

# TORTURE

ASIAN AND GLOBAL PERSPECTIVES

AUG - OCT 2014 VOLUME 03 NUMBER 04 & 05

## THE TORTURE FANTASY



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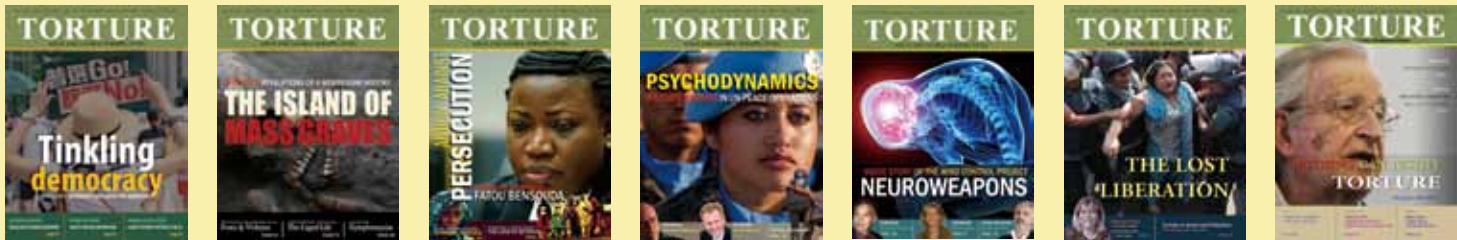
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**Front cover photo:**

A Cambodian kid siting inside the Tuol Sleng Genocide Museum, a museum in Phnom Penh, the capital of Cambodia. The site is a former high school which was used as the notorious Security Prison 21 (S-21) by the Khmer Rouge regime from its rise to power in 1975 to its fall in 1979.  
Thomas Tham, Mio Cade Photography.

**Back cover photo:**

A candid photo of education advocate Malala Yousafzai.  
UN Photo/Mark Garten

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# TORTURE

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The Torture Chamber at the Castello di Amorosa © David Ball

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Cartoon by Awantha Artigala

# Martin-Baró

## The Cynosure of Liberation

**WHEN** knowledge is limited to only quantifiable facts and events, we “become blind to the most important meanings of human existence,” pointed out Ignacio Martin-Baró once in his extraordinary work. He was a Jesuit priest who was murdered together with five other colleagues and their housekeeper and her young daughter by the Salvadoran government’s elite Atlacatl Battalion, a “counter-insurgency unit” created at the US Army’s School of the Americas in Fort Benning, Georgia in 1980.

Writing on the 25th anniversary of Martin-Baró’s death which fell in November this year, Bruce E. Levine, a practicing clinical psychologist beautifully traced what the late-Jesuit priest tried hard to convince the oppressed communities of. “Human dimensions such as commitment, solidarity, hope and courage cannot be simplistically quantified, but are what enable human beings to overcome injustice,” he pointed out.

What we are witnessing is that most of the mass movements that fought for human liberation started

from very limited numbers of people whose dimensions could not be simplistically quantified. They guided the fellow citizen while convincing, compassionating, educating them on the real meaning of liberation even in most dangerous political environments. Those who led mankind to reach milestones, not believed to be achievable by majority of people, led us to understand that social change is a possible and positive task of collective responsibility. They were the people who changed history, formalities and superstitions.

The history of liberation from vicious practices such as slavery and apartheid were written within this basic notion and the commitment of people who started to liberate themselves from injustice. Injustice is the most horrendous experience mankind ever faced.

Mankind has been fighting for thousands years but cruelty still exists in many forms. From the prison in Guantanamo bay, the killings fields systematically operated by the ISIS (Islamic State of Iraq and Syria), the infamous drones attacks by the Government of United States which result in the deaths of innocents, to the real situation in the local police stations in the most Asian, African and Latin American countries are evidence of the saddest reality of the unjust social disorder. In these places, injustice is prevailing at higher degrees while undermining and intimidating basic principles of humanity.

Ignacio Martin-Baró developed the authentic and rational form of social psychology (Liberation Psychology) which explained and examined the real meanings of human existences. He enlightened his followers to the inadequacy and weaknesses of the existing theories when they tried to address the effects of the structural violence that prevailed, particularly in El Salvador. But his explanations are universal and help give form to the common scenario we as human beings are suffering in our daily lives.

“It is clear that no one is going to return to the imprisoned dissident his youth; to the young woman who has been raped her innocence; to the person who has been tortured his or her integrity. Nobody is going to return the dead and the disappeared to their families. What can and must be publicly restored [are] the victims’ names and their dignity, through a formal recognition of the injustice of what has occurred, and, wherever possible, material reparation. . . . Those

who clamor for social reparation are not asking for vengeance. Nor are they blindly adding difficulties to a historical process that is already by no means easy. On the contrary, they are promoting the personal and social viability of a new society, truly democratic.” (Ignacio Martin-Baró, “Reparations: Attention Must be Paid,” in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, ed. Neil Kritz (Washington, D.C.: United States Institute of Peace Press, 1995), 570. (original -posthumously; Ignacio Martin-Baró, “Reparations: Attention Must be Paid” *Commonweal*, March 23, 1990, pp.184-186).)

It was a time when most of the globe was facing extreme violence. On the one hand violence was used as the tool to control the resistances by the state apparatus. On the other hand the violence was the subjective method of convincing the people that resistance against the oppressing governments was futile.

Why is violence important? What is the negative impact of violence? How can we eradicate violence?

“Violence, finally, as I have said, is distinguished by its instrumental character. Phenomenologically, it is close to strength, since the implements of violence, like all other tools, are designed and used for the purpose of multiplying natural strength...”, Hannah Arendt, author of “On Violence”, pointed out while making a new discourse on the subject which tended to be ignored in many ways.

“Violence,” she writes, “can always destroy power. Out of the barrel of a gun grows the most effective command, resulting in the most instant and perfect obedience. What never can grow out of it [violence] is power.”

Most of the accounts on violence try to explain the political impact on and the stability of the state apparatus. Therefore they had to justified use of violence to some extent. But there are also some rare accounts reflecting the point of view of the common person in society and the way they felt about violence.

Fortunately for us Walter Benjamin, Hannah Arendt and later Slavoj Žižek in their expansive political

■ cont’d to page 12



# The Torture Fantasy

## COVER STORY: THE TORTURE FANTASY

A number of elements in this scenario make it appear to present a convincing example of permissible, if not justified, torture. In the ticking bomb scenario, torture is being used in just one extraordinary instance in order to save hundreds or even thousands of lives, and so the use of torture won't become widespread or institutionalized.

by JESSICA WOLFENDALE

Over the last ten years versions of the ticking bomb scenario, in which officials have captured a terrorist who has planted a bomb that will explode unless he can be forced to reveal the bomb's location, have appeared in numerous philosophical articles and books, in political speeches, in the media, and even in legislation regarding the permissibility of torture.<sup>1</sup> Versions of the scenario have also appeared in popular culture, most notably in the television show 24, in which the hero Jack Bauer frequently used torture to extract life-saving information from recalcitrant terrorists.

After writing on the topic of torture for over nine years, I am struck by the fact that this fantasy about torture continues to dominate philosophical, political, and legal debates about the permissibility of using torture to fight terrorism. As noted by several authors (Ip, 2009; Luban, 2009; Shue, 2006) the torture debate often "begins with the ticking time bomb and ends there as well." (Luban, 2009, p. 1440). The persistence of the use of the ticking bomb scenario in debates about torture is initially very puzzling, given the many and obvious glaring differences between real life torture practices and the ticking bomb scenario. Indeed the differences

between real torture practices and the ticking bomb scenario are so great that the scenario is arguably next to impossible to instantiate in reality – a point that has been made by many writers on this issue, including myself (Buffachi & Arrigo, 2006; Luban, 2009; Shue, 2009; Wolfendale, 2007). Yet, despite the sustained criticism that the ticking bomb scenario has received over the years, the fantasy just will not die. The ticking bomb scenario appears to be impervious to critique.

It is not my aim in this article to reiterate the reasons why the ticking bomb scenario bears essentially no relation to real torture practices. Instead, my goal in this article is twofold. Firstly, I want to examine why this narrative of torture is so persistent despite its unrealistic nature and despite being subject to many serious criticisms. Secondly, given that the ticking bomb scenario is not a useful reference point for discussing real torture practices, I want to understand the role that the ticking bomb fantasy plays in the ongoing philosophical, political, and legal debate about torture. While it may be impossible to address these issues fully in this article, my hope is that through this exploration I can offer some insights into the nature of the attraction of the ticking bomb fantasy, and draw some conclusions about how the debate about torture should be conducted in the future.

### *The torture fantasy*

Many variations of the ticking bomb scenario have appeared over the years, but several elements remain constant in almost all iterations: There is a bomb, and

<sup>1</sup> For example, reference to the ticking bomb scenario appears in the infamous "torture memos" produced during the Bush administration that attempted to justify the United States' torture program (Cole 2009). The Israeli Supreme Court also referred to the ticking bomb scenario in their 1999 ruling that made torture illegal but allowed a necessity defense for security personnel accused of using torture in ticking bomb cases (Israeli Supreme Court, 1999).



the bomb will go off; officials have captured either the terrorist who planted the bomb or a terrorist who knows where the bomb is; there is only a short time before the bomb will explode (thus leaving no time for alternative methods of finding the bomb); it is highly likely that the terrorist will reveal the bomb's location under torture; and the terrorist will reveal the bomb's location in sufficient time to allow the bomb to be located and defused.

A number of elements in this scenario make it appear to present a convincing example of permissible, if not justified, torture. In the ticking bomb scenario, torture is being used in just one extraordinary instance in order to save hundreds or even thousands of lives, and so the use of torture won't become widespread or institutionalized. The torturer is a public official or military operative motivated by the need to save lives (and not, for example, by sadism or a desire to punish). The torture victim is an evil person who has plotted to kill thousands of people, and torture is very likely to be effective in forcing him to reveal the bomb's location. Thus the way the scenario is described makes the conclusion that torture is permissible both emotionally compelling and hard to refute. As David Luban points out, the ticking bomb scenario is "simple, easy to grasp, emotionally powerful, and—above all—it seems to have only one right answer, the pro-torture answer." (Luban, 2008, p. 4). It is no surprise, then, that when the scenario is used in (for example) surveys of public opinion about torture, there is widespread support for the use of torture in the ticking bomb case (Allhof 2012).

So why is the ticking bomb scenario a fantasy? It is a fantasy in two senses. Firstly, it is a fantasy because it is almost entirely imaginary. There has never been a documented real life case of a ticking bomb scenario that fulfilled even most (let alone all) of the conditions specified in the thought experiment. For example, one case offered as a real life ticking bomb scenario by (among others) Alan Dershowitz (2003) is the 1995 torture of Adbul Hakim Murad by Philippine police. The torture of Murad (it was claimed) produced information about plots to assassinate the pope, crash passenger planes into the ocean, and fly a plane filled with explosives into CIA headquarters (Dershowitz,

2003, p. 137). However, despite the superficial resemblance to the ticking bomb scenario, the true details of the case reveal just how very far removed the Murad case is from the ticking bomb scenario. For example, at the time of Murad's arrest there was no knowledge of any plots—for all the police knew, Murad could have been totally innocent. Murad was then tortured for 67 days and almost died in the process. The details about the plots were not revealed through torture but were in fact discovered on Murad's computer, which had been confiscated at the time of his arrest. Murad only revealed the (then redundant) information about wanting to fly one of the planes when a new team of interrogators questioned him (Ip, 2005, p. 54).

Second, the ticking bomb scenario is a fantasy because it depicts and perpetuates a fantasy version of the nature of torture, the nature of torturers, and the effects of torture on torture victims. In most academic and journalistic descriptions of the ticking bomb scenario the nature and effects of torture are rarely, if ever, described in detail. If specific tortures are mentioned, they are described almost as clinical procedures, such as Dershowitz's suggestion of inserting sterilized needles under the prisoner's fingernails (2003, p. 148). This reluctance to describe torture (or, at most, to describe it as essentially a medical procedure) means that the ticking bomb scenario allows us to think of torture in the abstract. We know that it is very painful (indeed, that is the point), but what using torture would actually require us to do to another person is conveniently left obscure. The brutal and deliberate destruction of the torture victim's physical and psychological integrity is glossed over. This reveals a profound and willful ignorance about the nature of torture.

Interestingly, fictionalized depictions of ticking bomb scenarios tend to display no such reticence in showing what torture might involve. In 24, for example, Jack Bauer brutally beats, electrocutes, and inflicts other equally appalling tortures on his prisoners. Yet, in the context of the show, the extreme brutality of his actions is portrayed as evidence of his willingness to do what has to be done to save lives rather than as evidence of his sadism or cruelty. The more brutal his actions,

the more clear it is that he is a hero who is willing to "get his hands dirty" to save us all.<sup>2</sup> This reveals the way in which the ticking bomb scenario encourages us to see the torturer as noble, resolute, and heroic. As Luban puts it, the ticking bomb scenario allows us to think about torture (for the first time) "from the torturer's point of view" (2005, p. 1439). The fantasy torturer in the ticking bomb scenario is someone who (despite never having tortured before) is able to overcome his moral and emotional resistance to torture, and can do so when the chips are down. Being able to inflict brutal violence on another person is depicted as a mark of honor, not shame.

The utility of creating this image of the fantasy torturer is clear. If torturers can see themselves as honorable and resolute, then torture will be that much easier to do. Torturers will be able to reconcile their brutal actions with a positive self-conception. Interestingly, depicting brutality as a sign of honor and toughness was a tactic also used by the Nazis to help inure soldiers to the unpleasant task of killing civilians, including women and children. In a speech given to SS generals (many of whom had been part of the murder squads responsible for the shooting of thousands of Jews in Eastern Europe) Heinrich Himmler said: "Most of you know what it means when 100 corpses are lying side by side, or 500, or 1000. To have stuck it out and at the same time—apart from exceptions caused by human weakness—to have remained decent

2 In one episode, Jack Bauer tells another (more squeamish) character: "That's the problem with you, George. You want results, but you never want to get your hands dirty." (Hall, 2013, p. 267).

"

The ticking bomb scenario thereby depicts a situation in which the "good guys" exert total control over a serious threat and manage to defeat that threat. Thus the ticking bomb scenario offers a deeply compelling and emotionally satisfying portrayal of control over and punishment for evil. It is no coincidence that the scenario is most often discussed in the context of debates about counter-terrorism methods, since states often portray non-state terrorism as unpredictable, uncontrollable, and as a threat to the very existence of a state and its people.

"

fellows, that is what has made us hard. This is a page of glory in our history which has never been written and is never to be written." (Bennett, 1994, p. 299). When one is unavoidably confronted with the reality of the brutal nature of the violence that one is committing, the torture fantasy can be maintained by focusing instead on the supposed nobility of one's motives in committing such violence.

This portrayal of the torturer is a fantasy, however, because it conveniently ignores both the context in which real torture occurs, and the motives and intentions that are central to the process of torture. Real torture occurs typically as part of a widespread dragnet information-gathering process, used on prisoners merely suspected of having relevant information who may very well not have any relevant information at all. When used by states, torture is not and arguably never has been a one-off tactic only used in the most extreme emergencies. Even allowing for the remote possibility of real life ticking bomb-type scenarios, I have yet to come

across a state that used torture only in such cases.

But more interestingly, consider what must be required in order for torture to be used at all. Before a session of torture can occur, someone (or, more realistically, many people) must have dedicated significant time and energy (and research and experimentation) to determining which torture methods will cause the most severe pain to different classes of prisoners. What will break this person most effectively? What fears, weaknesses, and values does this prisoner have that can we exploit to our advantage? What sexual

mores can we violate? Torturers must then be trained to use these methods. Thus a decision to use torture requires a dedication to knowing and trying to destroy a prisoner's individual and unique psychological and physical integrity. This motivation is central to what torture is, and is incompatible with the belief that torture can be motivated purely by the desire to save lives. Cruelty is part of the intrinsic nature of torture.

The fantasy of the noble torturer is also sustained by the fact that the ticking bomb scenario rarely, if ever, makes any reference to the long-term effects of torture on torture victims. In depictions of torture in popular culture, torture victims seem to recover extraordinarily fast from their ordeals (Ip, 2009, p. 50) and appear to suffer no lasting ill effects. Yet, as has been demonstrated repeatedly in numerous studies on the impact of torture, torture victims typically suffer profound and long-term effects, including ongoing severe physical complications and post-traumatic stress disorder (Wolfendale, 2009, pp. 50-51). Yet the ticking-bomb scenario portrays torture as "no worse than a painful tooth extraction," as Claudia Card puts it (2008, p. 9). Extremely painful, perhaps, but short-lived and causing no long-term serious harm. This portrayal of the effects of torture contributes to the wholesale fantasy that is the ticking bomb scenario: the fantasy that torture is a sometimes-necessary tactic that causes no serious lasting harm, that can be used by tough-but-noble public officials to save thousands of lives, and that torture can be used without cruelty.

### *Why does the torture fantasy persist?*

Given that the ticking bomb scenario both fails to adequately represent realistic torture practices and presents a highly misleading portrayal of the nature of torture, why does the scenario continue to be used as the main reference point in debates about torture? What point does the scenario serve in debates about torture?

One response to this question is to agree that the ticking bomb scenario is highly unrealistic, but to claim that the ticking bomb scenario is simply meant to be a hypothetical thought experiment that provides a counter-example to absolutist positions

on torture. In this view, the ticking bomb scenario should be understood as just one way of making a theoretical point about the implausibility of absolutist ethical theories. One author who takes this position is Fritz Allhof (2006, 2012), who argues that those philosophers (such as myself) who take issue with the many implausible features of the ticking bomb scenario are just missing the point. In Allhof's view, the ticking bomb scenario merely presents a list of conditions that need to met in order for torture to be permissible, but the scenario does not (and is not intended to) provide "information (yet) as to whether torture is permissible in the real world when one or more of the conditions is not met" (2006, p. 246).

If this is right way of explaining the continued use of the ticking bomb scenario in debates about torture, then my characterization of the scenario as a torture fantasy might be correct but wouldn't count as an objection to the continued use of the scenario. After all, philosophers have used far more fantastical and unrealistic thought experiments to generate intuitions about various philosophical issues and thereby make important theoretical points.

Yet while it is true that one certainly could utilize the ticking bomb scenario merely as a counter-example to absolutist ethical theories, the above explanation fails to explain why the ticking bomb scenario continues to be used as the primary reference point in arguments attempting to justify the use of torture in real life in ways that would bear little if any resemblance to the ticking bomb scenario. If the primary function of the ticking bomb scenario in debates about torture is to refute absolutist ethical theories, the persistence and prevalence of the scenario is extremely puzzling, since that relatively straightforward critique of absolutist ethical theories has been made numerous times and thus hardly requires continued repetition. The continued use of the scenario does not and will not teach us anything new or original about the plausibility of various ethical theories.

Secondly, one only needs a cursory reading of the many instances in which the scenario appears to realize that in most cases, the scenario is clearly *not* being used in order to make a theoretical point. For example, it is

highly implausible that the authors of the US torture memos decided to reference the ticking bomb scenario in order to make a minor claim about ethical theory. Instead, given the context in which the memos were produced and used, it is far more plausible to infer that the scenario was being used to provide a veneer of legitimization to what was in fact a widespread and institutionalized torture regime.

In addition, if the point of the ticking bomb scenario is to draw out the implausible implications of absolutist ethical theories, why is it only torture that is used to make that point? One could easily achieve the same end by constructing a hypothetical example using any atrocity one cares to imagine, including rape and genocide. It would certainly be possible to construct a hypothetical scenario in which rape or genocide appear to be permissible or even justified – such a scenario need not be any more unrealistic than the ticking bomb scenario. In fact, since rape is a frequently used torture method, one could easily modify the ticking bomb scenario so that rape is the torture method that will be used on the terrorist.

The rarity of such arguments in the public and academic domains suggests that anyone who did make such an argument would find it extremely difficult to get the argument published, and if they were published, they would be subject to severe public outrage and criticism. Indeed, two recent examples prove this point. In July an Israeli blogger published a blog post (since removed) in which he argued that the genocide of the Palestinians could be justified in order to protect Israel from destruction (Cole, 2014). In the same month an academic interviewed on an Israeli radio program stated that "the only thing that can deter terrorists, like those who kidnapped the children and killed them, is the knowledge that their sister or their mother will be raped." (Kashti, 2004). The fact that both these academics were subject to rapid and widespread criticism proves my point. It is not considered appropriate or acceptable to discuss even hypothetical cases of permissible rape or genocide in the public domain, and for good reason. As was evident from the responses to the two cases above, publicly offering examples of "permissible" or "justifiable" rape or genocide causes profound

offense to the many victims and survivors of rape and genocide, and appears to provide a false legitimacy to these universally abhorred acts.

Yet no such sensitivity or concern is shown toward the thousands of victims and survivors of torture. Instead, the ticking bomb scenario is repeatedly and publicly presented and defended; versions of it are shown in films and on television shows where the audience is invited to identify with and cheer on the torturer. The ticking bomb scenario is still frequently the beginning and end of the torture debate. In addition, and to compound the offense caused to torture victims, the scenario has been used to suggest that we should, perhaps, reconsider our laws regarding torture to allow torture warrants or a necessity defense for those accused of torture. Yet no reasonable person would make such a claim regarding our laws dealing with rape and genocide, simply because we might be able to imagine a hypothetical case of permissible rape or genocide.

So the continued publication and use of the ticking bomb scenario in public debates about torture suggests two things: that the point of using the scenario is not simply philosophical or theoretical; and that the academic, political, legal, entertainment, and media fields consider it acceptable and appropriate to use thought experiments depicting "permissible" torture. This widespread willingness to publicly discuss and defend the ticking bomb scenario suggests that torture is, in some sense, considered to be more open to justification and rationalization (and potential real life use) than other, similarly serious, atrocities. This willingness to publicly entertain the ticking bomb scenario seems to conflict with the supposed widespread belief that torture is among the worst things that can be done to a person – a belief reflected in the international prohibitions on torture. Yet, surely if we truly felt that torture was so abhorrent, we would be far more reluctant to continue to construct and publicly discuss cases of apparently permissible torture. Our rejection of torture, as David Luban noted, appears to be only "skin deep" (2005, p. 1426).

Furthermore, widespread acceptance of the use of the ticking bomb scenario encourages the belief that victims



of torture need not be treated with the respect due to the victims of other extreme human rights abuses.<sup>3</sup> The torture fantasy portrays torture as something that is only done to very bad people, and that doesn't have serious long-term effects. This suggests that, simply by virtue of having been tortured, real torture victims must have been torturable – dangerous enough or bad enough that their suffering does not count as a tragedy or an atrocity. The ticking bomb scenario thereby sustains a fantasy of torture that obscures and distorts what torture does to the victims of torture and who the real victims of torture are.

### *The attraction of the torture fantasy*

I believe that the torture fantasy's portrayal of torture victims provides an insight into the why the scenario is so persistent and ubiquitous in debates about torture. In the ticking bomb scenario, the decision to use torture is depicted as motivated by the noble desire to save lives. Yet, this heroic motivation allows the brutal infliction of pain on another person. Thus torture in the ticking bomb scenario serves two purposes: one that is admitted and indeed celebrated, and one that is hidden and denied. The purpose of torture is supposedly to save lives, yet torture also serves to punish the terrorist. The terrorist is evil: he deserves to be tortured. Indeed, the terrorist's guilt plays a crucial role in the continued popularity of the ticking bomb scenario. When a version of scenario is presented to survey respondents in which the captive is innocent (for example, the terrorist's wife is captured, not the terrorist), public support for the use of torture drops considerably even if the stakes are as high or even higher than in the standard version (Stout, 2011, p. 493). This suggests that, in the standard version, the fact that the terrorist is guilty generates a strong emotional desire for him to be tortured, independent from the desire to save lives.

<sup>3</sup> I am not implying that authors who use the ticking bomb scenario are intending to offend real life torture victims or defend real torture regimes. Such authors may have no such intention and would be horrified if such an intention were imputed to them. My point is that it is important to distinguish between a person's intentions in making an argument or using a particular thought experiment, and the effects of widespread social acceptance of the use of that argument or thought experiment.

The terrorist's guilt allows us to construe his torture as his fault since he is responsible both for the threat to human life and for withholding life-saving information. We can inflict the most brutal suffering on him and feel good about doing so. Thus the ticking bomb scenario presents a purified and moralized instance of what, in any other situation, would be simple retributive punishment. But couched in the narrative of the torture fantasy, torture in the ticking bomb scenario offers the primitive satisfaction of giving an evil person what we think they deserve under the noble guise of saving lives.

A second element of the scenario also provides a clue to its continued attraction. Torture is a paradigm instance of one person having total control over another. Indeed, torture is in part defined by the fact that the victim is powerless in relation to the torturer; this is what makes torture distinct from other instances of the infliction of severe pain, such as pain inflicted on combatants during war.

The ticking bomb scenario thereby depicts a situation in which the "good guys" exert total control over a serious threat and manage to defeat that threat. Thus the ticking bomb scenario offers a deeply compelling and emotionally satisfying portrayal of control over and punishment for evil. It is no coincidence that the scenario is most often discussed in the context of debates about counter-terrorism methods, since states often portray non-state terrorism as unpredictable, uncontrollable, and as a threat to the very existence of a state and its people (Wolfendale, 2007). Against such a portrayal of terrorism, the ticking bomb scenario provides a reassuring fantasy in which we assert dominance and control over this terrible existential threat, and at the same time satisfy our desire to punish those who threaten us while believing that our motives are purely heroic.

### *Talking about torture responsibly*

Regardless of the stated intentions of those who use the ticking bomb scenario in debates about torture, it is crucial that those engaged in discussions about torture recognize that the continued use of the ticking bomb scenario sustains the torture fantasy that I have described and helps justify and normalize

actual torture policies and practices – practices that are deeply immoral, illegal, and cause extreme and widespread suffering. In addition, it is important to understand that continued use of this scenario shows a deep and profound misunderstanding of torture, and a lack of respect for torture victims.

For these reasons, responsible debate about torture, particularly in the context of debates about whether torture should be implemented in the real world, must no longer make use of the ticking bomb scenario and instead must engage with the reality of torture as it is and has been practiced. Removing the fantasy of the ticking bomb scenario from the debate about torture will rapidly reveal the impossibility of justifying real torture practices and institutions.

And if philosophers wish to critique absolutist ethical theories, they should consider the wider implications of using a scenario that is so easily manipulated and so frequently used to rationalize real torture. If they would not be willing to make such a critique using thought experiments depicting supposedly permissible rape or genocide, they should be equally reluctant to make such an argument using the ticking bomb scenario.

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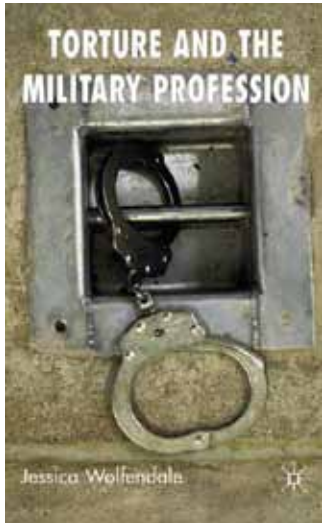
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## BOOK



Torture is banned in international law and condemned by government and military officials. Yet military torture is widespread. Despite the military's claim to be a profession bound by high moral standards, military personnel are involved in the illegal and immoral use of torture. This discrepancy between rhetoric and reality demands explanation. What's wrong with the military profession?

Torture and the Military Profession explores this question by bringing together a philosophical analysis of military professional ethics with an examination of military training and the training of torturers. Jessica Wolfendale argues that by claiming professional status, the military is constrained by high moral standards that forbid the use of torture. Yet in most cases it is military personnel who are torturers. She demonstrates that this discrepancy between rhetoric and reality occurs not because of human weakness but because basic and elite military training instils dispositions linked to crimes of obedience, aided by a perverted version of professionalism. By undermining the ability of military personnel to uphold the laws of war, she argues that this training seriously undermines the military's claim to be professional. If the military is genuinely committed to its stated moral values, then it must radically rethink current training methods.

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reality demands explanation. What's wrong with the military profession?

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essays were trying to depict the theoretical and political pictures of violence while showing the very important connection to human nature.

As Walter Benjamin pointed out, *"the destructive character knows only one watchword: make room; only one activity: clearing away ... The destructive character is young and cheerful. For destroying rejuvenates in clearing away traces of our own age ..."* (Walter Benjamin, *Reflections: Essays, Aphorisms, Autobiographical Writings*)

What we are seeing in the distinguished works of Ignacio Martin-Baró is his cleverness and insight into the common mind with the result that most of the theoretical arguments and explanations

to common forms of injustice to mankind were overridden and how shares with us the new light of his own illuminations to strength the ordinary citizen.

25 years after losing the legendary figure, we are entering an era of new forms and techniques of violence. It is therefore important to appreciate the urgent need to understand the works of Ignacio Martin-Baró here and now at the present time than was the case in the past. Why? As, Bruce E. Levine correctly pointed out, "liberation psychology - which Martin-Baró helped popularize - challenges adjustment to an unjust societal status quo and energizes oppressed people to resist injustices."

## COVER STORY: OPINION

# WHY TORTURE IS THE GREATEST CRUELTY

by BOB BRECHER

TORTURE is the worst thing we do to people. A torturous society —the sort of society increasingly legitimized since September 2001 — is the worst society we can create (Brecher, 2011). Why? Why is torture the worst form of human cruelty? It's because of what torture is. More specifically, the act of torturing being what it is, it's because of the sort of intention that it's necessary to have in order to torture someone. It's a matter of the sort of person someone has to be, in order to be a torturer.

Here is a brief account of torture that brings out what torture is: "The subject of judicial or interrogational torture is 'broken' when, and only when, he has become so distraught, so unable to bear any more suffering, that he can no longer resist any request the torturer might make. The tortured then 'pours out his guts'." (Davis, 2005, p. 165) The capacity of the tortured person to act, that is to say -- to think and then to do something, rather than just to behave in response to external stimuli -- is broken. That is what makes torture torture, whether interrogational, intimidatory or punitive. Slavenka Drakulic's fictional but all too realistic account of rape as torture makes the point

all too graphically: "The person who returns to the 'women's room' the following evening is no longer A. ... A. has left the body standing in front of them. Like her mother whose eyes lived on long after she was dead, A.'s body is still alive, but A. is dead" (Drakulic, 1999, p. 89). And because what makes us a person, rather than some other sort of being, is precisely our capacity to act, to do things, it follows that the person being tortured has, in their own eyes, ceased to be a person. That's why although "A.'s body is still alive ... A. is dead". That's exactly what torturers aim for: to break a person, to make them into only a body. The torturer has to get the person they are torturing to "pour out [their] guts," but to do so in that precise moment just before the response to "any request the torturer might make" becomes just that, an unthought response, rather than an action. Otherwise they are no longer able to give the torturer what they want, namely a truthful answer to a question, complete submission or indeed personal dissolution. To put it another way: the torturer wants their victim not just to be forced into being an object, to be broken, but to assent to being made an object, to assent to being broken.





Illustration by YuCo Man

The unsurpassable words of Jean Améry, an anti-Nazi resistance fighter who eventually committed suicide some 35 years after being tortured by the Gestapo, makes this clear: “Only in torture does the transformation of the person into flesh become complete. Frail in the face of violence, yelling out in pain, awaiting no help, capable of no resistance, the tortured person is only a body, and nothing else besides that” (Améry, 1980: 6).

What could be a more complete negation of a person than to break them, to make them into just an object? Dershowitz crassly assumes, as do many others, that “[P]ain is a lesser and more remediable harm than death” (Dershowitz, 2002, p. 144). From that, he argues that, since “nonlethal torture” is less bad than death, and since the death penalty is widely accepted, interrogational torture short of torturing to death must also be justified (Dershowitz, 2002, p. 148; p. 155). But to end a person’s life, terrible as it is, is not on a par with making them into something that is not a person, an object, whether temporarily or permanently. Perhaps it’s their commitment to a consequentialist view of morality that prevents apologists for interrogational torture from understanding this simple fact, that there are things worse than death. Or perhaps it’s their commitment to accounting only what can be, allegedly, measured – and the termination of life puts

an end precisely to measurement of pain, pleasure or whatever -- that allows them to be consequentialists. Either way, they’re wrong. (These considerations might of course be reasons for rejecting consequentialism as a plausible account of morality.)

Here’s one way, then, of understanding why intending to break a person is the most corrupt intention another person can have. It’s set in the terms proposed by Immanuel Kant, when he proposed as a principle that we “Act in such a way that you treat humanity, whether in your own person or in the person of any other, always at the same time as an end and never merely as a means to an end” (Kant, 1997, p. 38).

Why does this bring the point out so well? Because Kant’s principle seems self-evident. What argument could anyone make in favour of treating persons merely as a means? Try it. I think you’ll fail. And if there can be no good reason to use another person just as a means to some end, then doing that to them is fundamentally anti-rational. But then, since we are persons, that’s to say embodied rational agents, if we go against rationality in this way – doing something that cannot be rationally justified – we are going against ourselves. We are doing something like contradicting ourselves in what we are doing.

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Bad arguments are always dangerous. And since torture is the worst thing we can do, bad arguments in favour of it are the worst arguments we can make. They are especially dangerous. Liberal proponents of torture should know better. That they don’t is a measure of the intellectual and moral corruption of our time.”

So in torturing another person, the torturer is effectively denying their own personhood. They are going against themselves as rational agents. That’s why the sort of intention that torturing requires is the worst intention a person can have. It makes them into something other than a person inasmuch as it requires them to go against what makes them a person and not a thing.

And that’s one very good reason why politicians, lawyers, philosophers and others who advocate torture in extremis need actively to be countered in their attempt to create a torturous society. It’s also why they’re being disingenuous in asking other people to torture on their behalf; and why when someone like the impeccably liberal Michael Walzer says that he “would do whatever was necessary to extract information in the ticking bomb case -- that is, I would make the same argument after 9/11 that I made 30 years before” (Walzer, 2003), he is being dishonest. For the question isn’t “What would you do if...?”, but rather, “What would you demand of someone else, someone prepared to undergo the training required to become a skilled torturer, that they do on your behalf?” Or has Walzer undertaken torture training? Are Walzer and the rest of the liberal defenders of interrogational torture prepared to become professional torturers “for the good of their fellow-citizens”?

Bad arguments are always dangerous. And since torture is the worst thing we can do, bad arguments

in favour of it are the worst arguments we can make. They are especially dangerous. Liberal proponents of torture should know better. That they don’t is a measure of the intellectual and moral corruption of our time.

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# PRECEDENCE OF AN ICON OF HUMAN RIGHTS

**BASIL FERNANDO**

### INTERVIEW: BASIL FERNANDO

ON 25th September 2014, Basil Fernando and the Asian Human Rights Commission was bestowed with the coveted Right Livelihood Award, widely known as the “Alternate Nobel Prize,” for “his tireless and outstanding work to support and document the implementation of human rights in Asia.”

The Right Livelihood Award was established in 1980 and honours those “offering practical and exemplary answers to the most urgent challenges facing us today.” The Right Livelihood Award has no categories, the award recognizes that, in striving to meet the human challenges of today’s world, the most inspiring and remarkable work often defies any standard classification.

The others who were also awarded the prize were; Asma Jahangir, for protecting human rights in Pakistan and globally; Bill McKibben and the 350.org, for mobilising a global movement against climate change; a joint honorary award to Edward Snowden and Alan Rusbridger, for courage in revealing the extent of illegal government mass surveillance and for establishing a standard for responsible public interest journalism, respectively.

*Torture Magazine* caught up with Mr. Fernando in his office, minutes following the announcement of the award to speak with him of his lifetime of achievements that won him and the AHRC global acclaim of the “Alternate Nobel Prize.”

**Torture Magazine (TM):** Mr. Fernando, congratulations on this momentous achievement. Thank you for taking the time from your busy schedule to speak to us, on a subject that is perhaps the closest to your heart, the work, times and, more importantly, the ideology behind the Asian Human Rights Commission and its sister organization the Asian Legal Resource Centre. The Asian Human Rights Commission, as we are aware, began operations in 1984 and you were one of its founding members. Would you tell us briefly the story of its beginnings and its journey during the past three decades?

**Basil Fernando (BF):** Thank you. When one speaks of human rights organizations and their histories we should always bear in mind that what we really refer to are the problems of societies, the problems of the people living in the societies. Taken in this perspective, whether we speak of the last 30 years or the coming 30 years, one would see, certain important issues that are common in all the Asian countries.

That being said, each country has its unique set of problems particularly, in relation to the type of evolutions that has taken place over time of the different political institutions and the public justice systems. They have a direct bearing on the distinct types of human rights problems that people face as a result.

Let us then first look into the past 30 years. As you know, 30 years is quite a long period of time in the life of an individual, and what all these individuals in Asia experienced during the past years of their lives is of grave significance. On the other hand, it can also be said that 30 years, taken in a historical sense, is only a short period of time. Certain events may have taken place during that particular 30 year period, and such events may have been connected to events which took place during earlier periods and likewise all these events may have links dating as far back as several centuries and therefore, such series of events may be connected to what took place within the last 50 years of our history and would similarly manifest themselves in the next 50 years to come. Both these factors are important when considering every small moment in the lives of individual citizens. Added to this, when speak of the many problems of human rights we must also equally consider the larger picture of the history of each country.

In this light, Asian countries in the last 30 years witnessed the surfacing of an enormous amount of tension; tension, from struggles for democracy; tensions from struggles for the expansion of freedoms of people; tensions from experiencing severe forms of authoritarian systems; and tensions from such systems’ practices of various forms of repression.

I will try to elaborate on some aspects of the struggles for the expansion of freedoms in Asian countries in general;





*Basil Fernando at the 3rd meeting of Asian parliamentarians organized by the Asian Alliance Against Torture and Ill Treatment in Mid-October this year.*

Firstly, from the point of view of education of the masses or whom we refer to as 'ordinary folk' there have been vast levels of changes in many of the countries in Asia. The degree of this change varies from country to country. However, to say that 'education in the Asian Continent has undergone a colossal change' is an accurate statement. This colossal change has a substantial impact on the development of the discourse on human rights.

It is education that contributed to the possibility of development of social movements within Asia. 19th Century literature makes references to the 'common folk' as being mere 'passive peasants'. In example, a leading figure in modern Chinese literature Lu Xun very strongly critiqued people's passiveness and their archaic habits which have been a part of the Chinese culture. A predominant theme of Lu Xun's writing is an exhortation to the people, calling on

them to 'modernize their minds'. What Xun meant by 'modernizing their minds' was to learn of the changes; to learn the changes that were taking place not only in China, but in the world, particularly in the west. Similar critiques can also be traced in many other countries in Asia. In India, writers and social reformers worked steadfastly against oppressive and discriminative practices such as the caste systems and other social discriminatory customs particularly, relating to the way women were treated in societies and urged for radical reforms. These are all common features in Asia.

These times also witnessed in all Asian countries, even amongst the poorest strata of society, an opening of opportunities for children to obtain a formal education and in certain countries opportunities were extended to more extensive education for some.

Besides these changes, there was at the time, the development of another form of education across Asia. It was introduced by way of modern media, the radio to begin with, later by television broadcasts, print media such as newspapers, and today through the electronic media. This trend in providing access to information was one of the major factors that gave rise to change.

Similarly, political and social movements too were constantly evolving. In some countries, for example in China, revolutionary movements virtually changed the entire character of the nation. These revolutions although - they may have brought their own forms of repressions - directed the change from how these societies were functioning in the past. These movements revolted against the subjugation of the ordinary people and made them considerably change into more powerful persons or groups.

In addition to all this, the period also witnessed vast changes in infrastructure within each country; with the improvement of roads, railways and eventually air-transport. Today, large numbers of persons, even those from very poor backgrounds, make use of all these facilities including air transport, to migrate to foreign countries, particularly for employment. Understanding all these aspects in such transformations - is of utmost importance in trying to understand the problems of human rights of the people of Asia.

The very fact that the overall ethos of Asia is one in which people themselves are engaged in changing their ways of life and through a very natural process - is the single most basic condition that creates massive opportunities for change in the field of human rights.

This positive factor should always be taken into consideration at all times, when we speak about the very serious human rights issues that still persist in Asia, which often frustrates any person who wishes to engage in the promotion of human rights and for change. While the negative factors weigh overwhelmingly, in almost all the countries in Asia, what should be commended upon and what all human rights organisations and other activists should pay the greatest heed to is the positive factor that even today

Asian societies through a natural process and by themselves alone are engaged in attempts to change.

**TM: We understand that it has been indeed a long journey that both these organizations have travelled far from those humble beginnings. Today, AHRC is a household name in the international civil society and its stance against violations of human rights abuses is often in the limelight in many of the 13 Asian countries you work in. This work is if often referenced and quoted in publications and other media. Your sister organization, the ALRC, enjoys UN's ECOSOC general consultative status and particularly the work on Torture is well known. Torture is a subject that most civil society organizations refuse to touch upon. Why did the AHRC specifically choose to work predominantly on the prevention of torture? What made you tread where others dared to tread?**

**BF:** Torture reveals the inner structure of a particular society. If the police are able to investigate into crimes and to independently carry out their role in the process of facilitating prosecutions, it means that such a society has sound infrastructural facilities to protect its people. If the police and other security agencies need to use force in administering the process of criminal justice, it then is a clear indication that such a society does not possess a strong legal infrastructure for the protection of its people.

The most essential function of a state is the protection of its people. Protecting the people is what we term as 'people's security'. All of us want security. Parents who are in charge of the most important unit in the society - 'the family' - are deeply concerned in the security of their children, in the security of their properties, and in the security to move freely in their day to day lives. These are the issues that pre-occupy the minds of parents. In particular, parents of the girl child are even more concerned with security because the girl child needs also the protection from sexual abuse.

We can also say that those who are engaged in any type of business too want security; they require security of their contracts. All transactions take place in terms of contracts, whether they are of a formal or



an informal nature. People need to feel that the obligations under such contracts would be carried out or in the least there exists a predictable legal process through which they are able to ensure their rights.

Those who are engaged in political life also seek security. For example, ensuring free and fair elections require considerable amounts of arrangements for security. If such a security does not exist, more powerful and financially affluent parties will use various other means to ensure that they win the elections irrespective of whether they receive votes or not. For a political life to be a safe one, there needs to be established the understanding that in all political affairs there should be certain basic rules maintained and that such rules are being observed.

In ensuring these modes of security, the police and the security forces play a key role. If the police and the security forces cannot perform their duties without the use of torture and ill-treatment then it means the police and the security forces are ill-equipped. They are ill-equipped from the point of view of competence; ill-equipped from the point of view of abilities to do their jobs and ill-equipped with resources such as transport, communication and forensic knowledge all of which are somehow not adequately available to them. Thereby, if they are not competent and if they do not possess the requirements to carry out their jobs then they are incapable of performing their primary duty of protecting the people.

Brutal and barbaric policing therefore is a serious problem in the society. It is a prescription for insecurity, violence, and every form of cruelty that can take place within a society. If the police and the security forces in a country are the likes of such, then it is a dangerous place to live in. That is the primary reason to have always been concerned with and to study and to observe whether the policing systems in each of the countries we work in are sound ones

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and are ones that can perform their functions with utmost rationality and discipline.

Moreover, we have been focusing on the issue of torture for the reason that when a person is tortured or ill-treated, the basic principle of inviolability of the human body is violated. No government has the right to violate the physical security of a person. It is a fundamental law among nations, and a fundamental principle of civilization that the inviolability of the human body should be respected. If the police and the security forces are using torture and ill-treatment, it means they are violating one of the most basic rules of human civilization.

**TM: Your work and the work of the AHRC as well as the ALRC is nearing 30 years this year. What, in your view, have been its most important achievements?**

**BF:** We have witnessed in all the Asian countries, amongst the ‘ordinary folk’, amongst men and women, a new consciousness, and a new intelligence. People want change. They demand change. People demand that their human rights are respected by their governments, not

Painting by Basil Fernando

through mere words but by genuine improvement of the public institutions; they demand justice to be something real, tangible and accessible. Repression, by whatever means, such as enforced disappearances, extra-judicial killings, torture, suppression of freedom of expression, cannot succeed in any way in destroying this renewed consciousness, this new intelligence.

The wisest way to deal with these demands is for governments to facilitate these changes that are demanded of them. It is the only way open to end violence and achieve peace in all parts of the world. More developed countries should demonstrate more wisdom by assisting such changes and not in supporting repression.



Painting by Basil Fernando

**TM: Let us digress for a moment and reflect upon some questions of a more personal nature. You began your career as a lawyer. You are a poet, a writer and a jurist. What in your life and experiences inspired you to work towards the protection of human rights in Asia? We were also told that not only are you an acclaimed poet but also an ardent artist and that you have a collection of your drawings to show. Tell us a bit more about you as a poet and how that has influenced your work or vice-versa. What has mostly influenced your poetry and your drawings? Is there any particular reason you like to draw birds?**

**BF:** I have been writing poetry since my student days. In fact, one of my youthful aspirations was to be a poet. However, over the years my ideas on poetry too, have changed.

Some of my early poems were written in English. I think there may have been around 200 such poems. Some of these poems have been translated into

Sinhalese by Radhika Gunawardana and a collection was published last year. These days, I am writing in Sinhalese again and yet another collection of my poems has been published this year. I have also done some translations of poetry of other well-known poets, and a thin-volume of such poetry has been also recently published.

I have not consciously selected any particular theme for poetry and most of my writings have emerged as a response to the various types of events which have taken place in actual life and also as a response to some of the things that have pre-occupied my thinking.

Looking back at these poems today, I can see some commonalities. One theme that –often re-emerges is the issue of human suffering. It is in the human suffering that we see the deep links between the personal-self and the collective; in other words of me vs. the others. The times we live in, are times of intense human suffering both from a global sense and



also from an inner more personal sense in terms of my country, Sri Lanka.

From a global sense, the last century has been, to a great extent, a period of disappointment for all humanity. This does not refer to only the two world wars, the civil and cold wars, but to the alarming calamities that took place in almost all the countries, in some more so than others.

Primarily, this disappointment is about the feeling that almost all human ideals have been betrayed. Take for example, the enthusiasm that many people understood and expressed in socialism at the time. It was perceived as a possibility of obtaining equality, brotherhood and justice. That enthusiasm ended in disappointment. To people's sheer shock they realized, as the years went by, of the kind of 'horror' that socialism unleashed on the people. The carelessness with which many millions of people were shot dead or otherwise killed during that time, is today being revealed with greater detail. The creation of fear through killings led to the creation of labour camps or gulags, which depicts a situation worse than slavery. The amount of anguish that was caused as people ultimately discovered what socialism really came to be is one of the major causes of disappointment in our times.

On the other hand, people's ideals and beliefs of the 'free world', have also been thoroughly proved wrong and have disappointed almost all of us. Despite the massive improvements in technology and production, most people living in these countries do not derive the benefits of such progress. Instead, there have been reports of malnutrition even in the United States and Western Europe. Many have died without basic healthcare, all these can be easily provided if policy makers and the leaders could agree to resolve these problems. However, they cannot seem to agree, because there is heavy pressure from a very thin minority of people who own most of the world's resources. The result of which is, that these pressures are being more forcibly brought to bear on the people due to the influence of modern mass media and communication facilities.

Technological progress in communication facilities has been used to feed humanity with more lies than

ever before. The ugliest forms of lies have been deliberately published and re-published with the view to manipulate the human mind. Manipulation has become the aim whereas the ideas of revealing the truth have become increasingly obscure and more difficult a task.

Those who know the truth are treated as dangerous elements in our societies. Many have been killed or subjected to other forms of suffering, merely because they spoke the truth and had knowledge of facts and events that have been guarded as grave-secrets.

One of the greatest causes of human suffering is the loss of trust amongst human beings. People distrust their own leaders because they know, that once in power, these leaders cannot and do not speak the truth. One day, people elect a leader with great enthusiasm and shortly afterwards they begin to hate him as never before and consider him nothing but a liar.

The price for all this is paid by the ordinary people who are now exposed to problems such as enforced disappearances, extrajudicial killings, incredible forms of torture, ill-treatment, starvation, malnutrition, manifold forms of slave-like practices, most cruel forms of barbaric treatment of women under the pretext of culture, religion and traditions, and the like. Most of these people have no way out of any of these problems.

Perhaps, the greatest forms of suffering stem from the absence of truly effective justice systems. Particularly in the developing countries almost as a 'rule-of-thumb', there is the denial of the possibility of creating and maintaining public justice institutions. The police force, in most countries acts as predators rather than as protectors of the people. The same is true of even of judges, prosecutors and the lawyers, all of whom have become a menace to mankind instead of being their guardians.

As Albert Einstein said, 'technological progress is like an axe in the hands of a pathological criminal'. More human energy is spent on creating weapons of mass destruction and we all live in fear of what has thus been created.

There is more separation, than genuine love and friendship. This list can go on, endlessly. However, the fact remains that human beings, commonly, experienced suffering and not true happiness.

In the midst of such human suffering, humanity is still in search of truth, love, solidarity and compassion. There is this contradiction in the sufferer who in his deep suffering yearns for such things as love, compassion, friendship, and more deeper meaning to life than mere material goods—the human being yearns for that wonder of the 'undefeated human spirit'.

These are some of the ideologies that my poetry 'has come to deal with'. I say, 'have come to deal with' particularly because I did not consciously try to bring these themes into my poems but these musings of the suffering of humanity have entered into my poetry from a stream of thought that eternally flows inside us. Yes, there is such a stream inside all of us. It is out of that stream that these expressions have emerged by way of poems which I have written over the years and published.

Some of these poems have taken me by surprise. For example;" the much reproduced poem "Yet another incident in July 1983" written in 1983. Each year I have found more meaning in this poem. In other words, my poem speaks back to me. There are many such poems which I have written on the spur of the moment but as time passes by, I have found some of my deepest inner thoughts that have emerged through such poems even before I was myself conscious of such thoughts.

Regarding the very few amateur drawings [smiles] I have done, of which I am aware of, yes, birds have been the main object of my drawings. Of course, everyone loves birds. That kind of love that we all have for these ancient creatures is something that comes naturally to all of us. I am not able to explain why. However, birds are for me many things. They represent our aspiration of wanting to fly; of our aspirations to be free. This is why no amount of suffering can pin the human spirit down. We all want to fly away to another place, another time. We often do not know what that other place might be, but we simply do not

want to be imprisoned or caged. To me, birds are also the symbols of beauty.

I then photographed beauty  
Who are you?  
I asked a bird that was  
Posing for a photograph.  
I am beauty,  
The bird told me.  
Are you from heaven  
Or earth?  
I asked the bird.  
I have wings and feet,  
I eat and sing,  
The bird told me.  
Are you an angel?  
I asked.  
No, the angels  
Were modeled after me,  
The bird replied.  
I then photographed  
Beauty

- Basil Fernando

We also know that birds can be our protectors. When certain types of insects, such as locusts for example, that breed in numbers (millions) and swarm together to destroy our environment, it is the birds that protect us, that protect the crops by feasting on the "would be destroyers" of the crops. For example, we are aware of such a destruction taking place in China, during The Great Leap, which ended in a catastrophe, when they killed in large scale the sparrows and as a result of the killing of all the sparrows, who were natural predators of locusts, the problem was aggravated by the devastating locust swarm, which killed all the crops and made the fertile ground unfertile to grow any crops in again. The ecological balance that was lost by killing the birds, who are natural predators of insects, had to be restored for plant life to be protected. So much can be said about birds because I believe we ourselves would like to be birds, if that is ever possible.

*Read more about Basil Fernando at [basilfernando.org](http://basilfernando.org)*

# REFLECTIONS ON LAW AND HUMANITY

SUZANNAH LINTON

## INTERVIEW: SUZANNAH LINTON

Dr Suzannah Linton works extensively on rule of law and international justice issues, particularly in Asia. She has, inter alia, been a UN prosecutor for Serious Crimes in East Timor and worked at the International Criminal Tribunal for the former Yugoslavia, in Cambodia, Indonesia, Bosnia-Herzegovina, Croatia and elsewhere. She has supported the Asian Human Rights Commission since she was Associate Professor of Law at the University of Hong Kong, where she directed their LLM programme for several years. In her time in Hong Kong, she uncovered war crimes trials held in the territory from 1946-1948 and brought them to global prominence through a database at the University of Hong Kong, and academic publications. From 2011-2014, Professor Linton was Chair of International Law at Bangor Law School, Bangor University, where she established the Bangor Centre for International Law and started their International Law programmes. She is currently at the Max Planck Institute for Comparative Public and International Law in Heidelberg, Germany.

We recently interviewed her:

**Natalie Yeng (NY):** How do you see the significance of application of International Law to protect and promote human rights globally?

**Suzannah Linton (SL):** Let me start my answer by putting myself in the position of a Yazidi, Turkoman, Iraqi Shia or Iraqi Christian fleeing IS in Northern Iraq. I would say International Law is a load of nonsense. International Law did not prevent the rise of IS, it did not prevent IS from sweeping in from Syria where they had for many months been perfecting their monstrous ways, and inflicting barbarous brutality on the civilians of Northern Iraq (and captured Iraqi soldiers). IS and the ruinous catastrophes of Iraq and Syria are testaments to the failure of International Law across the board, not just in relation to the promotion and protection of human rights. Can anyone blame the Yazidi, Turkoman or Iraqi Christian for thinking this way?

As an International Lawyer and a humanitarian, I would like to reflect further on this.

1. The reason why there is such outrage and horror around the world about the dreadful situation in Northern Iraq is that we - all of us as human beings - have certain standards and expectations about how human beings should behave towards each other. What IS are, what they are doing, what they stand for and aim to do, are all utterly contrary not just to moral standards and values across cultures and religions, but also concrete legal standards. Those concrete legal standards are laid down in domestic laws, and also in International Law. The actions of IS and her members are not just prohibited in law, they are also punishable in law. Under International Law, the most relevant rules in relation to IS are in the areas of human rights law, the laws of armed conflict and international criminal law.

2. If the killing, maiming, torturing, raping, displacement etc are not just immoral but wrong in law, why has this happened? If we have laws - whether national or international - how did this happen? Well, laws are broken by individuals around the world every minute of the day. Sometimes people take calculated risks - they may think nothing will happen to them, they may think the benefits justify the risk, they may not know that what they have done is wrong, they may know but do not care about the consequences, or they may actively disagree with the law and choose to disobey it.

3. In the case of Northern Iraq, it is not the fault of the law - whether it is domestic or international - that certain individuals have chosen to ignore it. If we look for fault or blame here, there seem to be many culprits. Fault would of course first lie with the individual IS member who murders, maims, tortures etc (perhaps he/she has no respect for the humanity of others, and feels free to kill, maim and rape), but it may go beyond that. We can think about the State where these things happened (perhaps Iraq has allowed a condition of lawlessness or impunity to exist, fuelling such behaviour or perhaps it was derelict in its duty to protect its citizens), the State



of nationality of individual IS members (perhaps they failed to ensure an education that taught tolerance and compassion and respect for other human beings, perhaps they knew the extremist views of the person and preferred the person to go abroad rather than remain in the country), the international community (perhaps other states just stood by and did not speak out, and did not act when they should have done so), perhaps it was the people who manipulated the minds of others, who used propaganda to poison susceptible young people.

4. These matters certainly concern International Law, but the critical point that I am trying to make here is that it is not necessarily the law that is at fault when things go wrong. In this case, it is not necessary International Law's fault that it was not able to protect the Yazidis, Turkomen, Iraqi Shia and Iraqi Christians from IS.
5. These dreadful things should not have happened, but they did. What does International Law have to offer now that things have gone wrong? Right-thinking people around the world are horrified at what has happened and leaders are under pressure to 'do something' about the human suffering in Northern Iraq. International Law comes in here too. International Law provides a basis for evaluating what has gone on, and from that flows a basis for evaluating what can - and cannot - be done about that. Very late, far too late, in the day, some Yazidi, Turkomen, Iraqi Shia and Iraqi Christians were rescued from IS, with international assistance. What has International Law to do with that? Foreign assistance was directly requested by Iraq, on whose territory major violations of International Law were happening. Armed force has been used by the USA on Iraqi territory at Iraq's request, to protect human lives. Put another way, the internationalised military operations that are now taking place in Northern Iraq are because of a situation where major violations of International Law have occurred, and the response is one that itself is regulated by International Law. A critical source of law here is the United Nations Charter. There are other ways to see the role of International Law in the protection of the human person. Let me

give some examples. International Law requires that the displaced must be cared for, they must have food, water, shelter and medical care. Their return home, if possible, should be facilitated. International Law says that the fighting must be in accordance with the rules governing combat operations. International Law says that captured IS combatants cannot be murdered but must be cared for, provided with medical care if necessary, treated humanely. If the individual IS member has committed crimes, he/she can (must) be held to account. It is up to States to ensure all of this is done.

6. We can also look at what happens next when thinking of institutions. International Law does not operate in a vacuum, it operates as the lubricant of international society: it is directed at States and individuals, and it also needs States and individual for its application or enforcement. International Law lays down responsibilities - for example, the responsibilities of Iraq as the territorial State where these things are happening, the responsibilities of USA as a state engaging in an armed conflict on Iraqi territory. International Law regulates what the international community can and cannot do about the stronghold of IS in Syria. It regulates the issue of whether the USA can just attack IS in Syria, without an invitation from Syria to do so or an authorisation from the UN Security Council. International Law also regulates the responsibilities of the UN and her many agencies and associated institutions - the UNHCR, WHO, UNOHCHR, UNDP, etc - and what they can and cannot do in this matter.

So, based on the above illustration, it is quite clear that the application of International Law is highly significant in the protection and promotion of human rights globally. International Law needs States, and sometimes international institutions and individuals, to respect it, apply it and enforce it. This, rather than the content of the law, is often where the problem with application lies. The real challenge is in actually using the law to make a difference.

**NY: Could you explain how international affects not just countries but individuals in day-to-day life?**

**SL:** I like to refer my new students, who usually start off understandably puzzled by International Law, to what Lord Bingham wrote in the foreword to the book *Using International Law in Domestic Courts*: 'Times have changed. To an extent almost unimaginable even thirty years ago, national courts in this and other countries are called upon to consider and resolve issues turning on the correct understanding and application of International Law, not on an occasional basis, now and then, but routinely, and often in cases of great importance.'

International Law is everywhere and it affects individuals in many ways that people are unaware of. Think of that exotic foreign fruit that you bought in the supermarket. How did it get there from so far away? How is it that countries are able to trade with each other? This is about International Trade Law, which finds its roots in the ancient trading practices of nation states.

Think of a trip to another country. How is international air travel possible? How is it that aeroplanes can fly in the air over other countries? Who ensures that the aeroplane is fit to fly? How is it that aeroplanes can land in other countries? What is the legal status of a civilian aeroplane - what happens if someone commits a crime on an aeroplane? How do visitors enter other countries? What is the significance of a passport, what

is 'nationality'? Is a foreigner protected in another country? This of is all about International Law, and not just Aviation Law.

Think of receiving a letter sent from abroad, rare these days! The placing of a stamp on a letter and its posting to arrive in another country involves international agreements, centred around the 1874 establishment of the Universal Postal Union. Expand that to telecommunications, the internet - these benefits that we take for granted are rooted in international agreements between states, which form the basis of International Law (note that much work is now being done on drawing up international regulation of the activities of multinational corporations).

In the UK, students cannot be subjected to corporal punishment anymore. Why? This is the direct result of the UK's compliance with a decision of the European Court of Human Rights. At this point in time, a new university academic year in the UK is about to commence. Students are exercising their right to education, which is protected by International Law. They and their teachers will benefit from International Law's protection of their right to freedom of expression, but will be expected to exercise that with respect for the rights of others. The students are entitled to be treated without discrimination on grounds of race, sexual orientation, gender, religion,



*Seminar on Professor Linton's book 'Hong Kong's War Crimes Trials' hosted by the Chinese University of Hong Kong*



politics etc. Of course, in the UK, these rights are protected by domestic law, but this is a requirement of the UK's international commitments for example under the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

**NY: In developing countries, due to various factors there are inhumane treatments despite international treaties. How do you think such situations could be improved?**

**SL:** First of all, inhumane treatment happens all over the world. Sadly, very sadly. It does not just take place in developing countries. The world over, people have heard of the abuses that took place in Guantanamo Bay and Abu Ghraib Prison. I would like to refer your readers to the statistics of the European Court of Human Rights - the huge burden of that court should quell any belief that human rights violations only occur in developing countries. Importantly, 174 of the violations found by the Court in 2013 concerned either torture or inhumane treatment. So, Europe is still not a 'torture-free zone'. I would also suggest to read the European Court's decision in Husayn Abu Zubaydah v Poland, which reveals how 'developed' and 'human rights friendly' states assisted the USA in its illegal renditions and torture operations after 9/11. It is also from the USA that we have not just had torture and inhumane treatment, but have heard highly sophisticated and pernicious justifications of such conduct, at the highest levels.

'... despite international treaties', the question asks. There are international treaties that prohibit torture and other forms of cruel, inhumane and degrading treatment or punishment. They are both regional and universal. But, a state is only going to be bound by a treaty if it is a 'party' to the treaty - this means it has taken certain legal steps to make itself legally bound by the treaty. A treaty does not, in itself, impose any binding legal obligations on a state that is not party to it. There can be other sources of law, but I'll only deal with the treaty issue. Many states deliberately remain outside of certain treaty systems because they do not agree with certain aspects and do not wish to be bound in such a situation. This is a more honest approach than states who opportunistically sign up to every human rights treaty going because donor funding

requires it, rather than because they agree with the values that infuse the treaty and are prepared to make that vision a reality back home. Other states may have some doubts that do not go to the core of the treaty, and if the treaty permits it, they enter reservations that amend the extent of their legal obligation. So, how one deals with a state that is not behaving consistently with standards set out in a treaty depends on the State's actual relationship with that treaty.

Let us assume we are dealing with a particular developing country that is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('CATCIDTP'), but abuse in detention is still going on. All states are obliged, as a matter of International Law, to comply with their treaty obligations - this is a fundamental principle that we lawyers call *pacta sunt servanda*. Being a developing country is no excuse. To breach binding International Law renders the State liable in International Law to other states party to the agreement. It is also failing to protect and ensure the rights of victims. However it is not very easy to seek a remedy internationally. Many states that are party to international treaties do not allow actions to be brought against them before an international body, whether at the International Court of Justice (states) or before treaty monitoring bodies (individuals). This is because they are concerned about their sovereignty, but by doing this, they cut off an avenue of remedy when International Law is broken. Even so, the mere fact of international treaty participation definitely gives the international community added legitimacy in pressuring the State about the particular situation of inhumane treatment, so there is external political pressure that can be brought upon the State ('shaming'). Domestically too, local remedies can be sought - the extent to which International Law can be used directly in the legal system depends on how that system relates to International Law. There are, in theory, civil and criminal remedies that can be sought in the domestic courts. At the international level, the remedies are just civil unless it involves war crimes and other international crimes of that severity that are dealt with by an international judicial body as a matter of international criminal law (note that at the International Criminal Court, there is scope for reparations for victims).

It is important to remember that accountability is just one of the tools that we use for dealing with inhumane treatment. And, it is a blunt instrument, for it is a reaction to a situation that has gone wrong; it does not get to the root causes of why it happened and it does not address those root causes to prevent repetition.



Professor Linton teaching in Bangladesh, at Chittagong Law School

The process of individual accountability punishes the person convicted, and assumes that others will be deterred by this. This is often wishful thinking, and much effort has gone on taking a more holistic view when thinking about inhumane treatment. For example, abuse by the Police in detention in our developing country could be a systemic problem. It can be simply through poor levels of basic education that leave officers with a lack of understanding about core concepts of equality, human dignity and fundamental rights. It may be because of a corporate culture that promotes the use of confessions, believes that the ends justify the means, and is fixated on achieving quotas. It may be because of lack of training and awareness within the force about the role of the Police and how to treat detainees. It may be because

of entrenched impunity because the system condones such behaviour, even rewards it, and the officers know they can get away with it. It may be because of a wider political situation, where there is immense pressure on the Police to deliver results at any cost. If there are such underlying causes, unless the State takes its international obligations seriously and starts to develop strategies and policies for implementation, the mere fact that our developing country is a party to the CATCIDTP is likely to have no impact on the Police.

There is extensive international assistance that is offered to strengthen the capacity of developing countries in meeting human rights, from individual countries on a bilateral basis to the Office of the High Commissioner for Human Rights to the European Union to NGOs. Developing countries are often inundated with 'training' and 'capacity building' programmes. I am not alone in noting that that this is a job industry, and there seems to be little impact where there is a deeply entrenched systemic refusal to recognise the human rights principles that lie behind rules such

as the prohibition against torture. To expect a lowly Police officer to change his behaviour and stand against an entrenched system is unrealistic, we need to work more effectively on systemic change. And, I should like to add that since the revelations about what the USA has been doing in Guantanamo Bay and at Abu Ghraib Prison, training in this area has become more challenging.

Systemic problems of abuse in detention will require a range of approaches, and accountability is just one of them. One of the approaches that is producing results is preventative prison visits - rather than being reactive, this is about stopping abuse from happening. This was pioneered by the European Committee for the Prevention of Torture, and is now used by the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment



or Punishment ('SPT') around the world. The SPT can conduct visits to States Parties, and may visit any place where persons may be deprived of their liberty. It also has an advisory function, this involves assisting and advising States Parties on establishing National Preventive Mechanisms as required by the relevant treaty, which is the Optional Protocol to the CATCIDTP. The SPT also works more broadly on torture prevention, with relevant UN organs and mechanisms such as the Special Rapporteur on Torture and the Committee against Torture as well as with international, regional, and national institutions or organizations. Rigorous supervision of places of detention is an important method that is used to prevent - requiring detailed record keeping about the detention, ensuring prompt access to lawyers and family member contact, regular medical examination, close judicial supervision of detention and access to independent monitoring such as by the ICRC, the national mechanisms required by the Optional Protocol to the CATCIDTP or specialised NGOs. Of course, the CATDPR also requires criminalisation of such abuse (eg. specifically prohibiting and punishing torture) and the imposition of duties on superiors in relation to effective investigation and prosecution. The international community has developed a significant amount of 'best practice' such as the highly influential 1955 Standard Minimum Rules for the Treatment of Prisoners, which is now undergoing a process of updating.

Our particular developing country may not have the infrastructure to meet all its human rights obligations, but that is no excuse for a state that has taken on legal obligations in this regard - it will keep being in violation of its international obligations for so long as people are tortured or subjected to cruel and degrading treatment and punishment (it is not enough to be 'trying to improve the situation' which can suffice for economic social and cultural rights). This is, I would point out, a problem with pressuring developing countries to become party to international treaties before they have the capacity to meet such obligations. I must admit that I sometimes get frustrated when I read recommendations for states to become party to long lists of human rights treaties, with no consideration of what that actually entails. It seems as if the writers of these recommendations believe that simply signing

up to a treaty will do the trick, fix the problem. For me as a lawyer, it degrades the significance of legal obligation when States are pressured to enter into obligations when everyone involved knows these States cannot meet those obligations at that point in time. Of course, this is all part of the 'game' of being a 'good member of the international community'. However, I feel that States really should ensure - and be helped in that journey if necessary - that they have at least minimal capacity to do what is required before they enter into binding legal obligations. From the minute they become bound, they are liable whether or not they are developing countries.

**NY: What measures could be applied so as to ensure the international rules are applied at a local level?**

**SL:** For me, international does not necessarily mean better. What we call 'international rules' are usually broad statements of principle, rather than precise and concrete rules that are capable of being applied on the ground. They are inspirational, and often lack the specificity that we require for managing day-to-day life. It may well be that a country's domestic legal framework is sufficient to ensure that rights are protected in accordance with the State's international commitments; in fact, that is the way it is supposed to be - states find their own way to meet their international obligations. There may be no need to 'ensure that the international rules are applied at a local level'.

In the teaching of International Law, we always have a discussion about relationship of international and domestic law. Academics have had heated debates about this. Some say that these are two bodies of law, two separate bodies of law, and it is not possible to apply international rules at a local level just like that. Others argue they are both systems of law within the world of law, so International Law can be applied domestically just like that. Others believe that International Law is a higher body of law than domestic law, so in any 'clash', International Law has to be applied.

What does an academic debate matter in the real world, you might ask. It matters because it affects the issue probed in the question, whether International Law can be 'applied at a local level'. Some states

allow for the direct application of International Law in their domestic system because their legal theory regards them as being part of the same system. Legal doctrine in other states requires International Law to be turned into domestic law before it can be used. There is no right or wrong in this, they are just different approaches based on the reality that the world is made up of different legal systems, such as civil law and common law systems. The challenge is to work within the particular legal system to maximise what there is, and where it is not good enough, to work to improve it. My own concern is not actually with ensuring that international rules are 'applied at domestic level' but to ensure that states are meeting their international obligations. That means two things. The first is that they actively promote the values and approaches that lie behind the particular convention. If we are talking about conventions such as CATDPR and the Refugee Convention, these are infused with ideas of compassion, humanity, dignity and respect for the doctrine of individuals rights that we call 'human rights'. I am speaking of reaching out to the community's hearts and minds to persuade them of the values being supported. The second is that States regulate their internal governance in a way that complies with what they have committed themselves to do. The doctrine of State sovereignty usually means that states are left to their own devices to find a way to meet their international obligations. This does not mean there is no role for helping them, including in challenging the State on its way.

**NY: Looking into the project Hong Kong's War Crimes Trials, what difficulties did you and your crew encounter in gathering information?**

**SL:** There were numerous challenges, this has been a very demanding yet deeply fulfilling project. The first related to the relevant case files. This was the first such attempt to pull together the story of the Hong Kong War Crimes Trials. Before the legal work could be done, there was a huge logistical exercise to carry out with location of the relevant files. The originals were at the UK National Archives, and had to be tracked down. I spent hours and hours reading through hundreds of files and was able to find them, and also identify supplementary files that related to the actual cases, and the policy and administrative issues

surrounding them. Connections were drawn and links made through sheer hard work, and a fair bit of luck. This massive excavation exercise also involved trawling through the Hong Kong Public Records Office, the Imperial War Museum and private libraries such as that of Lord Anglesey. The connections between Hong Kong and contemporaneous had to be explored, and that meant looking at other British trials, as well as the Tokyo tribunal, and trials held by the Chinese, Americans, Dutch and Australians. This was not easy. Take for example, the Chinese trials. These documents are still locked up in archives in Nanjing and elsewhere. There were chance snippets found on the internet as old newspaper reports were digitised and haphazardly placed online. I had to rely on accounts of the trials in British files (found by painstakingly scouring them manually) and in one case, on documents held in the Academia Sinica in Taipei, Taiwan (I was assisted in this effort by a Taiwanese judge, and a Beijing lawyer who translated the judgement for me).

The nature of the case files provided major challenges to legal analysis. While there were well documented - the transcripts were very precise - these cases did not have reasoned judgements. The Hong Kong trials were military trials, and verdicts were delivered without a judgement explaining the court's reasoning. So, to understand the case, we had to go through hundreds of pages of transcripts and documents. Some cases, such as that of Colonel Tokunaga Isao and Colonel Noma Kennosuke, were lengthy and complex. The task was rendered somewhat easier by having case reviews by Judge Advocates (lawyers) who reviewed the files that were sent over to them in Singapore, but we still had to review the entire file for each case. Gaining a big picture of the situation, and the linkages between cases - for example the very many *Kempeitai* cases from commanders down to the ranks - was immensely challenging. I was of course very fortunate that the Hong Kong Research Grants Council funded my research, which enabled me to digitise the case files and make them electronically accessible. This greatly facilitated our research.

Another challenge was finding eyewitnesses and direct participants who were still alive and could help shed light on this historic legal proceeding all those years

ago. Investigations through specialist channels such as Prisoner of War associations and the British Army yielded nothing. Even the assistance of eminent local historians did not uncover new leads. However, after the Hong Kong media started to cover the work that I was doing, many members of the public contacted me. It must now be hundreds of people from around the world that have now called or written to me about the project, usually seeking or providing information about family members who were affected by what happened in Hong Kong in that time. Some people, such as Mr Stephen Tsui and Mrs Luba Estes, spoke about their own experiences. Mr Tsui, for example, spoke about his experience of torture. It was immensely helpful in linking up the dots, putting the jigsaw together. I was able to conduct interviews with some of them (see the website at <http://hkwtc.lib.hku.hk/exhibits/show/hkwtc/home>). These are enormously important historical accounts, and records of individual histories. But, until 2011, there was a very serious gap in the understanding of this time. I had still not been able to find files, or people who could shed light on the court itself. There was no 'insider knowledge' of the court itself that was to be found. That changed in May 2011, when Dr Donal Lowry, Reader in Imperial and Commonwealth History, and Irish History, at Oxford Brookes University, contacted me to say that he had read about my work, and that he knew a gentleman who had been a War Crimes Prosecutor in Hong Kong. I was ecstatic about this news, my numerous efforts to find former judges, prosecutors and lawyers had not borne fruit. Through Dr. Lowry, I met Major Murray Incell Ormsby, formerly of the West Yorkshire Regiment. He had been, from 1946-1948, a panel member (Judge) and then a Prosecutor of War Crimes Court No. 7 in Hong Kong. Major Ormsby was involved in 27 of the 46 trials that were held in Hong Kong. As a member of the panel, he sat on the earliest cases such as the *Lantau Island* case (*Silver Mine Bay* case) and the trial of *Kempeitai* Colonel Noma Kennosuke. As a Prosecutor, he prosecuted two of the 'Invasion of Hong Kong' trials (Major General Tanaka Ryosaburo and Lieutenant General Ito Takeo), and the trial concerning the execution of Fred Hockley, shot down over Japan on the day of the Emperor's capitulation to the Allies after the atomic bombings at Nagasaki and Hiroshima.

Major Ormsby, who has now very sadly passed on, was 92 years old when I interviewed him at his home on 21 and 22 July 2011, and conducted a follow-up interview by telephone on 4 August 2011. The precision and consistency of Major Ormsby's long-term recollections about his extraordinary adventure as a young man in his twenties was exceptional. The transcripts provide a first-hand account of a remarkable person's role in an important process of righting some of the wrongs of the Second World War in Asia, and are a priceless window into the past. Major Ormsby has been critical in the successful outcome of the Hong Kong War Crimes Trials project. I should like to add that my wonderful team at HKU, and my superb contributors to the book, were also indispensable.

**NY: Do you see the war crime trials fair at all? And has any patterns or trends been observed throughout the research?**

**SL:** I spent several years working closely on the trials, and drew from my own professional experiences of war crimes work, and my academic expertise. My conviction is that we should look at the big picture, and recognise the achievements without denying the stains on them. So, while there were definitely weaknesses, as trenchantly pointed out in Professor Alexander Zahar's superb chapter in the book, I believe that on balance the British Army provided a surprisingly fair and just process of accountability in Hong Kong. The approach was summary and practical, with reliance on common sense and solid evidence rather than convoluted legal arguments. The facts spoke louder than the law in these cases. In the difficult circumstances of the post-war world in Asia, copious evidence was collated and brought before the four military courts about the perpetration of war crimes. Sometimes the evidence was properly linked to the accused, and sometimes not. There were acquittals and convictions, and adjustment of verdicts and sentences following review. I am unhappy about the use of the death penalty, which seems to have been quite enthusiastically used here, but I also realise that this was the penalty that was accepted at the time for the most serious crimes. Some of the decisions seem correct on the weight of the evidence and in accordance with the applicable law, and some seem suspect. As a whole, the Hong Kong cases seem to me

to demonstrate that even when victors sit in judgment on the vanquished, and operate rather freely of the law and its practitioners, they can conduct the proceedings in a fair way. Perhaps this is the lesson for our generation: war crimes trials can be conducted in a way that is fair and expeditious without being legalistic and complicated.

I explained this assessment in an article in the *Melbourne Journal of International Law* in 2012, and I'd like to refer to some of that detail here.

The legal framework provided for a summary adversarial proceeding, but with numerous safeguards, such as the provision of notice of grounds of arrest and the evidence against an accused and arraignment before the court. Examination of the cases indicates that this was a robust and rigorous legal proceeding, offering a broadly fair trial in difficult circumstances. These were not 'kangaroo courts', especially when one considers that this took place immediately after a devastating war that had ravaged Asia, in a time where there were no computers, no satellite communications, no internet facilities or libraries for research, no specialised international criminal lawyers, etc. The summary nature of the proceedings emphasised expeditious trials, and *ALFSEA Instruction No 1 (2nd ed)* obliged with provisions such as one stating that trial would not be delayed for the attendance of unimportant witnesses.

The transcripts show the judges being rigorous in ensuring the accused were treated fairly and often making special efforts with Japanese Counsel. For example, Defence Counsel in the trial of Warrant Officer Omura Kiyoshi and four others was given two additional days to prepare his case. The Presiding Officer assured him that 'the Court does not wish you to feel that you have been hampered in any way by lack of time or facilities bearing on your defence, and it also appreciates the fact that you only have one interpreter who is working all day in Court'. The file for the trial of Major General Tanaka shows the Court also being supportive of the Defence's efforts in Japan to locate an elusive English-speaking Japanese officer whom an important prosecution witness said he encountered, and Nakamura Tokuo who interpreted for the accused when he spoke to the persons

gathered at the Repulse Bay Hotel at the time of the takeover of Repulse Bay. The records show that time – and assistance – was given to the Defence to find witnesses, and have documents translated. The trial of Major General Tanaka showed that his Japanese Counsel was struggling with the adversarial British system, and reveals numerous instances of patience on the part of the Court.

The records do not show abuse of the accused or Counsel in court, although in the very first case, the Silver Mine Bay trial, there was a clear indication of racial prejudice. Here, the Presiding Judge told the two members of the accused who were sentenced to death that they were members of a black and evil race, but even that did not excuse the heinousness of their crimes. Even so, that was the very first trial after the war ended, and it does not appear to have been repeated in other cases. There are examples of the Japanese praising the proceedings, the Prosecution and the Court. The trial of Hong Kong's so-called 'No 1 War Criminal', Colonel Noma, saw his Defence Counsel express his 'sincere thanks for the considerate and fair way in which the trial has been conducted over this long period' and publicly thank the Prosecuting Officer and his advisory officer for helpful assistance. Following his conviction and 12 year sentence, Lieutenant Ito Takeo enthusiastically thanked the Court for the thoroughness of his trial. But, he went further:

Before the trial commenced, in fact, I had worried of the procedure. Once the case started, however, I began to feel more at ease with the President and the members of the Court because of the way the trial has been conducted. In a word this must be attributed to the wonderful personality of the President and other Members of the Court as well. At this stage when the Court has given its sentence, I wish to express my gratitude.

One may of course take that praise for the proceedings with a 'pinch of salt' given that he had just escaped the death penalty, but these comments do not appear to be related to the outcome.

On the other hand, we cannot claim there were no problems, particularly if we look at them through



the lenses of human rights standards of our day and age. There are some obvious weaknesses. The accused were mostly defended by Japanese lawyers who were not familiar with the British adversarial system. In fact, Major Murray Ormsby, perhaps the last surviving prosecutor from the Hong Kong war crimes trials, has emphatically underscored the weakness and passivity of Japanese Defence Counsel as a major problem with the fairness of the trials. Translation and interpretation problems arose regularly. For example in the trial of Colonel Noma, Colonel Kanazawa Asao faulted interpretation for inconsistencies in his statement. In the trial of Rear Admiral Naomasa and Captain Mayazumi Haruo, during the examination in chief of the accused, the interpretation was so bad as to be unintelligible.

There were conflicts of interest with multiple co-accused (in the Silver Mine Bay trial, there were 15 of them) running conflicting defences but all having the same single Defence Counsel, Captain M Croft. The most senior of them was Lieutenant Kishi, who said that he had orders from his immediate superior to defend against attack and use weapons to that end and acted in accordance with those orders following the attacks on the Japanese garrison at Silver Mine Bay. His 14 subordinates raised a combination of alibis, denial of any wrongful actions, superior orders, mistaken identity and outright denial of involvement. In the Hockley case, Mr Murata Kiichi had to defend several of the co-accused arguing conflicting positions on the nature of the instructions that were given in relation to what to do about the captured pilot Fred Hockley after the Emperor's capitulation.

There was excessive reliance on affidavit evidence, denying the accused the opportunity to cross-examine. Sergeant Major Yokohata complained in his petition against the verdict that because the Prosecution filed a number of affidavits, he was denied the opportunity for cross-examination. The Defence in the trial of



Colonel Nakano expressed solidarity with the many complaints about the volume of affidavit evidence in these trials, and complained about how most of the Prosecution's case was built on affidavit evidence which was untested by cross-examination and 'cannot be held to have the same weight as evidence spoken in the court'. The statistics in the Kinkaseki Mine case were particularly egregious: just seven live witnesses testified as to the facts, while 24 affidavits were submitted.

The charges using the vague 'being concerned in' concept appear to have, unsurprisingly, raised problems with specificity. Defence Counsel would challenge that but to no avail. For example, in the trial of Sergeant Hanada Zenji and three others, the Defence challenged the vagueness of the indictment. At a late stage of the Prosecution's case, Defence Counsel in Noma challenged the charge sheet for duplication and the vague and non-specific nature of the charge. He alleged he had raised with the Prosecutor the problem of the abstract and vague charge sheet and had asked that it be rewritten with the specific charges mentioned clearly and separately, although he acknowledged that the abstract of evidence was concrete enough. The Prosecutor had told him that there would be no trouble in that case, but that if the Defence thought it essential they could ask for the charge sheet to be rewritten. Nothing was done, but as the trial proceeded, it became clear that the charge sheet contained duplication and generality, and would not be permissible in British legal practice. The Prosecutor's account was that he told Defence Counsel that he was perfectly at liberty to make any application he thought fit, but that he considered that 'an abstract of evidence together with statements of every witness proposed to be called by the prosecution constituted enough particulars for anybody'. The President of the Court's response was: It may be perfectly true that the charge would not stand in strict British law, nor possibly in a court martial, but this charge which has been approved by the Legal Section, ALFSEA, is perfectly in accordance with the charges in such cases. It is by no means any more vague than all the others nor contains more duplicity than charges in similar cases. So the charge is not going to be amended.

Nevertheless, the Hong Kong war crimes trials records do show that over the course of the trial, these vague and imprecise war crimes allegations were substantiated by disclosure of evidence, and the Defence did come to be on sufficient notice as to what the Prosecution was alleging. An example can be seen in the trial of Colonel Noma, where perusal of the court file shows that the Defence was sufficiently on notice as to what was being alleged of the Colonel.

There were no appeals as we know the concept today. Judge Advocates always reviewed convictions

and sentences, but never observed the proceedings. These reviews were conducted in Singapore, and most were mundane and did not stand out as being particularly ably conducted. Despite the limitations of this method, the Judge Advocates were able to report to the Commander of Land Forces Hong Kong, who also received petitions from the accused. He would then endorse or not endorse the judgment and any punishment imposed.

Sentencing was certainly inconsistent, within the Hong Kong trials and also when compared to the other British trials in Malaya, Singapore, North Borneo, Burma etc. In his petition against the verdict and sentence, Sergeant Major Yokohata complained about the unfairness of his 15 year sentence compared to the 12 year sentence imposed on the unrepentant Sergeant Yoshida Bunzo in the connected Bridge House case tried before a differently composed war crimes panel. Unlike the trial of Yokohata Toshiro, the trial of Yoshida involved maltreatment to death, and the unrepentant accused there received a lighter sentence. Sergeant Major Toshiro's sentence was not altered. The discrepancies were a source of official Japanese complaints, and as has been already discussed, after the trials programme was completed, the British authorities embarked on an exercise to standardise the sentences that were imposed across the board. According to Pritchard, the last Japanese war criminal in British custody 'was released on 30 January 1957 after clemency was approved in December 1956'. In this light, the fate of the many who were executed following conviction certainly seems unfair.

**NY: What are the differences comparing the war time trials and trials in Hong Kong nowadays?**

**SL:** There are similarities, both being founded on the English common law. But, the trials of 1946-1948 were military trials, and I don't think there has been any military proceeding in Hong Kong since the handover. Today's trials in Hong Kong are civilian trials. They are - I expect - compliant with the International Covenant on Civil and Political Rights, which reflects the modern standard. Over 1946-1948, this did not exist, but I believe the trials were infused with a sense of the importance of a fair and just trial.





# PACE OF TRIAL IS NOT ALL THAT MATTERS

**Day-to-day trials happen only in high profile cases, where either the accused or the victim of the crime is influential enough to make the dead system work, at least to the extent that the trial does not get postponed for months if not years between the chief and cross examination of a witness.**

by BIJO FRANCIS

THE Supreme Court of India has said that the criminal justice system in India needs an overhaul. It is the former Chief Justice of India, Justice R.M. Lodha, who has made this statement, while deciding a case relating to foreign prisoners languishing in Indian prisons for long periods of time, awaiting completion of their trials. The judge said that the experience of a person who has to go through the Indian criminal justice system is one akin to torture. Though the judge is right, he has limited his observation to trial courts, in particular, the procedural delays in such courts.

The Supreme Court of India and its various subordinate courts have, over the past 25 years, lamented about court delays. The issue is genuine. Yet, what the

Judiciary refuses to admit is that it only forms a part of a much larger criminal justice system.

The investigating agencies, the prosecutor's office, and the relevant legislations are the other important pieces of this large machinery. Unfortunately all of them contribute to render the criminal justice apparatus of India a dead horse.

The criminal justice process in India, governed by the Criminal Procedure Code, 1974; the Indian Penal Code, 1860; and the Indian Evidence Act, 1872 collectively referred to, as the 'Criminal Major Acts' is the product of a colonial architecture. The original texts of these laws were drafted at a time when the priority was to

maintain order, and morality, as it was understood in an alien society.

The genesis of the penal code is based on Thomas Babington Macaulay's Law Commission that was influenced by The Book of Leviticus to such extent it even borrows terms and phrases to define crimes. And today, the reality in the Indian post-colony is that the same colonial penal code remains intact in form and content.

In this matrix of biblical norms enforced through procedural formalities, the given was and is that the authorities are always correct and the procedure is set forth merely to check misuse. This has allowed everyone who has run this set of laws, like the judges, prosecutors, police officers, court clerks, and lawyers to misuse it in all possible means. The complete absence today of any form of accountability for any of these officers, for their misuse of authority, has only made matters worse.

Furthermore, a rights-based vision that places primacy upon dignity and individual freedom has not yet become the cornerstone of Indian legislative process. This reflects in the native amendments to these colonial laws, for instance in the amendment that replaced the 1861 Criminal Procedure Code in 1972.

The continuing power conferred upon the executive organs of the state, for example the district magistrate, is another notable example of continuing colonial "order". Chapter 10 of the Code authorises the district magistrate to declare public gatherings as unlawful and use force to disperse such declared gatherings. This provision of the Code is often applied to prevent or criminalise peaceful protest gatherings.

It made sense when the British required officers to be justified in law when dealing with those demanding an end to slave like work conditions, or backbreaking tax levies, or, at a later stage, independence itself. However, the need for such a provision in law is questionable today, even more so in light of its unchecked misuse.

Likewise, the powers conferred upon another important piece of the criminal justice apparatus, the police, particularly the authority to arrest, have not been reviewed in the post-colony. Due to lack of accountability and discipline, both in law and practice, the norm in India is for the police to arrest an accused first, and then do what is alleged to be an investigation, one that fits a story the police claim as the motive and modus of the crime. Contrary to the principles of modern crime investigation, such processes usually result in "confession statements." Often, these statements are either concocted or made by persons put under extreme duress, often torture.

Whether it is a district magistrate or a police officer that misuses authority, the misuse ultimately feeds into the judicial process. And, this process involves paperwork, manpower, and the consumption of other forms of resources. All of this adds to the clogging up a system already asphyxiated due to lack of basic infrastructure to effectively manage its workload. The prevailing lack of resources includes the absence of adequate judicial officers, court halls, managerial and clerical staff, and even electricity. And, since the police and the lower court judges know the entire system has already broken down, corners are cut, and procedures not complied with.

One of the ramifications of this broken system is the custody of persons being extended for years, without the judicial officer having seen the detainee even once. The law mandates judicial or police remands are not



extended beyond 14 days. The presiding judge can extend remand only in the detainee's presence, i.e. the court proceedings must be open. This is to ensure the judge has enough opportunity to verify the physical state of the detainee, and for the detainee to address the judge if he chooses to do so. But this does not occur in an overwhelming majority of the cases.

At best, a person in custody can only expect to be brought into the court compound along with others from prison, including convicts. For an accused to be presented before the judge, they may have to pay the police as well as court staff. It is not rare for a presiding judge and public prosecutor to "claim their cut" out of such payments.

Most judicial magistrates in India do not even call remand extension cases during the roll call. They just signoff "judicial proceedings" prepared by police constables posted on court duty at the end of the day, extending remands of undertrials. This is how most magistrates and sessions' judges function in India. It is so in the national capital as it is in remote townships across the country.

Confusion and uncertainty bordering on madness is what is being practiced. While some of this descends from continuing colonial brutality embedded in the system, largely it is neither the law nor the mandated procedure. Every judge that has served in India, including at its Supreme Court, knows that this madness is what abounds in undertrial proceedings in the country. Yet none so much as mention it.

Trials take the madness to another level. A trial in India is nothing more than a drama, enacted by the judge, the prosecutor, the court staff, the accused in the dock, the witness in the stand, and the defence lawyer. Many judges sleep while a trial is in session. Prosecutors prosecute, because they have found a case file at their desk for them to be attending to that day. Most witnesses that attend courts might not even have witnessed the crime or anything related to it. But because they have received a summons, or have been threatened to appear in court by the police, or have been paid by the accused to depose in his or her favour, they appear. This often includes "expert witnesses" too.

Day-to-day trials happen only in high profile cases, where either the accused or the victim of the crime is influential enough to make the dead system work, at least to the extent that the trial does not get postponed for months if not years between the chief and cross examination of a witness.

A trial process that lasts for a decade is not a trial. It is the dramatization of organised madness. Caught in the web of this lunatic gathering are the Indian poor, in particular, who are often the accused. This could be for a multitude of reasons: because the person accused is a paid "stand in" for the real accused; because the person in the dock has no money to engage a lawyer to post bail or defend the charge; or because, due to sheer misfortune, the police have held this person as the accused. It is common for the Indian police to implicate a person with several crimes pending investigation at that station, if the person cannot pay bribes.

Most of these unfortunate individuals ultimately get acquitted; some get convicted. In either case, by the end, many of these individuals may have spent a decade or more as undertrial prisoners. In the interim, the police, prosecutor, trial judge, court staff, and lawyers, as well as touts – found in plenty around court halls across India – will make their money out of this injustice.

It is in this context that one has to conclude that the observation made by the former Chief Justice is something only for his satisfaction. At best, it only serves a judge's "moral conviction" of having made an opinion after witnessing the madness of criminal trials that he and his fellow judges are often called upon to decide in appeal. The observation has neither been made with the conviction nor the intention to bring a change that will replace the defunct criminal justice process with a functioning one.

Such opinions have been made by Mr. Lodha's predecessors and will be made by his successors. And, none of them will lead to any change. Until Indian citizens wake up and transform their criminal justice system by re-engineering the pieces that make up the machinery, rituals of madness will continue and hollow rhetoric resound.

# INVASION, GENOCIDE AND RESISTANCE 1975–80 FROM CAMBODIA TO EAST TIMOR

by **BEN KIERNAN**

*A mother and her child in Lesuata, Timor-Leste.  
UN Photo/Martine Perret*



**Political Turmoil and Division**

*(Continued from last issue)*

**JAKARTA** had secured the support of some of the defeated UDT leaders as well as the Apodeti party. Two East Timorese chiefs from the West Timor border area also proclaimed the support of their small Kota and Trabalhista parties for integration with Indonesia. Kota was a monarchist group established by a number of *liurai* (district rulers, or “petty kings”) with several hundred members. It “appeared to be a racially pure satellite of Apodeti, based on an inner circle of tribal leaders with access to the mystical rites of the traditional culture.” Trabalhista had “a dozen or so members, many of whom came from the same family.”<sup>1</sup> This lineup enabled Suharto, in his talk with Ford and Kissinger on December 6, to claim the support of “four parties” from East Timor, adding: “The local kings are important, . . . and they are on our side.”<sup>2</sup>

Following the Indonesian invasion the next day, retreating Fretilin forces released a number of their Apodeti and UDT prisoners. But in the hills several weeks later, they summarily executed 80 Apodeti members, including the party’s leader, Osorio Soares, and possibly 70 UDT prisoners, including Secretary General Fernando Luz.<sup>3</sup> To compound the tragedy, as the Indonesians landed in Dili, according to James Dunn, “a large number of Apodeti supporters, who had just been released from internment by Fretilin, went out to greet their liberators, to be machine-

gunned in the street for their trouble.” Indonesian troops shot down 30 Apodeti supporters in cold blood. An Apodeti member “was shot while presenting his party identification card to a group of soldiers.”<sup>4</sup> As we shall see, Indonesian force would soon also be turned against other non-Fretilin groups, such as the ethnic Chinese.

The Indonesians soon appointed the Kota leader, Jose Martins, son of a *liurai* from Ermera in western East Timor, to a prominent position. However, Jakarta’s constituency even among anti-Fretilin Timorese quickly collapsed. During a March 1976 visit to the United Nations, Martins defected and criticized Jakarta’s intervention.<sup>5</sup> Another initially pro-Indonesian Timorese official, UDT’s founding president, Mario Carrascalao, was placed under house arrest in West Timor and repatriated to Portugal in mid-1976. A third “prointegration” Timorese official also defected to Portugal. Indonesia announced on January 31, 1976, that all Timorese political parties had now “dissolved themselves.”<sup>6</sup> Just in case, Jakarta banned them on February 3.<sup>7</sup> It then turned to traditional rulers from the western part of East Timor. After formal “integration” of the territory in mid-1976, the *liurai* of Atsabe became the Indonesian provincial governor and the *liurai* of Maubara became chair of the new province’s legislature.<sup>8</sup> Thus the strength of pro-Indonesian feeling was limited to traditional rulers in the west of the territory.

Differences quickly emerged in Fretilin ranks as well. On the morning of the Indonesian invasion, Fretilin’s founding president, Xavier do Amaral, allegedly set out for the capital, telling his cabinet minister, Eduardo

dos Anjos, “I am going to Dili to ask the Javanese why they [are] invading our homeland.”<sup>9</sup> The next day, dos Anjos told Fretilin Central Committee member Xanana Gusmao that do Amaral had threatened to “speak with the invaders to ask them to retreat immediately!” Xanana recalls that “Eduardo managed to convince him to stop such strange and daring behaviour!”<sup>10</sup> A month later, in January 1976, do Amaral approached Fretilin’s vice president, Nicolau Lobato, suggesting they “ask the United Nations to hold a referendum on self-determination.” Lobato and the chief of staff of Falantil (Fretilin’s army) “categorically rejected” this proposal, arguing that the issue was now closed, since independence had been unilaterally proclaimed on November 28.<sup>11</sup>

**The War**

According to Australian intelligence, by April 1976 Indonesia had 32,000 troops engaged in East Timor and another 10,000 in reserve in West Timor.<sup>12</sup> Against these, Fretilin deployed 2,500 regular troops and 7,000 part-time militia, and could draw upon 10,000–20,000 reservists, all trained by the Portuguese.<sup>13</sup> Suharto acknowledged in August 1976 that “the Fretilin movement is still possessed of strength.”<sup>14</sup> Indonesian intelligence reportedly estimated in September that Fretilin still fielded as many as 5,000 guerrillas.<sup>15</sup> Australian sources reported by late 1976 that Indonesia had lost 10,000 troops killed, wounded, or missing.<sup>16</sup> In early 1977, a senior Indonesian officer conceded

that Fretilin had inflicted up to 5,000 casualties.<sup>17</sup> But the invaders took a much greater toll on Fretilin forces, and by 1978 had also organized two Timorese battalions of their own.<sup>18</sup>

A discernible regional pattern began to emerge. Indonesia was able to count on *liurai* and other leaders from the northwestern part of East Timor. Within the resistance, as we shall see, moderate or conciliatory factions of Fretilin appeared strongest in the north-central sector. The Fretilin resistance would find its firmest support base in the remote eastern sector of the half-island.<sup>19</sup>

There were also ideological divisions. In 1984, Carmel Budiardjo and Liem Soei Liong described three major issues that had divided Fretilin’s resistance since 1975. These were: “compromise with the enemy, the nature of the war, and the implementation of Fretilin’s social and political programs.” Firstly, from the start the majority of Fretilin’s 52-person CC opposed negotiations or compromise with Indonesia.<sup>20</sup> But in early 1977, “the leadership split over the question,” leading to do Amaral’s dismissal. The CC was committed to a Maoist-inspired self-reliant strategy for the achievement of independence. Secondly, there was further division over the nature of “people’s war,” a strategy Fretilin adopted at its national meeting at Soibada in May–June 1976. Many of the professional army officers who joined Fretilin in 1975 had been trained by the Portuguese to keep the army out of politics. They differed with those leftist Fretilin leaders who insisted that “the political line prevail over the military line” and that peasant militia be trained. Army officers also tended to resist overall military and political coordination, retreating into and thus strengthening regionalism. Thirdly, Fretilin’s political leaders emphasized rural development and egalitarian social policies that conflicted with

1 Jolliffe, East Timor, 67; Dunn, Timor, 75.  
2 U.S. Embassy Jakarta Telegram 1579, December 6, 1975, in W. Burr et al., East Timor Revisited: Ford, Kissinger and the Indonesian Invasion, paragraphs 39, 51, National Security Archive, Electronic Briefing Book 62, December 6, 2001, at www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB62.  
3 Gusmao, To Resist, 32; Dunn, Timor, 305; D. Ball and H. McDonald, Death in Balibo (Sydney: Allen & Unwin, 2000), 175; Paulino Gama (Mauk Muruk), “A War in the Hills, 1975–85: A Fretilin Commander Remembers,” in East Timor at the Crossroads, ed. P. Carey and G. C. Bentley (New York: SSRIC, 1995), 98–99; Niner, “Long Journey,” 19.

4 Dunn, Timor, 283–85.  
5 Dunn, Timor, 296; “Intervention of the Republic of Indonesia in the Life of Portuguese Timor,” Kota internal document, March 23, 1976, cited in R. Tanter, “The Military Situation in East Timor,” Pacific Research 8, no. 2 (1977): 1–6; Jolliffe, East Timor, 282–87.  
6 Dunn, Timor, 60, 296–97.  
7 Taylor, East Timor, 72.  
8 Dunn, Timor, 5.  
9 “Full Text of Speech of Nicolau Lobato, Reading Statement of the Permanent Committee of Fretilin Central Committee on the High Treason of Xavier do Amaral, over Radio Maubere September 14, 1977,” East Timor News Agency (ETNA), Sydney, September 17, 1977, 13 pp. typescript, 4.  
10 Gusmao, To Resist, 49; Carmel Budiardjo et al., The War against East Timor (London: Zed, 1984), 61.  
11 “Speech of Nicolau Lobato,” 4–5.  
12 Tanter, “Military Situation.”  
13 Taylor, East Timor, 70; Dunn, Timor, 291–92.  
14 Age (Melbourne), August 26, 1976, cited in Tanter, “Military Situation.”  
15 Tanter, “Military Situation,” 10, citing Peter Monckton, AM, ABC radio, September 20, 1976, and Sydney Morning Herald.  
16 Tanter, “Military Situation,” citing National Times, September 27, 1976, and Australian, September 20, 1976.

17 Dunn, Timor, 310.  
18 Douglas Kammen, “The Trouble with Normal: The Indonesian Military, Paramilitaries, and the Final Solution in East Timor,” in Violence and the State in Suharto’s Indonesia, ed. B. R. O’G. Anderson (Ithaca, N.Y.: Cornell University, Southeast Asia Program, 2001), 159.  
19 Gusmao, To Resist, 29 n.  
20 Budiardjo et al., War, 60; Jolliffe, East Timor, 270.



local, traditional, hierarchical structures in some communities and regions.<sup>21</sup>

In the first year and a half of the resistance war (1975–77), Fretilin president Xavier do Amaral worked sporadically with his vice president and prime minister, Nicolau Lobato. Both were reportedly shocked at the scale of Indonesian brutality. As pressures escalated, however, differences between the two men grew, and in September 1977 Lobato had his superior do Amaral arrested for “high treason.” In an extended denunciation speech broadcast by Fretilin radio on September 14, 1977, Lobato acknowledged that “for over a year, the Radio Dili of the Javanese invaders has spread the story that there is a serious confrontation” between himself and do Amaral. “There was some truth in all this,” Lobato now announced.<sup>22</sup> As we shall see, divisions in Fretilin ranks were not only regional and ideological, but also rather volatile, as circumstances and opinions changed over time.

Fretilin’s minister of information and national security, Alarico Fernandes, reflected this changing pattern in the different positions he adopted during 1975–78. A former meteorologist and noncommunist social democrat, he had originally seen Austria and Scandinavia as political models for Fretilin.<sup>23</sup> But after the UDT’s violent coup, Xanana Gusmao says, Fernandes became a “real executioner” with “a frenzied thirst for vengeance.” Before the Indonesian invasion, Fernandes announced, “I’ll continue to stay [in] Fretilin but I will not accept communism.” Gusmao implies, but does not clearly state, that Fernandes was responsible for the execution of the UDT prisoners after the invasion. As the war against Indonesia ground on, Fernandes hoped for assistance from socialist countries, which never came.<sup>24</sup> In mid-1976, he aligned himself with the professional military faction, but now also proclaimed, “I accept Marxism as the only way of liberating our people.”<sup>25</sup> Initially opposed to negotiations, Fernandes finally lost hope of international support in 1977–78, when he “began

to waver and slowly shifted” toward compromise with Indonesia.<sup>26</sup> By then, internecine purges were escalating. The soldier Hermengildo Alves, second deputy secretary for defense and, according to Gusmao, an “incorrigible drunk,” had also become a “real executioner.”<sup>27</sup> And the Maoist left wing of Fretilin, Gusmao later wrote, was also responsible for “purging waves of massacres of nationalists” whom it “assassinated as reactionaries and traitors.”<sup>28</sup>

Despite internal violence and instability, for the first years of the war Fretilin mounted a highly successful resistance to Indonesia.<sup>29</sup> About 40 of its 52 CC members escaped death or capture during the initial invasion.<sup>30</sup> (Jose Ramos–Horta and Mari Alkatiri, who were abroad, took up the diplomatic struggle at the UN and elsewhere.) Nicolau Lobato’s rambling speech of September 1977, revealing the intense political and regional differences, also conveys an impression of great mobility on the part of the Fretilin leaders, of often free movement of forces and units, of mass meetings and assemblies in the hills, and of large areas and populations under Fretilin administration, despite occasional serious harassment from the Indonesian occupiers.<sup>31</sup> A report from Indonesian Catholic Church sources in late 1976 estimated that “80% of the territory is not under the direct control of the Indonesian military forces.”<sup>32</sup> A foreign diplomatic delegation, which visited East Timor in May 1977, reported that Indonesia still controlled only one-third of the territory, while Fretilin controlled another third and was able to move freely in the remaining third.<sup>33</sup> The next month, Alarico Fernandes claimed in a radio broadcast that Fretilin “control[led] most parts of the country, 80% of the national soil, defeating the vandal

26 Budiardjo et al., War, 61.

27 Gusmao, To Resist, 32, 47. See also Jolliffe, East Timor, 220, 154, 273.

28 Gusmao, To Resist, 134, statement dated December 7, 1987.

29 For accounts by priests living in Fretilin areas until 1979, see Taylor, East Timor, 81–82.

30 Jolliffe, East Timor, 270.

31 “Speech of Nicolau Lobato,” passim.

32 Age, November 19, 1976, cited in Tanter, “Military Situation,” 5; Jolliffe, East Timor, 300–01; Dunn, Timor, 310.

33 Dunn, Timor, 307.

Indonesian invaders on all fronts.”<sup>34</sup> Nicolau Lobato added that “all over the country the resistance is still very strong despite the continuous raids deeply launched by the enemy to the large areas under our forces’ control.”<sup>35</sup> As Dunn has pointed out, “an indication of the extent of Fretilin’s control is that it was able to hold the town of Remexio, only 15 kilometres from the capital, almost without interruption for more than three years.”<sup>36</sup>

Of the territory’s 1974 population of approximately 650,000,<sup>37</sup> an Indonesian-attempted census in October 1978 returned a population estimate of only 329,000. Possibly 200,000 more may still have been living in Fretilin-held areas in the hills.<sup>38</sup> In the east, for instance, Indonesian officials later acknowledged that in 1975–76, “a large part of the population in this region fled to the mountains.”<sup>39</sup> As late as November 1979, Indonesian foreign minister Mochtar conceded that only half of East Timor’s pre-1975 population had been brought under Indonesian control.<sup>40</sup> Jakarta’s hope of a quick victory had foundered.

But Nicolau Lobato’s prediction of triumph over “senile Javanese expansionism” was also premature.<sup>41</sup>

### The Genocide

Indonesian massacres of Timorese began on the first day of the December 1975 landing. Dunn calls the assault on Dili “one of the most brutal operations of its kind in modern warfare. Hundreds of Timorese

and Chinese were gunned down at random in the streets.” The Bishop of Timor watched from his window as 150 people, including at least 20 women, were systematically shot on the town’s jetty. Five hundred Chinese were killed on December 8 alone. About forty unarmed Timorese men were murdered in the south of the capital on December 9. A priest reported that the invaders killed about 2,000 people in the first few days, including 700 Chinese.<sup>42</sup> John Taylor reports many testimonies “of entire families being shot for displaying Fretilin flags on their houses, of groups being shot for refusing to hand over their personal possessions, of grenades being rolled into packed houses, and of Fretilin sympathizers singled out for immediate execution.”<sup>43</sup> The latter included the wife of Vice President Nicolau Lobato, shot dead on the dock. Her sister saved their infant son at the last minute.<sup>44</sup>

The massacres then spread to the coastal and hill towns. Dunn continues: “When they finally forced Fretilin to withdraw from Aileu, Indonesian troops, in a brutal public spectacle, machine-gunned the remaining population of the town, except for children under the age of four, who were sent back to Dili in trucks.” The killings at Aileu even distressed Tomas Goncalves, son of the *liurai* of Atsabe, a leading supporter of integration with Indonesia.<sup>45</sup> Citing Dunn, Taylor reports that “in the villages of Remexio and Aileu, south of Dili, everyone over the age of three was shot.” Taylor adds, “When Indonesian troops entered Aileu in February 1976, it contained 5,000 people. When a group of Indonesian relief workers visited it in September 1976, only 1,000 remained—they were told that the remainder had moved to the mountains.”<sup>46</sup> A visitor found no Timorese in Ainaro in late 1975. Of Baucau’s population of 85,000, 32,000 met the arriving Indonesian troops on December 10, 1975, but by the end of February 1976 most had fled the exactions of the occupiers, leaving a population of only 9,646. In mid-1976, “When the towns of Liquica and Maubara were eventually wrested

42 Dunn, Timor, 283–85; Taylor, East Timor, 68–69.

43 Taylor, East Timor, 69.

44 Jolliffe, East Timor, 8.

45 Dunn, Timor, 286, 303.

46 Taylor, East Timor, 70, 81.



from Fretilin’s control the Indonesians put to death nearly all members of their Chinese communities.”<sup>47</sup> Twenty-six people were executed in Liquica in May 1976 alone. Some survivors did remain in these towns, while many others fled to Fretilin-held mountain areas. But the Indonesian massacres took a heavy toll. A Timorese guide for a senior Indonesian officer told Dunn that “in the early months of the fighting, as the Indonesian forces moved into the central regions, they killed most Timorese they encountered.”<sup>48</sup>

Perhaps the worst massacre took place just inside Indonesian West Timor. At Lamaknan in June 1976, Dunn reports, “Indonesian troops who had been badly mauled by Fretilin units took their vengeance on a large refugee settlement which housed some 5,000 to 6,000 people.” After setting fire to several houses, the troops fired at the refugees for several hours, “shooting down men, women and children.” According to a Timorese truck driver for the Indonesian forces, about 2,000 people died.<sup>49</sup>

The president of the pro-Indonesian provisional government of East Timor, Lopes da Cruz, announced on February 13, 1976, that 60,000 people had been killed “in the six months of civil war in East Timor,” suggesting a toll of more than 55,000 in the two months since the invasion.<sup>50</sup> A late 1976 report from the Indonesian Catholic Church estimated that 60,000 to 100,000 Timorese had perished.<sup>51</sup> In March 1977, Indonesian foreign minister Adam Malik conceded that “50,000 people or perhaps 80,000 might have been killed during the war in Timor, but we saved 600,000 of them.”<sup>52</sup> On November 12, 1979, Indonesia’s new foreign minister, Mochtar Kusumaatmadja, estimated that 120,000 Timorese had died since 1975.<sup>53</sup>

47 Dunn, Timor, 293, 286; Taylor, East Timor, 80–81.

48 Dunn, Timor, 303, 293.

49 Dunn, Timor, 303.

50 Dunn, Timor, 302–303; Taylor, East Timor, 201; Jolliffe, East Timor, 278.

51 Dunn, Timor, 310, based on “Notes on East Timor,” in Dunn’s possession.

52 Age, April 1, 1977. See also N. Chomsky and E. Herman, The Political Economy of Human Rights, vol. 1 (Boston: South End, 1979), 175–76.

53 Taylor, East Timor, 203.

The pressures of full-scale invasion and ongoing genocide initially brought to the fore Fretilin’s harshest and most radical elements, who began to predominate in the resistance. As we shall see, Indonesian military forces successfully targeted them for destruction in 1977–79, but still could not eliminate Fretilin, which soon reemerged and rebuilt itself under Xanana Gusmao as the relatively moderate nationalist movement of its early years. In 1987, Xanana condemned the “senseless radicalism” that had “paid no attention to our concrete conditions” and “made us intolerably overbearing and led us to put many compatriots on the same footing as the criminal aggressor.” But he also lamented that “humanity had closed its eyes to the extermination of the Maubere people, a genocide carried out by the assassinating forces of the Indonesian occupation.”<sup>54</sup> More than \$1 billion in military equipment, supplied to Indonesia mostly by the United States, but also by Britain, France, and Australia, had made this genocide possible.<sup>55</sup>

### The Resistance

How did resistance continue and function under conditions of Indonesian-imposed famine and genocide? And how did moderate Fretilin leaders regain the initiative in a movement under such a siege? The primary evidence of internal Fretilin division, both regional and ideological, only underscores the remarkable persistence and survival of East Timorese nationalism, despite regional differences but with minimal ethnic conflict.

In his September 1977 denunciation, Nicolau Lobato claimed that do Amaral had “forged a racist theory, attributing the cause of the war to the *mesticos*.”<sup>56</sup> Lobato’s accusation of do Amaral’s racism against those of partial Portuguese descent is a rare suggestion of a politics of ethnicity within Fretilin. It certainly betrays political animosities. With partial fairness, do Amaral may have complained of Fretilin being run by a small

54 Gusmao, To Resist, 132. The statement was made December 7, 1987.

55 Budiardjo et al., War, 8–11; Taylor, East Timor, 84, 133–34, 174–75, 203; Ball and McDonald, Death, 182; Tanter, ed., Bitter Flowers, 135–36, 163–72.

56 “Speech of Nicolau Lobato,” 4.

non-Chinese *mestico* elite rather than the indigenous Timorese majority. He may even have considered that Lobato’s “black nationalist” posture was an educated pretension disguising undemocratic exclusiveness, and that Fretilin’s multiregional national identity was urban in origin. But such political characteristics alone do not constitute racial persecution. Do Amaral’s complaint seems as much against top-down political domination. Lobato, acknowledging and denying that complaint, in turn accused do Amaral, son of a *liurai*,<sup>57</sup> of drawing upon regionalism, traditionalism, and indigenous nativism to shore up his own political support. Such regionalism would indeed pose a ready challenge to nationalist imposition.

As nominal resistance leader in 1975–77, according to Lobato, do Amaral “never attempted to call a Fretilin Central Committee meeting.” “He created and fomented divisionism among Commands, among the rank-and-file, among different zones, among the different ethnic groups.” According to Lobato, do Amaral’s stronghold was an arc of territory in north-central East Timor, from the mountains south of Dili to the coastal area to its west. “His feudal fiefs were Turiscaí-[Ainaro] – Remexio-Lekidoe – Manatuto and part of Maubisse.”<sup>58</sup>

What kind of regime prevailed in this north-central area run by do Amaral in 1976–77? Xanana recalls that in early 1976, “We traveled through Turiskai. Xavier was in his kingdom leading a carefree life under the feudalistic care of his brother.”<sup>59</sup> Lobato, claiming that do Amaral “installed his relatives and friends,” also faulted “his protection of feudal institutions, like the *rajahs*, *sucos* [tribal groups], *povoacaos* [village units].” “These chiefs, together with the secretaries, some commanders and the major part of the other authorities are among his more loyal followers.” Do Amaral “spread through the mouths of his relatives and feudal bosses, the wrong theory that Turiscaí was the fount of politics in East Timor.” Lobato called all this “an authentic feudal authority.”<sup>60</sup>

57 Dunn, Timor, 4, 63.

58 “Speech of Nicolau Lobato,” 4–6.

59 Gusmao, To Resist, 40.

60 “Speech of Nicolau Lobato,” 6–9.

Locally, do Amaral seems to have made rather successful use of many of the traditional techniques of *liurai* rule. Lobato accused him of “recourse to use of corporal punishment, trials by Councils of Elders, . . . support for the feudal relations of parenthood, *balagues* (arranged marriages),” as well as *lulics* (animist sacred objects) “and other superstitious practices.” Do Amaral made “visits to festivities with big noise and big banquets; long voyages in cavalcade with the noise of numerous guards”; and “big colonial-style dances lasting all night and sometimes for a whole week.”<sup>61</sup>

Significant political issues also emerge from these cross-currents of rivalry, regionalism, and traditional leadership. Lobato envisioned “a new society, free from all forms of exploitation of man by man.” He considered “democratic centralism” to be “a fundamental principle . . . on which our politics are based.” He used the slogan, “Put Politics in Command,” by which he meant, “Between a civilian and a soldier, no wall exists . . . easily in practice, a civilian can become a soldier and a soldier, a civilian. The civilian tasks as well as the military tasks, are all political tasks. . . . [A]ll our acts must be oriented and directed to reach a political objective.” The CC meeting in Soibada from May 20 to June 2, 1976, which adopted the people’s war strategy, emphasized organizational as well as military tasks.<sup>62</sup> Budiardjo and Liong report, “It was concluded that it would be suicidal to continue to engage in frontal combat against the numerically superior and much better equipped Indonesian army units. As a result the leadership decided to switch to more appropriate guerrilla tactics.”<sup>63</sup> Maoist influence was now on the rise. It may also have been at this meeting that the CC created the Supreme Council of Resistance to oversee a protracted people’s war.

By contrast, Lobato said, do Amaral believed in separating the military struggle from the civilian sphere, giving the war precedence over state organization and economic tasks, and diverting scarce seed and human resources to the military on “the strange theory that in time of war there was no time to make politics” and “no place” even for military

61 “Speech of Nicolau Lobato,” 7, 4, 6.

62 “Speech of Nicolau Lobato,” 2, 13, 5, 7–8.

63 Budiardjo et al., War, 26.



preparations. “Now, we have only to fight anyhow.” Thus, Lobato claimed, many “disorganized soldiers . . . were put unprepared in the frontline around Turiscai and Maubisse.” Do Amaral allegedly interpreted “Put Politics in Command” to mean placing his own civilian appointees in charge of the armed forces in his region. He turned his Zone Political Bureau into “a sort of mini-Central Committee, like little heads leading the people in the zone.” This threatened Lobato’s authority as prime minister and the Supreme Council’s overall control of Fretilin’s still substantial territory. As Lobato put it, “only one vanguard exists: the Fretilin Central Committee—as in a person’s body there is only one head.”<sup>64</sup> This was clearly a political standoff.<sup>65</sup>

The rivals took their battle to Alarico Fernandes’ radio transmitter. Do Amaral supposedly gave “erroneous orders” that broadcasts were “not to attack any further . . . imperialism and its lackeys.” But Fernandes and Lobato broadcast that “the principal enemy of the people is imperialism.” Then “do Amaral started and sustained a very sharp polemic” with Fernandes.<sup>66</sup> Meanwhile, Fretilin’s Maoists also opposed do Amaral, as well as Fernandes and the military officers, who all wished to seek external support for their resistance. Xanana recalls hearing an anti-Soviet Maoist slogan: “‘Imperialism [equals] social imperialism’ was the reason the politicians gave for rejecting the request for help to the Soviet Union. ‘I don’t want to know if it is imperialism or social imperialism. I don’t care if the help comes from America, the Soviet Union, China, or whatever. All I need is help. Isn’t that what we need?’ yelled Xavier, dazed and defeated.”<sup>67</sup>

Strikingly, this partly political, partly regional internal conflict never became a racist crusade. In each political incarnation, the struggle remained nationalist and inclusive. The political divisions debilitated Fretilin, but did not prevent its eventual recovery across the territory, from a solid regional base in the east.

### Implosion

Internecine conflict seems to have broken out first in March 1976, during a meeting of the CC Standing Committee at Fatu Berliu, the first of three Fretilin gatherings in the south-central sector. Fernandes “started to follow very closely the tracks of Xavier do Amaral.” Then the CC rejected do Amaral’s proposed candidates for membership.<sup>68</sup> In April, at a meeting in nearby Barique, civilian–military relations soured; “it became obvious that the military had an aversion towards those of us who were politicians. . . . Silence and an obvious dissatisfaction characterized the climate of argument. . . . Outside the meetings, the soldiers avoided the politicians.” However, “many” professional officers were promoted to the CC, “avoiding a rebellion of the soldiers.”<sup>69</sup> Perhaps a deal had been struck to permit the establishment of the Supreme Council of Resistance.

At the CC meeting held at Soibada from May 20–June 2, 1976, initial ideological discussions turned to Marxist concepts of the state. Do Amaral declared the state to be “eternal, coming from God.” In what Xanana calls “a revolutionary avalanche of minds,” the CC adopted its strategy of people’s war, with most favoring “self-reliance”—except the army officers.<sup>70</sup> Do Amaral left the meeting “after only attending three days of its work, with the excuse of the National Celebration of May 20.” He planned “a big concentration of the masses in his feudal fief of Turiscai” in June. From then on, do Amaral allegedly “did not follow the resolution made in the May 1976 meeting.” He asserted rather “that the organizational work must come after the war.”<sup>71</sup> He may also have objected to being subordinated to the Supreme Council. Moreover, Alarico Fernandes “aligned himself with the soldiers” and also walked out on the Soibada meeting, taking the radio transmitter. “The soldiers did not indicate any consternation,” which worried Xanana. “Xavier had lost control because he knew so little about politics. Nicolau was on the other side, the soldiers continued to form a separate nucleus, and

the majority of us, the members of the FCC [Fretilin Central Committee], were unpoliticised.”<sup>72</sup>

The Soibada meeting saw other divisions, too. Some of the student leftists who had returned from Portugal, Xanana says, “tried to influence our thinking about ‘free love,’” while others, such as Vicente Sa’he, advocated a lifestyle of “puritanism” that earned more popular trust. Sa’he also gave Xanana a copy of *Historical Materialism*, “but I informed him I had already heard enough ‘isms’ in Barique.”<sup>73</sup> More ominously, conflict continued between the CC majority and a group of Timorese sergeants led by Aquiles Soares, a *liurai* from the central-eastern region. These conservative nationalists, professional soldiers, rejected national political oversight. Soares later reportedly disobeyed CC orders to provide food to other zones and transfer populations to more secure areas. He began moves to purge Fretilin nationalists from his region, and may have contacted Indonesian forces. In November 1976, Soares and three associates were arrested by neighboring Fretilin commanders and subsequently executed.<sup>74</sup> One of those executed was a pro-Fretilin *liurai* in the central-eastern sector; several other local *liurai* were Apodeti members. According to Xanana, “Our commanders constantly arrested the Apodetis and I kept freeing them. Finally they got tired of arresting them.”<sup>75</sup>

The CC Standing Committee, which met on September 20, 1976, may have authorized the repression. It is not known if do Amaral attended. Again the ranks diverged. In mid-December, do Amaral allegedly met secretly with commanders in the absence of the local political cadres and “tempted them to disobey” central directives.<sup>76</sup>

The ideological gap widened, too. “At the end of 1976,” Xanana recalls, “I managed to get hold of a copy of The Thoughts of Chairman Mao. I read and re-read it, trying to understand Mao’s simple way of describing complex things.” By May 1977, “In groups we studied

the ‘strategic questions’ of Mao and a change of war theory. The theory excited us in the planning of ideas

and in strategic thinking, but it was a theory that required a heavy loss of life.”<sup>77</sup>

The internal divisions came to a head. Rejecting invitations from “all members” of the CC, President do Amaral boycotted the conference of the Supreme Council of Resistance of the CC Political Committee, held at Laline from May 8 to 20, 1977.<sup>78</sup> Xanana says that “Xavier was happy in his kingdom and did not want to go to any more meetings.”<sup>79</sup> Despite his absence, “sharp debate centered on a proposal to declare Fretilin a Marxist movement.” Xanana recalls that “we were still dazzled by a vision of a miraculous process of human redemption.”<sup>80</sup> At mealtimes between political discussions, Nicolau Lobato “stopped talking. . . . ‘No one prays to thank God for this food that the people have sweated to collect,’ Nicolau said.” Xanana recalls: “I understood how he was upset because although he was a Marxist he continued to be a religious person. . . . Nicolau stopped going to the meetings. He said he was sick.” He donated his family’s coffee plantations to the state. Hermengildo Alves complained, “Any day now, the state will get my wife’s gold earrings too,” while the “inveterate bohemian,” dos Anjos, told “endless anti-revolutionary jokes, which did not amuse the Department of Political and Ideological Orientation.” Finance Minister Sera Key “debated issues, making an effort to demonstrate his abilities as a political theorist. In fact he was the only one who livened up the meeting, until all the political commissars were told to sit around the same table and get organized. After that there was no more debate.”<sup>81</sup>

As Fretilin leaders debated Marxism, heavy Indonesian aerial bombardments began. Debate was apparently unresolved when approaching Indonesian troops prevented ratification of the proposal.<sup>82</sup> According to

64 “Speech of Nicolau Lobato,” 6–8, 10.

65 Here we must rely largely on accounts of do Amaral’s rivals and successors, not all of whom survived. Hopefully do Amaral will provide a memoir of 1974–77.

66 “Speech of Nicolau Lobato,” 10.

67 Gusmao, To Resist, 41–42.

68 “Speech of Nicolau Lobato,” 11.

69 Gusmao, To Resist, 41–42.

70 Gusmao, To Resist, 42–43.

71 “Speech of Nicolau Lobato,” 5, 11, 8.

72 Gusmao, To Resist, 43.

73 Gusmao, To Resist, 49, 42.

74 Taylor, East Timor, 95–96; Niner, “Long Journey,” 19; Gusmao, To Resist, 42, 44–46, 50.

75 Gusmao, To Resist, 44.

76 “Speech of Nicolau Lobato,” 8–9.

77 Gusmao, To Resist, 47, 49.

78 “Speech of Nicolau Lobato,” 5.

79 Gusmao, To Resist, 47.

80 Niner, “Long Journey,” 19.

81 Gusmao, To Resist, 47–58; 25 n. 42; Jolliffe, East Timor, 219.

82 Gusmao, To Resist, 52 n. 83; Niner, “Long Journey,” 19.



Xanana, “Marxism was acclaimed,” but apparently this was done without formation of a revolutionary party.<sup>83</sup> Indonesian military pressure only widened Fretilin’s internal divisions. The result was what Lobato would soon call a “profound crisis that has shaken our nation, hit our people, threatened our young state and undermined the unity of the Front.”<sup>84</sup>

Heightening differences seem reflected in successive statements by do Amaral, Lobato, and Fernandes, all broadcast by Fretilin radio and recorded in northern Australia. On May 20, 1977, the third anniversary of Fretilin’s founding, do Amaral, absent from the Laline meeting, claimed that his government had “organised the people to defend their country, so that they were not bunched up to be captured, but were spread out to contain the invasion. They did very well with only guns, bows and arrows, and no heavy artillery. Today, the fight continues against colonialism and neo-colonialism.”<sup>85</sup> Do Amaral thus emphasized the military and regional aspects of the struggle, and apparently avoided criticism of “imperialism.” Nor did he mention the Maoist notion of Soviet “social-imperialism.” By contrast, in a recorded interview broadcast the next month, Nicolau Lobato stated: “Always politics is [in] command. We don’t make war by war. Our armed struggle has a deeply political form and sense.” He called for “liberation of our people from the colonialists and imperialists.”<sup>86</sup> This difference appears to have given rise to another issue, whether to seek negotiations. In successive interviews conducted by radio from Australia on June 18 and 19, 1977, Alarico Fernandes insisted on a slogan that may have required reaffirmation in recent debate: “negotiations with the corrupt Jakarta government, never,” and “negotiations with the enemy, never.”<sup>87</sup> Who had called for negotiations was still unclear.

Ideological discussions continued. In nightly meetings during August 1977, Vicente Sa’he and Xanana prepared “for the time when a revolutionary party would be formed.” Xanana recalled, “We would be Maoists. At least they were Maoists.” Sa’he, who admired Albania and Cuba, asked Xanana if he would agree to join the party. Xanana says he replied, “No”.<sup>88</sup>

On August 7, 1977, “the traitor Domingoes Simoes” tried to assassinate Alarico Fernandes. Do Amaral got the blame, and on September 7, 1977, he was arrested by Lobato and Fernandes, possibly after avoiding another Supreme Council meeting.<sup>89</sup> “In circumstances that are still far from clear, he had apparently sought to arrange a compromise with the occupying forces.”<sup>90</sup> Lobato announced: “Against the mistakes of comrades, we use the weapon of criticism. Against the enemies, traitors and sellers of the homeland, we use the criticism of weapons. To do that we must strengthen the repressive apparatus of our State.”<sup>91</sup> Attacking do Amaral’s group as “loyal slaves of the Javanese expansionists,” Lobato’s faction expelled two CC members from central East Timor and five cadres from the same region.<sup>92</sup> Other cadres and an alleged agent “infiltrated in the Department of Information and National Security” were arrested and “seriously interrogated.” Lobato announced that confessions had been “dragged out of the prisoners” and that the Remexio Zone secretary was “a traitor already under our control in a safe place.”<sup>93</sup>

At a meeting of the CC Political Committee in Aikurus, Fretilin education minister Hamis Basserwan now assumed “responsibility for the ideological training of the Fretilin Central Committee members.” Xanana Gusmao recalls Basserwan earlier confiding: “Don’t think, Xanana, that we are well-versed in theory. In

Lisbon, I spent most of my time with the Portuguese Communist Party painting slogans on the walls!”<sup>94</sup>

In the east, CC member Sera Key returned from Aikurus and told his subordinate Xanana of the purges and atrocities committed there. Confused but apparently convinced of the need for “revolutionary violence,” Key launched an investigation of local “counter-revolutionaries”. But at a meeting of four CC members, Xanana reports challenging him: “I cannot accept this violence. I cannot accept that a member of the Central Committee would inflict torture.” Xanana claims that he managed to persuade Key to let him conduct his own investigations, and that he eventually freed the prisoners.<sup>95</sup>

Despite the violent purge of his followers, do Amaral and his associate Arsenio Horta survived nearly a year in Fretilin custody. On August 30, 1978, they were captured by Indonesian troops during the battle for Remexio.<sup>96</sup> Do Amaral was taken to Dili, where he called on Fretilin to surrender.<sup>97</sup> (He spent the next 22 years in Bali and Jakarta.)<sup>98</sup> Then came the capture or surrender of his former rival, Information Minister Fernandes, on December 2, 1978.<sup>99</sup> One of Fernandes’ last radio transmissions announced that he and several others had broken with the CC.<sup>100</sup> In turn, Fretilin now also accused him of plotting a coup with “a correlation of forces in the central-north sector.”<sup>101</sup> This region had been Amaral’s stronghold. Close to Dili and to the center of Indonesian power, in 1977–78 the north-central sector appears to have favored a succession of

local and national leaders seeking compromise with Jakarta.

At his surrender, Fernandes named the six “intransigent” leaders of the continuing Fretilin resistance: President Lobato, the new vice president and justice minister Mau Lear, National Political Commissioner Vicente Sa’he, Education Minister Hamis Basserwan, Economy Vice Minister Helio Pina, and Commissioner Carlos Cesar.<sup>102</sup> One of their last bases was Mt. Matebian in the Eastern Zone, where 30,000 people were holding out.<sup>103</sup> Xanana arrived there with many others from the island’s eastern tip in September 1978. He describes what he saw: “I visited all the front lines engaged in combat. There was no room for the people. There were bombardments, explosions, death, blood, smoke, dust, and interminable queues of people waiting for their turn to try to get a bit of water for the children. . . . There was total lack of control. . . . The fighter planes were sowing the seeds of death all day long.”<sup>104</sup>

The base fell to Indonesian encirclement on November 22, 1978. That night, Xanana and some troops fought their way out to the east.<sup>105</sup> Others escaped west. Fretilin was now unable to defend its even larger base area, the Natarbora plain, with a population of 60,000 people near the south coast, commanded by Vice President Mau Lear and Vicente Sa’he. Indonesian forces occupied Natarbora in December.<sup>106</sup> Then, Nicolau Lobato was surrounded near Maubisse. On December 31, the Fretilin president was killed after a six-hour battle with Indonesian forces led by Suharto’s future son-in-law, Prabowo. Twenty other Fretilin leaders and troops fell with him, including Deputy Defense Minister Guido Soares.<sup>107</sup> Mau Lear took his place as Fretilin president. Vicente Sa’he took command of its military wing, Falantil – after escaping

83 Gusmao, To Resist, 47, 66.

84 “Speech of Nicolau Lobato,” 11.

85 “President F. Xavier do Amaral on Radio Maubere May 20 1977,” ETNA, June 8, 1977.

86 “Prime Minister Nicolau Lobato Answers Questions,” June 30, 1977, ETNA, July 4, 1977.

87 “Fretilin Secretary for Information Answers Journalists’ Questions,” June 18, 1977, ETNA, June 21, 1977; “Answers by Minister Alarico Fernandes, . . . June 19, 1977,” ETNA, July 12, 1977.

88 Gusmao, To Resist, 66.

89 “Speech of Nicolau Lobato,” 9, 3.

90 Niner, “Long Journey,” 19.

91 “Speech of Nicolau Lobato,” 11–12.

92 The CC members were from Manatuto and Lakular; the zone cadres were Lacro and Remexio secretaries and their deputies, and the Lakubar secretary. “Speech of Nicolau Lobato,” 1, 3.

93 “Speech of Nicolau Lobato,” 3, 11.

94 Gusmao, To Resist, 66, 47. Jolliffe says Basserwan was “Hata.” Jolliffe, East Timor, 219.

95 Gusmao, To Resist, 49–52; Niner, “Long Journey,” 19.

96 “Traitors Escape, Xavier Rescue,” East Timor News 41, September 14, 1978, 1; Niner, “Long Journey,” 19; 27 n. 20.

97 Melbourne Herald, December 5, 1978; East Timor News 47, December 28, 1978.

98 Niner, “Long Journey,” 27 n. 20. In the 1990s, do Amaral joined a group favoring autonomy within Indonesia. He returned to East Timor in 2000.

99 Melbourne Herald, December 8, 1978; East Timor News 47, December 28, 1978; Taylor, East Timor, 96

100 Gusmao, To Resist, 58 n. 91.

101 “Betrayal Not End of Struggle,” Tribune (Sydney), December 13, 1978; East Timor News 47, December 28, 1978. On fellow CC member Redentor, see “Speech of Nicolau Lobato,” 9.

102 East Timor News 48, January 18, 1979; Jolliffe, East Timor, 219–20.

103 Budiardjo et al., War, 33.

104 Gusmao, To Resist, 56.

105 Gusmao, To Resist, 57.

106 Budiardjo et al., War, 33, 66.

107 Gusmao, To Resist, 25 n. 40; Dunn, Timor, 317; Budiardjo et al., War, 36; Jolliffe, East Timor, 220.



the battlefield with Hamis Basserwan.<sup>108</sup> Mau Lear was tracked down and executed on February 2, 1979. Later that month, pursuing Indonesian troops wounded Sa’he in the leg. He ordered his fleeing comrades to leave him behind.<sup>109</sup> Basserwan, Pina, and Cesar all disappeared.<sup>110</sup> In the east, Xanana sent a young Falantil commander, Taur Matan Ruak, to the central sector to “find the Resistance Executive,” but his unit was betrayed and trapped near Viqueque. Ruak surrendered on March 31. He managed to escape after 23 days and would later become Falantil deputy chief of staff.<sup>111</sup>

From September 1977 to February 1979, the Fretilin central command was virtually destroyed. Only three of the 52 CC members survived, all in the Eastern Zone: minister of finance and political commissar Sera Key, Xanana Gusmao (chief of the eastern sector, Ponte Leste), and Mau Hunu (deputy secretary of the eastern region command).<sup>112</sup> David Alex, who had commanded elite companies until the fall of Mt. Matebian, also remained active in the east, his forces intact, including 14 troops from his native village there.<sup>113</sup> Budiardjo writes, “Although losses suffered by Fretilin in the eastern sector were enormous, the resistance movement there was in better shape than in the border and central regions.”<sup>114</sup>

It was here that Xanana now began the slow, painful process of rebuilding. In December 1978–January 1979, he recalls, “for a month and a half I traveled through the hamlets, making contact with the people.” An Indonesian-appointed village official hosted a secret meeting with a former Fretilin CC member, Joao Branco, and they “settled a few ideas on the continuity

of the struggle. In February 1979 I summoned Txay and Kilik so we could assess the situation.” Also, “The Commanders who were supposed to be in the Centre Region joined me.” They reported that the center was in “chaos,” as was Viqueque region, where the violent Hermengildo Alves had treated them with characteristic “suspicion.” A CC member from the center–east, Solan, and his ill wife, as well as “Olo Kasa and his weak wife, and Sera Key and his wife,” along with their escorts, were all “isolated from each other and abandoned by their forces. Sera Key recommended to his two commanders that the forces that had returned from the Centre Region, and those that could not get through, be put under my charge. He would go to the Centre to try to find the Resistance Executive.” Xanana toured the east, locating bands led by Mau Hodu, Taur Matan Ruak, Mauk Moruk, David Alex, Lay Kana, Olo Gari, Fera Lafaek, and Sabica. But the Indonesians captured Solan and Olo Kasa. They massacred Lay Kana, “the best commander” in the east, with his company and other defectors.<sup>115</sup>

In March 1979, the top five surviving Fretilin military officers (Falantil operational commander Mauk Muruk, Kilik Wae Gae, Olo Gari, Nelo, and Freddy) met with the five senior political leaders (Xanana, Mau Hunu, Mau Hodu, Bere Malay Laka, and Taxy) at Titilari-Laivai in the central-eastern sector, “to analyse the causes and consequences of the military collapse, and to devise adequate measures for the reorganization of the resistance.”<sup>116</sup>

Sera Key set out from the east in April to make contact with the remaining resistance bands in the central sector. He and his wife were soon captured, “sick, abandoned and betrayed by the last forces from the East Centre sector which had also surrendered.” Indonesian troops reportedly took Sera Key to Dili by helicopter and dumped him in the sea. In July and December, Xanana and Mau Hunu sent out further missions, but both returned without encountering surviving resistance groups further west.<sup>117</sup> In May 1980, Xanana took half a company of 60 troops from

the east to the western border and back. A Fretilin unit staged a spectacular attack on the Dili TV station on June 10. By October, Xanana had made contact with continuing resistance forces in Kablake near the border and in the central sector. On Christmas Day, Falantil attacked Baucau, the territory’s second city.<sup>118</sup>

Fretilin was eventually able to organize a national conference, from March 1 to 8, 1981, at Lacluta in the central-east region. Xanana was elected president, Kilik Wae Gae became chief of staff, and Mau Hunu became deputy chief-of-staff. Bere Malay Laka was named secretary of information. They reported to the conference that Fretilin had lost 79% of the members of its Supreme Command, 80% of its troops, 90% of its weapons, all its population bases, and all the channels of communication between its scattered groups and with the outside world.<sup>119</sup>

Famine and Mass Murder

According to Indonesian documents that Fretilin forces captured in 1982, “as a result of all the unrest, many village heads have been replaced, whilst many new villages have emerged.” The experience of two eastern villages is instructive: “With the upheavals,” the inhabitants “fled into the bush,” returning only in May 1979, when they were “resettled” in a district town. “But this led to their being unable to grow food on their own land, so that food shortages have occurred.”<sup>120</sup> Famine ravaged East Timor in 1979. Indonesian aerial bombardment of their homes and cultivated gardens in the hill areas had forced many Timorese to surrender in the lowlands, but food was scarce there. Indonesia’s control eventually expanded, and its counts of the Timorese population rose from 329,000 to as many as 522,000 in mid-1979.<sup>121</sup> More than 120,000 Timorese remained missing, mostly victims of the famine and the continuing Indonesian-instigated massacres and repression. Taylor reports that on November 23, 1978, Indonesian troops shot 500 people who surrendered to them the day after

the fall of Mt. Matebian; soon afterward there was a similar massacre of 300 in Taipo, and in two further incidents in the east in April–May 1979, Indonesian forces murdered 97 and 118 people.<sup>122</sup> Also in the east, Indonesians massacred Joao Branco and 40 others at the end of 1979.<sup>123</sup> In a September 1981 massacre southeast of Dili, 400 people died, mostly women and children.<sup>124</sup> In August 1983, 60 men, women, and children were tied up and bulldozed to death at Malim Luro near the south coast. On August 21–22, troops burned alive at least 80 people in the southern village of Kraras, and then made a “clean-sweep” of the neighboring area, in which another 500 died. Of East Timor’s 20,000-strong ethnic Chinese minority, survivors numbered only “a few thousand” by 1985.<sup>125</sup>

As fighting continued, Indonesia’s special forces worked to recruit Timorese paramilitary combat teams, predecessors of the militias responsible for widespread massacres in the 1990s. In the first two months of 1982, the team Railakan I, comprising 52 troops, killed 8 Falantil rebels and captured 32. In an attack on Xanana’s forces in September, Railakan I killed nine more Fretilin troops.<sup>126</sup>

Regional Resurgence

In the early 1980s, despite devastating blows, Timorese resistance still challenged Jakarta’s forces, who termed Fretilin “gangs of security disruptors” (Gerakan Pengacau Keamanan, or GPK).<sup>127</sup> In 1982, Indonesian commanders in Dili acknowledged in confidential documents that “despite the heavy pressure and the disadvantageous conditions under which they operate, the GPK has nevertheless been able to hold out in the bush.” For instance, from just six villages of the Eastern Zone, 293 inhabitants were “still in the bush.” After seven years of occupation, Fretilin “support networks” still existed “in all settlements, the villages as well as the towns.” These “underground

108 East Timor News 48, January 18, 1979, 3, citing Indonesian reports.

109 Dunn, Timor, 317; Taylor, East Timor, 97.

110 Xanana received a report that “Cesar Maulaka was in the South Centre region, in the area of Alas, but much of the information was contradictory.” Gusmao, To Resist, 63.

111 Gusmao, To Resist, 60 n. 94; 57 n. 89.

112 Gusmao, To Resist, 25 n. 42; 152. Gusmao says Txay was the third surviving CC member. Budiardjo et al., War, 67, 70, says it was Sera Key.

113 Gusmao, To Resist, 59 n. 92; 60; Budiardjo et al., War, 196, 213.

114 Budiardjo et al., War, 67; Taylor, East Timor, 115; Gusmao, To Resist, 29 n. 51.

115 Gusmao, To Resist, 51, 58–59.

116 Gama, “War in the Hills,” 101.

117 Budiardjo et al., War, 67; Taylor, East Timor, 115; Gusmao, To Resist, 62; 25 n. 42.

118 “Instruction Manual No. Juknis//05/1/1982: System of Security,” English translation in Budiardjo et al., War, 183; Taylor, East Timor, 115; Gusmao, To Resist, 64–65.

119 Budiardjo et al., War, xii, 67–70.

120 Budiardjo et al., 201, 243, 212–13.

121 Taylor, East Timor, 98.

122 Taylor, East Timor, 88.

123 Gusmao, To Resist, 53–54 n. 89.

124 Taylor, East Timor, 101–102; Gama, “War in the Hills,” 102.

125 Taylor, East Timor, 102–103, 142, 206, 68–70, 164, 207 (citing Far Eastern Economic Review, September 8, 1985).

126 Kammen, “Trouble,” 159–60.

127 Captured Indonesian documents, English translations of which are in Budiardjo et al., War, 82.



networks are closely related to customs and to the family system.” Jakarta aimed “to obliterate the classic GPK areas” and “crush the GPK remnants to their roots.”<sup>128</sup> The conquered territory must “eventually be completely clean of the influence and presence of the guerrillas.” Deportations continued; in one sector of the Eastern Zone, 30 more villages were resettled in 1982.<sup>129</sup>

The Indonesian commander in Dili, Colonel A. Sahala Rajagukguk, revealed to his officers that nine Fretilin bands continued to operate. Of four “small, unorganized groups,” one even operated near West Timor and Dili, “in the border district of Ermera, and in the districts of Dili, Liquica, and Ailiu.” Summarizing the activities of all these groups, Colonel Rajagukguk concluded that “they can meet together at predetermined places. . . . Meetings in the eastern region can be held in the regions of Koaliu, Matabean, Macadique or Builo. On such occasions there is a very sizeable concentration of forces in one place.” He went on: “It is in the eastern sector that people’s support is most militant and most difficult [for Indonesian forces] to expose. This is because of the very strong, close family ties and also because it has been possible for the GPK to consolidate its political leadership in this region for several years. This is also because a large part of the population in this region fled to the mountains and only came down to the new villages at the beginning of 1979. In such circumstances, the GPK has consciously chosen the eastern region as its hinterland and reserve base.”<sup>130</sup>

Normalizing the Occupation, 1983–99

In 1982, Indonesian intelligence knew most of the surviving Fretilin leaders, naming Mauk Moruk, Mau Hunu, David Alex, Kilik, Txay, and Loro Timur Anan.<sup>131</sup> If Jakarta was as yet unaware of Xanana’s leadership position, they learned of it within a year. A new Indonesian army commander, General Mohammed Yusuf, agreed to a cease-fire and negotiations with Fretilin. Xanana then held two days

128 Budiardjo et al., War, 176, 215, 222, 227, 194–96, 216, 242, 193.  
129 Budiardjo et al., War, 242–3, 193, 228, 241, 213.  
130 Budiardjo et al., War, 196, 201; Gusmao, To Resist, 29 n. 51  
131 Budiardjo et al., War, 177, 196.



Francisco Fernandes Maut (in front), his wife Frantalina Fernandes Pinto (behind, second) stand with their children in front of the ruins of their house in Babulo, Timor-Leste, burnt down during the August 2007, civil unrest in the area. UN Photo/Martine Perret

of talks with his Indonesian counterparts, on March 21 and 23, 1983. Jakarta later abandoned the negotiations, but the cease-fire was a temporary acknowledgment of Fretilin’s continuing military challenge. Fighting resumed, with Falantil estimated to be fielding up to 1,000 guerrillas in several areas. Indonesian reinforcements in 1984 brought troop levels back up to 14,000 to 20,000. Railakan I, a locally recruited special forces paramilitary team, increased in size from 49

to 90 men. From March to December 1984, this team alone killed 32 Falantil rebels and captured 12. As the war raged on, Suharto declared a state of emergency in East Timor on September 9, 1985.<sup>132</sup>

132 Taylor, East Timor, 136, 151, 206; Dunn, Timor, 319; Kammen, “Trouble,” 159–60.

Douglas Kammen sees the 1983 cease-fire as Jakarta’s “tentative, indeed abortive, first attempt” to normalize its control of East Timor and secure foreign recognition for its integration of the territory. However, this was accompanied by “alternative forms of violence,” such as increasing Indonesian use of East Timorese combat “teams.” Suharto made a second attempt in 1988, when he declared East Timor’s “equal status” with



Indonesia’s other 26 provinces. Jakarta announced the “opening” of the territory and the introduction of Operation Smile. The 1989 papal visit followed. But, Kammen says, “greater openness was accompanied by the heightened use of covert operations and terror,” especially against Fretilin’s new strategy of nonviolent urban protest, but also a new rural offensive aiming to capture Xanana, who moved secretly into Dili in February 1991. In August 1991, Indonesian forces in East Timor totaled 20,700, including 11,000 “external” troops on rotation there from other provinces, 4,800 “territorial” or local troops, and other members of the Indonesian armed forces. Samuel Moore writes, “The East Timorese continued to live under one of the most intensive military occupations of modern history,” with 10 to 14 troops stationed in each village and neighborhood, a soldier for every 38 civilians. In Dili on November 12, 1991,<sup>133</sup> the army gunned down and bayoneted 300 Timorese funeral marchers at the Santa Cruz cemetery, an event secretly filmed by a journalist, bringing East Timor to world attention. A year later, Xanana was discovered and arrested.<sup>134</sup> Still the resistance continued, and urban unrest mounted.

In May 1990, Jakarta had replaced its combat Security Operations Command (Koopskam) with a new East Timor Operations Implementation Command (Kolakops). In response to international condemnation of the Santa Cruz massacre, external battalions began to be withdrawn and replaced by local territorial troops, and a third attempt at normalization was made with the liquidation of Kolakops in April 1993. All security responsibilities, including command of the nine external battalions then on rotation in the territory, were now assigned to the local territorial command, Korem 164, headquartered in Dili but “entirely under the direction of non-East Timorese.”<sup>135</sup> By April 1994, when the number of battalions under Korem 164 was reduced to seven, the military had begun forming paramilitary units such as the “Young Guards Upholding Integration” (Gada Paksi), which

had 1,100 members by 1996. These militia forces expanded rapidly. By 1995, the former commander of the Railakan I paramilitary team headed a 300-strong militia. By 1997–98, there were 12 such paramilitary teams with 4,000 to 8,000 members. Also in 1997–98, the number of regular battalions under Korem 164 again increased, to 13.<sup>136</sup> By August 1998, the total number of Indonesian troops in the territory was 21,600, including 8,000 external troops.<sup>137</sup>

Suharto fell from power in May 1998 and pressure mounted on Jakarta to hold a referendum in the territory. This brought a sharp increase in militia activity. The army sponsored the creation of several new militia forces at the end of 1998.<sup>138</sup> The Fretilin leadership had suffered major losses by the time of Suharto’s fall. Falantil’s Operational Commander Mauk Muruk, who had surrendered in July 1985, spent the next four years in the psychiatric isolation ward of a Jakarta military hospital.<sup>139</sup> In June 1990, Mau Hudo became Fretilin vice chairperson, but he was captured in January 1992. After the arrest of Xanana in November the same year, David Alex became deputy chief of staff of Falantil. He was wounded and captured by Indonesian troops in June 1997 and is presumed dead. His successor was Konis Santana, who was killed in an accident in March 1998 and replaced by Taur Matan Ruak, who had been deputy chief of staff in the mid-1980s.<sup>140</sup> But despite these setbacks, 600 to 900 veteran Fretilin troops fought on in the hills, joined by 600 recruits in 1998 alone. Taur Matan Ruak’s force of 1,500 welcomed the United Nations peacekeepers when they arrived in the territory in September 1999.<sup>141</sup>

Despite its military losses, Fretilin maintained a broad political base. In 1992, an Indonesian intelligence report entitled “Data on Disturbed Villages” categorized only 163 of East Timor’s 442 villages as peaceful and secure. Seventy-nine villages were coded

“Red,” or “disturbed” (possibly Fretilin-controlled). In 1997, Korem 164 intelligence estimated that the GPK “clandestine front” had about 1,500 members in the capital, and in 1999 they were estimated to have 6,000 members throughout the territory.<sup>142</sup>

In September 1998, in a historic reconciliation, all five East Timorese parties involved in the civil war of 1975 joined forces under the new umbrella organization, the Timorese Council of National Resistance (CNRT), and elected the political prisoner Xanana Gusmao as president.<sup>143</sup> A year later, 79% of Timorese voted for independence in the UN-organized referendum.

Genocidal Counterinsurgency

Jakarta was unable to achieve its goal of conquest. But what underlying ideology justified genocide in the attempt? In Remexio and Aileu, where “everyone over the age of three was shot” in early 1976, Indonesian forces explained that the local people had been “infected with the seeds of Fretilin.” After the September 1981 Lacluta massacre, a soldier allegedly explained, “When you clean your field, don’t you kill all the snakes, the small and large alike?” In 1984, a new territory-wide military campaign aimed at what one commander called the obliteration of Fretilin “to the fourth generation.”<sup>144</sup> The mixture of biological and agricultural metaphors is common in genocidal regimes.<sup>145</sup> While the killings of more than 500,000 communists in Indonesia in 1965–66 had not been accompanied by ethnic massacres targeting minorities, in the territorial expansion a decade later, Jakarta’s repressive forces did single out the Chinese of East Timor for “selective killings.”<sup>146</sup>

Indonesia’s targeting of Fretilin as a multigenerational kinship group also resembles genocide. In early



133 Kammen, “Trouble,” 160–62; Samuel Moore, “The Indonesian Military’s Last Years in East Timor: An Analysis of Its Secret Documents,” *Indonesia* 72 (October 2001): 14.  
134 Kammen, “Trouble,” 164–65; Moore, “Indonesian Military,” 24–25, table 2.  
135 Kammen, “Trouble,” 162–65; Moore, “Indonesian Military,” 28.

136 Kammen, “Trouble,” 166, 168–69, 180, 174.  
137 Moore, “Indonesian Military,” 25, table 2.  
138 Kammen, “Trouble,” 182–83.  
139 Gama, “War in the Hills,” 103.  
140 Gusmao, *To Resist*, 43–44, 57–60. Moore names other 1990s leaders: Sabica, Lere Anan Timur, Ular, and Falur. Moore, “Indonesian Military,” 14.  
141 Moore, “Indonesian Military,” 13.

142 Moore, “Indonesian Military,” 13–14, 16. A 1982 Indonesian document describes the “Red Zone” as areas of Fretilin control. Budiardjo et al., *War*, 203.  
143 Kammen, “Trouble,” 173.  
144 Taylor, *East Timor*, 70, 102, 151.  
145 Kiernan, “Genocide and ‘Ethnic Cleansing,’” in *Encyclopedia of Politics and Religion*, ed. R. I. Wuthnow (Washington, D.C.: Congressional Quarterly, 1998), 294–99.  
146 Taylor, *East Timor*, 69.



1999, as the UN referendum approached, Indonesian military and militia commanders threatened to “liquidate . . . all the pro-independence people, parents, sons, daughters, and grandchildren.”<sup>147</sup> At a meeting in Bali in February 1999, Indonesian commanders Adam Damiri and Mahidin Simbolon ordered militias “to eliminate all of the CNRT leaders and sympathizers.”<sup>148</sup> On February 16, meeting with militia leaders, Lieutenant-Colonel Yahyat Sudrajad called for the killing of pro-independence leaders, their children, and their grandchildren. “Not a single member of their families was to be left alive, the colonel told the meeting.”<sup>149</sup> Jakarta’s governor of the territory, Abilio Soares, ordered that “priests and nuns should be killed.”<sup>150</sup> (In 2002, Soares was convicted in a Jakarta court.) Militia leaders called on their followers to “conduct a cleansing of the traitors of integration. Capture them and kill them.”<sup>151</sup> Tono Suratman, Korem 164 commander in Dili, warned, “if the pro-independents do win . . . all will be destroyed. It will be worse than 23 years ago.”<sup>152</sup> A May 1999 Indonesian army document ordered that “massacres should be carried out from village to village after the announcement of the ballot if the pro-independence supporters win.” The East Timorese independence movement “should be eliminated from its leadership down to its roots.”<sup>153</sup>

### Conclusion

Cambodia and East Timor were both subjected to genocide in 1975–79. Foreign occupying forces from Indonesia perpetrated the genocide in East Timor, while foreign occupying forces from Vietnam ended the indigenous Khmer Rouge genocide in Cambodia. The perpetrator regimes in Jakarta and Phnom Penh enjoyed diplomatic support from the United States, which continued after the genocides, including training and arming the Indonesian military. Until the 1990s, Washington supported Indonesia’s occupation of East Timor and voted in the UN for the exiled Khmer Rouge to represent Cambodia. Maoist ideological influence on Fretilin in East Timor and on the Khmer Rouge in Cambodia produced political purges, repression, and murder in both cases. Yet in the Cambodian case, Khmer Rouge military aggression against Vietnam, supported by China for geopolitical reasons, combined with a virulent Khmer Rouge racism that targeted foreigners and minorities for extermination, resulting in genocide. To the Maoist-influenced Fretilin regime, however, genocide came from without, in the name of anticommunism. East Timor did not attack Indonesia, but was the victim of aggression. Maoism functioned there within a multicultural nationalist party resisting foreign invasion and genocide. The political and geopolitical factors favoring genocide varied, and in each case regionalisms undercut the genocidists and the resistance, while racism and expansionism played major roles in both tragedies.



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147 Andrew Fowler, “The Ties that Bind,” Australian Broadcasting Corporation, February 14, 2000, quoted in N. Chomsky, *A New Generation Draws the Line: East Timor, Kosovo, and the Standards of the West* (London: Verso, 2000), 72. For details, see A. Evans, “Revealed: The Plot to Crush Timor,” *South China Morning Post*, September 16, 1999.

148 Quoted in Kammen, “Trouble,” 183.

149 Tomas Goncalves, former head of the PPPI militia, quoted in Evans, “Revealed,” 54. Andrew Fowler reported that in early 1999, pro-Indonesia commanders threatened to “liquidate . . . all the pro-independence people, parents, sons, daughters, and grandchildren.” Chomsky, *New Generation*, 72.

150 Evans, “Revealed”; Kammen, “Trouble,” 184.

151 Kammen, “Trouble,” 184.

152 Brian Toohey, “Dangers of Timorese Whispers Capital Idea,” *Australian Financial Review*, August 14, 1999; John Aglionby et al., “Revealed: Army’s Plot,” *Observer*, September 12, 1999.

153 Chomsky, *New Generation*, 74.

# the umbrella movement in HONG KONG

# DO YOU HEAR THE PEOPLE SING

## PHOTO ESSAY





## SEPTEMBER 22, 2014

Thousands of students begins a weeklong boycott of classes to protest an electoral reforms plan that they consider to be insufficiently democratic. The boycott eventually morphs into massive sit-ins in key parts of the city

## HONG KONG SAR TIME LINE

Once a British colony now a special administrative region under China, Hong Kong struggles for the Universal Suffrage

SEP. 22, 1982

British Prime Minister Margaret Thatcher goes to Beijing to discuss the future of Hong Kong, which China was forced to cede to Britain in 1842 after the First Opium War.



DEC.19, 1984

Britain and China sign a joint declaration that Hong Kong will return to China in 1997. Hong Kong citizens emigrate in droves to countries such as Canada and Australia following the agreement.

JULY 19, 1992

Chris Patten becomes the last British governor of Hong Kong. He proposes democratic reforms for the territory; some of these are adopted in 1994.



JULY 1, 1997

After more than 150 years of British rule, Hong Kong is returned to the People's Republic of China. The framework of governance in "one country, two systems," granting Hong Kong considerable autonomy for 150 years.

MAY 24, 1998

The first post-handover election for the legislature is held, but the process is not fully democratic. The law stipulates that only one-third of the seats are directly elected.

JULY 1, 2003

More than 500,000 people march to protest, among other issues, the government planned introduction of a national-security law. The rally forces the authorities to withdraw the legislation.



JULY, 2012

The Hong Kong government says it will introduce "national education" in public schools. The proposal is scrapped after protests by students, parents and teachers, who see the plan as brainwashing by the authorities.

JUNE 10, 2014

A Chinese government white paper asserts that Beijing has "comprehensive jurisdiction" over Hong Kong, and says its citizens should be patriotic.





PHOTO ESSAY: UMBRELLA MOVEMENT IN HONG KONG



*Pro-democracy demonstrators in Admiralty and Mongkok, Hong Kong*



A graphic designer and photographer Yoco Man lives in Hong Kong and has become a passionate documenter of the Umbrella Movement, mass protest demanding the greater democracy in the former British Colony. Man explains the feeling in Hong Kong and how democracy is making waves through his photographs.





Busses were abandoned at a Mongkok protest site is covered in messages from protesters and supporters.

Pro-democracy protesters reinforce barricades in several places where they protests.







Protesters in Mongkok



Protest in Admiralty







in Mongkok

Pro-democracy protesters reinforce a barricade in Mongkok





# SEX TRADE & PROSTITUTION PAKISTAN'S OPEN SECRET

by SAADIA HAQ

*"My father sold my virginity because he wanted me to help our family not to stay poor anymore. When I refused, he beat me badly and [sought help from] my mother who said I had no other option because we are poor." – 17-year old Sumeera\*, who is now a regular sex worker at a brothel in Lahore (Punjab Province, Pakistan).*

**ORIGINALLY** from Sahiwal, Sumeera ended up in Lahore at the mere age of 14 as a result of a trade deal between her parents and a brothel pimp. Today Sumeera's income feeds her father's opium addiction, while her mother works as a domestic maid in their neighbourhood to put food on the table for her husband and three sons.

Back in Sahiwal, her old neighbourhood, nobody speaks about the current "whereabouts" of Sumeera. However, it is an open secret. The society of the Islamic State of Pakistan prefers to stay silent on

the taboo subject of sex outside marriage. Mind-sets here don't differentiate between child prostitution and sex outside marriage. In this society, sex outside marriage is not supposed to exist, and certainly is not publicly acknowledged. Women caught selling their bodies for sex are sent to jail so sex workers are forced to operate underground. However, young girls and women like Sumeera are daily sold and bought even if selling women for sex is a crime. Even more so, selling underage children for sex is a crime, yet the prosecutions are rare, but police harassment is constant.

## Surviving Poverty Cycle with Mixed Emotions

Sumeera lives with three other women who are older than her. Like Sumeera, they, too, have their reasons for being in this profession. Fatima\* and Rinkle\* are widows in their twenties who were ousted from their in-laws home after the deaths of their husbands. Both

are victims of early marriages, received no schooling and, looking for a way to feed themselves, found themselves on the doorsteps of this brothel.

Then there are women like Samina Begum\*, the "leader of the pack," or as they call her locally, an auntie who houses the sex workers and handles the transactions.

Sumeera and her co-workers are part of a system that continues to feed the demands of countless men's carnal urges. Sex trade is deemed illegal in the vastly-Muslim populated country, where mind-sets continue to shun extra-marital sex as immoral. However the serving of immoral fantasies is done underground despite legal difficulties. Sex workers have no legal recognition in Pakistan.

Additionally, the activities of red-light districts and brothels remain illegal and operate as an open secret facilitated by huge sums paid in bribes to the police. Most red-light areas are not recognized on a State level, but the country's well-known red-light areas, including Heera Mandi in Lahore and 12 No Chungi in Sargodha (both in Punjab Province), have special licenses issued by the Government. They also receive police protection to cater to the usual extra marital fantasies. More often than not, local politicians or military personnel pay patronage to brothels and prostitution dens, which support the continuous existence of such markets, depicting a clear religious bigotry. The state policing of bodies of sex workers make it a very political issue for women's rights.

## Overview of Gender Based Violence and Prostitution in Pakistan

Religious and social ethics are highly admired and deeply ingrained in the Pakistani society. Like other Muslim countries, violence against women is a major factor contributing to Pakistan's low rating on the gender empowerment scale. The prevailing violence is both a cause and a result of women's disempowerment in general. Violence against women and obstacles to their empowerment are both rooted in the feudal culture, of which patriarchy is a core element.

According to Global Gender Gap Report 2013, published by the World Economic Forum, Pakistan

ranks as the world's second-worst country in terms of gender equality and equitable division of resources and opportunities among men and women. Overall, Pakistani women are severely disadvantaged in terms of income, education, power structure, or economic opportunities.

A recent study indicated that major cities like Karachi, Lahore, Faisalabad, Multan, and Peshawar have large populations of sex workers. Many sex workers in these cities operate from hotels or homes. Apart from two government licensed red-light areas, fewer cities have illegal red-light districts, but many sex workers work in homes and other private facilities.

As of 2014, there are very few identifiable traditional red-light districts in Pakistani cities and deeper analyses by women's rights groups provide strong evidence that prostitution is dispersed throughout urban areas and residential suburbs. This makes it easy for parents like that of Sumeera's to find contacts to sell their daughters to the sex trade.

Sumeera says, "I can still remember my first time; I felt so ashamed even if auntie kept telling me that it's my initiation night and that my virginity would make a fetching sum. After it happened, I was very ashamed, but in these years I have become hardened to men of all types."

Further Sumeera added, "What can I do when my own parents betray me? Each month when I call them to confirm the money transfer, not once has my father expressed his concern. He gets confirmation that he will buy his coming opium fix and he's happy with it."

To me, her co-workers seem somewhat dissociated from their reality, but perhaps their experiences have made them accept their fate. Rinkle told me, "after my husband died, my in-laws threw me out of their home; my brothers didn't want me in the house and have to bear my extra burden. I was totally desperate because no one wanted to give a job to an illiterate woman. Finally, a friend helped me come here."

While we were conversing, Fatima told me that she has secondary education, but could not find a job for a salary even as low as 2,000 PKR per month. She said,



“I faced hard times finding work. Most of the time job providers were looking for something else. Most men were not willing to part with few thousands PKR, but now they are eager to throw in more money to satisfying one night of lust.”

A large portion of Pakistani sex workers are lured into this trade by their domestic issues and, more importantly, sharply rising poverty, where selling bodies have become a means for survival.

A Pakistani film-maker of Balochi heritage, Aziz Sanghar, produced an eye-opening video documentary titled “Inside the Brothel” that captured the lives of Pakistani prostitutes on camera. Sanghar opined, “Poverty and hunger makes hapless women do anything. Just for bread in their stomach, a roof on their head, and few bucks [in their purse], they become willing to sell their bodies again and again.”

“Inside the Brothel” shows the depth of violence against women, particularly against sex workers, and how most of them are helpless against it. Since the Islamic law came into force in 1977, all red-light areas and brothels are outlawed. As the law does not permit them, there is no question of their existence – they continue to be an open, dirty secret.

In the 25 years Samina Begum has been in this profession, she says she has never seen a girl come to the bazaar, Urdu slang for brothel, at her own will. Most of the girls here were either cheated upon by their husbands or sold by relatives, she said. Before progressing to become an auntie, Samina worked as a sex worker since she was convinced by her lover to run away from home. “Young love, as you know, is tempestuous and once a girl has run away from her home, there’s no going back in our culture.”

In her case, at one point she did manage to return home only to have the door squarely shut in her face by her elder sister who told her to go back because she has brought shame to her family’s honour, and that their father has publicly announced that she died in a car accident on the way to an out-of-town wedding party.

The problem of girls suffering abuse at home and running away from intolerable situations is neither new in Pakistan nor confined to particular sections of the Muslim society. It is an age-old and deep-rooted phenomenon and, until recently, was shrouded in secrecy and silence and ignored by the authorities. The Pakistani mind-set is deeply troubling because, overall, people believe that a woman cannot marry a man of her own choice because that is what prostitutes do.

### The Taboo Talk

Stories of girls leaving their homes without permission with some lover can be found in any neighbourhood and social taboos have failed to stop this trend. With the current technology of mobile phones and Internet available, planning for eloping is easier than ever and young girls fall prey to the wrong hands of domestic traffickers that continue catering to the demand of brothels in the country.

The usual trend is that girls run away from their homes believing the promises of some lover. Unfortunately, very rarely do the promises and dreams materialize. More often than not, the girls end up in some brothel, commit suicide or just live a hellish life. If she is lucky, she returns to her family but stigma remains attached to her and her family for life and she often gets murdered in the name of honour killings.

Prostitution is a problem, a sin and a crime. Moreover it’s taboo, so it is hardly ever discussed. It is difficult to describe or understand the scale of this corrupt profession. And because of the strong stigma attached to the profession, it’s next to impossible to provide assistance to problems faced by sex workers. Most of the the development work that is being implemented to safeguard the rights of sex workers is done in a sporadic fashion because Pakistan lacks authentic data.

Moreover, gender discrimination within Islamic doctrine and the societal taboo against extramarital sex adds to the complexities that prostitution has brought to Pakistani society. The biggest hurdle we face in addressing this issue is the society’s attitude towards sexuality.

Sumeera and her colleagues would like to leave this life of daily degradation, but they are resigned that this might remain a futile dream. If they leave, they’d have to face a very unwelcoming and judgmental public that would be reluctant to take them back into normal society.

A dejected Sumeera argues everyone has a reason for selling sex. “It is very easy to criticize women like us, but nobody looks into our souls. Yes, we are sinners, but our lives are like open books,” she said.

### Unchecked Trafficking in Persons, a Malicious Advantage

Pakistan is a source, transit, and destination country for men, women, and children subjected to trafficking, specifically for forced labour and sexual slavery. The prostitution industry, especially the brothels, often remains associated with internal trafficking, as girls and women are sold across the country.

But while there are countless cases of internal trafficking throughout the country, much like Sumeera’s, there is sadly a great dearth of consolidated data. Experts believe that while internal trafficking of women is on the rise, the majority of stories remain unreported.

According to the Internal Trafficking project’s Bonded Labor report by the International Labor Organization (ILO), the problems lie with lack of laws and regulations covering this issue. Further the report indicates that there’s mass confusion regarding internal trafficking, cross border trafficking and human trafficking.

Zia Ahmad Awan, a legal expert and the man behind Madadgaar’s help lines, supports this theory. “The main reason [for the lack of solid figures] is that this is an underground practice and no serious effort has ever been made to undo it,” he explains. “Secondly, it is a complex issue. Internal trafficking also leads to external trafficking. There is no comprehensive law related to internal trafficking. In fact, internal trafficking laws are so weak that victims are not able to get lawyers and no money is allocated to compensate for their grievances.”

According to Awan, the Prevention and Control of Human Trafficking Ordinance (PACHTO) should include concrete internal trafficking laws so that stringent action against perpetrators can be taken. But on the government level, we hear the usual noise that they are struggling to cope with the magnitude of the issue. While all this continues, in our backyards traffickers continue to coerce people into sending their daughters to big cities to help improve the family’s living standards or as a means of getting out of the poverty trap. In many cases like Sumeera’s, families are aware of what awaits their daughters in the big cities. The dearth of regular opportunities also allows brothel owners and trafficking groups to do their work, and most of the time, local police also serves as an accomplice.

And when widows like Rinkle and Fatima find themselves on the street with mouths to feed, they feel prostitution offers the only solution. A Pakistani prostitute can earn 1,000 PKR to 3,000 PKR per day compared to the average monthly income of 2,500 PKR for domestic staff or labourers.

The Government of Pakistan says it’s taking significant efforts to comply with the minimum standards for the elimination of internal trafficking. But, there is an overall lack of will displayed by governments to address this issue in a holistic manner. This continues to pose a significant barrier to effective change.

Karachi, a sea-port and metropolitan city with a population of 23.5 million, is the biggest hub of internal and external human trafficking. Yet the Sindh government and police are still struggling to tackle the issue without much progress.

### Sheed Society, a Ray of Hope

Despite being ignored by the government and shunned by the traditional society, a small portion of sex workers have gained some victories through “self-help” initiatives. In 2005, Lubna Tayyab, a former sex worker started a small non-governmental organization within her own community at Lahore’s Heera Mandi red light area.



Tayyab founded this society to help address the lack of education and to create awareness of HIV and AIDS amongst the prostitutes and their children living shunned and oppressed under the heavy blanket of modesty in Pakistan.

Heera Mandi's community is a true depiction of societal abuse and powerlessness of women as a whole. Most men here are jobless, that is if you ignore their work as pimps and managers of women who work as prostitutes. The families have no means of support and therefore it falls upon the women to continue selling bodies. Generations pass on what they know – mothers sell their daughters and sons get entangled in the murky cycle of drugs, crime and child labour.

The Sheed society is a testament that women in Pakistan are challenging the power structures. Tayyab, thoroughly fed up with her own life experiences of growing up in Heera Mandi, decided to take matters into her own hands and reclaim the future of the neighbourhood. Since then, Sheed has grown in numbers and its entire staff is hired from within the community. It has built two schools and a health clinic providing free medical care. As the children of most sex workers and those within the Heera Mandi are never registered formally at the National Database and Registration Authority registration centre, they have no rights and are considered "alien citizens" in the country they were born in.

Sheed, despite being very small, is offering sex workers an opportunity to study and have access to basic education. The transformation over the years is clear – even if outsiders don't acknowledge it. The young children have finally learned to read and write and it's an amazing accomplishment for them. After all, they are the first ones in their families to become literate and might be able to find a job outside the sex trade.

**Don't Judge, Act Now – A Call to the Society**

In the present scenario, Pakistan has good reason to ponder the consequences of the high level of violence against women. A country ranking 82 out of 93 in the Gender Empowerment Measures, violence against women needs to be addressed as a society.

Pakistan has openly abdicated responsibility for half of its population by dismissing the abuse suffered by women as an unchangeable feature of feudal society. The same system ensures the women stuck in sex trade would continue to die as prostitutes.

Remedying the situation of Pakistani women involves a change in attitudes towards women. This can only happen from within the Pakistani society and it's high time to break the taboos instead of being repulsed by the issue as if it's a moral horror. Regardless of all the mystery and silence around the issue, its remains an open societal secret. It exists as an omnipresent fact of life, but never really talked about. The women who are part of this system do get societal sympathy and pity, but no one really wants to help this lot. Taboo and moral policing aside, the percentage of prostitution continues to grow at an alarming rate because the police and other law enforcement agencies abide with the real culprits and blatantly legally discriminate against women. The sex trade exists simply because the demand and supply is still there.

In the last two decades, given the increasing Islamisation of Pakistani society, have further reinforced stereotypes about such women. But the profession has only grown.

Karachi alone has at least 100,000 female sex workers, according to data gathered by local welfare organizations.

Lahore has 75,000 sex workers while the military garrison town of Rawalpindi has at least 25,000.

The capital city of Islamabad alone has some 200 brothels that work under the guise of beauty salons, massage parlours and social clubs. It is also noteworthy that most of these are in the jurisdiction of three big police stations.

The demand and supply for the sex trade has been best explained by a notable Pakistani short story writer, Ghulam Abbas, in his story "Anandi," where he explores ideas about the inevitability of prostitution. His story tells the reader how a group of prostitutes are forced out of the city to a distant, barren locality. Contrary to what one might expect, years later that

barren locality becomes a flourishing town because of the very presence of prostitutes. Abbas has demonstrated how prostitution is part of the basic human desire to feed and it can't end until we do.

Including factors like unemployment, poverty, limited opportunities for women, patriarchy, the pimp & 'madam' culture, greed and lust make its eradication more difficult. As long as these forces are there, prostitution can never be eradicated. And such violence against women continues in countries like Pakistan because it is both a cause and a result of their disempowerment.

In Pakistan, we can imagine that our authorities are more interested in monkey business here than providing protection to common citizens, let alone sex workers. There is near to zero tolerance for the sex workers, while the men who visit those brothels are continued to be treated with great respect as if they are saints. This sort of bigotry deludes the whole societal pattern of perpetuating violence against women and in this case, women sex workers. We hesitate in ensuring other people's rights. We also put obstacles on those who fight to get their rights. If I talk about sex workers rights, people shy away from associating with me because they worry about how they will be perceived by others. All this comes under the guise of religion. What makes me most sad is that people use God as an excuse to discriminate or put limitations on how others can behave. God teaches us that human beings should be treated with love, respect and kindness. What I don't understand is why we people keep forgetting this.

\* All identities have been changed to protect the sources

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# Standing Up to the Behemoth

## ISRAELI TUNNEL VISION

IS Gaza locked in a terminal enclosure or is Israel?

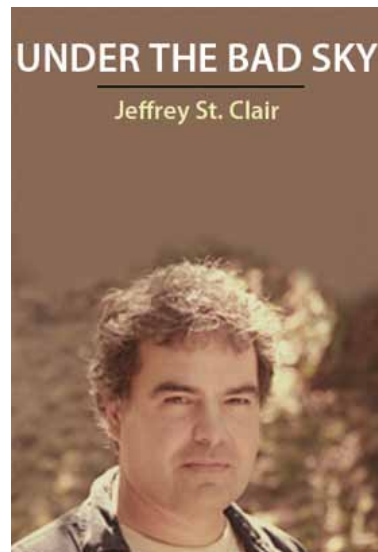
Certainly Gaza, that immiserated sliver of land, is encaged: its borders sealed; its coastline patrolled by Israeli gunships; its skies streaked with drones.

Gaza has a population of nearly 1.8 million and rising, jam-packed into a landscape about the size of Detroit. Roughly, 90 percent of the residents of Gaza are refugees, stranded by nearly unceasing Israeli wars since 1948.

Gaza is poor. That is what we are told.

And there are facts to back it up. The territory barely has an economy, especially since the tunnels, those subterranean streams of commerce, to Egypt were sealed after the coup against the Morsi government. A phony pretext for war, the tunnels delivered goods, from medicines to clothes and spices, interdicted by Israel. The tariffs imposed on this trade also provided funding for essential government services in Gaza, from sanitation to ambulances.

Gaza's per capita GDP was only \$876 in 2012. It is almost certainly lower now, as the Israeli blockade



strangles Gazan commerce. Only eight nations in the world rank poorer by that dismal standard. Israel, in contrast, boasts a per capita GDP of \$31,000; it's economy hums, growing even as the missiles fly.

More than 30 percent of Gazans have no jobs and no prospects, living in a kind of permanent limbo. When the power plants haven't been bombed by the IDF, most Gazans only enjoy electricity for 12 hours a day. Gaza's natural water sources are severely limited, much of it appropriated by Israel, and the 80 percent of the Strip's

groundwater is dangerously contaminated. Living conditions from Rafah to Gaza City are dire.

Gaza is weak. Its government is bankrupt, riven by internecine tensions between Hamas and the Palestinian Authority, which have been deviously exploited by the US and Israel. It has no army, no air force, no navy. It has no tanks, no anti-aircraft batteries, no armor-piercing weapons. Gaza has a few primitive rockets, mortars, rusty firearms, rocks, begging slogans

Gaza has no allies. The Arab monarchies fear Hamas more than the Israelis. Mahmoud Abbas, the Marshal Petain of the Palestinian Authority, has helped the Israelis target Hamas leaders. Turkey and Qatar, once reliable sponsors of Hamas, seem to have been bought off.

As the death count mounted, most of the world simply turned its eyes from the carnage, cringing only when UN schools were obliterated by Israeli airstrikes. Out of indifference? Out of shame? Out of guilt?

Everyone seemed to be getting in on the action, even Google, which was selling a "Bomb Gaza" game, an app for Android phones which allowed players to target their missiles strikes in Gaza City. Points deducted for civilian casualties.

But is that kind of blood sport really any worse than the gaseous outbursts of Bill Maher, America's most bombastic atheist? Maher regularly asserts that Israel is the only democracy in the Middle East and defended the bloodbath in Gaza by Tweeting: "Dealing w/ Hamas is like dealing w/ a crazy woman who's trying to kill u - u can only hold her wrists so long before you have to slap her." He says this without once addressing the fact that Israel is a religious state, where the full-rights of citizenship are accorded only to Jews. Maher is a prime-time bigot whose popularity with progressives is a bracing measure of the moral decline of the American left.

Meanwhile, the US has played its accustomed role of dishonest broker, by secretly sabotaging the unity government between Hamas and the PA and failing to make any effort to restrain Netanyahu's most savage inclinations. In his Middle East diplomacy, John Kerry doesn't shuttle so much as flutter, every tedious conversation monitored by Israeli intelligence to assure he doesn't deviate from the script. There is, naturally, some karmic justice in the wiretapping of a serial wiretapper.

There's more dissent against the war in the Knesset than in the US congress, which now functions as a

fully-programed automaton of the Israel lobby. When it comes to Israel, even Rand Paul snaps to attention, distancing himself from his father's heresies.

So Gaza stands against the Israeli behemoth: poor, weak, alone.

All of this may be so and yet one can't help but conclude that Israel's dominion is fragile. That, in fact, Israel is losing. Israel is losing, but is not yet conscious of the fact. Why? Because it is Israel, which has surrounded itself with walls and covered itself with an Iron Dome, which is truly isolated, which exists in a hothouse of its own design, exposed to the merciless law of entropy.

With Netanyahu strutting like a blow-dry Pompey Maximus, the IDF feels compelled to assert its power every four or five years with fusillades of rockets and bloody ground incursions. The nation has become seduced with it's own technological omnipotence: it's sophisticated weaponry, it's drones, it's Iron Dome. Israel has now gone beyond blaming the victims. The goal now seems to be one of annihilation. First of Palestinian identity, then the Palestinians themselves.

There is a bloody dialectic at work. The path that Israel has chosen, one of separation and isolation enforced by eruptions of extreme violence, will lead inexorably to its own ruin. As for the people of Gaza, the tenacity of their resistance, their unshakeable will to be free, is an affirmation of their humanity — and that is the most decisive rebuke of Israel's revolting cruelties.

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# THE SENSE OF DISCONNECTION IS UNREAL

THE sense of disconnect is unreal and formidable. The US military is slowly moving back into Iraq and it is armed to the teeth once again. Joining the military are any number of CIA agents, mercenaries and unnamed operatives whose purpose is to kill whatever force might be the enemy of the week while convincing the civilian population the Pentagon means no harm. Accompanying this buildup in Iraq is a new endeavor against Iraq's neighbor Syria. US planes will soon be bombing people and villages in that war ravaged land while a mercenary force assembled by the reactionary regime in Saudi Arabia (with assistance from the CIA) takes aim against those it opposes. In both cases, the original targets are supposedly those forces going under the name Islamic State. However, given the hatred of the Assad regime emanating from the US and Saudi Arabia, one feels secure predicting that the ultimate targets will be those forces. One sees only disaster; disaster that will not be remedied by bombers, helicopter gunships or armed troops of any kind. Yet, the citizens of the US ignore what they see and hear and go on about their reality show lives.

Most of those that are paying attention either clamor for greater war or support the president's approach



with or without modification. Those opposed to war at all go unheard. Part of Obama's purpose in making his speech right before the annual remembrance of 9-11 began was to confuse. Like his predecessor who intentionally confused Iraq with Al-Qaida and the Taliban with Saddam Hussein, Obama hopes to connect the war he is mounting with the events of 9-11—events which continue to traumatize a certain segment of the US population and most of its political and media establishment. The point of all this is to maintain not just a war footing, but some semblance of an actual war. I say "semblance" mostly because the carnage on the US side of things

is small when compared to most of Washington's previous military adventures. The profits for those involved in such things, however, are greater than ever.

Although we are told that as one grows older they tend to become more conservative, I find this to not be the case for me. My outrage at the daily bloodshed and destruction has not paled nor diminished. Although perhaps tinged by a good deal more cynicism, I continue to be appalled at the greed of some humans and the efforts they undertake in their attempts to satisfy that greed. Meanwhile, our media

entertains us with stories of celebrity misbehavior, from sexual antics among actors to violence against women and children by athletes. The fundamental lack of compassion required to maintain an empire like that of the United States cannot be redeemed by any amount of outrage regarding the antics of a professional athlete or entertainer. Yet, virtually everyone has an opinion regarding this misbehavior while only the most politically minded seem to have any opinion on the political issues of the day. In the United States and in many other nations, the political opinions celebrated in the press are primarily of the right-wing variety, even when they pretend to be otherwise. What I mean by that last statement is that the parameters of debate are skewed so far to the political right that there is essentially no such thing as a political left, at least not in the mainstream media.

There is plenty of beauty left on this planet. Yet, ugliness seems to be the stronger current, subsidized as it is by the machinery of capital and encouraged by those who serve that almighty mammon. Meanwhile, while these slaves to mammon wage their wars and ravage the planet, they work to place whatever beauty remains behind tollbooths and fences, hoarding the remaining beauty for those who can afford it. This process, called neoliberalism, privatizes national parkland and forests directly or by selling naming rights, maintenance and other elements involved in preserving parkland to corporate enterprises. Often, those corporations are involved in activities diametrically opposed to the park's livelihood (i.e. logging industry maintaining national forests.) As for human beauty itself, not only does it come at a price, but it too is homogenized into a few models. Those who wish to fulfil the corporate ideal of beauty pay for synthetic assistance in the matter.

Even history, no matter how gruesome, is repackaged and sold. A recent example of this recently occurred in the US. First, a little history. In May 1970 during protests against the US invasion of Cambodia four students were murdered by troops firing into the crowd of protesters. This action by the troops created an upsurge in already burgeoning protests and the shutdown of over one-third of the university and college campuses in the US. While other countries have experienced much worse scenes of murder

and mayhem at the hands of police and military forces on their university campuses, the murder of these four students remains the most deadly police action against student protesters in US history. So, after forty-four years, the corporate clothing chain Urban Outfitters decided to cash in on this incident by designing and selling a sweatshirt featuring the Kent State University logo and several blood-colored spots designed to look like bloodstains. Naturally, the company told the media that it wished to remind its customers of this tragedy. In reality, it is all about the money. By turning this moment of history into a sweatshirt, Urban Outfitters has trivialized the deaths, the protests, and the antiwar movement itself. It also received a lot of free advertising.

In closing, let me return to my previous comment regarding athletes and domestic violence. The politicians and media commentators who have filled the airwaves with statements blaming the professional sports leagues for their avoidance of the matter until a video was released have barely acknowledged the more fundamental violence in capitalist culture. Beyond the fact of a sport that emphasizes brutality is a culture based on predation and death. Virtually every politician, male or female, who has called the US National Football League on the carpet for its lukewarm policing of its players involved in domestic violence, has ultimately supported every US military adventure. Some like Senator Elizabeth Warren of Massachusetts also vocalized support for the recent Israeli attacks on hospitals and schools. And she did so without any apparent understanding of the dissonance between that support and her opposition to women being beaten by their partners.

Like I said a few hundred words ago: the sense of disconnect is unreal.

*Ron Jacobs is the author of The Way the Wind Blew: a History of the Weather Underground and Short Order Frame Up and The Co-Conspirator's Tale. Jacobs' essay on Big Bill Broonzy is featured in CounterPunch's collection on music, art and sex, Serpents in the Garden.*



# JOSÉ PADILLA

## THE ENDLESS DETENTION

*Our government has subjected José to extraordinarily harsh conditions of solitary confinement and isolation.*

*- José Padilla's legal team, Guardian, Sep 9, 2014*

IT is a combination of vicious Savaranola, heat warming inquisition and bible bashing, but it seems astonishing that José Padilla is still behind bars. This, it must be said, is hardly because he is angelic, the paragon of saintly virtue. Chicago gang member with a string of convictions, and convert to Islam, he was always a different breed of citizen. What made him, however, special, was the extra-judicial treatment he received at the hands of the US government.

He had been arrested on his return from Pakistan in 2002 at Chicago's O'Hare airport, and held as an enemy combatant. The cloud that has hovered over him ever since his subsequent convictions lay in a supposed radiological "dirty bomb" plot.

He has become the sacrificial beast (we can leave lamb aside), reminding both historian and freedom lover

### THE CORRECTIONIST

Binoy Kampmark



what the US empire did in response to its bleeding on September 11, 2001. Legal challenges have been many and protracted. President George W. Bush sent Padilla to a military prison – a South Carolina navy brig – for over three years as an "enemy combatant" though the designation was scrapped by potential Supreme Court determination.

That did not stop Padilla being added to another case involving Adham Amin Hassoun and Kifah Wael Jayyousi. The Padilla case also revealed the darker side of detention in the elastically conceived "war" against terror – the use of psychotropic drugs, "truth serum", exposure to conditions of

heat and cold, shackling and sleep deprivation.

In 2007, Padilla was sentenced to 17 years and four months in prison on charges of conspiracy to murder, kidnap and maim people overseas and conspiracy to provide material support for terrorism and providing material support for terrorism. In 2011, the 11th US circuit court of appeals found that US district judge Marcia Cooke had erred in taking into account the three years Padilla was held on the brig. He was

designated dangerous, and the wise judicial heads found themselves nervous at the prospect of letting him off too early. "He is far more sophisticated than an individual convicted for an ordinary street crime."

As recently as September 8, 2014, a new sentence was handed down – 21 years. The appeals court evidently felt that the legal system had somehow gone soft on the detainee. The prosecutors were themselves suggesting that they would not have sought a tougher sentence on the proviso that Padilla's defence team did not introduce records connecting with Padilla's time in prison.

The twist in this whole saga remains perverse. Padilla's holding for three and a half years was itself an act of executive vanity and abuse of power. He is a reminder that speculation by executive determination, when it becomes law, is insidious. As Robert A. Levy of the Cato Institute (Aug 11, 2013) explains, Padilla's case is an instance of "no charges, and no trial, just jail." It ignores that great warning of James Madison in the Federalist No. 47: "The accumulation of all powers, legislative, executive and judiciary, in the same hands... may just be pronounced to be the very definition of tyranny."

It is worth noting that what was undertaken against Padilla is extraordinary. It flies in the face of such laws as Title 18, Section 4001(a) of the US Code, which states that, "No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress."

Not even the infamous liberty crunching PATRIOT Act provided the accusers an example – that act makes the detention of non-citizens of the US permissible for up to seven days. Exceptions can be made in the case of the attorney-general, who needs to certify every six months if any exceptional individual presents a security risk.

The Padilla precedent acts like an established paralysis on the legal system. It suggests that a US citizen, and not even a confirmed combatant at that, can be imprisoned without charge. As Judge Harvie

Wilkinson of the Fourth Circuit noted in the context of another case – that of US citizen Yaser Hamdi, "With no meaningful judicial review, any American citizen alleged to be an enemy combatant could be detained indefinitely without charges or counsel."

Padilla has been something of a profane sacrifice in the excruciating twists of a legal system in need of tweaking. We have laws, but we are also happy to bend them in dexterous fashion when we need to – the tree of liberty may require the manure of blood, as Jefferson might well have tooted about, but that very same tree evidently needs to sway.

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repeal  
AFSPA



WHAT IS AFSPA?

- AFSPA empowers the armed forces to arrest without warrant. Shoot-to-kill, and destroy property in notified "disturbed areas"
- First enacted in 1958 as short-term measure, it has been in force in parts of the Northeast and Jammu & Kashmir in India

How many days must a woman fast before she is free?



# WAR TROPHIES

## A Visual Act of Triumph and Torment

by AHLAM CHEMLALI

*Wild animals never kill for sport. Man is the only one to whom the torture and death of his fellow creatures is amusing in itself.*<sup>1</sup>

**MOST** of the ancient civilizations of Mesoamerica such as the Olmec, Maya, Mixtec, Zapotec and Aztec cultures practiced some kind of taking of human trophies during warfare. Captives taken during war would often be taken to their captors' city-states where they would be ritually tortured and sacrificed. These practices are documented by a rich material of iconographic and archaeological evidence from across Mesoamerica.<sup>2</sup>

In ancient Greece and Rome, military victories were commemorated with a display of captured arms and standards. A war trophy was originally a war memorial assembled from such items on a battlefield. Body parts of slain enemies have sometimes served

as trophies since antiquity, in a practice called human trophy collecting.<sup>3</sup>

The series of images date back to mythology with an oil painting of the Greek hero Achilles dragging the body of Hector behind his chariot after his success in the Trojan Wars is an early testament that war often leads to the victorious publically and graphically displaying their bloody triumphs over their enemies.

The visual representation of violence, torture and conflict is certainly not new; the long history of communicating battles via pictures and symbols and artists painting scenes from war and violent political events have existed for centuries.

However, in the era of smart phones and social media, war trophies have been taken to a whole new level. The ability to share disturbing and macabre images and video to the public instantly provides a new understanding of torture and suffering as a public matter.

3 A. P. Fox (1987), "Silent Sentinels: The War Trophies of the First New Expeditionary Force in War and Peace", B. A. Hons, Otago University.

1 James Anthony Froude, English historian and novelist (1818-1894)

2 Berryman, Carrie Anne. (2007) "Captive Sacrifice and Trophy Taking Among the Ancient Maya" in The Taking and Displaying of Human Body Parts By Amerindians, edited by Richard J Chacon & David H Dye, pp. 377-399. Chapter 13. Springer Science + Business Media, New York.



Mythology: An oil painting by Donato Creti depicts Greek hero Achilles dragging Hector's body behind his chariot in the Trojan wars. <http://www.dailymail.co.uk/news/article-2132856/Graphic-pictures-testify-war-victors-posing-humiliating-dead-enemies-gone-centuries.html>

War trophies have been present in recent war zones, e.g. in Syria, Iraq and Afghanistan and many more.<sup>4</sup> Libya is no excuse. During the war in Libya in 2011 a lot of the torture and rape was documented on video, mainly on mobiles<sup>5,6</sup>. Filmed torture seems to have been a form of self-amusement and pleasure, a victorious performance and a consistent way of spreading and exposing fear in the society.

During my field studies in Libya after the war in 2011, I experienced firsthand how militia members talked about seeing videos with rape, torture or severe violence, and some I witnessed myself. Some of the videos of rape and torture were so widespread and popular that people would name characters from the videos, like "The Butcher from Misrata", or the "Rapist from Brega", as if they were actors, playing in a horror snuff movie<sup>7</sup>.

From late 2003 to early 2004, during the Iraq War, Military Police personnel of the United States Army and the Central Intelligence Agency committed human rights violations against prisoners held in the Abu Ghraib prison. They physically and sexually abused, tortured, raped, sodomized, and killed prisoners, while documenting these heinous crimes on camera.

4 Sherene Razack (2005). *Dark Threats and White Knights: The Somalia Affair, Peacekeeping and the New Imperialism*. Toronto: University of Toronto Press, 2004. *From Peacekeeping Violence in Somalia to Prisoner Abuse at Abu Ghraib: The Centrality of Racism*. GLOBAL DIALOGUE Vol. 7, Number 1-2, 2005. Humanitarian Intervention.

5 CNN, (2011). *Libyan rebels say captured cell phone videos show rape and torture*. June 17, 2011. Available: <http://edition.cnn.com/2011/WORLD/africa/06/14/libya.rape.hfr/index.html>

6 UK Reuters, (2011). *Rape used as weapon of war in Libya and elsewhere - U.N.* June 10, 2011. Available: <http://uk.reuters.com/article/2011/06/10/uk-un-rape-idUKTRE75947120110610>

7 Chemlali, Ahlam (2013). *Victims of torture and related violence in Libya : a qualitative assessment with a view to enhance a quantitative needs assessment in a post-conflict context*. University of Copenhagen. Faculty of Health and Medical Sciences, Copenhagen.





On several occasions in Afghanistan, recently in 2012, a video posted online showed four U.S. marines urinating on bloody Afghan corpses. One of the men can be heard saying, ‘Have a great day, buddy’ as his colleagues laugh and another jokes, ‘Golden like a shower’ and ‘Yeahhhh!’

The role of the camera is seen as reflecting rather than framing and is indeed orchestrating the events, for one must ask if this particular kind of humiliating torture would have occurred without the presence of the camera. It is as if the committer does not perform the torture; rather, the camera becomes the torturer as a weapon of humiliation and suffering.

### Theatre of War

While the images are seen as disturbing within dominant frameworks of understanding, it is because they are seen as repulsive or embarrassing and not because they are recognized as revealing human suffering contra triumph. They are violent and they expose violence but in their viewing it is the shocking qualities of the image, the sexuality, bodily fluids and smiling faces of the soldiers or prison guards, that are emphasized rather than the precarious humanity of the detainees and corpses.

They fail to humanize because the subjects are not seen as human according to the victors and the dominant norms of race, class and sexuality.

For Judith Butler, dehumanization affects who and how we grieve when lives are lost. Some deaths remain ungrievable, particularly when those who have been killed were never considered to have valid lives: *“Violence against those who are already not quite living, that is, living in a state of suspension between life and death, leaves a mark that is no mark”*.<sup>12</sup> As Butler infers, those who are pushed to the periphery of what is human cannot be considered worthy of grief, but killable and as an icon or symbol of superiority and strength and absolute victory.

### Torture Porn and Snuff Violence

The pictures from Abu Ghraib were taken for the enjoyment of the guards and a circle of friends, family and acquaintances. The images therefore operate more as snuff photos for those who are entertained by the consumption of visual violence. By drawing the viewers attention towards blood, feces and nakedness and away from the suffering human.



Libyans queued for a final, morbid picture of Gaddafi's bloated, blood streaked body. (File Photo)

I remember watching a video shot on a cell phone from Libya that went viral in 2011, which CNN obtained a copy of. It shows a woman being sexually abused. It shows two men in civilian clothes standing over a naked woman who is bent over and tied down with her face on the floor. The man standing behind her is sodomizing her with what appears to be a broomstick. “I can’t bear it! I can’t bear it!” the woman cries. “Let’s push it farther,” a male voice says off-camera. “No, no, that’s enough!” the woman begs.<sup>8</sup>

Many common conventions of snuff film are found in the images taken at Abu Ghraib, in Afghanistan and videos in Libya. Bondage and torture, standing on or urinating on victims, violent rape and strangulation are all present in the war trophies and intersects between porn, reality and violence.

The images and videos subscribe more closely to the conventions of violent pornography and snuff entertainment in that the photographer is actively involved in perpetrating violence and the camera perpetuates violence as much as it records it. Torture and abuse becomes the purposes of entertainment, degradation and dehumanization.

According to David Kerekes and David Slater, “snuff films depict the killing of a human being...perpetrated for the medium of film and circulated amongst a jaded few for the purpose of entertainment”.<sup>9</sup>

Specifically, this intersection between snuff, pornography and the abject is illustrated through the highlighting of bodily fluids. The abject refers to the human reaction (horror, vomit) to a threatened

<sup>8</sup> <http://edition.cnn.com/2011/WORLD/africa/06/14/libya.rape.hfr/index.html>

<sup>9</sup> Sarracino, Carmine and Kevin Scott. “The Nexus of Porn and Violence: Abu Ghraib and Beyond.” *The Porning of America: The Rise of Porn Culture, What it Means and Where We Go From Here*. Boston: Beacon Press, 2008



breakdown in meaning caused by the loss of the distinction between subject and object or between self and other. The primary example for what causes such a reaction is the corpse (which traumatically reminds us of our own materiality); however, other items can elicit the same reaction: the open wound, shit, sewage, even the skin that forms on the surface of warm milk.<sup>8</sup>

As Kristeva describes: “A wound with blood and pus, or the sickly, acrid smell of sweat, of decay...these bodily fluids, this defilement, this shit are what life withstands, hardly and with difficulty, on the part of death”.<sup>10</sup>

In many of the images from Abu Ghraib, the presence of these markers of the abject are undeniable: prisoners covered in mud and feces, puddles of urine around shackled feet and blood stains on the floor. By reducing victims to their bodily fluids, as is common in snuff films, the images deny the properties of life publically and discard the prisoners from the human into the abject by drawing the viewers attention towards blood, feces and nakedness and away from the suffering human.

Humanizing or De-humanizing?

The 20th October 2011 rebel fighters found Gaddafi hiding in a concrete drainage pipe after a long and bloody siege of the former leader’s home city of Sirte. He had gone into hiding in August, six months after the Libyan uprising began and five months after NATO’s military intervention.

Amateur videos taken at the time of his capture showed him injured but alive, surrounded by a frenzied crowd of jubilant rebel fighters. He is hustled through the crowd and beaten to the ground on several occasions, before he disappears in the crush and crackle of gunfire. Footage emerged on the internet of fighters holding a silver revolver at the former Libyan leader’s temple in a chaotic lynching as he was surrounded by members of the rebel militia, his dead body was dragged along the pavement. A frame by frame analysis of the video clearly shows the rebels

10 Julia Kristeva, Powers of Horror: An Essay on Abjection. New York: Columbia UP, 1982.

sodomizing Gaddafi by inserting some kind of stick or knife into his rear end. It is unclear as to whether the instrument was a knife from the end of a machine gun, which Libyans call a Bicketti.<sup>11</sup>

In the mobile video Gaddafi can be heard pleading with his captors to stop attacking him. “What you are doing is against Islamic laws,” he shouted. “Do you know right from wrong?”<sup>12</sup>

The whole capture was immediately uploaded and televised on all TV channels as breaking news. The former Libyan leader was captured and dead.

His corpse was on public display for three days.

Ready with cameras and mobile phones hundreds of Libyans queued up outside a refrigerated meat store in Misrata, where the dead dictator was being stored as a trophy. A guard allowed small groups into the room to celebrate next to Gaddafi’s body. They posed for photos, flashing victory signs.<sup>13</sup>

Stripped to the waist, the corpse was placed on a plastic-wrapped yellow mattress, bullet wounds were clearly visible on his temple and stomach, and deep scratches were etched into his chest. Young and old, crouched next to the bloody bloated corpse, posed for photographs, many raising their hands in the ‘Victory’ symbol. The photos were immediately sent around the world on news channels and social media.

Butler writes: “The body implies mortality, vulnerability, agency: the skin and the flesh expose to us the gaze of others, but also to touch, and to violence, and bodies put us at risk of becoming the agency and instrument of all these as well”.<sup>14</sup>

As Butler suggests the presence of a body reveals all the things Gaddafi has been denied in the rhetoric of

11 <http://www.globalpost.com/dispatch/news/regions/middle-east/111024/gaddafi-sodomized-video-gaddafi-sodomy>  
12 <http://www.dailymail.co.uk/news/article-2052178/GADDAFI-DEATH-VIDEO-Moment-Libyan-dictator-killed-bullet-head.html#ixzz3C3q0V4fR>  
13 <http://www.theguardian.com/world/2011/oct/21/muammar-gaddafi-body-misrata-meat-store>  
14 Butler, Judith. Precarious Life: The Powers of Mourning and Violence. New York: Verso, 2004.

evil that surrounds him; mortality and vulnerability are rarely attributed to him yet they appear in the footage of his death, an appearance made possible by the visual encounter with his violated corpse. The videos of Gaddafi’s final minutes were captured via mobile phone. Unsanctioned and amateurly recorded, the videos offers a view of Gaddafi that was not intended, and does so via a medium that enables Gaddafi’s humiliation and suffering to be broadcast to the world.

The young men who posed for the cadaverous pictures have never known a Libya without Gaddafi, and have grown up surrounded by giant propaganda images of the ‘Brother Leader’ and the ‘King of Kings’, an almost omnipotent creature, indestructible and immortal leader.

It was as if the body of Gaddafi as a war trophy, humanized him, opposite the Abu Ghraib war trophies that dehumanized them. The illusion of Gaddafi as the powerful and imperishable leader was destroyed by a mobile phone video, and reduced to a human of flesh and blood and finally depicted as a Trophy. An unimaginable and unconceivable transition, that people had to travel and queue for to document with pictures, the former leader and with it the former regime as the incarnated oppression. And so a brutal new beginning and a macabre manifestation of freedom was born.

The New Act

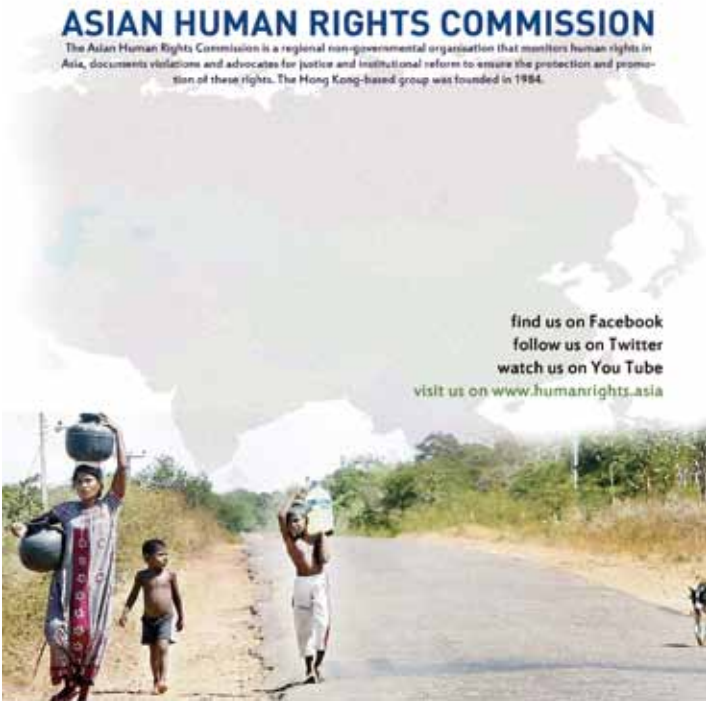
The modern expression of war trophies, still share the same elements of Hector dragging Achilles body behind his chariot, by victoriously publically and graphically displaying the triumphs over the slain body of the enemy. The distinctive difference is that we no longer have to wait for an artist to depict the victory on oil canvas. We live in an era of information technology which allows us to instantly, and in high quality distribute and share trophies with the public. So instead of having a necklace of fingers or a chain of ears, the trophy is in your pocket on the mobile phone. Thus, videotaped beheadings and images of mutilated corpses as trophies uploaded on the internet have become the New Act of the Theatre of War.

Previously intended for a few initiated ones, torture images and snuff film has now become an undeniable unrestricted field for everyone to join and witness. The camera or mobile phone becomes the visual torturer as a weapon of both humiliation and amusement. This blurs the lines between torture, porn, reality, war and heroism and subsequently we find that torture and abuse becomes entertainment for the masses.



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# THAILAND

## REFORM UNDER THE JUNTA IS FARCE

by SULUCK FAI LAMUBOL

**THIS** October marks the fifth month of Thailand's thirteenth coup d'état. Since May 22, when the previous government was overthrown, the parliament, constitution and the citizens' freedoms have been suspended in the name of ridding political chaos and moving the society forward. Indeed, the majority of Thais are tired of the political protests, clashes and disagreements among leaders amidst the long-standing deadlock since October last year.

The junta leader cum Prime Minister General Prayuth Chan-ocha tried to justify overthrowing the democratically-elected government led by Yingluck Shinawatra as the sole solution out of the serious problems the country is facing. Because the country is permeated with corruption, he said, suspending the electoral process and major overhaul was necessary before people could exercise their rights according to the constitution again.

Flaunting the word 'reform', 'rule of law' and 'democratic process' everywhere he goes, General Prayuth is deceiving himself and the world with the major suppression happening at home. Unless he allows space for the dissenting voices and those opposing the military rule, this so-called reform will not yield any legitimate or valid results.

Confronted with dissidents who oppose the coup, the junta has utilized the Emergency Decree and the interim constitution that grants freewheeling power to the military government to suspend any action they think undermines order and security. According to iLaw, the Bangkok-based legal advocacy NGO, 59 people have been charged with violations of the Emergency Decree for political gatherings of more than five people. One of those was Pansak Srithep, a father of a 17-year-old boy who was shot dead by the military during April 2010 political violence. Pansak was distributing handouts seeking justice after the military leaders responsible for his son's murder were exonerated by the criminal court. They were fined 5,000 baht (166 USD) each, and then released.

The number of people charged and prosecuted under the draconian lese majeste law has drastically increased after the coup. As of October 25, at least 14 people have been charged with defaming the monarchy. They include a 67-year-old man writing a message on the wall of a mall restroom [1], a 26-year-old activist performing political theater [2] and a taxi driver discussing politics with a passenger [3]. In a recent case, two army officers filed a complaint against the well-known social critic, Sulak Sivaraksa, for "defaming" an ancient Siamese King in an academic discussion on deconstructing history [4].

This chilling atmosphere even affects the academic setting. iLaw recorded that since the latest coup, the military ordered to suspend ten academic-related events, including talks on foreign dictatorships, the interim constitution, Thai education and Israel-Palestine conflict. Similarly, the civil society leaders on energy reform [5] and decentralization were also ordered to suspend a political gathering as it was considered disturbing peace and order.

"

If the government truly wants the society to participate in this reform process, it must not be executed under the oppressive atmosphere where dissidents are arrested, imprisoned and forbidden to speak out.

"

Now the process of "reform" is shaping up. The National Legislative Assembly (NLA) and the National Reform Council (NRC) have been filled with hundreds of figures cozy with the conservatives and the military. A striking 52 percent of the members of the NLA, which will be responsible for passing laws and stamp final approval on the new permanent constitution, are active duty military officers or retired military personnel. Interestingly, that number exceeds the number of military officers in the Burmese parliament, which is 25 percent. [6].

Likewise, the members of the NRC, who are experts in various fields working on recommendations and drafting the new permanent

charter, are known for their stances against the ousted Prime Minister and support for the conservative establishment. More than half of the NRC members are bureaucrats and business people, therefore it would not be surprising if the outcome of the new constitution would reduce the power of elected political parties and increase that of the bureaucrats. Getting rid of the populist Prime Ministers of the Shinawatra families from Thai politics has been the military's openly secret aim for past takeovers.



Corruption is one of the issues that the junta says they wanted to tackle. The National Anti-Corruption Commission is still pursuing the case against former Prime Minister Yingluck Shinawatra, who is responsible for the failure of the rice-pledging scheme. She could be tried in the Court for Person Holding Political Position if she is to be prosecuted. However, the same Anti-Corruption Commission recently declared that the junta, as well as the members of the NRC, need not declare assets. The junta needs to assure that their reforms would not be used as political tools that could benefit one political group over another.

If the government truly wants the society to participate in this reform process, it must not be executed under the oppressive atmosphere where dissidents are arrested, imprisoned and forbidden to speak out. If General Prayuth truly believes in human rights and the democratic process as he said himself in front of foreign leaders, he should immediately abolish the Emergency Decree and hold a fresh election. The government should let the people choose their government, design the constitution and reform the issues affecting them. The imposition of the elite-drafted constitution on the people without even holding a referendum will only deepen the conflicts the Thai society is facing.

- [1] <http://prachatai.org/english/node/4427>
- [2] <http://prachatai.org/english/node/4440>
- [3] <http://www.prachatai.org/english/node/4285>
- [4] <http://prachatai.org/english/node/4416>
- [5] <http://prachatai.org/english/node/4436>
- [6] <http://www.prachatai.org/english/node/4266>

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CHAPTER VII 35. (1)  
While any person holds office as President, no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity.  
(THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA)



**SRI LANKA**  
Executive Presidency is anti-democratic  
and it should be abolished

## STUDY

# THE PSYCHOLOGY OF TORTURE

*The Milgram experiments showed that anybody could be capable of torture when obeying an authority. Are they still valid?*

by MALCOLM HARRIS

**THE** year was 1960, and Dr Stanley Milgram had a theory about Germans. Only 27 years old, Milgram was a rising star in social psychology. He had just finished his doctorate work at Harvard on the phenomenon of conformity and begun a prestigious professorship at Yale. For his first experiment as a full-fledged academic, he wanted to push the literature on conformity further, to make it less abstract. Ever ambitious, Milgram didn't just want a bigger challenge, he wanted to recreate the Holocaust, to quantify and study it at the microscopic level. And unfortunately, he got his wish.

Milgram's graduate dissertation on conformity followed the famed work of Solomon Asch, a professor of psychology at Swarthmore College. Asch's 1951 experiment requires a small group made up of confederates (ie, knowing actors) and one unknowing subject. They are presented with a card with a single

black line, then shown another card with three black lines of varying length. The participants must pick one line out of the three that matches the single line. It's a task so easy everyone gets it right on their own, but in this experiment the unknowing subject goes last, after the confederates have all given the same wrong answer. Asch found that under these circumstances a third of subjects routinely conform by giving the incorrect response.

Milgram tweaked Asch's experiment a bit – using auditory tone lengths instead of lines – and sought an international comparison. (He wanted to use Germans, but his adviser persuaded him to use Norwegian and French populations instead.) The results would go on to be published in *Scientific American*, but Milgram was unsatisfied. This is how he described his thinking at the time to Richard Evans in *The Making of Social Psychology* (1980):



One of the criticisms that has been made of [Asch's] experiments is that they lack a surface significance, because after all, an experiment with people making judgments of lines has a manifestly trivial content. So the question I asked myself is, 'How can this be made into a more humanly significant experiment?' And it seemed to me that if, instead of having a group exerting pressure on judgments about lines, the group could somehow induce something more significant from the person, then that might be a step in giving a greater significance to the behaviour induced by the group. Could a group, I asked myself, induce a person to act with severity against another person?

Milgram made sketches of a long box with circular buttons numbered one through nine. It was an electric shock indicator, a way to quantify and measure a person's willingness to torture. This was the significant test he was looking for. No one would be actually shocked, of course, but the confederate would fake it. There was only one problem: in Asch's experiment, it was easy to get a control test without group pressure; all you had to do was give the same line test to an isolated individual. But without the group, a lone person wouldn't have any cause to shock a stranger. The control would require the experimenter to *order* the subject to perform.

In what he later called an 'incandescent moment', Milgram became more interested in the control than the test. He wondered how far people would go to follow his orders, and so he shifted the experiment's focus from conformity to obedience. He planned to try it on Americans in New Haven, after which he would perform the experiment in Germany to see how the two compared. But once he saw the first results, Milgram knew the German comparison wouldn't matter.

You probably already know the story: the subjects were far more obedient than they were expected to be, in both frequency and intensity. Milgram surveyed other psychologists before he ran the experiments, and his consulting group guessed about a tenth of one per cent (.125) of subjects (only sadists and psychopaths) would max out the voltage before refusing. Instead, 65 per cent of subjects hit the 450 volt button – labelled 'XXX' instead of 'lethal' in the final model – three times before Milgram cut them

off. All subjects reached 300 volts, which meant they believed they had administered 20 distinct shocks. It was a successful experiment. Too successful. Cross-cultural comparisons were beside the point if most Americans were already Nazis just waiting for the right orders.

*He was haunted by the  
demon of obedience, of  
Eichmann and the gas  
chamber, and he took an  
active role in calling it forth*

In his book *Obedience to Authority* (1974), Milgram published the results of his first experiment, along with the different variations he'd tried. It's an ostensibly dry text, yet a narrative seeps through the columns of results and lists of control conditions. In the context of the first experiment's unexpected results, the changed versions look like a man digging desperately for a limit. In the second test, he had the shocked confederate call out in pain and plead for mercy, clearly audible through the wall. A few more subjects stopped early, but only one person fewer went all the way. In the third test, Milgram put the victim in the same room as the shocker, but still 40 per cent got through 450 volts. Determined to find something humans wouldn't do, the fourth version of Milgram's experiment required the subject to hold down the confederate's hand on a shock plate, even as he refused to co-operate and begged to be set free. Still, 12 of 40 subjects went all the way.

Milgram kept looking for ways to isolate the reason for this failure of empathy. He tried to establish a new baseline by having the confederate complain of a heart condition and scream as if he were actually dying. After 330 volts, the confederate would make no response, as though now unconscious or dead. It didn't move the needle. 'Probably there is nothing the victim can



Stanley Milgram and his 'shockbox'. Photo courtesy The Chronicle of Higher Education

say that will uniformly generate disobedience,' wrote Milgram. Begging for your life, it turns out, doesn't do much good. Milgram could get subjects to rebel if he inserted disobedient confederates or a second authority with conflicting orders, but he never found a vaccine. In the epilogue of *Obedience to Authority*, he concludes that the human willingness to obey orders is 'a fatal flaw nature has designed into us, and which in the long run gives our species only a modest chance of survival'. This had not been his hypothesis, nor was it his hope.

The spectre of Nazism and the banality of evil haunted the Milgram experiment. The capture and trial of the Nazi bureaucrat Adolf Eichmann took place at the same time as Milgram's tests; the tests concluded within days of Eichmann's execution. At the core of Milgram's tests was the scientist's desire to replicate as best he could the conditions of the gas chamber. He sought to induce the Holocaust in individual subjects so that he could measure evil at the atomic level. In

an interview for *60 Minutes* in 1979, Milgram told the host Morley Safer:

I would say, on the basis of having observed a thousand people in the experiment and having my own intuition shaped and informed by these experiments, that if a system of death camps were set up in the United States of the sort we had seen in Nazi Germany, one would be able to find sufficient personnel for these camps in any medium-sized American town.

It's an ugly thing to know, and no doubt a stressful thing to prove a thousand times. After controversy regarding the ethics of his experiments, Milgram was denied tenure. He had a successful career at the Graduate Center at the City University of New York, but nothing he did could eclipse the notorious experiment he had designed in his 20s. In 1984, Milgram died, after his fifth heart attack, at the age of 51.



When I first learnt about Milgram in a high-school psychology class, I asked my grandfather, a Jewish clinical psychologist of the same era, about the experiments. He shook his head, sighed, and said 'Poor Stanley'. Milgram had hoped a version of the Nazis' own racial logic could save the rest of us from being implicated in the depths of their crimes: that there might be some distinctive evil about the Germans. But once the cross-cultural comparison was quickly deemed irrelevant, why proceed with the experiments? As a society, what do we have to gain by recreating this historical trauma?

What Milgram and his assistants told the subjects was that they were doing important work to advance the cause of science. It wasn't a *lieper se*, but the social value of this knowledge isn't immediately clear. The conclusion that man is cruel and beastly is repeated throughout art, theology and philosophy, not to mention the historical record. Milgram half-heartedly hoped that knowledge and awareness about obedience might decrease the human propensity to follow orders, but there's no evidence that this is the case. In 2007, the Santa Clara University psychologist Jerry M Burger in collaboration with ABC News reproduced the experiment under current ethical guidelines. Nearly half a century after Milgram first performed the test, they found virtually no change in compliance, even with additional warnings and disclosures to the participants. It's one of the most famous social science experiments of all time, but awareness, like pleading, doesn't seem to do much good.

And yet, despite there being no obvious social value and some obvious individual harm, researchers keep creating new Milgram experiments. In June, a group of European researchers released a Milgram-based study that cross-referenced participants' shock scores (on a mock game show instead of a lab session) with their results from a personality survey administered months later. Though the results weren't dramatic, they found that 'nice' and 'agreeable' people were more likely to follow instructions from a game-show host telling them to torture strangers.

In 2005, a research team at Eindhoven University of Technology in The Netherlands produced a study that found a novel spin: they replaced the confederate/

victim with a robot that participants had to train in word recognition. But with no sympathy for the bot, not one subject refused to obey. An international team of researchers had a similar idea in 2006 where they tried the experiment with a virtual confederate/victim. When faced with a life-size Sims-style cartoon figure, three of 20 participants disobeyed. The original Milgram experiment has also been repeated in a number of countries, including West Germany and South Africa. What all of these tests have shown is that, in a controlled situation, most people will obey an authority, even if that authority tells them to do something that conflicts with their morals; but why do research psychologists remain so interested in demonstrating the phenomenon?

Like the administrator in the experiment script, these researchers justify themselves with the pursuit of knowledge, but Milgram experiments seem to have a deeper motivation. In his essay 'Remembering, Repeating and Working-Through' (1914), Sigmund Freud introduced the idea of 'repetition compulsion'. From the perspective of pleasure-seeking and pain-avoidance, Freud couldn't understand why his patients would relive traumatic relationships from their past in therapy instead of trying to address them directly and move on. Gradually, Freud came to understand the urge to repeat as a way to master and control trauma, to take an active role in what had been a passive experience. The repetition that fills human lives 'gives the impression of a pursuing fate, a daemonic trait in their destiny', wrote Freud in *Beyond the Pleasure Principle* (1920).

Milgram was the child of two eastern-European Jews, and as an adolescent he was keenly aware that it was only historical chance that put him in New York and not a Nazi camp. His oft-cited letter to a Harvard classmate in 1958 reveals a young man beset with survivor's guilt: 'I should have been born into the German-speaking Jewish community of Prague in 1922 and died in a gas chamber some 20 years later,' Milgram wrote. 'How I came to be born in the Bronx Hospital I'll never quite understand.' He was haunted by the demon of obedience, of Eichmann and the gas chamber, and he took an active role in calling it forth from where it sits in the human psyche.

The Holocaust haunts more than just Milgram; in many ways, it's the founding trauma for social psychology. So great was its influence, that in his 1979 history of the sub-discipline, Dorwin Cartwright wrote: 'If I were required to name the one person who has had the greatest impact upon the field [of social psychology], it would have to be Adolf Hitler.'

Psychoanalysing the discipline itself helps to explain why social psychologists continue repeating the same series of experiments beyond their utility. The Jewish gestalt psychologist Kurt Lewin emigrated from Berlin to the US when Hitler came to power in 1933. Three years later, he would publish the founding equation of social psychology:  $B = f(P, E)$ , meaning that behaviour is a function of a person in their environment. Perhaps the world expert on Milgram is Thomas Blass, a Hungarian Jew born during the Second World War and himself a survivor of the genocide. So, far from being a pure, existential study of human nature, social psychology emerges from a particular moment in history.

*Milgram didn't write  
a hypothesis for an  
experiment, he made a script  
for a play. It's poor science,  
but it might be great art*

In *Behind the Shock Machine* (2012), the Australian journalist and psychologist Gina Perry assailed the very validity of the Milgram experiments. Although she initially came to the study of Milgram with sympathy for the haunted doctor, Perry quickly found a more worthy object for her feelings: Milgram's subjects. Reviewing transcripts from the experiments in the Yale archive, she found a lot of disobedience hidden in the obedience numbers, and a number of confounding variables. For example, Milgram made sure subjects knew the payment for participation was theirs even if they walked away, but in the transcripts this seems

to have triggered reciprocity with the experimenters. One subject continues only after the experimenter tells him he can't return the money. Another obedient subject remonstrates after she's finished obeying, because she quickly understands what the experiment was really about and is disgusted. In the drive for quantitative results, the procedure ignored valuable qualitative information. 'I would never be able to read *Obedience to Authority* again without a sense of all the material that Milgram had left out,' Perry writes, 'the stories he had edited, and the people he had depicted unfairly.'

In an unpublished paper Perry found in the archive, Milgram was quite candid with regard to his experiment's true purpose: 'Let us stop trying to kid ourselves; what we are trying to understand is obedience of the Nazi guards in the prison camps, and that any other thing we may understand about obedience is pretty much of a windfall, an accidental bonus.' Milgram didn't write a hypothesis for an experiment, he made a script for a play. It's poor science, Perry writes, but it might be great art.

To view the Milgram experiments as a work of art is to include the haunted young doctor as a character, and to question his reliability as a narrator. As an artwork, the experiments can tell us about much more than obedience to authority; they speak to memory, trauma, repetition, the foundations of post-war social thought, and the role of science in modernity. There is no experiment that can prove who we are but, in its particulars, art can speak in universals. Long after his tests are considered invalid, Milgram's story will live on.

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10 MOST INTERESTING INDIAN COURT CASES

EVERYONE NEEDS TO KNOW ABOUT

by RAJ DAS

SOMETIMES, I wonder why some Indian films have such boring stories. We are a land rich in source material, especially if you were to get into the real stories this country has to offer. Yes, it's a cliché but India is a great example of how often fact is stranger

than fiction. The Indian Judicial System is a treasure trove of such stories. Here are some of the most important and influential cases in Indian history. Read on.

1. K.M. Nanavati vs State of Maharashtra (1959)

This case was the last time there was a jury trial in India. KM Nanavati, a naval officer, murdered his wife's lover, Prem Ahuja. A jury trial was held to decide whether it was a crime of passion (carrying a ten year sentence) or pre-meditated murder (life imprisonment) to which Nanavati plead 'not guilty'. The jury ruled in favour of him but the verdict was dismissed by the Bombay High Court and the case was retried as a bench trial.



2. State of Orissa vs Ram Bahadur Thapa (1959)

This is a bizarre one. Ram Bahadur Thapa was the servant of one J.B. Chatterjee of Chatterjee Bros. firm in Calcutta. They had come to Rasogovindpur, a village in Balasore district in Orissa to purchase aeroscrap from an abandoned aerodrome outside the village. Because it was abandoned, the locals believed it was haunted. This piqued the curiosity of Chatterjee who wanted to "see the ghosts". At night, as they were making their way to the aerodrome they saw a flickering light within the premises which, due to the strong wind, seemed to move. They thought it was will-o'-the-wisp. Thapa jumped into action as he unleashed his khukri to attack the "ghosts". Turns out, they were local adivasi women with a hurricane lantern who had gathered under a mohua tree to collect some flowers. Thapa's indiscriminate hacking caused the death of one Gelhi Majhiani and injured two other women. The Sessions court judge however, acquitted Thapa declaring that his actions were the result of a stern belief in ghosts and that in the moment, Thapa believed that they were lawfully justified.





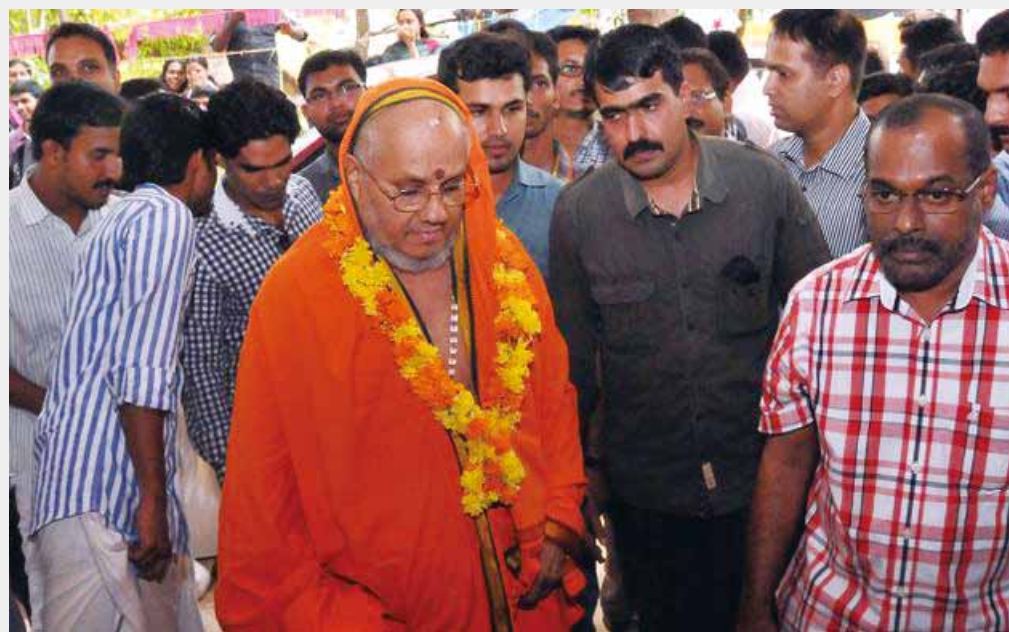
### 3. Mathura Rape Case (1972)

This is one of the most important cases in the country, because the protests that followed the verdict, forced some important changes in rape laws in India. Mathura, a young tribal woman, was raped by two constables within the premises of the Desai Ganj Police Station in Chandrapur district of Maharashtra. The Sessions court judge found the accused not guilty. The reasoning behind this was (believe it or not) that Mathura was habituated to sexual intercourse. This, according to the judge, clearly implied that the sexual act in the police station was consensual. The amendments to the law that were forced by the protests got one thing right - submission does not mean consent.



### 4. Kesavananda Bharti vs State of Kerala

If there's one reason India can still call itself 'the world's largest democracy', it is this case. Swami Kesavananda Bharti ran a Hindu Mutt in Edneer village in Kerala but the state wanted to appropriate the land. Bharti, who was consulted by noted jurist Nanabhoy Palhikvala, filed a petition claiming that a religious institution had the right to run its business without



government interference. The State invoked Article 31 which states "no person shall be deprived of his property save by authority of law." A bench of 13 judges deliberated on the facts of the case and through a narrow 7-6 majority, formulated the Basic Structure Doctrine, which puts some restrictions to how much the Parliament can amend the Constitutional laws. In many ways, the judgement here is considered to be a big middle finger to the then Central government under Indira Gandhi. Soon after, the emergency followed.

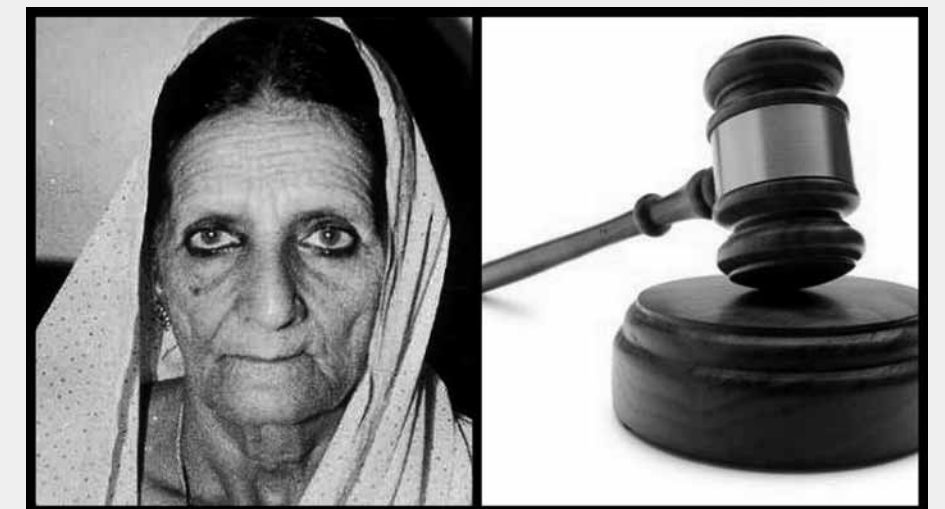
### 5. NALSA vs Union of India (2014)

This is the landmark decision by the Supreme Court of India which declared that Transgendered People were the 'third gender' and that they had equal rights as any other gender. The petitioner in this case was the National Legal Services Authority (NALSA).



### 6. Mohd. Ahmed Khan vs Shah Bano Begum (1985)

62-year old mother of five, Shah Bano Begum was divorced by her husband, Mohd. Ahmed Khan. She filed a criminal suit against him in the Supreme Court and claimed alimony, which was then granted to her. But then the Islamic orthodoxy protested the judgement claiming the practice of granting alimony as anti-Islamic. The Congress government, which was in power back then, succumbed to the pressure and passed the Muslim Women



(Protection of Rights on Divorce) Act, 1986 which diluted the Supreme Court judgement and further denied destitute Muslim divorcees the right to alimony from their ex-husbands. This case is regularly mentioned during talks about 'Uniform Civil Code' in the country.



### 7. Lal Bihari Identity Case (1975-1994)

Lal Bihari, was born in 1955; was dead through 1975 to 1994, and since then he has been an activist. Yes, you read that right. His uncle had bribed government officials to declare him dead so as to inherit their ancestral land, and so, as per official records, Mr Lal Bihari was registered as 'deceased'. Once he realized what had happened, he started his struggle against the Indian bureaucracy to prove that he was alive.



In the meantime, he performed his mock funeral, asked for widow's compensation for his wife, stood in the election against Rajiv Gandhi in 1989 and even added a 'Mritak' to his name. As of now, he heads an organization that tries to handle similar identity cases for people who have been officially declared dead but are actually still alive.

### 8. Bhawal Case (1921-1946)

It's still regarded as one of India's weirdest identity cases. It mainly revolved around a possible impostor who claimed to be the prince of Bhawal Estate, one which comprised over 2000 villages and was one of undivided Bengal's largest zamindari estates. Ramendra, the second kumar of the Bhawal estate died in the early 20th century, but there were rumours about him not really being dead. Ten years later, in 1921, a sanyasi who looked



a lot like Ramendra was found wandering the streets of Dhaka. For some reason, the former tenants and farmers of Ramendra vouched for this man and also supported his claim to the title. Almost everyone except Ramendra's widow, Bibhabati, believed him. There was a long legal process involving two trials where both sides attempted to prove their claims. In the meantime, the new Ramendra also moved to Calcutta and where he was welcomed in the elite circles. He used to regularly collect 1/3rd of the estate revenue, which was his share. He used that money to support his lifestyle while also paying the legal fees of the case. In the end, in 1946, the court finally ruled in his favour, but soon after that he passed away due to a stroke he had suffered a couple of days earlier.

### 9. Tarakeswar Case (1874)

This case was so (for lack of a better word) 'popular', that authorities had to sell tickets to let people come inside the sessions court. And the story itself is nothing short of a blockbuster. Nobin Chandra slit the throat of his 16-year old wife, Elokeshi, who was apparently having an affair with the mahant of the local Tarakeswar temple. Even though Nobin Chandra handed himself over to the police and confessed his crime, the locals were mostly on his side. The police had to let him go after two years, even though he was serving a life imprisonment while the mahant was arrested and put behind bars for three years. Alternatively, there were also rumours that the mahant had raped Elokeshi on the pretext of helping her out with "fertility issues". This case was really important for that time period because this was seen by the society as one of those moments where the British rulers meddled in the affairs of the Bengali bhadralok and a temple priest, something that was very rare back in those days.





## 10. Vishakha and Others vs. State of Rajasthan (1997)



Before the Vishakha Guidelines came in, the workplace was dangerous for many women especially in case of sexual harassment. In 1992, Bhanwari Devi was gang-raped by upper caste men in her village because she tried to raise her voice against child-marriage. Due to gross negligence, the vaginal swabs collected from her body were taken 48 hours after the incident. Ideally, it should be done so within 24 hours. Shockingly, the judge presiding over her case (this was the seventh judge after six others were removed) acquitted the accused, even going so far to say, "Since the offenders were upper-caste men and included a brahmin, the rape could not have taken place because Bhanwari was from a lower caste." Following the outrage over this acquittal, Vishakha and some other women's groups filed a PIL against the State of Rajasthan and the Union of India, forcing the latter to adopt the Vishakha Guidelines which now protects working women all over the country.

These are just a few cases that we thought were important and/or influential in India's history. There may very well be other examples and we shall always welcome our readers suggesting some of the best ones we might have missed.



*Raj Das is a writer and blogger with interests ranging from grass-roots activism to role playing video games. He is contributor to the ScoopWhoop, where this piece was originally appeared and reprinted with a special permission.*

# CLOSE BY

by K. G. SANKARAPILLAI

POEM

Neena, channel reporter  
quipped:

Mr. Nazar,  
which is your bigger success  
the Delhi blast,  
the Mumbai one,  
or this?

The one here burnt to ashes  
a language we can no more speak,  
broke to pieces the meanings within memory,  
the cool shade within the faith,  
the dream within the dream...  
They were enough  
for the poor to survive...

Shreds of screams  
lay entangled in the camera and the cable.  
It was impossible to know whether  
In their screams they said  
"You do not know what you are doing",  
whether they prayed the Lord  
To forgive you.  
Verbs tired of carrying the masculine gender  
Stood on the streets of screams  
Awaiting their turn

People fast forgot  
The voice of slain.  
The language of the slayer  
Grew cleaner and louder.  
In the voices from within  
The rolling of the dice  
The abusive laughter of the denuder...

Some tails  
groped on the highway  
uncertain whom to follow to heaven  
smelling Drama

Tell us, Nazar,  
was this the success  
you aimed at?

Nazar did not speak.  
Just spat out a mouthful of blood  
and showed his mouth:  
No tongue.  
It had been chopped off.  
The blood of language  
filled the mouth,  
the furnace ready to burn down  
all the fourteen worlds.



K. G. Sankarapillai (born 1948) is an Indian poet. He came into prominence in the 1970s with the publication of the poem "Bengal" and is now one of the most popular among the modernist poets of Kerala. A recipient of the state and central Sahitya Akademi Awards in 1998 and 2002 respectively, his writings in Malayalam have been translated into many Indian languages, as well as Chinese, French, German, English and Sinhala.

(translated from Malayalam 'Aduth' by K. Satchidanandan)



# U.S. Torture: Complicity and Accountability

After 9/11, the United States began a program of kidnapping, torture, and secret imprisonment of terrorism suspects with the help of more than 50 countries around the world. These governments allowed the CIA to abduct people from their soil, use their airports and airspace to extrajudicially transfer prisoners under brutal conditions ("extraordinary rendition"), or establish secret prisons where prisoners were tortured. In some cases, the governments participated directly, including in torture. The countries listed here are notable either for their role in the program or for their subsequent accountability efforts.

✈ EXTRAORDINARY RENDITIONS  
 🏠 CIA SECRET PRISON



## ZERO TORTURE ACCOUNTABILITY

- EGYPT**—site of CIA proxy prison (prison operated by local government; prisoners were often tortured by local officials but remained under U.S. control)
  - Admitted imprisoning and interrogating 60–70 people rendered by CIA; no government investigation
- JORDAN**—site of CIA proxy prison
  - No government investigation or admission
- MOROCCO**—site of CIA proxy prison
  - No government investigation or admission
- SYRIA**—site of CIA proxy prison
  - No government investigation or admission
- THAILAND**—site of secret CIA prison
  - No government investigation or admission

## INSIGNIFICANT TORTURE ACCOUNTABILITY

- DJIBOUTI**—site of CIA proxy prison, complicit in extraordinary renditions of foreign nationals to torture
  - Stunted government inquiry into single case closed; no government investigation of other cases
- IRELAND**—territory used as transit point for extraordinary rendition flights
  - Human Rights Commission examined the matter; no further government investigation
- LITHUANIA**—site of two secret CIA prisons
  - Parliamentary inquiry found two secret prisons existed in Lithuania and recommended criminal investigation
  - Criminal investigation closed after security services refused to provide key evidence; no charges brought; prosecutor refused to release findings on state secrets grounds or reopen investigation after additional evidence presented by NGOs
- MACEDONIA**—complicit in kidnapping, extraordinary rendition and torture of man held in secret CIA prison
  - Refused to open criminal investigation
  - Denied cooperating and lied to European Court of Human Rights about complicity
  - Found responsible by European Court for Human Rights for torture of terrorism suspect and ordered to pay compensation
- PORTUGAL**—territory used as transit point for extraordinary rendition flights
  - Stunted criminal investigation closed with finding of no wrongdoing
  - Parliament refused to open full investigation
- ROMANIA**—site of secret CIA prison
  - Senate inquiry closed; findings classified

## MINIMAL TORTURE ACCOUNTABILITY

- FINLAND**—territory used as transit point for extraordinary rendition flights
  - Foreign minister refused full investigation; parliamentary ombudsman investigation ongoing
- GERMANY**—complicit in extraordinary renditions to torture of citizen and resident; territory used as transit point for extraordinary rendition flights
  - Executive branch thwarted criminal prosecutions of CIA agents and three-year parliamentary investigation
  - Constitutional Court ruled executive branch violated constitution by failing to cooperate with parliamentary inquiry, yet Parliament failed to reopen inquiry
- POLAND**—site of secret CIA prison
  - Criminal investigation ongoing; former chief of intelligence reportedly charged with unlawful imprisonment and mistreatment, though charges may be withdrawn; prosecutor officially recognized two victims
- SPAIN**—territory used as a transit point for extraordinary rendition flights
  - Government ministers refused to seek extradition of CIA personnel; executive has opposed judicial investigations—one stayed, one ongoing—into torture and abuse
- UNITED STATES**—abused and tortured men onboard ships and in secret prisons, proxy prisons, Guantanamo Bay, and a domestic naval prison; extraordinarily rendered dozens of men to countries where they were tortured
  - Closed limited criminal investigation; no charges brought
  - Limited legislative investigations; main legislative report remains entirely classified
  - At executive's urging, courts dismissed all civil lawsuits on procedural national security grounds
  - Refused to cooperate with any foreign inquiry; pressured other governments to close investigations

## SOME TORTURE ACCOUNTABILITY

- ITALY**—complicit in kidnapping of resident subsequently extraordinary rendered to torture in Egypt
  - Convicted CIA agents, a U.S. military official and Italian officials of kidnapping (U.S. personnel tried *in absentia*; Italian president subsequently pardoned U.S. military official; court ordered compensation paid to victim and his wife)
- UNITED KINGDOM**—complicit in extraordinary renditions of British citizens, residents, and foreign nationals to torture; territory used as transit point for extraordinary rendition flights
  - Three criminal investigations: two ongoing, one closed; no charges brought to date
  - Halted government inquiry due to pending criminal investigations; inquiry findings remain classified
  - Settled most civil lawsuits with no admission of wrongdoing; paid compensation to several victims

## SIGNIFICANT TORTURE ACCOUNTABILITY

- CANADA**—complicit in rendition of citizen to torture in Syria
  - Judicial investigation completed; government admitted wrongdoing; paid compensation to victim
- SWEDEN**—complicit in rendition of two residents to torture in Egypt
  - Parliamentary ombudsman investigation completed; cooperated with United Nations inquiry; paid compensation to victims; granted residency to victim and to his family members

# UTOPIA

An Epic Story of Struggle and Resistance

FILM REVIEW



by JIM MILES

IN a clash of cultures, the one carrying the most guns, germs, and steel wins. In Australia, as with all former British colonial possessions, cultural views are dominated by white society. The First Nations of Australia, commonly referred to as the aborigines, have struggled through two centuries of subjugation by a white society that refuses to recognize the histories of the two peoples and their conflicting cultures.

As described by native elder Robert Eggington at the end of the film, "In our culture, our laws, if we were to harm the land and to hurt that land the way in which it is being done today, we would be punished spiritually severely for that. White Australia doesn't have a sense of belonging to this land and it only has a sense of belonging to the establishment and its institutions and it cities it's built here. It doesn't understand their country."

Utopia examines the many contradictions and double standards, the many ignorances of the white population, and the many cruelties and violences that they have visited on the land and people of the First Nations of Australia. It is a captivating and hauntingly disturbing film as these actions are not simply historical incidents to be forgiven by some simplistic apology, but are actions that are occurring through the beginning of the Twenty-first Century without concern for essential human rights.

The capital city, Canberra, was where a "city of white was born," and the first Prime Minister, Edmund Barton said that "equality of man never intended to apply to those who were not British and white skinned." This arrogant, ignorant, and racist viewpoint was common throughout the British empire and still clings strongly to former imperial states, but is arguably strongest in Australia.

Throughout the film, John Pilger examines the lies and platitudes of those in government with the actual historical record and with the narrative of the First Nations people.

As recently as the 1990s, there was an "ideological campaign known as the history wars." The historians claimed that there were "no invasions, no massacres, no genocide" and the natives should be grateful for Britain's arrival, as "they and their culture were all but obsolete, their history worthless. This genocide denial was the propaganda of empire, trying yet again to justify the stealing of a land, and banishment of its people."

Specific cases are examined, looking at their history, their modern history of the past twenty-five years as witnessed by Pilger, and the ongoing lack of real concern and real action to address the problems. Comparison are between a lavish resort that charges \$30,000 (AUD) per week on land from which it was "resolved to exterminate the whole race of blacks in that quarter (Sidney Monitor, 1838);" and a former concentration camp, Rattnest Island, that now serves as a holiday resort with rooms (former cells) renting at \$240 a night, where "thousands of aboriginal men and boys incarcerated here, many of them tortured and killed. Today it a hotel with a luxury spa (Karma Spa)."

Government is only part of the factor of Australia's racism. Pilger examines how the media, print and visual, support the generalized racist views within Australia. Towards the end of the film, he makes a comparison between the "lost generation"—those that were removed from their homes and families in order to deny their culture and lifestyle embedded into the landscape the government and corporations



wished to exploit (again a typical factor in other British colonial regimes)—and the much more recent "Interventions" of 2008-09, a government scheme concocted for the same reasons: exploitation of the land and its resources.

The excuse for the interventions was a false claim by a disguised government minister on a TV show about sexual abuse and drugs being rampant within the aboriginal communities. The government suspended the racial discrimination act and sent in the military, job schemes were eliminated, benefits and pensions were restricted, and a pass card was issued (how so much like South Africa, Canada, Israel and the British supported histories of apartheid). "With incomes quarantined, starvation was reported and "rates of self-harm and suicide quadrupled."

The fraud was exposed with no evidence for the charges that led to the intervention. No one paid any penalty, not the government personnel involved nor the media station (ABC, "Lateline") that promulgated the misinformation. The bitter irony of the event is

that it created situations similar to the previous "lost generation" wherein children were and still are being removed from families without explanation, many adopted for domestic servants leading to "rape and sexual exploitation used by whites against black women and children."

Enter the corporations. In 2007 a government program, "Top Secret 2" in 2007 was searching to create "the new frontier in mining." After this, and the "interventions" it was found that there

was a "huge amount of uranium and rare earths" in the affected area.

While it is mostly a service economy (as per most neo-liberal economies today) mining is a large part of the industrial economy, shipping mostly coal, iron ore, and gold to China (30%) and other Asian countries. It is "enormously profitable – one billion per week.... from minerals they didn't make from land they don't own."

In the 1980s, an attempt was made to legislate national land rights, but a combination of industry, media ads, and scare tactics were "bold, crude, and sadly effective" in defeating it. Universal land rights were abandoned. In 2010, PM Gillard attempted to raise the tax rate on the mineral super-profits, but the tax was effectively reduced to nothing, with lost revenue estimated at \$60 billion dollars.

Today, the First Nations of Australia are still discriminated against with all the resultant socio-economic problems that go along with the lack of good housing, education, and land and employment.



The Australian government and the majority of its white population hold the typical ignorant and racist British colonial views concerning other races.

Utopia addresses these issues directly, creating a picture of struggle and survival against the oppressive nature of a racist society. Australia is the “only western country repeatedly condemned for its abuse of indigenous people....reconciliation is not possible without justice.” The First Nations should be “offered genuine treaty that shares this land....until we give back their nationhood, we can never claim our own.”



**Jim Miles** is a Canadian educator and a regular contributor/columnist of opinion pieces and book reviews for *The Palestine Chronicle*. Miles’ work is also presented globally through other alternative websites and news publications.

## BOOK REVIEW

# BASIL FERNANDO’S “A CONFESSION OF A LAWYER”

by LAKSIRI FERNANDO

*“Autobiography is about change; it narrates a series of transformations. This is an expectation we bring to any autobiographical text.” - Carolyn Barros*

WHEN I picked Basil Fernando’s *Nitignayekuge Papochcharanaya hewath Mage Kathawa* (A Confession of a Lawyer or My Story), admirably written in excellent Sinhala, I got what I reasonably expected. It is a narrative of Basil’s transformations from a curious village boy from *Palliyawatta*, Wattala, to an internationally reputed human rights advocate now living in technologically advanced city of Hong Kong. Why he lives in Hong Kong is part of the story.

The first episode of his last chapter titled “The Death List” ends with a sentimental comment on his father.

*“It became clear to me from most of what I heard from others that my departure from the country greatly affected my father who was already becoming weaker and weaker because of age. I also came to know later that a frequently asked question by him was whether I would ever come back.”*



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Loss of dear ones, temporary or permanent, by departure, incarceration, disappearance or death was part of the unfolding tragedy in Sri Lanka of that time in late 1980s. The crime he had committed was to appear as a lawyer for a sister of someone who was suspected to be a ‘JVP terrorist.’ Of course Basil had appeared for several other human rights cases during that time to add to his misfortune. Anyone who exactly wants to know why he was forced to leave the country as an exile should read through the previous chapter twelve fittingly titled “Injustice Created through Law.”

## Law and Injustice

What is more important in this chapter is the contradictions and paradoxes within the legal system that he explains succinctly. The legal and the court system is supposed to protect the liberty of people under normal circumstances. But under Emergency and under the Prevention of Terrorisms Act (ACT) this is not at all the case. The whole of the judiciary was in a crisis. The judges and even the lawyers came under immense pressure and they were virtually helpless. He has outlined several of the contradictions and tragedies.

Under normal circumstances, the effort of a good lawyer is to get bail for the client as soon as possible. But under the prevailing situation, the remand prison was safer than bail or otherwise the client could have possibly disappeared after release.

The police used to submit incredible reports to keep people incarcerated. However challenging them could have amounted to being accused of abetting terrorism. No one was ready to take that risk.

To prevent possible disappearances, the clients or their families were asked to take unusual procedures. One was to petition higher officials as much as possible with much details of whereabouts of the person under arrest and let the arresting authorities also know about the petitions.

All these discussions in the biography are directly important to the prospective or the practicing lawyers

in the country. No one could be sure at what point the country might fallback to such a situation even in the future. After all, the biography is titled as a ‘confession of a lawyer.’ What might be interest to any reader is the last episode that he has related.

Basil has appeared for a client who has killed his wife quite unknowingly in his insanity. When the case was up, the Judge has called Basil to his chamber and asked how he would plead for his client and pointed out that he could give a lenient punishment if pleaded guilty for ‘homicide in insanity’ or ‘culpable homicide.’ The Sinhala term that Basil has used is ‘*Sawadya Manushya Gathanaya*’ (false homicide) which I am not aware of. That is how it was settled. The point of the story is to argue that most of what happened during late 1980s amounted to a similar insanity on the part of the whole of the Sri Lankan society.

*“There was no major difference between the mental status of all of us living in the country and the mental status of the client that I represented,”* he has noted.

The style of the autobiography is innovative. The substantive chapters from chapter nine are divided into several episodes each one impressively giving snap shots of different stages of his metamorphosis into the present status. Being a poet, other than being a lawyer, Basil has related these stories in a lyrical manner. On the contrary, being a crude political scientist, or a claimed one, I am definitely not in a position to appreciate fully the value of his literary eminence.

## Village Background

Let me however focus on the first few chapters on his ‘village background.’ As he has openly admitted, he has quite an influence from Martin Wickramasinghe in many ways. Before commenting on more controversial ideological influences, there is a clear resonation of *Ape Gama* (My Village) particularly on the first few chapters. Can he be criticized of imagining an *ape gama* through *Palliyawatta*? He cannot be.

Many of our post-independence first generation of Sinhala educated perhaps tried to imagine the same during our young days. I did the same quite unsuccessfully in my own ‘village’ at Moratuwella, and couldn’t unfortunately gather the minute details of what Basil has gathered on *flora* and *fauna* or more precisely on various types of *Ibbas* (tortoises) or *Issas* (prawns). But what differs my experience from his experience perhaps is in relation to caste and class.

In his depiction of “Internal Divisions within a Village” in chapter two, the caste system predominates and any particular mention of class divisions is conspicuously absent. Perhaps that was the exact situation in his village but this is substantially different to my experience. Of course we knew about the existence of certain families belonging to certain castes but they were not despised because of that fact in any manner. I was not even aware of my own caste until I came of age. Moratuwa undoubtedly was at the forefront of the capitalist development and the main division in my own locality was between the ‘rich’ and the ‘poor’ and not between different castes. This is one reason why Moratuwa became prominent for leftwing radicalism as the great majority obviously belonged to the poor.

What might be questionable in Basil’s analysis is that the caste system and the antecedent ideological backwardness are depicted as some evils that came after the influence of Hinduism, as he says, after the 8th century. According to historians (i.e. K. M. de Silva), the caste system prevailed in ancient times of Anuradhapura and even there were *Candalas* who were confined to do the menial work.

The genesis of the caste system was vocational and service. The basis was not primarily religion or ideology but the political economy. When there were major disruptions or final breakdown within the traditional political economy, undoubtedly the caste system became uglier socially than when it was working. This is exactly what happened under colonialism even continuing after independence. All the examples he has given shows that the so-called high castes were using the ‘stigma’ as a weapon in their social competition or to demean others when they were advancing socially.

## Transformations

Basil has always been a conscientious bloke as I knew him. His social convictions had come quite early. As he says, he was influenced by the SWRD Bandaranaike moto which was popular at that time: “*the primary duty of man is to serve mankind.*” When he was in grade nine, he has joined the seminary to become a De La Salle Brother, if I am not mistaken. Perhaps this was in 1959. He was trained at Mutwal and then in Penang, Malaysia, for this purpose. Then came a rupture even before he returned to Sri Lanka in 1964.

The first influence was the Second Vatican Council (1962) which was a renewal of the catholic doctrine more towards the needs and aspirations of the people wherever the Church worked. Basil also recounts the influence of a Dutch Catholic Priest, Fr. Henk Schram, who influenced him and others greatly even before the Vatican II. All these were towards working for the people and particularly the poor. Then came his exposure to the leftwing ideas during his study at Aquinas College for his university entrance. It is not clear however from the narrative that when he abandoned the idea to become a Catholic Brother, perhaps much later.

His study as a student of law at the University of Colombo appears to be relatively uneventful although he is critical of all what the Faculty offered him as ‘legal knowledge.’ I have no reservations on the matter whatsoever. He is critical of the professors, the (law) students and particularly of the curricula. It was in the midst of his university days that the JVP insurrection of 1971 had taken place but he was quite safe and immune. There are several key statements to this undisturbed effect.

Without becoming a practicing lawyer Basil has become an English teacher at the Vidyodaya University after his law degree. This phase seems to be quite a radical one in his life. Apart from teaching English, he had become a ‘teacher in revolution’ for the masses. For some years, he was associated with a leftwing Trotskyist organization of which I was a founder a few years ago. But by the time he joined, however, I had left the organization because of my



milder or moderate policies. We crossed our paths very narrowly. All indications were about his devotion to the cause, until he became disillusioned and left the organization for good. However, his experience within the organization must have helped him to become a lawyer with a social conscience later.

The experiences that he has related as a lawyer and the cases referred to as episodes in the evolving saga are useful insights for anyone who wish to understand the breakdown of rule of law and the predicaments of the judiciary in the country amidst social and ethnic conflicts. His story spanning for over sixty years, intermittently relates major events and incidents from the Bandaranaike era to the Eelam war in the North through two insurrections in the South.

Another tragic story that he relates is the court case of Kuttimani and his killing in the prison custody.

His later international experience, particularly in Cambodia during the peace process and reconstruction, supply more useful insights in understanding the tragedies of a country facing protracted social and ethnic conflict/s. In the case of Sri Lanka, his critical eye is unhesitatingly focused on the Police and its excesses.

### A Critical Comment

There cannot be much doubt that the story that Basil Fernando relates is part of the common story of everyone in Sri Lanka. Much of it, however, is his own interpretation quite useful for anyone to understand the events, developments and underlying causes.

As Professor Sunanda Mahendra has stated in a review, “This, I felt, is a remarkable effort in the search for the truth, and nothing but the truth.” He has also said, “As a reader, I felt that the readings of Basil Fernando are fused with a certain sense of religious-sensitivity which depicts the needs to express the inexpressibility.”

I am not sure, however, whether I can completely agree with what he says about the ‘truth and lie’

(*aththa saha boruwa*). In his Preface, he has argued that there is something called ‘the eternal difference or contrast between truth and lie.’ Second, he has argued that ‘one can only understand the above clearly if one intends and capable of understanding the truth and lie about himself or herself.’ This appears to me a very subjective endeavor although he has admitted that ‘this is not a problem that can be solved easily.’

It may be true or need to be respected that if Basil is a believer of truth and lie about this world. In my case, I am not, and quite skeptical about absolute truths except what the Buddha has said about the four noble truths. However there are valuable historical, social and political propositions and conclusions that humans have arrived at both as targets and means to achieve them. Otherwise, most of the interpretations that we make about events and developments are subject to controversy and different points of view.

I am particularly skeptical about his final conclusion or the concluding paragraph which says referring to Martin Wickremasinghe’s Bawatharnaya that “The conclusion that I have arrived at is the evolution of the social crisis that Sri Lanka facing today cannot be understood separated from the major transformations in the country around the twelfth century.” Apparent historical inaccuracy apart, one can even criticize Basil for interpreting history through the narrative of Sinhala nationalism. It is this narrative which considers all what came from Hinduism or South India to be detrimental to the glorious Sinhala civilization. Perhaps this mistake or orientation is a result of Basil’s effort to be religiously sensitive to Buddhism or the way he wanted to understand ‘what is Sinhala Buddhism.’

*Note: All the quotations are my translations from the original text.*

*Laksiri Fernando is a former Senior Professor in Political Science and Public Policy at the University of Colombo and currently a Visiting Scholar at the University of Sydney in retirement.*

### VOICE FROM THE GRASSROOTS

# I WISH MODI HAS WISDOM TO REPEAL AFSPA

*Sadokpam Ranjeeta is a research associate at Human Rights Alert (HRA) based in Manipur. HRA is one of the leading organizations that has taken up key issues concerning human rights violations in India’s Northeast, particularly the state of Manipur. She recently shared her experiences as a human rights defender in one of the most difficult areas on the planet.*

*Following are excerpts from the interview:*

**Torture Magazine (TM): What made you work on human rights?**

**Sadokpam Ranjeeta (SR):** The land, the state of Manipur, where I was born, and the socio-economic and political environment in which I grew up made me the person I am today. I come from a place where armed political conflict has been a prominent feature of everyday life. Since my childhood, I have been witnessing innocent citizens subjected to inhuman treatment by the state forces in the name of counter insurgency operations.

In the beginning of the 1990s, the state from where I hailed had witnessed not only clashes between armed militant groups and state forces, but also inter-ethnic clashes between the Naga tribe and the Kuki tribe.

I was around ten years old. As I was studying in a missionary school along with children from both ethnic groups, I was emotionally distraught with the gloomy trend of ethnic hatred and group clashes, though my own community was not directly involved in these clashes.

I was in the fifth standard when my friend’s parents became victims of the clashes. That day I realized how the common people could be affected by conflict.

I was too young to understand what was going on. I was also shocked to hear that a village near my school was razed to the ground, displacing hundreds of villagers, including my own school mates.

I decided to contribute on my part, when the school decided to launch a small relief measure for the affected village. As the class captain, I was one of the





students who took initiatives to collect relief items including food items and clothes. Then we, including our teachers, visited the village. The sight gave me a jolt I've never experienced before, when I saw half burnt books and school uniforms of the children who studied in my school.

I became much involved in student movements for human rights and other issues affecting the society, when I was in the high school.

I still remember the day my high school principal advised me to refrain from any student movements if I decided to go for higher studies. He was worried about me and knew deep within what I already had in my mind.

During my college days in India's capital New Delhi, I began joining various student movements for human rights, particularly the campaign to repeal draconian laws enacted by the Indian government.

Until now, I continue to associate myself with issues concerning human rights and state sponsored violence against its own citizens.

**TM: In terms of your work as a human rights defender, what's the most challenging situation you have ever faced?**

**SR:** One of the most challenging situations I have faced as a human rights defender is building trust between the people you are working with.

I work with so many women who have lost their sons and husbands in extrajudicial killings. In the process, the mothers and widows of the victims have to provide

adequate emotional succor so that they stand united in their resolve to continue the fight for justice. In an emotionally charged situation, it is very challenging to be free from subjective feelings while not forgetting the objective implications of challenging state-sponsored atrocities.

In an attempt to make the State deliver justice to the victims and their family members, our organization has been challenging the State in the courts.

Another important aspect is to support the family members of the victims both mentally and financially so then they can sustain their livelihood.

Most of the families of the victims are from the lower middle class families in which either the deceased sons or husbands had been the sole breadwinners of the family.

Their lives were entirely changed right after the death of their husbands or sons. In their continued fight for justice, they have undergone tremendous difficulties including facing collective scorn from the society in various forms. Apparently, the society believes those living relatives of the victims are cursed.

In the last five years of working with them, I have realized that if someone needs to work with them, there is no way he or she can escape the collective feelings of being oppressed by the social and political system on the ground. This is one of the most challenging aspects of working with widows and mothers in conflict.

**TM: Tell us about the historical background of the conflict in your native place?**

**SR:** Manipur was an independent kingdom until it was defeated by the British Raj in the Anglo-Manipur War 1891. Despite the defeat, Manipur was not annexed to British India, but kept as a princely state with much internal autonomy till the British rulers left in 1947. Consequently, Manipur's relations with the Dominion of India were governed by the terms of the "Instrument of Accession" signed by the Maharaja (king) of Manipur. Under this, the Indian Government exercised powers in respect of defence, external affairs and communications while residuary powers resided with Manipur.

The historical background to the present conflict in Manipur can be traced back to the political developments during 1947-1949.

Under the Manipur Constitution Act 1947 enacted by the Manipur Maharaja-in-Council, elections to a 52-member Manipur Legislature were held under universal adult suffrage in June-July 1948. The Maharaja became the nominal head of Manipur government while real powers were exercised by a council of ministers responsible to the elected legislature.

Meanwhile, under the terms of the Indian Independence Act 1947 which gave independence to India and Pakistan, more than 500 princely states in the Indian sub-continent could join either of the two Dominions. Indian leaders began to put all kinds of pressures on these princely states including Manipur to incorporate them into the Dominion of India.

In Manipur's case, the Government of India first posted a 'Dewan' to Manipur on the pretext of looking after the treaty relations between Manipur and the

Dominion Government of India while actually the person, a retired Major General, was a Trojan Horse.

In September 1949, Maharaja Bodh Chandra was requested by the Governor of Assam to visit Shillong, the capital of Assam, to discuss issues about election of a candidate to the Manipur legislature. However, on reaching Shillong the Maharaja was told to sign on dotted lines an agreement for merger of Manipur into the Indian Dominion. When the Maharaja refused pleading he was just a nominal head of government, he was subjected to emotional blackmail and kept in confinement for many days without any kind of contact with the world outside.

On 21 September 1949, the Maharaja signed the so-called Manipur Merger Agreement under duress. And on 15 October 1949, Manipur became formally a part of India as a Part 'C' State under a Chief Commissioner. Simultaneously, all constitutional, political and legal underpinnings for democratic governance in Manipur were dismantled and replaced by the autocratic rule of the Chief Commissioner with whom all legislative and executive powers were concentrated.

Thus the political roots of the conflict in Manipur lies in the controversial merger of Manipur into India and consequent denial of democratic space to the people ever since.

The Armed Forces Special Powers Act, 1948 (earlier version) was imposed on Manipur on 16 April 1950 by the Government of India to suppress an armed peasant movement in the early fifties led by legendary revolutionary Hijam Irawat against the new political dispensation.

The Naga tribes in the then Naga Hills of Assam began their own armed rebellion in mid fifties demanding independence from India and it gradually spilled over into adjacent areas including Manipur. To counter this threat, the Government of India enacted the Armed Forces (Assam and Manipur) Special Powers Act 1958 (AFSPA). And AFSPA has been imposed on Manipur for over half a century till today.



As such, Indian democracy has all along been rendered meaningless to the people of Manipur by the de facto military rule over them under AFSPA. No difference has been felt in the lives of the people in terms of a life with human dignity even if the political status of Manipur was upgraded from that of Part 'C' State to that of a full-fledged State over the last five decades.

Besides, historically, racially, culturally and politically, Manipur was never a part of mainland India until October 1949. At present, Manipur is like an extension of Southeast Asia into the Indian subcontinent.

It is therefore not surprising that the first armed opposition group in Manipur demanding national self-determination, the United National Liberation Front (UNLF), was formed in 1964. It was joined by many other militant organizations both in the hills and the valley of Manipur in subsequent years. The resultant armed conflict situation has claimed thousands of lives, and many more have become victims of torture, rape and illegal detentions.

**TM: Tell us about the AFSPA? Why are you protesting against the AFSPA?**

**SR:** Once an area is declared 'disturbed' under AFSPA, the armed forces can destroy any property and can arrest, detain, torture and even kill any person on mere suspicion. AFSPA gives them practical immunity from prosecution in carrying out such egregious human rights violations. In the last half a century that AFSPA has been in force in Manipur, the phenomena of enforced 'disappearances', extra-judicial killings, torture, rapes, arbitrary detentions, etc, have become endemic.

The people of Manipur have persistently struggled against AFSPA and has, in the process, transformed Manipur society. For example, when human rights violations became a daily phenomenon in Manipur valley in the eighties, the womenfolk took to the streets and by-lanes with bamboo torches in their hands and stood in vigil for whole nights and confronted the armed forces when they came to abduct young men of their localities. These young men are routinely tortured in army camps and some of them 'disappear' without

a trace. Manipur society have responded to atrocities by the armed forces by giving birth to a grassroots mass movement of women known as the Meira Paibis (literally and figuratively, 'the torch bearers').

A young woman, Ms Irom Sharmila Chanu, has been on a hunger strike for the last 14 years demanding repeal of AFSPA.

All relevant UN human rights treaty bodies, the three UN Special Rapporteurs who visited India recently and the UN Working Group on Universal Periodic Review (UPR) have recommended the repeal of AFSPA.

The Special Rapporteur on Summary, Arbitrary and Extra-Judicial Executions, Mr Christof Heyns, conducted his official mission to India in March 2012. His report to Human Rights Council and UN General Assembly includes critical observations on AFSPA:

*" 27. In the Special Rapporteur's view, the powers granted under AFSPA are in reality broader than that allowable under a state of emergency as the right to life may effectively be suspended under the Act and the safeguards applicable in a state of emergency are absent. Moreover, the widespread deployment of the military creates an environment in which the exception becomes the rule, and the use of lethal force is seen as the primary response to conflict. This situation is also difficult to reconcile in the long term with India's insistence that it is not engaged in an internal armed conflict. The Special Rapporteur is therefore of the opinion that retaining a law such as AFSPA runs counter to the principles of democracy and human rights. Its repeal will bring domestic law more in line with international standards, and send a strong message that the Government is committed to respect the right to life of all people in the country."*

In simple terms, the people of Manipur are protesting against AFSPA for restoration of real democracy and for a peaceful life with human dignity.

**TM: What is different between the Armed Forces Special Powers Ordinance of 1942, promulgated by the British on August 1942 to suppress the Quit**

**India Movement, and the Armed Forces (Special Powers) Act (AFSPA), an Act the Parliament of India passed on September 1958?**

**SR:** The Armed Forces (Special Powers) 1942 Ordinance promulgated by the British colonialists on 15 August 1942 was to suppress "Quit India Movement," which was applied to all states of India.

The Armed Forces Special Powers Act in 1958 was enacted in 1958 in order to quell the ethnic uprising in Naga Hills in North East of India. The Armed Forces (Assam and Manipur) Special Powers Act, 1958 empowered only the Governors of the States and the Administrators of the Union Territories to declare areas in the concerned State as 'disturbed'. Once an area is declared 'disturbed' under AFSPA, the armed forces can destroy any property and can arrest, detain, torture and even kill any person on mere suspicion.

**TM: Tell us about your activities and the present situation in the area.**

**SR:** I have documented cases of human rights violation by interviewing rape victims and other victims for crimes committed under the shadow of AFSPA. I have also documented victims' family members and the issues they face after extrajudicial killings of their sons and husbands or relatives.

Our organization also started facilitating organizations of mothers and widows of victims of extrajudicial killings and later they came under a platform called Extrajudicial Execution Victims Families Association, Manipur (EEVFAM).



"  
**The present situation is quite chaotic. The prolonged militarization has created abnormality in the life in my place. Right now, people are still protesting against AFSPA to repeal this draconian act of the State.**  
"

My work entails coordinating with these women. I facilitate human rights education, workshops, campaigns, solidarity meets and try to link these people to legal aid and to provide assistance to victims or their families to access and get justice. We also help them with exposure trips with other people and other countries around the world. For their livelihood support, we started a self-help group some years back. The idea behind the support group was to help enable them lead a normal life and support their family members besides taking care of their children. And in recent years, with the collaboration with our organisation and Asian Legal Resource Centre, we started giving trauma healing treatments and organized workshops for these women who have been affected right after their husbands and sons got killed.

In 2012, EEVFAM and my organisation have petitioned the Supreme Court of India requesting prosecution of the security forces personnel involved in 1528 extra-judicial executions in Manipur from 1979 onwards. In March 2013 a commission appointed by the Supreme Court probed into six randomly chosen cases, and in all of them the commission established the fact of extra-judicial killings. However, the apex court is yet to begin hearings on the case.

The present situation is quite chaotic. The prolonged militarization has created abnormality in the life in my place. Right now, people are still protesting against AFSPA to repeal this draconian act of the State.

How do you elaborate, the Shamila's legacy, section 309 of the Indian Penal Code (which punishes an attempt to commit suicide with a prison term of up to 1 year) and the recent judgment on her?



Irom Sharmila Chanu, a woman from Manipur who is an activist and a poet also known as Iron Lady, who has been hunger strike for the last 14 years demanding to repeal Armed Forces Special Powers Act (AFSPA) 1958, from Manipur. This 42-year-old woman started her hunger strike when the security personnel killed ten innocent people in Malom, Manipur, on 2 November, 2000. She started her hunger strike on 5 November at the place where the massacre took place. She was arrested the next day and criminally charged for ‘attempting to commit suicide’ under the section 309 of the Indian Penal Code. On 21 November she was subjected to force feeding by inserting a tube into her nose. The ‘tube’ became an inseparable part of her visage till today.

After this, a meaningless ritual continued for the next fourteen years. She would be produced before a magistrate after every 15 days and then remanded back to judicial custody in a high security hospital. The ritual continues for one year, which is the maximum period of custody for a prisoner under trial for allegedly attempting to commit suicide. So she is annually released, only to be rearrested within a day or two on the same charge.

After so many years, a court in Manipur has recently set aside the charges against her of ‘attempting to commit suicide’ and ruled that she was making a political demand using a historically rooted and constitutionally established form of protest. But the state challenged the order in the higher court and rearrested her on the second day of her freedom. Ms Irom Sharmila’s unparalleled struggle continues uninterrupted. Amnesty International had earlier recognized her as a prisoner of conscience.

**TM: What is your message to the newly elected Prime Minister Narendra Modi and his government?**

**SR:** In July 2004, a young woman called Ms Thangjam Manorama was picked up from her house in the middle of the night by the armed forces. Next morning, her bullet-ridden body, with semen stains on her undergarments, was found on the roadside about three kilometres away from her house. Outraged twelve Manipuri mothers stood naked in front of the

military headquarters in Imphal and challenged the military shouting, ‘India Army! Kill us. Rape us. We are all Manorama’s mother’.

The spontaneous and massive public protests in its wake left Manipur almost anarchic for the next few months. A student leader called Mr Pebam Chittaranjan doused himself with petrol on a busy road and burned to death in full public view, shouting ‘Repeal AFSPA’, on 15 August 2004.

In a desperate effort to calm down the enraged public, Manipur government reportedly defied Government of India and lifted the ‘disturbed area’ status under AFSPA from the municipal areas of Imphal. Government of India also followed by constituting the ‘Committee to Review the Armed Forces (Special Powers) Act (1958)’ headed by a former Judge of the Supreme Court of India. The committee in their report submitted on 5 June 2005 concluded:

*“..... the Act, for whatever reason, has become a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness. It is highly desirable and advisable to repeal this Act, altogether...”*

However, the Government of India have neither accepted nor rejected the Committee’s report till today and its contents have not been officially revealed to the public. Many more Indian official committees and commissions have endorsed the position of the above-mentioned Committee and recommended the repeal of AFSPA.

Despite all these persuasions and pressures on the Government of India to repeal AFSPA and despite the fact that India’s prestige as a democratic country is being tarnished internationally by the continuation of AFSPA, the Government of India have not yet found the political will to overcome counter-pressures allegedly coming from vested interests in the armed forces for its continuation.

Therefore, I wish that the new Prime Minister of India, Mr Narendra Modi, has the political wisdom and determination to repeal AFSPA as soon as possible.

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# The Power of Protest

(a poem dedicated to youngest Nobel Laureate  
Malala Yousafzai )

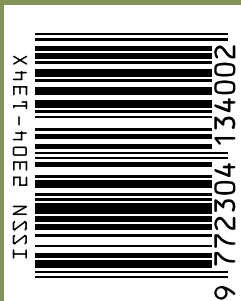
**This protest comes  
From Mother earth-  
like the rush of water  
falling from a waterfall. ....  
like the rising of love  
in a youthful heart.  
A pure call for justice.**

**Bringing power to the weak. ....  
courageously confronting  
the evil.**

**Such power comes from the pain  
Of Mother earth,  
From the healing hands  
Of Mother nature.**

**by Basil Fernando**  
Right Livelihood Laureate

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