

## **AN INTRODUCTION AND OVERVIEW**

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**21st July 2012** It gives me great pleasure to address this gathering of legislators from several countries, sitting together with a group of committed human rights activists. This gathering itself, to discuss the evil of torture, is a matter of great significance. While legislators from different countries often gather to discuss matters relating to trade and business, finance, geo-political alliances and other similar matters, it is rare that such meetings are held to discuss matters of great significance for the ordinary citizens of a country. It is therefore a great pleasure for me to participate in such a meeting. I am glad to have been invited to share a few thoughts for your consideration as you prepare to start your sharing and important deliberations.

### **UN Convention against Torture (CAT)**

The focus matter of your deliberations will be on the promotion of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Torture Convention"). History is full of examples of people in power flaunting their use of torture. History also records how until recently torture was considered acceptable. But recently a big change has occurred. A great milestone in the history of the human race, as well as the history of law, was to develop this convention to express the common point of view of all humanity: firmly stating that each state must do all that is within its power to end the practice of torture and ill-treatment of persons. As people who have an interest in the treatment of human beings as human beings, fully respecting the human dignity of each person, I presume each of us is proud to be associated with each and every attempt to implement this great convention.

### **Violations**

As this is a sharing among legislators who are fully aware of the unique circumstances within their respective countries, I do not think it is necessary for me to give examples of the violations of this convention and the rights guaranteed under it within each country. It suffices to say that the Asian Human Rights Commission, which I assist as the chairperson, has over many years taken great pains to document violations relating to torture and ill-treatment in each country as part of its endeavour to assist concerned persons in these countries to understand their obligations under the UN CAT. The AHRC documentation is a rich source of information which could be quite useful to legislators in their deliberations both now during the meeting, as well as for other domestic and international discourses. As legislators involved in the development of laws and vital policies you understand the need to rely on authentic and credible information on all the matters with which you deal. On the issue of torture and ill-treatment the AHRC and ALRC can provide well documented material on which you can rely.

## **AHRC & ALRC Documentation**

ALRC has published the following reports of torture through its quarterly publication Article 2 :

BANGLADESH – Volume 5 No. 4, Volume 10 No. 2

BURMA – Volume 2 No. 2, Volume 2 No. 6, Volume 6 No. 5 and 6, Volume 7 No. 3, Volume 11 No.1

CAMBODIA – Volume 1 No. 1, Volume 1 No. 2, Volume 5 No. 1

INDIA – Volume 1 No. 3, Volume 2 No. 1, Volume 2 No. 4, Volume 2 No. 5, Volume 3 No. 4, Volume 5 No. 6, Volume 7 No. 2, Volume 9 No. 3 and 4, Volume 10 No. 3

INDONESIA – Volume 5 No. 2, Volume 9 No. 1,

NEPAL – Volume 3 No. 2, Volume 3 No. 6, Volume 4 No. 1, Volume 7 No. 1

PAKISTAN – Volume 1 No. 5, Volume 3 No. 3, Volume 3 No. 5, Volume 8 No. 2, Volume 8 No. 3

PHILIPPINES – Volume 5 No. 5, Volume 6 No. 4

SRI LANKA – Volume 1 No. 4, Volume 3 No. 1, Volume 4 No. 4, Volume 4 No. 5, Volume 6 No. 2, Volume 8 No. 4 and Volume 10 No. 4

THAILAND – Volume 2 No. 3, Volume 4 No. 2, Volume 4 No. 3, Volume 5 No. 3, Volume 6 No. 3;

All these volumes are available at [www.article2.org](http://www.article2.org). Annually since 2005, the AHRC has published The State of Human Rights In Ten Asian Countries, which devotes a chapter to each of these countries.

## **From Old Style Policing to Modern policing**

I presume we all agree that torture and ill-treatment still remains a major problem in many Asian countries. Various historical factors may explain the existence of this situation. One obvious factor is that the development of modern policing systems that completely reject the use of torture in criminal investigations and that rely entirely on methodologies using up-to-date scientific techniques have not yet been achieved in many Asian countries.

As a long-time resident of Hong Kong I could share with you the experience here when the decisive change from an old style policing to a modern policing took place: namely about 1974 with the creation of the Independent Commission against Corruption (ICAC) which I know you will later visit. This institution and the decisive political will that ensured its full implementation have made a fundamental difference to Hong Kong's way of life and its administration of criminal justice.

Perhaps one of the concerns which may be preoccupying you as legislators is how a government can achieve this decisive transformation from an old style policing to a modern one. A modern policing system has implications that go far beyond the field of criminal justice; it has implications for the realization of full and genuine democratisation of our

societies. None of the basic elements needed for a fully functional democracy could be achieved without a radical transformation of policing, as this important institution must be made to function within the framework of democracy itself. Where this does not happen, the policing system itself not only can but has often become a threat to democracy. Even the holding of free and fair elections is not possible without a policing system that functions strictly within the parameters of the rule of law. Thus, the topic that you will be discussing during this meeting is likely to have very significant implications for the very problems that occupy you most as legislators, namely how to ensure a system of public institutions that is capable of sustaining democracy. Where democracy is threatened, even the role of legislators is threatened. Thus, as legislators you have very good reasons, as well as motivation to be deeply interested in the issue of modernising police structures so that the policing system becomes capable of achieving the objectives of the UN CAT.

### **Budgetary Allocations**

Achieving that aim implies that adequate budgetary allocations need to be made to enable a functional policing system and a functional system of criminal justice as a whole. It is here that the legislators face their most serious challenge. The allocation of budgets is often a test of political will in regards to trying to achieve a desired influence in regard to objective. Whatever rhetoric legislators may employ when talking about laudable objectives will have very little implementation if the legislators cannot find a way to make the necessary financial allocations that will ensure practical implementation. This again is an area to which you would give serious consideration in the coming few days. At least I hope so.

### **A common misconception that policing without torture is impossible**

Please allow me to comment on what seems to be a common misconception: policing without torture is impossible. This used to be a widely held view within the police, as well as in society, when the old style of policing was the only policing that people knew. However, the experience of many countries, some of which have abandoned the practice of torture a long time ago, clearly proves that policing without torture is not only possible but has become a reality. Old habits, including thinking habits, linger on. That may be one of the reasons for the baseless, but sometimes widely held belief that torture is a necessary aspect of enforcing discipline. A somewhat similar view, held at one time, was that the rearing of children without physical punishment was disastrous and that a husband should beat his wife to assert his authority. However, experience has quite clearly proved that physical abuse has a disastrous impact on human behaviour and policing based on torture does not bring about the desired results. In many of the countries where torture is still being used, the prosecution success rate is around 4 to 5 percent, or even lower. This alone is proof of the utter uselessness of this practice.

### **What psychology tells about torture**

A very important aspect of this discussion is based on the knowledge and insight obtained through modern psychology. For legislators who want to convince others about the need to eliminate torture and ill-treatment, modern psychology can be very helpful. Modern psychology has demonstrated and shown the negative impact of torture and ill-treatment on the human mind, and that the sufferings people go through during torture leave permanent imprints impairing the victims for the remainder of their lives. There is no moral and ethical justification for causing such suffering. The practice of torture violates all moral and ethical

norms. Furthermore, modern psychology also reveals that obtaining information under conditions of torture is almost useless. Human beings freeze under torture and parts of their brain become impaired, hampering their ability to communicate or to think in a rational way.

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Another aspect of psychology is the importance of implementing measures for rehabilitation of victims of torture. Rehabilitation is a function of the government. Rehabilitation requires a legal framework, as well as institutions to provide services to the victims. These should include both physical and psychological aspects. As psychological aspects have lasting effects, providing facilities for psychological treatment and counselling should be undertaken by the government. Often victims cannot return to work, or even deal with the essentials of daily life during the period of disability, because of the scars engraved on the bodies and souls by torture and ill-treatment. These also are aspects that I hope you will discuss, namely finding ways to ensure rehabilitation facilities for victims of torture.

### **Impunity**

Besides the issue of reforms, I am sure you are also aware of the serious allegation that there is widespread impunity regarding human rights violations in general and violations relating to torture and ill-treatment in particular. Impunity as you know, cripples the discipline of any institution and has adverse effects on the whole country. The police and the military are vital institutions in every society. If it is not possible to maintain discipline in these public institutions, then there appears to be something seriously wrong with the functioning of public institutions in a country. The life blood of a democracy lies in properly functioning public institutions. Therefore, dealing with the issue of impunity and the problems that arise from that impunity should be taken very seriously because it threatens the legislative function in a society. Carrying out your role as legislators is very much dependent on the proper functioning of public institutions.

The struggle against impunity lies in the creation and maintenance of effective complaint mechanisms, investigation mechanisms, prosecution mechanisms, as well as a functioning and independent judiciary. As you will note from the AHRC documentation, there is a common complaint in several countries that proper complaint mechanisms do not exist, or that even if these mechanisms do exist in the formal sense, they are not functioning effectively. People often complain that getting their complaints registered with the police or other institutions is difficult or even impossible, especially when the complaints are about the police or the military. Therefore it is essential to study the existing complaint system and to provide ways to overcome the limitations of such complaint mechanisms. What seems to be most frustrating is the absence of investigation mechanisms. Without independent investigation mechanisms it is not possible to carry out credible investigations. When there

are no credible investigations, people lose confidence in the justice process. If people feel that a fair chance of obtaining justice does not exist, then this implies a crisis in the democratic process itself. This too is an area that requires serious attention. There are also complaints about the politicisation of the prosecution process, or other serious defects of prosecutors. Without able and independent prosecutors it is not possible to maintain an effective system of criminal justice. The last and the most important element is the independence of the judiciary. I respectfully submit that legislators, who have been elected to represent ordinary citizens, should fight hard to ensure that the executive does not in any way interfere with the functioning of the judiciary (i.e. strictly enforcing separation of powers). I hope all these matters relating to the problem of impunity will be seriously discussed during this meeting.

### **Laws to criminalize torture and ensure witness protection**

In dealing with impunity, drafting and approving legislation to enforce the prohibition against torture is essential. UNCAT envisaged that state parties would enact legislative measures to criminalize torture and ill-treatment. A few countries in Asia, such as the Philippines, Sri Lanka and HK have already done so. There are other legislators who are currently in the process of proposing and pursuing proposed legislation to this end.

Besides criminalization, there also need to be measures taken to ensure implementation. One of the vital aspects in this regard is witness protection. One witness in a famous case in India, Jessica Lal's case, said, on the one hand there was a threat of "being treated with a bullet" if she persisted in giving truthful evidence, and on the other, there was an offer of a substantial sum of money if she refused to give her evidence. Her experience reflects a widespread phenomenon in many countries relating to the situation of victims and witnesses. Legislators need to take steps to ensure proper legislation and funding for witness protection.

Another matter of relevance to you as legislators is the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The purpose of this Optional Protocol is to provide a mechanism for monitoring the conditions of places of detention. As you know places of detention such as prisons, police stations, and other detention centres, often happen to be the places where the detainees are subjected to torture and ill-treatment. The Optional Protocol is meant to develop the cooperation between states to provide an effective mechanism for visits to such places with the view to take preventive measures regarding torture and ill-treatment.

### **Civic sense**

I am sure you will agree that distrust in public institutions limits public cooperation among people. Each society is an association of free and equal persons who are ready to cooperate with others. One function of public institutions is to enable and enhance such cooperation. If public confidence in public institutions is lost or lessened, cooperation would be lost or lessened. A discussion on torture and ill-treatment is vital when dealing with problems of a breakdown of public cooperation. Policing is one of the most vital public institutions, both for maintaining order, as well as for ensuring the administration of justice. If the public loses confidence in the police, both public order and the administration of justice suffer. There is

an open admission in many Asian societies that confidence in the police is low or does not exist. Therefore legislators should try to understand this problem and try to find ways to address it. In dealing with this problem, the issue of torture and ill-treatment becomes an unavoidable issue that needs to be addressed. In order to develop a civic sense among people, cooperation between the police and the people needs to be re-established. This too, I hope, will also be a topic you can discuss during your deliberations in the coming few days.

### **Protection of and cooperation with human rights defenders**

I must refer to one further matter of very great importance when dealing with future work for the elimination of torture and ill-treatment, as well as all matters relating to the violation of human rights. If this work is to succeed, it will depend on the active participation of civil society. You are aware as legislators that the achievement of any objective requires the closest possible cooperation with all citizens. This is even more so when the problem involves the violation of civilians' basic rights at the hands of state authorities. Naturally much fear is generated by the practice of torture and ill-treatment: and the citizen's initiative to struggle for justice and a better society is seriously hampered due to such fear and intimidation. It is the duty of legislators to protect the right of every citizen to participate in civil affairs. Citizens should not only be enabled, but also encouraged, to complain freely, as well as to pursue their complaints without any harassment or fear of possible harassment.

In this endeavour it is civil society organisations that play the most vital role. It is to human rights defenders that the victims go in order to get help. Thus, there is a need to protect the freedom of human rights defenders to offer their services to victims, as well as to society. Intimidation and harassment of human rights defenders has a deeply negative effect on all aspects of democratic life. In the area of monitoring and advocacy, human rights defenders need to be able to move freely and do their tasks without fear. This is an area where legislators can do a great deal to stop the present practice of harassment and intimidation of human rights defenders to allow them to perform their duties and offer their services to their fellow citizens.

Power is legitimised by popular consent. Unfortunately, silence is often interpreted as consent. If legislators do not outlaw torture, they by their silence imply torture is legal, allowed or morally acceptable. I am aware this is a provocative comment, but hopefully one that will guide our collective thinking about the issue of torture and who perpetrators are (other than those committing the physical violence).

These are a few suggestions for your deliberations. I am confident you will be able to bring your well trained minds to the important political task of finding strategies to effectively eliminate the practice of torture and ill-treatment in your countries.

My best wishes for a successful conference.

***Mr John Joseph Clancey***

***Chairman of Asian Legal Resource Centre (ALRC)***