

# Ethics in Action

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**Cover image :**

The security guards of a landowner in Hacienda-Velez Malaga in La Castellana, Negros Occidental shot at farmers protesting for their right to land on 4 June 2007, killing Ely Tupas and Alejandro Garcesa, members of Task Force Mapalad. This incident happened a year after capital punishment was abolished in the Philippines.

*Photo by Jimmy A. Domingo/Task Force Mapalad*

Picture on bottom left: Picture of 'Bong' Reblando and his daughter Maria

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# CONTENTS

<b>Tribute to Rashid: Your life and death</b>	
<i>Danilo Reyes</i> .....	3
<b>New 'principles' for state authorized killings in Asia</b>	
<i>Basil Fernando and Bijo Francis</i> .....	6
<b>My struggle for justice: Living in fear and uncertainty</b>	
<i>Myrna Reblando</i> .....	13
<b>No freedom of expression in Pakistan</b>	
<i>Baseer Naveed</i> .....	15
<b>Inter-religious integration – Inclusion not intrusion</b>	
<i>A reflection by Bishop Duleep de Chickera</i> .....	19
<b>Bangladesh: UN rights experts appeal to all sides to immediately stop the ongoing violence</b>	
<i>United Nations</i> .....	22
<b>POETRY</b>	
<b>Us and the modern monsters</b>	
<i>Basil Fernando</i> .....	25
<b>Unappreciative of the advantages of publicity</b>	
<i>Basil Fernando</i> .....	27



# Tribute to Rashid: Your life and death

Danilo Reyes

*Davao City's former mayor, Rodrigo Duterte, is running for election again in May 2013, despite being complicit in the extrajudicial killings that continue to haunt the city. One such killing was that of Rashid 'Jun' Manahan in 2004. Mayor at that time, Duterte had ordered the police to conclude its investigation into Manahan's death promptly, but the investigation never led to any prosecution or punishment of his killers.*

Rashid, your death did not put an end to what you worked for in your time. Rather, it tested those who should have carried forward your kindness.

I can still remember clearly how we pledged solidarity with others at a beach resort in Davao City, now known as a violent place for beachgoers to go. There was where you, I and others signed a pact of our brotherhood. It was not in blood, as our ancestors' custom, but it was real.

Your thoughts about the denial of rights to construction workers in General Santos City—where you and I planned to do community organizing in assisting workers fight for their rights—left an imprint on my heart and mind. We were young, so inspired and so ambitious, and we often forgot to think of ourselves. While at the beach resort, it never occurred to me that a few months later would be the last time I saw you.

My last memory of you, the last time I saw you, was when you came to my office to speak to a colleague. I was lying in a corner under a table, exhausted, resting and trying to catch sleep after a long day's work. Your feet, your voice and footsteps while I was lying on the floor were my last memories of you. I regret not forcing my exhausted body to rise up to speak to you. I never saw you again.

Later on, I heard how you were shot in Davao City while you were organizing a meeting in August 2004 for the abolition of the death penalty in the Philippines. My mind froze. I was speechless, I could not think, and I struggled to find words that I wanted to say. I learned you were with a colleague when you were shot. She was an eyewitness of your murder. But even she was so frightened to talk openly about how you died; too scared to testify for the prosecution of your murder.

Just days after your death, after only a short-lived condemnation, it was ‘business as usual’ for the NGOs and groups in Davao City. It is not really so surprising though; extrajudicial killings in our city were routine, and you, like many others whose cases remain unsolved, were another body added to the ongoing killing phenomenon.

Your colleague, I learned later, could not even travel to the place of your killing, Davao City. Now, the place where we spent our university, where we conceived our socio-political ideas, where we shared our dreams, is the place most people outside Davao are too frightened to be in. When I was asked to carry her testimony from Manila to be given to the special investigating body, I could not understand why I was asked. I simply took the documents I was asked to give.

I was told it was her testimony regarding how you were killed in her presence. I had no idea what was written on it. I did not ask her why she could not give it herself to the police investigators. Probably, I was so ignorant or naïve as to what was happening then.

I did it for you, not for her. For other people to know what happened that day; what has happened and how they murdered you. Also, I never thought I would end up replacing you at your vacated post: advocacy officer against the death penalty. I was later told that no one applied for your post. They were apparently too frightened that what happened to you would also happen to them. Taking over your job made me understand you more; your aspirations and your dilemmas. It also let me know who was there for you, the real, kind people.

During my term, I saw how people—regardless of their commitment—could stoop to such low levels in their personal lives. I was there, trying to carry on what you had left, but politics and unprofessional behavior I could not stand. I regret that neither me nor your group, were able to continue pursuing your case, nor carry on the work you were doing.

To this day, I’m still wondering why people, even activists, sometimes make their personal interests a priority over truth, solidarity and rights protection.

Writing this tribute gives me some small comfort—to share my reflection on your life and death, so that at least some people would gain a different perspective from reading it. Nothing can alleviate the guilt and sadness I feel at the lack of progress and public interest in your case.

Years after your death, in May 2006, another person not close to me questioned your integrity and kindness, telling me that your death was personal, a ‘love triangle (a crime of passion)’, which was why they did not intervene in your case. Your death was personal, not political. Even at that time, I was helpless to defend you. My deepest apology, Jun.

How could I defend you when your colleague, an eyewitness to your death, did not openly talk about how you were killed? I was not even able to read her testimony that she asked me to give to the police. After I ceased working as your replacement—advocating against the death penalty—there was no possibility for me to understand more about your death. Until today, I continue asking the question, ‘why did it happen?’

To the best of my knowledge, the investigation into your death never concluded whether your death was of personal or political reasons. However, to justify their reluctance, unwillingness and refusal to intervene in your murder, people have already made their own conclusion. I know someday I would know what really happened to you. When the time comes, I will speak for you—whether your death was for personal or political reasons does not matter to me. The fact is that no one was punished and no justice was done.

You were like many other humans who perish in Davao, never seeing their day in court. Somebody just decided to take their life away. They die in broad daylight, in public and crowded places and even in their own homes. They were called menace of the society, bad eggs, drug addicts and trouble makers. You were also portrayed as such.

If being an activist like you is a menace, as perceived in our society, this kind of society doesn't deserve to have your kindness as a person. Kind and good hearted individuals like you, and the hundreds of other human rights and political activists who have perished in our country in the recent past. I know their deaths did not go in vain, but I hope our people will some day recognize their contribution. You suffered, in your time and in your death, because you and other people like you wanted to have a better society for us to live.

# **New 'principles' for state authorized killings in Asia**

*Basil Fernando and Bijo Francis*

Prohibition of the death penalty is one of the most prominently debated subjects in the world. In the Asia-Pacific region, Australia, Cambodia, East Timor, Hong Kong, Kiribati, Marshall Islands, Micronesia, New Zealand, Nepal, Palau, Philippines, Samoa, Solomon Islands, Tuvalu and Vanuatu have abolished capital punishment. Out of these countries, Australia, East Timor and New Zealand have ratified the Second Optional Protocol to the International Convention on Civil and Political rights, abolishing the death penalty. Countries like Brunei Darussalam, Burma, Fiji, Laos, Nauru, Papua New Guinea, Sri Lanka and Tonga, though they have not abolished capital punishment, do not execute death sentences. China and Singapore ideologically defend the death sentence as a proper punishment. The rest of the countries execute death sentences in what they call 'extremely grave and in the rarest of rare' crimes.

The stand taken by countries in Asia on the death penalty however, is not an accurate measure of their stance on killing as a way of punishment. In fact, governments of several countries have authorized killing as a punishment on a very large scale. For such executions by state agencies, a prior sentence of death by a court of law is dispensed with. Agencies such as the police, the military, various paramilitary groups or even persons who do not officially belong to any state agency are authorized to carry out executions on behalf of the state.

Under these circumstances, the debate about the death penalty sometimes appears to be irrelevant; despite whatever policy adopted on the death sentence, states kill those considered deserving of death through means other than court verdicts. There is in fact, a new debate occurring, although not in the open. The debate is on which persons the state has the right to kill. Different countries have different views on who can be killed. There seems to be a general consensus that brutal terrorists may be executed by the state agencies, although there is no clear definition as to who might be a brutal terrorist. It appears that state agencies are allowed to decide this on their own, on the basis of facts and criteria known only to them. However, there is usually no written validation of this policy; no head of state will openly admit that such a policy exists.

There appears to be a trend now, to have policies that are not openly articulated or subjected to any legitimate approval. This new kind of policy making is based on the assumption that political wisdom or the wisdom of statecraft requires killing without

leaving any traces. The basic premise is that not everything can be done according to the law. Indeed, it may even suggest that it is dangerous to follow the principle that everything should be done according to the law; practical political exigencies require that the law be dispensed with at times and if this position is not adopted, the state may have to face many evil consequences.

State agencies carrying out killings without any court verdicts ordering them is also based on this overall political philosophy doubting the wisdom of the principle that all actions of the state should be carried out within the framework of the law. In the case of terrorism, the argument is that since terrorists operate outside the law, in dealing with them state agencies should also be allowed to operate outside the law.

Another category of persons allowed to be killed by state agencies, who may not be terrorists, are those identified as bad criminal elements. Encounter killings is one manner of approved killings by state agencies without any trial or court verdict. As in the case of terrorists, there is no criteria to judge who is a bad criminal undeserving of the right to a fair trial. Such definitions and decisions are left to the subjective assessment of whichever state agency is carrying out the killings.

The secrecy observed over such killings by state agencies protects higher authorities, including political authorities. They can always deny they had prior knowledge or that they approved any of these killings. If there is a scandal, or, as on some rare occasions, these killings are exposed, then the culpability would be placed entirely in the hands of those who carried out the executions. At this point, such killings would be treated as extrajudicial killings. The point of such punishment is to keep clean the hands of the actual policy makers and others who created the possibility of such executions, and who placed the responsibility of carrying out such executions on the actual executioners. It is therefore crucial that policy makers and other relevant authorities be held equally—if not more—responsible as those carrying out the executions, since executioners would not kill if the policies did not exist.

In talking about these killings outside the framework of legally approved procedures guaranteeing fair trial, we are talking about not a few exceptional cases, but large scale killings.

Despite the large scale of this practice, the international community including the United Nations human rights agencies, have not paid adequate attention to this problem. The international discourse on the death penalty is for the most part limited to the prohibition against the carrying out of the death sentence (which assumes that the right to a fair trial has been respected), or what are called extrajudicial killings, where the killings have been carried out without the apparent approval of the state. What the international

community has not paid attention to, is that when the state allows its agents to kill, the liability of such killings is not only on the particular officers, but the political authorities themselves. The discourse on impunity is too often confined to governments not taking actions to bring the killers to justice. Exposing political authorities however, and bringing them to justice, is possible only in the rare instances that international tribunals are established and everyone involved is brought before them. However, politically authorized or approved (directly or tacitly) killings are not infrequent occurrences.

The UN should seriously consider developing means to hold states responsible for tacitly approving killings under the pretext of the elimination of terrorism or the control of grave crimes, or any other pretext. Failure to address this issue not only endangers the lives of many persons, but also undermines the very idea of the rule of law and human rights.

The following 'principles' seem to have emerged in several Asian countries regarding killing outside the legal framework:

1. Killing for the purpose of deterrence is acceptable. Deterrence requires the creation of fear and summary killings have more potential for creating fear than any other kind of punishment. Therefore, the use of this mode of pursuing deterrence is not only deemed acceptable, but unavoidable.
2. The agencies to decide on who is to be killed for the purpose of instilling fear in others may be any agency dealing with security, such as the Ministry of Defense or agencies such as the police, military, paramilitary and intelligence agencies. There is thus no need of prior sanction by way of the person being found guilty after a fair trial by a competent court (virtually like the Cheka in Soviet Russia under Stalin).
3. Suspicion is sufficient grounds for arrest, detention and execution. Strict proof is not necessary, and nor is it possible when the right to fair trial is denied. Subjective judgments are considered valid.
4. It is accepted that there may be a mistake in identifying suspects. In fact, it is inevitable that many initial assessments of suspects may be wrong. This is unavoidable however, in pursuing killings as an effective means of deterrence. This policy is the very opposite of that found in criminal law, according to which it is better to let many go free than to punish one innocent person. In actual practice, large numbers of persons who are killed may be found innocent later.
5. No records need to be kept of the complaints, reasons and details of arrest, the interrogation and the manner and details of the execution. These matters are to be kept top secret and subsequent demands for enquiries are seriously resisted.
6. A comprehensive doctrine of impunity—to enable such killings—is developed and practiced with the approval of the highest political authorities.

Killing outside the legal framework occurs in several ways in **Bangladesh**. The law enforcement agencies and security forces, including the paramilitary forces and the armed forces, constantly execute crime suspects in the pretext of 'crossfire', 'encounter' or 'gun-battle'. Apart from this pattern of extrajudicial killings, state agents abduct persons from various places, including streets, business centres, shopping malls, and even homes, leading to their disappearance. The number of enforced disappearances is increasing in the country in recent years. In the last few years, there have been many incidents of dead bodies disposed in big rivers, mostly late at night or early in the morning. It is believed that state agents have been committing 'secret killings' after abducting persons, as no initiatives have been taken by the state to either identify the victims or the perpetrators. The country's primitive forensic science examination system barely identifies any victims. This situation leaves the families of missing persons to wait endlessly without knowing the fate of their dear ones, while secret killings and disappearances continue taking place. Complaints of extrajudicial killings are routinely denied registration by the police whenever law-enforcing agents are named as perpetrators. The possibility of obtaining justice for the victims thus remains almost impossible in Bangladesh.

'Encounter killings' by state agencies have been one of the most serious problems in **India**, with even the country's courts commenting on this at times. An association was recently formed called the Extrajudicial Execution Victim Families' Association, to support those who have lost family members through such killings.

In several instances, it has been revealed that the killings were done on the basis of mistaken identity. Those identified to be killed are usually termed by the police as 'hardened criminals'. The government has given tacit approval for such killings and the proof of this approval is the failure on the part of the authorities to take firm action to stop the practice. Another category of killings by state agencies is in areas such as the northeast, the states of Chhattisgarh, and Jammu and Kashmir. These include enforced disappearances and killings after arrest.

Recently a case was filed in the Supreme Court, where the petitioners, in (Criminal) Writ Petition 129 of 2012, alleged that between May 1979 and May 2012, 1528 persons were killed through extrajudicial execution in Manipur. The petitioners provided the court with two lists, in which details of 51 cases are provided, indicating that extrajudicial execution is widespread in the state.

While dealing with the case the Court said: "...the present case appears to be one where two persons along with some others were just seized from a hut, taken to a long distance away in a truck and shot there. This type of activity cannot certainly be countenanced by the courts even in the case of disturbed areas. If the police had information that terrorists were gathering at a particular place and if they had surprised them and arrested them,

the proper course for them was to deal with them according to law. ‘Administrative liquidation’ was certainly not a course open to them.” The Court was citing from its own jurisprudence, laid down as early as 1997.

That this ‘administrative liquidation’ continues by the state 16 years later, clearly indicates that the gravity of the problem is not addressed and there are no common efforts, either by the government or the parliament to deal with this issue. International agencies have also not paid adequate attention to this issue.

In **Indonesia**, individuals at risk of being summarily killed by state agents are those considered to be criminals, suspected of crimes with various degrees of severity. These could range from theft to terrorism, although those who are terrorist suspects are at a higher risk of getting arbitrarily killed. The 88 Detachment—the Indonesian National Police’s counter-terrorism unit—is often referred to as ‘the death squad’, given its notorious track record in executing terrorist suspects during raids.

The killings are typically followed by a police denial on the arbitrariness of their action, and a claim that it was justifiable for the sake of law enforcement. The police would say that the victims were either posing a threat or resisting arrest, so shooting them to death was inevitable. In last year’s killing of Papuan pro-independence activist Mako Tabuni for instance, the police claimed that Mako was attempting to take away the police’s guns, whereas witnesses testified that Mako was unarmed and did not pose any threat. Despite the discrepancy in the information delivered by the police and the witnesses, finally it was the police’s unilateral statement that prevailed. Police action cannot be challenged however, as Indonesia lacks any independent review mechanism to assess the necessity and proportionality of the measures taken by them.

In the **Philippines**, the death penalty was abolished for the second time in June 2006. Before it was abolished, former President Gloria Macapagal-Arroyo commuted the death sentence of a large number of convicts to life imprisonment. During the same period however, extrajudicial killings by the security forces reached a peak in the country’s history. In fact, the total number of victims extrajudicially killed were larger than those recorded during Marcos’ period.

The targets of these extrajudicial killings were firstly, human rights and political activists, including those who campaigned for the abolition of the death penalty. While there is no proof that these extrajudicial killings were a ‘state policy’, the government’s failure to stop them has encouraged their perpetuation. Secondly, targets were ordinary persons. There is a systematic practice of extrajudicial killings or ‘vigilante style killings’, notably of those either involved or suspected of being involved in the illegal drugs trade, as part of normal law enforcement to keep peace and order. These types of ‘vigilante-style killings’

are common in Davao City, where locals also tolerate public executions. Despite evidence of complicity by local leaders, notably by local politician Rodrigo Duterte, neither he nor those acting on his orders were punished. The Dutertes have retained their strong influence in local politics.

In fact, the Dutertes style of law enforcement had been seen as a 'model' by politicians of other local governments for its maintenance of order, notably in cities of General Santos, Tagum and Digos, in Davao City. When local politicians in these places are asked to comment on 'vigilante killings', they just pay lip service in condemning it. They have not, in fact, taken strong action to prevent the killings and punish those involved.

While it is commendable the death penalty has been abolished in the Philippines, the ongoing phenomenon of extrajudicial killings and 'vigilante killings', where the execution is done outside the law is even more alarming, because law enforcers and the politicians are complicit to it. This widespread and systematic phenomenon of extrajudicial and 'vigilante killings' is even out of the government's control, who has a responsibility to protect its citizens.

In fact, in cases of death penalty, the convicted person had some sort of remedy because the state is expected to observe due process and fair trial before any execution is carried out. But for executions outside the law, the victims of extrajudicial and 'vigilante style killings' are executed without being heard.

In **Pakistan**, thousands of people are killed by "unknown persons" every year. In Karachi alone, more than 2000 persons were killed during 2012 in this manner. The First Information Report (FIR) filed at the police station always mentions that this person was killed by unknown killers and after that the FIR remains open and anyone can be implicated in the case.

In Balochistan, more than 8000 persons were disappeared, with only some hundred persons recovered; the rest were killed by the state, but the government claims to have no responsibility for the killings. While abducted persons are no longer kept for a long period of time, their tortured and bullet riddled bodies are found on the road side. This practice has become very common in the Sindh and KP provinces. Most of the country's extrajudicial killings are conducted by state intelligence agencies, which always remain invisible and out of reach of the law and courts.

There are more than 8000 persons on death row since September 2009 when the government stopped carrying out executions, but the extremist forces do not allow the government to enact a law against the death penalty. According to Sharia jurisprudence, a society cannot be made pure or righteous without the imposition of strict laws

including death sentences, amputations and lynching. Pakistani society draws its religious inspiration from Saudi Arabia's way of governance, where every Friday many persons were executed without any kind of fair trial. These practices are done in the name of controlling law and order.

In **Sri Lanka**, since 1971 over 100,000 persons have been killed after arrest. Most of these instances are reported as enforced disappearances. Despite recommendations by various government appointed commissions, no government has taken any serious action regarding deaths caused by way of enforced disappearances. This failure to take action is a clear indication that the policy of arrest and execution has been politically approved, and is also approved by high ranking officers of the police, military and paramilitary organizations. Apart from enforced disappearances, extrajudicial killings also occur by way of 'self defence', in which police or paramilitary groups report that criminals attempted to escape from custody. In recent years, the killing of persons labeled hardened criminals has also become a frequent occurrence. The policy of impunity regarding all such killings prevails and this policy has come under criticism from UN agencies and other international groups. The government however, ignores all such criticism.

# My struggle for justice: Living in fear and uncertainty

Myrna Reblando

Good day everyone.

My husband, Alejandro “Bong” Reblando, was one of the 32 journalists murdered in the Maguindanao massacre in 2009. At the time of his death, he wrote for the Manila Bulletin, Reuters and the Associated Press.

I’m one of the complainants of the multiple murders against the Ampatuans, a powerful political clan in Mindanao; and the police, military and paramilitary forces who aided them in the mass murder of journalists. For two years, in pursuit of seeking remedies and redress for my husband and other victims, I openly criticized irregularities of how the police investigation, the prosecution and courts handled the case.

As a result of my intervention, I had become the target myself by those I had prosecuted. A bounty of 3 million pesos was placed on my head in exchange either to silence me or the dropping of the murder charges. To protect myself and my family, I promptly asked for protection from President Benigno Aquino III; however, one of the escorts deployed to me was himself a former bodyguard of one of those who masterminded the massacre.

Although I am a complainant and the risk to me was real, I had no adequate protection. I could not qualify for protection under the government’s witness protection program even though I helped the prosecution, encouraging witnesses to come forward. I was told that I am not a witness myself. Thus, the protection given to me was unofficial and *de facto*. I did not know it was the case.

In May 2011, I decided to leave my country. I feared that should I remain in the Philippines, neither I nor my family would be safe. My death could also undermine the complaints I have filed in court.



Myrna and her daughter, Julia Mae

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This is the speech given by Myrna Reblando to a UN side event in Geneva organized by the AHRC in September 2012, on the same day that the Philippines was being examined under the UPR. Unfortunately, the Hong Kong immigration department has recently dismissed her and her daughter’s torture claims under the Convention against Torture. For more information on Myrna’s case, see <http://www.article2.org/mainfile.php/1102/419/> and <http://www.article2.org/mainfile.php/1102/418/>.

Now, to live a life in hiding in another country has been very difficult for me. To be away from my loved ones, to hide, have never been easy. I want to go home but I fear that not only me, but the safety of my children and relatives would also be at stake.

In fact, my children who remain in the Philippines have had threats and been the object of overt surveillance at our home in General Santos City, Mindanao since November 2011. They reported these incidents to the local police; however, neither were they given adequate and immediate security protection, nor was their complaint of surveillance investigated.

It was painful to leave my children, for them to live without me. Like me, my children also fear, suffer trauma and deep hurt from the loss of their father. I have asked myself: how long would I and my children have to endure these pain, fear and uncertainties?

How long do we have to wait that all those responsible for this senseless mass murder would be arrested, detained and punished? Because many accused have remained at large, complainants, witnesses and families of the victims, have since been vulnerable to attacks. Apart from me, some others have left the country, their hometown and some now consider accepting the huge bribe in exchange of dropping the murder charges they filed in court.

My struggle for justice is not only for my husband, but also for all the Filipino people who continue to dream and aspire for justice and equality. I do feel guilty sometimes and ask of myself: why did I have to leave my family, why leave my country?

Uncertainty in my life sometimes now is too much to bear. I'm seeking protection from another country because my own country, which claimed to have upheld protection of fundamental rights, could not protect me.

I fight on my own and far away, as a mother to my seven children, I also have to keep an eye on my children. I realized that this is not just about me and my children. This is a quest for Filipinos in our aspiration for possibility of remedies and redress for our loved ones and victims of human rights violations in my country. If nothing would come of my pursuit for my husband's and other victims' case, there is no any prospects for other cases of human right violation to obtain any sort of remedies. It would be bleak.

Living a life that I choose to live now is very hard—away from my own children and in hiding; however, if this is the reality that I have to accept to hope for a possibility that those who murdered my husband and other victims would be punished, I choose not to surrender. I worked hard with my own capacity for what I know is right. This is my life and I have to come to terms with this.

Thank you.

# No freedom of expression in Pakistan

*Baseer Naveed*

Freedom of expression is today at its lowest in the history of Pakistan. In fact, the Pakistani people have never enjoyed freedom of expression. During the last decade or so, various governments have claimed that they have given freedom of expression to the media. This is not borne out by the number of journalists that have been killed or tortured, or who have struggled as victims of unemployment due to working to the dictates of their conscience rather than the self-censorship the government and media houses would like to see. A point of confusion is the comparison of freedom of expression with the freedom of the media houses. The two are actually completely different and far distant from each other.

In fact, much of the self-censorship comes from the media houses themselves, as they do not wish to draw the ire of the government, judiciary, the armed forces, and particularly, the Muslim fundamentalists. The voices that really need to be heard, those of the peasant farmers and industrial labourers, are sadly ignored and silenced by the media, whose sole purpose is to gain advertising revenue. It is no secret that the media houses are 'driven' by the armed forces through their Inter Services Public Relations office. The armed forces and the judiciary—its poodle—neither of which have ever served the nation, have both been given the status of a sacred cow by the media. The fact that the media houses seldom allow any real criticism of the military or religious extremists is proof that freedom of expression does not exist.

The restriction on the freedom of expression may be dated back to the very creation of the country. Pakistan was created on 14 August 1947, and the father of the nation gave his inaugural speech three days earlier on August 11. It is interesting to note that the speech of the Governor General-to-be, Mr. Jinnah, was itself censored. The censored parts were purely secular in nature, with Mr. Jinnah saying, "You are free; you are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion or caste or creed that has nothing to do with the business of the State." He further said,

Now I think we should keep that in front of us as our ideal, and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State.

Two years after the creation of Pakistan, a resolution entitled the 'Objective Resolution of Pakistan' was passed, which declared that sovereignty lay with Allah. This later became part of the constitution and denied the people the right to democracy and created guidelines on the restrictions for the freedom of expression and the freedom to practice the religion of your choice. The country was declared a theocratic society where only Islam can prevail. A clear demarcation was made between the majority and the minority, with all rights recognized for Muslims and no rights for those who were not Muslim. The concept of equality for various sections of the society was supposed to be determined on this basis.

Again, through the 1973 constitution, which was the first time anything was passed unanimously, the state took the responsibility to decide who is Muslim and who is not by making the fourth amendment in the constitution, where the Ahmadis were declared as non-Muslim. This amendment further encouraged pressure groups such as the Muslim fundamentalists, to take the responsibility of declaring who were Muslims and who non Muslims.

Although the Objective Resolution was initially part of the constitution's preamble, during the military regime of General Zia ul Haq it was incorporated into the constitution itself. Limited minority rights given in the original Objective Resolution were also deleted. General Zia made three famous laws, the Blasphemy laws, by inserting clause B and C, Qisas and Diyat, through which the evidence from women is denied and the Hadd ordinance. So the rights of women and religious minority groups were denied.

This has resulted in self censorship of the media as the rules and regulations concerning the Blasphemy laws are not being adhered to: while the law stipulates that the arresting and investigating officer must be of the rank of Superintendent of Police, in fact people are being arrested by the mob, and if they are lucky, handed over alive to any police officer present.

The media is extremely careful about what they say regarding the religious extremists as they can expect no protection or support from the authorities or judiciary. This was evident in the cases of the assassinations of the governor of Punjab, Mr. Taseer and the Federal Minister on Religious Minorities, Mr. Bhatti where the perpetrators of the violence have either gone unpunished or are being treated as heroes. Even lawyers, meant to be protectors of the law, came out in support of the assassins, blaming the victims for blasphemy.

Although Pakistan's Blasphemy Law is not the subject of this particular article, I mention it because it has a direct effect on the freedom of expression: while the constitution of Pakistan guarantees freedom of religion, the actual situation in the country is very

different, and any media person or company speaking out in support of the minorities soon faces attacks ranging from hate speech to physical violence, and even death.

The Blasphemy Law has been made a killer. If any person is accused of blasphemy, particularly on the charges of defiling the name of the last prophet (PBUH), he has to face the death penalty from the law or state, and if not, then fundamentalists will murder him. In a case of two Christians who were sentenced on section 295 B of the Blasphemy Law, they were released by high court Justice Arif Bhatti as they were illiterate scavengers. After their release they left Pakistan but the Justice was murdered for releasing the blasphemers.

One session court judge had to leave the country when he gave the death sentence to the killer of the former Governor of Punjab. Fundamentalists announced that he was liable to be killed because he had given punishment to the hero of Islam. The Governor of Punjab was murdered because he used his right of freedom of expression in support of one Asia Bibi, who was sentenced on blasphemy charges.

In fact, freedom of expression is also limited by the constitution, which declares the Ahmadis as non-Muslim. The constitution on one hand thus declares the freedom to practice the religion of your choice, but on the other hand places the Ahmadis in a position that leaves them open to attack by the fundamentalists. Any media house coming out in their support or criticizing the fundamentalists, are liable to the same degree of violence as the Ahmadis themselves.

The media is also suppressed by the military when they attempt to report on the nexus between the armed forces and the militant jihadists. One report noted that during 2006 about ten journalists were kidnapped by security forces apparently belonging to military secret services, while performing their professional duties. The report also revealed that the very few journalists based in tribal areas in Balochistan are caught in the crossfire between security forces, jihadist militants and tribal chiefs fighting each other to control the area.

Another area which is strictly forbidden to journalists is reporting on the corruption of the politicians, the military and the judiciary. These institutions have become sacred cows, untouchable by anyone other than their own hierarchy. Any journalists brave enough to highlight this corruption are liable to face the same fate as Mr. Taseer and others.

Often the freedom of expression is restricted on the pretext of vulgarity, morality and obscenity, three items that have never been clearly defined in the law or by any court. This does not deter the authorities however, or those with vested interests and the media houses, from promptly making use of these to enforce self censorship.

In an attempt to define these issues, the Pakistan Electronic Media Authority called for a consultative conference to discuss them. However, no one turned up so they have arranged another conference for later this month. It is hoped that by mutual consent they will be able to put forward proposals to the apex court of the land.

Therefore, it can be seen that through the country's constitution and laws, there are many restrictions on the freedom of expression and freedom of media. The "Official Secret Act of 1923" is still operative. Anything which the state thinks is prejudicial to the interest of the state or against the state is to be tried under this act. Classified matters cannot be published or even spoken of. The Safety and Telegraph Acts are also used for curbing the right of freedom of expression. The Newspapers, Periodicals and News Agencies Ordinance 2002 is still in force, according to which no periodical or newspaper can be printed unless given permission by the ministry of information. This is a clear violation of article 19 of the ICCPR, as well as the constitution of Pakistan. PEMRA is a regulatory body which gives out licenses for the production of any type of electronic channel; permission for this has to be taken from the government. It is not like Europe or the USA, where any person or organization can make their own radio or TV channel.

After military rule ended in 1985, pressure groups and fundamentalists took on the state's role to implement their own rules, as well as its tactics of coercion and intimidation. The role of the government has thus been reduced to a minimum.

Contempt of court is another method of restricting freedom of expression. While the government says there is no law regarding contempt of court, the Supreme Court relies on the Contempt of Court Ordinance of 2004 to minimize freedom of expression, particularly when it comes to the decisions of the court.

There is a draft law on freedom of information in circulation, but it can be termed as mere lip service to show that something is being done. It does not define who will decide what is secret and what is not. Contrary to global practices, the government has kept everything secret until it is declared to be made public. The data collection and maintenance mechanisms are very poor in Pakistan.

The draft law allows the government and its agencies to classify anything they want to be exempt from being made public, without explanation as to why they are doing so. The procedure to declare something secret has not been revealed. And the big question, is who exactly is authorized to declare anything secret?

The constitution declares quite clearly that Pakistan is an Islamic country. Therefore, quite simply there is no freedom of expression as the country is run purely on a religious basis.

# Inter-religious integration— Inclusion not intrusion

*Bishop Duleep de Chickera*

Over the past months Sri Lankans have been educated on two Arabic words: halal and haram (that which is *permissible and not permissible*). Unfortunately, the circumstances of learning have been an unprecedented antagonism towards the Muslim community, going much deeper than the halal issue. This trend must be addressed without delay by the government and all religions before it spirals into a much wider conflict, which the country can ill afford.

The government's responsibility is to do what all governments are mandated to do: ensure the prompt implementation of law and order without fear or favour to any. This should include steps to curb the provocation of religious animosity and ensure the security and dignity of the Muslim community, which has been an intrinsic part of the nation from well before the ninth century.

That this has not happened is worrying, since the government is more than capable of restoring order. It consequently suggests that there is an anticipation of political gain in the campaign against Muslims. If this is the case—and the weight of the foremost authority appointed to protect all is seemingly behind a divisive sectarian force—an afflicted minority has every right to feel betrayed. In this state of vulnerability they have an equal right to expect goodwill and solidarity from their neighbours of other religions in particular.

That this too has not been substantially demonstrated is an equally disturbing feature of today's multi-religious society. More than anything else, it points to the failure of moderates of all religions, including Islam, to fulfill certain essential obligations that feed inter-religious integration. These obligations are:

- That moderates of all religions should sustain mutual relationships of friendship and trust in times of tension as well as in harmony.
- That moderates should together discern how best the adherents of any one religion are to be free to live by their core teachings and practices, integrate with other religions whose freedom to live by their own teachings and practices is to be recognized and upheld, and find a dignified way forward when these interests run into conflict.

- That moderates should welcome the distinct presence of the other, gather the liberating resources that their respective religions offer and strive together to eliminate humankind's common life-threatening enemies such as poverty, greed, violence, abuse, discrimination and so on. (We have done this with ease in the areas of food, dress and music. But it has to spread to include moral values and spiritual insights that impact on the socio-political quality of life as well).
- That moderates should sustain a restraining dialogue with those within their own camps whose categorical views and behaviour are likely to hurt the religious sensitivities of others.
- And that moderates should engage in self-scrutiny; keep an ear to the ground and an ever vigilant eye on any provocative or offensive message that the practice and behaviour of their respective communities may convey to others, no matter how sincere the intention may be.

It is precisely a disinterest and bankruptcy in the potential of these obligations that has polarized, paralyzed and prevented the religions from anticipating the emergence of the current anti-Muslim campaign and arresting its escalation.

A conversation in the Bible between Jesus and a group of people addresses this type of stalemate. Jesus is informed of an act of political violence in which Pilate has massacred 30 persons from Galilee (the socially cosmopolitan and politically restless region in Palestine). He immediately vindicates those massacred, leaving his listeners to guess who then was guilty, refers to another incident of violence to indicate a trend in sectarian violence and promptly calls his listeners, who imagined they were neutral and safe, to "repent" lest they also "perish" (Luke 13.1-5).

The point is clear. None remains neutral when sectarian violence becomes a trend. All inevitably get sucked in as victims or violators, whether active or passive. So all, including those who think they are neutral, are to repent. They are to stop, take note of happenings, look within, examine their inner motives in relation to the highest values of their religion or ideology and reemerge with a reconciliatory stance.

At the height of the anti-conversion tensions towards the middle of the previous decade, the Congress of Religions refused to remain neutral. As it engaged in intense reflection on the issue, the complex task at hand became clearer. This was to recognize the crisis, take responsibility for the insensitive behaviour of some within its respective religions, honour the teachings of its respective religions, safeguard the democratic freedom of choice and stay together through it all. The reconciliatory outcome was a proposal for a national

inter-religious council as an alternative to legislation, with authority to address inter-religious tensions and more, as well as build inter-religious goodwill and trust.

In hindsight, one wonders whether if this proposal had been implemented by the then government, the current anti-Muslim campaign would not have been sensed and dealt with in its early stages; at the table and not on the streets.

At a recent inter-religious conversation, a participant turned to the others and invited a critique of his own religious community in order that it may engage in self-correction. This type of question usually says more than is asked and has a lesson for all. Each is privileged to learn from the other about one's own religious behaviour. But this can only happen when sufficient goodwill and trust has been built and the religious 'other' is invited with respect from the periphery into the middle of the discourse.

Living with integrity with other religions is never a betrayal of one's own; rather it exposes the superfluous and sometimes harmful beliefs and practices that have accumulated within our respective religions over the years. From here the courage to discard these excesses ironically draws us back to the core of our own legitimate beliefs and practices and motivates us to welcome, live with and work with the 'other'.

When this happens, the distinction between a world religion and a cult is clarified and the course of history is also influenced by religious sensibility. If not, all religions, not just the 'other one', deserve to be judged by a world which will simply look elsewhere for light and life.

With peace and blessings to all

*Bishop Duleep de Chickera*

# **Bangladesh: UN rights experts appeal to all sides to immediately stop the ongoing violence**

*United Nations*

GENEVA (29 March 2013) – A group of United Nations independent human rights experts today called on all parties in Bangladesh “to cease violence immediately and return to peaceful demonstrations,” after worrying levels of violence have been reported following large-scale protests across the country since 5 February 2013.

The protests have largely occurred in the context of the Bangladesh International Crimes Tribunal’s trials and verdicts. The Tribunal was established by the Bangladeshi Government in 2010 as a domestic court to try and punish persons accused of committing atrocities, including genocide, war crimes and crimes against humanity, in Bangladesh, during the country’s 1971 independence war.

Violent clashes between security forces and various groups as well as between the groups have so far claimed the lives of at least 88 persons and led to the injury of hundreds of other people. There have also been worrying reports on attacks against members of the Hindu community, their homes and places of worship, as well as against journalists and other media practitioners.

“I am extremely alarmed at reports that a large number of deaths may have resulted from excessive use of force by security forces, including the use of firearms against unarmed individuals,” said Special Rapporteur on extrajudicial executions, Christof Heyns.

“International law provides that, even in the dispersal of violent assemblies, law enforcement officials shall exercise the utmost restraint before using firearms, and shall ensure that they are used with the sole and imminent objective of saving another life.”

“I call upon the authorities in Bangladesh to ensure prompt, impartial and effective investigations of all killings committed irrespective of whether they were committed by a State or a non-State actor,” he added.

The Special Rapporteur on freedom of expression, Frank La Rue, warned that journalists and other media workers, who have been victims of serious attacks during the clashes,

are equally at risk. “The ongoing violence has threatened the safety of journalists in the country and led to the killing of at least one blogger, and injury of a large number of media workers. Twelve websites have also been shut down by the Bangladeshi authorities,” he noted. “I call upon all sides to cease any attacks and other acts of intimidation against journalists and other media workers. At the same time, I urge all parties to refrain from inciting violence.”

With regard to attacks on members of the Hindu community and their places of worship, the Special Rapporteur on Freedom of Religion, Heiner Bielefeldt, emphasized that “the Government must ensure that the rights and freedoms of this community are protected in conformity with international human rights law.” Together with the Special Rapporteur on adequate housing, with Raquel Rolnik, he expressed particular alarm at the destruction of Hindu temples and homes in the context of the current violence in Bangladesh, which left tens of families homeless.

“The attacks against the Hindu community are of serious concern, due to the fact that it constitutes a minority group in Bangladesh which has been at risk of violence at various times of the country’s history,” added the Independent Expert on minority issues, Rita Izsák.

“States must protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories,” she said, “and should ensure their effective participation in the process to work towards sustainable peace, unity and stability in the country.”

The Special Rapporteur on the promotion of truth and justice, Pablo de Greiff, underscored that “Governments should strive to achieve justice for victims of past human rights violations and restore trust in the rule of law including through criminal prosecutions.”

“Criminal prosecutions must themselves strictly comply with the rule of law,” noted the expert on transitional justice. “In the absence of due process guarantees, all verdicts, but particularly those which impose the death penalty may reignite the initial sources of conflict and entrench patterns of societal distrust.”

Earlier this year\*, the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, and the Special Rapporteur on extrajudicial executions, Christof Heyns, expressed concern at the aspects of non-compliance with fair trial and due process reported during the proceedings before the Bangladesh International Crimes Tribunal, including the pronouncement of death sentences.

They stressed that international law requires compliance with the most stringent fair trial and due process guarantees in such proceedings, and called upon the authorities in Bangladesh to ensure these are upheld.

(\*) Check – “Bangladesh: Justice for the past requires fair trials, warn UN experts” (07/02/2013): <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12972&LangID=E>

# Us and the modern monsters

*Basil Fernando*

Cry, my beloved country, cry.  
Loudly ask why  
Do not let the monsters  
Smash out the light.

Look at those three hoodless vans  
In the thick of darkness coming,  
Keeping measured distances.  
They move slowly.  
One in front carries  
Young prisoners from a camp  
And a few soldiers.  
They each take a prisoner  
Throw them into the air,  
As children throw balloons.  
A marksman takes aim,  
Moving his expert fingers.  
A few soldiers rush out of the third van,  
Pour petrol and set fire  
To the wounded youths.  
Three vans move again,  
Keeping measured distances,  
Till the next prisoner is thrown like a balloon.  
When kerosene runs out,  
The van begins its return, taking back  
A single surviving prisoner.

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Basil Fernando published his first volume of poems *A New Era to Emerge* in 1972. Since then, he has published several volumes of poems in English and two collections in Sinhala. His poems have appeared in several Sri Lankan and international anthologies. His poems have been translated into many Western and Asian languages. A translated anthology of his poems was published in Malayalam entitled *Sundaramaithry*. In 1983, he and Richard Zoysa shared the first prize for poetry in New Ceylon Writings, published by Professor Yasmin Gunaratne. His poems are available at [http://www.basilfernando.net/modules.php?name=Content&pa=list\\_pages\\_categories&cid=15](http://www.basilfernando.net/modules.php?name=Content&pa=list_pages_categories&cid=15)

In a mass grave at Matale  
Remains of one-hundred  
And fifty bodies are excavated.  
Some, among so many  
In the South, North and East.  
Such are the works of new monsters,  
Created by the marriage of  
Modern physics and ancient metaphysics.

Modern monsters more sinister  
Than a nine-headed poisonous dragon,  
Medusa or Minotaur.  
Theseus, Perseus and Hercules  
Too weak to tame  
The modern monsters,  
Created out of new concoctions.  
Perhaps, the depths of all oceans,  
And ocean-like human minds,  
Must be stirred, again and again...  
Till a new potent concoction,  
Emerges with powers  
To annihilate the modern monsters.

Cry, my beloved country, cry.  
Till out of the abyss of our desolation  
New giants may arise,  
Who, unlike Hellenistic heroes,  
Will possess the psychic power  
To melt away our collective burden.

# Unappreciative of the advantages of publicity

*Basil Fernando*

I saw a tiny bird  
Expertly balancing on  
A branch arching towards the ground.  
Hoping to give its image  
A permanence in print,  
I tried to fix the lenses  
Onto the bird.  
But the bird, unappreciative  
Of the advantages of publicity,  
Remained hidden under the leaves;  
Occupied itself wholly  
To the present task,  
Picking its morning meal,  
Wholly absorbed in here and now.  
Its presence was felt on through movements  
Of the branch,  
Giving me a glimpse  
Of human vanity.

(Thailand-April 2013)

# Practicing Ethics in Action

*Ethics in Action* begins with the realization that both law and morality have failed the people of many countries, who are today facing incredible forms of cruelty that they have little power to eradicate. Despite all the rhetoric of empowerment, the reality witnessed in most Asian countries is desperation and powerlessness. The two ingredients necessary for any real empowerment of ordinary people are law and morality. If living conditions are to improve, defective legal systems and the failures of upholding ethics and morality cannot be ignored. *article 2*, a publication of the Asian Legal Resource Centre, sister organization of the Asian Human Rights Commission, is devoted to discussing matters relating to defective legal systems obstructing the implementation of human rights. *Ethics in Action* will be devoted to discussing how movements and leaderships claiming to uphold ethics and morality have failed to promote and protect human rights.

The AHRC invites submissions to *Ethics in Action* by individuals and organizations interested in issues of human rights, ethics and morality in Asia. Submissions can include articles, poetry, fiction and artwork. For more information, please write to [eia@ahrc.asia](mailto:eia@ahrc.asia).

## Other regular publications by the Asian Human Rights Commission:

***Article 2*** – This quarterly publication covers issues relating to the implementation of human rights standards as proposed by article 2 of the International Covenant on Civil and Political Rights.

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