



HUMAN RIGHTS *advocacy*



LABOUR RIGHTS

# Decent work -- the heart of social progress

Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

"The primary goal of the ILO is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity." - ILO Director-General Juan Somavia

Decent work should be at the heart of global, national and local strategies for economic and social progress. It is central to efforts to reduce poverty, and a means for achieving equitable, inclusive and sustainable development. The ILO works to promote decent work through its work on employment, social protection, standards and fundamental principles and rights at work and social dialogue.

In each of these areas, people throughout the world face deficits, gaps and exclusions in the form of unemployment and underemployment, poor quality and unproductive jobs, unsafe work and insecure income, rights which are denied, gender inequality, migrant workers who are exploited, lack of representation and voice, and inadequate protection and solidarity in the face of disease, disability and old age. ILO programmes aim to find solutions to these problems.



Progress towards decent work calls for action at the global level, mobilizing the principal actors of the multilateral system and the global economy around this agenda. At the national level, integrated decent work country programmes, developed by ILO constituents, define the priorities and the targets within national development frameworks. The ILO, working in partnership with others within and beyond the UN family, provides in-depth expertise and key policy instruments for the design and implementation of these programmes, for the building of institutions to carry them forward, and for the measurement of progress.

Promoting decent work is a shared responsibility of the ILO's constituents and the Office. In the tripartite ILO, the decent work agenda incorporates the needs and perspectives of the governments, employer's and workers' organization that constitute the ILO, mobilizing their energy and resourcefulness, and providing a platform for constructing consensus on social and economic policies. ILO's mandate for pursuing action against poverty is contained in the Philadelphia Declaration of 1944 which states that "poverty constitutes a danger to prosperity everywhere". ILO has a long history of work on poverty reduction both at the policy level and in practice. This work is now being reinforced in the context of the international commitment to achieve the Millennium Development Goals (MDGs).

The four pillars of ILO's work, namely rights at work, employment, social protection and social dialogue, are mutually reinforcing in addressing poverty reduction. The ILO is currently developing ways of promoting a more coherent approach to addressing poverty reduction as a means for achieving decent work for all.

Source: ILO.

RIGHTS *monitor*



# Advocates sue Yahoo in Chinese torture case

A human rights group sued Yahoo, accusing the internet giant of abetting the torture of pro-democracy writers by releasing data that allowed China's government to identify them. The suit, filed in U.S. District Court in San Francisco, says the company was complicit in the arrests of 57-year-old Wang Xiaoning and other Chinese Internet activists. The suit is the latest development in a campaign by advocacy groups to spotlight the conduct of U.S. companies in China.

In a suit against Yahoo, the wife of a Chinese pro-democracy writer says the internet giant offered data that helped authorities identify and arrest her husband and others.

As they seek a slice of the booming Chinese market, Yahoo and other American companies have sometimes set aside core American values, such as free speech, to comply with the communist government's laws. The suit, in trying to hold Yahoo accountable, could become an important test case. Advocacy groups are seeking to use a 217-year-old U.S. law to punish corporations for human rights violations abroad, an effort the Bush administration has opposed.

In 2003, Wang began serving a 10-year sentence on charges that he incited subversion with online treatises criticizing the government. He is named as a plaintiff in the Yahoo suit, which was filed with help from the World Organization for Human Rights USA, based in Washington. Yahoo is guilty of "an act of corporate irresponsibility," said Morton Sklar, executive director of the group. "Yahoo had reason to know that if they provided China with identification information that those individuals would be arrested."

Wang's wife, Yu Ling, said her husband is imprisoned in a labor camp and has been subjected to beatings. In an interview in Washington, she said through an interpreter that American technology companies such as Yahoo should be held to a high standard of their overseas conduct. She said Yahoo gave the Chinese government personal information tied to e-mail accounts that Wang used to distribute his writings.

The suit says that in 2001, Wang was using a Yahoo e-mail account to post anonymous writings to an internet mailing list. The suit alleges that Yahoo, under pressure from the Chinese government, blocked that account. Wang set up a new account via Yahoo and began sending material again; the suit alleges that Yahoo gave the government information that allowed it to identify and arrest Wang in September 2002. The suit says prosecutors in the Chinese courts cited Yahoo's cooperation.

Jim Cullinan, a spokesman for Yahoo, of Sunnyvale, Calif., said he could not comment on the suit or the specifics of Wang's case because he had not seen the papers. But he said Yahoo condemns the suppression of speech.

Companies that do business in other countries have to follow the laws of that country or their employees could be subject to penalties, he said. In addition, governments are not required to tell a company why they want information. "No company would know if it is for a legitimate criminal investigation, or if it's a matter of public safety, or it's being used to prosecute political dissidents," Cullinan said. Yahoo's stances infuriate Yu, Wang's wife.

Source: Washington Post.

LAW *vision*

TRANSNATIONAL ENVIRONMENTAL LAW

# Precaution still pays off

This is the concluding part of a two parts story.

**BARRISTER ABU HENA MOSTOFA KAMAL**

GENERALLY burden of proof lies with the person who is opposing an act, which means the person who wishes to oppose an act must prove that the alleged activity is causing ecological damage. But the Precautionary doctrine endorsed the view that proponents of a hazardous activity should prove that their activity is not causing undue harm to human health or ecosystems, the burden of proof only lies with the proponents, not with the common people. Requiring the polluter to pay for damage is a way of keeping the burden of proof and responsibility on the shoulders of the polluter. This is why many legal theorists suggests that market incentives like 'assurance bonds' should be taken from entrepreneurs before they commence their business in order to cope with the worst possible consequences of an activity or liability for damages. According to them, this will encourage companies to think about how to prevent future impacts. Such assurance bonds are already used in construction projects in Australia to mitigate future damage. Moreover, in December 2001, the European Commission adopted a proposed directive, which is similar to 'assurance bonds'. This directive requires electronics manufacturers to take financial responsibility for managing their products throughout their lifecycles, including the disposal stage of the products. (EC Dec. 2001).

Precautionary Principle demands some standard of proof but it need not be as high as scientists themselves might desire. A substantial evidence is enough where it is "less than a preponderance, but more than a scintilla". In the case United Kingdom of Great Britain and Northern Ireland v. Commission of the European Communities (Case E-180/96, 5 May 1998) the European Court of Justice upholds a ban on the export

of British beef into EU countries by saying that: "[In view of the seriousness of the risk [of Bovine Spongiform Encephalopathy] and the urgency of the situation, the Commission did not react in a manifestly inappropriate manner by imposing, on a temporary basis and pending the production of more detailed scientific information, a general ban on exports of bovine [products]."

Legal theorists often interpret the Precautionary Principle in two different ways. The strict or restrictive forms of the Precautionary Principle demands inaction when action might pose a threat. It means if action may cause damage, then inaction is more preferable. Literally this interpretation seeks absolute proof of safety before allowing new technologies to be adopted. For example, the World Charter for Nature (1982) states, "where potential adverse effects are not fully understood, the activities should not proceed." But this restrictive Precautionary approach may cause problem where scientific endeavour is involved. For instance: if Mr. Arian under takes a scientific investigation or invents anything which could lead to harm to environment or may cause sufferings to human, then that line of research should be stopped. This approach gives rise to two basic problems:

Firstly, almost all human actions generates a certain amount of risk and it is virtually impossible for us to avoid all kind of trivial or moderate risks involved in any scientific endeavour. Therefore, strict adherence to this approach would prevent virtually all-scientific research.

Secondly, inaction carries its own risks, which may be greater than the risks of action. These arguments are based on narrow assumptions. The precautionary doctrine does not asphyxiate innovative science rather supports science to a great extent. It demands larger analyses than narrowly conceived risk assessments. It requires us to ask the question 'whether a proposed activity is essential?' If the answer is 'yes' then it let us confront another question 'is there any alternative

exists to meet the same goal?' This approach does not oppose the idea that people should evaluate a range of alternative options to mitigate ecological damage and promote more robust, diverse and adaptable technologies to reduce the costs of surprises and make best use of innovation.

In contrast, the liberal or active form of the principle promotes the idea that people should choose less perilous alternatives when they are available. In simple words, if damage is likely but not certain, the lack of absolute scientific certainty is no excuse for failing to mitigate the damage. When a potential risk is identified, the appropriate response is to search for less risky alternatives, and use them instead if practical. For example:

(a) The declaration on protection of the North Sea (1990) calls for action to be taken even if there is "no scientific evidence to prove a causal link between emissions [of wastes onto ocean waters] and effects"

(b) The Brent Spar was the massive oil storage facility for Brent Oil field located in the North Sea, where enormous amount of oil were pumped from drilling platforms and stored until it was loaded onto oil tankers. The Brent Spar was installed in 1976 and decommissioned in 1991. In 1995 Oil Company Shell wanted to get rid of the Brent Spar by sinking it in the Atlantic Ocean. The environmental group "Green peace" campaigned against this decision and occupied Brent Spar to prevent implementation of Shell's plan. They argued that Shell's action could cause irreversible damage to marine environment. This incident got huge public exposure. Many people boycotted Shell products and Shell had to lose millions of dollars. The publicity led the oil company to drop its plans. Soon after the Brent Spar incident of June 1995, there was a meeting of the parties to the Oslo and Paris Convention. At the meeting of the OSPAR Commission in June 1995, member states (with the exception of Norway and the United Kingdom) agreed to impose a moratorium on the disposal of decommissioned



offshore installations at sea. At that meeting, the parties declared, "the disposal at sea of decommissioned offshore installations cannot be considered to be a sustainable practice which takes into account the precautionary approach".

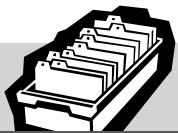
(c) Newfoundland 'northern cod' stock was regarded as the largest cod stock in the world, which had been exploited by fishers since the 16th century. In the 1960s fishing intensity grew dramatically in this zone. As a result after 1968, fish production severely dropped below and with out evaluating an adequate amount of scientific evidence they held that over fishing is responsible for this. In the late 1970s, using UN Convention on the Law of the Sea, Canada extended its jurisdiction from 12 to 200 nautical miles with the aim to bring much of this stock under its control and imposed a moratorium. This Canadian initiative to set 'deliberately conservative' restrictions on catches with the intention of rebuilding the stock is considered as a good example of liberal precautionary measures.

Many jurist think that 'risk assessment' and 'precaution principle' is the same thing. But in reality, they represent vastly different approaches. Risk assessment tries to determine 'how much harm we will tolerate' and Precaution asks 'how much harm we can avoid'. Precaution doctrine promotes the idea that people should overtly recognize uncertainty because it's beyond their power to know everything. But they must act with foresight and diligence. Some critics further argue that risk assessment makes the precautionary doctrine superfluous. Because risk assessment is based on sound science and is protective by nature. But it is also not true. Though Precaution Principle is based on tentative evidence, it requires 'evaluating a broad range of alternatives' and 'monitoring initiated activities' as stringently as any proposed activity. Therefore the precautionary principle should not be 'pitted as an alternative to risk assessment but will sit above risk

assessment.' Furthermore '.....the precautionary principle offers us a chance to move precautionary decisions upstream and establish a precautionary, public interest research agenda. By setting goals for, say, the kind of agriculture we want, we can develop seeds and technologies that are responsive to public need and ecologic principles and are less likely to pose threats. Not only will precaution as an overarching principle help set the research agenda; it will carry over into all aspects of society's interface with technology. From the research agenda and the conceptual phases of a technology through to judicial injunctions and court deference to scientific uncertainty, precaution must imbue our decision-making processes (Carolyn Raffensperger, in her essay 'Precaution: Belief, Regulatory System and Overarching Principle').'

The author is an environmental activist and advocate, Supreme Court, Bangladesh.

FACT *file*



# Philippines: Time for women friendly legislation

**AMABELLE PLAZA-LAMINERO**

"He was like a father to me," public school teacher Jelieta Ruca says of her thesis advisor Dr Melvin Mende, professor of industrial education and member of the graduate studies at the State-owned University of Southeastern Philippines (USEP) in Davao City. So, when Ruca found herself alone with Mende, to consult with him on her thesis one early evening on November 6, 2001, she could hardly believe what he did to her. "I felt so shocked and ashamed, that I did not even look up when I heard someone; it was probably the janitor who came to the door just then," she recalls. "I walked out, nearly walked into a speeding taxi as I crossed the street, and went straight home. I told my husband I was really angry, but did not tell him about what really happened that evening."

At first, out of humiliation and fear, Ruca chose to bear her trauma in silence. But she could not put it out of her mind, and realised one day that she could not handle the silence any longer. "I had to fight back," she says. Despite efforts by Mende and others to dissuade her from doing so, in May 2002, Ruca filed criminal and administrative charges against Mende on the grounds of sexual harassment.

Earlier in 2006, however, the courtroom battle ended with Mende's acquittal. The decision penned by Judge Antonio Laolao of Municipal Trial Court in Cities (MTCC) said that the victim did not "instinctively do every action she can to...stop any unlawful attack by any man against her womanhood". Women's advocates slammed Laolao's decision for using "skewed logic", "anti-women bias" and "sadly, setting standards that are outdated".

The court's decision stands in stark contrast to the recommendations of USEP's Committee on Decorum and Investigation (CODI). The committee found Mende guilty of sexual harassment and recommended his dismissal from service based on "substantial evidence". The five-member CODI said it "cannot be convinced" of Mende's alibi that he went home at around 3 pm and thus could not have committed the sexual harassment as alleged by Ruca. Mende's daily time record, the committee noted, said that he went out at 5:25 pm. "It created a doubt on his honesty," the



decision said. This case has been a five-year uphill battle for Ruca, who is now teaching grade five students at the Catalanun Grande elementary school in Davao City. She fought against the humiliation, continued, and succeeded in finishing her Masters degree from USEP. She ignored the stigma and went on to pursue her doctorate studies, even as CODI deliberations were being held in the university. Lyda Canson, chairperson of the women's solidarity group, Gabriela, notes that the court's theory on Ruca's lack of "instinctive" action is "outdated". Ruca's lack of reaction, she says, was due to a "post-traumatic syndrome and the battered-woman syndrome". She points out that these are "medically recognised phenomena that explain why women do not resist so-called attacks on their womanhood".

Former judge Adoracion Avisado, a convener of Transformative Justice Institute, says Judge Laolao's decision is "typical of the prevailing and pervasive patriarchal mindset in the judiciary. It is lamentable how judges set these standards. They have no background in behavioural science, but they are the ones who set the standards on how women should react to incidents."

Theresa Balayon, Coordinator of the Institute for Family Violence Prevention, a training arm of the Women's Crisis Centre, agrees with Avisado. "Traumatologists have found that when women suffer from

emotional trauma or are in a state of shock following sexual abuse, they will, in most cases, not react at all."

While the court found Mende's act of sexual harassment towards Ruca "contrary to natural and ordinary human behaviour", the CODI asserted, "no woman in her right mind would expose herself to humiliation if her allegations are not true." Avisado explains further that the elements of sexual harassment are already present in a thesis advisor-student situation: "There is authority, there is influence, and there is moral ascendancy. He had the power not to endorse Ruca's thesis to the panel of thesis reviewers."

Davao City has a very high rate of reported cases of violence against women, comprising 62 per cent of the total cases in the Davao Region, according to 2005 year-end statistics. Avisado says that despite the fact that the Philippines is a signatory to the Convention on Elimination of All Forms of Discrimination Against Women and to the Universal Declaration of Human Rights, and despite the passage of domestic laws that are in favour of gender equality, "the way the judiciary handles sexual abuse cases have been in defiance of the spirit and intent of these laws and instruments".

"It comes as no surprise, therefore, that women are increasingly losing their belief in the Philippines justice system," Canson adds.

Source: News Network.

LAW *week*



## HC to consider bail petitions

The High Court ruled that it has the jurisdiction to dispose of petition seeking bail by any person facing a criminal case under the Emergency Power Rules 2007. A division bench headed by Justice Nozrul Islam Chowdhury issued the ruling after inviting a legal debate on March 29 over revocation of the right to seek bail. The amended Emergency Power Rules (EPR) revoked the right to bail of those being herded up during the current countrywide operation against crime and corruption. Before giving its ruling it had sought opinions of senior lawyers on the issue, suspending the High Court orders on bail petitions moved on behalf of bigwigs, including politicians, detained on charges of corruption and serious crimes. On the night of March 21, the government issued a gazette notification to this effect under the Emergency Powers Ordinance 2007 with retrospective effect since February 13. According to the amended law, an accused in such a case has been stripped of right to file bail petition during the investigation or trial of the case. Additionally, they cannot seek redress from 'any higher courts against any order given by any court or tribunal before or during the trial--until the delivery of the final verdict'. -Unb, Dhaka, April 23.

## Court suspends arrest warrant against Hasina

A Dhaka court suspended the operation of the arrest warrants issued against Awami League (AL) President Sheikh Hasina and two others in connection with the Paltan killings on October 28 last year. The AL chief, meantime, has appealed to the world leaders and people of Bangladesh to put pressure on the caretaker government to let her return home. The former prime minister said she would fight any charges of murder and corruption in court, if she is allowed to return to the country. Hasina gave separate interviews to Indian television station NDTV, Qatar-based Al Jazeera television channel and BBC Radio (Bangla Service) from London, where she is now residing at her younger sister's house. Referring to the interim government's support for 'reforms' inside the political parties, she said it is not the job of a caretaker government. Hasina could not take her scheduled flight from London, as the British Airways did not issue boarding pass to her. The AL chief is accused of involvement in the death of four political activists during street violence in October 28 last year -- a charge she has denied. -The Daily Star, April 24.

## EC hopes ban on indoor politics to go by May 8

Election Commissioner Brig Gen (retd) M Sakhawat Hossain hoped that the ban on indoor politics in the country would be lifted next month. Meanwhile, the Election Commission (EC) removed six election symbols in a bid to protect voters from being confused by religious-image-based election campaigns. "We hope the ban on the indoor politics in the country would be lifted by May 8," Sakhawat said while talking to the reporters at his office. "The duration of the ban would go beyond three months on May 8, we therefore hope that the government would lift the ban," he said, adding, "If [the lifting of the ban] might be delayed." Sakhawat made the remarks follow the EC's meeting with the chief adviser. He, however, said, "We will sit with political parties to discuss electoral reforms whenever the government

lifts the ban on politics." Replying a query, he said, "We will invite political parties, that are eligible for registration, to discuss the electoral issues." -The Daily Star, April 24.

## UK hopes emergency to be lifted soon

British High Commissioner to Bangladesh Anwar Choudhury yesterday said the UK hoped that the present caretaker government would lift the state of emergency soon and set a detailed roadmap for the next election. The UK also stressed the importance of the Bangladesh government's commitment to proper process and human rights, he told reporters after a meeting with Chief Election Commissioner (CEC) ATM Shamsul Huda. "I stressed that it was important that the government demonstrate commitment to due process and human rights," Choudhury quoted British Foreign Secretary Margaret Beckett as telling Bangladesh Foreign Adviser Iftekhar Ahmed Chowdhury on April 19. The CEC told reporters that the government's political decision affects the activities of the Election Commission (EC) and "To lift the ban on indoor politics is the government's political decision." "There are two sides of the election, one is technical and another is political, and the EC looks after the technical side of the election," Huda said, adding, "It is the task of the government to create an environment conducive to election." -The Daily Star, April 25.

## Ban on Hasina's return lifted, no bar on Khaleda

The government withdrew the press note which barred Awami League (AL) President Sheikh Hasina from returning to the country and said the administration never put any pressure on BNP Chairperson Khaleda Zia to go into exile. The decision ends weeks of intense speculation and drama over the future of the two often-feuding leaders, whom the government reportedly wanted to exile as part of the political reforms. The decision was taken at a cabinet meeting, chaired by Chief Adviser Fakhruddin Ahmed, after international and local calls for the government to mothball a reported decision to send the two leaders into exile. A home ministry press note said, "The government issued a press note as a special security measure on April 18, 2007 in the light of recent comments and activities of Awami League President Sheikh Hasina and her concerns over her personal safety." "It was clearly stated in the mentioned home ministry press note that the measure was temporary. But, in the light of opinions expressed by different quarters and news published in the media, the government has decided to withdraw this step," the press note stated. In a separate press note on Khaleda, the home ministry said, "It has come to the government's attention that a section of news media has been recently publishing speculative news and opinions regarding BNP Chairperson Khaleda Zia's going abroad and her freedom of movement." -The Daily Star, April 26.

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