

Ethics in Action

Vol. 5 No.3

June 2011

ISSN 1997-2997



Asian Human Rights Commission

Cover photo:

Islanders protesting against illegal sand grabbing,
Mayadip, Bangladesh,
December 2010.

Asian Human Rights Commission 2011

Published by

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June 2011

Printed by

Clear-Cut Publishing and Printing Co.
A1, 20/F, Fortune Factory Building
40 Lee Chung Street, Chai Wan, Hong Kong

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Asia: Outdated policing systems rely on the use of torture as the most important tool in criminal investigations

Statement issued by the Asian Human Rights Commission on the Occasion of the International Day in Support of Victims of Torture, 26 June 2011; AHRC-STM-086-2011

Due to the enormous changes in the popular consciousness of people throughout Asian countries there is an increased demand for the elimination of the practice of torture. In recent decades, due to changes in education as well as communications, people have undergone significant changes regarding their attitudes to governance. The rejection of the abusive use of force for social control is one of the marked features of the present times.

However, the governments of Asia are still resorting to the use of torture on an extensive scale. The failure to improve the law enforcement agencies in keeping with modern times and the continued use of outdated policing and other law enforcement practices remains one of the major causes of torture. The reliance on such outdated instruments is mostly due to the refusal of the state to allocate adequate funding for the administration of justice in general, and on policing and other forms of law enforcement in particular.

In most countries of Asia due to varying political reasons, political regimes resist the development of rule of law systems as the mode of social control. Often a regime allows itself to be above the law in one respect or another. Various forms of immunity are claimed and sometimes incorporated into the constitutions and legal instruments. On the other hand impunity is also widely allowed to state agencies and particularly to the police and the military.

The result of such practices is the diminishment of equality before the law and the power and capacity of the courts to protect the individual's personal and property rights in varying degrees. The powerlessness of the courts to protect the individual is very much a part of the political schemes prevailing in several countries. In the absence of judicial protection for the individual, the law enforcement agencies are free to abuse their power and the individual is left without redress.

The Asian Human Rights Commission receives reports from many Asian countries on a daily basis regarding acts of torture perpetrated by the police or military agencies. On the basis of details revealed through these cases it can be asserted that very often people are arrested at random without the normal safeguards of arrest on the basis of a reasonable suspicion of the commission of an offense. Often, abuse of power and extortion are the reasons for a person's arrest. The abuse of the powers of arrest and the use of torture are often intertwined.

Under the Convention against Torture, and Other Cruel, Inhuman and Degrading Treatment or Punishment states are required to provide substantive and procedural measures for the protection of victims of torture and for the prevention of torture. However, such substantive and procedural obligations of the state are not created legislatively, and even where these laws exist to some extent, they are not implemented.

States have obligations for restitution, compensation and rehabilitation, all of which require them to initiate legislative, judicial and administrative measures. There is hardly any noteworthy example of compliance with these obligations from many of the countries in Asia however.

States also have the procedural obligation for providing effective legislative, administrative, judicial and other measures to prevent acts of torture in their territories. And yet, torture is not recognized as a crime except in a few countries of Asia. Governments appear to resist the enactment of laws to criminalize torture despite having signed or ratified the Convention against Torture. The failure to recognize torture as a crime contributes to the encouragement of its use by law enforcement agencies. Even countries where torture has been criminalized fail to prosecute violators of such laws despite of the violations being committed on a large scale.

States have an obligation to establish complaint mechanisms, investigation bodies and institutions capable of determining the right to, and awarding redress, for victims of torture and ill treatment and ensuring that such mechanisms and bodies are effective and accessible to all victims. However, there is no noteworthy example of a credible complaint mechanism for victims of torture and any credible investigation mechanism for torture victims in any of the countries in Asia.

Besides this, torture victims who complain about their perpetrators, be they from the police, military or paramilitary groups, are exposed to threats of assassination and other violence. Credible systems of witness protection do not exist. The victims fear to make complaints, and in any case often consider complaint making an exercise in futility, as they do not lead to investigations or effective redress. Such silence imposed on torture

victims is a clear demonstration of the failure of states to honour their obligations to prevent the use of torture within their territories.

Torture is also used as an effective instrument for political domination. Citizens are, for the most part, prohibited from active participation in politics. Those who attempt to break such prohibitions are exposed to torture and even worse forms of punishment. The police and military are often mobilized by political regimes in order to suppress political opposition and keep their hold on power.

The direct result of politicization of the police is the emergence of various forms of special police task forces engaging in secret operations such as kidnappings and the maintenance of secret places of detention with facilities for extraordinary forms of torture such as cold rooms for those subject to interrogations. Despite considerable evidence of the existence these practices, there is hardly any possibility to stop them or make complaints against them. There seems to be an assumption that such extra-legal bodies engaging in illegal activities are necessary for the maintenance of social control.

All these factors prevent the development of modern civilian policing based on the rule of law and on respect for citizen's democratic rights. Any meaningful action for the prevention of torture requires far reaching police reforms which will eliminate outdated and politicized forms of policing that exist at present. Special measures need to be taken to stop all kinds of extra-legal and secret operations of special units that are authorized to abduct, torture and interrogate persons outside the normal process of the law.

In Asia there is an urgent need for public attention to the practice of torture and the ways to prevent it. The prevalence of torture as it exists now, while causing enormous problems to the dignity of many individual citizens, threatens society as a whole by undermining the rule of law and, in fact, the very notion of governance on the basis of law.

Bangladesh: People's movement against sand-grabbing

Shahed Kayes

One group of formerly nomadic people in Bangladesh's ancient capital Sonargaon, settled on the small island of Mayadip, which is surrounded by the Meghna river, a 40-minute boat ride from the mainland of Sonargaon. They have survived since the 1980s without electricity, basic services, or access to schools, since massive flooding in the south displaced them. They rely on the river's catch of fish for their livelihood.¹

The residents of the islands of Mayadip and Nunertek in the Narayanganj district have been suffering great pressure and political powerlessness due to the threat of illegal sand extraction in their area. Those responsible for this illegal extraction are part of the powerful sector of society and are associated with the ruling political party of Bangladesh, the Awami League.

On 17 October 2010, the District Commissioner of Narayanganj visited the island of Mayadip and saw the plight of the poor islanders himself. He then set up a 21-member committee to save the two islands from illegal sand extraction. The District Commissioner asked the islanders to prevent illegal sand grabbing by any means and assured them that the administration would always be with them.

On December 9, however, the constant sand extraction from the Meghna River near Mayadip resulted in the bank of the island sliding into the river. In fact, due to previous sand extraction, a portion of Mayadip and Nunertek had already been absorbed by the river. Despite their resistance, the islanders were not able to stop the illegal sand grabbing. Both islands are now at great risk. The situation was such that when people went to bed at night they could see their land, but when they awoke the next morning, they could only see the river.

The dire situation of the island's bank led to hundreds of panicked islanders, including women and children, coming out on the morning of December 10 to resist the sand grabbers. They damaged their boats and dredgers and captured four of the sand grabbers, who were later freed by their thugs. On the same day, the sand grabbers filed two false cases against the islanders.

1. To visualize their living conditions, see: http://www.youtube.com/watch?v=KEaHseV-C_s_.

vegetables, rice and other items, as well as to sell their fish, the islanders must go to the mainland. Too scared to leave the island, they were hence unable to meet these needs.

The memorandum also notes that the sand grabbers filed two false cases in two different police stations—due to which the islanders are passing their days in panic, afraid of being arrested at any time—and attacked the islanders.

While the Bangladeshi government is doing its best to save the Buriganga River, upon whose banks rest Dhaka, the capital city, it is less concerned with the plight of the Meghna river and the inhabitants of Mayadip. Islands like Nalchar and Ram Prasader char, close to Mayadip, have already lost a maximum part of their land.

Finally, the memorandum appealed to the government to take all necessary steps to stop this illegal sand extraction from the Meghna River near Mayadip and Nunertek.

After December 10, the sand-grabbers warily removed their dredgers (40 dredgers) from near the islands. At present they extract sand from far away, mid-river (extraction from this location will not harm the islands). Sometimes at midnight however, they come near the islands to extract sand.

Due to political pressure from the Awami League, on 20 April 2011 the District Commissioner was compelled to advertise the leasing of the Nunertek sand extraction point (balu mahal) in the Meghna river. Previously, even though the sand-grabbers were extracting sand from the river close to Mayadip and Nunertek, they were doing so without any permission. If they obtained the lease, they would destroy both islands. The 12,000 inhabitants would become homeless, and the destruction of the river base would mean that fish cannot be bred for many years.

Therefore, a writ petition was immediately filed in the High Court against the government's proposed lease, and the court issued a stay order stating that there should be no lease due to the threat to the islanders. This legal victory has meant that the islanders are no longer threatened to go to the mainland, where they have also been able to gain public and media support. Although their fight continues, the situation today is better than before.

The only problems facing them now are the two fabricated cases against them, which require them to go to court every month. For the poor islanders this causes considerable difficulty; on the days they must attend court, they cannot fish and earn their daily livelihood, which is problematic for the entire family. For some of them, their transportation and other money is arranged by activists. The lawyers fighting their cases are also doing so without any fees.

The utility of the UN Human Rights Council concerning Asia: Opportunities and obstacles

Michael Anthony

This essay had initially intended to shed light on the United Nations Human Rights Council and the so-called 2011 Review, under which the international system's apex human rights body was undergoing a reevaluation of its working methods and mechanisms. When the Council was established in 2006, to replace the discredited Commission on Human Rights, it was to undergo the so-called "2011 Review" after five years of existence, in order to address any lacuna in the system and to fine-tune or improve its mechanisms and working methods. The review actually began in 2010 and by the early days of 2011 it was becoming clear that it would lead to little change to the system, and that the status quo would prevail.

A few days ago, on 14 June 2011, the UN General Assembly adopted a resolution completing the review of the Human Rights Council, with 154 votes in favour to four against (Canada, Israel, US, Palau) and no abstentions. The final resolution contains only a few technical changes, but no significant new measures that would help improve the Council's functioning or, importantly, help to enforce the membership standards foreseen in Resolution 60/251 that established the Human Rights Council. Ensuring better enforcement of membership criteria had been one of the main sticking points of the negotiations, with Western States desiring a stronger outcome that would place more stringent requirements on States wishing to become members of the Council.

To many NGOs, the review process has been a disappointment, as there was an evident need to improve some key aspects of the system, alongside the membership issue mentioned above, in particular to strengthen the Council's Special Procedures—comprising independent experts and working groups on a number of key human rights themes and country situations—as well as to improve the way that the Council deals with urgent situations across the world and the way in which individual States cooperate with the Council as a whole. The Asian Legal Resource Centre (ALRC), the Asian Human Rights Commission's (AHRC) sister-organization, collaborated in a number of global civil society efforts to bring about such improvements, but the States conducting the review had little stomach to take on such a task at the time.

Conversely, and perhaps even perversely, given the frailty of human rights around the world, the fact that the status quo was reaffirmed was not in fact a terrible outcome. It could have been worse. The 2011 Review was also an opportunity for those States that act to undermine the strength and capacity for action of the international human rights system to wreak havoc in the system, imposing constraints on the Council's more functional, independent components. That this was avoided was a positive achievement, if perhaps hard to sell to victims of abuses around the world.

Given the relative lack of noteworthy outcomes from the 2011 Review, the initial purpose of the essay to concentrate on this process is less attractive now. Instead, it may be of greater interest to look at how effective the Human Rights Council can be concerning the range of human rights abuses, both acute and endemic, that are encountered across the Asian region and the world. While the review of the Council was at best uninspiring, alongside this, the Council has in fact been acting more effectively and positively over the last year, although this has not always been the case. This following appraisal is based on over ten years of experience working for NGOs in Geneva, where the Council is based, as well as Asia, which have allowed me to attend nearly all of the sessions of the Human Rights Commission and the Human Rights Council since early 2001, and to chart its ups and downs.

It must be underlined that the ideas and views expressed below are the fruit of personal reflection and not the official position of the ALRC or AHRC. Different persons and NGOs have different expectations and levels of understanding about the Human Rights Council. A key obstacle for NGOs to make effective use of the system, in my view, is the lack of understanding of its political and systemic limitations and realities.

A decade of difficulties

I first participated in the then-Commission on Human Rights in March 2001. A few months later, on September 11, the terrorist attack on the twin towers of the World Trade Centre took place in New York and would have a profound impact on geopolitics and the struggle to advance human rights across the world. A key thing to understand is that which affects the global political climate, directly affects the Human Rights Council. As a political body, the struggles between nations and groups of nations, play out under the guise of discourse on human rights within the Council. The serious increase in tensions which have plagued the world since 9/11 have created disagreements within the Council that have stymied efforts to advance rights on many fronts.

Countries that had previously been amongst the standard-bearers for human rights at the international level, including members of the European Union (EU) and the US, began to question the absolute nature of the prohibition of torture and, as was later

revealed, engaged in renditions and the outsourcing of torture to other countries. The effect that this has had on the prospect of the advancement of human rights globally has been significant. Even though the number of cases of torture attributable to the US, EU or their proxies may not be vast, notably as compared with the number that can be encountered in the many countries in Asia where torture is endemic, it is the lack of leadership at the global level concerning human rights that has held back a great deal of possible progress during the period since 9/11. When the US and EU falter in their leadership, no State from other regions steps up to fill the void. While it is easy to blame the US and EU for their actions, the lack of action by all other States is a sorry indicator of their lack of credibility concerning human rights, and shows the extent of the challenge ahead to make human rights a reality around the world. All States when speaking at the Human Rights Council claim to be champions of human rights in one way or another, but in practice this is, of course, far from the truth.

Backtracking on issues such as torture, arbitrary detention, forced disappearance, fair trial and extrajudicial killing that have all come as a result of challenges to human rights in the age of counter-terrorism, have provided those governments with little intention of upholding human rights with tailor-made justifications that they have used, often with some success, to repel criticism of their use of torture, disappearances and other such violations. In this context, work at the international level, including with the UN's top human rights institutions, has been a frustrating pursuit. For a person working for an NGO that documents hundreds of cases of torture, disappearances and the like, trying to work to get such issues to move forwards against a prevailing climate of regression can be very trying. Having to sit in a room and listen to representatives of governments such as Bangladesh, Thailand, Sri Lanka, Pakistan or India, to name but a few, lecture the world on aspects of human rights and vote to decide the direction of decision-making on human rights standards at the international level, while they are engaged in carrying out or acquiescing to endemic, widespread and brutal human rights violations at the domestic level, leaves a particularly bad taste in the mouth. It is easy to be dissuaded from the international system as a result, or to argue that it is discredited, dysfunctional and a waste of time. But where does that leave us in terms of being able to address the many human rights abuses that continue to be perpetrated across the world and, in particular, here across Asia? To expect the Council to be better than its component parts—namely States, the majority of whom are engaged in widespread and numerous forms of abuse—is unrealistic. The key, in my opinion, is to use the Council as a means to pressure States into respecting human rights more than they would if they were left to their own devices, beyond international scrutiny of the type that the UN system provides.

From Commission to Council—Old dogs with new tricks?

During the decade since 2001, we have seen many fundamental rights challenged at the international level. Despite this, there was also pressure from many quarters to have the international system's human rights body reformed. While the system did need to be reformed, and in fact still does, the timing of the reforms undertaken was questionable. Many NGOs were increasingly being highly critical of the UN's Commission on Human Rights, which was seen as not being able to address human rights during this period of uncertainty. NGOs and some predominantly Western States wanted a UN body that could be more effective and called for the system to be reformed. However, this was seen by the majority of UN member-States, who remain at least suspicious and at worst openly hostile to human rights, as an opportunity to undermine the international system through reform, rather than to strengthen it. It can be seen as having been incredibly naïve to have engaged in reforming the UN human rights system at a time when many fundamentals were being questioned, when there was a lack of international leadership (notably with a weakening, expanding EU, and with the US being deeply anti-UN and isolationist under President Bush), and when significant tensions were evident at the international level as a result of a growing schism between the West and the Muslim world in the post 9/11 period.

As a result, the reform process risked producing a new international human rights system that was weaker than that which preceded it. The jury actually still remains out in some respects as to whether this is in fact the case or whether the Human Rights Council is an improvement upon its predecessor. Under the Commission on Human Rights' Item 9, strong resolutions on specific countries were possible. While many argue that this naming and shaming process was not constructive, and while it is true that these resolutions were typically ignored by the countries in question, the stick and carrot approach was successful in several cases. The threat of having a country resolution issued against Nepal in 2005 resulted in the government there doing a deal to allow a country presence for the Office of the High Commissioner for Human Rights, for example, which had a significant positive effect in reducing forced disappearances and may have contributed to bringing about the end of the war there. The Human Rights Council favours cooperation over condemnation, and, given the typically non-cooperative nature of governments that are engaged in grave human rights violations, this process can be seen as being intrinsically flawed. The Council can be seen as being armed only with a carrot and lacking a much needed stick.

Ultimately, however, in reality States will only cooperate with the international system if it is in their interest to do so, and the threat of a country resolution by the Commission or Council is only a small additional factor compared with the more significant pressures and incentives that result from bilateral relations between States or groups of States. The

international, multilateral system is only truly dependent on relations between States in order to function—the relation of any State with the UN is evidently significantly secondary. It can be easy to criticize the UN system if it appears to be failing in fulfilling its lofty objectives, but those who do so, often fail to pin the blame on the cause of this failure—the failure of relations between States to deliver positive outcomes.

In evaluating the role that the Human Rights Council can play, we therefore need to consider the geopolitical climate and to see how NGOs can play a role within this to bring about improvements. While the Commission has been replaced by the Council, the same old dogs—States—remain in place at the heart of the system. The UN is not an entity unto itself that has any real supra-national power—it remains a system that is controlled, financed and driven by States. Some of its components do have a certain amount of independence to speak and act, such as the High Commissioner for Human Rights and her office, but the UN's Human Rights Council is a body comprising States and only States. NGOs often look to this international body as if it is an expert body that can act with one voice to protect and promote human rights, and intervene to address their concerns with ease. However, it is not an independent expert body that acts without obstacle to intervene wherever there are human rights concerns. It is a body made up of States—often the very same States that were members of the discredited Commission on Human Rights. Therefore, we have to ask whether it is possible to teach old dogs new tricks?

States don't suddenly become altruistic when they step into the Council room. The Commission on Human Rights was discredited due to the double standards and selectivity that were rife within it. However, such politicization, double standards and selectivity can all still be seen in the Human Rights Council, and in fact go hand in hand with any system based on State membership. Should we therefore write off the Council too, or should we try to ensure that this set of realities can still operate in favour of human rights?

The Council is, in reality, driven by the interests of States, which are by definition political, selective and often beset by double standards. Action by the Council can only result when the aggregate of such interests is in favour of such action. In this way it does not differ at all from the Commission, except from the fact that the composition of the Council now includes a greater proportion of States from Africa and Asia, which results in a more difficult process to gain a majority that is in favour of progressive human rights. Africa and Asia now each have 13 seats, which together gives them 26 seats—a majority in the 47-seat Council. It is therefore more vital than ever to ensure that Africa and Asia do not vote as a bloc, and that each member-State's record is scrutinized and it is held accountable for its voting positions at the international level. NGOs need to work at the domestic and international level to ensure that acting in favour of human rights is in the

State's interests and that failure to play a positive role at the international level has a cost at the domestic level for governments. In democracies there are evident ways in which this can work. In many Asian nations, even those with nominal democracies, holding governments accountable for their actions concerning human rights at the domestic level, let alone the international level, has been shown to be a very difficult task. It is therefore not surprising, that the Human Rights Council does not function perfectly.

A new low—The failure to address gross violations in Sri Lanka

When looking at the Council's record to date, there has been one particular low that stands out amongst the rest, notably for those interested in how the system can help with human rights in Asia. During the final throes of the conflict between the government of Sri Lanka and the Tamil Tigers in 2009, as reports were surfacing of gross violations of human rights and humanitarian laws, including mass killings of civilians, the Human Rights Council held a Special Session on the situation of human rights in Sri Lanka on 26 and 27 May, 2009. The Sri Lankan government had been lobbying other governments hard and called in many favours. Due to the West versus the Rest schism that dominated relations between States and regional groups at the time in the Council, the majority of Asian and African States voted as blocs to support Sri Lanka, regardless of the reality of human rights on the ground. Sri Lanka had put forward a separate draft resolution text to that tabled by the States that had called for the Special Session. The government of Cuba called for a vote to block any text from the Western text being added to the text proposed by Sri Lanka, and won the vote. The resolution that resulted from this Special Session was therefore written by Sri Lanka and is an exercise in auto-congratulation that does not mention any grave human rights violations or the need for accountability or any follow-up by the international system. It was a complete white-wash of a situation that in retrospect is as damaging to the credibility of the UN as was its failure to act to prevent genocide in Rwanda or war crimes in Srebrenitsa in the Bosnian War. During the most recent session of the Human Rights Council, Amnesty International and Human Rights Watch held a side event in which they aired a new documentary produced by British Channel 4, entitled "Sri Lanka's killing fields" which shows compelling, credible evidence of war crimes by the Sri Lankan military during the end of the conflict, which I would suggest is a must see, although not for the faint of heart. It can be viewed here: http://www.youtube.com/verify_age?next_url=http%3A//www.youtube.com/watch%3Fv%3DnEYzH2yJkdg.

Beyond the failure of this Special Session to address in any credible way the terrible events unfolding in Sri Lanka, the outcome is seen as a political defeat for those Western States that called for the Special Session to be held. States do not like losing in this way, and since this event, many Western States have been far more timid in seeking action by the Council on country situations, which has obviously damaged the council's capacity to address not only Sri Lanka's rights issues, but also those elsewhere.

Not all doom and gloom

All of the above conspires paint a bleak picture of the functioning of the Human Rights Council. However, it is my firm belief that in order to make good use of the system, the difficulties must be understood, in order for those opportunities that are available to also be understood and seized whenever possible. Despite the evident range of challenges, there are a number of aspects of the Human Rights Council that give rise to hope. There are two main categories that can give rise to an improved international system: a better global political climate; and more effective mechanisms.

As has been shown above, the international system is a prisoner of international politics. Where global tensions increase, as they did under the Bush administration in the US and the War on Terror, the Human Rights Council increasingly becomes a political football used to score points against political rival groups. Where global tensions decrease, as can be seen happening as a result of the Obama administration's outreach to the Muslim world, for example, the chance for more effective action takes place. It is an unfortunate truth that so much depends on the US at present, but this is due simply to the lack of leadership elsewhere across the globe. For a more effective Human Rights Council in the long term, this dependency on the vagaries of the US political system need to be reduced by encouraging leadership on human rights to come from other parts of the world, including South Africa, Brazil, and dare I say it, the emerging powers in Asia (although the latter remains a distant prospect at present, admittedly).

In what is a significant development and source of hope, the series of pro-democracy and human rights popular uprisings in North Africa and the Middle East—the so-called Arab Spring—have led to a tangible improvement in the political climate within the Council. The March 2011 session of the Council was perhaps the most fruitful to date, as many governments in the African and Asian Groups, who are usually so active in blocking attempts to advance human rights, did not want to be seen as anti-democratic or anti-human rights at a time when revolutions were sweeping their regions.

Tunisia and Egypt have been negative voices in the Council, with Egypt in particular having had a significant impact on the positions of the African Group and those taken by the members of the Organization of the Islamic Conference, which comprises the world's majority-Muslim nations. The domestic politics of these two States have been dramatically changed by the revolutions that have taken place there, and the effect of these changes on their foreign policy is also beginning to be felt. Tunisia, for its part, has announced a number of pro-human rights steps, including the ratification of key international human rights legal instruments, the launching of reforms to institutions that have been at the root of human rights abuses, such as the police, as well as investigations into past abuses and a pledge to hold those responsible accountable. While many such pledges are made

by a range of States, there is a new level of credibility to these promises being made by Tunisia. Egypt has also begun to play less of a destructive role at the Council, and while it has yet to convert to a fully positive player, this shift towards a more neutral stand is already significant.

But the effect of the Arab Spring does not confine itself solely to those States that have been the scenes of successful revolutions. In a surprising statement made by Pakistan, on behalf of the OIC, during a Special Session of the Council concerning the situation of human rights in Libya in February 2011, the government representative addressed the Council as follows:

Mr. President,

The world is witnessing far-reaching developments in a number of OIC countries at present. It is a time of awakening; a time for reckoning. Muslims will no longer be denied their rights. Justice, equality and the rule of law must prevail, not only within Muslim societies but across the world.

Mr. President,

Recently developments in the Muslim world, provide a fitting rebuttal to those quarters that allege that Islam is incompatible with democracy. The Quran, our holy book, states in chapter 42 verses 38 to 43 that:

I quote

“they (the Muslims) conduct their affairs by mutual consultation and they keep open for the welfare of others what We have bestowed on them. And whenever gross injustice is inflicted, those who stand up for their rights and defend themselves are without blame; the blame is on those who oppress people and cause disorder on earth.”

Democracy, justice, freedom and morality thus constitute the core values of Islam...

... The Muslim awakening has emphatically stated that the Islamic world will no longer accept double standards and hypocrisy in the international sphere. Democracy, freedom and justice are immutable rights that cannot be promoted and protected selectively to serve the interests of some and not all. The international community will have to pay attention to the voices of the Muslim people and not just to their leaders...

... A new dawn has come. Rules of the game have changed. Those who do not embrace it, will be swept away.

These words remain only words, but are exceptional in their tone and content. Since 9/11, the Human Rights Council has been embattled by debates on the cultural relativism of human rights and embroiled, notably following the Danish cartoon depiction of the Prophet Muhammad, in arguments concerning the freedom of expression versus the need to respect religious and cultural sensitivities. This conflict between the Muslim world and the West has dominated much of the Council's agenda for years, which is why the shift in language and position as exemplified by Pakistan's statement, is so interesting and encouraging. On the ground, this statement has likely had no impact—human rights in Pakistan and many other OIC-member States remain deplorable and the people there are likely totally unaware of their government's utterances in Geneva.

The change in discourse and reduction of obstructionism that has occurred as a result of the Arab Spring and changes in US policy towards constructive engagement, at least to date, have led to some palpable outcomes at the Council. Prior to the March 2011 session of the Council, as the result of serious violence and grave and widespread human rights violations in Libya, the Council held its 15th Special Session on February 25, concerning the "Situation of human rights in the Libyan Arab Jamahiriya". This resulted in the General Assembly suspending Libya's membership in the Human Rights Council, which is the first time a member has been suspended and represents a very important precedent and victory for human rights. Until this point, although the suspension of members was loosely foreseen as a possibility, it was deemed unlikely that this would ever take place in reality. That Libya was a member of the Council at all is of course cause for concern and underlines the need for an improved system concerning the selection of members. Libya's suspension also sends a warning to other States that they could also face the ignominy of suspension from the council should they seek membership at a time when they are involved in gross violations, which is useful in protecting the Council from membership by the worst sections of the international community.

The Council also witnessed another first during the March session. During the whole process of establishment of the Human Rights Council, the Special Procedures have come under sustained attack by those States seeking to weaken the international system. The Special Rapporteurs and Working Groups are, in my opinion, the most independent and important component of the mechanisms set up during the life of the Commission on Human Rights. This also means that they are the inevitable target of those with negative intentions. This is particularly true of the Special Procedures set up to look at human rights in a specific country, such as the Special Rapporteurs on Myanmar, the DPRK or Cambodia concerning Asia, for example. Many negative States are fundamentally opposed to any outside monitoring of situations within country borders, as they seek to shield themselves from prying eyes in order to be able to continue violating their peoples' rights in peace. However, given the change in climate within the international arena in early 2011, the Council was able to establish its first new country mandate: the Special

Rapporteur on the situation of human rights in the Islamic Republic of Iran. Of course, this was an initiative led by the US, which has a well-known agenda concerning Iran. However, this does not diminish the importance of this as a precedent though. States will always pursue their interests, including where human rights are concerned. What is important to note is the effect that such actions can have on the human rights situations concerned rather than getting overly embroiled in issues related to State interests, as such interests will always seem dubious to NGOs, leaving little space for action.

For those who would seek to criticize the Council by claiming that it only takes action selectively concerning Western interests, the simple counter-argument is that it is always possible for African or Asian States to seek to establish a mandate on any country that they should desire. Their lack of action speaks more to their weakness concerning human rights than it does concerning problems with the system itself.

Another significant milestone that has been produced just last week, at the conclusion of the June session of the Human Rights Council, is the adoption of a resolution on human rights violations based on sexual orientation and gender identity. The resolution, presented by South Africa along with Brazil and 39 additional co-sponsors from all regions of the world, was passed by a vote of 23 in favour, 19 against, and 3 abstentions. The resolution is the first UN resolution ever to bring specific focus to human rights violations based on sexual orientation and gender identity. It is important to note that it has been a positive initiative led by South Africa and Brazil and not only represents a milestone in terms of the protection of specific rights, but is also a significant precedent in terms of establishing positive leadership from non-Western States, which must be applauded.

As mentioned above, the other category of developments that lead to hope for a more effective international system concerns the new mechanisms that have been established under the Human Rights Council, which give rise to opportunities for improved action to protect human rights in the future. Firstly, although there remain concerns about the weakness of the process of selection of members in the Council as expressed by Western States during the 2011 Review, there are opportunities within this process to put pressure on States to improve their records in order to merit membership. The suspension of Libya adds weight to this process. States vying for election to the Council are encouraged to make voluntary pledges to uphold human rights to the “highest possible standards.” NGOs can use these pledges to hold governments accountable at the domestic level and, should these pledges be broken, to campaign to block the State’s future membership in the Council. While the membership standards remain depressingly low in practice (otherwise it would be impossible to find 13 members each from Asian and Africa), NGOs have been able to campaign during the elections to ensure that the worst States are not elected. The AHRC is a member of the NGO Coalition for an Effective Human

Rights Council, which has campaigned successfully to block the election of Sri Lanka, Belarus and Iran in recent years, for example. The quality of the Council's membership has a direct impact on the body's ability to function effectively and the success of NGO campaigns in this regard is significant in building a more effective Council.

As seen above, the role of Special Sessions is very important in ensuring that the Human Rights Council can respond to urgent human rights situations, either in countries or concerning new and urgent cross-cutting themes. While the Sri Lanka Special Session represented a blow to the advancement of rights in the country and beyond, the hang-over from this now appears to be over, with the Special Session on Libya and more recently on the situation of human rights in Syria, having contributed to bolstering the international system's response to crises around the world.

Concerning the Council's processes, negotiations on resolutions are now open to monitoring by NGOs whereas they used to be behind closed doors in the commission. This enables greater transparency and also allows NGOs to be aware of the state of negotiations, in order to be able to conduct more effective and targeted advocacy to impact the direction of these negotiations in line with their human rights priorities.

Another new mechanism that is being lauded as a positive development is the Universal Periodic Review (UPR), under which all member-States of the UN are subjected to a review of their human rights records by a working group under the Council. From a political viewpoint, the UPR is very useful in that it treats each State equally, regardless of their size or human rights record. This goes some way to counter the argument that the Council is as selective in its approach as the now-defunct Commission. Of course, in reality, the system remains as selective as the interests of the States that comprise it, but at least the UPR system provides a veneer of fairness. The danger with the UPR system is that States that are committing human rights violations argue that the Council should not take any specific action concerning this, but rather only address country-situations under the UPR. Given that each State is only reviewed every four and a half years under the revised UPR system, such an argument is obviously flawed where there is an urgent need to intervene.

The interesting thing about the UPR system is that the majority of States are invested in it working, in order to show that the reforms have worked. This includes those States that do not want a stronger international system. Thus far, the majority of States have participated relatively well in the UPR process, and have generally accepted to implement a number of recommendations as a result. Although it is too early to tell whether the system will begin to fail when the actual implementation of recommendations comes into focus in the second round of reviews that will commence in 2012, at least for the moment there is more political will being shown by States in this system and more

cooperation than typically encountered concerning the Special Procedures or the Treaty Bodies that monitor States' compliance with their obligations under ratified international legal instruments.

There are, therefore, some noteworthy opportunities for those who work to further human rights around the world to make use of the Human Rights Council to further their aims. There remain serious challenges, and a serious burden on NGOs to improve their understanding of the possibilities presented by the system and the current political climate.

Great expectations

NGOs have great expectations concerning the international system, as well they should. In particular, in Asia, which has no effectively functioning regional human rights system such as those seen in the European or inter-American systems, the role of the international system remains key and often the only avenue for those seeking protection from abuse and redress. However, it must be noted that many members of civil society have unrealistic expectations of the international system, which then lead to frustration with it, and even the abandonment of engagement with the system. NGOs that call for the Council as a whole to intervene concerning a specific individual case of human rights abuse are likely to remain frustrated. The Council has a limited number of ways it can act, and these tend to involve the adoption of resolutions. It is unrealistic to expect the Council to pass a resolution on any given individual human rights violation. In fact, it is quite difficult to get the Council to pass a resolution on even serious and widespread situations of human rights violations, as such action typically requires a high level of consensus by at least a majority of member-States. This remains elusive as the majority of States resist action on country situations, as they seek to shield themselves from possible future action of that type. NGOs therefore need to have realistic expectations of the system if they are to use it effectively. Individual cases are best dealt with by the Special Procedures mechanisms.

NGOs also need to understand that to get results in the Council, a long-term strategy needs to be adopted. Many NGOs make statements at the Council and raise important issues, but unless this is backed up by concerted advocacy over the medium to long term, such issues are unlikely to become part of the actual decision-making agenda of the Council. While there is worth in raising issues publicly in such a forum, statements can easily get lost amidst the huge amount of information presented at each session. It is not enough to address the Council in the plenary, or even through a side event, and expect to have an impact on the discourse of the Council automatically. In order to make the Council more effective and able to protect human rights around the world, including in Asia, NGOs need to pursue concrete outcomes of the Council, or use their presence at

the Council to engage different actors, including other NGOs, UN experts and States, to take up their issues outside of the Council's proceedings. As shown by the recent resolution on sexual orientation, it is vital to not only lobby the traditionally human rights-friendly States, such as those within the EU, for example, but increasingly NGOs need to reach out to different regional powers, such as South Africa and Brazil, notably as growing economic and political weakness in the EU is reducing its capacity to hold leverage over States in other regions of the world.

The challenge ahead

The Council is a global body and requires a global approach to ensure it is stronger and more able to address situations around the world. This remains the main challenge to us, as human rights defenders seeking a more effective international system. Thus far, this system has not been endowed with the political will to make it effective concerning many grave human rights situations in Asia, but there is no reason to believe that this remains impossible in future. The mechanisms are there and the global political climate is, at least temporarily, improving. The burden is now increasingly on civil society in Asia and elsewhere to ensure that their respective governments' behaviour at the international level is improved. There are those who criticize the international body for its political approach and would like it to act as an expert body. This remains unrealistic. NGOs and independent experts can provide the expertise, but need to know how to use their knowledge to get the best out of the essentially political system that is the Human Rights Council.

While it is easy to criticize the international system, it is the only one we have and we all have a responsibility to work to ensure that it becomes more effective, however slow and frustrating that process may seem. The international system will only ever be as strong as its weakest members, and the strength of its members is a direct result of the strength of the civil society within these States. It is therefore imperative that NGOs across Asia pay greater attention to not only their governments' domestic human rights records, but also their foreign policy and positions at the international level, as a stronger international system benefits everyone. Popular movements, as seen in the Arab Spring, can clearly make a difference, which remains a great source of hope for us all.

The Philippine Penal Code: Breaching human rights

Fergal Mawe

Criminal law in the Philippines has its foundation in a single book of legislation called the Penal Code, which came into effect on 1 January 1932. This Penal Code was introduced by the Philippines' colonisers, the United States of America, and has remained in force since then. The Code defines a wide range of crimes with their corresponding punishments, and for the purposes of this article, theft, robbery, adultery, concubinage and resistance to authority will be focused upon. Not having been updated or altered since its date of enactment has severe implications on human rights today. In particular, this article will evaluate how the Penal Code has created a disparity of treatment between the sexes, and scrutinize its severe punishments against petty crime and its effects on children's rights.

To examine the severity of punishments in the Penal Code we needn't look further than article 308 on theft, which describes the punishment for a person convicted of theft in the following circumstances:

4. Arresto mayor in its medium period to prision correccional in its minimum period (*2 months to 2 years and 4 months*), if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.
5. Arresto mayor to its full extent (*6 months*), if such value is over 5 pesos but does not exceed 50 pesos.
6. Arresto mayor in its minimum and medium periods (*1 to 4 months*), if such value does not exceed 5 pesos.

It is necessary to consider the value of the peso and its purchasing power today, in order to appreciate the extent of the crime of theft in these provisions. As of 25 May 2011, one Philippine Peso is worth USD 0.02, and its purchasing power can allow you to consume 33 grams of rice (the weight of an average tablespoon). If an individual steals to

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the value of USD 1-4 (6.6kgs of rice) he could be sentenced to over two years in prison; if he steals just USD 1 (200 grams of rice) he could be sentenced to six months; and stealing an amount as low as USD 0.02 (66 grams of rice) could result in four months imprisonment.

It is thus clear that leniency in the Philippines is a myth, and the notion of the crime fitting the punishment is non-existent. For instance, what can one steal that is less than the value of USD 0.02, or what can one steal to feed a family that has a rice weight of less than a tablespoon? This is not to advocate or excuse theft by individuals; however, it is necessary to realize that petty theft is a daily occurrence, particularly given that half of the Filipino population struggle to meet their food expenses¹. In the interests of justice and liberty, petty crimes deserve petty punishment. A Roman philosopher and Emperor, Marcus Aurelius once said that “poverty is the mother of crime”. If we seek to apply justice in the Philippines, we need to change the current legislation of brutal punishment and focus our energies on combating this “mother of crime”.

Child rights

To understand the effects of the Penal Code on child rights, we can look at the Philippine Juvenile Justice and Welfare Act of 2006, which establishes various safeguards for children’s rights. The developments made in the issue of child rights however, is undone by the draconian penalties in the Penal Code.

In the Juvenile Justice and Welfare Act there is a noteworthy provision for ‘diversion’ where a minor offender (15 to 18 years) can avoid court proceedings and a prison sentence by partaking in a community based rehabilitation and restoration programme. This provision is subject to the following conditions: (1) if the penalty is less than six years, diversion is automatic; (2) if the penalty is above six years but a discernment test by a social worker determines that the child was unaware of breaking the law at the time, he can get diversion; (3) if the penalty is over six years but below 12 years, the judge can award diversion at his discretion.

A common crime committed by children in the Philippines is robbery, which holds the following penalties under article 299 of the Penal Code:

Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by reclusion temporal (12 to 20

1. http://www.ibon.org/ibon_articles.php?id=3. The IBON Foundation is an internationally recognized Filipino NGO that studies the most urgent socio-economic issues confronting Filipino society. It regularly surveys the standards of education and poverty in the Philippines.

years), if the value of the property taken shall exceed 250 pesos (\$5)

When the offenders do not carry arms, and the value of the property taken exceeds 250 pesos (\$5), the penalty next lower in degree (*6 to 12 years*) shall be imposed.

The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed 250 pesos (\$5).

When said offenders do not carry arms and the value of the property taken does not exceed 250 pesos, they shall suffer the penalty prescribed in the two next preceding paragraphs, in its minimum period (*6 to 8 years*)

According to the Penal Code, the punishment for robbery is in all cases above six years of imprisonment, regardless of whether it was armed or unarmed robbery, or whether it involved theft of less than USD 5. This being the case, no child having committed robbery can be automatically placed on the diversion programme under the Juvenile Justice and Welfare Act. As a result, the child will be imprisoned until he is considered for the second condition for diversion, the discernment test. Experience shows that it will take between four months to a year before this condition will be met. Moreover, the discernment test is not helpful in obtaining diversion for the majority of juveniles accused of robbery, as most 15-18 year olds will nearly always have known they were committing a crime, unless suffering from any mental disability. Thereafter, this test has evolved into a mechanism for delay against the child's rights to a speedy trial and due process. Lastly, it is left to a judge during court proceedings to determine whether the child should be placed on diversion. Judges have proved to be inconsistent in their decision from child to child, from day to day and from court to court, thereby denying diversion to children in circumstances where they would get it otherwise.

Michael Posados for instance, was a 17-year-old boy charged for stealing a bicycle on 11 March 2010. He was held for over one month in a holding cell in Mandaluyong City Police Station before being brought to the PREDA² home for boys. The legal team at the PREDA Home requested the court that he be placed on a diversion program on June 24, but there was no reply.

Finally, on 8 March 2011, we wrote to the court highlighting his minority, the pettiness of the crime and the fact that he had already served beyond the minimum sentence; these were sufficient grounds to dismiss the case. While the plea was noted by the judge, she did not allow for dismissal.

2. The PREDA (Peoples' Recovery Empowerment and Development Assistance) Foundation is a three time Nobel Prize nominated NGO that works in the area of child protection. It was established in 1974 and is based in Olongapo, Philippines.

She did however, allow for his release and return to his family, which was greatly appreciated by Michael. Nevertheless, it still means that he has an ongoing legal case, and if convicted he could still receive a custodial sentence.

Another 17-year-old charged with robbery of a cell phone was Ruel Nelida, on 14 April 2010. He was subsequently brought to the PREDA home for boys on July 17. The judge denied him both diversion and a release and return to his family. Again, we submitted a served sentence plea to the court on 27 January 2011, noting his minority, the pettiness of his crime and stating that if the minor was proved guilty his sentence would have to be reduced due to these mitigating circumstances. As a result, the sentence would not be greater than what he has already served. A reply to this motion was not forthcoming, however the judge provisionally dismissed the case on May 17, as the complainant did not attend any hearing. Ruel will thankfully be reunited with his family within the coming number of days.

It can thus be seen that the outdated stringent penalties in the Penal Code dismantles the effectiveness of the Juvenile Justice Welfare Act, particularly the applicability of the diversion programme. This is troubling due to the considerable number of children charged with robbery. The PREDA² Home for boys in conflict with the law shows that there is a yearly average rate of 33 percent of minor residents who face criminal charges of robbery, and who are unable to obtain diversion. While 50php would have been the equivalent of a middle class weekly wage in 1932, today it is merely the price of a can of coke; that both incur the same penalty surely indicates that the colonizers had greater respect for justice to the Filipino, than the Filipino has for his fellow countryman today.

Gender inequality

The Penal Code should also be examined in terms of gender, as inequality between the sexes in the 1930s was an accepted norm. Therefore, many laws debilitating to women still exist at present. Articles 333 and 334 of the Penal Code provide definitions for the crimes of adultery and concubinage for instance.

Article 333. Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her knowing her to be married, even if the marriage be subsequently declared void.

Adultery shall be punished by prison correccional in its medium and maximum periods (2 to 6 years).

If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed (2 to 6 months).

Article 334. Any husband who shall keep a mistress in the conjugal dwelling or shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by prision correccional in its minimum and medium periods (*6 months to 4 years and 2 months*).

The concubine (the *woman who committed the acts with the infidelity with the husband*) shall suffer the penalty of destierro (*banishment of 25km from the residence of the husband*).

The difference in these two articles is that a wife must prove that her husband keeps a mistress in the family home, or in some other dwelling, or that they were caught in the acts of scandalous circumstances, i.e. “*go together through the street of the town, and commit acts in plain sight of the community without caution and with effrontery*”³, while a husband only needs to show that intercourse was committed, even if he abandoned her for a few years. The law makes it more difficult for a husband to be charged with adultery than a wife: most mistresses are not kept in the family home, nor would the husband cohabit with her in any other house, nor would it be easy to find the husband and his mistress in scandalous circumstances. This clearly violates the fundamental principle of equality before the law for both men and women, as found in various international treaties as well as the Philippines’ constitution.

As can be seen, the Penal Code has outrageous provisions that perpetuates inequality and violates human rights. It is a shame that the Philippine government continues to allow such laws to rule society. The numerous executive orders and presidential decrees passed to amend various parts of the Penal Code are not enough; the Code itself must be fully updated. Apart from the provisions mentioned above, ridiculous provisions such as it being a criminal offence to resist or disobey your teacher or professor also exist today, with the penalty of 1-6 months imprisonment with a fine of 500 pesos; or, if the disobedience is ‘not serious’, imprisonment of 1-30 days with a fine of 10-100 pesos. Overall, and without doubt, this demonstrates the sheer backwardness and ineffectiveness of the Philippine government to enact good and just laws for its people.

The Philippines is a country crying out for the realization of its human rights, and if the government maintains to be of the people, for the people and by the people, it needs to listen to such cries and abolish this Penal Code. Laws based upon the principle of *Noxiae poena par esto*⁴, ‘let the punishment fit the crime’ must be introduced, and justice must be applied.

3. US v. Casipong, 20 Phil. 178.

4. Marcus Tullius Cicero, *De Legibus* (bk. III, 20).

In defence of the human rights defender: FMA Razzak's story told

Statement issued by the Asian Human Rights Commission: AHRC-STM-067-2011, 30 May 2011

States and state agents have historically used violence to stifle public debate, and silence their critics. In many countries around the world today, states no longer rely heavily upon overtly coercive methods and instead acknowledge the need for authentic debate. But in many others, states and state agents continue to resort primarily to coercive methods.

In such countries, some persons try to break the silence on matters of importance that threaten repressive systems for social control. These persons we honour with the title, "human rights defender". Oftentimes, the efforts of these persons seem small, especially to people in countries where authentic debate is taken for granted. Yet, such efforts necessarily begin small, and build up only with years of hard work.

Despite their appearance of smallness, such efforts challenge fundamental principles on which the state's power is based. For this reason, human rights defenders in these countries inevitably become targets for violence. Sometimes the violence seems arbitrary. Sometimes it seems grossly disproportionate to the small efforts of the person.

People unfamiliar with the milieu in which the human rights defender has been working naturally have trouble seeing how apparently small efforts to change society can provoke savagery. At such moments, those people who work with the human rights defender have a special responsibility to delineate the person sharply from his social and political environment, and in so doing, to set out some features of that environment, so that others can also understand why the person has been made the subject of violence.

For this reason, the Asian Human Rights Commission is issuing this short narrative on the work of a Bangladeshi human rights defender, FMA Razzak.

The story of how members of an army officer's family barbarically attacked and almost killed Razzak, gouging at his eyes and breaking his limbs, is now internationally known. The AHRC has set up a campaign webpage, which it is updating constantly, providing the latest details on the case and on subsequent events.

The purpose of this narrative is not to iterate all the contents of statements and appeals on the attack against Razzak, but to explain what motivated the attack, and to show how

the police, judiciary and National Human Rights Commission in Bangladesh are working not to defend this human rights defender but to enable the continuance of violence and impunity in their country. To do this, we must begin with the story of Razzak, the human rights defender. That story, although specifically the story of Razzak, is more generally the story of the human rights defender as Bangladeshi; the story of anyone who sincerely believes and fights for human rights in such a country.

A life thrice endangered

Three times FMA Razzak has been in imminent danger of losing his life because of his work as a human rights defender.

The first time that Razzak escaped with his life was in 2002. Razzak by then had been taking an interest in human rights issues for five or six years. His interest had been sparked by a visit to his district of Khulna, on the western seaboard of Bangladesh, by a retired appellate division judge of the Supreme Court, Justice KM Subhan. The former judge, a firm human rights advocate, had spoken to a group of local journalists, Razzak among them. The journalists had given a commitment to the senior jurist that they would do their best to work on human rights issues in the region.

Razzak took this commitment seriously. He began documenting and reporting on human rights abuses in and around his home area. This task was not a minor one. With a populace of over two million in Khulna district alone, stories of abuse were all too easy to hear. Yet, too few people were listening, let alone doing anything about them. Most people with stories to tell were poor and socially isolated. Hardly any journalists took an interest in them. Some considered the stories trivial, others deliberately ignored them, preferring to ally themselves with money and power.

If they were going to be serious about their commitment to Justice Subhan, Razzak and a few others realized, they would have to take the work to the next level. They set up and registered a new organization, the Human Rights Development Centre.

In Bangladesh, a country with a current population of over 160 million, groups like the Human Rights Development Centre are integral links in the chain of human rights defenders from the village to the national level. Professional organizations in the capital, like the Bangladesh Rehabilitation Centre for Trauma Victims, or BRCT, depend on human rights defenders in the districts for information and support.

Razzak and his colleagues took to the work in Khulna enthusiastically, devoting what spare time they had to the human rights cause. They documented cases and wrote petition letters to BRCT and other groups in Dhaka. They took poor victims of assault to hospital, and collected money with which to purchase medicines for them.

The work continued in this way up to 2002. Then the government initiated a notorious drive to capture “wanted criminals”. Codenamed Operation Clean Heart, the 86-day campaign provided a perfect opportunity for people nursing grudges to point their fingers at others. The army received an anonymous letter accusing Razzak of belonging to a banned political party. Razzak got wind of the letter and went into hiding. By the time that soldiers arrived at his house, he was gone. His family paid a high price for his absence. Soldiers ransacked the house. They tied up and beat Razzak’s father and younger brother. His wife they also assaulted and kicked, and stomped on her feet, crushing her toes. Then they poured cold water over her body and forced her to stand in the winter’s night for over two hours. Razzak’s seven-year-old daughter witnessed the assaults and suffered trauma as a result. Later, the army again came and took Razzak’s father into custody. They sent him to the local police station. The police held him for a month.

Only once Clean Heart ended was Razzak able to return home. During the operation, the army held and brutalized at least 11,000 persons. Fifty-eight of them died in custody. Had Razzak not escaped capture, he might have become another statistic.

Rather than frightening Razzak away from his work as a human rights defender, the threat of possible death in custody and the vicious attacks on his family only hardened his resolve. He went from being a human rights defender in his spare time to a fully dedicated participant in the struggle against impunity. He cultivated his contacts with national-level groups, and became actively involved in fact-finding missions around his region.

The BRCT took interest in Razzak’s work. He went for training, and became the organization’s first point of contact in Khulna and surrounding districts. Now Razzak had to travel widely across an area of some 20 million people, visiting the victims of custodial torture, investigating and making preliminary reports as part of a small unit of professionals. Being a journalist, he had a knack with words. The BRCT appreciated the clarity and quality of his writing.

But beyond his professional skills, what distinguished Razzak’s work in this period was his heartfelt concern for the plight of the victims. Although his home was 60 kilometers distant from Khulna city, he became better known within the city limits than people there that represented themselves as human rights activists. He never failed to take responsibility for a case that was brought to his notice, and travelled around neighbouring districts with the same unflagging energy. He took people to hospital, helped them to get treatment, to get medical certificates and to file cases against perpetrators. Anyone in need received Razzak’s assistance, no matter age, gender, religion or social standing.

The second time that Razzak narrowly escaped with his life was during 2004. In June of that year, the government set up the Rapid Action Battalions. The battalions, which

comprise of both military and police personnel, adopted the extralegal practices of Operation Clean Heart, making them a permanent feature of law enforcement in Bangladesh. The RAB quickly became notorious for killing arrestees in staged “crossfires”. In the first days of the RAB, few persons who were taken into their custody returned home alive.

When a RAB unit took Razzak away, witnesses frightened for his safety promptly contacted the BRCT. Someone at the organization got through to the unit’s commander. They impressed on the officer that witnesses had seen the RAB personnel taking Razzak and that the details of his arrest and other facts had already been documented. The BRCT’s quick work probably saved Razzak’s life. Realizing that the man in their custody was known, after just a couple of hours, the RAB handed him over to the police. A case against him failed in court, and he walked free.

Again Razzak proved his credentials as a human rights defender, redoubling his efforts to document and report on torture cases. He also brought victims personally to the BRCT in Dhaka, where professionally trained staff gave them treatment. Sometimes he organized for them to go to the centre with others.

In this period he documented a number of important cases. Soldiers beat a street vendor to death on the roadside. Apart from Razzak, nobody published news of the case. Another time, army personnel tied two men to a tree and assaulted them to extract information on the whereabouts of a wanted criminal. He also investigated and reported on corruption among officialdom; about police backing of illegal land grabbers, and about sectarian attacks on the minority Hindu community that the local authorities failed to halt or address.

A link with abroad

Around this time, in 2006, Razzak began voluntarily sending cases directly to the Asian Human Rights Commission. Soon, the AHRC was issuing urgent appeals on cases from Khulna that Razzak had documented. The following February, Razzak himself became the subject of an appeal, when he and his father were forced into hiding after an army officer falsely accused them of extortion. Observing his strong energy and efforts, the AHRC subsequently invited Razzak to its office in Hong Kong, where he participated actively in a programme for human rights defenders from across Asia.

Razzak had become a major pain to the local military and police. From his beginning as an interested but relatively inactive journalist he had become a tireless advocate for victims’ rights. He had gone from being a local activist to a point of contact for a major national organization. He also had found an international voice through the AHRC.

Earlier attempts at frightening the troublemaker off or quietly getting rid of him had not succeeded. Now the police and military resorted to a systematic campaign, which continues to the present day, aimed at blackening Razzak's name by painting him as a criminal. They also camouflaged attacks motivated by his work as a human rights defender, characterizing them as mere personal disputes.

In 2008, police brought a fabricated case against Razzak, alleging that he had abducted a young girl. The case was motivated by Razzak's support for a widow who had lost her costly trees and was about to lose her land to illegal interlopers. The interlopers had the backing of the officer in charge of the local police station. When the facts of the case came out in court, the police transferred the officer in charge as punishment. The punishment, although mild, encouraged local reporters and other human rights defenders. The newspapers began publishing more stories about the officer's role in other land grabbing incidents, and his part in various illegal enterprises.

Embittered, the police manufactured the case against Razzak. Because the fake case was the work of the police themselves, it fell to Razzak's family and fellow rights defenders to search for the girl and bring her to court, where she testified that nobody had abducted her. This time, Razzak and another rights defender spent three weeks in detention. The Asian Legal Resource Centre documented the case in the March 2009 edition of its quarterly periodical, *article 2*. The article on the case includes tabulated details of the amounts of money that the families of both men had to spend to secure their release, including by way of bribes to various officials.

During 2009, Razzak came back to Hong Kong, this time for a four-month internship. Basil Fernando, director of programmes and policy at the AHRC, remembers him well: "When Razzak came for the internship, his capacity to use the computer, to use the Internet, was basically zero. As a journalist he had been writing in longhand, using couriers to send his stories for print. Up to then, to send information to us also he had been relying on outmoded technology. I saw a tremendous fighter, but one frustrated by an inability to do more, and a man demoralized at the repeated attempts to silence him.

"In Hong Kong he gradually began to participate, to learn new techniques and new skills. He got into dialogue with people from around our region facing similar problems, and he shared ideas and experiences. I watched as some of the strength that had gone out of him after recent events returned. He regained his belief in his own ability, and on top of that realized how much more he could do.

"So, Razzak went back to Bangladesh invigorated, and also more skilled and knowledgeable than he was before. He went back to Khulna and in this new phase of his development as a human rights defender, whenever he took up an issue it went out faster

and got even more backing than ever before. So he had by now become much more of a nuisance than earlier. And this would have caused a lot of confusion and annoyance among the fellows responsible for attacking him. For years they had been escalating the campaign to stop his human rights activities, to the point of beating his family members and perhaps intending to kill him, yet still he had kept fighting, and each time had bounced back stronger.

“The whole point of these attacks on Razzak was to force him to give up, or to get rid of him completely. When the police or army attacks, the person is supposed to realize that whatever they are doing, they should stop it. But this fellow did not stop. So it is this atypical aspect of his behaviour that confused the perpetrators of abuses and their allies, and which led to the madly brutal attempt on his life in 2011.”

The ceaseless efforts of Razzak for human rights, which had begun in a small way some 15 years earlier, now provoked a response of such savagery that it has shocked people all around the world.

A savage attack with state agencies' complicity

The 2011 attack was the third time that Razzak escaped with his life. On this occasion, the escape was narrow.

After returning to Khulna from Hong Kong, Razzak immediately set about looking for new ways and new opportunities to promote human rights. The publisher of a local fortnightly newspaper had decided to give up the business. He offered it to Razzak, who took up the paper, both as publisher and chief editor.

In the meantime, Razzak had gone back to study. After years of entanglement with the legal system, he had decided to learn the law, so as to be better equipped to work on human rights cases. At the time, he explained to a friend that although his region had many good lawyers who were sympathetic to the victims of rights abuses, they lacked the enthusiasm needed to travel long distances and represent people with no money to pay for their services.

Razzak successfully completed a bachelor of law through a private university in Dhaka, and began working with a senior advocate in Khulna, drafting legal documents. The quality of Razzak's written skills combined with the legal knowledge he had obtained from the LLB proved formidable. His senior was very much impressed by the quality of the work, and did not make changes to Razzak's drafts before submitting them to court, as he would have done ordinarily. Meantime, Razzak set about trying to obtain a licence to practice.

All this was a bridge too far for the local police and military. In February 2011, they conspired to make yet another fabricated criminal case against Razzak and his family. This time, the complaint was of arson and destroying of property. With this new case underway, mobs led by the brother of an army major began a series of concerted attacks on Razzak's family and his property, culminating in the eye gouging assault in which he nearly lost his life.

On February 18, the brother of the army major led a mob to attack Razzak's house and its occupants, injuring his wife, brother and sister-in-law. The entire family went into hiding. On February 28 a mob led by the same man came to the unoccupied house, damaged property and carried off timber from the yard. In early March, someone apparently poisoned poultry owned by the family. And, on March 14 the officer's brother broke into the house with a group of others and looted it, carrying off a laptop, camera, jewelry and even a refrigerator.

Throughout this time, the police and courts took no action to stop the perpetrators. On the contrary, the function of the criminal justice system was to terrorize the family and enable the attacks to continue if Razzak refused to give up. The state agencies were fully arrayed against this human rights defender and his loved ones, including children and the elderly. The prelude to the third attempt on Razzak's life was, in hindsight, a portent of what would come after the attack. The prerequisites for impunity were already in place. In fact, the major attack could not have occurred without guarantees that the attackers would be protected.

The attack, when it came, was horrific. After some time in hiding, Razzak and his younger brother had again ventured out into public, and on April 29 had been travelling to meet with police and other local authorities, to appeal for help and to try to resolve the latest concocted case against them. Perhaps because they had been travelling to meet state officials, rather than trying to evade them, the men had not expected that the attack would come when it did.

The attack is described in full on the AHRC website. Briefly, according to Razzak, around 40 men surrounded the two brothers as they were trying to hire a car to travel for meetings with officials the next day. Razzak recognized them as men attached to the family of the army officer who had led the attacks of the previous two months. Kazal, the major's brother, was again present to coordinate the assault. Razzak vividly describes what happened next:

“Immediately, the gang jumped on me. They began to indiscriminately hit me: my head, back, chest, hands, legs--every part of the body. Kazal and his gang tried to push fingers into my eyes to gouge the eyes out. I tried to block the eyes with my hands. Then, they

severely pressed on my testicles. I was about to die! I had to move my hands from the eyes to the testicles at that moment. Immediately, they pushed fingers and a rod into my eyes and kept moving the rod inside the eyes. They tried to take out my eyeballs.

“Simultaneously, many others were hitting me with rod and stick. I cried out for help. But nobody responded to my cry. Only my younger brother tried to rescue me. But the gang caught him and brutally beat him, taking him a few yards far from where I was being beaten. I had no scope to follow or understand what was happening to my brother. I could do nothing to save myself. They knocked me down to the ground and jumped on my body and hit me as they wished.

“They constantly hit my right leg, which broke on the scene as I fell. When I tried to block the hits with my right hand, they hit my right hand, which also broke. I became completely motionless. They took away my mobile phone and some money that I had in my pockets. I was almost dead there.”

At this moment, what saved Razzak was his own sense to feign death. Had he continued to fight or cry out, the mob would surely have killed him. But knowing that nobody would come to help him, that the arrangements had already all been made to get rid of him once and for all, he lay still and listened to the men talk. Kazal called his brother, Major Mustafizur Rahman Bokul. He put the phone on speaker so the others could listen, and Razzak also heard the exchange. It began with Kazal:

“Brother, the kuttar bachha (son of dog) is caught in our hands now!”

“Only caught? What do mean? Break his legs and hands! Take out his eyes!”

“We have already taken out his eyeballs making him blind and have broken his hands and legs!”

“Where are you now?”

“We are in front of the paribahan (long route bus) counter.”

“Throw his body into some ditch!”

Instead of following the order, Kazal and the mob took Razzak in a van to a place where other members of the officer’s family and more people were present. The group again assaulted him. They again called the major on speaker phone, who said that he would arrange for the RAB in Khulna to take the body and make it look as if Razzak had been killed in crossfire. But, his brother advised that it would take too long and that the

matter had to be sorted out before then. Kazal instead called the officer in charge of the Paikgachha police, OIC Enamul, who asked,

“Kazal, what are you doing now?”

“We have already taken out his eyes and broken his hands and legs.”

“Very good! Bhalo kaz korecho (a great job)! Don't kill him on the scene; I am sending police there.”

After two police arrived, they began coordinating with the attackers. Neither the police nor the family wanted to take Razzak's body away. Finally, the police agreed to escort the attackers to the hospital, with the latter bringing Razzak by van. At this time it seemed that he was dead, or would soon die. Hospital staff kept him on the verandah and offered no help. Later, they sent him on to Dhaka, where at last he received treatment, and from where he could tell his story. According to medical tests, Razzak has lost 75 per cent of his right vision.

The most elementary things not done

Let us now take a moment to consider the role of state agencies during and following the attack on this human rights defender. What we find is that across all of these agencies, even the most elementary things that should have been done have not been done.

The role of the police in enabling the attack and colluding with the attackers is obvious. After the attack, with a large amount of national and international news on the incident, it would be reasonable to expect that the police would feign an investigation. But even this seems to be unnecessary. A month on from the assault, no police officer has yet recorded Razzak's testimony. The police did record a First Information Report about the incident, which listed 38 persons as accused, Kazal at the top of the list. Despite this, to date no charges have been brought against any of the 38. By contrast, on top of the fabricated case against Razzak pending from February, in April and May the police lodged two further concocted cases against him, his brother, wife and some other relatives and supporters. One journalist implicated in these cases they detained.

The local judiciary has so far done its job to protect the perpetrators. Although some of the accused it initially placed in custody, because Razzak's lawyers could not bring a proper medico-legal certificate to court in time, the judge released 14 out of the 15 persons detained. Whereas the criminal justice system has the responsibility to see that official medical examinations are recorded according to procedure and evidence brought to court, in this case the judge transferred his own duty onto the victim as a means to enable some of the accused to walk free.

The army for its part has seen no reason to suspend, investigate or even comment upon Major Bokul. He continues in his post as usual, despite requests for him to be suspended coming from high levels inside the country and abroad, and despite public rallies in Khulna calling for his dismissal.

Perhaps the most scandalous part in the business following the attack has been the role played by the National Human Rights Commission. Despite repeated requests from the AHRC, as well as from other persons and groups in the country and outside, it has failed to act on the case. The NHRC chairman, Professor Mizanur Rahman, in a discussion with AHRC staff iterated the lies of the army major: that Razzak was a criminal, and the attack related to a personal dispute rather than human rights work. Although he promised to visit Razzak in hospital, the chairman failed to appear, and his commission failed to record a statement from the victim. The NHRC, in short, has joined the ranks of the propagandists for the perpetrators of this heinous attack.

Yet, none of this is exceptional to Razzak's case. On the contrary, these are the routine methods of the criminal justice system in Bangladesh: precisely the methods against which Razzak had been fighting for years. The police give various excuses for being unable to complete an investigation. The court puts the onus on the victim. Other agencies that in principle should come to his aid instead rally around the perpetrators. This is the milieu into which Razzak first tentatively took steps as a human rights defender in the 1990s. It is the system of violence against which he has struggled since, and against which he is today forced to struggle for his own survival.

The violence continues

Within days of the attack on Razzak, the threats of further violence spread. Two of the attackers visited eyewitnesses who had joined rallies to call for the arrest of the perpetrators, and brandishing long knives told the witnesses that they would be killed if they did not remain silent. The eyewitnesses and families were forced into hiding.

That the attack on Razzak was motivated by his human rights work, and not a personal dispute--as people attached to the perpetrators have tried to portray it--is painfully obvious from what has since happened to two of his colleagues. Both of the two had been working closely with the AHRC on the campaign for Razzak following the attack of April. Both were in recent days abducted and threatened with death by unidentified members of the state security forces. One has suffered trauma from his experience and has gone into hiding. The other has spoken out.

That young man, Dipal Barua, was returning from a friend's house on May 24 when a group of men pulled him into a waiting car. They blindfolded and handcuffed him, drove

him to an unknown place, and stripped him naked. The men locked him in a room for about seven hours, without food, water or a toilet.

After this time, men took Dipal to another room. He thinks that the time was midnight or early morning. There were, he thinks, seven to eight persons inside this room, judging by the voices he heard. They questioned him: why had he visited Razzak in hospital many times? Why was Razzak shifted from the Dhaka Medical College Hospital to a private hospital? How much money was paid to Razzak by the AHRC? How long has he been engaged in the work of the AHRC? Who are the other persons working for the AHRC in Bangladesh? Where do these persons reside and where are they based? Are the persons currently living in Bangladesh or not? Who is the boss of the AHRC's Bangladesh work? When does that boss visit Bangladesh? When is the boss coming to Bangladesh for the next visit? Who came from Hong Kong to visit Razzak after his hospitalization? Whom did the AHRC team meet during their visit? Had not ten million Taka (about 1.4 million USD) been sent to Dipal and his friends from abroad for human rights work and where is the money?

Similar questions were repeatedly asked for an hour or so. Thereafter, the interrogators told Dipal that they were going to kill him. He got frightened and told them that he has aged parents and appealed to them not to kill him. He said that he is willing to do whatever they ask and asked them to spare his life.

Then the men told Dipal to sever all connections with the AHRC. They mentioned the names of several other persons, and told him not to have any contact with them either. They told him that they were going to give him a chance and that he should use it, that if he again had contact with those persons, he would not have such a chance. Then they put him back in the room until the afternoon time, when they took him back to the same place from where they had picked him up on the previous day.

Dipal's terrifying story speaks for itself. Not only are the attacks on human rights defenders in Bangladesh organized, systematic and life threatening, but they are also targeting persons connected to the AHRC because of the pressure of the campaign for Razzak.

No other strategies

Today, not only FMA Razzak and his family but also all human rights defenders in Bangladesh who have rallied to his side face real danger. One reason that the danger has spread is that the system has no strategies to deal with a man like Razzak, who will not stop his fight. The system's methods are premised on the idea that the person against whom they are directed will eventually give up. When a person refuses to give up, the

system is bereft of alternative strategies. Its personnel know only to escalate and widen the violence.

Others will be subjected to harassment and also possibly to further abductions and interrogations. In a country where extrajudicial killings are commonplace, we can also assume that the persons responsible for these threats are prepared to make good upon them. For these reasons, the solidarity of the international human rights community is vital for the human rights defenders of Bangladesh at this precarious time.

But it is also vital that this solidarity be informed by an understanding that the violence ultimately is rooted in centuries of oppression, and in the struggle, oftentimes seemingly small, to break open the silences which enable oppressive structures. In a society where most people are inert or disinterested in the plight of the ordinary victim of state violence, when the voice of a person like Razzak is heard, it echoes through the empty space that in another society may be filled with many disparate voices. It attracts the notice of many people, including those who do not want to hear such a voice, and will go to lengths to silence it again.

In this sense, the attack on Razzak must be understood not as an attack upon an individual but as an attack upon society. Its objective is to silence many by silencing one. The attackers know full well that if such a man as Razzak can be forced into quietude, others also will remain that way. In response to such an attack, the duty of all other persons who identify themselves as human rights defenders, both in Bangladesh and around the world, is to ensure that this objective does not succeed.

Suggested Actions:

1. Write to the Government of Bangladesh requesting the appointment of a special investigating team to investigate into the attack on FMA Razzak;
2. Request for an immediate judicial medical examination of FMA Razzak;
3. Request for the arrest and prosecution of the main instigators and perpetrators of the attack against Razzak and his family;
4. Request for adequate medical treatment for Razzak;
5. Request for ensuring security for Razzak and his family.

Some gouge out the eyes of others

Basil Fernando

A poem written for the 150th anniversary of Rabindranath Tagore

Cry, Tagore, cry.
Your nation knows you not.

Yes, they have ceremonies,
Exhibiting your photos,
Repeating your songs.
Talking about the 150th anniversary,
They may even build
a temple for you, these days.

But your brain,
Your voice,
Your love for the people,
Your vision for humanity,
Your dream for your nation,
That, dear sir, is dead-dead-dead.

Some gouge out the eyes of others.
During daylight people disappear
In darkened limousines.
Blindfolded, they take away people.
Naked, kneeling in mortuary-like places
they recall your verses.

Cry, Tagore, cry.
Your nation knows you not.
Your poems matter not.
You are so soon forgotten.
Yes, truly forgotten.
Dead-Dead-Dead.

Buddha's teachings and the struggle for freedom in Cambodia

Dr Gaffar Peang-Meth

(An article published by the Asian Human Rights Commission: AHRC-ETC-013-2011, May 16, 2011)

I write often that our future and what we do are not dictated by what we know. It is how we think, more than what we know, that determines the quality of our life and the quality of anything we do.

I also write often that though our brains can store countless facts and data, similar to keeping rocks in a box, that information is good and useful only if we can explain, interpret, evaluate, compare, and relate it to other facts and other situations around us, which requires critical thought, a capacity that can be taught and learned.

And Lord Gautama Buddha (563 B.C.-483 B.C.) was not only one of the world's great critical thinkers, he was also an activist from whom we can learn a lot.

Officially, 96.4 percent of the 14 million Cambodians are Buddhist; and there are more than 4,000 Buddhist monasteries scattered across the country, housing more than 50,000 monks. Theoretically Cambodians are followers of Buddha. Are they? What did Buddha teach about thought, action, and change?

I have written about a prominent Buddhist monk in Phnom Penh who questioned quietly how many monks (and how many Buddhists) really understand Buddha's teaching. I have also mentioned a Khmer scholar who asked in his writing whether Khmer Buddhist beliefs are only "skin deep", and pleaded for some serious "soul searching" amongst the Khmer Buddhists.

These are important points, because a misunderstanding of Buddha's teaching could hinder Cambodia's development and Cambodians' struggle for rights and freedom. Personally, I believe a correct application of Buddha's teaching could advance Cambodians' search for rights and freedom.

Buddha's teachings: Are Cambodians learning?

As Buddha himself said, "However many holy words you read, however many you speak, what good will they do if you do not act upon them?" The German playwright, Johann Wolfgang von Goethe wrote, "Knowing is not enough, we must apply. Willing is not enough, we must do."

So in my writing, I have reiterated Buddha's words from 2,500 years ago: "We are what we think... What we think, we become" and "He is able who thinks he is able". This latter quote should humble us today as specialists encourage positive thinking and the development of a "yes, we can" attitude to help make problems easier to solve and predicaments easier to cope with.

An activist, Buddha said man is responsible for what he becomes and that he is not a product of karma: Man can improve his life here and now, and not wait for the next life. "I do not believe in a fate that falls on men however they act; but I do believe in a fate that falls on them unless they act." "I never see what has been done; I only see what remains to be done." "Pay no attention to the faults of others, things done or left undone by others. Consider only what by oneself is done or left undone."

So, what should man do? "To be idle is a short road to death and to be diligent is a way of life," Buddha said, and therefore, "Work out your own salvation. Do not depend on others... No one saves us but ourselves. No one can and no one may. We ourselves must walk the path." In other words, man can do something to improve his lot in life and not to count on others.

These are themes I have emphasized in my writing. Think positively, dream big, imagine the world we want to see, demonstrate a can-do attitude, and take the first step, however small.

While Buddha says, "An idea that is developed and put into action is more important than an idea that exists only as an idea," he also warned, "One thought leads to heaven, one thought leads to hell." So we learn how to think and apply the thought that leads to heaven!

Buddha's principles of "Four Reliances"

And so, Buddha provided man with a guide in the principles of "Four Reliances": First, to rely on the spirit and meaning of the teaching, not the words; second, to rely on the teaching, not on the personality of the teacher; third, to rely on the wisdom in the

teaching, not the superficial interpretation; and fourth, to rely on the essence of our own pure Wisdom Mind (obtained through the eightfold-path), not on judgmental perceptions.

One lesson taught by Buddha, which I never tire of repeating, is his emphasis on “reason” and on accepting and living up to that which is to “the good and benefit of one and all”.

“Do not believe in anything because you have heard it. Do not believe in anything simply because it is spoken and rumoured by many. Do not believe in anything simply because it is found written in your religious books. Do not believe in anything merely on the authority of your teachers and elders. Do not believe in traditions because they have been handed down for many generations. But after observation and analysis, when you find that anything agrees with reason and is conducive to the good and benefit of one and all, then accept it and live up to it.”

What we do today matters most

Buddha’s “Do not dwell in the past, do not dream of the future, concentrate the mind on the present moment,” were not meant to discard the past as a lesson. He never tells man not to learn from the past, but he tells man not to be stuck in the past, not to live in it because it locks him in and provides him with no way to move forward. What has happened, happened, there is nothing one can do to change that. And he says, “Nothing is permanent.”

He warns us not to waste time dreaming about a future that is yet to come, but to focus on the importance of today: We have 24 hours to do something today, here and now, to avoid the pitfalls of the past, and to affect the kind of future we want to see. Man, not karma, is responsible for the future. Think positively, think creatively and critically, and act now to build a new world.

“Each morning we are born again,” Buddha says, “What we do today is what matters most.”

Any individual with common sense can see how all the above—and many other teachings by Buddha not mentioned here—apply to the life of Cambodians in particular, as they face difficult times.

Learning to relate

Last month, at about the same time Cambodians celebrated the New Year 2555 of the Buddhist Era, the United States also celebrated the 150th anniversary of the American

Civil War (1861-1865), the bloodiest conflict in its history. I used the occasion to write about how two general officers of two warring armies (which suffered 630,000 killed and more than one million injured) worked out in dignity and mutual respect the terms of surrender and organized a moving ceremony of disbanding the defeated army with “honour answering honour”.

As the Civil War ended, the United States motto, *E pluribus unum*—Out of many, one—became alive, the many states of the United States became one nation, peace and reunification subsumed years of animosities, and the American Nation became stronger and united.

I do not know what lessons Cambodian readers may have drawn from that article, but the picture of two adversaries coming to deal with one another with integrity and humanity at the conclusion of the Civil War was a far cry from Cambodia's Khmer Rouge victors executing the vanquished and turning the country into killing fields.

The divided warring states of the United States were able to reunite and rebuild, whereas the four warring Cambodian factions, even blessed with the 1991 Paris Peace Accord, were cowed into submission by Prime Minister Hun Sen and his ruling Cambodian People's Party.

Cambodians who oppose Hun Sen's autocratic regime can learn from India's political and spiritual leader Mahatma Gandhi, who observed, “A small body of determined spirits fired by an unquenchable faith in their mission can alter the course of history.”

Gandhi, 5 feet and 3 inches, and weighing a mere 100 pounds, told the world, “You can chain me, you can torture me, you can even destroy this body, but you will never imprison my mind.”

And Gandhi's mind was made up and unshakable. Gandhi was determined to lead his people in a non-violent struggle to end the British Empire's rule over India. He and his people won.

As US President John F Kennedy said, “A man may die, nations may rise and fall, but an idea lives on.” Ideas were what interested Buddha.

Thomas Jefferson was only 32 when he wrote in the 1776 Declaration of Independence, a sentence that has inspired men and women around the world: “We believe these truths to be self-evident, that all men are created equal...” The declaration became one of the world's most admired historical documents.

Fifty-six Americans—lawyers, jurists, merchants, plantation owners, farmers—signed the Declaration. They knew what would become of them should they be captured by the British and charged with treason. As the story is told, of the 56 signers, five were captured and tortured until they died; nine fought and died in the Revolutionary War; 12 had their homes ransacked and burned; two lost their sons in the War; another had two sons captured.

Nearly one hundred years after independence, Americans fought between themselves over the issues of human rights and slavery. The Civil War over, the fight for equal rights never stopped. American children go to school, learn the sacredness of the self-evident truths. And today's Americans continue their relentless fight to ensure that the self-evident truths live on.

The struggle of the Cambodians

As self-described followers of Buddha's teaching, Cambodian democrats who are generally Buddhist, should be successful in their struggle, the goals of which are clear and worthy: Keep the Cambodian nation from being overtaken by expansionist neighbours; protect the country's national independence, sovereignty, and territorial integrity; protect and defend the individual rights and freedoms of the Cambodian people in accordance with the Khmer Constitution and all relevant international conventions to which Cambodia is a party.

Yet Cambodian democrats are in disarray. Individually and as opposition parties they fight and tear at one another more ferociously than they fight the dictatorial regime in power. When Cambodian democrats call for national unity, they generally mean unity behind their respective leadership and party.

Cambodians of my generation, many of whom remain politically active in Cambodia, learned in elementary school that "Samakki chea kamlaing," or "L'union fait la force" —or "Unity makes strength". It is a common precept. Among Cambodians of all generations however, Buddha's teachings provide the foundation for unity across political parties. The teachings illuminate an apolitical way forward.

How far the strand of Cambodian authoritarianism extends can be worrisome. I find it astounding that some Cambodians find it appropriate to raise doubts about people and pejoratively brand them, because they hold different political opinions and methods for dealing with problems.

I would not have believed this until in an e-mail someone I do not know charged that I am a "Vietnamese who pretend(s) to be Khmer... to destroy Khmers" because of my

criticism of Hun Sen's autocracy, asserting that I have not written on the most recent Khmer-Thai spat over Preah Vihear Temple, nor have I written about Kampuchea Krom, and that right now is not the time to criticize Hun Sen but to unite all Khmers against Thailand's aggression!

I recall Buddha's words: "There is nothing more dreadful than the habit of doubt. Doubt separates people. It is a poison that disintegrates friendships and breaks up pleasant relations. It is a thorn that irritates and hurts; it is a sword that kills."

The "Lotus" Movement

I have previously written about the Cambodian "Lotus" movement: A movement of Cambodians of different political viewpoints from different areas of the world, who joined in Paris to demand Vietnam's withdrawal from Cambodia and that Hun Sen step down.

A few days ago, a Khmer statement, "Our Determination," in my inbox, made me smile. I liked it. Here's my translation of it:

"If we don't want dictatorship, let's not moan and groan.

"If we don't like foreign domination, let's not whisper.

"If we have problems bringing down a dictatorship, let's not shed our tears in solitude.

"If we have problems evicting the foreign aggressors, let's not talk quietly.

"If we have our political or personal differences, let's not tear each other apart.

"We have had to struggle against such difficulties since the Fourteenth Century, and our Preah Bat Thoammoek never listened to our cries.

"Henceforth, we shall protest often and regularly through non-violent actions,

"To disintegrate the dictatorship, and evict the foreign aggressors from our Motherland!"

To those soothing words, I say, Amen!

Pakistan's appeasement policy towards the armed forces

Baseer Naweed

The government of Pakistan has once again come out in support of our armed forces in an attempt to present them as brave and innocent—a legacy of Bhuttoism. The government is reluctant to initiate an independent inquiry commission into the incidents of Abbottabad and Mehran Naval base, and their silence is welcomed by senior officials of the armed forces and intelligence agencies. The history of Pakistan's civilian governments shows their lack of courage in admonishing the generals for their continuous defeats, whether in war or against terrorist action. Furthermore, the government is turning a blind eye to the grabbing of national resources by the armed forces.

This was first done by Zulfikar Ali Bhutto after the successful freedom movement of Bengalis and the shameful defeat of our soldiers. It was following this debacle that he started developing a heroic image of the army and generals. He begged Indian Prime Minister Indira Gandhi to release all the soldiers who were captured during the war with India in 1971, thinking that this would make him a popular man before the armed forces. It was the very same armed forces however, that hung him through their minion, the respected courts of the land.

The military government of General Zia Ul Haq enjoyed unchallenged rule for 11 years.

Not learning anything from the fate that befell her father, Benazir Bhutto followed in the same path and agreed not to take any action against the officers involved in the conspiracy against her father. She also agreed to accept army demands of non-interference in foreign policy, defense policies and the Finance Ministry. To further illustrate her loyalty, she awarded the Medal of Democracy to General Baig, the then chief of army staff. General Baig in turn demonstrated his loyalty to Benazir Bhutto by conspiring to overthrow her government with the support of the Inter Service Intelligence (ISI) and money sequestered from the Mehran Bank. The ultimate victim was Asif Ali Zardari, the incumbent President, who remained in prison for many years on the charges of corruption. Now, history repeats itself as President Zardari, who was severely tortured in custody, is also working hard to appease the army.

Former Prime Minister Nawaz Sharif also appeased the generals and supported the military on the Kargil issue, thinking he would become Sultan Salah Uddin Ayubi by

blindly following the wrong policies of the generals. The Kargil incident took place in 1999 when the Pakistan armed forces entered Indian Kashmir and captured some strategic heights, thereby invoking an undeclared war with India. There was much public anger over this incident because of the potential of full scale war (with nuclear deterrents). India repelled the Pakistani forces, leading to the loss of thousands of lives. People demanded an inquiry into the unconscionable action by the generals, but Nawaz Sharif refused these in an attempt to appease the military generals. History repeated itself once again when the generals toppled his government and compelled him to surrender. To save his life, Sharif wrote a letter of apology begging for amnesty before General Musharraf.

This was the armed forces way of telling the Pakistani people that even governments could be toppled if they dared to oppose the army's arbitrary right to wage war without consulting the government or the people. The military government of General Pervez Musharraf ruled for 10 years.

Today, the government of Gillani and Zardari are again following the same path by attempting to ignore the failings of a demoralized army. After the Abbottabad incident when the whole nation was agitating about the security agencies' performance, or lack of, regarding the violation of the country's sovereign air space and demanding accountability, the Gillani-Zardari team came forward to shield the armed forces and take the blame themselves, rather than sharing it with the real culprits.

This government has missed a God-sent opportunity to initiate action in favour of civilian rule and democracy by listening to the demands of the people and ensuring the accountability of the armed forces. No doubt, in their private meetings to discuss these matters they cannot help but reminisce on the downfalls of their predecessors who, at one time or another fell afoul of the army generals. There can be no doubt whatsoever that they have every intention of avoiding the same fate that befell the Bhuttos and Nawaz Sharif. However, they do not realize that remaining silent and offering blanket impunity to the generals does not confirm their safety.

What is to follow in the months to come? Pakistan already has a judiciary which cannot say NO before the generals; can we now expect martial law under the guise of securing the nation?

This government's habitual performance has been to turn a blind eye to the illegal and inhuman actions of the armed forces against the Pakistani people. The very people they are sworn to protect are now being disappeared and tortured in no less than 52 torture cells operated by the army and several by the navy and air force. Solid evidence has been produced in the courts with eye witness accounts by victims themselves, and yet no person has ever been recovered and no agency's official has ever been held to account.

There is even video evidence of extrajudicial killings by army officers and evidence of mass graves in locations where the army conduct operations in the name of counter-terrorism. Despite all this, no action is taken by the civilian government.

In their ongoing programme of appeasement the government has completely ignored calls from local and international human rights groups demanding accountability for these acts of terrorism against the people by their own army. After the international community documented the army's aerial bombardment of Balochistan in 2005, Gillani-Zardari's ruling party promised to hold inquiries when they came into power. Unsurprisingly, no such inquiries have been instigated. Instead, the disappearances in Balochistan continue to increase.

It is terribly sad to acknowledge that no government has learned a lesson from Pakistan's recent history. No representative of the people has ever paid attention to the character of the armed forces of the country.

This is the time for the government to take strong action against the wrongdoings of the armed forces and prosecute all those responsible for supporting terrorism and terrorists in the country, whether in the government, the religious community or the armed forces. An independent commission made up of the judiciary, academics and experts must be set up immediately to look into this if the power exercised by the generals is ever to be contained.

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.

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.

Human Rights Solidarity – Also a bi-monthly publication and available both in hard copy (from July 2007) and on-line. This publication covers stories and analysis of human rights violations in Asia.

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