TORTURE

ASIAN AND GLOBAL PERSPECTIVES

DECEMBER 2014 VOLUME 03 NUMBER 06

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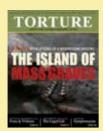
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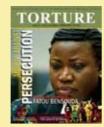
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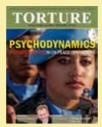
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An elderly lady at her window in a Nepalese village. Thomas Tham, Mio Cade Photography. 01 June 1981 UN Photo/John Isaac

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written by MORTEN KOCH ANDERSEN

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Voice from the Grassroots

TIME TO RATIFY UNCAT IN MYANMAR



NEPAL

Lack of Criminalisation of Torture PROMOTES IMPUNITY

Despite the political achievements of 2006, no proper transitional justice mechanisms, for example a Truth and Reconciliation Commission, have been established to address the human rights violations that occurred during the conflict. The victims of human rights abuses await justice while the perpetrators enjoy total impunity.

by KAMAL RAJ PATHAK

More than two decades have elapsed since the government of Nepal ratified the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) in 1991. The Nepal Government has repeatedly expressed strong commitment to criminalise torture before national and international forums but those commitments have not materialised.

Nepal ratified the UNCAT just after establishing a multi-party democracy with free and fair elections in 1990. The 1990 People's Movement ended the autocratic, monarchical, and party-less Panchayat System and established a constitutional monarchical multi-party parliamentary system. The restoration of the multi-party system was a great political achievement, yet discrimination and inequality remained unchanged. As a result, a Maoist insurgency began after the government failed to address the 40 point demand submitted by the Communist Party of Nepal United People's Front (CPN-UPF) to the coalition government headed by Sher Bahadur Deuba

of the Nepali Congress party on 16 February, 1996.¹ These demands were similar to those submitted during the 1990s People's Movement.

Human rights violations increased as the conflict intensified. The government tried to control the conflict, even deploying the then Royal Nepal Army (RNA), declaring a state of emergency throughout the country in accordance with Article 115 of Nepal's Constitution and suspending most of the fundamental rights granted by the Constitution. Since then, Nepal underwent three different emergency periods. On 26 November, 2001, King Gyanendra approved the Terrorist and Disruptive Activities (Control and Punishment) Ordinance. The Maoists were classified as "terrorists" and the Royal Nepal Army was deployed to maintain peace and security in the country. The Ordinance was later endorsed by the parliament and became the Terrorist and Disruptive Activities (Control and Punishment) Act (TADA) 2002. Despite the implementation of the TADA, Maoist violence continued throughout the country.

¹ http://www.satp.org/satporgtp/countries/nepal/document/papers/40points.htm (Visited on June 1, 2014).

The internal conflict in Nepal resulted in many human rights violations, including enforced disappearances, extrajudicial killings, torture, rape, and abductions, perpetrated by both the state security forces and the Maoists. The government was criticised nationally and internationally, including by the UN, for its general disregard of human rights and inability to address violations. The UN Special Rapporteur on Torture, UNCAT Committees and others expressed concern over particularly egregious human rights violations such as systematic torture.

During the increasingly brutal ten-year conflict, at least 13,000 people were killed, with a further 1,300 still missing today². The report notes that the final death toll is likely higher; government figures now report 17,000 deaths³. It is estimated that thousands of people were tortured by both state security and Maoist forces during the period.

The decade-long conflict formally ended in 22 November, 2006 with the signing of the Comprehensive Peace Agreement (CPA) between the seven party alliance and the Maoist CPN-M party. Human rights violations, such as the use of torture, have decreased in recent years. Yet in government detention facilities these violations continue, including torture. The Informal Sector Service Centre states that, "Between 2007 and 2012, 2,639 persons were killed by the nonstate actors while 185 were killed by the state. Of those killed by non-state actors, 28 were killed by the UCPN-M."4 The Centre also asserts that a total of 2,775 human rights violations took place throughout the country. Of the 2,775 incidents, 410 were incidents of killing by state and non-state actors and 66 were cases of torture by state actors⁵.

Despite the political achievements of 2006, no proper transitional justice mechanisms, for example a Truth and Reconciliation Commission, have been established to address the human rights violations that occurred during the conflict. The victims of human rights abuses await justice while the perpetrators enjoy total impunity.

Internal Armed Conflict and Torture

The UN reports and investigations by various local and international human rights organisations claim that torture and ill-treatment were widely and systematically practised in Nepal during the conflict, by both security forces and by the CPN-M.

Manfred Nowak, UN Special Rapporteur on Torture, visited Nepal in 2005 and concluded in his report that torture or ill-treatment is systematically carried out by the police, the armed police and the Royal Nepalese Army. Nowak also received shocking evidence of torture performed by the Maoists, as well as allegations of the forced recruitment of women and children. His report states,

"Torture and ill-treatment are systematically practised in Nepal by the police, armed police and the RNA primarily to extract confessions and to obtain intelligence in relation to the conflict. That the Government urgently needs to send a clear and unambiguous message condemning torture and ill-treatment was made dramatically clear to the Special Rapporteur when he received repeated and disturbingly frank admissions by senior police and military officials that torture was acceptable in some instances, and was indeed systematically practised." (Nowak Report on Nepal 2006, page 2).

The UN Committee against Torture also reported widespread use of torture and ill-treatment during the conflict. The Committee stated that it,

² Nepal Conflict Report 2012. UN Office of the High Commissioner for Human Rights (October 8, 2012).

³ http://un.org.np/headlines/ohchr-releases-report-charting-ten-years-violations-during-nepal-conflict (Visited on 1 June 2014).

⁴ Nepal: Human Rights Year Book 2013, published by INSEC, page 6.

⁵ UN Special Rapporteur on Torture country visit report (E/CN.4/2006/6/Add.5) http://www.un.org.np/sites/default/files/report/tid_188/2006-1-9-special-report-ontorture-visitsept.pdf.

⁶ UN Special Rapporteur on Torture country visit report (E/CN.4/2006/6/Add.5) http://www.un.org.np/sites/default/files/report/tid_188/2006-1-9-special-report-ontorture-visitsept.pdf.

"...is gravely concerned about the exceedingly large number of consistent and reliable reports concerning the widespread use of torture and ill-treatment by law enforcement personnel, and in particular the Royal Nepalese Army, the Armed Police Force and the Police, and the absence of measures to ensure the effective protection of all members of society (arts. 2 and 11)."

Similarly, the OHCHR "Nepal Conflict Report 2012" provides sufficient credible information on the occurrences of torture during the conflict perpetrated by both the state security forces and the CPN -M. The report reads,

"Torture, mutilation, and other sorts of cruel and inhumane and degrading treatment appear to have been perpetrated extensively during the conflict, according to available data, by both the security forces and the Maoists. Altogether, the TJRA recorded well over 2,500 cases of such alleged ill-treatment over the decade-long insurgency.⁸ ...Alleged cases show that the motive of the Security Forces in perpetrating acts of torture appears primarily to have been to extract information about the Maoists from anyone who might have had something to reveal.."

The Human Rights Treaty Monitoring and Coordination Committee's alternative report to CAT 2004 states that, "the trend of human rights violation and infliction of torture is widespread and in inclination to the severity. So called armed rebels became a pretence for systematic practice of torture by state authorities." ¹⁰

Advocacy Forum's (AF) report "Criminalise Torture", documents 2,271 cases of torture that occurred between July 2001 and April 2006.¹¹ The report states,

between july 2001 and 71pm 2000. The report states,

"During the decade long war that besieged Nepal, civilians suffered tremendously at the hands of security forces and Maoists. Common methods of torture included electrocution; hanging the detainee's body by his/her arms for several hours; sexual abuse, naked captivity, and rape threats; and spraying the detainee's body with pressurised water." ¹²

In its briefing for the UNCAT in October 2005, Amnesty International states,

"Most cases of torture and other ill-treatment reported to Amnesty International come from Kathmandu and the central districts, where the government is in control. It is likely that torture and other ill-treatment are equally, if not more, common outside Kathmandu – where international monitoring is more difficult." ¹³

Torture and Ill-Treatment Continue

Torture by state and non-state actors continues in Nepal despite the formal end of the conflict and subsequent political successes. Nepal's human rights situation did not improve as expected during eight years since the signing of the CPA in 2006. Torture and ill-treatment in government detention facilities continue to and the culture of impunity is becoming further and further entrenched.

The government of Nepal has yet to take any meaningful measures to investigate cases of human rights violations or implement proper preventive measures to substantively reduce torture. The government continues to express commitments to criminalise torture, investigate conflict-related human rights violations including torture and initiate institutional reform within security forces. However these commitments remain unfulfilled.

⁷ Conclusions and recommendation of Committee Against Torture, 15 December 2005, Para 13, (CAT/C/NPL/CO/2).

⁸ UNOHCHR summary of the 'Nepal Conflict Report 2012', page 9.

⁹ Id.

¹⁰ HRTMCC, CAT Alternative Report 2004, page 10.

¹¹ Torture Still Continues, Advocacy Forum report June 2007, page 7.

¹² Id.

¹³ Nepal: Amnesty International -Briefing for the United Nations Committee against Torture, October 2005, page 2 & 3 (http://nepalconflictreport.ohchr.org/files/docs/2005-10-00_document_ai_eng.pdf).

UNCAT Committee's Conclusion and Recommendation to the Nepal Government reads,

"Nepal has made no substantial progress in addressing impunity for conflict-era human rights violations and abuses. Allegations of torture continue to be made with great frequency despite the end of the armed conflict in 2006, and the State party has failed to adequately investigate all but a handful of these allegations." ¹⁴

Reports published by Nepal's leading human rights organisation, Advocacy Forum, show that cases of human rights violations, in particular torture and ill-treatment, continue in Nepal. Torture continues to be systematically practised today even after restoration of democracy in 2006, with the difference that the perpetrators are now mainly confined to the police forces, since the army and Maoist combatants have been limited to their barracks or cantonment since November 2006.¹⁵

The various reports published by national and international organisations show that human rights violations continue to take place in Nepal. However, these reports also accept that the incidence of human rights violations including torture have significantly decreased since the signing of the CPA.

According to AF's report, "In 2012, AF visited 3,773 detainees held in 57 detention facilities in 20 districts, of which 3,384 were male, 384 female, 5 transgender, among which 930 were juveniles. Overall, 22.3% of those interviewed reported that they had been subjected to torture or ill-treatment as defined under the United Nations Convention against Torture (CAT)." Similarly, AF's data shows that in the period of January to December 2013, AF lawyers conducted 3,662 interviews (3,165 male and 492 female) with detainees in 57 detentions centres located in 19 districts.

Of the 3,662, 611 detainees (16.7%) claimed that they had been subjected to torture or other cruel, inhuman or degrading treatment during their detention.

According to AF's annual torture reports published since 2006, the percentage of detainees tortured has decreased. In 2001, the percentage was 44.3%, in 2005 the percentage of detainees tortured was 35.5%, in 2010 it dropped to 19.3% and in 2013 the percentage detainees who experienced torture dropped to an all-time low of 16.7%. ¹⁷

INSEC reports also show that the incidence of human rights violations has decreased in recent years. According to a human rights situation report by INSEC published in 2011, there were 4,240 total cases of human rights violations in 2010. Of those, 459 cases were extrajudicial killings and 135 cases were torture. In 2011, human rights violations and abuses totalled 3,039, of which 377 were extrajudicial killings and 94 were torture by state and non-state actors. In 2012, the total was 2,775 with 410 cases of killing and 66 cases of torture.

Domestic Remedies & Legal Framework

The year 1990 proved instrumental in bringing about positive human rights initiatives, particularly in torture prevention. A massive movement pressured King Birendra to reinstate a multi-party democracy, and a new Constitution was promulgated shortly thereafter.

The 1990 Constitution of Nepal provides in Article 14 (4) that "[no] person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in a manner as determined by law." Though progressive, this provision did not manifest in law or policy. Nepal ratified the UN Convention against Torture and Other

¹⁴ Conclusion and recommendation of the UN CAT Committee, para 103.

¹⁵ Advocacy Forum, Nepal Sharing experiences of Torture Survivors 1 (26 June 2006).

¹⁶ AF report, Nepal: Is the Government Unable or Unwilling to Prevent and Investigate Torture?, 2013, page 13 (http://advocacyforum.org/downloads/pdf/publications/torture/26-June-2013-english-version.pdf).

¹⁷ Id. at 30.

¹⁸ INSEC Human Rights Year Book 2012, page 4 & 5. (http://www.inseconline.org/linkedfile/summary_eng.pdf).

¹⁹ Id. at 432.

Cruel, Inhuman or Degrading (UNCAT) on 14 May, 1991 but failed to put treaty obligations into practice.

On 18 December, 1996 the government enacted the Torture Compensation Act (TCA) after ratifying the CAT convention. Article 4 of UNCAT concerns the criminalisation of torture, and specifies that each state party,"...shall ensure that all acts of torture are offences under its criminal law[and should be] punishable by appropriate penalties which take into account their grave nature." Article 14 relates to compensation for torture victims and their dependents. According to Article 14, the state party must legally ensure that a torture victim, "Has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible."

The TCA prohibits torture and ill-treatment but does not criminalise it. The Act fails to provide justice to torture survivors or to punish those found guilty. The definition of torture and other provisions in the Act are not in line with the international conventions, including UNCAT.

UN Special Rapporteur on Torture notes that the TCA, "[fails to] satisfy the requirements of article 1 of the Convention, nor does domestic law make torture a criminal offence in accordance with article 4.1." (Nowak Report on Nepal 2006, at para. 14).

In the same year that Nepal ratified the CAT, the parliament enacted the Nepal Treaty Act of 1990. Section 9 of this Act states, "If any domestic law is found to be inconsistent with a convention to which Nepal is a party, the convention prevails." However, in practice, the courts have not used this provision to criminalise torture. For example, the Special Rapporteur on Torture noted that, "Officials would repeatedly cite the 1991 Nepal Treaty Act stating that the provisions of the Convention apply by default in case of inconsistent domestic law, but no evidence exists that its provisions have been invoked in the courts to prosecute perpetrators." (Nowak Report on Nepal 2006, at para. 26).

The 2007 Interim Constitution of Nepal was the first initiative to criminalise torture occurring during detention. Article 26 (Right against Torture) of the Interim Constitution provides:

No person who is detained during investigation, or for trial or for any other reason, shall be subjected to physical or mental torture, or be treated in a cruel, inhuman or degrading manner.

Any such an act pursuant to clause (1) shall be punishable by law, and any person so treated shall be compensated in a manner determined by law.

In December 2007, the Supreme Court made a landmark judgment in which it ordered the government of Nepal to criminalise torture. The decision was initially made in March 2006 in a mandamus case filed by lawyers Rajendra Ghimire and Kedar Prasad Dahal, demanding the criminalisation of torture and adequate redress for torture survivors.

The Court affirmed in its opinion that Nepal has an international obligation to pass a law criminalising torture in accordance with Articles 2 and 4 of the UNCAT. The Court decision further states that the Constitution recognised the fundamental right to be free from torture. Section 26 (2) of the Interim Constitution of Nepal 2007 provides for punishment to those involved in inflicting physical or mental torture, or any cruel, inhuman and degrading treatment, as well as adequate compensation to those victimised by such acts. Section 4 Article 33(c) seeks to end impunity via strict observance of the universallyaccepted concept of fundamental human rights. The same Article provides for the implementation of international treaties and agreements to which Nepal is party, observing that, "It is the constitutional duty of the state to ensure the effective implementation of the fundamental rights enshrined in Article 26 of the present constitution and to frame laws to punish the perpetrators of torture and compensate the victims."20 Furthermore, the Court decision reads:

²⁰ Ghimire&Dahal v. Nepal. Supreme Court Judgment (December, 17, 2007).

"Not only the Interim Constitution of Nepal but the ICCPR 1966 and UNCAT 1984, to which Nepal is a party, and especially article 2 and 4 of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, obligates Nepal to assume torture as a criminal offence and legislate accordingly to punish the perpetrators of torture and compensate the victims of torture.therefore, as no legislation has been drafted till date in line with the UNCAT 1984, albeit a considerable amount of time has elapsed since Nepal ratified the convention, and as Nepal has treaty obligations to implement and adhere literally to the UNCAT, and as it is the constitutional duty of Nepal to draw up legislation that ensures punishment of the perpetrators of torture to deliver the provisions expressed in article 26 and 33 (m) of the Interim Constitution, a directive order hereby has been issued in the name of the respondent the Government of Nepal to criminalise torture and make provisions to punish the perpetrators of torture as demanded by the petitioners."

Despite the Court order and provision in the 2007 Interim Constitution of Nepal, no law criminalising torture has been enacted. The Nepal Government failed to provide justice to survivors and punish perpetrators.

The TCA 1996 has proved ineffective and inadequate to prevent torture, provide redress to torture survivors and prosecute perpetrators.

The cases of human rights violations, including the use of torture during conflict have not yet been addressed. The government brought the long awaited Truth and Reconciliation Commission and the Commission on Enforced Disappearance Act in May 2014. The international community and local human rights organisations have criticised this act as not being in line with international human rights standards and Nepal's earlier Supreme Court decision. The act provides amnesty for serious human rights violations including cases of torture. Under Section 26 of the TRC Act, the commissions have the power to recommend amnesty for individual perpetrators. This power is limited only by the following words,

"The Commission shall not recommend for amnesty to the perpetrators involved in rape and other crimes of serious nature in which the Commission follows the investigation and does not find sufficient reasons and grounds for amnesty".

In response, 234 conflict victims filed a petition at the Supreme Court on 4 June, 2014 challenging the certain provisions including the provision of amnesty in the cases of serious human rights violations such as torture. However, the government formed two Commissions despite the case pending before Supreme Court, and disengagement and supports in the formation process from victims and national and international human rights community.

The Supreme Court on February 26, 2015 had annulled the amnesty provision of the transitional justice Act, saying that it is against the established principles of justice, constitutional provision, international law and the court's earlier verdicts. The recent Supreme Court decision has given hope for justice to the thousands of victims and their families who have been waiting for justice.

The Failure of Torture of Compensation Act 1996

The Torture Compensation Act, 1996 (TCA) does not meet international human rights standards including the UNCAT which Nepal ratified in 1991. This act is an important initiative of the government but insufficient as a piece of legislation. It fails to redress torture survivors and prosecute those involved in torture. The biggest disappointment lies in the lack of criminal investigation in cases of torture. Thus in terms of justice for acts of torture, victims have only the possibility of compensation, and only "departmental actions" such as reprimands, demotions, suspensions, fines, delayed promotions and so on, are remonstrations for perpetrators.

The definition of torture and ill-treatment has not been clarified and widened as per the obligation of UNCAT. Disappointingly, the evidentiary burden of proof goes to a torture victim and the perpetrators remain free. Similarly, one of the major concerns of the act involves the 35 day stipulation is that Section 5 (1) requires a complaint be filed, "Within 35 days from the torture is inflicted on her or him, or the day she/he is released from custody." It is almost impossible especially during the conflict, due to various reasons including threats from the torturers. There are several incidents where victims of torture were threatened by the perpetrators or by unknown persons for filing a case against them.

In a torture case of Dhanusha district, torture survivor Ms. Mukhiya and her family were beaten and threatened after filing a case on 22 March, 2012 against Assistant Sub-Inspector of the police at Dhanusha District Court. Ms. Mukhiya and her family received death threats which forced them to withdraw their case against the police officer.²¹

In the absence of a suitable victim/witness protection mechanism, victims frequently find themselves or their families in danger if they lodge a formal complaint under the act. The threat of further harm is enough to convince many victims that it is best to suffer quietly than to seek legal recourse.

Another failure of this act is lack of adequate compensation to the victims of torture.

Section 6 of the TCA places a ceiling on the amount of compensation a victim can receive at NPR.100,000 (approximately USD \$1,000). This ceiling is far too low to be considered "fair and adequate compensation, including the means for as full rehabilitation as possible," under Article 14 (1) of the CAT.

As the act itself is insufficient piece of legislation and does not criminalise torture, there are very few cases filed in courts using this act. Advocacy Forum's 2008 report claims that, "In the 12-year history of the TCA, over 208 victims of torture or their decedents have filed compensation cases (57 filed by Advocacy Forum and 151 filed by various other organisations and individuals). However, of those cases, only 52

victims have been decided in favour of the victims. In those cases, the courts have awarded compensation of between NPR. 5,000 (approximately USD \$50) and NPR.100,000 (approximately USD \$1,000). Over the whole of the 12 years, only 7 victims (13.46%) have thus far received this money. Furthermore, so far none of these perpetrators named in these TCA cases have actually been brought to justice".²²

The government of Nepal, however, does not hesitate to claim that all the victims of torture were given justice, perpetrators were prosecuted and compensation to victims properly provided. "The government of Nepal is fully committed to end torture and degrading treatment. Allegations of torture are seriously taken up and the persons found guilty of committing torture have been brought to justice. Actions have been taken against number of officials both in the police and army in this regard. On occasions, victims of torture have been awarded with compensation as per the verdict of the competent court of law".²³

Nepal's Failure to Fulfil International Obligations including UNHRC Views

Nepal has ratified most of the major core human rights treaties including UN Convention against Torture and Other Cruel, Inhuman or Degrading (UNCAT), UN International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC) among others since 1990, but it has failed to implement treaty obligations. The government has not brought proper laws and policies to bring treaties' obligations into force.

Nepal government has completely failed to fulfil recommendations made by the UNCAT Committee, UN Human Rights Council, Universal Periodic Review

²¹ http://www.humanrights.asia/news/urgent-appeals/ AHRC-UAC-123-2012

²² Advocacy Forum's 2008 report 'Hope and Frustration: Assessing the Impact of Nepal's TortureCompensation Act -1996', page 1

²³ Comments by the Government of NEPAL* to the conclusions and recommendations of the Committee against Torture (CAT/C/NPL/CO/2), 29 January 2008, para 20

and the UNSpecial Rapporteur on Torture. Therepeated recommendations of these bodies were to criminalise torture, investigate and prosecute cases of torture and provide adequate reparations to the victims of torture.

Nepal has been recently reviewed under the UN Universal Periodic Review (UPR) in January 2011. The major recommendations adopted by the working group on the issue of torture were; "In the framework of the reform of the penal code and the penal procedure code, conform to the totality of the provisions of the Convention against Torture; criminalise torture; enact specific legislation in domestic law to criminalise the offence of torture which is fully compliant with the requirements of the Convention against Torture; criminalise torture and enforced disappearances in line with international standards²⁴ However, it is very disappointing that the UPR recommendations are not fulfilled in relation to torture issues yet²⁵.

Similarly, the Nepal Government has also failed to implement the views provided by UN Human Rights Committee in response to the individual complaint filed by torture victim Mr. Yubraj Giri to the Committee. Mr. Yubraj Giri was arbitrarily arrested, detained and tortured repeatedly at the hands of the then Royal Nepal Army Personnel in 2004 to 2005. When he was not able to get justice at home, he brought his case to the UNHRC with the help of Advocacy Forum and REDRESS. In 27 April, 2011 the UNHRC found Mr. Giri and his family to be victims of violations of international Covenant on Civil and Political Rights and called on the Nepal Government to fulfil its obligations under the covenant to provide Mr. Giri and his family with effective remedy. The committee has asked Nepal Government to ensure a thorough investigation into the torture and ill-treatment and to prosecute and punish those who were responsible. The committee further asked the government provide Mr. Giri with adequate compensation and to protect Mr. Giri and his family from acts of reprisals or

The Way Forward

The Nepal Government has been responsible enough to ratify major UN treaties including UNCAT. They have not hesitated to ensure implementation of national and international human rights obligations before national and international forums. However, these commitments must now be acted on. Domestic laws and polices related to torture should follow Nepal's international obligations. The time for promises is over. Now is the moment for action.

Without any further delays, the Nepal Government must;

- Enact anti-torture legislation criminalising torture in line with UNCAT
- Investigate and prosecute cases of ongoing and conflict-related torture cases
- Ratify the Optional Protocol to Convention against Torture
- Ensure the non-repetition of incidents of torture and ill-treatment
- Undertake legal and administrative efforts to end torture and related impunity
- Establish an effective victim and witness protection mechanism

Kamal Raj Pathak is a human rights lawyer from Nepal. Mr. Pathak has been working in the field of human rights and anti-torture campaign in Nepal for last 10 years. Currently, Mr. Pathak is working as a Transitional Justice Thematic Coordinator at Advocacy Forum, a human rights NGO in Nepal. Mr. Pathak can be contacted at kamal220@gmail.com

intimidations.²⁶ The Nepal government has done nothing remarkable to implement the views of the committee beyond providing him NRP 150000 (USD 1500) as compensation.

²⁴ Universal Periodic Review, Report of the Working Group on the Universal Periodic Review, 8 March 2011, para. 106.3

²⁵ http://www.ncf.org.np/upload/files/417_en_Action_plan_UPR.pdf

²⁶ http://advocacyforum.org/_downloads/yubraj-giri-decision-hrc.pdf



WE CANNOT SIT & WAIT FOR CASES

WOLFGANG KALECK is a German civil rights attorney and the General Secretary for the European Centre for Constitutional and Human Rights. Against huge odds he has sought prosecution charges against a number of US officials and personnel in connected with the alleged human rights abuses at Abu Ghraib and Guantanamo Bay. He has lectured extensively throughout the world and is US whistleblower Edward Snowden's legal support in Europe.

John Clancey, Chairperson of the Asian Human Rights Commission and Asian Legal Resource Centre, caught up with Kaleck in Stockholm.

John Clancey (JC): Your organisation has an impressive history and does not shy away from the most contentious issues. How did this come about?

Wolfgang Kaleck (WK): The European Centre for Constitutional and Human Rights (ECHR) was founded in 2008 and is based in Berlin. Basically we followed the line of the Pinochet precedent of October 1998 — largely seen as the first time that legal human rights work conducted by NGOs showed its strength on a transnational level. So now when domestic venues are exhausted or are blocked, mainly for political reasons, we have an additional ability to act on a transnational level with regional human rights

courts, like the European Court of Human Rights, or through universal jurisdiction.

JC: Trying to universalise the Pinochet example?

WK: Yes, we fired a number of complaints against those who bear most responsibility for the US torture system after 9/11, for example against Donald Rumsfeld, the former Secretary of Defence. Though Rumsfeld did not go on trial there has been this great side effect in that people like former President George W. Bush, former Secretary of Defense Rumsfeld almost 500 CIA agents do not travel any more to Western Europe because they fear getting prosecuted for war crimes, for their involvement in extraordinary renditions.

So we still think that international criminal law against the torturers can fulfil its role and can have an impact. Our latest success was the filing of a complaint against high British politicians for the little Abu Grahib, as in the systematic torture and abuse carried out in Iraq by British forces after the occupation of Iraq 2003. We were very happy that the ICC did reopen the preliminary examination due to our complaint.

That is one line of our work - accountability for war criminals and torturers. And another where we are



Wolfgang Kaleck is a German civil rights attorney and the General Secretary for the European Centre for Constitutional and Human Rights and John Clancey, Chairperson of the Asian Human Rights Commission and Asian Legal Resource Centre, in Stockholm. (Photo by Nilantha Ilangamuwa)

maybe different from other organisations is that we want to challenge double standards so we also go into cases where Western actors are involved and we specifically try to research Western complicit cases.

JC: Besides your work challenging Western complicity in abuses what else do you focus on?

WK: Corporate actors who are involved in crime. My first case was for German disappeared persons during the dictatorship so I represented the German mothers of Plaza de Mayo and the other thing was that we looked into the complicity of companies and came up with cases of disappeared trade unionists at the Mercy de Spence plant in the province of Buenos Aires in Argentina. The political aim of the military dictatorship was to destroy very strong workers and trade unions and to establish a new neoliberal political and economic model. So it is not only an abstract human rights violation what happened in Argentina or what happened in Chile, it was the brutal and repressive enforcement of a new model of societies neoliberal models of societies - so these kind of legal cases are important to establish alternative narratives about what happened.

But that was only the start, we also looked into companies who are in someway involved in these kind of massive atrocities which is important because the attitude of Western countries is still to point to the global south who kill each other but not analyse their own role maintaining a completely unjust world economic system which leads to hunger and deprivation of many fundamental rights. We think it is also important to problematise the role of other actors, that is mainly companies. There is now a political window since the proposal of the Ruggie Principles on Business and Human Rights in 2011. This initiated an important worldwide discussion on corporate social responsibility but it is not enough to encourage the voluntary involvement of corporate actors, we need strong regulations to define red lines, where they are crossed and accountability mechanisms in international criminal law and compensation law. As a small organisation we are trying to work for this.

JC: What legal vehicles are open to you in terms of bringing a case against a company when it goes beyond your red line?

WK: We are not focused on one specific legal tool like universal jurisdiction. That was kind of the past. We have to sit together with local groups, regional groups, and discuss what kind of legal tool can bring added value to the specific political and social struggles. Sometimes cases are domestic, but sometimes there is an overlap between domestic and transnational law: we are always looking to lead to some kind of accountability. We can use competition law for example, in cases of the textile industry in Bangladesh. We say that the false advertisement by companies guarantee claiming to working conditions is a violation of competition law, because they do not. So it is about the strategic cooperation between transnational organisations; ours like domestic organisations. It is about bringing progress to a movement as well as the situation on the ground.

JC: How do cases come to your attention? Is it through NGOs or your network in Europe?

WK: At the beginning our network was very centred on Europe and the Americas. But now we are working closely with organisations from the Philippines, from India, Pakistan, Bangladesh and even some African countries. We organise proactive discussions and regional workshops on how to build cases and how to use them. It is important to create an understanding of under what circumstances it makes sense to bring a legal case, because it is not always appropriate. When legal interventions make sense they enable you to enlighten, to scandalise and to empower local communities to strengthen themselves.

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We cannot sit and wait for cases. We are very small with few resources so we think everything out fully. Yet we can react much faster than governments and corporations, so we always look for the optimal place, moment and tool. We want a continuous conversation because the problems we are facing are global problems.

JC: How do you find working with local courts?

WK: Difficult. There is this attempt to outsource responsibility and a lack of accountability. They are not very open to considering what is happening in other countries. For example a German local court will not want to take a case about crimes in Pakistan by German companies. We are trying to construct legal bridges to connect these crimes in Pakistan to actors in Germany. We think it is necessary to hold the headquarters accountable and one legal tool to do that is due diligence. It is difficult to prove that they are actively involved in crimes but if we say if they profit from doing business then they

have the obligation to guarantee their business is not harmful. So if you get the notice that it is a dangerous environment you have the obligation to protect your workers and if you don't we can hold you accountable in a Swiss court. That is a n example from a recent series of cases we started.

JC: So even though you have a separate legal entity in another country the repatriation of profits from that country to a home country should imply accountability.

WK: It is about control. Lifting the corporate veil. We are testing this and even if we are not successful in our court cases it fires up the debate because people in Germany now get that there is a certain responsibility of German textile buyers for companies in Bangladesh or Pakistan. That was not true 5 years ago. I think this is important grounding work.

JC: We know from history that the change in European countries came about because of political pressure from the people, the growing awareness and organisation. Do you see

anything parallel happening? Is there any building of the political pressure within European countries?

WK: I think that the solution is maybe not coming from Europe. Maybe it is coming from Latin America or Africa or Asia. Because many more people are realising that they have a right to rights. There are many more high skilled lawyers in India than in Germany. Yet still those in Germany have to play a certain role. It is about international solidarity, or you might call it globalisation from below. First of all it is about exchanging experiences and knowledge and a transfer of resources and that has to be organised.

But I think that is on the way and that even Western human rights organisations who initially only worked on political and civil rights are getting it. So even the big ones like Amnesty International or Human Rights Watch are more and more alarmed about economic and social rights. So we, the smaller organisations and those who are connected have to play this role to inform our Western European societies.

JC: How does the younger generation of lawyers fit into all of this?

WK: There is actually much going on in the younger generation of lawyers because many of the young lawyers are studying in countries other than their own

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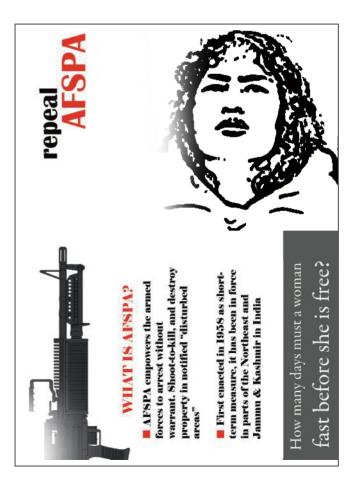
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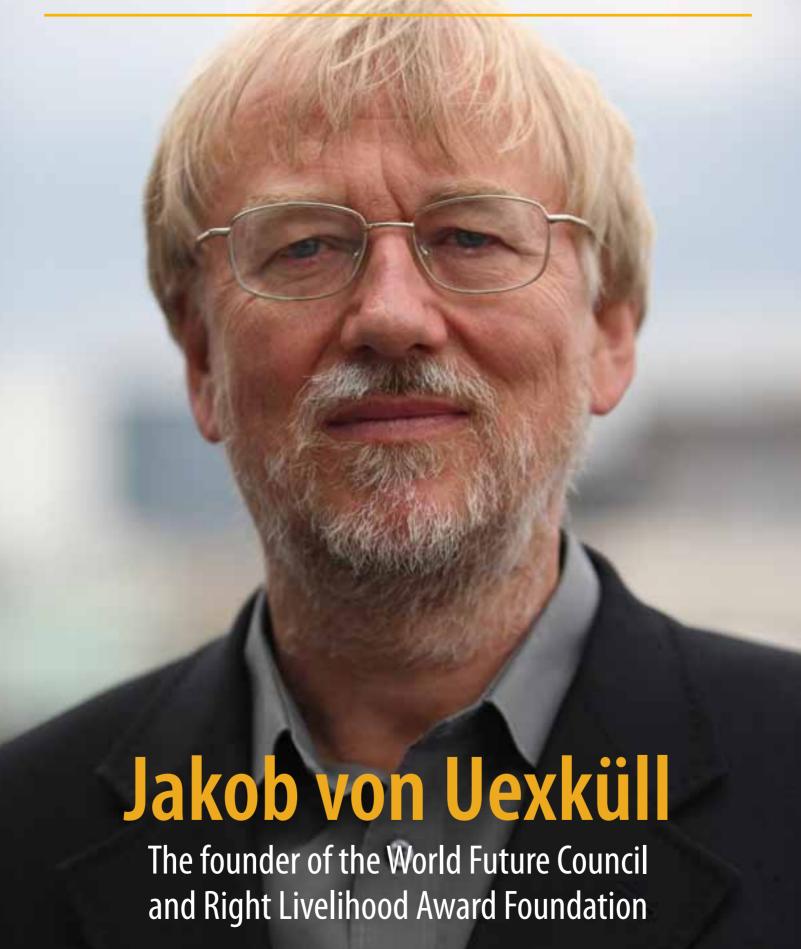
and learning several languages. They see a future field of work in human rights. That is new and for me it is a source of hope. We often hear from older lawyers that the young are not political enough and lack long term political vision. Yet they do want to challenge human rights violations! We should construct transnational and transgenerational networks where we organise the transfer of experience and knowledge.

Similarly with academics and scholars there are many more universities and academics interested in transnational criminal

law and transnational human rights law than 15 years ago. They are willing to support the work of organisations such as ours. This is a big field and we have a lot to work on.



Exclusive Interview



EXCLUSIVE INTERVIEW

"We need to accept this challenge or our children and grandchildren will see us as the greatest criminals who ever lived"

"THE idea that after the fall of the USSR we would have this liberal democracy spreading around the world was of course naive. We have a Western elite that isn't really interested in democracy unless their allies win. Otherwise, they are happier with a dictator whom they are friendly with. Often if the wrong people win then, suddenly, democracy is seen as not such a good idea," said Jakob von Uexküll, founder of the World Future Council (2007). Mr. Uexküll is also the founder of the Right Livelihood Award (1980), often referred to as the "Alternative Nobel Prize," and co-founder of The Other Economic Summit (1984).

As a former Member of the European Parliament (1987-89), Mr. Uexküll served on the Political Affairs Committee and later on the UNESCO Commission on Human Duties and Responsibilities (1998-2000). He has also served on the board of Greenpeace, Germany as well as the Council of Governance of Transparency International. He is a patron of Friends of the Earth International and lectures widely on environmental, justice and peace issues.

Mr. Uexküll received the Future Research Prize of the State of Salzburg, Austria (1999), the Order of the Cross of Terra Mariana of the Republic of Estonia (2001), The Binding Prize (Liechtenstein) for the protection of nature and the environment (2006) and the Order of Merit, First Class, of the Federal Republic of Germany (2009). In 2005, he was honoured by Time Magazine as a "European Hero" and, in 2008, he received the Erich Fromm Prize in Stuttgart, Germany. He is also a recognised philatelic expert with publications such as *The Early Postal History of Saudi Arabia* (London, 2001).

Born in Uppsala, Sweden, Mr. Uexküll is the son of author and journalist Gösta von Uexküll and grandson

of biologist Jakob von Uexküll. After schooling in Sweden and Germany, he graduated with an M.A. (Honours) in Politics, Philosophy and Economics from Christ Church, Oxford. He holds dual Swedish and German citizenship. Mr. Uexküll is married and has three children. He lives with his family in London. As the founder of the Right Livelihood Award, he recalled past experiences succinctly, "I saw it was needed so I set it up. It was criticised and people thought it was crazy or a CIA plot or a KGB plot at the time. One Member of Parliament believed in it and she convinced her colleagues. After five years, we were invited to present in Parliament and have been able to do so every year since, which I think it is a remarkable attribute of Swedish democracy and Swedish parliamentarianism. Parliament has no say in the choice. We don't have to inform them beforehand who we have chosen; that is remarkable and I am very honoured and overwhelmed that we have been allowed that."

"The challenge is making the award well known so that the recipients get support and their work is spread widely. The purpose of the award is publicity and inspiring others. I think we have succeeded here." On the comparisons between the Right Livelihood Award and the Nobel Prize he clarified, "It is not an anti-Nobel prize. It is also for those who bring the greatest benefit to humanity, like Alfred Nobel wanted."

On a cold December evening in an exclusive interview conducted in Stockholm, Sweden, Nilantha Ilangamuwa, editor of *Torture: Asian and Global Perspectives* interviewed Mr. Uexküll. The conversation spanned Mr. Uexküll's dazzling career, his thoughts on climate change, freedom of the press and global development, as well as Mr Uexküll's



THECURRENT GLOBAL SYSTEMIS BUILT ON SAND

hopes for the future and advice for the international community.

Nilantha Ilangamuwa (NI): Your background is very varied and interesting. After you completed your degree at Oxford University you went into journalism. What inspired this path?

Jakob von Uexküll (JU): My father was a journalist and I found it very interesting. When I grew up Germany was very conservative and my father was critical. When an editor instead of paying me asked for money to help keep his magazine going I realised that I had to earn a living and become financially independent some other

way. So I also turned my hobby into my profession: I became a dealer of rare postage stamps and worked for various auction companies. However I always kept up my interest in what was going on in the world and volunteered at international conferences.

NI: The freedom of the press is often considered key for successful democracies. How do you perceive this relationship?

JU: There is a huge gap between the way the world claims to be progressing and what is actually happening in many countries. As we see now with the Snowden affair we don't really have deep democracy in the West either. It is wonderful we can sit here and talk without being afraid the secret police will arrest us, but still many people are afraid here. They are afraid of losing jobs, of being spied upon, of change. Princeton last year defined USA as oligarchy and not a democracy. There is a worldwide rule of money with a democratic facade. It is very difficult to get the truth out. The ability to judge and trust facts and form an opinion and hold onto it is very difficult in the West too. You have remarkable papers, like the Guardian in Europe. But also the Murdoch press and media intrusions. We cannot be so self-satisfied. I always believe that rights come with responsibilities and a major problem we have had with media in the West is the lack of responsibilities.

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Pessimists do nothing and optimists assume others will solve their problems but possibilists have hope.

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NI: Tell us about your philosophy. You have strong ideas about the use of resources and development.

JU: Firstly, I'm a generalist. There are too many areas I am interested in. You need specialists and generalists. I also define myself as a possibilist. Pessimists do nothing and optimists assume others will solve their problems but possibilists have hope. What has driven me is that we tend to forget we are part of the natural environment and without that we have nothing. When it comes to the environment the pessimists have been overwhelmingly right. The environment is seen as a "luxury issue" which is a huge mistake.

The media like to present two sides but you shouldn't compare a scientist to any nutcase who says climate change is not manmade.

Secondly, in terms of rights as you can only have a right to what is possible. It is impossible for China to have the same per capita consumption of resources as Taiwan, or Sweden. Yet everyone needs basic essentials. As Gandhi put it, "there are people in the world so hungry, that God cannot appear to them except in the form of bread." If you don't have these basics then that will be your main focus. In Europe we have forgotten the concept of sufficiency and enoughness and believe the rich still have to become even richer. Our economic growth paradigm is ideological nonsense as we live with limited resources and have to share. We have moved from the rule of real life to the rule of economic theory which is in the service of the wealthy, global elite who know that when the growth stops they will have to share. So they claim that growth will continue. But if the average Ethiopian had the Swedish lifestyle then the Swedes would all be billionaires, it is just complete nonsense. We need to arrange things differently. There's no objective economical science which says we must live like this, destroy the earth and create huge gaps between the poor and rich. It is an ideology imposed by a small, rich minority. They pretend they are somehow scientific but it is nonsense.

Inner resources however, are much less restricted. The Club of Rome report on limits to growth said there is no limit the amount of languages you can learn and instruments you can learn to play. Once we have fulfilled our basic needs such as education and food we need to look at spiritual needs and not accumulating material possessions as the planet can't afford that.

NI: So is mass political participation the way forward?

JU: In regards to creating meaningful change the main problem now is the lack of trust and cynicism. Everyone wants to hand over a better world to their children. Why do we live with problems we can solve? We cannot mobilise enough will and need to start building trust. The elites do not want people to be involved in politics because politics can change something. They have created this idea that politics is dirty and the media have helped in that. There are some responsible papers but many have cultivated the idea that politics is corrupt and who wants to participate in that? It means that the global elite can rule things behind the scenes.

Democracy was created in Ancient Greece and it was your responsibility to get involved in public life and if you refused to get involved you were an "idiotus". I was an Member of the European Parliament for 5 years and learnt how this system works. If you want to influence a Member of Parliament you must go to their voters. We need greater political awareness and participation from voters.

NI: Your work at the World Future Council focuses on good public policy. Do you think that 9/11 was a landmark in domestic and foreign policies to become irrational?

JU: We are creating debt much faster than we are creating wealth. Debt is a claim on future wealth, based on the assumption that we will all be much richer in the future. Simply put, if we destroy the environment then we won't be. You can't eat money. The current global system is built on sand. This requires innovative solutions. In order for best practices to become the mainstream they need to be backed by best policies and for that you need to work with policymakers, find good laws, spread them and ensure that when the crisis comes you have not only

ideas but proven solutions.

Many people are very good at criticism. But the difficulty is going from critique to working out how to actually solve the problem. Our work at the World Future Council is to identify the main policy reforms, the *how*.

Everyone agrees on certain things, like the importance of getting rid of subsidies on fossil fuels but then income collapses and there are riots, as we saw in Sudan. We haven't actually got a way to do it. We need an integrated approach and a five to ten year strategy. Prices have been too cheap. At the same time, we need a strategy for the global poor. No politician dares say we have lived above our means and now we need to pay those bills and change the way we do things, with those who have not been able to live as well as that receiving compensation. But it is true. We talk about being global citizens so we need sharing. In practice that works by funding concrete projects. You can make unconditional, non-interest bearing and non-repayable grants to fund projects, like wind energy in Indonesia. This is the way to go.

NI: On laws and policies, it is our experience in Asia that there are many laws but the implementation is lacking, rendering them largely useless. What is your answer to this chicken and egg style debate?

JU: Without the law you have nothing to work for. Once that is in place it can be fought for. At the World Future Council we have this interesting technique to encourage the strengthening of the rule of law. We give prizes for the best laws, for example there is a community community forestry law in Gambia where people get legal ownership of the forest when they prove they can look after it. Through the giving of prizes we install pride in people so that when a change of government comes about they defend the law and it remains in place and protected. In Ecuador the previous Vice President Lenin Moreno created a very good for persons with disabilities, inspired by his own experiences as a wheelchair user. People are proud of this and this law will continue.

NI: Many countries, particularly in Asia, have minimum space to participate politically. Do you think that the international community has a role to play here? **IU:** We can have the sanctity of the nation-state in a way where every struggle is national. Unfortunately when there is outside interference it is very rare that it is positive. I encouraged intervention in Bosnia in the 1990s and was very glad of it. But most instances are in the interest of superpowers and have been disastrous, like in Iraq. I cannot imagine things would be as bad now if Saddam Hussein had been allowed to stay in power. I do believe we need to defend the principles of the United Nations: if a country is attacked it should be defended, but can we intervene to overthrow undemocratic regimes?

I think the situation in Sri Lanka deteriorated while it has improved in countries such as Indonesia. Sri Lanka, in many ways, is a tragedy—with people's lives and livelihoods threatened in a situation made complex in the civil war as no one had much sympathy for the Tamil tigers either.

NI: Do you see any legacy or hangover of colonialism in the influence of the West in the Global South?

JU: Colonialism was very good dispensing responsibilities but no powers. The legacy of colonialism is that in many decolonised and independent countries we still see a lack of power.

I work with parliamentarians all over the world and many have no real power. Under the new elites, officials and World Bank bureaucrats run the show, with the wealth of Africa being sold off far too cheaply. Are they truly independent and allowed to rule themselves? International institutions put a lot of pressure on the Global South to sign unfair commitments limiting their own development.

NI: You visited Gaza recently. Do you believe in a two state solution?

JU: I think it is unrealistic to think you can have one state when there is so much hatred and so many Israelis who feel that they are endangered. Therefore a two state solution is more realistic. What is clear is that the

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There's no objective economical science which says we must live like this, destroy the earth and create huge gaps between the poor and rich.

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distrust and the hatred between the two sides is so deep that they cannot negotiate, that they will not negotiate. Therefore the outside world has to impose negotiations; as happened in Norther Ireland and the Balkans

NI: What do they think of the developments in the establishment of the Palestinian state?

JU: The problem is that there is no Palestinian state. If you read the Swedish recognition it says that there is a government which could fulfil these obligations but they know very well it does not. The Israeli authorities have only

transferred responsibilities and duties but no rights. The Palestinians have no resources, no control over imports or exports, no powers over anything that cannot be taken away tomorrow. An Israeli soldier can go into their territories. The Palestinian authority was created to give the West a less guilty conscience. There is no peace process. In many ways the problem is now worse because when there was direct occupation the occupying power had certain responsibilities; the authority has basically made occupation much cheaper for the Israelis.

NI: Finally, what is your message to the international community?

JU: We live in a unique and very extraordinary time and we cannot continue business as usual. We have a responsibility to our children, to our grandchildren, to all future generations because our actions and our decisions (which also includes our inactions and non-decisions) will have an influence and may decide the future of this planet. This is an enormous decision, the magnitude of which no previous generation throughout human history has had to face. This is the reality. So now we each need to accept this challenge and become part of the solution. Otherwise we can ignore it, be part of the problem, and face the fact that our children and grandchildren will see us as the greatest criminals who ever lived.

THE GREAT TORT



by Karen Malpede

After a protracted struggle between the U.S. Congressional Oversight Committee, the C.I.A. and the Obama Administration, the world has been allowed to read the summary of the Senate's Torture Report, in redacted form and released to the public on 9 December 2014, with great courage by Senator Diane Feinstein.

The report conclusively concludes the C.I.A. practised torture, even more extensively than previously "known"—except by those who wished to know—

and repeatedly lied about it; they told obliging members of the press to lie about it too. The report concludes that torture does not work, that "information" gained by torture did not thwart one single plot (though torture victims made up quite a few to get the pain to stop) nor did torture produce one piece of necessary intelligence, nor did information gained by torture lead the Navy Seals to their murder of Osama bin Laden—supposedly torture's finest moment, memorialised in the Hollywood film "Zero Dark Thirty".

URE NON-DEBATE



As is usual with a nation that tortures, there is now a great debate—which won't last long as Americans' historical memories are notoriously short. "What torture programme?" asked a Brooklyn neighbour, devotee of Ayn Rand, just a few days before the Senate released their report. If there were now no debate but instead, at last, with official evidence at hand, the collective will to remedy the unlawful transgressions of the past for the sake of the collective future, there would be united understanding that those who tortured must be brought to justice.

From the top on down, the instigators and creators of the U.S. torture program should be put on trial.

First, we should apologise and pay retribution to the many innocent victims of our torture—those who were picked up by mistake, or sold to the U.S. by bounty hunters, rendered to black sites and abused for many months or years—77 of whom remain to this day in Guantanamo despite being officially cleared for release. We should make amends.

Those in the torture room, some of whom did rebel in the moment but were told by higher ups to continue, the petty functionaries of the great plan to "protect" the nation, the adrenaline-pumped private contractors— these lowly enlisted men and women we might forgive. They could publicly own their actions in some sort of redemptive truth and reconciliation process and never again be employed in any sort of position where they might have or take power over any other.

But the masterminds, the President George Bush (often "kept in the dark", the report rather conveniently says), Vice President Dick Cheney and their men; Secretary of Justice John Ashcroft, Justice Department lawyer John Yoo, who rewrote the laws to define torture as "legal"; Defence Secretary Donald Rumsfeld. who crowed with delight and wondered what was wrong with being made to stand as he stood eight hours a day at his desk

(without being suspended naked, his hands tied over head, toes barely touching the ground, one presumes) and George Tenet and Michael Hayden of the C.I.A. alongside the two former army psychologists, Bruce Jessen and James E. Mitchell, who made \$81 million off the torture program they engineered. These people have committed crimes against humanity and need to be held accountable. So says the rule of U.S. and international law.

But the U.S. has become a nation that no longer prosecutes evil-doers. The only person ever to go to prison over torture is the C.I.A. whistle-blower, John Kiriakou, currently serving 30 months for saying that water-boarding is torture and naming a retired torturer.

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"A load of crap," is how former Vice-President Dick Chenev characterised the Congressional Torture Report. "A lot of hooey," former C.I.A. Director Michael "Patriots." Havden, echoed. said current C.I.A Director John Brennan about those who tortured at the behest of their government. Is this the "other side" in our torture debate? These people don't believe in documented truth even though the Congressional report is taken straight from classified C.I.A. records. There are 2000 photographs that supposedly will never be released due to their graphic nature; and there were video tapes of torture destroyed before they could be viewed. evidence is apparently meaningless. The torture cadre believes what it believes; they did no wrong.

"It's hard to believe that anything will be done now. Republicans, who will soon control the Senate and have the majority on the intelligence panel, denounced the

report," comments the New York Times editorial page, glumly accepting the inevitable. Aren't we, the citizens of a nation that tortured supposed to glumly, or blindly, also accept "that nothing can be done"?

My black and brown students at John Jay College of Criminal Justice, who were in elementary school when the torture programme was instigated, have been on the streets protesting the grand-jury verdicts that refused to indict two police officers who murdered two unarmed black men, Michael Brown, shot 8 times, and Eric Garner, choked to death. "Hands Up; Don't Shoot" and "I Can't Breathe" are the young people's rallying cries. I tell them about the torture

programme. I talk to them about how the police have become militarised in the wake of September 11th and our never-ending wars. I discuss with them the terrible truth that a nation that tortures its enemies is going to torture its citizens too. Is there nothing that can be done?

"Such language is not helpful," wrote Jose A. Rodriquez Jr., then head of the C.I.A.'s Counterterrorism Center, in a memo to staffers, telling them to shut up about their doubts about the C.I.A. torture programme—and not to use the "T word" in memos.

The "F word", however, is much in favour. Remember, say the C.I.A. apologists, how much fear there was; how frightened we were in the aftermath of the September 11 attacks. Frightened people torture, goes the reasoning, in order to keep the rest of us safe. Fear creates cowards who delight in sexually humiliating detainees. There is an awful lot of anal-genital intrusion in our torture history – so much penetration of the hapless other that the pornographic side of torture can hardly be ignored. These big brave men, from the President on down, were turned into terrified children trying out forbidden sexual games to quell their anxieties. "Rectal hydration" is the newest term, a tactic imaginable only by perverse, homophobic bullies, obviously far removed from interrogation. Again, on the home front, Abner Louima comes to mind, sodomised with a broom stick way back in 1997, in his local police precinct. What goes around comes around.

What, I sometimes wonder, would our lives be like if Osama bin Laden had been put on trial in an international court of law for the crimes of 9/11? There is evidence that the Taliban, who understood Afghanistan was about to be attacked, offered to surrender their "guest" if proper evidence were presented and the death penalty were not invoked. The U.S. did not respond to Taliban overtures in this regard. Then, soon after, there was the real possibility of bin Laden's early capture in the mountains of Tora Bora where he was being pursued with too few troops,

who were summarily called off the hunt. The U.S. could hardly have invaded Iraq if bin Laden had been caught. The "information" that Osama bin Laden and Saddam Hussein were cahoots was got by torturing Ibn al-Sheik Al-Libi until he said so; like "weapons of mass destruction", Al-Libi's tortured testimony had no basis in truth. A public trial of bin Laden at in the International Court of Justice would have resulted in wide-spread condemnation of terrorism and nipped the violent jihadist movement in the bud by preventing bombings and invasions of two countries. A public trail would have shown the world that the U.S. believes in the power of justice, not in violent retribution.

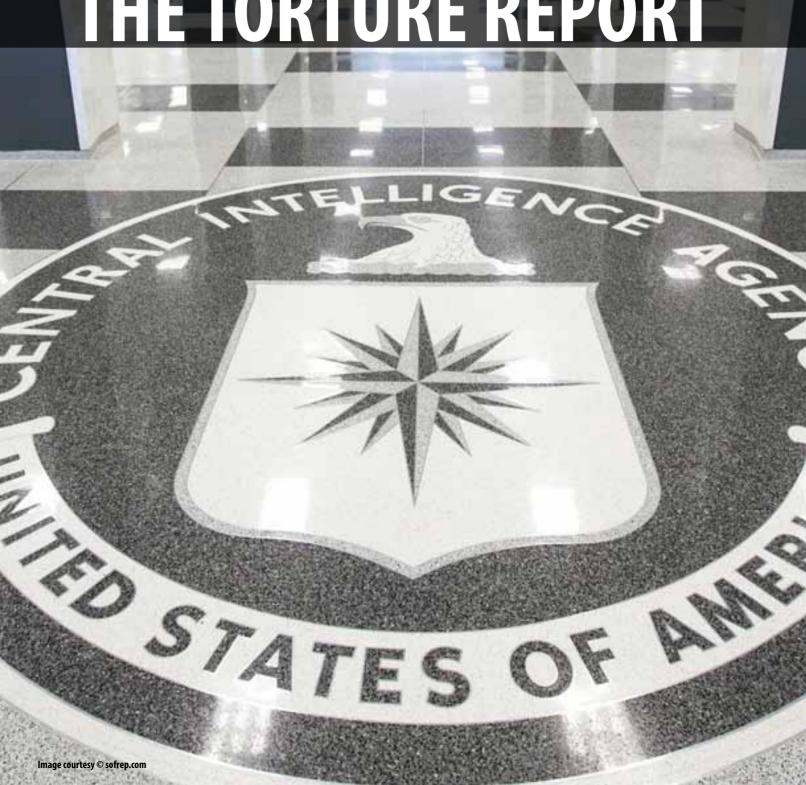
Instead of trial by law we have 14 years of war and torture, with no end in sight—if there had been an international trial at a moment the entire world was united against terrorism, what would our lives be like today?

Instead we have non-state and state-terrorism run amuck. We have Isis putting Guantanamo-like orange jump suits on its Western captives and beheading them. We have U.S. drone warfare hitting civilians as often as not. We have troops on the ground, again, in an Iraq our 2003 Occupation fractured and destroyed. We have troops still in a struggling Afghanistan. We have militarised police at home killing unarmed black men and children, and plenty of gun violence. It is difficult not to conclude that the significant result of U.S. torture programme has been an explosion of lawless violence at home and abroad.

It is difficult, therefore, not to call for a public reckoning.

Karen Malpede, playwright and writer, is author most recently of Extreme Whether, about climate change, and Another Life, that tells the story of the U.S. torture programme in surreal poetry and prose. She is editor of Acts of War: Iraq & Afghanistan in Seven Plays and a frequent contributor to Torture. www.theaterthreecollaborative.org





GUEST COLUMN CIA TORTURE REPORT

Let us refocus this debate. We need to acknowledge the true reasons for torture to have a hope of lessening its use. Let us no longer attempt to justify torture under the sanitised and ostensibly morally passable language of interrogation. It is when we are forced to really describe why we torture, why we deliberately inflict severe physical or psychological pain and deny the humanity of another, that any palatability is truly lost. "We wanted revenge". "She needed to be punished". "I enjoy torture".

by LAUREN GLENMERE

THE historical inertia into which the revelations of Abu Ghraib disappeared has been disturbed once more. December's release of the CIA's much delayed torture report has stirred righteous criticism from across the political spectrum. Yet, in many a sincere outburst of public indignation there is little attempt to scrutinise beyond a utilitarian context. The focus appears to be on the loss of US moral highground, a lack of bureaucratic oversight and bewildering comparisons to ISIS brutality. The utter failure of torture to deliver useful intelligence permeates all criticism. But why is this seen as something new? Torture is commonplace as an interrogation method throughout the world.

A brief account of the torture report - a summary of a summary - could be taken as follows. On Tuesday 9 December, the Senate Intelligence Committee published the summary of its report on the use of torture against terrorism suspects by the Central Intelligence Agency. Spanning 524 pages, the summary (the full report stands at a colossal 6,700 pages) provides an overview of the period between 2001 through 2009.

The result of a four year investigation, the report cost \$40m with its release delayed due to fighting between the Senate Intelligence Committee and CIA over access to information. Given the incendiary

content of the report, this is hardly surprising. The torture was brutal, repetitive and both physically and psychologically harmful. It included beatings, sleep deprivation, threats to family members, water boarding and "rectal feeding" - all neatly sanitised by CIA Director John Brennan as "enhanced interrogation techniques". The findings of the report are revolting and astonishing in equal measure.

Besides numerous cases where prisoners were later deemed to pose no terrorist threat, 26 of the 119 prisoners detained and tortured in secret CIA prisons were wrongly held in the first place. Operating in a murky grey world outside of democratic accountability, the CIA's torture activities were larger and more barbaric than realised, as well as exercised with almost complete impunity.

At the heart of the matter is the failure of the report to determine any utility in torture to extract valuable intelligence from victims. Of course, this is not news. As US Senator and former presidential candidate John McCain recently pointed out, "I know from personal experience that the abuse of prisoners will produce more bad than good intelligence. I know that victims of torture will offer intentionally misleading information if they think their captors will believe it. I know they will say whatever they think their torturers want them to say if they believe it will stop their suffering."

In the cases documented in the report, one detainee, Abu Zubaydah, revealed no new information after being waterboarded, whereas he had been forthcoming prior to torture. On his first day in custody Khalid Sheikh Mohammed offered an accurate description of a Pakistani/British operative, dismissed as untrue. He was later water boarded 183 times, frequently providing false confessions in an effort to put an end to the torture. The report testifies that, "[Khalid Sheikh Mohammed] fabrications led the CIA to capture and detain suspected terrorists who were later found to be innocent".

Besides the false confessions in efforts to appease torturers, waste time or implicate enemies, torture undermines alternative forms of gathering intelligence. Historically, the most valuable method through which to gain reliable information is through cooperation and trust with sources. Torture destroys this cooperation, with truths often discarded and lies believed.

CIA officials deliberately misled the White House, Congress and the general public about the effectiveness of their techniques, citing 20 "successes" in counterterrorism as a result of the use of torture when in reality there was no such link. Despite almost all the useful intelligence gained coming from non-violence interrogation such deception was seen as necessary to "justify" their "enhanced interrogation techniques".

This has created a legal quagmire from which the CIA has made little attempt to extricate itself.

Again, this is nothing new. Torture is committed throughout the world despite strong domestic and international laws prohibiting its use. 155 countries have adopted the UN Convention Against Torture. 79 are violating it. Impunity is rife and questions of legality appear largely irrelevant.

Can torture ever be "legitimate"?

There is a great deal of debate on the idea of "legitimate" torture in cases of national security. Thousands of articles, studies, reports and investigations have been

devoted to this very question. Of course the idea of "legitimate" torture in this case is premised upon the assumption that torture could be legitimate, if there was a reason behind it, and assumes that this reason must be the extraction of reliable information.

If one looks at the utter failure of the CIA to extract useable intelligence from torture, working in tandem with dozens of other states, and to a budget of billions of dollars, justified under the "necessity defence", then it appears that torture cannot be deemed "legitimate". Beyond the 6,700 page torture report are investigations and reports by noted academics, such as Darius Rejali's Torture and Democracy, coming to the same conclusions. Torture is not a reliable means to extract information. But still it is used prolifically throughout the world.

Why do we torture?

Torture has been practiced throughout history. Publicly sanctioned by states, groups and individuals, there are many practical reasons for torture. Besides interrogation, torture can be used as a form of punishment, revenge, coercion, education and deterrence. Another, less savoury but still pragmatic reason for torture is sadism on the part of the torturer or observer.

A modern-day phenomenon is the presentation of torture as uniquely for the purpose of interrogation. Other uses and, whisper it, practical justifications for torture, are deliberately obscured in the wake of modern mania for "national security". The ticking time bomb scenario in which a person with imminent knowledge of a terrorist attack and information he will disclose if (and only if) tortured, has pervaded debate and discussion of torture. As definitively demonstrated by the torture report, this scenario is a complete fantasy, as is the idea of producing reliable information from torture.

The darkest secret of torture is thus unveiled: torture is not expected to obtain valuable information, nor is it designed as a means to this end. That is merely the "justification", the smokescreen to obscure the truth of the fact. Torture does have a purpose.

Torture is an exercise in the destruction of the humanity of a person, whilst preserving life. Keep the body, lose the soul. Its very value lies in damaging the victim beyond all humanity. A particularly disturbing passage of the torture report details the attempts to dehumanise Abu Zubaydah, who was trained to get himself in position for waterboarding. Another section discusses the reaction of visitors to the "Salt Pit", a particularly horrific prison based in Afghanistan. Visitors compared the prison to a dog kennel with detainees cringing away, cowering in fear, as they walked past the cells.

Let us be frank: in no way do these graphic descriptions suggest that torture was employed here as primarily an interrogation technique. This level of subjugation and the complete invalidation of the humanity of the victims fits much better under other purposes of torture. Punishment seems clear. Revenge appears likely. Deterrence presents another possibility. Sadism is undeniable.

So why are these reasons denied?

The torture report offers us the opportunity to be honest with ourselves about the point of torture. As an interrogation technique torture does not work. It is a waste of time, money and resources. Despite intense efforts on the part of the CIA, the most sophisticated and well-funded professional intelligence organisation on the planet, it cannot be justified by the idea of utilitarian gain. But the use of torture will continue. The utter failure of interrogation under torture to produce useful intelligence has no bearing on the future exercise of torture.

This is because torture is actually very practicable. As a method of control through coercion and deterrence it is highly effective. Torture is a great way to punish, or to get revenge on others. In societies where torture is employed indiscriminately by institutions such as the police it is a good method of social control: torture drums up fear and creates a repressive environment. Some individuals find the act of torture enjoyable. To dehumanise and control others gives them a kick. Spec. Charles Graner Jr., apparent ringleader of the

torture at Abu Ghraib prison was reported to have confided in a colleague, "The Christian in me says it's wrong, but the corrections officer in me says, 'I love to make a grown man piss himself."

Torture projects toughness. It sounds good to the fearful public. A couple of nameless individuals suffering, who probably did bad things, so that I can sleep safely in my bed at night. Supporters of state level torture will invariably circle back to this argument. But torture does not make us safe. It is worthless for intelligence, as a society we must now recognise this.

Let us refocus this debate. We need to acknowledge the true reasons for torture to have a hope of lessening its use. Let us no longer attempt to justify torture under the sanitised and ostensibly morally passable language of interrogation. It is when we are forced to really describe why we torture, why we deliberately inflict severe physical or psychological pain and deny the humanity of another, that any palatability is truly lost. "We wanted revenge". "She needed to be punished". "I enjoy torture".

Stark, true and abhorrent. With this honesty the horror of torture is finally bald, finally undeniable. Now is the time for the real conversation. The world is waking up to the failure of torture in interrogation. As we lay bare the real purposes of torture and discuss it with candour, we are building our slingshot to use against Goliath. This is our chance. Let us hope that our aim is true.

Lauren Glenmere is a British human rights researcher and writer. She has conducted research activities throughout the world on the respect for human rights and the rule of law. Her work primarily focuses on the use of torture, women's rights policies and social justice. She holds a M.A. (Hons) in International Relations from the University of St Andrews and the Institut d'études politiques de Paris.

THE SHRINKING OF DISSENT

by TAPAN BOSE

JUSTICE Dattu's argument that the Chief Justices Conference was being held to save precious working days and meant no disrespect to the sentiments of India's Christian minority has not gone down well among the Christians who have been facing violence from the forces of Hindutva. All across the country, churches have been attacked, vandalized, nuns raped, priests beaten up and threatened and prayer meetings disrupted. The RSS the fountainhead of rightwing Hindu nationalism and the ideologue of the BJP has started an aggressive programme of converting Christians to Hinduism. In defiance of law, the RSS and its affiliates are offering both money and other benefits like eligibility to Scheduled Caste and Tribe reservation quota to reconverted Christians and Muslims.

One does not need to be a rocket scientist to understand that the Indian Christians are a threatened and a frightened lot. Yet, when a brother judge, Kurian Joseph, a practicing Christian requested the Chief Justice not to hold the meeting on Good Friday, he told him rise above "individual interest" in the interest of the institution. Justice Joseph has expressed his deep sense of hurt by this arrogant self-righteous response of the Chief Justice. Justice Vikramjit Sen who also had requested Justice Dattu not to hold the official function on Good Friday, apparently received similar response. Justice Sen it seems has preferred not to share his reaction to the advice to rise above individual interest in public. As pointed out by Justices Joseph and Sen, Justice Dattu had not thought of holding this meeting on Friday March 6, which was Holi. March 6, 7 and 8 were holidays for the Supreme Court. He had also not thought of holding this meeting on Saturday, March 28 (Ram Navami) which offered two consecutive holidays. However, it is a moot point to ponder that it was only Christian judges who protested, while non-Christians remained silent. Sad that non- Christian judges did not think it was important to protest against Justice Dattu's decision. How fast the number of dissenters is shrinking.

Why Good Friday? Perhaps a new precedent is

being created. Chief Justice H. L. Dattu's decision to hold the Chief Justices Conference on Good Friday seems to be motivated by Narendra Modi government's decision to declare Christmas as the Good Governance day. In its first official move to downgrade the "Holy" days of the Christians, Modi government declared that henceforth December 25 would be observed as Good Governance Day, commemorate birth day of A. B. Vajpayee and Madan Mohan Malviya. As we may recollect the Department of Electronics and Information Technology had sent a notice to all government servants to attend a day- long programme, which was to be chaired by the Communications and I T Minister Ravi Shankar Prasad. The HRD Ministry had asked the schools to organize various events like debates and essay competitions to observe Good Governance Day.

May be Justice Dattu is encouraged by Prime Minister Narendra Modi, whom he so admires. Following in the footsteps of Mr Modi, who decided that his government would hold official programmes

on Christmas, the Chief Justice also decided to hold official of the Supreme Court on Good Fri Day. And as we know, it is not the blessings of Jesus Christ, but the blessings of "Lord Balaji of Tirupati" which has put Justice Dattu in the chair of the Chief Justice.

It is a matter of serious concern that voices of dissent, against such actions of the high and the mighty are becoming feebler. In January 2015, when Justice Dattu had praised Mr. Modi as, "as a good leader,

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The success of a democracy depends on its ability to protect its minorities. We are living in days when leaders of the Hindu community, closely aligned with the government have started propagating that Hindus are facing the danger of becoming a minority.

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good human being, a man with a foresight and one who wants good governance." Only two voices of protest could be heard in the entire country. The bar Council had remained silent. I remember when Justice Bhagwati had written a letter of praise to Mrs. Gandhi in 1977, several judges, senior lawyers and the Bar Council had voiced concern and criticised him.

The success of a democracy depends on its ability to protect its minorities. We are living in days when leaders of the Hindu community, closely aligned with the government have started propagating that Hindus facing the danger of becoming a minority. As we know the Hindus who constitute more than 80% of this country's population. It is impossible for the Muslims who constitute 12% and the Christians who constitute about 1.5% of the country's population to produce such huge number of children that would reduce the Hindus into a minority. Ridiculous. Yes. But scary all the same as history tells us that when the majority takes on the minority complex, it goes Fascist.

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GROUND REPORT BANGLADESH

The struggle to secure governmental power and control of the state; its financial resources, bureaucracy and security agencies through parliament elections has defined Bangladeshi politics since independence. It is a reactive form of politics that encompasses the entire society and defines and negates new forms of politics and political vocabularies. It rests on the ability of the parties and political leaders to mobilise and reward people for participation in confrontational politics.

by MORTEN KOCH ANDERSEN

I VISITED Bangladesh for the first time in 2005. Ever since, I have been intrigued by the people, culture and especially its politics. However, Bangladesh is today a country plagued by human rights violations, enforced disappearances, misuse of authority and endemic corruption at all levels of the state. Ailments intimately connected to politics, political parties and politicians.

In 2012, a study of the 9th parliament concluded that 80% of the members, including ministers, had been accused of influencing administrative work, 75% of misusing state development funds, 70% of involvement in criminal activities, 69% of influencing public procurement processes and more than 75% of influencing educational institutions¹. This was an increase on all parameters compared to previous studies². It indicates that the problems have increased over time, not decreased with the growth of economy and development of the country. And it appears as if, these practices have been (re)cycled into the political arena, regardless of the particular parliamentarian power configuration or party in power.

What makes politicians do as they do, despite public knowledge and criticism? And how are people inclined and aligned to these damaging practices? This article looks into these questions and turns the gaze to the making and shaping of young politicians, who over time will populate and manage the state.

Politics and Politicians

Bangladesh national politics is characterised by a confrontational divide between two major parties, the Awami League (AL) and the Bangladesh National

Such political practices have endured and proliferated despite public knowledge, pressures and criticisms – nationally and internationally. These practices undermine the path towards democracy which began with independence in 1971 and severely affect the poorest in society by denying equal rights and access to state services. Misuse of authority and political interference in governance is a widespread and everyday practice, integral to politics and government in Bangladesh today³.

¹ Akram, S. M. (2012) Positive and Negative Roles of the Members of the 9th Parliament: A Review. Transparency International Bangladesh.

² Alam, Q. & Teicher, J. (2012). The State of Governance in Bangladesh: The Capture of State Institutions. In South Asia: Journal of South Asia Studies. 35:4. 858-884.

³ Transparency International Bangladesh (2014). A National Integrity Systems and Context Analysis (NICSA) Study. Transparency International Bangladesh.

Party (BNP)⁴. This divide has determined Bangladesh since democracy was reinstated in 1991, after 16 years of autocratic military rulers. Though challenged by the 2006-08 military take-over the confrontational politics reclaimed its defining role on society in the following two elections. It culminated with the 2014 election that was carried through by the AL without the participation of the opposition, the BNP, and widely criticised for not being fair and free. More than 80% voted in the 2008 election, with less than 30%⁵ in the 2014 election⁶.

The divide permeates society, state governance and is evident in all levels of state administration. Change of government is therefore, not just a change of parliamentarian decision making power but a complete transformation of bureaucracy and administration. Management and leadership are replaced throughout the state, from the police and hospitals to educational institutions etc. Unwanted people are transferred, some resign or are forced to retire and others are selected and promoted on party political affiliations. The underlying logic is, on one hand, to eradicate the traits of the previous government and, on the other, to ensure loyalty and control of key state institutions and agencies.

The confrontational divide is not just a feature of political competition; it is ingrained into and rests on the electoral system. It gets its power from the Westminster model in which the constituencies are the units of voting in head-to-head races where the winner takes it all. In addition, the constitution stipulates that a party member cannot vote against his/her own party. Together this creates confrontational political competition of absolute success or failure and ensures alignment and control of party members by the leadership. On this foundation, consecutive elected governments (disregarding the military dictatorships) have blatantly utilised the parliament

4 Andersen, M.K. 2013. The Politics of Politics: Youth Mobilization, Aspirations and the Threat of Violence at Dhaka University. PhD thesis. FS & Ph.D. Thesis no. 85/2013. ISSN

no. 0909-9174. Roskilde University.

to benefit themselves and their allies. The opposition consequently boycotts parliament and resorts to street agitations and mass movements to voice concerns and demands and disrupt society. Democracy only comes to life, has an existence and legitimacy in the actual voting, where all people are respected as citizens and as masses of voters.

The constituencies are the battleground and prize. The elected Member of Parliament controls the distribution of state resources planned for local development initiatives, such as contracts, jobs and promotions within the local administration, and uses this to build support bases and secure vote banks. This ensures party control of state institutions and establishes an opportunity structure for exchanges of favours, distribution of benefits and allocation of rewards. It is a political practice that has grown with democracy during which the two ruling parties have continuously utilised, amended and ignored the legal system for own ends. This kind of politics has created a society based on the rule *through law*, not rule *of law*.

The struggle to secure governmental power and control of the state; its financial resources, bureaucracy and security agencies through parliament elections has defined Bangladesh politics since independence. It is a reactive form of politics that encompasses the entire society and defines and negates new forms of politics and political vocabularies. It rests on the ability of the parties and political leaders to mobilise and reward people for participation in confrontational politics. Mobilisation works around the student front organisations at the universities.

University and Parties

Students and student activists have been at the centre of politics, political transformations and state building in every part of the world. Recently, students have been the leading force in attempts to promote democratic transformations in Pakistan, Iran, North Africa and Hong Kong demanding political changes, openness and participation, with varying degrees of success. However, contrary to our normal thinking

⁵ The official figures are contested.

⁶ More than 90 million are registered as eligible voters.

about young activists as challengers of the established order, the politics of student organisations in Bangladesh are closely connected to party politics.

The most significant events in the national history for independence the 1952 Language Movement and armed struggle during 1970-71 were to a great extent organised by students. Student activists mobilised popular national support for selfdetermination and democracy that paved the way for Bangladesh as an independent state. Since then, universities and especially at Dhaka University has been the key site for incubation of political leaders and popular movements protesting and toppling undemocratic governments and despotic leaders.

Initially, activism was defined by the anti-colonial struggle and, after the partition, by the conflictual relationship between East and West Pakistan. After independence, it was marked by 16 years of military rule and autocracy. With democracy in early 1990s, activism became absorbed into party politics. It was hereafter defined by the confrontational relationship between the two major parties; the Awami league and Bangladesh National Party and their respective leaders; Sheikh Hasina and Khaleda Zia.

The divide arranges the university into two competing and contesting groups along political affiliations⁷. It infuses university staff, students and faculty members at every level. It impacts students' grades, examination results and directs faculty promotions and appointments. A change of government means a replacement of university leadership with people aligned to the new rulers to control campus, fresh

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It is nonsensical that the changes and reforms we aim to achieve are political, but our interventions and practices are technical and instrumental — in many cases detached from the grounded political realities.

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opposition activists and ensures continuous recruitment of young people for party politics8.

Today, Dhaka University continues to be the hub of student politics and the key site of political mobilisation of young people into the machinery of party politics. Student organisations are seen as the mobilising 'muscle' of the political parties involved in unlawful activities such as extortion, violent assaults, killings, riots and clashes. Student organisations are seen as instigators and organisers of violence ordered by the political parties, commonly in the form of general strikes (hartals) where student activists work as 'picketers' forcefully closing shops, offices and transportation, including violent assaults on people trying to break

the strike or just moving about the city. In the runup to the 2014 election, at least 3000 vehicles were attacked and more than 500 people were killed in this form of political violence.

The main site for mobilisation of new activists is the campus residential halls, where a majority of the 30,000 students live. The halls are controlled by the student organisation in power. As governments change, supporters of the losing party are evicted from the halls and some expelled from campus. Access to housing and other benefits gained from political involvement is a powerful tool to attract young activists and control the student body because residence and affordable housing is a scarce resource at the university and in the city of Dhaka.

The city grows rapidly in economy and population, absorbing migrants motivated by dreams of prosperity and livelihood. Around 300,000-500,000 people have migrated to Dhaka every year since 1990, drivenby the growth of the garment sector creating a

⁷ Other parties, numerous left wing groups and right wing such as Shibir - though it is banned at campus, are present at university but they do not have the same amount of supporters and connections within faculty and politics.

⁸ This also happens at other public universities but Dhaka University is the most prominent and politically important.

range of employment opportunities. The population is expected to reach 20 million by 2020. Land prices have soared and housing is today unaffordable for the majority of the population. 28% of the population lives beneath the poverty line with 47.5% living in slums. In this situation, free housing and cheap meals at the hall canteens is an effective tool to manage and attract students to political activism. At the same time, activism is an opportunity to secure a future of prosperity and safety through political affiliations and party connections.

Activists and Student Leaders

Student politics is an opportunist self-generative and self-interested practice in which the politician with distinct interests, concerns and priorities, balances his own ambitions up against the demands of the organisation and the obligations to supporters, in the competition for higher and more influential positions. In this effort, individual drives, ambitions and aspirations are key motivators, set within a set of rules and procedures of political activism. However, to be an activist with leadership aspirations is not an easy endeavour

Like any other form of political organised hierarchies becoming a successful leader rests on the individual ability to gather and grow a group of supporters. Activists invest themselves into a political relationship with a leader on the prospect of tangible benefits such as money, rewards and opportunities. The leader maintains and rewards the activist in expectation of loyalty and presence. The number of supporters works as a tangible display of popularity and strength. Both of which are crucial to overcome the competition either by appeal or by muscle. Violence against competitors within the organisations is a regular practice, as is violence between the activists of the organisations. In this way, violence is ingrained

Student organisations are a micro-cosmos of party politics. All the way up to national politics, it is the responsibility of the successful to take care of supporters and support network. Rewards and favours such as promotions, nominations and contracts are defining features of party politics, government and governance in Bangladesh. Practices that are passed on and learned via political opportunity structures that mobilise, form and pave the way for the coming political leadership and national elite.

Ramifications for human rights improvements

Political leadership is essential in the fight for human rights, against impunity and misuse of authority. However, the global human rights movement attempts to improve state accountability, good governance and rule of law, tend to overlook this area in their focus on documentation and advocacy work, reform of law and institutions and change of practices and behaviour. Cooperation with authorities and institutions based on integrated sectorial and holistic approaches are seen as crucial for success. Reform and training are the conventional tools used to improve legal systems and change unlawful practices within the security sector. Unwillingness on part of the receiving government, targeted institutions or professional groups, is the preferred excuse employed when things are not moving in the desired or projected direction. Lack of resources, be they financial, technical or human, is the recipients answer to the same problem.

Bangladeshi politics illustrates a problem more complicated and indicates that rectifying technical tools might not be adequate to meet the challenge. It tells us two things. First, bad governance, misuse of authority and human rights violations are not singular

into political organisation and entangled with political activism. Student activism educates the youth with aspirations to become politicians. It is a risky and uncertain path but the rewards of accessing political power and state resources are tremendous. Success is secured by personal networks and individual patrons underlined by determination and patience. It is not unusual to struggle for 10 years or more to be granted a leadership position.

⁹ UN-HABITAT (2007). Global Report on Human Settlements 2007: Enhancing Urban Safety and Security. London: Earthscan.

¹⁰ World Bank (2013). South Asia Population-Urban Growth: A Challenge and an Opportunity. Washington, D.C. The World Bank.

disconnected entities but interrelated social processes that affects every corner of society. This might appear commonsensical, especially for the people living under such conditions, but as part of the global community of reformers, we rarely act upon this knowledge and change our thinking and activities.

Second, as every person depends on exchange relations and networks for safety, security and livelihood, it appears wishful to expect substantial changes of conduct from within the state system. State representatives targeted in reform and training programmes; judges, prosecutors, police, correction officers or civil bureaucracy, are often well versed in national and international law and human rights. They know the workings of corruption and violence and how it is detrimental to state accountability. Is the problem the unwillingness of the state or the incapability of individuals within the state? Or is it a matter of absent political courage, aspiration and leadership to initiate, stimulate and promote changes, be they legal or behavioural?

In Bangladesh, the confrontational divide and the politicisation of state institutions combined with the parties' perpetual mobilisation of activists continuously reinforce and reiterate oppressive unjust and harmful practices behaviours. The deep-rooted political culture, that educates and shapes student activists, politicians and bureaucrats in the image of their predecessors somehow negates or nullifies ambitions of improvement. It is nonsensical that the changes and reforms we aim to achieve are political, but our interventions and practices are technical and instrumental - in many cases detached from the grounded political realities.

We should ask ourselves; what is the source of the problem and where is the potential for change? Can we talk about rule of law, corruption and reform without addressing the political dynamics which define the ways in which inequality and

oppression unfolds? Can we expect a police officer stop threatening and torturing people or taking bribes through training and education in a system where impunity and rewards are secured through loyalty to the rich and powerful? Without addressing these questions, we cannot expect substantial improvements in the lives of the poor.

Unwillingness and incapability are not explanatory causes of human rights violations, bad governance or corruption but consequences of deep rooted routines, practices and behaviours such as within law enforcing institutions, defined by and through politics and political configurations, to secure livelihood, safety and security.

Morten Koch Andersen have worked for DIGNITY-Danish Institute Against Torture since 2006 as programme manager for the prevention of violence and rehabilitation of torture survivors. After achieving his PhD in 2013, he works as a researcher. Currently, he is pursuing post-doc research on corruption and torture in South Asia.

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Photo Essay

The Right Livelihood Award Foundation is an international award designed to "honour and support those offering practical and exemplary answers to the most urgent challenges facing us today". Also known as "The Alternative Nobel Prize", the award is based in Sweden and was established in 1980. The following photo essay covers their recent award ceremony, held at the Swedish Parliament in Stockholm in December 2014.





Basil Fernando

Basil Fernando is a leading Asian human rights defender. Born in Sri Lanka, his career has spanned over three decades with him leading the Asian Human Rights Commission (AHRC) for almost two decades. He has dedicated his life to documenting human rights violations, promoting sustainable solutions and encouraging human rights education. He is also a noted poet and creative writer. He received the award, "... for his tireless and outstanding work to support and document the implementation of human rights in Asia."



Asma Jahangir

Asma Jahangir is Pakistan's foremost human rights lawyer. Her courage in defending the most vulnerable Pakistanis has been sustained over an incredible career. She founded the first legal aid centre in Pakistan, has campaigned relentlessly against discrimination and made history when she was elected the first female President of the Supreme Court Bar Association of Pakistan in 2010. Despite threats, assault and house arrest she has never given up her struggle. She received the award, "... for defending, protecting and promoting human rights in Pakistan and more widely, often in very difficult and complex situations and at great personal risk."



Alan Rusbridger

Alan Rusbridger is a British journalist, and the editor of the Guardian, a leading UK newspaper noted for its coverage of global development, the environment and human rights questions. Under his editorship he has fought highprofile battles over press freedom. In 2013, Alan Rusbridger was vital in the publication of Edward Snowden's intelligence documents, continuing despite intense government pressure. He received an honorary award jointly with Edward Snowden, "... for building a global media organisation dedicated to responsible journalism in the public interest, undaunted by the challenges of exposing corporate and government malpractices."



Edward Snowden

Edward Snowden is an American former CIA officer and NSA contractor. Upon discovering that the US government was operating a clandestine global mass surveillance system, violating human rights and international law, he copied the documents at great personal risk, before sharing them with the press. The USA is now pursuing him on criminal charges, while his actions have incited an intense global debate on surveillance and the meaning of privacy. He received an honorary award jointly with Alan Rusbridger, "... for his courage and skill in revealing the unprecedented extent of state surveillance violating basic democratic processes and constitutional rights."

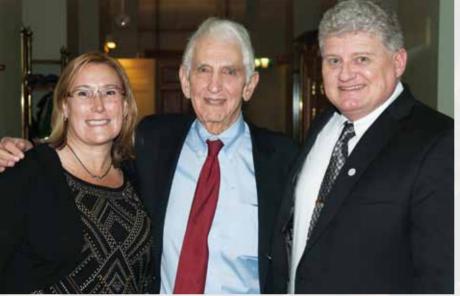


Bill McKibben

Bill McKibben is a globally significant environmentalist. As a writer, he was one of the first voices who informed the general public about climate change. He established and development 350.org, a massive grassroots climate change movement which has spread awareness of climate change, and mobilised political support for action. He received the award, "...for mobilising growing popular support in the USA and around the world for strong action to counter the threat of global climate change."



Alan Rusbridger, Basil Fernando, Asma Jahangir and Bill McKibben.



Karen Snowden, Daniel Ellsberg, Lon Snowden: the parents of laureate Edward Snowden posing with celebrated whistleblower Daniel Ellsberg who leaked the Pentagon Papers in 1971.



The Laureates posing with their award certificates: Bill McKibben,

Lon Snowden, representing his son, the whistleblower Edward Snowden.





Lon Snowden, Asma Jahangir, Basil Fernando, Alan Rusbridger.



Two photos of traditional Swedish musicians performing.







Jakob von Uexküll, founder of the Right Livelihood Award, presenting the award to Alan Rusbridger.





Jakob von Uexküll, founder of the Right Livelihood Award, presenting the award to Bill McKibben.



Jakob von Uexküll, founder of the Right Livelihood Award, presenting the award to Asma Jahangir.



John Clancey, Basil Fernando and Heiner Knauss



Monika Griefahn, co-Chair of the Right Livelihood Foundation Board, Laureate Alan Rusbridger and founder Jakob von Uexküll.

Monika Griefahn, co-Chair of the Right Livelihood Foundation Board,

Laureate Bill McKibben and founder Jakob von Uexküll.



Basil Fernando and Karin Verland - Director General -Danish Institute Against Torture

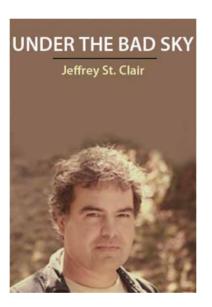


A FEARFUL SOLIDARITY laughter in the dark

by JEFFREY ST. CLAIR

IN the wake of the Paris shootings, the Western world exalted in the euphoria of unity. Angela Merkel and Benjamin Netanyahu (the party crasher) held hands. Two doomed politicians, David Cameron and Francois Hollande, kissed cheeks. Even the disgraced Nicolas Sarkozy seemed freshly polished for miraculous second act. The left and the near right - though not the vexing Marine Le Pen-paraded together to the Place de la Republique in a revel of solidarity. Fractious France has united, the press cooed, the terrorists have failed.

But what at a distance seems like a spontaneous coalescence can also be interpreted as a deeply-encoded cultural reflex, a kind of collective defence of the superiority of so-called Western values and identity. This united front must surely have been viewed as a fearful solidarity to Europe's Muslim community, a confirmation of their worst fears. The surging rallies in defence of free speech were simultaneously mass endorsements of intolerance. Even the slain editors and cartoonists of Charlie Hebdo would likely have



cringed at the sight of millions of people who had never read their scabrous magazine reflexively adopting the slogan "Je suis Charlie; nous sommes tous Charlie." It has all the hallmarks of an ominous outbreak of imperial groupthink.

No one paused for a moment to question what set off the killers, what kind of grievances they may have nursed, what kind of motives drove them to slaughter. Judgment was immediate. These were the people Bernard Henri-Levy and Michel

Houellebecq warned against. The excitable Muslims, the irrational ones, the fanatics with Kalashnikovs. People who defy our understanding, whose stimulus to action is unworthy of contemplation.

But the Paris killers were French. The Kouachi brothers were, in fact, wards of the state for years, educated by the state, inculcated with French values, amused by Asterix the Gaul cartoons, and fortified by French food. They were not born "others" or reared as outsiders. They wore French clothes and movies, they played French hip-hop and frequented Parisian clubs.

At what point did they come to feel like aliens in their own land? What triggered their transformation into urban jihadis? Was it simply a sudden, irrational eruption over demeaning cartoons in a little-read French weekly?

The western elites would like you to think so, but Cherif Kouachi told those who would listen a very different story. His metamorphosis was sparked by other images, images of sadist degradation of Muslims in Iraq, the photos of American soldiers torturing Iraqis held in Abu Ghraib prison.

Here's the first thing to know about the Kouachis. While the brothers were born in France, their parents were Algerians, who moved to France from wartorn North Africa while the stench of destruction, assassination and torture was fresh. The stories of those terrible days must have been relayed, again and again to the Kouachi children. They knew better than most that the French torturers of their relatives in Algeria had written the how-to-manual for the American torturers in Iraq and Afghanistan. Here was visual proof for the bloody continuity of colonialism. If you're looking for an ignition point, you might find that the fuse was lit, decades ago, in the abattoirs of Algiers.

Back in Paris, as the transcontinental celebration of tolerance for bigotry reached a frenzied pitch of self-congratulation, French police arrested the acerbic black comedian Dieudonné for making piquant jokes about Benjamin Netanyahu. His routines were deemed anti-Semitic. His post-massacre tweets cited as offensive, a transgression of French laws. Dieudonné had touched the third rail of tolerance.

While Dieudonné was being hauled off to a postmodern Bastille for thought crimes, 10,000 French troops swarmed the streets of Paris, Lyon and Marseille, dressed in black ops gear, armed with automatic weapons, infused with sweeping new powers of domestic surveillance-a bracing reminder of just how swiftly the feted freedoms of French republic could transform into a police state, poised to crush unauthorised dissent, such as the newly banned protests for Palestinian rights.

One can ignore the cries of rage and despair simmering in the banlieues at one's own peril, which, naturally, is exactly what French politicians did, as the National Assembly voted 488-1 to expand its role in the war on ISIS only a week after the shootings. There was no room for debate. Not to march in lockstep was viewed as a measure of seditious disloyalty. The French just put the smirk back on George W. Bush's face.

Voltaire, France's fiercest satirist, repeatedly admonished his coterie of radicals to: "Get the laughter on our side." Chris Rock pithily translated Voltaire's advice this way: "Satire should be punching upward." It is a call to use our pens and keypads to puncture the pretensions and prejudices of the powerful.

And here we confront Charlie Hebdo's greatest failing, not that its cartoonists mocked the Prophet or skewered the Mullahs, but that the magazine became a tool of the ruling order, aiming its most savage work at the most vulnerable citizens of France: the weak, the marginalised and the dispossessed. In the end, Charlie Hebdo, like much of the French intelligentsia, became an agent of orthodoxy, a persecutor of the poor and the powerless, deaf to their desperation.

One person's euphoria is another's worst nightmare.

Jeffrey St. Clair is editor of CounterPunch. His new book is Killing Trayvons: an Anthology of American Violence (with JoAnn Wypijewski and Kevin Alexander Gray).

STILL HANGING OVER THE PRECIPICE

THE world continues to crumble: figuratively and actually. The news today tells of an interstate highway overpass in Ohio in the United States that collapsed, closing a major north-south traffic artery for an undetermined amount of time. In Texas and Oklahoma, earthquakes and tremors apparently related to the extraction of oil and natural gas, via the process called fracking, are occurring in areas where earthquakes never appeared before. In the figurative sense, wars and smaller acts of terrorist murder occur at a pace most earthlings find difficult to keep up with.

Consequently, they accept the ruling elites' claims that the wars are necessary and the smaller acts of terror are the exploits of fanatics that have nothing to do with the wars of rulers. In the economic sphere, the wealthy hold the rest of the world hostage, demanding a daily ransom in lives and money—a ransom too many pay willingly, thereby creating a dynamic where all of us must pay something. The fairy tales of salvation we call religion appear ever more appealing to the world's citizens while the myth of easy earthly



wealth motivates all too many. Both of these phenomena are similar in their promise of happiness—a happiness that is as much of a lie as the phenomena themselves.

How is this time different from the rest of human history, one asks? Hasn't it always been a chronicle replete with suffering and injustice? Of course, the answer to the second question is yes. The answer to the first is more difficult. I would propose that this point in the human endeavour is different primarily in the magnitude of the suffering and in the callous arrogance of those

whose actions perpetrate it. Additionally, there is the very real threat to the earth's very essence. No longer is it just humans and animals that suffer from human greed and lust for power. It is the very actuality of the earth itself; its air, land and water. Unlike most human and animal life, these cannot be easily replenished. Furthermore, their expanding loss affects the lives of everything else on the planet.

In earlier times, royalty and its capitalist descendants claimed religion as the rationale for their stature. In other words, it was God's ordering of the universe that created the rich and the poor; the powerful and the weak. To challenge this order was the work of the devil, subject to those punishments reserved for heretics and infidels. In today's world, there is no pretence by the wealthy and powerful that the order they kill to maintain has anything to do with any god. Sure, they may utilise religion to keep the believers from demanding too much on this earth, but their fundamental justification for their wealth and power is simple. It is that they have obtained these assets (through inheritance, exploitation of labour and resources, repression and outright murder) and therefore all profits from their actions are theirs, consequences be damned. The rest of the world should kneel at their feet. The arrogance of these elites is most recently shown in the construction of Manhattan's second tower of Babel-the ninety-story apartment building on 157th Street where an apartment just sold for over \$100 million.

The question for the rest of us; that is, those who labour for the profits of the powerful, those who kill and die in their wars, and those at the very bottom of their hierarchy whose lives are considered expendable from birth—is how to change the way things are. How to create a more equitable world? Movements opposed to the greedy accumulation of wealth and consumption on a level never seen before have come and gone. Politicians have been elected by promising they will end the gross inequality of modern capitalism, only to be consumed by the succubus of greed that consumes almost everyone given entry into its web created by profit and maintained by lies and violence. Rebellions end up being manipulated by forces of the imperial state, defeated by local and foreign militaries and their corporate backers, corrupted by power or all of the above. Some of these so-called rebellions even turn out to be products of foreign markets and intelligence agencies. Recent examples can be found in places as seemingly different as Egypt and Ukraine.Likewise, in the United States, the never-ending volley between two corporate political parties slapping the ball of the polity back and forth; one party pretending to be the party of the people against war and Wall Street, and the other pretending to be the party of the people from the other side of the spectrum. Yet, after decades of this back and forth, the monied classes have greater control of our world than ever before in history. Their wars continue and their profits rise.

I've been alive almost sixty years and cannot recall one in which the rulers of the country I was born in were not engaged in some form of hostility against another nation or people. The war was either "hot" or "cold" and their enemy always foreign. Most often, these enemies were also not white skinned. One might think this history means that there is no point trying to change the scenario. I still believe that there is. There are no superheroes and there are no gods to rescue us. Ordinary humans exposing torture and fighting racial, ethnic, and gender persecution, both de facto and de jure, are the only heroes. One can join them and hope to save the present and change the future; or one can surrender to the temptations of the powerful, the easy lies of the religious, and/or the comforts a completely private life appears to provide. All of these illusions will not change the objective reality of that Damoclean sword above our heads. Of course, there is the possibility that nothing can at this point in human history. Discovering this truth without attempting to change it is perhaps the worst form of defeat. We must not allow it. Profiting from the catastrophe is wrong. So is doing nothing about it.

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.

EXONERATING THE CIA

WHEN THE ESTABLISHMENT INVESTIGATES ITSELF

EXONERATING spooks for improper conduct is a regular feature of the establishment. After all, you don't convict your own, turning your nose at activities pursued under the grand, catch-all term of national security. From the start, the CIA review, established to investigate its own activities into spying on the Senate Select Committee on Intelligence, was always predictably constituted, with predictable outcomes.

The "accountability board" was chaired by former Senator Evan Bayh (D-Indiana), along with former Obama White House attorney Bob Bauer and, as

anticipated, three senior CIA officers. The originating source of its convening was yet another predictable feature: the CIA itself (the board was convened in August 2014 by CIA Director John Brennan).

Its task: to investigate alleged misconduct of five CIA employees who improperly accessed computer data belonging to the SSCI under the Computer Fraud and Abuse Act and the Wiretap Act and make recommendations that, "future instances of the miscommunication and confusion that led to this controversy," do not occur again.



The background to the review proved acrimonious. The SSCI had an issue over the CIA prying into its material on the agency's rendition and torture program. The CIA, in turn, felt that the senators and their staff had obtained unauthorised access to agency documents and improperly dealt with classified material. The Department of Justice, sensing trouble, evaded the issue.

Last March, Senator Dianne Feinstein (D-CA) suggested that the CIA search may have violated a range of legal provisions, citing the Fourth Amendment, the Computer Fraud and Abuse Act,

and Executive Order 12333 prohibiting the agency from conducting domestic searches or surveillance.

The CIA, according to Feinstein, had become a power onto its own, effectively subverting the constitution. From the start, it hired, "a team of outside contractors – who otherwise would not have had access to these sensitive documents – to read, multiple times, each of the 6.2 million pages of documents produced, before providing them to a fully-cleared committee staff conducting the committee's oversight work."

Naturally it, "proved to be a slow and very expensive process" (Truthdig, Mar 12, 2014).¹

The January 14th redacted report² by the review board, termed the "Final Report of the Rendition, Detention and Interrogation Network Agency Accountability Board", concluded in rather bland fashion that the entire affair had been a misunderstanding. That blandness also involved a good deal of hair splitting, riddled by legal dissembling. "The Board determined that while an informal understanding existed that SSCI work product should be protected, no common understanding existed about the roles and responsibilities in the case of a suspected security incident."

It found that the "core" of that misguided understanding centred on "the establishment of SSCI shared drives that would be walled-off but also accessible to CIA IT staff for the purpose of IT network administration." While "SSCI work product was often cited as protected... these were not clearly defined or agreed to by both parties."

Evidently, areas of cognition vary in relationships between the intelligence community and the community that oversees it – understanding differs on whether it is informal, which can lead to breaches of trust, or "common", in which case it is assumed to be firmer. Truth be told, the CIA did not particularly like senatorial staff digging in a rather dirty intelligence backyard.

Accordingly, the board found that "none of the five individuals under review by the board was responsible for this mistake, and two of them – the most senior – had expressly counselled that care be taken to avoid accessing [SSCI] work product."

Reading between the lines, and you can only deduce that the senators and staff had to assume that they would be spied upon. (The names of who authorised such conduct have been redacted.) In the pecking order of the Republic, political figures investigating a body for alleged criminal conduct were the ones to be monitored. This attitude is outlined in so far as the CIA had "obligations under the National Security Act", with a pressing legal duty to search the computers "for the presence of Agency documents to which SSCI staff should not have access."

Various recommendations were made regarding the use of shared computer networks having classified material, though the agency retains the prerogative to define how those boundaries are to be charted. Expect more misunderstandings in due course. A specific omission from the review is the failure to explain the disappearance of material off the system, including the now famed Internal Panetta Review.

A standout feature that somehow undermines the constitutionally motivated anger of SSCI committee members lies in its inconsistent attitudes towards surveillance. Bulk gathering of data on US citizens, and non-citizens, has its uses, but keeping an eye on Congress, a body which has also taken its eye off constitutional erosions, does not. The question is one of degree: who are the greater rogues?

The exoneration of CIA employees may well sting, but it has its own institutionalised justifications. Even the president agrees. According to Barack Obama's spokesman, Jay Carney, the president expressed, "great confidence in John Brennan and confidence in our intelligence community and in our professionals at the CIA" (Truthdig, Mar 12, 2014). The establishment simply got off the hook, again.

Dr. Binoy Kampmark was a Commonwealth Scholar at Selwyn College, Cambridge. He lectures at RMIT University, Melbourne.

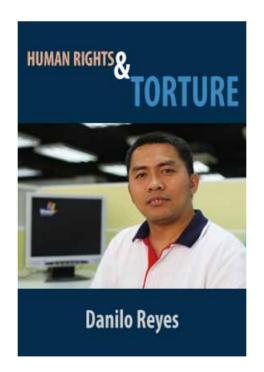
¹ http://www.truthdig.com/report/item/feinstein_v_the_cia_a_moment_of_truth_20140312

² https://www.cia.gov/library/reports/Redacted-December-2014-Agency-Accountability-Board-Report. pdf

Excusing abuses by public officials in the Philippines

IN August 2014, police arrested a Chinese national caught transporting ten kilos of high grade *shabu* (poor man's cocaine) in his car in Quezon City. The suspect was visibly having difficulty understanding English or Filipino when authorities spoke to him, as seen on TV cameras covering his arrest.

On the scene were journalists, invited by police and politicians. Inviting journalists to cover onsite is common for policemen and politicians once they arrest suspects linked to drug syndicates. Press conferences also held on the scene for publicity purposes.



With the television cameras rolling behind Herbert Bautista, mayor of Quezon City, the suspect could clearly be seen sitting in his car.

As Bautista was talking to the reporters, the drug suspect rose from his seat, positioned himself just beside Bautista's back and smiled at the cameras. Startled, Bautista gave him a high five.

Yet the reporters did not like what they saw, questioning Bautista in disgust: "Why would you allow that, Mayor? It seems he is disrespecting you". It was here that Bautista's reaction dramatically changed—from

being playful towards the suspect, to aggressive.

In view of the policemen, journalists and television cameras, he started questioning the suspect amusing the reporters waiting to witness exclusive stories unfolding.

"Where did you get this?" Bautista asked the suspect. Vague hand signals were given in response, signalling that the suspect either could not hear or could not understand. Bautista raised his voice: "You can't hear me?" and slapped the suspect twice.

After the incident, Bautista explained his actions on national television: "I realised, he is a Chinese national who should respect authorities and the law". Reports on Bautista's treatment of the individual did not mention he had hitthe suspect. His actions were described as if they were the trivial acts of a public official, like 'sinampal (slapped)', nakatikim ng sampal (deserved a slap)', and the aggression ignored.

But why inflict pain and humiliate the suspect? There is already clear and strong evidence against the suspect. Clearly Bautista's purpose in hitting was not to extract confession from him — because the evidence was already on hand — but rather to show to the journalists TV reportersand the public, that criminals must be seen to be punished in public and that he, as Mayor, deserves respect.

What Bautista did to a Chinese drug suspect, and his probable motives in doing so, is similar to how Alfredo Lim, former mayor of Manila, explained his actions of torturing a rape suspect in June 2013 in full view of the police, journalists and the public.

Lim believed his actions were fully justified. In his view, what he did was not torture (despite clear evidence he was hurting the suspect as he questioned him). He said there was no need for him to extract confession from the suspect because he has been positively identified by a witness as the real culprit.

But unlike Lim, Bautista admitted and apologised on television to the Commission on Human Rights (CHR) and the Filipino youth, saying that "My apology to the CHR, not to the suspect, to Mrs. Etta (Rosales), because I did it. It is not my character to hurt people. To the youth, what I did was not a good example of a leader".

Clearly, Bautista was remorseful, not because he knowingly and in view of the public breached the law. The Anti-torture law makes it a crime to inflict pain, physical or psychological, to anyone for purposes of extracting information. When Bautista began questioning the suspect: "Where did you get this?" he was in effect extracting a confession. As a public official this law applies to him.

Bautista knows full well how to capture the sympathy of the public so that his action of hitting the suspect would be acceptable in their eyes. Just like in Lim's case, where the public were angry at the suspect for raping and robbing a woman, Bautista knew many would be angered by the trade in illegal drugs.

The CHR, who knew full well of the allegations against Lim and Bautista, did not bring charges for violation of the Anti-Torture Act against them.

Furthermore, Bautista understood and made use of the Filipino's disgust and of its territorial thinking against foreign nationals committing crimes. The Filipinos views against taga labas (foreigner), hindi taga rito (had no roots in the community), and estranghero (stranger) are very negative when they break laws.

The suspect's country of origin, China, to whom the Philippine government has had protracted diplomatic dispute over the West Philippine Sea, further fuels anger and hatred in support of Bautista. Such anger and hatred often overwhelms police and politicians. They lose control of themselves.

As Bautista claims, it is not in his character to hurt people. After all, he was a well-known Filipino film actor and comedian before he entered politics. But we also see that clearly anyone, just like him, is capable of hurting another human being.

Other politicians, however, either did not approve of Bautista apologising, or have suggested that him slapping the suspect was not enough.

One of these is Rodrigo Duterte, mayor of Davao City, who said, "What you did was right. It was not enough though. You could have kicked him, too. [Had it happened in Davao City] I would have carried him onto a boat and fed him to fish in the Davao gulf. The fish do not have anything to eat there." Duterte is known for his support to eliminate drug offenders.

Even the television anchor who interviewed Bautistaexpressed support for his actions. Without any pretension, the anchor suggested that, "Next time, why don't you call somebody to do [the torture] for you?" To which Bautista readily replied, "Yes,

there were many people who suggested that to me also."

Clearly is does not enter either the journalist nor Bautista's minds that Bautista had committed a serious criminal offence. To even entertain the idea that, next time, Bautista could ask somebody to hurt another person for him, is sheer contempt of the law. Why is there clear impunity and understanding of such an act of violence?

The conversations following this incident show that torture and associated acts of violenceare not yet seen as a severe criminal offence in the Philippines. On paper, the law says torture is wrong; however, it is clear that the journalist, politicians and the public have a certain level of expectation wherein torture is and can be used.

(Danilo Reyes earned his master in law from the University of Hong Kong. Currently he deputy executive director of the Asian Human Rights Commission)



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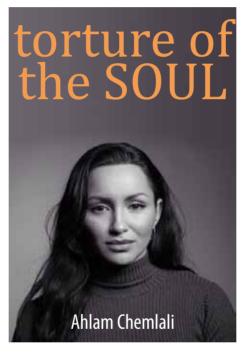
Loss & Love in the Middle East

DURING many of my travels I have crossed paths with people who have moved, touched and inspired me. Faces, stories, smells and places have stuck with me long after I am gone. The ruined and unstable towns of Libya, the dense and overcrowded streets of Cairo, and the miserably despairing refugee camps in the occupied Palestinian territories.

The people I meet are all different, each with their own story, to live and tell; their own light, their own pain. Nevertheless, no matter how different, almost all stories include Love and Loss. I remember the heartbroken women waiting for their men to be released from Israeli imprisonment. Female relatives of

prisoners suffer greatly when their husbands and brothers are taken away. Not knowing about their whereabouts, nor whether their loved ones are dead or alive, is unspeakably distressing. Will I ever see him again? Will our daughters know their father? Is he still alive? Then there are the lonely and sleepless Mothers of Martyrs, who impatiently look out their windows, jumping at any sound in the hope that their sons will return from the frontlines. Sadly, this rarely happens. Loss and grief are the only certainties in such times of darkness.

Thinking of these women, I recall the words of Khalil Gibran, "And ever has it been known that love knows



not its own depth until the hour of separation."

When travelling and working in the Middle East and North Africa, working in the field of torture and mental health, one cannot avoid getting familiar with the concepts of Maktub and Sabr.

Sabr is the Islamic virtue of "patience" or "endurance". It teaches to remain spiritually steadfast. Patience in the face of a calamity, at the moment of grief. Still, Sabr is more than patience. More than endurance. Sabr is the strength of your soul and mind. It is accepting hardship as a pathway to peace. It teaches you not to break

when you have been bent.

Maktub is an alchemist term which literally means "It Is Written". From mystical point of view, it points to the fact that whatever happens is already known to the One. It signifies that Destiny exists. Everything is already known to God.

These concepts are usually how victims of torture and violence, or people who have lost loved ones in conflict and war, explain their suffering to me. They are their coping mechanism. To understand this logic one has to understand the fundamentals of Islam; to submit to the Will of God. The faith is a form of refuge that offers consolation and comfort. Moreover, Muslims believe that God will avenge an injustice that befalls the faithful. Hence, the matter is left to God and trauma or distress is accepted as divine will.

It is in many cultures very shameful to admit to mental symptoms because people perceive it as a sign of weakness. The taboo and stigma towards seeking professional help is unmistakable, and I have come across it repeatedly during many field missions. The absurdity of acknowledging having a problem, but not seeking help for it, is a recurrent issue.

This causes further problems. Many countries across the Middle East and Africa have a custom of not seeking support for psychological pain, with few trained psychologists and psychiatrists having experience of treating trauma. As a consequence of this low prioritisation, severe social stigma exists regarding those affected by mental illness. Mental illness is often considered a demonic possession and psychiatric symptoms are attributed to supernatural sources, such as the evil eye, magic or sorcery. The most common form of seeking help is to solicit traditional healers, witchdoctors or Sheikhs who communicate with evil spirits known as Jinns. In Morocco and Libya going to Al-Hijama is preferred. Hijama in Arabic is derived from hajm which means "sucking". Blood Cupping (Hijama) is the process of applying cups to various points on the body by removing the air inside the cups to form a vacuum, in order to suck "bad" blood out. The procedure is also widely used across Asia in alternative medical practices.

Treatment and psychiatric hospitals are also saturated in deep stigma and taboo. Psychiatric hospitals are believed to be "frightening" places only for "crazy" people with severe mental disorders. In an Arabic context, women receiving care at a psychiatric hospital are marked as "crazy" and her chances for marriage are greatly diminished, leaving her likely to be perceived as a burden to her family for the rest of her life. Fewer females compared to males are inpatients in psychiatric hospitals, potentially due to the aforementioned stigma. In order to protect the family, sometimes individuals are sent to other

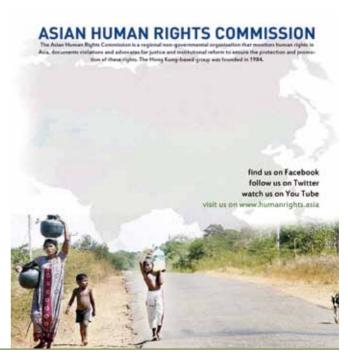
countries for care, like a family I met in Egypt who sent their daughter for treatment in Tunisia, because of the perceived shame and dishonour to the family.

So do we change this culture? Is the Western way of thinking the most appropriate? Or is pathologising the problem — the real problem?

If, as a society, we do not bear witness to grief, the burden of loss is placed entirely upon the bereaved while the rest of us avert our eyes and wait for those in mourning to stop being sad, to let go, to move on, to cheer up. If they don't — if they have loved too deeply, if they wake each morning thinking that they cannot continue to live — then we pathologise their pain; we call their suffering a disease. We do not help them. We tell them that they need to get help.

They say that time heals all wounds but that presumes the source of the grief is finite. I disagree. The wounds remain. The body will be seared in scars. In time, the mind covers these wounds with scar tissue in an effort to protect its sanity, and the pain lessens. But it is never truly gone.

The reality is that you will grieve forever. You will not get over the loss of a loved one. You will have to learn to live with it. You will heal and you will rebuild yourself around the loss you suffered. Yet you will never be the same again. Nor should you be the same. Nor should you want to.



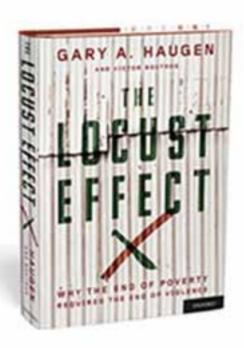
hope for the future

Book review by **V. T. BALRAM**, Member of State Legislative Assembly, Kerala, India on The Locust Effect – a book authored by Gary A. Haugen and Victor Boutros

IF you ask me which book influenced my convictions and viewpoints in the year 2014, I will definitely name the book titled The Locust Effect, authored by US-based human rights activists Mr. Gary A Haugen and Mr. Victor Boutros. My participation in a conference organised by the Asian Human Rights Commission in Hong Kong on the approach to human rights as suggested in this book also

provided me with new insights into human rights.

There have been several studies that have come out about poverty in the third world countries. Most of these studies speak of visible issues such as poverty, malnutrition, lack of drinking water, waste management, and the problems associated with educational and heath institutions. However, in



between all these issues there is a big problem that lays hidden.

This hidden issue is the failure of the rule of law in our communities and the cruel and violent circumstances that such a failed set up precipitates. In such societies violence is a part of life. This book introduces us to different lives that silently suffer sexual violence committed against women and children, bonded labour similar to slavery, land grabbing and police abuses. It is not that there are not laws formulated against these forms of violence. But these laws fail to provide protection to the poor. This is the riveting problem this book introduces us to. Anarchy

is the result when police, prosecution and the judiciary are drowned in corruption, with these institutions having lost people's trust. When such circumstances prevail where only the rich and influential can seek and obtain justice, and where the poor are hunted down by law-enforcement agencies, discussions about any other issue in that society are largely irrelevant. The Locust Effect introduces us to the shocking reality that

in the absence of a functioning justice process, traditional poverty eradication programmes, however earnestly they are implemented, will not produce any lasting result.

The book does not attempt undertake only an iteration of facts. It clearly shows a path forward to address the problems that our societies face. It is for this approach that this book is unique. very the historical experience of

The book does not attempt to undertake only an iteration of facts. It clearly shows a path forward to address the problems that our societies

face. It is for this approach that this book is very unique. It is the historical experience of today's modern and developed nations that give us hope to bring about change to our conditions.

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today's modern and developed nations that give us hope to bring about change to our conditions. What we face in our contemporary communities are issues that today's modern and developed countries faced one or two centuries ago. The book shows how progress in the respect of the rule of law, and justice institutions developed to protect human rights, have brought about amazing changes that have helped form the developed countries of today. The authors argue that the establishment of the rule of law is not a by-product of education and empowerment through education; but that a functioning justice institution framework is pre-requisite to establish the rule of law and therefore vital in addressing poverty.

Book review was originally published in *Malayalam*, on 9th January 2015.

V. T. Balram, Member of the Kerala State Legislative Assembly, India

CHAPTER VII 35. (1)

While any person holds office as President, no proceedings shall he 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

ATORTURE MANUAL

The following introduction is adapted from the newly released handbook dealing with torture, published by the Asian Human Rights Commission.

TORTURE can manifest itself in several forms. It can be mental, physical or sexual. If you are, or have been a victim of torture this manual will help you in seeking medical, psychological and legal aid. Please remember that if you don't speak out against torture meted out on you no one else will. It is your duty to report the custodial torture that you suffered at the hands of the law enforcement agencies. Law enforcement agencies in Pakistan are given unbridled power to impose the writ of the state the unchecked authority of the Law enforcement agency often results in them exceeding their power and authority. Torture and ill treatment is considered a norm

at all police stations in Pakistan and police officers feel no qualm about beating the alleged accused in their custody black and blue. In fact many a victim of



torture themselves don't know that they have been tortured they take it in a stride and don't realize that it is illegal for Law enforcement agencies to use torture. Thus it is pertinent for you to know your rights and how to get them.

Due to the rampant corruption in our criminal justice system seeking justice for torture and ill treatment during custody is an uphill task. You need to be extremely resolute in your stance in addition to being informed of the nitty-gritty involved. Your lawyer and the magistrates cannot help you if you are not vigilant about your right. If your lawyer advises you against reporting torture or does

not pay heed to your complain of torture don't feel

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We need political satire but not of the

'Jai Ho! Democracy' variety

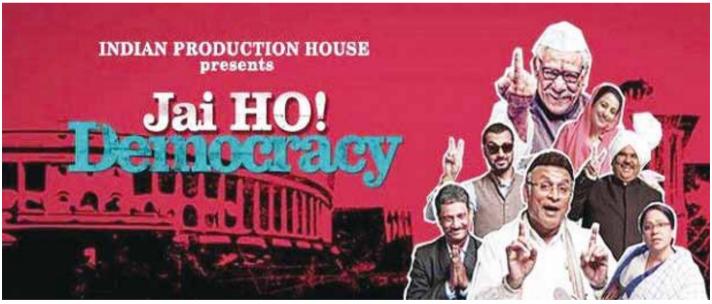


Photo Credit: Indian Production House

JAI HO! DEMOCRACY is only 96 minutes long. Early into the comedy, it's not hard to see why.

A gag that's worth a few minutes of air-time in a sitcom has been stretched beyond repair in Ranjit Kapoor's movie. It opens on the Indo-Pak border. A hen strays into no man's land. An Indian soldier is dispatched to retrieve the bird. Pakistani soldiers train their guns on him. Meanwhile, the media get wind of the story, and enough feathers are ruffled for a high-level committee to convene in Delhi and debate the course of action.

Is it funny? Is it even a complete idea? You keep waiting for the movie to develop into something bigger and richer than its one-line premise, but it never does.

All politicians bad

The committee, which consists of politicians of various national and regional parties, is supposed to be a microcosm of Parliament. The fact that the committee's members fritter away their time on technicalities and frivolities rather than addressing the issues at hand and can barely communicate with each other is supposed to be rib-tickling. The gabfest is conducted by stalwarts from parallel cinema and the National School of Drama, including Om Puri, Satish Kaushik, Annu Kapoor and Seema Biswas, who hoof around as though they were in a college production. One sequence, in which they have to demonstrate the difference between a cough and a laugh, depicts the banality not of our political class but of the film's writing department.

While linguistic diversity is squeezed for laughs in the script (only Annu Kapoor's Tamil politician impersonation being somewhat amusing), another language problem arises on the border. The Indian soldier who is trapped in no man's land encounters his Pakistani counterpart, and both happen to be from Punjab (but naturally). Cue Punjabi dialogue that is delivered without subtitles and teary-eyed nostalgia for the tragedy of the Partition and the yearning for an undivided state (only, nobody asked the Pakistanis if they agree with this very Indian obsession.)

Director Ranjit Kapoor, co-writer of the classic comedy Jaane Bhi Do Yaaron and the maker of Chintu Ji, is no stranger to satire, but Jai Ho! Democracy isn't the best advertisement for his capabilities. The cast, which includes Adil Hussain, Aamir Bashir and Mukesh Tiwari, might similarly want to bury this simplistic rant against the political class and tribute to the unknown Indian soldier deep down their resumes.

Nandini Ramnath writes for the Scroll.in, a digital news publication from India, where this review was first appeared. Reproduced with the permission by the editor

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Is it funny? Is it even a complete idea? You keep waiting for the movie to develop into something bigger and richer than its one-line premise, but it never does.

11



Time to ratify UNCAT in Myanmar



ZAW Moe is an activist based in Yangon (Rangoon), Burma (Myanmar). He is working for Assistance Association for Political Prisoners known as AAPP. We discussed with him about his works and the current situation in Burma.

He was sentenced to 18 years imprisonment by the Military Government but released after serving 5 years of his sentence.

Here is an extract from an interview;

Torture Magazine (TM): First of all let us know, why there is controversy even for the name of this country. Certain communities called it Myanmar where as others are tend to used Burma. Can't we have a single term, if yes, what would it be, and then why it should be the term?

Zaw Moe (ZM): There is nothing wrong with the name of the country (Myanmar). The issue is based on the legitimacy. The military government changed the name; they were not an elected government so some countries and opposition groups do not recognize the change based on the legitimacy.

TM: Many argue that the social system in Myanmar has deteriorated. What went wrong?

ZM: The main issue in Burma is current constitution. The State Peace and Development Council convened the National Convention in 1993 and adopted Constitution of the Republic of the Union of Myanmar through a nation-wide referendum on 29 May 2008 just after the devastation and chaos of Cyclone Nargis. It is seriously necessary to amend the constitution, such clause:

Let's have a look at them;

59. Qualifications of the President and Vice-Presidents are as follows:

(f) shall he himself, one of the parents, the spouse, one of the legitimate children or their spouses not owe allegiance to a foreign power, not be subject of a foreign power or citizen of a foreign country. They shall not be persons entitled to enjoy the rights and privileges of a subject of a foreign government or citizen of a foreign country;

Formation of the Pyithu Hluttaw

109. The Pyithu Hluttaw shall be formed with a maximum of 440 Hluttaw representatives as follows:

(b) not more than 110 Pyithu Hluttaw representatives who are the Defence Services personnel nominated by the Commander-in-Chief of the Defence Services in accord with the law.

Formation of the Amyotha Hluttaw

141. The Amyotha Hluttaw shall be formed with a maximum of 224 Hluttaw representatives as follows:

(b) 56 Amyotha Hluttaw representatives who are the Defence Services personnel nominated by the Commander-in-Chief of the Defence Services in accord with the law, four representatives from each Region or State inclusive of relevant Union territories:

Appointment of the Union Ministers

232. In order to appoint the Union Ministers, the President shall:

(b) (ii) obtain a list of suitable Defence Services personnel nominated by the Commander-in-Chief of the Defence Services for Ministries of Defence, Home Affairs and Border Affairs;

TM: The Assistance Association for Political Prisoners (Burma) also known as AAPP, is a human rights organisation based in Mae Sot, Thailand, where you works. The AAPP has recently opened offices in Rangoon and Mandalay, Burma. Tell us about the brief history on your organisation and your role there?

ZM: Assistance Association for Political Prisoners (Burma) or known as the AAPP is a human rights organisation based in Mae Sot, Thailand that works for the release of all political prisoners and for the improvement of prison conditions, inside Burma. Set up in Mar 2000, AAPP is entirely run by former political prisoners. AAPP has set up two branch offices in Burma, in Rangoon and Mandalay respectively. It carries out a range of activities on behalf of Burma's political prisoners. These activities include: providing

basic necessities, such as food and medicine, to current political prisoners and their families; to documenting and reporting on human rights abuses carried out by the regime against political prisoners and pro-democracy activists; and securing support from international governments and organizations to assist in the campaign to free all political prisoners. AAPP is widely recognized as a reliable and credible source of information on political prisoner issues in Burma, by the United Nations, governments, Amnesty International, Human Rights Watch and the media.

Other programs which AAPP-B carries out are

- MHAP (Mental Health Assistance Program)
- Data Collection (collection of current and former political prisoners' data)
- Vocational Training (provide vocational training to former and current political prisoners and their family members)
- Educational Support (provide financial support to former and current political prisoners and their family members)
- Health (provide financial support to former and current political prisoners and their family members)

I am currently working at AAPP-B as a data manager, managing prisoners' data and oversee the data collection program.

TM: The government announced this week, the releasing of 3,073 prisoners for the sake of "peace and stability" and "the rule of law," but it gave no details of who they were or why they had been imprisoned. What is your take on this issue?

ZM: Only two of those granted amnesty have thus far been identified as prisoners of conscience, while most are believed to have been jailed for ordinary crimes.

Former Brig-Gen Thein Swe, Col. Maung Than, Lt-Col Min Thu, Lt-Col Myint Oo, Maj. San Aung, Maj. Aung

Kyaw Moe and three other military men were among those freed from several facilities nationwide.

The two identified as political prisoners, Mar La and Saw Mya Saw, had both been jailed on charges of unlawful association with ethnic armed groups

The latest amnesty should not be mistaken by the international community as a meaningful gesture by Thein Sein's government, which has repeatedly promised to rid the nation's jails of all prisoners of conscience.

There are still 75 prisoners of conscience and 65 farmers in jail for political activity. More than 100 activists and over 500 farmers are currently facing charges that could land them in jail for political activities.

The authorities have failed to announce details such as the identities and nationalities of those being released.

"If the government truly cares about transparency, they should announce who they are pardoning,"

On the one hand, the government is making a show of releasing a lot of prisoners. On the other hand, they are still arresting, suing and jailing activists and farmers.

TM: Why the violence between the Buddhist Rakhine and Muslim Rohingya communities in western Myanmar are still continues.

ZM: It's current Burmese Government responsibility. This conflict and violence started at the time of current Burmese government.

As Myanmar emerges slowly from five decades of dictatorship, but land grabbing, torture and other form of violence are still in practices by the state forces.

The current Burmese government is transformed from military regime. They changed their dress from military uniform to civil attire but former military generals are still in administration body, parliament and also widely influence in judiciary. Most of the former generals have very close relationship with cronies and they are controlling the Burmese economic.

TM: How do you understand important of the rule of law and proper implementation of the public justice system which can be benefited to all citizen and treats all equally, in the country?

ZM: In order to get rid of torture, violence and unfair court procedures; rule of law in its true sense is very important to be maintained. In order to do that, proper implementation is really necessary. For instance, even though civil right, which is freedom of expression, has already stated in current constitution, many of the human right activists were arrested and imprisoned by practicing this. Articles 330 and 331 of the Burmese Penal Code prohibit 'hurt and grievous hurt' during interrogation and Art. 166 outlaws the injury of anyone by a public servant, but the use of torture and ill treatment is widespread.

TM: Do you think, addressing the very issues of the public justice system is the panacea to the crisis?

ZM: Yes. Proper implementation is the most important issue in the country.

TM: Feel free to share if we could not discussed which you think important to understand the situation in this country?

ZM: The Burmese Government has not stated when they are going to ratify UNCAT. International communities need to urge the Burmese Government to do that.

International communities need to urge the Burmese Government to allow monitoring group including local and international in upcoming election.

When international communities and local human right organizations conduct human right education program, please make sure to reach grass root level.

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dejected, insist that it is your right. Tell the magistrate or sessions judge before whom you are presented about the custodial torture or ill treatment that you are suffering. If there are wounds, ask the magistrate to order a medical examination from a medico legal officer. Remember magistrates are too busy to follow up your case; it is your duty to mention about the medico legal report at the next hearing.

During the medical exam make sure that you leave no detail unattended. it is for your own benefit that you cooperate with the doctor. Answer each and every question that he asks truthfully giving as much detail as you can.

The manual will help you in asking questions and knowing what is the right course of action. Be advised though that this manual is by no means exhaustive. You must seek help from professionals, for your convenience we have compiled a list of contact numbers, addresses and email of doctors, lawyers, NGOs, Psychologist from Lahore, Karachi, Peshawar, Quetta and Islamabad. These professionals will further help you in your case against custodial torture.

Remember to raise your voice against torture; silence will only benefit the perpetrator in continuing with this heinous practice. If you don't stand up against torture today generations after you will continue to suffer from this menace. Don't suffer in silence let the world know what you have been through. Rise today for a better tomorrow.

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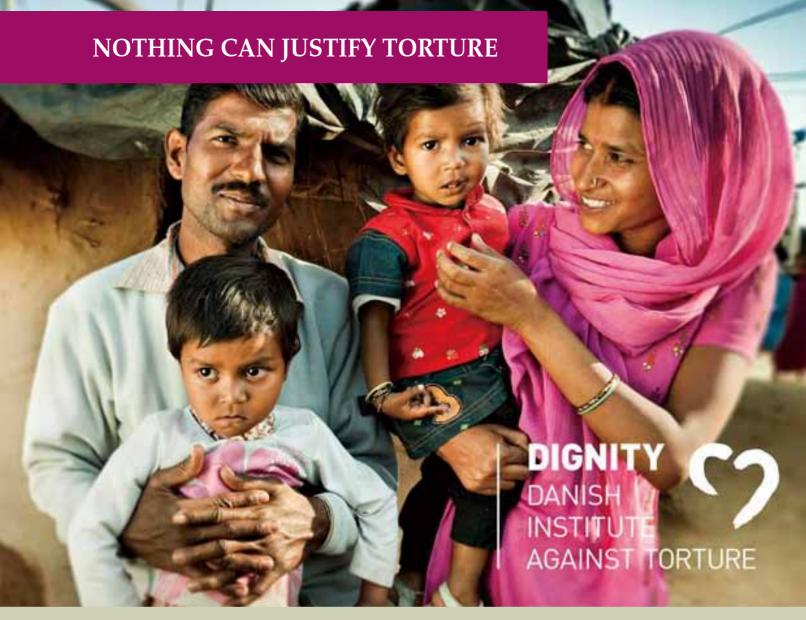
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