

India: Report on the Issues relating to setting up of an Asbestos factory at Marwan in Muzaffarpur district

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In the recent days newspapers have published reports on several activities and incidents relating to the controversy surrounding establishment of an asbestos factory at Marwan in Muzaffarpur district.. A petition was received from Khet Bachao Jeevan Bachao Jan Sangharsha Samiti (KBJBJS) requesting PUCL to hold an enquiry. In its weekly meeting on 23 January 2011, the matter was discussed and a team was constituted to enquire into the issues emerging from the incidents at Marwan. The team consisted of Prof Vinay K. Kantha, Mr Nageshwar, Prof Kishori Das, Mr Shahid Kamal and Mr Ramesh Pankaj.

1. Visit of the Team & Mode of Enquiry

The team visited Marwan on 25 January and met a large number of villagers besides inspecting the sites of incident. The team met one Mr Vijay Kumar, a supervisor, at the factory gate, who presumably contacted his superiors and finally did not allow the team members to enter inside the factory premises on the plea that only five members of the Core committee formed by the City S P were authorized to enter the factory. He gave the mobile number of one Mr D K Tiwari who agreed to meet us on 26th in his Patna office. When he was contacted in Patna on 26th he asked us to come on 27th at 4.00 pm. On 27th he switched off his mobile and his office in Luv Kush chamber was found locked up. He was given our number earlier, but he did not contact us even as we had explained to him that we are willing and interested in getting his version and if he wants to produce any documents he may do it. But it was clear that the Company people were evading any public contact, much less scrutiny.

The team visited the local police station and talked to the P.S. in charge Mr Jogendra Paswan at length besides perusing the FIR filed by Shashikant the probationary SI who was leading the force on the forenoon of 23rd January. Shashikant was not available in the P.S., but Jogendra Paswan, Officer in charge of the P.S. was the I.O. in the case and his version was important. The team also spoke to some members of SUCI, NAPM and Asbestos Virodhi nagrik Morcha. District officials however could not be contacted, 25th being a holiday, although a message was given to the DM Muzaffarpur and we had gone to the residence of SDO, but he was out for some meeting.

Some documents were also examined to understand the objections of the villagers to the setting up of asbestos plant in Marwan.. The letter of KBJBJSS to SDO (West) Muzaffarpur along with several supporting documents including couple of papers issued by WHO as well as chronology of events were perused. Villagers also brought before the team the two text books, one book on biology for class X and the other Inter Rasayan for Class XII, published by Bharati Bhawan which have listed the harmful effects of asbestos. Environment Impact Assessment report was also examined.

2. Issues to be examined

In the petition submitted by the KBJBJSS as well as the numerous reports that appeared in the newspapers and magazines there are implicit charges of human rights violations which merit a detailed enquiry. There are larger questions brought up by this episode, like the importance of the views of local population in the developmental decisions or use of land and water. PUCL thought it worthwhile to examine such emerging issues as well, in the wake of a new thrust proposed for some kind of development in the state.

The purpose of the enquiry was thus three fold: first, it related to the events at Chainpur Bishunpur particularly on 22 January when villagers were allegedly lathicharged on the factory gate and teargas shells were fired; secondly, there was larger question of the setting up of an asbestos plant when the local population has started opposing it; and thirdly, there are still larger issues relating to industrialization in the state of Bihar or for that matter elsewhere.

Before the first and second questions are raised it would be worthwhile to get an idea about the place of occurrence, including the rival descriptions, and the history of events.

3. Context and the Background

A. Area and the Proposal

Brief Profile of the Area

Village Chainpur Bishanpur comes under the Jakhra Sheikh Gram Panchayat in Marwan Block, Muzaffarpur District. The panchayat comes under Karja police station. The village Chainpur and adjoining villages have fertile agricultural land. Paddy is grown in most of the fields, and at the time of visit many fields adjoining the factory had standing crop of mustard. Chainpur is a large habitation with more than 1000 households, including a large number of dalit families. The local mikhiya of Jakhra Sheikh panchayat is Ms Lalmuni Devi w/o Suresh Paswan. Adjoining villages are Bisunpur, Parari, Jeean, Panapur, Raksa, Mohammadpur etc, and in the movement that has emerged there some persons of these villages are also involved. For example, Ramchandra Rai who is currently very active and was present in the gathering belonged to Jeean village.

A large number of schools were located within a distance of one kilometer from the site of factory. Primary school of Chainpur is barely at a distance of 400 meters, Parari Primary school was reported to be still closer- at a distance of merely 200 meters. In Jeean within a distance of 500 meters from the factory as the crow flies there were two schools, one primary school and another Urdu Vidyalaya. In Bisunpur likewise the primary school is within 300 meters from the site of factory. Besides there were several anganwadi kendras nearby. In fact the inhabited areas are quite close to the factory, in some directions within 100 meters radius.

Purchase of land

From 2009 'Balmukund Asbestos Cement and Roofing Ltd.' purchased at least about 18 acres of land for the factory through middlemen, without disclosing to the land owners the proposal of establishment of an asbestos factory. The team spoke to the villagers gathered there and several persons gave their versions all confirming that they were not told about the asbestos factory in the beginning. There was an impression apparently based on the versions of middlemen that either an iron rod factory would come up, or possibly some agro-industries would be set up. Most of the land was purchased at the rate of Rs. 10,000 per kathha, and a large number of farmers, more than a dozen, gave their land including some dalit families. Some of their family members were present in the gathering, but they were not aware that the factory to be set up was an asbestos factory.

After the purchase, construction was started on site without clearances. Today the factory stands on a large piece of land amidst farms and close to residential bastis.

Description in Company's proposal and EIA/EMP Report

M/s Balmukund Cement & Roofing Ltd. proposed for the establishment of Asbestos Fibre Cement Roofing Sheet Plant (3,00,000 TPA) at village Chainpur Block Marwan in Muzaffarpur district for which they have acquired 17.8 acres of 'barren land' of which green belt will be developed in 5.9 acres (33% of the total land). No rehabilitation, resettlement or forest land etc are involved. Total cost of the project is Rs 31.0 crores. as they submitted in the petition for environmental clearance while Rs 125.00 lakhs and Rs 50.0 lakhs are earmarked for capital cost and recurring cost/annum for environmental pollution control measures, Rs 125.0 lakhs and Rs 50.0 lakhs are allocated towards Corporate Social Responsibility activities and Occupational Safety and Health Measures respectively. Total water requirement of 300m³ / day will be sourced from own bore wells.

The Committee responsible for making recommendations for granting clearance took note of the complaint of Centre for Science & Environment (CSE), a villager and the reply from Bihar State Pollution Control Board in this regard.. A clarification was sought by the Committee w. r. to distance of the project from nearby plants and the proponent clarified that the distance of school from the plant is more than 500 meters. Based on these submissions the Committee recommend the company for environmental clearance subject to a set of 19 specific conditions along with other environmental conditions.

B. Background of Events leading to start of movement against the establishment of factory and incidents of January 22

Background

While the land was purchased or even after that when construction work started, the local people did not raise any objections believing that the factory would be a harmless industry, iron based or agri-based, giving jobs to people. However, some of the local village people working in the factory leaked the actual purpose of the factory, that it would produce asbestos sheets used for roofing. Reportedly some persons (maybe including a person close to the promoters named Sanjay Jalan) were responsible for distribution of a pamphlet describing the ill effects of asbestos in a local meeting some months after. As the truth came out there was discontent building up amongst villagers. Interestingly the matter was brought up by some children as well, who were aware that asbestos production causes various incurable illnesses including lung cancer. This information was passed on to the villagers by their children whose textbooks talk about the ill-effects of asbestos. In the book Jeeva Vgyan Bhag II published by Bharti Bhawan authored by Banerjee and Varma it was mentioned on p.166 as pointed out by a student of class X Harekrishna Ram s/o Devendra Ram. Their tutor showed them another book Inter Rasayan written by Singh & Sinha (published by Bharati Bhawan itself) where again there was a discussion on diseases like asbestosis, mesothelioma or lung

cancer which asbestos may cause. During this period some villagers also recalled that three persons of that locality who worked in asbestos factories of Rajasthan had died earlier after contracting asbestos-related diseases. Another development that has provoked people against the factory is the sudden lowering of water table after the commissioning of the boring tube wells on the factory campus. It was pointed out by villagers that the boring of Niranjana Singh which was in the vicinity of the factory had dried up after the start of factory boring. They feared that in times to come water scarcity may also result from running of the factory so close to habitations.

While this debate has begun in the village a public hearing was organized by the Bihar State Pollution Control Board (BSPCB) on 28th June, 2010, at the Marwan High School. According to the villagers they were not informed about this hearing, but on the day of the hearing Tarkeshwar Giri (an ex-Mukhiya) and Sanjay Singh were present near the venue and went to see what was happening. When Tarkeshwar Giri got to know about the asbestos factory, he tried to register his protest. Some assurance was given to him but apparently nothing came out of it. In a letter written by CSE Associate Director Mr. Chandra Bhushan, it has been pointed out that the public hearing was not done in the right spirit. According to the letter CSE Representative Nivit Kumar Yadav attended the hearing and “found serious flaws in the proceeding of the public hearing, especially not providing proper opportunity to the local representatives who had adverse opinion about the project”. (Letter from CSE to Additional Secy, MoE&F).

The beginning of protests

After coming back from the hearing Tarkeshwar Giri shared the happenings of the public hearing and this confirmed the rumors that it is indeed asbestos which would be produced in the Marwan factory. This led villagers to form the KBJBJSC, with Tarkeshwar Giri as its convener. After protests were launched by the committee, a tri-partite meeting was held in September, 2010 between the company administration, representatives of the KBJBJSC and the SDO, where it was agreed to stop further construction work of the factory but this agreement was violated and construction restarted. Later in November, 2010 after protests at the BDO office, the BDO gave a public assurance that work of the factory would be stopped, but yet again construction activity was restarted.

In December, 2010 peaceful protestors were allegedly fired upon by company goons. On the same day unknown persons burnt a car (magic van that used to ferry workers) owned by factory management. Villagers believe that the factory management themselves burnt the car, and implicated organizers of the KBJBJSC. Later Mr. Tarkeshwar Giri and Kumod Ram were arrested on charges of arson, and are still in jail.

4. Examining different aspects

A. Alleged Lathicharge on 22 January

The sequence of events

Peeved by the tacit administrative support to the company by allowing it resume construction KBJBJSC decided to organize dharna at the factory gate and informed the officials in this regard. 22nd January was the fifth day of the dharna by the KBJBJSC. At around 11.00 am people were gathering at the factory gate. While the arrangements were in progress, a truck carrying the company's goods arrived, allegedly accompanied by a police jeep from Karja thana. The police team led by probationary SI Shashikant asked the people present to allow the truck to go into the factory. But the protestors refused and this provoked Shashikant who reportedly became very aggressive. As protestors stood their ground, the SI assaulted Ashok Kumar Singh, a frail old person, who was

arguing on behalf of the protestors. Others who tried to intervene and protect him also sustained injuries.

While the protestors retreated in the beginning, people from the villages had already started gathering for the day's dharna. As more people heard about the assault by police more and more people arrived at the factory gate. The protestors insisted on sitting on the dhar laid out outside the factory gate and refused to move. The police personnel at this point lathi charged at the crowd, probably in the hope that they would be able to disperse the crowd. The team met five women and two men at the district hospital who had sustained injuries in the lathicharge. Two more persons admitted there, namely, Manoj and Rajesh had left in the meanwhile. Rajo Devi w/o Umakant Paswan, had been admitted to the Muzaffarpur district hospital with head injuries and a hand injury because of which she could not move her left hand. According to Rajo Devi, she was hit by a policeman using his rifle butt and she fell. Seeing his wife fall Umakant Paswan s/o Matukdhari Paswan, went to pick up his wife and in the process was also hit with a rifle butt. He was also admitted in the district hospital, though his injuries were less serious. The team also met Sheela Devi w/o Satyanarayan Paswan, who said that she had come to the dharna sthal in solidarity after she heard about the beatings taking place at the site. When she reached she tried to stand at the site of the dharna but was attacked with a rifle butt. Her hand was swollen and she also got head injuries. It was alleged by the villagers that bricks were also thrown from inside the factory campus. Subhagi Devi w/o Singheshwar Ram was also admitted to the district hospital reportedly hit by one such brick, and suffering head injuries.

Police reinforcement reached the factory gate at this time along with a vajra vahan and more police jeeps. By this time people had become very aggressive, having suffered the lathi-charge and attacks on women. The people in turn attacked the vajra vahan and police jeeps. The reinforcement personnel also lathi-charged and the scene became ugly. It was somewhere around this time that Kalash Devi w/o Harinder Mahto realizing that the scene was going out of control, took shelter by the factory wall with 4 other women. But some policemen attacked these unarmed women, Kalash Devi was hit by a rifle butt and she is in the district hospital with a swollen jaw.

At this point the vajra vahan took flight and most police vehicles also left but one police jeep was left behind and the mob, which was out of control by now, ransacked the jeep.

The city SP reportedly arrived there in the afternoon at around 3pm accompanied by the SDO. By that time the crowd was completely out of control and even when the SP tried to address the crowd, people were not ready to listen. At this point the city SP sought the assistance of some senior persons among the organizers who succeeded in bringing order. After that the city SP addressed and made two important announcements. He assured that, on the 27 January, 2011 he would himself come to Chainpur and make an investigation in the case of arrests of KBJBJSC convenor Tarkeshwar Giri and Kumod Ram. He further assured that the factory would now remain closed and the police will be stationed to protect the people. The city SP also constituted a committee of local persons who could inspect and confirm that the factory has not resumed work.

B. Regarding the demand for the ban on asbestos

KBJBJSS submitted a well argued petition before the S.D.O. (West) Muzaffarpur on 28.12.2010, and a copy of the petition was provided to the PUCL along with three annexures. The first annexure contained a document produced by Public Health and the Environment, World Health Organization (WHO) in September 2006 titled 'Elimination of asbestos-related diseases'. The second one was also a WHO paper on 'Preventing Disease through Healthy Environments' and a third annexure was a letter written by Dr Sanjay Chaturvedi, Professor & Head, Department of Community Medicine, University of Delhi, Delhi which summarises the findings of medical researches confirming that

'occupational as well as non-occupational exposures to any form of asbestos are associated with mesothelioma and other malignancies among humans'.

These documents supported by a large number of references to researches, resolutions etc establish beyond doubt the various ill effects of asbestos, and the need to curb its production and use. The following brief observations should clarify the underlying issues:

a. There is an international move to phase out and eliminate the use of asbestos. Taking note of large number of deaths taking place in different countries WHO document 'Preventing Disease through Healthy Environments' note, "Elimination of asbestos-related diseases should take place through the following public health actions: a) recognizing that the most efficient way to eliminate asbestos-related diseases is to stop the use of all types of asbestos; b) replacing asbestos with safer substitutes and developing economic and technological mechanism to stimulate its replacement; c) taking measures to prevent exposure to asbestos in place and during asbestos removal (abatement), and d) improving early diagnosis, treatment, social and medical rehabilitation of asbestos related diseases and establishing registries of people with past and/or current exposures to asbestos." International Labour Organization (ILO) has passed several resolutions on this issue, the most recent one is a Resolution in June 2006 in its 95th session meet asking for "the elimination of the future use of asbestos and the identification and proper management of asbestos currently in place." The WHO document reports that "To date, more than 40 countries, including all member states of the European Union, have banned the use of all forms of asbestos, including chrysotile."

b. In India too way back in 1995 Supreme Court had directed the Government of India to take cognizance of the resolutions of ILO. In several studies the ill effects of asbestos has been brought out and demands have been raised to ban it or at least restrict its production and use. A bill on Prohibition and use of White asbestos is lying with the Rajya Sabha since 2009. The preamble to the bill points out that white asbestos is 'highly carcinogenic' and that 'more than fifty countries have already banned the use and import of white asbestos'. It notes further that 'Even the countries that export it to India prefer not to use it domestically' and that safer and almost cheaper alternatives to asbestos are available in the country.'

B. Regarding the agitation and the role of state

It was clearly noticeable in our enquiry that the agitation in Marwan was a spontaneous reaction of the local people. Initially villagers gave away their land willingly, but when they came to know about the asbestos factory, they became uneasy and then suspicious. The mode of public hearing reinforced their doubts about the desirability of the factory in their locality. Interestingly children and their textbooks helped them understand the possible hazards, about which they gathered more information and eventually decided to form an organization and launch an agitation to oppose the opening of factory. It was only after the start of the movement that some political groups like SUCI extended support to their movement. While the local movement is still largely being carried out by villagers, outside groups sometimes expressing their solidarity to the cause, the activities in Muzaffarpur and Patna are being organized by urban support groups. If a determined mood of the villagers and their unity are the hallmarks of the local agitation, widespread support of intellectuals and eminent citizens lends strength and credibility to the movement, which has started addressing larger issues as well.

There is an ongoing anti asbestos movement in India, and even at the global level. The national group has provided informational ammunition to the local struggle. In Patna an Asbestos Virodhi Nagrik Manch has been formed consisting of some doctors, teachers, lawyers etc apart from social and political activists. Impressive citizens march against the proposed factory were organized both in Muzaffarpur and Patna. In Patna it took the form of a rally with a large participation of villagers

from Marwan. Already there is an opposition of the other five asbestos plants proposed in the state as per reports available so far.

Unfortunately the response of the state both at the political and administrative levels are unsatisfactory. There has been a silence or evasion of the issue at the political level, while in one way or the other there is evidence of administrative support to the setting up of factory. According to newspaper reports the Chief minister first feigned ignorance about the local agitation, shifted the onus on the central government putting forward the plea that if a ban has to come it is the responsibility of the centre. Even regarding the environmental clearance or permission to set up the factory it was done at that level. He may be technically correct, but the state government comes into picture in many ways and will have to take a clear stand, particularly in the wake of a widespread people's opposition. It has led to building of an agitation which is a law and order problem and a definite responsibility of the state government. The land was wrongly certified as barren land by an official of agricultural department. As for the administrative response the police force sometimes seems to have worked in collusion with the company authorities, and the District administration seems to be favouring them. Despite a clear promise of SDO Sadar (West) to stop the construction work at the site and hold a tripartite meeting, work was allowed to be resumed and no meeting took place. Another disturbing feature has been the general reluctance to meet the delegations of civil society both in Patna and Muzaffarpur. A delegation of very respectable citizens of Muzaffarpur sought an appointment with the DM who reportedly kept them waiting first and then disposed them off standing in the corridor in a few minutes. This attitude is objectionable. After a massive demonstration when a delegation went to see the CM, all that the government conceded was a meeting with a junior Deputy Secretary rank official to receive the memorandum. This kind of response may be on account of an arrogance or some kind of fear of the people, and in either case it does not augur well as it precludes the possibility of negotiation and democratic dialogue. The likely course for an issue on which people are determined to oppose would be some kind of avoidable confrontation at the ground level. It is by no means a feature of good governance in a democracy.

4. Conclusions and Recommendations

A. Regarding Incidents on January 22

- 1.** The initial action of the police force was provocative and uncalled for. They had prior knowledge of dharna being staged and yet they insisted upon trucks to move in forcing the peaceful squatters to allow the entry. The police force was led by Shashi Kant a junior officer and he should be suitably punished for his indiscretion and highhanded behaviour.
- 2.** Subsequent action of the force was also excessive and unwarranted until the arrival of the city S.P. The crowd assembled at the factory gate could have been engaged in dialogue, was clearly established by the later turn of events even as the situation had turned very ugly by that time. It is true that they were uneasy and worked up because continued administrative support to the factory owners. But it will be wrong to infer they were inclined to create scenes on their own.
- 3.** The assault on women, that too by male police personnel, is highly objectionable. Apparently they were soft targets, and the application of force was surely excessive. It was also clear from the team's visit to the sadar hospital that of the 8 injured admitted here, the 4 women were more seriously injured than the men.
- 4.** The FIR lodged by the PSI Shashikant reveals his strong prejudices and attitudes very clearly. He has recounted the later part of events, omitting the early portion of incidents which could have thrown light on the build up of the confrontation. He goes on to assert that people were armed with

'lathis, bhala, tengari, hathora etc', which is apparently with a view to portray the militancy and preparedness on the part of the crowd. From all the enquiry it is not borne out. Further, the FIR suggests that the militant demonstrators (ugra pradarshankari) were indulging in the act motivated by 'commercial jealousy' and they were misleading the ignorant innocent villagers spreading the illusion that asbestos causes cancer. He goes on to insinuate that they were receiving huge money from the professional rivals. These assertions are obviously uncalled for and sustain the allegation of the local people that police force, at least some of them, are acting as the stooges of the company.

5. The people seem to have no faith in the local thana or those stationed in the factory. The people's perception is that the police are only to protect the factory and not listen to both the sides (i.e. the company and local people). This view seems to have been reinforced by the events of December, 2010 when company goons fired on local protestors, but the police only arrested 2 KBJBJSC members and took no action on the people's complaint of the firing by company goons.

B. Regarding the demand of closure of asbestos factory

1. The people's demand for closure of the asbestos factory should be addressed in earnest by calling all the parties involved. Meanwhile the work should stop in the factory. A state level investigation committee may be formed to look into the manner and validity of grant of permission despite objections from the local people. The averment of the factory owners regarding the type of land and proximity of habitations and schools need to be re-examined. The PUCL visiting team noticed that the land is fertile and there are several schools, not one in the vicinity of the site of factory. Persons responsible for wrong certification with regard to these should also be suitably reprimanded.

2. As far as PUCL recommendations are concerned we have no doubts that the asbestos factory should not be allowed to be set up there in view of strong protests of local people as well as clear possibility of ill effects including health hazards for the people residing nearby. However, Balmukund Company may be allowed to set up some agro industries or some other safe industry taking the people into confidence.

C. Regarding the demand of ban of asbestos industry

1. It is time that the demand for ban on asbestos is seriously considered by the central government. Maybe a period of phasing out is decided for the present, making assessment regarding the existing unavoidable requirements and the time which may be taken for substitution by some alternative materials. But surely opening of new factories should be stopped. There is a bill pending before the Rajya Sabha for the regulation of import and use of white asbestos and this should be passed without any further delay.

2. Considering the worldwide move for a ban on asbestos it will be unwise and a misplaced idea to promote factories of asbestos in the state of Bihar. It is reported that as many as six plants are coming up in Bihar, the Marwan being in the most advanced stage with largest capacity. Others are proposed in Madhubani, Chapra, Vaishali, W. Champaran and Bhojpur. PUCL recommends an immediate stoppage of the work at all the places. Bihar can not be made the dumping ground of hazardous production exposing the people here to all kinds of risks, because they are poor.

D. Regarding the State policies on industrialization and development

1. After decades of economic stagnation Bihar is supposed to have started its pursuit of development and growth. A high rate of growth, higher than the national average, is being claimed and the level of public investment has increased manifold. This is expected to spur private sector investment as well and beginning of a new phase of industrialization. But meanwhile the world has moved ahead,

particularly during the past two decades of liberalization and globalization, accompanied by vast technological changes. All of this has thrown up in new problems, while opening up new possibilities, which need to be carefully appraised in the specific context of Bihar.

2. Agriculture continues to be the mainstay of Bihar economy, while given the high density of population in the state, the pressure on land is heavy. This brings up the problem of protecting fertile land from encroachments by industries or other profitable economic pursuits. Hence clear policy framework is required both for industrialization and land use, including the issues relating to land acquisition. The developed countries and even developed states in our country are reluctant to allow industries with adverse ecological impact in their own land, preferring outsourcing of such production until substitutes are available. Asbestos is such an item which is already banned in many countries. A state like Bihar has to guard against dumping of such industries here, even if there is a keen desire in the official quarters to attract private investments. Before it is late we have to realize the need and importance of protection of environment and preservation of natural resources like land, water or greenery. Marwan episode has to be appraised in a holistic perspective, and does provide an early warning as to the problems of misplaced zeal of industrialization. Greater care is needed and the state will have to intervene to ensure that industrialization is promoted in a manner which does not harm the people and causes the least injury to environment.

3. As a matter of fact the model of development being pursued in the state currently seems to follow the same course that started two decades back in India and taken up vigorously in some of the relatively developed states like Gujarat or Maharashtra or backward states keen on development like Orissa or Andhra Pradesh. This strategy of development however has been opposed by many for their inequitable exploitative character, and there are people's movement noticeable particularly in the backward states. While Bihar is poised for growth, it has to carefully work out its strategy of development keeping in view the large poor population of the state and its precarious control over natural resources. After all development is meant for human beings and in a democratic country it is all the more necessary to respect the views and interests of the bulk of the population while designing policies.

Whatever is happening at Marwan is of larger significance than one off local problem at this point of time in Bihar. The present government will be well advised to appreciate the complexities and lay down clear policies with regard to industrialization as well as development. Development is a matter of human rights, and no less. It is time that the government accepts this fact.

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