Ethics in Action

Vol. 4 No. 3 June 2010 ISSN 1997-2997

Asian Human Rights Commission

Cover photo:

AHRC torture poster, 2010.

Published by

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June 2010

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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Negros Island: Living in our colonial past

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I am not a Negrense, a term that refers to the inhabitants of the island of Negros, in Visayas, the Philippines. I am a Filipino, but had never visited Negros until recently. While I can speak Cebuano, the language spoken in the eastern part of the island, Negros Oriental, the Hiligaynon language spoken in the western part of the island, Negros Occidental, is a language I have little knowledge of.

My ancestors were of Cebuano origin so I had no roots with an Ilonggo tribe, whose language is Hiligaynon. However, they were the people I met on this trip. I tried to find connections between the island, its people and myself during my short stay there, but apart from the similarity of being a Filipino and being able to speak Cebuano, I realized that I was not only a complete stranger to the island but also to many of the Filipinos in my own country. I had little idea of Negros and its people.

Spending some days in the company of the locals in Negros Occidental, I was aware of my failure in comprehending the depth of their suffering and its origins—the extreme poverty and oppression they have faced for more than half a century. My belief that I had a fairly good understanding of my country's context was now shaken and I spent a lot of time questioning myself, my opinions and attempting to find the meaning of my work and its potential impact on the lives of the Negrense so that it might be more consequential to them.

My perception and understanding of what should happen in a rule of law society had no bearing on the experiences of the locals on a daily basis. This was my failing, not theirs, and I felt sorry for myself until I realized that the very least I could contribute was to share my reflections as to how the locals live their daily lives and what makes the sharp delineation and control of the classes possible. It is, in fact, the elite who, having remained powerful over centuries, make this delineation possible.

Poverty and oppression force locals to migrate

Having spent most of my adult life in southern Mindanao, one of the over 7,000 islands in the Philippines, it was not until my recent visit to Negros that I began to understand why people from Negros migrate to southern Mindanao. My stay there strengthened my historical and anecdotal knowledge.

For years now, the island of Negros has been a place to escape from. Many of those who left the island, including my wife's father and his siblings, left for Mindanao in the 1960s and 1970s, due to the extreme poverty. In the years to come, they settled in Mindanao and now have their own families and communities.

Sugarcane is the island's primary agricultural produce and Negros is known for its vast plantations. It has been supplying sugar as far as Europe and the Americas since the early 1900s when sugarcane production was first introduced to the island. But it is also an island of contrast where class divides and social control are sharp and clear. There is no pretense of humility on the part of the ruling classes.

The situation of extreme poverty that prompted the migration of my father-in-law and his neighbors so many years ago has not improved today. Indeed, it was in existence for many years prior to their departure. People growing up in Negros, particularly in the villages, would rather migrate to other places than try to settle there. What I find amazing, is how the people who chose to stay manage to survive.

The dreams of most children growing up in a village would often be to either move to the island's so-called 'urban areas', like the cities of Bacolod or Dumaguete to find employment, or migrate further afield to places like Metro Manila for the same purpose. Migration from the island is mostly for reasons of poverty, lack of opportunity and with the mindset that perhaps migrating could get them a better future. For the women there is also the hope that they will be able to marry a well-off person. Regardless, whether man or woman, the ultimate purpose is getting off the island.

Some are lucky, but most are not.

Control begins at childhood

From the moment a child is born into a family of sugarcane workers, he becomes an object of control in his society, community and even in his own family. For such a long

time now the lives of the people have revolved around sugarcane planting and production that it is naturally assumed any children born into a sugarcane family will adapt to this way of life. It is such a certainty that they are taught to harvest sugarcane at the age of eight years.

Even the child's very existence is meant to sustain the family's survival. The concept that a couple give birth to a child as a gesture of love and fulfillment, to have someone to carry on the family name and tradition, is of secondary importance to sugarcane families. A child is conceived and born for the very purpose of the family's survival. They are raised in the hopes that when they grow up they can help the family to earn money.

In reality, children are seen as beasts of burden. If cows and water buffalos are a source of milk or used to plow farmlands, children who belong to a family of farmers work to add to the family's daily income for their mutual survival.

In Negros, the minimum wage as required by the law is Php 218 (USD 4.9) a day, but in reality the majority of the plantation workers only get Php 70 (USD1.5). The more children a family have the more income the family can generate once they are old enough to help their parents work in the fields.

But this also results in the children suffering from an early age. In one village near Cadiz City, Negros Occidental alone, a social worker said that there are over 2,000 children less than six years-of-age whose weight falls under the 'below normal' category, and about ten of them are clinically malnourished. This phenomenon is very common during the tiempo muerto (the dead season when the sugarcane is harvested and milled), from May to September each year. There is also the possibility that for various reasons, the family will lose their jobs at the plantation.

The government agency responsible for providing relief to these children is the local Department of Social Welfare and Development (DSWD). However, only children falling under the 'malnourished' category are entitled to relief or food assistance. Malnourished children are provided with at least three kilos of rice per month as a form of relief, but this assistance stops once the child's weight rises to the 'below normal' category. Also, this provision of food assistance depends on the government's budget availability, and is not considered a priority.

Due to the extreme poverty faced by people, the notion of parenting has evolved. Parents know full well they will not be able to adequately feed, clothe or educate their children,

or even simply allow them to enjoy their childhood as children and not as workers; yet they must bear children. Considering children as 'beasts of burden' has become an acceptable norm. To simply condemn the parents would therefore not only be insensitive, but a superficial critique of what needs to change. Under the present circumstances, this is their only way of survival.

Both the children and their parents are victims of a decades-old cycle; like the children of today, their parents and ancestors endured the same experience. Today's adults are yesterday's children; they were raised and suffered as their children are doing today. It is easy for outsiders to pass judgment on people, to come to conclusions based on the reality of their own lifestyles and put the blame squarely on the parents. But in reality even the children do not blame their parents. Some even tell their parents it is pointless to spend huge amounts of money for their university educations, and they should rather marry and have a family of their own as soon as possible after finishing high school.

In the Philippines the average age of completing high school is 16 years. I met a woman in one of the Negros villages I visited, who was recently married. She had only completed high school, but she spoke fluent English to my Korean colleague who was interviewing her. Her English was far better than that of the foreigners who come to study English at the universities in Negros. [1]

For her, as for other children in the village, completing high school education must have been extremely difficult. In one of the villages I visited, children walk four hours a day in going to and from their school, often on an empty stomach. Moreover, even with ambition, children are unlikely to benefit as their parents cannot afford to send them to school, buy school supplies, books and uniforms, because their employers do not pay them decent salaries or the benefits they are entitled. In fact, by ensuring the salaries they pay to the sugarcane famers do not allow them to properly educate their children, the plantation owners ensure that they will have laborers from one generation to the next. This is one of the many ways in which the landed elite control the farmers and their children's lives, and this cycle has continued for years.

Decimating local values and habit

Before your airplane touches down at the Silay City's national airport in Negros

1 Many Asian nationals come to the Philippines to study the English language, due to the cost, quality of education and the prominence of English in daily life.

Occidental, what you see from the sky is the island's huge plains. Negros is the country's third largest island with a land area measuring about 13,328 km². It is divided into two provinces, Negros Occidental and Negros Oriental. The native settlers were originally Negritos, an indigenous tribe whose appearance is that of short, dark-skinned persons with curly hair. The Negritos had their own settlement in the island long before the Spaniards arrived and referred to them as Negritos. Even today, this indigenous community continues to suffer ethnic discrimination.

The Negritos, according to the locals, were either forcibly pushed towards the mountains or displaced from their communities when the Spaniards and local elites began to establish settlements and accumulate properties. In years to come these would be known as Haciendas—huge agricultural lands owned and controlled by elites where the sugar plantations and agricultural products have since been cultivated. The people who own these haciendas are but a handful of wealthy local families of Spanish descent who came into possession of ownership certificates during the Spanish colonial rule. The land ownership was passed down from one generation to another.

The entire island has since been under the control of a few wealthy elites in terms of its economy, politics, governance, culture and social life. The locals, particularly the farmers and their families who are working for the landowners, grew up in a society where they are mentally conditioned to change their own habits, attitudes and beliefs.

The villager's gesture of bowing whenever he meets or seeks an audience with a landlord is one such example. For other societies bowing is a form of respect, but in Negros it is a form of one's submission to authority. This practice remains deeply embedded in the minds of the people, a practice even followed by some local activists despite their progressive political and ideological education. However, while the local activists do bow to the landlords, they don't bend forward as deeply or as long as the locals.

Another example of this mental conditioning is that young children are permitted by their parents to work in the landlord's household without being paid. The long history of oppression and exploitation can explain how this mindset and habit developed. The perception also exists amongst the children and their parents that having worked in an elite household raises their social status.

Language is their freedom

As mentioned, the island of Negros is divided into two dominant languages—Cebuano in

the east and Hiligaynon in the west. While the accent, words and meaning of the spoken word in these languages are unique and different, a Cebuano speaker like me, with some basic knowledge of Hiligaynon, can to some extent get a sense of what is being said.

A prominent historian described Filipinos as having 'barriotic' attitudes. Barriotic of course comes from 'barrio' (a subsection of a village); the attitude of being 'regionalistic' (based on the regional division of groups of islands of the archipelago). Both barriotic and regionalistic describe a person deeply focused on the way of life, people and the problems of his own community. This narrow focus precludes viewing the bigger picture of our country—or even considering that despite differences in our language, culture, tradition and way of life, we are all Filipinos.

With regard to the people of Negros however, speaking their own language does not mean being barriotic or regionalistic. Rather, it is something that makes them feel free. It is the ability to express their anger, demand what they want, explain their grievances and problems in their own language. This was, according to one of the locals, why despite the strong dominance of Spanish since colonial times, Hiligaynon and Cebuano have remained the spoken languages amongst the inhabitants of Negros. They are spoken even by today's landlords and elite. These languages survive not because they are taught in schools, but because of the struggle of the people for their own survival.

When I was interviewing some of the local activists and victims' families, I could feel what their language means to them. They consider their language to be an external expression of their freedom. Speaking in their own tongue, you could get a real sense and clear description, not only about the case details, but also of their fear and suffering. As a gesture of respect to them, I did my best to question and discuss matters in Hiligaynon. Moreover, even if you speak to them in Cebuano, they would respond in Hiligaynon; this is how strongly they feel about their own language. It means their survival and protection of their way of life.

Living in a colonial past

There are historical accounts of Filipinos being arrested, detained and even executed on fabricated or illogical charges during the Spanish colonization, for the purpose of sowing fear within the society. Filipinos were displaced from their communities and had their lands taken away. These accounts, found in history books, depict realities that continue to persist in Negros today. Unlike in the past, the antagonists of today are Filipinos themselves, exploiting their own people.

After more than a century of independence, the islanders are still living their Spanish colonial past. Emerging from one of the local communities where I had a consultation, I felt as though I had witnessed a scene from the past. When I asked whether any of them felt there "is a government for them and how do they feel about their government," none of them answered in a positive manner. Their perception of the government and its officials is that of an oppressor and its accomplices. They have been detached for many decades from their own government due to the complete absence of governance, despite the existence of bureaucratic and organizational structures. The notion of state responsibility is non-existent, both in terms of government behavior, and in terms of a concept understood by the villagers.

The police are perceived by the locals to exist only to serve the landlords and elites. When the landlord makes a complaint against a farmer or sugarcane worker for instance, regardless of whether the complaint is backed up with proof or not, does not matter; the police take action without any questions or explanations. When the farmers or persons from a poor family file a complaint against the landlord however, the police either refuse to register the complaint or simply ignore them.

The local chief executive—city mayor, town mayor or provincial governor—is entitled to have an oversight and certain level of control over the policing in their locality, including selecting the local chief of police. The purpose of this regulation was to affirm civilian authority and supremacy. In most cases however, the appointment and allocation of funds to the police by the local chief executive has resulted in the police becoming subservient to political control.

Furthermore, there is no distinction between police officers and soldiers. Soldiers do the serving and conducting of arrests of persons facing false charges, and they are the ones who take them to detention facilities to wait for the prosecution of their case. This was the case in Cadiz City, where the farmers/sugarcane workers of a particular hacienda were demanding the ownership of the land they cultivated and lived on for many years. They were arrested by soldiers who had court arrest orders. Charges against them involve theft and the usurpation of property, due to the farmers cultivating root crops for their food and fighting for land ownership from the landlord they served.

Filing false charges against farmers and sugarcane workers has become a common form of harassment not only in Negros, but also in other parts of the country. This usually happens once the tenant/farmer claims land ownership under the Comprehensive Agrarian Reform Law (CARL). According to this law, qualified beneficiaries can claim the land and the government would pay the cost of the property to the landlord on their behalf. The farmers would then pay back the government the amount on an installment basis. The landlords have strongly resisted the implementation of this law however.

Since most of the landlords and elite in Negros are themselves local politicians or family members of those with influence, they have the means—legally or illegally—to suppress the farmers demanding their rights and welfare.

After over hundreds years of anger at Spanish colonial rule, it is shocking that we are not more angry about the abuse and exploitation committed by the Filipino elite against their own people. We may have a democratic government and good laws but unless these laws are effectively implemented in a real sense, the question as to whether we really gained independence from our colonial past and are true to our democratic values will continue to haunt us.

Inequality before the law

The story of two elderly farmers, Marilyn Lanotes, of Hacienda Tres Hermanos and Uldarico Nalipay, of Hacienda Manuela, both in Cadiz City, Negros Occidental are just two of the many stories indicating legal inequality between farmers and landowners, and how the application of the law is abused to favour the latter.

Marilyn had been working for her employer, Rafael Lopez Vito, since the early 1970s. Vito owns the 154 hectares of land on which Marilyn and others had been employed as farm workers. The minimum wage that the law requires employers in this region to pay their employees is some Pesos 218 per day, but Marilyn and her fellow workers only received Pesos 167.

Marilyn Lanotes

The workers endured this situation for years, before deciding to complain and demand payment of the differential. This is also one of the reasons that prompted them to file a petition to have the land they were cultivating covered under the land reform program with the Department of Agrarian Reform (DAR) in Bacolod City in February 2007. The DAR is a government agency responsible for the implementation of the Comprehensive Agrarian Reform Program (CARP), a law intended for the distribution of land to landless farmers and tenants.

However, due to the DAR's failure to promptly resolve their petition and after their employer terminated their employment, the farmers were forced to cultivate 31 of the 154 hectares purely as a means for subsistence. They planted sugarcanes, intercrop vegetables (crops planted between rows of sugarcane to maximize land usage) and root crops in March and April 2009.

As a result, 62 of the workers were prosecuted for malicious mischief and usurpation of

property by June and July 2009 in courts of law. These are criminal offenses under the country's penal code that involves acts in which one destroys and/or takes possession of another person's property. Under the arbitration rules of the DAR however, any complaints or disputes arising from the implementation of CARP should be heard in the offices of the DAR (the original jurisdiction) and not regular courts.

Also, when the farmers sought the assistance of the local police in October 2009 to prevent other workers hired by their landlord from harvesting the sugarcane planted by them, the police did not take action. They even told the farmers that as complainants, they had no right over the property. The duty of the police should have been solely to maintain law and order; all disputes regarding the harvest should have been settled with the DAR. Nevertheless, the police arbitrarily passed judgment in favor of the landlord and the hired workers were able to harvest the crops.

Hired workers destroying crops planted by Marilyn and her companions

Marilyn and her fellow workers who had planted the sugarcane, spent their own money to fertilize the land and worked hard to ensure the crops would have a good produce ended up with nothing. They had lost their jobs, endured a lengthy and expensive legal battle over the ownership of the land and were prosecuted for cultivating the land they had been working for years. Some of the farm workers have struggled between feeding their family and remaining in hiding for fear of being arrested, including Marilyn.

In another case, Uldarico Nalipay had been farming his land since 1960. He also chairs the Manuela Farm Workers Association, a group of 20 farmers who are claiming ownership of a 60-hectare piece of land. The property had already been covered for distribution under the CARP. Their employer had in fact 'Voluntarily Offered to Sell' (VOS) the property for the government to pay on behalf of the farmers. According to regulations, once the landlord offered to sell the property to the government, the property would be valued to determine how much the government—represented by the Land Bank of the Philippines (LBP)—should pay the landowner, before the property was turned over to the farmers.

Uldarico Nalipay

Due to delays in the conclusion of this procedure, the farmers planted sugarcane, root crops and vegetables covering 42 hectares for subsistence. While the landlord had expressed no opposition to the farmers' petition to claim the land under the CARP, one day armed men employed by the landlord came to the village and destroyed the sugarcane, root crops and plants that Uldarico and his fellow farmers had planted. According to Uldarico, he saw the landlord in the company of police officers and soldiers. Since then Uldarico and his companions have been subjected to continuing harassment, intimidation and surveillance by the landlord's armed men and paramilitary groups under the soldier's control, the Citizens Armed Forces Geographical Unit (CAFGU), deployed in the village.

Uldarico then decided not to file a complaint, not because he had waived his right, but because in a small village like theirs he knew full well he would end up complaining to the same police officers he had seen accompanying the landlord. To his surprise, a week later he and his fellow farmers were charged for 'robbery in band' and qualified theft under the penal code. Like Marilyn, Uldarico had to go into hiding after the soldiers, carrying arrest orders from the court, started looking for him and his fellow farmers.

In this case, the actions by the soldiers, policemen and the armed men against the farmers had sown fear amongst the villagers that even to complain and to attend court could be hazardous. These are the conditions in which the soldiers and police function contrary to their constitutional duties and obligations—to serve and protect the people.

Uldarico's decision not to complain should not be superficially dismissed as a person simply waiving his right or not knowing his rights and how to complain. It is simply that he is aware of the futility of the exercise. Like most school children in Negros today, Uldarico only completed second grade; despite his rudimentary education, he speaks and argues like any paralegal might. He knows his rights, what is due to him and what is wrong, despite having no formal education. He said that when he was a boy, he and his neighbors had to walk ten kilometers a day going to and from the school where they were studying.

The experiences of Marilyn and Uldarico demonstrate the extent to which the people in Negros have been struggling in their daily lives. They are people who have not only been subjected to control since birth, but are now being deprived of the opportunity of obtaining adequate education due to poverty. Regardless of all the setbacks they face however, they continue to fight and struggle to assert their rights and demand what is due to them.

Their struggle for their rights is an inspiration to all.

Depayin 7th anniversary: When cries for justice are silenced, how can Burma's 2010 elections be free and fair?

Noveline

This year, on May 30, was the seventh anniversary of the Depayin massacre. On 30 May 2003, Aung San Suu Kyi, Secretary General of the National League for Democracy (NLD), other NLD members and their supporters were attacked near the town of Depayin while their convoy was en-route to northern Burma. Although Aung San Suu Kyi and U Tin Oo, NLD vice chairman, escaped the attack site, a large number of persons were brutally killed or injured by a well armed group. Both Aung San Suu Kyi and U Tin Oo were detained on their way back to Rangoon and subsequently placed under house arrest.

There was considerable outcry after the massacre, but all calls for an investigation into the massacre were ignored by Burma's military regime. No national or international commission was formed and no perpetrators were brought to justice. Rather, many NLD leaders and members were arrested afterwards, including survivors of the attack. Aung San Suu Kyi remains under house arrest seven years later.

Without any independent investigation into the Depayin attack, the perpetrators continue to enjoy impunity. Not only does the Burmese regime perpetrate crimes against its political opponents, but also towards ordinary citizens. During the 2007 nationwide protests, the state used violence against unarmed civilians asking for national reconciliation and lower food and fuel prices. During the crackdown against the protests, the regime killed at least 31 persons while arresting over 3000.

Conditions in Burmese prisons are desperate, rife with torture, mistreatment, poor sanitation, inadequate health care, and irregular visits from family with food supplies for their loved ones. Most of Burma's prisons and forced labor camps are closed to international monitors.

To further indicate its lack of empathy and concern for its citizens, the regime forcibly held a national referendum regarding a new constitution in the wake of a cyclone that left hundreds of thousands destitute and homeless in 2008. Government sources then reported that more than 90 percent of civilians voted and supported the constitution.

Under this constitution, the military government has planned general elections to be held sometime this year. How can there be any credible elections when persons are not free to politically associate, or when the media is not free to report or analyze events? Censorship, intimidation and imprisonment—daily tools of the military regime—are incompatible with a free election.

In early February 2010, U Tin Oo was finally released from house arrest. The interview conducted with him and other NLD members by Radio Free Asia on 30 May 2010 is as follows (translated):

Depayin massacre as seen by eye witnesses

On 30 May 2003, in a convoy headed into northern Burma, Aung San Suu Kyi, secretary general of the National League for Democracy (NLD), Tin Oo, vice-chairperson of NLD, its members and villagers who followed them, were attacked and some killed. They were put upon by a group at a village called Kyi, near the town of Depayin. Before this massacre, they had been harassed by a group trained by the military junta.

U Tin Oo: "When we arrived at the Kyi village, we stopped for the first time. As it was a little dark, we had to turn our car lights on. When we saw Aung Sun Suu Kyi's car moving forward we followed. When her car stopped, we stopped. This happened three times. Then, the car stopped a fourth time. A young man, following behind us on a motorbike, came up to us saying that they had come under attack by a group.

People from the Dina bus came forward saying that those following had been badly beaten. They surrounded both Aung Sun Suu Kyi's car and mine to protect us. They told me to not get out of my car because of the precarious situation. So, we stopped our car for a while and I went to check on Aung San Suu Kyi's car. As she had been seated in the middle of her car, she was not hit. But she knew that people had been badly beaten. As the place was very dangerous, I wanted her to move to a safer place. I asked her to go on. But she refused saying that she could not abandon the people beaten by the terrorist group. I was so worried about her at that time because of the chaos around us where people were screaming and shouting.

Shortly after the terrorist group advanced to the car behind Aung San Suu Kyi's, they again started beating people. I ran towards her car asking her to drive on, but she refused. As the terrorist group came near to her car, Toe Lwin, one of her bodyguards, shouted at them not to beat her. He asked them to think about what would happen if they beat her and how the international community would react.

I myself shouted at them to stop the beatings, because they all had weapons. However, they continued. I then fell down, but I heard some youths beating on Aung Sun Suu Kyi's car which was surrounded. Then, Aung San Suu Kyi's car started moving forward. Even though they followed her car, she was able to escape. When I went back to my car, it had already left. I stood up beside the road in the darkness and ran towards Depayin. While running, I heard the terrorist group leader giving orders, "Man 1 join here, Man 2 Join there." Finished with their beatings, the terrorists closed ranks. As I was making my escape, I met up with a man called Dr Win Aung. Blood was coming from his mouth and his clothes were covered in blood. While walking, we heard the Depayin authorities announcing that Act 144, which is the State Protection Law, is operative in this situation. We then found the other members and joined them."

TOE LWIN: The man responsible for Aung Sun Suu Kyi's safety, Toe Lwin, said that he was beaten by the terrorist group 'Suan Arr Shin'.

"Twenty people armed with weapons approached Daw Suu's car. Htun Myint, Sun Tun and I were beside her vehicle. I asked them to not to beat her car because Daw Suu was inside. However, Daw Suu had already told us not to do anything except in self-defense. I was very worried so I urged her to go on. As she refused, I told the driver to drive away from this place. When I asked him to move, I was beaten for the first time around the head. After they beat me for the second time, I became dizzy and fell unconscious. It was dark when I regained consciousness and I hid. As daylight came the police arrived. They arrested about 80 NLD members including myself and put us in jail."

U Tin Oo, vice-chairman of NLD said that the terrorist group which systematically attacked them was under military orders.

U Tin Oo: "When the lights were turned on and off, I thought that Daw Suu's driver was signaling to us to come closer. So three other members and I went quickly to her car. Unfortunately, we found ourselves surrounded by many terrorist cars, all with their headlights trained on us. They were shouting "beat, beat". Later, the one who seemed to be the leader got out of his car. Some of his followers said that one of their members was now in hospital. He said one of our cars that had passed them drove very fast, causing injury to their comrade. They said they had to revenge this by beating us. I told them that we had already been beaten by them and most of the people had died. So I asked them why they would beat us as there were no problems between us. In addition, we were not armed, did not wish to harm them and were here with permission. By treating us like this, they are punishable by law. Then, the leader asked us where we were supposed to go and why. I replied that we were going

to Depayin to meet with Aung San Suu Kyi. He said he would think about it. As a parting gesture, they photographed us and let us go."

Daw Nyunt Nyunt: "Their coordinated actions appeared to us like a team that had been well trained. They stopped driving and shone lights on us. They got down from their cars and beat all the people who were in the other vehicles. The young people on motorbikes were beaten by four people each. I was taken from the bus, struck by four persons asking what Aung San Suu Kyi has done for us and whether I want to be a wife to westerners. I was hit with bamboo and beaten several times. Before I became unconscious I saw two people from the car just in front of me die. One was a photographer, another was an NLD member. Shortly before he died, one of them asked me to look after his daughter. When I woke up, I tried to stand and went to our bus nearby. Late in the night, four villagers and a monk approached us. I asked them for help to go to a safer place. As I looked around, one of the drivers was dead due to his injuries. His eyes had been dug out. The young people on motorbikes were dead. All in all, about 80 people were dead on the path I crossed."

After this massacre, government authorities arrested more NLD members and students, sending them to prison. U Tin Oo was in prison for nine months and then under house arrest for seven years. Later on the military junta was in dialogue with Aung San Suu Kyi. She said that she did not speak out about the Depayin massacre in order to facilitate a reconciliation of both sides, and to move forward the development in political, economic and social areas in Burma. She asked them to release all political prisoners, to give permission to open NLD offices and to reconcile. But not one of these requests was accepted.

The NLD members who experienced this atrocity want the truth to surface and justice meted out to those offenders guilty of grave crimes. But the NLD are ready to forget the massacre and desire only reconciliation [http://www.rfa.org/burmese/audio].

Burma's elections: An absence of minimum conditions

[This article is compiled from a series of statements issued by the Asian Human Rights Commission: AHRC-STM-059-2010; AHRC-STM-063-2010; AHRC-STM-065-2010]

Elections without a judiciary

One of the basic prerequisites of a fair election is that agencies exist which are responsible for settling disputes that arise before, during and afterwards. These disputes take many forms, and are a normal part of electoral politics. It is essential that well-prepared institutions can address these disputes within rules that are clearly set down and understood in advance, and can resolve disputes over the rules themselves.

Electoral commissions can perform some of these tasks. When functioning effectively, an electoral commission can secure party compliance with rules designed to ensure a fair election, and can greatly improve public confidence in the outcome. But when disputes rest on problems arising from the rules themselves, on fundamental problems of law, it is the judiciary that must decide.

Just as a competitive football game cannot be played without an umpire, an election cannot be run fairly without a judiciary with the capacity to consider and rule on problems of law arising from the electoral process. Where such a judiciary does not exist, it is needless to ask whether or not an election can be fair.

Therefore, it is irrelevant to begin any discussion about whether the elections that the military government of Burma is planning for later this year can be fair. The country has no judiciary capable of performing the function required of it to ensure fair elections. Without it, disputes arising in the process, like during the football game without an umpire, cannot be resolved to the satisfaction of either the parties involved, or the public.

If this plain fact in any way needed to be proven, then it has already been by way of an application from the National League for Democracy to the Supreme Court during March. This party won 392 out of 485 seats in the 1990 election, which some observers have mistakenly described as fair, because the military government did not manipulate the counting of votes itself. But the outcome of the election did not result in the league being entitled to form a government, because then—as now—there was no judiciary capable of enforcing results.

On 23 March 2010 the NLD submitted a miscellaneous civil application to the court under the Judiciary Law 2000 and the Specific Relief Act 1887. The league asked the court to examine provisions of the new Political Parties Registration Law 2010 that prohibit convicted serving prisoners from establishing or participating in political parties.

Whereas the 2008 Constitution prohibits convicted prisoners from being members of parliament, the new law prohibits these persons from being involved in a political party. As the NLD has hundreds of members behind bars—and hundreds of others who could be detained, prosecuted and convicted at any time—its concern over these provisions is obvious. Therefore, it approached the court for an interpretation of the law: that is, it sought to clarify a fundamental question on which the whole electoral process hinges.

According to the NLD, the application did not even go before a judge. Instead it was returned by lunchtime on the same day with an official giving the reason that, "We do not have jurisdiction." The party has since submitted a special leave to appeal by way of a letter to the chief justice, pointing out that it is illegal to return an application without even stamping and registering it in the court records. No details are yet known about the progress of this latest attempt.

In some countries, courts without effective authority over matters that are technically within their domain go through the pretence of hearing and deciding on these things at least to impress on the government and public that they are cognizant of their responsibilities, even if they cannot carry them out, and still have a degree of self respect that requires the keeping up of appearances. But the courts in Burma, or Myanmar as it is officially known, have lost even these minimal qualities of a judiciary. It is nothing strange for their personnel that the planned electoral process is beyond their authority. Indeed, it would be far stranger for them to think that they would actually have any authority over actions of the executive.

The refusal of the court to hear the application concerning the Political Parties Registration Law will affect some parties more than others. It evidently contributed to the NLD's decision at the end of March not to register and instead to engage in social work for the foreseeable future. It will also directly affect the second-placed party in the 1990 election, the Shan Nationalities League for Democracy, whose chairman and general secretary are, among other party members, serving lengthy sentences for their political activities. The Asian Human Rights Commission has previously issued appeals on their cases (AHRC UA-017-2007), and the United Nations Working Group on Arbitrary Detention has opined that their imprisonment is arbitrary (Opinion No. 26/2008, A/HRC/13/30/Add.1); however, to date they remain in jail.

But ultimately the refusal of the court goes beyond questions of the damage to specific

parties and individuals and to those concerned with the wider conditions in Burma inimical to electoral process. As the Supreme Court's own personnel admit that it does not have jurisdiction to consider the terms of the laws under which the proposed elections will be held, and that they cannot accept applications to examine the legal parameters of these laws with reference to other existing laws, then Burma is set to have elections without a judiciary. Such elections, like the football game without an umpire, cannot be fair. In fact, they cannot be anything but farcical.

Discussion and analysis about the planned elections should not be lost in the myriad technicalities of laws-by-decree, rules and electoral procedures that the regime has and will continue to introduce so as to push Burma towards outcomes that are amenable to its interests. Although all these are relevant, they are subsidiary to the basic problems that arise from the absence of any meaningful institutions for the conducting of fair elections.

In this respect, the elections are at least an opportunity for much more deeper and purposeful discussion about the utterly degraded conditions of state institutions in Burma that go beyond the immediate issues arising from the planned ballots, and to far longer and bigger problems about how a future society can be built in which, after half a century of violent and defective military rule, people can have some confidence in the work of government and trust in any form of political leadership.

Elections without rights

The government of Burma has set down conditions for the forming of political parties that would have people associate in order to participate in anticipated elections, but nowhere is the right to associate guaranteed. While parties are required to have at least a thousand members to enlist for the national election—500 for regional assemblies—a host of extant security laws circumscribe how, when and in what numbers persons can associate.

The allowance of association without the right to associate is manifest in the Political Parties Registration Law 2010, which contains references to some preexisting laws that prohibit free association. According to section 12, as translated by the Asian Human Rights Commission,

> "A party that infringes [the law in the manner of] any of the following will cease to have authorization to be a political party: ... (3) Direct or indirect communication with, or support for, armed insurgent organizations and individuals opposing the state; or organizations and individuals that the state has designated as having committed terrorist acts; or associations that have been declared unlawful; or these organizations' members."

As in present-day Burma anybody can be found guilty of having supported insurgents, of having been involved in terrorist acts, and above all, of having contacted unlawful associations, the law effectively allows the authorities to de-register any political party at any time.

The case of U Myint Aye is indicative. For founding a local group of human rights defenders and speaking on overseas radio broadcasts about what he saw after Cyclone Nargis, Myint Aye was arrested and accused of a fabricated bombing plot. The military tried and convicted him and two other accused in a press conference during September 2008; in November a court followed suit, handing down a sentence of life imprisonment (AHRC-UAU-018-2009).

More recently, the AHRC has issued appeals on evidence-free cases in which people have been tried and convicted to long terms of imprisonment for having allegedly had contact with unlawful groups outside the country. These include the case of Dr Wint Thu and eight others in Mandalay (AHRC-UAC-011-2010), and the case of Myint Myint San and two others in Rangoon who were convicted for allegedly receiving money from abroad that was for the welfare of families with imprisoned relatives (AHRC-UAC-137-2009).

The new party registration law is hostile to democratic government because it envisages the arbitrary use of draconian provisions to prevent people from associating freely. It is a law to ensure that only persons and parties palatable to the military regime will be able to run for and obtain office.

But it also points to a far deeper problem. The very concept of a right, in terms of international standards, is neither recognized nor understood by the government of Burma. That the right to associate does not exist is not merely a consequence of a law designed to deny it. It is a consequence of a political and legal regime that does not contain rights within its conceptual framework at all.

This was not always the case. In 1950s Burma, rights were a central part of how national leaders sought to shape government and society. The courts also strongly supported citizens' rights against the state through a robust constitutional framework. But after the military took full power in a second coup, during 1962, rights became "socialist".

According to this notion of rights, the interests of the people and the state were aligned against the capitalists. Under "socialist rights" the very idea that a citizen might have a right to claim against the state was absurd. Individual agents of the state could violate citizens' rights, but the state itself could never do wrong. The right to associate in this time was therefore always a "right" to associate with and through the organs of the state, not apart from them.

After 1988 the socialist concept of rights also ceased to exist, but it was not replaced with anything else. The new state in Burma was right-less, constitution-less, and also law-less in the sense that all laws in the last two decades have been issued as executive decrees rather than through any legislative process. Anything described as a right in this time has in the official view been no more than an entitlement bestowed upon all or part of the population, even if it may be described otherwise.

The 2008 Constitution has confirmed the absence of rights from the normative frame of the new state. At every point it negates and qualifies so-called statements of rights, including the right to associate. Under section 354, citizens have a "right" to form associations that do not contravene statutory law on national security and public morality: which as shown above can be construed to mean literally anything.

The military regime in Burma evidently expects the new constitution and new elections together to be taken as indicators of social and political change. But the passing of a constitution does not signify that rights exist, and nor does the holding of elections signify democratic renewal.

After 52 years of almost unbroken army rule, Burma is today not only without a judiciary, but also without the conceptual frame of rights that are requisite for a fair electoral process. Lacking these, what remains can only be characterized as the politics of despair.

Elections without speech

When Burma's military government passed five new laws and four bylaws during March in preparation for the planned elections, it attracted a lot of interest, discussion and analysis in the global media. The only place where the media did not pick up the story was in Burma itself. Aside from official announcements in the turgid state mouthpieces and some articles in news journals iterating the facts, there was no analysis, commentary or debate.

The absence of debate was not because the persons writing and publishing these periodicals did not want discussion, or even try to have some. According to various reports, journalists have interviewed experts and obtained views that they had thought would be printable. But instead, journals have so far been prohibited from covering anything significant about the laws at all, or the parties now registering for the upcoming ballot. The absurd situation exists of an election having been announced and the process of party registration begun without anything other than formal acknowledgement of these facts in the local media.

Burma is a difficult place to be a reporter. The Asian Human Rights Commission has itself over a number of years taken up and followed cases of journalists and others who have been imprisoned for acts that in other countries are simply taken for granted, such as filming people at electoral booths during the 2008 referendum (AHRC-UAC-040-2009).

But the blackout on news about the electoral process is not merely a question of media freedom. It is indicative of far deeper dysfunction that prohibits the possibility of free or fair elections. The problem is not just one of how journalists can communicate with their society but how their society can communicate with itself.

The vitality of a society depends upon its capacity for internal communication. It is no coincidence that the most successful and happy societies in the world today are where people can communicate with one another, freely and equitably. Internal communication is not about the number and size of television stations or political parties. It is about the extent to which everyone is able to communicate with everyone else, the extent to which there is widespread participation and sharing of ideas from different quarters, with which to grow and improve as a community.

In recent years, the Internet and mobile technologies have brought about many new opportunities for this sort of communication, and it is not surprising that the military regime in Burma has only slowly and reluctantly opened up the country to them, with severe warnings to users who transgress vague laws on usage. Today Internet cafes around the country carry warnings on their walls and above computers that users are not to access either political or pornographic websites. In Burma, politics and pornography are indeed analogous.

Where internal communication is blocked for a long time, as it has been in Burma, it brings about all sorts of deep psychoses hidden under the surface of day-to-day life. As different parts of society are not able to communicate openly with each other, problems build up and fester. Tensions may emerge that are a consequence of other aspects of life about which people can do nothing. They become deeply frustrated and angry, and occasionally the frustration and anger burst out suddenly on a very large scale, as during the nationwide protests of 2007. At such times, when the authorities use force to bring people back under control the problems are again submerged and worsened.

Under these circumstances, the type of controlled communication that the military regime in Burma envisages for the anticipated elections is not a form of communication at all. It is a mere contrivance aimed at a different type of social control from what came before. This is obvious from reading Burma's print media: when officialdom says it is now okay to publish cartoons, everyone publishes cartoons; when officialdom says that it is

now okay to comment on new political parties, everyone will comment. In this way, the government hopes to construct a wall of its own opinions in which the public will be a mere onlooker and recipient of fabricated, sanctioned views.

The jerking puppet-like responses of private media outlets to the instructions of the government on the upcoming elections and manifest lack of commentary are merely manifestations of much deeper afflictions. Artificial debate will, of course, do nothing to address or ease these. In fact, it will only make them worse. Until there are enough opportunities for open communication about the psychological illnesses that society has contracted from decades of military rule, the possibility of some kind of democratic government emerging in Burma is zero. Under these conditions, the only type of politics that can be practiced, the only type of politics possible is the politics of demoralization, the politics of despair.

Indonesia: 'Unprofessional' police leads to torture

Interview with Answer Styannes

Answer Styannes is a law graduate from the University of Indonesia. She has been involved with civil society issues and has worked for the Community Legal Aid Institute in Jakarta. She spoke about her views on Indonesia's policing system in an interview with the Asian Human Rights Commission.

First of all, tell us something about yourself. You grew up in which town in your country?

I grew up in Jakarta, the capital city of Indonesia. Since I work in Jakarta, I spend my daily life in Jakarta.

Tell us a little about your studies.

I graduated recently from the Faculty of Law, University of Indonesia. I graduated this past January.

How long have you been working with your NGO?

I work for a legal aid organization in Indonesia, called the Community Legal Aid Institute. I started working there when I was a university student, so it's been more than two years now.

Since you've finished your law degree, do you want to become a lawyer?

Not yet.

Tell us what you think about the policing system in Indonesia.

If I had to describe the Indonesian policing system in one word, that word would be 'unprofessional'. The word 'unprofessional' includes a number of things, such as corruption. The Indonesian police are highly corrupt. For example, Indonesian law requires drivers to wear helmets. If the police find a driver is not wearing a helmet, they should bring the driver to a court of law where they can decide how much is to be paid in

fines. But in Indonesia, you can just pay off the police and then you won't have to attend any trials. So even for such a simple thing, for a small amount of money, the police can be bribed.

Do you know of any direct corruption cases? Or do you just hear of them?

There is a case where 13 workers working in a gas corporation were arrested and detained because the company believed they decreased the volume of a gas tube. The police and prosecutors asked them to pay money; some of them were asked to pay 5 million rupiahs, others were asked to pay 7 million rupiahs. The total amount of money they had to pay came to 100 million rupiahs, which is about HKD 10,000. The police and prosecutors promised them that they would be released, but that was a lie.

Why do you think police are corrupt?

I think there are several reasons, but one of the factors is they aren't well paid. I don't know the exact details of their salaries, but I think compared to other jobs, it's quite low.

In your knowledge, do police in Indonesia torture people?

Since I work at a legal aid organization, I have met clients who have told us that their family members were arrested, detained and tortured during their detention. Then they come to us and ask for help in filing a bail request to the police so their relative can be released.

Among ordinary people is there a feeling that if you are arrested you will be beaten?

Yes. I think if you ask people, they will say that it is unjustifiable, but they still see it as a common practice. It is a well known fact in Indonesia that if the people arrest someone, 95 percent of the time they will be tortured.

What is your own personal view of torture? Is it the right thing to do?

Of course, I disagree with the use of torture by police. As human beings we have the right to not be tortured. It is the obligation of the police to help us feel safe, but instead they create fear by torturing people. The use of torture in Indonesia shows how unprofessional the police are. They have an obligation to collect information and evidence when they are investigating a case, but they won't bother to do those things, they want to take shortcuts. They torture people because it is easier and faster to get confessions this way than to search for information, evidence and find witnesses.

What does the court and government do to stop this?

Of course, the courts and the government say they condemn torture, that's why they ratified the Convention against Torture (CAT) in 1998. Recently, the Chief of Police in 2008 or 2009 enacted a regulation prohibiting police officers from using torture. But that is their only effort. Their only effort is to create good laws. But this is only part of the solution because torture is not considered to be a crime in Indonesia. In the Indonesian penal code there is a provision on assault, but it has some different elements to the torture defined by the CAT, so it is difficult to charge police this way. Why? Because the monitoring mechanism is weak within the police force. If anyone wants to file a torture complaint, they have to file it through another policeman, and it's almost impossible that the police would report on their own colleagues.

Are there any independent places where people can make complaints?

There is a National Police Commission, but their power is very limited. There is also an Internal Disciplinary Unit, but that is an internal mechanism of the police so we can't expect too much there because the process is not transparent. It can't be monitored.

So if someone makes a complaint, will the police get to know about that complaint or does no one even complain about police torture?

In most cases I have found that people are just too scared to complain. It's not just that they are afraid, they are also sceptical. They don't think there is any use in complaining because they don't think the police will follow up. So it's not just that they are scared, they have no trust in the policing system.

What can the police do to improve this?

There are several things. Firstly, they should be receiving a proper salary. Also, it is important to have strong monitoring mechanisms. The process in the Internal Disciplinary Unit in terms of complaints must be conducted transparently. We also need independent external monitoring to evaluate the police's work. We have the National Police Commission, but their authority is limited. They have the authority to accept complaints from the public but they have no right to do anything about it. I think the police should have human rights education too.

Are there any civil society organizations that are trying to press the police to become better?

I think all civil society organizations, especially those who are concerned with legal reform

push for police reform, but there is one organization called the Indonesian Police Watch which specializes in this issue.

Are there any laws for domestic violence in Indonesia? How are they implemented?

We have had laws against domestic violence since 2004. In general, if someone complains to the police about domestic violence, the police will conduct a good investigation and the prosecutor will conduct a good prosecution because they have a special task force inside the Attorney General's Office (AGO) which focuses on this issue. But I'm not sure that a lot of Indonesian women would file cases of domestic abuse. My organization, the Community Legal Aid Institute, conducts legal and human rights education from community to community, and domestic violence is one of the issues we discuss. Usually, when we make a presentation, peoples' first reaction is that domestic violence is bad and that perpetrators of domestic violence should be punished. If we ask them however, whether they would consider filing a complaint with the police if they themselves were victims of domestic violence, then they say they don't want to because it is a private issue. It has nothing to do with the state; they think it is my problem, not the government's. Also, many of the women who I have met say that if her husband was abusive, what is important to her is to live separately from him; she doesn't want to cause any harm to her husband. For them, divorce is a proper solution because they do see domestic violence as a private issue and they don't want any harm to fall on their husband.

If the policing situation is so corrupt on most things, why is it not corrupt when it comes to issues of domestic abuse?

I'm not saying that the police are not corrupt at all with these issues. But maybe compared to other crimes, they handle cases on women and children a bit better. They pay more attention to the issue because they have a special unit for women and children and the AGO has a special task force to deal with gender issues. Of course, this is not a guarantee that police and prosecutors will work well with women's and gender cases but these cases attract more public attention (including funds from foreign institutions) than what are seen as 'ordinary' police cases. This is another problem with the police in Indonesia, they're 'picky' about cases. The police only work seriously on cases which get them a lot of money and media attention. Like the case which allegedly involved two KPK commissioners, Chandra Hamzah and Bibit Samad Riyanto, the police worked very hard and seriously, but with the rape case of a young girl that I worked with, it took more than one year for the police and prosecutors to investigate and bring the case to court.

So the AGO has a special task force for gender violence?

Not only for domestic violence cases, but all related gender and children issues.

Is it effective?

Again, I think it depends on how 'sexy' is the case. I myself only cooperated with this task force once when I handled the rape case of the young girl. Because the prosecutor of the case didn't bring this case before court, we sent a letter to the task force of the AGO urging them to pay more attention to this case. They never replied to our letters but not long after that, the case was brought to trial.

Is there anything else you would like to say?

I just want to say something else about the policing system in Indonesia. When I said they were 'unprofessional' before, besides being corrupt, this also means that their 'picky' attitude allows them to only work on certain cases. Also they often use excessive force, especially when it comes to cases of suspected terrorism. There are some people who are suspected to be terrorists and are shot, and some of them were innocent and mistakenly recognized to be members of terrorist organizations.

So there are also allegations of extra-judicial killings?

I guess so. For example, the police recently shot a terrorist member to death in Cawang even though he was unarmed and was not doing anything suspicious at the time.

Sri Lanka: 'A woman finds it difficult to go to a police station alone'

Interview with Thamara

Thamara is a mother who had to go to a Sri Lankan police station to report domestic violence. She speaks to the Asian Human Rights Commission of her experiences.

What do you think about the policing system in your country?

In any police station there are good and bad officers. Due to the bad behaviour of many officers, now they are all thought of as bad. This is the impression of everyone, that all the police officers are bad.

I think that this policing system should be changed. A woman finds it difficult to go to a police station alone. There is bad talk, bad jokes and bad behaviour. We go to the police stations when we are in powerless situations, but their reactions to us are not good. So, it would be good if we could have some changes in this system. The police officers who do wrong things should not be allowed to work as police officers. Now they may receive some small punishment for the things they do but they continue to do them and work as police officers.

The job of the police is to catch wrongdoers and punish them, but they themselves do wrong things and they are not punished. This doesn't work. Those officers who do wrong things should not be allowed to continue working as police officers.

What do you think about the use of torture?

This is something that should be talked about a great deal more because a lot of innocent people go to police stations. They are taken on suspicion and almost immediately they are assaulted by the officers. What the police should do is ask some questions and find out what has happened so that they can take some action; instead, they immediately resort to assaulting the suspect.

I don't think this is correct; I really don't like what is happening. What they should do is

look into things and then take the proper action. People have died at the police stations because of this and I really don't approve of this kind of behaviour.

What are your views on the public relations of the police?

Sometimes there are good reactions by the police for good things; sometimes they do good things in public functions. But they also take bribes and give assistance to known criminals. Suppose I give them a bribe to have a person arrested and harassed, they will do that. And that is not a good thing. Sometimes there are good relationships but often the bad things are there in a very prominent way.

If you have a problem would you go to a police station to get help?

Now I can talk from my own experience as I went to a police station for a personal problem. When I went to the station the officer who was dealing with this particular matter was not there. There was a good police officer and he told me, "Don't come to the police station alone. That is very bad. You'd better go now and return with somebody later."

As for my complaint, the police did make some inquiries but didn't do a really good job on the case and as a result there was no real justice. This was a case of domestic violence.

Is there a domestic violence law in your country and what is your opinion of it?

I went through a domestic violence dispute and I can tell you what happened. When I was there at the station to complain, another woman was there talking about an incident in which her husband got drunk and beat her. The police went to arrest the man but returned, saying that they could not find him. Later the woman returned to the police station to complain that the man was threatening to hurt her. The police officer said to her, "So you haven't actually been beaten up yet, you are only afraid that you will be beaten up? So come back after he beats you up." This is obviously not the right attitude. If the woman gets beaten up, or perhaps even killed, then what is the use of the police taking action then?

A woman does not go to a police station just for fun. She goes because things are very bad and even desperate. So the attitude of the police in this case was not correct in my opinion.

The AHRC model for torture prevention

Basil Fernando

The final report for the evaluation of the 'Prevention of Police Torture in Sri Lanka' project in November 2009 by Welmoed E Koekebakker and Loreine B dela Cruz refers to the AHRC model of torture prevention [For full report see Ethics in Action vol 3, no 6, December 2009]. This article discusses the elements making up the model.

The first and most basic element of the AHRC model is to connect local human rights activists and solidarity groups with victims of torture. Access to legal, medical and psychological services for torture victims can be enhanced by their quick and speedy linkage with concerned individuals and groups who can take immediate steps for their protection and welfare. This is necessary because in nearly all cases torture victims come from poverty stricken backgrounds. They lack financial resources, knowledge, communication skills and also social connections, in order to obtain quick access to social services. Trained and motivated human rights activists and other individuals, including persons from religious groups, can provide the necessary linkage to the victim. To do this effectively, the concerned groups and individuals need to situate themselves closer to the various parts of the country that the victims come from.

In a society like Sri Lanka, where caste and other grounds of discrimination like ethnicity can create significant differences of social status, linkages to solidarity groups creates the necessary self confidence in victims to embark on a long journey seeking justice and/or rehabilitation.

These solidarity groups need to be known to the public so that victims can approach them promptly after incidents of torture occur. The activists should be prepared to keep a hospitable and friendly atmosphere in which the victims find comfort. At the same time they must have the necessary skills, equipment and capacity to conduct interviews and relevant documentation, and to provide preliminary assistance needed by the victims. The groups need to have access to lawyers as well as medical personnel who can constantly be consulted and who would come to offer their services.

Once such relationships start between victims and these groups, there needs to be a readiness to engage in many different activities over a long period to help the victims. Over the years, these groups will acquire new experiences and knowledge about law,

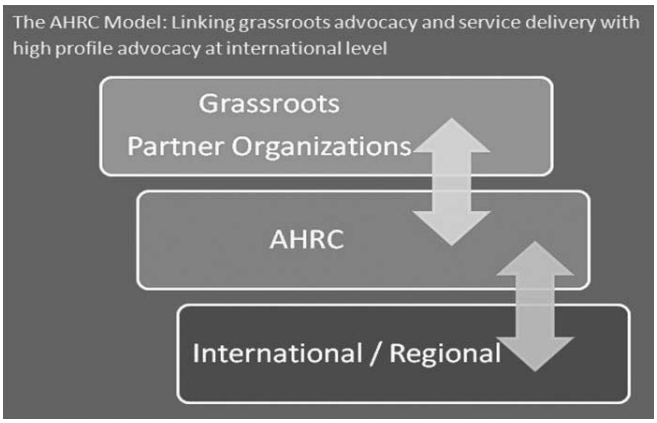
psychology, enabling them to better deal with these situations. Above all, the groups will need to develop skills and strategies to protect the victims and themselves. Training and discussions can significantly help in such development.

The next stage of the model is lobbying and advocacy. At this stage, the local groups obtain assistance from a regional human rights organization, the Asian Human Rights Commission (AHRC), based in Hong Kong. The AHRC has its own staff skilled in various aspects of lobbying and advocacy. A quick system of receiving information from the local groups about victims is arranged through the Urgent Appeals desk. This desk receives information and verifies it and then prepares documents that are sent to government authorities, UN agencies and also to international human rights groups so that interventions are made to help the victims and the human rights defenders from various sources. The relationship between the AHRC and the local groups also results in a documentation process; all available documents made or received by the local activists, lawyers, doctors and even psychologists are transmitted to the AHRC office. The AHRC staff then study and record these systematically. All the materials collected are maintained within an electronic documentation system and made available—with necessary precautions to protect victims—to many sources worldwide.

Once the factual basis is collected, the local groups and the AHRC work together with lawyers to address the legal aspects. This brings the groups involved into the court processes from lower courts to higher courts. During this time, an enormous amount of data is gathered on each case; together, the cases constitute a considerable amount of documentation that can be used by any expert or researcher. On this basis, there is a constant analysis of the system, which is then regularly published by way of statements, reports and other forms of media publications. As more information is gathered, it becomes the basis for the development of books and other publications. All issues are analyzed on the basis of international law and human rights legal theory.

One special publication, *article2*, is devoted to such theoretical studies. All these materials are disseminated to large audiences and kept in websites for reference.

The third stage of the model is international lobbying. The AHRC together with RCT and other international organizations constantly take up all matters relating to torture with various human rights agencies. Almost daily the UN special rapporteur against torture receives information on torture related matters from the AHRC network. Oral and written submissions are constantly being made. Networks are developed to work together with all other concerned groups and persons to keep up the efforts on torture prevention.



Prevention of Police Torture in Sri Lanka, Final Evaluation Report, Ethics in Action, vol 3, no 6, December 2009, p 16.

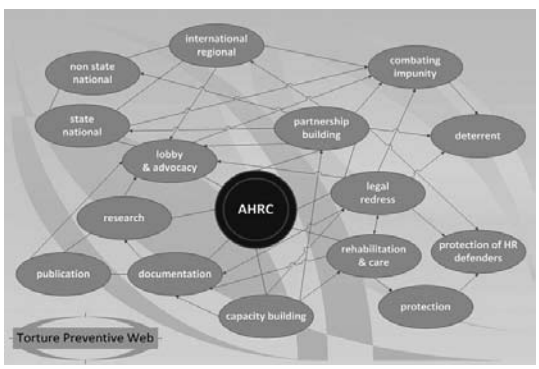
Theoretically, the focus in this model is always kept on two aspects: the victims and the defective legal system of Sri Lanka, which is the main cause of torture. This means that while every attempt is made to help the victim, everyone's attention is constantly kept on the systemic issues from which the victim has suffered. Mere legal redress in an individual case or healing activities does not suffice when the system itself is seriously flawed. The system creates victims all the time; therefore observations and analysis on the system have to be kept up with the view to pursue legal reforms. The core of this project is a preoccupation with legal reforms; the identification of areas needing reforms, the development of arguments against systemic abuse, and the detailed exposure of all aspects of such abuse are constant activities within this model.

In order to achieve reforms quickly, constant public education and pressure is needed. Not only do state actors need to be alerted and educated, but non-state actors and civil society in general need to be constantly engaged with the issue. In conflict ridden societies like Sri Lanka, there are many problems that demand public attention. Any lobby that wants to be successful must therefore constantly engage in a contest to keep its issues at high attention. This can only be done by highly skilled writing and publication on the one hand, and a capacity for wide dissemination on the other. Here human rights groups face the problem of resources; the state and others have mega resources in the media, while human rights groups do not have the financial ability to maintain such services. The only economically possible alternative today is to rely extensively on electronic media. For this reason, the AHRC model holds the acquisition of IT, communication and media skills as vital.

In countries such as Sri Lanka attention to the psychological aspects for the assistance of victims has not developed in the state sector. The burden on this falls on civil society

for the most part. Thus the human rights groups involved in this work have to develop knowledge and the capacity to improve their knowledge in trauma counseling and other methods of healing. Over the years the groups working in this model have developed their appreciation of this are of work. In recent years with the help of organisations such as RCT and also some local and regional psychologist must knowledge has been gained in these areas. Testimonial therapy is also one of the concerns that the groups are developing their knowledge and skills in.

The test of success in this model is to gain public confidence locally as well as internationally. By consistent work the groups involved have gained considerable public sympathy for their efforts in this direction.



Prevention of Police Torture in Sri Lanka, Final Evaluation Report, Ethics in Action, vol 3, no 6, December 2009, p 19 and front cover.

Poor governance and abuse exposes Pakistanis to food insecurity

Julia Lemétayer

The Pakistani people are increasingly vulnerable to food insecurity because of the government's bad governance and its lack of political will to tackle hunger. According to the Global Hunger Index (GHI) prepared by the International Food Policy Research Institute (IFPRI), Pakistan is one of the most food-insecure countries in Asia. Causes of food insecurity are as various as its consequences and the government must acknowledge its responsibility to tackle all dimensions of this complex issue threatening the lives of more than 83 million Pakistanis.

'Food security' means the availability of food and one's access to it. According to recent reports and international rankings, food insecurity is an increasing issue in Pakistan. In 2009, the country was ranked 58 among 84 developing countries (India was ranked 65). Over 48 percent of Pakistanis are food insecure today, according to the Swiss-sponsored report 'The state of food security in Pakistan', cited by Dawn editorial 'Poverty of thoughts'. The number of districts believed to be facing 'extreme' food insecurity has more than doubled between 2003 and 2009, while the number of food-secure districts has fallen by 14 percent. In 2007, UNICEF concluded that half of all child deaths in Pakistan could be attributed to poor nutrition.

The world remembers images of 'hunger riots' in the past years because of a double-digit surge in food costs. The extraordinary rise of global food prices in early 2008—notably due to an increasing demand for food by the growing world population, a decline in agricultural investments and rapid increase in oil prices, along with the international financial crisis—hit developing countries' economies hard, and endangers their population's access to adequate nutrition.

The reasons for food insecurity in Pakistan are not only external; the government bears a strong responsibility. Zafar Altar of the Pakistan Agricultural Research Council denounces the bad government management of agriculture, notably the disproportionate emphasis on wheat, the inefficiencies of fertilizer and irrigation systems, the poor infrastructure in the western provinces, and a lack of innovative knowledge generation. Unfair subsidy policies that disproportionately favour producers and penalize consumers

are also to blame. Food insecurity is also due to unequal land distribution. For instance, the availability of and access to wheat is very different in the poor Northwest Frontier Province (NWFP) compared to that in rich Punjab. Instead of launching broad-based and efficient land reforms, the government is selling 202,342.8 hectares of farmland to Saudi Arabia, so that it can meet its own food needs. Improved land access would reduce food prices for families and thus would help strengthen food security and reduce poverty, two closely linked issues.

Military-driven policies on the part of the government are also responsible for the Pakistani people's high food insecurity. Regions where the government is conducting military operations, like the Federally Administered Tribal Areas, or Baluchistan and the NWFP, have been found to be respectively 'extremely food insecure' and 'food insecure'. The reason is of course the level of destruction caused by military operations, and also the number of persons forced to flee their homes in relation to the conflict. It is estimated that 1.23 million Pakistanis have been internally displaced by the conflict against the Taliban and the so-called "war on terror", and are particularly vulnerable to food insecurity. Instead of military spending, the government should invest a larger part of its budget to social development.

Food insecurity is not only about poverty and agriculture. It also leads to a host of humanitarian, human rights, socio-economic, environmental, developmental, political and security-related consequences. The society is divided by a growing poverty gap; the richest become richer, while the number of hungry rag pickers is increasing.

The state cannot implement the rule of law and efficiently guarantee its people's rights if their right to food is not protected. For instance, some Pakistani families have to choose between their children's education and their nutrition, as underlined in the Dawn editorial, 'Poverty of thought'. Struggling parents therefore withdraw their children from school, sometimes sending them to a Madressa (Muslim seminary). There is a great risk of thus creating an uneducated and radicalized youth. History has shown that hunger leads to insurrection and terrorism. In Pakistan, religious extremists exploit the hungry and uneducated, leading to greater instability and ignorance. The exploitation of hunger will push the country further into crisis.

Hunger also comes hand in hand with violations of human rights by the state. Indeed, as stated by the Asian Human Rights Commission's Food Justice Program, such violations by law-enforcement agencies are due to the deep inequality prevalent in the society, the same inequality that denies food or water to the people. The state-managed violence thus maintains inequalities in food distribution and is responsible for food insecurity. "Torture is used to keep people hungry," insofar as it maintains a system of fear and deep inequalities that prejudices the most vulnerable.

Article 38 of the Pakistani constitution refers to the state's responsibility to promote the social and economic well-being of the people. It notably refers to equity in food. It must also be recalled that Pakistan ratified several international human rights treaties which recognize the right to food: the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. It is therefore the responsibility of the state before national and international law to protect its citizens' right to food and to ensure their food security.

The solution lies not only in land or agricultural reforms, or in international conferences discussing global food prices. It lies in a deep change of mindset and implementation of rule of law and democracy that empowers the people. As its causes are structural, the solutions to food insecurity are also to be found in the structure of society. A change of mindset to improve the status of women would for instance significantly reduce child malnutrition. The struggle for food goes hand in hand with the struggle for justice and rule of law.

Possibilities for Sri Lanka's truth and reconciliation commission

This article was compiled from a series of statements issued by the Asian Human Rights Commission: AHRC-STM-075-2010; AHRC-STM-072-2010; AHRC-STM-071-2010

A communiqué from the Presidential Media Unit on 6 May 2010 announced a probe into the violations of internationally accepted norms of conduct during Sri Lanka's recent conflict, incorporating unfamiliar terms and phrases such as restorative justice, rehabilitation and reconciliation.

For a long period the Sri Lankan government considered burying the past as the best policy to avoid any surfacing of unhealed wounds. Such a view is not sustainable however; at a certain point, it becomes necessary to deal with the past. How boldly such a task will be undertaken, depends of course, on the political will of the country's leaders and civil society of the time. If the country is blessed with an enlightened political and intellectual leadership it is possible to take far reaching action to address past atrocities and human rights violations.

The BBC Sinhala Service reported of a press conference on May 12 held by the Minister of Media, Keheliya Rambukwella, regarding the possible 'Commission on Lessons Learnt and Reconciliation'. Questioned as to whether the commission will be similar to the well known Truth and Reconciliation Commission of South Africa, the Minister responded that the South African experience, the bringing of Norway as mediators, and the like are all alien experiences to Sri Lanka. According to him, the government will look to an indigenous approach, something home grown, to address the issue of reconciliation and lessons learned in terms of the country's recent conflict.

This being the position of the government, it is worth examining the indigenous approaches to truth and reconciliation within the Sri Lankan context. There is overwhelming agreement that all the commissions appointed in Sri Lanka to date have failed to address the serious questions affecting Sri Lanka from recent past conflicts. These commissions have been condemned by international organizations such as Amnesty International, as well as by local human rights groups who have published extensive reports and analysis on the commissions' workings.

From the mandate, the selection of the commissioners and the work they have carried out, it is not difficult to grasp that these commissions were not meant to engage in any genuine truth seeking, or to address concerned problems of law and morality. They also

did not deal with ways to avoid the recurrence of similar incidents in the future.

In fact, all such commissions have been exercises of denial. At the times people were expressing concerns about problems resulting from these conflicts, such as forced disappearances, extrajudicial killings, torture, abuse of power, illegal arrest and detention, these commissions created confusion and doubts about the good faith of the government. Thereby, they diminished the possibility of resolving the hopeless conditions prevalent in the country.

Will the past experiences of evasiveness, denial and hopelessness be repeated by this new commission? To avoid this, we should go back and ask whether any local traditions of truth telling in the midst of conflicts exist. Sri Lanka's ancient tradition is set on a caste based social structure. Political scientists and sociologists agree that centuries of social organization in Sri Lanka was based on the hierarchical model of caste. Caste does not recognize the equality of human beings and is based on the legal premise of disproportionate punishment for different categories of persons. While any crime against the upper layer is considered the most heinous, any violence to the lower layers of society are not considered crimes at all. Such was the caste doctrine in India, and so was it entrenched in the Sri Lankan psyche. The country has no tradition of truth telling and reconciliation after periods of crises.

Some may argue Buddhism, the official religion of Sri Lanka, has a rich tradition of truth and reconciliation. This is undeniable; it is one of the greatest traditions in terms of seeking truth and reconciliation. However, this is not the living tradition of Sri Lanka in terms of social relationships. The country's monks themselves are divided into castes, and this tradition remains entrenched in the Sinhala and Tamil communities. In the living reality of Sri Lanka, there has never been a time since the Polonnaruwa period at least, when there was a tradition of truth seeking and reconciliation.

With this background, talking of a commission in indigenous terms is clearly dangerous. The first time this was introduced into the political discussion in Sri Lanka was in the 1972 Constitution, which was called an autochthonous constitution. What was this indigenous, autochthonous constitution? It displaced the supremacy of the parliament and destroyed all that had been built with regards to freedom of expression and the duty of the judiciary to protect the individual from arbitrary actions of the state.

That indigenous tradition was continued in the 1978 Constitution, which created the indigenous dictator. At this time Sri Lanka abandoned the liberal democratic constitutional model altogether. Separation of powers was given up in favor of absolute power of an executive president. After that came the undermining of the judiciary on an unprecedented scale, as well as the undermining of the parliament. These are all well documented and discussed elements of Sri Lanka's political history, saving the necessity

for greater detail at present. The purpose here, is to simply underline the country's tradition of dictatorship, authoritarianism and the suppression of individual rights.

Sri Lanka's problem is an indigenous tradition of suppressing people, which is the cause of the violations seen today. The development of this tradition of suppression provoked indigenous rebel movements, which also resorted to barbaric modes of violence. Both the south (JVP rebellions) and the north (Tamil movements) have seen such violence.

Therefore, the Minister's statement regarding an indigenous commission can only be taken to mean that the commission will be a farce, a repetition of the traditions of denial, suppression of truth and repression of people.

Were this not to be the case, were the commission to follow some of the world's better practices regarding truth, reconciliation and restorative justice, there are a few key elements that must be focused on.

Witness protection

One of the basic problems that came up before Sri Lanka's failed Presidential Commission of Inquiry (November 2006-9), set up to investigate into alleged serious violations of human rights by both the LTTE and the state forces, was the issue of witness protection. Many persons were unable to come before the commission because they feared for their lives. Some attempts were made to allow persons to give evidence in camera from the countries to which they had fled. However, the process did not take place with any credibility.

Subsequently, a draft Witness Protection Law was placed before the parliament, largely to appease criticism against the government and the commission; the law was never actually passed.

For this reason, it is essential that before any effective inquiry can be held in Sri Lanka, a genuine witness protection law and programme must be put in place. During the last commission, the few dedicated police officers who attempted to provide some kind of protection to the witnesses faced threats themselves. In the meantime, senior policemen went into hiding like fugitives because they were in line for punishment. If the proposed commission is set up under the same circumstances, it will only create greater threat to the lives of people already suffering the losses of their loved ones. Without a proper protection scheme, they will face enormous risk in coming forward to reveal the truth.

Sri Lanka today is a country where fear is the norm. The suppression of media freedoms and the repression against groups dealing with human rights issues is directed towards the creation and maintenance of such a fear psychosis, which will diminish victims'

capacity of finding support and expressing their grievances. The country's justice system is paralyzed by this crisis of confidence relating to personal security. What kind of guarantees then will this new commission provide for the security of witnesses? The absence of guarantees will simply bring more danger to people knowing the truth than provide solace to those wanting to engage in the search for truth and justice.

Credibility of commissioners

Another element to be addressed is the members making up the commission. International norms require that the credibility of such commissioners should be above suspicion or doubt. They should have both personal and institutional credibility—proven integrity and institutional security to engage in their work.

The appointment of the Constitutional Council is a useful example of ensuring integrity. On that occasion, the nation engaged in a serious manner to ensure that persons appointed to this highest of posts enjoyed public confidence. To this end, there was representation from all sides of the political spectrum, and glaring publicity.

Therefore, in the case of the new commissioners as well, all political parties should have a say. They should not be selected secretly and announced suddenly by the president or any other source. Their selection must be subjected to scrutiny and public discussion.

Some of the names put forth as possible commissioners do not inspire confidence however. One is a former Attorney General, whose past is connected to the government's exercise of denial. He has represented the Sri Lankan government before UN commissions with the specific purpose of denying allegations of human rights violations. His role in the inquiries of the killing of Tamil prisoners during the July riots of 1983 also came under serious criticism.

The other proposed names similarly do not inspire much confidence. It is necessary to examine whether they were previously employed to engage in exercises of denial, or whether they in fact have the credentials to deal with justice in a manner required by the norms and standards on which truth and justice is based.

World experience

Perhaps in the situation that Sri Lanka is currently facing, it would be useful to recall attempts by other countries in a similar direction. In the years following the Second World War, the German society was faced with a period of severe psychological and social problems. For many Germans it became a problem to realize they were capable of supporting a terrible dictator as their leader. Many would recall that their own families followed Adolf Hitler with admiration at some point in time. For others, the fact that

their own children became soldiers in the Nazi army and were capable of carrying out atrocities towards the Jews, and people of other countries was severely traumatic. The sheer incapacity to deal with these problems led to the thought that it was better to simply forget about such things and to begin a new way of living. However, the past that people are involved in is not something that can be forgotten so easily.

An extremely talented psychologist, Alexander Mitscherlich realized that many people who came to him for treatment were not really suffering from any identifiable illness. After long years of clinical work he realized that their illnesses were a product of their inability to mourn their past. Mitscherlich and his wife Margarete, wrote a famous book which was translated into English under the title 'Principles of Collective Behaviour—the Inability to Mourn', based on their experiences of this time. This book, which later became a household item, deals with the enormous need for humans to mourn the social wrongs that people commit collectively, as much as people need to mourn in the face of personal tragedies.

The book's approach was later developed throughout the world in dealing with similar problems facing societies. Dealing with past wrongs is not just a political matter, but rather a process of social reflection by which society comes to terms with its past. One of the best known examples in this direction is the experience of South Africa. The country's Truth and Reconciliation Commission was set up after the defeat of apartheid, and in the process of developing new political strategies for a new South African society.

Grave atrocities had been committed by the apartheid regimes, and in retaliation, considerable violence was undertaken by black groups against the whites, with everyone caught up in this cycle of violence. Merely bringing perpetrators to court was not enough to resolve the deep social and political problems faced by the South African society. The truth and reconciliation commission adopted the concept of restorative justice; an attempt to restore the dignity of the people and social relationships that were destroyed by societal violence.

Despite the various controversies surrounding the extent of the commission's achievements, the concept is recognized as an important component of dealing with such problems. Other countries such as Chile and Argentina have also developed similar methodologies in dealing with their past. The questions relating to Augusto Pinochet and the various trials that evolved against him for the use of his office as President of Chile to authorize atrocities is well known. That was possible only because of public involvement within Chile to address the country's past violence.

The question is how seriously and in how much depth will all sectors of Sri Lankan society utilize this approach of truth and reconciliation to deal with the problems resulting from its own recent period of atrocities.

My lawless mother land

Basil Fernando

My lawless mother land
What am I to say to you

Today, I saw the photograph
Of this young woman
Whose hand and a finger is severed by a thief
A woman from Vavunia

I also heard that the thief
Shot her husband when he tried
To protect her
And then the thief fled

Just yesterday I read about Doti
A mother aged fifty
Telling about the abduction of rape
Of her seventeen year old daughter

And that was at Kalutara
Where the police protected
The rapist, at the high court
Not far from the police station

My lawless mother land
What am I to say to you

Asia: Wide-ranging restrictions on freedoms of expression must be addressed

Written statement submitted to the UN Human Rights Council by the Asian Legal Resource Centre: ALRC-CWS-14-06-2010.

The Asian Legal Resource Centre (ALRC) wishes to highlight a number of restrictions to the freedom of expression ongoing in several countries in the Asian region. There are a number of situations in the region that are cause for concern with regard to this important right, affecting a range of countries with different levels of development, democracy and records concerning human rights.

At one extreme, in Myanmar, the absence of opportunities for free speech is nullifying the prospect for any notion of free and fair elections. The media have been prohibited from analyzing the new laws and rules for the planned elections, or from saying anything about parties already registering for the ballot. The ALRC has submitted a separate written submission concerning the issue of the elections in Myanmar to this session of the Human Rights Council (HRC).

Furthermore, in countries in the Asian region that have a range of records concerning the respect for human rights, the ALRC has also noted worrying trends to curtail and violate the freedom of expression, pointing to a wide-ranging and complex problem affecting the entire Asian region in various forms.

In the Republic of Korea, for example, since the current government came to power, it has appointed a close supporter of the President as CEO of the Korean Communications Commission (KCC). Mr Jeong Yeong-ju, the CEO of the Korea Broadcasting System (KBS), was also forced out of office and union members were dismissed for protesting against these developments.

Mr Park Dae-sung—a blogger also known as 'Minerva'—was arrested on January 6, 2009 and detained until April 20, 2009, for publishing articles on the internet, notably concerning gloomy predictions about the future of the Korean economy. In July 2008, the Ministry of National Defence labelled 23 books as being seditious. Mr Park Won-soon, a human rights lawyer alleged illegal activities by the National Intelligence Service (NIS) in an interview with a weekly magazine on June 10, 2009, and based on this, the NIS sued him on September 14 for civil defamation requesting Korean Won 200 million,

or around USD 170,000, in damages. Several bills that will likely further undermine the freedom of expression have been introduced without adequate public discourse. They include measures to expand the number of internet portal websites that have to adopt a 'self-verification identity system' that registers the identity of users, as well as the creation of a new form of illegal act, known as a cyber insult.

Freedom of expression is greatly constricted in Thailand. Using the lesè majesté law (Article 112 of the Criminal Code) and the more recent Computer Crimes Act of 2007, a series of dissidents, journalists, and observers of politics have been threatened, intimidated, and in some cases, arrested and prosecuted. The lesè majesté law criminalizes any speech or action judged to be against the institution of the monarchy: "Whoever defames, insults or threatens the King, Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to 15 years." On 5 April 2008, Chotisak Onsoong, a young activist, was charged with lèse majesté for not standing up during the royal anthem before a film; he has not yet been prosecuted.

The Computer Crimes Act of 2007 was passed in order to address hacking, unlawfully accessing computers or network resources not in possession of the user, and intercepting emails and other electronic data with the aim to commit theft or other criminal activities. The Act gives authorities wide-ranging powers to search the computers of suspected users, as well as to request information from internet service providers about the identities of owners of computers with particular IP addresses. Since its inception, the Act has been used to silence opposition and intimidate journalists and other citizens. In April 2009, Suwicha Thakor was sentenced to ten years in prison under both the lesè majesté law and the Computer Crimes Act for allegedly posting YouTube clips insulting to King Bhumipol, Thailand's 82-year-old monarch, to a webboard. Compounding the dangers to freedom of expression contained within the two laws, full information about all of the pending and prosecuted cases is not available, as to repeat information about the charges risks causing the speaker to be charged as well. Several exemplary cases illustrate the range of abuses possible under the two laws.

Darunee Charnchoengsilpakul was sentenced to 18 years in August 2009 for alleged crimes of lesè majesté she committed during speeches she made during political rallies in support of ousted former PM Thaksin Shinawatra in June and July 2008. When she was sentenced in August 2009, the court decision included transcripts of her comments. She never mentioned the monarchy or related institutions or individuals by name. However, as noted in the judgment, the court extrapolated the objects of her speech, as well as made conclusions about her intentions. On the basis of the court's extrapolation and interpretation, she was sentenced to 18 years in prison. Of primary concern, she has significant untreated dental problems. In early 2010, the physician at the prison wrote a report explaining the seriousness of her condition and his inability to treat it with

the facilities at the prison. Darunee Charnchoengsilpakul's family filed an appeal for temporary release for her to seek care at a specialized clinic outside the prison. The appeal was denied, on the basis of the alleged severity of her crimes, and the non-life-threatening nature of her dental problems.

Under the Computer Crimes Act, computer users have been accused of committing crimes by circulating others' words and images, and web editors have been accused of not censoring others' words, or not doing so quickly enough. Chiranuch Premchaiporn, webmaster of the Thai and English-language progressive news site Prachatai, was arrested and charged on March 31, 2010 under the Computer Crimes Act for allegedly not removing offensive webboard comments quickly enough. She is currently out on bail, but could be sentenced to up to 50 years for her alleged crimes. On April 1, 2010, the government-majority-owned Mass Communications Organization of Thailand reported the arrest of Thanthawut Thaweewarodomkul, who "confessed to posting messages received from a person using a pseudonym on eight websites." The terms of the draconian lesè majesté law and the Computer Crimes Act mean that the alleged content of his crimes have not been made public, but other reports indicate that Thanthawut also maintained websites which cover the opposition red-shirt movement (www.norporchorusa.com and www.norporchorusa2.com).

Increased arrests, charges and convictions under both the lesè majesté law and the Computer Crimes Act of 2007 represent a grave threat to freedom of expression and human rights broadly in Thailand. During the crisis between the opposition red-shirts and the government which began in late March 2010, the government announced extensive funding and other state resources being allocating for monitoring of websites and webboards. This means that anyone active in dissident Thai politics online—and dissident at this moment can simply involve passing on the words of someone else—must wonder if, and when, there will be a knock at the door.

In Sri Lanka, since the end of the conflict, rather than seeing a marked improvement in the human rights situation, the government has tightened restrictions on the freedom of the media in order to silence any forms of dissent or criticism. Journalists have even been killed; the most infamous example concerns Lasantha Wickramatunga, the editor of the Sunday Leader who, a few weeks before his death predicted his assassination and pointed the finger at the government in the event that it should come to pass. He was killed on January 8, 2009, however, to date no effective investigation has been conducted and no-one has been prosecuted for this crime. An estimated 40 prominent journalists have left Sri Lanka claiming that their lives have been seriously threatened. For example, Poddala Jayantha, a senior journalist and who is also the General Secretary of Sri Lanka Working Journalists Association (SLWJA) and a key activist of the Free Media Movement (FMM) in Sri Lanka, was abducted on June 1, 2009 in broad daylight near the Embuldeniya

junction in Nugegoda. His legs were broken and he was thrown out of a white van. He survived but was forced to leave the country due to further threats.

Keith Noyer, another well-known journalist, was abducted after he wrote an article critical of some financial aspects of the Sri Lankan military. After resurfacing he fled the country. Many others have imposed self-censorship on themselves for fear of repercussions. Journalists who have visited the country have complained of various kinds of harassment. The overall situation is extremely threatening to all those who are engaged in the publication of material that challenges the government, particularly concerning the issue of corruption or the manner in which the security laws have been used by the government.

In Indonesia, the Attorney General's Office has been engaged in acts of censorship. On December 23, 2009, the AGO announced the banning of five books including an Indonesian translation of John Roosa's "Pretext for Mass Murder: The September 30 Movement and Suharto's Coup," a historical review of the political turmoil in the 1960s that resulted in millions of persons being imprisoned or killed. Other censored books include writings about human rights violations in the Papuan provinces and religious freedom. The AGO justified this claiming that such books risked "disturbing public order" or threaten "state unity".

The Indonesian Film Censorship Board (LSF) dates back to the colonial period of Indonesia's history and continues to ban movies as recent cases show. Three documentaries about East Timor and one about Aceh were banned during a movie festival in order to avoid "social unrest" according to the authorities. The ALRC is concerned that the prohibition of these publications not only violates the fundamental freedom of expression but also fosters impunity by blocking public discourse on key human rights issues in Indonesia. Censorship by the AGO and the LSF is arbitrary and doesn't follow any objective standards or legal criteria.

Radio Era Baru, a local radio station airing in the local language and Mandarin Chinese has been forcibly shut down by the police. The station had its equipment forcibly seized on March 24, 2010. The police and Batam Radio Frequency Spectrum Monitoring Agency officials, representing the Indonesian Broadcasting Commission (KPI), closed the radio offices in Batam, Riau Islands Province to stop broadcasts. An investigation by the National Human Rights Commission concluded that the move was in response to pressure from officials from the People's Republic of China, who objected to the station's airing of criticism of Beijing's human rights record. After a visit from Chinese officials in 2007, several Indonesian institutions and ministers received letters from Beijing, requesting a termination of the licence of the radio station. The Riau regional branch of the Indonesian Broadcasting Commission had refused to renew the radio's licence ever

since, without a valid explanation. The matter is now being appealed in the Supreme Court. The closure of the radio station is of particular concern given its international character.

The Asian Legal Resource Centre is gravely concerned by the fact that it is currently witnessing serious attacks on the freedom of expression in many different contexts in Asia. These restrictions take many forms and are adapting to the level of development and means of communication available, either through direct prohibition, threats and attacks on the media, the censorship of publications, or even attempts to control online content and monitor or even punish the authors of such material.

The ALRC urges the Special Rapporteur on the freedom of opinion and expression to raise the above issues with the relevant governments. More widely, the ALRC urges the Special Rapporteur to conduct a study to evaluate the quantity, timeliness and quality of government responses to the mandate's interventions and recommendations –similar to the study carried out by the Special Rapporteur on torture—and urges the Human Rights Council to make the required resources available for this.

Teaching principles of fair trial in China

Basil Fernando

During criminal trials in China, the accused is called by the prosecutor first for questioning. He is questioned about the crime and what his explanation might be; he has a duty to give a statement to the court about the incident. The rest of the inquiry rests on his statement about the crime.

This statement is made on the basis that the accused does not have the right to remain silent. Therefore, the right to remain silent and the presumption of innocence are related; in China, both are disregarded. Instead of the right to remain silent, there is a 'duty' to speak at the beginning of the trial. If the accused does not give a statement or does not answer the questions adequately, he would be seen as having a 'bad attitude'.

It should also be noted here that the accused is brought to trial after a long period of detention at a police station; in China, from the time of arrest to the time of being produced before the court, there is usually no right to bail.

This is noteworthy because pressure can be placed on the accused during detention to prepare for the statement he should make in court. If there is pressure, in particular if he is tortured or threatened with torture, any statement he makes under such circumstances cannot be assumed to be voluntary and free.

Moreover, it cannot be assumed that the statement of the accused is truthful. It is generally accepted that persons under detention, particularly prolonged detention, will adjust their statements to agree with their interrogators or other officials, in order to safeguard their security. This makes it easy for interrogators to obtain statements correlating to their own agendas, rather than to any 'truth', whether directly or by insinuation.

An important component of a fair trial is proof; the burden of proof of the accusation is on those making the accusation. Forcing an accused person to make a statement at the very beginning of the trial amounts to placing the burden on the accused rather than the prosecution. Even if the prosecution has no evidence to support its accusation, they can still prosecute the case on the basis of what the accused says, or is made to say.

The legal principle that the statement of the accused is not enough and should be collaborated in some way is no safeguard. The reason for this is that once an accused is made to say something, it is quite possible to find something else to collaborate it. Even the factor of collaboration will depend on what the accused himself says.

In other words, the Chinese trial does not consider proof to be of utmost importance. What is important is to find the truth through facts. This is in fact a slogan of sorts, and a kind of ideological statement. Through the concept of searching for the truth, the concept of proof is suppressed.

For the Chinese trial, proof is rather to be based on a logical connection of the facts brought before a judge; the arguments of a case. These arguments are made to establish certain elements of a crime, and ascertain whether the facts are established in terms of the statement made by the accused.

The justification used in China for this process is that the person who knows best about a crime is the accused, and therefore he should speak first. It is a sort of common sense method, where the court approaches the accused and asks him to explain things. Whatever idea is formed later will depend on the explanations given by the accused. If he is unable to explain certain things, that would inevitably be held against him. Such explanation seeking, placing the burden of proving innocence on the accused, is in fact a reversal of the fair trial process.

Reasons for teaching fair trial

One way of teaching fair trial is to teach the principles of fair trial. This type of education has been ongoing for many decades in China, and the principles are now commonly known, and even accepted. Chinese lawyers, judges and experts have no difficulty in saying that they accept all basic fair trial principles in both common and civil law.

There is a difference however, between the accepted principles and the actual procedure adopted in a trial. When it comes to the trial, the principles do not seem to matter at all, and a separate set of principles operate in judging the guilt or otherwise of the accused—assumptions made from the 'facts' and linking these to whatever the accused says. It is therefore necessary to investigate this issue by those contributing to the study of fair trial in the country.

The repetition of principles over and over again only leads to training that is disconnected from the actual procedure and explanations during the trial. Such training leads to a discussion on principles on the one hand, and a practice unrelated to any of these

principles on the other. Not only is the practice unrelated to the principles; it is in fact, in contradiction to those principles.

Before and after the 1997 reforms

Prior to 1997, China followed the socialist trial system found in other socialist countries. In a socialist trial, there was no question of the guilt or otherwise of the accused. The socialist system held trials for the sole purpose of the defense of the state, and the accused person's role was simply to demonstrate that he had committed an act against the state.

Within a socialist system the concept of fair trial did not exist. Rather, trials were an ideological exercise where the state explained certain wrongs to the population by making an example of a particular individual. This individual was expected to speak out and confess the wrong committed, and to explain why he had committed it. In cases where guilt has to be aggravated, political factors will be attributed to the actions of the accused, for example, he has done this under the instigation of foreign elements or those acting against the state and so forth. Mitigating factors would be that he was unaware, was not properly educated, or for various reasons he did not intend to hurt the state. The entire trial was about what the accused would say to the charges made by the state; there was no question of the accused being found not guilty at the end.

The 1997 reforms

The reforms that occurred in 1997 changed the questioning of the accused by the judge to the prosecution. The accused still had to speak however, and what he said remained the same. The reforms did not really affect the approach taken towards the accused therefore.

Also, by 1997 the ideological elements of the trial seemed to be reduced, and there was greater focus on the elimination of crimes. As a result, training and education focused on issues relating to specific crimes and the need to eliminate such crimes.

Despite this, a trial system in which the person on trial is considered innocent until proven guilty, and where the burden of proving guilt is on the prosecution, has not yet found any foundation in China.

Death sentence

It must be noted that the ultimate punishment in China can be a death sentence. A trial beginning with the questioning of the accused himself can therefore easily end in a guilty verdict and the imposition of the death sentence.

Various incentives have been initiated to reduce the death sentence, by suspended sentences and other ways. However, this will only create a reason for the accused to somehow account for acts he may not have committed; taking the stance of innocence will be treated as a bad attitude that can end in a death sentence. Giving an explanation for the actions or admitting guilt would be seen as a more convenient approach. In these circumstances, the death sentence could be imposed on persons who are in fact innocent.

It is therefore essential to look into these matters, understand the implications of fair trial, and identify areas where changes are really needed, when developing education on trials and other related matters.

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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ISSN 1997-2997
9 771997 299005