



## HUMAN RIGHTS analysis



## FACT file



### Nepal: Reconciliation bill risks undermining justice

Victims of Nepal's decade-long conflict may be denied their right to truth, justice and reparation under current proposals for a Truth and Reconciliation Commission, warned Amnesty International today. In its detailed memorandum on a draft Bill currently under consideration, Amnesty International is particularly critical of provisions that appear to allow the granting of amnesties to perpetrators of crimes under international law, including hundreds of cases of enforced disappearance. "Without bringing to justice the perpetrators of gross human rights abuses, there is a real danger of Nepal's recent tragic history repeating itself."

Anything less would be a gross betrayal of the hundreds of families still anxiously awaiting news of their missing relatives and a recipe for further civilian suffering," said Tim Parritt, Deputy Director of Amnesty International's Asia programme.

The memorandum also highlights a number of other serious deficiencies in the draft Bill, including:

Absence of any detailed provisions for the protection of witnesses, despite the concerns of many families and other potential witnesses that they could face intimidation if they give evidence; Lack of provisions to guarantee the independence of the proposed Commission whose members are to be appointed by the government from political party nominations with no independent vetting of candidates and no involvement of civil society;

Failure to specify that the Commission's reports must be made public and be presented to Nepal's Parliament within a set period. Amnesty International has issued today's memorandum as a constructive contribution to continuing discussions on the Bill by government officials, parliamentarians, human rights NGOs and other interested parties in Nepal, as well as the international community.

The organization fears that the present draft Bill may not realize the objectives of its own Preamble, which includes as an aim of the Commission "to bring impunity to an end by bringing the persons involved in gross violation[s] of human rights and crimes against humanity... within the confinements of law and also to make all aware that such acts would be punishable in future too".

Amnesty International urges the Government and Parliament of Nepal to allow sufficient time before the establishment of the Truth and Reconciliation Commission in order to complete a comprehensive process of consultation with all those concerned, including civil society organizations, both Nepalese and international, victims, human rights defenders, persons belonging to minorities and vulnerable groups, and others.

Source: Amnesty International.

### LAND RIGHT

# Needed separate Land Commission for Adibasis

MD ABDUL KADER

MORE than 45 Adibasi communities live in the length and breadth of the country. Of these 11 ethnic communities live in Chittagong Hill Tracts region and the rest more than 33 in the plains. But these Adibasis are falling victims to various

deprivations and deceptions almost everyday and evicted from their own soil. Land has become the main problem for the Adibasis of the plains. Their hardship is increasing as their land right is being squeezed day by day.

In fact the Adibasis of the plains

are long victims of deprivation. Whether it was Permanent Settlement or partition of the sub-continent on the basis of two nation theory and the communal riots that followed, or Tebhaga movement, Santhal uprising of Nachole or Indo-Pak war as well as our war of liberation every time they were found as easy target of oppression and

their possession were recorded in others' name or shown as vested property. Many non-Adibasis even forcibly occupied their land with impunity.

Innumerable incidents of such land grabbing and eviction occurred in Santhal domiciled Rajshahi, Dinajpur and Naogaon districts; Khasia domiciled Moulvibazar and

land grabbers but also in the name of creating eco-park and preservation of forestland.

True, the awareness about land right is naturally very low among the Adibasis. They have never been enthusiast in preserving their land documents. There is also a historic reason for this they believe land is gift of God and it belongs to God. For this, many Adibasis, specially the illiterate and simpler among them seldom tried to institutionally or formally record their right on lands under their possession for generations. And the land grabbers seized this opportunity to deprive the Adibasis of their age-old own land.

This happened in the past and the trend is continuing in the present, and the Adibasis are losing the possession of and right to their own land. There are laws to preserve Adibasi land and provide security to them, but these are never properly applied. This, on one hand, is not protecting Adibasis' land right and on the other, providing the exploiters opportunity to grab their land.

The problem with Adibasi land is a very old one, for this the restrictions imposed in matters of transfer of Adibasi property in the Bengal Tenancy Act 1918 have been set intact in clause 97 of the State Acquisition and Tenancy Act. The Adibasi communities coming under jurisdiction of this Act are Santhal, Banai, Bhuiyan, Bhumij, Dolu, Garo, Barman, Hajong, Ho, Kharia, Koch, Kora, Mog, Maal, Suria Paharia, Sech, Munda, Mundal, Oraon and Turi.

The provisions to be effective under clause 97 of the State Acquisition and Tenancy Act have been described in a few sub-clauses, viz

a. Any Adibasi desirous of transferring his/her territory to a non-

Adibasi can only make it effective subject to consideration of Revenue Officer.

b. This clause 97 shall not be effective in matters of transfer of property among their own community.

c. Application of this clause shall not be obstructed because of religious conversion or by religious identity of any Adibasi.

d. The government even wilfully cannot apply or nullify the provisions of this clause by any circular in case of any special community or area.

Clause 97 of State Acquisition and Tenancy Act is virtually the 7<sup>th</sup> part of Bengal Tenancy Act 1885 -- the added new part is 7<sup>th</sup> 'A' part. Here were laid the restrictions regarding transfer of Adibasi property.

The 7th A part was kept in fact in our State Acquisition and Tenancy Act. But statistics show that immediately after 1947 the landless Adibasis constituted 20 percent of their population in North Bengal which has now reached to 85 percent and is increasing every year. This means, although the provisions of clause 97 remained in force the process of Adibasis losing their land, being evicted from their land, being oppressed and persecuted has never ceased. It leaves no room for two opinion that the clause 97 is not enough to protect Adibasis' land right, resolve their many-fold problems.

This also necessitates constitutional recognition of Adibasis, ensuring their representation in all aspects of national life, adopting suitable laws to ensure their land right as well as properly implementing the existing laws with appropriate explanation to remove complexity, also adopting law to the effect that the Vested Property Act shall not be applicable in matters of Adibasi land.

To overcome the complexity of permission in case of selling Adibasi land local recommender may be elected from among them with their direct vote.

In Adibasi domiciled areas govt khas land should be leased out to them on priority basis, specially in the name of those Adibasi families who are already living on khas land. In Adibasi forest land areas special steps should be taken to ensure their right to protect and use the forest land. To enhance the Adibasis' awareness towards land right, initiative should be taken at government level. Non-Adibasis should stand beside the Adibasis in their united movement to protect and reestablish their right to land with a view to resolving the Adibasis' land right problems. It is also necessary to arrange for views sharing programmes with staff members and officers of Department of Land and Department of Land Registration at both government and non-government level, so that there created a moral support base.

The Adibasis also fought side by side with the mainstream population in 1971 war of liberation and sacrificed their lives as well. They are also the sons of soil. So it is a shame on us that they are losing their land, evicted from their homesteads in independent Bangladesh. Thus it is duty of the conscientious mainstream population to help them protect their homesteads and lands, culture and language to our national enrichment in diversity. They must be given their traditional right to land now. And for this, constituting a separate Land Commission for Adibasis is the need of the moment.

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PHOTO: AMIRUL RAHMAN

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persecution. Many of them lost their last resort of homesteads and became landless.

In fact after the partition their problem of deprivation and eviction from own land turned serious. Their lands were grabbed with forged deeds on a massive scale. Lands in

Sylhet districts; Mandi or Gaara domiciled Netrakona, Mymensingh and Tangail districts; Rakhaine domiciled Barguna, Patuakhali and Cox's Bazar districts.

In the above mentioned districts, the Adibasis were evicted from their own land not only by the non-Adibasi

## HUMAN RIGHTS advocacy



# Occupational health service: Global need for workers

BIKASH KUMAR BASAK

THE international programme for the improvement of working conditions and environment was launched by the ILO in 1976 (Improving Working Conditions and Environment: An International Programme (PLACT) 1984; 71st Session of the International Labour Conference 1985). The ILO Occupational Safety and Health Convention, 1981 (No. 155), with its accompanying recommendation (No. 164), and the ILO Occupational Health Services Convention, 1985 (No. 161) and its accompanying recommendation No. 171, augmented the impact of the ILO in the development of the occupational safety and health.

The necessity of formulating a precise and integrated national policy on occupational safety and health for the first time spread over the whole world after the adoption of the ILO Convention (No. 155) concerning Occupational Safety and Health and the Working Environment, in 1981. According to Article 4 (1) of the Convention (C-155)-

"Each Member shall, in the light of national condition and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review coherent national policy on occupational safety, occupational health and the working environment."

In addition, the aim of having such a national policy has been precisely described in Article 4 (2) of the convention; whereas the prevention of accident and injury to health and minimisation of the causes of hazards happening in the working environment have been prioritised. This has a distinct link with the ordinary course of work. Furthermore, in 1985 ILO adopted the Convention on Occupational Health Services (C-161) for the establishment and maintenance of a safe and healthy working environment which will definitely facilitate optimal health of the workers in relation to health, both physi-

cal and mental, and at the same time, for the adaptation of work to the capabilities of workers in consideration of their state of physical and mental health. (Article of 1(a) of the Occupational Health Services Convention, 1985)

The model for occupational health services proposed by the ILO Occupational Health Services Convention (C-161) and Recommendation (No. 171) adopted by the International Labour Conference in 1985 enjoy the support of a large consensus at the international level. All countries should consider this model as objectives towards which progress should be made, taking into account, local differences and the availability of specialised personnel and financial resources.

The national policy for a particular country should be adopted to develop progressively occupational health services for all workers, considering the specific risks of the undertakings and such policy should be formulated, implemented and every so often reviewed in the light of national condition and practice in consultation with the very representative organisations of both employers and workers as well as necessary plans should be set up indicating the steps which will be taken at the time when the said health services cannot be immediately settled for all undertakings. (Encyclopaedia of Occupational Health and Safety, Volume-1, Page 16.19)

Each member shall ensure occupational health services for the workers including those in the public sector and the members of production cooperatives in all branches of economic activity and all undertakings and if such services cannot be established immediately for all undertakings, then each member concerned shall draw up plans for the establishment of such services in consultation with the most representative organisations of employers and workers, where they exist (Article 3 of the Occupational Health Services Convention, 1985).

More recent laws of the world reflect-

ing international guidelines such as those contained in the ILO Convention of Occupational Health Services (No. 161) consider the occupational health services as an integrated, comprehensive, multidisciplinary team containing all the elements needed for the improvement of health at work, improvement of working environment, promotion of workers' health, and the overall development of the structural and managerial aspects of the workplace needed for health and safety.

There are two main types of legislation regulating occupational health services; such as

1) One implies the occupational health services as an integrated multidisciplinary service infrastructure and stipulates the objectives, activities, obligations and rights of the different partners, the condition of operations as well as the qualification of its personnel.

2) The other type of legislation is found in most industrialised countries and is more fragmented. Instead of a single act stipulating the occupational health service as an entity, it involves a number of laws that simply oblige employers to carry out certain activities. In many developing countries, this legislation is applicable only to main industrial sectors, while large numbers of other sectors as well as agriculture, small-scale-enterprises and the informal sector remain uncovered. (Encyclopaedia of Occupational Health and Safety, Volume-1, Page 16.3)

### OSH in the Asia and SEAR countries

The legislation on existing policy and procedures were assessed by the following criteria: (a) the presence of legal provision or policy that comprehensively addressed occupational health; (b) surveillance mechanism for mandatory reporting of occupational morbidity and mortality, and (c) the role played by the trade unions in implementing occupational health.

The legislation on occupational health, consisting of laws and acts, evolved over a period of time solely depending on the needs of the existing

economic sectors and the notion of the occupational risks at the time. As a result, the parliamentary acts of a particular state primarily focus on the welfare and the benefits. As an attachment, these include provisions on occupational health and safeties of workers mainly in the manufacturing sector and obviously absent in the agriculture sector and as a result these suppose to be fragmented and overlapping and redundant also in its functions. As for example, in Bhutan and Maldives, the legislation is still in the formulation process and there is no comprehensive legislation for occupational health and safety in the states.

Hence, it is the need of time to formulate a more progressive and protective legislation covering all economic sectors of a country and in order to overcome the fragmentary nature of the existing policies, consultation with stakeholders should be held for ensuring inter-sectoral coordination. Furthermore, the disparity of the agriculture sector should be addressed during the formulation of a comprehensive policy.

Most of the countries, like India, Indonesia and Sri Lanka have a decentralised system for the delivery of occupational health safety and practices at the various administrative levels of the country while in Thailand, both the private and public hospitals are involved in delivery of occupational health and safety and whereas, in Bhutan and Maldives it needs to be improved to a large extent.

When occupational health is included in the national action plan of a country, funds are automatically provided either by the national government or supplemented from WHO and different donor agencies. In some countries like India and Thailand, the International Labour Office is also involved in some activities which will definitely promote occupational safety and health.

China: The Labour Law of the People's Republic of China, Chapter VI, specifically addresses OHS issues. The Legislation is vague and puts the pri-

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many onus for health and safety on employees to take positive action against the employer by either refusing to work or to criticize, report or file charges against any acts endangering the safety of their life and health. The responsibility of supervision and inspection is with the labour administrative departments of people's governments or the trade unions.

Japan: The national government, by the Ministry of Labour, has full jurisdiction over the administration of Occupational Health and within the ministry of labour, occupational health is administered directly by the industrial health and safety department while the Ministry has several hundred peripheral regional offices which are administered directly by one central office and the OHS Legislation stipulates among other things, the minimum standards for measures to be taken by employers, as well as outlining the level of supervision and guidance that should be given by labour standards inspectors. In order to continually improve achievements, the

government has called upon voluntary activities by management and labour at their respective workplaces.

India: There is no comprehensive occupational health and safety legislation in India and the three main acts are: the Factories Act, 1948, the Mines Act, 1952 and the Dock Workers Safety, Health and Welfare Act, 1986. The present Factories Act in India, even today, covers workers only in the registered factories and thus a large number of blue as well as white collar workers do not qualify for occupational health and safety benefits under any law. Recently in 2006 (revised up to March) India has drafted its first national OSH policy where the fundamental purpose of the policy is not only to eliminate the incidence of work related injuries, diseases, fatalities, disaster and loss of national assets and ensuring achievement of a high level of occupational safety, health and environment performance but also to enhance the well-being of the employee and society, indeed.

Bangladesh: The occupational health and safety service in Bangladesh is still in the stage of development and the notion of occupational health and safety here solely refers to workers of industries and does not include all the occupations of the country. The ILO Convention both 155 and 161 are not yet ratified in this country though many of these recommendations have been practiced to some extent through the implementation of existing labour laws. Like most of the western countries, the responsibility of health and safety at workplace is shifted to the employer though the government has a little more responsibility to provide necessary health care services and safety standards.

The constitution of Bangladesh recognises productivity as basic need for development and covers right to work and reasonable wages, medical care, diseases and disablement while this constitutional policy did not turn into a formal national occupational health and safety policy. (Article 15 A and 18 (1))

Lack of work environment standards and exposure limits for different hazards and lack of requirement for periodic structured objective driven medical examination are the main deficiency of the legislations in terms of occupational health and safety.

Recently a study was conducted by DOEHS-NIPSON among different categories of enterprises to assess the state of OSH through surveys on employee, employer and working environment which revealed that the state of OSH was moderate both in large public and private industries in the perspective of the present legislation but while in the medium and small industries the state of OSH is quite shocking specifically regarding the workplace environment and OSH awareness.

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