



*Editorial*

## *Persistence*

Caste-based/caste-like discrimination has been very persistent despite the passage of laws prohibiting it and the implementation of special programs to help the discriminated overcome the problem.

The persistence of this form of discrimination is a sign that those who support the discriminatory practice still do not accept its adverse effects on the victims. Some probably still believe that the victims deserve such discriminatory treatment. Hopefully, on the other hand, the victims do not see caste-based/caste-like discrimination as ordained fate.

This form of discrimination is also persistent as it mutates into cyberspace hate crime.

How can this social problem causing very dire consequences to victims be fully eliminated? How much more must be done to erase it from the societal fabric?

To such a persistent problem, a persistent approach is needed. There is no possibility of eliminating it by mere legal and even socio-economic measures. There must be persistence in finding other ways of addressing the problem, and persistence in implementing old and new measures over time.

In the end, the elimination of caste-based/caste-like discrimination is dependent on the whole society's move towards respect for the humanity of the victims as much as recognition of the inhumanity of the discriminatory practice.

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 Osamu Shiraishi, Director of HURIGHTS OSAKA.

# Untouchability and Violence against Dalits

*N. Paul Divakar\**

The so-called Scheduled Castes (SCs) of India, erstwhile Untouchable communities and presently termed Dalits by most movements and political bodies in the country, number 167.2 million people (2001 census). In addition, there are at least 42 million Muslim, Sikh and Christian Dalits who in one form or another are vulnerable to discrimination and also to different and particular form of backlash violence.

## **Untouchability a crime**

The Constitution of India not only guarantees equality, liberty, fraternity, justice and basic human rights as Fundamental Rights but also prohibits the practice of Untouchability in any form. Through the efforts Dr. B.R. Ambedkar, the iconic leader of Dalits, who led the Dalit liberation movement and was the Chairperson of the Constitution Drafting Committee, the Constitution has made Untouchability a crime and provided safeguards against it. Article 17 of the Constitution abolished Untouchability and its practice in any form is forbidden. Article 25(2b) of the Constitution provides that Hindu religious institutions of a public character shall be open to all classes and sections of Hindus. This provision is contrary to the traditions of some sects of Hinduism that prohibits Scheduled Caste members from entering temples. Two important legislations were enacted to give effect to these articles. The Protection of Civil Rights Act, 1955 punishes the preaching and practice of Untouchability.

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 criminalizes certain acts against members of the Scheduled Castes and Scheduled Tribes such as traffic in human beings, 'begar (free labor)' and forced labor in any form. A related law, the Bonded Labour System (Abolition) Act, 1976 provides for a special program for identifying bonded laborers, and for their liberation and rehabilitation. While this law does not specifically mention Scheduled Castes, it is especially significant to them because the majority of bonded laborers

belong to the Scheduled Castes. Article 24 of this law provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any hazardous employment. The Child Labour (Prohibition and Regulation) Act, 1986 complements this law. The practice of requiring Dalits to remove human feces by hand continues despite the prohibition of manual scavenging by the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

## **Rampant Untouchability despite law**

A recent study on Untouchability in rural India,<sup>1</sup> covering five hundred sixty five villages in eleven States, found that public health workers refused to visit Dalit homes in 33% of villages, and Dalit children sat separately while eating in 37.8% of government schools. Dalits were prevented from entering police stations in 27.6% of villages, did not get mail delivered to their homes in 23.5% of villages, and were denied access to water sources in 48.4% of villages.

## **Backlash violence against those challenging Untouchability**

Police statistics averaged over the past five years show that every week: thirteen Dalits are murdered, five Dalits' homes or possessions are burned, six Dalits are kidnapped or abducted; every day: three Dalit women are raped, eleven Dalits are beaten up; and for every eighteen minutes a crime is committed against a Dalit.<sup>2</sup> This is despite the fact that many Dalits do not report crimes for fear of reprisals by the dominant castes. Despite twenty-seven officially

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registered atrocities being committed against Dalits every day, the police often prevent Dalits from entering police stations, neglect their cases and even partake in torture.

### **Impunity and wilful negligence**

The state machinery, especially the police, exhibits gross negligence of the plight of Dalits resulting in impunity. In a query raised by the Chief Justice of the High Court of Andhra Pradesh on a Public Interest Litigation case filed by Sakshi Human Rights Watch to the State Police Department,<sup>3</sup> it admitted to 14,452 cases with delayed filing of charge sheet beyond the stipulated period of thirty days as per the SC/ST POA Act. This means insurmountable impunity resulting in denial of justice to the victims of violence.

### **Multiple forms of discrimination and violence**

The discrimination against the Dalits takes different forms such as:

**a. Dalit Women:** They face double discrimination on the basis of caste and gender in all spheres of life and are subjected with impunity to gross violations of their physical integrity, including sexual abuse by dominant castes; they are socially excluded and economically exploited. The practice of '*divine prostitution*' (*Jogini/Devadasi systems*) continues even today despite laws prohibiting this menace affecting the Dalit women.

**b. Communities involved in manual scavenging:** Of the more than 1.2 million manual scavengers, over 95% are Dalits. They are compelled to undertake this inhuman and degrading task under the garb of 'traditional occupation'. The practice of manual scavenging is illegal and unconstitutional and a blot on the face of humanity. But it still continues.

**c. Exclusion from political participation:** Many reports from across the country reveal that Dalits' exercise of their legitimate and rightful claim to representation (namely participation or leadership in the electoral process) is met with violence.

**d. 'Discrimination by Default':** The 2005 Asian

Tsunami demonstrated that all levels of authority involved in responding to the tragedy practiced Untouchability. Aid was distributed through caste panchayats, and those who called themselves traditionally as 'fisherfolk by birth' were given priority on receiving aid. These organizations proved efficient in distributing aid in their community, but excluded some people including Dalits regardless of loss or suffering. This was done through coercion as well as simple exclusion. Higher authorities or donors did nothing to ensure equitable distribution.

**e. Education:** Untouchability in schools has contributed to drop-out and illiteracy levels for Dalit children far beyond those of the general population, with the 'literacy gap' continuing between Dalits and non-Dalits and literacy rates for Dalit women remaining as low as 37.8% in rural India (2001 Census). Teachers have been found to maintain discriminatory attitudes and practices that underlie caste relations in society.

**f. Nutrition:** Half of India's Dalit children are undernourished, 21% are 'severely underweight', and 12% die before their 5th birthday.<sup>4</sup>

**g. Exclusion from budget:** The Government of India has a potentially powerful mechanism for the economic empowerment of Dalits known as Special Component Plan (SCP). The spirit of the Plan has been consistently thwarted in its application and implementation by most of the departments at the Central and States levels, by diverting on an average Euro2,000 million (2.7 billion US dollars) every year<sup>5</sup> during the past five-year plan period.

**h. Labor market:** Like other sectors Dalits also face discrimination in the labor market. This is clearly exhibited in exclusion of Dalits from employment by 'higher caste'; exclusion of 'low caste' from certain types of jobs due to notion of pollution and purity associated with Untouchability; selective inclusion in employment but with unequal treatment reflected (i) in lower wages (lower than wages given to other laborers), (ii) in terms and conditions with respect to hours of work, (iii) different behavior by employers towards low caste laborer /worker in the work place, and (iv) compulsive and forced work governed by tra-

ditional caste related obligations.<sup>6</sup>

**i. Economic exclusion and discrimination:** Through differential pricing in sale, purchase and hiring activities ranging from raw materials to finished goods Dalits are disadvantaged.<sup>7</sup> They are also denied the sale or purchase of land for agriculture and non-agricultural use.

### **Persistent denial in the United Nations**

While the situation of the Dalits still warrants special and urgent measures and interventions by various bodies of the state and the civil society, the state is still in a dilemma in its commitment to challenge the precipitation of the mindset of Untouchability and the resulting caste-based discrimination. While, at the time of Independence and thereafter, the Indian state did recognize and take constitutional and legislative remedies to correct the injustices caused, gross gaps in their implementation result in impunity. This mindset is also reflected in the actions of India at the United Nations (UN) and its various bodies that could have addressed the situation of discrimination and exclusion. It declined to address the issue in the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) held in Durban, South Africa from 31 August-8 September 2001.

### **Dalits betrayed**

There is a strong comfort level in society and the state that crimes against Dalits do not need to be punished. This attitude of impunity is rooted in social and cultural values and persists in society despite the constitutional provisions against it. Protecting the rights of marginalized and vulnerable people is probably the most overlooked and disregarded area of human rights in India.

However there is a clear departure from this *denial* through a realistic acknowledgment of the situation. Manmohan Singh, the President of India, at an international conference on Dalits and Minorities in New Delhi on the 27 November 2006<sup>8</sup> drew the parallel between social and caste injustices saying it was modern India's failure that millions of Dalits were still

fighting prejudice. He explained:

Even after 60 years of constitutional and legal protection and support, there is still social discrimination against Dalits in many parts of our country. Dalits have faced a unique discrimination in our society that is fundamentally different from the problems of minority groups in general. The only parallel to the practice of untouchability was apartheid.

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### **Endnotes**

1. Shah, Mander, Thorat, Deshpande and Baviskar, *Untouchability in Rural India*. Delhi: Sage Publications, 2006.
2. Based on *Crime in India 2005*, <http://ncrb.nic.in/crime2005/home.htm> and <http://ncrb.nic.in/crime2005/cii-2005/CHAP7.pdf>
3. Writ Petition No. 1019 of 2006, High Court of Andhra Pradesh, filed by Sakshi Human Rights Watch, Response by the State Police Department in Annexure R-2/1.
4. *National Family Health Survey*, commissioned by the Indian Ministry of Health and Family Welfare, 1998-99 (last survey available), page 11, [www.nfhsindia.org/data/india/indch6.pdf](http://www.nfhsindia.org/data/india/indch6.pdf)
5. Calculated from Expenditure Budget Vol. II (Notes on demands for Grants), *Union Budget 2006-07*; Statement No. 21, Expenditure Budget Vol. I, *Union Budget 2006-07*; Outcome Budget 2006-07- for various Ministries of Central Government.
6. Sukhdeo Thorat, M. Mahamallik, and Ananth Panth. *Caste, Occupation and Labour Market Discrimination: A Study of Forms, Nature and Consequences in Rural India*. Report Submitted to International Labour Organization, New Delhi, India, January 2006.
7. Ibid.
8. *The Guardian*, 28 December 2006, reporting the Prime Minister of India's inaugural address on the occasion of the International Conference on Dalits and Minorities in New Delhi, 27-28 December 2006.

# Combating Discrimination on the Internet

## *Keihatsu Renkyo*

In the early summer of 2001, two tragedies struck the Kansai region in western Japan. In June 2001, a man broke into a primary school, stabbed eight young children to death, and injured many more before getting subdued and arrested. In July 2001, people rushing to and from a fireworks display on the beach crushed ten young children and two elderly people to death on an overcrowded pedestrian overpass.

Subsequently, vicious messages began to appear on an internet message board called "2 Channel" insinuating that the victims of the incidents were of Buraku origin and praising the perpetrators. These messages are examples of the rising number of discrimination messages on Japanese cyberspace.

### **Discrimination on the internet**

Discrimination on the Japanese internet is a serious challenge. A study on the extent of discriminatory postings on the internet in 2002 shows that 75.8% of the messages involved discrimination against people of Buraku origin. What is being aired in cyberspace is a reflection of the actual situation in society, and the figure indicates the extent of discrimination against people of Buraku origin that remains in the minds of the Japanese people.

The study shows that postings included messages slandering particular groups of people (those of Buraku origin, Korean residents, people with disabilities and people recovering from Hansen's disease), statements inciting discrimination as well as listing of the locations of Buraku areas.

Discriminatory postings, including on the Buraku issue in general, on the internet continue to proliferate in many prefectures in Japan, and recently seem to have become worse. Some use websites set up abroad, or anonymous websites to attack a particular individual or organization. There have been serious cases, in which even the families have come under attack. The

worsening situation is confirmed by data from the Ministry of Justice, which indicate an annual increase in the number of human rights violations on the internet from seventeen cases in 1999 to one hundred ninety-nine cases in 2004.

A recent trend seems to be postings on sites that can only be accessed by mobile phones. Numerous discriminatory messages on the electronic message boards on such sites are posted. It is very likely that those writing and reading such messages are junior and senior high school students. One site uses an internet provider in the United States.

### **Combating discriminatory messages**

The internet messages discriminatory to people of Buraku origin and the Korean residents that came out subsequent to the stabbing of school children and the deaths in a stampede, prompted some members of the Nara Prefectural Liaison Council for the Promotion of Awareness Raising on Human Rights and Dowa Affairs (*Keihatsu Renkyo*) to create a special unit to combat discrimination on the internet.

*Keihatsu Renkyo* is composed of representatives of departmental sections within the local governments of the municipalities in Nara Prefecture, responsible for public awareness-raising on human rights and Dowa affairs. These awareness-raising programs aim at public opinion that supports an environment that does not allow human rights violations to happen. *Keihatsu Renkyo* was established in 1988 to make more effective the local governments' efforts at human rights awareness programs. The local governments are duty-bound to provide the social environment that enables the public to participate in learning about human rights and join in actions toward eliminating discrimination.

*Keihatsu Renkyo* became the core organization combating discriminatory postings on the internet in Nara

prefecture. It launched in 2002 the Project Conference on Discriminatory Messages on the Internet (Project Conference) to study the issue. Initially conceived as a project team within the *Keihatsu Renkyo*, the Project Conference includes a broader range of people - local government staff members, representatives of civil society organizations working on human rights education and anti-discrimination, as well as private companies. By the time the Project Conference was set up, there were eighty participants.

### **Project Conference activities**

The Project Conference spent its first year mostly increasing the understanding of this form of discrimination, through study meetings. In the second year, it began to study the scope of the problem. An "internet station" was set up within the municipal hall of Nara Prefecture, as the base from which to conduct the studies. It tries to persuade operators of internet sites found to have discriminatory messages to delete such abusive postings, and to raise the issue among relevant people.

In one case, it discovered a series of postings on a site targeting a teacher and naming her as well as the school she worked in, and repeatedly emphasizing that she was of Buraku origin. The postings continued persistently for about two months. The team working on it decided that it was necessary to notify the relevant authorities, the *Keihatsu Renkyo* secretariat and parties involved in view of the seriousness of the case. The *Keihatsu Renkyo* secretariat informed the human rights office of the Prefectural Government of Osaka, and also tried to contact the website operator to request deletion of the postings. The site was eventually found to have been set up by an unknown individual, who could not be contacted. The case was documented and the records kept for future use as teaching material.

It is seriously monitoring mobile phone sites that host discriminatory messages, as the possibility that young people in Nara accessing it is very high.

The Project Conference also organizes annual sympo-

siums, supports educational initiatives (including the development of teaching materials). It started computer classes as part of the efforts to eliminate illiteracy and fill in the "digital divide." It has grown into an organization with fifty teams, and two hundred fifty members.

In the 2004 symposium, it adopted the following actions to take on the fight against discriminatory messages:

1. Raise public opinion against discriminatory postings on the internet message boards, and create a nation-wide sentiment and movement.
2. Strongly demand the deletion of postings that violate human rights
3. Initiate judicial proceedings against pernicious postings
4. Call for more effective legislative measures
5. Widen the circle of people who take a stand against discriminatory postings.

Although *Keihatsu Renkyo* made some progress in its activities, it still faces an uphill struggle in combating the remaining problems. In particular, human rights awareness-raising activities within the information society and remedial measures for the victims of human rights violations in cyberspace remain insufficiently effective. It bears in mind that at the start of its efforts over 70% of the discriminatory postings involved Buraku issues. It needs to confirm once again that the activities it undertakes are a part of efforts to eliminate Buraku discrimination.

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# Destination Thailand

## The Case of North Korean Asylum Seekers

*Heidi Han\**

Thailand has become a transit destination for North Korean asylum seekers. On 22 August 2006, Thai authorities arrested one hundred seventy-five North Koreans in Bangkok. To show that they were keen on enforcing the law against illegal crossing of Thai borders, the Thai authorities immediately brought charges against them in court. Having been found guilty by the court, they were jailed for failing to pay the fines. Despite the threat of imprisonment, North Koreans prefer to cross the porous Thai border. The number of North Korean asylum seekers is expected to increase as the international sanctions against the North Korean government continue to loom.

Those who decide to undertake the journey towards Thailand are not certain of their future although they know it is a little more hopeful than the journey towards China. One thing they are sure of is that, for the time being, the Thai government cannot push them back after crossing the border. According to a church-based non-governmental organization (NGO) in Thailand, once the asylum seekers reach the Thai border, they cannot be pushed back since North Korea is more than 7,000 kilometers away. Most North Koreans turn themselves in willingly to the police fully aware that they will be taken cared by humanitarian groups and by the South Korean government. However, the journey to the Thai border is a different story. During the long trail, some are kidnapped by human traffickers, and are forced to pay high costs to be able to slip through the Thai border. Human traffickers profit from the trade, taking an upfront payment (which can be as high as \$10,500 per person).<sup>1</sup>

A North Korean asylum seeker detained in the immigration detention center in Bangkok explained that many chose Thailand not only because of tighter Chinese patrol, but also because Vietnam, Laos, and Burma recently enforced stricter border patrol. She said that until a few years ago, Vietnam was consid-

ered to be the most accessible transit country for North Koreans. But this perception has changed.

The change of perception and plans led more North Korean asylum seekers to Thailand that put the Thai government in a dilemma. While it still accepts those crossing its border, and allows international organizations to provide assistance to them, the growing number of asylum seekers pouring in will strain Thailand's limited resources and personnel. It may find pushing the North Korean asylum seekers back to Laos and Burma, which will ultimately lead to their deportation, a viable option. The South Korean government and the UNHCR have stepped in, without a concerted international effort, to address the issue and ensure the protection of the North Korean asylum seekers.

### **Problem of detention**

At the moment, the Thai government is sensitive to the concern of the international community about the mistreatment of North Koreans. With international attention focused on the actions of the Thai government since the military coup, any harsh response against the asylum seekers will invite condemnation by the United Nations and NGOs. Yet, in April 2007, over four hundred North Korean asylum seekers went on a hunger strike at a detention center in Bangkok. "They are angry at extended delays in bringing them to the South [Korea]," according to Lee Ho-Taeg of the International Campaign to Block the Repatriation of North Korean Refugees.<sup>2</sup> The North Korean asylum seekers on hunger strike were part of a group that was supposed to leave for South Korea, but held up for three months.<sup>3</sup> In addition to the one hundred asylum seekers waiting to leave, four hundred more North Korean asylum seekers joined the hunger strike, in hopes of better treatment in the detention center.

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The hunger strike became a protest not only against the delayed response of the international community to the plight of asylum seekers, but also the harsh living conditions in the detention center. The center, built for one hundred people, holds over four hundred detainees. And three hundred of them are women who are forced to share one toilet.

The UNHCR appealed to the Thai government to address the conditions in the detention center. The South Korean government, on the other hand, held closed-door negotiations with the Thai government on the issue. A resolution of the issue was subsequently announced, ending the hunger strike. But both governments failed to elaborate or provide details on their agreement. The South Korean government justified the secret negotiations to avoid NGOs from taking action that would provoke the North Korean government into enforcing stricter control over its citizens, which it believed would not help the asylum seekers.

One newspaper<sup>4</sup> reported that "For whatever the reason, the South Korean government is not bringing these refugees who have been waiting for release even though the procedures have been finalized and the airplane tickets have been obtained." NGOs believed, on the other hand, that about twenty North Korean asylum seekers would be granted passage to a third country per month under an agreement, they found inadequate since the detention center was a virtual prison. One newspaper said that the asylum seekers were "dying a slow death inside."<sup>5</sup>

### **International response and enhanced capacity for protection**

With predictions of worsening economic conditions and an upcoming famine, the international community must at least provide assistance to strengthen the capacity of the few facilitators and assistance providers in helping those choosing to cross the Thai border.<sup>6</sup>

The international community has to deplore the situation in North Korea that caused thousands of North

Koreans to flee. At the same time, the international community must also urge the Thai authorities not to repatriate the North Korean refugees, since they and their families will face dire consequences. Indeed, Thailand, in view of its "long tradition of hospitality towards refugees" and as a "responsible member of the international community" must seek a solution by sending the asylum seekers to a third country of their choice after their 30-day jail sentence expires.

Countries willing to take in the North Korean asylum seekers should at the earliest opportunity announce their intention to do so to prevent asylum seekers from being kept in detention longer than necessary.

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### **Endnotes**

1. Simon Montlake, "Swell of North Korean refugees could strain Thailand's tolerance," *Christian Science Monitor*, September 2006.
2. "NKorea refugees on hunger strike in Thailand", AFP, April 2007
3. Based on statement of Ms. Kitty McKinsey, spokesperson for the United Nations High Commissioner for Refugees.
4. Kim Song-A, "400 Defectors on a Hunger Strike Requesting Relocation to South Korea", *Daily NK*, 26 April 2007.
5. Quoted from Peter Jung (Seoul-based Humanitarian Worker) of Justice for North Korea and also in " North Korean refugees in Thailand reach asylum deal", Reuters, 27 April 2007.
6. Yonhap, a South Korean news agency, amplified the need for coordinated international efforts in response to the hunger strike by reporting that "Activists claim that 622 North Korean defectors were arrested since 2003 at the checkpoint of Mae Sai in northern Thailand. Of those, 367 entered the country illegally last year." " Four hundred N. Korean defectors go on hunger strike in Thailand: activists", Yonhap News Agency, 25 April 2007.



# Extrajudicial, Summary or Arbitrary Executions In the Philippines, 2001-2006

*Maria Socorro Diokno*

The arbitrary deprivation of life is reprehensible and unjustifiable; killings perpetrated in the guise of "maintaining peace and order in society," or "combating terrorism," or "protecting the stability of the nation," are unacceptable excuses for the killings of suspected criminal offenders, journalists and opponents of the administration of Gloria Macapagal Arroyo, now taking place throughout the Philippines. This report contains information relevant to understanding the phenomenon of extrajudicial, summary and arbitrary executions in the Philippines.

## **Killings of political opponents**

The number of political opponents summarily executed remains in dispute. Philippine government bodies tasked to investigate political killings admit there are about 100 or so victims killed between 2001 and 2006. The human rights community, on the other hand, claims there are between 103<sup>1</sup> to 819<sup>2</sup> victims for the same period.

The disparity between figures cited by government and the human rights community can perhaps be traced to non-cooperation by victims' families and witnesses with government agencies. Victims' families and witnesses fear reprisal; some claim they were warned against providing information on the killings of their loved ones. Others have no faith or have lost trust in the very agencies tasked to investigate the killings, believing, rightly or wrongly, that these agencies or other agents of government are responsible for the killings. Hence many witnesses and victims' families have not cooperated with government agencies investigating the killings.

The disparity between figures cited by members of the human rights community is perhaps best explained by two factors: first, one group includes those killed during military operations while the other does not; second, each group documents cases of victims within their respective spheres.

Women and men who have opposed the present

administration have fallen victim to political killings; data from human rights groups indicates more men than women have been killed.

Most victims of political killings were shot to death.<sup>3</sup> The modus operandi of political killings follow similar patterns: victims first receive death threats, sometimes via unsigned letters or through text messages received on their mobile phones. Victims then notice some form of surveillance on their homes, offices or places they frequent, complaining to their families or to their organizations of persons following them. In some cases, leaflets labeling the victim as a "communist-terrorist" are distributed within the community where the victim resides. In other cases, soldiers conduct "public meetings" where they present a version of the power point presentation "*Knowing the Enemy*" and read aloud the names of "*wanted persons*" listed in the "*Military Order of Battle*;" some victims were reportedly among those listed in the "*Military Order of Battle*." Victims are shot, sometimes in public places, sometimes at home, by assailants in teams of between four to six armed men, in civilian clothing, riding motorcycles with bonnets or bandanas covering their faces.

Some victims of political killings belong to or are affiliated with organizations identified by the Armed Forces of the Philippines as "enemies."

Sometime in 2005, a power point presentation entitled "*Knowing the Enemy*," produced by the General Headquarters of the Armed Forces of the Philippines, became available to the public. The power point presentation consists of 335 slides; among others, it presents what it calls the "strategic development of the Communist Party of the Philippines;" it also identifies the alleged "echelon of alliances" of the Communist Party of the Philippines, and the "role" these "alliances" play in the "protracted people's war."

The power point presentation does not only identify the alleged "echelon of alliances," but names some fifty-four organizations and groups, calling them

"legal fronts" or "legal front organizations" of the Communist Party of the Philippines thus, "enemies" of the state.

Also in 2005, the Headquarters of the Northern Luzon Command of the Armed Forces of the Philippines released a book entitled "*Trinity of War Book III*." The book, like the power point presentation discussed above, presents the history and strategies of the Communist Party of the Philippines and the "Philippine Revolutionary Movement." It also delves into the "echelon of alliances" and describes the facets of work of the Communist Party and its "echelon of alliances." The book contains a series of annexes entitled "Watchlist CPP-NPA-NDF Allied Organizations;" many organizations in the "watch list" are similarly identified in the power point presentation.

These so-called "watch lists" contravene the 1987 Constitution, which mandates full respect for the political beliefs and aspirations of all Filipinos;<sup>4</sup> the Constitution not only upholds the rights of Filipinos to form and join organizations, but also encourages them to do so.<sup>5</sup> The Constitution even forbids the arrest and detention of persons "solely by reason of [their] political beliefs and aspirations."<sup>6</sup>

Also, there are no existing laws that authorize the identification of organizations as "enemies." Republic Act 1700,<sup>7</sup> the Anti-Subversion Law, which, among others, outlawed "subversive organizations," has since been repealed by Republic Act 7636.<sup>8</sup> No "anti-terrorism" bills, which propose to outlaw "terrorist organizations," have yet been passed by Congress.

In addition, it is unclear what standards, if any, were applied to warrant the inclusion of organizations like the Catholic Bishops Conference of the Philippines, founded on 15 February 1945 as the Catholic Welfare Organization, primarily to address the aftermath of the Second World War,<sup>9</sup> or the Free Legal Assistance Group, founded in 1974 to provide free legal services to victims of human rights violations in the martial law era, in the so-called "watch list of enemies of the state."

It is also unclear, who, specifically, included or ordered the inclusion of organizations, and what capacities, if any, such entity or individual possesses. Neither is it clear what process, if any, was followed.

The identification of an organization as an "enemy" based solely on the discretion of the members of the Armed Forces of the Philippines is dangerous, as the killings of political opponents indicate.

The identification of organizations as "enemies" appears part of the government's anti-insurgency campaign. The legal amendment that puts the primary responsibility to suppress the insurgency and address serious threats to internal security on the Armed Forces of the Philippines;<sup>10</sup> may be inconsistent with the constitutional provisions on the supremacy of the civilian authority over the military, and on the goal of the Armed Forces of the Philippines to secure "the sovereignty of the State and the integrity of the national territory."

Arguably, this constitutional provision may be interpreted as limiting the role of the Armed Forces of the Philippines to the defense of the country from threats by external or foreign aggressors. This interpretation was apparently adopted by the Philippine Congress when it enacted, in 1990, Republic Act 6975.<sup>11</sup> Section 12 of this law assigned the Department of the Interior and Local Government and the Philippine National Police the "primary role of preserving internal security, leaving to the Armed Forces of the Philippines the primary role of preserving external security."

However, this interpretation was abandoned in 1998, with the enactment of Republic Act 8551.<sup>12</sup> Section 3 of this law relieved the Department of the Interior and Local Government and the Philippine National Police of primary responsibility over internal security matters and mandated the Philippine National Police to support the Armed Forces of the Philippines through "information gathering and performance of ordinary police functions."

The support role of the Philippine National Police was further strengthened in 2006 by the adoption of Executive Order 546,<sup>13</sup> which directed it to provide "active support" to the Armed Forces of the Philippines even in combat operations.

The National Internal Security Plan, the guiding policy document on "threats to internal security," was written sometime in 2004 and has since been "enhanced;" it is a "classified" document, not avail-

able to the public.<sup>14</sup> FLAG has, however, requested copies of portions of the Plan or other documents that discuss the Plan that are not "classified."

The strategic framework of the National Internal Security Plan is what is referred to as the "holistic"<sup>16</sup> or "whole of government"<sup>17</sup> approach to internal security. The Accomplishment Report of the Department of National Defense for the period covering January to June 2004 describes the strategy thus:

The strategy of the Holistic Approach is a coordinated, synchronized, interrelated and mutually supporting campaign of the whole government machinery and its resources to uplift the socio-economic condition of the Filipino people, particularly those at the local levels.<sup>18</sup>

The "holistic" or "whole of government" strategy to internal security has four major components: (a) political, legal, diplomatic; (b) information; (c) socio-economic and psychosocial; and (d) security. It is pursued through Internal Security Operations Plans, employing the operational strategy of "Operations, Intelligence, Civil Military Operations, in coordination with civilian government agencies"<sup>19</sup> that seek to "clear, hold, consolidate and develop insurgent areas."<sup>20</sup>

Apparently part of the "political, legal, diplomatic" component of the National Internal Security Plan is the creation of the *Inter Agency Legal Action Group* (IALAG) through Executive Order 493,<sup>21</sup> tasked "to provide effective and efficient handling and coordination of the investigative and prosecutorial aspects of the fight against threats to national security." FLAG believes the creation of IALAG signals unwarranted intrusion by the military intelligence community into principally civilian functions.

The National Security Adviser leads IALAG; its members include representatives from the Departments of Justice, National Defense, Interior and Local Government, the National Intelligence Coordinating Agency, the Armed Forces of the Philippines, the Philippine National Police, the National Bureau of Investigation, and such other units tasked by the National Security Adviser.

IALAG's principal task is to "coordinate all national

security cases." Executive Order 493 classifies the following as "national security cases:" rebellion, sedition and related offenses, and "national interest cases that threaten national security."

It is important to note that no similar body was created to "coordinate" the cases against those responsible for the killings of political opponents, journalists and suspected criminal offenders. No additional funds were appropriated for this purpose.

Other activities conducted by the Armed Forces of the Philippines in many parts of the country also seem to be part of the "psycho-social" and "security" components of the National Internal Security Plan. In some parts of the country, residents are required to present their residence certificates *upon demand by soldiers*; even children and minors are reportedly required to present residence certificates (known in local parlance as *cedula*), even if the law on residence certificates does not require persons below 18 years of age to secure these certificates.<sup>22</sup> Failure to present *cedulas* is perceived by soldiers as tacit admission that the person failing to present a *cedula* is part of the insurgency, hence said person is often arrested without warrant, or interrogated without the presence of counsel, or placed on a "watch list," or otherwise harassed. Persons placed on a "watch list" or "*order of battle*" are "invited" to present themselves before the military at a military camp "to clear their names." These persons are then "questioned," "interrogated" or "investigated" by soldiers without the presence of counsel; some are tortured; others who may be released are "required" to report to military camps, sometimes twice a day. In other parts of the country, checkpoints manned by "civilian volunteers," including persons who have been forcibly required to man checkpoints, or by soldiers, are often set up in strategic points throughout the province, to monitor all entries and departures; at these checkpoints, persons are often subjected to "questioning." These actions often take place in areas with the highest numbers of extrajudicial, summary or arbitrary executions; as a result, residents, including families of victims and witnesses to the executions, are in a state of constant fear; it is not surprising therefore why victims' families and witnesses refuse to cooperate with government in the investigation of cases of extrajudicial, summary or arbitrary executions.

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## Endnotes

1. Data supplied by Task Force Detainees of the Philippines.
2. Data supplied by KARAPATAN; KARAPATAN admits that their documentation includes those killed during military operations.
3. Data supplied by Task Force Detainees of the Philippines indicates that 102 of 103 victims were shot; 1 victim was stabbed; data supplied by KARAPATAN indicates that 817 of 819 victims were shot to death, while 2 victims were stabbed to death.
4. Section 18(1), Article III, 1987 Constitution.
5. Section 8, Article III, in relation to Section 23, Article II, 1987 Constitution.
6. Section 18(1), Article III, 1987 Constitution.
7. As amended by Presidential Decrees Numbers 885, 1736, 1835 and 1975; revived by Executive Order No. 167 and amended by Executive Order No. 276.
8. "An Act Repealing Republic Act Numbered One Thousand Seven Hundred, as Amended, Otherwise Known as the Anti-Subversion Act," 22 September 1992.
9. The Catholic Welfare Organization was later reorganized into the Catholic Bishops Conference of the Philippines on 31 January, 1968.
10. Section 3, amending Section 12 of Republic Act 6975, 25 February 1998.
11. "An Act Establishing the Philippine National Police under a Reorganized Department of the Interior and Local Government, and for Other Purposes."
12. "An Act Providing for the Reform and Reorganization of the Philippine National Police and for Other Purposes, Amending Certain Provisions of Republic Act Numbered Sixty-Nine Hundred and Seventy-Five Entitled 'An Act Establishing the Philippine National Police under a Reorganized Department of the Interior and Local Government, and for Other Purposes.'"
13. "Directing the Philippine National Police to Undertake Active Support to the Armed Forces of the Philippines in Internal Security Operations for the Suppression of Insurgency and Other Serious Threats to National Security Amending Certain Provisions of Executive Order No. 110 series of 1999 and for Other Purposes," 14 July 2006.
14. Information supplied by Defense Undersecretary Ricardo Blancaflor, in a telephone conversation with Maria Socorro I. Diokno, on 4 January 2007. During the conversation, Ms. Diokno requested copies or portions of the "enhanced" National Internal Security Plan, as well as copies or portions of Oplan Bantay Laya I and II, that are not classified documents. As of the date of this report, no documents were provided Ms. Diokno.
15. Department of National Defense, *Accomplishment Report January to June 2004*, at [http://www.dnd.gov.ph/DNDWEBPAGE\\_files/html/accreport.html](http://www.dnd.gov.ph/DNDWEBPAGE_files/html/accreport.html)
16. Department of National Defense, *Accomplishment Report January to June 2004*, at [http://www.dnd.gov.ph/DNDWEBPAGE\\_files/html/accreport.html](http://www.dnd.gov.ph/DNDWEBPAGE_files/html/accreport.html)
17. 4th Whereas Clause, Executive Order No. 546, "Directing the Philippine National Police to Undertake Active Support to the Armed Forces of the Philippines in Internal Security Operations for the Suppression of Insurgency and Other Serious Threats to National Security Amending Certain Provisions of Executive Order No. 110 series of 1999 and for Other Purposes," 14 July 2006.
18. [http://www.dnd.gov.ph/DNDWEBPAGE\\_files/html/accreport.html](http://www.dnd.gov.ph/DNDWEBPAGE_files/html/accreport.html)
19. Department of National Defense, *Accomplishment Report January to June 2004*, at [http://www.dnd.gov.ph/DNDWEBPAGE\\_files/html/accreport.html](http://www.dnd.gov.ph/DNDWEBPAGE_files/html/accreport.html)
20. General Headquarters, Armed Forces of the Philippines, *Knowing the Enemy* power point presentation, 2005.
21. "Providing for the Creation of the Inter-Agency Legal Action Group (IALAG) for the Coordination of National Security Cases," 17 January 2006.
22. Sections 156 to 164, Article VI of the Local Government Code govern residence certificates, now known as Community Tax Certificates. Section 157 mandates that every inhabitant of the country aged 18 or over, who has been regularly employed on a wage or salary basis for at least 30 consecutive working days during the calendar year, or who is engaged in business or in an occupation, or who owns real property with an aggregate assessed value of PhP 1,000 (21 US dollars) or more or who is required by law to file an income tax return must pay community tax. See *Section 157, Article VI, Local Government Code*.

# Promoting and Protecting the Economic, Social and Cultural Rights of Women: NHRI Actions and Strategies

*Sneh Aurora\**

Typically, NHRIs have a mandate to receive and act upon complaints of human rights violations from civil society. Most NHRIs are also empowered to undertake enquiries on their own initiative (*suo moto*) into particular human rights situations or issues. Both of these powers can be extremely important in highlighting and addressing the issues women face in the realization of their economic, social and cultural (ESC) rights, and reporting on how the Government implements national laws and international instruments which promote these rights of women.

Many NHRIs in the Asia-Pacific region are indeed conducting investigations into cases involving violations of women's ESC rights, including the National Human Rights Commission of India which in a 2004 case of a female bonded laborer, ensured the woman received compensation and was rehabilitated.<sup>1</sup>

## **Investigating systemic violations**

ESC rights issues typically include those that are more systemic in nature, rather than individual complaints. NHRIs are well positioned to raise systemic issues of human rights violations with authorities. For example, NHRIs can conduct general inquiries or undertake research and investigative studies on a particular issue or violation of women's ESC rights.

In 1998, the Australian Human Rights and Equal Opportunity Commission undertook a National Inquiry into issues relating to pregnancy and workplace discrimination. The inquiry involved extensive research and consultations with employers, employees, unions, health professionals, employer associations, government agencies, community groups and school students in metropolitan, regional and rural areas. The report entitled *Pregnant and Productive: It's a right not a privilege to work while pregnant* details the findings of the inquiry and makes 46 recommendations. The report evidences the existence of widespread and systemic discrimination on the grounds of pregnancy and potential pregnancy in Australian workplaces.<sup>2</sup>

NHRIs can also develop, in cooperation with academ-

ic and research institutions, methodological and practical tools for mainstreaming a gender perspective in all policy areas. The National Human Rights Commission of India has conducted and/or commissioned several research studies in the area of ESC rights as they relate to women. For example, in 2004 the Indian NHRC commissioned a study on the *Feminization of Poverty and Impact of Globalization - A Study of Women Construction Labourers in Delhi, Uttar Pradesh and Haryana*. This research study was conducted by the Sarojini Naidu Centre for Women's Studies, Jamia Millia Islamia, New Delhi, and aimed to project the appalling conditions of women construction laborers and suggest measures for improving them.<sup>3</sup>

## **Monitoring the ESC rights of women**

A State's performance of its human rights obligations must be monitored to ensure that the obligations are being met. Monitoring performance with regard to obligations relating to the ESC rights of women is especially important, particularly because of the obligation of progressive realization of ESC rights, and the fact that women are typically a disadvantaged group.

In July 2005 during the time of the conflict between the Maoists and the State, the National Human Rights Commission of Nepal conducted a month-long monitoring mission on the rights of the children, including the girl child, in armed conflict. In the course of monitoring, the teams of the Commission gathered significant information on various issues related to the rights of children in 11 districts, giving special attention to extra-judicial killings and maiming, use and recruitment of child soldiers, attacks inside schools and use of schools in the conflict, rape and other violent acts against children, abduction and illegal detention of children, and refusal of humanitarian assistance to children. During the monitoring mission, the team also organized several interactions with local people including representatives of civil society and

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various administrative authorities in the districts, as well as representatives of the Maoists, calling upon them to respect children's rights, and to include schools in the zone of peace while respecting international humanitarian law.

In another example, the Monitoring and Review Division of the NHRI of Sri Lanka carried out several surprise visits to State Women's Detention Centers and Children's Homes in 2006. The purpose of these visits was to monitor the conditions within these custodial institutions, and to make recommendations to change policy regarding women's ESC rights, as well as to raise the awareness of Center inmates and staff through a series of workshops. Specific women's rights addressed included the rights to education, health, food and housing. Immediate results from the monitoring activity included an improvement of the quality of food provided to women inmates, the establishment of medical facilities within certain Centers, and the provision of schooling and vocational training for children in Children's Detention Centers.

### **Development of national human rights action plans**

An NHRI can make a significant contribution to the development, adoption and implementation of a national human rights action plan and, in particular, can ensure that the plan includes issues relating to the ESC rights of women. NHRIs can ensure the inclusion of a commitment to take legislative and administrative measures to entrench the recognition and observance of ESC rights, the elimination of discrimination in the observance of ESC rights, as well as a commitment to effective means of redress for violations of such rights. An NHRI can also support the integration of a strong gender perspective in the national human rights action plan, and ensure that such plans are informed by and consistent with a comprehensive strategy for gender equality.

NHRIs should participate in both the national coordinating committee and in wider consultative activities. NHRIs are also well placed to ensure that a wide array of actors in civil society are consulted, and can facilitate and coordinate dialogue between the government, relevant NGOs, and other civil society organizations and individuals.

Where national plans have been developed to date in countries that have NHRIs, these institutions have

usually been closely involved in the planning process. For example, in Indonesia, an Inter-Departmental Standing Committee on Human Rights drew up the *Indonesian National Plan of Action on Human Rights 1998-2003* in cooperation with the Indonesian National Commission on Human Rights. Much of the input for the human rights action plan came from a National Workshop on Human Rights held in 1994, which was attended by some 300 participants from government, civil society and the Indonesian NHRI.

In some cases, NHRIs may be called upon to take a leading role in coordinating the implementation of the plan. Where this happens, it should still be clearly recognized that the commitments in the plan impose obligations on governments to take appropriate action and that responsibility for ensuring achievement of the plan's objectives cannot be transferred to non-governmental bodies.<sup>4</sup> For example, a feature of the *Philippines Human Rights Plan 1996 - 2002* was the central role given to the Philippines Commission on Human Rights (PCHR) in coordinating its implementation, as well as overseeing its monitoring and review process. The plan also included a number of issues, including those relating to the ESC rights of women.<sup>5</sup>

### **Promotion and human rights education**

As the second focus of their mandate, NHRIs are required to undertake programs on human rights education and sensitization. NHRIs can promote public awareness of the issues around the realization of the ESC rights of women by:

- issuing public statements on issues related to women's ESC rights;
- publishing research studies on these issues;
- developing and disseminating publications using the media (radio, television, print, internet) effectively in disseminating information; and
- conducting national workshops and hearings on issues relating to women's ESC rights.

Increased public awareness of the issues encourages victims of such violations to access the NHRI. As well, there is heightened awareness of state obligations around these rights by the government, as well as civil society.

Around the issues of sexual harassment in the workplace, for example, numerous Asia-Pacific NHRIs

have developed and disseminated publications and materials, including the national institutions from Australia, India, Mongolia, Sri Lanka, Nepal and Fiji.

In addition, the National Human Rights Commission of Malaysia (SUHAKAM), in collaboration with the UNDP, organized a High-Level Policy Dialogue on *A Human Rights Perspective on MDGs and Beyond* in July 2005. This session included a focus on Millennium Development Goal 3: *Promote gender equality and empower women*, and Millennium Development Goal 5: *Improve maternal health*. One of the main objectives of the dialogue was to facilitate the development of country-specific MDG targets and indicators for Malaysia. Among the issues discussed were the poverty level of female-headed households, the low female labor force participation, the lower-level employment of women, and maternal health. From the workshop, a series of recommendations were put to government.<sup>6</sup>

### **Training specific target groups**

NHRIs can also develop and conduct trainings and workshop on the ESC rights of women for specific target groups. These trainings should include sensitization on the Convention on the Elimination of Discrimination Against Women and International Covenant on Economic, Social and Cultural Rights and the centrality of women to the promotion and protection of ESC rights. Trainings can also include issues around: general gender sensitivity, state obligations under international covenants, and the development of national level action plans and strategies. Target groups for trainings and sensitizations sessions (at local, provincial/district and national levels) include government officials, NGOs, community-based organizations, police and law enforcement officials, judges and lawyers, and prison officials.

In February 2006, the National Human Rights Commission of Thailand and other stakeholders organized participatory seminars on ESC rights (including women's ESC rights) in Chiangmai for 150 community leaders, educators, local government officials, and NGOs and minorities. During the workshop, participants discussed regional ESC rights issues affecting women and children. This session was replicated in four other regions of the country later that same year.

The Philippines Commission for Human Rights has a wide-ranging program in the area of human rights education, which has won the institution a UNESCO prize for human rights education in 1994. In addition, the President of the Philippines declared 1998-2007 a Human Rights Education Decade. Within this framework, the PCHR has put in place an ambitious program of education and inter-agency cooperation.

*This article is the second of a two-part series on the role of NHRIs in protecting and promoting the ESC rights of women.*

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### **Endnotes**

1. Case of Smt. Thenmozhi, reported in December 2004 Newsletter of the Indian National Human Rights Commission.
2. Australia Human Rights and Equal Opportunities Commission website (1999-2000 Annual Report). [http://www.hreoc.gov.au/annrep\\_99\\_00/sex.html](http://www.hreoc.gov.au/annrep_99_00/sex.html). Accessed on 30 May 2007.
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7. Paris Principles Methods of Operation (g).

## HURIGHTS OSAKA CALENDAR

HURIGHTS OSAKA will be holding a seminar on teaching human rights at the higher institutions of education with Professor Theodore Orlin of Utica College, New York state, USA as speaker. Professor Orlin, J.D., is the Clark Professor of Human Rights Scholarship and Advocacy at Utica College (founded by Syracuse University), a founder and Director of the Human Rights Advocacy Program (HRAP), and President of the International Human Rights Education Consortium (IHREC). The seminar will be held on 11 July 2007 in HURIGHTS OSAKA.



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