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## Civil & Human Rights

Free online magazine from village earth

Volume One December 2016

Natural Rights:  
Individual and Human Rights  
**DR HOWARD RICHARDS**



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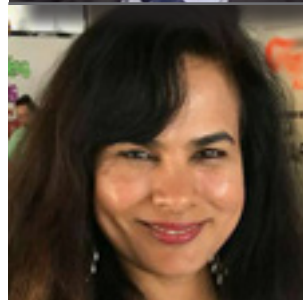




## Guest Editorial - Natural Rights...

**Dr Howard Richards**

Dr Richards is a philosopher of Social Science who worked with the concepts of basic cultural structures and constitutive rules. He is Research Professor of Philosophy at Earlham College; PhD in Philosophy, University of California, Santa Barbara; Juris Doctor (J.D.) Stanford Law School: Advanced Certificate in Education (ACE) Oxford University (UK); PhD in Educational Planning from Ontario Institute for Studies in Education (OISE), University of Toronto, Canada. He now teaches at the University of Santiago, Chile. Dr Richards is a Catholic, a member of Holy Trinity (Santisima Trinidad) parish in Limache, Chile, and a member of the third order of St. Francis, O.F.S.



## Irom Sharmila: The Making of an Icon...

**Dr Namrata Goswami**

Dr. Namrata Goswami is one of the foremost Indian thinkers on long-term global trends, emerging security challenges, and scenario building. She is currently an Independent Senior Analyst. Dr Goswami was formerly Research Fellow at the Institute for Defence Studies and Analyses (IDSA), New Delhi where she specialized on ethnic conflicts, insurgency, counter-insurgency and conflict resolution. She was a Jennings Randolph Senior Fellow at the United States Institute of Peace, Washington, D.C., She is a recipient of the Fulbright-Nehru Senior Fellowship.



## Transformation of Women at Work in Asia

**Dr Sukti Dasgupta and Dr Sher Singh Verick**

Based on original comparative research and extensive fieldwork, Transformation of Women at Work in Asia (SAGE) highlights the commonalities as well as the diverse nature of challenges that women across Asia face in gaining access to more and better jobs. Findings show that women across the continent have contributed significantly to its spectacular growth story; yet, social norms and economic factors limit their levels of participation. This is an excerpt from the book courtesy SAGE Publications.



## Afghanistan: Myth of the Splendid Sisterhood

**Heidi Kingstone**

Heidi Kingstone is a freelance journalist specialising in Afghanistan. Her book, *Dispatches from the Kabul Cafe*, was published in May (Advance Editions 2015). Views expressed in the piece are that of the author, and not of Mantraya.



## The New York Declaration for Refugees & Migrants

**Dr Emma Larking**

Emma is a Research Fellow in the Centre for International Governance and Justice. She was a Postdoctoral Fellow on Professor Hilary Charlesworth's ARC Laureate Fellowship project, 'Strengthening the international human rights system: rights, regulation and ritualism'. Her research background is in legal, political, and applied philosophy. Before moving to ANU, she lectured in the University of Melbourne's Schools of Historical and Philosophical Studies, and of Social and Political Sciences – where she also worked as a senior research assistant on the ARC Discovery Project, 'The Politics of Rights', with Chief Investigators Professor Brian Galligan and Dr John Chesterman



## Natural Rights

**Tom Kilcourse**

Kilcourse spent his career in management development and was widely published in management and academic journals. He appeared in several educational videos produced for the BBC, and has spoken on management in the USA, Europe and the UK. Tom began working life as a manual worker in his native Manchester, before winning a scholarship to study at Ruskin College, Oxford. He later won a State Scholarship to read economics at Hull University. He is now retired. [www.amazon.com](http://www.amazon.com)



## Raising the Accountability Bar

**Nimmi Kurian**

Nimmi Kurian is Associate Professor at the Centre for Policy Research, New Delhi, India. Her research interests include border studies, India-China borderlands; approaches to regionalism; transborder resource governance particularly water. Her recent publications include: *India and China: Rethinking Borders and Security* (co-authored) University of Michigan Press, 2016; *The India China Borderlands: Conversations Beyond the Centre*, Sage, 2014; 'River Diplomacy on Test', *Indian Express*, 04 October 2016; 'Co-opted Federalism? Border States and Resource Revenue Sharing Bargains', *CPR Policy Brief*, October 2016.



## Speaking Up for Free Speech...

**David Morgan**

David Morgan is a London based journalist with interests in politics, human rights, international relations, history and cultural issues. He has been working in journalism as an editor and writer for three decades after he studied literature and history at university. He has edited several titles from the Socialist History Society (SHS) of which he is the Secretary. He writes regularly for the SHS Newsletter, occasionally for the Morning Star newspaper and for a range of other online and printed publications.



## ULMWP and the insurgent Papua

**Dr Budi Hernawan**

Hernawan is Lecturer at Paramadina Graduate School of Diplomacy and Research Fellow at Abdurahman Wahid Centre at University of Indonesia in Jakarta.



## Human Trafficking

**Dr Veerendra Mishra**

Peter Gonsalves, PhD, is Dean of the Sciences of Social Communication at the Salesian Pontifical University, Rome. A member of SIGNIS, a world association for communicators. He has books include: a manual for South Asian educators entitled *Exercises in Media Education: Gandhi and the Popes* (Peter Lang, 2015) which is the last of his Gandhian trilogy, preceded by *Clothing for Liberation* (Sage 2010) and *Khadi: Gandhi's Mega Symbol of Subversion* (Sage 2012).



## Khadi: Gandhi's Mega Symbol of Subversion

**Dr Peter Gonsalves**

Dr Peter Gonsalves is the Dean of the Faculty of Social Communication at the SPU. Salesian Pontifical University, Rome. A member of SIGNIS, a world association for communicators, he has also written a manual for South Asian educators entitled *Exercises in Media Education*.



## Update 2016 - Another year of Living Foolishly?

**Mark Ulyseas**

Ulyseas is founder and editor of Live Encounters Magazine and Live Encounters Poetry. He is the author of three books: *RAINY – My friend & Philosopher*, *Seductive Avatars of Maya – Anthology of Dystopian Lives* and *In Gethsemane: Transcripts of a Journey*. <http://www.amazon.com/author/markulyseas>



Dr Howard Richards (born June 10, 1938) is a philosopher of Social Science who worked with the concepts of basic cultural structures and constitutive rules. He holds the title of Research Professor of Philosophy at Earlham College, a liberal arts college in Richmond, Indiana, USA, the Quaker School where he taught for thirty years. He officially retired from Earlham College, together with his wife Caroline Higgins in 2007, but retained the title of Research Professor of Philosophy. He has a PhD in Philosophy from the University of California, Santa Barbara, a Juris Doctor (J.D.) from the Stanford Law School, an Advanced Certificate in Education (ACE) from Oxford University (UK) and a PhD in Educational Planning from the Ontario Institute for Studies in Education (OISE), University of Toronto, Canada.

He now teaches at the University of Santiago, Chile, and has ongoing roles at the University of South Africa (UNISA) and the University of Cape Town's Graduate School of Business program. He is founder of the Peace and Global Studies Program and co-founder of the Business and Nonprofit Management Program at Earlham. Dr Richards is a Catholic, a member of Holy Trinity (Santisima Trinidad) parish in Limache, Chile, and a member of the third order of St. Francis, O.F.S.

[https://en.wikipedia.org/wiki/Howard\\_Richards\\_\(academic\)](https://en.wikipedia.org/wiki/Howard_Richards_(academic))



## DR HOWARDS RICHARDS

# NATURAL RIGHTS: INDIVIDUAL AND HUMAN RIGHTS



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Let's talk about natural rights. What shall we say? Well, let's begin the way students in law schools begin when they brief a legal opinion to prepare for a class. They read the dissenting opinion before they read the majority opinion. Starting with the dissent is a good way to bring the issues into focus.

But even before tackling the dissent we should consider the threshold question, why are we doing this? Why should we talk about something as old-fashioned as "natural rights" redolent as they are of the musty air of an old attic in Paris built in the 18th century? What relevance do they still have today in our 21st century when people live on the streets of Shanghai talking on cell phones and die in the deserts of Iraq and in the mountains of Afghanistan hit by drone strikes directed via satellite by computers in California and Florida? To ask these questions is already to begin to answer them: We need to talk about natural rights because today our human rights, especially our social rights, cannot become realities in the third world, or defended in the first world, precisely because we still live in the 21st century under a rule of law constructed by and for the 18th century. The triumphant revolutionaries of the 18th century lived and breathed natural rights.

Now: On to the dissent! When it comes to natural rights, the most famous and most influential dissenting opinion is that of the English philosopher Jeremy Bentham (1748-1832). According to Bentham we should expunge natural rights from our vocabulary. Natural rights is a bogus concept. It would better serve the common good if nobody ever talked about them, or if the idea had never been invented. The term "natural rights," Bentham wrote, "is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, --nonsense upon stilts."



# IN CONGRESS, JULY 4, 1776. A DECLARATION BY THE REPRESENTATIVES OF THE UNITED STATES OF AMERICA, IN GENERAL CONGRESS ASSEMBLED.

WHEN in the Course of human Events, it becomes necessary for one People "to dissolve the Political Bands which have connected them with another," and to assume among the Powers of the Earth, the separate and equal Station "to which the Laws of Nature and of Nature's God entitle them," a decent Respect to the Opinions of Mankind requires "that they should declare the causes which impel them to the Separation.

We hold these Truths to be self-evident, "that all Men are created equal," "that they are endowed by their Creator with certain unalienable Rights," that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, "deriving their just Powers from the Consent of the Governed," that whenever any Form of Government becomes destructive of these Ends, "it is the Right of the People to alter or to abolish it, and to institute a new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness." Prudence, indeed, will dictate that Governments long established should not be changed for light and transient Causes; and accordingly all Experience hath shewn, that Mankind are more disposed to suffer, while

[https://en.wikipedia.org/wiki/United\\_States\\_Declaration\\_of\\_Independence](https://en.wikipedia.org/wiki/United_States_Declaration_of_Independence)

What was Bentham's problem? Why did he complain about the natural rights that his revolutionary contemporaries including the authors of the United States Declaration of Independence (1776) and the authors of the French Declaration of the Rights of Man and the Citizen (1789) say are self-evident; indeed, they sometimes say that protecting and preserving them are the original and only purposes of government.

We can summarize Bentham's complaints under two headings: (1) Theoretical, and (2) Practical.

**1. Theoretical.** The theory of natural rights is part and parcel of the theory that society began with a social contract. In a state of nature people already had rights. Most importantly they had property rights. They came together and decided to agree on a contract to form a society. The contract provided for someone to be the ruler (at first the King, later the elected government). The same contract provided that the ruler was bound to respect the natural (pre-existing) rights of the ruled.

Although Bentham did not have access to all the scholarly studies we have today, he knew enough about history to know that the social contract never happened. The concept of "natural rights" like any concept based on a false story was from a scientific and theoretical point of view off to a bad start.

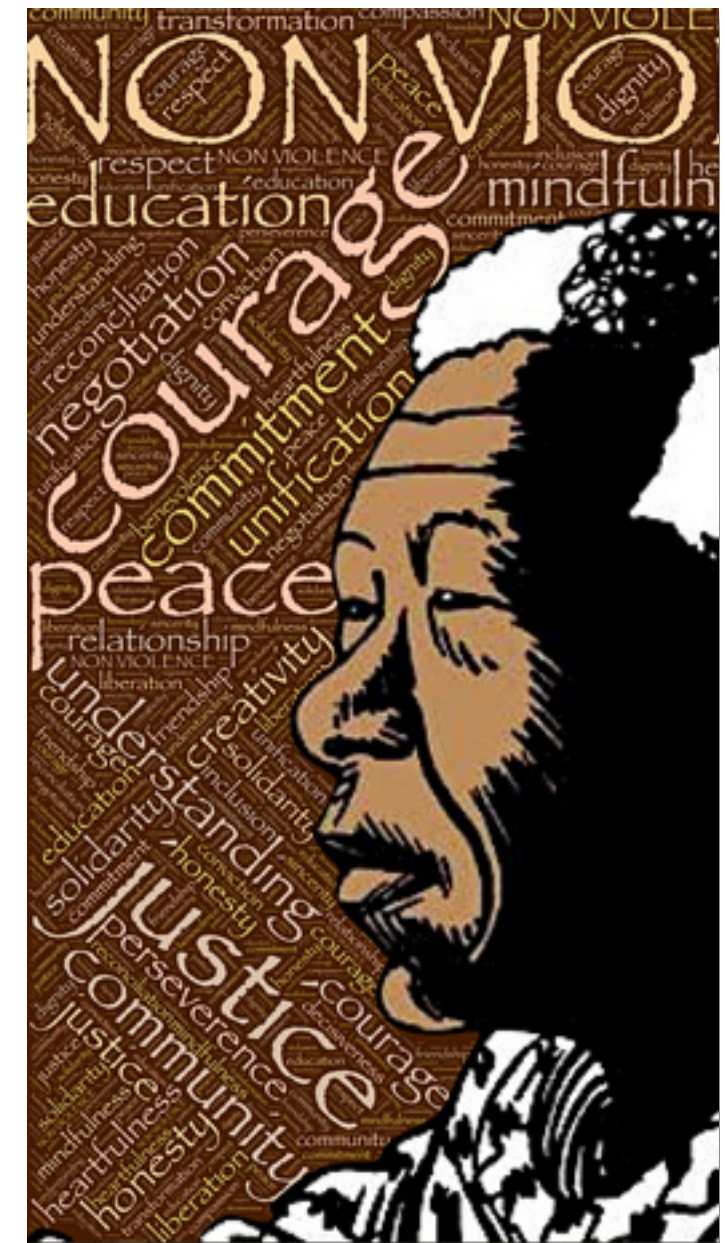
**2. Practical.** Bentham was known in his time as a "philosophical radical." He wanted to rebuild society from the ground up. The ground, the foundation, was the principle of the greatest happiness of the greatest number. In his *Principles of Morals and Legislation* Bentham proposed to evaluate every law, and then to accept it or reject it, by calculating how much happiness (or how much misery) it would bring to how many people. Natural rights got in his way. They are supposed to be universal and unchanging. You are not supposed to evaluate them and then either accept them or reject them. You are just supposed to respect them. From a practical standpoint, natural rights introduced rigidity where Bentham wanted flexibility.

Let this suffice for a brief of the dissent. Most of us today, even those of us who are foggy about what "natural" might mean or what a "natural right" might be hold the opinion that human rights are at the centre of an emerging global consensus on basic shared values. They are promulgated in numerous treaties and conventions, adhered to at least formally by virtually every nation, and in many cases incorporated in national constitutions.

Mandela changed his views. But he did not change his ideals. He transposed them to the principle that that human rights, especially social rights, would be the bedrock foundation for the new South African under construction. His views are reflected in the new Constitution of South Africa written in 1994 which guarantees every South African thirty-five basic rights, including food, housing, employment, education, and pensions. Many of them are spelled out in great detail.

Many people today can identify with the path followed by Nelson Mandela that led him to see individual and human rights as the basic framework defining what the social structure of his country South Africa should be. He grew up in the Xhosa-speaking Thembu tribe where he lived as a child the communitarian values that, as he said later, predisposed him to sympathize with socialist ideals. He was a convinced socialist before and during his long imprisonment on Robben Island. Not long after his release, when he had already become the presumptive President of the new South Africa but before he was inaugurated, he took a world tour visiting, among other places China and Vietnam, two countries that while remaining formally Communist had embraced capitalist economics. Those visits confirmed what he already tended to believe for other reasons: There was no place for a socialist South Africa in the world of the 1990s.

Mandela changed his views. But he did not change his ideals. He transposed them to the principle that that human rights, especially social rights, would be the bedrock foundation for the new South African under construction. His views are reflected in the new Constitution of South Africa written in 1994 which guarantees every South African thirty-five basic rights, including food, housing, employment, education, and pensions. Many of them are spelled out in great detail. If we accept Nelson Mandela's views on human rights as pretty close to or exactly like today's majority opinion, how do we make a rational case defending the majority against dissenters like Bentham?



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This question can also be divided into two, a theoretical question and a practical question.

**Theoretically:** If human rights do not come from an original social contract, where do they come from? What rational basis is there for believing in them?

**Practically:** How can we transform the human rights that are promised on paper to real human rights that are respected and guaranteed? The case of Irene Grootboom, a homeless woman, is a case in point. Aided by volunteer lawyers she demanded that the Constitutional Court order the government to provide her with the home she was promised by Article 27 of the South African Constitution. The Court ordered the government to redouble its efforts to house the homeless, but it also held that immediately providing a house to everyone in her condition could not be a legal obligation because it would be impossible. The government could not afford it. She died still homeless in 2008.

**1. Theory:** An answer to the question, “If human rights were not created by nature or by a social contract, how were they created?” is “They were created by history.” Human rights are historically constructed social realities. Simplifying –not simplifying in a misleading way but simplifying in a way that could be confirmed if there were space to add more detail—two key historical times when long periods of gestation culminated in declarations of rights were the time of the French Revolution, and the time of the Second World War. The first gave us the *Déclaration des Droits de l’Homme et du Citoyen* (1789). The second gave us the Universal Declaration of Human Rights (1948).

What rational basis is there for believing in rights? Otherwise put, as speakers responsible for our choices when we decide to use some words and not others, how can we justify doing rights-talk? Here I propose to take a cue from the protestant theologian Paul Tillich, whose ideas were further developed by Martin Luther King Jr. in his doctoral dissertation. Love is the fundamental ethical commandment. Justice (and therefore rights-talk) is a means for doing the work of love. In Tillich’s language, love has “being” while justice has no separate being apart from being a way to put into practice the principle “Love one another as I have loved you.”

Nevertheless, even though we would not be in trouble if everybody took an unbounded approach that derives from traditional wisdom basic moral guidance but does not establish rigid institutions unsuited to practical problem solving, in fact, as things stand, we are in trouble. Irene Grootboom was in trouble and so are we. Today our human rights, especially our social rights, cannot become realities in the third world, or defended in the first world, within a legal framework created by and for the 18th century and not fundamentally changed since then.

Human rights, then, are a gift of history that help us to put into practice the fundamental ethic of love, also known as solidarity. Rights give love the force of law. For those who are not religious, Mahatma Gandhi offered a secular argument for a love ethic: if love were not the law of our species, our species would never have survived and we would not be here today.

**2. Practice:** In principle a love theory of human rights solves Jeremy Bentham’s practical problem: Rights do not have to be thought of as rigid rules (read “neurotic rules” since in psychology rigidity defines what it means to be neurotic). Like the ancient Hebrews (but unfortunately unlike the contemporary European Central Bank in its dealings with Greece) believers in human rights can forgive debts even when in strict justice the creditors have a right to be paid.

This does not mean there is no place for natural law in contemporary philosophy and theology, nor does it mean Bentham’s philosophy was better than Aristotle’s. It does mean that whatever philosophy we hold should support us and not tie us in knots when we organize to get houses built for people like Irene Grootboom.

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The winners of the French Revolution and similar winners in other places unseated the old aristocracies, the old monarchies, and the old empires. They set up republics. The rule of law that guaranteed basic rights in the new republics also guaranteed limited government. To nail down limitations on the powers of governments the 18th century winners established modern states as what the great economist and historian of economics Joseph Schumpeter called *Steuerstaaten*, tax states. Their life blood, what they lived on, what they still live on, is taxes.

It is not that there were too few resources in South Africa to build houses for all the Grootbooms. South Africa has its share of the world’s billionaires. It has today the world’s highest Gini coefficient, making it the most unequal society in the world.



Piketty calculates that in the countries for which data is available public wealth is approximately zero. The sum total of all public assets is approximately equal to the sum total of all public debts. Virtually all the world's wealth is in private hands.



Photo: Abir Abdullah/ADB [LINK](#)

Nevertheless, the Constitutional Court was correct when it said it was impossible for the government to house the homeless because the government did not have and could not get the funds needed to house them. It acknowledged that the government led by Mandela's ANC was trying. It had already, among other things, slashed the military budget by almost half and shifted the funds it was not spending on armaments to the social budget.

Nevertheless, the ANC was caught in the trap that nearly all contemporary governments are caught in, aptly described by Jürgen Habermas in *The Legitimation Crisis* as a permanent fiscal crisis of the state. The state is perpetually lowering taxes to stimulate the economy by putting money in the pockets of consumers so they can spend it, or in the pockets of investors by making investment more profitable than it already is. At the same time, it is perpetually raising taxes to try to pay its bills. The see-saw never stops.

The state is permanently competing with every other state to persuade capital from elsewhere to come into the country and to persuade the capital that is already in the country not to leave. Thomas Piketty calls this "tax competition."

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Photograph by Rowland Scherman for USIA - U.S. National Archives and Records Administration, Public Domain.

The permanent fiscal crisis of the state means that governments go ever more deeply into debt. It means that governments become ever more unpopular as they fail to keep their promises. They promise to improve the performance of the economy and to fund compliance with the social rights—employment, health care, pensions, education, etc. -- promised by the Universal Declaration of Human Rights. They cannot keep their promises. This is why Habermas writes of a "legitimation crisis."

The authors of the Universal Declaration of Human Rights expected a future better than the present we who live in their future are now experiencing. The democracies had just won a war. They had promised their soldiers that after risking their lives on the battlefield they would not come home to another depression like that of the 1930s but instead to what USA President Roosevelt speaking in 1941 in the middle of the war called the Four Freedoms: freedom of speech and expression, freedom to worship God in one's own way, freedom from want, freedom from fear. Keynesian economics seemed to prove scientifically that governments could steer economies to shared prosperity. The Swedish Model seemed to be—leading architects of it like Dag Hammarskjöld and Gunnar Myrdal actually believed it was—a model that could be imitated everywhere. The deal was sealed by the vote of the General Assembly of the United Nations at the Palais de Chaillot in Paris when it approved the Universal Declaration of Human Rights on 10 December 1948. All the world's peoples were to enjoy the individual rights that were declared in the 18th century and to make those rights safe from the kinds of social breakdown that had proven to lead to fascism and war; and also to promote the general welfare all the world's peoples would enjoy in addition the social rights declared in the 20th century.

But the basic legal framework of modern republics established in the 18th century with its emphasis on individual rights does not lend itself to social democracy. The combination of limited government and almost unlimited property rights does not lend itself to making human rights real. Social democracy fizzled. It had to fizzle because of a fiscal crisis of the state made inevitable (as Habermas demonstrated) by the legal framework of the economy. In most of the world social rights never made it from paper to practice, and as the 21st century dawned social rights in the first world were suffering from chronic and accelerating erosion.

The optimism of 1948 did not last. Asia, Africa, the Middle East and Latin America did not replicate the social democracies of Western Europe. Instead Western Europe and the United States descended to levels of chaos and unpayable debt formerly associated with Banana Republics. The poor did not get justice and the rich did not get peace.



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Do I exaggerate the facts, seeing only what is going wrong and overlooking what is going right? Maybe. My point is that there is a fundamental reason why amid all the ups and downs there is a generative causal power at work pushing toward the down side, even while other generative causal powers are pushing on the up side. The one pushing down is the fiscal crisis of the state.

At this point in history what do we do, apart from repeating, and spelling out all the consequences of Tillich's basic point that justice has no being (no "ontological reality") separate from love?

Forgive me for making two simple points when you and I and everyone else knows that the world is very complicated and no simple one-dimensional solutions will work. That said, if there were simple solutions, if there were key changes that could make the world governable they would be these two. These two would be giant steps toward turning paper rights into real rights.

**1. Unbounded organization.** This means alignment of all sectors to work for the common good. It means being clear that the goal is a fully nurturant society in harmony with the natural environment. It means rational flexibility in the constant improvement of institutions to make them better perform their life-serving functions. It means not treating human rights as something the government is expected to guarantee alone. Making sure there are no homeless Irene Grootbooms should be everybody's responsibility.

**2. Put the finances of democratic governments on a sound and sustainable basis.** This means ending the tax state. It means, to illustrate the principle with just two examples: (1) Follow the example of the settlers who came to New England in the 17th century who set aside in every town a tract of land belonging to the town whose rents would fill the town's public purse. (2) For another example take a cue from the days when Jesus could say "render unto Caesar that which is Caesar's." In those days money belonged to sovereigns and sovereigns used their financial privileges to defray their expenses, mainly the expenses of waging wars. Now banks and other financial institutions have privileges that the sovereign people should have and should use to make social rights real rights.



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### Recommended Reading

Glyn Davies (2002), *A History of Money*. Cardiff: University of Wales Press.

*Declaration of the Rights of Man and the Citizen* (1789)  
[www.americanbar.org/.../human\\_rights/french\\_dec\\_rightsofman.authcheckdam.pdf](http://www.americanbar.org/.../human_rights/french_dec_rightsofman.authcheckdam.pdf)

Jürgen Habermas (1975), *The Legitimation Crisis*. Boston: Beacon Press

Howard Richards (2010) *Human Rights and the End of the Age of Keynes*  
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Howard Richards and Joanna Swanger (2013) *Gandhi and the Future of Economics*. Lake Oswego: Dignity Press.

Howard Richards and Joanna Swanger (2006), *The Dilemmas of Social Democracies*. Lanham: Rowman and Littlefield.

*Universal Declaration of Human Rights* (1948)  
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Dr. Namrata Goswami is one of the foremost Indian thinkers on long-term global trends, emerging security challenges, and scenario building. Dr. Goswami is currently an Independent Senior Analyst. She was formerly Research Fellow at the Institute for Defence Studies and Analyses (IDSA), New Delhi where she specialized on ethnic conflicts, insurgency, counter-insurgency and conflict resolution. She has been a Jennings Randolph Senior Fellow at the Congressionally Funded United States Institute of Peace (USIP) in Washington DC, where she explored long-term India-China-US scenarios in order to craft sustainable security frameworks to enable unimpeded human development and security. She was co-lead and editor of two IDSA sponsored works on long-term trends, *Imagining Asia in 2030*, and *Asia 2030 The Unfolding Future*. Her latest book published by Pentagon Press, New Delhi is on *India's Approach to Asia, Strategy, Geopolitics and Responsibility, 2016*.

## Irom Sharmila:

The Making of an Icon,  
and the Compulsions That Come With it

### Dr Namrata Goswami

Independent Senior Analyst, Author and one of the foremost Indian thinkers on long-term global trends, emerging security challenges, and scenario building.

The name, Irom Sharmila, is synonymous with the idea of non-violent protests against obstacles to civil liberties in India. For 16 years, Irom Sharmila had to be forced fed through a tube in her nose, as she engaged in the world's longest hunger strike against the imposition of the Armed Forces (Special Powers) Act, or AFSPA, 1958, and amended in 1972, in Manipur.<sup>1</sup> The AFSPA, is fashioned on the British colonial act, titled, 'Armed Forces Special Powers Ordinance, 1942', transmitted by the British to subdue the Quit India movement of 1942.<sup>2</sup> The AFSPA was first imposed in Naga areas of Assam, in response to the rise of secessionist violence under the aegis of the Naga National Council (NNC) by designating the affected areas as 'disturbed areas'. It was enforced in Manipur in 1980.<sup>3</sup> The Act is a direct affront to the idea of fundamental rights and civil liberties granted by the Constitution of India. For instance, there are clauses in the Act like:

enter and search **without warrant** [emphasis added] any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary.<sup>4</sup>



It is the continued imposition of AFSPA that motivated Irom Sharmila to tread on the courageous and difficult path of a 16 year hunger strike. In 2006, when the Malom massacre occurred in Manipur, in which 10 people were killed in a bus stop, allegedly by the *Assam Rifles*, a para-military, Sharmila, then a volunteer for *Human Rights Alert*, started her fast that has now made her an international icon.<sup>8</sup> Many have been inspired by her story and she has single-handedly brought international focus on the AFSPA. Within Manipur, civil society groups embraced her struggle and made her an icon for their own protests against the lack of civil liberties in the state. Her steadfast commitment to be on fast, despite immense physical and emotional discomfort, earned Irom Sharmila the name, “Iron Lady of Manipur”.

This stands in direct contrast to Fundamental Rights, protected and guaranteed by the Constitution of India. Significantly, it is pointed out by *The National Council of Educational Research and Training* (NCERT), tasked by the Government of India to establish curriculum for Indian school students that “no organ of the government can act in a manner that violates them...judiciary has the powers and responsibility to protect the fundamental rights from violations by actions of the government. Executive as well as legislative actions can be declared illegal by the judiciary if these violate the fundamental rights or restrict them in an unreasonable manner”.<sup>5</sup> While reasonable restrictions can be imposed on fundamental rights, they cannot take away a person’s right for judicial purview. The most concerning aspect regarding the AFSPA is that the ‘special powers’ it confers, takes away the right to ‘judicial purview’ over security personnel functioning in areas where it is imposed. Moreover, civilians in ‘disturbed areas’ can be arrested on ‘mere suspicion’ and without warrant, of conniving with armed groups, and the burden of proof falls on the arrested party. Manipur, as a result of imposition of AFSPA, has suffered from high levels of individual and societal stress, and distrust of Indian government organs. While it is a fact that Manipur has the odious distinction of being the most conflict affected in Northeast India, there are other ordinances that can be utilized to deal with the situation. In 2005, a high level official panel led by Justice Jeevan Reddy branded AFSPA, a “symbol of oppression, instrument of high-handedness” and recommended for its removal.<sup>6</sup> Significantly, the Supreme Court of India upheld the constitutional validity of the Act in 1998 in the *Naga People’s Movement of Human Rights vs. Union of India* case, though the Court cautioned in July 2016 that the Act cannot be misused, and laid out a framework for accountability.<sup>7</sup>

It is the continued imposition of AFSPA that motivated Irom Sharmila to tread on the courageous and difficult path of a 16 year hunger strike. In 2006, when the Malom massacre occurred in Manipur, in which 10 people were killed in a bus stop, allegedly by the *Assam Rifles*, a para-military, Sharmila, then a volunteer for *Human Rights Alert*, started her fast that has now made her an international icon.<sup>8</sup> Many have been inspired by her story and she has single-handedly brought international focus on the AFSPA. Within Manipur, civil society groups embraced her struggle and made her an icon for their own protests against the lack of civil liberties in the state. Her steadfast commitment to be on fast, despite immense physical and emotional discomfort, earned Irom Sharmila the name, “Iron Lady of Manipur”.

Significantly, on August 9, 2016, Sharmila decided to end her 16 year old fast in favor of more active involvement in Manipur politics.<sup>9</sup> In her own words, she described her decision as a change in tactic, from passive non-violent protest to more active involvement by entering local politics.



Ironically, the response to her decision to end her fast in Manipur has been largely negative, representing a classic case of society creating an ‘icon’ for its own rallying point, and forgetting that she is human like anyone of us. Many women activists groups in Manipur, who had undertaken ‘relay hunger’ strikes in solidarity with her, rejected her decision to end her fast, and accused her of being brain-washed. In the process, they denied a 44 year old woman, who had undertaken one of the most selfless acts of courage for their sake, the dignity and honour of her own decisions.<sup>10</sup> Sharmila was left feeling abandoned stating:

They misunderstood my step. I didn't give up on my struggle, I have just changed my tactic...I want them so much to know me, not their version of me. Their harsh reaction to an innocent human being... They were very harsh.<sup>11</sup>

The question that arises is: why such rejection and anger? Why is it that a woman who gave up most of her youth in protest against an Act, by sacrificing a life that most of us aspire for, family, professional and economic well-being, meted out such a harsh response? The answer lay in dissecting the complex social investment in her cause.

Socially, when Sharmila ended her fast on August 9, Manipur lost the ‘live image’ of Sharmila with a tube on her nose, to use as a ‘symbol of protests’ against the AFSPA. Her protest symbolized a live protest against limitations to civil liberties. Sharmila, by ending her fast, created a social vacuum in that aspect. Moreover, local groups like Sakal or the Sharmila Kanba Lup (The protection of Sharmila Organisation) were left with nothing to band together and the Imas (mothers) who took it upon themselves to take care of her, were left with no rallying point. Groups like *Meira Peibis* (mother activists), were so upset that they influenced some of her friends to turn her away if she came for shelter to them after breaking her fast.<sup>12</sup> Most of those who were/are angry with her, expressed a sense of betrayal: that she, who started a movement against AFSPA, abandoned it halfway. Many were angry that she did not consult anyone when she took the decision to break her fast.

An icon, is regarded as being owned by the society, represented by her or him. So, Irom Sharmila’s life and story is socially owned and her chronicle of protest has been adopted by Manipur’s society as its own story. Moreover, there is anger at her, for not consulting anyone, even her family, as her brother, Irom Singhajit puts it, and that too for a decision that has social and political ramifications. Even her personal choices are not spared as she is viewed as belonging to all. As a result, her decision to love someone has been questioned socially.



The legacy of Irom Sharmila for civil rights in Manipur is both novel and commendable. As a young woman, she had the courage to take the unprecedented step of going on a hunger strike for 16 years, cooped up against her will, in a hospital room. She had no access to the internet or a phone for years. Yet, she persisted, and succeeded single-handedly by her passive resistance, to attract global attention to her cause; to repel acts like AFSPA and ensure respect for civil rights and liberties. To question her decision now of ending the fast and adopt a different strategy for her protest, or to claim that she has been somehow brainwashed with no facts to show for it, reflects utter disrespect for her humanity, depriving her of the very individual grit and agency that enabled her to undertake such a decades long protest.

For instance, activists and women organizations in Manipur questioned Sharmila's decision to marry Goa born British national, Desmond Coutinho, whom Sharmila met in 2011 in Imphal. While not all have rejected her decision to end her fast, with some activists arguing that she has a right to her own life, the overall environment in Manipur appears unsupportive.

One can, with hindsight, understand why Irom Sharmila decided to end the fast on her own without consulting anyone. For one, if the negative reactions are any indication, it is rather obvious that she would have been pressurized on the contrary; there would have been endless public debates on the effects of such a decision depriving her of any privacy or agency. For another, her decision to begin the fast, 16 years ago, was her own decision; therefore, her decision to end it is rightly her own despite her story of courage being adopted by the larger society. Gandhi's decision, not to celebrate India's independence on August 15, 1947 publicly due to communal riots in Calcutta (now Kolkata), but privately as he put it in a letter to Agatha Harrison of *British Quakers*, "my way of celebrating great events, such as today's, is to thank God for it and, therefore, to pray".<sup>13</sup> While his decision has been criticized by many, I firmly believe Gandhi had every right to his decision despite being such an icon. In that light, it strikes one as rather odd that a 44 year old woman has been subjected to such scrutiny by her own community with regard to her decision to enter politics, or even with regard to whom she wants to marry.<sup>14</sup> That should be her personal decisions and no one has a right to it, or to question her wisdom.

The legacy of Irom Sharmila for civil rights in Manipur is both novel and commendable. As a young woman, she had the courage to take the unprecedented step of going on a hunger strike for 16 years, cooped up against her will, in a hospital room. She had no access to the internet or a phone for years. Yet, she persisted, and succeeded single-handedly by her passive resistance, to attract global attention to her cause; to repel acts like AFSPA and ensure respect for civil rights and liberties. To question her decision now of ending the fast and adopt a different strategy for her protest, or to claim that she has been somehow brainwashed with no facts to show for it, reflects utter disrespect for her humanity, depriving her of the very individual grit and agency that enabled her to undertake such a decades long protest. My salutations to such a feisty woman, for the meaning that she has brought to her and our lives. It is something we all aspire for in our own lives but rarely achieve it, as it requires tremendous sacrifice: As we all know, it not easy to live for the greater good of humanity, or to be the change that we want to see in our world, as Gandhi so aptly put it.

*All views expressed in this article are solely personal.*



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authors of

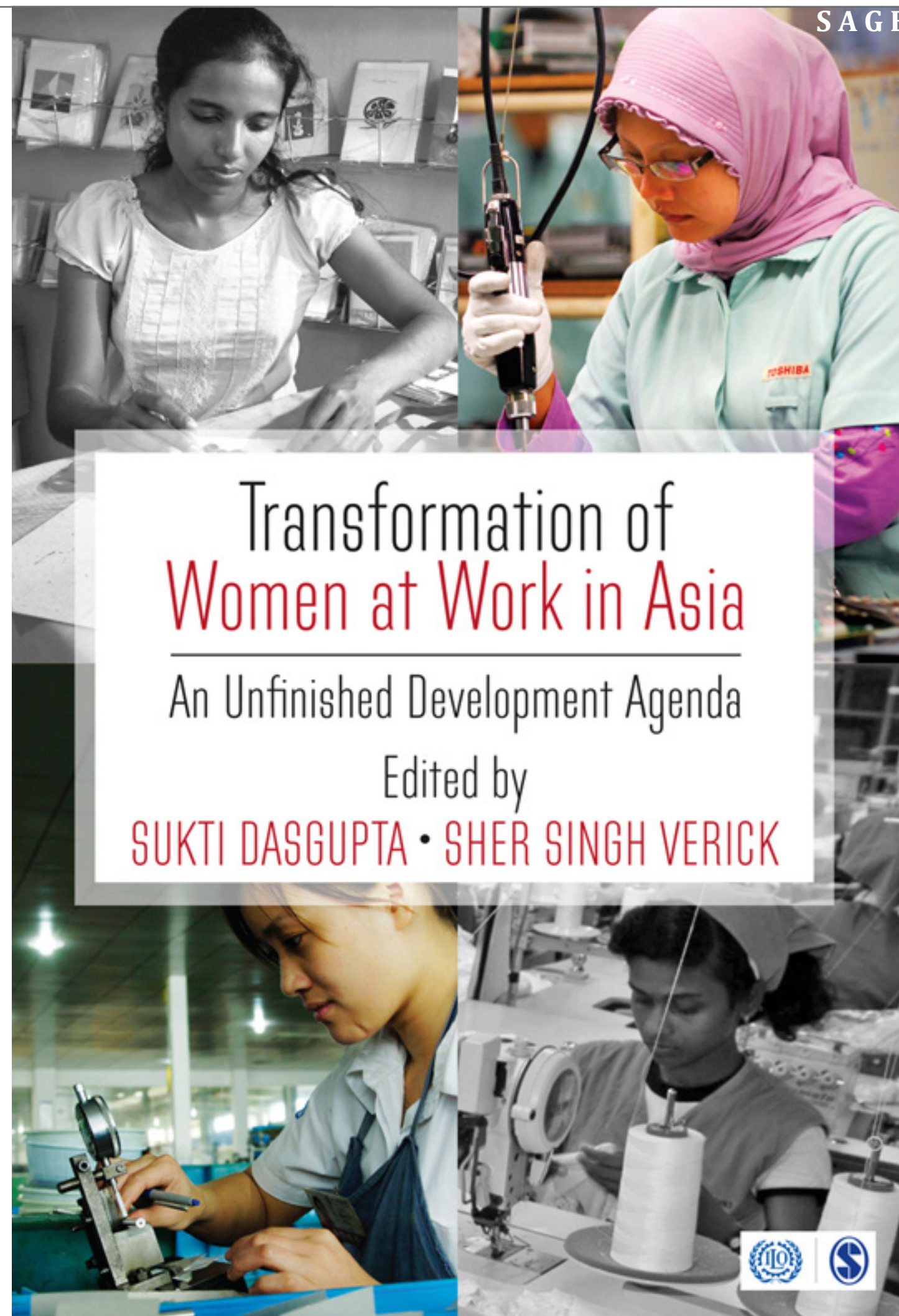
**Transformation of Women at Work in Asia**

Published by [SAGE](http://www.sagepublicationsindia.com)

An excerpt

Asian economies have undergone considerable economic transformation over the last three decades. Home to 2.9 billion working-age people and roughly 55 per cent of the global population, Asia is one of the most dynamic regions in the world today, but there is enormous diversity in levels and patterns of growth across the region. While some countries have relied on low wage export-led growth, others have been largely service-oriented. Agriculture remains important though its share in gross domestic product (GDP) has fallen in most countries. Many economies have moved into middle-income status and poverty rates have declined significantly. Since the 1990s education levels have improved considerably, with gender parity in access to primary and secondary education achieved in most of the region. At the same time, fertility rates have fallen in all countries, by as much as 50 per cent in Bangladesh, Cambodia, Lao People's Democratic Republic and Nepal.

Consequently, women in Asia are increasingly better educated, have fewer children and live in countries with more urbanized economies with a shift away from agriculture. These trends suggest that women across the region have more opportunities to engage in the labour market, particularly in wage employment. However, as witnessed in a number of countries, participation of women in the labour force has either fallen or remained rather stagnant. On an average, female labour force participation declined in East Asia from 70.8 per cent in 1994 to 63.3 per cent in 2014, while it has fallen from 36.4 to 30.6 per cent in South Asia over the same period. Female labour force participation in Southeast Asia and the Pacific remained stable at roughly 59 per cent.





Women in Asia are increasingly better educated, have fewer children and live in countries with more urbanized economies with a shift away from agriculture. These trends suggest that women across the region have more opportunities to engage in the labour market, particularly in wage employment. However, as witnessed in a number of countries, participation of women in the labour force has either fallen or remained rather stagnant. On an average, female labour force participation declined in East Asia from 70.8 per cent in 1994 to 63.3 per cent in 2014, while it has fallen from 36.4 to 30.6 per cent in South Asia over the same period. Female labour force participation in Southeast Asia and the Pacific remained stable at roughly 59 per cent.

While these aggregate trends mask the diversity across countries, they are significant in that they set the region as markedly differently from the rest of the world. In other developing regions of the world, there has been an increase in women's labour force participation rates, which is in contrast to what we observe across Asia. Even the Middle East and North Africa, the region with lowest level of labour force participation of women, has witnessed an increase, from 18.1 per cent in 1994 to 21.7 per cent in 2014.

As evident, in the analysis of different countries' experiences presented in this volume, the relationship between women's engagement in the labour market and broader development outcomes is very complex, reflecting different aspects of societal, household and individual behaviour. Since the 1970s, there has been a vibrant literature on women in development—with an emphasis on analysing women's role as economic actors. Boserup's (1970) seminal work highlighted that women's work, both at home and in the paid workforce, has made a significant contribution to economic growth. This opened up a lively discourse on 'women in development', which strove to highlight the positive synergies between investing in women and reaping the benefits of economic growth (Razavi and Miller, 1995). Researchers have pointed to the positive spill over effects of women's employment in accelerating poverty reduction and spurring productivity (Morton et al., 2014). It is also widely accepted that women's participation at work helps enhance gender equality (ILO 2012b; Khandker, 2002; World Bank, 2012).

From macro-economic perspective, lower levels of female labour force participation reduce the potential growth rates of an economy. This implies that underutilization of female labour force would result in economic losses (World Bank, 2012). In a report jointly authored by the International Labour Organization (ILO) and the Asian Development Bank (ADB) in 2011, it was pointed out that the Asia Pacific region is losing US\$ 42 billion to US\$ 47 billion annually because of the limited access of women to employment opportunities (ILO and ADB, 2011). Some studies have shown that eliminating discrimination against women could increase productivity per worker by 25 to 40 per cent, depending on the worker type and extent of exclusion. ILO (2012a) estimates that should the gender gap in labour force participation rate (LFPR) drop half way in the next five years, assuming that more women are working, the GDP growth rate could increase by an additional 1.5 per cent in South Asia, 0.5 per cent in East and Southeast Asia and roughly 0.3 per cent in East Asia. There are, therefore, clear economic benefits to the region from raising the share of women in the workforce.

As evident, in the analysis of different countries' experiences presented in this volume, the relationship between women's engagement in the labour market and broader development outcomes is very complex, reflecting different aspects of societal, household and individual behaviour. Since the 1970s, there has been a vibrant literature on women in development—with an emphasis on analysing women's role as economic actors. Boserup's (1970) seminal work highlighted that women's work, both at home and in the paid workforce, has made a significant contribution to economic growth.

These figures capture the negative effect of gender inequality on economic growth and development. The contribution of women to the development process, though often overlooked in broader policy discourses, could not be more relevant to countries that are yet to sustain higher rates of inclusive growth, especially in many parts of Asia (Kabeer and Natali, 2013; Ghosh, 2009).

To better understand these issues, this volume tackles two interconnected phenomenon. First, women's empowerment and gender disparities in the labour market and second, the extent and nature of economic transformation and structural change that countries in Asia have experienced in recent decades. Using this framework, the empirical work presented in the volume seeks to answer two overarching questions: first, what has been the role of women in the process of economic transformation in Asia? and second, to what extent have women gained from the transformation witnessed in the region?





**Afghanistan: Myth of the Splendid Sisterhood**  
Heidi Kingstone





<https://uiwomenscenter.wordpress.com/2015/10/29/the-married-life-of-a-marriage-afghanistani-woman/>

Stories of abuse and the mutilation of women in Afghanistan are so common we are almost desensitised to it. Violence against women and particularly domestic violence has fed the headlines certainly since our recent escapade into the country, one attack more horrific than the next.

Male abuse in countries such as Afghanistan has spawned laws, reports, column inches, books, movies and documentaries and ultimately resulted in the International Day Against Violence Against Women on 25 November. Yet violence against women isn't solely a male preserve.

*It is estimated that about a third of attacks in the home in Afghanistan are perpetrated by women against other women.*

Writing about the violence women perpetrate against other women stays below the radar. Its exposure seems like such a betrayal. It also complicates the narrative of violence against women being a story of male perpetrators and female victims, but it's part of a whole spectrum of gender-based violence that doesn't get written about and goes against mainstream thought.

*The main culprits are mothers-in-law and to a lesser extent sisters-in-law and other female relatives in extended family households, women who have themselves been dominated, abused and disenfranchised.*

Violence against women and girls is related to their lack of power and control, as well as to the social norms that prescribe men and women's roles in society and condone abuse. These factors reinforce women's low status in society.

One horrific story propelled me to research this article. Several months ago in an area east of Jalalabad, Afghanistan, a 15-year old girl died after her sister-in-law threw her into a tandoori oven. In yet another gruesome account in Afghanistan, a pregnant woman in her twenties had part of her genitals cut off. Her mother-in-law and sister-in-law helped her husband tie her up and beat her with a wooden stick. She miscarried.

*"In situations where girls marry young and go directly from their birth household to their marriage household, they will have little experience with the outside world," says Lauryn Oates.*

Heidi Kingstone is a freelance journalist specialising in Afghanistan. Her book, *Dispatches from the Kabul Cafe*, was published in May (Advance Editions 2015). Article reprinted by permission of [mantraya.org](http://mantraya.org). Views expressed in the piece are that of the author, and not of [Mantraya](http://mantraya.org).

As the programmes director for Canadian Women for Women in Afghanistan, Oates has spent 13 years going in and out of the country. Her analysis is that when young women enter the new household they do so at the bottom of the rung. "They have no negotiation skills, no agency, and their 'purity' is prized but the price of this purity (having had no interactions with males outside the family) is that she has no education, no life experience, no worldliness, and no status," she says. "The situation is one set up for abuse, and she may have cost money (if there was a bride prize), fuelling further resentment." These are draws for violence.

*"Domestic violence is an unfortunate part of the Afghan society and it takes place everywhere in the country in different ways. Women, in particular, are the largest victims of domestic violence and often women become a cause for violence against other women for various reasons," says Quhramaana Kakar, Founder and Director of the NGO, Women for Peace and Participation (and gender adviser to the Afghan Peace and Reintegration Programme and Joint Secretariat of the High Peace). "In the house women are forced to live together and share responsibilities. Limited mobility and freedom of expression make other women easy targets of their own frustrations and where they can seek revenge of their own insecurities."*

In Afghan society, patriarchy is created by men while guarded by women.

Afghanistan, India, Central Asia as well as many other male-dominated cultures that share the same structures to which women adhere, makes them think and act like men in terms of power and control. When the mother-in-law was a victim she justifies her position of perpetrating such violence toward her daughter-in-law.

"Thus, the women help in continuing the patriarchal system once they come to occupy positions of power in household or politics," says Dr Shanthie D'Souza, President and founder of Mantraya, an independent web-based research forum. "Moreover, they continue with such measures to gain some amount of respect in their society where power is measured through control and subjugation among peers and men."

On my first trip to Kabul in 2007, I became aware of Sippi Azarbaijani-Moghaddam's legendary reputation as one of the foremost experts on Afghanistan.



“power, powerlessness, lack of education, no rule of law, socialization into violence, acting out what has been done to them as children, shame, shame and more shame. With shame on top so victims and perpetrators are stuck in a bond of silence.”



<https://pilir.blogs.pace.edu/2014/02/12/womens-rights-regression-in-afghanistan-criminal-code/>

I met her shortly after and her insights and advice remain amongst the best. As a gender expert, she has worked in the country for over twenty years and doesn't mince her words when it comes to explanations:

*“power, powerlessness, lack of education, no rule of law, socialization into violence, acting out what has been done to them as children, shame, shame and more shame. With shame on top so victims and perpetrators are stuck in a bond of silence.”*

“Women are the most ‘stuck’ in the cultural systems,” says Azerbaijani-Mogaddam. “Older women are rewarded by men for maintaining the cultural system so they punish transgressors. There is also jealousy when younger women come into the household and get more attention from men, and during war, violence at all levels of society escalates. Everyone, given the chance, is violent to everyone – hitting, sodomy, rape, sexual abuse, verbal abuse. It is a hierarchical society where many social norms have been broken down by war. Men are also stuck in the system and feel trapped to do anything but what is expected of them to maintain ‘face’.”

The low status of women in Afghanistan has been a main focus for the international community when the term ‘gender’ replaced the word for ‘women’. There emerged a discourse on women's rights, centred on the goal of catapulting women from *purdah* and isolation to the spotlight with economic freedom and other rights. Gender mainstreaming seemed like a new great approach to change and challenge the dynamic of the cultural norms; and to the credit of its champions, was genuinely fuelled by the desire to make a difference. What happened was enormously different from the original intention.

“The first approach was called: Women in Development,” says Oates. “The idea was that special attention would be paid to help women move up the rungs. This was later superseded by gender mainstreaming where it was determined that the WID approach wasn't good enough; it separates women and hives off “women's problems” as if they are unrelated to the wider society. It was determined the low status of women is actually something that is socially constructed by both males and females in the society, so it must be addressed at that level. So ‘gender’ replaces the word ‘women’ and projects must mainstream (integrate) gender considerations into their general projects (as opposed to having separate special projects or activities for women).”

*As Oates points out, it sounds good, but there little real expertise exists in how to do this in practice. “Development donors tell implementers: you're required to mainstream gender in your project. But neither the donor nor the implementer often knows how to do this,” she says. “They just need that box checked. it's a policy from the top that doesn't necessarily have a lot of understanding at the implementation level. And from what I've seen, donors do not demand that gender mainstreaming strategies are evidence-based.”*

Oates has often seen that a project will insist on having “all this GM stuff in the proposal and inception phase – a gender strategy for example – but as the project is implemented and the reports come in, the GM stuff becomes pretty token and no one raises it, and by the end of the project, no one is bothering any more to look at the GM stuff.”

Her take is that development people are being asked to do gender, where you need a deep familiarity with the structure and sociological characteristics of the site of implementation. As she points out, a new crop of experts has come about.

*“This is not a profession where there are standards, a code of conduct, minimal expectations of what you need to know and what you can do (i.e., as opposed to evaluation, where a serious evaluator is likely to belong to a professional association in their country, has had training, abides by some gold standards of practice). For now, the gender advisers are cowgirls [and a few cowboys]. There are some exceptions, but I've watched this new sub-sector of development for a decade and a half, and I've seen little that impresses me. And a lot of tokenism.”*

Which leaves women almost back where they started despite the laws and gender-based programmes. The growing strength of the Taliban, the arrival of the Islamic State and lack of international focus on women's rights, means the struggle continues much as it has done since King Amanullah tried to bring in reforms almost one hundred years ago, as did the Soviets, neither situation ending well.



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Dr Emma Larking, Centre for International Governance & Justice, RegNet

## The New York Declaration for Refugees and Migrants – What's Missing?



The [New York Declaration](#) for Refugees and Migrants adopted by the UN General Assembly in September commits states to negotiating by 2018 'Global Compacts' on refugees, and for safe, orderly and regular migration. Unfortunately, these Global Compacts will not be legally binding. As currently envisaged, they represent a disastrous missed opportunity.

When the 1951 [Convention Relating to the Status of Refugees](#) was first drafted, the UN Secretary General expressed regret that it did not include a binding resettlement mechanism.[1] States refused to accept obligations to resettle refugees, or to adopt a mechanism allowing the costs of refugee support and resettlement to be distributed among them. The result has been that the world continues to confront refugee and migrant crises.

Overwhelmingly the brunt of these crises are borne by the world's poorest and least well equipped countries. The political and social impacts in these countries have flow on effects, contributing to global instability. Displacement crises are also impacting more directly on wealthy and powerful states. They fuel populism and xenophobia, and support for border control policies that have corrosive effects on the rule of law and rights protection, even for citizens of these states. It is essential that we forge a new international framework for managing displacement that is consistent with human dignity and with the rule of law within and between states.

So what is currently envisaged as the basis for negotiating Global Compacts on refugees and for safe, orderly and regular migration?



The Framework calls for a focus on ‘root causes,’ but does not impose binding Overseas Development Assistance obligations. It is silent about, and therefore does not challenge, policies of interdiction or repulsion at borders. It says host states *should* – not must – ‘provide legal stay’ for *refugees*. It does not call for legal status for other forced migrants.

If crises of displacement are to be prevented in the future, and displacement generally managed in a way that ensures global political stability and humane treatment for all people, a different framework is needed. New and binding Conventions must recognise that displacement may be caused by degrading poverty, civil conflict, natural disasters and environmental degradation, as well as targeted persecution.

The current draft ‘Comprehensive Refugee Response Framework’ – attached as an appendix to the New York Declaration – is premised on continued application of the 1951 Refugee Convention as the primary protection framework. It does not seek to expand the Convention’s narrow refugee definition. This means the Convention will continue to be used as a containment mechanism, allowing states that are parties to the Convention to exclude people who are fleeing natural disasters, civil war, or poverty.[2]

The Refugee Response Framework calls for international burden sharing, but does not attempt to establish a mechanism allowing for the calculation of particular country’s obligations or the imposition of binding obligations. It relies entirely on voluntary ad hoc commitments.

The Framework calls for a focus on ‘root causes,’ but does not impose binding Overseas Development Assistance obligations. It is silent about, and therefore does not challenge, policies of interdiction or repulsion at borders. It says host states *should* – not must – ‘provide legal stay’ for *refugees*. It does not call for legal status for other forced migrants.

Proposals for the Global Compact for Migration – also attached as an appendix to the New York Declaration – do not include an internationally managed migration service, nor binding settlement obligations, nor obligations to accord lawful status regardless of mode of arrival. The proposals support further international cooperation on border control. They say that this should occur with ‘full respect for the human rights of migrants’, and at the same time as states cooperate in ‘combatting trafficking in persons, migrant smuggling and contemporary forms of slavery’. The reality that border control policies *produce and sustain* migrant trafficking and smuggling, and contemporary forms of slavery, is ignored.

The New York Declaration therefore sets a worryingly low baseline for the conduct of negotiations.

If crises of displacement are to be prevented in the future, and displacement generally managed in a way that ensures global political stability and humane treatment for all people, a different framework is needed. New and binding Conventions must recognise that displacement may be caused by degrading poverty, civil conflict, natural disasters and environmental degradation, as well as targeted persecution.

They must establish a mechanism allowing for the fair distribution of resettlement obligations and the financial burdens of resettlement among all states. This mechanism will need to take into account a range of factors, including the economic and environmental capacity of individual states to resettle people in need or to provide temporary protection where it is likely that displaced people will be able and willing to return to their country of origin in the near future.

The existence of such a mechanism will spur constructive action to address the root causes of displacement. Currently the need to address root causes is a meaningless mantra, with states that are in a position to act doing nothing because they have no compelling political or financial imperative to act.

Concluding Conventions for refugees and for regular migration that impose binding obligations on states may seem a politically impossible task, but this is an opportunity that the world cannot afford to defer any longer.

As Philip Rudge, the former General Secretary of the European Council on Refugees and Exiles, once said:

*I have received many lectures about the realism, the realpolitik of ... States and the unrealism, even the irresponsibility of the NGO sector. [But it] seems to me self-evident that the true realpolitik of the modern world, if we are to survive, is tolerance, pluralism, bridge building rather than protectionism, fear and all the defensive aspects of the fortress mentality that we currently live with. Why do the strong States persist with policies that are demonstrably inhuman, very problematic legally and do not work anyway?[3]*

[1] As Jane McAdam pointed out during an excellent panel discussion on [Q & A](#) on 10th October 2016.

[2] See my discussion in chapter 7 of [Refugees and the Myth of Human Rights: Life Outside the Pale of the Law](#), and particularly p.128.

[3] Philip Rudge, ‘Reconciling State Interests with International Responsibilities: Asylum in North America and Western Europe’ (1998) *International Journal of Refugee Law* 10 (1/2), cited in Emma Larking, ‘Human Rights and the Principle of Sovereignty: A Dangerous Conflict at the Heart of the Nation State?’ (2004) *Australian Journal of Human Rights* 10(2) 15.



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## Tom Kilcourse Natural Rights

When asked to contribute to a discussion on 'natural rights' I am tempted to think that my background as a writer of fiction gives me an advantage: how creative and imaginative can I be? However, the task here is not to create a situation that will challenge the skills of some fictional detective, but to comment on a question that has been raised over the centuries by some heavyweight philosophers. So, why the temptation? To explain my response in the simplest terms, I am convinced that the concept of natural rights is a fiction and that the term is misleading.

Though Thomas Hobbes, Rousseau and others have introduced the concept of 'man in nature' as opposed to man in society, I believe that introduction to be merely a suppositional device from which to launch their ideas. 'Man in nature' is no more than a platform designed to give credibility and authority to their concepts. I know of no evidence that mankind ever existed as autonomous individuals in nature. Man is a social creature, and always has been, which implies the existence of leaders and followers and obedience to group norms. It is through that membership, and his position in it, that the rights of man are determined, and always have been. I suppose it possible to suggest that mankind's social nature implies an entitlement to certain rights, but these are more properly considered as *social* rights,

Nature presents us with challenges, dangers and opportunities, but not with rights. Any question of our rights inevitably demands some examination of their true source, be that source the state, society, or god. I shall avoid discussion of the last of these, divine right, as I consider it grounded in unprovable belief, though for centuries it was the principal foundation for human rights, and remains so today in many parts of the world and in various cultures. This brings us then to consider the state and society at large as sources of our rights. We must also examine the influence of power over our rights. As the power of the church declined in the West, so did its influence to define our rights. Our rights now must consider the balance of power between society at large, and the state.

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What has happened in the West illustrates unequivocally that our rights are not ‘naturally’ determined, that far from being rights owed to the nature of man, they are simply concomitants of power. Retreat of state control has enabled those with the power to rise above the norms of society. Indeed, it has promoted the fragmentation of society, with the powerful moving in social circles populated only by the equally powerful, while the powerless, who share the same ‘rights’ in theory, are prevented by circumstance from exercising them.

This last point has perhaps been best understood by certain activist groups who, in recent decades, successfully convinced the state to use its legislative power to underline the rights of certain groups, whether racially or sexually based, and to sanction would-be critics. Consequently, the rights of these minorities are supported by the power of the law, while that same power is used to silence less organised would-be critics.

Society at large and the state differ in how they define and enforce our rights.

‘The state employs the method of coercion or compulsion: its purpose of declaring and enforcing a scheme of law and order makes the method necessary; and the unity of its organisation makes the method possible. Society uses the method of voluntary action and the process of persuasion: the nature of its purposes can be satisfied, and is best satisfied, by that method; and the multiplicity of its organisation, which enables men to choose and relinquish freely their membership of its various and alternative groups, enables them also to escape coercion by any group if coercion should be attempted.’ (Ernest Barker. ‘Principles of Social and Political Theory’)

For at least two centuries the principal determinant of rights in the West appeared to be society at large, with the state taking something of a back seat, often playing a subordinate role in response to strengthening social norms. We saw the rise of liberalism with such champions as J.S. Mill supporting the rights of individuals to think and behave according to their conscience. Now in my eightieth years, I still remember my excitement as a young man when introduced to Mill’s writing. His views on liberty remain the most influential effects on my own thinking. Over subsequent decades the focus shifted from the state to individual liberty with legal constraints on our rights, with a number of notable exceptions, replaced by social norms.

That process has continued in the West until we reached the point where the individual appeared not to be answerable to either state or society. We have seen the growth of neo-liberalism in which the rights of the individual to pursue his interests and well-being are considered virtually absolute, with the role of the state being confined to the provision of security. So, the state’s power to employ the method of coercion or compulsion, was successfully challenged, most notably in the field of economics. Concurrently, society’s ability to use the method of voluntary action and the process of persuasion to influence individual behaviour and intrude upon rights also declined, but for different reasons.

What has happened in the West illustrates unequivocally that our rights are not ‘naturally’ determined, that far from being rights owed to the nature of man, they are simply concomitants of power. Retreat of state control has enabled those with the power to rise above the norms of society. Indeed, it has promoted the fragmentation of society, with the powerful moving in social circles populated only by the equally powerful, while the powerless, who share the same ‘rights’ in theory, are prevented by circumstance from exercising them.

In effect, though discussion of rights may exercise some people in academic circles, it has only an esoteric quality off campus. When state involvement and social constraint diminish together, power becomes the sole arbiter of whose rights are respected.

This last point has perhaps been best understood by certain activist groups who, in recent decades, successfully convinced the state to use its legislative power to underline the rights of certain groups, whether racially or sexually based, and to sanction would-be critics. Consequently, the rights of these minorities are supported by the power of the law, while that same power is used to silence less organised would-be critics. We have reached a position that J.S. Mill explicitly rejected, that giving offence to someone by word of mouth also offends the law of the land, and carries legally enforced sanctions for the offender. Indeed, offence is commonly presumed even when no complaint is forthcoming from the subject of a remark. Thus, aberrant minorities are given the right to curtail others’ freedom of speech through use of the power of a state that had been drawing back from direct engagement in social organisation.

This situation raises for me a question that has been discussed in relation to the rise of totalitarian government, be it Marxist or fascist. Has the state the right to alter the society that gave birth to it? If it has, where lie the limits to that right? In some places there is no distinction drawn between state and society, but that has not been the understood position in the West. Again, we are drawn to the conclusion that rights not only do not rest in our nature, but do not exist at all, other than conceptually, for those without power to exercise them. In the literature on this subject one finds self-preservation presented as a natural right, but this has been negated by laws that prevent the ownership or carrying of weapons with which one might preserve one’s self. There is perhaps no better illustration of the truth that a right without the power to implement it is no right at all.



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## Raising the Accountability Bar

Rising social mobilisations and protests against dispossession today stands for a loss of public trust that confronts the state in India. Across India's borderlands, resource interventions that do not respect the supply potential of mountain ecologies are creating and reinforcing interlocking webs of environmental and socio-economic vulnerability. These resource peripheries have tended by and large to be seen through a 'specific national lens' without 'political or cultural referents', virtually emptying these spaces of people. These are resulting in an increasing role for the state, deepening centralisation of control and bureaucratisation that threatens to displace long traditions of community resource management and constitutional safeguards for local autonomy.

Reframing the accountability question holds the potential to broaden the agenda to include issues that typically go missing in technocratic and legalistic notions of governance. Top-down moves to enhance accountability only capture the formal, legal-technocratic arena of responsiveness. Such cosmetic forms of community engagement 'from the top' often end up lip-syncing the language of a bottom-up paradigm. To be viable, these need to be seen in conjunction with the bottom-up, societal push factors and the role played by associational groups in incentivising state institutions to be more responsive. The conventional focus on the formal domain has also meant that informal innovation tends to remain unacknowledged and 'hidden from view'. Interesting recent experiments in co-governance in India's eastern borderlands could help rework some of these assumptions in modest but potentially dramatic ways. For instance, the Communitisation Initiative in the state of Nagaland is an ongoing experiment in co-governance wherein the government and the community work as partners to share development activities and responsibilities. It emerged as an innovative response to a serious crisis in public administration in the state plagued by poor service delivery across key sectors such as elementary education, primary health care, rural drinking water supply, and biodiversity conservation. This was manifested in the strong public frustration with a dysfunctional delivery system that lacked accountability to people and was marked by high absenteeism levels, crumbling infrastructure, employee indifference and non-existent monitoring capacity.

The sub-text of regaining public trust is evident from the fact that the Communitisation Initiative has been self-consciously presented as an accountability-enhancing measure as seen from the programme's declared focus on the three Ts, namely trust, train and transfer. The Nagaland State Assembly passed the Nagaland Communitisation of Public Services and Institutions Bill in 2002 as a measure to improve public service delivery at the grassroots level.

The government handed over, in a phased manner, the ownership and management of three sectors namely, education, health care and power utilities to village communities. The role of the government was to be more of a supportive, supervisory and regulatory one. A brief deliberative process preceded the enactment of the Act during which officials and a cross-section of civil society actors engaged in debating and discussing the concept's policy viability.

The innovative use of social capital has been a clear hallmark of the programme. Choosing to build on existing traditional civic institutions rather than design parallel institutional frameworks has proved to be one of its key strengths. Local self-governance institutions have traditionally been strong in the state with well-defined systems of village administration. The Nagaland Village and Area Councils Act of 1978 provides for strong state support and statutory recognition of traditional local governance institutions. This builds on the constitutional guarantee enshrined under Article 371A that safeguards Naga customary law<sup>4</sup>. These have reinforced the central authority of the village and of the Village Council in Naga society.

Based on an essentially simple institutional design, the programme has scripted an improvement in the performance of grassroots level public utilities across the state. These have brought all-round benefits ranging from significant improvements in service delivery; to greater checks and accountability over government funds and an overall enhancement in the quality of rural governance. Improved public service delivery gains include increased enrolment rates in schools, higher revenue generation in electricity dues, improved healthcare facilities, staff attendance, payment of staff salaries, and availability of medicines. These have also led to an overall increase in awareness levels of the average villager of entitlements under various government and development schemes. In recognition of its successes, the Nagaland government won the United Nations Public Service Award for innovative use of social capital in 2008.

There are interesting takeaways from this ongoing experiment for rethinking the link between institutions, incentives and innovation. Recognising the social license to operate in resource-rich regions and sensitising policy makers to obtain 'free prior informed consent' of local communities for resource development activities in the region will be critical in ensuring that they are not on the sidelines of the growth experience. Connecting what may otherwise remain disparate dots in the development framework can help raise the accountability bar in innovative ways from below.



Views expressed in the piece are that of the author, and not of Live Encounters Magazine and its associates.

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### ULMWP and the insurgent Papua

Since the United Liberation Movement for West Papua was established in December 2014 in Vanuatu, Papua's international diplomacy has gained a new momentum. Papua political factions no longer presented themselves in different voices but rather, it has come in a unified voice. The Saralana Declaration reflects a strong commitment of all three major Papuan political organisations, namely West Papua National Coalition for Liberation (WPNCL), Federal Republic of West Papua (NFPB), West Papua National Parliament (WPNP). It states, "We declare and claim that all West Papuans, both inside and outside West Papua, are united under this new body and that we will continue our struggle for independence".

While many critics and skeptics, who claim to be realists, remain unconvinced of the sustainability and solidity of ULMWP, they argue that this might be just another episode of the Papuan factionalism. One umbrella organisation after another seems to be the pattern.

The critics might overlook the facts that the ULMWP has been effective in representing the Papuan political aspirations at the domestic and international fora just in two years. The ULMWP has secured international recognition from the Melanesian Spearhead Group and has gained more attention from the United Nations and the Pacific Island Forum. Papua has become an effective insurgency.

If we looked back to the Papuan Spring in 2000 when Papua gained much more space to express their political identity, the commitment to 'gain international recognition' was formulated during the 2nd Papuan Congress in Jayapura in June 2000. During the Congress, which was politically and financially supported by the late Indonesian President Abdurahman Wahid, Papuans elected the Papuan Presidium Council as their leaders led by late Theys Eluay, who was assassinated by the Indonesia Special Forces. The Congress gave mandate to the Presidium: [1] "to struggle for world recognition of the sovereignty of the Papuan people and for investigations into and the trial of the perpetrators of crimes against humanity in West Papua; [2] to speedily set up an Independent Team

to enter into peaceful negotiations with Indonesia and the Netherlands under the auspices of the United Nations for a referendum on recognition of the sovereignty of the Papuan people and Nation; [3] to use available resources in Papua in a non-binding manner to fund endeavours to achieve the objectives of the struggle."

It took fifteen years before the Papuan leaders convinced the Pacific nations under the Melanesian Spearhead Group (MSG). During the 2015 MSG Summit hosted by Solomon Island in Honiara, the Forum gave an observer status to the ULMWP to the forum. The decision marked a historic moment for Papuans. Backed by Solomon Island popular and particularly churches' support, the Papua was born as an international legal entity. Since then, Papua no longer need Vanuatu or Solomon Island flags to raise their voices at this diplomatic forum because it has raised its Morning Star flag.

This year Papua is expecting a full-membership status at the MSG. The trajectory remains fragile. The proposal split the MSG leaders into two camps: Papua New Guinea and Fiji which are keen to maintain the status quo, on the one side, and Vanuatu, Solomon Island and the FLNKS on the other side, which envisage fundamental change for the forum. As the decision has been deferred to be discussed by the end of this year, this development might reflect the irreconcilable differences within the MSG as they have to take decisions by consensus.

The Papua insurgency has only penetrated the MSG but more broadly, the Pacific Island Forum, the diplomatic forum that covers the whole Pacific nations. In the recent Pacific Forum Island's communiqué held in Phonpei, Federated Republic of Micronesia, PIF shed a new light on the issue of Papua, "Leaders recognised the political sensitivities of the issue of West Papua (Papua) and agreed the issue of alleged human rights violations in West Papua (Papua) should remain on their agenda. Leaders also agreed on the importance of an open and constructive dialogue with Indonesia on the issue."



As we know, however, in comparison to Aceh, which found peace settlement for its political dispute with Jakarta through the 2005 Helsinki Agreement mediated by the European Union, Papua remains experiencing negative peace. That is, Papuans only experience the absence of war but continue suffering from multipolar of violence. That is, the ongoing state-sponsored violence is not the only source of Papuans' grievances.

The statement reflects the struggle of the Pacific leaders in dealing with Papua. On the one hand, they are concerned with "alleged human rights violations" but on the other hand, they are well aware that Papua is a "sensitive issue" for them. The sensitivity relates to their relations with Indonesia, a large and influential neighbour. For some PIF members, Indonesia provides a profitable market for their trade that sustains their domestic economy particularly Australia, New Zealand, PNG, and Fiji. Its political influence has been seen as a bridge between Asia and the Pacific.

In a parallel move, Papua's influence has convinced seven UN member states from the Pacific spoke up. They raised their concerted voices on Papua during the prestigious 71st session of the UN General Assembly in New York last September. This was an unprecedented turn.

Nauru started the intervention by highlighting the issue of human rights violations in Papua, followed by a newcomer in the discourse of Papua: the Marshall Islands. Vanuatu, Tuvalu and the Solomon Islands followed suit and went one step further by specifically highlighting the issue of the right to self-determination for Papuans. Tonga emphasised the gravity of the problem and Palau, another novice, called for constructive dialogue with Indonesia to solve the Papua issue.

In other words, we might see another Papua Spring like we experienced in 2000. The question is whether the Spring will lead to Summer or back to Winter as we had in 2000 after Theys Eluay was assassinated? Many Papuans might believe that the progress is linear and irreversible so they put high expectations of the political process in the Pacific. The expectation is understandable but it needs the ULWMP leaders to manage it. Further, we need to put it in a broader political dynamics of Indonesia.

As we know, however, in comparison to Aceh, which found peace settlement for its political dispute with Jakarta through the 2005 Helsinki Agreement mediated by the European Union, Papua remains experiencing negative peace. That is, Papuans only experience the absence of war but continue suffering from multipolar of violence. That is, the ongoing state-sponsored violence is not the only source of Papuans' grievances. They have confronted the increasing pressure of non-state actors that exploit their natural resources. The business interests of large corporations, particularly extractive industry, have put Papuans in a more vulnerable position as the local governments continue issuing licences to these corporations with little consultation with the Papuans.

They have confronted the increasing pressure of non-state actors that exploit their natural resources. The business interests of large corporations, particularly extractive industry, have put Papuans in a more vulnerable position as the local governments continue issuing licences to these corporations with little consultation with the Papuans.

Once a business project is established, it attracts jobseekers from all over Indonesia to go to Papua to fill the job market. As we have seen Merauke Integrated Food and Energy Estate in Merauke, BP Gas Project in Bintuni, various timber industry in Sorong, and the classic example of Freeport Indonesia in Timika, any large business projects also mean a demographic shift as many skilled and non-skilled labor will enter Papua simply because Papua does not have enough manpower. The demographic shift without proper social and cultural mitigation on the part of the local governments has caused resentment and widening social gaps between different ethnic groups in Papua that often lead to communal clashes. All of these different elements have merged into complex grievances that are not properly addressed by the Indonesian government.

At the international diplomacy, Indonesian diplomats simply deny the reality of human rights by referring to the state sovereignty argument. They overlook the unchanging reality of impunity on the ground in Papua. In the meantime, different ministries endorse overlapping and sometime opposing policies towards Papua. While President Joko Widodo endorsed open-door policy for Papua for international observers, the Indonesian Ministry for Foreign Affairs and the Indonesian Military remains reluctant to implement the President policy. Similarly, when victims of human rights violations and human rights organisations in Indonesia call for justice, the President appointed Wiranto the Coordinating Ministry for Security, Legal and Political Affairs who then promote non-judicial measures to address human rights abuses. Given his alleged involvement in human rights abuses in East Timor, many are not so convinced that non-judicial manners will address the lingering question of impunity.

The non-monolith response from Jakarta suggests that it grapples with a formidable challenge in formulating and implementing a coherent policy to Papua. The situation illustrates that the domestic politics will unlikely change in the near future. It means that Jakarta will not be prepared to engage any meaningful discussion with Papua at either domestic or international levels. In this context, the ULWMP leadership will have to work hard. On the one hand, they have to navigate and negotiate with political powers in Jakarta and the Pacific, domestically they have also to deal with the expectations of their constituents. If the ULWMP leaders pass this ordeal, they will confirm their solidity. Otherwise, they might confirm the doubts of the critics and skeptics.



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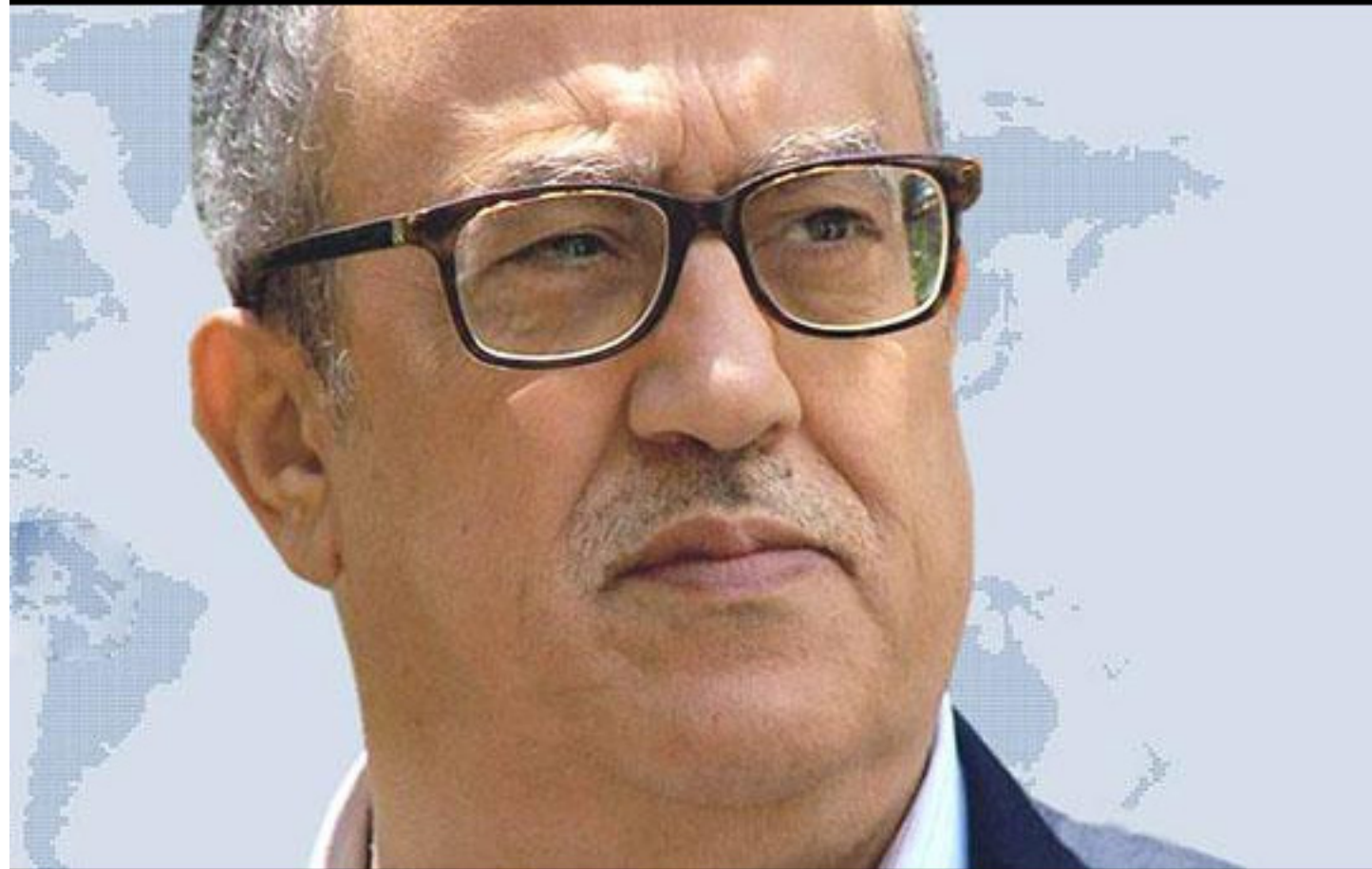
## David Morgan

# Speaking Up for Free Speech - Against the New Intolerance

Today in the age of global democracy and respect for "otherness", those who exercise freedom of speech are under attack from all quarters. Nahed Hattar, a prominent writer in Amman, capital of Jordan, was brutally slain on 25 September as he left a court where he was charged with "insulting Islam" after he had posted what was deemed to be an "offensive cartoon" on Facebook. His prosecution might simply have been interpreted by some as an encouragement to exact a severer punishment on him than the legal process would impose. As a writer he exercised his freedom to speak out against the arrogance of power, exposing human foibles and ignorance just as writers have done throughout the ages. His killing was an attack on all writers and all those who believe in tolerance and free thought.

The stability and success of any civilised society depends on the freedom to think, speak and express ourselves creatively. There is a profound sickness in any society where writers are in and out of jail, when their words are censored, when books are burned and when authors and journalists are the targets of the assassin's bullets. Sadly, these acts of barbarism are all too frequent occurrences in today's fractious world.

In Turkey, the West's key strategic ally in the Middle East region, intellectuals face daily arrest, dismissal and persecution following the failed coup. President Erdogan has seized his opportunity and is conducting a revenge purge on all opponents irrespective of whether they supported the military's hapless coup or not. Many thousands of alleged opponents of the ruling party, the Islamist AKP, have been rounded up and arrested in a punishing clampdown. Hundreds of publications and media outlets have been closed and suppressed. Erdogan's victims are even being released from jail to free up space in the prisons for others who are still being arrested. This relentless process of oppression has generated an atmosphere of fear and intimidation in society. It has been carried out in a conscious and highly cynical way. But possibly the most alarming aspect of this matter is how muted the criticism of Erdogan has been from those who one normally expects to defend civil liberties and free speech. There has been a deafening silence from some quarters. Machiavellian machinations appear to have won out once again over political principle.



Prominent Jordanian writer Nahed Hattar was slain by a gunman on 25 September, 2016, in a case that has echoes of the Charlie Hebdo incident. © Facebook



There is an absurd kowtowing where minorities lay down the terms to the majorities, where free speech is too dangerous to be given free rein, where rights are encroached upon supposedly to protect the perceived sensitivities of those thought likely to be offended. The programme planners, directors, educationalists and the editors-in-chief simply dare not risk causing one iota of offence to any of the noisy faddists and militant lobby groups, especially when the public funding might be cut. It leads to an inane timidity where the mediocre is a means of success. Speaking out and truth telling are to be avoided.

Freedom of speech must never be seen as a pristine principle of a bygone era but must remain a living reality; it's quite simply as essential for civilisation to function as the air we breathe is necessary for life. Nevertheless freedom of speech is coming to be regarded as little more than an indulgence or an inconvenience, an issue that can be bargained away, sacrificed or done away with altogether. All too frequently offending mouths are to be stopped, tongues cut out, words blue pencilled and collective memories erased; in both public and private, there's no escape from the new tyrants who come in several guises. Intolerance is like a modern plague that's infecting the entire world. It has us in a deathly embrace: stifling, crushing and even killing. Under assault from left and right, religious zealots, well-meaning liberals, politically correct anti-racists, multiculturalists, transgender equality advocates, are all united in their intolerance. It's no longer simply The Daily Mail editorials, the self-appointed upholders of conservative morality or fundamentalist Christians who are to be feared. The enemies of free speech are much more extensive, more widespread, diverse and unpredictable. It's an international war on words, spoken, written and thought, and it is taking place in every corner of the globe.

There is an absurd kowtowing where minorities lay down the terms to the majorities, where free speech is too dangerous to be given free rein, where rights are encroached upon supposedly to protect the perceived sensitivities of those thought likely to be offended. The programme planners, directors, educationalists and the editors-in-chief simply dare not risk causing one iota of offence to any of the noisy faddists and militant lobby groups, especially when the public funding might be cut. It leads to an inane timidity where the mediocre is a means of success. Speaking out and truth telling are to be avoided.

Intolerance is a beast that now stalks public life and ends in the policing of all our private thoughts. Both the technology and the intentions are in place to stifle even our most intimate thinking. In contemporary Britain, as elsewhere, respected academics are routinely "no platformed" on university campuses up and down the country. When feminist author Germaine Greer became a victim of no platforming, there was some alarm expressed in the press, but she was allowed to be silenced and her proposed lecture was cancelled. Months later when Greer was denounced as a "fascist" by the female president of the students' union hardly anyone noticed or bothered to raise a voice in protest against such an outrageous description so casually expressed; surely the student leader needed to be challenged? Were people afraid to do so or are the defenders of freedom too tired to take up the cudgels? Perhaps they secretly believed Professor Greer deserved what's coming to her for being so outspoken?



<http://www.debate.org/opinions/do-you-believe-we-truly-have-freedom-of-speech>

If this was simply one random incident, one would not need to be overly concerned; however, it is part of an increasing trend. Intolerance is gaining ground and the genuine defenders of free thought and free expression seem to be becoming fewer in numbers these days; it is as if there is a cultural shift towards intolerance which is justified on the basis of respecting diversity and eliminating "hate speech". If anyone takes offence at a comment it is branded as "hate speech" and cannot be allowed.

The same trend appears in broadcasting where television shows are censored by the humourless bureaucrats of Ofcom over what was clearly intended as a joke; likewise, old movies and classic play scripts are doctored for traces of offensive dialogue; social media posts from years previously are sufficient to warrant a person's punishment or expulsion from political parties; an unguarded comment in a private correspondence can put a person's job at risk; when all this and worse excesses are allowed to pass unchallenged, then, it is surely time to sit up and ask, where is society going? Are we in danger of destroying a once tolerant society or is this only a myth that never truly existed? But why is it that we seem no longer to dare permit free speech and how is it that the gradual erosion of tolerance is provoking such feeble resistance? We are in danger of cultivating a generation who will not even remember what free speech was like. The irony is that we are witnessing the slow death of liberal and tolerant values murdered in full public view by the very people whom we entrust with their defence.

I have cited cases in the Middle East, Turkey and in modern Britain but this trend towards a brutal enforcement of conformity is now a global phenomenon. In the name of eliminating hate crime, for instance, censorship and suppression of awkward opinions and controlling language are all too widespread. The restrictions fly directly in the face of the values of tolerance that are a legacy for all humanity and handed down from the Renaissance and the Enlightenment. Turning against tolerance is eroding centuries of social advance and overturning a vast cultural heritage and centuries of experience. If we remain compliant the trend will signal the emergence of a new Dark Ages.

The alarms bells have been ringing loudly for quite a while, but unfortunately far too few people seem to have been listening. Indeed, those whom you would most expect to be alert and on guard to present dangers are closing their ears and averting their eyes. Others simply collude, knowingly and unknowingly, in the suppression of free speech as the process marches incessantly onwards to a destination that should fill us with deep foreboding. Soon, before we know it, we will have become citizens of a new tyranny where the exercising of free speech is viewed as little more than an anachronism or a mere episode from a long discarded history.

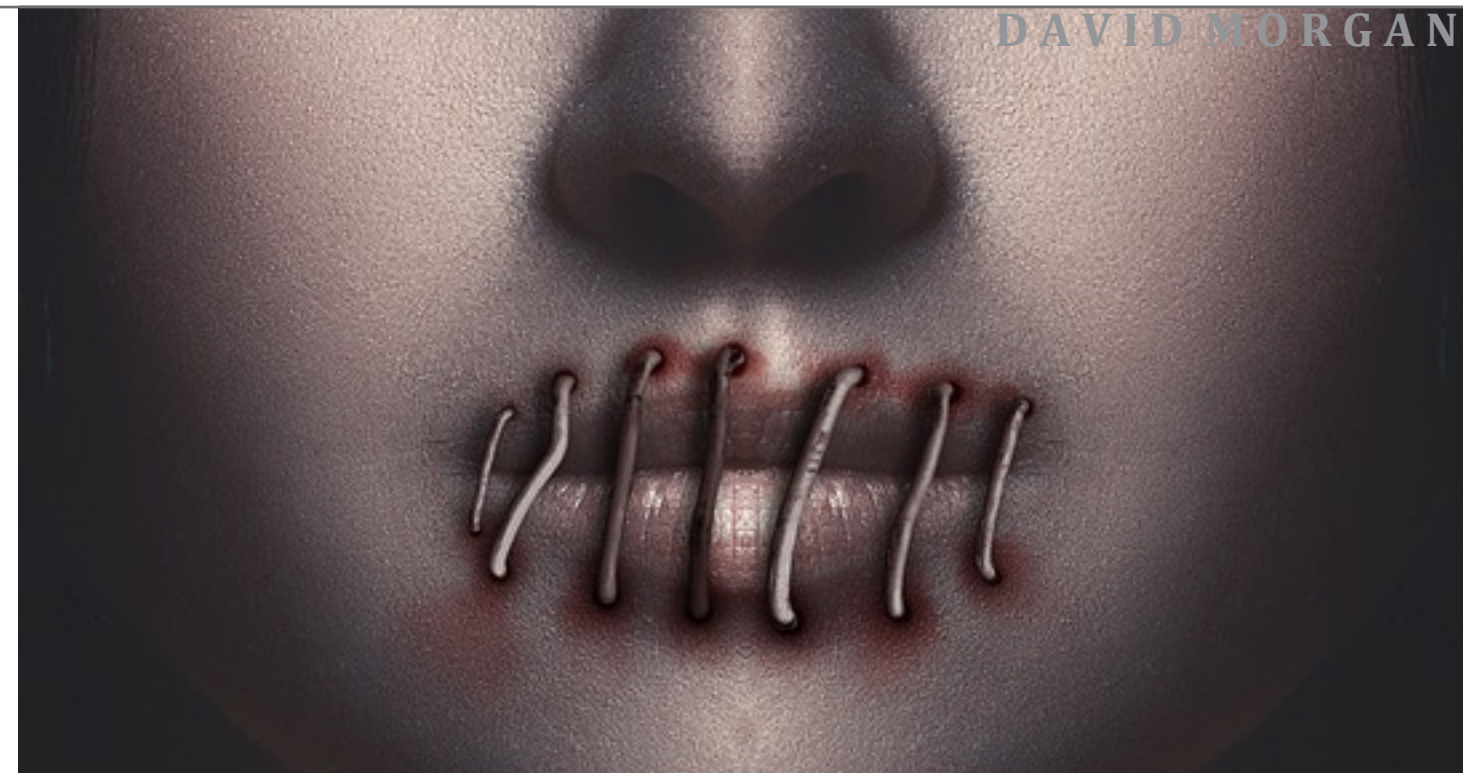


To adopt clumsy mechanisms like bans and censorship to protect citizens from what is deemed “offensive language” is inherently irrational and produces an over protectiveness that will destroy the liberal society it claims to protect. The result is an utterly infantilised society that’s not only dull and tedious, but ultimately a dangerous place to live. Where language is cut and tailored, thought is mutilated and imagination is dealt a terribly heavy blow. Darkness falls over us all like the perpetual winter in Narnia.

It was tried but it failed and is now deemed wholly inappropriate for modern circumstances where protecting the diverse sensibilities of various communities is paramount and the requirement to genuflect has become utterly compulsory for social advance and acceptance in public life. Play the game or become a pariah: there is no other alternative. It is almost beyond the pale to speak out or to articulate any opinion that diverges from the strictures of the new consensus that’s been approved - without a vote - by the new thought police. This rising intolerance should send a sharp shudder down the spine of all those who still cherish free speech as an inalienable and fundamental right. As humans we need it like we require clean air to breathe. The human mind needs to roam freely in order to maximise its creative talents.

Every single citizen needs to learn how to handle being offended. There needs to be implanted into the minds of every individual a little Voltaire mechanism to enable us to respect alternative opinions and to defend the rights of those we might ordinarily find more disagreeable. Teaching tolerance should form part of every school curriculum without exception. We really have nothing to fear from being offended and in exercising the right to free speech we should not trim our thoughts to avoid upsetting others. While deliberate malice and wanton cruelty must never go unpunished, freedom of speech should be positively cherished; it should be inculcated and encouraged as a vital component of any healthy society. We have much more to fear from suppression than permission.

To adopt clumsy mechanisms like bans and censorship to protect citizens from what is deemed “offensive language” is inherently irrational and produces an over protectiveness that will destroy the liberal society it claims to protect. The result is an utterly infantilised society that’s not only dull and tedious, but ultimately a dangerous place to live. Where language is cut and tailored, thought is mutilated and imagination is dealt a terribly heavy blow. Darkness falls over us all like the perpetual winter in Narnia. But the White Witch who today rules with the ruthlessness of a Borgia or a Genghis is the well-meaning liberal, the corporate administrator, the educationalist, the publisher, the editor and the producer; a class of professionals who in the common pursuit of minimising offence, give readers/viewers/customers exactly what they want - or what they are perceived as wanting - by strictly curtailing what is permitted, by playing safe, defining the limits of the permissible, whether it’s in the arena of public or private discourse. A Tweet to a friend can get you sacked “with immediate effect”. A “misspeak” can ruin a reputation forever. An awkward thought publicly confessed can lead you in hot water; water that will sink a career. Dissenting voices are being silenced permanently by murder by acts of murder which occur now with startling frequency.



<https://pixabay.com/en/woman-mouth-lips-silence-excluded-1445917/>

Intolerance is the curse of modern life because it leads towards a universalised blandness. Creativity and innovation are encouraged and celebrated but only within highly circumscribed limits; works of literature and popular entertainment must be deemed suitable and appropriate “for all our readers or viewers”. Disputes among academics like debates between politicians require vigorous polemic and even resorting to invective is to be expected when the stakes are high. We need to be mature enough to distinguish between these polemics and the malicious abuse that deliberately sets out to cause distress and inflict humiliation.

But in a market place where intolerance holds sway protecting the image and reputation of the brand is the ultimate priority. This highly competitive environment imposes blandness through regulation which everyone is compelled to follow if they want to win acceptance and ensure success. Controversy has been turned into a product but to stray too far makes for damaged goods that can’t be sold. As human beings we are all diminished when our thoughts and words are over regulated by opinion formers and those who hold the reins like a noose. Our liberal society stays true to its core principles in name only. Our values have been hollowed out and the real substance has been thrown onto the garbage heap. Sadly, few people seem to have noticed how maimed and mutilated we have become. In response, those who uphold free speech are duty bound to act. What is urgently required is nothing less than an intellectual insurgency to raise the banner of free speech and free thought in every public space at every possible opportunity. The consequences of inaction are virtually unimaginable: the triumph of a belief in the necessity of suppressing speech, policing the language and imposing the mental manacles on us all. Freedom of speech and expression must remain the guiding principles of our public and private lives, our social conduct and behaviour. Everyone’s existence will inevitably be the poorer should this culture of intolerance go unchallenged and universal blandness will be the ultimate result. For true freedom to reign supreme, the beast of intolerance must be slain.





Dr Veerendra Mishra

Author

**Combating Human Trafficking: Gaps in Policy and Law**

Published by **SAGE** Publications

## Preface<sup>©</sup>

*Give me few men and women who are pure and selfless and I shall shake the world.*  
Swami Vivekanand

Human trafficking is referred to differently in different regions of the globe. USA refers it as Trafficking in Persons (TIP) and European countries prefer to call it Trafficking in Human Beings (THB). The general term is human trafficking. This book is very flexible and has used the terms interchangeably. Interestingly, in Hindi (India), human trafficking is referred as *manav durvyapar*, which literally would mean “illegal trading of humans,” though this would not construe human trafficking as per definition because of ambiguity in purpose. However, this is the closest workable term in vogue, and to make it more specific, it would be better to qualify the purpose of illegal trade, that is, *manav durvyapar*, for exploitation.

This book deals with the legal, functional, and technical part of human trafficking. Human trafficking, as a subject of study, has evolved very recently or, to be honest, is still evolving. There are still gaps in understanding of what action is construed as trafficking worldwide. Despite the fact that more than 13 years back, United Nations (UN) defined human trafficking in its Palermo Protocol, but still there are countries which have not framed laws to address it. Trafficking, per se, has not even found space in the law books of many countries. Even USA, which has been releasing TIP report for more than a decade now, ranking 184 nations, does not accept the UN definition in totality. In the definition given in Trafficking Victims Protection Act 2000, which has been reauthorized every three years, latest in 2013, talks merely about forced labor and sex trafficking, overlooking trafficking for organ transplant, which is mentioned in UN definition. There are many more dimensions of trafficking, which are not covered in UN definition; hence, this book has raised the issues of revisiting the definition. USA has found an easy way out by generalizing the term *forced labor* and claiming to encompass all other dimensions, which they fail to recognize or will be realized later. However, this book also mentions the practical risk involved in overgeneralization of terms.

To address the problem of human trafficking, it is necessary that we try to understand the various dimensions of trafficking. And each dimension has to be further classified to comprehend the basic difference, or else the strategy to counter trafficking, through legal or social means, will misfire. This book has tried to discuss in detail the possibly known dimensions with classifications.

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Mishra is currently working as Executive Director of Nehru Yuva Kendra Sangathan, an Autonomous body under Ministry of Youth Affairs and Sports. Previously he was Assistant Inspector General of Police (CID), Madhya Pradesh, India, with a PhD on ‘Changing Image of Police: An Empirical Study’ from Barkatullah University, Bhopal (2004) and a recipient of the Hubert Humphrey Fellowship under Fulbright Scholarship. He has served on two UN Missions in Bosnia and Kosovo and worked in East Timor. He has published a short story book, stories in “Chicken Soup Soul” series and a book entitled, *Community Policing: Misnomer or Fact*.



A new addition to the most often discussed dimension is medical trafficking, which goes beyond trafficking for organ transplant, such as trafficking for surrogacy and clinical drug trials. Attempts have been made to specify dimensions, in contradiction to the popular US belief of considering all forms of trafficking under forced labor.

There are various perspectives on human trafficking as to whether to consider it as a legal problem or a social problem. Depending on perception of the policy makers, legislations are framed to address the problem. In the past, it was considered to be purely a law enforcement problem, but of late with the development of a concept of victim protection, there is a perceptible shift in approach, particularly among civil society organizations (CSOs) in Western countries. The book tries to analyze various perspectives and possible convergence for holistic address of the issue.

The book adds new perspective to the subject of trafficking by analyzing the gaps in social policies, which have resulted in continuous increase in human trafficking. The discussion ranges from understanding the criminal justice system, its merger with social justice system, and the new progressive shift in legislations in the form of socio-criminal acts. Brute Mute theory, developed over the concept of unheard stifled voices of vulnerable, who are supposed to be the main benefactors of any social policy but land up being victims of unfair social justice system, explains the practical gaps in framing and implementation of social policies and legal acts. A study of two communities, Bedia in India and the Native Americans in USA, reflects the above-mentioned gaps, enhancing their vulnerability.

Here, I would like to humbly submit that this is not a book on human trafficking laws. The reference of laws is a natural consequence of any discussion on human trafficking. As the title of the book suggests, this is a book on gaps in social policies and legal acts, which are the causes of perpetuation of human trafficking.





Dr Peter Gonsalves is the Dean of the Faculty of Social Communication at the Salesian Pontifical University, Rome. A member of SIGNIS, a world association for communicators, he has also written a manual for South Asian educators entitled *Exercises in Media Education*.

[www.amazon.com](http://www.amazon.com)

# Khadi

## Gandhi's Mega Symbol of Subversion

### Peter Gonsalves

#### Dr Peter Gonsalves

Dean of the Faculty of Social Communication Salesian Pontifical University, Rome  
author of **Khadi: Gandhi's Mega Symbol of Subversion** (SAGE)  
speaks to Mark Ulyseas

#### Why did you write **Khadi: Gandhi's Mega Symbol of Subversion**?

The story of India's independence has always amazed me. How was it possible for one puny individual to bring down the largest empire in the history of the world. The standard answer of course was by the power of truth and non-violence. But the more I reflected, the more I was convinced that a powerful communication strategy was necessary. I also noticed that well-known Gandhian biographies paid scant attention to Gandhi's repeated insistence on the promotion of khadi, almost as if it was irrelevant to the political agenda for an independent India.

Since I was interested in the field of communication and particularly concerned about the promotion of Media Education in India, I believed that Gandhi's khadi revolution provided the key to the powerful impact his leadership had on the 300 million diverse, stratified and dispersed people. On reading Indian history from a communication perspective, I was convinced that I needed to highlight the efficacy and uniqueness of Gandhi's sartorial strategy for **purna swaraj**.

#### How did you write it?

In 2005, while I prepared for my doctorate in the *Faculty of Communications at Salesian University, Rome*, I considered analysing Gandhi's communication ability to use cloth and clothing for India's liberation. My aim was to use three theories of communication as a framework for the analysis. This study was published by SAGE publications in 2010 as, ***Clothing for Liberation***. However, no such analysis would have been possible without a prior investigation into the history of Gandhi's Swadeshi Movement. While doing this, I felt I needed to go deeper into history in order to contrast Gandhi's words and actions on the basis of what he had inherited. This opened my eyes to the subversive nature of his interventions.

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Before I answer this question, permit me to put the focus of my book in perspective. My book is not about khadi. It is about Gandhi's subversive symbolization through khadi. It therefore emphasizes the symbolic role that khadi played in the freedom struggle. Therefore, I am personally indifferent to the relevance or irrelevance of khadi today

### How did you write it? *contd...*

My book therefore is at pains to show how Gandhi actually turned Indian history on its head - singlehandedly! By the power of his Truth. That's why, Khadi: Gandhi's Mega Symbol of Subversion. It is not just a historical account of the khadi movement. It is a detailed, multi-disciplinary study of the non-violent subversion of one man who conceived, designed and managed the largest sartorial communication revolution that hastened the end of colonialism across the globe.

I have tried to prove that Gandhi's place as a political communicator is historically unparalleled.

### How relevant is Khadi in 21st century India?

Before I answer this question, permit me to put the focus of my book in perspective. My book is not about khadi. It is about Gandhi's subversive symbolization through khadi. It therefore emphasizes the symbolic role that khadi played in the freedom struggle. Therefore, I am personally indifferent to the relevance or irrelevance of khadi today.

But, people do benefit and even profit from its relevance today. It is relevant and salutary to those who strive to follow in the huge footsteps of Gandhi . These are the social activists and community workers who dedicate their lives to the liberation of the millions at the bottom of India's stratified pyramid. Then there are those who abuse the historical credibility that khadi has to promote their own interests – whether it be to impress the public or to win the elections. There is a third group that, motivated by pecuniary concerns, has tried to reinstate khadi as a popular fashion statement suitable for public performances and ceremonies.

The traditional economic relevance of khadi as the coarse home-spun cloth of the constructive programme for village development is almost history. Most of the varieties available are mill-made, colourful and more refined – that poorer Indian would hardly afford. In general, people do wear it out of a sense of patriotism especially on national feast days or at religious festivals.

### Does his symbol resonate among the masses today, or, has this been subverted by the politics of caste, religious fundamentalism or manic consumerism?

I have partly answered this question in the previous entry. Yes, Gandhi's symbol has been usurped by politicians to curry favour the masses. By dressing in khadi the wearer tries to show that he/she is linked to the same values and goals of the Gandhi-led independence movement, and in doing so hopes to convince their audience. Unfortunately, because many politicians are corrupt in India today, wearing khadi is takes on a negative meaning that reminds one of corrupt government workers who love to garland Gandhi's statues or pictures on his birthday (October 2nd).

My message? Nothing other than Gandhi's own message to youth: *'Be the change you want to see in the world.'* If each of us made an effort to first live by the values we profess (presuming that we still have ideals we look up to) before we rush to find fault in others, our world would be a different place. The Live Encounter we seek can become a life-enriching encounter only when we learn to live responsible lives.

### Could you kindly give us a glimpse of your life and work?

I am an Indian from Mumbai, and a Catholic Priest who belongs to an international educational organization called 'Salesians of Don Bosco'. My desire to learn more about Gandhi grew out of three major experiences in my life: First, my work in a rural parish in Ahmednagar (about 200 kms from Bombay), a drought stricken area that has had a long history of famines. While combining social work with my priestly ministry, I realized the importance of self-sustainable socio-economic growth that would enable poor peasants become the protagonists of their own dignity and development (Gandhi's emphasis on swadesh was for swaraj.) Second, as a director of a publishing house in Mumbai, I saw the need for making school education more life-based. We produced manuals to help educators implement, what we called, *'Quality Life Education'*. One of them was my own work: *Exercises in Media Education*, on which were based about 40 teacher-training courses all over India. The goal was to teach young people to develop a critical appreciation of media productions. Here is where I became interested in the vast field of communications and where I first began to design and produce media products for education. The third experience that forms a background to the theme of my books is my work in Rome. I was put in charge of a web-designing team that was to set up a five-language website for the international Salesian Society. This brought me in touch with people of different cultures and heightened my awareness of promoting peace.

When the work on the website was completed I enrolled for my doctoral studies at the Faculty of Communications, Salesian University, Rome. Here is where I chose to study Gandhi for three years under the guidance of Tadeusz Lewicki, professor of semiotics and theatre studies. I now teach the history of communications and peace communication at the same Faculty.

### What is your message for the readers of Live Encounters?

My message? Nothing other than Gandhi's own message to youth: *'Be the change you want to see in the world.'* If each of us made an effort to first live by the values we profess (presuming that we still have ideals we look up to) before we rush to find fault in others, our world would be a different place. The Live Encounter we seek can become a life-enriching encounter only when we learn to live responsible lives.



Ulyseas is founder and editor of Live Encounters Magazine and Live Encounters Poetry. He is the author of three books: *RAINY – My friend & Philosopher*, *Seductive Avatars of Maya – Anthology of Dystopian Lives* and *In Gethsemane: Transcripts of a Journey*.

<http://www.amazon.com/author/markulyseas>



## Update 2016 Another year of Living Foolishly?

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*This essay was written and published in 2008. Since then I have updated it every year. Except for a few lines here and there the basic essay has remained in its original form. It is a reminder to us that the inhumanity of humanity has not changed. In fact it appears to be growing in intensity. Sadly the more things change, the more they remain the same.*

This year is grinding to a close and then hope will begin for the New Year.

So what will it be?

More wars for religious or commercial purposes? Cultural genocide? Child abuse?

Human slavery? Beheadings? Sixth Mass Extinction?

New insidious revelations that expose the all-pervasive criminality of governments, international politics and sections of the Media?

And is the UN still a coffee shop for the rich and powerful to hang out in and where honour still exists among thieves.



Statistics are essential in war zones. They can always be rearranged to suit one's perceived objectives. The little numbers represent people; mothers, fathers, sisters, brothers, relatives and friends. A neat way to manage these numbers is to write in pencil so that an eraser can be used judiciously. And as the death toll in war ravaged countries rises, a hysterical caucus threatens a host of other countries for deviating from the 'acceptable norms of international behaviour' like illegally invading countries on trumped up charges and bombing innocent folk back to the stone age.

There is so much to choose from. It's like a supermarket out there with all kinds of manmade disasters available on the shelves, one has simply to reach out and grab one. 2016 is ending on a note of negotiated delusions with the Climate Change Conference in Marrakech. What happened to the good old days when we used a blanket instead of a heater? All this talk of saving the world is pointless. Everything is done half-heartedly. Let's make a resolution for the New Year to decimate the planet. Destroy all our natural resources, pollute the rivers and farm the seas to extinction. At least we would be doing one thing properly.

On one hand we talk of peace, love and no war. On the other hand we bomb, rape, pillage, annex and subdue nations with money, military power and retarded religiosity.

For instance, let's take a quick look at Afghanistan. The British couldn't control the tribes in the 19th century, the Russians failed miserably and the American with their assorted comrades in arms, poor souls, are being killed along with hundreds of faceless unarmed civilians. I suppose life is cheaper by the dozen. Hasn't anyone got a clue as to what the Afghans want?

What about certain parts of the Middle East and in particular Syria and Iraq, areas that have become mass open air abattoirs for the mindless slaughter of innocent people? Do you think they will run out of people considering the number of killings that are taking place? Education there is history – like the death of a six year old killed by a bullet deliberately fired at close range. It stems from the barrel of a gun. The pen is for signing death certificates. And as 'heads begin to roll', aficionados of one religion pursue a scorched earth policy including hounding, raping and pillaging innocent civilians and their properties; people whose only crime is eking out a living on their ancestral lands and following their faith in peace.

Statistics are essential in war zones. They can always be rearranged to suit one's perceived objectives. The little numbers represent people; mothers, fathers, sisters, brothers, relatives and friends. A neat way to manage these numbers is to write in pencil so that an eraser can be used judiciously. And as the death toll in war ravaged countries rises, a hysterical caucus threatens a host of other countries for deviating from the 'acceptable norms of international behaviour' like illegally invading countries on trumped up charges and bombing innocent folk back to the stone age...while deliberately turning a blind eye to China, a country that continues to violently dismantle the vibrant ancient Tibetan culture, brainwashing and incarcerating the Tibetans. Incidentally these very countries vie for commercial and 'military' space in the South China Sea while using China as a manufacturing base and its banks for financing projects.

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Africa, the Dark Continent, what can one say about its peoples and their ancient civilizations that have slowly been corrupted by large corporations and foreign governments meddling in the affairs of the states: Buying and selling governments on mammoth proportions? Oh for the days of Idi Amin. Remember Entebbe and the blood baths? Everything is so quiet now, no excitement and drama except for bloody popular uprisings, theft of natural resources and other inconsequential happenings like the sudden spread of highly infectious diseases and mass kidnapping of school children for forced marriage and conversion...and the continuing practice of female genital mutilation, which appears to be a thriving business across the world where doting parents take their little girls on 'vacation' cuts.

What about the sub-continent, India? Do they still abort female fetuses? Burn women who don't bring enough dowry? Is rape part of the culture? Do they continue to decimate wildlife? Persevere in the destruction of the environment? And do millions still exist on the threshold of life and death? And is the arrogant Indian Middle Class growing to newer levels self-indulgence? And, are the subsistence farmers still committing suicide due to failure of crops, seeds often supplied by a multinational? And are rationalists still killed for their beliefs? And is the holy cow more important than feeding hundreds of millions of people living below the poverty line?



Photograph by Mark Ulyseas



Let's leave all this violence for some tuna, shark fin, whale, and dolphin meat. The Japanese and an assortment of other 'civilised' countries are so considerate to the world at large. For countries that pride themselves on rejecting nuclear weapons they have a rather odd way of showing their respect for the environment. I am referring to the mass killing of whales, dolphins and other sea creatures on an industrial scale.

And once again, as we have done in the past, this Christmas and New Year we shall all sit down to sumptuous meals, drink whatever fancies our taste buds, shop till we drop and pamper our overweight children and pets. It's the season of happiness, love and family especially for the homeless, injured and maimed children of wars, missing women in Afghanistan, Syria, Iraq and elsewhere, asylum seekers, political detainees and the fringe folk of the planet. They will surely be very happy and content with what they see, hear, feel and touch this festive season.



Forgive me, I missed that little country to the west of India; Pakistan. Poor chaps they've had such a tiresome year with the constant ebb and flow of political violence and religious fundamentalism peppered with suicide bombers that probably the common folk want to migrate to the West... can't really blame them. All they desire is to live in peace to pray, work and procreate.

Now let's see who is left on the black board? Hmm...the indigenous people of the Amazon are still fighting a losing battle with the powers that be to stop the plunder of their home, the rain forest, the green lung of mother earth. South America appears to be lost in translation. We never seem to get a lot of news from there except for soccer, drug lords, plunder of the marine world and the continued exploitation of the poor and defenceless.

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Actually you must admire their concern. Ever considered the fact that they maybe ridding the oceans of monsters that take up so much space and are a serious health hazard to humanity?

I think Japan's neighbour China has the right approach. It has dispensed with the cumbersome concept of human rights and its implementation. In its place totalitarianism with a small dose of plutocracy has been suitably installed.

There are many countries that lecture China on its human rights. Wonder who has a perfect track record? The world's last superpower? A superpower that continues to interfere in the affairs of other nations ... at times actually sending troops and bombing unarmed civilians, including hospitals and marriage parties along with perceived enemies of the State? I suppose the term 'collateral damage' is more palatable than the word... murder.

Civil liberties are essential for the survival of a nation and so is the health of its people. In some areas of society where common sense has been the victim, Nature has found a way of retaliating by inventing diseases like Ebola, AIDS, Swine Flu and Zika, infecting millions and helping to keep the population in check: Of course, with a little assistance from humankind's scientific community who often test drugs on unsuspecting illiterate folk in the holy name of finding new cures to make a profit.

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From genocide to environmental disasters it has been a roller coaster ride through many countries and peoples and cultures and religions. This journey will end only when we truly comprehend the reason as to why we have been put on this planet by a power far greater than we can ever imagine.

Merry Christmas and a peaceful New Year to you.

Om Shanti Shanti Shanti Om



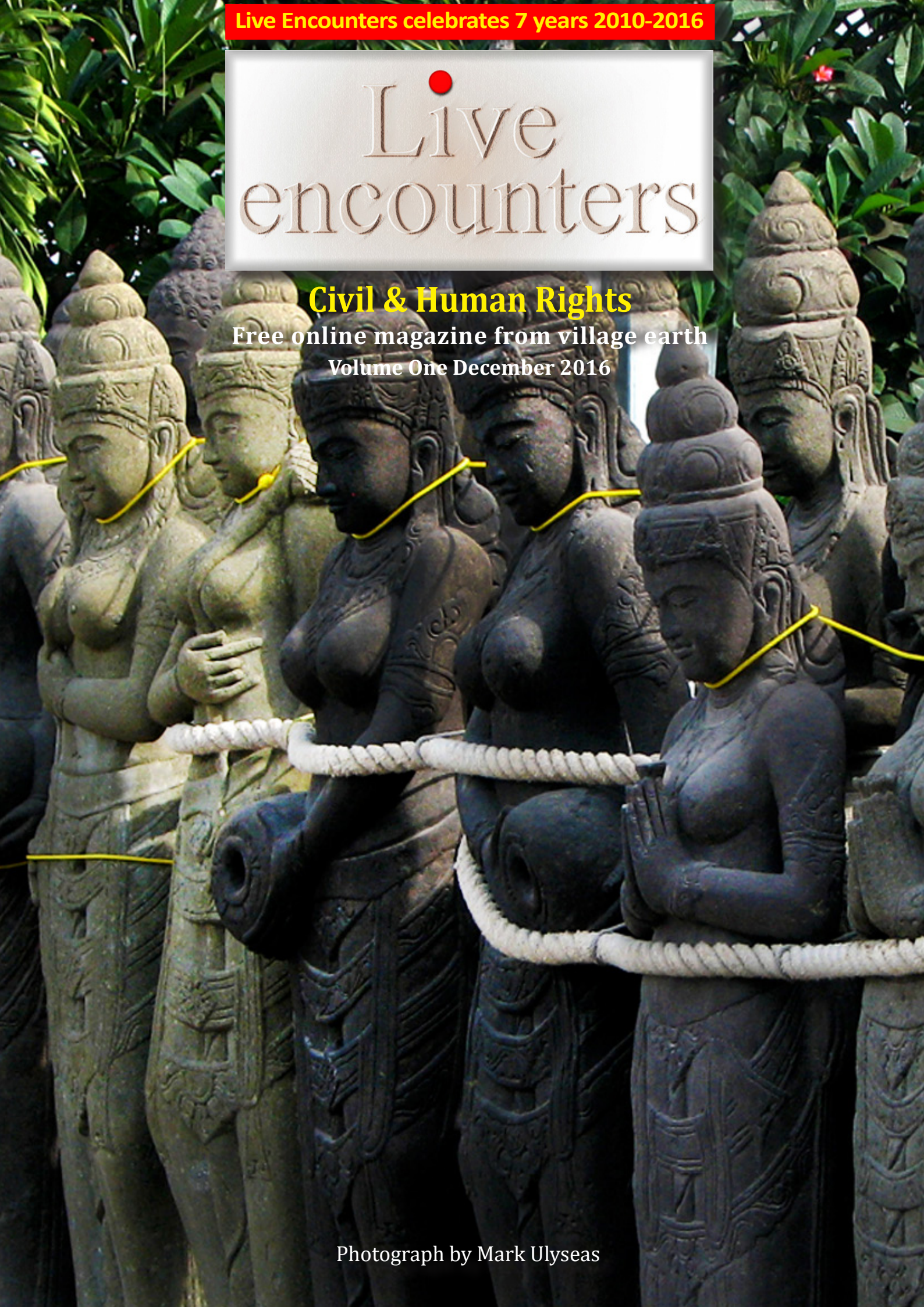
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## Civil & Human Rights

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