

THE HUMAN RIGHTS COMMUNIQUÉ

YOUR MONTHLY DOSE ON HUMAN RIGHTS

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INSIDE:

- *Release of IromSharmila*
- *Elsewhere in India*
- *Across the Globe*
- *Case Analysis – The Kishenganga Case*



ISRAEL GAZA SAGA

“One dead, dozens wounded in West Bank clashes; IDF warns Gazans of continued strikes as 51 targets hit across Strip, killing 5 Palestinians; 2 rockets shot down over Beersheba, rocket hits Sderot home; 57 rockets fired since 8 a.m.” These were the first findings to be reported as the events unfolded into the 32nd day of Operation Protective Edge. Hamas rejected the proposal of extending the 72-hours ceasefire and opened rocket fire on the Israel soon after the clock struck 8:00 am. By 11:17 pm in the night the count went up to 57 rockets, killing 5 individuals. Israel, which withdrew its ground troops earlier this week, responded quickly with airstrikes and artillery shelling that by day’s end had hit nearly 50 targets and killed five people, including three children. The Israeli Government was severely criticised by the United Nations and other world leaders for bombarding UN-sponsored school in Gaza sheltering civilians. The Israeli Government retaliated against the same criticism and said that it won’t stop until it has not destroyed all the tunnels constructed by the Hamas leading from Gaza to Israel.

If we try and trace back the exact reason for the ongoing conflict, it may prima facie appear to be religious in nature. But when probed further, it is quite evident that its a “land-war”. Some say that the Palestinian State is an independent state; some consider it as an occupied territory and some do not recognise it at all. Technically speaking the Gaza strip is under the Palestinian authority but has been governed by the militant group Hamas since 2007. The Hamas control the Gaza Strip and are considered to be a terrorist group by Israel and the U.S. While there is no Israeli military presence inside Gaza anymore, the effective control of Gaza’s sea, air and borders is under Israeli control.

The current violent outbreak is considered to be quite notable because it has occurred after almost two years of peace between the forces of Israel and Palestine. The outbreak was triggered when three Israeli teenagers were kidnapped while hitchhiking in the West Bank and killed. Their bodies were discovered after two weeks of their kidnapping. The Israeli accused the Hamas of kidnapping the three teen, which was denied by the militant group. Within days the Israeli government arrested more than 300 Palestinians, including some members of the Hamas. At least ten Palestinians were killed and approximately 10,000 homes were raided. This move on the part of the Israeli government was said to be driven by the motive of settling the scores. The attacks quickly escalated leading to the devastating situation.

Various legal issues have surfaced in the course of ongoing conflict. A number of human rights groups have expressed their concern about the rocket attacks by the Palestinian and the continuous efforts of the Israeli forces to destroy homes of the militant group which has led to gross violation of human rights. The United Nations High Commissioner for Human Rights (“UNHCHR”) has severely criticized Israel’s military operation stating that there was a strong possibility that International Law principles have been violated in such a manner which amount to war crimes. The rocket attacks by the Palestinian were also condemned by the same.

The use of human shields by the Hamas has raised concern among various human rights activists. The Israeli government has claimed it to be the primary reason for the increasing civilian casualties. The Israeli government has also been tainted with accusations that many of its targets were not even valid military targets. On 23 July 2014, the United Nations Human Rights Council voted to establish an inquiry into the human rights violations. With the Palestinian government ready to join the International Criminal Court to press charges against Israel, Israeli Prime Minister Benjamin Netanyahu has asked United States legislators to try to stop Palestine from joining the court.

It is evident that this conflict is not taking place in a small bubble isolated from the rest of the world. It has led to a change in political attitude in the entire international paradigm. China for the record, has taken a neutral stand. However, what is interesting to note is that for decades, China did not try to stay out of the conflict. The reason is quite simple: Israel's defense technology was attractive to China. Today, China-Israel military exchanges and economic cooperation have become two major pillars for bilateral relations. China's stance on the Israeli-Palestinian conflict has changed from unilateral condemnation of Israel to the current neutral stance. Countries like Jordan and Egypt which are directly affected by violence in the Gaza strip have condemned Israeli government for their indiscriminate use of weapons and violent means of destruction. Egypt, which has reportedly been in contact with the Hamas in an attempt to set up a ceasefire agreement between Gaza and Israel, denounced Israel's raids on Gaza. Jordan, one of just two Arab countries to have signed a peace treaty with Israel, demanded that Israel immediately halt deadly Israeli air raids against the Gaza Strip.

Countries like US which have a vested interest in the entire conflict seem to have a liberal view towards Israel. While urging Prime Minister Benjamin Netanyahu to stay in contact with Palestinians to resolve the ongoing conflict, the White House reiterated its support for the Israeli Defense Forces and Israel's right to defend itself. The presence of US as a supporter of Israel has led to the strengthening of its position in the middle-east conflict. Not only Israel has gained leverage in the conflict, but the recent US policy has also been successful to keep Israeli conduct out of the discussion rooms of the United States. Since Resolutions 242 and 338 (regarding the compromise reached by the two countries), the Security Council has taken no significant steps to end the Israel-Palestine conflict. Both bodies would have been more effective if the governments had been willing to confront US pressure and displeasure.

Thus, the biggest question which shoots up as a consequence of these activities is why is Israel playing around with so many provisions of Domestic and International Laws, and why is US an unwavering supporter of Israel? What is it that makes US and Israel such good allies?

Why is US Supporting Israel?

There are many ways in which the US support for Israel emerges. A few examples may be quoted as financial, military and diplomatic supports. Political thinkers around the world have

quoted many reasons for this, the prime being the despicably strong Jewish Zionist lobby in the US. Jews own majority of the banks, largest corporations, congress and the media, they control all the elections and appoint those who will back Israel.

The Americans are of the view that the US foreign aid policy vouch for the poorest countries in the world, it still remains a fact that Israel (wealthier than a number of European Union member countries) receives 25 percent of the entire US foreign aid budget. Unsurprisingly, since the year 1976, Israel has been the highest recipient of US foreign aid in the entire world. The aid from the giants comes to about \$1.8 billion a year under the military head and \$1.2 billion of economic aid for reconstruction purposes.

Israel is the only country in the world which is allowed to make indigenous arms and ammunitions with the aid received from the US. Israel is America's most sophisticated and experienced partner in missile defense, helping it from invention to deployment to joint training exercises. Israel invented the short-range rocket defence which the US used in both wars. Israel has shared its advanced military robotics with US. Moreover, Israel is the world leader in the development of unmanned aerial systems, including drones (invented by an Israeli) for intelligence collection and combat, and has shared with the US military technology, doctrine, and vital experience.

In the diplomatic scene, it is only the US that protects Israel, whether it is about the United Nations or any other international organization for that matter, from being held accountable for the violations it carries out. It even makes a country go absolutely silent on the terrible human rights violations and humanitarian law breaking by one of its allies on the Gaza Strip. Generally, US is a country which acts like a guardian of laws when it comes to law-breaking by other states. But when it is about Israel and the Jews, it loses its edge. This is turning out to be extremely lethal for the world, as the terribly violent activities in Gaza keep on soaring till date.

ABOUT CASIHR

Centre for Advanced Studies in Human Rights ("CASIHR") is a centre of excellence established by RGNUL to undertake and promote study and research in emerging trends in human rights. With the principle of human dignity at its core, the CASIHR aims at conducting multi – disciplinary research in various human rights issues. CASIHR seeks to disseminate human rights related information by creating working documents serving as advices to policy makers, regularly organize conferences, seminars and debates on the relevant topics. The ultimate objective of CASIHR is to emerge as a think tank for national and international issues relevant for promotion and protection of human rights.

TRIVIA

- Since 2004, only China, Iran, Pakistan and Sudan have put Child Offenders to Death
- The International Court of Justice is the only UN Agency Outside the United States
- The First International Year Proclaimed by the UN General Assembly in 1959 was World Refugee Year
- The International Criminal Court's jurisdiction does not apply retroactively it can only prosecute crimes committed on or after July 1 ,2002.

DAYS OF MONTH

- August 29 - International Day Against Nuclear Test
- September 8 - International Literacy Day
- September 15 - International Day of Democracy
- September 21 - International Day of Peace

UPCOMING EVENTS

- Army Institute of Law, Mohali's National Seminar on Human Rights – September 20, 2014

DID YOU KNOW?

Every year May 29 is celebrated as International Day of United Nations Peacekeepers



“It was never the people who complained of the universality of human rights, nor did the people who consider human rights as a Western or Northern Imposition. It was often their leaders who did so.”

- Mr. Kofi Annan, Former United Nations Secretary General

IRON LADY OF MANIPUR FREED; REARRESTED

An Indian human rights activist who has been on hunger strike for the last 14 years in protest against alleged army atrocities walked free on Wednesday, 20th August 2014 from a prison hospital where doctors had force-fed her to keep her alive. Irom Sharmila's release comes after a trial judge found no evidence to support charges filed in 2000 by prosecutors in the North-Eastern state of Manipur that she was trying to commit suicide by refusing food.

Upon release, draped in a white shawl, she walked unsteadily as supporters helped her by each arm. The 42-year-old, known as the Iron Lady of Manipur, began her fast in November 2000 after 10 people were killed in a shooting at a bus stop near her home in Manipur, a remote state that borders Myanmar. Activists blamed the army for the killings, which included two children. Police registered a case but no arrests were made. Despite calls from judicial inquiries and human rights groups, the Central Government has kept in force a draconian anti-terror law that gives soldiers virtual immunity from prosecution in regions hit by insurgencies. Shocked by the failure to bring those responsible to justice, Sharmila started her hunger strike, vowing only to end it when the law was repealed.

SPECIAL POWERS

In response to Sharmila's protest and growing popularity, state prosecutors charged her in 2000 with attempting suicide - a punishable offence under Indian law which also outlaws assisted suicide. Sharmila was held in a state hospital and force-fed by tubes several times a day. Her recent release and rearrest on 22nd August 2014 is expected to rekindle debate over the Armed Forces Special Powers Act (“AFSPA”), which is in force in parts of North-Eastern India and the Northern state of Kashmir, which have been affected by years of separatist violence. The law gives security forces powers to search and enter property and shoot on sight. The military says the law is needed to tackle insurgents and that it investigates allegations of abuse made against soldiers. Amnesty International described Sharmila as a prisoner of conscience and, in a statement on Tuesday, welcomed a court order to release her as long overdue. Amnesty argues that the AFSPA falls short of international standards on human rights,

HENRY DUNANT

Born on May 8, 1828 Henry Dunant established the International Committee for Relief to the Wounded which later came to be known as International Committee of Red Cross. He consulted the Empress Eugene on application of Geneva Convention on Naval Warfare. He comforted wounded during Franco – Prussian war. Moreover, he organized diplomatic conference on prisoners of war. For his efforts, Henry Dunant received the First Nobel Peace Prize. He died on October 30, 1910. The date of his birth, May 8, is celebrated as World Red Cross and Red Crescent.

HUMAN RIGHTS NEWS...

HUMAN RIGHTS CAMPAIGNER BARRED FROM ENTERING INDIA

Kashmir, August 18, 2014

Mary Aileen DiezBacalso, the Secretary General of Asian Federation Against Involuntary Disappearances (AFAD) was banned to enter India on the night of August 17 at the Mumbai International Airport. On 11th August, Aileen Bacalso had tried to apply for visa from the Indian embassy in Manila. While her papers were complete her application was not accepted on the pretext that time was too short but they looked at the documents and were completely aware that she was travelling on 17th August to India. She was asked when was the last time she visited India, which was in November 2009, and also 'what bad happened then'. Aileen Bacalso was sent back on the same flight and her passport was only handed over to her when she arrived at Manila.

It is pertinent to mention that Association of Parents of Disappeared Persons (APDP), a member organization of AFAD produced a report in December 2009 on unmarked graves and mass graves in Jammu and Kashmir, which later became a huge embarrassment for Indian State. This ban on AFAD representatives to Jammu and Kashmir and India shows the deep paranoia and hostility of the Indian government towards human rights activists. It appears that Indian State's objective from this ban is also to isolate the human rights activists from Jammu and Kashmir. India, despite being the largest democracy has consistently behaved like a rigid anti-human rights country without any respect and concern to allow human rights groups to work unhindered in Jammu and Kashmir.

NATIONAL HUMAN RIGHTS COMMISSION SERVES NOTICE TO MP CHIEF SECRETARY

Indore, August 04, 2014

The National Human Rights Commission (NHRC) has issued a show-cause notice to Madhya Pradesh chief secretary regarding the non-payment of suitable compensation to Ratlam nursing students who were allegedly forced into a prostitution racket by chief medical superintendent and other staff of Ujjain's RD Gardi Nursing College. On October 28, 2013, 14 students of Sardar Patel College of Nursing had lodged a complaint against the chief medical superintendent and others for forcing them into a prostitution racket. "As the report of investigation shows that there was prima facie violation of human rights to life and dignity of the trainee nurses by the authorities of the nursing college which must be either belonging to the state government or getting financial aid/grant from the government. So, the state government is prima facie liable to compensate the victims for the violation of human rights," the NHRC noted. The commission has also given the chief secretary six weeks to

explain what departmental action has been taken against the "delinquent doctors and staff.

RIGHTS PANEL NOTICE TO DELHI GOVERNMENT OVER MEDICAL NEGLIGENCE

Delhi, August 01, 2014

The National Human Rights Commission today issued notice to the Delhi government over reports of medical negligence leading to a child's birth outside a government hospital. The commission took suo motu cognizance of media reports that said on account of negligence of doctors at Guru Teg Bahadur Hospital, a woman gave birth to a child outside the hospital under the open sky on the night of July 27. It then issued notice to the secretary, department of health and family welfare, government of Delhi, calling for a factual report within two weeks. "The commission has observed that the contents of the media report, if true, raise a serious issue of violation of right to health of the victim woman and her newborn," the NHRC said. The woman, who was in advance stage of labour, had come to the hospital for treatment. But the doctors, instead of admitting her, asked her to get an ultrasound performed from outside. In the process, she delivered the baby outside the hospital.

"WHY VICTIMS OF CUSTODIAL DEATHS IN MAHARASHTRA ONLY FROM MINORITIES", BOMBAY HC ASKS

Mumbai, July 31, 2014

The Bombay high court observed on Thursday that the victims of custodial deaths in Maharashtra appear to be only from the minority community. A division bench of Justices V M Kanade and P D Kode made the remark after they informed advocate Yug Chaudhry of their decision to appoint him as amicus curiae (friend of the court) in a case where a 23-year-old resident of Nalasopara (East) mysteriously died in Thane Central Jail. Observing that custodial deaths are occurring routinely, the high court added, "It seems to be happening only against certain persons from the minority community." Chaudhry agreed: "I have done my research and it shows that the cases are mostly of Muslims and Dalits." The court questioned why such deaths are happening in Maharashtra. Referring to the case at hand, it said, "It is not reported as a custodial death but as a natural death." The number of such cases is unknown, the court noted.

AROUND THE GLOBE...

SUSPENSION OF FUNDAMENTAL RIGHTS INVITES CRITICISM IN ISLAMABAD.

8th August 2014

The Human Rights Watch, in the wake of the suspension of fundamental rights and the grant of military authority for law enforcement in Islamabad, expressed that Pakistan should

immediately rescind the ongoing political regime as the powers given to the military risk misuse in the face of ongoing large-scale political protests. "Pakistan faces very real threats of terrorism, but giving unbridled powers to the army and suspending fundamental rights is the wrong response," said Brad Adams, Asia director at Human Rights Watch.

On August 1, 2014, the government invoked Article 245 of the constitution, permitting the military to carry out law enforcement in Islamabad. Under Article 245, the government also suspended fundamental rights, including the courts' jurisdiction to enforce freedom of expression, assembly and association, and habeas corpus, allowing detention without charge or remedy along with giving the forces excessive powers under the Anti-Terrorism Act of 1997, which permit soldiers to shoot to kill after giving a warning and arrest without warrant. Plus, they do not bind them to act only in self-defense or to protect the lives or property of others.

The International Covenant on Civil and Political Rights, which Pakistan ratified in 2010, permits some restrictions on certain rights during an officially proclaimed public emergency that "threatens the life of the nation." According to the United Nations Human Rights Committee, the international body of experts that monitors compliance with the treaty, any derogation of rights during a public emergency must be of an exceptional and temporary nature, and must be "limited to the extent strictly required by the exigencies of the situation."

While, the minister of interior, Nisar Ali Khan, said Article 245 was invoked for the benefit of one and all, because of security and counterinsurgency concerns after the military undertook an offensive against Taliban forces in North Waziristan, but the imposition has suffered staunch opposition and may call for tens of thousands of protesters expected to participate in marches and demonstrations in the coming days.

NIGERIA MUST STOP ITS HUMAN RIGHTS VIOLATION

August 6th 2014

Amnesty International has accused the Nigerian military and civilian militias of "extensive human rights violations" in their fight against extremists in the northeast of the country. The global rights watchdog said gruesome video footage, images and witness testimonies collected during a research mission in Borno state found "fresh evidence of extrajudicial executions and serious human rights violations" in the region.

While it is true that Nigeria needs to deal with the menace of Boko Haram as swiftly as possible, it is also true that its army must abide by international conventions regarding the capture and incarceration of terrorists. As the leading force in Africa, it is

important that Nigeria show the way forward for its peers in not taking the path of retribution. The more nations of the world abide by laws that uphold human rights — no matter what the provocation — the more hope there is for the world to find solutions to the violence tearing it apart.

RIGHTS OF INDIGENOUS PEOPLE, TRODDEN OVER ACROSS THE AMERICAS

7th August 2014

Murder and abduction attempts, intimidation and attacks, as well as ongoing daily discrimination, are among the multitude of abuses Indigenous Peoples across the Americas face simply for defending their human rights, said Amnesty International. Indigenous Peoples' Long Struggle to Defend their Rights in the Americas is being published ahead of the International Day of the World's Indigenous Peoples (9 August). It highlights the many inequalities and human rights violations faced by Indigenous Peoples across the American continent.

"The entire communities of Indigenous Peoples in the Americas are being denied access to their ancestral lands, while others face violent repression and abuse for peacefully protesting to demand their human rights," said Erika Guevara Rosas, Americas Director at Amnesty International. Moreover, the Indigenous women and men are more likely to be underpaid, have lower levels of education, die in child-birth, have a lower life expectancy and face multiple forms of discrimination on the basis of their culture, class and gender.

The report also includes many cases the organization has documented of physical attacks and acts of intimidation against Indigenous communities and their leaders in the past year. Amnesty International is calling on governments across the region to create and preserve the conditions for Indigenous leaders and community members to peacefully defend their rights without fear of reprisals, and to bring to justice perpetrators of violence against Indigenous human rights defenders.

On 22 January this year, the Public Prosecutor's office in Lima closed the cases of more than 2,000 poor Indigenous and campesino women who were sterilized by state authorities in the 1990s without their full and informed consent. By closing the case the Peruvian government has failed to address systematic human rights abuses perpetrated against Indigenous women and those living in poverty, and effectively denied them justice.

In spite of pervasive discrimination and attacks, Indigenous Peoples have continued their struggle for justice and human rights. The last year witnessed some positive steps forward regarding the recognition and protection of their rights.

Contributions are invited for the further issues of the CASIHR newsletter. The last date of submission would be 15th of every month and it can be mailed us at casahr@rgnul.ac.in.

THE KISHENGANGA ARBITRATION



Since the Independence, India and Pakistan have rarely seen eye to eye on issues ranging on nuclear tests to signing of treaties. This case has been a perpetual thorn in Pakistan's eyes because it gave India a leverage to exploit the waters that had so far been theirs. The 330 MW Kishenganga Hydro Project is located on river Kishenganga, a tributary of river Jhelum, in Bandipore district of Jammu & Kashmir. The project involves transfer of water of Kishenganga River in Gurez valley to Bonar nallah near Bandipore in Kashmir valley. In the early '90s, India had informed Pakistan of its intentions to construct the KHEP. Since then, Pakistan has been raising objections to the project. The main objections were:

- 1) That the inter-tributary diversions are barred by the Indus Water Treaty (IWT) and existing Pakistani uses must be protected as execution of this project would deprive Pakistan of the river's natural flows,
- 2) Pakistan has also raised objections relating to certain design features, especially the draw-down technology to flush sediments.

Pakistan instituted arbitral proceedings against India in 2010, challenging, in particular, the permissibility of the planned diversion by the KHEP of the waters of the Kishenganga/Neelum and the effect that this diversion would have on Pakistan's own hydro-electric project under construction downstream of the KHEP (a 969 MW Neelum-Jhelum hydro-electric project (NJHEP) at Nowshera, with the help of a Chinese consortium) for which the blueprints and technical stipulations were finalised in 1997.

The Permanent Court of Arbitration, on December 20, 2013, issued a judgment, on the construction of Kishenganga Hydro-electric Project (KHEP) by India, which restructures and modernises the Indus Water Treaty (IWT) between India and Pakistan and, again makes it an effective instrument in avoiding conflicts on use of the rivers of the Indus Basin. In fact, the verdict offers a lot more than just a ray of hope; it indicates that complex

conflicts such as these can always be peacefully resolved. According to the court, India demonstrated a high degree of certainty when it started work on the dam between 2004 and 2006; while Pakistan lagged behind in implementation and planning of the NJHEP. Consequently, the PCA found India had a priority over Pakistan on the use of Kishenganga/Neelum river for hydroelectric power. The PCA, however, decided that India was obligated to construct and operate the KHEP in a manner that maintains a minimum flow of water i.e. 318 cusecs into the Kishenganga/Neelum river below the KHEP at all times.

However, the court also decided that either India or Pakistan may seek reconsideration of this decision through the Permanent Indus Commission and the mechanisms of the IWT after a period of seven years from the first diversion of water from the Kishenganga/Neelum River.

This case is important from two points of view: Firstly, because it was the first instance in the history of the IWT when a Court of Arbitration was constituted and second, because it led to the resolution of an age long issue along with a thought for environmental awareness.

The final award, thus, is a landmark for legal governance of shared trans-boundary water resources as this dispute had raised important questions on the relevance of the IWT; model of development adopted by building large dams and reservoirs for hydro-electric power with environmental consequences; application of international environmental obligations and adequacy of existing international courts; and tribunals to settle complex water disputes.

ANALYSIS

The decision means that India can, as laid out by the IWT, continue to develop much-needed hydropower projects on the Chenab and the Jhelum, but it must strictly respect the IWT-defined limits on storage, and must use methods other than the construction of low gates to flush silt. This decision will apply to all other run-of-river plants to be built in future on the western rivers, as well as to the KHEP. For Pakistan, construction of the KHEP would result in decrease in the flow of water for the NJHEP. This would reduce annual energy generation from expected 5,238 million units to 4,536 million units. Thus the PCA decision would cause a loss of more than \$145 million to Pakistan in the wake of reduction in water flows. Moreover, in drought conditions as happened in 2001, Pakistan is likely to face a loss of more than \$544 million every year. Experts on water disputes are, therefore, of the view that diplomatically and economically, the award by the PCA is a major setback for Pakistan for internationalising a bilateral issue for the second time.