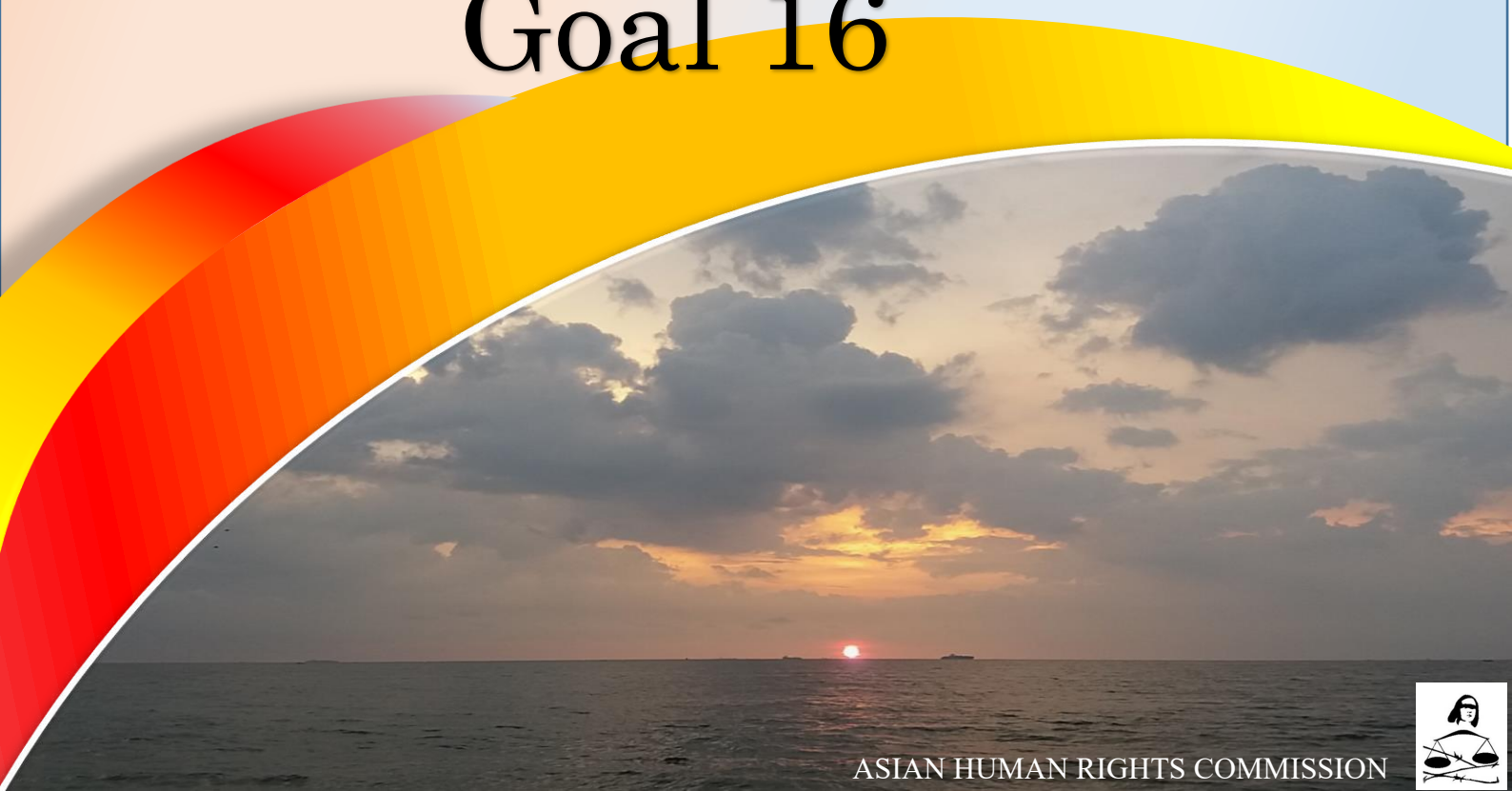




# Promoting UN Sustainable Development Goals 2030 Goal 16



**Promoting**

**UN Sustainable Development Goals 2030**

**Goal 16**

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**Vol. 1, No. 1**

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**SUSTAINABLE DEVELOPMENT GOAL 16**

**Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.**

**Published by the Asian Human Rights Commission**



# Goal 16

## TARGETS

## INDICATORS

### 16.1

Significantly reduce all forms of violence and related death rates everywhere

#### 16.1.1

Number of victims of intentional homicide per 100,000 population, by sex and age

#### 16.1.2

Conflict-related deaths per 100,000 population, by sex, age and cause

#### 16.1.3

Proportion of population subjected to physical, psychological or sexual violence in the previous 12 months

#### 16.1.4

Proportion of population that feel safe walking alone around the area they live

### 16.2

End abuse, exploitation, trafficking and all forms of violence against and torture of children

#### 16.2.1

Proportion of children aged 1-17 years who experienced any physical punishment and/or psychological aggression by caregivers in the past month

#### 16.2.2

Number of victims of human trafficking per 100,000 population, by sex, age and form of exploitation

#### 16.2.3

Proportion of young women and men aged 18-29 years who experienced sexual violence by age 18

## 16.3

Promote the rule of law at the national and international levels and ensure equal access to justice for all

### 16.3.1

Proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms

### 16.3.2

Unsentenced detainees as a proportion of overall prison population

## 16.4

By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime

### 16.4.1

Total value of inward and outward illicit financial flows (in current United States dollars)

### 16.4.2

Proportion of seized, found or surrendered arms whose illicit origin or context has been traced or established by a competent authority in line with international instruments

## 16.5

Substantially reduce corruption and bribery in all their forms

### 16.5.1

Proportion of persons who had at least one contact with a public official and who paid a bribe to a public official, or were asked for a bribe by those public officials, during the previous 12 months

### 16.5.2

Proportion of businesses that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public officials during the previous 12 months

## 16.6

Develop effective, accountable and transparent institutions at all levels

### 16.6.1

Primary government expenditures as a proportion of original approved budget, by sector (or by budget codes or similar)

#### 16.6.2

Proportion of the population satisfied with their last experience of public services

#### 16.7

Ensure responsive, inclusive, participatory and representative decision-making at all levels

##### 16.7.1

Proportions of positions (by sex, age, persons with disabilities and population groups) in public institutions (national and local legislatures, public service, and judiciary) compared to national distributions

##### 16.7.2

Proportion of population who believe decision-making is inclusive and responsive, by sex, age, disability and population group

#### 16.8

Broaden and strengthen the participation of developing countries in the institutions of global governance

##### 16.8.1

Proportion of members and voting rights of developing countries in international organizations

#### 16.9

By 2030, provide legal identity for all, including birth registration

##### 16.9.1

Proportion of children under 5 years of age whose births have been registered with a civil authority, by age

#### 16.10

Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

##### 16.10.1

Number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months

##### 16.10.2

Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information

## 16.A

Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime

### 16.A.1

Existence of independent national human rights institutions in compliance with the Paris Principles

## 16.B

Promote and enforce non-discriminatory laws and policies for sustainable development

### 16.B.1

Proportion of population reporting having personally felt discriminated against or harassed in the previous 12 months on the basis of a ground of discrimination prohibited under international human rights law.

## **Promoting**

## **UN Sustainable Development Goals 2030**

## **Goal 16**

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Editors : Basil Fernando  
Avinash Pandey

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# Introduction to this publication:

## **SDG Goal 16: Challenges posed to access of justice in less developed countries**

**T**he United Nations Sustainable Development Goals (SDGs) for 2030 includes the creation of inclusive societies through access to justice and strong institutions, Goal 16. To pursue this goal in seriousness, there needs to be a better understanding of what prevents access to justice.

The access to justice requires certain basic factors:

- a)** The possibility of obtaining justice exists within the legal system of a particular country;
- b)** All wrongs, particularly related to crimes and violation of human rights, can be addressed by way of effective remedies that exist within the legal system;
- c)** All persons have access to this system without any kind of discrimination (This is particularly important if persons who are of minorities, marginalised groups and particularly the poor are to have access to justice.);
- d)** No one should be deprived of obtaining a remedy for wrongs purely on the basis of a lack of financial resources. This necessitates legal aid schemes and other means of effective assistance given to those who lack resources to come before the courts and obtain the redress they deserve.

Now we may examine each of these four elements from the point of view of their availability within a given legal system, particularly in less developed countries.

### **a) The legal system which makes justice possible should exist in the first place.**

Persons from more developed countries with long histories of democracy and human rights may assume that this basic element must exist everywhere. That assumption is not based on actual observation of these systems in many of the developing countries. In many Asian countries, there is a limited development of the law regarding many wrongs. Various kinds of political upheavals in these countries have halted the development of courts and legislation. Torture and ill treatment, for instance, is not recognised as a crime in many of the countries in Asia. Enforced disappearances and extrajudicial killings are also not recognised in several jurisdictions. Furthermore, these

countries face not only a lack in substantive law, but also limitations in procedural law, which also affects access to justice.

#### **b) Remedies should exist for wrongs committed**

Aside from the fact mentioned above that many wrongs are not considered legal crimes, and thus have no remedies, there is another factor hindering the obtaining of remedies. In many Asian countries, there is no effective system of investigation into all crimes, making it impossible to provide remedies. A remedy requires a serious investigation into the crime/alleged crime.

Another aspect regarding remedies is the extent of proof required before punishment. Some countries have adopted philosophies that

virtually displaces the burden of proof on the prosecution or the persons who allege a crime, and instead puts the burden entirely on the suspected person. The Chinese trial system for instance, although in theory recognises the burden of proof on the prosecution, in fact procedurally has created a situation where the accused has to give the evidence first, and then is thoroughly questioned on the basis of statements he has made during the time of a prolonged detention. Thus confession becomes the basis of conviction.

In any attempt to improve access to justice, it is essential to conduct detailed studies on what is the extent to which the wrongs done to a person is justiciable.

Access to justice also implies adequate funding for all institutions related to the administration of justice, such as the investigative arm of the police, which serves the function of obtaining evidence to decide whether a crime has been committed or not. The prosecution department and the judiciary must also be adequately funded and staffed.

#### **c) Access to justice without discrimination**

Justice needs to be available to all the persons living in a country. There should not be any kind of ranking by which some are excluded from legal liability while others are subjected to it. For example, there are some countries in which those who represent the government cannot be brought to court or prosecuted, whatever the crime they may have committed. Even if they are called upon to give evidence before the courts, the evidence is sent by way of return documents and they have to be accepted without having the opportunity of cross examining the authors of such reports or documents.

In countries such as the Philippines, Bangladesh, Pakistan and Sri Lanka, impunity is granted to everyone who had taken part in enforced disappearances. Thus the victims or family members of victims of such serious crimes have no access to justice because either by direct means of laws and regulations, or by indirect methods of non acceptance of complaints and non investigation of complaints, they are denied of even taking the earliest steps to seek justice.

Then there are forms of discrimination regarding minorities. It may be minorities in terms of indigenous people who live outside mainstream society and they have no institutions created by the state in order to look into their complaints and where necessary to prosecute the offenders. Then there are racial minorities or ethnic minorities- the specific wrongs done to them is not justiciable due to obstacles arising from lack of legislation or other institutional variants. There are also limitations of justice towards women. Lack of effective protection prevents women in many countries from taking advantage of laws because of the heavy repercussions that could follow. Lack of special procedures deny the right of children for access to justice particularly in the cases where they are exposed to sexual abuse and other forms of violations of their rights. Thus, there is a vast area that needs study and understanding of the limitations placed on various categories of persons from obtaining justice.

#### **d) Availability of justice to the poor**

This is a topic that is usually discussed when talking about access to justice. Many persons who have been wronged in a serious way have no financial resources to get the services of competent lawyers in order to pursue their cases. There are only a few places in Asia where satisfactory systems of legal aid exist to assist them. There are several countries in which there is no such service at all. Countries that have some services, such as assigned councils or junior lawyers who may undertake such cases, see the disadvantage of matching the knowledge and experience of lawyers who appear against them. The party that can spend money on lawyers can retain highly competent lawyers, who with their acquired skills make the work of junior lawyers very difficult. There are thus a vast number of persons in many of the countries who have just grievances, but who do not dare to undertake the journey to seek justice. The result is the prevalence of an imposed silence, as people try to bear their suffering in silence, rather than seek justice. This resignation has an extremely negative impact on the entire society. People consider the system itself as unjust, reducing their trust in the law and public institutions.

### **Strong institutions**

The SDG for 2030 requires that every society should have strong institutions which would provide protection to the people. From the point of view of justice, these basic institutions are the systems of civilian policing, the department of the prosecuting lawyers (in some countries they are called the state councils representing the attorney general), and the judges and material infrastructure for courts to function.

In most of the countries in Asia, there are serious limitations in all these institutions. Some of the limitations could be summed up as thus:

**a.** Severe forms of political interference. Disregarding the notion that any interference into the administration of justice is considered a crime, politicians from the top to the bottom interfere into the work of the police and the prosecuting departments, as well as the judiciary. Interference in the judiciary takes place in several ways. One is in the

very process of recruitment, in order to exclude those fair minded and independent persons, and instead select those who are willing to comply with requests from powerful persons. This could happen at the stage of recruitment or at the stage of promotions to higher positions. The interferences into the police could come with threats of transfers or dismissals if they do not comply with the request made by those who hold powerful positions. This has a domino effect on the whole institution of civilian policing, and appears to replace independent actions on the basis of what is legally correct and wrong with what is expedient in the political environment of a country.

**b.** One of the ways by which the entire justice administration system could be virtually made non effective is through failure to allocate adequate funding for the policing, running of the prosecutor's department and judiciary, including the failure to provide buildings, technological facilities and adequate number of staff for running of the system. This inefficiency within the system could also lead to any litigation taking a long time. Even a chief justice in India has remarked that in order to deal with the backlog of cases in his country, it would take at least 300 years. In Sri Lanka, the average time for finalisation of a criminal case would be 17 years, noted a parliamentary select committee report. Similar delays exist in Bangladesh, Pakistan and the Philippines.

**c.** Other countries have systems built not on the basis of rule of law, but on principles opposed to the rule of law. Cambodia and Myanmar are glaring examples of such systems. These legal systems exist not for protecting of the individual from the unjust repressive machinery of the state, but in order to protect the State from the individuals. With this change of standpoint, it virtually means a system of justice based on liberal principles and values does not exist in these countries at all.



# Ethical perspectives and Priorities on human rights and civil society in Asia

By Basil Fernando<sup>1</sup>

This Article was initially published in Ethics for Life - Voices from Ecumenical Partners on a New Paradigm of Life and Society - Published by Bread for the World in 2019

William Butler Yeats gave a glimpse of the post-Second World War world in his poem The Second Coming:

*“Things fall apart; the centre cannot hold; Mere  
anarchy is loosed upon the world,*

*The blood-dimmed tide is loosed, and everywhere The  
ceremony of innocence is drowned;*

*The best lack all conviction, while the worst Are full  
of passionate intensity.”<sup>2</sup>*

This poem was published in 1919, in the immediate aftermath of the First World War and in the environment that finally produced the Second World War. Even before this, Nietzsche had predicted the development of extreme forms of violence in Europe as a result of the displacement of the belief in God, which was the source that created what was understood to be the basic moral fabric of Europe.<sup>3</sup> In 1922, TS Eliot’s The Waste Land was published. Eliot wrote, “I will show you fear in a handful of dust.”<sup>4</sup>

The ‘new world’ brought about by the Second World War and the atomic bombs possessed by both the United States and the Soviet Union led to new challenges to humanity. It is in light of these challenges that the modern global project for human rights had its

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1— Basil Fernando was executive director of the Asian Human Rights Commission and Asian Legal Resource Center in Hongkong

2— William Butler Yeats, “The Second Coming”, [www.poetryfoundation.org/poems/43290/the-second-coming](http://www.poetryfoundation.org/poems/43290/the-second-coming)

3— Friedrich Nietzsche, The Will to Power. Walter Kaufmann (ed.), New York: Random House, A Vintage Giant, (1967): 7

4— T. S. Eliot, “The Waste Land”, [www.poetryfoundation.org/poems/47311/the-waste-land](http://www.poetryfoundation.org/poems/47311/the-waste-land)

beginnings.<sup>5</sup> The adoption of the Universal Declaration of Human Rights<sup>6</sup> by almost all countries in the world took place against that background. In what became the foundation for the new world order, a radical doctrine advocating the equality of all

human beings was articulated. No human being was excluded in this radical new perspective. It was agreed that all have the same dignity and status.

Thus, the Universal Declaration differed from all other well-known declarations on human rights: the Magna Carta of 1215 confined the extension of rights to the barons, particularly limiting the right of king to arrest, detain or punish them without fair trial, or to deprive them of their properties; the rights of man declared in the French Revolution was confined to the country, though the principles spread later on and have a universal significance; this is also true of the American Bill of Rights. None of these documents mention the rights of women or minorities. The Universal Declaration was to be for all, irrespective of difference of class, caste, gender or other distinction, including disability.

Thus,

*the Universal Declaration was an attempt to think in terms of the whole world and to attempt to set up standards of treatment for all human beings.*

In the earlier development of the Western world, a similar notion was expressed when St Paul wrote, ‘... there is neither slave nor free, there is no male and female, for you are all one in Christ Jesus’ (Galatians 3:28). The only limitation was in terms of a belief in Jesus Christ, thus defining limits in terms of religion.

The radical new perspective adopted in the Universal Declaration is of great importance as, during the time up to the Second World War, most European nations understood the world to be the Western world. The justification of colonialism was often articulated in terms of superior civilizations as against other inferior civilizations. The Universal Declaration virtually abolishes that manner of understanding of the world.

*While the implications of this wider understanding of humanity may have many connotations, one of the most significant implications was that humanity shares a common standard of morality and ethics.*

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5— V. R. Krishnayer, *Dialectics and Dynamics of Human Rights in India: Yesterday, Today, and Tomorrow*. Calcutta: Eastern Law House, (1999): 139

6— UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), [www.refworld.org/docid/3ae6b3712c.html](http://www.refworld.org/docid/3ae6b3712c.html)

Thus, the various articles of the Universal Declaration set out, as rights, those essentials that go to the preservation of this common morality. Beginning with the idea of non-discrimination and non-exclusion, the Declaration goes on to specify elements that are essential for the preservation of the dignity of human beings. The Declaration creates universal prohibitions against those practices that are opposed to notions of shared moral standards as birthrights of all human beings. The prohibitions of illegal arrest and illegal detention; the right to fair trial by a competent judiciary before any punishment can be meted out; rights of appeal – these were declared to be the rights of every human being. These rights, won after centuries of struggle involving sacrifices of life and liberty, were declared to be the rights of everyone. It may be argued that the rights won through historical struggles were declared to be the inheritance of everyone.

The Universal Declaration also set out some basic rights of all human beings to be respected by all states, such as the right to life, right to education, right to healthcare, right to leisure and culture, and the like. The standards of morality expected of the new world were thus set out in the Universal Declaration.

In subsequent developments, the global human rights project attempted, through covenants and conventions, to expand the idea of moral standards into legally binding obligations. The adoption of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966 marked this development. Since then, many attempts have been made to make provisions for transforming the basic moral obligations contained in the Universal Declarations to be binding obligations under international law as well as in domestic law.

Besides creating legal obligations, extensive attempts have also been made towards the development of legal mechanisms for the enforcement of these moral obligations to be transformed into legal rights through international as well as legally enforceable rights with remedies under domestic law. Various UN bodies, such as treaty bodies, the appointments of Rapporteurs, and specialized bodies such as the Committee against Torture, and similar groups relating to the rights of women and children, and many other specific subjects were part of this attempt. The Vienna Conference on Human Rights<sup>7</sup> created the High Commissioner's Office for human rights, which was considered a high point in the search for the practical implementation of human rights. The development of various regional mechanisms, such as the European Court of Human Rights and other bodies, were also attempts in this same direction.

The subsequent development of the Human Rights Council was also meant to be a more effective means of achieving the practical implementation of rights than the former

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7— World Conference on Human Rights, 14-25 June 1993, Vienna, Austria

mechanism under the UN Human Rights Commission<sup>8</sup> Although the actual achievement of this aim may have suffered setbacks due to many pressures, the aims behind the creation of the UN Human Rights Council was to create progress towards better implementation of human rights in the world. Work on cases is also carried out by the Human Rights Committee.

The overarching principles obligating states to implement rights were entrenched under Common Article 2 of the ICCPR and ICESCR.<sup>9</sup> This obligates states to take legislative, judicial and administrative measures in order to ensure the implantation of rights enshrined in the Universal Declaration and other covenants and conventions duly adopted by the United Nations.

## **The challenges**

The last few decades have seen developments that point to certain limitations in the vision of the achieving universal moral norms and standards through the jurisprudential and practical developments described above.

A key limitation was the inadequate attention given to the protection of moral norms through legal systems without taking into consideration yet unrealized political and social developments in a considerable part of the world. The assumption that mere international agreements could result in political and social developments leading to the adoption of legal norms has been proved a fallacy in many parts of the world. While it has been possible to achieve consent and even ratification of United Nations covenants and conventions, the actual measures taken for practical implementation of such norms and standards have been much less than expected.

The basic problem involved is not difficult to understand. In developed democracies, which are, for the most part, a number of countries in the Western world, there have been several centuries of political and social struggles to reach that stage. Thus, the higher degree of compliance with moral norms and standards has not happened merely due to legislative enactments or other declarations but the opposite; legislation and other declarations have

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8— United Nations Secretary-General, “Secretary-General’s Address to the Commission on Human Rights”, 7 April 2005, [www.un.org/sg/en/content/sg/statement/2005-04-07/secretary-generals-address-commission-human-rights](http://www.un.org/sg/en/content/sg/statement/2005-04-07/secretary-generals-address-commission-human-rights)

9— Editorial Board, “Open letter to the global human rights community: Let us rise to article 2 of the ICCPR”, in Article 2 1(1): 2-4, <http://alrc.asia/article2/in-print/volume-1/volume-1-number-01/>; issue 10, article explaining the meaning of legislative, judicial and administrative measures in article 2

followed victories in the struggles to subdue certain forces in society and have led to high levels of consciousness about a new set of obligations achieved through political and social struggles. The historical narratives of various countries demonstrate what these struggles have been and how new standards have been achieved. In fact, these narratives are very well documented and easily available for anyone who is interested in looking into them.<sup>10</sup>

In many other parts of the world, due to various developments peculiar to each of these countries, such struggles have not led to similar results. There are many places in which struggles for equality have been successfully repressed and where the old order, based on opposite standards, has been able to maintain itself. Any serious study into the histories of inequality will demonstrate how certain aspirations for change have been suppressed or, in certain circumstances, how such aspirations did not spread enough to win support among the larger section of the population in those countries. What is simply obvious is that entrenched inequalities that have been dealt with by some societies have not been successfully addressed in other societies.<sup>11</sup>

When the Universal Declaration and other UN covenants and conventions were adopted, serious thought should have been devoted to ways in which less advantaged countries – in terms of the moral and legal norms envisaged in the Universal Declaration of Human Rights – could be practically helped to achieve the political and social developments that could create the foundation for respect for these newly articulated ideas of radical equality to be achieved in these countries.

This would have required extensive and frank discussions in which people who aspire for these changes in these less advantaged countries could, themselves, have had the chance of expressing their views on the matter.<sup>12</sup> Perhaps, in the immediate aftermath of the Second World War and the emergence of a new global situation in terms of the development of nuclear weapons, may not have provided such a climate for a global discourse on the matter. However, the issue is that such a discourse did not take place, and, therefore, the undertakings in terms of the Universal Declaration did not take place in an adequately well-informed situation.

In the subsequent decades, very little has been done to overcome this situation. Even today, there is in the world no well-informed consensus on the manner in which the less advantaged countries (in terms of political and social development required to bring about radical equality as required by the Universal Declaration) can make the achievement of these rights a practical possibility.

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10— For example, Gary Haugen and Victor Boutros, *The Locust Effect: Why the End of Poverty Requires the End of Violence*. Oxford: Oxford University Press, (2014); Geoffrey Robertson, *The Tyrannicide Brief: the Story of the Man who Sent Charles I to the Scaffold*. London: Chatto & Windus, (2015).

11— Nick Cheesman and Basil Fernando, “Why Asian Legal Institutions Fail to Protect the Human Rights of the Vulnerable”, Fernand de Varennes and Christie May Gardiner (eds.), *Routledge Handbook of Human Rights in Asia*. London: Routledge, (2018, forthcoming)

12— For an example of a model that can be used in such discussions, see: Basil Fernando, *Demoralization and Hope: A Comparative Study of the Ideas of N.F.S. Grundtvig (1783-1872), Denmark and B.R. Ambedkar (1881-1956), India*. Hong Kong: Asian Human Rights Commission, (2000).

## **The underlying problem**

It is not difficult to identify how it is possible for one part of the world, known as developed countries, to be in a position to practically implement the norms and standards envisaged in the modern international law on human rights while those other countries, usually called developing or less developed countries, have not been able to do the same. This relates to the problems associated with inequalities in the distribution of wealth in the world. The mere adoption of the Universal Declaration was not an adequate step towards the development of a global consensus on assisting less advantaged countries (in terms of world history) to be helped in an adequate manner to reach the developments necessary, in economic, social and political spheres, to be able to practically develop possibilities for the implementation of rights within their legal systems and thereby bring about respect for common moral norms and standards as required in the new world order envisaged after the Second World War.

### ***Creating the material environment for the respect of universal norms and standards***

Perhaps the most difficult problem in the world is the development of a consensus on at least the minimum requirements of the less advantaged countries to overcome some of their basic problems so that all peoples in these countries can aspire towards the achievement of what some countries have achieved in the course of their historical development. Without material means, it is not possible to nurture new ideas and ideals that give rise to expectations of a higher nature in relation to the dignity of people and to bring about the conditions that enable actual respect for such human dignity. Despite this being the most difficult problem, this is also the most important problem that needs to be solved if the universal norms and standards required by the modern understanding of human rights is to become a reality for the whole world. The core of the debate on raising respect for moral norms and standards needs to be in this very area, bringing about a discussion towards arriving at the above-mentioned objective.

## **Transformations of political systems**

***A closer examination of many of the countries in Asia clearly shows more authoritarian rather than democratic transformations in their political systems. From a human rights point of view, authoritarianism means the suppression or imposition of serious limitations on the basic civil and political rights of the people.***

Ever-increasing restrictions on the freedom of speech and of association are a direct result of the expansion of the authoritarian grip on societies. This is combined with the loosening of legal restraints on every form of extrajudicial killings, including enforced disappearances<sup>13</sup>; permitting illegal arrest and illegal detention<sup>14</sup>; allowing many forms

of physical and psychological torture<sup>15</sup>; restricting or virtually displacing the right to a fair trial and expanding the power of the state to impose punishments without any recourse to judicial oversight<sup>16</sup>; and, in short, suspending access to every form of legal protection, either formally or in practice.

All this is aimed at denying or limiting people's political participation in running their societies. This is accompanied by ideological developments that advocate authoritarianism as a necessary instrument of economic development and social stability. Advocating for rights is often portrayed as the pursuit of alien or Western modes of thought and political styles that are detrimental to rapid economic progress. On this basis,

*he suppression of civil and political rights is ideologically justified as being necessary economic development, and democracy, rule of law and respect of human rights are portrayed as necessary sacrifices. In terms of this overarching ideological framework, a political model is developed that favors authoritarianism over democracy.*

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13— Asian Human Rights Commission, “Cyberspace Graveyard for Disappeared Persons”, [www.disappearances.org](http://www.disappearances.org)

14— For example: Report of the Special Rapporteur on Torture and Other Cruel, Inhuman Treatment or Punishment on his Mission to Sri Lanka, (2017), in: [www.refworld.org/docid/58aefcf34.html](http://www.refworld.org/docid/58aefcf34.html)

15— Basil Fernando, Narrative of Justice in Sri Lanka: Told through Stories of Torture Victims. Hong Kong: Asian Legal Resource Centre, (2013)

16— Nick Cheeseman, Opposing the Rule of Law: How Myanmar's Courts Make Law and Order. Cambridge: Cambridge, (2016)

## **The rights of women and minorities, and environmental rights**

While there had been some attempts to develop legislation to protect the rights of women, the rights of minorities and environmental rights, practical enforcement of these rights has been limited in less developed countries. Generally speaking, there has been a degeneration when it comes to practical access to these rights. This can be explained because of the need for a functional state apparatus as a pre-condition for the enforcement of any right. In the many countries that have seen a breakdown in their legal and political systems, there is an inability to control crime within a rule of law framework, which has an impact on women and minorities in particular. The overarching insecurity pervading such societies puts women in a vulnerable situation. It is commonly said that the test of whether people are secure in a society is to look at its impact on women. For example, when women feel unsafe travelling after dark, this is a clear indication of the state's inability to enforce the law. This lack of protection affects all minorities as well. Attempts to protect those targeted for their sexual orientation or gender identity often fail for the same reason.

Insecurity and the inability to enforce the law is also the greatest enemy of the environment. The destruction of forests, theft or pollution of natural resources, and other activities that undermine people's rights to live in a habitable environment thrive in the context of impunity.

Of particular concern is the difficulty in accessing drinking water due to the unscrupulous release of chemicals, which also leads to extremely seriousness medical consequences, such as kidney failure. A state that is weak in law enforcement cannot act decisively to resolve any of these problems. There are many illustrations of this throughout developing countries in Asia.<sup>17</sup>

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17— Asian Human Rights Commission, "INDIA: The government must act immediately to save the lives of protesters", [www.humanrights.asia/news/urgent-appeals/AHRC-UAU-030-2012/?searchterm=Jal%20 Satyagrah](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-030-2012/?searchterm=Jal%20Satyagrah); Ben Boer, *Environmental Law and Human Rights in the Asia-Pacific*. Oxford: Oxford University Press, (2015), chapter 5

## Human rights defenders

For individuals and organisations committed to fighting for the protection and promotion of every kind of human right, the lawless contexts of many developing countries is threatening.

There are constant reports of attacks on human rights defenders. Authoritarian states consider human rights defenders to be hostile elements. National security concerns have been used by states that develop anti- terrorism laws to silence human rights defenders.

Where the relationship between the state and the people becomes confrontational and violent, the state is particularly concerned about maintaining secrecy about what takes place on their territories. Violations of human rights are often followed by attempts to erase all evidence. Human rights defenders are particularly targeted because they try to expose such acts and develop international and local advocacy to expose and resist such violence.

The Asian Charter<sup>18</sup> and declarations on the right to justice, peace and culture in Asia, including the upcoming Declaration on Right to Justice – A Supplement to Asian Charter<sup>19</sup>, address these issues and the need for practical reforms that allow for the actual enforcement of human rights.

## Challenges to civil society

The abovementioned political transformations and consequent attacks on human rights pose enormous problems to civil society in less developed countries, including many Asian countries. Civil society is faced with enormous confusion due to these developments.

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18— Asian Human Rights Charter 1998

19— Asian Human Rights Commission/Asian Legal Resource Centre, “WORLD: Draft Asian Declaration on right to justice – right to an effective remedy for violations of human rights in terms of Article 2 of the ICCPR”, <http://alrc.asia/draft-asian-declaration-on-right-to-justice-right-to-an-effective-remedy-for-violations-of-human-rights-in-terms-of-article-2-of-the-iccpr/>

This confusion spreads into intellectual life, creating difficulties in theoretically understanding the new crises and formulating solutions that can be the basis for their struggles to defend their livelihoods and other rights. The uncertainties that arise as a result of this could be said to be the source of many of conflicts within civil society and obstruct the growth of powerful solidarity movements based on common objectives and commonly agreed strategies.

It also creates highly complex psychological problems that disturb individuals, families and society as a whole. Finding solutions to these psychological crises also adds to the confusion in civil society. It also provokes negative reactions that support nihilistic tendencies. These tendencies, in turn, create serious problems that obstruct the development of solidarity movements. Alternatives like mass migration are common features in most of these countries. Dislocation within their own societies and exposure to new situations as a result of migration have caused new forms of conflict and instability. This situation has caused spiritual crises, the expression of which has given rise to racism and other forms of divisions that have the potential to cause violent conflicts.

### **Challenges to civil society movements committed to democracy, rule of law and respect for human rights**

New forms of social crises and many forms of dislocation taking place in societies have created serious obstacles to the development of movements committed to the promotion of democracy as authoritarianism develops new forms of attacks on civil society to discourage it from embarking on struggles for democracy.

*Enormous restrictions placed on freedom of expressions and association virtually criminalize many activities and create an intimidating social ethos, leading to an unfavourable environment for movements to defend democracy.*

Authoritarianism particularly targets political parties that are rooted in democratic traditions. It also penalizes legitimate protest and state security apparatuses develop new branches for surveillance as well as violent suppression of non-violent demonstrations and other civil society activities. The most frightening aspects of such suppression are the legitimization of arrest without due cause, permissiveness towards prolonged detentions and even extrajudicial killings, including enforced disappearances.<sup>20</sup> To enable such suppression, the system for the administration of justice that may have prevailed in normal circumstances is severely curtailed through attacks on the independence of the judiciary and the prosecutorial branches, and limitations being placed on the powers of investigation into human rights abuses by state authorities.<sup>21</sup> Paramilitary forces are also absorbed into the police force, which

causes severe problems for civilian policing. The overall development is towards greater militarization and the paralyzing of the justice system. When a common understanding develops within society that their system of administering justice can no longer offer them legitimate protection, and that the institutions in the justice system are being reshaped to suppress them, hopelessness prevails about the possibility of finding solutions to their problems.

This new environment poses a problem to human rights organisations in particular in terms of how they can engage in protecting people's human rights when they can no longer rely on the justice system – or the legal system as a whole – to be the primary recourse for their protection.<sup>22</sup>

This has caused bewilderment as the human rights movements also oppose the use of violence as a form of protest. Certain sections of society do take to violence on the pretext that there is no other alternative for the defence of people's rights. The growth of these movements, in turn, strengthen the oppressive approach taken by the state and the growth of draconian anti-terrorism laws, as well as the harsh methods of enforcing such laws.

The overall situation that civil society movements face in less developed countries is now echoed in other places. There have been global changes under various pretexts, such as anti-terrorism and anti-migration efforts, that have led to threats to democracy in developed countries, including Western democracies.

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20— Jane Thomson-Senanayake, *A Sociological Exploration of Disappearances in Sri Lanka*. Hong Kong: Asian Human Rights Commission, (2014)

21— Basil Fernando, *Torture: As An Entrenched Part Of Cruel, Inhuman And Degrading Legal Systems*. Hong Kong: Asian Human Rights Commission, (2017)

22— For example, Basil Fernando (2013) and Gary A. Haugen and Victor Boutros (2014).

*The growth of right-wing tendencies in developed countries strengthens those who are opposed to democracy in developing countries as well. This poses serious problems for the growth of global solidarity movements.*

The reduced support from democratic movements in developed countries is a further cause of anxiety for civil society movements in developing countries.

### **The need for a new discourse on the protection of human rights**

The post-Second World War developments that promoted human rights globally, symbolized by the adoption of the Universal Declaration and United Nations mechanisms as well as the policies of developed democracies to support civil society movements in developing countries, created the kind of discourse that still predominates. However, in the new environment described above, this global human rights movement needs to strengthen and develop its capacity to face up to the present threats. The articulation of human rights principles through various conventions, which was a major achievement of the earlier period, no longer suffices when dealing with the present crises.

The global human rights movement needs to develop the capacity, both in the areas of understanding and practical action, to support movements in less developed countries by placing greater emphasis on the actual implementation of human rights rather than mere agreements to promote human rights.<sup>23</sup>

In this practical sphere, support for the reform of organs responsible for the administration of justice – namely, an independent judiciary, an independent department for prosecutions, and civilian policing institutions that can conduct impartial investigations – are essential as a counterstrategy to defeat the present-day developments towards authoritarianism and suppression. The defence of the rule of law against the arbitrary actions of the state has become a precondition for sustaining and developing the capacity of civil society movements to provide vibrant and effective leadership for the protection and promotion of human rights.

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23— AHRC/ALRC, “WORLD: Draft Asian Declaration on right to justice”, in: [www.humanrights.asia/news/ahrc-news/AHRC-PAP-001-2018/](http://www.humanrights.asia/news/ahrc-news/AHRC-PAP-001-2018/)

suppression. The defence of the rule of law against the arbitrary actions of the state has become a precondition for sustaining and developing the capacity of civil society movements to provide vibrant and effective leadership for the protection and promotion of human rights.


The emergence of such support from developed countries to developing countries largely depends on the resolving of problems associated with the distribution of wealth, the resolution of which is the ultimate source of a durable solution to these problems. Liberty should not be seen as an excuse for denying equality of opportunities for all.<sup>24</sup> It needs to become the core of the discourse seeking solutions to the extremely difficult problems we are facing today. Contributions made by such thinkers as John Rawls<sup>25</sup> and others in this direction should be made a very important part of the global discourse for making the world a peaceful environment for everyone to live in.

Once again, things are falling apart and the center cannot hold. The best must regain their conviction that human rights principles are fundamental to the world they want to live in, and must be willing to confront the complexities and difficulties involved in practical enforcement of human rights.

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24— John Rawls's description of the two principles of justice: the liberty principle and the equality principle. John Rawls, *A Theory of Justice*. Cambridge, MA: Belknap Press, (2005).

25— John Rawls (2005)



## Eliminating hunger, i.e. SDG Goal 2 is unachievable without peace, justice and strong institutions, i.e. SDG Goal 16

**Avinash Pandey**

**T**he State of Food Security and Nutrition in the World (SOFI) Report, 2019, confirmed the fear of growing hunger that were looming large in the minds of civil society activists across the world. They did so for the third consecutive year. It established that the continuing decrease in hunger over almost a decade that the world has enjoyed has come to an end, a definitive end and that the world is looking at a gloomy picture of reversal in the gains painstakingly made over the years. It also confirmed that instead of being on track to achieve the Sustainable Development Goals (SDG), 2030, the world is moving away from achieving SDG 2 that stipulates for eliminating hunger by 2030. The world is rather seeing continuous increase, even if at a little slower rate in 2018, in the incidence of hunger for 3 years in a row now.

SOFI 2017 had found that in 2017, 815 million people were chronically hungry in the world, 38 million more than the previous year. In 2018, that number has risen to 820 million. The world, in other words, is going back to 2000 when 900 million people suffered with chronic hunger instead of moving forward to the goal of no one being hungry in 2030.

The report further grimly notes that about 2 billion people in the world, or almost every fourth human being, experience moderate or severe food insecurity. Alarming, though they are primarily concentrated in poorer parts of the world, even North America and Europe are not immune to the problem of food security, 8 percent of the population of these prosperous continents too is affected by moderate or severe food insecurity. Further, as common sense would have it, women face slightly higher food insecurity in every continent.

The economic slowdown has contributed a lot to the increasing hunger as seen by the fact that hunger has been increasing in many countries where economic growth

is lagging, and many of these countries are middle-income countries that rely heavily on international trade of primary commodities.

The cumulative effects of all this would be that the world would fail to meet both: 2030 SDG Target to halve the number of stunted children and also the 2025 World Health Assembly target to reduce the prevalence of low birthweight by 30 percent.

So where did things go wrong? Where did the stakeholders- people, communities, governments, civil society and the international community, including the United Nations (UN) lose the plot?

The report notes several issues that have contributed to the crisis. Among them are increasing conflicts and instability causing greater population displacement, climate change and increasing climate variability and extremes affecting agricultural productivity, food production and natural resources, with impacts on food systems and rural livelihoods. All these factors have played significant role in the ways food is produced, distributed and consumed. This affects affects hunger and nutrition. The report also underlines the importance of economic turmoil including both- slowdown and shocks affecting acute food insecurity in food crisis contexts.

These are all very important and genuine reasons playing their part in increasing hunger. Yet, they fail to explain something very important- that hunger is increasing despite many of the countries with severe hunger levels having plenty of food, India for instance, sees millions of tonnes of foodgrain rotting because of storage issues while millions remain hungry in the country.

So what explains hunger in countries like India? A detailed analysis of the report gives a few hints at the possible reasons. The report duly notes the interlinkages of Goal 2 with other SDGs. Opening the SOFI launch event on 15 July 2019, UN Economic and Social Council (ECOSOC) President Inga Rhonda King highlighted that the Goal 2 is inextricably linked to several other goals like SDGs 8 (decent work and economic growth), 10 (reduced inequalities), and 1 (no poverty).

They are all important in fact. However, they miss on one very important Goal, which, without achieving, Goal 2 will remain a pipe dream, i.e. Goal 16- Peace, Justice and strong institutions. Going deeper into this, strong institutions are the key here. Howsoever much effort the world can put into eliminating hunger, nothing much will

change on the ground unless and until there are strong public institutions which are effective, accountable and transparent (Goal 16.6) for implementing the efforts on the ground without corruption and bribery (Goal 16.5).

SOFI, 2019, as mentioned earlier, rightly, and grimly, notes that the world has seen a rise in the conflict and instability causing greater population displacement, often an immediate threat to the food security of the communities affected. Western Asia is a sad example of the impact of conflicts on hunger with a continuous increase since 2010 with more than 12 percent of its population undernourished today, up from 9.4 percent in 2005.

But is it conflict alone that causes hunger and increases it?

Conflicts do contribute to increase in chronic hunger. However, they do not do it alone as one can see from the example of Sri Lanka, a country recently out of a three-decade long civil war added and seeing its hunger levels increasing. It has now become so worse that Sri Lanka has earned the dubious distinction of becoming one of the four worst countries in terms of wasting in children under 5 along with India, Djibouti, South Sudan.

What does explain the different paths hunger took in Western Asia as against Sri Lanka? It was rapid deterioration of public institutions, including the justice institutions, in post-civil war Sri Lanka with an authoritarian leadership.

Another contrast can be seen in Nepal which has been rather successful in bringing hunger down in the country immediately in the aftermath of a civil war. Nepal heavily invested into its public institutions and aimed at increasing household assets, maternal education levels, improved sanitation levels, and implementation and utilisation of health and nutrition programmes, including antenatal and neonatal care.

That brings us back to the Goal 16. One basic reason behind many of the countries in the region failing to take concrete steps for eradicating hunger is the lack of the very idea of justice, which is in turn rooted in the idea of citizenship in the region. Despite their democratic façades, most of the countries in the region operate exactly like their colonial (feudal in Nepal's case) predecessors and still treat majority of their populations as dispensable natives devoid of rights. They show callous disregard for

the rights of their citizen, which inalienably include the right to life with dignity, something impossible for those exposed to chronic hunger.

Sadly, the simultaneous lack of a functioning justice system in these states denies the discriminated against section of the citizenry the opportunity to seek redress. It forces them into continuing with their dehumanized existence, hungry, stunted, and wasted.

In fact, completely defunct public institutions just pretending to be functioning is one commonality among all the countries which have failed to arrest hunger and starvation. This denies, as noted earlier, their hungry citizenry of any attempt at seeking redress. The rot in the public institutions of these countries runs too deep; their social welfare institutions remain, generally, so frustratingly corrupt and inefficient that almost nothing reaches the poor and is lost to vested interests entrenched deep in the system.

The judicial institutions, overcrowded, overburdened, understaffed, underfunded, and often corrupt, complete the vicious cycle of denial of justice to the violated people. Gary Haugen and Victor Boutros brilliantly summarize the end result in their book, *The Locust Effect*. They say countries remain stuck in the cycle of poverty because of the failure of the justice system, law enforcement, and the government in saving the poor from day to day violence, slavery, or forced labour. Governments, and the world community, might have a thousand schemes ready to fight hunger. However, if the governments are really interested in ending hunger and poverty, they need to provide mechanisms of deterrence, on the ground, fighting the bullies, be they State or non-State actors, who inflict violence on the poor and marginalised and thereby keep them in cycles of poverty and hunger. The mechanisms of deterrence are none other than functioning justice systems, treating everyone as equal and operating to punish criminals swiftly, and ultimately providing redress to victims of injustice.

This brings us back to the SOFI, 2019. The report very rightly recommend fostering “pro-poor and inclusive structural transformation focusing on people and placing communities at the centre to reduce economic vulnerabilities and set ourselves on track to ending hunger, food insecurity and all forms of malnutrition while “leaving no one behind”.

It also, rightly, emphasizes the need to “integrate food security and nutrition concerns into poverty reduction efforts to make the most of the synergies between eradicating poverty, hunger, food insecurity and malnutrition” while also asserting on the need of “reducing gender inequalities and social exclusion of population groups” as “either the means to, or the outcome of, improved food security and nutrition.”

It gets it right again while calling for “accelerated and aligned actions from all stakeholders and countries, including tireless and more integrated support from the United Nations and the international community to countries in support of their development priorities, through multilateral agreements and means of implementation, so that countries can embark on a pro-poor and inclusive path to transformation in a people-centred way to free the world from poverty, inequalities, hunger, food insecurity and malnutrition in all its forms.”

What it misses, despite noting the same, is that Implementation will require functioning public institutions, which hardly exist in many countries of the world, to take the efforts to the grass roots. It will also require justice institutions for redress in case the implementation is faulty. In short, we need to fulfil Goal 16 to achieve Goal 2. Until we achieve that, eradicating hunger will remain just a dream.

# **INDIA: A corpse of rights without justice at its soul**

**Sachin Kumar Jain**

**O**ne of the sad truths that we have to live with today is that the people's struggles for human rights are highly fragmented in India. Equally disheartening is the fact that whenever or wherever human rights comes up for discussion, it is addressed in piecemeal, ignoring and leaving far behind a comprehensive approach to rights based on the notion of justice. The focus is usually on the concept of rights understood within the limited periphery of 'people's welfare' in which quotient of 'justice' is forgotten.

In India we have 713 legislations that deal with people's rights, their entitlements and protection. Another 19 on food, nutrition and health are on the anvil. In fact what we have is a law-making regime for last 65 years, and the concept of justice is missing in the country.

Do rights make any sense without justice? Can we expect that human rights will be guaranteed without justice? Can we afford to seek justice only through the courts, exempting the executive? The rule of law is not the state generating fear about its might and ruling by it. What we have in India are rules and laws that could exploit the marginalised.

When public pressure concerning an issue disturbs the state, the state comes out with a policy and passes a law. But laws are meaningless if there is no system to implement them. And where there is no accountability within the system legislating becomes a farcical exercise. The basic objective of the people's struggles in the country is to ensure proper implementation of the laws. What we need to do is to think where and how deep is the passive or sometimes active negations of rights permissible within the system. Otherwise the enormous efforts of the people's struggle to claim these rights would go in vain.

There are more than 3,000 struggles for justice going on in the country's 640 thousand villages where over 3500 thousand voluntary and non-governmental organisations work. This is ironic, because India has some of the most progressive laws in the world and claims to be the world's largest functioning democracy. Yet it is a country in which 9,000 custodial deaths take place every year and over 1500 thousand children die of malnutrition, while policymaking continues unmindfully!

In such a situation how can we ignore the question of why the system refuses to change? Why the lives of people count for nothing and why their standard of living shows little sign of improvement?

There are 15,777 under trail prisoners in Madhya Pradesh and 15,784 in Maharashtra. They are not considered eligible for bail, and are forced to wait for a final verdict till an uncertain time. Many among them have already spent more time in the prison than what the sentences for the crimes alleged against them might warrant. The path of justice tends to veer towards injustice because the state, which has the responsibility to dispense justice, is not accountable to the people. Is this, perhaps, part of its well thought out strategy to retain state's supremacy over the society? It's a thought worth considering.

The first question we need to ask ourselves is: what are the tribulations in our society and what kind of change does we necessitate deciphering them? We are living in a period of policy changes and laws. The government formulates policies and passes laws, allegedly to solve these problems. But the laws remain on paper. They are of use to the society only if an institutional framework for implementing them is created, an adequate budget sanctioned, officers appointed, and other necessary infrastructure put in place.

For instance, the government claims that the people have a right to health. But if there are no doctors, no hospitals, no money to buy medicines, what does this right mean? When will people enjoy its benefits? The government has also passed a law giving people the right to free and compulsory education. But to ensure quality and equal education to all we need enough teachers, introduce new teaching methodologies and provide classrooms and toilets in schools. But the financial resources available for this is not even half of what is in fact required. So what kind of right to quality education could our children hope for or lay claim to?

Justice must be evident and should appear to be done. Rights cannot be seen as disconnected from justice. If the state is unjust, if it abdicates its responsibility to dispense justice, people can neither claim nor protect their rights. In India, the state is only putting on an act with its 'people-oriented' policies and laws to hoodwink the people. The reality is the continuing violation of all basic rights. Nowhere in the laws is there a provision that says the government will have zero tolerance for compromise and will take steps to ensure that people get not just their rights but justice as well.

Take the example of the law guaranteeing the Right to Information (RTI Act 2005). It says if people are denied this right the responsible official will be penalised to ensure that such violations do not occur in future. The right is for seeking and obtaining information, but justice is for taking actions to punish those officials who violate the right. As long as this aspect is ignored, talking about rights is mere deception.

Justice and rights are not limited to the judiciary or to the state that is supposed to safeguard them for society. They go beyond these institutions. Justice is a universal trait, a basic human character, like courage, equality and respect for nature. It is not something that one obtains only through a court of law. The notion of justice starts with the faith that justice will not be denied. Justice is also the belief that when the authorities and the system where you go to claim your rights will respect these rights and treat you in a way that raises your morale and reinforces your belief in the system.

The search for justice could begin for instance with the police inspector or a constable in a police station. If they are unjust, one cannot get justice from the court that in a

criminal case will have to depend upon the police for investigation of a criminal charge. The decision of the court is based on the case report the police present. That is why justice is not something that only a court of law ensures.

There is also the country's media that presents a case before the public. If the media is unjust, they cannot feel the soreness that a victim experiences when rights are violated. Investigations about rights violations without a perspective of justice serve only the purpose of whitewashing of some and slinging mud at some others.

If more and more cases of rights violation keep occurring, and if they continue to be viewed in a perspective devoid of justice, the policies that are eventually formulated will also be devoid of justice. If justice is not ingrained into the system, it will become a purveyor of injustice. There are no half measures, or middle path. You either have justice or injustice, corruption or transparency. It is a shame to say that 40 percent justice is dispensed or 60 percent of the system is corrupt. A system can be either completely just or absolutely unjust. It is a dangerous reasoning for the future of democracy, society and the constitution to claim that the District Collector is an honest person but the subordinate officers are corrupt, or the chief minister is honest but his ministers are corrupt, or the prime minister is a good man but his cabinet colleagues are bad.

The British ruled our country – India for more than 200 years as a colony. They came for business and later continued to influence our systems – political, economic and social. They also make laws and created institutions. Definitely those were not for the welfare of the people and to ensure justice. They made it; to control any action, which might challenge their rule here in any form. They forced people not to speak, they created police in 1861, and they made forest a state property by creating the forest department in 1861 – 62, with a clear message that community has no ownership over their natural resources; and suddenly with the creation of a law and system, people become encroachers from the owners.

The colonisation reduced the space for the people up to a level, where they found themselves unable to breath. The colonial rulers follows a specific meaning of the rule of law; which for them translates as regime to establish the rule of the state over the native society, to suppress the strength of people, so that there is no opposition to the colonial interests. One country rules the other for looting, not for welfare; so one cannot expect that the coloniser will take any pain for setting up standards of living, welfare or norms for human rights. In such a situation ruler (not the state per say) is the key culprit in human rights violations. And justice here means protection to a section of people who provides them support for ruling their own country or society.

The British hanged Indians who demanded justice, dignity, rights and freedom. They did follow a system of judiciary – which was created to hang such people, who challenged the then state; without considering the norms of justice or that of rights. At that moment justice translated as the protection of those who were fighting for the country's freedom. Tax and revenue systems were made for looting resources; education system was contaminated to create a bonded society. There should be no revolt even after extreme injustices like massive food shortages. This was the key

objective of the coloniser and that is why the concept of law and order become important for them. We, in the independent state, continue to follow the same. If you go for an agitation, you will be booked and may be disappeared forever. Why there is no scope and space for those in the country who want to share their anger, frustration and agony; why they are treated as criminals? Such space was not there before 1947 and still not there, 65 years since.

Making laws is a collective process of the legislature. The government drafts a bill and presents it to the parliament. The bill is normally sent to the parliamentary standing committee, which invites comments and suggestions from institutions/organisations and from the public. The bill is accordingly modified and sent back to the parliament. But the government is not bound to accept all the recommendations of the committee. So it is free to ignore any provisions that may be mistakenly viewed as diluting the legislature's power or compromise its positions. The passage of the bill depends on the strength of the ruling coalition. If it enjoys a majority in the house it faces no compulsion to keep the people at the centre of its legislation.

A law is an all-encompassing document of the right in question. But often it does not outline the steps required for its implementation or for creating the required institutional structure. These are dealt with in the rules and procedures and this is where the next deception of the people occurs. Unlike the bill, there is no scope for the standing committee to offer its views and suggestions about the rules and procedures nor do people have the right to have their say. There are enough loopholes and pitfalls in them for the people to stumble into and get trapped. There are no systems to ensure that our rights are clothed in the cloak of justice.

The key to the implementation of a law is with the state. The 73rd Amendment of the Constitution had paved the way for the decentralisation of state power through the Panchayati Raj, with authority given to the panchayats (elected local body at the cluster of villages) and gram sabhas (village councils). But no panchayat can impede the salary of a corrupt official or who do not perform his/her duty. It can only make recommendations to the executive that action is to be taken against an erring officer. In the past, the village institutions controlled resources but today these resources are retained in the central treasury by the state and the panchayats and gram sabhas have to extend their palms to plead for central 'alms'.

Our society is still ruled by the caste system; we all know this truth. It is plagued with discrimination, gender inequality, untouchability and feudalism, which is the reason why there is little hope for the society or for its social institutions to make any real effort in creating a system that is based on equality and social justice. Our society remains silent when confronted by deaths from starvation and malnutrition. It fails to raise its collective voice against the rapes that it witnesses. And instead of resisting the naked exploitation of our resources it spends its energies looking for escape routes such as internal or external migration. It is in such situations that the role of the state comes into focus.

The expectation is that the state will create a system to counter and abolish inequality, discrimination, exploitation and social boycotts. Such a system cannot be limited to

policy formulation and law making. Laws create the system and the system should, in principle, function within its ambit. Social contradictions can only be resolved by governance guided by value and justice-based laws. In today's context, it means justice and values should remain not just the responsibility of the state, but also that of its banks, media, markets, production systems and in the private sector. Otherwise these agencies inevitably become the new players in the processes of exploitation and subjugation.

Rights cannot be claimed or given unless and until an accountable and institutionalised structure is created to implement them. The laws enacted should be such that they carry the message of rights with justice. They should explicitly state that an institutionalised structure will be set up for implementation, with an effective, transparent and decentralised mechanism to monitor the implementation and register and resolve complaints within a specified time. They should also contain provisions to punish the guilty and compensate the victims of rights violations. Equally important is sanctioning of the required budget, because without such allocations, nothing is possible.

Madhya Pradesh is a state where six million children are battling malnutrition. Their chances of winning this battle are slim because the state government does not provide them the kind of support they need. But eradicating malnutrition is a battle that the state should be fighting because it is the constitutional guardian of our children. The Integrated Child Development Scheme (ICDS) was formulated in 1975 to address and resolve the problem. Its primary target is children aged below six years, who are most susceptible to malnutrition. But 37 years after its launch, malnutrition remains a scourge that continues to play with the life of our children. The question we need to ask is: Why did such an ambitious scheme fail to bring any significant change in the situation?

The ICDS provides for setting up anganwadis (child development centre at the level of every local habitation) to care for all children and the Supreme Court has decreed that such care centres must be established in every village and habitation and no child should be denied its services. The anganwadis have the infrastructure to provide six crucial services to children, at least on paper. These include monitoring their growth and development, providing nutritious food, imparting health and nutrition education to pregnant/lactating mothers as well as adolescent girls, vaccinating children, imparting pre-school education and admitting the seriously ill in hospitals.

An anganwadi has to cater the needs of around 40 children aged below six years, under the supervision of an anganwadi worker and a helper, who are recruited from the village. The worker has to maintain six registers with vital data about the children and the services rendered. Can two workers cope with this large burden of responsibility? The Supreme Court has instructed that the anganwadi services should be universalised and their quality should be improved. The government continues to enrol children in the care centres but it has done very little to increase human resources, their capacities, infrastructure facilities and remuneration.

In 1991, the government made an allocation of one rupee per child for providing nutritious food. But the actual disbursement was Paise 47 (\$0.023) per child. If seen from another angle the budgetary provisions would be adequate for only 47 percent of the child population in this age group. Moreover, when the village community complains

that nutritious food is not provided for six months in an year, the bureaucracy did not point out that the allocation itself has been drastically cut and that is why children remain hungry. Instead, it blames the anganwadi workers and takes action against them to maintain the power of the state. Where can the anganwadi workers go to fight for their rights and justice? There is no mechanism to give them justice.

Another distressing fact is that the budgetary provision remained unchanged for 15 years until 2005, when it was raised to Rupees two per child. Today, in 2012, the amount is Rupees four per child, which is still only half of the actual need. This is the irony. The government calls malnutrition a 'national shame' yet allocates a measly amount – which cannot even buy a cup of tea in today's market price – to resolve the crisis. A country with one of the fastest growing economies of the world has the largest population of malnourished children among all nations and yet it has no willingness to give more than one percent of its budget for children aged below six years, who constitute 14 percent of its population!

The ICDS has been riddled with corruption since the time it was launched. There is no mechanism in the system to register complaints against this corruption, carryout an impartial investigation, take immediate action, award punishment, or protect the rights of the children and women. If a complaint is registered, the state government asks the district collector and the programme head in the district to conduct an inquiry. These officials themselves are an integral part of the implementing agencies. So in a way they are responsible for the corruption and negligence. Should the accused be given the responsibility of investigating the misdemeanour and felony?

Madhya Pradesh has constituted a State Commission for Protection of Child's Rights. To begin with, it is a moribund organisation. Even if any of its members take the initiative to fulfil its responsibilities, there is little likelihood of anything coming out of the exercise because the commission only has the power to make recommendations but not the power to ensure compliance by the implementing agency, which has unlimited and unrestrained power. Perhaps the government wants it this way. That is why it never acknowledges that the lack of accountability.

The state does not appear committed to protect human rights or dispense justice. In such a situation, children will continue to starve and be malnourished. Their hunger is not so much the outcome of inadequate food but the lack of accountability, corruption, carelessness and despicable apathy of the state.

It is a question of intent. On the one hand there is no system or mechanism to ensure justice, while on the other our judicial system is caught up in protecting its own interests. In 2011, a total of 26.3 million cases were pending in Indian courts. It would require 24 years for the courts to clear the backlog, provided no new cases are registered in the interim. If cases continue to be registered at the current rate, the courts would have a backlog of 240 million pending cases.

This only shows that the state is becoming progressively ill equipped to deal with its responsibilities even as its officials show an increasing tendency to abuse their authority. Even then the government makes no commitment to overhaul the system to ensure that the people do not have to wait endlessly for justice. People living in Manipur, Arunachal

Pradesh, Nagaland and Tripura have to travel all the way to the high court in Guwahati because there are no other high courts in these northeastern states.

Take a look at the following example. In 2006, the Indian government passed a law recognising the forest rights of scheduled tribes and other traditional forest dwellers. The law declares in its opening statement that the indigenous communities have been subjected to historical injustice for centuries and the state seeks to give them justice through this legislation. Now take a look at its provisions. In order to establish community rights to forests the villagers have to produce adequate documentation to show that they have been using forests for their livelihood, grazing and access or for cultural and religious purposes or for foraging forest produce for their daily needs. This is a task that is beyond most of them.

In India, systematic records have been maintained at the district level (in district record room) from even before 1950 of every village, its resources and their use. Many people are not even aware of this storehouse of data and information. These documents are called nistar patrak (record of use of land, forest and other natural resources) and Bajib-ul-Arz. It is almost impossible for villagers to access these documents in the maze of modern bureaucracy and red tape. The result is that only around five percent of the claims to community rights have been legally established and recognised.

If the intent of the government is to confer community rights to the rightful claimants why did it not add a provision to the law stating that it will make available all the documents in its possession to the gram sabha and the village level forest rights committees to enable them to process claims and establish the rights of the community? It is the responsibility of the government to provide the required documentation, not of the people who have been subjected to this historic injustice. Until and unless the state internalises the concept of justice every utterance of its officials will be futile and meaningless. But the state is reluctant to part with the power it has over the people.

It is not as if the government has never built a strong institutional framework for implementing its laws. Wherever it needs to protect its powers it ensures that such a system is established. For example, when electricity production was privatised, private companies were permitted to decide electricity tariffs, a job which the government did earlier. It set up an Electricity Regulatory Commission to approve the tariff increases and give them the official stamp. The commission gives priority to the arguments of the private companies, not the government or the people, in arriving at its decisions. As a result, electricity tariffs have been raised by 20-30 percent every year.

Water is also in the process of being privatised and the appropriate institutional changes will be affected. Poor people living in slums will now have no access to free water. Prices will be raised periodically and those who cannot pay will be deprived of their right to water and electricity. The government gives statutory powers to these commissions, which make them more powerful than even the parliamentarians. This clearly shows that the implementation of a law depends on the kind of enabling institutional structures that are created.

The problem is not that 42 percent of our children are victims of malnutrition or that our prime minister calls this a national shame. The problem is that the state has made

no concrete effort to resolve the problem, nor created accountable and resource-rich institutions to deal with it. Nor does the system have responsible people and policy makers or a planned mechanism to implement a solution. The problem is that the bureaucracy is neither accountable nor capable of dealing with the situation. Even if there are capable bureaucrats who do good work, they end up being punished instead of rewarded because corruption is accepted as a way of life.

The problem is that the state has been given too much power and sees itself as supreme. It understands strength and turns a blind eye to those pages in the constitution that elaborate its duties and responsibilities. Its limited perspective tells it to silence and neutralise anyone who dares to criticise its functioning. This is the reason why the state is very often seen to be despotic in its work. It adopts every means to protect its powers, whether through the use of the law and its policies or otherwise. We need to analyze these methods and counter such despotism with democratic values.

We also need to understand the link between people's struggles, agitation and advocacy. People's struggles emerge in certain special circumstances and the initiatives they take aim to change the mindset of society. They see the problem from a social and political perspective but find themselves caught up in many dilemmas. They cannot decide how to change the system if the very root of the crisis lies in its unjust nature. The system can only be changed by democratic means, but there is a reluctance to enter into electoral politics to affect such political change. The people find themselves caught up in answering the questions posed by the government when in reality it is they who should be demanding answers from the government. The people's struggles have been weakened and divided by the state through its power to distribute favours and services.

Prior to 1997, everyone could get ration through the public distribution system. In 1997 the government decided to draw a poverty line and declared that only those below this line could receive subsidised rations. The poverty line was a ruse to deny rations to 64 percent of the population. And now when a people's struggle is being fought to bring about institutional change in the rationing system, our middle class and the class of people excluded from the ambit of rations by the poverty line turn their faces on this struggle, saying they have nothing to do with it. And those who are eligible for rations are so socially and economically debilitated and deprived that they find it difficult to leave everything to fight for their rights.

The state weakens the people's struggle for social, political and economic rights in this way. In the past 20 years we have seen farmers and agricultural labour melded into a powerful force but the state had created divisions between them through its policies. For example, it has reduced the concessions and subsidies extended to agriculture, raising the cost of production. At the same time, it has raised the wages of unskilled labour, who also work as farm labour, through the National Rural Employment Guarantee Act.

The government has not given proper support prices for agricultural produce while it has given a fillip to the import of cheaper agriculture products from other countries, where farmers are given large subsidies. With cheap imports flooding the markets the local farmers have no market for their produce. The outcome is that they are in a pitiable

state today. Most of them (77 percent) are small and medium farmers owning less than two hectares of cultivable land. They find committing suicide to be an easier alternative than farming.

The growing urbanisation of the country is also responsible for alienating society from the concerns of our villages. The pitiable state of health and education services in rural areas and the crisis caused by development project linked displacement of people does not strike a chord in the cities. The possibility of launching a people's campaign is low in such a scenario. There is a thin line between people's struggles and advocacy. People's struggles raise issues and slap the government to take notice of these issues. Advocacy involves building up a fact-based and analytical understanding of issues to strengthen the people's struggles. The two do not themselves look for solutions to problems but try to force society and the state to take up the task of looking for solutions.

Advocacy is a process that takes up one or several linked issues with the objective of bringing about a change. When we work on any issue, case or incident there are three objectives we have in mind: The affected individual, people or community should receive their rights with justice. Those responsible for perpetrating injustice should be punished and their accountability should be fixed so that no abrogation of rights can occur in future. The weaknesses of the system should be removed, in keeping with these objectives, so that it is no longer unjust in character.

And finally, we must ourselves clearly understand that human rights cannot be defined without justice. And justice cannot be limited to the courts but must permeate and become an integral part of society, the state and the system. Change cannot happen only by formulating policies or making laws. It requires provisions being made for an administrative, economic and infrastructural system (buildings, equipment, roads, water supply, sanitation, etc.), creating an accountable grievance redressal mechanism that works in a time-bound manner. We would have to decide the values and standards that govern this system and the government should pledge to adopt these values and standards.

## Domestic Mechanisms for Law Enforcement as inseparable from Goal Number 16 of SDG

*This is the summary of a presentation made to a panel held at Nuremberg organized by The International Nuremberg Principles Academy in May 2019 by Basil Fernando*

*“Paving the Path of Human Rights: Synergies between International Criminal Law and UN Agenda 2030”*

### **Panel V: Mechanisms of Protections for Human Rights Defenders**

**T**he questions posed to the panel inter alia are: How can institutional protections for human rights defenders be strengthened? What have been the biggest lessons and challenges identified by the mechanisms designed to protect human rights defenders that can aid the implementation of UN Agenda 2030? How can these mechanisms and systems counter the increasing arbitrary power of states? How can non-state actors contribute to this protection?

The standpoint from which I would approach this problem is contained in Goal 16 of the Sustainable Development Agenda 2030: the need to “[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”.

Further, subsection 16.3 calls for promoting the rule of law at national and international levels and ensuring equal access to justice for all. Further, I also rely on Articles 2 and 3 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms<sup>1</sup>. Article 2 of this declaration is as follows:

2.1 Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2.2 Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.”

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<sup>1</sup> General Assembly resolution 53/144 of 9 December 1998.

Further, I also rely on Article 2 of the International Covenant on Civil and Political Rights (ICCPR), which also gives expression to this need.

The specific premise on which my short submissions are made is that without an effective mechanism for the protection of the right to access to justice, and the protection and promotion of human rights through functioning institutions, what can be done in terms of the protection of human rights defenders is very limited. In the least developed countries, mechanisms ensuring access to justice and the protection and promotion of human rights have been undermined and, often, the very opposite of what is required is taking place. My submissions are based on about 30 years of experience with other human rights defenders, mainly in the least developed countries of Asia. I believe that these observations are valid, if with some variations, for most of the less developed countries.

In systems where what is written on paper as law (both substantive and procedural) does not match what happens in practice, the idea of fairness in public institutions and of justice dispensed by an independent judiciary – requirements for domestic protection of human rights defenders – become contrary to the objectives of the system in practice.

Where domestic systems have the basic legal safeguards for their citizens to freely express their views and collaborate together to address injustices, there are still human rights violations, but there are mechanisms that – while imperfect – operate according to the law and principles of natural justice.

The life and liberty of human rights defenders is mainly threatened where the state is either incapable of or opposed to implementation of human rights, or both – after long-term neglect and undermining of institutions, there is often both limited political will and political competence to course correct.

## **Promotion of human rights through functioning domestic institutions**

The following are some observations on features of institutions that are supposed to protect access to justice and human rights, looking at how they presently exist in the least developed countries in Asia.

This paper concentrates on the experience of the least developed countries, which are also referred to as developing countries. The specific reference is to the least developed countries in the Asian region, from which generalizations can be drawn about all developing countries. The observations made in this paper are based on about 30 years of work carried out by the Asian Legal Resource Centre and its related organization, the Asian Human Rights Commission, based in Hong Kong.

### **The AHRC/ALRC was compelled to come to the following conclusions:**

1. There have been large-scale killings under various pretexts, such as counter-insurgencies or terrorism, drug control, and suppression of crimes – these illegal killings

include large-scale extrajudicial killings, including most of the cases of enforced disappearances<sup>2</sup>.

2. The practice of direct punishments carried out by security forces under policy direction given by the Executive: these punishments include the matters mentioned in subparagraph 1, and other forms of punishments, such as sexual abuse. All of this is done with the view to try to subdue sections of the population, and gain benefits for state actors, as well as those who are close to particular governments, including land grabbers. At the same time, there is also widespread non-enforcement of laws by state institutions, which creates impunity and enables many forms of violations of the rights of people<sup>3</sup>. The use of direct punishments and deliberate impunity not only ignores due process, but all constitutional rights and the rights guaranteed under various statutes.

3. Fair trials have become an unattainable goal, partly due to the practice of these direct punishments. There are other insurmountable difficulties that virtually make the search for justice and fair trial a futile exercise. The causes for this includes: long delays for trials, even taking 10 -20 years or more for the completion of a trial; and the police refusal to entertain complaints of crimes due to policy reasons, such as protection of security personnel from prosecution, or due to more mundane reasons like corruption<sup>4</sup>.

4. While Constitutions are couched in attractive language, the practice of constitutionalism has been abandoned in favor of direct Executive actions, which may or may not conform to the provisions of the constitution<sup>5</sup>.

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2 In the Philippines, President Duterte declared a war on drugs and, through many of his speeches, both in the Congress and in other speeches published in the media, authorized security personnel to shoot those who are allegedly engaged in the drug trade. As a result, the number of killings according to government sources is now 5000, while NGO and civil society sources give the estimate of 25,000. There are many complaints that many of those who have been killed have not been involved in any serious crimes relating to drugs, but are innocent. The victims of these killings also include many human rights defenders, particularly those who are fighting for environmental rights. In Sri Lanka, from 1971-2009, the estimated disappearances in the South, North and the East are said to be around 100,000. The only official statistics available regarding the disappearances are from about 1971 to 1991 in the South, under the pretext of suppressing an insurgency led by the Peoples' Liberation Front (JVP); there has not been any official investigations into the 1971 killings or the killings in the north and the east related to the suppression of the LTTE in the Tamil-speaking areas. Any attempt to investigate into these disappearances and killings is popularly regarded as unpatriotic and as a betrayal of the "Heroes" who fought to defend the territory of the country. In Pakistan, the number of disappearances is quite large, particularly in Baluchistan, where there is a movement for independence. The number of disappearances and killings in Bangladesh is also quite alarming. In parts of India that are under military control, such as in the North-East and also Kashmir, the same situation prevails. During the civil war, there were also large-scale disappearances in Nepal; these have also not been investigated, as both the government and former Maoists resist such investigation.

3 Impunity is a very common factor in the Philippines, Sri Lanka, Pakistan, Afghanistan, Bangladesh, Nepal, Cambodia, Indonesia, and also in several parts of India. Many complex factors operate in favor of impunity: Involvement of powerful politicians, in corruption and abuse of power; the fear that any action against the military or the police may lead to retaliations which the government is not in a position to control; heavy pressures on victims by organized crime, drugs trade and other powerful forces threatening serious consequences against those who attempt to obtain justice; and the inherent effects of the justice systems themselves which can easily be manipulated for the purpose of denial of justice.

4 In most Asian countries, the genuine implementation of international norms and standards on fair trials, particularly for politically sensitive cases, has become almost impossible. Punishment without trials, including the killings of alleged suspects, has become a common affair. Extreme threats to victims and businesses has created a culture of silence, where many people are willing to abandon their rights to seek justice: the manipulation of

investigation, prosecution and judicial systems creates insurmountable difficulties for the implementation of fair trial, while widespread corruption and abuse of power also undermines the possibility of having fair trials. The judicial habit to formulate judgments and decisions on various orders in a brief manner, without following the traditional styles of summarizing all the evidence and reasoning, makes the appeal processes difficult. Meanwhile, practices have developed to deal with even the most serious crimes like murder, rape and enforced disappearance through the payment of fines or extremely short prison sentences as a convenient method of disposing of cases. Setting aside jury trials allows for prolonged postponements, which causes great difficulties for litigants.

5 The texts of various constitutions, such as Thailand, Cambodia and the Philippines, are couched in liberal democratic jargon, while the actions of their governments are hardly in line with the same. Cambodia is a particularly pertinent example, having included all UN Conventions on human rights as operative in Cambodia in the constitution, which was promulgated after the 1993 elections sponsored by the UN Transitional Authority of Cambodia (UNTAC). In actual fact, the constitutions merely remain on paper, hardly ever implemented. One reason for the lack of implementation is that the basic institutions of democracy and justice were not reformed in terms of the new constitutions.

5. The consideration of whether some act of the Executive or the Legislature is legal or contrary to the constitution or a particular law has virtually been abandoned, and thereby many acts that are in fact illegal can be carried out without any legal consequences.

6. As a consequence of the above-mentioned factors, the role of the judiciary has been reduced to such an extent that, on many matters of vital public interest, judicial institutions cannot function independently. Pressure has been brought on the judiciary and prosecutors by the Executive, as well as by other powerful forces, to suppress judicial independence. The processes of appointment, promotion, and dismissal of judges have been done in ways that have enabled the emergence of submissive judges and prosecutors.

7. Torture and ill-treatment has been used as a routine method of criminal investigation, even for petty crimes. The justification given for this is that the government is unable to afford a modernized policing system. We have documented many cases which show that torture and ill-treatment have also been used by the police and security forces for corrupt purposes, such as to force victims and their families to pay bribes.

8. The cumulative effect of all these factors is that denial of justice has become the common mode of practice. As a result, most people in these countries have lost faith in their legal and judicial institutions.

9. The absence of faith in judicial institutions creates a new political culture within which people resort to powerful politicians instead of the courts. Many politicians exploit this situation in order to seek to dominate the police, prosecution, and judicial institutions, which in turn leads to the further degeneration of these institutions.

10. The legal profession in several of these countries has lost its capacity to function professionally. It is often forced to compromise with the existing situation, thus abandoning professional obligations to protect their clients within the framework of law.

Within such settings, the idea of access to justice makes little sense. When the system itself is so twisted so as to deny justice, making provisions for legal fees and taking other measures to grant access to justice does little but create further disillusionment

for complainants and lawyers about the possibility of obtaining justice within their countries.

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There is another category of countries like Sri Lanka, Bangladesh, Pakistan where there were deliberate attempts to remove the core elements of liberal constitutionalism by amendments to the constitutions to create tyrannical governments where the Chief Executive would nearly have absolute power.

6 rhaps the most important factor that threatens the legal system as a whole in these countries is that the issue of legality or illegality of an action is being treated as a matter of irrelevance. When Filipino President Duterte orders extrajudicial killings regarding drug-related matters, there is no way to challenge this as being contrary to all the basic principles relating to the rule of law. When orders are made to arrest all vocal opposition leaders in Cambodia, there is no legal remedy which they could pursue before any court; moreover, resorting to the court is considered dangerous because the courts will deliver judgments in line with government aims. When the government directly or indirectly orders extrajudicial killings, there is hardly any possibility of pursuing a legal remedy against this. Further, when the governments call upon judges to give the judgments they want on very vital matters, and remove the judges who refuse to do so, the final safeguard against illegal actions and legislations vanishes. Former Chief Justice of Bangladesh, Surendra Kumar Sinha, in his book *A Broken Dream*, published in 2018, reveals how the Bangladesh system of justice has been brought under severe pressures to conform to the demands of the Executive. The author was removed from his position as Chief Justice without any inquiry, and now lives outside Bangladesh.

7 n Sri Lanka, former Chief Justice Shirani Bandaranayake was removed without any justification by creating a pseudo inquiry team made up of persons close to the Executive President, which gave no fair hearing to the Chief Justice. In Cambodia and Myanmar, a functioning higher judiciary is virtually absent, and there is no possibility of challenging any decisions of the government. In the Philippines, the Supreme Court has been severely pressured under several Presidents, and the worst kind of pressure is being exercised now under the present government. For further details, see notes under 6.

8 In the countries mentioned above, recognition of the independence of the judiciary either does not exist at all, as in Cambodia and Myanmar, or such independence is severely undermined and limited.

9 The legal profession can effectively function only where an enabling environment exists. Where the professional exercise of rights of lawyers is overwhelmingly restricted, lawyers are unable to maintain an honest relationship with their clients. The lawyers need to adjust to the unpredictable circumstances, which may arise due to extraneous reasons in the course of legal proceedings. Lawyers are generally extremely critical of the situation in their private conversations. However, when they take any kind of protest actions, they have to suffer the consequences, and there are sections of the legal profession who are quite quick to exploit the situation unscrupulously for their own gain. There is hardly any effective disciplinary process against this, despite the existence of statutes and texts which may lay down proper procedures. The frequent use of contempt of proceedings against lawyers and even clients who may raise legitimate questions, further contributes to the climate of fear and intimidation.

It is these enemies who also target human rights defenders. Without the protective arm of law and law enforcement, it is not possible for individual human rights defenders or organizations to attain any significant achievements in the field of protecting people's rights by enhancing sustainable development.

Therefore, the unavoidable conclusion is the need for strengthening legal systems as a whole, including law enforcement and judicial systems. We are grateful that Section 16 of the Transforming our World: The 2030 Agenda for Sustainable Development, linked sustainable development with justice institutions and the rule of law. The implications of this section must also become part of the discourse on human rights defenders.

1. If sustainable development and enhancement of the protection of rights for and by human rights defenders is to be realized, it is essential that, particularly in the least developed parts of the world, the actual situations of dysfunctional and collapsed legal institutions are recognized in terms of their impact on the overall development goals in general, as well as on the protection of people's rights. This should be closely monitored and documented, so that a common body of knowledge on these matters will be available. All UN agencies dealing with human rights, all databases in research institutes in developed countries, all universities in countries where the rule of law and sustainable development are part of the educational syllabuses, and many other agencies of various types, should make arrangements for acquiring more documentation of, and a greater knowledge about, how the political systems, the social systems, and legal systems of least developed countries actually function. The absence of such facts and knowledge creates a situation of "the blind leading the blind."

2. Despite the many achievements in the field of human rights after the adoption of the Universal Declaration of Human Rights in 1948, the problem that remains is perhaps the reliance on generalization, without the knowledge of the actual reality, particularly in the least developed countries. This generalization may make sense in terms of developed countries, where basic political systems, as well as institutions of justice, have been far better organized than in the least developed countries. Thus, when new conventions are adopted in developed countries, the existing avenues in the legal system can be relied upon to deal with the provisions of the new convention. But, in the least developed countries, the legal systems themselves are major obstacles to implementing international law provisions. The weaknesses of these legal systems are exploited by those in charge of the political systems, who generally have no interest in undermining themselves in favour of implementing international law. In most cases, the political system generates propaganda stating that international law undermines national sovereignty. Furthermore, human rights defenders are often characterized as 'unpatriotic,' and serving the interest of the 'West.' If this vicious circle is to be broken, it is very essential to have people knowledgeable about the actual realities at the local level so that the pleas coming from human rights defenders will not be treated lightly or ignored.

3. For such a body of knowledge to come to existence in developed countries, there has to be close cooperation with local and regional actors who are directly struggling

against the political, legal and judicial systems in the least developed countries that are used as instruments of repression. Such local actors exist in significant numbers in each country, and they have the knowledge acquired through day-to-day living within their own context. By establishing effective collaboration between these persons and organizations in the least developed countries and organizations in developed countries, a rich source of statistics and stories about the actual realities of the least developed countries could be documented within a short space of time.

However, the present available avenues are not adequate to acquire such a vast body of facts and knowledge. As a result, these problems have not yet become part of the international human rights discourse.

While various sanctions are placed against those responsible for crimes against humanity or war crimes, there are very few examples of the actual practical implementation of those laws in the least developed countries. The political alignments of various groups within the international community itself has become a major obstacle to pursuing international law and to seeking justice within the international institutions created for this purpose.

If we hope to have a system that routinely works to deal with violations of international law and the requirements of sustainable development, then much effort has to be made to enhance human rights collaboration between local and regional actors and those who represent the international community. The present state of inadequate funding for existing institutions dealing with international law creates serious problems even when only thinking about more effective future work in this field.

## **Basil Fernando**



*Figure 1 Photo of the participants of Nuremberg Meeting*

## 6 The Sovereignty of the People, Freedom of Expression and Contempt of Court

The sovereignty of the people is best expressed by the exercise of freedom of expression and freedom of assembly. Both of these freedoms are essential to common people living with a sense of dignity. These freedoms are also essential in order to create a sense of community among all the peoples who live within the territory of a particular state. The deepest material, intellectual, physiological, and spiritual bonds are created only through the people talking and thinking about each other.

The state of nature that Thomas Hobbes spoke about where every man lives for himself or herself could be modified, and each other's welfare could be enhanced only through the capacity for freedom of expression and freedom of assembly. Therefore, all branches of the state should make it their duty to do everything possible to allow space for the exercise of these two freedoms.

If any of the branches obstructs these freedoms, it does so at the peril of the whole state, which in turn means the peril of the people living within such a state.

Whatever powers each branch exercises, including the power of the contempt of court, should be the purpose of enhancing the internal unity and sense of responsibility and care of all the people. If any power is used without consideration for this overall goal, many societal problems will arise and such problems could lead to violence and even civil wars. Therefore, genuine security demands the highest possible expression of these two freedoms.

The direct results of the exercise of freedom of expression and assembly are the improvement of the creative powers of the people. Dynamism of the society depends on the exercise of such power. If the economy is in deep crisis, if there are internal conflicts among the people living in society, if demoralization rather than hope prevails, these all mean that there had are loopholes in the exercise of creative powers by the people.

It is only when there are societal failures, that there also begin to manifest the failures of the state. When these two failures combine, it becomes impossible for any government to rule and to achieve the desired goals to contribute to the betterment of the society as a whole.

All branches of government, including the judiciary, should contribute to the unleashing of the creative power of the people. If any of the branches act contrary to this purpose, the result would be ruining of the very fabric of the society.

What all this means, is that contempt of court should have a limited scope, and that scope should be used with extreme caution and prudence. A critique of the judiciary as an institution, and the exposure of its defects is the only way through which the institution can be improved. If the institution does not improve, it negatively affects societal development.

Therefore, the use of contempt of court powers is not meant to intimidate critics or directly or indirectly suppress the creative power of the people. The contempt of court power is only a limited power to enable the courts to function in a manner required by the law, to ensure the orderly conduct of the court proceedings.

As for various different views on the courts, it should be assumed that the people are capable of choosing the better opinion from a variety of opinion that they may listen to. Inherent to the sovereignty of the people is the assumption that the people are able to exercise the sovereignty if no intimidation and fear is imposed on them. The power of reason residing among human beings is a foundation on which the sovereignty of the people could rest.

No branch of government should interfere on choosing what opinion is better and what is not. This is a function that the people could exercise by themselves. No branch of government should interfere in order to impose its point of view on the people.

The feudal conception of authority derives from the feudal King and corresponding laws taking it upon themselves the task of imposing opinions and beliefs upon the people. Furthermore, they impose severe punishments on contrary opinions expressed by people. The modern state is not built on this feudal consideration. That human beings are born free is the foundation on which democratic society rests. The feudal society believes that human beings are not born free, and that whatever freedom they get, they get from their monarch. John Locke refuted this position in his two treatises on government. The foundation of the sovereignty of the people rests, according to him, on the basis of the inherent rights of people, which are inalienable. This is also the foundation of the declaration of independence and the constitution of the United States, as well as in all countries that accept a democratic way of government. To reject this position of inherent freedom provides a premise for tyranny.

All branches of government should demonstratively manifest that their power rests on the inherent freedom of the people living within a particular state. None of the powers should be used to intimidate or to impose fear on the free exercise of people's freedoms within a framework of the law. The exercise of the contempt of court jurisdiction is no exception to this rule.

The sovereignty of the people and the role of the institutions of justice

It was Jean Jacques Rousseau who articulated the concept of the sovereignty of the people as a foundation on which the state is built. Previously, the notion of divine rights of the King to rule was the prevalent universal doctrine. This was challenged by John Locke in his two treatises on government. He argued against the divine rights of Kings. Jean Jacques Rousseau expanded this debate further by asserting the sovereignty of the

people as the foundation of government. The Sri Lankan Constitution is also based on the principle of sovereignty of the people.

The sovereign's every attempt to undermine the rule of law is a venture attacking the very notion of the sovereignty of the people. A slave does not have the benefits of the laws that apply to free people. On the other hand, when a Ruler stands above the others by not being bound by the same laws, that too makes the notion of sovereignty of the people meaningless.

What gives legitimacy to the justice administration system is the existence of uniform laws. The distinction between democracy and tyranny lies along with this existence of uniform laws; wherever the ruler is above the law, the essential condition for tyranny exists therein.

It is the sovereignty of the people that creates the state and gives powers to all the branches of the state to rule within the framework of the law. Therefore, the sovereignty of the people is the superior principle from which the state itself derives its authority.

This also applies to the judiciary, which is also a branch of the state. The judiciary acts on the basis of a power derived from the sovereignty of the people. Therefore, the courts are bound to act strictly within the framework of uniform laws created by the sovereignty of the people through their system of representatives or by other means, like for an example in the event of revolutions.

A citizen coming before any court shares in the sovereignty of the people. Therefore, the court should recognize in him a share of the sovereignty from which the court itself has derived its authority.

It thus follows that in the exercise of such authority, courts, like any other institutions, have no power to act contrary to the principle of sovereignty of people. This also applies to litigants who are accused of contempt of court. The idea of the contempt of court within the modern state is not based on the divine rights of Kings to rule. During the time when that notion of divine right of Kings prevailed, courts derived their power from the King.

Under the doctrine of divine rights of Kings, the King had the power to act arbitrarily without any respect for any of the laws that prevailed in the particular country. Deriving power from the Kings, the courts in a society could also act arbitrarily. In the case of contempt of court, the courts could arbitrarily exercise jurisdiction; the courts could subjectively define what constitutes contempt and how the offence is to be punished.

However, that is not the case where the sovereignty of the people is the foundation on which the structure of the state is built and maintained through a uniform system of laws. What is contempt of court, what is the manner in which such a charge should be brought about, what is the manner in which such a charge should be inquired into and what is the punishment for such a charge, should all be decided on the basis of law and not by any arbitrary power that the court may give to itself.

The notion of the sovereignty of the people imposes a certain discipline on the part of all those who act on behalf of the state including those who are engaged in tasks related

to the administration of justice. This also includes the judiciary. This general principle relating to discipline also applies to deal with the cases of contempt of court. The strict discipline of the law should be maintained and should be seen to be maintained in dealing in all cases. A uniform system of discipline excludes any arbitrary action. Anyone who acts contrary to the discipline required by the prevalent laws derived from the sovereignty of the people is engaged in wrongdoing. That endangers the very fabric of society based on the sovereignty of the people.

The Executive or other powerful social forces may want to use contempt of court as a weapon to punish and silence opponents. When the Executive or others do this, they act arbitrarily and not on the basis of law. The courts have a fundamental obligation to resist such arbitrary actions. Such attempts to misuse the contempt of court jurisdiction directly collide with the principle of the sovereignty of the people.

The United Nations Human Rights Committee has held twice that the actions taken on the charges of contempt of court by the Sri Lankan Supreme Court violate the human rights of the petitioners, requiring the state to take corrective action, including the payment of compensation for the wrongs suffered by the petitioners. These two cases are the communication by Anthony Emmanuel Fernando (see number) and the case of S. B. Disanayake (case number), a politician and a member of parliament at the time.

The prevention of arbitrary action also applies to sentencing, if the court finds that the contempt of court charge has been proved. In the views expressed by the UN Human Rights Committee in the above mentioned two cases, the Committee mentioned that the sentences imposed by the Supreme Court were arbitrary and that they violate the human rights of the petitioners.

## **ASIA: Cannot remove hunger without functioning public Institutions**

**T**he year 2016 has proved to be a difficult year in terms of food and livelihood security for the poor and marginalized communities across Asia. There have even been reverses in food security of the people in countries like Sri Lanka. The year witnessed increasing attacks on urban poor, most glaringly in the Philippines but also across Asia, including in India, Pakistan, Bangladesh, and Indonesia. It also saw reversal or dilution of several hard-won legislations for ensuring and promoting food security, the poor in India being the worst hit. The year has also witnessed several other upheavals of all kinds, from political to natural; these upheavals unfortunately compromised endeavours to enhance food security of the communities.

One of the worst things to happen to the struggle for food security in the region in recent times, however, is increasingly hostility of the governments to human right defenders (HRDs). With new governments consolidating themselves, human rights work has been hit hard by exceedingly intimidating crackdowns by the states of Bangladesh, India, and the Philippines. All these countries have seen HRDs getting framed in fabricated cases, arrested, and, in a few cases, even tortured. The year also witnessed authorities hounding many non-government organizations, often cancelling their licenses and stopping them from receiving funding on the flimsiest of grounds; the crackdown has been particularly severe in India with a partner organization of the Asian Human Rights Commission documenting over 400 criminal cases being slapped on its members by authorities in Odisha, a province in Eastern India. The Philippines State has displayed similar actions.

The Global Hunger Index Report, 2016, of the International Food Policy Research Institute, and Concern Worldwide, reflects the trends of the year. The Report notes that despite progresses made, levels of hunger remain alarming in 50 countries, many of them in Asia. A closer look betrays that the level of hungers seems to be unrelated to “economic growth” levels of the countries, and thus indicates a widening gap between the food security statuses of mainstream and poor / marginalized communities.

Take, for instance, India’s ranking of 97 out of total 118 countries. It has fared worse in eliminating hunger than all of its neighbours, sans Pakistan (ranked 107). Even Nepal, a poor country devastated by an earthquake in April 2015 ranks far better at 72, as do countries like Myanmar (75), Sri Lanka (84), and Bangladesh (90). That all of them, barring China, have the same level of hunger (serious) may be consolation for the government of India, but not for the poor who go hungry.

Sri Lanka gives another example of political stability not translating into lowering food insecurity of vulnerable populations, with both the hunger levels in the country and its rank worsening when compared to 2015! Sri Lanka ranked 69th in 2015 as against 84th this year. The following table gives an idea of the hunger situation in the countries where the AHRC works directly:

	<b>Country &amp; GHI rank</b>	<b>Undernourished (%)</b>	<b>Wasting in under fives (%)</b>	<b>Stunting in under fives (%)</b>	<b>Under five mortality (%)</b>
1	Pakistan (107)	22	10.5	45	8.1
2	India (97)	15.2	15.1	38.7	4.8
3	Bangladesh (90)	16.4	14.3	36.4	3.8
4	Sri Lanka (84)	22	21.4	14.7	1.0
5	Nepal (72)	7.8	11.3	37.4	3.6
6	Myanmar (75)	14.2	7.1	31.0	5.0
7	Cambodia (71)	14.2	9.6	32.4	2.9
8	Indonesia (72)	7.6	13.5	36.4	2.7
9	Philippines (68)	13.5	7.9	30.3	2.8
10	Thailand (51)	7.4	6.7	16.3	1.2
11	China (29)	9.3	2.1	6.8	1.1

The table demonstrates the extent of hunger in Asia as well as the variations in the priorities of the governments to eradicate the same. What it does not showcase is of course how the statistical percentage points gets translated into whopping numbers of real people suffering on the ground. What it also missed is that most of the countries in the region have the means to alleviate hunger altogether.

For example, United Nations Development Programme observed in its Human Development Report, 2015, that India can provide “a basic and modest set of social security guarantees for all citizens with universal pension, basic health care, child benefits and employment schemes”.

As against this meagre sum required, a UNICEF study found out that government of India’s expenditure on health care for children has ranged from 0.28 to 0.31 percent of total expenditure between 2001-02 and 2014-05. The trend has continued in recent years with the incumbent government slashing health budget by a whopping 20 percent and exposing 63 million Indians to face poverty every year, as the government’s draft National Health Policy, 2015 itself notes.

This happened simultaneously with India’s increasing Non Performing Assets (NPA), a euphemism for loans taken by the corporations and other bigwigs and never paid back. Face the figures: Indian bank NPAs grew from Rs 53,917 crore in September 2008 to Rs 3,41,641 crore in September 2015, i.e. much more than India spends on its social sector.

Other countries in the region are not doing much better. For example, on health, Pakistan spent a mere 0.9 percent of its total GDP in 2014, Bangladesh 0.8, the Philippines 1.6, Cambodia 1.3, Indonesia 1.1. Though Nepal and Sri Lanka

outperformed the region with 2.3 and 2.0 percent respectively, they too left a lot to be desired.

The answer to why countries did not spend such a meagre amount of their GDP to achieving something this important and basic shows why hunger still persists in the countries. Ironically, spending on eradication of hunger and ensuring basic social security for the population is no dole or favour done to the poor. It is, quite on the contrary, an investment that brings massive gains for the economy by building an efficient work force and obliterating the prohibitive costs that hunger inflicts on the economy in terms of lost human resources, health, and other expenditures.

To put it simply, a massive section of the population exposed to chronic hunger upsets the 'demographic dividend' that political leaders of these countries keep exhorting about. Having a frail, hungry, and unhealthy workforce is not that much different from not having a workforce at all.

One basic reason behind many of the countries in the region failing to take concrete steps for eradicating hunger is the lack of the very idea of justice, which is in turn rooted in the idea of citizenship in the region. Despite their democratic façades, most of the countries in the region operate exactly like their colonial (feudal in Nepal's case) predecessors and still treat majority of their populations as dispensable natives devoid of rights. They show callous disregard for the rights of their citizen, which inalienably include the right to life with dignity, something impossible for those exposed to chronic hunger.

Sadly, the simultaneous lack of a functioning justice system in these states denies the discriminated against section of the citizenry the opportunity to seek redress. It forces them into continuing with their dehumanized existence, hungry, stunted, and wasted.

In fact, completely defunct public institutions just pretending to be functioning is one commonality among all the countries which have failed to arrest hunger and starvation. This denies, as noted earlier, their hungry citizenry of any attempt at seeking redress. The rot in the public institutions of these countries runs too deep; their social welfare institutions remain, generally, so frustratingly corrupt and inefficient that almost nothing reaches the poor and is lost to vested interests entrenched deep in the system.

The judicial institutions, overcrowded, overburdened, understaffed, underfunded, and often corrupt, complete the vicious cycle of denial of justice to the violated people. Gary Haugen and Victor Boutros brilliantly summarize the end result in their book, *The Locust Effect*. They say countries remain stuck in the cycle of poverty because of the failure of the justice system, law enforcement, and the government in saving the poor from day to day violence, slavery, or forced labour. Governments, and the world community, might have a thousand schemes ready to fight hunger. However, if the governments are really interested in ending hunger and poverty, they need to provide mechanisms of deterrence, on the ground, fighting the bullies, be they State or non-State actors, who inflict violence on the poor and marginalised and thereby keep them in cycles of poverty and hunger. The mechanisms of deterrence are none other than functioning justice systems, treating everyone as equal and operating to punish criminals swiftly, and ultimately providing redress to victims of injustice.

A social justice bench of the Supreme Court of India, comprising justices Madan B. Lokur and U.U. Lalit, summed up the problem in September 2015 while criticizing the Government of India over the “mismatch” between “wonderful schemes” it creates and their woeful implementation, leaving ground realities unchanged.

This mismatch, between plenty of schemes, acts, and promises to fight hunger with abysmal implementation, without financing and monitoring, is the basic reason behind continuing hunger, not only in India but also in the whole region. Sadly, the problem will not be addressed even if the funding crisis is resolved, as there would still not be functioning public institutions delivering the benefits without pilferage, leaks, and outright loot, due to corruption that is endemic in the region.

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## NEPAL: New Laws and Policies aim to throttle the NHRC, media, and civil society

The government of Nepal has been repeatedly throttling the civil society, media and human rights organizations in Nepal. Even the National Human Rights Commission (NHRC) has now come under its ambit. The present government, led by the Nepal Communist Party, does not like civil society questioning its business. In an attempt to silence critical voices, the government is trying to control civic space, and curtail freedom of speech in the country.



The government has registered/proposed an amendment to the NHRC Act, 2012. The proposed bill contravenes the provisions relating to the NHRC as enshrined by the Constitution of Nepal and the United Nations' Basic Principles for National Human Rights Institutions. The Nepalese Constitution vests primary responsibility in the Commission to protect and promote the human rights of Nepalese people. The NHRC currently enjoys "A" status worldwide, which it may lose if the government pushes through the proposed amendment.

The amendment bill gives discretionary power to the Attorney General to investigate and implement recommendations made by the NHRC (Section 17a), and allows government interference in the financial autonomy of the NHRC. It also proposes the cancelation of the NHRC's provincial and contact offices, among other things. This will limit the jurisdiction, autonomy and the independence of the NHRC, turning it into a government puppet. The lack of provincial and contact offices will prevent victims of human rights violations and their families from timely reporting to the NHRC and seeking assistance.

In order to maintain the credibility, impartiality, and autonomy of the NHRC so that it can function well, the government must revise the NHRC bill.

Aside from targeting the NHRC, the government has also registered a bill to control the media. The proposed bill seeks to impose a fine of NPR one million on media and journalists including editors, who tarnish the image of any individuals. Another bill on mass communication proposed the confiscation of media equipment, a fine up to NPR

10 million, and 15 years of imprisonment, for media persons who are found to have engaged in publication of contents “undermining national sovereignty and national integrity”. This provision gives the government room to target persons at their discretion. Ultimately, the Press, considered a fourth pillar of the nation, will come under the scrutiny of the nation itself. The bill must be revised without any delay in order for press freedom in the country to flourish.

The government of Nepal is also proposing a separate governmental body to oversee International Non-governmental Organizations (INGO) and Non-governmental Organizations (NGO). The government has been proposing it as a way to better monitor INGOs and NGOs in the country. However, when the monitoring and evaluation is being done by the Social Welfare Council (SWC), there is no need for a separate governmental authority. It is a direct proposal to restrict INGOs and NGOs to operate and carry out advocacy work relating to human rights in the country. Slowly, the government might also be extra vigilant and deny registration and cancellation of INGOs and NGOs working in human rights and freedom of speech.

The AHRC has serious objections towards the government of Nepal for trying to bring in these amendments. They must be revised properly with due consultation, in order to keep democratic space alive in Nepal. The AHRC calls for national and international groups to lobby the Government of Nepal to withdraw these bills. The proposed bills are an attempt to silence critical voices. When there are no critical voices present in the country, the government can run the country under its monopoly; and the human rights, freedom of speech, and freedom of movement of common people will come under its control.



# **SRI LANKA: AHRC's Letter to Cardinal Malcolm Ranjith on Sri Lanka Easter Sunday Attacks on Churches & Hotels**

Cardinal Malcolm Ranjith

Archbishop's House, Colombo - 8, Sri Lanka

Phone: +94 11-2695471-2-3 / 2696054

Fax: +94 11-2692009

Email: [archbishop@sltnet.lk](mailto:archbishop@sltnet.lk) / [cardinalmalcolm@gmail.com](mailto:cardinalmalcolm@gmail.com)

Dear Cardinal Malcolm Ranjith,

On behalf of the Asian Human Rights Commission, we are writing to express our solidarity with the Catholic community in Sri Lanka, as well as the entire Sri Lankan people, who have experienced fear and trauma as a result of the brutal and horrendous terrorist attacks that killed more than 359 persons, and injured many more, as well as damaging three churches and some tourist hotels. At this painful time, we wish to share through you our concern and support for the families of those who have suffered, and for all the members of the Catholic community, who have been shaken by these attacks, and for all persons in Sri Lanka who feel threatened by these brutal, careless and inhuman activities.

We also want to express our appreciation for the manner in which you have exercised your leadership to communicate to the government and to all politicians the need to act together to improve the security situation for everyone in the country. The efforts taken by the Catholic leadership to try to prevent a backlash that might have victimized ordinary people in the Muslim community is an example for everyone to follow. The steps taken by you and others in the Catholic community to console the victimized families and the people as a whole, speaks loudly about charity and non-violence and love for the neighbor, all of which are deeply embedded values in the Catholic faith.

In our view, in your public speeches, you have correctly pointed out the failures of the government. This regards official information provided by the Indian authorities about the planned attack which was particularly aimed at the Catholic Churches. Such failures are horrendous in nature, and would in fact constitute a criminal neglect of duties.

We note that you have called on both the government and the opposition to act firmly and to do so in a unified manner, with a sense of urgency and efficiency, in order to guarantee the security situation of all people.

We wish to share with you a great concern that the Asian Human Rights Commission has consistently expressed for almost two decades. It is about the serious collapse of public institutions, which in our view is at the root of the government's incapacity and/or unwillingness to provide security and protection for the people of Sri Lanka. There appears to be an alarming level of disintegration of those institutions that are meant to protect people, mostly due to the Executive's interference with the independent functioning of those institutions, namely the policing/security service, the prosecutorial service under the Attorney General's department, and the Judiciary itself. In any country where these institutions function with an adequate degree of accountability, they would prevent the possibilities of large-scale violence. They take precautionary action to monitor those who engage in illegal activities, using law enforcement powers to stop such endeavors.

When the legal system becomes dysfunctional, the law itself is regarded as an obstacle to the arbitrary actions of the Executive and unscrupulous. They want to utilize a chaotic situation to make illegal profits. There is nobody to whom people can turn when they face threats to their lives and dangers to their properties.

The tremendous loss of lives and the attacks on holy places suffered in these recent attacks is an indication of the catastrophic level to which the protective arm of the state has been allowed to degenerate.

Under these circumstances, we presume that you must realize the future of all those living in Sri Lanka is threatened by even greater calamities.

Given the apparent impotency of politicians, it is our opinion that civil society leadership, including that of the Churches and other religions, should take a more proactive role. They should demand the restoration of the rule of law and the provision of guarantees for the protection of the lives of all people. If such a proactive stance does not emerge, we fear that more vicious attacks will occur in Sri Lanka, committed either by terrorists or by underworld gangsters.

We are writing to urge that you and your fellow leaders in the Catholic Church make this an occasion to reflect upon the gravity of the overall situation faced by Sri Lanka. By inviting reflection among the experts who may be advising you and also discussion among all members of the Catholic community, perhaps strategies can be developed for a quick recovery of these public institutions so that they will again serve the public interest that they are meant to serve.

We hope and pray that efforts by yourself and other religious leaders who rise to the occasion will bring about sober reflection and help create social pressure to redeem Sri Lanka from the present pathetic situation.

Please be assured of our support, our prayers and our concern as you work with others to try to create a secure nation where peace, love, truth, and mutual support for one another will become a reality.

Sincerely,

John Joseph Clancey

Sr. Marya Zaborowski

Chairperson

Maryknoll Sister



# 10 WORLD: Key to eradicate Hunger is making public institutions work

**W**ho can enjoy any of the basic human rights guaranteed to them by the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in Paris on 10 December 1948 through the United Nations General Assembly resolution 217, if they face chronic hunger, or even worse, starvation? The answer to the question is simple. The rights guaranteed by the UDHR to peoples of all nations would be nothing more than a cruel joke on them.

Sadly, this is the truth that millions of hungry souls in the world encounter meal by meal, day by day, month by month, even 67 years after the declaration and 19 years after the recognition by the world community. This is the realizing of everyone's right of access to safe and nutritious food, consistent with the right to adequate food. It is the fundamental right of everyone to be free from hunger. This concept was put forth on November 13 1996, in Rome, at the World Food Summit called by the Food and Agriculture Organization of the United Nations.

The world has seen progress since then and equally spectacular failures to achieve a planet free of hunger. As the FAO itself notes in its State of Food Insecurity in the World report (SOFI) for 2015; 72 developing countries out of 129 it was monitoring for the Millennium Development Goals targets, have achieved them. But, we still see globally more than 793 million people who remain undernourished. The numbers have come down from 960 million, but is this acceptable?

A regional breakdown of hunger statistics makes things even more worrying. It tears apart claims of economic development and growth being the best weapons for eradicating hunger. India, for instance, is one of worst offenders in failing its hungry citizens. However, it maintained its spectacular annual growth rate of over 7 percent for almost all of the decade gone by-even when the rest of the world was on the brink of an economic break down not seen since the 1970 Oil Shock. The same period has also seen other countries not doing that well when dealing with hunger on the economic front. Bangladesh was much better.

The reasons behind the prevalence of chronic hunger are as varied as the countries and communities in which it is endemic. Armed conflicts and insurgencies raging in Africa have pushed millions more into starvation in an Africa that has always been beset with hunger. India has seen the same without having such violence except in a few border areas. Sri Lanka, on the other hand, did not suffer much food insecurity despite three decades of civil war. In the case of food scarcity- it threatens the food security of

millions across the world but millions of others in India go hungry despite food grains rotting in government warehouses.

However, there is one commonality among all those countries who have failed to arrest hunger and starvation. It appears that almost all of their public institutions are either completely defunct or just pretending to be functioning. This denies their hungry citizenry of any attempt at seeking redress. The rot in the public institutions of these countries runs too deep—from their justice to their social welfare institutions—with the end result remaining the same. The end result is brilliantly summarized by Gary Haugen and Victor Boutros in their book *The Locust Effect*. They say countries remain stuck in the cycle of poverty because of the failure of the justice system, law enforcement and the government in saving the poor from day to day violence, slavery or forced labor. Governments, and the world community, might have a thousand schemes ready to fight hunger. The question is worth asking, what would they be on the ground fighting against bullies? Often in connivance with law enforcers than not, stealing all the benefits from the intended beneficiaries who have no justice system to seek redress against such theft.

“Hunger is more than a lack of food—it is a terrible injustice,” said United Nations Secretary-General Ban Ki-moon on the World Food Day, albeit in a very different context. It cannot be further than the truth. It is a terrible injustice that public institutions, which can eradicate hunger, do not work for the hungry people and most of them have no justice institutions in which to turn. A massive reengineering and rebuilding of these public institutions is the key to eradicate hunger.



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## BANGLADESH

### **Bangladesh's Enforced disappearances: A nexus between justice institutions and authoritarianism, amidst the diplomacy of geopolitics and economic growth**

#### **INTRODUCTION:**

**E**nforced disappearance has been made an integral part of the public vocabulary in Bangladesh<sup>1</sup> today. Amidst continued denials and justifications by high profile political authorities, disappearances continue. Enforced disappearances<sup>2</sup> were rampant immediately after the independence of Bangladesh. Then, after an interval of 20 years, one incident<sup>3</sup> was reported in June 1996. Another case was documented in 2007.<sup>4</sup> From January 2009, when the incumbent government assumed office, the escalation<sup>5</sup> of enforced disappearances has continued.

<sup>1</sup> Bangladesh emerged as an independent nation-state in 1971 through tremendous bloodshed, with Pakistani military forces being especially brutal. Geographically, the country is located in the delta of the Bay of Bengal, surrounded in the west, north, and east by India, with the Bay in the south. It shares a 4096-kilometer border with India and a 271-kilometer border with Myanmar.

Constitutionally Bangladesh claims to be a parliamentary democracy; however, the family-centric political parties operate far removed from democratic norms, from selecting leadership, representing the public, to making all manner of decisions. Currently, the country has around 160 million people in a national territory of 148,000 square kilometers. Further details can be viewed from the following link: [https://www.cia.gov/library/publications/the-world-factbook/geos/print\\_bg.html](https://www.cia.gov/library/publications/the-world-factbook/geos/print_bg.html)

<sup>2</sup> Around 30,000 activists of left leaning political parties and their underground militants were reportedly disappeared between 1972 and 1975. The law-enforcement and paramilitary forces were accused to have abducted the people; whereabouts of most are still unknown; while, several hundred bodies were floated in ditches and roadsides during those years.

<sup>3</sup> Ms. Kalapana Chakma, a political activist of the Chittagong Hill Tracts, was allegedly disappeared by the soldiers of the Bangladesh Army in the early hours of 13 June 1996.

<sup>4</sup> Mr. Md. Shafik Ullah Monayem was picked up by members of the Rapid Action Battalion (RAB) from Barishal city. He remains disappeared since then. The Asian Human Rights Commission documented the case of disappearance of Monaye: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-201-2008>.

Most victims of disappearances are identified as opposition political leaders<sup>6</sup> and dissidents<sup>7</sup>. Justice is neither affordable nor accessible to victims, except in one case. Intimidation through physical and digital surveillance are in place to silence the relatives of the disappeared victims, and bar their access to the justice mechanism. The Rapid Action Battalion (RAB), the Detective Branch (DB) and the Counter Terrorism and Transnational Crimes Unit (CTTCU) of the Bangladesh Police, the joint teams of the RAB and Police, and the intelligence agencies are allegedly responsible for the enforced disappearances in Bangladesh, according to witnesses and victims' families.

However, law-enforcement agencies continuously deny all allegations of their involvement in abducting and disappearing. And yet, weeks or months after the disappearances, some one-fourth of the disappeared people are found detained in prison in various trumped up criminal cases. This clearly indicates the involvement of law-enforcement agencies in the disappearing of citizens. Few people who returned home have never dared to speak out about their experiences.

The present paper seeks to discuss the issues interrelated to the consistent practice of enforced disappearance, which is defined as a 'crime against humanity' under international law such as the Rome Statute<sup>8</sup>. Efforts are made to shed light on why Bangladesh, a party to the Rome Statute<sup>9</sup>, does not come under the international radar for its gross violations of human rights.

### **Authoritarianism and the absence of independent of institutions**

Authoritarianism hardly offers 'good governance' in any country. There is an inseparable relation between authoritarianism and the absence of independent of institutions of the State. An authoritarian regime concentrates on establishing overwhelming control over basic public institutions, such as the Election Commission, the Police, the Crime Investigation, Forensic Medicine Examination, Prosecution and Attorney service, and the Judiciary. These institutions are crucial for the existence of a functional 'democracy'.

<sup>5</sup> From January 2009 to May 2019, at least 526 people have been victims of enforced disappearances in Bangladesh. For further details, please see: Civil Society Joint Alternative Report on Bangladesh Submitted to the Committee against Torture, [http://www.omct.org/files/2019/06/25408/civil\\_society\\_alternative\\_report\\_on\\_bangladesh\\_to\\_cat\\_committee\\_omt\\_fidh\\_alrc\\_fa\\_afad\\_rfk\\_odhikar\\_1.pdf](http://www.omct.org/files/2019/06/25408/civil_society_alternative_report_on_bangladesh_to_cat_committee_omt_fidh_alrc_fa_afad_rfk_odhikar_1.pdf)

<sup>6</sup> The victims include two former parliament members, a former minister, many representatives of various local government units associated with the mainstream opposition political parties.

<sup>7</sup> Critiques of the incumbent government, researchers, academics, writers, former diplomats, former officers of armed forces, and social activists and in certain cases the members of their family have been disappeared in Bangladesh.

<sup>8</sup> The Rome Statute of International Criminal Court has defined 'enforced disappearance' as a 'crime against humanity'. The definition is available at the following link: <http://www.un.org/en/genocideprevention/crimes-against-humanity.html>. General Comment on Enforced Disappearance also defines it as 'crime against humanity', which can be accessed from the following link: [http://www.ohchr.org/Documents/Issues/Disappearances/GCas\\_crime\\_against\\_humanity.pdf](http://www.ohchr.org/Documents/Issues/Disappearances/GCas_crime_against_humanity.pdf)

<sup>9</sup> Bangladesh is a party to the Rome Statute since 23 March 2010 [https://asp.icc-cpi.int/en\\_menus/asp/states%20parties/asian%20states/Pages/bangladesh.aspx](https://asp.icc-cpi.int/en_menus/asp/states%20parties/asian%20states/Pages/bangladesh.aspx)

## **The difference between Bangladesh and a functional democracy**

In any developed democracy<sup>10</sup>, the institutions of the State are committed, and designed and resourced with the objectives of upholding the norms of ‘democracy’ and the ‘rule of law’.

In the case of Bangladesh, the overall attitudes and functionality of the ‘Executive’, ‘Legislature’, and ‘Judiciary’ are apparently the opposite to that of a democracy. The colonial<sup>11</sup> legacy and the post-independent practices of law-enforcement, intelligence agencies, and the security forces, have transformed the State to a ‘republic of coercion’. The politicians that occupy or associate with the ruling parties of the day, the military, the law-enforcement agencies, the judiciary, and the civil bureaucracy, are considered the ‘elites’. These ‘elites’ take up undeserving privileges, causing immeasurable plights to the rest of the population.

The condition establishes a cycle of degeneration of institutional competence, democratization, governance, socio-political and cultural space, barring people’s participation in various spheres of life. Assuming power either by “elections”, or via other means, enable a “ruling class” to take overwhelming control of all the public institutions, including justice institutions. Acquiring undeserving assets by abusing the State’s power increases in the absence of competent institutions. The power-abusers invest their efforts to weaken the institutions. The continued inaction and abdication of authority by the institutions of the State consistently contribute to the process of weakening themselves. Thus, the possibility for the people to get effective redress from the Executive, Legislature, and the Judiciary and other subsidiary institutions becomes almost impossible.

The rulers, the institutions and professionals aligned with them become Frankenstein in the real life of the people. A group of media and civil society emerge aligning with the regime for their mutual benefits. Together with the public institutions, all of them act to perpetuate a fear psychosis in society. Success in creating fear remains the key to obtaining personal, collective, and ideological benefits.

In a centralized, constitutional framework of political and administrative power, the Executive is able to establish an unbridled authority over the Judiciary, to justify or cover-up the abusive actions of the regime. Throughout a reciprocal system, both the professionals of the institutions and the political masters of the day share their expected and available benefits by complementing each other. In an entrenched institutional crisis, gross human rights abuse, such as arbitrary deprivation of life, incommunicado

<sup>10</sup> States that pursue ‘democracy’ invest their ‘political will’, financial and intellectual resources for building institutions that guarantee the fundamental freedoms of the people. Competent institutions equipped with principles of ‘equality before the law’ and the ‘right to fair trial’ establishes the atmosphere of ensuring ‘good governance’ within the jurisdiction of the given State. There, the people confidently believe that each of them shall be treated ‘justly’ regardless of their ethnic, socio-economic or political status. Over the years and by generations, the society as well as the institutions can nourish and improve their aptitudes in their private and public life. Discriminations or privileges gradually become rare in society as viewed from the public perspectives.

<sup>11</sup> Being a former British colony till 1947, Bangladesh has the common law system in place, in terms of the justice mechanism, like its neighboring States.

detention, torture, and extrajudicial executions continue relentlessly. Authoritarianism becomes almost unchallengeable.

### **Role of Police as law-enforcement and crime investigation agency**

Bangladesh's police systematically refuse<sup>12</sup> to register complaints regarding enforced disappearances. They insist that the name of the law-enforcement agencies withheld in the complaints. Replacement of the term "disappearance" by "kidnapped by unidentified miscreants" or "found missing" only allows the registration of complaints. Intimidation of the relatives through physical and digital surveillance by the police, RAB, and the intelligence agencies continues.

The Police, as the statutory crime-investigating agency, do not conduct investigations of the complaints filed with the police stations or with the Magistrate's Courts, except one case since 2009. As a result, there has been only one prosecution of perpetrators in the last ten years, for committing enforced disappearances and subsequent disposal of bodies.

### **Role of Magistrates & Lawyers**

The complainants face similar challenges at the Magistrate's Court, where registration of complaints requires mandatory assistance by lawyers. Very few lawyers wish to step forward for assisting the complainants. Due to the prevailing circumstances, where reprisals may ruin "professional practice", most lawyers refrain from challenging law-enforcement agencies.

### **Role of the Supreme Court and Office of the Attorney General**

Around ten Habeas Corpus writs were filed with the High Court Division of the Supreme Court since 2009. The High Court issued Rule against the respondents<sup>13</sup> of the specific writs, asking them to respond to the Rule. Afterwards, the progress of the cases has been zero.

The Office of the Attorney General denies any involvement of the perpetrators of the law-enforcement agencies in disappearing people. The Court also complies with the Attorney General's suggestions, and refrains from holding the perpetrators accountable in the cases of Habeas Corpus. Since 2009, the Supreme Court has never ordered the State agencies to produce people whose whereabouts remains unknown following their abduction by law-enforcement agencies.

In sum, there is no legal remedy accessible, affordable, and available in the existing domestic justice institutions of Bangladesh. Thus, lack of trust in the justice institutions spreads more fear in the society.

<sup>12</sup> The police, who control the complaint mechanism and crime investigation, bar the relatives of disappeared victims to have access to the justice mechanism.

<sup>13</sup> The Respondents in the Habeas Corpus writs are often represented by the Ministry of Home Affairs, the Bangladesh Police, the RAB, and other State agencies.

### **Role of the High Profile Officials in the Government:**

Bangladesh's Prime Minister and her Cabinet colleagues have repeatedly justified<sup>14</sup> disappearances and denied<sup>15</sup> any crime taking place. She also slammed human rights organizations for raising the issue of enforced disappearance<sup>16</sup>.

Combating “extremism” and “militancy” is one of the excuses used to redirect the interest of the international community. At the same time, the process of justice has been consistently halted and delayed in addressing the issue of ‘militancy’. Draconian legislations have been adopted to use against human rights organisations, civil society groups, and any dissenter in general.

### **UN Human Rights Mechanism and International Community**

The United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) had transmitted General Allegation to the Bangladesh Government thrice: the first one on 4 May 2011, the second one on 9 March 2016, and the third one on 22 February in 2017, according to its mandate<sup>17</sup>. There has been no response from the government yet. Bangladesh not being a party to the *International Convention for the Protection of All Persons from Enforced Disappearances*, its matters do not fall under the mandate of the Committee on Enforced Disappearances (CED).

Apart from the WGEID's interventions, international human rights organisations occasionally campaigned against enforced disappearances. Yet the outcry remains

<sup>14</sup> Bangladesh's prime minister has claimed that forced disappearances allegedly perpetrated by security forces in the country also occur in Britain and the US, saying “275,000 British citizens disappeared” in the UK each year. The Guardian of United Kingdom reported on this matter: <https://www.theguardian.com/world/2017/nov/25/bangladesh-pm-sheikh-hasina-claims-forced-disappearances-take-place-in-uk-and-us>.

<sup>15</sup> After State minister and opposition leader Salahuddin Ahmed was picked on 10 March 2015 and disappeared by the RAB for 62 days, the Prime Minister publicly accused her political rival – the Chairperson of the BNP – that the latter had trafficked Salahuddin by putting him in a trash bag. YouTube video clip containing Prime Minister Sheikh Hasina's speech in the parliament about the disappearance of opposition leader Salahuddin Ahmed: <https://www.youtube.com/watch?v=UwHUaG91vKI>. Salahuddin was later found in the polo ground in Shilong, the capital of Meghalaya, in India.

<sup>16</sup> The Prime Minister has been cited in the media in the following way: “[W]hile talking about missing youths, the prime minister also came down hard on human rights organisations. ‘These international human rights bodies are releasing reports on abductions and blaming the government and law enforcing agencies. But they have failed to report the missing youths who returned as militants and terrorists. Why didn't they release reports on this? Why did they fail to report these missing youths? They must answer.’ She said the government could have taken immediate steps if the human rights organisations had provided the right information instead of making ‘motivated statements’” BD News 24.Com published Prime Minister Sheikh Hasina's speech, which is accessible from the following link: <http://bdnews24.com/bangladesh/2016/07/07/pm-hasina-urges-parents-tell-police-about-their-missing-children>

<sup>17</sup> UN Human Rights Council, 39th Session, Report of the Working Group on Enforced or Involuntary Disappearances (WGEID), 30 July 2018, UN Doc. A/HRC/39/46, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/46](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/46). The WGEID submitted the first general allegation on 4 May 2011, regarding the alleged frequent use of enforced disappearance by law enforcement agencies, and paramilitary and armed forces, as a tool to detain and even to execute individuals extrajudicially - A/HRC/22/45 and Corr.1, para. 33, and A/HRC/30/38, para. 61; the WGEID submitted the second general allegation on 9 March 2016, concerning the reportedly alarming rise in the number of cases of enforced disappearance in Bangladesh - A/HRC/WGEID/108/1, para.6 ; and the third general allegation was submitted on 22 February 2017, concerning allegations of grave human rights abuses and violations committed by the security and intelligence forces, as well as law enforcement authorities - A/HRC/WGEID/111/1, para. 24 and annex II.

mostly a matter of concern for civil society groups. The countries that are known for their functional democratic culture and apparent commitment for human rights have hardly spoken about the issues of enforced disappearances. The reason for not being vocal or critical about it is mostly related to diplomacy focusing on 'geopolitical interest' and 'investment interest'. Compromises are being made for a preferred regime despite the fact that gross human rights abuses are on the rise and 'justice' is neither accessible nor affordable in Bangladesh's current context. In addition, Bangladesh's incumbent government takes the advantage by claiming success in 'economic growth' in Bangladesh, which is arguably a doctored claim on the part of the regime, however, its Western development partners maintains their supports for Bangladesh's continued engagements with the 'war on terror' and 'counter terrorism' projects.

## **RECOMMENDATIONS**

The following are recommendations to improve the condition of Bangladesh:

1. Reforming the electoral system for, and, hosting credible, free, fair, and inclusive parliamentary elections to ensure governmental accountability to the people;
2. Invest more financial and technical resources to study the behavioural patterns of policing, crime investigation, prosecution, forensic medicine examination, and adjudication systems under various research programmes so that appropriate transformation initiatives can be devised when the window presents itself;
3. Transform the institutions aiming to make them compatible for functional democracy and rule of law through establishing 'justice' by upholding the universal norms and standards that can pave the way to achieve the sustainable development in the long run, without requiring distorted data of economic growth;
4. International community, particularly the development partners of Bangladesh need to prioritise functional democracy, rule of law, and human rights for the people of the country instead of 'geopolitical strategies', 'financial investments', 'war on terror', and 'counter terrorism' without any transparent system of local and international accountability in place.

# CAMBODIA

## **CAMBODIA: Three years and still no effective investigation into Dr. Kem Ley's killing**

A Joint Statement from [The Cambodian Center for Human Rights](#)

9 July 2019

(Bangkok, Thailand) ---

**T**oday, on the third anniversary of the killing of prominent political commentator and human rights defender Kem Ley, the 24 undersigned organizations renew calls on the Cambodian government to establish an independent and impartial Commission of Inquiry to conduct a thorough and effective investigation into his killing.

On 10 July 2016, Kem Ley was shot and killed while having a morning coffee at a gas station located on Monivong Boulevard in central Phnom Penh. This killing occurred amidst a backdrop of attacks on human rights defenders and members of the political opposition, and a documented history of killings of human rights defenders with impunity in Cambodia.

On 23 March 2017, after a half-day trial hearing, the Phnom Penh Municipal Court found Oeuth Ang – the suspect arrested by authorities who identified himself as “Choub Samlab” or ‘Meet to Kill’ – guilty of Kem Ley’s murder and sentenced him to life imprisonment. On 24 May 2019, Cambodia’s Supreme Court rejected Oeuth Ang’s appeal for reduction of sentence and upheld his life imprisonment term.

On 23 March 2017, the ICJ, Human Rights Watch and Amnesty International highlighted eight specific issues which had been inadequately investigated during the trial of Oeuth Ang, and called for an investigation in line with international standards set out in the International Covenant on Civil and Political Rights (ICCPR) and the revised Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016).

“It has been three years since significant gaps were highlighted in the investigation and trial of Kem Ley’s case, which need to be remedied through an independent, impartial and effective investigation,” said Frederick Rawski, ICJ’s Director for Asia and the Pacific. “The lack of progress reflects a clear lack of political will by the Cambodian government towards meeting its obligations under international law to fully and

impartially investigate a potentially unlawful death and protect the rights to life and to effective remedy.”

On 7 July 2017, 164 organizations signed a joint letter to the Deputy Prime Minister of Cambodia, Sar Kheng, calling for the creation of an independent Commission of Inquiry into Kem Ley’s case, in light of the “flawed investigation into the killing of Kem Ley and lack of progress in subsequent investigations into suspected accomplices to the killing.”

*“The farcical trial of Oeuth Ang fell far short of international fair trial standards and raised more questions than answers about who was really behind the killing of a respected political analyst who dared to harshly criticize Prime Minister Hun Sen,” said Phil Robertson, Deputy Asia Director at Human Rights Watch. “What’s known is Kem Ley’s family had to flee Cambodia out of fear and anyone who now alleges government involvement in the murder faces immediate harassment and retaliation.”*

“The trial of Kem Ley’s killer still points to a cover-up. The Cambodian authorities’ ongoing failure to identify and prosecute the masterminds behind Kem Ley’s murder shows that an independent investigation is urgently needed to deliver justice to his family and to make progress towards ending impunity for the killing of human rights defenders in Cambodia,” said FIDH Secretary-General Debbie Stothard.

The Cambodian government’s failure to conduct a thorough, impartial investigation into the killing of Kem Ley obstructs the rights of Kem Ley’s family members and the public to ascertain the truth.

It also signifies that Cambodia has failed to respect Oeuth Ang’s right to a fair trial by a competent, independent and impartial tribunal, in violation of the ICCPR, to which Cambodia is a State party.

On 13 July 2016, soon after the killing, the ICJ made five recommendations to the Cambodian authorities aimed at meeting its obligations under international law to promptly carry out an independent, impartial and effective investigation into the killing. These recommendations included ensuring that:

- Investigating judges and investigators are independent;
- The investigation process is transparent and open to public scrutiny;
- The rights of victim family members are protected, particularly against intimidation or retaliation as a result of their participation in the investigation;
- The rights of any other person providing information to the investigation are protected; and
- Offers of assistance from States and international organizations with respect to forensic analysis or data collection are actively sought out and accepted.

To date, Cambodian authorities have not implemented any of these recommendations.

“The apathy of the Cambodian authorities could be seen to protect the masterminds of this killing,” said Nicholas Bequelin, Amnesty International’s Regional Director for East and Southeast Asia. “Fearless activists like Kem Ley only want to make their country better. They deserve justice from their government – not brazen indifference.”

The upholding of Oeuth Ang’s sentence by Cambodia’s highest court in May 2019 — despite the failure of lower courts to sufficiently address shortcomings in his trial — also raises serious concern as to the lack of independence of the judiciary in Cambodia. The lower courts that considered the case were the Phnom Penh Municipal Court and then the Court of Appeal, which rejected Oeuth Ang’s first appeal, before he then appealed to the Supreme Court, where his appeal against his sentence was also dismissed. These courts did not address the clear shortcomings that had marred the investigation and the original trial before the municipal court.

In October 2017, an ICJ report found that the lack of independent judges and prosecutors was the “single largest problem facing the Cambodian justice system” — where “the rule of law is virtually absent” and political interference and corruption in cases endemic.

Given the lack of trust and confidence in the impartiality, independence and competence of persons within the Cambodian judicial system to sit on a Commission of Inquiry into Kem Ley’s case, the undersigned organizations urge the Cambodian authorities to request that an appropriate body with independent experts be established under the auspices of the United Nations.

"Kem Ley’s murder was a tragedy and marked a regrettable return to the killings of human rights defenders in Cambodia. An independent body must be established to conduct a fair and impartial investigation to ensure Kem Ley’s family finds out the truth about his killing,” said Naly Pilorge, Director of the Cambodian League for the Promotion and Defense of Human Rights (LICADHO).

Kem Ley’s killing remains an alarming reminder of Cambodia’s culture of impunity in cases of apparent enforced disappearances, killings and other forms of physical and legal harassment of human rights defenders, labour leaders, monks, journalists, members of the political opposition and other individuals critical of the ruling regime since the 1991 Paris Peace Accords. Kem Ley’s death also occurred in the midst of a crackdown on dissent, and rising restrictions on independent and critical media.

“Kem Ley was a true man of the people. He was unshaking in his commitment to the truth, and always continued to speak out against the corruption and injustice that was continuing to impact the lives of ordinary Cambodians. Three years after his death, his legacy continues to live in the hearts of Cambodian people.” said Chak Sopheap, Executive Director of the Cambodian Center for Human Rights. “On the third anniversary of his death, we renew our call for an independent and transparent investigation into the entire circumstances surrounding Kem Ley’s death, so that truth and justice can finally be delivered to his bereaved family, and the general public.”

Kem Ley's family and friends, in partnership with Cambodian, regional and international human rights and development organizations, will continue to call for an independent, impartial and thorough investigation into his killing until those accountable for his death are brought to justice.

### **Relevant international legal standards**

Pursuant to international law binding on Cambodia, including the ICCPR, to which Cambodia is a State Party, Cambodia has a duty to promptly, independently, impartially, and effectively investigate all deaths suspected of being unlawful. Investigations must seek to identify not only direct perpetrators but also all others who may have been responsible for criminal conduct in connection with the death.

Article 14 of the ICCPR establishes the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Principle 11 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions calls for the establishment of a Commission of Inquiry when 'the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies.'

The revised Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) clarifies that the duty to investigate potentially unlawful deaths is derived from the obligation to protect the right to life, which includes a positive obligation to prevent the arbitrary deprivation of life. This obligation also includes ensuring accountability and remedy for violations, including through equal and effective access to justice and provision of prompt and effective reparation.

### **Signed:**

1. Amnesty International
2. Article 19
3. ASEAN Parliamentarians for Human Rights
4. Asian Forum for Human Rights and Development (Forum-Asia)
5. Asian Network for Free Elections (ANFREL)
6. Cambodian Alliance of Trade Unions (CATU)
7. Cambodian Center for Human Rights (CCHR)

8. Cambodian Food and Service Workers Federation (CFSWF)
9. Cambodian Human Rights and Development Association (ADHOC)
10. Cambodian League for the Promotion and Defense of Human Rights (LICADHO)
11. Cambodian Youth Network (CYN)
12. Center for Alliance of Labor and Human Rights (CENTRAL)
13. Civil Rights Defenders
14. Coalition of Cambodian Farmer Community (CCFC)
15. Equitable Cambodia
16. Human Rights Watch
17. Independent Democracy of Informal Economy Association (IDEA)
18. International Commission of Jurists
19. International Federation for Human Rights (FIDH)
20. International Freedom of Expression Exchange (IFEX)
21. Labor Rights supported union of Khmer Employees of NagaWorld
22. Lawyers' Rights Watch Canada
23. Not One More (N1M)
24. Southeast Asian Press Alliance

Please see the Joint Statement attached in English and Khmer. You can also find the joint statement on CCHR's website in English and Khmer.

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The Cambodian Center for Human Rights (CCHR) is a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights throughout Cambodia. For more information, please visit [www.cchrcambodia.org](http://www.cchrcambodia.org)

# THAILAND

## THAILAND: Military authorities can still arbitrarily detain civilians

**Analysis of the Head of the NCPO Order no. 9/2562 that repealed some Announcements/Orders that are no longer necessary**

**O**n 9 July 2019, Gen. Prayuth Chan-ocha in his capacity as the Head of the National Council for Peace and Order (NCPO) issued the Head of NCPO Order no. 9/2562 to repeal 70 NCPO Announcements/Orders and Head of NCPO Orders. Since staging a coup on 22 May 2014, the NCPO has issued a total of 557 decrees: 214 NCPO Orders, 132 NCPO Announcements, and 211 Head of NCPO Orders. Head of NCPO Order no. 9/2562 repeals only some of the decrees, while most of the Orders, Announcements,



and Head of NCPO Orders remains in effect.

Below is the analysis by Thai Lawyers for Human Rights (TLHR) regarding the implications of Head of

NCPO Order no. 9/2562.

### **1. Military authorities retain the power to detain civilians without judicial oversight**

Military authorities will retain the power to summon individuals to report themselves, to apprehend individuals who commits flagrant offenses, and detain them for up to

seven days, to search, forfeit and freeze assets invoking the Head of the NCPO Order no. 3/2558 and no. 13/2559.<sup>1</sup>

On 1 April 2015, the NCPO issued the Head of NCPO Order no. 3/2558, which authorized military authorities to detain individuals, most of whom had their liberties deprived of in military barracks.

The exercise of such power has been euphemistically defined by the authorities as “attitude adjustment.” Throughout the past five years, at least 929 members of the public have been summoned by the NCPO and detained in military barracks for “attitude adjustment” (for more detail, please see [6 years under NCPO, enough is enough? Recommendations to rid the coup’s remnants](#)).

TLHR finds the exercise of such power should be restricted to emergency situations when an imminent harm against the nation is impending and should be confined to certain areas – which has not been the case over the past five years.

The retention of the Head of NCPO Order no. 3/2558 and no. 13/2559 to continue authorizing military authorities to detain an individual up to seven days in an undisclosed place without access to family or lawyer and without judicial review, increases the risk of arbitrary detentions in breach of Article 9 of the [International Covenant on Civil and Political Rights](#)(ICCPR) and may result in other forms of human rights violations, such torture and enforced disappearance.

In its Concluding observations on the second periodic report of Thailand, the UN Human Rights Committee recommended that Thailand amend Head of the NCPO Order no. 3/2558 to ensure that it complies with all the provisions of the ICCPR, including with the guarantees against incommunicado detention.

## **2. Disobeying and showing defiance to NCPO summons are still criminalized**

Despite the NCPO’s repeal of the ban against political gathering of five or more persons, disobeying and showing defiance to NCPO summons are still criminalized under NCPO

Announcement no. 41/2557<sup>2</sup>. To date, the NCPO has summoned 2 at least 472 individuals to report themselves, and at least 14 of them who have defied such summons have been issued with arrest warrants that remain effective.

Once individuals report themselves to the NCPO, they are often held in incommunicado detention in military barracks. Their fate and whereabouts are unknown to people outside. This makes them vulnerable to torture. Without judicial review and given that they would have to later stand trial in military courts, many individuals who were summoned decided to leave the country. As a result, since the May 2014 coup, 86 individuals have become political exiles (for more detail, please see [\*\*Collapsed Rule of Law: The Consequences of Four Years under the National Council for Peace and Order for Human Rights and Thai Society, Part 3\*\*](#))

TLHR recommends that NCPO Announcement no. 41/2557, which criminalizes individuals' defiance or disobedience to the summons to report themselves, be immediately repealed and that all prosecutions pursuant to this decree be stopped.

### **3. Transferring cases against civilians from military to civilian courts**

The Head of NCPO Order no. 9/2562 has led to the repeal of NCPO Announcements no. 37/2557, no. 38/2557, no. 43/2557, and no. 50/2557, and Head of NCPO Order no. 55/2559. As a result, cases against civilians that are being tried in military courts will be transferred to the Court of Justice. It would effectively make the previous proceeding in military courts part of the further proceedings of the Court of Justice, which would continue to hear the cases.

Over the past five years, at least 2,408 civilians have been tried in military courts nationwide (for more detail, please see [\*\*6 years under NCPO, enough is enough? Recommendations to rid the coup's remnants\*\*](#)). TLHR is offering legal assistance to defendants in 59 cases prosecuted in military courts, 21 of which involve 41 defendants.

TLHR remains concerned about the following ongoing negative impacts of prosecutions of civilians conducted by military courts under the NCPO.

### **3.1 Cases which have reached a verdict, but the right to a fair trial was not upheld**

Ongoing cases as well as cases that have reached the final verdict in military courts, have not been heard in fair trials, and no remedy for the violation of this fundamental trial has been established.

The right to a fair trial is guaranteed by Article 14 of ICCPR, which underscores particularly the principles of judicial independence and impartiality. Military courts flout such principles because they operate under the authority of the Ministry of Defense and two thirds of their presiding judges are commissioned military officers who are not required to obtain a law degree.

In addition, over the past five years, military courts' proceedings have been exceptionally protracted.

Some defendants prosecuted for alleged violation of Article 112 of the Thai Criminal Code (lèse-majesté) remain detained awaiting trial and their hearings were conducted behind closed doors. Those convicted by military courts for violating Article 112 have been sentenced to prison terms that have been twice as harsh as sentences imposed by civilian courts (for more information, please see [20 reasons why civilians should not be tried in the Military Court](#)).

### **3.2 Defendants tried in military courts are barred from appealing their sentences**

According to fair trial principles, defendants are entitled to have the right to appeal to courts of higher instance. Nevertheless, those indicted when Martial Law was imposed and whose cases fell under jurisdiction of military courts have been deprived of such right. To restore justice to the individuals whose cases have reached the final verdict, their right to appeal to courts of higher instance should be restored.

### **3.3 Arrest warrants issued by military court remain active**

Apart from hearing the cases, military courts have also issued arrest warrants for suspects who remain large. As of 30 November 2016, over 528 individuals were still

wanted by military courts nationwide (please see [Why will Thanathorn have to stand trial in the Military Court?: Getting to know the Military Court under the NCPO Era](#)). To ensure these individuals will stand trial in proceedings that uphold the principles of judicial independence and impartiality, TLHR recommends that the existing warrants be rescinded and new warrants be issued by the Court of Justice.

#### **4. Offenses under NCPO decrees remain in place**

Only 70 (12%) of the 557 decrees issued by the NCPO are being repealed. Most of the NCPO Announcements and Orders remain in effect and can only be repealed or amended by laws, except for the Announcements or Orders concerning the exercise of administrative powers, whose repeal and amendment are subject to the executive power of the Prime Minister or the Cabinet.

In addition, all the Announcements and Orders and acts of the NCPO are made legal and constitutional by Sections 279 of the 2017 Constitution. Even after the imminent dissolution of the NCPO, the NCPO cannot be held accountable for violations that resulted from its Announcements, Orders or acts.

TLHR deems that NCPO decrees have no place in the legal system because they lack proper checks and balances. The retention of legal provisions that justify a lack of accountability in all circumstances contributes to fostering a culture of impunity in total breach of the principles of the rule of law.

#### **5. TLHR's recommendations**

TLHR believes the Head of NCPO Order no. 9/2562 repeals only some Announcements and Orders which are no longer useful for the NCPO, but it does not serve public interest because the military authorities retains significant powers, including the power to restrict people's rights and freedoms, for example under the Head of NCPO Order no. 3/2558 and no. 13/2559, among others.

In addition, the NCPO is set to expand the power of military authorities in a variety of public affairs concerning civilians. In particular, the Head of the NCPO Order no.

51/2560 on the amendment of the Internal Security Maintenance Law increases the powers of the Internal Security Operations Command (ISOC) and bolsters budget and structure of the regional and provincial ISOCs.

To address the coup's remnants, the repeal of some NCPO Announcements/Orders is insufficient.

Rather, an effort has to be made to systematically restrict powers of the military as a whole. In addition, it is necessary to address the problematic NCPO Announcements/Orders, laws endorsed by the National Legislative Assembly (NLA), court verdicts, justice system reform, and remedies for victims (for more detail, please see 5 years under NCPO, enough is enough? Recommendations to rid the coup's remnants) Concerning the NCPO decrees and the judicial process, TLHR wishes to make the following recommendations to the House of Representatives;

1. Repeal Articles 265 and 279 of the 2017 Constitution, which make the decrees and acts of NCPO legal under Articles 44, 47, and 48 of the 2014 Interim Constitution to ensure that the NCPO Announcements, Orders, and acts comply with Thailand's international legal obligations and the principles of the rule of law.
2. Review all NCPO Announcements/Orders and Head of NCPO Orders and all other laws adopted by the NLA and amend or repeal all those that violate the people's rights and freedoms.
3. Immediately repeal the Head of NCPO Order no. 3/2558 and no. 13/2559. When any wrongdoings or public disruption take place, law enforcement officials can already resort to powers prescribed in the Criminal Procedure Code. It is not necessary to retain power offered by these orders.
4. Take all necessary measures to provide redress to civilians whose cases were heard in military courts and have reached the final verdict. Civilians convicted by military courts after the imposition of Martial Law in May 2014 should be allowed to appeal to courts of higher instance and be provided compensation.

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1 The Head of the NCPO Order no. 3/2558 and No. 13/2559 endow appointed officers with extensive police powers, including powers to arrest, detain and search suspects without warrants and hold them in places not officially recognized as places of detention for up to seven days.

2 This order prescribes a maximum sentence of two years' imprisonment or a maximum fine of 40,000 Baht (approximately USD1,250) or both. The order also has a provision that prohibits financial or property transactions.



## Writings from others on HRC/ALRC

### Healing wounds one story at a time

An article from [Maryknoll Magazine July/August 2019](#),  
written by Maria-Pia Negro Chin

*Maryknoll sister helps to shed light on human rights violations in Asia*

***by Maria-Pia Negro Chin***

One morning, a man wakes up, hugs his children and kisses his wife goodbye before walking to work. But, he does not come back home. His wife calls her husband's job and hospitals and looks around the city. Finally, the family goes to the police. And then, they start an uncertain journey, fearing they will never see him again.

Maryknoll Sister Marya Zaborowski says the families of people like this man often struggle to find answers as they desperately search for their loved ones. "The government does not know who took him. You don't know whether they were taken as a slave, they are being tortured or if they were killed," says Sister Zaborowski. "These people ... you cannot imagine what they have been subjected to."

Once she started working for the Asian Human Rights Commission (AHRC), an independent non-governmental organization based in Hong Kong, Sister Zaborowski realized that the situation described above was an all-too-common reality. According to the UN Working Group on Enforced or Involuntary Disappearances, countries in Asia account for over 25,000 outstanding cases of disappearances, about half of the disappearances worldwide.

Enforced disappearances- which typically means the arrest, detention or abduction of a person by agents of the state, after which the person's fate or whereabouts are concealed-and torture are two major issues AHRC works on. The organization promotes awareness about the need for human rights to be respected, and advocates for victims of human rights violations in 11 Asian countries, including Bangladesh, Indonesia and the Philippines.

Working as an editor at AHRC, Sister Zaborowski helps to shed light on issues like forced disappearances, as well as violence against women, extrajudicial killings, discrimination, food insecurity, prison conditions, and the plight of marginalized people.

Sister Zaborowski , 86, has served as a missionary in Hong Kong since 1965, ministering at Our Lady of Maryknoll Hospital as a nurse and an administrator, while teaching nursing students.

The missionary, who grew up in Staten Island, N.Y., also served as health director for the Mary- knoll Sisters Congregation before working as an AHRC editor and a volunteer teacher of religious education at St. Teresa's Church.

She acknowledges that transitioning from 35 years in medicine to human rights was challenging. "The first three days, I felt over-whelmed," she says, recalling her start at AHRC in 2007. "The torture impacted me ... There is a pain in your heart and you cannot do anything about it So, what can you do? You can write about them and you can pray for them." Sister Zaborowski adds that her medical background helped her understand how human rights organizations can heal people who have suffered human rights violations. Producing documents about their experiences can help victims heal their spiritual and psychological wounds because they can share their testimonies and seek justice. *"That would help them to gain back their lost happiness,"* she said during a weekly broadcast of human rights news.

Basil Fernando, former executive director and current program director at AHRC, says corruption, along with weak justice systems, results in authorities beating up suspects to get a confession and oft en extorting money from them. *"Torture is a common phenomenon at every police station in most of the least developed countries i n Asia,"* he says.

Fernando explains that even though the constitutions of many Asian countries guarantee human rights, systems of impunity deny people those rights. Like Sister Zaborowski, Fernando sees A HRC's efforts to protect human rights as an apostolate "within which you bring the whole idea of respect for the human person." Since its founding in 1984, AHRC has documented abuse and helped victims tell their stories, heal and pursue justice in court. Sister Zaborowski says her co-workers, a team of 20 human rights experts, as well as interns and volunteers, handle violations at a grassroots level: getting victims a lawyer,

accompanying relatives to court, advocating for justice for the victims through letters and appeals and supporting the families. "We try to enlist their help as much as possible," she adds.

AHRC's advocates help the victims send their complaints to relevant authorities at the local, national and U.N. level.

***"We are tending to the people, ordinary people. Nobody (else) is going to take up their cause," she explains, because they don't have the means for legal aid. "We can give them our expertise," for them to know how to help themselves, she says.***

AHRC's reporting mechanism of urgent appeals has visible effects. Namal Fernando, an AHRC staff member from Sri Lanka, recalls a recent case of a Kashmir man living in Hong Kong who had fled violence in the disputed area between Pakistan and India. The Hong Kong government wanted to send him back, but AHRC's urgent appeal explained that the man's life was at risk. "They were waiting for him (in his homeland) and they would just have disappeared him," Namal says. Thanks to the appeal, the government stopped its deportation procedure and the man was able to get refugee status.

AHRC also publishes books and reports detailing the state of human rights in Asia and collaborates with other human rights defenders and civil society organizations. AHRC has educated hundreds of lawyers and activists on the principles of fair trial and the rule of law. Reports show that 75 cases the organization addressed have been taken up to the supreme court of their respective countries with favourable results.

But there is much more to do, says Basil Fernando. He believes re-engineering the justice system in countries where violations take place is key. "People demand that their human rights are respected by their governments, not by words, but by genuine improvement of the public institutions," Fernando wrote. "They want justice to be something real, tangible and accessible."

The stories of victims and survivors help to raise awareness and lead to change, says Sister Zaborowski. By sharing the voices of those in need of protection and healing, AHRC enables survivors of human rights violations and human rights defenders to help other victims, she adds.

***"I pray that people become more conscious of human rights and how they are denigrated within societies," she says. "Ordinary people are being oppressed by unjust systems. I see (our work) as mission to people who really need a helping hand."***

### **Voice for the Voiceless**

As an editor at the Asian Human Rights Commission in Hong Kong, Maryknoll Sister Marya Zaborowski confers with co-workers as they raise awareness of human rights violations and assist victims of abuse in Asia. Please help the Maryknoll Sisters make God's love visible by defending the rights of downtrodden people.

# **‘They’re not music videos’: YouTube human rights news channel Just Asia struggles to make a difference**

*An article from [South China Morning Post](#), written by Bernice Chan*

*By Bernice Chan*

Hong Kong student volunteers present weekly video news programme showing oppression and state brutality across Asia

Just Asia’s producer and cameraman, journalist Amila Sampath, is frustrated by channel’s low viewership but says: if we don’t do something for victims who will?

A Pakistani man shaves his wife’s head when she refuses to dance for his friends in their home. On the Philippine island of Negros, police slay 14 innocent farmers they suspect are communist rebels. A mother and her two children die from suspected smoke inhalation after she was banished to a “menstrual hut” in rural Nepal.

These are just a few of the recent stories covered by Just Asia, a weekly YouTube news programme from the independent, Hong Kong-based Asian Human Rights Commission that aims to broadcast news of regional human rights abuses to a global audience.

As founding video producer of Just Asia, Amila Sampath, 30, gathers film clips and news snippets from around the region. His sources include activists, lawyers and NGOs, and the show, uploaded on Fridays, is anchored by university student volunteers.

*“There are a lot of TV channels but there is no space for those victims and to talk about human rights. I want to create a platform [for] victims, survivors, lawmakers, journalists, human rights defenders ... to ... discuss their problems,”* Sri Lanka-born Sampath says.

Among other issues Just Asia has covered recently are clashes over clean water in Sri Lanka, the lowering of the age of criminal responsibility to nine in the Philippines, and the political aftermath of Hong Kong’s 2014 “umbrella movement” pro-democracy protests.

Sampath has produced more than 250 episodes of Just Asia, but getting audiences to take an interest in the protection and well-being of fellow human beings has not been easy. He is disappointed the show is not more widely viewed.

*“It is difficult to get people to watch human rights stories,”* Sampath says. *“They’re not music videos, but I just have to keep trying.”*

The social injustice Sampath witnessed growing up in rural Sri Lanka propelled him to study journalism.

“When someone is beaten up by police in Sri Lanka, people think the police have the right to do that, thinking that torture is part of the investigation. They don’t know it’s not right,” he says, and this ignorance has deep roots.

Sampath shows a video clip on his smartphone filmed in the Sri Lankan capital, Colombo, last month of a frightened woman lying on the ground. She struggles to breathe as a man presses a foot against her throat. The woman is an actress, he explains, who chose to give birth when she fell pregnant as a teenager, snubbing convention. Now her ex-boyfriend is attacking her in the street, angry that she is dating someone else.

***“She has the right to do what she wants to do ... but this man thinks he can do anything to her,” says Sampath.  
“Can you imagine, in a faraway village, how the women there are treated like this?”***

He credits his educated mother for his strong moral beliefs. “She was smart to teach me what is correct and what is wrong. She inspired me to learn about human rights,” he says.

Sampath’s first job was with a television station in Colombo, where he covered government press conferences, but he found the assignments tedious. He became more passionate about work when he got involved with the Asian Human Rights Commission’s Sri Lankan partner organisation, Janasansadaya (People’s Forum), where he produced more than 300 videos that together garnered a million views.

Many abuses are carried out by the authorities, Sampath says. When a minor crime is committed, police will round up several suspects and put them in a cell, for example. In the evenings they will become inebriated and start to physically abuse the suspects.

***“I was behind the camera, listening to the victims’ stories. It’s painful to hear how terrible society is, how they were tortured illegally in the police barracks. They have so many torture methods ... some people could not handle the pain and hanged themselves.”***

The People’s Forum has a programme called Urgent Appeal, where Sampath and others of a like mind help victims by writing letters describing the injustices meted out against them and demand authorities take action and investigate the incident.

In some cases, the Asian Human Rights Commission has been able to help victims find justice, while some torture victims have been awarded compensation, though the amounts are low – ranging from 50,000 (US\$285) to 100,000 Sri Lankan rupees.

Sampath arrived in Hong Kong in 2013 after the commission invited him to take up an internship.

***“I got more experience learning a lot about other Asian countries. I thought, I can do something more than just for people in Sri Lanka. I see more people need help in Asia, so we started to do a human rights Asia weekly round-up,” he explains.***

That was Just Asia, which he puts together with a skeletal crew comprising himself as producer, cameraman and director, and colleague Meryam Dabhoiwala, who writes the scripts and edits. Their studio is a simple office in Ho Man Tin, Kowloon, with a green screen background. Each week he compiles five regional stories and enlists the help of university students to shoot the episodes and edit the videos.

One volunteer is Alexandra Leung Chui-yan, 22, who will be graduating from the School of Communication at Hong Kong Baptist University this month.

She became involved with Just Asia 18 months ago when she was introduced to Sampath through a mutual friend. As Leung was keen on improving her public speaking skills, her friend thought working as a TV host would be good training, and she had personal experience of the wrongs humans commit against each other.

On August 17, 2017, Leung was on the last day of a trip to the Spanish city of Barcelona, walking along La Rambla boulevard, when a car ploughed into a crowd on the famed pedestrian strip.

The terrorist attack killed 13 people and injured more than 130, including Leung. In the ensuing chaos she was trampled, resulting in a broken toe and fractured knees.

***“It made me realise how safe Hong Kong is. We talk about terrorist attacks, but I had never seen one until then,” she says.***

Leung has since undergone surgery, but is still not completely healed; she cannot wear high heels or work out intensely. She continued to follow the news of the attack, shocked by what human beings can do to others – particularly the innocent, like herself.

A few months after the incident she began volunteering for Just Asia as a trainee, learning how to read the news in front of a camera and how to pronounce Southeast Asian names.

***“I actively read news every day, but you almost never hear of human rights violations in Hong Kong news. We are practically the only channel to share this kind of news,” she says.***

Leung praises Sampath’s passion for human rights, adding that it’s a difficult job. Some of the raw footage Sampath receives is too shocking to broadcast and has to be blurred, he says, but he thinks it is too important to ignore.

***“A lot of it is too graphic to show, and most of the time I decide not to show it. But sometimes I also try to show how***

*cruel it is. Without seeing it, you can't see how terrible society is,"* he says.

*"Sometimes, when we write urgent appeals, you send it to people to read. But if you have the image, you get more sense of the [overall] picture. I try to use my maximum capacity to protect the victims, and at the same time show how bad our society is."*

Having filmed more than 250 episodes of Just Asia, Sampath is mentally exhausted, but feels content to have done something to help victims of human rights abuses.

*"It's not like giving you money or comforting you. I can't go and hug you. I didn't see you or talk to you, but I did something for you ... I feel if I can do something, if you can do something, do it. If we don't, then who will?"*

Find out more about Just Asia at

[www.alrc.asia/justasia](http://www.alrc.asia/justasia)

or

[www.humanrights.asia](http://www.humanrights.asia)

# NEW BOOKS: HUMAN RIGHTS IN ASIA

An article from [Thammasat University Library](#): Thailand

Through the generosity of the late Professor Benedict Anderson and Ajarn Charnvit Kasetsiri, the Thammasat University Library has newly acquired an important book of interest for students of history, political science, literature, and related fields. It is part of a special bequest of over 2800 books from the personal scholarly library of Professor Benedict Anderson at Cornell University, in addition to the previous donation of books from the library of Professor Anderson at his home in Bangkok. These newly available items will be on the TU Library shelves for the benefit of our students and ajarns. This gift raises the prominence and prestige of Thammasat as a center for Asian and Association of Southeast Asian Nations (ASEAN) research and related subjects.

[The Right To Speak Loudly: Essays on Law and Human Rights](#) is shelved in the General Books Sections of the Charnvit Kasetsiri Room at the Pridi Banomyong Library, Tha Prachan campus. It is by W.J. Basil Fernando and was published by the [Asian Legal Resource Centre](#). The TU Library also owns several books about [human rights in Asia](#) and more specifically, in Sri Lanka.

The Asian Legal Resource Centre (ALRC) works towards reform of justice institutions in Asia, to help victims of human rights violations. As its [website explains](#),

The Asian Legal Resource Centre (ALRC) is an NGO having General Consultative status with the Economic and Social Council of the United Nations. The ALRC was founded in 1986 by a prominent group of jurists and human rights activists in Asia. It is a body committed to the development of legal self-reliance and empowerment of people. It will place particular emphasis in its work on the areas of cultural, social and economic rights and the right of development. ALRC will work closely with and support regional, national, and local groups involved in this field, taking care, at the same time, to protect the autonomy and independence of such groups.

The Centre will promote the development of, and support specific legal service and resource programmes promoting self-help at the local level. It will also seek to strengthen and encourage positive action on legal and human rights issues by the bar and other legal bodies and personnel, at local and national levels. The Centre will press, where appropriate, for the introduction and improvement of effective government legal services.

The ALRC has done extensive work in several countries in Asia. More notable ones are: the judges' and lawyers' programmes conducted in Cambodia and Sri Lanka. At such meetings judges and lawyers from a particular country are brought together with other experts from the region and discussions are conducted for arriving at conclusions on what changes are to be recommended to the governments concerned...

The ALRC is the sister organization of the [Asian Human Rights Commission \(AHRC\)](#), an independent, non-governmental body, which seeks to promote greater awareness and realisation of human rights in the Asian region, and to mobilize Asian and international public opinion to help victims of human rights violations. The ALRC is based in Hong Kong & holds general consultative status with the Economic & Social Council of the United Nations.

The [AHRC and ALRC work together](#) for structural reforms to prevent human rights abuses and promote rights. They have a community-based approach, often establishing support bases in churches and other religious groups. Democracy and the rule of law are held as ideals and founding principles. Eradicating poverty, gender equality, caste, indigenous people and minority rights are a constant concern.

Among leading [ALRC programs](#) are those educating judges and lawyers in China as well as judges, lawyers and paralegals in South Asia, East Asia and Southeast Asia.

W.J. Basil Fernando is a Sri Lankan jurist, author, poet, and human rights activist. He was educated at [St. Anthony's College, Wattala](#), Sri Lanka and [St. Benedict's College](#), a Catholic institution located in the Kotahena area of Colombo, Sri Lanka. He earned a bachelor of laws degree from the University of Ceylon, later dissolved and replaced by four independent universities: the University of Colombo, the University of Peradeniya, University of Kelaniya (Vidyalkara University) and the University of Sri Jayawardanapura (Vidyodaya University). 2019 marks the 25th anniversary of Mr. Fernando's work with the AHRC and ALRC.

The TU Library owns another book by Mr. Fernando, [Problems Facing the Cambodian Legal System](#). It is shelved in the General Stacks of the Puey Ungphakorn Library, Rangsit campus.

According to his website, his poems include a brief lyric entitled Mosquito:

=====

Mosquito resting on the wall

Awaiting digestion

Contemplated its own fate

Sadly.

=====

According to one sympathetic reader, the short life of the mosquito as mentioned in the poem has some parallels to human life.

Among his many other writings are articles for The Sri Lanka Guardian, such as this one which appeared in September 2014:

### **Asia: Poverty as the Absence of Protection**

The most common way is to see poverty as the absence of the most meagre of resources for living. In other words, it is the lack of a minimum income. On the basis of this perception of poverty, the solution commonly suggested is to supplement this lack of income with contributions by the state. And, the approach proffered by states, and even by the United Nations in terms of the Millennium Development Goals, in discussions on poverty alleviation, is to find ways to improve basic income needed for living.

Often missing from such poverty alleviation discourse, purely concerned with a minimum improvement of basic income, is the cost that the poor have to pay, as a result of the absence of protection. What is meant by absence of protection? This absence is the non-existence of a public justice system capable of protecting the poor from the onslaught of predators in society.

Any study that focuses on such predators of the poor is bound to produce a shocking picture of man's inhumanity to man. There are a large number of forces that scavenge from a poor man's income and resources for their enrichment. The role of moneylenders who extract high rates of interests from the poor is well known. What is often not discussed is the way a "bad system" of administration of justice can create an ever greater burden on the poor.

The police, in many developing countries, rely on the poor for supplementing police officers income. This is a known fact. The power of arrest is often utilized as a means to force the poor to pay bribes to law enforcement agencies. Years of work at the Asian Human Rights Commission, in 12 Asian countries, has resulted in the collation of a body of information on the ways the poor are harassed by law enforcement agencies. When poor persons are arrested, often for no good reason, their close circle of family members and friends are forced to bribe the police and security agents, in cash or kind to obtain their release and to ensure that they will not be tortured in custody. Often, the way in which the poor pay such bribes is by borrowing money on high rates of interest or by selling whatever few possessions they may own.



## An Appreciation of Heiner Knauss of EED in Germany

On 13th July 2019, Heiner Knauss passed away after being sick for some time. His funeral will take place on 20th July, according to his family.

Heiner was one of the mentors and a very close friend and colleague of the Asian Human Rights Commission (AHRC). He succeeded Yan Randers who was an extremely wise and compassionate leader in the development of civil society groups in the less-developed countries and who introduced the AHRC to the EED.

Heiner, by the time he came into contact with us, was already a very mature person with considerable experience in several countries in less-developed parts of the world. He had also worked as a magistrate in one country in Africa.

He brought that wisdom and the capacities that he had developed over the years to bear on the work that he was doing, in an attempt to develop civil society organizations in Asia. Heiner kept a very close link with us by way of regular email exchanges. And he always responded to emails received from us. The matters that we discussed with him were rarely about funding. They were about the problems that we were trying to deal with. Heiner was always very clear in his attempt to understand the type of the problems that his associates were dealing with in the different parts of the world.

He was able to transcend the differences of continents, races, climates and above all varying political circumstances. Perhaps, growing up closer to the generation coming after World War II, he had a deeper insight into what dictatorship meant. He would try to guide us to understand these problems from many different points of view. When requested, he would find books of interpretation of what happened in Germany during the Nazi period. For example, we asked him to help us get material on what happened to the Weimer Constitution and how the weaknesses of the Weimer Constitution were dealt with after WWII. He arranged a visit for us to see the Constitutional Court in Germany. Conversations with him, which were many, were always about larger issues and the problems that confront the world in general—the Third World in particular.

There was an advantage to the EED being a much smaller organization. It meant that there was freedom for them to keep an informal relationship with the organizations they were supporting. This informal relationship, where sharing of the information of all matters including organizational matters, were discussed constantly. This prevented petty misunderstandings which could cause severe problems to the smaller organizations being developed.

The knowledge Heiner had acquired about cultural backgrounds in various countries, helped him to easily distinguish two things: all kinds of petty jealousies and so-called campaigns where some try to undermine others through false information. Heiner had a way of dealing with any of these matters through direct contact because he had a

fundamental trust in the persons with whom he was working. He could be firm as much as he was compassionate. He would give clear advice in a fashion that a wise man gives advice.

On several occasions he sent delegations. One such included a senior Bishop accompanied by some senior persons associated with the Church. They visited Hong Kong as well as the mainland. During such visits substantial matters were discussed leisurely and at length.

For the same reason he invited delegates from the Hong Kong groups that they were supporting. He provided them with opportunities to talk to the Church groups on the problems they were facing in various countries. Problems included the dual problem of poverty on the one hand and various kinds of tyrannies on the other.

It was Heiner Knauss and Basil Fernando from the AHRC who jointly evolved the formula for action by the AHRC from the late 1990s. This was after the time the EED ceased to exist. It had been absorbed into the larger organizational framework of Bread for the World. He prepared us for this changeover for a considerable period of time.

His experience of Germany's evolution as a nation, particularly in the period of Bismarck, when the Rule of Law foundations were laid, helped him to understand the problems associated with democracy in Asia—not founded on the solid foundation on the Rule of Law. He always said Rule of Law first if democracy is to follow. Such discussions were what helped develop the AHRC's vision.

It was Heiner who, through the chief of the EED, officially proposed the name of the AHRC and Basil Fernando as its Executive Director for the Rights Livelihood Award, also known as the Alternative Nobel Peace Prize. In 2014 when the Award was given at the Swedish Parliament, Heiner accompanied us and according to his family it was a quite memorable event for him. When met with some difficulties he used to tell his colleagues and his chief this—of what significance were these problems, as compared with the problems his partners in the Asian region were facing and grappling with. He said that gave him the consolation needed to face his own problems.

The AHRC's experience with Heiner would take a long time to narrate. Suffice it to say that he was a wise and great mentor, that he was a genuinely compassionate person who tried to solve problems and not aggravate them. He understood and sympathized with the poorer parts of the world in which things don't happen as they happen in the more developed parts of the world. He was a type of the Universal Man—not biased or afraid of those areas of the world where much deeper problems existed.

He was passionate about human rights not only in other parts of the world but also in his own country. He would discuss certain incidents which should not have happened in post-Hitler Germany and on such occasions he would actively participate in opposing them. His was a life not lived in vain. He did what he believed was right. He went out of his way to understand our problems and to defend his partners on the basis of firm principles.

The AHRC will always remember him. And, we are sure that the other organizations he helped will also remember him forever.

We send our condolences to his wife, his children and other family members.

**A Life Not Lived in Vain**

**Tribute to Heiner Knauss**

**From where comes the Spirit  
That transcends the continents,  
Nations, races, genders, languages,  
Climates and ethnicities, and all differences?  
It comes from heaven, I think.**

**From where comes wisdom  
When narrow-mindedness dissolves  
And a broader and many-sided vision emerges?  
I am sure it comes from heaven.**

**From where comes compassion  
When the tears of one  
Finds a response in another's eye?  
Yes, that comes from heaven.**

**From where comes good humour  
When joys and ironies are shared,  
When laughter is mixed with understanding?  
It comes from heaven, too.**

**From where comes a good friend  
When eye meets eye  
And soul meets soul?  
I am certain he comes from heaven.**

**Heiner was all that,**

**He was much more.....**

**I am sure he came from heaven.**

**A gift to the world that suffered the horrors of war.**

**Now he is back where he came from,**

**Carrying a life**

**Not lived in vain.**

**Basil Fernando**

**July 18, 2019**