



Editorial

National Reconstruction and Human Rights

Human rights comprise a major issue in the United Nations-organized national reconstruction projects in countries that have suffered from armed conflict and/or repressive rule. Setting up a special mechanism to redress human rights violations is an essential task. Establishing regular government institutions that would collectively protect, promote and realize human rights is an equally essential task.

The United Nations' Security Council rightly prescribes the process by which these tasks should be undertaken in national reconstruction projects. The Security Council resolution that creates the United Nations Transitional Administration in East Timor (UNTAET)

(s)tresses the need for UNTAET to consult and cooperate closely with the East Timorese people in order to carry out its mandate effectively with a view to the development of local democratic institutions, including an independent East Timorese human rights institution, and the transfer to these institutions of its administrative and public service functions.

This provision stresses the importance of involving the major stakeholders in the United Nations-organized national reconstruction projects. The local people's active participation in national reconstruction will likely determine the effectiveness and sustainability of the institutions and programs being created.

National reconstruction is an initial step in the long process of human rights protection, promotion and realization in countries recovering from the trauma of armed conflict and/or repressive rule. It is best to learn from the experiences in Cambodia, East Timor and Afghanistan.

FOCUS Asia-Pacific is designed to highlight significant issues and activities relating to human rights in the Asia-Pacific. Relevant information and articles can be sent to HURIGHTS OSAKA for inclusion in the next editions of the newsletter.

FOCUS Asia-Pacific is edited by Yoshio Kawashima, Director of HURIGHTS OSAKA.

Building the Future with Women: The Challenges of National Reconstruction in Afghanistan

Fatana Gailani

A transitional government was established in Afghanistan in mid-2000, more than six months after the Bonn agreement was adopted. It is tasked to facilitate the adoption of a new constitution for the country and hold nation-wide elections. It is governed by the United Nations Assistance Mission to Afghanistan (UNAMA).

President Hamid Karzai has been heading the transitional government since its establishment. Various government offices were created including the Ministry of Women's Affairs.

The International Security Assistance Force (ISAF), a United Nations-mandated operation, helps the transitional government maintain security in the country.

In June 2002, the Afghan Independent Human Rights Commission (AIHRC) was established to monitor and investigate human rights violations, develop and implement human rights education programs, and propose a national strategy to address justice and past abuses issues. Afghanistan's ex-minister for women's affairs, Ms. Sema Samar, heads it.

General situation

Security remains a major concern in Kabul and other parts of Afghanistan. Warlords are still in power and people fear the breakdown of the fragile security arrangements. ISAF cannot adequately respond to the need for security. Too much focus has been given to Kabul city for the past one year while the rest of the country derives no appreciable benefit. There is resistance among sections of the Afghan society to a long-term presence of ISAF in the country. They want the UN to replace the U.S.-led ISAF for peace-keeping work. The UN must take the lead in the demilitarization of the regions and pressuring the warlords to discard their weapons and respect the rights of the Afghans. The flow of weapons from the neighboring countries has not stopped, which contributes to the continuing dominance of the warlords.

The development of an all-Afghan army addresses this issue and would satisfy the Afghans' desire to have full control of their own national army.

The promises made by Mr. Karzai to the members of the emergency Loya Jirga have not been fulfilled. These promises include the reduction of the number of Cabinet members (which has actually expanded), creation of employment opportunities for eligible people, taking away the power of the warlords, freedom for various political parties, immediate rehabilitation of the economy, improving the security situation of the country, and addressing human rights (in particular women's rights) issues.

Competent and well known Afghans have not been given government positions. It is very important for the government to include a wide variety of people in the government and in pursuing the peace process to make them more sustainable and effective.

Situation of women

The situation of women and girls has improved somewhat since the fall of the Taliban. In some parts of the country, they can only get out of their houses wearing veil (*chadari*). Unfortunately, the world media focuses only on this issue and tends to undermine other issues. The women's contribution to peace-building and reconstruction has been underutilized and has not been recognized at the community, national and international levels. During the reign of King Shah, women were already occupying responsible positions in society. They were working in the government, in the parliament and in the different sectors of society. They were in school as students and teachers. They were doctors, engineers, and other professionals. This means that Afghan women are capable of doing important tasks if the opportunity is provided. The ensuing 24-year conflict brought the status of women down. Since the Soviet occupation, they were shunted aside by the rulers - be they the Soviets, the local leaders, or the Taliban. The post-Taliban situation has not significantly improved the status of women. The local

warlords are not giving women due recognition and role.

Poor gender policy in the government and limited opportunity in the programs of the United Nations agencies and international and local non-governmental organizations (NGOs) relegate Afghan women to non-influential positions such as secretaries and receptionists. There is a lack of recognition of the potentials and skills of these women and there is no opportunity for them to build on and increase their capacity in various fields. Women must be trained and brought into decision-making levels in all sectors. There should not be any restriction on employment of Afghan women at any level.

Afghan women have limited access to health, education and employment opportunities. Facilities are very limited. Due to various reasons, it is very difficult and sometimes impossible to mobilize them.

Awareness programs and vigorous advocacy are needed to facilitate the political participation of Afghan women. A new law provides that women, on an equal basis with men, are entitled to vote in any election, run for any elective office, hold any public office, and exercise any public function. This law should be used as basis for women's participation in Afghanistan's national reconstruction program.

The Afghan women struggled for their rights over the years. Their voices have been heard in various venues. Now they believe that they should be recognized as key participants in the prevention of armed conflict and violence, and in the post-conflict reconstruction of the society. They must participate in the social, political, and economic reconstruction of Afghanistan.

Afghan refugees

The UN High Commissioner for Refugees (UNHCR) is repatriating refugees from Pakistan and Iran on a voluntary basis. There are conflicting reports on the number of refugees repatriated to Afghanistan. Numerous refugees are skeptical of statements attesting to government stability. The government of Pakistan, on the other hand, demolished the refugee camps and has been pushing refugees to return to Afghanistan. Refugees are virtually forced to go back

to their country. In Kabul, most of refugees live in "container" houses shared by two to three families. This is a clear evidence of inadequate capacity of the Afghan government to provide the basic needs of the refugees. The UNHCR and other agencies should work on this issue before repatriating the refugees.

There is a suggestion to allow Afghan refugees to resettle in other countries if they cannot safely go back home in Afghanistan for security and other legitimate reasons. Many refugees are still reluctant to return to Afghanistan due to various problems such as discrimination on the basis of religion, gender and ethnic background. This fear is supported by reports of violation of human rights of some returnees. The government, with the support of the UNHCR, has to establish a monitoring system to prevent such violations from occurring.

Another issue that dissuades refugees from returning to Afghanistan is the existence of landmines and Unexploded Ordinance (UXO) in various parts of the country. Although there are a number of NGOs operating under the United Nations Mine Action Programme (MAPA) umbrella, the demand is greater than the capacity. The effort to increase the capacity of the demining programs all over Afghanistan should be reviewed. A number of returnees have died or were maimed by the explosion of these bombs. These incidents seriously affected the confidence among refugees to return back to Afghanistan. Many of those who returned to Afghanistan decided to go back to Pakistan.

Education

Education must remain high on the agenda of any government in Afghanistan. It is the main area requiring funding in recognition of the long-term process involved. Considering that access to education is a fundamental right of every Afghan girl and boy, more schools should be built, and new curricula must be developed to remain abreast of modern thinking and technology.

Due to significant lack of professionally qualified Afghans in the country, attracting qualified Afghans in other countries must go beyond short-term objective. There is a clear need to address the longer term. More teachers, materials, and books are needed. But

for the development of the education system to prosper, security and stability must exist.

International supporters and donors

International support for the rehabilitation of Afghanistan exists. In the March 2002 Tokyo conference, supporting countries pledged millions of US dollars to support programs for the supply of food for the widows in Kabul, health and child care, demining and mine awareness activities, international security forces, among others. Many international agencies provide support too.

An effective monitoring system to evaluate how money is spent and its impact and continuous assessment of NGO program implementation is necessary. This will facilitate improvement and general efficiency of the aid programs.

Donors should focus more on the long-term programs for Afghanistan. There is no short-term solution and there is no room for short-term commitment. The international community should not leave Afghanistan and Afghan people alone. But their programs should involve the Afghan people, including women, in the process of rehabilitating their country to ensure the sustainability of the process. Donor countries are urged to consider funding projects and agencies based on gender balance at beneficiary and implementation levels. It is necessary to develop indigenous capacity at all levels.

Conclusion

The promises made at the Bonn conference are valuable and have been accepted by the Afghans. They must be implemented soon. The Afghans accepted the six-month transitional government in the hope that a democratic election will be held soon, where people will have chance to elect their own representatives in government. Unfortunately, intellectuals and national figures are excluded from this process. The Afghans desire to have an elected and democratic government free of warlords and with the full support of the silent

majority. This seems to be the only solution to realize meaningful national reconstruction.

Afghan women are the ones who have suffered significantly through the decades of war. They are the ones who lost their husbands, brothers, children and families. They suffered from the crimes and atrocities committed not only by the Taliban but also by the warlords.

Afghan women have demonstrated that despite the hardship and tough policies of various governments over the years, they have kept the struggle to bring peace, security, justice and democracy.

Now, the women of Afghanistan are potentially stronger than ever. Many are now aware of human rights and their own rights, thanks to the work of the majority of Afghan women NGOs. They believe that through a democratic government they can achieve full rights, protection and participation in the country.

The rehabilitation of the returnee-families at the village level requires adequate resources and guarantee of security. The returnees must be confident of their security and the protection of their basic rights. A human rights monitoring system is needed in this regard. Only when these conditions are met will Afghan refugees be encouraged to return.

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Reconstruction in East Timor: Critical Issues on UNTAET

Mericio J. Dos Reis

The United Nations-organized¹ 30 August 1999 referendum allowed the East Timorese to choose their fate, after a long and difficult independence struggle. With the referendum results showing overwhelming support for an independent East Timor, widespread violence occurred, aimed particularly at East Timorese pro-independence activists. Three weeks later an appalled international community was forced to create the International Force in East Timor (InterFET). But by the time InterFET arrived, the Indonesian military and their militia allies had completed a scorched-earth campaign, destroying the country's infrastructure, displacing two-thirds of the population, and killing thousands. The powerful Indonesian authorities failed to take measures to stop the violence. The complicity of the Indonesian military leadership in the violence is undeniable.

A United Nations Security Council Resolution in 1999 established the Transitional Administration in East Timor (UNTAET). It has the mandate to provide security and maintain law and order throughout the territory of East Timor; establish an effective administration; assist in the development of civil and social services; ensure the coordination and delivery of humanitarian assistance, rehabilitation and development assistance; support capacity-building for self-government; and assist in the establishment of conditions for sustainable development.² UNTAET started operating on 28 February 2000. Mr. Sergio Vieira de Mello, appointed as Special Representative of the UN Secretary-General and Transitional Administrator, had absolute power over all branches of the transitional UN administration. East Timorese leaders were given token consultative role. They were given some power to make decisions only after almost two years of the UNTAET administration had passed, and after the first elections were held. But even at this stage all their decisions were subject to approval by Mr. de Mello.

Some of UNTAET's objectives were accomplished successfully, but others proved to be no more than empty promises proclaimed in the international community. One success is in the peace and order area.

InterFET - which was replaced by a UN Peace Keeping Force (PKF) - minimized the threat posed by the Indonesian military (TNI) and its militias. Also, UNTAET did an adequate job in running peaceful elections for the members of the Constituent Assembly and the President.

But several other objectives were not given adequate attention and consideration.

Healthcare

UNTAET international staff and peacekeeping troops had access to high-quality medical care from the various foreign militaries, and would often be evacuated to Darwin, Australia for advanced treatment. The East Timorese have no such options. Based on suggestions from international institutions such as the World Bank and International Monetary Fund to minimize East Timor's government expenditures, the budget for healthcare is significantly lower than the amount under Indonesian rule. The adverse effect of this situation can be observed in the condition of the hospitals in the country. They lack personnel (especially doctors), basic equipment and supplies, even in the largest and most advanced center for healthcare in the nation, the National Hospital in Dili. Until the beginning of 2003, there was a severe lack of medicine across the nation. Without access to medical services, rural population turned to traditional medicine, which often has dubious results. Nevertheless, serious cases in the rural areas have to be brought to the National Hospital to receive treatment. Until this year, no significant changes in the healthcare system and human resources across East Timor have been done, and the healthcare facilities, including the hospitals, are still very limited.

Education

While UNTAET repaired many school buildings, educational resources are still lacking. Tetum- or Portuguese-language books have not been distributed

well, and a national school curriculum does not exist. The continued use of either 'Bahasa Campur' (a mix of Indonesian and Tetum languages) or Bahasa Indonesia as language of instruction creates problems. One of the biggest problems is the lack of experienced East Timorese teachers. The departure of Indonesian teachers, who constituted the majority of the teachers under the Indonesian rule, caused a vacuum. The limited opportunity of becoming schoolteachers caused many East Timorese to lose interest in this profession. Many private universities have no adequate resources - libraries, fully qualified instructors, school buildings, and proper curriculum. UNTAET left all these problems to the new government of East Timor.

Inability to restore the judicial system

UNTAET's success in providing security and peace can only be sustained by a working judicial system. But it failed to give priority to the reconstruction of this institution.

The judicial system was destroyed as a result of the violence that occurred after the independence vote in the referendum of 1999. Court buildings and law libraries were destroyed, while the lawyers and judicial personnel fled. Of the 60 East Timorese lawyers that remained, none had any adequate experience as a judge or public prosecutor.

There is still a severe lack of judges and lawyers across the system. Many people await trial indefinitely, as the fragile system is unable to make time to hear the cases or make decisions. Others are waiting to appeal sentences, as it was almost a full year after UNTAET's mission ended that a president of the Court of Appeals was finally chosen, and the Court of Appeals still lacks judges to hear any cases brought before it. UNTAET continued to apply Indonesian law, except if it was found to be in violation of international human rights standards or if UNTAET passed specific legislation changing the situation. In practice, it is often difficult to tell which law to follow. The independent government has inherited this confusing mixture of laws, and the legal framework is very slowly being created.

UNTAET assigned two persons to implement a program on the judicial institution. Their task was to develop a new judicial system. But due to the many problems involved and the lack of staff, the task was

not completed. UNTAET treated judicial matters as an emergency task, but it did not make serious efforts to establish a credible legal and judicial system.

UNTAET had legal experts with international status but little practical experience and skills. They did not develop a sustainable legal system because they failed to work together with the East Timorese legal experts. This contradicted UNTAET's mandate as provided in the UN Security Council Resolution 1272, which requires its staff to cooperate and consult with the East Timorese society and to develop the human resources of the country. Some international staff tried to transfer their knowledge to the East Timorese. But without guidelines to follow, the effort was often done in a paternalistic and condescending manner. Such a task should have been done at the level of equals, with international and East Timorese staff sharing experiences together.

Another task that UNTAET failed to accomplish was the handling of the thousands of cases of crimes against humanity that occurred during the last 25 years. Some low-level East Timorese militia members have been held accountable, but the majority of suspects are yet to be tried.³ Those who are most responsible for the atrocities, Indonesian policymakers and high military officials, are now enjoying virtual impunity. While the Truth, Reconciliation and Reception Commission is successful in achieving reconciliation, its high visibility however should not obscure the need for justice to the victims. Justice cannot be realized by East Timor alone. The support of the international community is needed in this task.

UNTAET established a hybrid international-East Timorese court, the Serious Crimes Unit, to try war crimes and crimes against humanity committed in East Timor from 1975-1999. The Unit has not been adequately funded - during substantial periods there have not been enough international and East Timorese judges hired to fill the three-member Special Panels that hear the cases, frustrating plans to have two panels operating at the same time. The Unit has also only been able to try those people residing in East Timor - the UN never put serious pressure on the Indonesian government to extradite Indonesian residents indicted for crimes. This has resulted in a few sentences given to low-level East Timorese militia members, while the Indonesian military generals who are most responsible for planning and orchestrating the destruction of the country

enjoy immunity in Indonesia. The Serious Crimes Unit will be ending soon, even though it only had time to brush the surface of crimes committed in 1999 and not even begin to look at incidents before then.

Capacity of the International Staff

UNTAET staff often acted as experts who cannot be questioned. This attitude made them rarely try to listen to the voice of the local population and to learn about their culture, political situation, customs and general socio-economic conditions. Armed with such knowledge, they could have carried out their tasks more effectively. UNTAET also failed to develop among the East Timorese a sense of ownership of the reconstruction process. This condition could have created goodwill and better understanding between the UNTAET staff and the East Timorese. Capacity-building programs for, and participatory planning with, the East Timorese are important in this regard. Training for the UNTAET staff on practical skill such as obtaining local knowledge and resources, on the other hand, could have involved local people (and not just the elite in the East Timorese society).

The international staff's insistence on doing everything by themselves rather than giving the East Timorese staff the opportunity to take part, caused some of the problems of UNTAET. This situation eventually became the main reason why the East Timorese did not feel any sense of ownership of the reconstruction process. For them, this is a repeat of the way programs were carried out by the Indonesian government during the occupation. The local people always felt that they were only objects of the reconstruction process rather than actors determining reconstruction plans.

Conclusion and suggestions

East Timor still needs technical and financial support from the international community to establish education and health programs, and rebuild social, legal and economic infrastructures. We hope that the lessons from the three-year UNTAET experience have been learned by the Republica Democratica de Timor Leste government and the international institutions so that programs will become more efficient, effective and comprehensive. We also hope that they will follow the principle that the local people should

determine what programs are needed and how the reconstruction process can be undertaken.

The East Timorese civil society continues to demand that the international community lives up to its responsibility of enabling justice to be realized in East Timor. Two important things should be done: strengthen the judicial system through capacity building for local legal professionals; and build a national legal framework with clear and consistent laws.

In the meantime, the international community and the East Timorese people need to work together to establish an international tribunal to deal with the war crimes and crimes against humanity that occurred during the Indonesian occupation, for without justice there is no peace.

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Endnotes

1. This was undertaken by the United Nations Assistance Mission in East Timor (UNAMET).
2. Security Council resolution 1272 (25 October 1999).
3. See "Should be done: Justice still Delayed," *La'ó Hamutuk Bulletin*, Vol. 3, No. 4, www.etan.org/lh

Not Toy Soldiers: Children in Armed Conflicts

Glenda Ramirez

I was afraid that first time. The section leader ordered us to take cover and open fire. There were seven of us, and seven or ten of the enemy. I was afraid to look, so I put my face in the ground and shot my gun up at the sky. I was afraid their bullets would hit my head. I fired two magazines, about forty rounds. I was afraid that if I didn't fire the section leader would punish me.

(Human Rights Watch Interview with Khin Maung Than, who was 12 years old when this happened.)¹

Khin Maung Than² is one of the more than 300,000 child soldiers in the world, children under eighteen years old fighting as soldiers in armed groups, whether with government or opposition forces. Hundreds of thousands more have been recruited into government armed forces, paramilitaries, civil militia and various non-state armed groups. The average age of the children ranges between fifteen and eighteen, with the youngest recorded age at seven.

The use of children as soldiers is most serious in Africa and Asia, though governments and armed groups in several countries in the Americas, Europe and Middle East have also used and recruited child soldiers. There has been widespread and substantial child participation in armed conflicts across Asia and the Pacific, with Afghanistan, Myanmar, Sri Lanka and, in the recent past, Cambodia, as the worst affected countries. Children are also used as soldiers in ongoing lower-intensity conflicts across India, Nepal, the Philippines, Indonesia and, in the past, Papua New Guinea and Solomon Islands.³ It is estimated that about one in four child soldiers are in Asia.

Recruitment of children

Realistically, if the enemy is approaching and destroying your community, how can you stand back?...Sometimes people were exploiting us...I want to save my island and my people...I have five brothers. Four joined the fighting, three joined before me. I want to defend my island and my people...

(Interview of a child who joined the Bougainville Revolutionary Army in Papua New Guinea when he was 17.)⁴

In 1999 I went with my mother to visit Yangon. My mother returned home first, and I left for home five days

later. On the way home there were many checkpoints. At one checkpoint the police stopped me because I had no ID card, and took me to the police station. There the police threatened me, saying that because I had no ID card I could be put in jail [for] 6 years. Then they told me that I could choose to either go to jail for 6 years or join the army. I was afraid of spending 6 years in jail so I decided to join the army. At this time I was 11 years old.

(Interview of Min Zaw by the Human Rights Documentation Unit.)⁵

The recruitment of children into armed groups can be compulsory, "voluntary" or through the use force. Compulsory recruitment, or conscription, consists of the legal obligation of nationals of a country, which may include those under the age of 18, to perform military service.⁶ Forced recruitment, as practiced by government and opposition armed forces, involves the use of threat of or actual physical violence on the children or someone close to them.⁷ There are cases of children being kidnapped and forced to become soldiers.

Children, without force or compulsion, may decide to join an armed group for various reasons such as desire for revenge, nationalism, lack of educational opportunities, financial problem, heroism, and influence of family members. Economic, cultural, social or political factors may influence the decision of a child to become a child soldier, hence, it may be misleading to call such recruitment as "voluntary."⁸

Role of children in armed conflict

[I was best at] close range fighting. [But the most difficult job] was when I was assigned to assassinate somebody at Isabela, which is surrounded by the army and police.

(Interview of a child soldier in the Philippines who joined when he was 17.)⁹

When children participate in armed conflict, they perform various tasks, either as combatant, bomb carrier, executioner or assassin, informant, porter, spy, courier, construction worker, cook, domestic worker, thief, and sexual slave, or a combination of all of these. Regardless of the role they perform, the children's physical security and entire well-being are placed in

grave danger. Children are exposed to conditions that endanger their life and physical health. Social and psychological effects on children include difficulty in interacting with others, apathy, militarist attitude, hatred, sense of insecurity, cold-bloodedness, sense of isolation, and violence.¹⁰

Sometimes, about once a month, I have bad dreams of killing people. I become angry in situations when I feel I'm not good. Yes, I think of myself as violent. I drink to enjoy myself.

(Interview with a child soldier in Papua New Guinea who joined an armed group when he was 17.)¹¹

Protecting the children: The Optional Protocol

The United Nations General Assembly adopted on 25 May 2000 by consensus the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. It entered into force on February 12, 2002.

The Convention on the Rights of the Child sets 15 years as the minimum age for direct participation of children in hostilities and recruitment in government armed forces, with State Parties giving priority to those who are oldest. The Optional Protocol, however, raises the minimum age level to 18 years. It also calls upon State Parties to raise the minimum age for voluntary recruitment and to maintain safeguards to ensure that the recruitment is genuinely voluntary.

The Optional Protocol prohibits non-state armed groups from recruiting, whether voluntary or forced, and using children under 18 years of age.

The Protocol also requires State Parties to undertake the following actions:

*Take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of its provisions;

*Make the principles and provisions of the present Protocol widely known and promoted to adults and children alike;

*Take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service;

*Cooperate in its implementation, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to the Protocol, including through technical cooperation and financial assistance;

*Provide, if in a position to do so, such assistance through existing multilateral, bilateral or other programs; and

*Submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement its provisions.

As of 25 April 2003, there are 111 signatories and 53 State Parties to the Optional Protocol. The following countries in Asia have already signed or ratified the Protocol:

States*	Signature	Ratification
Azerbaijan	8 September 2000	3 July 2002
Bangladesh	6 September 2000	6 September 2000
Cambodia	27 June 2000	
China	15 March 2001	
Indonesia	24 September 2001	
Israel	14 November 2001	
Japan	10 May 2002	
Jordan	6 September 2000	
Kazakhstan	6 September 2000	10 April 2003
Lebanon	11 February 2002	
Maldives	10 May 2002	
Mongolia	12 November 2001	

States	Signature	Ratification
Nepal	8 September 2000	
Pakistan	26 September 2001	
Philippines	8 September 2000	Final instruments to be submitted 25 July 2002 (a)
Qatar		
Republic of Korea	6 September 2000	
Singapore	7 September 2000	
Sri Lanka	21 August 2000	8 September 2000
Tajikistan		5 August 2002 (a)
Timor-Leste		29 January 2003 (a)
Turkey	8 September 2000	
Viet Nam	8 September 2000	20 December 2001

*Eastern Asia, South-Central Asia, Southeast Asia, Western Asia and the Middle East

In spite of the universal ratification of the Convention on the Rights of the Child, only half of the countries in Asia¹² have signed the Optional Protocol. And of these countries, only eight have ratified or acceded to it so far. Countries which have not yet signed or ratified the Optional Protocol include those which have already been violating it: countries whose armed forces are known to recruit and use child soldiers in the armed conflict. Both state and non-state armed groups across Asia continuously and consistently defy the provisions of the Optional Protocol.

Some countries that have already signed the Optional Protocol expressed support to the “straight 18 ban” position of the Coalition to Stop the Use of Child Soldiers on both compulsory and voluntary recruitment. However, with the lapse of a reasonable amount of time from the date of signing the Optional Protocol, these countries have not yet undertaken the necessary steps for its ratification. For other countries, the Optional Protocol is simply not a matter of national priority at this point. Considering the continuous violation of the rights of children who are recruited and used in armed conflicts around the world, the urgency of protecting their rights, and the need to further prevent their recruitment and use as soldiers, all governments in Asia are strongly urged to sign and ratify the Optional Protocol. The governments are urged to do so without reservations and specifying at least 18 as the minimum age for all forms of military recruitment, whether compulsory or voluntary.

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Endnotes

1. Human Rights Watch, *My Gun Was As Tall As Me: Child Soldiers in Burma* (New York: 2002), page 83.
2. Not his real name
3. *Child Soldiers Global Report 2001*, Coalition to Stop the Use of Child Soldiers (London: 2001).
4. UNICEF, *Adult Wars, Child Soldiers: Voices of Children Involved In Armed Conflict in the East Asia and Pacific Region* (New York: 2002), page 26.
5. *The Impact of Armed Conflict on the Children of Burma*, submission by the Burma UN Service Office-New York and the Human Rights Documentation Unit - Bangkok, both of the National Coalition Government of the Union of Burma, to the Office of the Special Representative of the Secretary-General for Children and Armed Conflict for the preparation of the Secretary-General's third report to the Security Council on children and armed conflict, in compliance with UNGA resolutions 1261 (1999), 1314 (2000), and 1379 (2001).
6. Brett, R. and McCalin, M., *Children: The Invisible Soldiers*, Save the Children Sweden (Stockholm: 1998), pages 41-42.
7. Goodwin-Gill and Cohn, Ilene, *Child Soldiers: The Role of Children in Armed Conflicts*, Henry Dunant Institute,(Geneva:1994), page 24.
8. UNICEF, op cit., page 23.
9. Ibid, page 44.
10. Result of workshop discussion during the Consultation Workshop Against the Use of Children as Soldiers in Indonesia, organized by KKSP Foundation Education and Information Center for Child Rights on 29 -31 October 2001 in Parapat, North Sumatra, Indonesia.
11. UNICEF, op cit, page 64.
12. Including the Middle East.

Are Asian States Ready to Prevent Torture? : Looking at the UN Optional Protocol on Torture

Cecilia Jimenez

On 18th December 2002, the United Nations General Assembly (UNGA) adopted what could be one of the most forward-looking human rights instruments ever drafted and accepted by the international community - the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention).¹ While human rights treaties usually put a stress on protection and prosecution of human rights violations, the Optional Protocol on Torture emphasizes the prevention of torture - one of the most despicable acts of humankind - and sets up international and national structures for this purpose. Under the Optional Protocol,² States Parties shall establish independent and impartial national organs that will visit, at any time, its prisons, police stations and other detention centers. Moreover, an international committee of experts shall have the same powers to visit the States Parties and enter places of detention.³

The draft of this treaty had been in discussion for not less than ten years in the United Nations. The idea was conceived twenty-five years ago by a Swiss banker, adopted in at least one region of the world⁴ and has undergone much adaptation over two decades based on developments in law and practice. The present and definitive text provides for a two-pillar approach of direct national responsibility and international monitoring. Based on one of the fundamental articles of its mother Convention,⁵ the Optional Protocol aims to strengthen and make the States Parties more accountable on the actual prevention of torture. Only States Parties to the Convention could ratify the Optional Protocol.

In this process, where have Asian governments positioned themselves? Torture, indeed, continues to persist in many Asian countries, and victims of torture and inhuman treatment remain aggrieved, their lives and those of their families damaged and shattered forever. Discussions on the draft Optional Protocol

reveal, however, that many of the Asian States either refuse to acknowledge the gravity of the problem or deny their responsibilities to tackle the problem.

Asian governments and the Optional Protocol

In the final votes in the UNGA, the Optional Protocol was adopted with 127 votes in favor, 4 against (the USA, Marshall Islands, Nigeria and Palau) and 42 abstentions. Twenty-one countries from the Asia-Pacific region voted in favor of the Optional Protocol: West Asia - Bahrain, Israel, Jordan, Lebanon and Yemen; South Asia - Sri Lanka; Southeast Asia - Cambodia, Indonesia and Timor Leste; Northeast Asia - Mongolia and South Korea; and the Pacific - Fiji, Kiribati, Micronesia, Nauru, New Zealand, Papua New Guinea, Samoa, Solomon Islands, Tuvalu and Vanuatu. The rest of the Asian States abstained, including the following States Parties to the Convention: Kuwait, Qatar, Saudi Arabia; Afghanistan, Bangladesh and Nepal; the Philippines; China and Japan; and Australia. Compared to other regions of the world, the Asia-Pacific region has the lowest record in supporting the Optional Protocol.⁶

Indeed, while the twenty-one States from the region are to be highly commended for their support and commitment, the rest, most specially those who are already States Parties to the Convention, should be held accountable. In light of their continuing rhetoric deploring torture and reaffirming their commitment to eradicate the practice, these Asian governments missed out on an opportune moment to demonstrate their intention to combat torture in a concrete way. Instead, they have made clear their blatant insincerity.

This dismal Asia-Pacific record goes back to the 2002 session of the UN Commission on Human Rights, when a resolution was proposed to consider the adop-

tion of the Optional Protocol. Not one Asian State was among the fifty-three co-sponsors of the resolution. Cuba responded with a no-action motion (which could set back the adoption of the Optional Protocol) and got the support of all eleven Asian members⁷ of the Commission voting as a bloc. Fortunately, the majority of the Commission members rejected it.⁸ The Commission then proceeded to adopt the Optional Protocol with 29 votes in favor, 10 against and 14 abstentions. Only one Asian state voted in favor - Bahrain; five Asian states voted against - China, Japan, Malaysia, Republic of Korea and Saudi Arabia; while the rest - India, Indonesia, Pakistan, Thailand and Vietnam abstained.

At the UN Economic and Social Council (ECOSOC), the next stage, attempts were again made to derail the adoption of the Optional Protocol. A motion by the United States that would have re-opened the negotiations got the support of Australia, China, Cuba, India, Iran, Japan and Pakistan. It was defeated, again, by the majority members, of which only Fiji came from the region. Bahrain, Bhutan, Nepal, Qatar and the Republic of Korea abstained from this motion.⁹ There was a slight improvement in the Asian record when the ECOSOC finally adopted the substance of the Optional Protocol: ECOSOC members Bahrain, Fiji and the Republic of Korea voted for its adoption; Australia, China and Japan stood firmly in opposition; Bhutan, India, Nepal and Pakistan abstained and Iran was absent.

As the penultimate stage, the Third Committee of the UN General Assembly witnessed even more attempts. Japan proposed to defer action on the draft Optional Protocol for 24 hours on the claim that it needed more time to look at the budgetary implications. This motion, supported by China, India, Israel, Kuwait, Malaysia and Singapore, was defeated.¹⁰ The United States made a second attempt by proposing an amendment that would have taken the Optional Protocol's expenses shifted from the UN regular budget to the sole responsibility of the States Parties. Australia, India, Israel, Japan, the Marshall Islands and Pakistan were among the 11 supporters of the motion, who were then defeated by the majority of the Third Committee members.¹¹ The final vote on the Optional Protocol in the Third Committee that adopted the text had 104 in favor, 8 against and 37 abstentions. Twelve Asia-Pacific States voted in favor: Afghanistan, Fiji,

Indonesia, Jordan, Mongolia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Samoa, Sri Lanka and Vanuatu. On the other hand, China, Israel, Japan, Syria and Vietnam voted against along with Cuba, Nigeria and the United States.

Hard-headed Asian governments

Among the Asia-Pacific States, Japan and Australia were the most vociferous opponents to the adoption of the Optional Protocol. As States Parties to the Convention, Japan¹² and Australia¹³ had actively participated in most of the ten years of negotiations in the UN. In the final years, they have taken up issue with the substance and budgetary concerns surrounding the operation of the Optional Protocol. With China,¹⁴ they also protested the procedure in adopting the draft at the working group level, claiming that more time is needed to develop consensus, a position shared by most of the other Asian States including, among others, India, Malaysia, Singapore and Vietnam.¹⁵ Thus, in the ECOSOC and in the Third Committee of the General Assembly, they have become part of the US-led alliance in attempts to derail the Optional Protocol. In the end, during the final vote in the General Assembly, China, Japan and Australia abstained, as did most of the others. These States, along with the others that opposed, should be ashamed of their positions and their continuing perseverance to make a mockery of the situation of victims of torture.

Positive surprises and consistent support

The most positive surprise in the whole process of adopting the Optional Protocol was the position of Bahrain. Although it supported or abstained from the procedural motions that would have derailed the Optional Protocol's adoption, Bahrain had the courage to be the only Asian State in the Commission to support adoption at the final vote. It remained consistently supportive of the Optional Protocol from the ECOSOC to the UNGA. Bahrain explained its positive vote as part of its efforts at building democratic process and establishing institutions to advance the cause of its people.

In addition, the Republic of Korea experienced a commendable change of mind. Voting against the Optional Protocol in the Commission, it then gave its support to

the adoption of the text in all subsequent stages from the ECOSOC up to the UNGA. Explaining its position, South Korea said that it had reservations concerning the process but gave the Optional Protocol its support in light of the country's commitment to the prevention of torture.

Furthermore, two countries from the Pacific should be highlighted: Fiji and New Zealand. Although Fiji is not a State Party to the Convention and could not participate in the Geneva negotiations, its support in the UNGA (New York) was crucial and admirable. New Zealand,¹⁶ on the other hand, had been active in the Geneva negotiations through its Geneva mission and had fully supported the Optional Protocol in both Geneva and New York. Moreover, New Zealand publicly welcomed the adoption of the new treaty and declared that it will begin the process towards signing and ratifying the new Optional Protocol.

Last but not the least are, of course, the Asian States who, although not active supporters, had nevertheless given their precious and commendable support for the Optional Protocol, including the positive votes in the UNGA.

To all of these Asian states, we say BRAVO! These Asian States showed that despite the persisting problems, they could look into the possibility of actual prevention of torture and not shirk their responsibilities. Indeed, let prevention of torture be a reality in the Asia-Pacific region!

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Endnotes

1. UN GA Resolution 39/46 of 10 December 1984, entered into force on 26 June 1987.
2. UN GA Resolution 57/199 of 18 December 2002, opened for signature on 4 February 2003.
3. Article 1 of the Optional Protocol provides: "The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.
4. At the regional level, the European Convention for the Prevention of Torture establishes the European Committee for the Prevention of Torture.
5. Article 2.1 of the UN Convention against Torture provides: "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."
6. Positive votes are as follows: 25 states from the Americas and the Caribbean; 32 from Africa; 24 from Eastern Europe and Central Asia; and 25 from Western Europe.
7. Bahrain, China, India, Indonesia, Japan, Malaysia, Pakistan, Republic of Korea, Saudi Arabia, Thailand and Vietnam.
8. The vote was 28 against, 21 in favor and 4 abstentions.
9. The vote was 29 against, 15 in favor and 8 abstentions.
10. The vote was 85 against, 12 in favor and 43 abstentions.
11. The vote was 98 against, 11 in favor and 37 abstentions.
12. Japan acceded to the Torture Convention on 29 June 1999.
13. Australia ratified the Torture Convention in 8 Aug 1989.
14. China ratified the Torture Convention on 4 Oct 1988.
15. All of these States are not States Parties to the Torture Convention, although India had signed the Convention in 1997.
16. New Zealand ratified the Torture Convention on 10 Dec 1989.

Rights in Law and in Practice:

The Case of Bangladesh

Jamila Ahmed Chowdhury

Women are favorite subjects of literature, and Bangladeshi women are no exception. The beauty and charm of Bangladeshi women are extolled in poems, legends and short stories. But the suffering of Bangladeshi women hardly comes out in the literature. Bangladeshi women endure oppression and deprivation in their own family, community or in the society at large. They are also subjected to violence and discrimination. In a large country like Bangladesh, with its socio-economic and legal systems biased against the poor and the women, Bangladeshi women are in difficult situation.

Women's rights in law

Under the 1972 Constitution of Bangladesh, women's rights are protected under the broad and universal principles of equality and participation. These principles are found in the following Articles in the Constitution:

*Article 10 of the Constitution provides that steps shall be taken to ensure participation of women in all spheres of national life.

*Article 19 (1) provides that the State shall endeavor to ensure equality of opportunity to all citizens. Article 27 specifies that all citizens are equal before the law and are entitled to equal protection of the law. Moreover, Article 28 (1) provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth. Article 28 (2) more directly and categorically says that women shall have equal rights with men in all spheres of the State and of public life. This latter provision means that all rights mentioned in the Constitution, such as right to life, right to personal liberty, right to property, freedom of movement, freedom of speech, freedom to exercise a profession or occupation are equally applicable to women in Bangladesh.

Bangladesh has a number of special laws, specifically prohibiting certain form of violence against women including the Penal Code, 1860, the Anti-Dowry Prohibition Act (1980), the Cruelty to Women Ordinance (1983), the Suppression of Immoral Traffic Act (1993;), and the Prevention of Repression against Women and Children Act (2000).

Women's rights in reality

Despite the legal support for women's rights, Bangladesh women are still practically not given equal treatment. Practices of inequality are manifold, of which the following deserve a special mention:

- In case of wages in the informal sector, women are paid a lower grade than men for the same work;
- In divorce, women need a court order to enforce their right to divorce, which requires proving the validity of their reason for seeking divorce. Men, on the other hand, do not need such court order and thus they can divorce their wives

even without any proper reason, and at any time they wish;

- In inheritance, a woman is generally given half the share of her male counterpart. A son would exclude his paternal uncle or aunt from inheriting from his deceased's father's property, while a daughter would not cause such consequence.

Contravening the Constitutional provisions on the right to life and liberty (Article 32), and freedom of movement (Article 36), Bangladeshi women face different forms of violence by men on a daily basis. One research report¹ published in 2000 by a reputed women's non-governmental organization in Bangladesh shows that 30% of the women in the cities are battered by their husbands, 37% are victims of verbal insults and harassment, and 33% are victims of other forms of domestic violence. Another survey reveals that among the victims of physical violence, 23% are rape victims, 22% are acid-throwing victims, 10% are burn-victims, 5% are victims of poisoning, forced abortion and other kinds of violence.

A number of traditional practices also oppress Bangladeshi women. Many women have been charged with committing "moral" offences before local religious leaders whose views are generally biased against women. The local religious leaders issue a *fatwa* (ruling) that metes out punishment to women, such as the humiliating and degrading public whipping and stoning. There is no legal sanction for fatwa; it is simply a part of traditional practice.

Bangladeshi women who fail to pay the dowry to their husbands and their families are subjected to violence. Some have been beaten, set on fire or poisoned. Women who turn down marriage proposals are in danger of suffering violence from spurned men. There is increasing number of cases of men throwing acid to the faces of women with the aim of disfiguring them. One non-governmental organization (ODHIKAR)² reported an increasing number of acid-throwing cases - 101 in 1998, 178 in 1999, 186 in 2000, 206 in 2001 (including 33 of the victims who were children) and 247 in 2002.

The mobility of Bangladeshi women is also hampered by traditional practices. The observance of *pardah* (seclusion) is an example of such traditional practices. This practice restricts the movement of women outside the house. And if they enter a public place where men are present, they have to make sure that no part of their body (including their face) is without any cover. In some extreme cases, family reputation is considered blemished if any of the Muslim family's women fail to follow this tradition.

There are also cases of trafficking of Bangladeshi women to other countries for purposes of forced prostitution. Because of the hidden nature of trafficking, reliable statistics are hard to find. Nevertheless according to one report,³ the rate of trafficking of women and children in Bangladesh is as follows:

- * 200-400 young women and children are smuggled and

trafficked every month from Bangladesh to Pakistan and Arab countries;

* An estimated 10,000 - 15,000 are trafficked to India annually;

* On average at least 70-80 women and children are trafficked daily from Bangladesh to other countries;

* An estimated 200,000 women have already been trafficked to different countries including girls as young as 9 years old.

Rape cases are also increasing in an alarming rate. There were 3,189 rape cases in 2002, up from 3,140 cases the previous year.⁴

This situation restricts the free movement of women. They fear for their safety. They are not safe whether they are inside or outside the house. Parents, relatives and the women themselves are constantly worried about their physical security. This led to the situation where women cannot anymore freely move around without another person acting as bodyguard, and where parents insist that they return home before it gets dark whether their work is finished or not.

The Bangladeshi government created in 1990 a program in the Ministry of Women and Children Affairs to assist women victims of violence. Assistance cells have been created in different parts of the country to implement the program. However, the number of such assistance cells is very limited to be able to cope with the demand for service.

Early marriage is another obstacle in promoting women's rights. The Majority Act, 1875 clearly provides that a woman must at least be 18 years old to be able to get married. This legal requirement unfortunately is disregarded, especially in rural areas. Many marriages are held without the 'free consent' of the women. The parents give the consent as if there is no justification for getting the consent from the women. Poverty, family honor, social insecurity are some of the major reasons for early marriages. As a result, the women's right to education, a pillar for realizing one's own rights, suffer.

In education, more Bangladeshi boys study than girls. The ratio of boy-girl students in the primary school level has improved with girl enrolment reaching 70% of the boy enrolment level. But the situation in the secondary school level is still bad with girl enrolment constituting only 40% of the boy enrolment level.

In livelihood, Bangladeshi women suffer discrimination in getting bank loans. Since most of them do not have properties of their own that can be used as loan collateral, and husbands or male relatives have to give consent to any bank loan transaction, the opportunity for women to access to financial resource from the bank is limited.

Employment of women is still low. This is true for the both private and government offices.⁵ And women who occupy government jobs have lower status and very little influence in government decision-making processes.

In politics, while Bangladesh has two women Prime Ministers during the last decade until the present, only 6 women legislators have been elected into Parliament during the 8th National Elections held in June 2001. There are 36 women legislators (composed of 30 members occupying reserved seats for

women and 6 elected members) in the 330-member parliament.

Turning the Law into Practice

The situation of Bangladeshi women illustrates the problem of turning legal principles into social, political and economic practice.

The discriminatory attitude against women, rooted in the family and extends to the State level, should be ended. Because of the constraints from the family, society and the State in general, Bangladeshi women are not aware of their rights. And even if some of them become aware of their rights, they still would not assert them due to the "ingrained unexpected continuity" (i.e., the traditional belief of keeping women under the shadow of somebody such as their fathers or husbands).

A basic change in the institutional structure may occur if 'social security' for women is ensured. Furthermore, the outlook of the family and society has to change to give more opportunity for women's protection and participation in Bangladesh. This, in turn, will help women become independent and conscious about their rights.

In this case, the approach may have to be two-pronged - at the level of the family and society, and at the level of the State. This approach mitigates the gap between the laws and the existing practices against women's rights.

Without the link between the principles and the practice, Bangladeshi women will continue to suffer. This is a sad state three decades after the United Nations pronounced the "Decade of Women (1975- 1985)."

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Endnotes

1. *Violence on Women in Bangladesh*, Nari Pakha Report, (Dhaka: 2000).
2. ODHIKAR, *Yearly Report on Human Rights Situation in Bangladesh* (Dhaka: 2002).
3. US Department of State, *Trafficking in Persons Report 2002* (Washington: 2002) and USAID, *Bangladesh Anti - Trafficking* 13 March 2003.
4. "Violence May Be Rising Against Bangladesh Women," *Gulf News*, United Arab Emirates, 23 March 2002.
5. The government policy of recruiting more women into the government service has not been successful so far. In 1999, only 14% of the new government employees are women. See 1999 country reports on human rights released by the Bureau of Democracy, Human Rights and Labor, U.S Department of State, February 25, 2000.

HURIGHTS OSAKA ACTIVITIES

Mr. Jun-ichi Kasahara assumed his post as Secretary-General of HURIGHTS OSAKA last April 2003. Mr. Kasahara was assigned by the Osaka City Government for a three-year posting in HURIGHTS OSAKA.

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