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AAATI: Meeting of Parliamentarians

Meeting of Parliamentarians Hong Kong
21st – 24th July 2012

MEETING MINUTES

Co-organised by

the Asian Human Rights Commission (AHRC)

and

the Rehabilitation and Research Centre for Torture Victims (RCT), Denmark

WELCOME

WONG KAI SHING, EXECUTIVE DIRECTOR OF ASIAN
LEGAL RESOURCE CENTRE, HONG KONG
21st July 2012



Dear esteemed guests and friends,

On behalf of the Asian Human Rights Commission (AHRC), Hong Kong, and the Rehabilitation and Research Centre for Torture Victims (RCT), Denmark, I would like to extend a very warm welcome to the 2012 Asian Alliance against Torture and Ill-Treatment Parliamentary Meeting.

The Meeting of Parliamentarians is a recent initiative by two non-governmental organisations under the aegis of the Asian Alliance Against Torture and Ill-Treatment (AAATI) aimed at establishing a core group of Asian leaders and parliamentarians who will take responsibility for and actively work towards the prohibition of torture and other forms of cruel, inhuman and degrading treatment and punishment within the legal framework of their respective countries. This year, we are pleased to present the second instalment of the Parliamentary Meeting. It will be held from 21-24 July 2012 at Royal Park Hotel in Sha Tin, Hong Kong.

It is our great hope that this meeting, jointly organised by the AHRC and the RCT, will pave the way for increased and enhanced engagement of parliamentarians in the promotion of universal norms and ideals explicitly expressed by prominent international declarations, resolutions and treaties. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is one such key legal document that places a legal and moral obligation on state actors not only to desist from violent, barbarous and injurious acts that demean a human being's inherent dignity and endangers that individual's health and life, but to practically combat such practices by outlawing it.

You are all painfully aware, as we are, that the practice of torture and ill-treatment is pervasive and prevalent in many state institutions within Asian countries, particularly among law enforcement (police), paramilitary and military institutions. The practice of torture is not only barbaric, but it is scientifically crude and backward, particularly where better methods for obtaining evidence have already been proposed, implemented and are readily available to those in a position to investigate crime. The practice of torture is therefore also a troubling manifestation of grave defects in the investigative process, failures that would in turn compromise prosecution, conviction and rule of law in these countries. By fighting such monstrous and primitive practices, we express not only abhorrence of these reprehensible acts and attitudes but a genuine desire to endorse and advocate the supremacy of law in our countries.

The objectives and expected outcomes of this meeting are as follows.

Objectives

1. To promote the role of parliamentarians in their state's accession to the CAT as well as in the implementation, operation and maintenance of a sound legal framework that criminalises and systematically eliminates the practice of torture and ill-treatment;
2. To facilitate and develop cooperation between parliamentarians and civil society groups working against torture and ill-treatment in Asia;
3. To host permanent fora composed of potential, current and ex-Asian parliamentarians against torture and ill-treatment and generate opportunities for genuine, critical and constructive feedback and analyses concerning the adoption of the CAT within local-national laws as well as regarding countries' adherence to its provisions.

Expected Outcomes

1. Increased understanding of parliamentarians concerning the importance of the CAT and the crucial role they play in the accession by their countries to the CAT;
2. Enhanced ability on the part of parliamentarians to design initiatives that will influence legislature through the active advocacy for legal or institutional reformation geared toward the eventual elimination of practices of torture or ill-treatment in their respective countries;
3. Strengthened formal and informal cooperation between civil society groups and actors of the AAATI, evidenced in particular by the formulation of common strategies and the joint organisation of effective programmes, that aspires to the eradication of torture and ill-treatment in Asian countries

Today, even as we celebrate your presence amongst us, we call upon your convictions of the supremacy of law, the sovereignty of the people and the love you have for your country and your people. We call upon your belief in the dignity of every man, woman and child, and your appreciation of our common humanity in the advancement of this cause. We take the liberty, and revel in the privilege, of appealing to you, in your capacity as leaders and change-makers, to join us in this exciting venture to change for the better the lives of millions in Asia. We thank you for aspiring with us to a better, brighter, fairer and safer world for all.

*Wong Kai Shing
Executive Director
Asian Legal Resource Centre, Hong Kong*

OPENING ADDRESS

PROFESSOR EMERITUS OLE ESPERSON,
FORMER MINISTER OF JUSTICE, DENMARK
21st July 2012



Address to Parliamentarians: The Ultimate Responsibility

Delivered by Erik Wendt, Rehabilitation and Research Centre for Torture Victims, Denmark

Dear Parliamentarians,

The organizers of this conference feel honoured and attach great importance to your presence here and to your participation in the efforts in the fight against torture and ill-treatment.

International law and the UN Convention on Human Rights provide us with prohibitions against torture. These prohibitions are of a '*jus cogens*' category, which means that, just like the prohibition against slavery and genocide, they must never, under any circumstances, be deviated from. Very few rules are of this nature. The reason is, of course, that torture is such a horrifying practice that it should never be applied to any person. In this respect the *international legal* situation is in order. But something is left to be done and that can only be done by you, esteemed parliamentarians: that is effectively to secure the **implementation** of the basic rules prohibiting the use of such means as torture in our countries.

The right not to be exposed to torture is in fact no real and genuine right if it is not combined with an effective remedy for the victims to make use of a legal machinery to have what the victim had to suffer redressed and guilty persons punished. In other words: *With no general rule of law in the country there is no protection against torture.* What does this mean? It means that the ultimate responsibility for the national fight against torture – and all other human rights violations, rests with the parliament and the government in each country. And this responsibility should be seen as our most sacred and obligatory task - the task, first of all to ensure the existence and availability of an independent judiciary in each of our countries. This may not at all be easy and is more difficult in some countries than in others. Nevertheless it must be done.

No rule of law means no democracy and no human rights.

My conclusion and strong recommendation is: if you make efforts to fight for the protection of human rights, as we do in the Asian Alliance against Torture and Ill-

treatment (AAATI), we should always keep in mind that with no rule of law there will be no such protection. The effort to protect human rights must always be combined and move in step with efforts to establish and maintain rule of law in the country. Let us come together in the spirit of universal brotherhood to achieve this.

I do wish you all success at this important event.

*Professor Emeritus Ole Espersen,
former Minister of Justice, Denmark*

KEYNOTE SPEECH

JAN OLE HAAGANSEN, REHABILITATION AND
RESEARCH CENTRE FOR TORTURE VICTIMS,
DENMARK

21st July 2012



Honourable parliamentarians, government officials, researchers, members of the judiciary, colleagues in Asian Human Rights Commission (AHRC) and from other human rights organisations, I would first like to greet you all warmly. I extend a special welcome to our esteemed parliamentarians who have taken the time and special effort to be here with us today. It is a great pleasure for me to see you all here and to participate with you in the coming days' deliberations. I have so looked forward to this event where parliamentarians and representatives from civil society organisations, two groups of individuals crucial to a vibrant democracy, are engaged in discussions acknowledging and working towards the eradication of the gruesome and anachronistic practice of torture.

Torture is not only a tragedy for the victims but degrading to those who perpetrate it as well as to the societies which tolerate such outrageous acts. Today we have international instruments in place to prevent and punish torture – the UN Convention against Torture and its Optional Protocol are examples of these mechanisms. Freedom from torture and other cruel, inhuman or degrading treatment or punishment is an inalienable human right. The prohibition of torture is a fundamental principle and aspiration of international human rights law. This prohibition is absolute and allows no exceptions. Yet today, a significant proportion of countries in the world still actively practice or condone practices of torture; Asian countries compose a considerable part of this statistic.

Torture: an indicator of fundamental system failure

For the last twelve years I have been working at Rehabilitation and Research Centre for Torture Victims (RCT) in Copenhagen, Denmark. At present, we support activities in over twenty countries and meet a variety of people working tirelessly toward the alleviation of suffering in victims of torture. Good intentions are not always translated into action or meet expectations. Furthermore, the work to stop torture is often rather risky for the activists involved. The tremendous effort put into anti-torture efforts never seem sufficient. Over the years, we have met competent and confident government officials who genuinely desire to work towards rule of law, but they are often entangled in fatally flawed or malfunctioning systems and institutions. The situation is exacerbated by another insidious practice that has hindered anti-torture efforts and other development-oriented programmes – corruption.

Torture is preventable: changing practices and attitudes

Training for police officers, prison staff and the judiciary has thus far proven seriously inadequate. Police officers who are trained do not apply the lessons learned to everyday practices, so deeply and institutionally entrenched are the practices of torture and corruption. The crucial internalisation of values such as respect for the dignity of a human being has not come to pass yet, and it is my sincere belief that unless this happens, the barbaric practice of torture will persist.

Human history has shown it is possible to eradicate torture. In Denmark, Scandinavia and Hong Kong, for instance, government officials and civil society have worked together to prevent torture. Political will is the critical factor deciding whether or not the practice can be eliminated, which is why I am so pleased and encouraged to see you all here today. I look forward to hearing more about your particular experiences and to uncover insights which may be useful elsewhere. Government officials are not only legislators but influential role models who change public opinion. Through the process of legislation, parliamentarians represent popular sentiment and lay the groundwork for law-based prohibition and punishment of the practice of torture and ill-treatment.

Example from Denmark

I would like to refer to my own experiences with the RCT in Denmark. The RCT was founded 30 years ago in response to the needs of torture survivors and refugees who had fled their own countries and who were in need of specialised treatment. The RCT took upon itself the task of campaigning against the practice of torture through the knowledge accrued over the years through medical documentation of the consequences of torture on the individual, the family and the wider community. We now know better the infinite capacity of human beings to bring harm upon fellow human beings.

The RCT was born of the horror Danish society felt toward practices of torture. This powerful resistance was strengthened during the Second World War, when Denmark was occupied by the Nazis who tortured suspected Danish resistance fighters. In the late 1960s, Danish parliamentarians also supported Greek politicians who had been severely tortured by the military regime then in power (1967-1974). Professor Dr Ole Espersen, who specialises in International Law and is presently a legal consultant of the RCT, was one of the Danish politicians who had pushed for the reception and rehabilitation of those victims of torture from Greece. He later became the chairman of the RCT in the 1990s. Although Ole Espersen was a Social Democrat, the Danish right-wing demonstrated solidarity with moves by the left to put greater pressure on the Greek military regime, which was eventually expunged from the Council of Europe. This diplomatic isolation contributed to the eventual collapse of the military dictatorship in

Greece. It also showed that those who actively oppose torture and advocate human rights span the political spectrum.

The Danish government subsequently became very supportive of all attempts to assist torture survivors and also became heavily involved in the global movement against torture. The RCT has also worked these many years for the rehabilitation of torture survivors within Denmark – this includes the practical inclusion of post-trauma rehabilitation in the Danish public health system.

Even in Denmark, however, effort must be expended to harness the otherwise passive belief against torture. This is because people simply forget, in a safe environment, the terror and excruciating physical and psychological pain torture induces. Younger generations are increasingly less aware of torture and its effects on the individual, the family and society. This is the reason human rights organisations must never become complacent, and must continue to ensure awareness of human rights in our respective societies.

Standard Operating Procedure (SOP): It's not only the “bad” people who practice torture

Torture is a barbaric practice all too common despite the international conventions prohibiting it. Regrettably, this is also the case in Asia, where torture is so commonplace the practice is considered SOP (Standard Operating Procedure). Torture is carried out where there is ignorance as to the effects of torture upon the individual, the family and the society. Torture is a manifestation of severe system failure; the state is unable or unwilling to live up to its commitment to the protection of human rights, entitlements inherent to a dignified existence.

We must distinguish a few bad apples and much graver system failure. Various studies conducted by psychologists suggest that under the wrong conditions almost all of us are capable of the senseless cruelty exhibited by perpetrators of torture (refer to experiments by Zimbardo and Milgram). Humans are not born cruel or evil; rather, flawed systems produce individuals capable of evil and cruelty. Torture hurts not only the person tortured by the perpetrator as well. The consequences for society are far-reaching. It is also a fact that most of those subjected to torture and ill-treatment are the poor and marginalised of society.

Role of the parliamentarian

It is necessary to first appreciate the nature and frightening scale of the violence and accept that this problem of torture and ill-treatment cannot be satisfactorily addressed

through the simple ratification of a few conventions or even through the drawing up of new laws to criminalise torture. It is relatively easy to obtain information indicating the severity of the problem – the Asian Humans Rights Commission (AHRC) has extensive documentation of the numerous violations in various Asian countries and provides detailed analysis of the root causes of these problems. The Commission also issues statements and forwards articles that make recommendations about how to develop strategies to methodologically combat the practice of torture. These analyses are important to our understanding of how torture negatively affects every member of society, whether directly or indirectly. They also expose how non-transparency and unaccountability stemming from the disregard for the rule of law and rampant corruption encourage perpetrators and potential perpetrators to ill-treat and torture those in their custody with impunity.

Without political courage, parliamentarians cannot hope to make a difference. Because of their high profile and legislative powers, they may be able to work more effectively and less fearfully. Parliamentarians are morally obliged to secure

1. National legislation criminalising torture and oversight of the implementation of all necessary programmes, laws, acts and ordinances toward the elimination of torture;
2. State ratification of the many international treaties and conventions against torture;
3. Sufficient funds to ensure the proper functioning of law enforcement agencies, the judiciary, military and paramilitary;
4. Cooperation between human rights activists/organisations, the executive and the legislative is strengthened.

It is important to realise that a permanent change can only be achieved through a parallel evolution in every individual's worldview. Only when attitudes change can practices so long institutionalised be reformed. This will require political courage; there will be substantial resistance from power-holders in the various institutions and branches of governments, as well as conservative sections of society that may mistakenly believe the government is becoming lenient in its dealing with suspected criminals. One of the weaknesses of any democracy is the people's demand for and expectation of "instant justice" – human rights may then fall prey to populism. It is therefore the duty of the government to resist majoritarian sentiment that may perversely compromise the rights of certain individuals and minorities, and to uphold the sanctity of each citizen's right to equality before the law and to equal protection by the law.

Although almost no one even attempts to justify torture – and some resort to various euphemisms to mask the truth (President George Bush, for instance, termed the practice "enhanced interrogation techniques") – many powerful agents and agencies turn a blind eye to the practice of torture within their countries. It is easy to overlook sensitive or

controversial issues. Parliamentarians must therefore act on their immovable convictions about the inherent equality and dignity of all humans. In the short term, few medals or accolades will be awarded for championing anti-torture efforts, yet this is necessary for the sake of the entire country. Efforts should be made not simply to avoid critique from the respective UN treaty bodies, but because torture and impunity create fear and distrust in public institutions and result in a fragmented and socio-politically and economically unstable country.

Tomorrow I will discuss in-depth the very real cost and inefficacy of torture. I wish today to simply highlight the ethical argument against the inhumane practice of torture, a practice that is an affront to our beliefs in a collective humanity; violent, senseless acts that offend our individual consciences. It is for this reason that an absolute prohibition of torture has been explicitly established by international law.

The right against torture and other ill-treatment is a fundamental human right; it is what makes us - perpetrator, potential perpetrator, victim and potential victim – human.

In some countries, to be a courageous politician is to be at risk of being personally tortured. This is particularly true of opposition politicians. This is because torture is already employed in the suppression of dissenting voices. This is extremely troubling and telling because it clearly reflects the lack of democratic space. Cooperation between politicians from different countries can then become valuable, as in the case where Danish politicians supported Greek counterparts who had been tortured or who were at risk of being tortured. We must first acknowledge a difficult statistic that for every “special” or “celebrity” case, thousands of other ordinary individuals are also being tortured. This is a fact I alluded to earlier.

The Role of the Asian Human Rights Commission (AHRC)

This Meeting of Parliamentarians is the first of its kind in Asia. The RCT feels privileged to be invited by the Asian Human Rights Commission, an organisation that has worked relentlessly, diligently, resourcefully and skilfully on the issue of torture for many years now. On the flight to Hong Kong, we read in the last issue of the International Herald Tribune news referencing the work of the AHRC. The rising profile of the AHRC raises the profile of the issue of torture and torture prevention in Asia. I would therefore like to congratulate the Asian Human Rights Commission for organising this event.

Once more, I would like to say how happy I am to be here with you all. We are grateful you have taken time off busy schedules to take part in this important meeting. We do not expect miracles – we work to make them happen. I hope that the exchange of views in active discussion will help us identify realistic, pragmatic and yet ambitious strategies for

the elimination of torture in Asia, itself an ambitious but necessary goal. I have discussed the orientation and content of this regional meeting with Danish politicians who have expressed an eagerness to take part in this fight against torture, and to share experiences, ideas and opinions with you all. Through our presence at this meeting we affirm our belief that not only is torture preventable, but that we have to play a part in working toward that reality. Let us join hands in this endeavour.

Thank you.

*Jan Ole Haagenzen
Director of International Department of Rehabilitation and
Research Centre for Torture Victims Copenhagen, Denmark*

AN INTRODUCTION AND OVERVIEW

JOHN JOSEPH CLANCEY, CHAIRMAN OF THE
ASIAN LEGAL RESOURCE CENTRE, HONG KONG
21st July 2012



It gives me great pleasure to address this gathering of legislators from several countries, sitting together with a group of committed human rights activists. This gathering itself, to discuss the evil of torture, is a matter of great significance.

While legislators from different countries often gather to discuss matters relating to trade and business, finance, geo-political alliances and other similar matters, it is rare that such meetings are held to discuss matters of great significance for the ordinary citizens of a country. It is therefore a great pleasure for me to participate in such a meeting. I am glad to have been invited to share a few thoughts for your consideration as you prepare to start your sharing and important deliberations.

UN Convention against Torture (CAT)

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

Violations

As this is a sharing among legislators who are fully aware of the unique circumstances within their respective countries, I do not think it is necessary for me to give examples of the violations of this convention and the rights guaranteed under it within each country. It suffices to say that the Asian Human Rights Commission, which I assist as the chairperson, has over many years taken great pains to document violations relating to torture and ill-treatment in each country as part of its endeavour to assist concerned persons in these countries to understand their obligations under the UN CAT. The AHRC documentation is a rich source of information which could be quite useful

to legislators in their deliberations both now during the meeting, as well as for other domestic and international discourses. As legislators involved in the development of laws and vital policies you understand the need to rely on authentic and credible information on all the matters with which you deal. On the issue of torture and ill-treatment the AHRC and ALRC can provide well documented material on which you can rely.

AHRC & ALRC Documentation

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

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

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

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

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

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

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

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

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

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

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

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

From Old Style Policing to Modern policing

I presume we all agree that torture and ill-treatment still remains a major problem in many Asian countries. Various historical factors may explain the existence of this situation. One obvious factor is that the development of modern policing systems that completely reject the use of torture in criminal investigations and that rely entirely on

methodologies using up-to-date scientific techniques have not yet been achieved in many Asian countries.

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

Perhaps one of the concerns which may be preoccupying you as legislators is how a government can achieve this decisive transformation from an old style policing to a modern one. A modern policing system has implications that go far beyond the field of criminal justice; it has implications for the realization of full and genuine democratisation of our societies. None of the basic elements needed for a fully functional democracy could be achieved without a radical transformation of policing, as this important institution must be made to function within the framework of democracy itself. Where this does not happen, the policing system itself not only can but has often become a threat to democracy. Even the holding of free and fair elections is not possible without a policing system that functions strictly within the parameters of the rule of law. Thus, the topic that you will be discussing during this meeting is likely to have very significant implications for the very problems that occupy you most as legislators, namely how to ensure a system of public institutions that is capable of sustaining democracy. Where democracy is threatened, even the role of legislators is threatened. Thus, as legislators you have very good reasons, as well as motivation to be deeply interested in the issue of modernising police structures so that the policing system becomes capable of achieving the objectives of the UN CAT.

Budgetary Allocations

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

A common misconception that policing without torture is impossible

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

What psychology tells about torture

A very important aspect of this discussion is based on the knowledge and insight obtained through modern psychology. For legislators who want to convince others about the need to eliminate torture and ill-treatment, modern psychology can be very helpful. Modern psychology has demonstrated and shown the negative impact of torture and ill-treatment on the human mind, and that the sufferings people go through during torture leave permanent imprints impairing the victims for the remainder of their lives. There is no moral and ethical justification for causing such suffering. The practice of torture violates all moral and ethical norms. Furthermore, modern psychology also reveals that obtaining information under conditions of torture is almost useless. Human beings freeze under torture and parts of their brain become impaired, hampering their ability to communicate or to think in a rational way.

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

Impunity

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

The struggle against impunity lies in the creation and maintenance of effective complaint mechanisms, investigation mechanisms, prosecution mechanisms, as well as a functioning and independent judiciary. As you will note from the AHRC documentation, there is a common complaint in several countries that proper complaint mechanisms do not exist, or that even if these mechanisms do exist in the formal sense, they are not functioning effectively. People often complain that getting their complaints registered with the police or other institutions is difficult or even impossible, especially when the complaints are about the police or the military. Therefore it is essential to study the existing complaint system and to provide ways to overcome the limitations of such complaint mechanisms. What seems to be most frustrating is the absence of investigation mechanisms. Without independent investigation mechanisms it is not possible to carry out credible investigations. When there are no credible investigations, people lose confidence in the justice process. If people feel that a fair chance of obtaining justice does not exist, then this implies a crisis in the democratic process itself. This too is an area that requires serious attention. There are also complaints about the politicisation of the prosecution process, or other serious defects of prosecutors. Without able and independent prosecutors it is not possible to maintain an effective system of criminal justice. The last and the most important element is the independence of the judiciary. I respectfully submit that legislators, who have been elected to represent ordinary citizens, should fight hard to ensure that the executive does not in any way interfere with the functioning of the judiciary (i.e. strictly enforcing separation of powers). I hope all these matters relating to the problem of impunity will be seriously discussed during this meeting.

Laws to criminalize torture and ensure witness protection

In dealing with impunity, drafting and approving legislation to enforce the prohibition against torture is essential. UNCAT envisaged that state parties would enact legislative

measures to criminalize torture and ill-treatment. A few countries in Asia, such as the Philippines, Sri Lanka and HK have already done so. There are other legislators who are currently in the process of proposing and pursuing proposed legislation to this end.

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

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

Civic sense

I am sure you will agree that distrust in public institutions limits public cooperation among people. Each society is an association of free and equal persons who are ready to cooperate with others. One function of public institutions is to enable and enhance such cooperation. If public confidence in public institutions is lost or lessened, cooperation would be lost or lessened. A discussion on torture and ill-treatment is vital when dealing with problems of a breakdown of public cooperation. Policing is one of the most vital public institutions, both for maintaining order, as well as for ensuring the administration of justice. If the public loses confidence in the police, both public order and the administration of justice suffer. There is an open admission in many Asian societies that confidence in the police is low or does not exist. Therefore legislators should try to understand this problem and try to find ways to address it. In dealing with this problem, the issue of torture and ill-treatment becomes an unavoidable issue that needs to be addressed. In order to develop a civic sense among people, cooperation between the police and the people needs to be re-established. This too, I hope, will also be a topic you can discuss during your deliberations in the coming few days.

Protection of and cooperation with human rights defenders

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

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

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

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

My best wishes for a successful conference.

*Mr John Joseph Clancey
Chairman of Asian Legal Resource Centre (ALRC)*

PRESENTATION

CHEUNG YIU-LEUNG, ASIAN HUMAN RIGHTS
COMMISSION'S BOARD OF DIRECTORS, HONG KONG
21st July 2012



Earlier this year at a presentation at Peking University, I said, “I’ve never done this before with such mixed feelings. Soon HK will have an executive of dubious character. He denies being a CCP cadre. We can only look on to see how things unfold in the future.” Four or five months later, I’m here presenting to you with the same mixed feelings. Let’s see how things transpire.

Fifteen years ago, Hong Kong went from being a British Crown colony to being part of Chinese territory. Many friends ask if locals have observed changes since transfer of sovereignty. In terms of law, there have been few changes, although it remains to be seen if this will remain the case in the future. In 1997, HK formally abolished the death penalty, although it had not been used for a long time (last execution was carried out in 1965). Under the 1997 “one country two systems”, we retained existing legal systems and practices. Our judiciary remains rather independent, although we cannot be sure this will continue to be true in the future. The influence of the mainland on HK is increasingly visible – this is cause for worry.

Let me provide a brief overview of the “HK system”. It’s not an easy task to explain criminal justice system and notions of law in an hour. Let me try. I realise many friends sitting here today are from common law systems so the basic principles and notions of justice need not be explained too thoroughly. I will reiterate a few points:

1. To begin, some figures. HK has a population of 7 million. We have about 195 full-time judges (excluding a small number of part-time judges appointed from the legal profession). There are approximately 8000 lawyers in HK.
2. We have common law jurisdiction as opposed to China’s “continental (Europe) model” (I personally prefer calling it the Soviet model).
3. Is one country, two system successful? We have hung on, to be fair. Tibet requested the same “one country, two systems” policy but this request was rejected by the CCP. Why? Because HK is a small city and can be easily sealed off, whereas Tibet is geographically huge. This is in addition to the fact that the Dalai Lama’s conception of geographical Tibet is at odds with China’s definition of Tibet (Dalai Lama claims Tibet to be twice the size the Central Government believe it to be). Tibet’s thousands of kilometres of border cannot be properly patrolled or regulated. Considering HK’s manageable physical size, on the other hand, where borders are

quite easily regulated, mainlanders cannot enter without visa, etc. etc. It's therefore possible to maintain distinct administration and judicial system from mainland.

For judicial success, we need a number of conditions, some written, some unwritten. Some institutions are crucial in maintaining a credible, viable legal system – an independent judiciary, independent prosecution and independent and professional lawyers, for instance. I repeat “independent” because these structures in HK have been operating rather autonomously without much political interference. This creates a sort of power balance. The independence of judiciary in HK is legendary, particularly in the mainland. I was asked once in China, “Is corruption in HK’s judiciary serious?” It implied the student hadn’t even considered the possibility of zero or extremely low corruption.

Our judiciary has been rather professional; most judges are appointed after years of experience in the legal profession. They have excellent work records and proper academic qualifications. The judicial fraternity work quite closely together. The Bar Council, composed of 1100 members, has a detailed internal code of conduct and internal disciplinary (essential regulatory) mechanisms. Compare this with China, where the Ministry of Justice governs the equivalent of the Bar Council. This places the judiciary directly under the control of the executive. There can be no shortcut in this matter either on the part of the legal fraternity; a high ethical and professional standard has to be maintained from within the Bar council, or the executive will be given another reason to “manage” the judiciary.

Prosecution (Office of the Attorney-General) forms the last arm of the trio. This department is headed by the Secretary of Justice from the Department of Justice. The decision of whether or not to proceed with prosecution given the evidence available is made quite independently.

Other than these three branches of judiciary, there are other important “supporting institutions”. Prison regime or management is independently organized in HK. This is a department independent from the police. We generally understand torture as occurring mostly in prison, detention centres and other places of custody. The management of these places (standard procedures, processes and command responsibility) is therefore a matter of great concern to us. In HK, most detention centres are governed by an independent Correctional Service. Even police officers who require access to prisoners need to gain permission through application, must complete their work during stipulated time and often under the supervision of Correctional Services officers. A maximum of 48 hours detention is allowed if it is authorised by senior officers. Police need a court order (by a magistrate) to detain a person for further investigation, and an arrested person can argue before the magistrate for bail. Such measures are checks against arbitrary deprivation of liberty.

Principles of rule of law are largely unwritten but nonetheless widely recognised, accepted and respected on the basis of universal and unquestionable/unquestioned values. Fundamental principles known as “rules of natural justice” are accrued from centuries of human history and experience. For example:

1. “No one shall be a judge in his own cause” – no man should try a case in which he is interested.
2. “No man should be condemned unheard” – entitlement to fair hearing. Chance to defend himself against charges.
3. “Risk of bias must be avoided” – no one should adjudicate if there’s even the most remote possibility he has a personal, direct or indirect interest in the matter. Judges must themselves consciously avoid such cases and transfer the case to another judge (abdicate responsibility and thereby culpability of personal bias). We’re talking not simply about obvious bias, but even the remote risk of bias.
4. Not only does substance have to be good, image also has to be good. Judges must not only act fairly but *be seen to be acting fairly*. Public confidence would otherwise be jeopardised. This is essential to the legitimacy and credibility of the judiciary. There are over 80 detailed paragraphs of a Code of Conduct – so specific it warns judges what to wear and what not to wear in court! Refer <http://www.hkba.org/the-bar/code-of-conduct/code-of-conduct.html>.
5. Hong Kong is very small and its community very densely connected. Our media (think ‘paparazzi’) is very active. It is therefore critical that the judiciary is ‘clean’ (behaviour, lifestyle), transparent, accountable, credible, impartial and independent. Proceedings must be open (‘open court justice’ – no secret trial...except in special cases, for instance when a juvenile is involved. That’s for the protection of the child. It is essential also that even in a closed trial, the juvenile is represented by lawyers and guardians/parents in court, as well as by probation officers. Representatives from the press may be invited although there are naturally some restrictions (publicising the child’s name is strictly prohibited, for instance). Family courts are also private.

What if there is a breach of these fundamental principles? We have an important mechanism “judicial review”. Procedural unfairness or unreasonableness can be challenged through this and the Court can declare that certain decisions by the authorities are void because they are unlawful or unconstitutional. (Now there is some controversy that judicial review is being abused by some unmeritorious characters!) There is also a judge who reviews the papers for judicial review to grant “leave” for hearing. The success rate for judicial review is low (20-30%) but it is, at least, a credible avenue for challenging constitutionality or lawfulness of government policies/decisions.

On Monday the Asian Human Rights Commission has scheduled a visit to the Independent Commission against Corruption (ICAC) and the Bar Association. The

ICAC has been a very powerful, intrusive law enforcement agency since the mid-70s and has therefore ensured a very low corruption rate. Now the ICAC deals with more minor matters such as deception and delays. They have some “restricted” tasks such as investigating labour department (employment disputes, non-compliance with employment rules, environmental protection and property/building/estate disputes). Major law enforcement matters are still cared for by the customs and police primarily.

Law enforcement agents are responsible for investigations and filing for prosecution. However, the decision concerning whether or not to prosecute, as well as the actual prosecution, is handled by the Department of Justice. If it has been decided a case will be prosecuted, the legal profession, through lawyers, step in – even before prosecution begins. My observation in the criminal courts of Hong Kong is that over 95 percent of the people charged are represented by lawyers because success is reliant on those with legal expertise. Access to lawyers is therefore essential to the notions of justice because not everyone has legal knowledge or expertise. This is critical to our understanding of a “fair trial” – all factors and evidence have to be considered, and punishment must be appropriate to the crime.

The Hong Kong government dedicates HKD100 million each year to providing legal aid to its people. Legal aid is granted to families and in cases where employment disputes, personal injuries (and other categories) are involved. One has to appreciate the value of legal aid in maintaining the independence of the judiciary. The judicial system is often there to challenge the overwhelming power of authorities (the government). It might sound strange that a government would pay to help people challenge it. Yet, in all its literal sense, this is the other sort of “feedback” the government would or could get. Every government needs critical assessment to improve/review/repeal policies and to ensure its own functionality and existence. When feedback mechanisms are compromised, the legitimacy and survival of the regime are also jeopardised.

Probation service is another “supporting institution” attached to the Social Welfare Department. It is, like the Correctional Services, an independent entity from the police. It is a post-incarceration service to conduct rehabilitation and reintegration activities for convicts who have already served their sentence.

Free press and media is also a “supporting institution”. Free NGOs and social groups also monitor the entire process and are useful sources of information where the government may be able to otherwise control information accessible to the public. We have quite an open society; justice is largely available to the public, who then scrutinise the judiciary and the government and pass comments/criticisms. It is my sincere belief that no organisation or institution can function without some kind of challenge to its functionality or legitimacy – it is at such moments of crisis that a government is given the

opportunity to prove its validity, legitimacy and worthiness of the continued support of its people. I have hope because there are many parts of Hong Kong civil society working together to improve existing institutions. The government must not perceive these “feedback mechanisms” as threats but rather as attempts by the wider society to engage their elected power-holders.

There are two important international covenants, the 1966 International Covenants on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) already incorporated in Hong Kong’s laws a long time before the handover of sovereignty. The provisions therein are recognised and implemented in Hong Kong courts. In many cases regarding civil liberties, the public frequently uses these two documents to argue their case. This raises the standard of the conduct of justice. The rights of the individual are guaranteed under specific laws. These include the

- ◆ Right against self-incrimination
- ◆ Right to consult lawyers in confidence and privileged communication
- ◆ Right to remain silent

In mainland China, these rights are absent and there is almost no chance of justice ever being served because of this. In China, people have no guaranteed entitlement to access to lawyers. Some superficial changes in legislation have not relieved or reversed the situation. Communication with lawyers is at the discretion of the police, and it’s not “privileged” in the sense that lawyers can be compelled to divulge what is discussed. During prisoner-counsel conferences, police officers are often present, sitting in the same room and listening in to the conversation between the legal counsel and his client. There is no chance for protest of this practice.

In Hong Kong, to achieve this openness and fairness, the prosecution has a duty to disclose *all* material, used and unused, to the defence. Failure to do so is ground enough for an appeal against conviction. Failure to disclose “material evidence” can result in the overturning of a conviction (therefore it is in everyone’s interest to “obey the rules of the game”). The reason for this is to even the playing field in court – after all, the police have large amounts of public resource at their disposal and can carry out thorough investigations and have access to so much material, whereas a suspect (individual) has no resource to do the same (investigations where full disclosure doesn’t take place privilege the prosecution).

I often wait for police and prosecution to deliver bundles of evidence. This material is for defence’s consumption; even if the prosecution doesn’t use a part of the material uncovered, the defence may choose to. The entirety of evidence, *including* what is

favourable to defence, must be made available to the defence. Police are therefore forced to *think* before prosecuting. If the body of evidence is in any way unsatisfactory or unconvincing, the case will be dropped by the office of the Attorney-General (prosecution). This minimises the (time and resource) inefficiency of judiciary because the number of cases prosecuted is lessened and the conviction rate increased for those “guilty beyond shadow of doubt”.

What remedies or safeguards exist for a person accused of torture? In the early 1990s, there were reports of serious physical abuse by police to elicit confessions. This evidence was extremely useful for the prosecution, evidence the defence would consider objectionable or obtained through objectionable methods. The defence counsel would then challenge the use of that material evidence (“confession under duress or coercion”). The judge may then render that piece of evidence “inadmissible” and exclude that from his considerations. There were trials within trials undertaken (in French, *voir dire*) where police officers and the person who claimed to have been tortured must be questioned/testify in court. This is a procedural undertaking that makes police even more cautious about their actions and discourages the use of violence. It also discourages the prosecution’s heavy reliance on confessions. If police officers were found guilty of torturing an individual in their custody, there were severe and adverse consequences for their actions.

Nowadays, suspects in Hong Kong complain more about objectionable inducement than physical violence. If true, such acts render the statement given ‘involuntary’ and therefore excludable. Officers are liable to a fine for misconduct; this deterrent is another form of protection afforded through procedure.

Of course these are all premised on professionalism of the legal fraternity (judges, lawyers, prosecution) and law enforcement. If there’s a failure at any point in the process, it will breed other failures and greater impunity. Operation of the justice system must be/is frequently scrutinised, both from within institutions and by the public. The management of the police is also regularly reviewed and updated training is provided.

What is the role and function of the legal profession? Happily, rule of law is now recognised as a core value in the Hong Kong Special Administrative Region. What system is Hong Kong trying to preserve under the “one country, two systems” policy? Whenever we talk about “one country, two systems”, we have to first define the systems. China is becoming even more “capitalistic” than Hong Kong, although this is a capitalism thinly coated with socialist terminology. Independence of judiciary and rule of law would, I suggest, be two fundamental elements of this system that Hong Kong wishes to preserve. In Chapter 1 of the Bar Council’s code of conduct, it states, “We uphold principles of justice and rule of law. The role and function of a lawyer is to assist the court in

administering justice.” This is fundamental to all other values and principles upheld by the court. Although lawyers defend their clients, they must conceive of themselves as a crucial component in the service of justice and assistants to the judge. There are three parties in a common law “adversarial system”:

- ◆ judge – impartial referee
- ◆ lawyer – one side
- ◆ prosecutor – other side

In the real world, disputes are common. Everyone believes in his version of the truth and usually presents evidence supporting that version of the truth. It is therefore difficult for the judge to hear controversial matters without professional assistance from both sides of the dispute. Lawyers and prosecutors present facts in a well-defined, succinct matter that will enable the judge to immediately grasp the nature of the dispute. The questions posed to witnesses are to most expeditiously reveal facts relevant to the case; these pieces of information are also then more easily documented in a clear and systematic fashion. Gaps in information are also more readily discovered and filled in. This system relies on the understanding and agreement that no one should deliberately mislead the court. Those who fail to meet this standard must be presented before the disciplinary tribunal of the Bar. In one famous case, a senior counsel had to appear before the disciplinary tribunal and was found guilty. He was subsequently fined. This indicates the existence of rule of law – even judges, lawyers, prosecutors and other administrators of the law cannot be beyond the law but must also live and work within the same set of rules.

The public usually have a certain idea of what is just or fair, but sometimes they do not have the knowledge of *how* to pursue that cause. This is why there is a means test for legal aid assistance from the government. There are *pro bono* or heavily subsidised legal fees for families and individuals unable to afford legal counsel. This is again a mechanism that helps to level the playing field and to reduce barriers to justice.

*Cheung Yiu-Leung,
Member of the Asian Human Rights Commission's Board of Directors,
Hong Kong*

Reflections, Questions & Answers

1. **Answer Styannes, Indonesia:** Thank you Mr Leung for the presentation. I have a practical question: when there is a torture case taken to court in Hong Kong, what is the standard for presentation of proof? In Indonesia, torture has not yet been criminalised, but we can make reference to ill-treatment or assault, which is a crime. When we want to convict a perpetrator, we need two witnesses. In torture cases, it is almost always impossible to find witnesses/there are no witnesses. Could that burden of proof be shifted to perpetrators?

Y. L. Cheung: To my recollection, we haven't had any torture case in our criminal courts yet. Any charges of physical abuse are usually referred back to common law (i.e. crime of assault, force, intent to injure...). We therefore have no real precedents. In the common law system, burden of proof always lies on prosecution – presumption of innocence is a central principle of law. If a torture case is made out against someone, those who make the complaint should and must prove guilt. For the victim of torture, medical or forensic evidence should support the charges being made. It may be risky to begin placing the initial burden of proof already upon the alleged perpetrator, because it undermines the suspect's right to be presumed innocent, and, as we are well aware, rights are universal, indivisible, inalienable and equal to all. It certainly is true that the alleged will often also have to prove then why he had the complainant in custody because arbitrary detention, particularly for periods exceeding 48 hours, is illegal – the person detained has a right to liberty and himself be presumed innocent until proven guilty.

Basil Fernando: There are certain provisions that already exist concerning shifting burden of proof to crimes committed earlier. If a person has been taken into custody, his detention must be explained by the officer too (person detained has right to presumption of innocence). If a man dies in police custody, he obviously cannot testify against the person who killed or tortured him. The detention in itself requires investigation. Once a person is proven to have been taken into custody and there is no evidence that he was released from custody (of course, prior to his death), the police have to account for his injuries/death.

2. **Mohammad Fazlul Azim, Bangladesh:** I have three points/questions.
 - (i) Independent prosecution in HK, yet you have to obtain prior permission from the Department of Justice (DoJ). Might refusals by the Department of Justice to prosecute a case not dishearten the police who investigated the case?
 - (ii) What will the mainland government's influence on prosecution be like in the future? Does this mean the independence of the judiciary cannot be assured?

- (iii) The Supreme Court has two divisions. Questionable judicial review means that appeals have different tiers. If I understand correctly, only having exhausted all other courts and avenues, a judicial review is requested. Appellate division of High Court conducts pre-appeal review.

Y. L. Cheung: The decision to prosecute is made independently. I'm not sure to what extent currently or in future there'll be mounting government influence from mainland. In China, the Chinese Communist Party (CCP) oversees everything and there's no such thing as "independence". This may spill over into Hong Kong if the Chinese cannot or simply refuse to understand separation of powers (suspicions concerning CY Leung's political independence). Just last week, a cabinet member of Leung's government, Mak Chai-kwong resigned for misconduct in 1980s following investigations by the Independent Commission against Corruption). He has not been prosecuted yet. This may be a political or politicised matter, but at least ICAC is seen to be "independent" for its ability to arrest a suspected high-ranking official just 12 days after his swearing-in (refer to Radio Television Hong Kong's narrative at http://rthk.hk/rthk/news/englishnews/20120712/news_20120712_56_854455.htm#). Whether or not he is prosecuted will have serious implications for Hong Kong. In 1999, Secretary of Justice Elsie Leung Oi-sie decided not to prosecute a Sing Tao Group chairman, Sally Aw Sian, allegedly because she was a personal friend of the then Chief Executive, Tung Chee-Hwa. This decision was explained to the public very unpersuasively (there will be unemployment if her newspaper goes bust and her arrest is therefore against public interest).

This is an excerpt from

http://www.thestandard.com.hk/news_detail.asp?pp_cat=&art_id=45861&sid=&con_type=1&d_str=19990205&sear_year=1999:

"Apart from the staff losing employment, the failure of a well-established and important media group at that time could have sent a very bad message to the international community. At a time when unemployment was on the rise, the prospect of a prosecution occasioning yet further widespread redundancies filled me with foreboding. It was my duty, in those circumstances, firstly, to consider the potential effects of a prosecution upon other people."

The result of such blatant cronyism was public outrage bordering on full-scale revolt. I provide this example so as to demonstrate that there have been instances wherein we have seen not entirely 'clean' or independent action on the part of the Department of Justice. However, I still assert that this is an exception, and that most public institutions in Hong Kong tend toward transparency and public accountability. This is owed not only to the public spirit and civic consciousness of

the citizen, but also to the political will of the government and the specific socio-political circumstances Hong Kong past and present has found itself in.

To answer your other question: Judicial review commences in High Court (court of first instance, court of appeal, high court and court of final appeal) and targets government policies/decisions/actions. It's not used for individual cases against other individuals; these are referred to courts of appeal. If judicial review decision is objected to by the aggrieved party, this is also referred to courts of appeal.

3. **Hari Phuyal, Nepal:** Would there be judicial review on whether or not to prosecute?

Y. L. Cheung: If we approach it logically, we realise that if a case has not even reached court yet, there can be no appeal. An aggrieved party should appeal to the Prosecution Division (which determines if there is sufficient or persuasive evidence before deciding whether or not to prosecute). Judges cannot step into the shoes of the Prosecution Department. Judges have their own mandate, and that is restricted to matters *within court*. Judges also usually do not have expertise in specific fields such as environmental regulations, but they may still arbitrate on the basis of *procedures* and fundamental *principles* of law.

4. **Nandana Manatunga, Sri Lanka:** A defence lawyer will certainly present facts to aid his client. There seems to be selectivity on both sides. Does this count as misleading the counsel?

Y. L. Cheung: No. So long as there's no falsehood or deliberate misrepresentation, this selectivity does not count as misleading. It is only perjury if you lie. Both sides have to tailor their defence and prosecution otherwise there would be no case, just a body of facts. Yet this body of facts must be weighed up (evaluated), usually in favour of one side. Lawyers may or may not trust their clients' account of the matter, but they have a duty first and foremost to represent their clients before the court in order for the sentence to match the crime or to obtain an acquittal. A person may have murdered another person but there could have been "mitigating factors" – insanity, for instance – that need to be taken into account when the sentence is passed.

There is a funny rule in the Bar Council's code of conduct: a barrister cannot decline to act for a person who wishes to engage and pay for his services. It is his duty to take up the case. In this respect we are similar to taxi drivers; we "act on instruction". Short of incompetence or personal threats, you have to defend even the terrorist. This is in accordance with a fundamental principle in rule of law – presumption of

innocence. Even if your client is unreasonable, inarticulate or incoherent, you have to plead for the jury/judge to accept his version of the story. Lawyers therefore also work under difficult or hopeless circumstances. We have to believe that every person is also entitled to justice anyway.

5. **Sharif Islam, Bangladesh:** In pre-Independent Commission against Corruption days, Hong Kong experienced a high degree of police corruption. How can we explain the correlation between corruption and torture?

Y. L. Cheung: The Independent Commission against Corruption (ICAC) is not a magic potion to remove torture. It is an answer/response to corruption specifically. I heard from my uncle, who was a police officer, that the police were brutal. They thought (and he did too), and proudly so, that to beat up criminals was to do your job, particularly during investigations to elicit information or confessions. There obviously is police brutality, even today, and even in public arenas (e.g. to break up public assembly, truncheon to disperse protestors). Yet I do not recall systematic and persistent cases of torture approved by people from above.

Basil Fernando, AHRC: Please refer to Asian Human Rights Commission's documentation of torture cases. A case from Bangladesh concerned a man named Razak, a law graduate who is now a lawyer and human rights defender. He was helping victims and therefore infamous amongst the police for making complaints against them. Razak was brought in for questioning regarding a complaint he did not make. His family had to give his tormentors USD2000 to prevent his torture during the two weeks he was detained. Torture is closely linked to corruption because it's a tool of exercising absolute power over others to illegally induce payments. The right against torture becomes non-absolute, non-guaranteed and something that must be purchased from those in power, instead of being naturally protected by them. If the top officials disapprove, it will be difficult for the entire system to have such prevalent practices of torture because of the checks available to those suffering below. It is precisely because those at the top also condone or commit those practices that all forms of redress are rendered improbable, if not impossible. Superiors have to take the responsibility for enforcing organisational discipline and internal codes of conduct. They must also be given the mandate to bring punitive action against those who disobey their orders. It is in this way the vicious cycle of torture and cover-ups can be broken and the law enforcement agents can take pride again in professional and morally acceptable work.

John Joseph Clancey, AHRC: The UN Convention against Torture (CAT) covers both physical and psychological abuse, so even in HK the CAT remains pertinent. Corruption and torture are manifestations of impunity. If you have a system

wherein the police can do whatever they like knowing nothing can/will be done about it, that is where rule of law has been subsumed by rule of rex (“king”) and the tyrannical principle of “might is right”.

6. **Abbasi Nusrat Bano, Pakistan:** If a person is tortured and dies in custody, who can bear witness to the incident?

Y. L. Leung: We have not had such a case before but I can describe a death in custody. In HK about 10 years ago, there was a drug trafficker who was arrested and died in custody. He had been injected with a substance (torture), but the police were not responsible. The case was not prosecuted because the forensic evidence did not point to foul play by the police, but the deceased’s family went for civil remedy anyway. Your question was regarding the finding of proof? The case explains itself – if someone goes in a healthy person and dies there is full reason for demanding an explanation because there would be great suspicion he was extra-judicially killed. The burden would therefore be upon the police officer to prove his innocence. (Other examples of inadmissible or unacceptable evidence: video recordings obviously tampered with, where persons are suddenly blacked out or audio cut off). All in all, forensic evidence is still necessary for the prosecution of any person. A person who is tortured should attempt to get himself medically examined. In Hong Kong, most if not all doctors operate independently and have no incentive to do otherwise. In other countries, the victim should still attempt to get a professional medical report detailing the injuries sustained; this is one of very few pieces of evidence available to such victims owing to the secretive nature of the crime committed against them.

Basil Fernando, AHRC: There must be proper post-mortem to support circumstantial evidence (e.g. a neighbour witnesses someone taken into custody, next day his corpse is found on railway track. Witness can identify the individual(s) who came to arrest the deceased).

7. **John Joseph Clancey:** I would like to make a couple of points.
- (1) “Zero corruption” would not be true, but zero systemic corruption probably is the case in Hong Kong at the moment. Construction companies, for instance, and other business interests, may continue practising corruption. This is why complaints still keep being registered with the ICAC today.
 - (2) Cooperation with civic society: public invited to report corruption.

Basil Fernando, AHRC: Just some clarification. Cheung meant zero corruption amongst judges. Of course there is not a single place in the world with zero corruption at the moment, just varying degrees and in different segments of society. We will carry on these issues into the next three days. A big thank you goes to our three speakers Jan, Clancey and Cheung, and to the participants for their input.

PRESENTATION: BANGLADESH

HONOURABLE MOHAMMAD FAZLUL AZIM,
MEMBER OF PARLIAMENT, BANGLADESH
21st July 2012



It is indeed a great privilege and honour for me to have been invited to participate in the Meeting of Asian Parliamentarians against Torture and Ill-Treatment sponsored by the Asian Human Rights Commission and the Rehabilitation and Research Centre for Victims of Torture. I must thank the Organisers for staging this meeting in which parliamentarians from 13 Asian countries are participating. I am hopeful that the objectives in the meeting shall be achieved through valuable and meaningful deliberations, discussions and contributions by the participating parliamentarians.

One of the paramount considerations in the UN Charter was to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and to encourage respect for universal human rights without any distinctions. Consequently, human rights viewed at the universal level are described in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 5 of the UDHR and article 7 of the ICCPR enshrine the individual's right against torture and other cruel, inhuman or degrading treatment or punishment. The legal framework of all member countries should be based on this principle. This is the cornerstone of democratic statehood. Every individual's life, liberty, security of person and freedom from slavery, servitude and torture and other cruel, inhuman and degrading treatment or punishment must be guaranteed. The UN General Assembly recognises these ideals and considers it the obligation of the state to prohibit any form of torture within the national legal order. The CAT was therefore adopted by the General Assembly on 10 September 1984.

We are all aware that human rights as proclaimed by the world bodies can be safeguarded only if we make **conscious** efforts to fulfil our commitments. In the background paper of the Asian Alliance against Torture and Ill-Treatment, it has been correctly noted that the practice of torture is widespread in most countries of Asia, my country included. The objective of this meeting is to find ways forward to work for a torture-free Asia and identify ways in which parliamentarians can help guide the process. A suggestion would be for parliamentarians to promote the adoption of a sound legal framework conducive to the elimination of torture and ill-treatment in their respective countries. In the same background paper, the Asian Alliance against Torture has provided a 27-page brief on the state of human rights and practices of torture in Bangladesh. I am not here to defend our legal system – there are certainly areas which are in need of reform and modernisation

– but I do wish to acknowledge publicly the areas in which extensive legal reforms have been made.

A few points concerning Bangladesh

1. Article 35 of the Constitution of Bangladesh provides for the protection of the citizen against torture and other cruel, inhuman and degrading treatment or punishment.
2. Since 1971 independence, several reforms have been undertaken to promote the preservation of human rights of citizens.
3. The law concerning right to information was passed in 2011 following long-standing demands from the media and several human rights organisations.
4. In 2011, a law was passed to formally separate the judiciary from the executive.
5. In most cases of human rights violations, it is not the absence of relevant laws but rather the lack of access to legal redress that have frustrated individuals, families and communities. The non-implementation of human rights instruments have also become a major problem.
6. Bangladesh has a large number of human rights non-governmental organisations (NGOs) who have, as human rights defenders, often criticised the lack of accountability on the part of the government to properly implement the CAT. An active citizenry has also sustained the struggle to defend human rights these past years.
7. Rule of law is often undermined by inadequately funded government institutions. The lack of funding precludes investigations into alleged crimes and human rights violations. Investigations that are made are often not very thorough.
8. There has been a draft law formulated to replace the 1861 Police Act. This is intended to improve the accountability and quality of service of the police force. This draft law has been posted on the government's website for the purpose of public comment and feedback.
9. A bill entitled "Torture and Custodial Death (Prohibition) Bill 2009 was tabled in the parliament on 10 December 2009. This bill sought to criminalise torture in Bangladesh in accordance with the state's international obligations. The AHRC welcomed the bill, and the bill is awaiting passage as law – this is dependent upon the political will of the government (in which Awami League holds a significant majority of seats).

The role of parliamentarians

1. What should be the role of parliamentarians in a malfunctioning police system?
2. What kind of legal reform is necessary to increase the competence and interest of police in criminal investigation?

3. Are laws designed to protect officials and not citizens? Section 46 of the Bangladesh Constitution empowers the government to extend immunity from prosecution to any state officer.
4. What is the role of parliamentarians in movements to repeal local laws incongruous with international law?
5. Parliamentarians can play a critical role in domesticating the CAT as torture has not yet been criminalised in Bangladesh.

My role as a parliamentarian to promote the implementation of the CAT

1. My role as a parliamentarian is to make legislation. This is the case for any representative of any democratic society. Laws are usually passed by majority vote in parliament, but these can be overturned by a subsequent parliament. Then there are long-term structural challenges to be worked out. Democracies can make life difficult for their governments too. We also have to note that any single parliamentarian cannot represent the sentiments of the entire government. I highlight that any declaration made by me is not representative of my current government.
2. It is my personal commitment to get my government to remove its reservation on article 14(1) of CAT. MPs of a ruling party can also be punished internally for speaking out against their leadership. I am glad to be an independent MP – I stand up to speak my mind and my convictions, and I do it on behalf of 155 million people, not for a select group of people who compose a political party.
3. I am proud of the strong NGO networks in Bangladesh. It is my belief that civil society can and does influence the government as well as popular sentiment. Motivation is a key word: there must be occasions in which government is pressed with the importance of the CAT. I encourage meetings such as this one wherein dialogue can be open and difficult issues raised on the ground. Let's raise public awareness about human rights, even among the 'enlightened' and educated few. I hope therefore to build alliances between civil society, NGOs and members of the government.
4. Few have access to the print and the media. If the people are not aware they possess these rights, there'll be little popular pressure for change – the people will accept torture not as something "just" but as a fact of life. I wish to sensitise the media and the community to the notion of human rights.

I go home with a moral commitment to be an agent of change. I want there to be serious debate, temporarily away from the political culture and environment of my country so that I can go home to introduce new ideas, reaffirm my convictions and influence my government for the betterment of my people. I will be frank – there are numerous obstacles, some seem insurmountable.

1. Since 1991, my country's democratic process has been stronger – elections and the parliamentary system exist. Yet the practice and belief in practice of human rights have deteriorated.
2. Lack of training – the army's actions can be extreme, and members of law enforcement do not have sufficient training.
3. Lack of use of modern and scientific methods and existing technologies to collect information and gather evidence.
4. Hypocrisy or fickle-mindedness of certain politicians – MPs elected today who now do not care about human rights were only yesterday, as members of the opposition, clamouring for their government to adopt this, ratify that. There is a lack of seriousness when thinking about, debating and implementing mechanisms to protect human rights. If human rights are not consciously accepted as a socio-political priority, proper mechanisms to protect them will never be designed or put to use.
5. Deficiencies in our system
 - a. Lack of witness protection, particularly where powerful politicians are involved.
 - b. Non-independence of National Human Rights Commissions.
 - c. Police reform has not been taken up in conjunction with the implementation of CAT. This furthermore requires close cooperation between civil society and the government.
 - d. Safeguards against arbitrary deprivation of liberty (64 and 167 of the Criminal Procedure Code), closely linked to the fundamental legal principle of *habeas corpus*, have yet to be put in place.
 - e. Failure by the government to ensure independent and impartial investigations and prosecutions into allegations of torture materialise.
 - f. Lack of specific legislation(s) providing for redress and compensation for victims of arbitrary arrest and torture.
 - g. Non-implementation of basic human rights provisions in international law, including article 14a of the CAT.
 - h. Lack of legal framework that can prevent and punish practices of torture.

I endorse the Meeting of Parliamentarians as a useful forum for the discussion of existing reality of torture and challenges faced by governments/parliamentarians committed to fighting torture.

Recommendations

1. Establish a judicial reform commission to review outstanding concerns related to the CAT.
2. Restore independence of the National Human Rights Commission and enable

- them, through adequate funding and human resources, to take steps to combat corruption and make recommendations toward police reform in conformity with the requirements of the CAT.
3. Draft a Police Bill following extensive consultation with the public. The Bill should attempt to incorporate suggestions and feedback in a manner that reflects the consultative process and represents popular sentiment. This is fundamental to the workings of any democracy.
 4. Actively develop close cooperation between parliamentarians, NGOs and civil society groups.
 5. Implement existing High Court guidelines concerning safeguards against arbitrary arrest and detention under sections 54 and 167 of the Criminal Procedure Code.
 6. Ensure independent, impartial and thorough investigations into allegations of torture committed by previous regimes.
 7. Ensure prosecution of those found responsible of torture and other human rights violations.
 8. Adopt specific legislation reaffirming right to redress for victims of torture and arbitrary arrest and detention, and providing avenues through which remedy may be claimed.
 9. Remove the Bangladesh government's reservation to CAT article 14(1).
 10. Legislators should create a sound legal framework that can effectively prevent and punish incidents of torture.
 11. The AAATI should persevere in its efforts to develop a permanent forum for Asian parliamentarians to discuss ways to promote the CAT and methods of implementing the CAT.

Concluding remarks

Yet there is reason to hope, and I hope others share that view. Parliamentarians have an immense role to play in the construction of a torture-free society. A sound legal framework is pivotal to achieving the objectives laid out in the CAT. Most importantly, mind-sets have to change along with procedural reform; without this, change is not sustainable. In addition to legislating, parliamentarians have the responsibility and authority to raise questions concerning the compliance of the government with provisions in the CAT. Parliamentarians also play other practical roles such as peace- and confidence-building between powerful and powerless groups; this is a daily challenge for all grassroots representatives. Conflict resolution and information dissemination are other ways in which parliamentarians could influence their constituencies and the government. Human rights may be protected through laws constructed by men, but are best guaranteed when enshrined in the understanding and consciousness of all people. A victim must know his or her inherent right before becoming outraged at the abuse, or to be able to claim the right to remedy following the violation. As such, although I may sound powerless as an

independent, opposition parliamentarian, I believe there is a much more complex and meaningful role I play in the very slow shifting of paradigms. Human rights work, as you are all probably aware, requires patience and perseverance. I believe we will eventually see the light.

Thank you very much for your attention. I am available after this; please feel free to speak to me. It is a privilege to receive this information from civil society and to serve my country by being in the government.

*Honourable Mohammad Fazlul Azim,
Member of Parliament, Bangladesh*

PRESENTATION: PHILIPPINES

HONOURABLE RAYMOND PALATINO, MEMBER OF
PARLIAMENT, PHILIPPINES

21st July 2012



Good afternoon, fellow delegates, *mabuhay*! In order to give you all a better picture of torture and the situation of human rights in the Philippines, I would like to give you a crash course on domestic politics; I hope you will bear with me.

North of Manila, a lady named Rohas was arrested as a Communist rebel. After several days, she was released and recounted being tortured. In an affidavit submitted to the courts, she stated, "I was always blindfolded and handcuffed except when I was allowed to take a bath. Plastic bags over my head and I could not breathe. I was interrogated continuously." Rohas was a citizen of the US and therefore her case commanded international attention. She had the courage to share her story. In April 2011, she highlighted in Geneva the bad state of human rights in the Philippines. During Arroyo's administration 2001 – June 2010, the documented number of cases reached 1000. The number of human rights abuses skyrocketed in the past decade, therefore strengthening lobbying for an anti-torture law which Arroyo passed, on November 10, 2009. I am proud to say that I was one of the legislators who supported and voted in favour of this law. Philippines throughout Marcos' rule (1972-1986) experienced martial law – tactics by the police to intimidate and extract confessions and information included mental and psychological torture. Police paraded suspects openly to humiliate them, although the suspects had not even been convicted. The paramilitary were used to harass and torture innocent civilians.

In Section 8, all evidence obtained by torture is inadmissible – these are legislative remedies, or safeguards against the use of torture on suspects. Section 12 states state should provide medical evidence for victims, information that can be used in prosecuting incidents of torture. Section 13 underscores command responsibility. A superior with knowledge of torture who did nothing to expose and remedy the act/practice can be sued in court too. Gloria was herself tried under this section. These days, human rights are taught also using popular culture references (in the movie about Batman and Joker) and questions are being asked about the validity of such methods.

In Philippines, you may be arrested on nothing more than your political affiliations – you're Communist, for instance. Suspects are then subjected to severe physical and psychological abuse. I listened to a testimony about torture inflicted that included repeated electric shocks, degrading treatment such as guards washing private parts of

females, deprivation of food and severe beatings. Military and police are given carte blanche against “communist sympathisers”, so strong is the bureaucracy’s stance against Communists. Human rights violations have continued even under the supposedly progressive parliament of Benigno Aquino. “Impunity” is a word recently popularised in Philippines. A few days ago, the chairperson of the National Human Rights Commission of the Philippines complained that not a single perpetrator had been charged under Benigno III. And abuses are rampant especially in mining areas (top economic sector of Philippines), where workers endure impossibly harsh working conditions and are deprived of their socioeconomic and political rights.

The State has failed to distinguish combatants from non-combatants in their operations. The government’s unrealistic deadlines to quell armed rebellion have only worsened the problem. The murder, torture and kidnapping of non-combatants by state actors has become commonplace. The Philippines has been facing since 1969 Maoist-influenced rebels, who have been conducting guerrilla war. Rebel groups are composed mainly of poor farmers attracted to radical communist ideologies that espouse equality in social status, standards of living and income.

The abolition of usury, confiscation of lands and inequitable land distribution in 7000 islands have forced past and present administrations to enact land reform laws rejected by the marginalised for favouring land owners. The incumbent’s family owns the largest land holdings in Southeast Asia, and yet their political party credits longevity to popular support of farmers. This seems at odds with its aggressive land reform programme. The Communist Party claims to be operating a people’s war. Its armed forces are strategically scattered (neither winning nor losing at the moment) to defy capture and extermination. With its effective strategies and appealing ideology, it’s the largest security threat to the Philippines.

Between 1972 and 1986 Marcos’ administration and the Communist Party sustained a democratic movement which gained prestige and strength. After Marcos’ downfall, peace talks between government and rebels broke down. An amnesty programme was offered but few surrendered. In the early 1990s, the Communist Party reaffirmed adherence to Marxist ideologies and proposed a model for advancing revolution. Some elements wanted a peaceful transition to socialism, and the party openly apologised for killing some of its members for being suspected spies of the government. The Communist Party was most powerful in 1986, but there have been many splits since, none of which boded well for the existing situation of human rights. The rebel movement has, according to the government, kept Philippines in poverty by impeding economic development. There has been tacit approval from the government concerning the ready use of harsh military tactics in dealing with members of the extreme left. Since Marcos, the approach of the establishment against dissenting voices has always been violent, extreme and

disproportionate (armed forces against unarmed men). Post 9/11, careless references to the threat of terrorism has been an easy way for the government to justify their high-handed methods.

In 2010, an “innovative approach” patterned after the military model of the USA was implemented to end the insurgency. It was a counter-insurgency programme supposed to create genuine peace. Instead, the situation was exacerbated. This was due to a failure to

1. Address and accommodate valid concerns of rebels (and significant parts of the population)
2. Place the peoples’ safety and welfare at the heart of operations

These days, the government is redirecting engagement efforts to social services. The military is eager to win back public confidence and trust in public institutions. Human rights seminars are held and handbooks carried while performing duties. The Philippines army are most battle-tested. They need some respite from being constantly active against the Communists. Relying purely on military might is a strategy proven ineffective in resolving an insurgency deeply rooted in genuine concerns of the larger society (e.g. concerning ownership and equitable distribution of land). Peace advocates and human rights organisations are not convinced the government has addressed or is intending to address the most basic issues (land reform, national sovereignty, democracy, social justice). A paradigm shift may or may not address past offences by military, bitter hurts endured and remembered by survivors and their families. The habit of branding all dissenting voices “Communist” has also become viewed as hypocrisy on the government’s part. It seems to always be talking about peace but in reality, it still uses high-handed and unacceptable methods. There are three main points the Philippines government has to acknowledge:

1. The necessity of documenting abuse
2. Implementing law is insufficient. The process must begin with the legislature that lays down the law in the first place. Laws should be carefully considered, well-designed and not internally contradictory. And yet...
3. Legislation is also inadequate. The mind-set of police officers and the military have to be changed. They cannot only behave always as if they are waging a war (and therefore justify the exercise of unnecessarily “extraordinary” powers and measures).

The National Human Rights Commission (NRHC) has suggested

1. Anti-torture and law-based rules and procedure be observed
2. Approval for the Memorandum of Understanding for the National Monetary Mechanism, which would ensure timely discussion and quick response actions to violations by state armed forces

3. Ratification of the Optional protocol to UN CAT.

After the anti-torture law, the National Preventive Mechanism (NPM) was implemented. This incorporated regular visits to all facilities concerning deprivation of liberty (juvenile detention and drug rehabilitation facilities included). There was a slight increase in the number of prosecutions concerning human rights violations and campaigns to raise awareness.

Bureaucratic and administrative reforms are insufficient in themselves. Legal remedies are, to some extent, available. Abuses continue despite open endorsement of ideals – why? It is impossible to mainstream human rights without restructuring public institutions.

Peace talks stalled after government refused to free more than 300 political prisoners. The government must review its counter-insurgency programme that has victimised thousands of innocents. Government should furthermore concentrate on provision of social services (an effective strategy to win over public sentiment and socioeconomically stabilise the country) and a high standard of living, particularly in the countryside. Some branches of the government are inclined to continue as they are. It will require popular support and political will to change the current situation. Again I repeat the three major legal documents that will greatly progress the situation of human rights in Philippines

- ◆ The Anti-Torture Law
- ◆ A Witness Protection Law
- ◆ OP CAT

Our work doesn't end with enactment but implementation and funding of these laws and mechanisms. Political leaders must adhere to the highest standards of democracy and rule of law. The best approach would be to encourage the rise of citizen movements to articulate issues that those in parliament treat as taboo or try to ignore.

Thank you very much for giving me this opportunity to speak about the situation in the Philippines. I hope as parliamentarians we will not only have the power but the courage to work for a better world.

*Honourable Raymond Palatino,
Member of Parliament, Philippines*

PRESENTATION: INDIA

HONOURABLE V. T. BALRAM,
MEMBER OF KERALA LEGISLATIVE ASSEMBLY, INDIA
21st July 2012



Introduction

Custodial torture is a method frequently used to collect evidence, information and confessions from a criminal suspect. This practice is primitive, barbaric and irrelevant in a modern society built upon democratic values. Torture militates against the civilizational and scientific progress made by humanity.

The right of the individual against torture and other cruel, inhuman and degrading treatment has to be acknowledged as part of a fundamental right to life and cannot be detracted from under any circumstances according to international and comparative law. In practice, however, this right remains one of the most frequently violated rights worldwide. It is ironic that the practice of torture has been euphemized as “enhanced interrogation techniques” by Bush’s administration in the United States, a country otherwise associated with the movement for and champion of human rights.

Torture in India

Despite being the largest democracy in the world, India has a long way to go in the elimination of torture and ill-treatment in its territory. There have been many studies, official and unofficial, revealing the terrible abuse of human rights of persons while in police and judicial custody. The Asian Centre for Human Rights (ACHR) studies, based on official data from the National Human Rights Commission (NHRC) of India, indicate that 14,231 persons have been killed in custody between 2001 and 2011. This works out to more than 4 persons killed in custody each day, and many cases are not even reported! Of these deaths, 1504 occurred while in police custody and 12,727 in judicial custody. A majority of these deaths can be directly attributed to practices of torture and other forms of custodial violence. Yet these alarming statistics must be appreciated as only the tip of an iceberg. Even today, a large number of custodial deaths are not reported to the NHRC. Equally troubling is the fact that the NHRC, as Section 19 of the Human Rights Protection Act explicitly states, does not have jurisdiction over the armed forces. This is problematic because complaints arise frequently against this group and the Act does not provide recourse for victims of human rights abuses.

The experience of Soni Sori, a tribal teacher in the Maoist affected Chhattisgarh state, has drawn much criticism from across the globe against the inhuman practices of torture

practiced even today in India. Soni Sori was alleged to have supported the Maoists. She was arrested by the local police, was persecuted and sexually tortured in ways so heinous as to render words incapable of explanation. The most disturbing fact is that Soni Sori, in anticipation of such treatment from the local police, had even approached the Supreme Court of India to request assurances of protection. These pleas were blatantly ignored and she was subjected to inhuman treatment by prison officers the very first day spent in custody.

India is a vast country and such incidents may be trivialised. However, these experiences are cause for great worry. Violence has become a part of everyday life in most of these “Maoist” designated areas, and residents have come to accept violence as fate instead of as injustice. When we speak of torture, we tend to refer only to physical abuse perpetuated by the state’s various organs. We may feel that Maoists and other groups are prey to the atrocities committed by state agents. However, external observers know that the violent and barbaric treatment of individuals by the Maoists is equally horrific. Maoists run parallel judicial and law and order systems in almost 200 districts in the name of *jan adalats*, or people’s courts, where cadres may even sentence a man to capital punishment for the slightest offense.

Torture and sexual violence is inflicted by the Maoists upon the poor tribal people upon whom the Maoist’s political legitimacy is cemented. The police and paramilitary organizations in such areas are under pressure to manage such stressful situations where rule of law has been so systematically hollowed out and its meaning is no longer understood. The state’s practice of torture is primarily a reaction to the more severe and inhuman culture of violence of those who challenge it. This does not justify the practice of torture, but it is important to also recognise the frustration of law enforcement personnel who work in extremely difficult environments and under trying situations where their authority and the rule of law are continually challenged, and for us to design methods of combatting torture that also deal with other critical problems frustrating attempts by a government to administer a region. Law enforcement agencies are under tremendous pressure from both the government and the locals. (Lack of funds leading to) inadequate training is one key “stress point” that has brought about these practices of ill-treatment in police or military custody. The lack of understanding by the people about rule of law, as opposed to “might is right”, is another point of stress in cultivating a violence-free society.

The citizen’s rights are the first level of protection against any form of torture. Article 21 of the Constitution of India describes as fundamental the rights of its people to life and personal liberty, and guarantees individuals protection from infringements by the state. The judiciary, through its various progressive judgments, has also done its part quite well, extending the scope of these rights to include protection from torture and ill-treatment.

India is a signatory to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT). Around 146 countries worldwide have ratified the Convention. I admit that India has been so far largely reluctant to bring in a separate domestic legislation to fulfil its obligations under this Convention. We realise this has affected our international image and has raised many questions regarding our claim as a liberal democracy. It is in this context that the government of India has decided to come up with the Prevention of Torture Bill, 2010 (hereafter referred to as “Bill”), which was passed by the lower house of the parliament (*lok sabha*) and is pending before the Upper House (*Rajya sabha*).

Prevention of Torture Bill

The Bill passed by the *lok sabha* has come under severe criticism from many quarters. The right-wing Bharatiya Janata Party (BJP) criticises the Bill as “unwarranted”; according to them, it “handcuffs” police and military officers acting against criminals and terrorists. This is unsurprising as the right-wing favours high-handed tactics in combatting crime and perceived enemies of the state. Various human rights and civil society groups question the form and efficacy of the current Bill in investigating, containing and punishing incidents of custodial torture. The *Rajya sabha* has therefore sent the Bill before a Parliamentary Select Committee for careful consideration.

There are five major issues regarding the Bill passed by the *lok sabha*. The first major point of dispute concerns the very definition of the term “torture” as is used in the Bill. Clause 3 of the Bill defines “torture” as an intentional act which causes “grievous hurt” or “danger to life, limb or health”. Grievous hurt is defined under Section 320 of the Indian Penal Code to include extremely serious injuries such as permanent loss of eye or ear, emasculation, bone fractures, or hurt which causes severe and debilitating pain for twenty days or more. However, given the nature of torture usually practised in the police stations, this definition cannot bring about the booking of perpetrators. The administration of electric shocks, water-boarding, sexual assault, the deprivation of food, water or sleep, whipping, rubbing chilli on sensitive body parts and other such barbaric acts readily condemned by most reasonable individuals do not amount to “grievous injury” as defined in the law, and this is an ontological problem. In other words, a very high threshold has been set for an act to qualify as “torture”, and this renders the Bill ineffective in most incidents we would consider “torture”. Additionally, the Bill is silent regarding “other cruel, inhuman or degrading treatment or punishment” although the prohibition of such is an essential requirement under the UN CAT.

The second criticism is about Clause 4 of the Bill, which states that even if an act qualifies as “torture” it is punishable only if committed “for the purpose of extorting any confession or any information which may lead to the detection of an offence”. If a police

officer resorts to torture in order to intimidate a person, extort money, to “teach him/her a lesson” or for no reason whatsoever, he cannot be punished under this Bill. Although the clause targets an important fault line in the investigative process that has brought about the serious violation of the right against torture and ill-treatment, its neglect of other causes or conditions that also breed cruel acts is troubling and permits circumvention of prosecution by those responsible. Systemic torture also stems from various kinds of discrimination. In the Indian context, members of minority or marginalised groups like the poor, the illiterate, women, *dalits* (untouchables), Muslims (and other religious minorities), tribal or sexual minorities (such as the *hijras*) are more prone to being tortured than members of dominant castes or groups. This brings me to the third major area of dispute. The Bill in its present state makes the victim responsible to show that the torture inflicted upon him was based on some form of discrimination. Ideally this should be an independent criterion, rather than an additional one as it is in the UN convention.

The fourth contentious issue is Clause 5 of the proposed Bill, which restricts a Court to entertaining only complaints made within six months of the date of the offence. This is totally unacceptable. We are all aware that victims of torture are particularly vulnerable. They need a lot of time to overcome the physical and psychological trauma, find support, organise resources and gather courage to make the complaint. They live and report of the crime at risk of retaliatory attacks upon themselves and their families. It should be a general principle that criminal law does not prescribe any time limits to the investigation and prosecution of crime.

Finally, Clause 6 of the proposed Bill prohibits a court from taking cognisance of a complaint without the prior sanction from the government to prosecute. This provides a powerful shield for government officials who may be involved in the crime (e.g. torture, extortion) and is against the spirit of the UN Convention.

Despite these issues raised, however, I am happy to say that the Select committee of the *Rajya sabha*, in its report, has asked for a thorough revision of the Prevention of Torture Bill before it is finally legislated. This is in spite of the fact that the committee was headed by a member from the ruling party, who is also presently a minister. This is the strength of Indian democracy – that a government has shown itself more than willing to accommodate popular sentiment, even if such moves restrict its own powers. Because of this, I am hopeful that we will soon have a good and effective anti-torture law in place. I congratulate the Asian Human Rights Commission for the valuable interventions they had in this whole process. As a young legislator, I offer my full support to make this law a reality.

Yet I still feel that we should not be contented with just legislation. Our tendency to search for easy answers and quick fixes (i.e. strengthening our legal framework) may not

produce the desired objective (actual eradication of torture and ill-treatment). We have to examine the root cause of violence in society, approaching the issue from political, sociological and scientific perspectives. A feudal and patriarchal society, as opposed to a democratic and egalitarian one, intrinsically tends to violence. Violent acts are systematically committed by powerful agents within society, usually those vested with the authority and legitimacy to govern – this qualifies as torture. The extent to which a society accepts such violence is a true test of how undemocratic it is. The fight against torture must therefore be seen as part of a larger struggle for the democratization of society; in this case, I speak concerning the democratic credentials of India.

I come from Kerala, a southernmost state of India. Societies like those in Kerala have traditionally been more egalitarian and have effectively checked many atrocities against the most vulnerable sections of society (such as the *Dalits*, or untouchables). However, there have been of late some alarming signals that necessitate some introspection. There are increasing incidents of religious fundamentalist groups trying to impose certain perverse social outlooks upon an otherwise multicultural society. Such perverse views are particularly prevalent in discussions of the relationship between man and woman and in other gender debates. Some of us call this “cultural policing”, a practice problematic because it indicates a government fundamentally unable to change with the times. Such reactionary or ultraconservative tendencies potentially threaten every modern democracy.

Politically motivated violence is another matter of disgrace in many parts of India. Organisations from the political far left (such as the Maoists) are not alone in their reprehensible acts of politically motivated violence. Even “established” left parties who take part in national elections, parties like the Communist Party of India (Marxist), in their stronghold states of Kerala and West Bengal have occasionally resorted to violent acts in the same manner as fundamentalist Maoists and other terrorists. The world outside India may be surprised to hear that these “political parties” said to operate in a democracy have in fact established “party villages” wherein individuals are required to obtain the approval of the local party unit chief to conduct as simple and natural a thing as marriage, or to sell your own property – this is essentially a form of administration or government, minus the critical elections and limited terms in office that give India the semblance of being a democracy. Parties systematically eliminate their political opponents either by utilizing their own cadres or by outsourcing the dirty work to mafia-modelled gangs and petty criminals.

India is unable to boast of an ancient democratic culture. For over four centuries, India was subjugated to foreign rulers and interests. Yet we have had the fortune of having the world’s most non-violent independence movement that culminated in India’s freedom from colonial exploitation. The will and sentiment of India’s people were expressed through this struggle for freedom; ideals such as democracy and the protection of

civil liberties were also enunciated. Mahatma Gandhi, who led this noble struggle for freedom, proposed and advocated the concept of *satyagraha* (meaning steadfastness on truth) and *ahimsa* (non-violence) as a means to condemn and resist injustices of all kinds. This concept differs fundamentally from the belief that the end justified the means, a notion espoused by perpetrators of violence who purport to work in the name of some higher or abstract ideal. Gandhi's firm conviction that *swaraj*, or "self-rule", could not be accomplished unless the most marginalised and vulnerable of citizens felt that they too had a say in the governance of their homeland. The engagement of ordinary people with governing bodies is an essential to any functioning democracy. The triumph of India's independence movement paved the way for the introduction and observance of individuals' civil liberties, as well as for the exercise of democracy in India. I therefore believe that the life and message of Gandhi can serve as an inspiration to all who wish to take up the fight against torture and ill-treatment.

After gaining independence, India, under the visionary leadership of Prime Minister Jawaharlal Nehru and Dr B.R. Ambedkar, achieved considerable progress in the reinvention of itself as a modern democratic state. The Indian Constitution is one of our world's most detailed constitutions, with the state putting in considerable effort to include vulnerable minority groups and enshrine its own duty to protect and observe key human rights. In the past six decades since independence, Indian democracy has helped to stabilise the country – regular and transparent elections legitimise political leadership, and this leadership is reined in by an independent judiciary and a clear separation of powers between the legislative and the executive. A free press and a vibrant, engaged civil society has also contributed to a meaningful and flourishing democracy in India. This stands in huge contrast to other countries in the region. India is, arguably, one of the most religiously, socioeconomically, linguistically, racially, culturally and biologically diverse regions in the world, even when considered in light of its population of 1.2 billion. Depending on the category being used to identify an individual, every Indian may be considered as belonging to a very particular minority. It is necessary for us to realise that India is necessarily an amalgamation of individuals who, in themselves, represent a plurality of identities and affiliations (and none of these preclude another). The Indian Constitution can therefore be said to defend a "minority democracy", where special emphasis is placed on non-discrimination on any grounds (whether or not one belongs to a particular religious, ethnic, linguistic, cultural, socioeconomic group).

To eliminate torture and other forms of violence, we need to understand its roots in socio-political context and factors which breed violence. **Developmental inequity** is a fundamental challenge. It is in turn variously caused by poor governance, bureaucratic inefficiency and insensitivity to the rights and plight of minorities. We observe extremism and armed insurgencies primarily in **poverty**-stricken parts of India, for instance. **Impunity**: Armed conflict and the reaffirmation of the brutish "might is right" paradigm,

especially where the poor do not see any viable alternative to violence, threatens every individual of the state, whether he or she chooses to partake in the conflict, the survival of existing regimes as well as the integrity of the state. “Violence simply does not pay” and “dignity and worth of the individual must be absolute” need to become governing principles. Governments must not only realise this but (i) seek to help all to understand this as well, and (ii) address the grievances of its people through consultative and constructive processes. By doing this, the incentive to use force, torture and other forms of ill-treatment, both on the part of the government and on the part of armed rebels, would be removed. Concrete steps would include credible assurances by the government that inclusive development would be a priority. Such overtures would strengthen the national psyche and encourage non-violence. The larger objective of power-sharing between powerful state agents and the state’s subjects is precisely this delicate balance of responsibility. Power can only be shared with some degree of decentralisation of political power and the strengthening of local government structures and systems. This should be a political mission to empower the most underprivileged and honouring their *equal* right to public resources and the fruits of national development. The Indian government understands this and has pushed forward a variety of programmes, schemes and activities that aim to strengthen civil society and Indian democracy. The rights of ordinary citizens are upheld through legally explicit entitlements such as the Right to Information Act, the Mahatma Gandhi Employment Guarantee Scheme (at least 100 days/year) and the Right to Education Act (free and compulsory education up to the age of fourteen). The government is also considering the Food Security Act (allocation of 30kg of rice/family/month) and the Right to Services Act.

The Role of Science in Preventing Torture

A steadfast pursuit of science can be of immense help in our fight against torture and ill-treatment, manifestations of our brutish tribal instinct. The practice of torture militates against rational inquiry and the exercise of empirical methods. Laws are basically concerned with the regulation of human behaviour. Neuroscience is a critical source of information that ought to inform policies and laws in any country. Advances in the field reveal the inefficacy and detrimental impacts of coercive interrogative techniques upon the functioning of the suspect’s mind – one unintended consequence could be the corruption of memory in the individual. Human civilisation requires policymakers to meditate carefully upon such findings and upon their commitment to truth and justice. Legislators ought to formulate laws and policies, particularly in the field of criminal investigation, that reflect a genuine and sympathetic understanding of the workings of the human mind. I concede that the Indian police are in sore need of reform based on scientific precepts and a meticulous and compassionate understanding of the sociological implications of torture and ill-treatment. As a parliamentarian, I declare also the need for closer cooperation between the state and civil society in understanding the devastating

effects of torture and ill-treatment, and to design ways to combat such practices in country- and context-specific ways.

I wish to conclude this presentation with an appeal to all, both the actors in government, and to the entirety of civil society, to join hands in this fight against the unscientific and barbaric practice of torture and other forms of cruel, inhuman and degrading treatment or punishment. Such deeply entrenched practices must be consciously and systematically resisted. It is my earnest hope that this gathering of parliamentarians and civil society representatives from across the globe marks the beginning of a new era of increased dialogue between the state and its people, as well as between parliamentarians, and new aspirations to the realising of a world free from torture and all forms of violence.

Thank you.

*Honourable V. T. Balram,
Member of Kerala Legislative Assembly, India*

PRESENTATION: INDONESIA

HONOURABLE SAYED MUHAMMAD MULIADY,
MEMBER OF PARLIAMENT, INDONESIA
21st July 2012



Good afternoon to all gathered here today. My name is Sayed Muhammad Muliady, and I am a parliamentarian from an opposition party in Indonesia, the Indonesian Democratic Struggle Party. There are 560 members of parliament in Indonesia, 94 of which are from my party. Today I wish to give a brief overview of the situation of human rights in Indonesia, and I hope we will have a good discussion afterward to assess the challenges we are facing.

Indonesia has a population of over 240 million, and our territory lies in the Indian Ocean and Pacific Ocean. If all our territories are totalled, our geographical size is 1.9 million square miles. Indonesia is composed of 33 provinces, 540 cities and regions scattered in five major islands: Kalimantan, Papua, Sulawesi in the East, Sumatra, which is the largest, in the West, and Java, where Jakarta, our capital, is located. The large number of tribes and languages make Indonesia a very multicultural country. Indonesia has also seen its fair share of ups and downs in terms of protection of citizens and human rights.

After 33 years under a military regime, in 1998 began a reform era, a democratic and open era. The police force, which used to be a part of the military, is now separated by legislature. These reforms also limited the military's political influence. Indonesia's new regime banned violence and torture, protecting particularly civilians against abuse by the state.

In the past, before 1998, the military in Indonesia exercised draconian powers, including the power to investigate the police. Torture and abduction were very common occurrences. However, after the reform era and the establishment of new "human rights-based law", the number of violations in Indonesia was reduced significantly. There came into existence legal mechanisms in a special court to assist those who have been wrongfully confined or ill-treated.

Yet even in this period of reform, human rights violations were still taking place. Loopholes exist within the Indonesian Criminal Procedure Code. Human rights violations still take place because few perpetrators are brought to justice and acts of violence are not routinely investigated. Most investigative or feedback processes are internal in nature. The practice of internal investigations has led to cover-ups, impunity and an ineffective campaign against systematic practices of torture. Indonesia is supposed

to be a state founded on rule of law and the supremacy of a Constitution that upholds human rights and rights of citizens to equality before the law. Our government is obliged to this principle without exemption.

As a state based on law, Indonesia places serious emphasis on the prohibition against torture, under article 28I of the Constitution. Article 28 concerns the protection of *fundamental* human rights: 28A specifies the right to life, 28D to equality before the law, 28E to freedom of religion and against servitude, 28I to remain free from torture, to freedom of thought and conscience, to adhere to a religion, to not be enslaved, to be treated as an individual before the law, to not be prosecuted on the basis of retroactive legislation and to be protected under all circumstances against the curtailment of fundamental human rights.

In fact, the Indonesian government *has* to be against torture against *anyone* – a just and civilised humanity is one of five major principles upon which the country was founded (*Pancasila*). Indonesia was also one of 41 countries that first ratified the Convention against Torture in 1985. This shows the serious failure of the Indonesian government to take effective steps to eliminate torture from its territory since then. I have to explain here that before 1981, Indonesia had inherited their laws from the Dutch. This was a legal system wherein confessions were considered primary evidence in prosecuting crime. Police therefore used all means possible to extract confessions, employing methods that we would categorically classify as discomfort- or pain-inducing treatment (torture), practices that violate human rights. This legal framework so conducive to the use of violence by those in authority was repealed by Law 8 in 1981. This was a significant development that discouraged the use of torture and guaranteed better protection of human rights. The Criminal Procedure Code is also legislation made and endorsed by government and parliament, a fact that minimises the possibility of the arbitrary exercise of power by law enforcement officials. I would like to point out several noteworthy things in Indonesian law that have helped discourage practices of torture and other forms of ill-treatment:

1. Individuals cannot be detained for over 24 hours without seeing a magistrate
2. Detention by police cannot be for any longer than 120 days
3. The existence of a pre-trial clause (*habeas corpus*)
4. Search and seizure requires authority of district court
5. The existence of “civil servant investigators” separate and independent from the police
6. Suspects must be accompanied by legal counsel
7. Confessions are no longer treated as primary or damning evidence under the criminal justice system. The implication of this is that there is less incentive to use torture to extract one

However, the current Criminal Procedure Code has been used for over 30 years. This means it is also time for the law to be revised. Police still use very subjective reasons to detain someone. They appeal to the possibility of the destruction of evidence, the possible repetition of offences or the possibility of the suspect's escape as justification to detain someone indefinitely. The death penalty is still permitted under our current Criminal Procedure Code – this opens up the individual to a most severe and permanent abuse of his rights: the denial of the right to life. The local law that permits this sentence is therefore inherently incompatible with the country's expression of support for human rights and other international norms.

Another reason for the immediate revision of Indonesian law is the fact that there has been no clear penalty laid down for the misconduct of law enforcement officials during criminal investigations. Many police officers choose to exploit this loophole in order to carry out farcical investigations, investigations which deviate from established laws, procedures and protocol.

The Criminal Procedure Code is at the moment being revised, but, in Indonesia, consent from the parliament is still required. To this day, a proper revision of Criminal Procedure Code has not happened because changes to the Code are still being discussed. This revision should be prioritised. The creation and revision of laws is the prerogative and responsibility of the government. Our parliament has expedited the process by urging the Minister of Law and Human Rights to submit a revision of the Criminal Procedure Code by 2012 (this year). If this deadline is not met, parliament has promised to assume the task and pass the law on its own initiative.

My conclusion is that the government should hasten the revision of the Criminal Procedure Code and create a separate law punishing the use of torture in order to meet its international and moral commitments. This is only a suitable response to the problem of torture in Indonesia. Relevant institutions – the military, police and Ministry of Law and Human Rights, for instance – have to enforce punishment upon perpetrators of torture and implement effective internal mechanisms to check such abuses of torture. These internal mechanisms include independent and thorough investigations, possibly by an external agency, into allegations of torture and ill-treatment. Independent commissions such as the ombudsman or representatives from the National Human Rights Commission (NHRC) should be given the mandate to investigate such cases as well as to promote awareness among the public and among civil servants who may be in a position to rectify such wrongs. The Indonesian government should also demonstrate its sincere commitment to eradicate torture and other human rights abuses by ratifying the Optional Protocol to the Convention against Torture as well as the Convention against Enforced Disappearances. The government needs to review policies and guiding principles that may encourage torture or other cruel, inhuman and degrading treatment or punishment.

Today, I would like to personally declare my support for the Asian Alliance Against Torture and Ill-Treatment, a new initiative proposed by the Asian Human Rights Commission (AHRC) and the Rehabilitation and Research Centre for Torture Victims (RCT). I hope that such meetings continue to be hosted because they represent a people united in their aspirations toward a torture-free world through the gradual but necessary revision of legislation currently in force in the countries represented here today.

*Honourable Sayed Muhammad Muliady,
Member of Parliament, Indonesia*

PRESENTATION: SRI LANKA

HONOURABLE ERAN WICKRAMARATNE,
MEMBER OF PARLIAMENT, SRI LANKA
21st July 2012



I thank Asian Human Rights Commission (AHRC) and Rehabilitation and Research Centre for Torture Victims (RCT) for hosting this event, I am very glad to be here. I confess from the outset I am not a specialist on the topic, so I will endeavour to make more political comments on the issue. You are all aware of the documentation available, so I would like you all to participate in commenting later on points I will raise in this presentation.

Can you have bad government in a torture-free society? This is a question raised by Basil in an issue of *TORTURE* which discusses what went wrong in Sri Lanka. In 1948, Sri Lanka gained independence. The country went on to become a Republic in 1972. In 1978, what we had was essentially a presidential system of government and a proportionally represented parliament. This was akin to the French system, except without the checks and balances. The President is completely immune – this is at the root of a lot of problems in Sri Lanka at the moment. The 18th Amendment effectively overturned separation of powers (between judiciary, legislative and executive). The Constitutional Council was composed of opposition representatives, the President and a few other “independents”; this gave the Council a sense of independence and impartiality. However, our present President enhanced the already powerful presidency even further by allocating himself the right over all appointments to government and by abolishing the term limit on presidency. Sri Lanka is therefore now considered a one-party authoritarian state.

I am personally from a banking background. I was Chief Executive of the country's Development Bank and am relatively new to politics. What I wish to share is a broad understanding of the **political landscape of Sri Lanka**:

1. The authoritarian slide – people gravitate towards power, where benefits are. Half my party (we are the opposition) defected to the current President's party to benefit from being allied with those in power.
2. 1978 Constitution
3. 17th & 18th Amendments
4. Separation of powers
5. Nationalism and Internationalism – military conflict of 26 years ended (significantly reduced killings in northeast). Majoritarianism will mean isolation from traditional allies in international community (e.g. Britain because of the country's colonial

past, and the United States). There is mounting sensitivity concerning relations with India. The UN General Assembly has passed a resolution censuring the Sri Lankan government, yet due to striking similarities in governance style the Chinese are very supportive of it.

6. Post-war consequences
7. Latest developments
 - a. Militarisation: not simply proliferation of violence, but the acceptance/normalisation of such. Even cuts in military budget not always helpful in a culture of violence and impunity.
 - b. Parliament, which constitutionally has all rights over financial matters (should decide on remuneration of judges, for instance), has in reality little independent say
 - c. Politician threatened “dire consequences” because didn’t like ruling of a judge. Following day, 500 stormed the court house and destroyed it. To the credit of the Sri Lankan judiciary, there was a strike by judges in lower courts the following day. In higher courts, judges did not want to attend court, so yesterday unprecedented freezing of judiciary across the country. When I was young, court houses were stoned when unpopular judgements were passed, but the strike yesterday was unprecedented.
 - d. We could explore the feasibility of civilian police methodologies
 - e. Shooter identified but not arrested. Over 100 warrants issued for arrest of this particular individual but he surrendered himself a week later. Judge made it clear how politically connected the individual was – only the previous week he had visited others in jails and the doors were standing open for him. I will leave the experts to make further remarks on the current prison system. But prisons don’t meet international standards (e.g. a few toilets only to thousands of prisoners).

The State of the Justice System

1. The (non)independence of the judiciary
2. The violence and lawlessness of the police
3. The appalling conditions of detention centres and prisons, and the brutality of the officers stationed there

The State of Laws

1. Constitution and chapter on fundamental rights: freedom from torture
2. Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT)
3. Sri Lankan Parliament Act No. 22 of 1994

4. Non-implementation due to onset of war on terror and re-inflamed ethnic conflict; prosecutions of torture allegations were deemed an inhibition on law enforcement and military to carry out full-strength attacks on terrorist groups

Torture & Ill-Treatment

1. Scope
 - a. Ethnic conflict-related
 - b. Police-related
2. Challenges
 - a. Conflict is internationalised. Here I speak pragmatically, we need to insulate our system from global conflicts founded on, broadly, religious or racial intolerance
 - b. Police brutality – this requires increased awareness in the public of their inherent and legal-constitutional rights
 - c. Disempowerment of victims, particular those economically and politically marginalised
 - d. Cultural attitudes
 - i. High acceptance threshold of violence (soft factor even more difficult to deal with than hard factors, which can be thrashed out politically and legally)
 - ii. Non-appreciation of individual rights (Asian culture weighs collective rights > individual rights); indifference of community & fear psychosis – this is a huge mechanism for social control. I'll choose my words carefully: before the conflict, even if you drew a cartoon in the newspaper about the Commander of the Armed Forces (since imprisoned for contesting presidency), President and Minister of Defence (who will so happen to be brother to the President), there would probably be an invitation for all cartoonists to lunch with the President.
 - iii. Women are not treated with due respect by the police
 - iv. Indifference of community to the plight of individuals
 - v. Social control and fear cycles
 - vi. "Shame culture" = less open society. Lack of sympathy or association with those deemed criminal or anti-state

Possible Ways Forward (experts please comment, I'm only coming from political angle)

1. Legal
 - a. Strengthening the Act

- b. Optional Protocol not signed, and no chance in present climate, although torture has been criminalised
- 2. Political
 - a. Mainstream issue of police brutality – will have significant acceptance from public (this will permit legislators to move more emphatically on the issue)
 - b. Funding – I’ve advocated increase in the pay of judges (something to be tackled from budgetary perspective), prison wardens and the police
- 3. Other practical ideas
 - a. Raising awareness at local and national level, amongst the population as well as among politicians
 - b. Educating public service departments
 - c. Training (for the police and prosecution)
 - i. Alternative prosecution methods to reduce the emphasis placed on confessions as damning evidence (this will reduce the incentive for investigators/police officers to extract a confession from the suspects through torture and other forms of ill-treatment)
 - ii. Building an awareness of human rights
 - d. Build coalitions with
 - i. Gathering support for human rights across the political spectrum
 - ii. Newer politicians who are less entrenched in their corruption/practices or resigned to existing corruption/practices, both in government and opposition (across party lines). These new ones are better educated, usually more open-minded and more optimistic.
 - iii. Same with police: work with younger officers who are more likely to build relationships with civil society. These newer recruits will be again more flexible and optimistic compared to those tainted by experiences of the war
 - iv. Supplementing local police with advice from the Attorney-General
 - e. Helping policemen to adjust
 - i. Addressing their fear of prosecution
 - ii. Empowering them with alternative methods and training
 - iii. Discouraging/rendering disadvantageous bad practice and their inevitable “cover ups”
 - f. Helping victims
 - i. Sharing experience through media and social groupings/raising public awareness
 - ii. Remedial or rehabilitative therapy for victims

*Honourable Eran Wickramaratne,
Member of Parliament, Sri Lanka*

PRESENTATION: BURMA

(NAMES WITHHELD)

21ST July 2012

Written statement

My name is A.T. I'm not a parliamentarian, but I have 30 years of experience. Now I am a legal advisor to Aung San Suu Kyi's party, the National League for Democracy (NLD). Today I wish to speak briefly concerning torture by government officers, since it is something I am familiar with.

Torture is commonly practiced in military facilities and police stations and special bureau and bureaus of special investigations. Used to extract confessions to crimes, torture is a common practice in "national security" cases. Confessions are readily given by suspects to avoid torture, regardless of whether or not they were actually guilty of the crime. Methods of torture are many. They range from ill-treatment to the more physical violence we commonly associate with the word. Individuals may be denied food, water or sleep for days. Perpetrators may prevent detainees from sleeping or bathing. They may also keep women naked and humiliated when bathing. Tormentors may also lock people in pitch dark rooms for weeks at a time. In a moment, we will show a short video of a torture survivor explaining how he was tortured. He was a client of my legal firm. He was hit repeatedly on the head and body, burnt on the testicles, tortured with water and made to stand in difficult positions for extended periods. Torturers tie prisoners in awkward positions and hit them; this may result in fractured or broken bones. Alternatively, perpetrators choose to torture friends and family members of the suspect in order to force a confession. These acts are in themselves criminal. Survivors of torture suffer severe mental damage. There is a leader of a protest movement who was released at the start of 2012, but his mental condition is now abnormal. Political prisoners and their families are especially vulnerable to being tortured. Such prisoners are detained in remote jails. Relatives can only visit once every fortnight, if at all. Authorities harass the families, threaten or take away their livelihoods, refuse to grant access to prisoner if they talk to media and write down everything as evidence to be used against them at a later date. Post-Traumatic Stress Disorder (PTSD) and other trauma associated problems are common in survivors, who then need constant medical, economic and social assistance, but there are no programmes in Burma for these individuals and families. We need people from other countries with the experience to deal with these issues. I would like to point out that despite the political change seen in Burma, torture and related problems continue unabated. Let us please work together to change this. Thank you.

A. T. and T. A. H., Burma (names withheld)

VIDEO: Survivor's account of 15 days of torture in police detention

Video Transcript

*Translation by Helen**

The first time they arrested me from the bus stop, they grabbed my arms and took me away. In the car, I was blindfolded with a piece of cloth and handcuffed.

When we reached the interrogation centre, they asked for my name and punched me in the face. I fell from the impact and they ordered me to stand up again. I didn't know who was punching me as I was blindfolded. They forced me to kneel and stand repeatedly with my hands cuffed behind my head. I had to hold my head in an uncomfortable position for a long period. I was sweating a lot and for a long time desperately thirsty. They did not give me water. I was not provided food daily.

When I signed a piece of paper, they finally allowed me to have a few drops of water. They filled the cap of a water bottle and dashed the water on my face. I had to lick around my lips to get just a couple of drops of water.

I was not permitted to sit in comfortable position. If they caught me sitting, they would beat my legs and back with rubber truncheons, a common implement of abuse among the police. My hands were badly cramped by the restricting cuffs. I was not permitted by the officers to use negatives during the interrogation. For example, I could not say "I didn't go" or "I didn't do" or "No, I am not". They would hit me five times each time I did so. I was sitting kneeling for a long time and in terrible pain. It was really painful. I was beaten a lot and they used so many methods of torture such as forcing me to lie down and beating my legs with the rubber truncheons. I could not stand the pain and so I shook and moved around a bit. They shouted me not to do and stood on my legs while other person beat me on my back.

Once, I had to remain in a sitting position with both of my hands handcuffed at either my left or right side while they beat me with the rubber truncheons. One person (officer) rolled the rubber truncheons against my legs with pressure while the other one beat me on the back. At the same time, the third person (officer) boiled water and put tea into it. Then he removed the pot of hot water from the stove for a minute. Afterwards, they brought forth the boiling water and poured it between my legs. I was in a sitting position and tried to keep my legs together. But the hot water scalded my skin and I could not stand the pain. I involuntarily opened my legs and my genitals were burnt as a result. I was in so much pain that I cried out. They then put chopped chili in my mouth and forced it shut by gagging me with a piece of dirty cloth.

The above form of torture I just mentioned lasted for one whole day, while the kneeling and beating lasted the full fifteen days I was interrogated. I found blood in my urine on the eighth day. I knew it was because I was dehydrated from a lack of water. I constantly felt the urge to urinate but could not. After a while, the police realised I was severely dehydrated and finally allowed me to drink some water.

On the ninth day (or at least I thought it was the ninth day), I overheard the policemen in the detention centre complaining that they couldn't get any sleep because of me, so they beat my head until my skull fractured. Then the officers who were supposed to take me to prison took me to a hospital. Notwithstanding the fact that the staff at the hospital had taken X-rays and found my skull fractured, I was transferred to a jail instead of being kept in the hospital for treatment.

I couldn't sleep for 15 days as they continuously interrogated me with thousands of questions. Each and every time, I was beaten severely. For example, they beat my hand and crushed my fingers with the rubber truncheons. When the beaten flesh became swollen, they would beat it again with a tiny wire stick. As a result, I had sustained severe injuries and wounds all over my body.

I could not stand it any longer and so I tried to commit suicide with a wire from the stove. In my witness statement, I could not disclose all these facts as the police officers had told me that I would be charged with another offence if I did so. When my case was brought to court, it was mentioned in the trial transcript that I was holding the wire because the interrogation process was so painful.

Back in detention, I was also forced to sit and lie with my face to the floor, while they kicked me and stomped on my back. When they did this to me for the second time, I was not able to breathe. The other form of torture I experienced was clearly designed to amuse the guards, such as pretending to drive a Motorbike, and reading the newspaper while standing on one leg, as well as turning around multiple times with one finger touching the ground. In my weakened state, I became very dizzy after one round. They would also beat my face and my entire body.

They also dipped me into water for long periods of time. First, they covered my face with a plastic bag and tied it on my neck, during which my hands were hand-cuffed at the back. Then, they suddenly pulled my legs up so that my body was upside down and I was submerged in the water tank. I stopped breathing and became unconscious. Afterwards, they dragged me out of the water and slapped me until I regained consciousness. I was told that "we will kill you unless you sign the paper". Under those circumstances, I didn't have any option so I signed a sheet of blank paper.

The scars from the severe beating have remained on my back even though three years have passed. It is also obvious that the scars on my head will also remain. Yangon Hospital and Insein Hospital have refused to give me the written medical records even though I was examined and given X-rays for my fractured skull at those hospitals during the time of my detention. The doctors and nurses there are afraid to testify to the physical abuse I endured at the hands of the police.

To conclude, these marks show to the world that torture is still prevalent and widely practiced in detention centres in Burma.

T. M. A. (name withheld)

Closing Remarks

Torture is physical and mental. To close our session, I want to make some brief comments. After physical torture, to get even basic medical treatment is difficult and even requires permission from perpetrators. Hospital staff do not want to treat without approval slip, and even then, hospital staff are poorly trained and medicines not readily available.

Mental torture – everyone in Burma has suffered from totalitarian rule. Under the 1907 law, if we go to stay in someone else's house in a nearby town, we must register with authorities. Now there is a new law requiring registration even if you wish to stay with local friend or relative in the same town. This restricts movement and creates stress in local population. Police also protect organisers of illegal gambling and other criminal syndicates. Complainants are counter-charged with falsified evidence. This deters responsible citizens from taking action against even the most blatantly committed crimes.

In court, judges place tremendous stress on lawyers fighting for democracy, rule of law and the protection of human rights. Those particularly vulnerable are the already marginalised – the uneducated, the poor and ethnic minorities, for instance. Many are tortured in jail. I recently handled a case in which police brought fabricated charges against the individual. Although I eventually managed to get him acquitted, his ears and ribs were injured. This is the face of a dysfunctional justice system. This is a place devoid of respect for the equal dignity and worth of every individual.

T. A. H. (name withheld)

SPEECH AT OPENING DINNER

MARTIN LEE CHU-MING, QC, SC, JP, HONG KONG
21st July 2012



Introduction by John Joseph Clancey

I wish to thank Martin for donation to underwrite cost of dinner and for the words he is about to speak to us. Martin is a successful, humble senior counsel trying to incorporate dialogic/consultative processes in Hong Kong politics. He was elected to the Legislative Council for a few years, and then stood for geographical seat. He is the founding chairman of a highly successful Democratic Party. He began as a teacher before going on to study law. I've watched him in courts and before large crowds at Legislative Council. In many ways, he approaches things as a teacher, helping others find a new perspective or understanding on issues. He has encouraged appellate courts to set new precedents and persuaded people to take hope despite difficult circumstances or in their struggle for democracy. Martin was also very involved in drafting a good Basic Law for Hong Kong. After the Beijing Tiananmen massacre in 1989, Martin resigned and has been under a stronger-than-ever conviction to fight for democracy in Hong Kong and other parts of China.

Martin Lee Chu-ming, QC, SC, JP

I am not an expert in cruelty. I do not believe in corporal punishment. I'm afraid in this part of the world there's much cruelty. There's an infamous declaration from ASEAN leaders talking about "Asian values". They meant to tell visitors from abroad (US, Europe) – it's not right for you guys coming from where you are to tell us what to do. You are now in Asia, we have Asian values. We respect you, so respect our culture and respect us when you come here (i.e. shut up and don't criticise us for these alleged human rights violations). Let us now discuss this argument of cultural relativism, one frequently employed by autocrats or oppressive governments against those arguing for the cessation of practices of torture in Asian countries. If you lock up individuals from all the civilisations – if you lock them up, they all yearn to be free. If you break their arm, they will all scream and writhe in excruciating pain. If you put a bullet in the head of each one, they all die. So why are Asians different when it comes to cruelty and infringement of human rights? Were we born to be cruelly treated? How long it took our former colonial masters to achieve universal suffrage! Let democracy develop along Chinese timetable. But they (the Chinese) don't follow their own timetable! They said, let's start with our villages. In another five years, maybe we can change a town, in another five years, maybe major cities, in another five years it will be the entire country.

Democracy doesn't take time to develop. It does not require years to teach a people how to choose between twelve people which one they prefer. We can elect our entire legislature in 2020 – but is it going to come? No! We are going to have Chinese-styled democratic elections. The authorities will know the result before the first vote is cast. They want to make sure even the nomination process is controlled. An election committee (1200 persons elected by functional constituency – Beijing controls 950), elected the last representative. They will turn the election committee into a nomination committee. Two candidates will be chosen for the Hong Kong people to elect someone. It's a non-choice even though, hallelujah, it is one person one vote, because the candidates will be the two heads on one dragon – whichever head is chosen, the same terrifying dragon will still rule the roost.

Leung Chun-Ying (more popularly referred to as C. Y. Leung) is an undercover communist party member but of course he denies it. The Chinese Communist Party has been functioning in Hong Kong all these years, even under British rule. They have always had undercover, long-term agents/moles who will never confess until and unless the Chinese Communist Party leadership permits it. Many senior government officials and secretaries are members of the Chinese Communist Party but they'll never own up to it. Democracy has therefore been delayed, despite outward appearances of having elections.

So far we have inherited rule of law from the British. The British, as our former colonial masters, have left behind some kind of "rule of law" in every one of their former colonies. How long can the rule of law continue without genuine democratic foundations? No matter how good judges are, if the legislature passes oppressive laws that do not protect but impinge upon human rights, a judge is still powerless. He can only resign or carry out that law. Of course, a Chinese leader recently came to Hong Kong and declared that "our judges must cooperate with our government". How can rule of law and human rights be guaranteed/preserved with this system? There simply is no separation of power.

I am glad there are so many of you here, and that I have the privilege to share our problems. Think of Singapore. My good friend Dr Chee Soon Juan was sent to jail for acting upon his political convictions. You all have terrible experiences to share too. In Hong Kong we have not reached that stage yet, but we're supposed to be part of China now. A big promise was made that Hong Kong people will rule Hong Kong under the "one country two systems" principles. But practically speaking, this is not the case. Chinese Communist Party cadres are now ruling Hong Kong. We have little meaningful or no autonomy. This is a breach of that big promise made in 1984 when the joint British-PRC declaration was first announced. What's the world doing about it? Which government would dare risk losing trade with China by mentioning human rights? That is the reality we are dealing with. The world doesn't care two hoots what happens and what is happening to HK. Self-preservation comes first. I want to share with you a piece of good news, though. Younger generations are now coming up to protest. They have the wisdom to know what is good for them and what is bad for them. There has been "patriotic

education” designed by Beijing to brainwash our kids. I have no objection to singing national anthem in the morning. Students in most countries do that. I have no objection to students being taught about Chinese history – fine! They should know their countries, particularly when they’re born in Hong Kong, formerly a British colony for so long. But they must be encouraged to think independently. They should have open discussions in school, grow up and be useful Chinese nationals, useful to China and useful to Hong Kong. But the Hong Kong government has given huge subsidies to pro-Communist actors and agencies, and has come up with a textbook of China that only glorifies the country and doesn’t teach the entire truth. Some things are downright lies. And the students are not just swallowing it, at least. My old school – Kowloon Wai Yen College, my former teacher who also teaches civic education, he has a lot to do with setting the paper. One day, because he wanted to know how well he would perform for the subject he teaches, he sat for the test and scored 4. Now the top grade possible is 5, 5* and 5**. He got only 4. Yet he was so happy when interviewed, and he exclaimed, “What makes me happier than seeing my students outperforming me?” Therein lies our future. Good, committed, dedicated teachers – yet they are few.

For the short term, things look pretty bad for Hong Kong. I can’t see how things are going to improve in China either, with problematic one-party rule. I was sharing with some delegates at my table: if you are always in government, you never think about the unfairness or cruelty of the government, because that’s you! Extracting confessions through torture and cruelty seems expedient. You cannot appreciate the difficulty of the situation unless, like the former school master, you also sit for the public exam. For instance, you only have twenty minutes to do a long question, I must consider this when I set the paper.

For the long term, I am optimistic. There’s no good reason for this, simply that democracy and human rights are now internationally accepted. Even if China were the last country in the world to acknowledge, accept and have this, it’s still inevitable. This is the contagion of ideology and ideas. Whatever religion you have, please pray for one another. It will take time, yes. I may not live to see it. But it’s a hope for future generations, your children and your children’s children. The most corrupt use the slogan “love your country” but send their children away from China to receive an overseas education and then to work and live permanently overseas. If you’re an optimist, however, you would see such actions as demonstrative – at least these officials and rich men know things are bad in China.

I’m therefore optimistic that in the long run, things will look up. In the meantime, we’ll just have to sweat it out.

Thank you, I’m happy to take questions!

Martin Lee Chu-ming, QC, SC, JP, Hong Kong

Reflections, Questions & Answers

1. **Sharif Islam, AHRC:** I am from Bangladesh, teaching at University of Dhaka. My question is will you face trouble for giving this speech?

Martin Lee Chu-ming, Hong Kong: The turnout at the next demonstration will be bigger! (laugh) I don't mind. I have a high profile, there will be suitable outcry. I was invited to go to Singapore. There was a small group, reporters and government officials too. "I have strong views about the state of human rights conditions, but of course it must have improved, I'm here!"

2. **Fazlul Azim, Bangladesh:** Just today, Leung, our barrister speaker from earlier today, presented a much more cheerful situation about the state of corruption in Hong Kong. How do we reconcile what he has said so optimistically with your more bleak evaluation of Hong Kong's present situation?

Martin Lee Chu-ming, Hong Kong: I don't think we can point a finger at any magistrate and say he's corrupt. The condition of human rights in Hong Kong is generally alright; our press is technically free but practices, of course, self-censorship concerning Beijing and its actions. The South China Morning Post editor (I think) is a cadre of the Chinese Communist Party. I read it religiously and still subscribe, but what I find most fascinating is the column that teaches you nifty tricks in the card game Bridge. That column is very independent! (laugh) The establishment of the Independent Commission against Corruption (ICAC) in mid-1970s brought many to justice – we used to have syndicated corruption that worked smoothly. It was a very tight and mutually beneficial nexus, you pay one big check and the vultures will sort it out among themselves. This is unlike China now, where you have to pay *everyone individually* and it's just too costly to do legitimate business. But I foresaw that if Hong Kong could not export rule of law to China, the mainland Chinese would export lawlessness and corruption here. What's there to prevent them from blackmail, for instance? Let us consider the 25 March 2012 election – shortly before that, Beijing representatives (the "Chinese Liaison Office" head is also the head of all Chinese Communist Party members in Hong Kong) were unhappy with Donald Jiang. They sent someone to the Chief Executive (Jiang's) office and said look, delay some papers concerning investigation into suspected conflict of interest concerning CY Leung (who was then a candidate). The CLO tried to suppress information and prevent the public embarrassment of CY Leung appearing before Select Committee until after he was elected. Donald Jiang refused them firmly and kicked them out of his office. Before he left, the CLO representative simply said, "I will give it to your boss tomorrow". The next day, Jiang was blackmailed. Nothing prevented/prevents CLO from making such demands on judges too (hey we have a folder somewhere on you).

I still think and hope that judges brought up in common law system will be brave enough to resist that threat. This is not easy. Judges should never be put in that invidious position. But when the government is handled by the Chinese Communist Party, you cannot count on the judges to act courageously and bear the highest cost for such convictions – you can only count on the collective, the people, to resist such. And the election process is yet fraught with manipulation and machinations.

3. **Samar, AHRC:** There are moments of democratic resistance in our universities and so on. Is there any chance in Hong Kong for such, since the handover? What are those sites of engagement when someone can become inculcated with democratic values?

Martin Lee Chu-ming, Hong Kong: Well in Hong Kong, many have been educated under the British, and many who can afford it send their children to study overseas in UK, Australia, Canada, US...but those left behind have also learned the value of democracy. Strangely, although we never *had* democracy, we enjoyed the *fruits* of democracy under the British, because in the metropole it (democracy) was there. If things went wrong in Hong Kong, questions were asked in parliament and administrators would have to respond. And in theory, at least, if people were arbitrarily locked up, that could result in collapse of British government. Although we didn't possess the democratic trio (separation of powers for the executive, legislative and judiciary) physically here, we enjoyed the fruits of democracy – rule of law and a relatively level playing field. We would rely on China for these things, but she doesn't have it. We must therefore grow our own democratic three branches domestically. In 1994, when Chris Patton, last governor, was here, he tried to pass a legislative reform bill that would make Hong Kong democratic. At that time, another party tried to introduce a number of amendments to it that would render it undemocratic. When the Bill was debated on 29 September 1994 (something like that), I remember lobbying for it. John Major tried to lobby legislators in Hong Kong through the employers in London. Beijing also tried to lobby other legislatures in Hong Kong by ringing personal mobile phones (laughs). My party strongly supported the Chris Patton reform bill. My principle opponent was from a major Liberal party (liberal in name only). "You are wrong, Martin, if you side with us, we could get a "through train" and those legal professionals could continue to stay another two years. If you vote for the Bill, you could eject us all on 1st July when we are handed over!" I replied, look, a through train is good if it leads up to democracy, but it's a through train to hell.

"If we voted amendments we would get two years of modest democracy at work." I told him once the fire of democracy is ignited, nothing can quench it. This is why Beijing is still worried about giving us genuine democracy because their preferred

candidates could not ever return. The difference is that the people of Hong Kong themselves desire democracy; this, even the Chinese Communist Party cannot quench with its humongous political and economic power.

4. **Kanyarat Wiphatawat, Thailand:** How can we deal with corruption?

Martin Lee Chu-ming, Hong Kong: I've given generic advice that work in most countries that are corrupt. Of course there were jokes about Hong Kong's own ICAC. At the time it was established, some said it was an acronym for "Interference with Chinese Ancient Custom". Another joke that is being passed around is "I Cannot Accept Cheques, but I Can Accept Cash". But there was nevertheless a strong push for the establishment of the ICAC anyway. Increased salaries of civil service were implemented to ensure take home pay gave officers a sense of financial security and to reduce the incentive and need to accept bribes. Rather draconian powers were also awarded the ICAC. It was almost *too* successful – ICAC began prosecuting entire police stations! Some policemen rushed into the ICAC office, where officers were unarmed, and threatened them. Therefore an amnesty was declared by the governor for offences before 1973 unless it was really serious; then it would require a certificate from the government. This was a necessary move by the government – people must be returned to original state (*tabula rasa*) and given a clean slate. It shows seriousness on the part of the government (political will of those from the top). Declaring a cut-off date for retroactive laws and enforcement of laws and forgiving past crime allows the people to understand the determination of the government. The ICAC (or equivalent in your country) must therefore first have the full confidence of the people in order to succeed. The people must themselves abhor corruption and cease to see it as an unchangeable, neither good nor evil way of life. Amnesty works hand in hand with retroactive legislation. You must also restore real power to civil servants so they take pride in their work and feel you trust them.

In China, all at the top, whether directly or indirectly, are corrupt and there's a lack of political will.

5. **Nandana Manatunga, Sri Lanka:** We're economically dependent on China. Chinese policy with regard to human rights is also applied very much in our own countries. There cannot be independent thinking and democracy because we're dependent on China and do not ourselves respect human rights. As you mentioned earlier, Hong Kong is economically dependent. How is it that it has maintained a certain political or social independence?

Martin Lee Chu-ming, Hong Kong: The Chinese market of over 1.3 billion is extremely attractive to the rest of the world. The year 2000 was the last year of

Clinton's presidency. He wanted to give WTO membership to China. He wanted to give Permanent Normal Trading Relations (PNTR) to China. This was an extremely dangerous move because it awards *carte blanche* to China (by removing the likelihood or possibility even of economic sanctions or repercussions). I was happy to help draft proposals. In May 2000, the White House invited me to get proposals through the House of Congress. A week before our scheduled departure, I was called to ask, "Do you mind going over with them to see over 20 members of the House of Representatives who are still undecided"? I agreed again. I was invited for lunch on Capitol Hill. I was introduced to each one. I spoke to Nancy over lunch. "I agree with your reasons ("China's not to be trusted") and if they didn't have the debate every year, the Chinese government would ignore everything and proceed in its evil ways. But how does it help to deny PNTR and membership of WTO? I am going to support your President in the hope they honour all the conditions of membership of WTO and PNTR, so they will have respect for rule of law in commercial contracts to begin with. Hopefully respect for human rights laws will follow." The vote was going to be very close. The President told me his exact prediction." "I want you to know my motives," I said to both the President and Nancy. "I want Chinese to think of rule of law as in line with their best interests so they'll conceive of human rights in a similar fashion. **But you must ensure China adheres to rules.**"

History will have one of two things to say about you, Clinton:

1. He worked hard to give China membership to WTO and PNTR to delay the reign of a tyrant
2. He worked hard to give China membership to WTO and altered the trajectory of Chinese socio-political development, particularly with regards to the observation of human rights.

Everything hinges on one word: compliance.

We went to Yellow Oval, which is the residential part of White House. Twenty-six members of the house and their aides were all standing about having chocolate cake, strawberries...as arranged, I spoke for ten minutes, my colleagues four, and then we took about forty questions. The following day, Shefsky who was doing all the work, said, "You know what happened after you three guys left? I've never seen it before. Complete silence in the room." The next person I saw was Larry Somers. "Why are you pinching my staff, Mr Lee?" A junior staff wanted to help me in HK. "Give me twenty votes", he said. "How can I do that!" He replied, "You already did."

Today, I'm not allowed to go back to China for having said strong words against the government. Today, China is still not respecting human rights. The US government must

enforce compliance, or the first thing will be said of Clinton and the US – the tyrant was just delayed. China signs contracts only because it benefits from them economically, which makes them politically strong. But they make you believe you lose out if you even mention human rights. Imagine this: US President brings huge delegation to China, including reporters, and human rights are almost immediately swept under the carpet in the interests of business talk. “My reporters outside are going to ask if I mentioned human rights. Now that I have, let’s get on with business.” The US government is getting a dialogue, but what do you do with this chance? Will you exploit it and press hard enough? Is the US government faltering itself in its convictions?

SHARING SESSION: RECAPITULATION & REFLECTIONS

22-07-12 (Sunday)

1. **Basil Fernando, AHRC:** We spoke yesterday concerning the epistemology of torture – the study of victims’ narratives different from the observation and collection of facts (empiricism). We have to address the lie that policing without torture is impossible. Rather, proper police with torture is impossible. Understanding basic structure of society through the experiences of torture victims – what went/is wrong? The elimination of custodial torture should be a primary task when working toward democracy. It is a practical way of going about undoing institutional obstacles of democracy. It is this approach which the AHRC is placing before this meeting – asking legislators to take the problem of torture seriously. Enabling freedom of speech and eradicating torture are inseparable goals.

We are all agreed that our institutions have failed. What then is this democracy we have pretensions to? To preserve freedom and enable people to take part in the process is our ambition, yet these people are living in the shadow of constant fear and pain.

We don’t need legislators to completely resolve all things – they can’t. Only the people can do that. You can’t fight dictators with speeches. You can only fight them by listening to the suffering of the victims. It is something dictators cannot deny.

2. **Adilur Rahman Khan, Bangladesh:** In the 10 years since 9/11, Asian countries have enacted many national security acts and emergency laws. In 1974, Bangladesh did the same. Torture is legitimised by law! Therefore we cannot only talk about rule of law. The 1982 Citizenship Act made the Rohingya non-citizens of Myanmar, although these people have been living there 500-700 years. The Rohingyas continued statelessness points to the failure of ASEAN to address the issue. At the same time, Bangladesh has failed to shelter the fleeing Rohingya. There was a budding human rights movement in the 1970s-90s, but this was crushed badly by the 9/11 incident. We need to discuss how to revive these organic movements. 2013 will mark 20 years of the Vienna Declaration and Programme of Action. What can Asian states claim to have done then?
3. **Kanyarat Wiphatawat, Thailand:** Torture in Thailand happens in the normal policing process (a common technique, particularly under security law. Absolute power is given to officials, and there is a lack of due process). Torture usually occurs in remote military camps. Suspects’ families are often not informed of the whereabouts of these individuals. I am now working in the Law Reform

Commission, which has had but a brief one and a half year's existence; we have many sub-commissions, including a forensic science division. Last month, we organised a public forum on torture and invited forensic officers, the CSO, police officials and torture victims to speak at this event. The purpose was to evaluate the traditional legislation process. We discovered that Bills are passed from minister to cabinet to state council to the parliament. This means minimal or no public consultation.

We have also had martial law and an emergency decree enacted since 2005 by the executive branch of government. Under martial law, an individual might be detained up to seven days without his captors being under any obligation to inform anyone. Safeguards such as producing suspects before a magistrate certainly do not apply. From southern Thailand emerge the most reports of torture.

In 2006, the interim government ratified the Convention against Torture (CAT). A professor under the public prosecutor drafted a law in 2008 for the Minister of Justice to consider amending or adding to the Penal Code to incorporate torture as a cognisable offence. They called for judicial reviews into allegations of torture. Four years later, this draft is still under review, and there has been notable failure to meet the country's obligations under the CAT. Our current Prime Minister Yingluck Shinawatra has announced a plan of action that includes the drafting of an anti-torture bill, which is to be finished before 2014, which is still some time more. Actors from civil society have taken the initiative to attempt to draft an alternative Anti-Torture Bill.

4. **John Joseph Clancey, AHRC:** Another provocative way of putting it is that since 9/11, everywhere, including in the Western world, things have been regressing and human rights are being violated instead of consciously protected. Terrorism is real, but combatting that had the much more tangible effect of concentrating ever more power in smaller groups and individuals.
5. **Basil Fernando, AHRC:** The persistent argument is that areas of human existence *do* exist outside law. Oh, when there's this greater goal (national security), we ignore these smaller, dispensable ideals (human rights). First, why are we being forced to choose? This is a false and forced choice. Secondly, shouldn't human rights be the ultimate, irreplaceable and absolute ideal? These basic rights that are so fundamental they help *define* the human; observing and protecting these rights also defines *you*, who might otherwise have been a perpetrator, as a human. Let us reflect if there is at all a court system in your country where the most basic torture case could be investigated? It's great for developed countries to focus on ICESCR, having settled rights listed in the ICCPR. But Asian countries may "exploit" ICESCR and

“collective rights” to resist living up to the ICCPR. The rights in the ICESCR then become a distraction. We have to remember that rights are indivisible. None of them may be sacrificed.

6. **John Joseph Clancey, AHRC:** I originally studied philosophy. You can have many philosophical discussions that go absolutely nowhere. Do we start from philosophical, theoretical points and arguments or from the suffering, narrative and nitty-gritty details such as technical points in laws, penal codes and other legislations that permit these abuses?
7. **Erik Wendt, RCT:** Basil was specifically dealing with police torture. Let us also consider two separate (but equally critical) issues:
 - i. Standard Operating Procedure (SOP) of normal policing work, which is a more approachable and accessible topic for the parliamentarians to deal with
 - ii. Non-Standard Operating Procedure of “emergency” or “security” forces, against which parliamentarians can place suitable legislation in order to protect human rights
8. **Adilur Rahman Khan, Bangladesh:** What also struck me yesterday was the dehumanising aspect of torture. When you wish to cheapen the life and liberties of someone, you have to paint him as a traitor, a dog – then your methods suddenly become a lot more justifiable or acceptable. Then, in abusing him, you psychologically begin believing in the same lie you sold to the rest of the community – that he is a dog and not your equal in dignity and worth and not possessed of the same rights.
9. **Myrna Reblando, Philippines:** It pains me to talk about these things, even if I am not physically tortured. I am mentally distressed. My husband was a journalist who was slaughtered in the Maguindanao Massacre. I will talk to people in the same intelligent manner he did to honour his memory. I’ve studied the negligence of my government and how my people think about incidents in my country (incidents such as massacres and the practice of torture). Legislators, please listen to us, the people who are oppressed. I have lost everything, including my own business. My own government has frightened me, even the present government, which claims to be more progressive, which claims to value the human and his rights. But the AHRC has helped me greatly and helped me recover from this experience. I am here for asylum because my own government has failed me. With the help of some journalists I feel I have been able to speak out. One of the accused was indicted this time last year. I feel if the people are listened to by individuals such as Raymond Palatino, individuals who have weight when they speak, individuals who are leaders with compassion and a heart for the people, leaders who lead knowing

who put them in power, the country will truly be a democracy. Raymond Palatino, our Member of Parliament from the Philippines, has agreed to speak about this Maguindanao case in a Privileged Speech. This is a small victory for those who were killed, and for their families and for witnesses, some of whom have perished since, and the rest, who, to this day, live in fear for their lives. I also want to call on you to seek out those who demonstrate potential as leaders and develop them to help victims such as my husband and my family. Thank you.

10. **Basil Fernando, AHRC:** *Systemic effect.* We can talk about the things governments do with regards to terrorism, but, day to day, for all people, terrorism is a cover-up for a powerful few to remove the few liberties from them that make them human.
11. **A. T., Myanmar:** In 1989, a man was arrested, accused of bombing (petrol purifying factory). He was sentenced in a closed military court. Four or five years later, an old man was arrested on a separate charge and admitted to the 1989 case. He received only three or four years' imprisonment for an equal charge. Yet the first accused arrested in 1989 remained in prison until July 2012. He contacted me, was seeking redress and remedy (compensation) for the extended detention at the interrogation centre. However, he was failed by a critical piece of legislation, the 2008 Constitution, which stated that the present government was absolved from addressing whatever had been done by previous governments. The question is if this victim will be able to speak about his experience, and the damage done to the credibility of each administration in Myanmar if people are not assured of the steadfast rule of law. Such impunity bodes ill for the future of Myanmar.
12. **Baseer Naveed, AHRC:** How can we engage parliamentarians and lower judiciary? The issue of torture cannot be isolated from the whole. It would be a fallacy to assume that the police are wholly responsible for the existence of torture. The war on terrorism, as earlier mentioned by Adilur Rahman Khan, has infected the outlook of every paranoid regime, which has sought since then not purely the goal of containing the threat terrorism poses to the nation, but neutralising every challenge to the regime and current power holders. Since 9/11, the United States has been quick to recognise Musharraf, government and judiciary, never mind the endemic practice of torture by that regime. If you're suspected of anything, you will likely be tortured, and before being proven guilty too. There has been a mushrooming of torture cells run directly by army (52 by army, 3 by navy, and 3 by air force). There have been many reports of disappearances, individuals "incommunicado", female sex slaves, particularly in Balochistan, where the army battles a secular Baloch nationalist movement. It will be difficult to change these entrenched practices, given the prevailing paranoia of those in authority and the perverse "professional" pride the military and law enforcement take in conducting their "national duties" ("I'm doing my job", "I'm powerful" and "I'm serving national security".)

PRESENTATION: PSYCHOLOGICAL EFFECTS OF TORTURE

DR RAJAT MITRA

22nd July 2012



Good morning, everyone. It is an honour to present a talk on the sensitive psychological aspects of torture. When I was asked to conduct this talk, I was specifically requested to speak of the permanent effects of torture. I would like to tell you all gathered here today that almost all aspects of torture are permanent. These permanent effects are, moreover, damaging.

To better consider the nature of torture and its effects upon us, let us now consider two scenarios.

1. You have a tornado or cyclone that hits you. Your bones are broken, your family suffers grievous injury, your house is torn to the ground
2. A group of policemen picks you up, beats you, inflicts physical damage by breaking your bones, tortures your family and burns down your home.

End consequence appears the same – wherein lies the difference? Why does the second scenario affect or trouble us so much more?

1. It's the force of impersonal, unpredictable nature
2. It's personal, deliberate (and unnatural) human cruelty. It's a violation of respect for the human by a human.

Torture is intensely personal. Torture violates us. How do we begin to understand torture? Interpersonal aggression and violence is an important starting point.

Torture has existed as long as human civilisation has. Yet psychiatry/psychology has only focussed on this terrible practice in the past 30-40 years. It is shocking to see how torture dramatically alters the human psyche, even for those who have not personally experienced it. Torture causes human thought and our sub-consciousness to develop abnormally: major parts of the brain cease functioning altogether as the body retreats into survival mode. Only the most primitive aspects of our brain involved with sheer survival remain functional and this remains the case for a very long time, if not for the rest of that person's life. The cognitive, creative parts of the brain dealing with abstract thought are no longer or are much less active. This has serious implications for the way that person lives or interacts with others subsequently. The person may exhibit an inability to form

deep emotional bonds with others, find it difficult to trust others or find it extremely stressful to be in a new situation or to talk to new people, for example. When someone endures trauma, permanent damage is done to the brain which results in an inability to pick up environmental cues (i.e. “danger signals”) afterward. This means an exponential increase in the likelihood of being re-victimised.

Let me share a story of someone who was a victim of sexual assault. There was a stakeout on a rapist. The officers involved allowed the rapist to continue to stalk and grab a woman so they could catch him in the act. They then told the extremely scared and distressed woman that they had saved her. There’s a very practical dilemma here: in allowing the rapist to continue to stalk, grab and frighten the woman, they knowingly permitted her to be traumatised. Yet practically speaking, they needed evidence to convict the rapist. In this particular encounter, they sacrificed the woman’s psychological well-being to their need for evidence. The trauma done to the woman, even if she was not eventually raped, is immeasurable and will have a long-lasting effect on her emotional intelligence and the health of her relationship with others.

How then can we address trauma that’s already been inflicted? The first step we need to take is to convince and reassure the victims that it was not their fault they were victimised. Often, perpetrators successfully convince their victims that they had somehow brought it upon themselves. They may convince a rape victim, for instance, that her dressing somehow “seduced” them and caused them to lust after her. A schoolteacher who viciously beats his students may convince them that they somehow deserved the beating because they had been naughty, or maybe did something wrong. The children may come to believe they deserved the punishment, no matter if the punishment is monstrously disproportionate. This is an emotional burden that trauma survivors bear their entire lives.

Let’s take the scenario of torture one step further. What happens to us?

For a long time, it was believed that trauma was something observable or overt. We expect individuals under tremendous stress or trauma to scream, or shout or writhe in pain – very outward, obvious expressions of an internal anguish that we, as outsiders and observers, cannot feel or imagine. Psychologists have learnt, however, that victims of extreme trauma actually go into shock and “freeze”. An experiment was done in the United States with a chicken, which was pushed, dragged and poked. Initially, the chicken did flap around a bit to try to escape the manhandling, but after a while it went very still, even after the physical harassment stopped. Our traditional understanding of the “fight or flight syndrome” is no longer perfectly true. When faced with overwhelming danger, everything in your system shuts down. It is the complete inability of the animal to respond any further in that moment. The animal, given time, recovers from this

psychological paralysis, gathers itself and devises an escape plan. The closest analogy I can find in the English language is that of the deer caught in the headlights. So is this survival or avoidance mechanism? It is the former. My colleagues were among these studying 9/11 survivors. Different responses were shown when people saw the planes crashing into twin towers. One group immediately fled. Another group froze and perhaps called people on their mobiles. A third group, the members of which showed the highest degree of post-trauma survival, took charge of the situation and tried to devise a good plan for escape. Many who work in highly stressful jobs – firemen, civil defence officers, policemen, etc. – form this last group, and are society's first, and perhaps only, line of defence against unforeseen disasters. Unfortunately, the people making up this last group are rare. The rest of us find ourselves in the second group, frozen in the face of imminent and on-going danger and reliant on the help of others.

I have worked with many torture survivors. I have been in those situations. I still carry guilt from the first time I witnessed torture. I froze in those moments. I was completely unable to help the victims. In one case, the police were pounding a suspect. I took a full twenty seconds to realise the enormity of the situation. I asked the perpetrators to stop, but they gently pushed me aside, warned me against getting involved and continued to beat the man to a pulp. The suspect's only obvious crime was in not conveying immediately what they wanted to hear. This was in an infamous prison in Tihar, Delhi.

There are three parties involved in every incident: the perpetrator, the victim and the witness/bystander. The effect on all three agents is different, but only slightly, and only in degree. The bystander feels threatened because they fear the same could/would happen to them. They rated the fear (trauma) experienced as 6 or 7 out of a maximum scale of 10. This is of course less than the rating given by the victim himself, who consistently rated the trauma experienced 9 or 10 out of 10).

Somebody once asked if interpersonal violence actually had that much of an impact. My answer would be a resounding "Yes, it does". Let me explain how seriously interpersonal violence affects everyone. A serial killer can change the behaviour and mental well-being of an entire city. Most would have never seen or spoken to the serial killer. Nevertheless, fear is contagious, and the subsequent trauma wrought by such fear is not easily mitigated or quenched. Fear affects the plasticity of the brain in fundamental ways. It affects our children too. Let me share two instances in which I have observed this.

I have a 7-year-old daughter. She accompanied me to my office in the Asian Human Rights Commission (AHRC). Stuck to the wall right above my desk is an anti-torture poster and I naturally had to explain what torture was. I didn't know where to begin, so I started by saying things from my own experience. "You know, sometimes when police want information, but they don't get it the correct way ..." My daughter immediately

said, “Oh, that’s boring, I know all about that, we play torture in school.” When I reacted in something approaching horror, she very nonchalantly replied, “Ya, when we want information we grab someone like this and put him like that...” I told her very sternly, “That is not how you get information. You talk to people if you want information. Where did you hear all that from!” to which she replied, calm as ever, “TV!”

In the case of documentaries or movies depicting Abu Ghraib, there have been recorded cases of children becoming excited and re-enacting conditions in prison after watching it on TV. The globalisation of violence is going to be also a potent force shaping the world in the future. There is nothing called good torture or a good beating, and yet children are unable to know the difference. It is the responsibility of parents and adults to inculcate the notion that violence and torture is, under all circumstances, unjustifiably bad. Children have to be told that when one does something to someone against that person’s permission, it is wrong and the effects last a lifetime, both on the perpetrator as well as on the victim(s).

Torture affects memory. In the field of psychology, we contrast “normal memory” and “traumatic memory”. When a person is traumatised (trauma is inevitably and invariably a result of being subjected to torture), “normal memory” fragments. When we ask torture victims “What happened to you? Can you describe it? Do you remember this particular detail, or that? Are you absolutely certain this was the man responsible? Can you demonstrate what happened?” One of the difficulties victims experience is describing their experience.

In one study, a group of 20 Literature majors from the best universities across the United States were shown a 10 minute video clip showing torture and asked to describe what happened. What emerged was amazing. None of the students could easily describe the phenomena of torture. They were only able to describe very mechanical events (he beat him...here, here, here) and provided only reductionist accounts stripped of detail. Researchers expected eloquent and detailed descriptions, but not one student was capable of it. An alternative description was then shown the students, which gave graphic details such as the “cracking of bones, loud sounds, acrid stench...” The students had simply blanked out all these details. They experienced tunnel vision and a strong desire only to get away from the traumatic experience.

I was mugged years ago on the streets of San Francisco while taking a walk after the conference on Clinical Psychology and Forensic Sciences. I was walking home on a street notorious for crime. Three young men whipped out knives and became angry when they saw I only had \$70-80. I tried placating them, so they pushed me and ran off. I went to report the incident to the police and hotel. I informed them I was a psychologist and the police said, “Oh, it must be easy for you to describe events then” but all I could recall

was the handle of a knife they had pressed against me. I could not recall their faces or the clothes they were wearing. I used to take pride in the details I was able to capture, but when I was traumatised I could not take in these important environmental cues and clues.

Through this and many other examples we must change our perspective of torture survivors. They are not lazy or dishonest. They have genuine difficulty describing the events. Today, psychologists have sensory amplification techniques by which we help survivors recall details of the environment and the encounter. In principle, this is quite simple. Somatic memory is this: even if your brain doesn't register, your body does. By recalling the entire incident one thing at a time, and then asking at appropriate junctures things such as, "What does your hand feel like now?", the brain is able to reconstitute events and put it together in a more coherent narrative.

The research on trauma and torture today is breaking new grounds. New techniques are being discovered and invented to motivate and encourage survivors, as well as to enable them to testify in courts. The coming century will lead us to understand more truths about torture and trauma, and give us more scientific avenues for the reporting of facts and stories.

Dr Rajat Mitra

Reflections, Questions & Answers

1. **Basil Fernando, AHRC:** Dr Mitra, you gave the example of a serial killer having such a big emotional and behavioural impact on the entire city. Can a prison station where torture is practiced have the same effect?

Dr Rajat Mitra: Absolutely. Once, a group of children were asked to describe a police station. Many described it symbolically, as a fortress, because nothing that went in came out. None of their drawings showed tables or chairs. When asked why, the children replied that they simply did not think of it. Such impressions of the police station convey an ominous, unwelcoming and uncomfortable environment in which people suffer violence and normal daily life just doesn't happen. Such fear not only paralyses but causes ordinary people to become capable of all sorts of other monstrous acts. [Dr Mitra described in an earlier public talk at Hong Kong University (the first instalment in AHRC's anti-torture series) an encounter in which he witnessed two suspects detained by the police slapping each other. When asked why they were doing so, it was discovered that the boys had to prove their innocence by denouncing the other, and to demonstrate their innocence by

physically abusing the other. Captors were therefore absolved from the responsibility of themselves injuring the suspects. Instead, the officers in charge simply caused such fear in the boys of being wrongly accused that they were turned against each other. Such methods are a patently unscientific way to investigate a crime – even if both suspects are innocent, they would keep abusing each other in order to assert their own innocence.]

2. **Basil Fernando, AHRC:** The Nazis had police stations in the centre of town. These “centres” proved to be most effective ways to physically control people. Individuals, families and communities were also immobilised through the constant export of fear from these centres. You say we black out when traumatised. Is there also an intellectual “black out” where people consciously avoid the topic altogether?

Dr Rajat Mitra: My professor asked me, “Don’t you have anything better to talk about” when I wanted to give a talk on torture. He asked, “Will you talk about it objectively and scientifically?” I said yes, yet he was still reluctant. This is considered a taboo topic even in academic/mental health circles. I decided to respect his feelings and changed the topic, but I wasn’t going to let that slide so easily. Torture is associated with evil and religion/superstition. It is therefore not usually considered within the realm of science. And torture is quite certainly, in my opinion, an illogical and inhuman practice. I was accused of using religious jargon to prove my point when I said torture is evil. But torture is not mysterious or esoteric. The effects are palpable. The study of torture and its effects are scientific.

John Joseph Clancey: We should also do a study of how much psychologists focus on/are aware of torture and its effects. We need to use important information like this when talking to parliamentarians.

3. **Answer Styannes, AHRC:** (1) Thank you for your interesting talk. I wanted to ask about the psychological effects of torture, which is a legal term, and the specific psychological effect of violence. (2) Recalling what you said about the memory of traumatised person, I would like to ask whether it is possible to train individuals to guard against “black outs”? This is important for human rights defenders who are constantly under threat of violence, and who need to provide details for a case to be waged in court.

Dr Rajat Mitra: There are a couple of things we all need to know about memory. You never forget. Previously they thought that memory was localised but it’s been proven now otherwise (we still do not know the precise way in which this fragmentation happens).

I was talking of torture as a subset of violence. The thing characterising torture is the intensity, close contact (it's always personal) and physicality of the experience. I have extreme difficulty obtaining data because such abuse is typically perpetrated by authority (usually authority you are supposed to trust/depend on). There are very few who are able to do long-term and practical work with torture survivors. This is because these workers threaten the very system in which they operate. They risk their livelihoods and attract threats to their person and family.

4. **Nandana Manatunga, Sri Lanka:** You say human beings freeze. When it comes to the legal arena, freezing, particularly in cases of rape, it is sometimes described as giving consent ("Why did not you protest or run away?").

Dr Rajat Mitra: Judges now examine reasons why victim didn't run. For instance, if the perpetrator(s) threatens to carry out further physical hurt (killing her or harming her family). Also, coming from patriarchal culture, I understand that some societies teach their women to submit and fear men. We now know that the "fight or flight syndrome" understanding of response to trauma is now outdated. Freezing can be natural response under overwhelming stress to maximise our chances of survival.

5. **Nandana Manatunga, Sri Lanka:** Perpetrators do not accept culpability. I remember a police officer in Kandy who was known for torture. He came personally to me to ask for help for victims' families. I didn't know if this was out of guilt.

Dr Rajat Mitra: This is probably a deviation from what we have learnt to expect. "The Sunflower" by Simon Weisenthal is a book in which a Nazi person is asking forgiveness from the person he traumatised. However, this is the exception; most Nazis didn't. In fact, at the time of the act, most perpetrators genuinely believed they were doing the right thing.

Stanley Milgram's experiment that revolutionised psychology: university graduates were chosen and told to give electric shocks to another group of subjects, told it was a scientific experiment. Of course shocks weren't real, but the experiment blasted myth – the ability to be cruel cuts across cultures. Perpetrators simply conferred responsibility of acts to those commanding them.

6. **Eran Wickramaratne, Sri Lanka:** Which is worse, mental or physical torture?

Dr Rajat Mitra: The two categories are not quite comparable, and my response would depend also on your definition of "worse". Does "worse" mean incapacitating/debilitating? Or does it mean less morally acceptable? Physical trauma also brings with it psychological anguish. Both physical and psychological

injuries may be permanently damaging. I will take the stand that mental torture is “worse”. The human body will surprise you. It has a high threshold of pain. Simply brutalising a terrorist often does not result in information. But begin to eat away at the mind and there are encouraging results. Mental trauma, because it isn’t visible, is also neglected. Frequently, treating the mind is less straightforward, less easily resolved than a physical injury.

7. **Samar, AHRC:** What [can we do] when violence is so much a part of everyday life that people are either desensitised or begin to consume/give social sanction to such violence (e.g. Brahmin “enjoying” or approving the beating up of a *Dalit*)?

Dr Rajat Mitra: Bystanders get a “high” or excitement that is not quite enjoyment. It’s an imprint on the brain, a lasting impression. You can’t seem to stop watching, partly due to fear, partly due to shock, partly due to relief that you are not the victim. When the scene’s over and you talk to them, you realise how seriously affected they are by the event. The fear sets in. The best control mechanisms for fear are subtle. You may not even realise it’s there until much later, or at all. We shouldn’t begin with the premise that the bystander or perpetrator “enjoys” the torment either – they do so out of training, habit, ignorance. They might require just as much help as the victim to escape the vicious cycle.

8. **Hasina Kharbhih, India:** I’ve worked in northeast India quite a bit, with law enforcement and non-state actors as well. Both groups adopt torture to accomplish their organisational or other selfish personal goals. Law enforcement “gear up” to alcoholism because they’re asked to perform certain things they may not agree with. The violent actions spill over into their homes and their family becomes more vulnerable too, to attacks by these same individuals.

Dr Rajat Mitra: Officers themselves need medical-psychological support to address these anger and alcoholism issues. While an addiction or bad habit may not necessarily imply or cause a person to be capable of monstrous acts, these can fuel a vicious cycle. Feelings of disempowerment or general helplessness in your job may lead to escapist drinking, for instance, to viciously beating your child at home simply because it’s an environment in which you can still assert your authority. The child suffers and the home is no longer a safe place to be. The parent, usually the father, might also feel guilty later on but this only fuels the bitter feeling of powerlessness, which will lead to further violent acts, momentary outlets through which the individual may be expressing his rage and frustration.

9. **Kanyarat Wiphatawat, Thailand:** Thank you Doctor for your presentation. I wanted to ask for your views concerning torture victims’ right to remedy and

redress (i.e. not just monetary compensation but opportunities and funds for rehabilitation).

Dr Rajat Mitra: It is important we look into these seriously. We have to first acknowledge that torture is just not worth it. Even without considering what is moral or ethical, the real cost of torture is very, very high. The ecological history of humanity tells us that certain diseases, practices or events affect all of humanity so badly it threatens our communities' and species' survival. In the past it may have been tuberculosis, bubonic plague, smallpox, AIDS, witch hunts or even war. Today I would say that in parts of the world, the social, political and economic consequences of torture has reached the same epic proportions. If we do not stem the practice, now so prevalent in parts of Asia, we may one day find that we are not able to. Granting remedy and redress to victims of state-sponsored torture is within our power. As parliamentarians, as professionals, as people with a conscience, I urge us all to act today.

10. **Baseer Naveed, AHRC:** I want to know the exact effect on lives of torture victim. A male victim/perpetrator becomes aggressive, the female victim/perpetrator mostly become extremely submissive, withdrawn.

Dr Rajat Mitra: If effect occurs to entire family, it's less destructive (however perverse that sounds) because the experience is common to all the individuals and there is an emotional understanding, however tacit, amongst them. If torture occurs only to one or a few individuals within the family, the "rate" of suicide, divorce and recurring acts of violence is high. Women are particularly susceptible to suicidal tendencies and the inability to parent or connect with her children (nurturing capacity is diminished) – this is controversial, but makes sense to me.

11. **Poonsuk Poonsukcharoen, Thailand:** What is the difference between Post-Traumatic Stress Disorder (PTSD) and traumatic memory?

Dr Rajat Mitra: Traumatic memory has not been linked to PTSD. Rather, it is *disrupted normal memory*.

12. **Abbasi Nusrat Bano, Pakistan:** Last night in a graveyard in Pakistan 45 women were raped, all victims of a single man. Families suspected they were tortured. The man responsible was asked why but he said he didn't know. Are these fetishes applicable to perpetrators of torture?

Dr Rajat Mitra: There are people addicted to sexual assaults – brain receives an adrenaline "high" from different stimuli (from committing rape on children,

keeping bomb in crowded market place, killing people). We're still trying to discover who will get high on what. Most people experience a sense of extreme excitement or euphoria when going through what we would consider "normal things" such as having your children run toward you, or when you receive an award. Others have feet fetish, or may be addicted to alcohol or drugs. There are certain arguments that hurting someone else may or may not get you "high", but being able to exercise power and complete control does. You need to uncover the individual's personal history to discover what the man's response is to corpses, in the case you raised, or to torture. However, these studies are (i) retroactive and therefore not as helpful in *preventing* torture, (ii) are time, energy and human resource consuming, and often are not even conducted in developed countries where torture does not seem to be as prevalent. In a country where torture is prevalent, it appears justified. In countries where torture isn't prevalent, it is still a taboo topic, and politicians still do not prioritise the issue. It is difficult therefore to get funds for such research and rehabilitation.

PRESENTATION: REHABILITATION & RESEARCH CENTRE FOR TORTURE VICTIMS (RCT)

JAN OLE HAAGANSEN, RCT, DENMARK
22nd July 2012



Unbearable Pain: the Impact of Torture (Outline)

- Individual, familial/community and societal level
- Definition
- What the UN Convention against Torture prohibits
- Facts about torture
 - ✓ Zimbardo – an unethical study? http://en.wikipedia.org/wiki/Philip_Zimbardo
 - ✓ Milgram http://en.wikipedia.org/wiki/Milgram_experiment
- Effects of torture
- Consequences of torture for the individual
- Consequences of torture at the community level
- Societal consequences of torture
- Effects of torture on politics
- Effects of torture on the economy
- Effects of torture on culture/society
- How to deal with torture
- It's about remembrance and living memory (one generation)

*Jan Ole Haagenzen,
RCT, Denmark*

Reflections, Questions & Answers

1. **Hasina Kharbhih, India:** I wish to raise a question about the dislocation of human rights workers working in isolation. Parliamentarians are generally not involved when it comes to dealing with these activists. Sometimes, there exists just documentation without proper strategies to connecting these statistics and studies to the political environment and how it needs to change. We have spoken of the victims' and survivors' pursuit of compensation. In Denmark, such programmes are integrated into the national healthcare system. There therefore is the constant link between advocacy, prevention of atrocities, compensation and rehabilitation.
2. **Basil Fernando, AHRC:** Regarding compensation, in Sri Lanka you have avenues through which to demand your fundamental human rights. You can make declaration or demand compensation. Instead, the debate has revolved around quantum and time frame for the delivery of these funds and services.

PRESENTATION: HONG KONG

HONOURABLE MARGARET NG NGOI-YEE,
HONG KONG
22nd July 2012



Introduction by John Joseph Clancey

We may wonder today about the institutions that have helped free Hong Kong from political violence. Let me say a few words about Hong Kong's Legco ("Legislative Council"). Many would not consider Hong Kong a full democracy. Half of the seats are functional constituencies. Margaret is a barrister elected for four terms by the legal sector to be a representative in the Legco. Before that, she was a journalist. Margaret's speeches are not overwhelming. You have to listen to the building argument. Her newsletters every month come with a recipe. Her arguments and articles are well-crafted, a subtle combination of ideas and arguments. The reasons and argument falls in place convincingly. Let's listen today to what Margaret has to say about the phenomenon of torture and political persecution and the role of the judiciary in combating this practice.

Margaret Ng Ngai-yee

Thank you very much, good afternoon everybody. My talk is simple, it is this.

1. Compared to other parts of Asia, Hong Kong is relatively free from politically-motivated torture
2. Freedom from politically-motivated torture does not imply that Hong Kong is a paradise of liberty. Rather, institutions exist to protect human rights
3. The threat is always there, and close at hand. If we do not keep vigilant, institutions may crumble and the day will not be far off when Hong Kong will see very unsavoury violence

Let me begin with a story. Last month, 10 June, on a day as hot as this, 25000 Hong Kongers marched in the streets chanting "Lee Guangyao!" Now Lee Guangyao is a journalist-activist jailed the past 21 years for his involvement in the Tiananmen Square incident. He was kept in solitary confinement, handcuffed with cuffs far too small for him and thereby disabled, blinded and his teeth were knocked out because he tried to go on hunger strike. Upon release at the beginning of the year, a reporter from Hong Kong went to interview him and asked him if he regretted taking such a hard path. He said, "I'd rather they chop off my head, then to repine".

A few days after this interview was broadcast, he was found dead in a hospital room, standing before the window with a cord around his neck (he was reported as having hung himself). His family came just in time to see the position the body was in before authorities rushed the corpse off to perform an “autopsy” and to cremate his body. Lee’s sister, who had been caring for him, mysteriously disappeared.

Hong Kongers refused to accept this account. “He has not committed suicide! He has been ‘suicided’!” We want to know the truth”. Elderly citizens and students blind-folded themselves and walked to the sound of a beating of a drum. “We want to experience what it is to not see, to identify with this man.”

The international press asked them, “How did this man inspire you?” This man inspired many because of the people’s inner sense of the grave injustice committed against this man, a man who was so strong in his conviction that he was prepared to put down his life for freedom and democracy in China. I would argue also that this man was so inspiring because, increasingly in their hearts, Hong Kongers see the shadow of oppression, force, violence and invasions into their freedom.

In 1997, the British colony of Hong Kong was handed over to China on the basis of a joint declaration. China laid down points of fundamental policy for Hong Kong. This was later worked into a Basic Law. The Hong Kong people’s freedom and independent system was guaranteed. At the same time, Article 23 in the Basic Law required Hong Kong to enact laws to prohibit acts of sedition, theft, secession, “wrong” political association, etc. In 2003, government under Tung Chee-wah tried to implement by Article 23 “national security” legislation – this move got Hong Kongers very worried. Famous marches and protests by over half a million pressured Tung’s administration into reconsidering the legislation. The people felt their civil and political freedoms had been threatened. Eventually, the Bill was withdrawn. The Article 23 legislation was stayed because Hong Kongers clearly expressed non-acceptance. In 2005, the Chief Executive who tried to introduce this Bill stepped down. Is it good news for HK? Not necessarily. But this demonstrated our sense of justice and fear that our own freedom would be curtailed.

I said that by comparison, we have fewer atrocities in HK than in the mainland (for instance when we marched for Lee Guangyao). Protestors were asked, why march for Lee Guangyao and not the thousands of others also under similar political persecution? Lee Guangyao was a representative man. He represented the rest, the numerous we didn’t or still don’t know about.

Hong Kong is not a bed of roses. We have constant fears about “confessions” extracted under police custody, intimidation (fear of domestic and police violence). There were

many women arrested on suspicion of being prostitutes, strip-searched although there was no need or justification. Many people who were engaged in peaceful demonstrations were also detained and humiliated with strip-searches. Increasingly, we are witnessing greater police control at public demonstrations. The use of (larger) pepper spray during demonstrations is increasingly approved. While the government claims police are exercising self-restraint, such proclamations provoke questions of what police do when not exercising self-restraint.

On 17 March 2009, a police constable shot 31-year-old Hong Kong-born Nepali Bahadur Limbu dead on a hillside slope. The assumption was that the man was South Asian because he was dark complexioned. The man who was killed was mentally disturbed, but the claim was that the police officer shot him in self-defence. The Hong Kong community rejected the official explanation. The inquest into the shooting took 76 days, and the wife of the deceased was represented by lawyers and also cross-examined, along with other witnesses. She was given legal aid because she could not afford it herself. Although the eventual verdict by the jury was that the police officer was not to be blamed, this case proceeded to civil court.

The law demands that any circumstance surrounding death not completely straightforward, including deaths in official custody, should be properly investigated by the Coroner. Yet the Limbu case did not come about merely because of laws or codes but due to pressure from the media, civil society, individual Legco members and the general public.

Let me share another incident with you. The Vice-Premier of China, Li Keqiang, came to celebrate Hong Kong University's Centenary. Security tightened all over campus. The free press was interfered with and students were prohibited from protesting. A man wearing June 4th logo shirt was forcibly taken away by police although he lived in a nearby estate. Reporters who attempted to take photographs had their cameras covered roughly and pushed aside. Lousy explanations were given at the Legco to explain away the lack of media freedom ("The policeman thought he was about to be hit and raised his hand. It got caught in the camera"). The University subsequently set up its own independent inquiry to investigate complaints of political persuasion and compromised independence. By statute, an independent Police Complaint Council was established to review and draw conclusions from internal police complaint mechanisms. They then formed their own conclusions.

These stories I attempt to tell you disclose but a mild situation compared to the rest of Asia. But I want to highlight that behind the scenes there is still the fear of authorities using violence. What has checked the complete degeneration of our civil liberties is the peoples' belief and memory of laws since recent colonial times, wherein rule of law and political freedom are crucial components back in the "metropole", the United Kingdom.

Such national experiences have generated certain expectations, values and beliefs that will only fade as living memory dies.

What institutions and political norms currently exist in Hong Kong?

1. The Coroner's Ordinance (reviewed shortly before 1997) established the need for most deaths to be investigated. It awarded pathologists and the Coroner the power to investigate and open public inquests wherein concerned parties were legally represented. These inquests were then decided upon by a jury.
2. An independent judiciary determined the different "weight" and "admissibility" of confessions. The burden of proof rested on the prosecution to show that the confession was voluntarily given. This clause used to be under "Judges' Rules".
 - a. Wire Tapping Law – the Hong Kong government used to carry out illegal wiretapping and there were litigations against it. Court ruled against government's illegal and unconstitutional acts and declared that if the government continued that would be unlawful (outside Basic Law). So this legislation had to be passed.
 - b. Government that still considers rule of law important and requires it of the people. It therefore needs to live by these same laws itself. One day this may no longer be the case.
3. The independence of legal profession
4. The independence of a still relatively free press
 - a. Stories such as Lee Guangyao's would not otherwise see the light of day
 - b. Hong Kong Journalists' Association has the ability to compel police to admit to fabrications in official press releases or publications, for instance
5. Half of Hong Kong's Legco geographically elected
 - a. This is not ideal. There is also the issue of there not being truly universal suffrage. There are 30 seats contested under "geographical constituencies".
 - b. The other half of the Legco are "functional constituencies" (another 30 seats)
6. Strong, flourishing civil society and Non-Government Organisations (NGOs)
7. Strong emphasis on human rights, equality in opportunity, public complaint-making mechanisms
8. The presence and participation of many different actors from civil society in Legco meetings concerning legislation. This is essential to the democratic process.

We must simply watch over these institutions and ensure they do not become watered down. They must not "occupy" the political spaces already conquered. We must provide moral and practical support for victims of the political process. The independence of our judiciary is also essential – but everyone must act fearlessly against the overwhelming power of the state. Preventing politically motivated violence (including torture) is possible through democratic expression of dissent – we have observed this in many places. The

public must therefore be careful to avoid resorting themselves to violent protest, thereby legitimising or necessitating even more forceful measures by a threatened regime.

The Legco finally passed an Amendment to immigration law to include a system for torture claimants (subset of refugees). These are provided legal assistance (protecting natural justice) by the state. The Government has had to do this because they lost a number of court cases – judicial review declared actions of the Government unconstitutional. Then again, abuse of this system is possible, here as elsewhere. There is sometimes hostility against those who claim to be victimised elsewhere and wish to settle here, a latent xenophobia or reluctance to assist, provoked either by false reports or by a fear of the saturation of the job market. Genuine torture victims therefore labour under a great and not entirely unreasonable suspicion of the local community. One true of 5000 claims is still a person with full, uncompromised rights to be protected. Hong Kongers are merely concerned about threats to our own freedoms to the extent of caring less for the freedoms and rights of others. This is not something to be proud of.

Honourable Margaret Ng Ngoi-ye,
Member of Legislative Council, Hong Kong

Reflections, Questions & Answers

1. **Answer Styannes, AHRC:** I was involved in a Non-Government Organisation (NGO) coalition in Jakarta which proposed to the government a draft Amendment to the Criminal Procedure Code. I assume the situation [of human rights] in Hong Kong is better than in Indonesia. But I wonder, because of anti-torture laws in Hong Kong, what would happen if an accused counters a charge with claims of torture? Would a parallel proceeding be undertaken? Yesterday we were talking about a “trial within a trial” mechanism, but could you please elaborate? When civil society in Jakarta was drafting a proposal to government concerning anti-torture they were not entirely sure of the technical aspects or justifications for these mechanisms.

Margaret Ng Ngoi-ye, Hong Kong: Usually the police beat up a detained person with the goal to extract a confession. That statement will be produced in court as evidence. If the prosecution presents this statement as part of “admissible” evidence, the court immediately requires the prosecution to prove that the arrested person made this voluntarily. If the accused doesn’t challenge the admissibility of the evidence, that is the end of the matter. Even so, the prosecutor is obliged to go through certain formalities (set questions such as “Did you induce...pressure... force”). If the accused challenges the admissibility of the evidence in the same trial

(*voir dire*), the court must first address the voluntariness of statement. The defendant will begin by explaining why it wasn't voluntary ("I was beaten up, threatened with arbitrary detention, my family was threatened, I was denied food, etc."). This is followed by examinations and cross-examinations of witnesses and involved parties. The court will decide then and there if the evidence is inadmissible on the grounds of the suspect being coerced or forced. If the evidence is deemed inadmissible, the prosecution will not be allowed to produce it when arguing their case. Otherwise, the statement may be "admissible" but would not qualify as very strong or damning evidence. These days, the voluntariness of confessions is not so debatable since confessions are video recorded.

2. **Jan Ole Haagensen, RCT:** Let's discuss countries in Asia instead and perhaps less about Hong Kong where there are, admirably, greater safeguards for rule of law and democracy. What recommendations would you [Margaret] have for parliamentarians? What should the relationship between parliamentarians and civil society look like?

Margaret Ng Ngoi-ye, Hong Kong: It is important to ensure human rights in any community are not the business only of human rights defenders. In Hong Kong, we're fortunate that human rights are ever-present in debates in parliament and Legco. The (relatively) democratically elected Legco has always kept an eye on that and are very sensitive to reports and complaints of humiliating treatment. A Security Panel monitors the police force, so questions are asked, questions such as "What is the policy governing strip searches? Are people kept overnight in police stations?" The government always attempts to avoid such questions but meetings with the Legco are open (reporters are present) so there is a lot of attention. This is a highly political process – constituents will hear and discredit the authorities if the government cannot satisfactorily account for its actions. Human rights groups act as advisors/experts and make recommendations to the Legco concerning the contravention of human rights. This is also Hong Kong's international obligation, to watch and criticise or commend what occurs in other countries. Frank discussions are important to a true understanding of why it is wrong to strip search unnecessarily. There are complaint mechanisms to individual members of the Legco. Human rights groups and the press work together with the Legco to be catalysts for discussion and change. Although I have appealed a lot to what Hong Kong currently looks like, I believe that if you can aspire to such a condition in your respective countries, you might achieve a great deal for the protection of human rights.

3. **Bijo Francis, AHRC:** Acceptance of confession as evidence is prohibited by statute ("inadmissible") in many common law systems, regardless of voluntariness, or rendered very weak evidence. The exception is where a confession statement is

recorded by a judicial officer, and only when the person in question requests to do so. Testing the veracity of such material is essential. It is important to convey to legislators here today that, globally, the acceptability of suspect statements have been diluted, precisely because of the abuses the admissibility of such documents as evidence exposes the individual to. In many Asian countries, the suspect's family is threatened – this makes the suspect very pliant to whatever the desires and whims of the authorities are.

Margaret Ng Ngoi-ye, Hong Kong: I agree that protections are being challenged by threats external to the state/non-state actors. The rise of national security (in the face of terrorism, particularly) has permitted abuse of laws and other constitutional safeguards, for instance. Any accused person must be given an opportunity to defend himself (this principle is central to notions of fair trial and presumption of innocence). It is difficult to resist the argument of “national security”. Hong Kong's anti-terror law waters down civil rights.

Erik Wendt, RCT: What can the legislature do? We invite deputations from the public. When we discuss the fairness of torture complainant systems, external organisations with experience are asked to join the Legco and give evidence directly (this is a more inclusive, consultative and thorough process).

4. **Eran Wickramaratne, Sri Lanka:**

- a) As a legislator, I wish to talk about how humiliating treatment creates public opinion/awareness in HK. We have very few women in our parliament, and male politicians are not checked for laughing at the issue of stripping suspected prostitutes. Such disrespect for the female person instead exacerbates the poor condition of human rights, a philosophy and belief system that emphatically asserts the inherent dignity and equal worth of the human person.
- b) I would like to raise another interesting observation. In Hong Kong, you have institutions and no “fair” or “ideal” elections. In Sri Lanka, we may have elections, but this is rendered farcical in the face of “no institutions”. I would rather be [in] Hong Kong!
- c) Partnership between parliamentarians and civil society – we need a paper with proper recommendations and laws that better include non-state representatives in decision-making. Unfortunately, civil society in Sri Lanka is beaten down.

Margaret Ng Ngoi-ye, Hong Kong: Human rights defenders are often seen as troublemakers. I've been standing for elections in the legal functional constituency. Some people say I'm on the bad side of Beijing and that won't be good for trade and our economy – and so on and so forth. Human rights defenders' participation in politics also becomes more precarious by the day, even in Hong Kong, which cannot

claim to represent the rest of Asia. We must constantly invent methods and means to support and strengthen each other while doing our work, both as human rights workers/organisations and as morally convicted parliamentarians.

5. **Pushpa Bhusal, Nepal:** In Nepal, the Maoist cadres petitioned the Supreme Court, which ruled against and ordered the executive to release them (quite a progressive move). I want to hear more about the relationship between three powers. What can the judiciary do to make effective decisions against the government?

Margaret Ng Ngoi-ye, Hong Kong: I would name independence of judiciary as the most important to rule of law. But how do we maintain the independence of the judiciary? Judiciary cannot speak for itself outside court. It is civil society that protects it; civil society is an irreplaceable component in this process of maintaining the independence of the judiciary. And every legislature has a strong reason to protect its judiciary. In 1999, the issue of children of mainland Chinese being able to vote in Hong Kong came up. The judiciary referred to Beijing. This interpretation process compromised the autonomy of Hong Kong courts. Usually, in cases of human rights abuses, it is the citizen or individual waging a case against a government possessed of overweening power. The people must then decide what their bottom line is: law (an established, objective standard, or **rule of law**) or political correctness (always deferring to authority, or **rule of Rex**, which may be a monarch, an autocrat, a powerful political party or a corrupt bureaucracy).

At any rate, it's a given that rule of law is ironclad (ultimate transgression to not). But in parts of Asia, the price for observing rule of law is high: it might cost you your business, livelihood, family, freedom, health and/or life. There was an incident in which a foreign domestic helper wanted to apply for a Permanent Resident's permit after living in Hong Kong for 7 years. Yet many locals worried that if the court set precedent and allowed her to become a Permanent Resident, many foreign workers would rush to settle in Hong Kong, where salaries and the average standard of living is high. There was a movement against the lawyer who represented this foreign domestic worker. And when you represent a client, it is not on behalf of your political party or affiliation; yet this was used as criticism against my party. Hong Kongers therefore can be hypocritical and turn on their own beliefs (right to have legal representation) when their own interests are compromised. There is no solution but vigilance – civil society must also watch itself and the congruity of its own actions, or risk harming the same civil, political and economic liberties they today freely enjoy.

6. **Bijo Francis, AHRC:** There have been examples of the Indian legislature cooperating with the AHRC. The Bill on Torture for Bangladesh has been proposed.

The time frame was 7-8 days, and this bill is today being debated in Parliament. Our Member of Parliament wasn't sure how far the bill would go, but at least it has passed the first stage. A law needed to be drafted, so section by section it was written by the legislature and the AHRC. The lok sabha debated hardly 30 minutes after 9.30pm, and the law against torture was passed last year with hardly any debate – barely 362 words to deal with the enormous issue of torture! It was a farcical exercise. Since it was a central decision, it needed to be run past the upper house too. Non-Government Organisations have been putting pressure on the upper house to approve this law too. A Parliamentary Select Committee was formed to call for objections and suggestions (critique and sample legislature to see what they would like to see as law against torture). They suggested a comprehensive review of the existing draft which included the definition of law, definition of torture and that described properly degrees of severity of torture. This Alliance should be used as a platform for further collaborative efforts. This is a responsibility civil society should also shoulder. No legislator is going to come around to ask for help on his or her own initiative.

Margaret Ng Ngoi-ye, Hong Kong: Interestingly, legal professionals compose a working group that explains judgements of court that require the reformation of complaint processing mechanisms. The Legco constantly involve the legal fraternity – cooperation between legal profession and the parliamentarians are crucial. I was going to ask what the relationship is between parliamentarian and electorate in your countries. If you do not do your duty, your electorate should not vote him in. Then again, this assumes a completely rational or at least single-minded electorate, which of course is not the case anywhere.

7. **Kanyarat Wiphatawat, Thailand:** So judges should be independent and accountable. Should parliaments appoint judges? Why should judges have the power to decide when not elected by the power (admittedly in America some elected, some appointed, but we are speaking of Asia).

Margaret Ng Ngoi-ye, Hong Kong: The common law answer to this question is that judges do not have personal power, only power as given by law. They are there to interpret and judge by law. Whether or not they have exceeded their powers is obvious in the judgement itself. Judgements must therefore be reasoned, and should be subject to appeals. I still favour appointment of judges but making the process as open, fair and competitive as possible to ensure security of tenure. And do remember that judges make evaluations based on an existing corpus of statutes. The legislature still bears the responsibility of creating or altering laws.

PRESENTATION: PAKISTAN

ABBASI NUSRAT BANO,
MEMBER OF PARLIAMENT, PAKISTAN
22nd July 2012



Dear friends and delegates,

I am thankful for AHRC for inviting me to represent legislators of Sindh, Pakistan. We first proposed separate land from India. The people of Sindh have been a vanguard for democracy, rule of law and human rights. The dream of democracy is not fulfilled.

I am from the Functional Pakistan Muslim League (PML-F), and my party stands for the elimination of all forms of discrimination and torture and ill-treatment. I have been a member of the Sindh provincial assembly for the past four and a half years. We have introduced several legislations, bills, motions and urgent motions for the protection of rights of children, honour killing victims and women (for instance, we have put in place a 33% reservation for women to hold positions in government). I recently submitted a resolution on honour killings and sexual harassment in workplaces and women's entitlements to land. I also participated in a roundtable conference in Karachi organised by Hamdard University and the AHRC, and have suggested possible changes in legislation at these meetings.

Torture is an endemic problem in Pakistan. Most reported cases of torture and ill-treatment in law enforcement agencies are said to occur in the pre-trial period. Torture is perceived as the easiest and fastest way to achieve certain goals (extracting information and confessions). Today, because only two female parliamentarians will deliver presentations on behalf of their countries, I wish to highlight specifically problems faced by women. Pakistani women face the worse form of physical and psychological abuse from officials, particularly at police stations. Women are not safe even in asylums and safe houses. Although numerically more cases of torture reported involve men, women are particularly vulnerable and most of their cases go unheard. It is therefore difficult to establish a statistic to represent this sector of society. From January to November 2010, 1998 cases of torture were reported. The real number is almost certainly higher than that. In 1973, the Pakistan Constitution and Criminal Procedure Code criminalised torture. In 2010, our country ratified the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT). However, there were no practical efforts to sensitize law enforcement officials to such violence. Child abuse, bribery, corruption and extraordinary or martial laws have disrupted the people's conception of "normality". Torture is an instrument of terror and fear, especially for more progressive forces in society who constantly challenge the status quo.

PML-Functional affirms that we will support any initiative for the eradication of torture in custody, whether under police or other law enforcement agencies. I want to remind you that according to the 18th Amendment of the Constitution, provincial governments also have the power of legislation. I announce here that I will move a Bill in Assembly against all forms of torture and ill-treatment, and commit here that we will also work on the rehabilitation of victims. *Inshallah* (“God willing”), Sindh will be the first province with legislation against torture. Thank you very much.

*Honourable Abbasi Nusrat Bano,
Member of Parliament, Pakistan*

PRESENTATION: PAKISTAN

HONOURABLE SENATOR SAEED GHANI,
PAKISTAN
22nd July 2012



I do not have a legal background, but we have discussed pieces of legislation with some legal experts. There's a simple point in my mind that we are just trying to resolve the contradiction between laws. In Pakistan, the perpetuation of torture and the practice of enforced disappearances continue due to ignorance. It is the randomness of the violence that is the most horrifying – violent acts are committed even against our Chief Justice and President. Torture is used to extract bribes, information and confessions. Within the law, torture is not even defined. Since 2008, there have been attempts to reform our law. We have witnessed the passing of the 18th, 19th and 20th Amendments to the Constitution since 2010. The power of the central government has become decentralised; provinces have greater autonomy, to the extent of making reservations. There is more freedom of expression. In 2010, furthermore, Pakistan has acceded to the International Covenants of Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention against Torture (CAT), with reservations fully withdrawn by 2011. We have, as our previous speaker has mentioned, a domestic violence prevention act that minimally demonstrates the authority's intolerance toward any kind of abuse against the individual. We have legal aid offices; we try to protect women in the workplace, and so on and so forth. In 2012 there was the Industrial Relations Act, and I dare say our National Human Rights Commissions (NHRC) is rather powerful and independent.

But I argue that there is strong resistance from the judiciary. The ousted elected prime minister shows the judicial activism. People call it judicial extremism. A major problem we face is wonderful work with legislation sans implementation. We have a violent judiciary and a violent media. Our people may not be ready to accept democracy.

Honourable Senator Saeed Ghani, Pakistan

PRESENTATION: NEPAL

HONOURABLE PUSHPA BHUSAL,
MEMBER OF CONSTITUENT ASSEMBLY, NEPAL
22nd July 2012



Nepal: Combating Torture

Respected Chair,

Fellow members of the Parliaments, representatives of the civil society and other delegates to the program, organized by the Asian Legal Resource Centre and the Rehabilitation and Research Centre for Torture victims,

I thank you for providing me this forum to share the latest developments in the combat against torture in Nepal.

1. The political changes in 1990 led to the adoption of a democratic constitution and of a multiparty system and introduced liberal values in the society. Among many others, right against torture, cruel, inhuman and degrading treatment was recognized as a fundamental right and after four years, a Torture Compensation Act was promulgated by the Parliament.
2. In the aftermath of the promulgation of the 1990 constitution, the government of Nepal ratified major six international human rights treaties making Nepal bound by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture. However, Nepal already had an obligation under the Geneva Conventions ratified in 1963 to treat people with dignity even during armed conflicts. Further, the promulgation of a Nepal Treaty Act in 1991 established the primacy of international law over domestic law. International law can be referred to in the court to declare any provision as ultra virus. The Supreme Court can issue a directive order to bring in line domestic legislation with the provisions of international law.
3. Nepal also established a National Human Rights Commission, which is mandated to protect human rights in accordance with international and national laws, and combating torture has been part of its mandate since then. Further, the Government also introduced a National Human Rights Action Plan of which torture is one of the focuses.
4. The 10 years of armed conflict in Nepal brought a new political scenario. A Comprehensive Peace Agreement was signed in 2006 followed by the Interim

Constitution, 2007. The Interim Constitution prohibited and criminalized torture and ill-treatment by including the right against torture in the chapter of fundamental rights. Five years after the adoption of the Interim Constitution, the Government prepared a bill to criminalize torture, which was tabled in the Parliament. (But now we don't have a parliament so we need to wait for the new elected government). The text of it and comments are provided in the dossier prepared and circulated by the ALRC in this program. It is an executive proposal and I will assure you that the Parliament will make necessary changes in the Bill to meet the international obligation and best practices around the world.

5. The Comprehensive Peace Agreement, as stated above, promised to deal with the past atrocities committed by the government forces and by the Maoist insurgents, including torture, through the adoption of a Truth and Reconciliation Commission and Disappearance Commission and for which two separate bills were tabled in the Parliament. These two separate bills have been discussed – all parliamentarians, across the political spectrum, felt an obligation to discuss. There were many debates and many points of agreement (e.g. reconciliation, rehabilitation and compensation process. If perpetrator cannot pay, should state pay? Amnesty process?). The political parties and the government are in the mood to prosecute some of the emblematic cases, as a deterrence, to ensure that such thing will not happen again.
6. The activism of NGOs in Nepal has exposed the practices of torture by the Police, Armed Police Force and the Nepal Army and other quasi-judicial bodies with alarming indication that Nepal must do away with such practices. Currently, the National Human Rights Commission, previously the Office of the High Commissioner for Human Rights in Nepal and many national and international organizations and the respective security organizations themselves have been engaged in providing human rights trainings to reform the behaviour of the security forces. This is a positive development. This has helped to reduce torture, but it still remains a part of the system as a matter of attitude of the law enforcement authorities.
7. The Special Rapporteur on Torture visited Nepal in 2004 and in his report he provided many recommendations and these are still being implemented. Further, Nepal took part in the Universal Periodic Review in the Human Rights Council and many of the UPR recommendations are being discussed and implemented in Nepal. The voices and concerns raised by the international organizations like the Asian Human Rights Commission have contributed to raise the profile of torture cases and many torture compensation cases are being filed in the courts by organizations like Advocacy Forum. The government is implementing the court orders to provide the compensation to the victims. Supreme Court order legislative to pass domestic violence and sexual harassment bills (and others based on humanitarian concerns.)

8. The political changes in Nepal, in 1990 and 2007 have strengthened democracy, but we are still continuing our efforts to build up the rule of law and human rights protection system. The Police Act, Criminal Code, Evidence Act, the prosecution and the prison system are under question. The government has tabled the Criminal Code Bill in the Parliament. This Bill was so effective but the Criminal Procedure Code interred in parliament at the time but Parliament since dissolved. Waiting on next Parliament. Works are underway to prepare the Police Bill and Witness Protection Bill. The Supreme Court has recently ordered the government to reform the quasi-judicial bodies¹ and make them in compliance with the fair trial and independence of the judiciary. Further, the Supreme Court has also ordered to reform the Military Justice System to make it in line with the independence of the judiciary. We are in the process of change and increasingly feeling that we need to invest in the infrastructure and human resources development of the police and other law enforcement bodies, along with legal and systematic reforms.
9. The Government has been working to implement the 1325 and 1820 resolutions of the Security Council and torture against women. Women's role in the transitional justice system is being discussed and an action plan is being prepared. In the last four years, Advocacy did survey of women in custody (10-30% report torture). Plans for transitional justice system.
10. Finally, the practice of torture is reduced in Nepal, but the system remains to be built and we have a long way to go to make Nepal a torture-free country. I request the international organizations, the Asian countries and other members of the international community to continuously engage in Nepal and play a role to combat torture. Nepal is going through a very difficult time, but at the same time we are reforming the laws, institutions and procedures. The active civil society and the human rights friendly political parties will work further to raise the voices, build the system to fight against torture and to restore the inherent inviolability of physical integrity of human personality. All are concerned about political situation in Nepal. Restructuring policies has been debated in Constituent Assembly but too many disagreements/no consensus. First of all, we must write a Constitution. We have to meet agenda of transitional peace constitution. We need parliamentary elections. We will hope that someday we'll have a good government that will enable us to address issues of HR violations such as torture and enforced disappearances. We have a strong civil society and media who always support our movement. We have a very

1. Established for the administrative purpose, but do exercise some judicial power such as the Chief District Officer, Forest Officer, Warden of Conservation and so on. The Supreme Court has recently asked the government to reform the law to provide such authority to the courts and to take immediate initiative to train such official with legal knowledge, fair trial procedure and judging skill.

strong judiciary that guides legislative and executive, therefore we are hopeful yet. Interim Constitution + no clear cut way to hold Constituent Assembly elections. What is the best way to achieve democracy for Nepal? Hari Phuyal and I will do our best to respond to your questions and comments.

Thank you.

*Honourable Pushpa Bhusal,
Member of Constituent Assembly, Nepal*

Reflections, Questions & Answers

1. **Erik Wendt, RCT:** There is the need to develop a professional police force.
2. **Hari Phuyal, Nepal:** Police have expressed obliquely that they need better facilities (custodial centres), more funds and more training. The Police Bill is being considered and discussed, and the international community is more than ever better engaged in the police reform process.
3. **Baseer Naveed, AHRC:** For policing systems in Pakistan, we had in 2002 a Police Reform Act made under the military government. However, the police force was so strong that within a year, they had successfully resisted the reform. No government is able to implement the reform and it is not simply a matter of political will when it is not backed by commensurate material capability. The First Information Report remains the best instrument – it can result in a case against any person, so even high officials are terrorised. More recently, parliamentarians have been discussing over roundtable conferences in many cities the importance of reform. New, younger police officers are corrupted during training; they are trained to believe that without torture you cannot do your job. I found in Pakistan many legislators and members of civil society who want to join the draft Bill submitted by the AHRC. We will make changes again to that Bill in September and submit the amended draft. People feel the overwhelming power of the police and therefore more inclined now than ever to push for some change.
4. **Samar, AHRC:** I think much ill stems from the politicisation of the police force. It is a vicious cycle: when you're in power, the temptation is too great for any party to refrain from politicisation of police. The police force is a potent material force that can bolster your political advances.

5. **Baseer Naveed, AHRC:** The police have become the mafia in Pakistan, which is a situation slightly different from the one in India.
6. **Bijo Francis, AHRC:** According to the Constitution, policing is primarily the task of the state. The parties in power may not be consonant with New Delhi. And New Delhi usually just gives excuses for not wanting to, or being unable to control the power holders from the states. Sometimes it is a function of scratching backs between parliamentarians and police (half our parliamentarians are convicted criminals!) Few Indian organisations work on police reform, so there is little (discernible) effort from civil society, and this is not entirely the fault of civil society, which often feels it cannot make a difference to institutionalised flaws. Torture is a tool used by authorities for social control. Fear and bullying – these are the mechanics of negative social engineering by politicians and police and other powers on the ground.
7. **Wong Kai Shing, AHRC:** Institutions have been hijacked by various forces and the police are a law unto themselves.
8. **Eran Wickramaratne, Sri Lanka:** I agree with what Samar mentioned just now, but I do not think it is merely the police being politicised. The entire system is politicised. You would never get a conviction against a politician, even if some have obviously committed gravest crimes. Police are extremely corrupt. There has been a recurring debate on the devolution of powers – why not to the provinces? Land powers & police powers. The reason behind not devolving police powers is the fear of separatism (I personally don't think this is actual reason. Perhaps it is more accurately the fear of loss of socio-political control.) I learnt from Hong Kong that reform of police must be accompanied by paying them decently. Sri Lanka has a huge percentage of the population employed in the public sector. How do we tackle the problem of remuneration and compensation? Where do you start? It's an unaffordable problem. Training and decent salaries necessarily improve the situation, but I think we may also need to shift people to the private sector to make for a leaner and more efficient public workforce. Yet this is a highly resisted move and you'll lose political power just suggesting this.
9. **Basil Fernando, AHRC:** I have a question for our Pakistani friends. You say police are power unto themselves. Is there any book or study done by an independent person that really analyses real situation of police in your country? Is the extent of politicisation of that institution still relatively low? The problem does not rest with only the police but with related institutions too. The media is also creating problems in Pakistan. Some assert that although the police are guilty of certain wrongs, these are limited in the grand scheme of things (societal breakdown). Is the judiciary not

taking up its role, despite the faith people place in the institution? The judiciary is accusing the president of being corrupt – when then should we blame the judiciary, especially when the parliament is not doing anything? There is a two-liner in the constitution that secures the immunity and impunity of the President. As far as your party is concerned, would you say that the President is not corrupt?

Senator Saeed Ghani, Pakistan: No.

10. **Wong Kai Shing, AHRC:** In the 1970s, Hong Kong's Independent Commission against Corruption (ICAC) and the role of police shifted. The main challenge faced by the government was maintaining order, stabilising society and maintaining the "system". To solve issues of unemployment and to rebuild the confidence of society in law enforcement, the government needed to address the issue of corruption. At that point in time, there existed material incentive or political motivation for the police to be undisciplined. Therefore, Hong Kong's government acted to remove these incentives and to build a highly independent watchdog commission. It was important to build up civilian police rather than a police force that would only look after interests of colonial power. This was enhanced by political will in the 1960s and 1970s on the part of the British to accept limits on their own exercise of power, owing to their own political climate and values back in their home country.
11. **Basil Fernando, AHRC:** From my knowledge of Sri Lankan police, the problem is not limited to inadequate or unattractive salaries. But there is another side to the matter – most are simply not qualified. I don't wish to reveal everything, including behaviour at the very top within that set-up. Departmental Orders all also neglected. Where direct supervision is required by officers, however, such a requirement is completely ignored. Senior police have to cover their duties otherwise they'll be found responsible. Such a hierarchy is dysfunctional and there's no transference of a culture of discipline, responsibility or commitment to truth and justice.
12. **Danilo Reyes, Philippines:** The Philippines is comprised of 85 provinces and 1200 municipalities. Many mayors and other power-holders treat the police force as their private army. There is clear "patronage politics". Of course an immediate way to alleviate the situation could be to pay military more, but this is not a solution. It only buys a mercenary sort of loyalty (i.e. loyalty to money and nothing else) to the central government. And of course, the government can always be outbid by other unsavoury characters. In Philippines, the police are certainly not being given a small budget. Also, other government employees could use it as argument for more pay. This is clearly not feasible or sustainable for the government. A more suitable kind of intervention would be to investigate the top and keep those few responsible. It would also be necessary to inculcate a sense of calling and duty to justice and the truth.

13. **Kanyarat Wiphatawat, Thailand:** The police pose a structural problem. The chief police officer has a lot of power to appoint, fire, transfer, promote, demote and pay (or not pay) police officers. In the meanwhile, the government may have policies for cracking down on drugs, or fighting insurgencies, causes which serve as convenient covers for the exercise of total impunity by the police. Furthermore, there has been a troubling legitimisation or oversight of (refusal to acknowledge or punish) extrajudicial killing, torture, corruption. To this day, the police officers responsible for the above crimes have not been prosecuted. There have been many important reports by independent commissions but these are not taken seriously by those able to bring about reform. Politicians may be able to do something about this.

14. **Answer Styannes, AHRC:** We have so many Non-Government Organisations in Indonesia. I think what we need for our police is investigation training. As in Sri Lanka, the police are trained to torture, so it's not human rights training specifically they need, although that is separately also necessary. Rather, the police simply need professional investigative training. This is first and foremost the right way to frame reform. Only then will the duty be taken seriously, and undertaken with pride. Indonesia also needs more safeguards against torture – revising the Criminal Procedure Code and the rest of the justice system is a beginning. In Indonesia, detention is the rule and awarding bail is the exception. This is not in compliance with international standards (“liberty and security of person”). In Indonesia there exist loose and subjective requirements for detention. The period of detention may be up to 61 days without judicial supervision. These are very technical but practical and important requirements: to have medical examinations prior to and after detention so responsibility for injuries can be traced. What has also become necessary is the revision of military court rule – armed forces personnel are not tried in ordinary court, so there's no transparency. The establishment of independent bodies to visit and monitor detention centres is another example of moves that can be made even before accession to the Optional Protocol of the Convention on Torture.

15. **Sayed Muhammad Muliady, Indonesia:** I want to make another point. After 1998, there were significant developments separating the police and military. At the moment, Parliament is trying to limit power of police by revising the Criminal Procedure Code. I would also like to emphasise that sometime ago, Parliament passed a law to revise juvenile court. This law provides that there will be “special” police, prosecutor and judges for children to reduce the likelihood of abuse.

16. **Hari Phuyal, Nepal:** I don't want to give wrong impression that our police are non-corrupt. We are challenging their shady activities through reports and litigation. We realise that the legal system is extremely important. I urge parliamentarians to

review police regulations and any anti-torture legislation: these documents make it so much easier to protect human rights in society. We have some good legislation (the compensation act, for instance). Compensation and departmental action can prove more constructive than simply lynching the police.

17. **Poonsuk Poonsukcharoen, Thailand:**

- i. Civil society's participation is important.
- ii. Spreading awareness about civil and human rights is important. Our organisation focuses on access to justice.
- iii. Drafting Bills to pass CAT into domestic law is quite important in some of our countries. We just don't have good mechanisms for victims' redress and rehabilitation. We would like to propose laws to parliament with ...
- iv. ...international support.
- v. Update: We are currently preparing a report on Sharia law for government.
- vi. Two important Universal Periodic Review (UPR) recommendations are
 1. Anti-Torture Law
 2. Optional Protocol of the Convention Against Torture (OP CAT)

18. **Bijo Francis, AHRC:** Perhaps we could see this as determining where the bottom line is. Where does prosecution begin, when investigation is begun or when a charge filed to court? It should be the latter, when the suspect has been adequately advised and represented, where he has a chance to defend himself. And in court, the process should be taken seriously and the verdict should not be a foregone conclusion.

DRAFT DECLARATION

24th July 2012

Preamble

The Parties to the present Declaration,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family;

Recognising that these rights derive from the inherent dignity of the human person;

Believing that, in accordance with the Universal Declaration of Human Rights, the ideals of democracy, civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby all may enjoy their civil and political rights;

Deeply troubled by the pervasiveness of the archaic and abhorrent practice of torture by law enforcement, the military, intelligence agencies and other government or government-affiliated institutions throughout Asia, especially in light of every individual's inherent right against torture and against other cruel, inhuman or degrading treatment or punishment;

Understanding and accepting the duty of States under the Charter of the United Nations to promote universal respect for and observance of human rights and freedoms;

Acknowledging the commendable albeit insufficient past efforts Asian countries have made to promote the UN Convention against Torture;

Acknowledging in particular the moral and legal obligation of parliamentarians and other political leaders, in both their personal and official capacities, to initiate and effect such change as is necessary for the guarantee of the fundamental rights and liberties enshrined in the Universal Declaration of Human Rights;

Hereby agree upon and declare the following.

Independence and Modernisation of Institutions – Practical Needs and Recommendations

An independent, impartial and effective system of investigating, prosecuting and adjudicating cases of alleged abuse is critical not only to the legitimacy and functionality of the authorities but to the success of any anti-torture campaign. A crucial element of establishing and maintaining the independence of key institutions is the allocation of adequate monetary, infrastructural and human resources for the purpose of modernising methods of policing.

The elimination of the barbaric practice of torture is dependent upon

1. Strategic Management of Public Institutions

- a. The enforcement of command responsibility. This is another key organisational strategy to improve policing systems and ensure accountability and transparency amongst policing agents and systems. Senior officers should directly oversee and be held responsible for discipline amongst their subordinates and in the areas under their jurisdiction.
- b. The modernisation of the police force through the provision of proper training, adequate funding and suitable facilities by the authorities. Torture has been proven counterproductive in investigative or rehabilitative processes. The use of torture or ill-treatment to punish, to intimidate or to extract confessions or information from any individual is therefore an indication of the unacceptable tyranny, backwardness, irrationality and dysfunction of policing institutions, systems and processes. Enhancing gender-sensitivity amongst law enforcement personnel and gender inclusiveness in legislative frameworks are a critical way forward for Asian states. Female officers must be provided at least the same level and type of training as their male counterparts.
- c. Increasing the salaries of law enforcement personnel. This may be one way in which the restoration of the dignity and professionalism of policing work may be made possible. Parity of pay between female and male personnel must be another important aim to be considered during the writing of budgets.
- d. The formalisation of legal and ethical norms and standards in the public service against torture and ill-treatment must be prioritised by legislators, the executive and the judiciary.
- e. Gender-based violence must be specifically addressed when considering the elimination of all ill-treatment by public servants. Women are especially vulnerable to criminal acts such as rape, not currently or widely considered to be another way in which police threaten to or actually torment the women and their families. Such gender-specific crimes by public servants are used to

extract information, confessions or even to “punish” the individual; strategies must be carefully devised to fight the entrenched practice of such abuse.

- f. Detention systems should be reformed so as to minimise the practice of torture. The physical security of any individual in detention should be the general principle adhered to, and deprivation of liberty considered a last resort to protecting a clearly defined “public interest”. The period of detention should be in accordance with international human rights standards and should not be any longer than absolutely necessary. Individuals taken into custody must be taken promptly before a judge, and detention must be served under judicial supervision. Newly admitted individuals must be medically examined by independent and competent doctors to discourage physical abuse while in detention. Detention facilities should also be periodically subjected to visits and reviews by external and independent monitors.

2. **Political Will**

- a. The ability and political will of leaders to initiate legislative precedents, reviews and other institutional reforms. This political will can be expressed through legislation to criminalise torture and to bring domestic laws into congruence with international laws and standards.
- b. Close cooperation between the legislative, judiciary and executive. Legislators are vital in generating and representing popular opposition to the passage of draconian acts, national security laws and other bills that impinge upon the sanctity of human rights. The executive must demonstrate competence in the internal regulation of their various ministries and government agencies. Finally, the judiciary must act as a final bulwark against the abuse of human rights, as well as to deliver justice when such violations do occur.
- c. Resisting arguments of national security (particularly the need to address the constant threat of terrorism) as justification for the practice of torture or ill-treatment. The dehumanising or demonising of political opponents has been effectively utilised to reduce public support for these victims of arbitrary and state-sponsored violence. This tendency to disregard the absolute nature of human rights in favour of other principles and goals is dangerous and could result in the erosion of respect for human rights and the general rule of law.
- d. The belief that effective policing requires the use of torture, and the appeal to cultural relativism as justification for the oppressive use of coercive and violent methods, are fallacies that need to be consciously resisted. This is particularly because of the tremendous power political and religious leaders wield, and because advances in the field of psychology categorically state how counter-productive torture is in the fight against crime.

3. **Protecting the Protectors**

- a. Governments' willingness to guarantee media and press freedom. These are avenues through which abuses, particularly those perpetrated by overwhelming powerful and/or secretive state apparatus, are more quickly and systematically exposed. Journalists, reporters and editors are particularly vulnerable to falling prey to the same abuses they attempt to expose, and should therefore be provided proper protection. The use of social and other electronic media should be encouraged and protected, as these enable mass communication. The right of all individuals to seek, impart and receive information must be guaranteed by their governments.
- b. Human rights activists and defenders, as well as political dissidents, are often exposed to all sorts of persecution, particularly physical and mental torture and ill-treatment. Special measures should be taken against such attacks on the individuals' freedom of expression, association and movement, as these are entitlements each individual should expect to enjoy. These groups are vital nodes the government can furthermore rely on to provide programmes and initiatives for the rehabilitation of torture victims and for the distribution of information and research concerning institutional failures. Human rights organisations are therefore integral to the review of government agencies, a process of great import to any government's continued success. Human rights defenders and organisations are also sites of engagement between the authorities and civil society – their suppression is a slur on the democratic credentials of any government claiming legitimacy on the basis of popular support. Governments should therefore accede to relevant International Protocol, establish support systems for these groups and individuals and formulate legislation that protects the right to report on atrocities committed.

4. **Prevention is Best, Otherwise Redress**

- a. The ability and political will of leaders to deter, investigate, prosecute, convict and punish perpetrators of torture and other forms of ill-treatment, as well as to compensate and rehabilitate victims of torture – this is a right established by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights – and strengthening rule of law.
- b. Governments should bring about credible mechanisms to investigate allegations of torture through the provision of adequate funding, human resources and training.
- c. States have an obligation to exploit all possible avenues to treat victims of torture. Their programmes should holistically address both the physical and psychological impact of the trauma upon the victim, the victim's family and community and wider society.

- d. Research should be commissioned and funded by the government into uncovering the long-lasting effects of torture that prevent the reintegration of victims and perpetrators into mainstream society, as well as into ways in which these problems can be addressed.

Reaffirmation and Undertaking

The right against torture and ill-treatment is an absolute, non-derogable right. Convinced of the inherent dignity of the human person and committed to protecting the right of all against torture and other ill-treatment, I undertake, in both my personal and official capacity, to combat all forms of torture and ill-treatment in my country through all means available.

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Practicing Ethics in Action

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

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

Other regular publications by the Asian Human Rights Commission:

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

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