

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 legislation 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".)