

State Violence and Human Rights in Asia

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PREFACE

This year's *Asia Journal* collection is to select key articles from the two preparatory issues, the first and second issues of the *Asia Journal*, which were published by the 5·18 Foundation during the last two years of 2009 and 2010. Similarities and interconnection of the contents in articles were considered; please note that they have been rearranged into four categories such as State System and Human Rights Violation, Gender and Human Rights Violation, Human Rights Movements against State Violence, and the New Situation.

In the case where the original piece was written in English, no substantial revisions were made except the minor grammatical or stylistic modification. But some of the articles by Korean authors have been partially or largely revised, after having been translated from Korean into English. We sincerely thank the authors' additional painstaking contributions.

The *Asia Journal* is intended mostly for Korean readers, but it also beckons forth other Asian readers who are not familiar with Korean, and/or non-Asian readers who are interested in Asia. Thus if possible, it was desirable to publish the journal in English. To our regret, the Foundation had not been able to achieve it. We hope sooner or later that the *Asia Journal* in English language will reach us.

Nevertheless, even prior to that, we thought it would be necessary to present, in English, some of the core works of the *Journal*, before the eyes of Asian and non-Asian readers. This may lead to the discovery of new and more readers outside of Korea.

This book is a brain child, born from this common idea of both the Foundation and the Editorial Committee. In this book, we have tried to more effectively share the vision of the *Journal* with the readers, and discuss Asian people's courageous and continuous struggle for a democratic society against the states' violence and the government's illegitimate actions. The political and economical difficulties that Asian countries encounter all encompass their own specific and characteristic cultural complexity. Each one of them has been carefully analyzed by the authors. Through this, the authors reached a common conclusion; in order to overcome the social problems, it is vital that the socio economic system be reformed according to the rule of democracy and human rights. But in reality, how may this democracy be reached? Some countries are in the vicinity of democracy, while others still have a long way to go. How, and why do they differ? How did they, are they to eventually achieve democracy?

Furthermore, from this book, the readers will also be able to learn important inside facts of each country, provided by the authors. These pieces of information are presented against the background of the history, the ethnic groups, religion, relationship with neighbor countries and so on.

As for the *Journal*, there are interesting but less serious essays and/or reports as well as poems in Korean and/or English. Due to various reasons, such as to keep within the page limit and to make the book be centered on one main theme, they have not been included here. If you are interested in reading them, please refer back to the *Journal* itself.

This is a first in a possible future series of two, maybe even three books. We will continue to try to give the readers more collections of *Journal* excerpts (unless the English version is made beforehand). I want to believe that even after the publication of the English issue, this collection will remain close to our hearts.

Finally, we want to express gratitude to the staff members of the May 18 Memorial Foundation who have all endured the laborious works in making this new English book, and also a special thanks to Ms. Myongwon May Cho for her work of copy editing and translating the articles of Korean authors.

Suk-Tae Lee
On behalf of the Editorial Committee
August 2011

INTRODUCTION

Democratic Struggles in Asia and “Popular Revolution as Process”

Hee-Yeon Cho

Eunhong Park

Introduction

Asia is composed of diverse elements, such as nationalities, languages, cultures and ideologies, more diverse than any other continent. Notwithstanding that diversity, Asia, along with Africa, played a major role in leading de-colonization struggles to escape from the grip of imperial powers. For instance, as Sukarno proclaimed at the Asia-Africa Conference in 1955 which paved the way for the non-alignment movement, “Asia and African countries are not any more instruments or toys of powerful countries.” The U.S. power elite, afraid of a domino effect of the Chinese socialist movement impacting on other Asian countries, supported rightist dictatorial regimes, yet the U.S. was defeated in Vietnam in the mid-1970s. As shown in the People’s Power Movement of February 1986 in the Philippines and the democratic struggles of June 1987 in South Korea, there was fierce resistance

by civil society in Asia, threatening the rightist dictatorial regimes supported by the U.S.

In this paper, we discuss, from the perspective of ‘popular revolution as process,’ the instability of ‘implanted democracy’ after de-colonization in Asia, the consequent rise of civilian dictatorships or military dictatorships and diverse forms of democratic struggles against dictatorship. We also evaluate the significance of the democratic struggles in Asia.

Popular Revolution in the West and Asia

Democracy in the West was established through bourgeois revolutions. Political and social transformation into a modern society through bourgeois revolution was symbolized by the establishment of modern electoral democracy, abolition of a status system, and a political and legal system guaranteeing civil and political rights. The true meaning of this revolution does not lie only in the shift of its legal and institutional form to that of the modern electoral democracy, but in the demise of the power monopolies of established ruling elites and the simultaneous transition of the subject from the ruled to a political master and political actor.

In fact, what the bourgeois revolution aimed to destroy was the existing conditions under which an absolutist monarch and his aristocrat followers enjoyed the monopoly of power and all others were subject to their arbitrary rule. Before the revolution, there was no free and autonomous non-state social space, that is, civil society. Neither was there free and autonomous economic space. Because of the revolution, the power relation between the state and the civil society changed. The power holders of the state who wielded absolute power became elected officials who were subject to periodic elections. Also with the revolution, the people became political actors who were endowed with civil and political rights. The theory of natural rights, introduced to legitimize the people’s struggles, produced a notion of a ‘citizen,’ who was free and equal before the law.

In such a nexus, those who are reminded of the French Revolution tend to think of the Western popular “revolution as event.” But, we believe that the Western revolution is only apparently an event in reality, that revolution has characteristics of “revolution as process.” It is because, though the French revolution of 1789 or that of 1848 appeared to be a dramatic revolutionary event, it evolved, in reality, as a long revolutionary process through revolution and counter-revolution, domination and resistance, and the dynamic interaction between the conservative and the progressive. Such characteristics are more evident in Asian societies, for their indigenous transition to modern society was frustrated by imperial powers and they fell into being colonies. In an infertile Asian soil where the pursuit of freedom and autonomy and yearnings for democracy were suppressed under the colonial conditions of imperial rule, with economic dependence and cold war after the liberation and under the developmental dictatorship, Asian people defended and adapted democracy through various forms of ‘small popular revolutions’ and in the process, they transformed themselves into modern political actors rising against state power.

Anti-Imperial National Liberation Struggles and Asia’s Popular Revolution

Against such a historical backdrop, we think that the substance of popular revolution in the West has been realized in Asia through anti-dictatorial democratic struggles and we think that, from a historical perspective, anti-imperial national liberation struggles formed ‘preconditions’ for popular revolution. Of course, we do not think that tasks of anti-imperial national liberation movements can be narrowed down to those of modern bourgeois revolution in the West and these movements included radical elements—for example, socialist elements and other social liberation movements—which went beyond the Western popular revolution as ‘bourgeois revolution.’ Yet, we note that, in the process of anti-imperial national liberation movements, structural and subjective preconditions for realizing the tasks of modern popular revolutions were prepared.¹⁾

When Asian and African countries were liberated from colonial rules after the Second World War, it appeared that the legal and institutional democracy as so-called “implanted democracy” were to be realized. Yet, it did not mean that the new democracy would lead to the realization of modern political and social order which the Western popular revolution wanted to realize. On the contrary, national liberation was a starting point for another ‘popular revolution as process’ and true transformation was to be achieved through extended anti-dictatorial democratic struggles. Fulfillment of modern democracy from below necessitated anti-dictatorial democratic struggles.

The roles of anti-dictatorial democratic struggles do not stop here. The struggles secured civil, social space, i.e., autonomous political and social space independent of the state. From this space, various new movements arose and these movements contributed to the expansion of democracy to various dimensions beyond the political dimension of democracy.

Democratic Struggles and Popular Revolutions in Asia

When we take various democratic struggles in Asia as small popular revolutions and analyze changes after national liberation, we do not see them as following the same trajectory. To our view, political changes in Asia are characterized in four patterns. The first pattern is a turn to a socialist system. Here, democracy, extolled as world standard, is considered as in accord with another type of colonialism and the socialist system is seen as a new form of democracy.²⁾ The second

1) Western bourgeois revolution progressed while it combined political tasks, such as individual freedom and guarantee of autonomy from absolute political power, making of so-called social space which is relatively independent from the state, and establishment of modern democracy based on the separation of state and civil society, with economic tasks, such as establishment of free market economy and formation of capitalist market economy which entailed the rise of proletariat.

2) While many post-war socialist countries—influenced by the external condition of cold war confrontation—turned into a kind of ‘socialist authoritarianism’ in the 1960s and 1970s, socialism was accepted, at least in the post-war political space, as social democratic democracy, substantial democracy and direct democracy by people.

pattern is a continuation of a dictatorial regime, where popular revolution from below is suppressed. The third pattern is neo-oligarchic democracy, where, even though democracy is formally instituted, oligarchic forces threaten democracy and popular revolutionary forces fight against them. The fourth pattern is post-oligarchic democracy, where oligarchic dictatorship which threatens democracy is removed and conflicts arise around new agendas of civil society.

Burma is an example of the first and second patterns. Though Burma is a 'pre-democratic' society still under the military rule, it underwent the 'Burmese Way to Socialism.' Indonesia and Thailand are examples of the third pattern. They achieved half-way successes of popular revolution on the basis of the middle-level development. South Korea and Taiwan are examples of the fourth pattern. South Korea put an end to the era when the military forces had hegemonic power and ran dictatorial development regimes, and waged a relatively wide campaign of liquidating the vestiges of the past in order to overcome the legacies of dictatorship. It does not mean a total democratic reshuffle of ruling powers. In these countries, while political powers are pluralized, economic re-monopolization by capitalists with market power emerges and becomes strengthened, and the autonomy of the state from capital is being undermined.³⁾ In this paper, we elaborate

3) We define a system which maintains political exclusion, economic inequality, social discrimination as political monopoly, economic monopoly, social monopoly respectively. We define 'dictatorship' as a kind of 'monopoly complex' where political, economic and social monopolies are combined, not as a system where a ruler maintain power for a long-term period, Democratization is therefore defined as 'multi-layered de-monopolization' of monopolies in several levels. So, we propose "(de-)monopolized democracy." With this notion, we classify the Philippines, Indonesia and Thailand as neo-oligarchy where dismantling of political monopoly is incomplete; South Korea and Taiwan as post-oligarchy where political dominance of old conservative dictatorial is relatively fragmented. Neo-oligarchy can be called "democratic oligarchy" because it works within the confines of democratic rules, which makes it different from dictatorial oligarchy. While in neo-oligarchy, old oligarchic forces hold strong power, in post-oligarchy, there is an established plural competition for power among old dictatorial conservative forces and anti-dictatorial middle of the road liberal forces and, as a result, power shift takes place repeatedly. Post-oligarchy can be seen as "plural political competition system." It corresponds to 'polyarchy,' used in American political science. But, weakening of past dictatorial political monopoly does not mean the disappearance of political monopoly. On the contrary, 'dominance by market' or 'economic re-monopolization by market' is strengthened and—as American democracy is captured by capitalism and works as 'political consumption market'—market-dominated democracy prevails (see Cho, Hee-Yeon, Lawrence Surendra and

on the experiences of South Korea as 4th pattern example, Indonesia and Burma as second and third examples.

Democratic Struggles and Popular Revolution in Korea

How did 'popular revolution as process' reveal itself in South Korea? We think 'small popular revolutions' took various forms of democratic struggles in South Korea. Prominent examples include April 19 Revolution(1960), democratic struggles in the 1960s and 1970s and their culmination in Kwangju Revolt(1980) and June Democratic Struggles(1987).

First, a brief remark on the anti-imperial national liberation struggles as 'formation of preconditions.' In 1919, nine years after Korea's fall as a Japanese colony, March 1 Movement made it clear that a modern republic was an ideal political order after independence, thus making the restoration of the Chosun monarchy unfeasible. Such an idea reflected several facts: there had been preconditions for indigenous modernization since from the last phase of Chosun Dynasty and after Korea opened its door to foreign countries, citizen rights activities, demonstrated by Independence Association, and reform efforts, led by enlightened elite, preceded March 1 Movement. National liberation fights under the Japanese rule virtually ended the idea of monarchy and established the aspiration for modern republic, whether it should be capitalist or socialist was hotly debated, as nation-wide aspiration.

As result of accumulated experiences of anti-imperial national liberation struggle, under the influence of world-historical changes in the first half of the 20th century which assumed democracy as 'world standard,' and under the influence of American military government after liberation from Japanese imperial power in 1945, the Constitution, founded in 1948, took a modern democratic republic

Eun-hong Park eds. 2008. *States of Democracy: Oligarchic Democrats and Asian Democratization*. Chinnai: Earthworm Books; Cho, Hee-Yeon ed. *Asia Democracy in Complex Conflicts: Focusing on the Variation of 'Political Monopoly'* (in Korean); Cho, Hee-Yeon, Eun-hong Park, Hong-Gyun Lee. eds. 2009. *Democratization in Asia and Dynamics of Socio-Economic Inequality* (in Korean).

as an ideal. As mentioned before, what Western bourgeois revolution achieved was ‘implanted’ in Korean soil.

However, such a legal and institutional implantation does not signify the power shift and rise of people as political actor, as shown in Western bourgeois revolution. The gap between the ‘implanted’ laws & institutions and political reality was abused by civilian or military dictators modern democratic institutions were in place, yet they were actually nullified. It is through democratic struggles against dictatorship that what Western bourgeois revolution achieved was meaningfully institutionalized and internalized.

In South Korea, there are several remarkable democratic struggles which made up ‘popular revolution as process.’ They are April 19 Revolution(1960), anti-dictatorship democratization movements in the 1960s and 1970s, Kwangju Revolt and June Democratic Struggles in 1987. It was through these diverse democratic struggles that power shift and formation of modern political actor were realized.

Seen from the Korean experience, popular revolution represents several events which came into process of defending democracy in the face of various anti-democratic threats and process of securing the space for civil society resisting the naked power of the state, transforming itself into modern actors who are conscious of their civil rights. ‘Popular revolution as process’ in South Korea was demonstrated by April 19 Revolution which resisted the dictatorship of the 1950s, created on the pretext of defending national security by anti-dictatorial democratization movements of the 1960s and 70s which rose against the first development-dictatorship of President Park Chung Hee and by Kwangju Peoples’ Revolt and June Democratic Struggles of 1987 which opposed the second development-dictatorship.

Popular revolution in South Korea made progress to a certain degree, in the establishment of National Human Rights Commission of Korea, cleaning up of the past, promotion of decentralization—under the ‘democratic government’ led by anti-dictatorial forces—it showed limits, on the other, in many areas, such as abolition of National Security Law, realization of socio-economic equality and expansion of welfare program. Furthermore, it is faced with new challenges,

such as ‘reversing’ of democratic practices, ‘hollowing out of democracy’ by market power and capital power under the ‘new conservative government’—what we may call ‘post-democratic government’—which take an advantage of neoliberal discourse on ‘international competitiveness’ as ideological weapon.

Democratic Struggles and Popular Revolution in Indonesia

National liberation struggles, which preceded a popular revolution, began under the Dutch colonial rule. In 1912 when the country was under the colonial rule, an organization for modern Islam reform movement formed. Though this movement began with the aim of promoting economic interests of Islam and small-and-medium-sized businesses, it gradually turned into radical national movements. After the First World War, international socialist ideas were brought into the Islam reform movement, which caused an internal feud. As a result of the feud, a radical revolutionary faction withdrew from the organization and formed the Communist Party of Indonesia in 1920. The Islam reform organization collapsed in the period of 1926~1927. So, the leadership of nationalist movement was handed over to Partai Nasional Indonesia(PNI), founded by Sukarno. Yet, the intransigent Dutch colonial authorities arrested its leaders, Sukarno and Hatta, and imprisoned them. They were released after Japanese invaded Indonesia.

Unlike in South Korea, liberation struggle forces, headed by Sukarno and other leaders, saw the post-war world order as neocolonial and they were close to the seizure of power. Imminent challenges to Sukarno and his group was to achieve a meaningful integration of Indonesia which had many ethnic groups. In this nexus, Sukarno proposed “Five Principles for National Construction,” called “Pancasila.” Governing groups which regained national sovereignty wanted to introduce democracy which was considered ‘a world standard’ and realize the democratic ideals. Yet, they failed to achieve their ultimate goal of national integration. When the implanted democracy led to anarchy, Sukarno groups put a halt to the implanted democracy and expressed their distrust about democracy and came up with an idea of “Guided

Democracy,” which limited fair competition for power. Sukarno declared ‘Nasakom’ which had nationalism, Islam and communism as its backbone. Guided Democracy, based on Nasakom, emphasized anti-colonialism and anti-imperialism. It was on the extended line of anti-imperial, national liberation struggles as preconditions to popular revolution.

However, anti-imperial, national liberation struggles which did away with implanted democracy was ended in 1966 by the rightist military coup d’etat, led by Suharto. Suharto promised modernization and development, like Park Chung Hee in South Korea and solidified his rule by relying on dual functions of the military, i.e. assuring national security and establishing political and social order. Suharto criticized that Sukarno’s left-wing politics practically abandoned ‘Pancasila’ and he promised the faithful realization of Pancasila, while he controlled mass media and publications in the name of national security. Suharto’s New Order was typical of development-dictatorship. Paradoxically, as the fruits of development-dictatorship, defiant student bodies and middle-class which opposed the military dictatorship were produced. In March of 1978, students led the opposition against the Suharto’s third-term presidency campaign. Regarding the report of the student demonstration, four newspapers were forced to shut down.

Though this opposition movement was suppressed violently by the state, eighteen years later in June 1996, people rallied in greater numbers to oppose the military government’s political manipulation. This time, at the mass protests and demonstration, Megawati, a victim of political manipulation, daughter of Sukarno and leader of Indonesian Democratic Party, her supporters, workers, and civil society activists criticized the government of economic inequality, corruption, human rights violation, and Suharto’s prolonged one-man rule. It was a small popular revolution resisting the iron-fist rule of the Suharto government.

In 1997, a financial crisis originated from Thailand dealt a heavy blow to Indonesia. A crisis of national bankruptcy aroused under-privileged class’s latent discontents to rioting and drove the Suharto’s military government into the greatest crisis ever. People’s political

and economic discontents, having been accumulated since June of 1996, came to the fore due to the financial crisis and culminated in popular revolution, May of 1998. The Suharto's thirty-two-year-old dictatorship ended finally by the people's power from below. Since then, we have seen decentralization of power, yet as the fact that a current president is a military-turned politician shows, Indonesia is not free from the grip of the past oligarchical forces.

Democratic Struggles and Popular Revolution in Burma

By the turn of the 20th century, students under British colonial rule expressed anti-colonial feelings in more radical forms and earnestly began political movements with 'Do-bama Asi-ayon' (which means 'We Burmans Associations'). 'Do-bama Asi-ayon' had, as its members, Aung San, a national hero in Independence fight and U Nu, a head of the government after Independence. As soon as the Second World War ended, political elites of the secret AFPFL(Anti-Fascists People's Freedom League) which had included all of anti-Japanese movement forces came to the fore. First, they took back their sovereignty successfully from United Kingdom. They paved the way for Burmese Federation with the consent of representatives of minority ethnic groups. But, with the tragic assassination of Independence hero, Aung San who led the integration efforts in the Burmese society, fraught with ideological and ethnic fragmentation, an internecine warfare broke out. At one point the two-thirds of Burma fell into the rebel hands and the U Nu government was cornered as to be called 'Rangoon government.' Like Indonesia, during the constitutional democracy of 1948 to 1962, Burma underwent serious internecine warfares which developed into a civil war. Amidst the turmoil military increased its political influence.

The military, headed by Ne Win, waged a coup d'etat in March 1962 on the pretext of saving the fatherland from fragmentation. Prime minister, U Nu, and other cabinet members were arrested in a row. That signaled the end of implanted democracy. The military junta prohibited activities of political parties except for the BSPP(Burma Socialist Programme Party). All the major state institutions

were held sway by the military. In this way, Burma began a unique type of military dictatorship under the rubric of ‘Burmese Way to Socialism,’ which was neither a security-dictatorship, nor a development-dictatorship. And it also meant a beginning of deteriorating poverty.

In January, 1974, a new Constitution was adopted. General elections were held in March and the People’s Assembly was created. Power was transferred to civilian hands, but, Ne Win held the exclusive power. The election was extremely formal, because BSPP nominated all candidates. In spite of all these, the appeasement phase began following the power transfer and people voiced their discontents. Students, monks, and workers waged demonstrations and strikes, trying to overthrow the Ne Win government. The military responded to these groups with school close-offs, shut-downs, and bloody suppressions.

In 1987 people’s rage soared when it was known to people that the Burmese military asked UN to classify Burma as Least Developed Country. In July, 1988, Ne Win declared that he would take a full responsibility and resign. The Burmese Way to Socialism reached a crisis. Yet, rather than being appeased, people’s rage continued to spread and exploded in the so-called ‘8888 Popular Revolution’ on August 8, 1988.

In May 1990, general elections were held, this time with the participation of many political parties. There were doubts about the fairness of election, because Aung San Suu Kyi was under house-arrest and an outdoor meeting with more than four people was not allowed due to the martial law. Yet, NLD(National League for Democracy), led by Aung San Suu Kyi, daughter of general Aung San, won 392 seats out of total 485 seats while the military won only 10 seats. It was an election revolution to the truest sense of the word, opposing the military dictatorship in the wake of ‘8888 Popular Revolution.’ But, the military refused to transfer the power and took up repressive measures against the democratizing forces. Afterwards, the military imitated Suharto’s development dictatorship model and the military dictatorship continued. In September, 2007, Buddhist monks wearing saffron-colored robes and their supporters led anti-government dem-

onstration(Saffron Revolution). But, the Burmese military again resorted to bloody suppression.

Concluding Remarks

Instability of ‘Implanted Democracy’ in Asia after the Second World War led to the military coup d’etat in the 1950s and 1960s. Preceding struggles in the colonial period as pre-history of ‘popular revolution’ was only pre-history, nothing more or less than pre-history. Conflicts among tribes, religions and ideologies made impossible the institutionalization of constitutional democracy as implanted democracy. In the case of South Korea, there was little conflict among tribes and religions, whereas the ideological conflicts developed into a civil war. The war moved South and North into an ideologically unitary society respectively. North Korea did not move beyond anti-imperial and anti-colonial struggles as the pre-history of popular revolution and in South Korea, implanted democracy took the form of security-dictatorship. April 19 Revolution was a protest from the below against security-dictatorship. It was the beginning of the re-birth process where colonial subjects turned into post-colonial subjects and again into citizens in the Western sense of the word. A series of democratic struggles in the 1970s developed into May 18 Kwangju People’s Protest and into June Protest of 1987, which led to post-oligarchy democracy. Behind these achievements, Korea faces new challenges, such as deepening economic monopolies and weakening of state autonomy from capital.

Indonesia and Burma were liberated from the colonial rule and started as independent republics about the same period as South Korea. However, in these countries, implanted democracy lay on the extended line of anti-imperial, national liberation struggles. Also they had military dictatorship. While Indonesia had the development-dictatorship, like Korea had under Park Chung Hee, Burma emphasized autonomy over development and its Burmese Way to Socialism was a national revolutionary system, combined with xenophobia.

Though two countries saw brutal iron-fist rule more suppressive than Korea saw, struggles for democracy continued. At last in 1998, Suharto's 32-year-old military dictatorship was overthrown by citizen power. In Burma, continuous democratic struggles were crushed by state violence. On this score, we may say that democracy as 'world standard' is still denied in Burma and it stands at the pre-democratic stage.

Democratic struggles in Asia show us various trajectories of small popular revolutions. As we have seen from South Korea, Indonesia and Burma, each representing a different pattern of democratization with a different domestic political time dimension, Asian countries, seen from a macro-historical perspective, are undergoing 'popular revolution as process' which is to ride the reactionary tides of colonialism, authoritarianism and neo-liberalism.

I

State System and Human Rights Violation

1. An Overview of the Human Rights Issues in India

Lenin Raghuvanshi

India is the world's largest democracy with one of the best constitutions and is equipped with domestic mechanisms to fulfil the constitutional guarantees to protect human rights and dignity. However, theory is very different from practice. Internationally accepted human rights institutions are reporting continuously on severe human rights violations in India. Primary concerns are torture, caste based discrimination, cases of starvation as a direct consequence of caste discrimination as well as abuse and discrimination of women. There is a widespread use of custodial torture in India. In the context of crime investigation suspects are tortured to enforce confessions. Due to the absence of an independent agency to investigate cases, complaints are often not properly proofed and perpetrators are not prosecuted and punished.

A blatant lack in human rights protection in India is the fact that the government has refused to ratify the United Nations Convention against torture. Caste based discrimination still affects the life of a high percentage of Indian population and is practiced in the educational system, in places of work, villages and towns and even in courts of justice. The refusal of the police to investigate a case of caste discrimination is common. The most heinous impacts of caste based discriminations are starvation and malnutrition. Acute poverty and cases of starvation occur especially in marginalized groups in the Indian society like minority communities, tribes and Dalits.

In response to independence movements in the north-east of India special emergency laws were enacted (e.g. The Armed Forces (Special Power) Act of 1958). The implementation of this law is limited to areas declared as 'disturbed' by the central government in Delhi. However similar laws are also implemented at the state level by various state governments in India. The Chhattisgarh Special Public Security Act 2006, the Maharashtra Control of Organised Crime Act 1999, the Madhya Pradesh Special Areas Security Act 2001 and the Uttar Pradesh Control of Organised Crime Bill 2007 are a few examples. These state/province-made laws have resulted in the militarisation of a large part of India. The militarisations in these areas are sponsored by the local state government by deploying 'special armed forces' recruited from the state police. The unfortunate target of most of these legislations is often human rights defenders. The case of Dr. Binayek Sen from Chhattisgarh is a classical example.¹⁾ Human Rights organisations regularly report on extra-judicial executions, rape, torture and arbitrary detention. Due to the fact that the militarisation of these regions threaten the development of human rights standards for the whole nation

The Scheduled Castes, indigenous groups and other backward classes face atrocities and discrimination in all spheres of life. The data collection of 361 survivors in the project under Rehabilitation and Research centre for Torture Victims (RCT)-PVCHR on testimonial therapy, in which 89 per cent of survivors belong to Scheduled Castes, indigenous groups and other backward classes (OBC) verify this. The general impression is that Dalits and tribals not only do menial work, they also form the major source of churning out anti-socials and criminals. Unfortunately, a culture of silence has permeated society historically. The privileged class is conveniently convinced that they cannot be wrong.

That is why one finds most of the custodial torture, violence and deaths that are committed against marginalised and deprived castes going unrecorded. Many Dalits are tortured and subjected to humil-

1) Arbitrary detention of Dr. Binayak Sen continues; Combat Law: Binayek Sen: Victim of state vendetta (Vol.6 Issue 4 August 2007)

iation like being garlanded with slippers, their faces blackened or being forced to ride an ass.

Indian Police learnt demoralisation and community punishment from the caste system. When a person from an upper caste commits any crime, punishment may be meted out after a trial. However, in the case of the lower castes, the entire community is punished, mostly without any trial. This punishment is doled out by the higher castes, with implicit support from the police.

It is very common to find the police unwilling to register cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. This legislation, which is meant to ensure proper investigation by a high-ranking police official within 30 days, is rarely adhered to. As a consequence, the accused moves out of jail with a lesser sentence.

The caste based patriarchal feudal system continues to determine political, social, and economic life for a billion people in South Asia. The practice of “Untouchability” against Dalits—people of low status, who fall outside the caste system—was outlawed by the Indian constitution sixty years ago.

The Musahars population is estimated to be between 500,000 and 700,000 in Uttar Pradesh, a province of India. Exact figures are not available as they are included in the Scheduled Caste category in the state but were not counted separately in the last census. They are estimated to be close to three million in Bihar.

These landless communities, traditionally dependent on forests, were slowly pushed from these areas as forests were nationalised and a land-based economy took over. These communities without resources found themselves at the mercy of the landed classes, which exploited them as bonded labour for weeding, harvesting and clearing the fields. The work of clearing the fields of rats and later using the grain from the rats’ burrows may have given them the name Musahar (musa-rat and ahar-diet) hence meaning people whose diet is made up of rats.

The Musahar community was further pushed toward pauperisation as land was divided and harvesters were introduced. With the forests

out of bounds, they also lost their supplementary income from supplying leaf plates during marriages and community events.

Brahmins, Thakurs, Patels and Yadavs are the main landholders in the area. In five villages I visited in Uttar Pradesh and one in Bihar, only 25 per cent of the people from the Musahar community in two villages had land and the average land holding was not more than one or two acres. They got this land when the Land Ceiling Act was implemented in 1976; but in 75 per cent of cases, the people did not have control over their land, as the original landholders had managed to get stay orders from the court. Also, their land tends to be stony, not arable, and far from the villages.

The Musahars work as agricultural labourers for the landholding castes and mainly do weeding and harvesting work. The men earn Rs 40 (almost half of ₹1) a day, and the women Rs 25 (30 pence) for harvesting and even less for weeding work. This is far below the minimum wage of Uttar Pradesh, which is Rs 100. Both these jobs are seasonal and provide employment for not more than three months in a year. For the rest of the year they work as casual labourers, earning not more than Rs 40 to Rs 60 per day. Many work in brick kilns for Rs 70 a day, but none of them are skilled enough to do the work of a fireman, which is highly specialised work.

In the lean agricultural season, the Musahars migrate to other parts of the country, travelling to New Delhi or Punjab, where they work as casual labourers in the construction industry, earning not more than Rs 70 to Rs 80 a day and barely surviving. Some of them go to Jaipur, where they are employed in small textile businesses to colour cloth and earn up to Rs 100 per day.

In reality, the practice persists. Subsequent laws have elaborated the rights and protections due to Dalits, tribal and minorities, but contradiction between the laws that are supposed to govern a society and the ethics and beliefs that rule the streets remain high. Dalits are still either landless or own very little land, often living in segregated colonies. They are forbidden by upper-caste Hindus to enter temples, to draw water from public wells and ponds, and must use separate tumblers at village tea stalls. Caste violence is rampant. In the state

of Bihar, the private gangs of high-caste landlords murdered more than four hundred Dalits from 1995 to 1999. Police often refuse to pursue complaints against upper-caste Hindus accused of abusing Dalits and fail to enforce laws written to protect them. Prejudiced by their own biases or influenced by powerful village landlords and politicians, they frequently detain Dalits under the slimmest pretext. For their part, civil society organizations treat the symptoms of caste discrimination without attacking the disease itself. There is a tendency to reduce problems originating from caste conflict to problems of poverty; higher income, however, does not preclude discrimination. Even progressive civil society organizations aim to improve the lot of lower-caste people by finding them jobs, teaching them to read, educating their children, or seeking justice in individual cases of abuse. Each case is treated by giving out aid to the person suffering from a particular rights violation without looking at the underlying caste discrimination. The greater impact of such an approach is negligible because it seeks to achieve equality among people deemed unequal by society.

A Dalit is not considered to be part of the human society, but something, which is beyond that. The Dalits perform the most menial and degrading jobs. Sometimes Dalits perform important jobs, but this is mostly not socially recognised. Dalits are seen as polluting for higher caste people. If a higher caste Hindu is touched by an untouchable or even had a Dalit's shadow across them, they consider themselves to be polluted and have to go through a rigorous series of rituals to be cleansed.

In India there are approximately 240 million Dalits. This means that nearly 25% of the population is Dalit. It also means that in a country, where everybody is supposed to have equal rights and opportunities, 1 out of 5 persons is condemned to be untouchable.

In general one can say that being a Brahmin (Priest-Caste) means that you are more privileged. This can imply having a good education and, accordingly, a more powerful position in the society. Being born as a Dalit you will be less off and because of less education you will have a less good job. In daily life it has a lot of consequences of being a Dalit.

Dalits are poor, deprived and socially backward. Poor means that they do not have access to enough food, health care, housing and/or clothing (which means that their physiological and safety needs are not fulfilled). They also do not have access to education and employment. With deprived we would like to underline the injustice they face in every day's life. Officially, everybody in India has the same rights and duties, but the practice is different. Social backwardness, lack of access to food, education and health care keeps them in bondage of the upper castes.

In the past one year, the PVCHR has reported several cases that depict the brutality of caste based discrimination. Of particular importance is the case of Suresh Musahar, a primary school student who was facing discrimination based on caste not only from his classmates, but also from his teacher.

Suresh Musahar is the son of Mr. Sajjan Musahar and a resident of Ayer Musahar ghetto, under the jurisdiction of Cholaipur police station in Haranhuwa block of Varanasi district. Suresh is 8 years old and is studying in class two at the Shivrampur Government Primary School. On 2 August 2007 Suresh complained to his class teacher Ms. Sangeeta Agarwal regarding his missing school bag. The bag could not be traced out on that day. On August 4, 2007 Sangeeta returned the bag to Suresh. While returning the bag, the teacher asked why Suresh has to be concerned about the missing bag and books since the members of his community will invariably end up rearing cattle and working for the upper caste. Saying this, without any further provocation the teacher started caning Suresh.

Suresh's mother who came to know about the incident complained to a local human rights group seeking intervention. Mr. Vijay Bharati, an associate of the People's Vigilance Committee on Human Rights intervened. Bharati organised a meeting of the parents from the Musahar community whose children are attending the government school along with Suresh. In the meeting the parents and the children complained that most of the Musahar children were treated similarly by Sangeeta as well as the other staff in the school. The children also complained that the teacher discriminated them due to their

lower caste and had instructed them not to touch her thereby 'polluting' her.

For decades Indians have been separated and divided according to the caste hierarchy. In spite of several laws and even Constitutional guarantees India remains largely divided along the caste lines.

Caste based discrimination is omnipresent in India. It is reflected across the societal spectrum. It is so evident that even a complete stranger could identify the inequalities practised openly in the society based on the caste. Caste based discrimination is reflected in the private and public life. Caste is the final denominator for everything in India. It has its influence in the politics, administration and even the economic growth of the country.

To control the Dalits, the age-old Brahmin policy of food deprivation and bonded labour is brutally enforced. Though bonded labour is prohibited by the Bonded Labour System (Abolition) Act, 1976, the law has little meaning for the Dalits. They are forced to bone-breaking work in the farms, quarries and kilns of the upper caste community. Food deprivation and poverty eradication, though sought to be prevented through several central and state government programmes like rationed distribution of food grains and oils through the Public Food Distribution System (PDS) shops and implementation of programmes like the Antyodaya and Annapoorna schemes along with the employment generating programmes like the Rozgar Yojna and MNREGA never percolated into the Dalit community for their benefit. Dalits are deprived from accessing these programmes by the upper caste by corrupting the implementing element of these programmes.

All this is possible only because of a corrupt and fallen criminal justice delivery mechanism in Uttar Pradesh. The backbone of the criminal justice system is the policing in the state. Policing in Uttar Pradesh suffer from the impunity the officers enjoy for their corrupt practices. Custodial torture and extra judicial killing is widely used to terrorise those who challenge the police in Uttar Pradesh. Even well known human rights groups are not immune to this terror.

PVCHR and their activists, based in Varanasi who is fighting against the caste based discrimination in the state is targeted by the local

police and the corrupt officials within the administration. Several threats have been made against the life of the activists associated with the PVCHR. Thus far instances were limited to harassment by the local police and death threats sent out by the upper caste feudal whenever they found their position were challenged.

Illegal dealing of rationed articles is dominated by corrupt licensees, mostly from the upper caste, who had obtained licenses to run the PDS shops in villages. Some of them have been renewing their license for decades in spite of specific complaints filed against these licensees. The district administrations, the license issuing authority on behalf of the state government, has thus far ignored these complaints and failed to properly investigate them. Even in cases where an investigation was ordered it was breached by corrupt police officers who rallied behind the upper caste under the influence of their money.

When mere complaining and campaigning was found ineffective matters were taken to the local courts for intervention. The local courts which are equally corrupt and nepotism failed to intervene. Some of the judges in the lower judiciary and a few in the higher judiciary of the state are so prejudiced with their caste sentiments that any issue concerning the lower caste is thrown out of the court without any consideration.

The UN High Commissioner for Human Rights has expressed an urgent need to end caste-based discrimination. In an interview with *The Nation* on 26 October 2009, Navi Pillay, a former judge in South Africa, mentioned the need to create a new international convention that includes the explicit recognition of caste-based discrimination as a human rights violation. "Slavery and apartheid could be removed, so now [caste] can be removed through an international expression of outrage," she said in the interview.

Recently, Pillay was visited by a group of women who gave her a brick from a latrine where Dalits are forced to clean toilets with their bare hands. There are approximately 260 million "untouchables" or "Dalits" (broken people) throughout the world today, many of whom continue to deal with discrimination. The issue of caste has been discussed for over a hundred years; Pillay says action is long overdue.

Perhaps the most disturbing aspect of the entire movement is that many laws do exist to criminalise caste-based discrimination in theory, protecting Dalits from violence and exploitation. Affirmative action programmes exist to guarantee Dalits a presence in the government and access to education. However, strong discrimination continues to be practised. This paradox is perhaps illustrated best in India, where the vast majority of Dalits live.

Dalits have faced death from upper caste individuals for entering a Brahmin temple, or lynching for inter-caste marriage. In some parts of Northern India, Dalits must vote in segregated polling stations. India's ban on caste-based discrimination will not be effective unless the government makes it a priority to enforce it, said Paul Divakar, general secretary of the NCDHR in India. Violence and other human rights abuses against Dalits are still committed with impunity. The government should work with the international community to address this problem. The concept of caste continues to centre a heated debate in international circles. For Pillay, caste issues have been distorted by governments such as India who have successfully argued in UN conferences that existing policies, conventions, and treaties against human rights abuses do not apply. In general, lower-caste individuals are confined to menial, low-income employment while deprived of land and credit. Many are doomed to indebtedness and labour bondage, which is a form of slavery that continues generation after generation. Dalit rights tend to fall under the purview of the UN's guidelines for the effective elimination of discrimination based on work and descent in various inter governmental discussions on caste.

Due to the obfuscation of governments and the interpretative flux of inter-governmental bodies, Pillay suggests creating a new international convention explicitly recognising caste based discrimination as a human rights violation. Through such recognition, Pillay hopes to incite the type of international pressure used against apartheid.

The Prime Minister of India in his foreword in the 'Report to The People' dated May 22, 2007, claimed: "In this 60th year of independence, the country should have the satisfaction of recording

for the fifth year in a succession a rate of economic growth of over 8.5%.” What is not sure however is whether the estimated over 200 million Indians who are presently suffering from malnourishment, and the many more million who have done so during past decades, will be satisfied with this growth. The country’s overwhelming population is often given as an excuse to justify poverty and starvation in India. This theory is applicable only if the State itself is poor and has no means to procure enough food for its people. India is not poor, even though 70% of Indians are poor. India’s projected defence budget for 2007-08 is 24 billion US\$ and it plans to spend further on its weapons upgrade programme. Defence spending of such proportions in a country where a section of the population equivalent to 2/3rds the size of that of the United States is undernourished or suffering from malnourishment, is difficult to stomach. The United Nations Special Rapporteur on the Right to Food has highlighted this contradiction of priorities in his report following his mission to India in 2005.

India is a country of contradictions. A country that has a projected 9% development index performs worse than some Sub-Saharan countries with regard to addressing starvation and malnourishment within its territory. The National Minimum Programme promulgated by the Government of India in 2004 speaks about the Rural Employment Guarantee programme, which is also reflected in India’s voluntary pledge to the United Nations Human Rights Council. However, millions of Indians in rural villages are not benefiting from this programme and remain unemployed. The programme is not properly implemented and in places where there are possibilities of implementation and thus employment, recruitment to the programme is based on caste bias and nepotism.

Poverty and resultant starvation in India is not limited to the lower caste, although they suffer the most. The lower caste forms only about 20% of the Indian population, whereas starvation and malnourishment affect about 53% of its entire population. Starvation and malnourishment are the direct result of the failing administrative system in India. A malfunctioning administrative system has a direct bearing

upon the living conditions of the poor. For example, for the distribution of food to targeted population the government has established the Public Food Distribution System (PDS). However, the management of this system suffers from corruption—particularly black marketing, caste prejudices and the utter failure of various local governments.

Torture is not a crime in India. To convict a law enforcement officer for torture, the act has to qualify all the requirements like any other crimes in the Indian Penal Code, 1890. To prove a crime, meeting all standards, to be punished under the Indian Penal Code, is difficult because of the absence of independent investigating agencies in India. The absence of an independent agency to investigate cases of custodial torture is exploited by the offenders since they know that even if a complaint is made regarding torture it would not be properly investigated.

The widespread use of custodial torture has taken its toll upon the law enforcement agencies in India and is reflected in the overall state of rule of law in India. As of today, the ordinary people have isolated themselves from the law enforcement agencies. The people do not trust the law enforcement agencies. The use of torture has also considerably reduced the morale of the law enforcement agencies. For example cases that are brought to a court based exclusively on the evidence gathered by use of torture often results in acquittal. The loss of morale of the law enforcement agencies is exploited by corrupt elements in the society who would like to use the local police as their militia, paid from the state exchequer. This isolation of the law enforcement agencies from the ordinary people has resulted in increasing number of incidents where people take law into their hands.

In the past few years incidents of violence committed in the name of 'justice' are increasingly reported from India, of which the highest number was reported in 2007. These are acts of violence, is resorted to by either the state agents or the people for executing what they think is justice. Such violence indicates that the public perception of justice in India is rapidly changing—changing for the worse. The people's perception of justice depends upon how the justice dispensation mechanism in a country functions. In theory, India has a

reasonably good legislative framework within which laws are drafted, debated and implemented. But in practice the drafting and debating of laws remain mostly outside the scope of any public discourse. The acts of the legislature are often dominated by caste, religious and partisan political sentiments as opposed to welfare and betterment of the people.

The culture of impunity is the biggest threat to the rule of law in India. Victims are often threatened to make submission or give statements before the magistrate so that the case weakens and nothing happens to the perpetrator.

If at all the department or the court decides to take cognisance of the statement of the victim and orders an inquiry against the accused police personnel, it directs the superior officer to undertake an investigation. It does this knowing full well that both work in the same office and the higher officer is familiar with the movements and intentions of his subordinates. In the absence of evidence or weak evidence on cases like custodial torture, encounter or disappearances, the court relies more on the police report, resulting in acquittal in most instances.

The insensitivity of the judiciary and human rights institutions make them extremely culpable in contributing to the impunity that persists and aggravates the problem. Evidence indicates that the poor are increasingly being criminalised. The limitation of the enforceable power of the National Human Rights Commission, India, has been a matter of concern for everyone. Legal impunity is embedded in provisions like Sections 197 and 132 of the Indian Criminal Procedure Code (CrPC) as well as Section 6 of the Armed Forces (Special Powers) Act (AFSPA).

In fact, almost every section of the CrPC provides some kind of impunity. For example, Section 46 empowers the police to shoot to kill any accused charged with a crime punishable by death if that accused person attempts to escape from police custody. The police forces of Andhra Pradesh and Uttar Pradesh have made extensive use of this section to cover up fake encounters, killing hundreds of detainees.

Experience shows that the government habitually denies sanction for prosecution of members of the police and security forces whenever any private criminal complaint is filed against them. In many cases, the police routinely refuse to record the First Information Report (FIR) against misdeeds of police personnel. In cases where FIRs are lodged following sustained campaigns by the families of victims and human rights defenders, these are never properly investigated.

Human Rights Watchdogs and critical observers agree that the Indian criminal justice system seems to be dealing with two broad categories of people: those who live above the law and those who are absolutely crushed by it. Prisoners are one of the weakest constituencies in the society. They have no voting rights, have very limited access to the outside world, and are under the complete control of the prison authority. They cannot speak with the press, write letters or speak with their families without the permission and/or censorship by the prison department. In India, majority of these voiceless people remain in prison pending trial or conviction. Most recent statistics reveal that over 65% of the prisoners are under-trials and they may continue to be held in overcrowded prisons for years. The occupancy in prisons exceeds by 41.4% over and above its sanctioned capacity. A huge majority of these under-trial prisoners are poor. They are denied bail for want of monetary security. And trials take years. Often, they have no lawyers, live in pathetic conditions, do not have access to adequate medical care, and are likely to be tortured or exploited. Many times, the legal aid lawyers and prison officials are also unaware of the existing legal standards. The system fails the prisoners at every turn and often times the agencies blame each other for non-performance and unaccountability.

Under Indian law, there is no enforceable right to rehabilitation for torture survivors. Private medical and psychological support is offered by only a few rehabilitation centers²⁾ and torture survivors cannot access the public health sector, due to lack of specialized rehabilitation and rejection by the health care providers. In most

2) India has only six rehabilitation organizations for torture victims registered in the IRCT updated global directory of rehabilitation services. www.irct.org

cases, torture victims, who have approached PVCHR for assistance, have never been referred for any kind of treatment.

In this context of impunity, limited access to justice, and limited rehabilitation services, PVCHR with RCT identified a need for a psycho-legal approach. The two organizations have so far partnered on three pilot projects on testimonial therapy.³⁾ Preliminary experiences show that testimony has a potential for creating new dynamics in the justice process; converting the survivor's private pain into a new political voice to challenge impunity, contribute to the establishment of the rule of law and people-centered advocacy. The pain and the agony expressed in the testimonies help to convince the judiciary and human rights institutions about the injustice committed against the plaintiff. It was easier to elicit a coherent story from survivors and it seemed to release their pain during narration of self suffering of being tortured.

On the specific recommendation by the UN Human Rights Council during examination of India, human rights records under the Universal Periodic Review in April, 2008 to expedite ratification of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the government of India stated that "the ratification of the Convention against Torture is being processed." While the inter-ministerial group has made no public recommendations, the ministry of external Affairs has drafted the Prevention of Torture Bill, 2008 for the ratification of the UNCAT. The Prevention of Torture Bill, 2008 as drafted by the Government of India states in the preamble that the law is being enacted "to ratify the Convention and to provide for more effective implementation." While recognition of torture as a criminal offence is welcome, the Bill contains ONLY three operative paragraphs relating to (1) definition of torture, (2) punishment for torture and (3) limitations for cognisance of offences. It excludes many of the key provisions of the UNCAT.

India needs to ratify UNCAT and enact domestic laws on torture, unlike its present draft. But what is more important and should be taken up on a priority basis is an inclusive, healthy debate on reforming

3) <http://pvchr.blogspot.com/2009/01/giving-voice-manual-for-testimony.html>

security forces. The Supreme Court directed that police reform programmes be given priority. And all these should happen keeping the victim, already abused by the protector (security agencies), neglected by the justice giver (judiciary) and abandoned by the caregivers (family and community) at the centre.

The international code of medical ethics, drawn up in 1949 states: “A physician shall in all types of medical practice be dedicated to providing medical service in full technical and moral independence, with compassion and respect for human dignity.”

2. Ten Years of War against Terrorism

Odhikar¹⁾

War Against Terror: Sign of Coercive Presence

On the evening of the attack on the World Trade Center and the Pentagon, President Bush made a statement in his address to the nation:

“Good evening. Today, our fellow citizens, our way of life, our very freedom came under attack in a series of deliberate and deadly terrorist acts. The victims were in airplanes, or in their offices; secretaries, businessmen and women, military and federal workers; moms and dads, friends and neighbors. Thousands of lives were suddenly ended by evil, despicable acts of terror. The pictures of airplanes flying into buildings, fires burning, huge structures collapsing, have filled us with disbelief, terrible sadness, and a quiet, unyielding anger. The acts of mass murder were intended to frighten our nation into chaos and retreat. But they have failed; our country is strong.”

The next day, Mr. Bush opened with another statement: “I have just completed a meeting with my national security team, and we have received the latest intelligence updates. The deliberate and deadly attacks which were carried out yesterday against our country were more than acts of terror. They were acts of war. This will require our country to unite in steadfast determination and resolve.”

1) Odhikar is a human rights organization based in Dhaka, Bangladesh. Details can be found at www.odhikar.org

Later, both the Bush administration and the U.S. media fixed on the phrase ‘War Against Terrorism (or Terror).’ Many commentators asked why the deployment of organized violence against terrorism was being described as a war.²⁾ In the past, when governments responded to terrorism—especially in the context of colonialism—they spoke not of war but of police action. Governments that had had to deal with the Baader-Meinhof group in Germany, the IRA in Britain, ETA in Spain, or the Red Brigade in Italy, typically described their responses as “security measures” or “police actions,” rather than using the term “war.”

Alain Badiou proposed that in its capacity as a world power the United States had privileged war as the sign of its presence. From the beginning, he said, its political formation was achieved through a long history of military encounters across the North American continent and abroad.

Challenges and Paradox

Defending Human Rights in the wake of global war on terror is a pressing challenge. We have witnessed a change in the structure of global order. In the last two decades, our world has gone through a massive transformation. It is still undergoing various forms of integration and submersion. After the collapse of the Soviet Union, it was declared that the United States and its European ally have won a resolute victory over contending forces i. e. the end of History. Since then, a process was set off to reconfigure the world in accordance with the American model. The emergence of American supremacy and its hold in dictating terms was widely accepted. The world came under the control of a single superpower. The corollary architect of this unipolar world’s economic vision and implementation process was dubbed ‘globalization.’

2) See for example, “On September 11 2001: Philosophy and the “War against Terrorism” by Alain Badiou in *POLEMICS*. Verso 2006. New York.

This inherently imbalanced system and coercive mechanism pushed the rest of the world, especially developing and poor nations, into a precarious situation. The whole matrix of economic and social problems started to be viewed as a security issue. No local problem was left outside the bounds of this pervasive threat paradigm. It was said that, threats no longer originate only from outside the country's border but also from within the country. Internal changes in society; technological changes; population growth; poverty and economic instability; unemployment; urbanization; environmental degradation; competition over energy and resources, etc., were regarded as crucial destabilizing factors of a country; for that matter these also constitute global security threats.

If we look back at the actual consequence of neoliberal policy execution, we can easily identify ample disastrous scenario. Globalization has increasingly created an interdependent and interconnected world in order to globalize the culture of infinite personal greed and expand the scope for corporate profit. Coupled with the fossil fuel based industrial civilization and ceaseless assault on life affirming processes of nature, globalization has accelerated environmental and ecological destruction; to many observers globalization introduced a new form of colonialism.

Strengthened by neo-liberal policies, globalization not only transformed domestic economy and its relation to global market—tearing down all barriers for the movement of capital and goods—but constantly reconfigures sovereignty, the State, gender and class and their roles; the law and legal regimes also constantly change to serve corporate interests rather than ensuring citizen's rights and responsibilities. A striking feature in this era of globalization is that no country can remain insulated from external intervention. Scopes and limitations of human rights activism is determined and shaped by these realities and the contradictions and antagonisms they generate.

Human rights are now universal and almost all states have formally endorsed the basic principles of human rights. This reality does not make the task of human rights activists easy, but more difficult and challenging. The task of human rights is more and more concerned

about the individual persons as victims as against the State. Paradoxically, it is the perpetrators, the States, who are to implement human rights obligations. Conventions, declarations and the so called laws in the name of protecting the victims actually empower the States. States obtain the power of law to implement human rights since only the State can enforce norms as the law. Among others, 'external interventions' (like Libya) are often 'justified' on humanitarian grounds. This is always selective and politically motivated. In this era of military industrial complex, no country mobilizes its military resources into war just for upholding moral values.

There are historical examples of "wanton violence" in war. And of course they have sometimes been sanctioned by military leadership. But rare is the commander who orders "unnecessary," "wanton violence" "disproportional" to any legitimate military objective.

Far more often the tactics employed by other forces will seem excessive. The vocabulary in which this charge is made, and defended, is the vocabulary of humanitarian law. Indeed, whatever tactics seem extreme—carpet bombing, siege, nuclear first use, suicide bombing, terrorizing the civilian population—the condemnation and the defense seem to converge on the vocabulary of necessity, proportionality, and so forth. Think of Hiroshima.

The humanitarian vocabulary of necessity, proportionality, and humanity is now commonly used in arguments over particular events in war in the attempt to subject military conduct to transcendent rules. But it is worth bearing in mind that terrorists themselves often talk about what they do in the language of necessity and humanity. The Red Brigade in 1970s Italy, for example, mirrored the judicial authority of the state and challenged its monopoly of violence, trying kidnapped victims for crimes against the people and then executing them. Such acts not only transcend the limits of (state) law in the name of revolutionary justice, they do so by explicitly invoking a wider humanity. Thus when the Italian prime minister was kidnapped and killed, the incident was described by a Red Brigade ideologist as "the highest act of humanity possible in this class-divided society" and therefore as necessary. The ruthlessness of terrorists often matches

the effects achieved in the strategic strikes made by state armies, even when the latter use the language of humanitarian law in which a liberating or self-defensive purpose can be claimed.

The new law of force is a field of argument rather than a set of absolute rules (e.g., civilians must not be harmed). The consequent flexibility makes for an advance on the previous position. The sense that this constitutes an advance may be connected to the increased importance given to the sovereignty of individual conscience in this matter. Law is always a matter of argument because it requires interpretation, but here emphasis is placed not so much on what the military commander does (which is comparatively easy to determine in relation to absolute rules) but on what he has judged necessary and then chosen to do, an interpretive process that lies at the heart of modern ethics. And yet what matters primarily here is not a vocabulary of moral argument or the conscience of the virtuous warrior, but the existence of an independent institutional structure that has the ability to set a legal process into motion and apply its legal verdict in relation to conduct in war, regardless of who is to be judged. But it is a banal fact that powerful states are never held accountable to such institutions, that only the weak and the defeated can be convicted of war crimes and crimes against humanity.

Human rights activists cannot escape this paradoxical situation. Difficulties are more complex in countries where human rights activists remain aware of their role at various levels of the society and the polity and fight against such 'interventions.' While States, and this is true for all Asian States, are constantly violating human rights, the same State is facing challenges in the Neo-liberal era to maintain its sovereign authority, arguing that it is necessary to protect her citizens. 'People versus the Corporation' are emerging as the major area of antagonism, conflict and violence, while States take the side of the big capital. Elevating the market to become the dominant social institution, free from the politico-social determination by the will of the people, the state has been reduced to the role of maintaining security; the state has become a security institution to maintain law

and order on behalf of the elite and corporations. In this context arrived the events of 9/11 and the consequent ‘war against terrorism.’

Anti-terrorist Legislations

In the wake of the September 2001 attacks on the United States, President George W Bush launched major military and political operations in Southeast and West Asia as part of the global, U.S. led anti-terrorism effort. In the aftermath, globally – particularly in Asia – several countries are debating or have passed laws and policies aimed at ‘terrorism’; these laws and policies were supported by ‘security assistance’ like training, supplies of torture equipment and weapons from western governments to national armies and law enforcement agencies.

There have been a number of factors and indications which have had a significant impact for ostensible ‘terrorist’ activities in Asia. Without addressing social, economic, political causes of the militant activities from 2001 to the present day in Asia, all indications are that the prevention of terrorism will be one of the major tasks of governments and regional and international organisations. In response to the globalized nature of ‘terrorism,’ the security syndrome i.e. anti-terrorism laws and policies, have become matters of global concern. Anti-terrorism laws and policies cross boundaries between states and between domestic, regional and international law and also cross traditional disciplinary boundaries between administrative, constitutional, criminal, immigration and military law and the law of war. However, such laws and policies strike at the heart of every Asian country’s democratic culture and shows that civil liberties even in the strongest European democracies are under threat from an obsessive and disproportionate approach towards anti-terrorism laws and policies. Human rights defenders networks in Asia have called on the governments to review anti-terrorism laws and policies in the face of strong criticism from human rights defenders, advocates, lawyers, judges, journalists and others. Anti terrorism laws in practice are limiting the freedom of expression and thought, movement, associ-

ation and so on. Some also argued that anti-terrorist legislations are too broad and vague, so that these are applied against the freedom fighters, self determination campaigners, religious groups, suspected terrorists, law abiding citizens like the political opposition, human rights defenders, trade union activists and other activists; and in most of the cases it would undermine international human-rights standards, including the right to be presumed to be innocent and the right to a fair trial. These laws also strike at the common fundamental freedoms in our democracy in a most draconian way.

The nature of anti-terrorism legislation designs all types of laws passed with the purported aim of fighting 'terrorism' in Asia. They usually, if not always, follow specific bombings or assassinations. Anti-terrorism legislation usually includes specific amendments allowing the state to bypass its own regular legislation when fighting terrorism-related crimes, on the grounds of necessity; and these laws have the potential to target religious and certain political groups in particular. Because of this suspension of regular procedure, such legislation is most of time criticized as a form of *lois scélérates* which may unjustly repress all kinds of popular protests. In all the promulgated and proposed legislations in Asia, the definition of 'terrorism' is unacceptably broad, imprecise and unwieldy. In particular, it is critical of qualifying actions as terrorism if they are done with the intention of advancing a political, religious or ideological cause. The effect of such a definition is to remove from the definition of 'terrorism' the credible element, if any, of intentionality to 'terrorise' the government or the public through intimidation, coercion or the evocation of extreme fear. Anti-terrorism laws exploit public fears about 'terrorism' by introducing laws or policies for which no justification has been or could be made. Critics often allege that anti-terrorism legislation endangers democracy by creating a 'state of exception' or 'state of emergency' that allows an authoritarian style of government. Governments often state that these are necessary as temporary measures which will be dispelled when the danger finally vanish. However, most anti-terrorist legislation remains in place even after the disappearance of the original context. A good example of

this is the “War on Terror” which officially was to end in 2003; however it remains till this day (April of 2011). With no clear end in sight it violates the laws of reason, facilitating its own brand of circular reasoning and a pseudo straw man (“terror” as the straw man), perpetuating its own existence as it were. Measures which may be included by anti-terrorism legislation include preventive detention (that is, detention without trial) in Thailand and Pakistan, control orders in Bangladesh and India, warrantless searches in the Philippines, Indonesia and different parts of Asia and also laws that contained provisions which can circumvent normal criminal proceeding such as quick orders for long detentions. One of the main contentions of the law in the South Asian region is that it allows intelligence information to be used as preliminary evidence, which can be used for apprehending a suspect. Many proposed and passed legislation gives the government power to ban organisations that are deemed ‘terrorist’ groups. Other provisions allow the death sentence³⁾ to be imposed on those directly or indirectly involved with ‘terrorist’ organizations and allow ‘suspects’ to be held without charge or access to a lawyer for potentially extended periods.

The concern of human rights defenders is that the Asian governments and public funded security agencies fail to distinguish between participation in a democratic debate and ‘terrorism’ or sedition offences. Debate and protest are not antithetical to democracy but are an essential element of a thriving democracy.

So, anti-terror laws and polices are of grave concern to us; if they are not repealed, these laws will continue to undermine Asians’ civil and political rights and personal freedoms. In Asia we need to engage with the growing field of comparative and international studies of anti-terrorism laws and policies. A particular feature of this objective is to focus on a particular country and region in the Asia through the combination of knowledge and critical perspective and overarching thematic effort, that is able to take a comparative approach to particular aspects of anti-terrorism law and policy, including international,

3) This is clear violation under international conventions and treaties and also domestic laws in some Asian Countries

constitutional, immigration, privacy, maritime, aviation and financial laws.

The Common Features in Anti Terrorism Laws in Asia:

Common threads run through anti-terrorism laws in Asia. Some of these are as follows:

- All legislation was promulgated without any public consultation or participation.
- Allow individuals to be targeted and charged on the basis of their religious or political beliefs.
- Definition of 'terrorism' is quite broad and vague, opening up possibilities of abuse and it can catch all, even legitimate protests exercising constitutional rights, could be perceived by the government as threats against State and as such 'terrorism.'
- Crimes under the legislation are non bailable.
- Under emphasises intent over motive, which is a cornerstone of traditional criminal law.
- Erodes the legal right under international humanitarian law to self-defence in furtherance of self-determination.
- In practice, many of these offences have led to the criminalisation of conduct that is far removed from any intent to commit a violent act.
- Legislations gives extensive powers to law enforcement agencies, over and above the wide power given by existing regular legislations to arrest without warrant, on mere suspicion, and powers of preventive detention.
- It authorizes law enforcement agencies to detain a person on remand for certain days, which can be extended by the court.
- Persons can be charged for extending financial or other support to terrorist activities, even on the basis of reasonable suspicion.
- The laws provides the authority to ban any organisation purportedly engaged in 'terrorism' and prohibits and criminalizes statements in support of a banned organisation without needing to

show that the speech directly incited a criminal or terrorist act.

With such significant factors impacting Asia, the need has arisen to address these issues. Unfortunately, in Asia, the legal policy frameworks and institutional machinery involved in governing these processes has not been kept abreast of the consequences of a rapid rise of disadvantage and backward classes, and are challenged by inadequacy of services to protect and provide for the people and their families.

In India the draconian Armed Forces Special Powers Act of 1958 is now widely used not only against the people of Kashmir and North East, but also against the people who are struggling to defend their rights over ancestral lands and forests. Encounter killings have become a regular matter in the name of containing the so called Maoist movement.

In Pakistan the number of disappearances is increasing everyday coupled with the massive drone attacks conducted by the 'western' forces.

The Prime Minister of Bangladesh has already proposed a 'South Asian Task Force against Terrorism.' After the introduction of the Anti Terrorism Act of 2009, journalists, human rights defenders and political activists have been charged under this Act. In the name of countering 'terrorism' hundreds of people are tortured in custody and charged under this flimsy Act.

The Thai government, to contain the self determination movement in Pattani area of the deep south, has deployed the military and terrorised the entire area with killings, torture and detentions sponsored by the State. The Few human rights activists who braved that scenario also faced intimidation, including disappearance.

In the Phillipines the left wing guerrilla movement in the North and the self determination movement in the South also faced state repression. The Southern Moro movement for the right to self determination has been ruthlessly suppressed by the Phillipines government of Gloria Aroyo with the help of the US Forces.

Afghanistan and Iraq are only two examples of occupation and resistance.

Concluding Remarks

On the face of all these odds and widespread impulse to use anti-terrorist discourse and laws in legitimizing cruel and atrocious acts of local or global actors, it is a critical duty of human rights defenders to unpack the actual reality. Always be watchful and relentless in challenging the organizing principals that promote a coercive juridico-political apparatus. It makes no case for accepting some kinds of cruelty as opposed to others. Rather it is the task of HR defenders to question as to make his or her position sufficiently clear that he or she will be able to take a distance from the complacent public discourse that prepackages moral responses to terrorism and war.

3. Sri Lanka: All Negatives and Bursting at its Seams

Kusal Perera

In Colombo I was asked by a visiting businessman exploring post-war investment possibilities, “Isn’t Sri Lanka a success story in fighting terrorism?” This person then added his own epitaph to his question. “You Sri Lankans did it quite stubbornly.”

What ever he meant, Sri Lanka is now on the world map of successful “terrorist” eliminators. It is also in the map of South Asia as the “Pearl of the Indian ocean.” In the flight magazine of ‘SriLankan’ airlines, it is the “Paradise isle.” It was also called “Serendib,” “Taprobane,” “Ceilan” and then “Ceylon” by different ancient voyagers and colonisers from the West and the Arabic world. But it was “Hela diva” and “Lankadveepa” for the Sinhala people and “Ilankai” and “Eelam” for the Tamil people, the two major societies in Sri Lanka, with Moors and Malays as religious Muslims making a third presence.

While there are different interpretations to this history in relation to the fore fathers of this strategically placed island in the Indian ocean, there is historical evidence that a Tamil society with an independent culture of its own evolved in the North of the island spreading along the Eastern coast during the early centuries, while the rest of the island came under the domination of the Sinhala society that too grew with its own unique cultural identity. Sri Lanka thus became a land of two distinct societies with two distinctly different cultures. The conflict between these two peoples then was in its feudal form where powerful “kings” that emerged time and again, waged war to conquer neighbouring kingdoms and land.

Yet, the modern day conflict in this civilised, democratic world rolls out in a totally different socio political scenario.

Leaving the Past to Face a Modern Challenge

The modern day Sri Lankan society is an extension of the colonial legacy from the British in terms of socio political, cultural and economic life on which the independent country “Ceylon” as it was then called, had to establish its sovereign State from 1948, to govern itself. This brought forth the issue of who would wield political power and how. While the Muslim leadership was with the majority in forming the first independent government, the Tamil political leadership compromised with the hope of getting a justifiable share in the decision making process of governance, a right they were convinced they had.

Ceylon at independence was therefore up against the fundamental challenge of establishing a democratic nation State in a multi ethnic, multi religious, multi cultural and a bi-lingual society. The reluctance of the Sinhala political leadership in accepting this modern democratic challenge, saw a gradual distancing of the Tamil society from the Sri Lankan political process.

Two and a half decades after independence with many attempts at negotiating a decent and justifiable arrangements for political co-existence being snubbed away by the Sinhala political leaderships, the emerging Tamil politics within the new generation that lost all hope in negotiations with the Sinhala leadership, took a different radicalised turn. Thus came the new phase of armed Tamil politics that fought for an independent State of their own. Within this militant phase of Tamil politics there developed the concept of a “Tamil homeland.” This provided for a consensus in Tamil politics for “self determination” and a “separate State” in the Northern and the Eastern provinces together, as the “Eelam” nation.

It was this armed power struggle, the perceived right of the Sinhala political leadership as the legitimate government to suppress the armed struggle of Tamil Nationalism labelled as “separatism” and the opposite perception in Tamil Nationalism that they have the right

for “self determination” to establish their own State, that led to a protracted war for almost 3 decades. Within this war, the Tamil Tigers usurped power over all other armed Tamil groups and political parties, ruthlessly eliminating opposition to their authority in Tamil politics. In this context of organising brutal power for superiority, it was the supporting ideology for the war against “Tamil separatism” that established the “Unitary Sinhala State” concept within the Sinhala society and backed the war to be as brutal and savage as it was, in defeating the LTTE, militarily.

A Failed Task Ending in a Ruthless War

This war that was fought with international and regional interferences and facilitations, was declared as over in mid May this year, by the present regime. A human audit on this extra ordinarily over stretched and hyped war in a country with just 19 million people, would give a death toll of over 100,000 civilians on both sides of the ethnic divide and includes Muslims too. It has whole villages of people, predominantly Tamil with Muslims too in both the North and the East, displaced many times and left at the mercy of charitable organisations. It also has Sinhala villages neighbouring conflict areas that had many marauding Tiger cadres brutally attacking and killing innocent Sinhala civilians.

It would thereafter have over 27,000 Tamil youth killed and committing suicide as “Black Tiger” bombers. At least 24,000 Sinhala soldiers killed in battle on the opposite side of the barricade. It would have a correlated number of Tamil youth either permanently maimed or partly disabled. The number of similarly laid off Sinhala youth in government forces would exceed 40,000. Yet the most miserable cost of the war is the still unaccounted number of children turned “war orphans” having lost their parents and the thousands of young “war” widows who have lost their husbands. All due to war.

The 1,100 plus Indian Jawans who were killed in battle fighting another man’s war in a foreign country, shipped and airlifted as the

IPKF (Indian Peace Keeping Force) to the North-East of SL under the Indo-SL Accord of 1987, is the other unfortunate category.

All that lies as gaping pot holes in a completely devastated land area that has no assessments on damage caused to roads, bridges, electricity and telecom facilities, public and private buildings, natural terrain and of course to the ecology and natural habitats that were sound and firm, before the war. Sri Lanka was annually allocating increasing amounts in funds for defence (war) with LKR 69 billion in 2006, the year the present regime came into total control of the government, making it almost double the next year (2007) at LKR 139 billion. In 2008 it went up further to LKR 166.44 (US\$1.58) billion and to LKR 177.1 (US\$1.66) billion (2009) this year. This in fact is much more if the sum allocated to the police department is also added as the police is also now used directly for security purposes. (There is now statements been made that defence allocations for year 2010 will not be reduced.)

This brutality with such heavy human, material and financial cost, with the Sinhala political leadership not seriously working towards an alternate peaceful and democratic political alternative to, was carried through with a heavy campaign by the present regime against the Tamil Tigers that in broad terms was one against Tamil politics. Thus the underlying tone was one of “anti Tamil” feeling.

The “war against terrorists” by then had become a fashionable global tag line after the “New York 9/11 terrorist attack” almost wholly sponsored by the former US Bush administration and was made noisier after the Lashkar-e-Taiba (LeT) attack in “Mumbai on 26/11,” in a world that has no consensus even at the UN on the definition of the term “terrorism.” Yet a consensus there was, to fight “terrorism” in any way the political leadership of a government would wish to identify any armed opposition against it.

War on “Terror” and Sinhala Supremacy for War

Thus it was clear from the beginning of 2006, the war strategy of this government was based on the single premise that no social seg-

ment, group or even a person would be allowed or given space to discuss or voice any protest. It clearly worked towards a “tailored war monologue” in society that allowed for whole scale suppression of the media. First target from early 2006 was the Tamil media in the North and then the rest, with no distinctions made. Death threats, arbitrary arrests and detentions, abductions, forced disappearances, extra judicial killings and attacks on media institutions was the order of the day. Internationally recognised Editor Lasantha Wickramatunge gunned down in broad day light in a high security area, comes as the most talked of brutality from among over a dozen such killings of media persons.

Thereafter, detained for over 150 days without any charges, a much respected journalist in the mainstream English media, Tissainayagam, who was declared a “victim of conscience” by the Amnesty International (AI) was indicted basically for 2 articles he wrote in 2006 and was sentenced to 20 years rigorous imprisonment on 31 August, crowning the rule of impunity in Sri Lanka. The Asian Human Rights Commission (AHRC) issuing a statement on Tissainayagam’s verdict, concludes by saying, “Justice and media freedom in Sri Lanka is like the phantom limb; a dream of an amputee who still believes that his limbs are intact. The reminder of the Tissainayagam case should always be associated with the image of the phantom limb.” It wasn’t therefore no accident when Sri Lanka was called the 4th most dangerous country in the world for journalists to work in.

Nevertheless, the formally recognised Western international community that during the pre “NY 9/11” was quite vocal and principled against human rights violations, backed the global call for “war against terrorism” and was resigned to have the LTTE eliminated. Most of them had the LTTE listed as a “terrorist organisation” in their own countries. Except for their “left over conscience and reputation” that made them feel uncomfortable in the face of human rights violations carried out with impunity, they were ready to make way for the defeat of the LTTE with carefully phrased statements that blamed every one all round, but also subtly dodging the call to end the war.

Meanwhile the SL regime worked on alternate power centres in global politics that wasted no time inquiring into human right violations of others. China for instance invested in 8 of the African countries notorious for their violations in human rights including Darfur/Sudan and Zimbabwe. Others like Russia, Pakistan, China, Iran and some time later the Libya were not only talked of as providing arms, ammunition and other military hardware to fight the SL war, they were also seen buffering the government with aid projects and funds.

The Indian role was obviously different but was similar to their approach in Myanmar. The SL Defence Secretary went on record after the war was declared over, saying the Indians were very supportive of the war all through to its end. Indian assistance given to the SL war was covert in nature and in service than in military hardware. Their logistical and intelligence support extended, was extremely vital in combating the LTTE and was enjoyed in silence.

Towards a Cold and Closed Regime with Impunity

That being the advantage the SL government of Rajapaksa had in the “post 9/11” world against “terrorism,” it worked on the Sinhala platform that established the most racist government since independence. The political division created in society as “patriots” and “traitors” with the defence authorities themselves intervening to interpret these terms as those who support the war and those who opt for negotiations and power sharing respectively, instilled a cold, numbed fear in the majority Sinhala South as well.

The social mentality thus created allowed for an extremely ruthless, covert repressive machinery to operate at its own will, accepted in silence as necessary to curb “terrorism.” This included para-military groups already working in tandem with government security forces and new armed “outfits” that integrated with the regime. By 2008, it had turned out to be a regime that lived with arrogance and impunity, yet unquestioned in the Sinhala society.

The Constitution was also violated openly for this purpose. The President took upon himself, the power vested in the Constitution

and appointed “independent” Commissions that otherwise had to be appointed by the Constitutional Council under the 17th Amendment. Independent Police and Human Rights Commissions expected to function without political interference thus came under direct control of a regime that ruled with political arrogance. The result is seriously noted as follows in an open letter dated 24 August, 2009, addressed to all elected members of parliament by the Asian Human Rights Commission (AHRC).

“Today, Sri Lanka’s policing system has been described as completely lawless, corrupt and having no regard for human life. Extra judicial killings often disguised as some sort of self defense killings, torture and extortion have become the common feature exhibited at all police stations. The absence of even limited discipline within the police has also become visible where even persons who are charged with murder at high courts and facing trial, continue to work as police officers.”

With that there was brazen trespassing of political power by the defence authorities who took decisions that turned democracy into a mere procedural existence. The decision to remove Tamil persons en masse from Colombo lodgings within 24 hours considered temporary residents and therefore as not qualified to stay, was such an encroachment into freedom and democracy, challenged in the apex body of the judiciary.

Such legal interventions from the civil society were not often seen for 2 reasons. First, those who dared to challenge them were immediately labelled as “traitors” supporting the LTTE and the “division of the country.” Here was a country where all extra judicial killings of such “traitors” could be easily justified. The other reason is the hesitancy of the more conscious of the society in accepting the judiciary as an independent institute.

The International Crisis Group (ICG) in its latest report (30 June 2009) minces no words in presenting the Sri Lankan judiciary. In its “executive summary” it says, “Sri Lanka’s judiciary is failing to protect constitutional and human rights. Rather than assuaging conflict, the courts have corroded the rule of law and worsened ethnic tensions.

Rather than constraining militarisation and protecting minority rights, a politicised bench under the just-retired chief justice has entrenched favoured allies, punished foes and blocked compromises with the Tamil minority. Its intermittent interventions on important political questions have limited settlement options for the ethnic conflict.”

In a militarised society where the last option for any citizen in seeking justice is also thought of as flawed, the defence authorities were time and again dictating terms to the media as to how the media should behave. The defence web site was used to convey veiled threats to journalists and to lawyers who defended victims of human rights violations, by the police. All victims of human rights violations were generally projected as “suspect” Tiger cadres by State media and therefore as ones who should not have the basic right of legal defence.

All this in a country where the elected legislature, the parliament is reduced to a devalued and discredited institute. Apart from its lack of sincerity and commitment in functioning as a responsible elected legislature, the very proportions in representation as at elections which is the basis of representative democracy in Sri Lanka, has now been totally distorted through power brokering, thus making those voter who elected this parliament a bunch of innate clowns.

The electoral consensus in constituting the present parliament was that it would have 105 members in the ruling UPFA with all its appendage parties, for the 45.6 percent it managed to poll. The balance percentage of votes brought in elected opposition members to the government (UPFA). With total disregard and insult to the voters who elected these members as their representatives, this leap frogging of elected members has now provided the UPFA government, with a wholly disproportionate number of 125 members for their 45.6% votes, which denies people’s sovereignty and turns representative democracy into a disfigured but a demonic rule.

The parliament was further reduced to a bickering lobby of corrupt politicians with no discussions taking place on policy and principle issues relating to the war. The political aspect of the war was comfortably shifted to another forum outside the parliament called the “All

Party Representative Committee” (APRC) that did not include the main Tamil representation the Tamil National Alliance (TNA) and the main opposition, the UNP. The APRC, called for by the President, was explained as a democratic exercise that would draft a new proposal for a political solution to the conflict. In effect, it was everything but an APRC that sought to find a solution to the conflict. It was used by this regime to effectively deflect criticism that it did not stand for a political solution. Now after the war, the President has taken upon himself the responsibility of pushing his own “home grown solution” while the APRC is left stranded.

All of it in their cumulative form was garnered to dismantle the organised societal life. All democratic structures were either co-opted within the control of the regime or were forced to abandon their functional responsibilities, within this extremely repressive but populist brand of politics.

Final Phase of the War “Without Witnesses”

It was such a racially anaesthetised society that left the present regime to wage its war the way it preferred. The LTTE, much to the surprise of most, without much resistance, rolled up and folded its mini “Eelam State” from West to East coast. From Mannar in the West coast through Madhu, Pooneryn, Uyilankulam, Paranthan and Killinochchi on the famous A-9 land route that linked the Jaffna peninsula with the mainland, to the last patch of land in Mullaitivu in the Eastern coast. It bore heavy damages and loss of reputation and trust among the Tamil polity within Sri Lanka, unable to protect them as promised.

Perhaps with the Diaspora promising to deliver, the LTTE Supremo’s calculations to stick to their ad hoc mini “Eelam State” that could be justified for recognition by international agencies and UN members against a pro-Sinhala State run by a very “Sinhalesed” government in Colombo, came a cropper. “Post 9/11” international perspective which called for “a global war against terrorism” was not understood by the LTTE while their Diaspora underestimated it. Thus Prabhakaran’s decision to pull the Tamil votes out of the 2005 November presidential

elections and allow the predominantly Sinhala society to decide the next “Sinhala” President, brought about an internationally approved war waged by this ideologically Sinhala driven SL government, the LTTE could not this time manage or control.

Amidst forced absence of any solidarity in South, gaining land and establishing an ad hoc rule over it, the LTTE also fell into the disadvantaged position of having to defend a large stretch of land through conventional warfare, they were not capable of handling. The Tiger Supremo had other disadvantages too in that his “battle trained” leaders were no more young guerillas who could match the SL forces moving into battle as small regiments from multiple fronts. Worst was the loosing of the East along with its military leadership. With “Colonel Karuna” its Eastern province military leader turning a renegade and pulling off a coup against the Tiger leadership, the LTTE lost the biggest recruiting grounds it enjoyed all through their Eelam war.

During this war against an embattled but unusually bloated LTTE, none including the independent media was allowed access into conflict zones. Almost all humanitarian agencies were left out of the Vanni area where the war raged fiercely. The ICRC that was allowed special access, had clear and strict instructions to avoid the media.

Thus all air raids, said to have totalled around 3,000 sorties at one moment in war towards the finish, were all declared as “taking precision targets” on intelligence provided by the military. What ever news that leaked into foreign media on civilian casualties were simply laid aside as “LTTE propaganda.” This was a country that used air raids and heavy armour against its own citizenry, in the name of “eliminating terrorists.”

Despite the massive State campaign for a war waged in the absence of media and other non State independent agencies, the final phase of the war turned civilian casualties into a crying issue in international circles, lobbied by humanitarian and human rights organisations. The number of civilians caught between the advancing government forces and the defending Tiger cadres were disputed to be 250,000 or more by international agencies, as against the 70,000 quoted by government

sources. All appeals and requests for temporary “cease fire” arrangements and “humanitarian pauses” in the conflict to allow civilians to move into safer places of their choice, were rejected by the government with the accusation the LTTE was holding civilians as “human shields.” Yet, still under pressure from international and regional humanitarian and human rights groups, it declared a gradually narrowing patch of land as a “No fire Zone” for civilians to move in.

While there was no independent monitoring and little respect for such arrangements with loud accusations on violation of international law and conventions, the government declared the war as over with the defeat of the LTTE and elimination of its top leadership on 18 May. The fall out of the conclusion of this much disputed war, was catastrophic. The government acceded the number of civilians that crossed over as displaced people, totalled around 300,000 in all. International humanitarian and human rights groups and organisations accused the government of mass destruction of human lives and held the government responsible for over 13,000 civilian deaths. The final conflict area is left as “closed to outsiders” to date.

What is now left to be discussed and argued about, is the outcome of the war.

Without Terrorists and Living in Uncertainty

The post war Sri Lanka was projected as a “resurrected” paradise with the elimination of the “separatist Tigers” and the conclusion of the near 30 year war. President Rajapaksa claimed there are “no more minorities in Sri Lanka and there are only patriots who love the country and others who don’t.”

Unfortunately for Sri Lanka, the end of the war, does not mean all that and an end to the political conflict that had a cancerous growth through 60 years of “run away” Sinhala politics that evaded the political challenge of establishing an inclusive, pluralistic nation State. The way things are being steered by President Rajapaksa and his government that enjoys the luxury of being next to the most

“Sinhalsed” King of ‘Mahawamsa’ reputation, there would certainly be no “opposition” or “minority” voice in the next few years to come.

The agenda for such authoritarian “Sinhalsed” rule was set from the initial stage of the war. While the State machinery was being moulded to take over a regimented, regime driven rule, democratic procedures were also adopted to legalise the regime and provide it with a human face. All provincial elections were lined up to prove the “people” accept the regime with maximum support.

The North-East that was bifurcated into two different provinces as North and East through judicial intervention, was taken to polls in the East for its provincial council last year where para-military group(s) with the government had the advantage of taking the province under their control through a “doctored” election. Thereafter, other provincial council elections were lined up at different times, with different phases of the war used for election promotion with vigour. Use of State resources without any thrift, was a very conspicuous feature in government’s election campaign. That included intimidation of opposition candidates, when they thought it was necessary.

Except for the now militarily retrieved North, all the other 8 provinces will have provincial councils elected, when the Southern PC election concludes on 10th October. Election campaigns for all these provincial councils were used to establish the “Sinhala” supremacy in Sri Lanka with the war projected against Tamil “separatism” as the main political idiom.

The advantage the present government had in all these elections that spanned for nearly a year, was the inherent incapacity of the main Opposition, the UNP in finding itself the right political identity as an opposition political party. It was riddled with internal squabbles from the time its leader Wickramasinghe lost the presidential elections in November, 2005. There emerged within the UNP a call for a change in its leadership. Given different interpretations to this call for change, a group of UNP parliamentarians joined the Rajapaksa regime with ministerial portfolios, thus strengthening the “call for war” by the government. Thereafter the Wickramasinghe leadership ignored all human rights violations committed by this regime and restricted itself

to vague protest statements while on its way to compromise its political stand on the ethnic conflict that accepted “power sharing in a united country.” With that the Southern society lost the only political alternative that could have contained racist politics.

Meanwhile, the strongest ally President Rajapaksa had in his own presidential election campaign, the JVP which stood fanatically loud for war, was also trying to have its own independence in oppositional politics. This being a total duality that could not be sold to the people by a political party that did not veer away from its “war call,” the JVP lost considerable ground to President Rajapaksa who came to own the Sinhala platform for war. This weakening of their political potency amidst access they gained into mainstream politics and the State that corrupted their leading cadres, brought about a defection which not only reduced their numbers in parliament, but eroded their credibility too.

The other hard line Sinhala Buddhist group that has some foothold in the urban middle class and within the small time business community, the Jathika Hela Urumaya (JHU) which fielded Buddhist monks at the last parliamentary elections in 2004 April, opted to join the government with a ministerial portfolio.

With the opposition UNP also in disarray and compromising with Sinhala politics, the Rajapaksa regime got total ownership to the Sinhala ideology, its Southern base and the justification for authoritarian rule in the name of “war against Tamil separatism.” In short, it emerged as the sole Sinhala power bloc in the country, that could run with impunity.

Future without Minority Voices and Opposition Sanity

The end of the war that still leaves the original conflict in its political form, has left the Tamil polity in Sri Lanka without any worthy political leadership that could intervene on their behalf. All Tamil para military groups that claim to politically represent the Tamil people have been with the government that waged this war against a whole Tamil society, by virtue of the fact that they were all “anti-LTTE” groups.

All except the “Karuna group” that initially was known as the TMVP (Thamil Makkalai Viduthal Puligal) have a long history of being with SL governments and working with State security and intelligence agencies. All of them are groups that went along with the Indian project in 1987 and thus had to assist the IPKF, when the LTTE opted to wage war in October, 1987. They had no option but to lean on the governments in Colombo thereafter for their own security and thus failed to evolve as democratic political entities.

“Colonel Karuna” who now uses his original name as Vinayagamoorthis Muralitharan and as a government minister joined the SLFP, of President Rajapaksa and his early TMVP that was installed as the Eastern provincial council ruling entity, are also part and parcel of the regime. All these past and present groups therefore have very little credibility left to represent a wholly battered and mauled people under this regime, having sneakily supported the war.

The TNA too has lost considerable face having being identified as a proxy to the LTTE. They are now going through a transitional crisis, trying to find an independent role for them. Their performance at the two primary elections to the local governance system in Jaffna and Vavuniya held in early August, nevertheless shows they are still preferred by the Tamil people, in contrast to other Tamil groups. What was more evident at this local government elections is the fact that Tamil people are not very interested in getting into elections thrown out by this regime.

The Sri Lankan citizenry now seems certainly polarised into two social entities and the Tamil people left to live in almost total isolation under heavy security. The government shows it is in no hurry in sorting out any of the Tamil issues including that of the Internally Displaced Persons (IDP) who are more or less caged in to live under extremely harrowing conditions.

With no opposition to any of it, there is not only a possibility, but also a suspicion that the government would use the resettling of IDP's to change the demographic pattern in the now almost empty Vanni lands recaptured from the war. A change that would erase the political base for any future Tamil claim for a “Tamil homeland.”

The possibility of whipping up Sinhala sentiment on all those issues would not be easy as the war frenzy can not be kept going without a war and time wastes off for a government that has no clear programme for development and would lose trade benefits for apparel products to the European Union due to its track record of violating human rights. It would thus be impossible to hold the economy stable for long under a very corrupt and plundering regime to satisfy the Sinhala polity. This seems the reason for speculations on the next presidential elections very much before time. An attempt to gain public clearance for an extension to the rule of arrogance and impunity, while the going still seems good and easy.

Probably a sure victory, in the absence of any sane opposition. And a long time it would be, for Sri Lanka to develop a committed, intellectual political leadership to usher in a rule of law and democracy.

4. Nepal in Transition: A Rugged Road from Royalty to a Republic¹⁾

Krishna Siwakoti

Tracking the Uneven Past with Pride

Nothing with reference to Nepal is beyond contradiction! It's a petite non-coastal nation of astounding topographical diversity. From the tallest mountain in the world, Nepal plummets to subtropical tiger jungles stretching at sea level along its southern border—all within a distance of 92 miles. It's caught between the two giant webs of Asia: China and India. Although the UN and the international community recognize its independence, in reality, Nepal often faces constriction to reach the outside world both in political and economic realm without the expressed approval of its giant neighbors. The truth is that, at every point on the compass, Nepal's independence is negotiated.²⁾

Nepal's shadowy feudal past collides with the vibrant spirit of the new millennium. It's a country that was born in—and is still hobbled

1) This essay is a brief review of the political turmoil of Nepal covering issues related to democratic development, civil society engagement and the dynamics of political transition in Nepal. A young Himalayan republic, which witnessed a decade-long violent conflict, has gone through a rapid political transformation with high intensity post-conflict organized crimes and mushrooming splinter armed groups. Nepal's transition can be manifested as a unique case study to comprehend how radical political change can be achieved through a peaceful popular uprising. Besides, the essay also deals with the consequences of the failure in confronting the past in the absence of a viable transitional justice mechanism.

2) A Brief History about Nepal, Yadab Prasad Bastola, February 20, <http://www.internationalpeaceandconflict.org/profiles>

by—an archaic caste system that traditionally supported ethnic marginalization, gender injustice, and absolute rule with no room for liberty and open society. Nepal had an autocratic monarchy that managed to cling to its throne—with varying degrees of success—for 240 years: And yet a violent Maoist insurrection blended with peaceful popular uprising of 2006 has all but dashed the majestic institution. Though projected as peace-loving people, Nepalese have been beleaguered by a decade-long civil conflict and excruciating political transition.

In Nepal, there were numerous sparsely populated tribal chiefdoms before 1743. A relatively simple social structure, with the division of labor and status being largely organized along the lines of age, gender and military performance was in existence. Gradually Indo-Aryan communities, especially the Hindus from the northern part of the present day India, entered the hills of Nepal and introduced a complex form of social divisions based on caste systems. By the end of seventeenth century, most of the petty states were already under the firm control of Hindu Princes (Rose and Fisher, 1970; Bista, 1991).

Around the middle of the eighteenth century, Prithivi Narayan Shah, an ambitious king of one hill state, called Gorkha, and his successors extended the territory of the Gorkha kingdom and founded the present day Nepal. The annexation and political control over large areas resulted into a situation whereby increased amounts of land tax could be spent on invading the neighboring states. Land tax revenues were the major source of income for the Nepalese ruling classes after the unification of the petty states (Regmi, 1978).

In 1846, Janga Bahadur Rana became the Prime Minister of Nepal, who gradually took control of power, making the King merely a figurehead. In order to avoid outside invasion, they developed close relationships with the British East India Company.³⁾ Their policy towards British-India was that of reconciliation and survival. The Ranas agreed to supply Nepalese manpower as soldiers for the British army. In turn,

3) South Asian Alliance for Poverty Eradication (SAAPE), People's struggle for democracy and just governance in Nepal, Position Paper, 2008

the British guaranteed them political support and non-interference in Nepal's internal affairs (Stiller, 1975). The Ranas ruled the country for over a century and in they established a highly oppressive structure of state bureaucracy that suppressed the concerns of other social groups in the country (Rose and Fisher, 1970).

By the 1950s, popular opposition to the Rana regime had steadily grown and different political parties and organizations were established. Despite the emergence of different political parties coupled with the bureaucracy taking the form of a modern institution, the political power structure and class relations did not undergo any radical changes (Blaikie et al., 1980). As Panday (1999: 239) mentions, this period remained unstable as the new political systems did not provide any clear strategies guiding future actions, ultimately leading to political chaos in the country.

In 1960, the King decided to ban all the political parties and introduced the partyless Panchayat political system, accusing the ruling party, the Nepali Congress, of abuse of authority, corruption, failing to maintain law and order, among others (Rose and Fisher, 1970; Burghart, 1994).

The introduction of the partyless Panchayat political system encouraged the King to control civil administration, the military, the legislative and the judiciary with high castes and land owning people acting as subordinates. The people of Nepal lost their voice in this political climate, the people's rights established by the 1950s' democracy were abolished by the King.⁴⁾ This environment led to growing unrest amongst the disillusioned populace who saw the Panchayat System of misusing power and failing to tackle poverty despite three decades of planned development and the influx of foreign aid (Panday, 1999). Moreover, the system denied freedom of expression, and political dissidents were treated with cruelty and were held in detention without trial.

4) Blaikie, P., Cameron, J. and Seddon, D. (1980) *Nepal in Crisis: Growth and Stagnation at the Periphery*, New Delhi: Oxford University Press

Advancing for Future with Greater Drive

The unitary and centralized Nepali state making process began 242 years back in the name of unification and nation building. Nepali people have challenged the oppressive mode of state several times in its history. In 1990, the banned Nepali Congress and several Communist parties launched a joint movement demanding the restoration of democracy. Following a period of civil unrest, the King agreed to disband the partyless Panchayat system, and remained as the constitutional monarch. Following the restoration of democracy based on a multi-party system, several organizations and political parties emerged. In addition to this, changes in bureaucracy and state apparatus were made. Foreign assistance and the growth of the private sector increased significantly in a short period of time. The government's policy to encourage local NGOs in the development sector has had an enormous impact and enabled them to play an important role in Nepal in the early 1990s (Seddon, 1994).

Despite all these positive changes, Nepal did not experienced political stability after more than a decade of restoration of the multi-party political system. Pandey (1999) explains, "one can see a political fault line expanding and threatening to have the whole facade crumble under the weight of Nepal's history of authoritarian rule and traditional, hierarchical and semi feudal social structure." With the restoration of the democracy, people expectation from their elected government grew. But their expectations were dampened as the political parties were marred by disunity and divisions, thus failing to maintain the democratic commitment. Additionally, this period was characterized by intensified corruption cases, contributing to the crisis of values and leadership (Seddon, 1994).

In the past, the degree of exclusion in Nepal's governance has been startlingly represented in the fact that under the electoral process mandated by the constitution, more than 60 per cent of the votes were excluded from the government formation process.⁵⁾ The 1991

5) National Election Observation Committee (NEOC), Observation Report, Constituent

constitution had no provision for the devolution of power from the centre to the regional to the grassroots level, which is reflected in the fact that only 40 per cent of the national budget was allocated outside the centre. Nepal has had the peculiar situation of parliament being elected thrice but dismissed four times in 12 years. This is a reflection of how governance has been at the mercy of the whims of the ruling elites, such that the prime minister of a highly unrepresentative system, one in which power is concentrated at the centre, enjoyed the authority to dissolve parliament at will. In the past, 41 per cent of the population occupied 84.9 per cent of the seats in parliament, while over 58 per cent had only 15 per cent of the seats. These figures show that the then political system was structurally flawed.

Had the judiciary been stronger, it may have acted as a check and balance. But its weakness has been well reflected in the fact that for each of the dismissals that have been challenged in court, it has returned a verdict that conflicts with the previous verdicts.⁶⁾ In some other countries that have suffered a democratic deficit, governments have been known to take ameliorative measures, but this did not happen in Nepal. Since the structure itself was flawed, with corruption, nepotism and series of “horse-trading” in the parliament, then it came to no surprise that in such a climate, the people gradually lost their faith in the political parties and their leaders. To save the culture of democratic values and human rights safeguards, a massive overhauling of the system was inescapable beyond the piecemeal approach.

Firearms to Fight

On 13 February 1996, six years after the restoration of democracy, the Unified Communist Party of Nepal (Maoist) began its armed rebellion

Assembly Elections, 2008

6) Constitution and electoral reform, a working paper by Bharat Raj Upreti, organised by Social Science Baha, Kathmandu, 24~26 April, 2003

in the name of the 'People's War' in the remote hills of the mid-west. Their aim was to establish a new democratic state by overthrowing the feudal system and establishing a rule of the proletariat in the country. In spite of its rhetoric, the Nepalese People's War was not a class war, and contrary to the Mozambican case, it did not polarise the population on the basis of ancient, ethnic difference. It rather mobilised young people individually, offering them a career, which in many aspects appeared as a (noble) alternative to migration.⁷⁾ Poverty, along with a weak government, no real transition from autocratic to democratic rule, and the absence of efforts to address caste and ethnic problems, resulted into a period of instability, which over-time provided breeding ground for the rise of the Maoist insurgency. No one could foresee the gravity of the rebellion at the time it began. The rebellion fanned fast, pushing the country into a national crisis and a long-drawn civil war with no end at immediate sight. The war did not draw much attention of the state and the international community in its initial years. The Maoists were very successful in attracting frustrated and disillusioned youths and the discriminated poor to its rebellion. Those who hoped that the conflict would produce a better, more equitable society were soon disappointed. Consequently, the country fell into a maelstrom of illegal detention, torture, extortion, abductions, disappearance, extra-judicial executions, compounded by the already widespread poverty and misery.⁸⁾

In the meantime, the then King Gyanendra took power and imposed an autocratic rule in 2005, with virtual ban on the activities of political parties and civil society organizations in place in the name of curbing the state-declared "terrorism" of the Maoists. Human rights groups the cushioning force of conflict were also pushed up to the edge! As time passed by, the insurgency intensified and became uncontrollable, with no chance of winning it by either warring sides. The Maoists claimed control of almost 80 per cent of the rural areas, the state administrative and security mechanism remained limited to urban

7) Armed Militias of South Asia, Fundamentalists, Maoists and Separatists, Laurent Gayer and Christophe Jaffrelo, Foundation Books, C. Hurst & Co. UK, 2009

8) Nepal: Human Rights in Political-economic perspective, Social Watch report, 2008, Instituto Del Tercer Mundo, Uruguay

areas, district headquarters and selected security bases of rural areas. This situation led the country to two governments, with most rural areas remaining without state's administrative, judicial and security wings, were subjected to dual governance from the Maoists and, to a lesser degree, from the state.

The conflict affected all spheres of Nepalese society. Human rights abuses were rampant, with the country witnessing extra-judicial killings, maiming, threats, humiliation, social isolation, gender-based violence, abductions and forced conscription of children. Over 15,000 people lost their lives to the conflict (Ministry of Peace and Reconstruction). The conflict forced thousand of families and individuals flee from their homes to relatively secured district headquarters and urban areas out of insecurity. The government estimated that around 18,000 people were displaced but the Norwegian Refugee Council estimation puts this figure at between 10,000 and 200,000. Caritas Nepal estimated the number of internally displaced persons between 214,000 to 2,72,000.⁹⁾

Nonviolent Arms to Protect

After months of slow negotiations following the success of the mass movement that forced the King to give up his direct rule in April 2006, the then seven party alliance (SPA) and the Maoists signed a historic Comprehensive Peace Agreement (CPA), which ended the decade-long conflict, in November 2006. The agreement had its root to an understanding between then SPA and the Maoists in New Delhi in 2005. However, it represents a temporary convergence of interests more than a permanent shift in the underlying outlooks and interests of the sides. The SPA and the Maoists retained different visions for Nepal's future institutions, and individual parties' electoral interests came increasingly to the fore. The CPA will not in itself alter the exclusionary characteristics of public life or deliver urgently needed

9) Caritas Nepal, Caravan of Conflict, Study on the Dynamics of Conflict-induced Internal Displacement in Nepal, Gopal Krishna Siwakoti & Shreejana Pokhrel, 2006

economic progress and human security.¹⁰⁾ The agreement paved way for the formation of an interim legislature and a government and for the elections of a constituent assembly (CA). In a detailed agreement on arms management, the Maoists committed to cantonment of their fighters and locking up their weapons under UN supervision; the Nepalese Army largely confined to barracks.

The election of the long-cherished CA, which was ultimately held on April 10, 2008, adopted a mixed electoral system: first-past-the-post and proportional system. The world's last Hindu kingdom, then a secular state, has now been declared a republic, after the Maoist-led new parliament decided to abolish the 240-year old monarchy in May 2008.¹¹⁾

The CA, unfortunately, has failed to deliver significant results. Some of the problems that characterized it since its formation in April 2008 are manifested in primarily a lack of solid dialogue mechanisms, poor facilitation, little attention to confidence-building and an opaque, elite-driven approach.¹²⁾ The sheer rift among the key political actors in relation to exploring a compromised solution on the contentious issues including the integration of the cantoned rebel fighters, determination of the federal structure of the state, setting human rights benchmarks, determining the form of the government, electoral representation characters, self-determination and autonomy may continue to dog the next stages. The deadline for the promulgation of the new constitution on May 28, 2010 as mandated in the interim constitution is almost sure to be overshoot

The activities of the parties in Nepal are characterized by suspicion, partisan interests, lack of faith in the electorate, primarily closed door decision making by leadership and elites. The weakness in forging party consensus has been exacerbated by poor discipline within most parties, with individual politicians, making provocative statements and pursuing personal agendas in public.

10) Prospects for a Successful Peace Process in Nepal: Internal and External Factors, www.ciaonet.org/pbei/usip/usip

11) <http://www.sajaforum.org/2008/05/nepal-maoist-le>

12) Concept Paper for Monitoring Comprehensive peace Agreement in Nepal, INHURED International, 2007

The major challenges remain with how the state and political parties will respond to the demand of the Madhesis, ethnic groups, women, dalit and other marginalized groups. A number of marginalized and regional groups have emerged with their demands to be included in the mainstream of political process and in the new constitution. For instance, the Madhesis have been expressing their dissatisfaction of not being included in the decision-making processes of political governance in Nepal since its establishment so is the case with indigenous, dalits, the disabled and other traditionally marginalized section of the society.

Road to the Republic

Nepal's CA elections marked a major step forward in the peace process, paving the way for the declaration of a federal democratic republic and the start of the constitution-writing process. The elections delivered a clear and, to many, surprising result. The Communist Party of Nepal (Maoist, CPN (M)), emerged as the largest party by a wide margin, winning more than one-third of CA seats. The largest established parties, the Nepali Congress (NC) and Communist Party of Nepal (Unified Marxist-Leninist, UML), were not wiped out but have had difficulty coping with their relatively weak showing—their combined seats are less than those of the Maoists. Royalist parties failed to win a single first-past-the-post seat, only saving a foothold in the new assembly through the parallel proportional representation contest.

The election for a CA was carried out in relative peace despite fears of extensive violence. Power sharing negotiations continued for months following the elections until July when Nepal's governing assembly elected Dr. Ram Baran Yadav as the first president while Pushpa Kamal Dahal was named Nepal's first Maoist Prime Minister and took office in August 2008. The Maoists struck a chord with popular aspirations that the old parties had not even woken up to. In this, as in their more dubious techniques, they made full use of the fact that they had stayed in close touch with ordinary people and not lost

their heads in Kathmandu politicking.¹³⁾ The elections gave the people of Nepal a chance to have their say, whose voices had been silenced for so long. Despite cases of disruption and intimidation, people turned out in large numbers to have their votes counted. Although falling short of an outright majority, the Maoists won a decisive victory at the April polls, securing a fresh mandate for leading the fragile peace process to a logical end.

The first meeting of the CA unanimously abolished nearly a 242 years old monarchy and Nepal became a secular, federal democratic republic.¹⁴⁾ The emergence of regional parties particularly in Tarai region has also been a feature of the new political landscape. The Madhesi parties performed well in the CA elections and that has been established by the CA election as Madhesi parties have significant representation in the CA.

The CA is a remarkably inclusive body and has more representatives of Nepal's caste, ethnic, religious and regional diversity than any past parliaments. One third of its members are women, catapulting the country into regional leadership on gender representation. The Madhesi Janadhipakar Forum (MJF) proved that it was more than just a brand name for a vague sense of Madhesi grievance but a viable political machine able to mobilize votes and put identity politics on the map—probably for the foreseeable future.

Survival of the Fittest

Political exclusion is mainly a problem of the past. The bigger problem is the political vacuum one sees in the districts, a vacuum born of mal-development, a vacuum that came from the leadership at the national and local level getting no legitimacy. Over these turbulent years, the Maoists have understood the weakest links of the Nepali electoral democracy, the regional margins, ethnic-state margins, caste

13) Nepal's Election: A Peaceful Revolution?, International Crisis Group, Asia Report N°155 3, July 2008 (<http://www.crisisgroup.org/home/index.cfm?id=5551&l=1>)

14) <http://www.rediff.com/news/2008/may/28nepal1.htm>

margins and ethnic margins. And this is precisely where the insurgency is burning at its hottest. There is also evidence that a large part of the population mobilized by the Maoists was never successfully brought under the fold of any major political party. The last 15 years also show that elections alone are not enough for democracy and inclusion. Injustice of all forms, not only of the state but also of the market, need to be critiqued by our civil society.

During the past six decades of Nepal's tenuous body politics, in which autocratic rule was twice punctuated by constitutional monarchy and multi-party democracy, freedom often gave way to political anarchy and public disenchantment rather than contentment. That happened because of a perpetual power tussle among political parties and the monarchy and the continued neglect of social and economic development. A compromise between King Birendra and parties in 1990 helped formalize a British-style constitutional monarchy and parliamentary democracy. Many hoped, including freedom-lovers in the west, that Nepal had finally crossed the democratic threshold. It was not to be. The developments on February 1, 2005 in Nepal, in which King Gyanendra seized power much in the way his father had done in 1960, shocked any freedom-lover, especially at this time when the western world is pursuing a vigorous policy of spreading freedom abroad.

Current institutions are fundamentally shaped by their exclusionary orientation. Majoritarian institutions, such as those adopted by Nepal, work in majority societies, not in multicultural ones. Majoritarian institutions worsen class cleavages, and in Nepal they are imbued with caste-Hindu values, which have the effect of limiting individual rights.¹⁵⁾ As the constitution is geared towards certain groups, individuals from those groups enjoy protection under the law not afforded to all citizens. There are any number of objections one could raise against the present political structure, from its racist and sexist assumptions to its unfair dismissal of multilingualism and restrictions on rights of association.

15) *Inclusive Democratic Institutions in Nepal*, Mahendra Lawoti, SAGE Publications, New Delhi, 2005

In order to achieve these aims, some believe that one practical model is federalism. Such a system could provide the right balance of state action and decentralization, allowing inclusion through cultural autonomy, empowering marginalized groups, and molding public policy to better reflect the interests of the entire public. There are also opportunities for better management of ethnic conflict, for more efficient and responsive administration, for regionally-balanced economic development, and for more decentralization and local-level experimentation.

Human Rights: Inhumane Wrongs

Still struggling to recover from the after-shocks of the decade-long Maoist insurgency and ruthless monarchist-military counterinsurgency that claimed the lives of over 15,000 people, displaced hundreds of thousands from their villages and upturned all previous certainties, impunity remains one of the biggest problems in contemporary Nepal.

The 2006 April uprising created space for sustainable democracy and peace, but unless the long-promised Truth and Reconciliation Commission and the Disappearance Commission formed, it will not be possible to be sanguine about the peace process. The police, the military and the Maoists have all violated norms of human rights in the past when extra-judicial killings, abductions, torture and disappearance were routine.¹⁶⁾ Not even a single perpetrator has been brought to justice and not a single victim/survivor has been awarded reparation and justice beyond a token of blood money compensation. Attempts are being made to sacrifice judicial process at the altar of political expediency, but this will further entrench culture of impunity endemic to the system of governance in Nepal. The military is reluctant to handover the alleged perpetrators to the civilian court for trial and the culprits of atrocities in the Maoist atrocities are at large. The former giant human rights violators have befallen the

16) Preliminary Status Report, International Covenant on Civil and Political Rights (ICCPR), INHURED International, Lalitpur, February 2007

glorious victors.¹⁷⁾ Since time is an enemy of justice the ‘victors’ are deliberately prolonging the formation of the mechanism that is mandated to investigate the atrocities reveal the truth and proceed for peace through justice for ultimate reconciliation. The saving grace of horrible human rights record in Nepal is a vibrant civil society that keeps a close watch on all abuses. Volunteers in blue jackets with ‘Human Rights Defender’ emblazoned in white are common sight even in remote parts of the country. Whether their work bears fruit and institutionalization of retributive justice succeeds in ending culture of impunity or not, remains to be seen.

Uncivil Supremacy and Civil Society

The history of war and peace has shown that civil society has tremendous potentiality to enhance peace processes (Abdullaev and Barnes 2001; Armon and Carl 1996; Galtung, 1996; Armon and Philipson 1998; Armon et al., 1998; Armon et al., 1997; Baechler, 2002, Aditya et al., 2006; Barnes, 2002; and Upreti, 2006 and 2004). The unquestionable reality is that creating and maintaining peace require an active engagement of all actors of society, from ordinary citizens, security actors to politicians. Additionally, civil society plays an important role in the conflict transformation process where management of arms and demobilisation is of great concern. Peace scholar Guenther Baechler argues that a strong civil society within the framework of multi-track diplomacy is pivotal for conflict transformation and peace building. He argues that, “A strong civil society can serve as a grantee for a sound societal fabric, one that can support civil conflict resolution’ (Baechler, 2005:4).

However, civic engagement in the peace process in Nepal is not getting enough attention. It is very hard to realise genuine efforts from the state to promote public participation in the peace process. Pragmatically, peace keeping is more than ending armed rebelled

17) Prospects for Transitional Justice in Nepal, Guest Lecture Series, Gopal K. Siwakoti, Mahodol University, July 2008

struggles. It goes beyond this to address root causes of conflict and it promotes peace transformation.¹⁸⁾ Therefore, it is a political and social transformation process as it has to focus on structural change in governance, security and development, human rights policies and practice and regaining eroded trust (Barnes, 2002). In this respect, contribution of civil society for democratizing peace process is critical in Nepal (Upreti, 2006).

Civil society organizations (CSOs) have played a vital role in defending human rights and promoting democracy in the political history of Nepal. Since 1990, the emergence and growth of NGOs have played a vital role in raising awareness among the dalits, women, ethnic and other marginalized groups and helped them to defend their rights. The strength of the awareness was translated into the people's movement of April 2006 against the autocratic regime in Nepal. After some months, the leaders and cadres of the political parties came forward and joined hands with the CSOs to overthrow the monarchy in Nepal. In April 2006, the Nepali people won the battle and the King stepped down and the restoration of a multi-party democracy proceeded. Evidently, civil society has contributed greatly in the conflict transformation and peace building process. This has been achieved through public dialogue, raising the people's concerns, articulating governance reform, pressuring for peace talks and negotiation, organizing mass meeting and rallies (Dahal, 2005; Upreti, 2006).

Through constant efforts, civil society was successful in bringing the Office of the High Commission of Human Rights (OHCHR) to Nepal. The presence of OHCHR became instrumental, in protecting human rights, thus demonstrating competency, commitment and credibility in Nepal.¹⁹⁾ It is important to mention that, the UN is quite bureaucratic and complications may arise when it engages in managing arms and armies. In both situations, constant vigilance may be needed if the bureaucratic and technocratic procedures and practices delays or

18) Breaking the barriers and building a bridge: A roadmap for structuring negotiation and peace process in Nepal (A discussion paper), Centre for the Study on Democracy and Good Governance and Friedrich-Ebert-Stiftung, Bishnu Raj Upreti, Kathmandu, Nepal, December 2003

19) www.ohchr.org/Documents/Publications/NGOHandbook

hinders transformation process. Once the UN is involved in managing arms and armies, it needs collaboration and support from all actors to smoothly accomplish the responsibility, where civil society could constructively contribute. There are several international bilateral and multilateral actors who are positively contributing to Nepal's peace process and supporting the UN for arms management with whom civil society has one way or another contentedly collaborated.

Not surprisingly, civil society organizations have often played important roles in promoting and supporting transitional justice experiments in the country. Unfortunately, in many countries, civil society is often weak, disorganized, and lacking independence in post-conflict nations. Contrary to this, in Nepal's context, where the decision has been made to establish some form of accountability for past human rights abuses, human rights community and organized survivors' groups have demonstrated their courage and conviction in pressing the successive transitional governments to act. Increasingly, transnational human rights activists have provided additional pressure on the government to confront its past, as well as expertise on transitional justice to advise the government how to do so. As such, civil society has been playing a central role in attempts to address past human rights violations by mobilizing broader sections of society to participate and then disseminating the lessons of the transitional justice experience to a wider national audience.

Politics of Poverty

The issue of poverty which encompasses serious violation of human rights, freedom and justice is not getting much importance in the contemporary political discourses in Nepal. Development priorities, policies and strategies have been developed with a technocratic point of view that have been proved defective approach as several decades of attempts failed to address poverty. This is the outcome of ineffective political and social systems under which the policies, programs and strategies of poverty reduction have been placed for the last five decades. However, poverty needs to be viewed as a political issue

and requires political solutions. Poverty is closely related to the socio-political structure of society that marginalizes women, dalits (so called lower caste people), ethnic minorities, disabled people and other disadvantaged groups. The technical solutions for these political problems seem synonymous with “treating a headache with medicines for stomach ache.”²⁰ Addressing poverty requires democratic governance (polity), which guarantees the access of poor and marginalized people.

Additionally, the role of international agencies in reducing poverty does not appear to be effective as they regard poverty more as a technical issue rather than a socio-political one. The aid governance of international agencies appears to be top down and techno-centric. The Poverty Reduction Strategy Paper (PRSP) itself is prepared by the government with a large influence of International agencies such as the World Bank. PRSP was developed with no consultation with people. Similarly, the World Bank pushed the government to establish a Poverty Alleviation Fund despite strong resistance from some of the civil society organizations.

When Law of Force Triumphs Force of Law...

Despite successful elections and a lasting military ceasefire, Nepal's peace process is facing its most severe tests yet.²¹ Over three years of the CPA, no monitoring mechanism in place to audit the compliance of the accord resulting in series of incidences of the violation of the CPA provisions with total impunity. Granting of amnesty to the perpetrators in the name of generating political consensus has severely undermined the basic doctrine of the rule of law. Twenty months after the elections, the constitution-writing process is finally getting underway, but major parts of the peace deal remain unimplemented. Most of the transitional commissions as enshrined in the CPA are yet

20) South Asian Alliance for Poverty Eradication (SAAPE), Militarisation in South Asia, Peoples' SAARC Position Paper, 2008

21) www.nepalmonitor.com/.../nepals_peace_process.html

to be constituted. Impunity is rife and public security alarmingly weak. The consensus underlying the process has frayed, relationships between parties are increasingly acrimonious, and fundamental elements of the deal are being challenged. Post-conflict organized crimes and violence has marred the society with a visible law and order vacuum.

The Maoist-led administration's nine months proved frustrating, with the government's achievements overshadowed by poorly handled controversies. The Maoists' long-term intentions remain suspect with their strong-arm tactics still allied to a revolutionary strategy aimed at a people's republic. Even after the formation of the new coalition government in mid-2009 after the self-exit of the Maoist from power, there is little unity of effort or intent among coalition partners and the opposition Maoists is in organizational and political disarray. The established parties have yet to face the need for reform to counter their poor past records, become more representative and reconnect with voters.

Heightened tensions between Maoists and Nepal Army underline the urgent need to tackle the future of the security sector. Issues such as implementation of federalism will generate intense debate; and even though addressing these challenges is the job of Nepal's leaders, the international community must recognize the fragility of the process and be prepared to stick to it.²²⁾ International actors have played an important role in promoting peace and now need to maintain consistent pressure on all parties to live up to their commitments and encourage them to face the threats to peace. Allowing parts of the peace agreements to drift into abeyance will put the entire process at risk.

The political landscape has been altered irreversibly in Nepal. The Maoists have managed their transition from underground insurgency to open politics with a persuasive triumph in the April 2008 CA elections. Establishing lasting peace and delivering the change, Nepali people through ballots called for all parties to accept the new situation, in particular to deal with cornering poverty, discrimination, exclusion,

22) Nepal's Faltering Peace Process, Asia Report N°163, International Crisis Group, 19 February 2009

impunity, lack of access to resources, and recognition of identity. While feudal, exclusionary and corrupt politicking remains in present political practices, the shape of politics has been creating a different trend. The new CA is the most inclusive body that Nepal has ever elected, with much greater representation of the many castes, ethnic groups and regional communities than past parliaments. For instance, women now make up a third of the assembly, placing Nepal well ahead of other countries in the region.

However, the deadlock in Nepali politics continues to be the major obstacle in transformative change. The popular mandate was not for a one-party minority administration but for cooperation on a path for peace and change. The Nepali Congress (NC) and Communist Party of Nepal (Unified Marxist-Leninist, UML) went into the election with a clear commitment to work on the basis of consensus and cooperation after the polls, regardless of the outcome. Their reluctance to keep that promise may be partly a bargaining position but risks harming the process and further reducing their already low public esteem. They are in danger of being seen as sulking spoilers instead of constructive participants in a constitutional process that would benefit from healthy debate and different policy positions. The longer they delay internal reforms to make themselves more representatives, the longer it will take to reconnect with disillusioned former supporters.

The Maoist leadership has also not made full use of the opportunity to lever its position of strength internally and decisively reject the politics of violence and coercion. The “peaceful revolution” strategy, much questioned within the movement, appears to have delivered a great success. Still, they face internal debates and external pressures. The security sector remains the critical problem. The continuing existence of two standing armies is inherently destabilizing. There have been widespread and sensible concerns over the earlier Maoist government commanding both the Nepal Army (NA) and its own forces. But it is the NA and the mainstream parties who created this situation by spending two years determinedly resisting every overture to discuss the future of the security sector. The national army remains outside

any meaningful democratic control – and hence without checks and balances to safeguard a smooth handover of power.

Beyond the security sector, other pressing challenges need to be addressed. Law and order is in tatters, particularly in some Tarai districts, and the culture of impunity remains intact.²³⁾ There has been no progress on the twin questions of returning land seized during the conflict and establishing a committee to plan Promised Land reforms. Securing peace will require serious attention to measures at the district and village level, but so far there has not even been consensus on re-establishing the rudiments of local government.

The swift but still a tender transition mandated by the people's movement has is in transition from an autocratic, feudal, centralized and discriminatory political governance system to a democratic, inclusive and decentralized system. Although Nepal's political economy has been drastically changed in the last few years, the country is struggling to transform its political, social and economic systems towards a more equal and just society. Despite their continued struggle for democracy, the democratic and just governance system in the life of Nepali people is yet to be materialized. A heavily debated issue today is the promulgation of a human rights-friendly, inclusive, participatory democratic constitution by amicably resolving the contentious issues relating to the future of the approximately 19,000 former Maoist combatants and their integration into the national army, determination of representation model, federal structure in light of the effective realization of the rights to self-determination in a noble dream project of reinventing a 'New Nepal.'²⁴⁾

Finally, the widespread misgiving of the global community which implies that Nepal is, politically speaking, heading towards the rosy road of democracy is dangerously wrong-headed. Nevertheless, a luminous future remains a prospect, not inevitability. The reality is that Nepal currently closely parallels a nation teetering on the edge of backsliding motion. To parachute-view Nepal a glittering democracy

23) Nepal's New Political Landscape, Asia Report, International Crisis Group, N°156, 3 July 2008

24) Project Ploughshares, Armed Conflict Reports, January 2009

through the lens of international eyes is nothing but a sight-guilt. In the sad event of a U-turn of the delicate democracy could prove costly for decades to come—not only in the Asian arena, but on the world stage too.

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5. Tibet Through a Critical Lens: Geo-politics, Diaspora and Identity Formations

Banajit Hussain

I

Tibet has for long been in the minds of different people around the world, as the region which hosts the earthly paradise, Shangrila, a world where youth and serenity appear as immortal features, so “beautifully” portrayed in the novel *Lost Horizon* by the British author James Hilton in 1933. In the modern world’s desire for a utopian world, the imagined land of Shangrila has also been appropriated into western imagination of the ‘exotic,’ at once unreachable and ‘alien.’ In fact the west’s early rendezvous and Tibet’s coming to the world scenario was very much triggered by the expanding arms of western imperialism. In the post colonial situation, however, the horizons of this constructed ‘other’ world has receded into oblivion, and now Tibet is becoming ‘popular’ to the world, ironically, through the concern of ‘human rights.’ Nearly after 60 years of occupation by China Tibet continues to be one of the flash points of human rights abuses. The Chinese authorities have continuously employed imprisonment and torture to tackle any kind dissident voices among the Tibetan population. At times merely carrying a picture of the Dalai Lama has been met with imprisonment. Forms of torture including kicking and beatings, applying electric shocks to sensitive areas such the genitals and mouth; placing heated objects on skin; using self-tight-

ening handcuffs; and placing prisoners in confinement cells and in extreme isolation for long periods have been fairly prevalent to curb dissident voices.

However, the rate of imprisonment, which is often cited as marker of human rights violence by many Human Rights groups focusing on Tibet, over past decade had shown “declining tendencies.”¹⁾ As has been argued by the Chinese it can be said that it implies improving human rights situation and rising economic prosperity in Tibet with lesser number of Tibetans engaging in overt political activities which are deemed threatening by the Chinese authorities. In fact it is undeniable that Tibet has embarked on a path of economic development following Chinese annexation in 1950 and that the Chinese has ushered in economic and human development in form of improved infrastructure, rising living standard, life expectancy and falling mortality rate especially since mid 1990’s.²⁾ But the large scale protest that erupted in March 2008 across Tibet strongly demystify Chinese government propaganda and demonstrates underlying grievances from economic marginalization to political subordination and social humiliation, all typical to any other situation of occupation around the world.

II

The Tibet issue has been divisively political and emotional among scholars and activists. Some criticizes what they term as China’s “nationalistic imperialism” and are openly supportive of Tibetan national “self-determination.” This group of scholars tends to emphasize the brutality under Mao’s leadership and ensuing human rights violations, it is also argued that attack on Tibetan Buddhism is genocide because to be Tibetan is to be Buddhist and Tibetan Buddhism was being eliminated, even in absence of mass killing. The other group of scholars tends to be more critical of “old Tibetan elites” hewing

1) “Prisoners of Tibet: Special Report 2006”; Tibetan Centre for Human Rights and Democracy, Dharamsala, 2006

2) Fischer, Andrew Martin; “Back to Reality on Tibet”; Alternatives International Journal, Vol-1, No-1, 2008

closely towards a seemingly pro-Beijing position, they stress China's reasonableness and self-restrain specially in Post-Mao era and dismisses claims of genocide being carried out by the Chinese.³⁾ The position in mainland china, for obvious reasons asserts that "Tibet was, is and always will be part of China," but it reflects very little historical understanding. There can not be much contention over the fact that it was not until the occupation of Tibet in 1950 that Chinese state for the first time got directly involved in the social and economic control of the Tibetan region.

However, most of these positions tend to over-simplify the complexity of "Tibet issue." The many layers of romantic perception and motive of deflecting perceptions of Tibetans, as well as the continuing effect of essentially cold war perception of china within the global imagination further complicated by China's perceived emergence in the post-cold war era as a global economic and political threat, makes a critical look at the Tibet issue ever more pertinent. On one hand, the over-simplification of the emergence of Tibet issue as either "Tibet being a national formation since time immemorial" vs "Tibet being always a part of china"; and on the other hand, the romanticized images of "Tibetan-ness" being inherently spiritual and peaceful people crushed by ruthless Chinese neo-imperialism are both a recent product of strong Chinese nationalism, discursive practice of the Tibetan Diasporic community vis-à-vis its interaction with the west. With these factors in mind, this article endeavors to complexify understanding of Tibet issue by illustrating and elucidating two related by varied themes. It attempts to does so by, firstly, demonstrating that emergence of Tibet issue is a product of complex geo-political tussle and hegemonic competition between two newly emergent and equally nationalistic regimes in India and china in the 1940's. Wherein, Tibet could have become a remote peripheral neo-colony of "Democratic" India as opposed to "Communist China," and one can only wonder

3) Many publications deal with recent history of Tibet. For a perspective which critical of dharamsala approach see Barry Sautman and June Teufel (eds), "contemporary Tibet: Politics, Development, and Society in a Disputed Region," M.E sharpe, Armonk, 2006; for a pro-Dharamsala approach see warren Smith Jr, "Tibetan Nation," westview Press, Boulder, 1996

if there would have been any global “Free Tibet Movement” today considering the geo-politics of cold war era. Secondly, by critically looking into the re-casting of Tibetan identity and “Tibetan-ness” by the Tibetan Diasporic community in India in conformity with pre-existing romantic imageries present in the western world; and how it renders essentialized Tibetan identity problematic. However the ensuing discussion in this article should not be read as an attempt to subvert struggles of Tibetans against political, economic and social oppression under Chinese rule, rather it is fomented by uncritical forms of idealized image of Tibet and Tibetans rather than complex reality of Tibet and Tibetans.

To seek the complexity of Tibet issue amidst rampant stereotypes, it is imperative to point out that it emerged as a part of the geo-political tussle in Himalayan and sub-Himalayan region of the time arising out of the changing regional power structures in Asia. No sooner had two almost equally nationalistic regimes came to power in India (1947) and China (1949) Tibet became flash point for both. Critical question in 1950 was who could or should occupy the strategic buffer zone between the two?⁴⁾ In fact 3 years earlier, the last British officer in command of India’s eastern defense, Lieutenant General Sir Francis Tucker, had recommended that “rather than see a Chinese occupation of Tibet, India should be prepared to occupy the plateau herself” and he estimated that India had to send only one brigade of troops to Tibet and China would have held off.⁵⁾

At the time, Indian Tibet policy was in fact continuation of the colonial British policy, that is, to treat Tibet as an autonomous buffer state between India and China within Indian hegemonic parameters, and protecting Tibet’s autonomy by recognizing its treaty making power especially with India. As early as September 1947, India assured Tibetan authorities that it will respect all Anglo-Tibetan treaty and in fact sent a senior army official as military advisor to the Tibetan government.⁶⁾ This complex policy of maintaining Tibet as a buffer

4) Norbu, Dawa, “Tibet in Sino-Indian Relations,” *Asian Survey*, Vol-37, No-11, 1997

5) Chaturvedi, G, “Indian Visions” in Dagmar Bernstorff and Hubertus Von welck (eds), “Exile as Challenge: The Tibetan Diaspora,” *Orient Longman*, New Delhi, 2003

state was not only a product of geo-politics but was also the most economical way of ensuring security along 3,200Km undefined border in the Himalayas.

On the other hand Tibet presented equal amount of anxiety to the Chinese side. A telegraph sent on 2 January by Mao to one of his generals reiterates this position: “The population in Tibet is not large, but Tibet has a very important international position, and we therefore must occupy it and transform it into a Tibet of people’s democracy.”⁷⁾ In July 1949, after expulsion of the Han nationality in Lhasa, the CCP accused the “the Anglo-American imperialist and its lackey—the Nehru government of India” for instigating the expulsion to “prevent the people in Tibet from being liberated by Chinese PLA.”⁸⁾ Chinese anxiety seemed to derive from Mao’s suspicion about bourgeoisie nature of Nehru regime in India and that hostile forces supported by Britain, India, and the US were turning Tibet into an anti-China front.

Once PLA was in full command in Tibet gaining considerable strategic advantage vis-à-vis India, India could do virtually nothing militarily to dislodge the PLA. But India didn’t give up on the new Himalayan situation very easily. Echoing the fear arising out of Chinese occupation of Tibet, the first Home minister of Independent India Sardar Patel wrote to Nehru on 7th November 1950, “The undefined state of the frontier [in the Northeast] and the existence on our side of a population with its affinities to Tibetans or Chinese have all the elements of potential trouble between China and ourselves. Our northern or north-eastern approaches consist of Nepal, Bhutan, Sikkim, the Darjeeling and tribal areas of Assam... the people inhabiting these portions have no established loyalty or devotion to India... The political and administrative steps which we should take to strengthen our northern and north eastern frontiers” were to “include the whole of the border,

6) Norbu, Dawa, “Tibet in Sino-Indian Relations,” Asian Survey, Vol-37, No-11, 1997

7) Cited in Michael M. Sheng, “Mao, Tibet and the Korean War,” Journal of cold War Studies, Vol-8, No-3, 2006

8) Ibid

i.e. Nepal, Bhutan, Sikkim, Darjeeling and the tribal territory in Assam.”⁹⁾

On one hand, India consolidated its interest in Himalayas, around the turn of that decade, by rushing through to push a series of defense treaties with Bhutan (August 1949), Nepal (July 1950), and Sikkim (December 1950) turning Bhutan and Nepal into suzerain and semi-suzerain states and paving the way for eventual take over of Sikkim in 1975. Towards the north-eastern part, India occupied Manipur in 1949 and effected a Merger Agreement with the Maharajah (king) on 21st September 1949 through a militaristic maneuver without the sanction of the democratically constituted Manipur Legislative Assembly. Subsequently, an Indian army battalion arrived on 12th October 1949 in Imphal (capital city of Manipur), and the first Legislative Assembly in entire South Asia constituted through an election based on universal adult franchise was unceremoniously dissolved on 15th October 1949 when the Merger Agreement came into force. And in the “tribal region of Assam” it asserted its sovereignty militaristically by instituting the draconian Armed Forces (Assam and Manipur) Special Powers Act, 1958 (AFPSA).

On the other hand India continued to be involved in the Tibetan guerrilla activities (facilitated by CIA) being carried out from the Mustang area of Nepal-Tibet border under the Leadership of Kham trader Gompo Tashi. In fact the command of Mustang forces and the Mustang operation remained a joint US-Indian-Tibetan responsibility until 1974, when King Birendra of Nepal was no longer willing to have the presence of Mustang guerrilla forces. The Dalai Lama sent an emissary with a tape directing his followers to comply with Nepalese demand, and on 23 July 1974 the bulk of Mustang guerillas surrendered there arms to Nepalese forces.¹⁰⁾ As a response to Indian involvement in Tibetan guerrilla, the Chinese started arming and training resistance

9)Cited in A.Bimol Akoijam and Th. Tarun Kumar: “ Armed Forces (Special Powers) Act 1958: Disguised War and its subversions”; Eastern Quarterly, Vol-3, No-1, April~June 2005

10) For and account of CIA and Indian role in Mustang operation based on recent declassified CIA document see John Kenneth Knuas, “Official Policies and Covert Programs: The U.S State Department, the CIA, and the Tibetan Resistance,” Journal of Cold War Studies, Vol-5, No-3, 2003

groups in the Northeastern part of India, most notably the Naga resistance groups who see India as the occupying force in the Naga region of “tribal belt of Assam.”¹¹⁾

While talking about Tibet it is important to reiterate this “Himalayan tussle” flowing out of threat perception of two highly “nationalistic” countries, because it continues to produce tremendous human cost through out the Himalayan and sub-Himalayan region. If “Communist” China continues to violate fundamental right humans in Tibet; “Democratic” India continues to have an abysmal human rights record in the northeast.¹²⁾

III

However the Tibet cause often called the “Free Tibet Movement,” for decades, have aroused people, mostly around the western (and non-western) developed world. Unlike many befitting “causes” which faces equally grave human rights situation like the neighboring Uighurs to Northwest and northeast India to Southeast of Tibet. Few outside China know that, like the Tibetans, there are other restive minorities struggling against the Chinese domination, mostly notably the 7 million Uighurs. The Uighurs of Northwest China or the Nagas or Manipuris of northeast India have failed to attract international attention. Bob Clifford asks a very pertinent question—Western celebrities like Richard Gere, Goldie Hawn, Rock star Annie Lennox and host of others speak out on behalf of Tibet. But no one is planning a Uighur Freedom Concert in Washington, why?¹³⁾ The answer to this question has to rely on various contingent underlying reasons, but it is arguable that one of the main reasons is that the so-called “global civil society is not an open forum marked altruism, but a Darwinian marketplace where legions of groups vie for scare attention, sympathy, and mo-

11) For details see Subir Bhowmick, “Insurgent Crossfire: Northeast India,” Lancer Publication, New Delhi, 2006

12) Chenoy, Kamal Mitra, “Nationalist Ideology, Militarization and Human Rights in the Northeast,” *Eastern Quarterly*, Vol-3, No-1, April~June 2005

13) Clifford Bob, “Merchants of Morality,” *Foreign Policy*, March~April, 2002

ney.”¹⁴) Moreover, it largely restricted to the Western world where it requires a figure who neatly embodies their own ideals, meets its pragmatic requirements or fulfills romantic notions of rebellion, in short something which mirrors their own preconceived romanticized values of the ‘other.’ The overwhelming figure of Dalai Lama and the exotic “Shangri-la” image of Tibet fulfill all the pre-requisites.

The “Tibet Cause” has attracted a very diverse group of people with different sources of motivation. Human rights being just one of them, many see their activities connected with Buddhist belief and practice, wherein it is believed that Tibet before Chinese occupation was a spiritually oriented kingdom, free from empty materialism and corrupting vices that beset modern industrial world. On the other hand some find their motivation in opposing communism and a range of other motivations.¹⁵) But popular support for Tibet cause in the West needs to be looked at separately from Western government policy. As Tibetan scholar Tsering Shakya points out “that most Western government is essentially very pro-China. This is mainly connected to economic questions: Beijing and the West are in broad agreement on matters such as developing market economies, privatization and globalization of trade”¹⁶) and with China’s emerging economic power the issues of human rights and Tibet take a secondary seat in Western government’s policies.

However the backbone of the “Free Tibet Movement” remains the 130,000 Tibetan Diaspora (of which more than 95% lives in India). For activists and supporters of the “Free Tibet Movement,” it is of utmost importance to understand the history of identity formation vis-à-vis the outside world it interacts with and inner dynamics of the Tibetan Diasporic community. The authoritarian state machinery inside Tibet and censorship of information has ensured that Tibetan nationalism is far more developed among the diasporic community. Also interaction with the discourses of international human rights, democracy, de-colo-

14) Ibid.

15) Power, Johns, “The Free Tibet Movement: A Selective Narrative,” *Journal of Buddhist Ethics*, Vol-7, 2000

16) Shakya, Tsering, “Tibetan question,” *New Left Review*, No-51, May~June 2008

nization and self-determination has provided the Tibetans in exile sophisticated tools for articulating a national identity.¹⁷⁾ And more than anything else it is often the discursive practices of the diasporic community that informs the idea of what constitutes “Tibetanness” in the world media upon which we rely so much.

In recent years major Hollywood productions like “Seven Years in Tibet” and “Kundun” has made Tibet cause even more popular in different parts of the world. However, if not all most international support for Tibetan cause is based on particular depiction of Tibetans as inherently spiritual and peaceful people. This is an essentialization of Tibetan identity where as historical evidence runs opposite. Historically there is anything to prove that Tibet was inherently a peaceful society. In fact Tibetan society was structured into manorial estates worked by serfs replete with regular instances of floggings, mutilations and amputations as criminal punishment meted out to the serfs.¹⁸⁾ In fact contrary to the ‘peaceful’ depiction, despite their recognized status as re-incarnation of Buddha, 5 Dalai Lamas were murdered by Buddhist courtiers in history.¹⁹⁾ The non-violence that we associate with the “Free Tibet Movement” is essentially adopted from Gandhian philosophy by the XIV Dalai Lama while being exile.²⁰⁾ However, it is also noteworthy to mention that unlike Gandhi, the Dalai Lama has not been able to transform his personal commitment into a tool for mass political action.

It is well known among students of social sciences that western stereotyping of the other (non-western) was marked by a sense of affirmation of moral and civilizational superior by which authority and control were justified epitomized by self-serving colonial phrases like “white men’s burden.” But some representation of the non-western was also deployed in the service of self-criticism. One such recent

17) Anand, Diyes, “(Re)imagining nationalism: identity and representation in the Tibetan Diaspora of South Asia,” *Contemporary South Asia*, Vol-9, No-3, 2000

18) Parenti, Michael, “Friendly Feudalism: The Tibet Myth,” *New Political Science*, No-25, No-4, 2003

19) Ibid

20) Puri, Bharati, “Deconstructing the Dalai Lama on Tibet,” *Economic and Political weekly*, August 24, 2002

example can be Hollywood actor Richard Gere, a devout advocate of Tibet cause, when he laments “I would say that the West is very young, it is very corrupt. We are not wise. And I think we ‘re hopeful that there is a place that is ancient and wise and open and filled with light.”²¹⁾ But this kind of positive stereotyping, as one author argues, only “replaces the impress of power with the blandishments of curiosity” thus “Tibet remains a service society for the west, offering resources by which the west can criticize itself, question its values.”²²⁾

As has been poignantly argued by Donald Lopez that the Tibetans Diaspora are “prisoners of Shangri-la” with an image of themselves as a religious, peaceful, exotic community. When the Tibetans came out in exile, they found that “Tibet” already existed in the western imagination, and given their limited choice, they conformed to the exotic image in order to garner support. The western Tibetan enthuse, Tibetologists and Tibetan themselves have contributed to the romantic image, which argues Lopez, renders problematic their struggle for self-determination from Chinese occupation.²³⁾ While others have argued that instead of focusing how the Tibetans have been represented by others, it is worthwhile to see how Tibetans have appropriated such exotic representation for furthering explicit political purposes thus recognizing that they have been active agent in the creation and presentation of their Tibetanness.²⁴⁾

The Tibetan Diaspora has in fact greatly invested in re-enforcing exotic image of Tibetanness that existed in western imagination. It gets well manifested when the XIV Dalai Lama says, “Tibetan civilization has a long and rich history. The pervasive influence of Buddhism and the rigors of life amid the wide open spaces of an unspoiled environment resulted in a society dedicated to peace and harmony. We enjoyed

21) Frontline, Interview with Richard Gere, “Dreams of Tibet: A troubled country and its enduring fascination,” at <http://www.pbs.org/wgbh/pages/frontline/shows/tibet/interviews/gere.html>

22) Anand, Dibyesh, “Western Colonial Representation of the Other: The case of Exotica Tibet,” *New Political Science*, Vol-29 No-1, 2007

23) Lopez, Donald, “Prisoners of Shangri-la: Tibetan Buddhism and the West,” University of Chicago Press, 1998

24) Anand, Dibyesh, “(Re)imagining nationalism: identity and representation in the Tibetan Diaspora of South Asia,” *Contemporary South Asia*, Vol-9, No-3, 2000

freedom and contentment.”²⁵) On the other hand, in order exude a sense of defiance and pride in Tibetan identity, the Tibetan diaspora also plays into western stereotype of Chinese as the alien, dog-eating, and the communist ‘other.’ This gets well reflected in song like Red China Robber Gang by popular California-based Tibetan singer Techun g.²⁶) The conformity to the romanticized image has not only happened to solicit support for the Tibetan cause but also has an economic rationale. The commodification of the ‘exotic’ sustains the economic life of the Diaspora as well as helps them to maintain a distinct Tibetan identity within the host society. Tibetan refugees across settlements in South Asia have been able to create a niche for themselves in the tourism industry catering almost exclusively to western tourists wherein expressive production of cultural artifact are tailored to the western taste of the “exotic.” This economic rationale has created a vicious cycle where the “exotic and esstentialized homogeneity” of Tibetanness gets constantly reproduced and it restricts the possibility of latent diversity and heterogeneity within the broader Tibetan identity to surface.

On the surface, Diasporic Tibetans appears to be homogenous with allegiance to one single authority—the Dalai Lama, but the politics of Diasporic nationalism remains a fissured and complicated phenomenon. Even though the whole spectra of Tibetan Buddhist pantheon owe their allegiance to the Dalai Lama, prior to the Chinese occupation, the Dalai Lama had rather restricted temporal authority confined to the central Tibetan region of U and Tsang (roughly present day Tibetan Autonomous Region). Other parts of Tibet namely Kham and Amdo (present day Tibetan Autonomous Area in Yunnan, Qinghai and Szechuan provinces of China) were ruled by different monastries, sects and warlords. However, elite exile discourses of the Tibetan

25) Dalai Lama cited in Donald Lopez, “Prisoners of Shangri-la: Tibetan Buddhism and the West,” University of Chicago Press, 1998

26) The lyrics of this popular song goes like this: “Oil and water cannot mix, Tibetans and Chinese cannot mix, We are Buddhists you are its destroyers, We are yak meat eaters you are dog meat-eaters, we are tsampa-eaters you are worm-eaters” see E. T Yeh, “Exiles meets homeland: politics, performance, and authenticity in the Tibetan diaspora,” *Environment and Planning D: Society and space*, Vol-25, 2007

nation downplay this regional diversity in their focus on Tibetan histories and identity centered on Lhasa and central Tibet.

Many observers have realized that “Tibetanness” and Tibetan national identity remains a highly contested notion. Essentialized categories of language, culture, religion provides ready templates for the political project of “Free Tibet” in exile.²⁷⁾ But such homogeneous categorization does not necessarily conform to actual life world of the Diaspora. As Tibetan historian Tsering Shakya argues that the on going conflict with China generates a “denial of History” in which both the Tibetan government in exile and Chinese government produces simple and stubborn histories with no space for complexity and responsibility.²⁸⁾ The default categories for internal and external depiction and recital of national history, identity, religion and language, projected by the government in exile, centers on the central Tibetan provinces of U and Tsang. This hegemonic depiction of “Tibetan” also conforms to western “exotic” image. As one veteran from the guerilla resistance echoes the tension, “Kham and Khampa history is important for Tibetan history. Films like Kundun and Seven years in Tibet don’t help with this. They either entirely ignore Kham and Khampas or portray all Tibetans generically as U-Tsangpas, even when they were wearing Khampa clothes!”²⁹⁾ Even though the government in exile exhorts exile Tibetans to conform to a “hegemonic” and “homogenous” Tibetan identity, in practice regional affiliation and allegiances still retains an importance in the inner politics of the exiled community as can be seen from elections of representatives to the exile Assembly of Tibetan people largely on the basis of regional and sectarian affiliations.³⁰⁾

The centrality of Dalai Lama in defining Tibetanness can not be overemphasized; the government in exile under his leadership plays

27) Houston, Serin & Richard Wright, “Making and remaking Tibetan diasporic identities,” *Social and Cultural Geography*, Vol-4, No-2, June 2003

28) Shakya, Tsering, “Tibet and the Occident: the myth of Shangri-la,” *Lungta*, special Issue: Tibetan Authors, April, 1991

29) Cited in Carole McGranahan, “Truth, Fear, Lies: Exile Politics and Arrested Histories of the Tibetan Resistance,” Vol-20, No-4, 2005

30) Ibid

a crucial role in maintaining a nationalist cohesion among the relatively dispersed diasporic community. But influence of his leadership over the Tibetan self-determination movement has also reinforced a culture that stands against pluralist and has discouraged any alternative debate on Tibet's future. But as has been observed, since the moral position of the Dalai Lama and his popularity in the West has not produced any concrete political outcome, there is a growing disenchantment with the government in exile's nationalist policies.³¹⁾ Respect for the spiritual authority of the Dalai Lama remains undiminished, but on political matters his positions are no longer uncontested. The second generation diasporic youth educated in Indian Universities and brought up in the liberal political atmosphere of India are well versed with other contemporary nationalist struggles and has started to question moral position of the Dalai Lama. Dalai Lama's "middle path approach" and repeated assurance to the Chinese that his governments want real autonomy and not independence for Tibet, has brought in a heightened frustration and impatience among the politicized younger generation. The Tibetan Youth Congress (TYC), a radical secular organization with considerable clout among the exile community, has in recent years adopted an aggressive stance and has engaged in more confrontational activism putting itself in odd with the government in exile. The TYC has made it clear that "as a struggling people it has every right to choose alternative methods if peaceful methods fail."³²⁾ The TYC also views the "non-violent religiosity" of Tibetan society as the prime cause behind the "emasculatation" of the entire Tibetan nation, and also finds it "unreasonable that Tibet's struggle for self-determination should be a hostage to the linear peaceful course."³³⁾

31) Shakya, Tsering, "Tibet and the Occident: the myth of Shangri-la," Lungta, special Issue: Tibetan Authors, April, 1991

32) Statement by Tseten Norbu, the then president of TYC, quoted in Sadanand Dhume, "Lama Trouble," Far Eastern Economic Review, vol-163, No-3, 2000

33) Misra, Amalendu, "A nation in exile: Tibetan Diaspora and the dynamics of long distance nationalism," Asian Ethnicity, Vol-4, No-2, 2003

IV

Scholars have argued that Tibetans as whole inside Tibet see the 'Tibet cause' and political struggle against Chinese occupation as an act that is "religiously sanctioned."³⁴⁾ However, this argument needs to be questioned; as one reputed Tibetan scholar has suggested that "Tibetans were among the most radical Red Guards during the dreadful Cultural Revolution and were instrumental in the deaths of countless monks and the destruction of monasteries" and further more it was ethnic Tibetans who carried out imposition of the anti-Buddhist secular way of life in Tibet.³⁵⁾ On the other hand resistance to Chinese occupation was fierce around Lhasa and adjoining areas, but it has historically been negligible in the peripheries.³⁶⁾ This is not to say that there was/is no discontent among Tibetans in Tibet, but it remains a fact that Tibetans have been collaborator as well as the opponents to Chinese occupation and subsequent administration.

Even though all Tibetan communities outside Tibet focuses on reclaiming the political control of their Homeland, and speaks and "struggles" on behalf of those living inside Tibet; a chasm has developed on the meaning of "homeland" and "Tibetan-ness" among the Diaspora and reality of what exists in Tibet. This chasm becomes evident when one looks into the encounters between the older Diaspora³⁷⁾ and the newly arrived refugees from Tibet. When faced with 'newly arrived' with unfamiliar mannerism (hence assumed Chinese habits) and clothes; this non-conformity with the "image of their fellow Tibetan from Tibet as being pure and uncorrupted," for the younger generation of Tibetan Diaspora gives way to suspicion that the 'newly arrived'

34) Schwartz, Donald, "Circle of protest: Political ritual in the Tibetan uprising"; C. Hurst & Co. (Publishers) Ltd., Hong Kong, 1994

35) Shakya, Tsering, "The dragon in the land of snows: A history of modern Tibet since 1947"; Pimlico, London, 1999

36) Smith Jr, Warren "Tibetan Nation," westview Press, Boulder, 1996

37) Here by older Diaspora I refer to those Tibetans who left Tibet in along with Dalai Lama and the second generation of exiles born and brought up in South Asia

must have been brainwashed because of their upbringing under Chinese rule.³⁸⁾ Hence most 'newly arrived' find themselves as outsiders among the Tibetan Diaspora in India and Nepal. Even those who existed from Tibetan for political reasons "feel that they are not trusted because their narratives do not conform to the standard, expected story of Chinese oppression."³⁹⁾

Another reaction to the 'newly arrived' is based on a class distinction; while the 'newly arrived' from urban areas of Tibet are seen as political suspect as being brainwashed by education under Chinese rule, the ones from rural areas of Tibet are seen as 'kachas' (literally meaning Raw in Hindi language) which is a reference to their unfashionable clothing, haircuts etc. and hence looked down upon.⁴⁰⁾ Furthermore, the 'newly arrived' are also described as 'impolite' and person of poor behavior, and moreover the men are projected as 'aggressive' and being prone to physical violence lacking in monastic discipline.⁴¹⁾ Since the Diasporic community has long been investing in fostering the image of "Tibetanness" as being marked by compassion, non-violence and gentleness, it has become a marker of authentic "Tibetanness." Hence, violent trait shown by 'newly arrived' gets translated into proof of being "Sinocized" (converted to being Chinese). These marking of authenticity has been framed by the Dalai Lama himself when he says that:

"There are clear signs of the degeneration of the Tibetan traditions, and of moral principles. In recent years there have a number of murder cases in the Tibetan community in India. All of them took place among people newly arrived from Tibet. This shows the degeneration of the spirit of tolerance and self-discipline. And then in Tibet itself, there is gambling and also prostitution."⁴²⁾

38) Strom, A; "Between Tibet and the west: on traditionality, modernity and the development of monastic institutions in the Tibetan Diaspora," in *Tibetan Culture in the Diaspora* (Osterreichischen Akademie der Wissenschaften, Wien); cited in E.T Yeh; "Exiles meets homeland: politics, performance, and authenticity in the Tibetan diaspora," *Environment and Planning D: Society and space*, Vol-25, 2007

39) Yeh, E.T; "Exiles meets homeland: politics, performance, and authenticity in the Tibetan diaspora," *Environment and Planning D: Society and space*, Vol-25, 2007

40) Ibid

41) Ibid

Another factor that has created a chasm in perceived “Tibetan-ness” is how the politics of language has shaped up in the Diasporic community. Within the Diasporic community the dialect from the central Tibetan region of U and Tsang (popularly known as Lhasa dialect) has become a standardized language; by contrast inside Tibet distinct dialects continue to be used in everyday life with Mandarin filling up the role of lingua franca among Tibetans from different areas. Hence a Tibetan arriving newly in exile finds it not only difficult to communicate but also is “not trusted for his or her political viewpoints” because he or she speaks Mandarin.⁴³⁾ This is essentially so because the Tibetan identity has been fostered and structured among the Diaspora within the atmosphere of the cold war and hence it can be said that Tibetan-ness in the Diaspora is defined as everything else but Chinese. On the other hand those Tibetans who have arrived newly in India and in fact have left Tibet due to political reason “do not assume that other Tibetans’ use of the Chinese language has a necessary connection to political view.”⁴⁴⁾

Now, if one is to elucidate the recent uprising in Tibet that started on March 10th 2008 keeping in mind how Tibet and Tibet-ness have come to mean different things for the Tibetan Diaspora and Tibetan in Tibet itself, it seems less plausible that the uprising was ignited by the Diasporic community as has been claimed by the Chinese authorities.

Unlike the uprisings of the past inside Tibet, notably in the 1980’s which were essentially undertaken by monks but had only a partial support among the layperson and furthermore were mostly restricted to the central region of Tibet around Lhasa,⁴⁵⁾ the recent uprising markedly differs in its geographical spread to almost all of the areas where Tibetans live and also in terms of social classes as “this time

42) Iyer, P; “Over teas with the Dalai Lama: an interview with the Dalai Lama,” Shambala Sun, <http://www.shambalasun.com/Archives/Features/2001/nov1/iyer.htm>

43) Yeh, E.T; “Exiles meets homeland: politics, performance, and authenticity in the Tibetan diaspora,” *Environment and Planning D: Society and space*, Vol-25, 2007

44) Ibid

45) Misra, Amalendu, “A nation in exile: Tibetan Diaspora and the dynamics of long distance nationalism,” *Asian Ethnicity*, Vol-4, No-2, 2003

the protests involved groups from across Tibetan society. There were schoolchildren, students, intellectuals, city workers, farmers, nomads—as well as Tibetan university students in Beijing and other cities. This level of involvement from different sectors of Tibetan society was unprecedented.”⁴⁶⁾ One scholar has observed that the protest were intense in the more developed areas where the “disparity between the migrants’ (Chinese) success and the status of the indigenous is so glaringly obvious”—again Lhasa being the flash point where “protest were directed against the Chinese government and the Party, but also against ordinary Chinese people who have settled in Tibet—Chinese shops were burnt, ethnic Chinese were beaten.”⁴⁷⁾ Human rights issues and national identity played an important latent role in the recent uprising, but the predominant reason seemed to be heightened degree of economic and social polarization generated since intense modernization drive of 1990’s which has created a “ethnically exclusionary dynamics with development.”⁴⁸⁾

V

There lie many dilemmas for the Tibet Movement ahead. Dalai Lama stature has been so bolstered by international support (read western) that dissident voices effectively finds themselves powerless. For reasons discussed earlier this international support is conditional upon the particular “inherently non-violent and peaceful” representation of Tibetan, hence dissidents like TYC who presents a secular but not necessarily always non-violent alternative has not been able assert itself and create a niche into the rungs of international support. On the other hand, a look into strategies of some other contemporary Diasporic nationalist movements reveal that the community in exile invariable tries to develop active link with those in the contested territory,⁴⁹⁾ but in case of the Tibetans the chasm between what

46) Shakya, Tsering, “Tibetan question,” *New Left Review*, No-51, May-June 2008

47) *Ibid*

48) Fischer, Andrew Martin; “Back to Reality on Tibet”; *Alternatives International Journal*, Vol-1, No-1, 2008

is happening inside Tibet and how the Tibetan Diaspora re-interprets that renders problematic as to what they can do about it.

The recently concluded six day deliberation of Tibetan exiles held in Dharamsala should be looked into with these dilemmas in the background. About 560 leading Tibetans, who came from around their world to their government's home in exile in India proclaimed with one voice that they will not allow China to swallow their identity. The conclave was called by the Dalai Lama invoking Article 59 of the Charter of Tibetans in Exile and was organized by the Tibetan Parliament in Exile. As a Tibetan researcher who participated in it says, "this was an unprecedented gathering of Tibetans with many perspectives from all over the world that marks a real step forward for the exiles in considering new approaches and strategies."⁵⁰ The conclave was divided into 15 sub-groups to intensely debate on issues including the recent rounds of talk with China since 2002, the middle way approach of Dalai Lama, the question of independence as an ideal or a strategy, ramifications of the recent uprising and subsequent Chinese crackdown in Tibet.

But even though the Dalai Lama didn't attend the conclave himself to allow freer deliberation, the status quo of his "middle path approach" was upheld by majority. Out of the 15 sub-groups, 3 groups supported the "middle path approach" unanimously, 8 groups upheld it by majority votes and 4 groups recommended it without specifying if it was by unanimous or majority votes.⁵¹ 161 written suggestions were also received from 50 Tibetan settlements and scattered communities, 20 monasteries and nunneries, 44 educational institutions, 25 Tibetan associations based outside India and 22 Tibetan non-governmental organizations; 103 of them supported the Middle-Way Approach unanimously and 28 by majority vote.⁵² Ahead of the con-

49) Misra, Amalendu, "A nation in exile: Tibetan Diaspora and the dynamics of long distance nationalism," *Asian Ethnicity*, Vol-4, No-2, 2003

50) "Tibetan Exiles Back Dalai Lama" <http://www.savetibet.org/media-center/ict-press-releases/tibetan-exiles-back-dalai-lama-challenge-talks-with-china>

51) Statement from Tibetan Government in Exile on 10th December, 2008, <http://www.tibet.net/en/index.php?id=622&articletype=flash>

52) Ibid

clave, some 17,000 Tibetans inside Tibet had also been consulted about their opinions on the future course of action Tibet.⁵³⁾ Of them more than 8000 Tibetans said they will follow the Dalai Lama's direction and almost 3000 backed the Dalai Lama's middle-way approach.⁵⁴⁾ Another opinion that was strongly voiced and got unanimous supports within the sub groups are that the "Tibetan Government (in Exile) should adopt a more aggressive, less conciliatory approach toward the Chinese Government."⁵⁵⁾ The decisions made by the sub-groups are recommendation to the Tibetan parliament in Exile which convenes again in March 2009, however under Article 59 of the Charter of Tibetans in Exile the Government in Exile is not bound by the recommendations. While a significant minority led by TYC want a more radical shift towards independence. Tsewan Ringzin, the president of the Tibetan Youth Congress reiterates that "We had hoped we would revert to our original goal of independence because when we first came into exile in 1959 our main goal was independence and then go back," while another senior leader of TYC Dhondhup Dorji adds that "the bottom line is every Tibetan would wish and aspire for independence. It's just that the Dalai Lama is not seeking independence, the exile government is not seeking independence."⁵⁶⁾

This maintenance of the status quo can be seen as a reaffirmation that the Dalai Lama is the sole representative of Tibetan people. But a closer reading reveals that it is not without inner tension and challenges as can be read from the final statement of the conclave which leaves the option open of changing the goal of the Tibet movement to complete independence as possible alternative if there is no progress in the near future and if China does not respond positively to their requests for meaningful autonomy then a future special meet-

53) From the present data available, it is difficult to tease out the regional, dialectic and class composition of these 17000 Tibetans inside Tibet who had been consulted.

54) Thinley, Phurbu, "To uphold "Middle way": Tibetan Exiles demands China's sincerity," 22nd November, 2008, <http://www.tibet.ca/en/newsroom/wtn/4732>

55) Choeying, Tenzin & Lhadon Tethong, "Tibet's generation gap is no gulf"; Indian Express, 25th November, 2008

56) "Tibetan vote for no more talks with China," <http://www.voanews.com/english/2008-11-22-voa17.cfm> and http://www.lankanewspapers.com/news/2008/11/35512_space.html

ing would be convened.⁵⁷⁾ It is also important to note that this was the first of a kind conclave where the senior ministers and employees of Tibetan Government in Exile engaged and debated with younger leaders of Tibet movement. The convening of this conclave in the first place and also that the voices of the radical groups like the TYC had a considerable impact within the conclave is indicative of the fact that the Government in Exile finds itself incapable of not engaging with the demands put forth by organizations like TYC. It can also be considered indicative of a “in process” gradual loss of control over the exiles as political community. This new emerging discourse in the political domain seems to be snowballing and there are enough indication that the future of “Tibet Movement” within the diaspora will be one of conflict between Buddhist morality epitomized by the Dalai Lama and the activities of increasingly militant younger generation.

The central aim of this article has been to highlight the inadequacy in understanding the complexity of the Tibet issue both in terms of historical understanding of the emergence of the issue as well as in understanding of Tibetanness as the romantic “exotica.” For the international support to meaningful resolution it is of utmost importance to locate the emergency of Tibet issue in a larger sub-regional history of geo-politics surrounding the Himalayan region. Failing which Tibet is seen as an extra-ordinary and isolated case of denial of self-determination and human rights abuse, which in turn gets connected with and complicated by the romantic imagination of a homogenous Tibetan people inherently “peaceful and spiritual.” This exotic image is not only a product of western imagination but also has been effective re-enforced by the diaspora itself in order to solicit more and more western support. The idea of what constitutes Tibetanness has essentially been a product of the interaction between western exotic imagination and discursive practice of the diasporic community. And it has created a viscous cycle where the Tibet movement finds itself trapped wherein other dormant and alternative voices

57) Choeying, Tenzin & Lhadon Tethong, “Tibet’s generation gap is no gulf”; Indian Express, 25th November, 2008

finds itself incapable of surfacing and creating a niche into the rungs of international support. It is getting more and more evident that considering the economic and political clout, developed countries will continue to shy away from Tibet issue. What is required is to link Tibet issue with other socio-political movements across Asia in order to render it effective in the long run. Rather than being dependent on glamorous western support, as one scholar has suggested, a good starting point would be to ask and examine “why support for Tibet is minimal among the Third world peoples and the minority in the developed countries.”⁵⁸⁾ And this initiative has to come from the Tibetans themselves.

58) Anand, Diyes, “(Re)imagining nationalism: identity and representation in the Tibetan Diaspora of South Asia,” *Contemporary South Asia*, Vol-9, No-3, 2000

6. Indonesia's New Democracy: Who Controls Political Parties?

Kuskridho Ambardi

Indonesia has witnessed three legislative elections and two presidential elections at the national level within the span of 10 years, from 1999–2009. In June 2005 local elections were introduced at provincial, district, and mayoralty levels. Since then there have been hundreds of local elections. All these facts show that Indonesia is a democracy.

Of course, mere elections do not represent true democracy. In fact, before the new era—domestically known as *reformasi* era—Indonesia under the New Order government conducted many elections. What makes the elections before and after 1998 different is the nature of the election: free or not free.

All elections held after 1998 meet the prerequisites for a democracy: free press, the observance of political freedom and civil liberties, and a level playing field where no parties receive special treatments.

What drove the democratization process in Indonesia? Why does the Indonesian democracy take the form as it has today? And what does the future hold for the new democracy?

Political History

Indonesia's experience with democracy is not unprecedented. Democracy once thrived in the mid 1950s but it ended in 1959 when Soekarno—one of the founding fathers of Indonesia—subsequently

took power and then introduced Guided Democracy. In 1966 Suharto replaced Soekarno after the failed coup d'état in 1965—allegedly by the Indonesian Communist Party. Suharto eventually introduced what was called Pancasila Democracy. These last two regimes were authoritarian in nature under the guise of democracy. In domestic political parlance, the two governments were named the Old Order and the New Order.

Even though it was short-lived, the democracy in the 1950s was a vibrant one. Many praised this democracy: there was a lively party politics, a fair and free election, a functioning parliament, and governments that were formed by party coalitions within the parliament.¹⁾ People freely established associations and political parties and the press enjoyed freedom.

The lively party politics was marked by the representation of collective interests within the society by political parties. A large chunk of the Islamic community was represented by Islamic parties such as Masjumi and Nahdlatul Ulama—the two largest Islamic parties at that time. The secular section of Indonesians was represented by PNI. Class-based politics was also present where the Indonesian Communist party skillfully politicized class issues. The tension between central and regional tendency also animated the 1950s party politics and Masjumi and some regional parties channeled out regional interest at the national level. Thus we learn how collective societal interests were played out in party politics where each party through their campaigns and program had endlessly tried mold the state and the society in their own image: Islamic, secular, or socialist/communist.²⁾

The drawback of the 1950s democracy is the fact that the government was truly unstable. Within the span of ten years (1949–1959), Indonesia had 10 different governments. This democracy was marked by ineffective governments, conflicts among the parties were rampant, and regional rebellions exploded in several provinces.

1) Herbert Feith, *The Decline of Constitutional Democracy*. Ithaca, New York: Cornell University Press, 1962.

2) Herbert Feith, *op. cit.* See also, Herbert Feith and Lance Castles, *Indonesian Political Thinking, 1945–1965*. Ithaca, New York: Cornell University Press, 1970.

The government instability during 1950s had become a pretext for Soekarno to bury the democratic experiment. In 5 July 1959 he announced a decree stating the end of the Indonesian parliamentary democracy. He then introduced what he called Guided Democracy while emphasizing the incompatibility of democracy and the Indonesian culture.³⁾

At the core of his idea of Guided Democracy was the idea of amalgamating three ideological streams that deeply rooted within the society: Islam, Nationalism (secular), and Marxism. He engineered popular supports for his power by placing the three opposing political forces under his wing. This strategy partly was meant to be Soekarno's effort to make a political balance against the military which was building its political base. The Guided Democracy survived for only six years, however. It ended when a coup d'état allegedly initiated by the Indonesian Communist Party in September 1965. Suharto with the military took power eventually and established the New Order government.

Different from the old one, the New Order government made a serious effort in masking the authoritarian nature of the regime. National elections were regularly conducted in the interval of five years. Three political parties—except for the first election—were allowed to participate in the elections and a parliament was produced after the elections.

For the purpose of detaching itself from the old regime and giving an impression of being democratic, the new government under the leadership of Suharto promised to hold an election. From the beginning of the New Order, however, the signs of authoritarianism could be detected. The election was postponed several times for making sure that the new government political party—Golkar—was ready as an electoral machine to win the election. With the help from the military, Golkar built an overarching party structure from top to bottom, from

3) See, Harry Benda, "Democracy in Indonesia," in Benedict Anderson and Audrey Kahin (eds), *Interpreting Indonesian Politics: Thirteen Contributions to the Debate*. Ithaca, New York: Cornell Modern Indonesian Project, Cornell University, 1982.

the national level to the village level.⁴⁾ In 1971, Golkar won the election handily.

The New Order government engineered a series of political moves to ensure that Golkar could win the next elections and simultaneously the government could secure political stability so that it could make a planned economic development. The structure of party competition was then simplified. The government allowed only three political parties, forcing Islamic parties to fuse into one party, PPP (United Development Party) and nationalist-secular parties into PDI (Indonesia Democratic Party).

In the following years, the government imposed a policy that requires all civil servants to join Golkar—the government party. This policy was known as a civil servant mono-loyalty. Completing this move, in 1985 the government introduced a law that enforced the two parties to adopt the state ideology of Pancasila to be the sole ideology to be adhered. The process of depoliticizing the society was at play when the law was also enforced at the mass organization level. And Suharto's went unchallenged for the rest of his tenure.

The 1998 Moments

The beginning of the profound political changes in 1998 was marked by the resignation of Suharto—as a president—on 23 May. The event was extraordinary and unanticipated. It was extraordinary because it signified the end of the authoritarian era that survived for 33 years. And it was partly unanticipated because it appeared that his political grips remained intact as the military which buttressed Suharto's power basically stayed with him.

The trigger for Suharto's resignation was the fact that a majority of his ministerial appointees left him and refused to join his new cabinet. It made him unable to reestablish his power by forming a

4) Julien Boileau, *Functional Group Politics in Indonesia*. Jakarta: CSIS.

new cabinet. Thus the process of cabinet reshuffling simply did not work as he expected.

There were two underlying circumstances that were deemed more responsible for the fall of Suharto: the economic crisis severely hitting the country and the extra-parliamentary movements that forced him to give up his power.

Months before Suharto's resignation, a series of economic events that defined the Indonesian economic crisis took place.⁵⁾ Indonesia's currency hit a record low in exchange value to only 14% of its original value before the crisis. Inflation was skyrocketing, hitting a record high. Many state-owned banks as well as private banks collapsed when they were unable to cope with the problem of liquidity. Many private companies went bankrupt as they were no longer able to pay their foreign debts. To make it worse, there was a phenomenon of capital flights at grand scale that forced the government to turn to IMF for financial assistance.

At the society level, the majority of Indonesians experienced a sudden unfathomable economic hardship when the prices of basic necessities such as food and clothing were skyrocketing and at the same time their pockets were shrinking. The source of economic crisis itself was external. It started when the Thai bath collapsed in 1997 that followed by a severe financial crisis in Asia.

At the domestic level, the economic crisis turned into political crisis when people started to see and feel that the government was unable to solve the crisis. Mass protests formed across the archipelago and spilled out in streets. In May only, there were 284 protest events and the number of protests peaked in September to reach 493.⁶⁾ Joining the cause of the mass protests, leading public figures banded together to establish a sort of opposition movement.

In some places the mass protests turned into bloody riots to be followed by a series of burnings and lootings in many parts of Jakarta.

5) See, Kevin O'Rourke, *Reformasi: The Struggle for Power in Post-Soeharto Indonesia*. New South Wales, Australia: Allen & Unwin, 2002.

6) Denny J. Ali, *Democratization from Below: Protest Events and Regime Change in Indonesia, 1997~1998*. PhD. Dissertation, Ohio State University, 2001.

Mobs even flattened a luxurious housing complex where the wealthy Chinese Indonesian resided.

Following these events most protesters had shifted their demands. In the first half of the lengthy and continuous series of protests, their demands were dominated by economic and social issues but in the second half their demands were filled with political reform issues. They eventually voiced an ultimate demand for Suharto to step down. The ministerial appointees who refused to support Suharto as mentioned earlier were basically reading the changing situation in which the support for Suharto was drastically declining. They therefore boycotted Suharto that apparently forced the president to resign.

Immediately after Suharto's resignation, Habibie the vice president replaced him as a new president. This process of replacement simply followed the constitutional procedure where the vice president takes over the presidency when the president resigns, is unable to perform his or her tasks, or dies. Thus, constitutionally there was no obligation for Habibie as the new president to hold a new election.

The political dynamics went to another direction, however. Suharto's replacement with Habibie did not calm down people's political demands for having a new government by way of election. Many viewed Habibie was simply protégé of Suharto and his government was simply a continuation of the authoritarian New Order government. The student movements remained strong as before and kept piling up Jakarta's main streets and governmental buildings. The opposition forces grew stronger as the pro-democracy activists and advocates also overtly expressed their support for the cause of the movements. And in some places, the street demonstration had even grown into riots. Contributing to the worsening economic and political situations, ethnic clashes and secessionist movements took place across the country. There were mass killings in Borneo, religious conflict in Molucca, and some provinces voiced their demands for establishing an independent state.

The turbulent situation definitely did not give Habibie too many choices. Relying on a constitutional argument for buttressing his authority would appear to be a naïve option even though it could give

him a formal legitimacy. Cracking the mass protests with military means would likely ignite bloodshed and could potentially undermine his political legitimacy. Thus the situation could only give him one viable option: keeping his promise to hold an election. For this, Habibie needed to devise new electoral laws to create a free and fair election.

A team was established by Habibie with a single task of drafting new laws since the old election-related laws had many flaws. Law No. 3/1985, for example, allowed only three political parties in the election. It also tied the civil servants to give exclusive loyalty to the government party, Golkar. Law No. 2 on the Structure of the Parliament, another example, secured 100 seats for the military which did not participated in the election.

The new election-related laws practically eliminated all the political restrictions and lifted favorable treatments previously enjoyed solely by Golkar. Once the necessary laws were in place, the preparation for the coming election was completed; and the election was held in May 1999.

Structure of Competition

There were 48 political parties that participated in the founding election of 1999. Covering all parties and describing to see the content of political competition would definitely become an insurmountable task. We may focus, however, on parties that won seats in the parliament. Out of ten parties, two of them won more than 100 seats, that is, Golkar and PDIP. These were the two largest parties. There were two middle-sized parties, PPP and PKB, with 50 or more seats. The rest were small parties with less than 40 seats. All these parties share the distribution of seats in the parliament which was 462. What did the political parties stand for?

What divided them were three issues—at least what appeared during the campaign: religious, regional, and economic or class issues. These three issues have historical roots in the sense that these issues reflect three deeper societal divisions. In the 1950s, these issues were captured by the political parties on which they tried to politicize all of them

for creating electoral advantage. The Indonesian Communist Party epitomized the class division and sided with labor class and other groups of lower stratum. Masjumi and NU embodied the Islamic ideological division through which both parties tried to engender an Islamic-based solidarity as a way of building electoral supports. To some extent, Masjumi also exploited the regional issue for the sake of winning the election. It has a sizable support in the region of West Sumatra whose population was traditionally pious Moslems. Thus Masjumi pressed on the central government to pay attention to regions outside Java. With other local parties, Masjumi represented regional interests. As for nationalist-secular section of the society, PNI was the party for channeling out the interests of the nationalist and secular communities.

In the recent democratic era, these three lines of social division prove to be resilient even though they were suppressed during the previous authoritarian era. As all political restrictions were removed and the timetable for the founding election of 1999 was set, political parties picked up the three issues altogether and tried to build electoral momentum to win bloc votes by connecting themselves to the existing social groups.

In terms of secular-Islam division, political parties had put themselves in this continuum. Golkar and PDIP occupied the secular camp while Islamic parties such as PPP, PBB, and PK (and other smaller Islamic parties) were in the Islamic camp.⁷⁾

The parties also picked up the regional issues as it happened in the 1950s. The regional grievance was the ingredient for political parties' strategy in luring voters. The regional issues were captured by the political parties through which each party offered the public a form of regional autonomy and federalism.⁸⁾ Most parties were for the idea of giving the regional government a higher degree of autonomy while PAN was the only party that offered federalism.

7) Further descriptions on the ideological postures of political parties, see, *Partai-partai Politik Indonesia: Ideologi, Strategi dan Program*, Litbang Kompas, Jakarta: Kompas, 1999. See also a similar book by the same publisher for the year of 2004.

8) "Konsep PAN: Otonomi atau Federasi. *Kompas*, 20 Agustus 1998. See also, "Golkar Tolak Negara Federal," *Kompas*, 1 September 1998.

In essence, these two alternatives did not bear any differences in the sense that all parties agreed to give more power to regional government and more fair distribution of wealth. Thus, what appeared to be two opposing alternatives actually were not what it was.

On class issue, some political parties during the campaign also tried to engender of class sentiment. However, all class-based parties did not win any parliamentary seats in the 1999 election. These were the parties that exclusively and purely made use of class issue to win the election.

The dynamics of party politics of 1999 therefore was different from the one in 1950s. Regional and class issues were not an essential feature of party politics in 1999. And it has stayed this way for the next two elections (2004 and 2009). What explains the difference is that the central-regional tension at the societal was not fully translated into party politics for the fact that all regional grievance was solves through the creation of a law on regional autonomy. Thus political parties could not truly exploit the regional grievances for electoral purposes. In addition, the electoral law did not permit the emergence of regional or local parties. All parties were required to be a national party and to have a central office in Jakarta.

As for the class issue, none of the class-based parties recorded an electoral success in the 1999 election. It is true that all parties touched the issue of economic recovery but they did not rely on class issue in building mass support.⁹⁾ Instead, they used populist appeal that was not necessarily class appeal.

The founding election of 1999 then produced a multiparty system. There were 19 political parties that won at least one parliamentary seat. The structure of competition and the political division among these parties basically was defined by religious issue – not regional and class issues.

9) Interview with Budi Harsono, General Secretary of Golkar 1998~2004, 20 December 2004; interview with Tosari Wijaya, vice chairman of PPP 1999~2004, 29 December 2004.

The Presidential System

The transformation of the parliamentary system into a presidential system occurred in 2004. The pretext for this change was the event of the presidential selection in the Assembly in 1999. The two largest parties, Golkar and PDIP, lost their bid to win the presidential position. Habibie, supported by Golkar, withdrew his candidacy when a majority of the Assembly did not give him approval for his speech. Thus Megawati, the chairwomen of the largest party of PDIP had the greatest chance of being elected by the Assembly to win the presidential position.

Nonetheless, the small and middle-sized parties within the Assembly engineered a coalition and promoted another candidate—Abdurrahman Wahid—from PKB which won only 12% of votes during the 1999 election. It turned out that Abdurrahman Wahid defeated Megawati when voting was held in the Assembly.

This event had left many members of the Assembly dissatisfied, in particular those who were from PDIP. They felt that the process was unfair and the Assembly had robbed the PDIP's opportunity of winning the presidency after winning the plurality of the legislative election. At the mass level, many of them were ready to challenge the result of the presidential selection in the Assembly. But the political elite were able to reduce the tension between Wahid and Megawati's supporters and to prevent the tension from escalating into physical clash.

To reduce the political unpredictability within the Assembly and to avoid the public's dissatisfaction, the parliament devised a new law that became the basis for a direct presidential election. In the 2004 presidential election, Susilo Bambang Yudhoyono won the direct presidential election. Yudhoyono, a candidate from a new party (Democrat Party) defeated Megawati in the second round of the election. Democrat Party itself won only 7% of the total votes in the legislative election. But it did not undermine Yudhoyono's legitimacy since he was popularly elected. He, again, as the incumbent, won the second term of his presidency in the 2009 presidential election.

The Challenge

As Indonesia has passed through five legislative and presidential elections, will its democracy survive for decades to come? Will the Indonesian democracy be durable and stable overtime? Borrowing a political science jargon, will the emerging Indonesian democracy reach a process of democratic consolidation?

Democratic consolidation is a jargon but its meaning and logic are very simple. In a democratic country, not all people would accept democracy as “the only game in town.” Some would prefer another type of political system other than democracy such as authoritarian, totalitarian, caliphate and the like.

As widely known, democracy is a Western product. It is an imported product to be planted in new soil—in non-Western countries. The same holds true for a section of Indonesian society. For them democracy is something foreign and should not be adopted to be the Indonesians’ choice of political system. It is—the argument goes—simply not part of the Indonesian tradition. Thus it is very possible that a great number of Indonesians would refuse to have democracy as a method of selecting leaders or a way of toppling or establishing a government. Democracy is consolidated when a majority of the citizens accept democracy as the only legitimate political arrangement.

A series of survey data released by Lembaga Survei Indonesia (the Indonesian Survey Institute) provide a good picture of citizens’ preference.

Asked whether democracy is the best type of government for Indonesia, a majority of respondents agree or strongly agree. In 1999, there were as many as 68% of them agreed or strongly agreed with the statement. And this number rose to 75% in 2004, 83% in 2007, and slightly declined in 2008 to 79%.¹⁰⁾

Going further, the surveys also asked Indonesians to assess the actual performance of Indonesian democracy—of whether they are satisfied with the implementation of democracy in Indonesia. There is still

10) Lembaga Survei Indonesia, *Masalah Konsolidasi Demokrasi dan Pemilu 2009*.

a majority of Indonesians who have positive assessment, meaning that they are satisfied with democracy as practiced in Indonesia. But the figures are slightly lower. In 2005, 67% of them had strong or moderate satisfaction. This number declined slightly in 2006 to 62% rose to 63 in 2007, and dropped drastically to 54% in 2008.

Looking at the survey data, then we may interpret that democracy has begun to plant its roots among Indonesians. As an ideal type, a majority of Indonesians prefer to have democracy to any other types of government. As a practical matter, they become more critical in the sense that the implementation of democracy as practiced in Indonesia is not as good as they expect.

Equally important, we should take a note that the survey data are drawn at the individual level. Meanwhile the level of support for democracy can also be influenced by the political dynamics at the group level. Some groups may shape citizens political attitude by campaigning that there is a better alternative system of government. The fact is that the citizens' preference of the best system of government and the level satisfaction with the implementation of democracy can go up and down. It does not necessarily means that group dynamics is the sole factor that determines the citizens' political attitude. Their attitude may be shaped by economic situation from which they assess the performance of government in delivering public goods. But still we need to heed the groups that may shape Indonesian citizens' political attitude.

Islamism. As previously mentioned, a section of the Indonesian Moslem community does envision Indonesia to become an Islamic state in which sharia or Islamic law would become the basis for governing the society. A part of them has tried to reach this goal through official politics by forming Islamic parties. This way, they enter electoral politics and the parliament from which they continuously attempt to sell the idea of Islamic state.

In 2000, PPP and PBB brought the issue into the People Consultative Assembly session (the highest political body that secures the right to amend the constitution), asking the assembly to insert an additional clause into the preamble of the constitution requires Indonesian

Moslems to observe Islamic law. Not directly mentioned the idea of establishing an Islamic state in Indonesia, PPP and PBB simply wanted the clause to be accommodated in the constitution. Many saw that the parties' move could mean an indirect route toward an Islamic state. But the secular parties, namely Golkar, PDIP, and other smaller parties, wanted to maintain the original preamble of the constitution in regards to the religion issue. PPP and PBB's initiative was defeated during the Assembly session but then the two parties made a similar effort in the 2001 and 2002 during the Assembly's yearly sessions. Again, they were defeated by the secular parties.

This effort indicates that the idea of Islamic state is lingering in Indonesia. Since the Islamists made an effort of implementing the agenda of establishing an Islamic state through the parliament, it may properly be called "the parliamentary road toward an Islamic state." Another variant for this is the effort to create an Islamic society as advanced by another party, PK. The effort it has made is not through the amendment of the constitution but through the adoption of sharia or Islamic law at the lower governmental level such as districts or mayoralties in the form of local regulations.

Parallel with this political effort, at the society level some Islamic mass organizations such as KAMMI (Indonesian Student Islamic Action Committee), FPI (Islamic Defender Front), and MMI (Indonesian Mujahidin Council) kept supporting the Islamic parties for the adoption of sharia in the constitution. Shortly, a section of the Indonesian Islamic community still maintains the agenda of Islamizing the state and the society.

What is worrisome is a fraction of the Islamist that resorts on violent means for reaching their goals. The fact is that they have perpetrated terror acts in the form of suicide bombings in different places such as Bali and Jakarta. Recently, the Indonesian police successfully dismantled an Islamist-terrorist camp in Aceh—the western tip of Indonesia. This shows that a section of the Indonesian Islamic community persistently subscribes to Islamism and a smaller part of them resorts to violence. But how vast is the support for Islamism at the society level?

By looking at the official election data released by the General Electoral Commission, Islamist parties and Moslem-based parties have been losing electoral support in the three elections. Combined, they collected 41% of the total votes in 1999, but they electoral support declined to 37% in 2004, and in the last election it dropped to 24%. If we limit the counting by excluding the Moslem-based parties, the total votes collected by the Islamist parties was 18% in 1999, slightly rose to 21% in 2004, and dropped to 13% in 2009.¹¹⁾

The same holds true for the level of support for Islamist mass organizations such as Jamaah Islamiyah (Islamic Brotherhood), FPI (Islamic Defender Front), MMI (The Council of Indonesian Muhahidin), and HTI (Indonesian Hizbut Tahrir). The level of public support for the Islamist cause of these organizations has been declining.¹²⁾

Secessionist movements. Three regions known as the bastion of secessionist movements are Aceh in the northern tip of Indonesia, Papua in the eastern part of Indonesia, and Timor Leste which is located in Timor Island in the south east of Indonesia.

Timor Leste finally retained its independence through referendum which was held in 1999. Thus it has no longer created any problem for Indonesia. Aceh's secessionist problem was solved in 2005 when the peace agreement was signed between two parties, the Indonesian government and the Acehnese Independent movement (GAM). Thus the remaining secessionist movement is the one in Papua. Until now, the Papua Independence Organization (OPM) has sporadically attacked sites that represent the presence of the Indonesian government in Papua.

By military account, the presence of OPM has not seriously posed a problem for the government. But it to some extent has undermined the legitimacy of the government's claim that Papua is part of Indonesia. Many Papuans have never identified themselves as Indonesian. So the Papuan case is different from the Acehnese case. The majority of Acehnese do not reject Indonesian nationality. The

11) Calculated from the election results of 1999, 2004, and 2009 as published by the General Election Commission at www.kpu.or.id

12) Lembaga Survei Indonesia, *Trend Orientasi Nilai-nilai Politik Islamis Vs Nilai-nilai Politik Sekuler dan Kekuatan Islam Politik*. Jakarta: Oktober, 2007.

history of Aceh was part of the Indonesian history when Acehese leaders joined the Indonesian independence movement in 1945 and saw themselves as a component of Indonesian nationalist movement. The Acehese rebellion broke out in 1976 as a response to the Indonesian government that did not meet its promise to grant Aceh provincial autonomy. The rebellion ended in 2005 when the peace agreement was signed by both parties and Aceh has won its special autonomy.

Putting aside the case of Papua, there is no longer secessionist threat in Indonesia. Regional demands of having an independent state in provinces such as Riau and South Sulawesi voiced in the beginning of democratic era have now died down. Not to mention the deep feeling of nationalist sentiment among Indonesians, the regional demands and grievances have been matched by the government with the law on regional autonomy.¹³⁾ This law has granted the regional governments more political power and fairer distribution of national wealth.

The Need of a Vibrant Civil Society

Overall, the Indonesian democracy has appeared to work. Democratic institutions have all been in place and the prerequisites of political freedom and civil liberties have been met. As found in many other democracies, the primary political locus has been the parliament and presidential office; and the primary actor of the democratic politics is political parties. The members of the parliament are all from political parties as well as the president. No independent candidates—as stipulated by the political laws that govern the Indonesian democracy—are allowed to be the parliamentary members and the president must be a party member or must be chosen through political parties.

The next question is of course on the quality of party performance in channeling political demands, in representing collective interests

13) Ryas Rasyid, "Regional Autonomy and Local Politics in Indonesia," in *Local Power and Politics in Indonesia*. Singapore: ISEAS, 2003.

within the society, in carrying out the task of political recruitment, and in formulating public policies relevant of the public.

The public do not give political parties a high mark. In a national survey conducted by LSI in January 2010, the public were asked to assess the performance of all state/government institutions. Political parties occupied the lowest rank in performance compared to other institutions such as president, the military, State Auditing Body, the Supreme Court, et cetera. There are only 48% of the respondents who said that the performance of political parties is good or very good.¹⁴⁾ Interestingly, the military was placed in the highest rank in terms of its performance with 80% of the respondents said that it is good or very good.

This survey finding does not come as a surprise since political parties in democracies generally are perceived as the necessary evil. Modern democracy is always big in size, so practically it needs the presence of intermediary institution that can connect the government and its citizens. Political parties are therefore needed in a modern democracy. However, the public believe that they are filled with ambitious politicians that care more for their own interests than representing societal interests.

But in the case of Indonesia, it could be very problematic for two reasons. First, it is a fact that political parties have dominated the political process. Second, it is also a fact that corruption is very rampant.

Political parties have nearly all political power at their disposal. They make laws that govern the country; they are in the parliament as well as the government. The problem is that Indonesian political parties seem to have a tendency of colonizing the government at the national as well as the local level. By colonizing we mean that governmental position at the cabinet level and at the local level are seen as a site to collect rents for financing political parties.

Article 17 of the Party Law of 2003 does stipulate that parties are required to submit a proper financial report. In addition, the law

14) Lembaga Survei Indonesia, *Kinerja Pemerintahan SBY-Boediono: Sebuah Evaluasi Publik*. Januari 2010.

also specifies the illegal financial sources such as foreign entities, unidentified contributors, and state-owned enterprises. But these provisions are problematic because the independent auditors rely on superficial administrative reports prepared by the party offices but does not go through substantive issues of authenticity of the financial documents. Thus the party financial reports may meet the administrative criteria but not the legal, substantive criteria.¹⁵⁾

This is a loophole through which political parties could mobilize financial sources from anywhere. The fact is that other financial sources of political parties contribute only meagerly to parties' disposal. Therefore Indonesian political parties are always in need for bigger sources of money. At this point, mobilizing rents – illegal or not – has been compelling for parties.

Recently, a national newspaper showed a list of party politicians who were involved in corruption and pocketed illegal money from different sources. The list includes politicians from Demokrat, Golkar, PDIP, PKB, PPP, PAN, PBR, PBB, and PKS.¹⁶⁾ Most of them are the parties that joined the government for the period of 2004–2009.

These parties have been in the government as well as in the parliament. They have been the law maker and at the same time the player. They have filled the government but these same parties simultaneously the controller of the government. Furthermore, they also have the power to give approval for any high-ranking state officials such as the members and chairman of KPK (State Commission for Combating Corruption) and the Supreme Court.

The fact that the political parties are so powerful and that they are the key actor of all political process in all levels are is the true

15) IFES, *Campaign Finance in Indonesia*, 1999. See also, IFES, *Reporting and Public Disclosure of Financial Activity of Political Parties and Electoral Participants*, 2004.

16) "Parpol Tak Lepas dari Jerat Korupsi," *Kompas*, 12 April 2010. The cases of corruption that involves political parties since the Reformasi Era have been well chronicled by major publications such as Kompas daily and Tempo magazine. The cases range from the illegal use of tactical funds under the management of a minister, the bribery for parliamentary members in the process of selecting the deputy governor of the Central Bank, the bail-out policy for private banks, to the misuse of state finance for implementing governmental programs. A more detailed description for these cases, see, Kuskridho Ambardi, *The Making of the Indonesian Multiparty System: A Cartelized Party System and Its Origin*. PhD dissertation, Ohio State University, June 2008.

face of contemporary Indonesia. The question is then: who controls the political parties? A vibrant civil society can be an answer for controlling the political society. Otherwise, the Indonesian democracy may be trapped into a “partyocracy.”

II

Gender and Human Rights Violation

7. The Terror of Never-ending War: The Role of Gender Relations

Honey Lay Ean Tan

Introduction

“Al Qaeda is to terror what the mafia is to crime. But its goal is not making money; its goal is remaking the world and imposing its radical beliefs on people everywhere. [...] Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated. [...] Either you are with us, or you are with the terrorists.”¹⁾ (George W. Bush)

With those infamous phrases, the ‘war on terror’ was launched. Their rhetorical value in invoking a multitude of emotions in a speech post the 9-11 attacks in the United States of America (the US) may be appreciated. However, when used as the basis to form policies and laws, its impact has been manifold. Among them are violence and destruction on a mammoth scale, and deaths and injuries of both combatants and civilians which are immeasurable.²⁾ Bush’s use

1) Bush, George W., (20 September 2001), Address to a Joint Session of Congress and the American People, <<http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>> accessed on 24 December 2008.

2) General Tommy Franks, then commander of the Afghanistan operation, said at Bagram Air Base, “You know we don’t do body counts.” Epstein, Edward (23 March 2002), The San Francisco Chronicle, <<http://www.globalsecurity.org/org/news/2002/020323-attack01.htm>> accessed on 21 December 2008. For an indication of the number of the Iraqi dead, see Iraqi Body Count at <<http://www.iraqbodycount.org/>> accessed on 17 January 2009, where the dead were then estimated to number between 90,329 to 98,605 since 2003.

of the emotive word ‘terror’ deviated from the more common phrase, ‘war on terrorism.’ The latter phrase was first used in the nineteenth century by the press to refer to the efforts of the governments of Russia, Europe and the United States in suppressing anarchists who were attacking their political leaders. The British also used the phrase in its efforts to tackle the Jewish attacks in Palestine in the 1940s, and Ronald Reagan during his term of office.³⁾

The ‘war on terror’ was not limited to the invasion of Afghanistan and Iraq, where outbreaks of violence have not ceased since their invasion. Member states of the United Nations were exhorted to take all necessary steps including legislating to curb ‘terrorist acts.’⁴⁾ However, the terms ‘war on terror’ or ‘war on terrorism’ are problematic as ‘terror’ is an emotion, and ‘terrorism’ is a tactic. Surely a war cannot be waged against an emotion and a tactic, and if begun, surely such a war would have no end.

Among the armed conflict situations in Asia that have come under the ‘war on terror’ rubric include the continued unrest in Southern Philippines where the Abu Sayyaf and Jemaah Islamiah groups are based. In 2002 under Operation Enduring Freedom – Philippines, the United States deployed soldiers to assist the armed forces of the Philippines. The major bombings in India in 2008 in Ahmedabad, Delhi, Assam, and most recently in Mumbai were all said to be done by terrorists, as were those in Bali (2002 and 2005) and of the Australian Embassy in Jakarta, Indonesia (2004).

Whether termed as ‘war on terror’ or otherwise, armed conflicts rage on with no end in sight in Asia, rather than outright wars between countries. Their causes have been analysed as battles for the supremacy of their political ideology, religion, the control of markets and natural resources.

In the jostling for geo-political power, women were instrumentalised by the administration of George W. Bush as one of the justifications for the invasion of Afghanistan and Iraq. They were to ‘liberate’ the

3) War on Terrorism, Wikipedia, <http://en.wikipedia.org/wiki/War_on_Terrorism> accessed on 21 December 2008.

4) See for example, the UN Security Council Resolutions 1373 and 1624.

women – the women of the ‘enemies.’ Laura Bush said on radio, in justifying a need “[...] to kick off a world-wide effort to focus on the brutality against women and children by the al-Qaeda terrorist network and the Taliban [...] Only the terrorists and the Taliban [...] forbid education to women. Only the terrorists and the Taliban threaten to pull out women’s fingernails for wearing nail polish.”⁵⁾ However, to talk about women in those terms without analysing gender relations is not helpful.

In this article, I will adopt Cockburn’s position that there is a strong causal link between gender relations and war,⁶⁾ and extend it to situations of armed conflict. She argues that patriarchal gender relations are among the causations of war as they predispose societies to it, make war likely and make peace difficult to attain and sustain.⁷⁾

If it is agreed that states bear the primary duty to ensure that the rights of its people are protected,⁸⁾ which institution of global governance do they look to in terms of setting standards of rights? Whether the states agree wholeheartedly with those standards or dispute them, it is to the United Nations (the UN) that they generally look. So in positing that gender relations are one of the causes of war, I will examine the human security framework that the UN has formulated as part of its peacebuilding effort. The human security framework takes a development approach which emphasises political and economic insecurities as the main continued causes of conflict.⁹⁾

In recent years, the Security Council of the United Nations passed two resolutions to address the specific needs of women in conflict and post-conflict situations, and the ongoing peacebuilding efforts:

5) Cockburn, Cynthia (2008) Gender as a Driving Force in War, Bertrand Russell Peace Lectures 3~4 May 2008, <<http://www.cynthiacockburn.org/Blogbertrandrussellectures.pdf>> accessed on 24 December 2008, p.14.

6) Cockburn (2008), *ibid.*, p.2.

7) Cockburn (2008), *ibid.*, p.13.

8) Molyneux, Maxine and Razavi, Shahra in Molyneux, Maxine and Razavi, Shahra (eds) (2002) Introduction, *Gender Justice, Development and Rights*, Oxford, Oxford University Press, pp.1~44.

9) Commission on Human Security (2003), *Human Security Now*, United Nations, <<http://www:humansecurity-chs.org/finalreport/English/FinalReport.pdf>> accessed on 24 December 2008, p.2.

Resolutions 1325¹⁰⁾ and 1820.¹¹⁾ I will also examine the two resolutions within the framework advanced by Cockburn.

In critiquing the human security approach and the state of implementation of Resolutions 1325 and 1820, it will be seen that unless and until we have a satisfactory manner in dealing with the challenges that gender relations pose, peacebuilding will continue to be fractured and render peace illusory.

The Strong Hold of Patriarchy¹²⁾

In setting out her argument, Cockburn begins by viewing war as a social phenomenon which is relational in that there is a degree of shared understanding between the parties at war. War may also be seen as systemic as it is supported by a set of institutions such as the Ministry of Defence, the arms industry, the military training academies and the people in the armed forces. A systemic relationship is also discernable between the ‘hardware’ such as guns, bombs and tanks, and the ‘software’ which are the cultures and attitudes. The use of violence and weapons as a common means of settling disputes small and big, are evident when we note the domestic violence in our homes, bullying in schools, internal armed conflicts and outright wars between nations. Violence becomes normalised into an acceptable way of life, our culture.

Wars are also viewed as a linked continuum, and are cyclical: from the time when the fighting is ongoing to ‘peacetime’; and from militarism to militarisation. By militarism, it is meant the mindset which persists in glorifying war through various mediums such as the media, sermons in religious institutions and even in Philosophy which invokes notions of a ‘failed state’ and ‘just war.’ Militarization describes the economic processes that continue to prepare society for war which

10) <<http://www.peacewomen.org/un/sc/1325.html>> accessed on 24 December 2008.

11) <<http://daccessdds.un.org/doc/UNDOC/GEN/N08/391/44/PDF/N0839144.pdf?OpenElement>> accessed on 24 December 2008.

12) This section draws on and summarises Cockburn’s arguments as set out in Cockburn (2008), *op. cit.*

include the designing and invention of weapons, its production and trade, and the financing thereof.

Intertwined and interwoven into this tapestry is gender. Over time, sex or biological differences between the males and females of human-kind came to be appreciated and valued differently. Stereotypical roles and characteristics of men and women became more pronounced and in the process, became valued differently. The term 'gender' became used to describe the socially constructed and stereotyped roles of men and women, and the relations between them. The impliedly hetero-normative manner of presenting sex/biological and gender differences, and the ideal family is not without its inherent difficulties as it is not inclusive of the more sexually marginalised such as the lesbians, bisexuals, gay, trans-sexuals, inter-sexed and queer communities.

Be that as it may, those characteristics which were associated with men and therefore masculine, such as strength, intelligence and ambition became more valued than those which were associated with women and therefore feminine, such as innocence, obedience and nurturing. This gendered structure of most societies in the world came to be called 'patriarchy.'

Patriarchy has been systematised into most, if not all, of the institutions of society. This can be seen in the overwhelming majority of family structures, education systems, commerce, government and the armed forces. As Cockburn puts it, "Men and women are specialized in patriarchy, the genders made complementary and unequal. Good qualities like strength and courage get allocated to men and deformed into tools for domination. Good qualities like tenderness and care get allocated to women and deformed into the badge of submission. Both parts of humanity end up as less than fully human. At the same time we collude in it, do its work."¹³

Patriarchy, along with militarism and nationalism, drives wars. There are other factors, but these are three compelling ones. Cockburn notes that, "Nationalism's in love with patriarchy because patriarchy offers it women who'll surely breed true little patriots. Militarism's

13) Cockburn (2008), *op. cit.*, p.4

in love with patriarchy because its women offer up their sons to be soldiers. Patriarchy's in love with nationalism and militarism because they produce unambiguously masculine men."¹⁴⁾

Masculinities¹⁵⁾ have been produced and reproduced by patriarchy within institutionalised structures of power and cultural processes. Two of these structures and processes—the economy and politics—have enabled men who have exhibited a certain type of masculinity to share the wealth and authority that the systems of class and state supremacy allow. This type of militarised, coercive and violent masculinity can be seen in the men of Iraq, Afghanistan, Burma, Pakistan and India. Not surprisingly, the armies or paramilitaries of those countries wield great power, and these countries continue to be embroiled in armed conflicts.

The violence of ongoing armed conflict produces and reinforces ethnic identities; reminds the populace of the wrongs done unto them and fuels revenge. It produces a militarised masculinity and the victimised women. A case in point is India with its ongoing conflict between Hindu and Muslim fundamentalists which manifested themselves in the rapes and killings in Gujerat in 2002.

An aspect of the violence of war is that it is sexualised. This is unsurprising as in our everyday lives, gender based violence of a sexual nature is common. It ranges from sexual harassment such as wolf-whistles as we walk down the streets, to rape, including marital rape. The sexualised violence is another example of normal patriarchal relations extending into wartime. It is often used as a tool of war when the women from the other side are raped. It may also be a recreational and bonding activity which could include women from their own side. Cockburn notes, "A survey of 558 women who served in US military in Vietnam showed that half had experienced sexual

14) Cockburn (2008), *op. cit.*, p.21

15) Connell has argued that there are many types of masculinities. Among them are working class masculinity, homosexual masculinity and subaltern masculinities: Connell, R.W. (1995) *Masculinities*. Cambridge: Polity Press, cited by Cockburn (2008), *op. cit.*, p.7.

violence and 30% had been raped by their fellow soldiers.”¹⁶⁾ Men are also sexually assaulted to ‘feminise’ and punish them.

When the war ends, violence does not end for women. This continuum of violence exists partly because there is impunity for the perpetrators under the patriarchal structure of society. It is difficult for women to lodge reports for fear of bringing shame and dishonour to themselves and their families. The police are often reluctant to investigate, the prosecutors find it difficult to succeed in proving the crimes due to substantive and procedural laws. Judges often times lack the gender sensitivity to convict¹⁷⁾ and pass sentences that reflect the gravity of the crimes. The recent incident of acid being thrown at five Afghan girls as they were walking to school exemplifies this continuum of violence.¹⁸⁾ It also shows the continued impunity that exists and how the patriarchal culture exerts itself in trying to keep girls in their ‘rightful place’ at home—to coerce them into only nurturing and caring roles.

Cockburn uses the sociological concepts of positionality and intersectionality to interrogate how a person’s individuality is partly defined by that person’s positioning in relation to power. A poor Brahmin woman may occupy a higher position in society as compared to a wealthy Dalit woman due to her caste, but a lower position economically. However, both will be equally susceptible to gender based violence as women occupy a lower position of power and status in society. Sets of power relations also intersect women to mark them individually while simultaneously making them a part of several collectivities.

16) Morris, Madeline (1996) ‘By force of arms: rape, war and military culture,’ *Duke Law Journal*, 45.4, February, cited by Bourke, Joanna (2007) *Rape: A History from 1860 to the Present*. London: Virago, cited by Cockburn (2008), *op. cit.*, p.16.

17) There is only a 4% conviction rate after trial for sexual crimes in the state of Penang, Malaysia. See: Women’s Centre for Change, Penang (2007) *Seeking a Better Judicial Process for Sexual Crimes: Background Paper for Dialogue with Penang Judiciary* <http://www.wccpenang.org/files/docs/Judiciary_Background_Paper.pdf> accessed 25 January 2009, p.11.

18) Filkins, Dexter, Afghan girls brave terror to return to school (14 January 2009), International Herald Tribune, <<http://www.ihf.com/articles/2009/01/13/asia/kandahar.php>> accessed on 20 January 2009.

In the larger context, Cockburn notes, “The power system of economic class based on ownership of the means of production, the racializing power system of ethno-nationalism expressed in community authorities and states, and the power system that constitutes sex/gender hierarchy together shape human social structures, institutions and relational processes. Together they establish positions of relative power, thereby laying down the possibilities and probabilities for individuals and groups that variously inhabit them. No single one of them produces its effects in the absence of the other two. [...] So we’re suggesting here that militarization and war are caused, shaped, achieved and reproduced over time by all three systems of power. If one is at work, the others will be too. The gender drama is never absent: the male as subject, the female as alien, the alien (the one out there, and the alien inside us) as effeminate. This is why a theory of war and its causation is flawed if it lacks a gender dimension.”¹⁹⁾ She further notes that violence is a facet of the three centres of power.

Gender relations manifesting themselves in the patriarchal structure do not mean that women are not valued or that they lack agency. On the contrary, women are revered for their biological and cultural reproductive roles, with the expectation that any other aspect of their lives should revolve around those two main roles. Women buy into this ‘patriarchal bargain’²⁰⁾ even though they suffer under it because of the status it affords them in society. This reverence has also manifested itself into one of the ways in which women do peace-building to embrace ‘mothering.’ Ruddick supports “A feminist maternal politics of peace: peacemakers create communal suspicion of violence, a climate in which peace is desired, a way of living in which it is possible to learn and to practice non-violent resistance and strategies of reconciliation. This description of peacemaking is a description of mothering.”²¹⁾

19) Cockburn (2008), *op. cit.*, p.18.

20) Kandiyoti, Deniz (1988) ‘Bargaining with patriarchy,’ *Gender and Society*, 2:3, p.274~90 cited by Cockburn, *op. cit.*, p.19.

21) Ruddick, Sara (1990), *1935~1990. Maternal thinking: towards a politics of peace*, London Women’s Press, p.244

Recognising gender relations as one of the driving forces of war enables us to begin to think about how we can organise ourselves differently. Cockburn exhorts us to “redefine manhood and womanhood, being masculine or feminine.”²²⁾

However, that would bring us to different, but still binary dichotomous moulds. We also need to deconstruct the hetero-normative stance as it unnecessarily and artificially constrains us to be man/woman and masculine/feminine. It connotes the heterosexual family unit consisting of mother-father-children as the norm. In moving away from that hetero-normative model to others which are more diverse and encompassing, the term ‘gender relations’ would take on a more nuanced meaning, and enable us to deepen our analysis of how gender relations drive wars.

Next, I will move on to examine the work done by one of the key stakeholders driving the global effort in peacebuilding: the UN. The idea of an independent Commission for Human Security (the CHS) was mooted at the 2000 UN Millennium Summit for it to work towards enabling every person to enjoy “freedom from want” and “freedom from fear.”²³⁾ The CHS produced a report, *Human Security Now* (the Report)²⁴⁾ in 2003 to outline one of the frameworks the UN uses to facilitate the task of peacebuilding globally. The UN also established the Peacebuilding Commission in 2005 dedicated to facilitating that task.

The adoption of Resolution 1325 was the result of a move by the Security Council of the UN to recognise the crucial role women must play in the peacebuilding processes. The Security Council of the UN also acknowledged that sexual violence has been unleashed as a tool and strategy of war when it passed Resolution 1820.

In the next section, I will also explore whether Resolution 1325 has aided more women into decision making positions in the peacebuilding processes? Have Resolutions 1325 and 1820 dealt satisfactorily

22) Cockburn (2008), *op. cit.*, p.23.

23) Commission on Human Security (2003), *Human Security Now*, <<http://www.humansecurity-chs.org/finalreport/English/FinalReport.pdf>> accessed on 24 December 2008, p.iv.

24) *Human Security Now*, *ibid.*

with the matter of impunity in violence against women during armed conflict? Have those incidents decreased at all?

Lip Service, or Service to Half the World's Population?

One of the reasons the Report is examined now even though it was launched in 2003 is because it exemplifies how the mainstream discourse on peacebuilding is (still) being carried out. Noting that one of the two main authors of the Report is Amartya Sen, it is not surprising that the Report adopted a developmental approach when framing the issue of human security.²⁵⁾

The Report defines human security as “[...] [embracing] far more than the absence of violent conflict. It encompasses human rights, good governance, access to education and health care and ensuring that each individual has opportunities and choices to fulfill his or her own potential. Every step in this direction is also a step towards reducing poverty, achieving economic growth and preventing conflict. Freedom from want, freedom from fear and the freedom of future generations to inherit a healthy natural environment—these are the interrelated building blocks of human, and therefore national, security.”²⁶⁾

The crucial issues of gender equality and non-discrimination did even not warrant an explicit mention in that definition, and if at all, needed to be read into the terms ‘human rights’ and ‘good governance.’ That lack of visibility is also an indication that gender relations is not viewed as having a causal link to war and armed conflict. It therefore did not warrant specific strategies with which to address those root causes.

The human security framework proposed was meant to address 21st century challenges and is people-centred in that it focused on people and communities. It recognised the interdependence and links among

25) The human security report starts by stating, “Today’s global flows of goods, service, finance, people and images spotlight the many interlinkages in the security of all people.” See Human Security Now, *op. cit.*, p.2.

26) Human Security Now, *op. cit.*, p.4.

the people of the world. It urged the forging of alliances to wield a greater force.²⁷⁾ The Report emphasised the five policies which it held to be essential in protecting people in violent conflict: “placing human security on the security agenda, strengthening humanitarian action, respecting human rights and humanitarian law, disarming people and fighting crime, preventing conflict and respecting citizenship.”²⁸⁾

It is interesting to note that the Report only mentioned “disarming people” and curtailing illicit arms trade.²⁹⁾ It made no mention about eliminating the production of arms and weapons of war, or stopping the arms trade altogether. These activities drive militarisation.

The Report did not address the issue of militarism by stating clearly the need to reduce violence generally, and violence against women specifically. That could have been one of the strategies to ensure human – women’s – security. Jones had noted that “feminist discourse is an analysis of power, and in particular, the continuum of violence against women. Rape is not particular to war or peace, neither is the trafficking of women, they are acts of violence by those with power over those they wish to disempower. Violence of this kind and the violence of war are part of the continuum of violence against women. It also enables us to take a different perspective when we come to look at building peace: from a feminist perspective, peace is not merely the absence of war, but an absence of the violence – physical, psychological and structural – that women in post-conflict communities experience. But though armies may sign truces, governments agree to peace deals, and armed groups may demilitarise, challenging violence against women is never on the agenda of peace constructed by militarist thinking.”³⁰⁾

27) Human Security Now, *op. cit.*, p.130.

28) Human Security Now, *op. cit.*, p.24.

29) Human Security Now, *op. cit.*, p.62.

30) Jones, Sian (2003) Feminist Antimilitarism, *Women’s Teach-In: Antimilitarism, Fundamentalisms/ Secularism and Civil Liberties & Anti-Terrorism Legislation After September 11th*, WLUML Occasional Paper No. 14, November 2003, <<http://www.wluml.org/english/pubs/pdf/occpaper/OCP-14.pdf>> accessed on 14 January 2009, p.14.

Furthermore, the CHS did not give recognition to the patriarchal structure of the world in which it is hoping to make secure. In using the term ‘people’ frequently, it did not address the different needs of women in all the sectors covered in the Report. As noted by Chenoy, “Guaranteeing ‘people’s security’ does not automatically ensure women’s security.”³¹⁾ Issues of women are occasionally placed in boxes, for example, on reproductive health.³²⁾ However, domestic violence, which is viewed as a health issue, was mentioned only once in the Report,³³⁾ despite it being one of the most common and insidious forms of violence faced by women. It is always in the continuum of violence faced by women whether in ‘peace’ or war time. Once again, this failure to take gender relations into account as a cause of war and insecurity meant that there was no strategy to address this core issue. Perhaps the CHS should have paid more heed by, “Starting at the microlevel and listening to the experiences of women, [as] feminists base their understandings of security on situated knowledge, rather than knowledge that is decontextualised and universalised.”³⁴⁾

It is further disheartening to note that in Box 4.1, entitled “Gaps in today’s post-conflict strategies,” there was no recognition of the low number of women involved in the peacebuilding processes—especially the formal processes.³⁵⁾ That is a serious gap. Within the UN itself, only 1 woman of the 27 peace operations is the head of mission or Special Representative (for the United Nations Observer Mission in Georgia). At the level of Deputy Special Representative where there are 14 positions, only 3 are occupied by women (for the United Nations Observer Mission in Georgia, the United Nations Mission in the Democratic Republic of Congo, and the United Nations Verification

31) Chenoy, Anuradha M. (2005) Women, Peace and Security: Perspectives from Asia Theorising and Practising Peace and Security, *Gender, Governance and Democracy: Peace and Security*, ISIS Monograph Series 2007 Issue 1. Vol. 2, ISIS International and Women and Gender Institute: Manila, p.24.

32) Human Security Now, *op. cit.*, p.100, Box 6.2.

33) Human Security Now, *op. cit.*, p.107.

34) Tickner, J. Ann (2001) *Gendering World Politics and Approaches in the Post-Cold War Era*, New York, Columbia University Press, p. 64.

35) Human Security Now, *op. cit.*, p.59.

Mission in Guatemala). Out of the 16 members of the Secretary-General's High Level Panel on Threats, Challenges and Change, there are only 4 women.³⁶⁾

In the 31-member Peacebuilding Commission, it is not clear how many of its Commissioners are women. Created by both the General Assembly and the Security Council resolutions number A/60/180 and SC 1645 respectively in 2005, its specific mandates are to "[...] propose integrated strategies for post-conflict peacebuilding and recovery; help to ensure predictable financing for early recovery activities and sustained financial investment over the medium to longer-term; extend the period of attention the international community gives to post-conflict recovery; develop best practices on issues that require extensive collaboration among political, security, humanitarian and development actors." It is an advisory body which aims to work closely with national and transnational authorities as it is recognised that member states of the UN must take national ownership of the peacebuilding processes. The impact of the work of the Peacebuilding Commission has yet to be felt. So far, it can only be noted that it has issued statements.³⁷⁾

A major step was taken by the UN when the Security Council passed Resolution 1325 in 2000 to include a greater participation of women at the decision making levels in peacebuilding processes. Among others, the resolution also emphasised that it was the responsibility of Member States to end impunity, prosecute those responsible for sexual crimes and to exclude such crimes from amnesty provisions. Resolution 1820 was passed in June 2008 which complimented the provisions of Resolution 1325. It also condemned the use of sexual violence in times of armed conflict. Among others, it reminded Member States to enforce military discipline, uphold the principle of command responsibility and train troops on debunking myths that fuel sexual violence.

36) NGO Working Group on Women, Peace and Security (2004), No Women, No Peace: The Importance of Women's Participation to Achieve Peace and Security, Written for the UN Secretary-General's High Level Panel on Threats, Challenges and Change <<http://www.peacewomen.org/un/ngo/ngopub/NoWomenNoPeace.pdf>> accessed on 24 December 2008, Annex 1.

37) See <<http://www.un.org/peace/peacebuilding/qanda.shtml>> accessed on 24 December 2008.

Concerned to assess the implementation of the resolutions, the Security Council held an open debate in October 2008. One of the responses to the call for an open debate was from the NGO Working Group on Women, Peace and Security to the UN (the NGO Group). It noted that while some progress was made, overall, the implementation was uneven and problematic in the area of participation. Part of it was attributable to inadequate funding and the fact that there was neither a Gender Unit nor a Gender Advisor within the Department of Public Affairs, which plays key administrative and managerial roles during peace negotiations.

The NGO group also called on the Security Council to refuse to recognize peace processes that did not include women in discussions and decision making related to their security needs and concerns. It supports the call to have more women in the Judiciary of Member States, and emphasised the need to increase access to justice for women, and to end impunity for sexual and gender based violence.

The NGO Group further noted the need to increase the number of women in the police forces of Member States and the civilian units of UN Peacekeeping missions, and for the Secretary-General to appoint more women to high level positions in UN field missions.³⁸⁾

Key issues identified by the Security Council on the lack of participation of women in decision making positions at peacebuilding processes were an “absence of options for achievable and effective implementation” and that the delegates sought more assistance from the Security Council to provide guidance and information.³⁹⁾

The Secretary-General of the UN also noted that despite efforts made by the UN, violence against women persists.⁴⁰⁾ An explanation for the persistence in the occurrence of violence against women in armed conflict and post-conflict situations, and the uneven im-

38) The NGO Working Group on Women, Peace and Security (21 October 2008), Open Letter To Permanent Representatives To The UN: Recommendations On The Security Council Open Debate On Women's Equal Participation and Full Involvement in all Efforts for the Maintenance and Promotion of Peace and Security, <http://www.womenpeacesecurity.org/media/pdf-2008_October_21_Open_Letter.pdf> accessed on 24 December 2008.

39) Security Council Report: Update Report Women, Peace and Security (21 October 2008), <http://www.womenwarpeace.org/webfm_send/1675> accessed on 24 December 2004, p.5.

40) Ibid., p.2.

plementation of Resolutions 1325 and 1820, is that they are merely expositions of the gendered nature of war and armed conflict. Gender relations are not viewed as a cause of war and armed conflict. The failure to recognise that link and to strategise accordingly brings me to the conclusion that there is little hope that any meaningful change will happen anytime soon.

Conclusion

So if we wanted to challenge the self-reinforcing triumvirate of patriarchal gender relations, militarism and ethno-nationalism, what steps should we take?

The NGO Group suggested that first, we should define security in human terms. This is done by creating a form of gender-aware human security where peace is defined as the positive and creative process of building sustainable societies. They encompass economic development, social justice, environmental protection, democratisation and disarmament. Second, integrate the 3Ps framework into all planning, design and implementation of initiatives. The 3Ps framework consists of conflict prevention, participation of women in peace and security and the protection of civilians while noting their special needs. Third, expand and revitalise partnerships with civil societies. Fourth, we must build a culture of peace to replace the culture of violence. Key components of this culture of peace include gender equality. The UN has defined it to mean a set of values, attitudes, modes of behavior and ways of life that reject violence and prevent conflicts by tackling their root causes to solve problems through dialogue and negotiation among individuals, groups and nations. There needs to be introduced a holistic, participatory peace education where people have and understand global problems, and can learn to resolve conflicts in a non-violent manner.⁴¹⁾

41) NGO Working Group on Women, Peace and Security (2004), No Women, No Peace: The Importance of Women's Participation to Achieve Peace and Security, Written for the UN Secretary-General's High Level Panel on Threats, Challenges and Change, <<http://www.peacewomen.org/un/ngo/ngopub/NoWomenNoPeace.pdf>> accessed on 24

These are, but the latest in the suggestions of 'how-to,' good ones though they may be. There is a bigger, if not the biggest, challenge to someone who is thinking of proposing another 'how-to': How to dismantle patriarchy? It is all pervasive and invasive. It is in our families, workplace, educational institutions, politics, government, judiciary, police, the law and even in the way we carry out our activism. This seemingly Sisyphean task needs new ways of thinking and doing, and so the search continues...

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8. The Practice of Torture against Acehnese Women

Poengky Indarti

Three police officers from United States, France and Indonesia were assigned on a task to analyze the sex and the age of a recently found mummy. Police officers from United States and France were failed to estimate. On the other hand, the third police officer from Indonesia confidently concluded that the mummy was female and her age was 15 thousand years old. Consequently, the police officers from United States and France could not resist asking their colleague from Indonesia on the method used. Then, the Indonesian police officer explained, "It is simple, I just tortured the mummy until she told me that she was a female and about her age."

The cynical anecdote above is often associated to the practice of torture of the Indonesian police department, which conflicted with its function as law enforcement institution. Although security apparatuses in Indonesia declared that they will reform themselves, however, based on the victims' and NGOs report, journalist's coverage and report of the UN Special Rapporteur on Torture Manfred Nowak, the practice of torture and impunity to its perpetrators still continuously being practiced in Indonesia, especially in conflict areas and targeting women.

The practice of torture in Indonesia

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹⁾ It is a right for all people to be free

from torture. This right against torture is a within the category of non-derogable rights, and must be respected in all situations including, situations of emergency or war.²⁾

The right against torture is categorized as *jus cogens*, which posits it as the highest norm within international law.³⁾ Those who commit torture are classed as acting against humanity (*hostis humani generis*), as is applied to crimes of the sea and slave trading in the past.⁴⁾ Further, crimes of torture on a large scale can be categorised as crimes against humanity.⁵⁾

Article 1 section 1 of the Convention defines torture as any “act by which severe pain or suffering, whether physical or mental, is

1) Article 5 Universal Declaration of Human Rights, 10 December 1948.

2) See common article 3 Geneva Convention 1949 and article 2 section (2) Convention Against Torture.

3) See the Prosecutor v Anto Furundzija, Case IT-95-17/1-T, Judgement 10 December 1998, Trial Chamber II, Judge Florence Mumba (Presiding), Judge Antonio Cassese, Judge Richard May. See also *Siderman Blake v Argentine*, the United States Court of Appeals for the Ninth Circuit, 965 F.2d 699; 1992 U.S. App., In discussing the claim of torture the Appeal Court decided that torture is within norm of *jus cogens* norms.

4) See *Filartiga v Pena Irala* case, 630 F.2d 876 (2d Cir. 1980), 30 June 1980, on remand , 577 F.Supp. 860 (E.D.N.Y. 1984), 10 January 1984.

5) See *R v Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte*. In his judgement, Judge Lord Browne-Wilkinson argue Ever since 1945, torture on a large scale has featured as one of the crimes against humanity: see, for example, ...; Statutes of the International Criminal Tribunals for the Former Yugoslavia ... and Rwanda ... Moreover, the Republic of Chile accepted before your Lordships that the international law prohibiting torture has the character of *jus cogens* or a peremptory norm, ie one of those rules of international law which have a particular status. In Furundzija's case at para 153, the tribunal said: ... The *jus cogens* nature of the international crime of torture justifies states in taking universal jurisdiction over torture wherever committed. International law provides that offences *jus cogens* may be punished by any state because the offenders are 'common enemies of all mankind and all nations have an equal interest in their apprehension and prosecution': *Demjanjuk v Petrovsky* (1985) 603 F Supp 1468, 776 F 2d 571." Judge Lord Hope of Craighead argue "The Statute of the International Tribunal for ... Yugoslavia ... includes torture in art 5 as one of the crimes against humanity. In para 48 of his Report to the United Nations the Secretary-General explained that crimes against humanity refer to inhuman acts of a very serious nature, such as wilful killing, torture or rape, committed as part of a widespread or systematic attack against any civilian population. Similar observations appear in ... the Secretary-General's Report of ... 1994 on the Rwanda conflict. Article 3 of the Statute of the International Tribunal for ... Rwanda ... included torture as one of the crimes against humanity 'when committed as part of a widespread or systematic attack against any civilian population' on national, political, ethnic or other grounds. Article 7 of the Rome Statute contains a similar limitation to acts of widespread or systematic torture."

intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

There were a number of cases of torture with massive numbers of victims carried out by the Indonesian security apparatus in an organised and systematic manner in the period between 1985 and 1998, from the time the Indonesian Government signed the Convention Against Torture until they became an actual party to the Convention. These cases include, among others, the cases of “petrus” or mysterious shootings (1983–1986),⁶⁾ the case of the Jaring Merah (Red Net) Operation in Aceh (1989–1998),⁷⁾ the case of Kedung Ombo (1985),⁸⁾ the case of Talangsari Lampung (1989),⁹⁾ case of Santa Cruz (November

6) Mysterious Shooters or Petrus are a method that was used by the apparatus on the pretext of eradicating crime. They were carried out between 1983 and 1986 aimed at hoodlums and former convicts who had previously helped the Government to pronounce Golkar as the winner of the 1981 election. Hundreds of these civilians and volunteers were killed by sniper bullets.

7) The ‘Jaring Merah’ (Red Net) Operation in Aceh carried out from 1989 to 1998 aimed to eliminate GAM in four districts of Aceh being Pidie, North Aceh, East Aceh and Greater Aceh. During this operation around 15,000 non-organic military personnel including Kopassus (Indonesia Special Forces) were deployed in Aceh. They established many strategic and tactical unit posts (which called pos satts) which were used for the capture and interrogation of people suspected of being members of GAM, or sympathising with GAM. The military were assisted by the police and civilians recruited as military assistance staff (cuak). Whilst Operation Jaring Merah continued many civilian victims were subjected to extraordinary torture in the various pos satts.

8) The Kedung Ombo case began with the flooding of 37 villages, 7 subdistricts in 3 districts of Sragen, Boyolali and Grobogan Central Java as a result of the Government’s development of the Kedung Ombo Dam funded by the World Bank. As many as 5268 families lost their land as a result of the establishment of this dam. The communities in the places that refused the development of the dam were captured and detained by the apparatus. They were tortured whilst detained.

9) The Talangsari case in Lampung was the case of an attack of the Military Resort Command 043 Garuda Hitam apparatuses led by Colonel A.M. Hendropriyono, Regional Police of Lampung (Polda Lampung) and the local Government (Pemda Lampung) on the Islamic

1991),¹⁰⁾ case of Marsinah (1993),¹¹⁾ case of Timika,¹²⁾ case of July 27 (1996),¹³⁾ case of Waropko, Merauke (1995),¹⁴⁾ case of the hostage

board school in Cihedeung, Dukuh Talangsari III, in the village of Rajavasa Lama, subdistrict Way Jepara, Central Lampung on 7 February 1989. The apparatuses carried out captures, detention, torture and killing of the Tangsari community who were stigmatized as followers of radical Islam. The leader of the people (named Warsidi) were also pointed as a Group Disturbing Security (Gerakan Pengacau Keamanan) and accused of establishing an Islamic state. This case increased the distrust of the Government towards the rejection by the community of the principles of Pancasila. The victims died as a result of the attacks were noted at 246 people, hundreds were detained and tortured. Those indicted before the Court were accused of subversion according to the section of the law on Subversion No.11/PNPS/1963.

- 10) The Santa Cruz case which occurred in November 1991 was carried out by the Indonesian military apparatus against the civilian community who were making a sacred visit to the Santa Cruz cemetery in Dili, East Timor. It is estimated that as many as 271 people died, 278 were injured, 103 admitted to hospital and 270 people reported missing, presumed dead.
- 11) The Marsinah case was a case of the death of an activist working for PT. Catur Putra Surya (CPS) Porong—Sidoarjo, East Java, named Marsinah as a result of brutal maltreatment that was thought to have been carried out by the apparatus of the District Military Command 0816 Sidoarjo in the District Military Command Office 0816. After the death of Marsinah, the military apparatus and police made a scenario as if the killing of Marsinah was arranged by the leaders of PT CPS. The leaders of PT.CPS were then captured and detained by police apparatus, accused of planning the murder of Marsinah. Whilst in detention the leaders of PT.CPS, amongst others Yudi Susanto the Chief Director and Mutiari the Head of Personnel were brutally tortured. Yudi Susanto as well as being beaten was forced to drink the urine of police apparatus and lick the toilet floor. While Mutiari was subjected to physical and psychological torture until the fetus she was carrying aborted.
- 12) This case was well-known as Munninghoff's report as this was reported by Most Rev. H.F.M. Munninghoff, Bishop of Jayapura, on 1 August 1995 to the Indonesian's Bishops' Conference entitled "The Report on Human Rights Violations against the Locals around Timika, District of Fak-fak, Irian Jaya" (*Laporan Pelanggaran Hak Asasi Manusia Terhadap Penduduk Lokal di Wilayah Sekitar Timika, Kabupaten Fak-fak, Irian Jaya*). This is the case of torture and extrajudicial killings committed by the security guard of Freeport Indonesia Company against the civilians who lived around the mining operation site.
- 13) The 27 July case is a case of an attack on the central office of the PDI on Diponegoro Street in Central Jakarta on the 27th of July 1996 by unknown persons, who are suspected of being military apparatus. This case began with an unequal leadership battle in the PDI office between Megawati and Soerjadi, who was supported by the Government. Soerjadi had the full support of Soeharto because Soeharto was afraid that Megawati would achieve victory at the 1997 elections. Hundreds of Megawati's supporters who took control of the office are suspected of having fallen victims to torture, disappearances and killings by the military apparatus. The trial on this case did not ever affect the military and the intellectual actors who were behind the attack. In fact Soerjadi also escaped any legal accusations.
- 14) This was the case of arbitrary arrest, detention and torture of five civilians committed by the Strategic Armed Forces 432 and the Special Forces Maleo 15 following the incident of shooting on 14 November 1995 in Komen river, Waropko, that killed Blasius Weripang

crisis in Loretz National Park, Mapnduma (1996),¹⁵⁾ and the Activist Kidnapping case (1997-1998).¹⁶⁾

Acts of torture that were undertaken by apparatus referred to above are not isolated incidents or cases of individual creativity, rather they became official policy of the Indonesian Government. This was proudly acknowledged by President Soeharto, who, in his memoir "Soeharto: My Thoughts, Words and Deeds," acknowledged that he himself had authorised the use of shock therapy as one of the methods to be used to overcome security problems and criminal cases, similarly there was a systematic use of "petrus" or mysterious shooters in Indonesia between the years of 1983-1986.¹⁷⁾

Indonesia became a signatory to the Convention, after the Indonesian Government ratified the Convention in 1998.¹⁸⁾ The Convention was

a member of Infantry Battalion 751 Company C and wounded Jumat Muntu, a civilian. The army claimed that the OPM did the shooting and accused the six civilians as the perpetrators, including Mr Baselius Arimjab Apay, Mr Hendrikus Kowip, Mr Kasimirus Iwop, Mr Benediktus Kua Wamba, Mr Benediktus Beraip, Mr Marius Kamelus Awinman. They were brought to trial and sentenced from 2-7 year imprisonment. This case was investigated and reported by the Legal Aid Foundation of Jayapura October 1996 entitled "Insiden Waropko, Laporan Hasil Investigasi Kasus Pelanggaran Hak Azasi Manusia di Desa Waropko, Kecamatan Waropko, Kabupaten Merauke, Irian Jaya"

15) This case attracted quite intensive international media coverage as some of 13 hostage were foreign researchers. The army deployed a military operation to set free the hostages but the impact was on the civilians living around the hostage spot. They were targetted by a massive military operation as they were accused to be part of the group who held the hostages: 3 civilians killed, 7 women raped, 16 people tortured. ELSHAM Papua, a Jayapura-based NGO, investigated this case and reported it to KOMNAS HAM in August 1999 entitled "Military Operation to Free Hostages and Human Rights Violations in the Central Range of Irian Jaya.

16) The Activist Kidnapping case occurred in the period between 1997-1998. There was a youth group that were critical of Soeharto's Government. Around 13 activists are still missing to this day. Several activists who are now safe have stated that they were also kidnapped by the Kopassus (Indonesia Special Force) Mawar Team who at that time were under the leadership of TNI Lieutenant General Prabowo Subianto, the son-in-law of Soeharto. The activists were kidnapped and taken to a place that was marked as the Kopassus Head Office in Cijantung. Whilst they were being held captive the activists experienced terror, intimidation and torture at the hands of the Kopassus apparatuses.

17) Ramadhan K.H., Soeharto: Pikiran, Ucapan dan Tindakan Saya (Soeharto: My Thoughts, Words and Deeds), Lamtoro Gung, 1989, p. 364

18) Office of the UNHCHR, Status of Ratifications of the Principal International Human Rights Treaties as of 2 November 2004, available at <http://www.ohchr.org/english/law/cat-ratify.htm>

adopted into Indonesian law through law number 5/1998¹⁹⁾ which means that the Convention has already become part of the law of Indonesia and must be implemented as to the fullest extent possible.

In 2008, the Committee Against Torture reviewed Indonesia's supplementary report that explained about all measures have been taken by the Indonesia Government to fulfill its obligation under the convention. The Committee recommended to the Government of Indonesia to end the practice of torture in Indonesia, including several issues that highlighted by the Committee for example misused of power against people in conflict areas e.g. Aceh, and the misleading implementation of Sharia law in Aceh that applied flogging/canning and stoning to death.

Based on the Committee's review, the Indonesian Government must pay more attention and take immediate actions to end the following aspects: widespread torture and ill treatment and insufficient safeguards during police detention, disproportionate use of force and widespread torture during military operations, impunity, definition of torture and appropriate penalties for acts of torture, coerced confessions, local regulations and breaches of the convention, and lack of effective investigations and prosecutions by the Attorney General.

In this article, focus will be given to women, especially Acehnese Women, for several reasons: first, torture against women is used to oppress women because of their gender and show male domination against women; second, women, children and elder people are among the most protected persons during conflict; third, torture against women also shows the ignorance of "predominantly male" Government towards its people, which majority of them are women and also shows that women treated as the secondary citizens; fourth, the misleading of norm, culture and religion used as justification to marginalize women; fifth, the voice of Indonesian women, especially from conflict area such as Aceh, must be spread up, therefore they will get justice everywhere; and the last, the writer of this article (myself) is woman

19) Law No. 5/1998 on Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

and my focus of work are security sector reform and human rights defenders in conflict areas of Aceh and Papua.

Unfulfill Promised: The practice of torture against women in conflict areas of Aceh

Aceh is located on the island of Sumatra, the western part of Indonesia, with more than 3.5 million inhabitants and many riches due to natural resources such as gas, oil, as well as non-fuel based such as coffee, palm oil and wood. 96% of Acehenese are Muslims, and Aceh is often referred to as “Negeri Serambi Mekkah” (“the Veranda of Meccca”).

The Acehenese demonstrated their strength during 1873-1942, when they united to defeat the colonising Dutch. After independence, the Acehenese agreed to merge with the Indonesian Government, on the condition that they would have full autonomy to govern Aceh itself. However, the Indonesian Government did not fulfill its promise of full autonomy. The Government ignored the “uniqueness” of the Acehenese situation, proceeded to impose ‘top-down’ policy in Aceh. For example economic policies and the management of natural resources were dominated by Jakarta and Java-centric governmental administration rules were implemented.²⁰⁾

Since this period there has been an element of distrust from the Acehenese community toward the Indonesian Government. Various Acehenese leaders have launched resistance movements against the Indonesian Government. From 1953-1959 Aceh’s leader Daud Beureueh declared the Islamic Nation of Islam and joined the war movement known as DI/TII (Darul Islam/Tentara Islam Indonesia).

President Soekarno responded to the resistance of Daud Beureuh by promising special status to Aceh. But the efforts at peace between Aceh-Jakarta did not last long because after Soeharto took power, he revoked the special status that was bestowed by Soekarno. The national government entered into contracts allowing foreign financial

20) Riza Sihbudi et.al, “From central politics to GAM: Identification is the root of the problem and its solution,” Mizan publisher, January 2001, p.34

investment in Aceh via exploration and exploitation of oil and natural gas by PT EXXON, and it became clear that Aceh's rich natural resources would belong to Jakarta and a handful of elite Acehnese.

The imbalance in social conditions, politics, the economy, and Government's arbitrary treatment of the Acehnese community motivated people Hasan Tiro to rebel against the Government. Hasan Tiro then initiated the Gerakan Aceh Merdeka (GAM—Free Aceh Movement) on December 4, 1976 along with the military branch was known as Angkatan Gerakan Aceh Merdeka (AGAM—Military Branch, Free Aceh Movement). The Indonesian Government responded militarily to the resistance.

During Soeharto's regime, Aceh was classified as a Daerah Operasi Militer (DOM—Operational Military Area) from 1989 until August 1998 which provided the conditions for the government to carry out a military operation to quash GAM's rebellion. The Government policy of conducting military operations in Aceh opened the door for torture to be inflicted on Aceh's civilian population. Many of those accused of being members of GAM or sympathising with GAM, experienced torture outside the boundaries of humanity. Based on data received from Forum Peduli HAM (FPHAM) Aceh, a local Acehnese NGO, over the period of DOM as many as 15,000 civilians were killed, 1958 were disappeared, 128 women and girls were raped, 81 people became victims of sexual assault, 597 houses were burnt, 16,375 people were disabled, including children, and as many as 23 mass graves have already been found containing hundreds of human skeletons.

The methods of torture used by the military and police were intended to terrify the Acehnese community. The military believed that torturing members of the community would be the most effective method of controlling the community, so that over time they could crush the community. A pattern of human rights violations by the military was established as follows:

1. Male victims who were accused of membership or supporting GAM were detained or abducted by the military. Following this the victims

were immediately shot or taken to the military post. At the military post the victims were tortured, killed or disappeared.

2. Female victims were held hostage until those accused of being members or supporters of GAM surrendered. The victims were also detained or abducted, and forced to give information about their families, for example their husband, father, child or other relative accused of membership or supporting GAM. Victims were taken to the military post and experienced things including: being stripped naked, raped, tortured, sexual assaulted/humiliated or killed.²¹⁾

The Alternative Report prepared by the Coalition of the Indonesian NGOs to the Committee Against Torture in 2001 mentions methods of torture that were used by the military and police apparatus against Acehese women, such as:

- Rape
- Gang rape
- Sexual assault
- Kicked, slammed and hit
- Electric Shock
- Rape followed by whipping with wire
- Stripped naked then left out all night
- Stripped naked then paraded in public
- Stripped naked and forced to perform oral sex
- Cutting genitalia
- Killed

The Acehese women were targetted by the security apparatus to be caught in order to oppress the struggle of the Free Aceh Movement and made them weak. The security also used women as human shields when they searched members of the movement in the villages.

After the fall of Soeharto on 21 May 1998, the Acehenese community campaigned loudly for the first time in public about the brutality

21) Dyah Rahmani, "Rumoh Gedong: The Scar of Acehese," published in 2001 by Cordova and LSPP, Banda Aceh-Jakarta, p. 41

that had been inflicted for many years. The people of Indonesia was very shock when they heard the story of Acehnese Women about “Kampung Janda” (Kampong of the Widows) and “Bukit Tengkorak” (Skeleton’s Hill), in which brutallity of Indonesian military tortured Acehnese Women never heard before.

During the operation of the Military Emergency in 2003, Acehnese women human rights defender became a target for the authorities, both the police and military. Many of those who were caught were then detained and experienced torture. For example, in Banda Aceh, the police caught the chairwoman of Yayasan Srikandi (Srikandi Foundation) Cut Nur Asikin on 20 May 2003, one day after the commencement of the Military Emergency status. The police accused Nur Asikin of committing assaults against the government and agitation. Nur Asikin was accused of being part of Panglima Inong Bale (Chief of the Women’s Free Aceh Movement Armed Forcers) and the police produced false evidence such as finding a GAM flag in a hotel owned by Nur Asikin. Nur Asikin was also accused of facilitating meetings in her hotel for high-ranking members of GAM. During her time in detention, Nur Asikin stated that she was tortured by the authorities and it was only when she was moved to the prison in Lhok Nga did her torture cease. Cut Nur Asikin was sentenced to 11 years imprisonment and was ordered to be moved to the women prison in Tangerang – West Java.²²⁾ However while she was still detained at the Lhok Nga prison the Tsunami hit and she was one of the detainees who died.²³⁾

Nuraini (a Staffer of Kontras Aceh) was arrested on 19 June 2003 together with Nuraini’s father Zakaria (who was 72 years old) and their neighbour named Zulkifli in the village of Lueng Dama, Pidie. A combined unit of military and police personnel from Yonif-315/JRD, Koramil-5/Delima, Yonif-642 and Polsek Delima conducted the raid. They hit them and covered Nuraini’s eyes, then they took them all to Polsek Delima headquarters. The authorities accused Nuraini’s father of being a member of GAM and having a weapons hidden in his house.

22) The writer interviewed Cut Nur Asikin in Lhok Nga prison, Greater Aceh, 15 May 2004.

23) Imparsial report about Aceh about the period of the tsunami, visiting the location of the ruins of the women’s prison Lhok Nga on the 14 January 2005.

Nuraini was released from police detention on 3 July after many telephone calls from Jakarta and abroad to confirm that Nuraini was being held. Nuraini's father's case continues to be processed within the criminal justice system and he is detained at the prison in Kedah Banda Aceh.²⁴⁾

Nazaria, human rights activist, was arrested by the Police of East Aceh and accused of hiding her husband who was a member of GAM, even though Nazaria had divorced long before. Nazaria were released after a few days detention. While in detention she experienced psychological abuse as she was shouted at and threatened by the authorities. Her mobile phone was also confiscated by the authorities. The authorities ransacked her office at PB HAM East Aceh office and tried to burn the office documents.²⁵⁾

A few days after the capture of Nazaria, the East Aceh Police arrested Nursyamsiah and her staff member Fitriani from Pemberdayaan Harkat Inong Aceh (PHIA). They were interrogated about their activities. The police directed their accusations at them being a part of inong bale because the name of their organization PHIA also has the word "Inong" which means woman. Because there was no evidence that they were members of inong bale, the police released them. During the time they were detained, Nursyamsiah and Fitriani were also shouted at and Fitriani was slapped by the police.²⁶⁾

Of the activists who were included in the suspects list (*daftar pencarian orang*, DPO) of the police and military, there were many who tried to find safety by leaving Aceh. Such activists included Kontras Aceh and LBH Banda Aceh because they criticized the police and military. Asiah from Kontras Aceh and Ratna Dewi from LBH Banda Aceh were pursued by the authorities, which forced them to be evacuated out of Aceh.

During the operation of Military Emergency, the detention and conviction of women also increased. Many women were taken before

24) The writer interviewed Nuraini in Jakarta, August 2003.

25) The writer interviewed Nazaria in the office of PB HAM Aceh Timur, Langsa, 18 May 2004.

26) The writer interviewed Nursyamsiah and Fitriani in the office of PHIA, Langsa—Aceh Timur, 18 May 2004

the criminal justice system with accusations of being an inong bale or female soldiers of GAM, GAM members or GAM supporters. During the process of arrest and detention in the police station or military headquarters they experienced torture and sexual assault. Some women stated that when they were arrested they were taken to the SGI station in Pidie, there they experienced torture and were sexually assaulted repeatedly, and the authorities there also had a practice of spying of the women when there were asleep or bathing.²⁷⁾ Many of those women who were detained or convicted died when the tsunami hit on 26 December 2004 destroying much of the Lhok Nga prison.²⁸⁾

The reports on human rights in 2004 by the Aceh Human Rights NGO Coalition indicated that the year after the implementation of Military Emergency there were many violent acts which affected 968 people being affected. The majority of the victims, 456, were civilians, with 119 being killed, 176 tortured, 84 abducted or disappeared, 6 sexually assaulted and as many as 71 being arbitrarily detained.

At the start of 2004, Aceh still was in a state of Military Emergency with the Presidential Decree No 97/2003 which was designated the period of 18 November 2003 until 19 May 2004.²⁹⁾ However, in the

27) The writer interviewed female detainees and those already convicted in Lhok Nga prison—Greater Aceh on the 15 May 2004.

28) Imparsial report on the Tsunami in Aceh and the impact for Aceh human rights defenders. Visiting the ruins Lhok Nga—Aceh Besar prison, 14 January 2005 which was three weeks after the tsunami.

29) At the beginning of her government, Megawati extended the political umbrella through Presidential Decree (Inpres) No 4/2000 to endure the continued legality of the military operation in Aceh, which was originally declared by Presiden Abdurahaman Wahid, and continued by Megawati in issuing Inpres No 7/2001 and Inpres No 1/2002. In the following phase, Megawati made efforts to re-open negotiations which gave rise to the Cessation of Hostilities Agreement (CoHA) which was signed on 9 December 2002 in Geneva, but then failed when it entered the demilitarization phase. Efforts for peace became efforts for war, because Megawati issued a political policy stating that Aceh was under a State of Military Emergency which disertai military operation in Aceh for 6 months pursuant to Kepres No 28/2003, which started from 19 May 2003 to 19 November 2003, Rekonstruksi negara melalui kebijakan darurat di Aceh, analisa kebijakan di Indonesia by Imparsial team, 3 November 2004.

Further, the condition of the Military Emergency in Aceh did not cease TNI pressure who wanted to resolve the Aceh conflict through violence through military operations. It is difficult to find written evidence on this issue however it can be seen in the political attitude of the high level officers in the TNI. For example, the conflict in the time of COHA was continually justified by high level TNI officers as a failure of peaceful methods through

midst of the frantic atmosphere in the lead up to the elections on 18 May 2004, Megawati decreased the status in Aceh from a Military Emergency to a Civil Emergency pursuant to Presidential Decree (Kepres) No. 43/2004.³⁰ Despite the change in status, the practices of military operations did not change, and security continued to be imposed through military operations in efforts to resolve the conflict in Aceh.

Throughout the operation of the civil emergency status in Nanggroe Aceh Darussalam (NAD) province, cases of violence and human rights abuses continued to occur. The occurrence of cases of violence and violations of human rights is related to the weakness in government police which does not provide clear limits about the aims of military operations and the disregard for human rights law as guidelines for resolving conflict. While the military operations continued resolutely, there were also other efforts aimed at restoring security which covered the rule of law, restoration of the economy, stabilization of the government functions, and humanitarian operations which were not implemented to their potential.

In the context of the rule of law, the injustice displayed by court decisions through the military emergency period aggravated the disappointment of the Acehnese community in the Central government. An example of such a case was the sentence handed down to three military officers who raped 4 Acehnese women and were only sentenced to between 3 to 4 years detention. Based on the criminal code, for both civilians and military personnel, the sentence for those convicted of rape carries a maximum of 12 years. These sentences can be com-

negotiation. Further, it can be seen in analyzing the data in relation to conflict between the TNI and GAM, at the time before COHA and during COHA, a decline in violence during the period of COHA is clearly evident. In the time before COHA there were 12~13 shooting exchanges each day, while during the time of the COHA only about 2~3 cases of of shootings per day. Furthermore, negotiation efforts in Japan not yet occurred, nevertheless the TNI as a party, had already deployed forces to some of the primary harbours. On the 8 May 2003, about 1, 300 soldiers which were gathered as a Rapid Response Force (Pasukan Pemukul Reaksi Cepat/ PPRC) which was already ready to depart from the quay in Ujung Surabaya, Kompas 8 May 2003.

30) Kompas Daily, 14 May 2004, Aceh status became a Civil Emergency. See also the Presidential Decree No. 43/2004 at http://www.indonesia.go.id/produk_uu/produk2004/kp2004/kp43'04.htm

pared with the 5 year sentence handed down to Mohammad Nazar on the basis of his activities in demanding a referendum be held in Aceh.

On 19 August 2004, the TNI from Yonif 400/Raider arrested and detained woman activist Yulidartini (25), together with four other Perempuan Merdeka (Independent Women) staff members, Irmawati, Krisna, Anissa Narda and Naisnayah. Yulidartini was taken to the TNI Yonif 400/Raider UDKP post in Seulimum sub district, Greater Aceh. There the activist experienced physical torture including being beaten. Yulidartini was tortured with an electric current 3 times on her fingers and was slapped in the face so that her mouth bled. Yulidartini and her colleagues then were released after the military could not find any evidence that they were linked to GAM.³¹⁾

On 26 December 2004, Aceh was hit by a massive earthquake and tsunami that caused the death of 311,029 people, with another 37,000 people missing and 66,622,249 homes destroyed.³²⁾ The earthquake and tsunami brought about a change in government policy on Aceh and the relaxation of restrictions of access to the region by the international community. In order to rebuild Aceh, which had been flattened by the earthquake and tsunami, the government of Susilo Bambang Yudhoyono decided on 18 May 2005 to reinstate the “civil order” status in Aceh, a downgrading of the previous “civil emergency” status.³³⁾

The Government of Indonesia received financial assistance from a number of different countries to assist in reconstruction. One of the conditions attached to this assistance was that there would be efforts by the government to bring about peace in Aceh, with the reasoning that reconstruction would not be possible in the absence of peace. Because of this, the government and Free Aceh Movement (Gerakan Aceh Merdeka – GAM) returned to the negotiating table. Talks were facilitated by Crisis Management Initiative (CMI), which

31) The writer interviewed Yulidartini in Banda Aceh, 22 May 2005

32) Data from the Aceh Reconstruction and Rehabilitation Agency (Badan Rekonstruksi dan Rehabilitasi (BRR) Aceh) as of 19 June 2005 (6 months following the tsunami).

33) Kompas, 16 May 2005, “Aceh Status Tertib Sipil Mulai 18 Mei 2005.”

is headed by the former President of Finland, Marti Ahtisaari. The talks took place over five sessions and began on 27 January 2005 in Helsinki.³⁴⁾

Although the central government changed its stance and entered into peace talks, initially the situation on the ground did not reflect this. The local government in Aceh continued to use “separatism” as legal rationale for the pursuit, arrest and detention of activists in Aceh. Chief of Aceh Regional Police, Inspector General Bachrumsyah Kasman, said there were indications that activists from the political front, Aceh Separatist Movement (Gerakan Separatist Aceh – GSA), were preparing to return to Aceh following the quake/tsunami disaster. According to Bachrumsyah, these activists were thought to be working surreptitiously in organisations or NGOs, either local or international. Based on this, Bachrumsyah ordered the heads of all police resorts and sectors (Kapolres and Kapolsek) in Aceh to again refer to and study the names of people whom on the suspects list (daftar pencarian orang, DPO). If suspects on the list were identified, the chief of police ordered that criminal procedures immediately be initiated against the activists in question.³⁵⁾

The impact of torture to Acehese women is very serious. All Acehese women are very traumatic, their live have been ruined, and it is very difficult to forget the painful memories out of their mind. They will bring the Government’s stigma of separatist till death. The Acehese women who become victims of torture, rape, sexual assault and murder (including several names that mentioned above) never get reparation from the Government because the Government did not bring the perpetrators to justice. The Government’s promise to fully implement the Convention Against Torture never been kept.

34) Crisis Management Initiative, Aceh Peace Process Negotiation, www.cmi.fi. The first round of negotiations was held from 27~29 January 2005, followed by the second round from 21~23 February 2005, the third from 12~16 April 2005, and then, the forth from 26~31 May 2005. Between the fourth and fifth rounds of talks, CMI prepared a draft Memorandum of Understanding that was based on the outcomes of the forth round of talks. The fifth round of talks were held from 12~17 July 2005 and the peace agreement was signed on 15 August 2005.

35) Serambi Aceh Daily, 22 May 2005.

Bylaws on Criminal in Aceh: Once again, Acehnese women are betrayed.

On 15 August 2005, peace negotiations between the government and GAM reached a climax with the signing of a Memorandum of Understanding (MOU) in Helsinki. Based on this agreement, each side had to adhere to a number of commitments, including commitments for the withdrawal of troops and disarmament. These commitments were met. In accordance with the MOU, GAM demobilised 3,000 fighters and surrendered 840 home-made weapons for destruction. The Government of Indonesia committed to withdrawing 18,000 non-organic military personnel and 3,800 non-organic police officers from Aceh. Following this demobilisation, there are 14,700 Acehnese military personnel and 9,100 Acehnese police officers serving in Aceh.³⁶⁾

After the Memorandum of Understanding was signed, as part of the peace agreement in Aceh, Law No. 11/2006 on Aceh Governance stipulates that the Sharia Law is enforced in this province as recognition of its special autonomy status within the Indonesian Unitary state system. This policies are not new. During the Gus Dur's government, he also gave political compensation to the community in Aceh in the form of laws on Islamic Syariah, Special Autonomy status, and the restoration of Aceh's name, Nanggroe Aceh Darussalam (NAD).³⁷⁾

Local regulations (bylaws) produced in Aceh have their own Arabic term, qanun (cannon). Through the qanun, Muslim dress is obligatory for Muslim women and close proximity between an unmarried woman and a man who is not her guardian (khalwat) is a violation punishable by public flogging. This form of punishment has never existed within the Indonesian legal system and undermines the provisions of Law No. 23/2004 on Local Government which stipulates that law, religion and security as sectors which remain under the authority of the national government and are not decentralized to local governments.

36) Imparsial Report on the Peace Process in Aceh 2005.

37) Ministry of Foreign Affairs, "Presidential Instruction No. 4 of 2001 about comprehensive steps in the plan to resolve the Aceh problem," <http://www.dfa-deplu.go.id>

The procedures of implementation violates basic legal guarantees, including the principle of presumption of innocence. The prosecution process developed in enforcing Sharia Law provides no protection to the rights of those accused of its violation. The accused are provided with no opportunity to defend themselves, have no right to legal counsel, and, therefore, increases the risk of punishing innocent women. The provincial government in Aceh has established a new body to enforce the Sharia Law, the *wilayatul hisbah*, another unprecedented body within the Indonesian system of governance.

Punished women face persistent stigmatization by the community. The form of punishment, which is carried out in public view (including children), results in a persistent stigmatization of those accused of violating the Sharia Law. The generated social sanctioning lasts far beyond the execution of flogging. For women, the impact of the punishment is worse than for men. Women sentenced with public flogging are labeled as immoral by their community, families and husbands.

As part of their newly-gained autonomy, under Indonesia's decentralization scheme, other parts of Indonesia has started introducing public flogging as a form of punishment, such as Bulukumba District of South Sulawesi, although it has not been implemented.

UN Special Rapporteur on Torture, Prof. Manfred Nowak on his report before the UN Human Rights Council in March 2008³⁸⁾ explained that he was concerned about penalties provided for by Sharia law, such as public flogging, incorporated into the 2005 Aceh Bylaws following the special autonomy status agreed in the Helsinki Memorandum of Understanding. These local regulations criminalize the consumption of alcohol, closed proximity between unwed couples, and gambling, and penalize them by flogging. Corporal punishment constitutes degrading and inhuman treatment in violation of article 7 ICCPR and article 16 CAT and should therefore be abolished. These morality offences under Sharia law are normally tried in public hearings, at which the audience can shout at the defendant, which renders the

38) See A/HRC/7/3/Add.7, 7 March 2008.

presumption of innocence meaningless. Moreover, punishments are carried out in public and are often televised.

In May 2008, the Committee Against Torture was deeply concerned that local regulations such as Shariah Bylaws on Criminal Code adopted in 2005, introduced corporal punishment for certain new offences. The Committee is concerned that the enforcement of such provisions is under the authority of “morality police”—the Wilayatul Hisbah, which exercises an undefined jurisdiction and whose supervision by public state institution is unclear. Furthermore, the Committee is concerned that the necessary legal fundamental safeguard do not exist for persons detained by such officials, including the absence of a right to legal counsel, the apparent presumption of guilt, the execution of punishment in public and the use of physically abusive methods (flogging, canning, etc) that contravene the Convention and national law. In addition, it is reported that the punishment meted out by this policy body have a disproportionate input on women.³⁹⁾ The Committee then recommended the Government of Indonesia to review all bylaws contravened.

Instead of reviewing all bylaws that contravene with the Convention as recommended by the Committee, the Government of Indonesia ironically seems do not pay much attention on it. Until the second week of September this year, the local parliament of Aceh has passed the bylaw on Adultery by applying stoning to death as its punishment, which increasing criticism by civil society and human rights groups. Under the controversial bylaw, adulterers may be stoned to death, while individuals engaging in sexual activities out of wedlock can be caned. The bylaw, which is applicable to Muslims and non-Muslims, also criminalizes homosexuality and punishes all parties proved to have “facilitated” such acts including hotels and entertainment venues.

After receiving sharp criticism, Home Affairs Minister Mardiyanto says the government will ask the Supreme Court to review the Islamic criminal code newly-endorsed in Aceh, which condemns adulterers to death by stoning. His statement signaled the first time the central

39) See CAT/C/IDN/CO/2, 16 May 2008, point 15, page 5.

government had intervened in the issuance of rules and legislation by the Aceh administration and council. Furthermore, Mardiyanto told reporters that he was coordinating with Justice and Human Rights Minister Andi Mattalatta, who is scrutinizing contentious articles in the bylaw endorsed by the Aceh legislative council. "The government and the public can voice their objections to the qanun (sharia bylaw); they can demand the Supreme Court review the bylaw if they consider it wrong or improper. The government will no doubt do that," Mardiyanto said. "Aceh is part of Indonesia, so it must respect the Constitution and the laws of the country. And remember, Aceh should not be issuing bylaws that are detrimental to its people," he added. "Investors will refuse to come, people will be afraid to visit Aceh... They have to take those things into account."⁴⁰

Once again, Acehese women are betrayed by the Government. They still become victims of the Government's policy. Acehese women still hope that all regulations and Government policies after Peace Agreement in Aceh will give protection to Acehese women and will end any forms of the practice of torture against them.

Conclusion

The practice of torture against women in conflict area of Aceh is still exist and it needs broader cooperation to end. The Government of Indonesia must be monitored, whether it fulfill its obligation under the Convention or not. International monitoring, such as the UN Human Rights Council, the Special Rapporteur on Torture and the Committee Against Torture must be supported by broader international solidarity to end the practice of torture in Indonesia, including Korea, that has very good relationship with Indonesia.

40) See the Jakarta Post "Government to review Aceh's stoning bylaw," 17 September 2009, at <http://www.thejakartapost.com/news/2009/09/17/government-review-aceh%E2%80%99s-stoning-bylaw.html>

Recommendation

For the Government of Indonesia

1. The Government of Indonesia must end the practice of torture in Indonesia, especially in the conflict area of Aceh by fully implementing Convention Against Torture as well as Law on the Governance of Aceh, in which stipulated that all perpetrators of human rights violation in Aceh must be brought to justice;
2. The Government of Indonesia must monitor and review all by-laws in Aceh and other areas that contravene with national law and international convention ratified by the government;
3. Revoke all bylaws and regulations as mentioned above;
4. Rehabilitation and Compensation must be given to the survivors of torture or family of the deceased;

For the Government of Korea

1. Supporting Indonesian Government to end the practice of torture in Indonesia, especially in the conflict areas, e.g. Aceh, by providing grants, training for police/law apparatuses, initiating mutual legal agreement to combat torture, establishing shelters for women survivor of torture;
2. Considering human rights protection as conditionality for development cooperations;

For Korean Civil Society

- (a) Supporting Indonesian People to end the practice of torture, especially in conflict areas, e.g. Aceh, by monitoring human right situation in that area;
- (b) Supporting the establishment of rehabilitation center for women survivor of torture in Aceh.

III

Human Rights Movements against State Violence

9. Campaigning for the Rome Statute of the International Criminal Court in ASIA

Evelyn Balais-Serrano

“The time is at last coming when humanity no longer has to bear impotent witness to the worst atrocities, because those tempted to commit such crimes will know that justice awaits them” (Kofi Annan, April 11, 2002)

Introduction

The paper discusses the establishment of the ICC as a landmark achievement in international law and international justice. It presents some of the breakthroughs in international standard setting and highlights its relevance and challenges in the Asian context. It argues that when Asian countries ratify or accede to the Rome treaty, the opportunities towards enhancing the rule of law, ending impunity and forging peace in the region are greater. It highlights the role civil society is playing in the whole process of establishing the ICC and ensuring it functions according to its mandate as an independent and effective mechanism for justice.

The Rome Statute—A landmark in the history of international law

The 20th century was the bloodiest period in human history. Yet no major perpetrator of the horrendous crimes committed during those times had ever been brought to justice. For more than fifty years, the international community had been aspiring to have an independent and effective international criminal court. With the International Court of Justice (ICJ) established to deal with disputes involving states, the Tokyo and Nuremberg Tribunals and later the Special ad hoc Tribunals for Rwanda, the former Yugoslavia and Sierra Leone to try specific crimes committed in those territories, the collective desire to try individual perpetrators of the most heinous crimes of genocide, war crimes, other crimes against humanity and aggression was very much called for. Though the idea of an international criminal court was introduced as early as the 18th century, it was only in 1995 when Trinidad and Tobago proposed to the United Nations general assembly the establishment of an international criminal court and consequently the UN convened a Plenipotentiary Conference in 1998 to draft the ICC treaty. On July 17, 1998, the Rome Statute creating the ICC was adopted by 120 states, marking this day as a landmark in the history of international law and international justice. Since coming into force in July 2002, July 17 has been declared by the international community as the World Day of Justice.

International law experts consider the Rome Statute of the ICC as the greatest advance in international law since the founding of the United Nations. According to William Pace, convenor of the Coalition for the International Criminal Court (CICC), “Its birth represents the victory of so called ‘new diplomacy’ model of developing international law, one that reflects one of the best examples of what can be achieved through strategic cooperation among governments, international organizations and civil society.”

The 1998 Amnesty International Report on the Rome Statute highlights the significance of the ICC: “The true significance of the adoption of the Statute may well lie, not in the actual institution itself in

its early years, which will face enormous obstacles, but in the revolution in legal and moral attitudes towards the worst crimes in the world. No longer will these crimes be simply political events to be addressed by diplomacy at the international level, but crimes which all states have a duty to punish themselves or, if they fail to fulfil this duty, by the international community in accordance with the rule of law.”

The ICC is the first permanent and independent international criminal court with the mandate to try the most serious crimes of international concern: genocide, crimes against humanity, war crimes and once defined, the crime of aggression committed by individuals since the coming into force of the treaty, July 1, 2002. The crime of aggression shall be dealt with by the Court when the Assembly of States Parties has agreed on the definition. This will only happen until the Review Conference has been convened which takes place in 2009, seven years after the Rome treaty has come into force, as provided for by the Rome treaty.

The ICC is designed to complement national judicial systems in prosecuting crimes within the Court’s jurisdiction. Only when national courts are unable and unwilling to investigate and prosecute the crimes can the Court exercise its jurisdiction over the case. This complementary principle enhances states’ sovereignty as it provides primary jurisdiction to the state to try the case.

The ICC: Some breakthroughs

On Gender Justice

The Rome Statute of the ICC is groundbreaking in its provisions relating to gender justice. While we recognize history as full of examples of women being targeted as victims of sexual assault in armed conflict situations, all too often these acts of sexual violence have been accepted as natural consequence of war. The Rome Statute is the first international treaty to recognize a range of sexual and gender violence as among the most serious crimes under international law. The criminalization of violent sexual and gender related acts provided in the Statute

as crimes against humanity and as war crimes, represents a significant step towards the recognition of these crimes by the international community. Women's rights experts consider the Rome treaty as more advanced than CEDAW as it codified the sexual and gender related acts as crimes against humanity, not just as crimes committed in the context of wars and conflicts. These crimes include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.

On Victims' Rights and Protection

Another major breakthrough is on victims' rights and protection. Special provisions for victims' rights, including the right to participate during the process of investigation and trial have been laid out, giving due attention to victims. Victims' rights include their right to truth or to know the factual information about the case, to fair trial, to a counsel, to effective remedies, including punishment to those found guilty of the crimes and the right to reparation which includes restitution and compensation.

This is of utmost importance to Asia not only because of the high number of victims of serious crimes in the region, mostly women and children, but the dismal treatment the victims are getting from the authorities, not to mention the serious threat to their and their families' lives especially when they stand witness against the perpetrators of the crimes committed. One significant feature of the Rome treaty is that, it has a Victims Trust Fund that can provide benefits to victims and their families relating to their reparation, including restitution, compensation and rehabilitation. The Victims' Trust Fund is administered by a board, comprising of five members representing the five regions of the world and elected by the Assembly of States Parties of the ICC.

Another significant provision of the ICC treaty is the irrelevance of official capacity. Article 27 states that "This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or Parliament, an elected representative

or a government official shall in no case exempt a person from criminal responsibility under this Statute, not shall it, in and of itself, constitute a ground for reduction of sentence. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.”

A recent example is the arrest warrant issued against Sudan’s president, Omar Hassan Ahmad al-Bashir for crimes of genocide, crimes against humanity and war crimes committed in the past five years in Darfur. Prior to this, warrants of arrest were issued against Ahmad Muhammad Harun, Minister of State for Interior of the Government of Sudan and Ali Muhammad Al Abd al-Rahman, a militia leader for similar crimes committed in 2003 and 2004.

Since the referral of Darfur to the ICC by the Security Council on March 31, 2005, Sudan has refused to cooperate by arresting the two accused Harun and Rahman and turning them over to the Court for prosecution. Instead, the Sudanese authorities waged a campaign to persuade the Security Council to defer the ICC proceedings on Bashir invoking Article 16 of the Rome Statute which provides for possible deferral of trial for a renewed period of 12 months by the Security Council. This deferral is meant to ensure that the Security Council’s peace-making efforts will not be jeopardized by the Court’s investigation or prosecution. The African Union and the Organization of the Islamic Conference supported Sudan’s position and therefore, the risk of political interference in the judicial process is high.

While the Rome Statute deals with both state and non-state actors, the case of Sudan provides a classic example of the Court addressing state-perpetrated violence. ICC Prosecutor Luis Moreno-Ocampo, in his report to the Security Council pronounced “the entire region of Darfur to be a crime scene and his evidence makes clear that the widespread crimes against civilians “required the sustained mobilization of the entire Sudanese apparatus.”¹⁾ But even with non-state actors perpetrating widespread violence, the responsibility to prevent

1) Genocide in Darfur: Challenges and Opportunities for Action, Nicolas Burniat, Betsy Apple, CICC Monitor, Issue No. 37.

or to stop such violence still rests on the state. “It is important to be clear that among mass atrocities, no single crime is worse than another and each requires similar action from the international community. Grave violations of the Geneva Conventions and crimes against humanity are as appalling as the crime of genocide, and the Rome Statute justly vests the ICC with the responsibility to prosecute all of them equally.”²⁾

Another argument is the emerging norm of the Responsibility to Protect, which provides that states have the duty to protect their populations against war crimes, crimes against humanity, ethnic cleansing and genocide. Under Genocide Convention, states have the duty not only to punish genocide when it happens but also to prevent it from occurring on their territory as well as in other countries.

Some governments in Asia have not joined the ICC for fear of being brought before the Court for the serious crimes that maybe attributed to them while in power. The Rome treaty provides no immunities to heads of states and monarchies as many countries in Asia have immunity provisions in their national laws. For example in Thailand, there is fear for the King to be indicted by the Court which make the government reluctant to ratify the Rome treaty. In Indonesia and the Philippines, the security sectors pose objection to the governments’ ratification for fear of being charged for crimes committed by the police and the military especially in conflict areas.

However, there is a provision in the Rome Statute on non-retroactivity. Article 24 states that: “No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute. Therefore, any state has no reason to fear of being charged for crimes committed before 2002 when the Rome treaty came into force, unless such state plans to commit crimes in the future. Otherwise, there is no basis of any fear of being brought before the Court.

Another significant feature of the Rome Statute is the absence of death penalty in giving of sentence to those found guilty of crimes. The highest individual sentence as provided for by Article 78 of the

2) Ibid.

Statute, is a maximum of 30 years imprisonment or a sentence of life imprisonment. Despite a worldwide campaign against the use of capital punishment by international organizations and governments, death penalty is still practiced in most countries in Asia, notably in China, Singapore, Malaysia and Indonesia.

Global Campaign for the ICC—The role of civil society

The global campaign for the ICC was initiated by international organizations like Amnesty International, Human Rights Watch, International Commission of Jurists, International Federation of Human Rights, World Federalist Movement and others lobbying at the UN for the establishment of an international criminal court since 1995. These organizations formed themselves as the Coalition for the International Criminal Court (CICC) and since then have worked closely with its members, governments, inter-governmental bodies, the United Nations system and the media in advocating for a fair, effective and independent ICC. The result was the overwhelming adoption of the Rome Statute on July 17, 1998.

“The Rome Statute and the ICC are universally acknowledged to be the unique achievement of historic partnership between small and middle-power democracies and global civil society working together...³⁾

This partnership formula has worked effectively in the establishment of the ICC from its drafting process, to its adoption in 1998 and finally, to coming into force in 2002. Ten years after, with 18 judges and a prosecutor elected by the Assembly of States Parties of the ICC, it has commenced its initial investigations on four situation countries namely Uganda, Democratic Republic of Congo, Central African Republic and Darfur, Sudan. Under case analysis are situations in Cote d'Ivoire, Colombia and Afghanistan.

3) Note from the Convenor, William R. Pace, CICC Monitor, Issue No. 36

Governments have acknowledged and recognized the important role the civil society has played throughout the process. UN former Secretary General Kofi Annan said during the Global Issues Forum on April 29, 1999: "NGOs helped make 1998 the year of the International Criminal Court...NGOs have helped give life to the idea of an international community. It is clear that there is a new diplomacy, where NGOs, peoples from across nations, international organizations, the Red Cross, and governments come together to pursue an objective. When we do, there is nothing we can take on that we cannot succeed in, and this partnership of NGOs, the private sector, international organizations and governments, in my judgment, is a powerful partnership for the future."

Campaigning for ICC in Asia

In 1998, a group of lawyers from Bangladesh organized the Asian Network for the ICC (ANICC) and thereafter initiated activities in South Asia to promote the ICC. In 1999, Forum-Asia, a regional network of human rights organizations based in Bangkok, Thailand, was invited to attend the Preparatory Commission of the ICC in New York, USA. Thereafter, it undertook the task of organizing a regional consultation on the ICC which paved the way for the formation of a regional network on the ICC, with Forum-Asia serving as CICC's focal point for Southeast Asia and later in 2002, for the whole of Asia. In 2006, Forum-Asia became a member of the CICC Steering Committee, representing the Asian region. Other sub-regional focal points are the Asian Human Rights Commission based in Hongkong for northeast Asia and Odhikar in Bangladesh for south Asia. Within these sub-regions are local organizations that are campaigning for ICC ratification and implementation at the national levels. Except for countries like Brunei Darussalam, Bhutan and Maldives, all other countries have their own ICC focal points which are responsible for generating support for the ICC, both from their respective governments and civil societies. They do these by organizing workshops, seminars and other awareness building activ-

ities, lobbying their governments and broadening and strengthening their organizational networks.

Despite the active campaigns, Asia remains the least represented region in the ICC together with the Middle East. To date, of the 108 states parties to the Rome treaty, only 6 countries are from Asia, namely Afghanistan, Cambodia, Timor Leste, Republic of Korea, Mongolia and Japan. Three have signed but have not yet ratified: Bangladesh, Thailand and the Philippines. Two states parties, Republic of Korea and Japan have completed their implementing legislation while the four other countries that have ratified are at different stages of their drafting process; 21 have signed the bilateral immunity agreement (BIA) with the USA and only two, South Korea and Mongolia have so far signed the Agreement on Privileges and Immunity of the Court (APIC), a separate treaty that has to be signed and ratified by a state party or a non-state party allowing the Court personnel to conduct its work within the state's territory. As the ICC is independent from the United Nations, it has to go through this process of signing and ratifying such agreement with states which gives privileges and immunities to all its personnel similar to what UN personnel enjoy when they are in the field.

Role of Korean Society

Republic of Korea ratified the Rome treaty on 13 November 2002, one of the first countries in Asia that ratified the Rome treaty after it came into force in 2002. The first elected judge of the Court representing the Asian region came from Republic of Korea. With the country's past experiences of wars, atrocities and serious human rights violations committed by repressive governments, it has gained moral ground in its search for justice for thousands of victims and their families. What it has so far achieved through its contributions to the establishment and functioning of the International Criminal Court has given it a moral authority among Asian countries in the search for international justice. Korea must take a lead role in urging other countries in the region to ratify and implement the Rome treaty as

a way of not only dealing with the region's own problems of impunity and injustice but also in forging strong solidarity with other peoples of the world in similar, if not worse situation.

In all of Korea's bilateral and multilateral relations, it should include in its policy to encourage other countries not yet party to the Rome treaty to consider ratification and implementation.

On specific cases, Korea can also take a strong position to urge countries to stop providing arms and other military assistance to the government of Sudan and increase its support to the UN Security Council and other UN agencies in taking more effective measures to prevent further commission of genocide in Darfur. In Asia, Korea can use its influence to other countries in the region, particularly China, in pressuring the military junta of Burma to consider recognizing and implementing UN resolutions on Burma and the ASEAN's 'Roadmap to Democracy.'

Asia being one of the hotbeds of conflicts in the world, the ICC will soon find its way in the region's territory. Of the major conflicts in Asia, Afghanistan is now one of the situations under analysis by the Office of the Prosecutor for possible investigation. A state party since 2003, the Afghan government has submitted cases involving the Talibans to the ICC. Under Article 14 of the Rome Statute, 'A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with commission of such crimes.' This was the case of Uganda, Central African Republic and the Democratic Republic of Congo where, as states parties, they referred their cases to the ICC.

Burma is another possible case. For decades, the Burmese people had suffered extreme forms of human rights violations committed by the military junta and no amount of international pressure has so far put a stop to all the atrocities. The magnitude and extent of such crimes are acknowledged by many as crimes against humanity, including the indefinite detention of opposition leader, Aung San Suu

Kyi who had been held under house arrest for the past 20 years. However, since Burma is not a state party to the Rome treaty, the only way it can be brought before the ICC is through a referral by the United Nations Security Council, like the case of Darfur, Sudan. Article 13 (a) of the Rome treaty states that the ICC may exercise jurisdiction when 'a situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the UN Charter.

The prospect for Asian countries to join the Court may take sometime. ICC advocates can adopt strategies in enhancing the rule of law through law reform using the ICC regime and the international cooperation and support the ICC as an international body has so far created in the international community. States can undertake law reforms and harmonize them to international standards as many of the laws that govern the peoples of Asia had been products of long years of colonial rule and authoritarian regimes. Despite so-called democratization that swept the region in recent history, many of these laws remain and continue to rule peoples' lives in the region. For example, the national security laws that were imposed by former regimes are still operational in most of the countries, reinforced nowadays with sweeping adoption of anti-terrorism laws. It is therefore a deadly proposition to invoke the rule of law when we know that the laws are violative of basic rights of peoples and are serving the interests of those in power. This applies also in the administration of justice when for example, the law provides for arrests without warrants, for the accused to be presumed guilty before innocence and worse, when summary or extra judicial killings and enforced disappearances are used to eliminate certain sectors in society perceived as 'terrorists' or 'enemies' of the state.

The Rome Statute provides relevant provisions that can help countries to reform their laws in accordance with international standards. For example, in the Philippines, the historic Judicial Summit initiated by the Supreme Court, coincidentally last July 17, 2008, the anniversary of the ICC treaty, highlighted the significant issue of command responsibility and accountability, in the light of increasing number of extra

judicial killings and enforced disappearances that have significantly increased under the present administration. With hundreds of cases remaining unresolved with perpetrators of crimes continuing to create havoc on the lives of peoples especially those involved as human rights defenders—journalists, student activists, community leaders and ordinary citizens, such a law on command responsibility which does not exist in many national laws, is crucial.

There is now a move to pass a law in the Philippines on command responsibility and accountability, invoking the provision of the Rome treaty, stating that:

- (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or to exercise control properly over such forces, where:
 - (i) That military commander or person either knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
 - (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective control properly over such subordinates, where:
 - (i) That superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

- (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
- (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

All these being within the judicial process, but because they involve people in the position of power like a head of state or head of police or the military, everything becomes political, in most cases undermining the so-called rule of law in the administration of justice.

Dr. Raul Pangalangan, a member of the Drafting Committee during the Rome Conference, in his article “The International Criminal Court and Institutional Protection for Human Dignity,”⁴⁾ proposes a three-fold gains as we campaign for the ICC:

“First, we de-politicize the enforcement of norms and place the campaign for human dignity squarely on legal footing. We focus on the individual, not on the nation or the nation’s cause. Second, we internationalize the burden of prosecuting away from the reach of partisan national groups. We shift them to international bodies beyond the reach of the power of these groups. Third, we also equalize the burdens between the State and non-State actors.”

We in Asia have yet to ratify and implement the Rome treaty by adopting our domestic laws to the ICC standards. The goal for universal jurisdiction of the Rome Statute is captured by a statement made by CICC convenor William Pace. “With every new ratification, the era of impunity fades, to be replaced by one of strengthened national legal systems, backed by a new system of international criminal justice, anchored by a new world court...”

One major challenge the Court has been facing since its inception is the US opposition of the Court, claiming that it can be used for

4) Published in *For Hope & Human Dignity, A Primer on the International Criminal Court for the Security Sector*, Philippine Coalition for the International Criminal Court, 2008.

‘politically motivated cases’ against US nationals. While the US government under President Clinton signed the ICC treaty, the government under Bush withdrew its signature in May 2002 and from then on embarked on an all out campaign to undermine the Court. First, by having countries sign bilateral immunity agreements (BIA) which in effect gives immunity to all US nationals from any prosecution by the ICC. Also called the ‘Non-Surrender Agreements,’ they prohibit the surrender of American nationals accused of committing serious crimes to the Court. Second, US Congress passed into law the American Servicemen’s Protection Act (ASPA) which allows the President to cut or withdraw aid to countries joining the ICC and the latest law, the Nedercutt Agreement with in effect likewise cuts or restricts military aid and trainings to countries supporting the Court. Over the past years since these laws were implemented, a number of US officials, including State Secretary Condoleezza Rice, have expressed alarm over the negative and counter productive impact of these laws to their foreign policy, stating that the ICC position needs be reviewed as it is hurting their foreign policy. A number of Latin American states have defied US threats and went on to ratify the ICC treaty despite withdrawal of economic and military aid.

Over the period of the last years of President Bush’s term, a ‘softening position, compared to the hard-line policy against the ICC upon his assumption to office has been observed. The laws which cut or restrict military and other aid to countries supporting the ICC have been repealed. A new law on genocide, the Genocide Accountability Act has been passed, empowering US courts to prosecute suspected perpetrators of genocide committed anywhere, so long as they are physically present in the US. While the law does not mention ICC, its legislative history, its objective and purpose are consistent with the letter and spirit of the Rome Statute. US joins other countries like Australia, Belgium, Germany, Senegal and United Kingdom that have adopted universal jurisdiction laws into their national legal systems that allow them to investigate and prosecute suspected perpetrators of genocide anywhere in the world. The Security Council referral to the ICC of

the Darfur case also shows US' acknowledgement of the work of the Court.

In the Asian region, the US position remains a factor in the states' decision whether to ratify or not the ICC treaty. With the outcome of the recent elections in the US, hopes are high in getting more positive reaction from the new Obama administration on the ICC.

It is to the best interest of Asian states to accede to the Rome treaty and be part of the growing movement for international justice. Governments in the region can avail of the historic opportunity to be part of the globalization, not only of their economies but the globalization of justice through the ICC. When massive violence is perpetrated by the state and victims have no recourse to justice, the ICC provides an option for the people.

10. Current Discussion on Human Rights Mechanism in Asia: From ASEAN Charter to Human Rights Mechanism

Rafendi Djamin

ASEAN and Human Rights

The Association of Southeast Asia Nations (ASEAN), which was established in 1967, has always been seen as an “elitist club” which only recognises state security and often put democracy and human rights aside. However, this view seems to have changed in the 1990s after the World Conference on Human Rights in Vienna, Austria in June 1993. At the conference, member states endorsed the Vienna Declaration and Programme of Action (VDPA), where the document highlighted the need to set up a regional human rights protection mechanism for regions which are yet to have one. The outcome of the World Conference seem to have influenced the 26th ASEAN Ministerial Meeting (AMM) in Singapore when it declared in a Joint Communiqué that, “the Foreign Ministers welcomed the international consensus achieved during the World Conference on Human Rights [...] and reaffirmed ASEAN’s commitment to and respect for human rights and fundamental freedoms as set out in the Vienna Declaration of 25 June 1993.”¹⁾ The same Communiqué also stressed that, “in support of Vienna Declaration and Programme of Action [...] ASEAN

1) The full text can be found at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En)

should also consider the establishment of an appropriate regional human rights mechanism.” However it took more than 14 years, after this political commitment which means 40 years after its establishment, for ASEAN to come up with a concrete steps toward the establishment of ASEAN human Rights body/ commission.

Developments in ASEAN Scope of Rights

Given that all ASEAN member states have ratified the two international conventions related to women and children the Convention on the Elimination of Discrimination against Women (CEDAW) and Convention on the Rights of the Child (CRC) ASEAN feels more comfortable to discuss about women and children’s rights issues. ASEAN started its focus on women and children concerns, not explicitly on women’s rights, since the 1980s. Specifically, it has adopted the following regional human rights instruments

On women:

1. Declaration on the Advancement of Women in ASEAN (1988)
2. Declaration on the Elimination of Violence Against Women in the ASEAN Region (2004)
3. ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004)

On children and youth:

1. Declaration of Principles to Strengthen ASEAN Collaboration on Youth (1983)
2. Kuala Lumpur Agenda on ASEAN Youth Development (1997)
3. Yangon Declaration on Preparing ASEAN Youth for the Challenges of Globalisation (2000)
4. Manila Declaration on Strengthening Participation in Sustainable Youth Employment (2003)

Effort to translate those regional instruments (as soft laws at the regional level) on women and children’s rights into action was reflected

in the Hanoi Action Plan (HAP) documents covering the period 1997–2004. The HAP was intended to fulfil the ASEAN Community by the year 2020 as envisioned in the ASEAN Vision 2020 document. The HAP points out the need to: Strengthen ASEAN collaboration in combating the trafficking in, and crimes of violence against, women and children. To Work towards the full implementation of the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination against Women and other international instruments concerning women and children.

In 2004, after the conclusion of the HAP, ASEAN leaders came up with the Vientiane Action Programme (VAP) for the next five years: 2005–2010 which includes the following human rights plan of action:

1. Complete a stock-take of existing human rights mechanisms and equivalent bodies including sectoral bodies promoting the rights of women and children;
2. Formulate and adoption the MOU to establish a network among existing human rights mechanisms;
3. Formulate the work of the network;
4. Promote education and public awareness on human rights;
5. Establish a network of cooperation among existing human rights mechanisms;
6. Elaborate on an ASEAN instrument on the protection and promotion of the rights of migrant workers; and Establish an ASEAN commission on the promotion and protection of the rights of women and children.

Developments of the ASEAN Charter

The goal of creating an ASEAN Charter was first officially acknowledged in the 10th ASEAN Summit in November 2004 in Vientiane as embodied in the VAP: “we recognise the need to strengthen ASEAN and shall work towards the development of an ASEAN Charter.” At the 11th ASEAN Summit in December 2005 in Kuala Lumpur, Malaysia, ASEAN leaders came out with the Kuala Lumpur Declaration on the

Establishment of the ASEAN Charter. This was followed by the setting up of Eminent Persons Group (EPG) to provide practical recommendations on the creation of the charter. The Declaration stated that the charter would reaffirm the “promotion of democracy, human rights and obligations,” a final recognition of the importance of human rights in the charter.

Regarding the inclusion of a human rights mechanism, the EPG report only stated that “the EPG discussed the possibility of setting up of [sic] an ASEAN human rights mechanism, and noted that this worthy idea should be pursued further, especially in clarifying how such a regional mechanism can contribute to ensuring the respect for and protection of human rights of every individual in every Member State.”²⁾ This wording was particularly disappointing when considering that it was way back in 1993, at the 26th ASEAN Ministerial Meeting (AMM), that the foreign ministers “agreed that ASEAN should ... consider the establishment of an appropriate regional mechanism on human rights.”³⁾

The 12th ASEAN Summit in Cebu, Philippines in January 2007 endorsed the EPG report with its Cebu Declaration on the Blueprint of the ASEAN Charter. It also directed a High Level Task Force (HTLF) to draft the Charter ready for signing at the November 2007 13th ASEAN Summit in Singapore. The HTLF met for the first time in February 2007 and began drafting the Charter based on directives from the 11th and 12th ASEAN Summits, the EPG Report and other key ASEAN documents.

Benchmarking Human Rights with the ASEAN Charter

At the 13th ASEAN Summit on November 2007 in Singapore, the HTLF presented the ASEAN Charter to the ASEAN leaders, which was then signed by all the ten leaders. It is now under a ratification process.

2) *Ibid*, pg.23

3) AMM Communiqué (1993), Joint Communiqué of the 26th ASEAN Ministerial Meeting held in Singapore on 23~24 July 1993, available online at (accessed 31st May 2007): <http://www.thinkcentre.org/article.cfm?ArticleID=1797>

As of July 2008, Brunei, Cambodia, Laos PDR, Malaysia, Singapore, and Vietnam have deposited their ratification documents to the ASEAN Secretariat, followed by the other four members, namely Burma, Indonesia, Philippines, Thailand by the end of November 2008.

Looking at the ASEAN Charter, we can see that the charter does not only mention human rights in article 14 alone, regarding the ASEAN human rights body.⁴⁾ However, the term “human rights” is being mentioned in the charter four times separately.

It is mentioned first in the pre-amble which says ASEAN will “[adhere] to the principles of democracy, the rule of law and good governance, respect for and promotion of human rights and fundamental freedoms.”

Second is under article 1 (purposes) when it says that the purpose of ASEAN is “to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regards to the rights and responsibilities of the Member States of ASEAN.”

Thirdly it is mentioned under article 2 (principles) under article 2(i) that ASEAN shall act in accordance to “respect the fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice.”

Lastly, the provision on human rights is mentioned under article 14 (ASEAN human rights body). It says (1) In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall established an ASEAN human rights body; and (2) This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.⁵⁾

4) See Charter of the Association of Southeast Asian Nations, <http://www.aseansec.org/21069.pdf>

5) Bolding made by the author.

Sufficient Reference on Human Rights?

It is quite a ironical to see that the ASEAN Charter which has claimed to be the people-centred charter to only highlight human rights in the charter broadly in the pre-amble, purpose and objective parts, and the ASEAN human rights body part without mentioning the mechanisms other than the ASEAN human rights body to uphold and ensure the respect for the rule of law.⁶⁾

It is deeply regrettable that the charter does not make any reference to the international human rights standards, notably the Universal Declaration of Human Rights (UDHR). Despite the fact that the establishment of ASEAN in 1967 made a reference to UDHR. The charter vaguely mention only about international law. Under article 2 (j) it mentions that ASEAN will “[uphold] the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN member states.”

By putting this together, it continues to remain unclear what exactly these human rights principles are, as there is no specific mentioning to the international agreed norms. Therefore, this could give the governments too much leeway to interpret these standards.

Is it Possible for Implementation?

Although, human rights standards is a universal idea and often beyond the pretext of non-interference policy, however, the human rights principles are being labelled hand in hand together with the issue of non-interference. The charter does not mention how actions will be taken if there has been a serious breach of human rights violations by one of the ASEAN members, notably for the case of continuous human rights violations committed by Burma against its own citizens.

6) See a more comprehensive analysis of the ASEAN Charter in FORUM-ASIA's Analysis of the ASEAN Charter, which can be found in Public Statements on ASEAN Charter by SAPA Working Group on ASEAN, Members, and Partners, Produced by FORUM-ASIA and SEACA.

There are other articles that are problematic in terms of going against the purposes of human rights within the charter such as the promotion and protection of human rights must be taken with regards to the rights and responsibilities of the state. This goes along with the old trends of ASEAN, which the state's rights go against its citizen rights.

Ironically, the principal of ASEAN also go line in line against one another. The principal of "non-interference in the internal affairs of ASEAN Member States" will directly go in line with the "respect for fundamental freedoms, the promotion and protection of human rights and the promotion of social justice."

Furthermore, ASEAN in article 1.13 states that one of the purposes of ASEAN is to promote a people-oriented ASEAN, which is welcome but there is no indication of how this will be realised, especially how engagement can be made through this inter-governmental body.

CSO Engagement with ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) under the Vientiane Action Programme (VAP)

Along with the track on the establishment of ASEAN Human Rights body which was started after the adoption of ASEAN Charter in 2007, it is important to look at other track towards establishing a regional women and child rights mechanism under the Social and Cultural Pillars of ASEAN. After the adoption of the VAP in July 2005, ASEAN senior officials (SOM) met the Working Group for an ASEAN Human Rights Mechanism (Working Group) to study the possibility of creating a regional women and child rights mechanisms. The Working Group is a coalition of government officials from national working groups, academe and NGOs in the following five countries namely Cambodia, Indonesia, Philippines, Singapore, and Thailand. The national working groups are to assist in the human rights programmes of the VAP with regards to the ACWC.

The Regional Working Group tasked the Thailand national Working Group and Mahidol University's Office of Human Rights and Social

Development (OHRSD) to conduct studies and stocktaking of the regional and national laws relating to the rights of women and children in ASEAN. The OHRSD conducted two meetings on 20 November 2006 and 3-4 April 2007 which started the process of writing and releasing the report of the study.

In the ASEAN Security Community Plan of Action Coordinating Conference (ASCCO) held in Jakarta on 4-5 September 2006, the ASEAN SOM and the ASEAN Standing Committee (ASC) which consist of all DG on ASEAN of each member-state, agreed that they would take the lead in the implementation of the VAP in the area of women and children's human rights and will be working with other bodies such as the Senior Official Meeting on Social Welfare and Development (SOMSWD) and the ASEAN Committee of Women (ACW).⁷⁾

At the first meeting of the OHRSD expert group on 20 November 2006, some of the significant conclusions and recommendations were:

1. Any regional mechanism to be established should take into consideration the regional economic and social agenda;
2. The commission should not replicate the experiences of other regional mechanisms but should be distinctly ASEAN;
3. The institution should not challenge the government. It should not be used, however, by governments as window dressing to raise their image;
4. The commission should be mandated with promotional and protective activities. It should be empowered to monitor compliance by member-states according to international and regional standards;
5. The selection of the commissioners should be done through a participatory and transparent process including impartiality and independence of the commission and commissioners;
6. Further consultations should be broadened to involve more people from various sectors;

7) See "ASEAN and Women and Children's Rights," paper by Everlyn S. Dunuan, National Commission on the Role of Filipino Women, presented at the First Regional Consultation on ASEAN and Human Rights

7. Engaging civil society and creating space for dialogue with all parties concerned is needed.⁸⁾

On 3-4 April 2007, the Regional Consultative Meeting on the Establishment of an ACWC was held in Bangkok to discuss the study report on the establishment of the ACWC. The outcome of the meeting identified the following components of any regional mechanism:

1. Promotion and protection of human rights, particularly women's and children's rights;
2. Consistency with international standards, particularly CEDAW and CRC;
3. Commission of experts with independence of action;
4. Inputs from civil society pertaining to the establishment and functioning of the commission.

Both meetings resulted in the report entitled "Towards an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children" which was only released in June 2008, four years after the VAP was launched. The report is very comprehensive as it discusses i) ASEAN's commitment to the promotion and protection of the rights of women; ii) Legal and political commitment to human rights of the rights of women; iii) Lessons drawn from other regional mechanisms; and iv) conclusion and recommendations. However, there is very little involvement from the broader civil society, human rights organisations, and women and children's rights groups as participants were mainly governments and national machineries on women or children.

In another development, on 7-8 April 2008, the ASEAN Secretariat held a Joint Roundtable Discussion on the Establishment of an ACWC in Jakarta which stressed the need to set up the commission. It also recommended that the terms of reference of the Commission should

8) Working Group for an ASEAN Human Rights Mechanism (2007). A Submission on the Occasion of the 2nd ASEAN Security Community Plan of Action Coordinating Conference (ASCCO). Available at: <http://www.aseanhrmech.org/downloads/Working%20Group%20Submission%202nd%20ASCCO.pdf>

be established by the appropriate ASEAN body and the members of the drafting group to be nominated by member states. However, there are different views and options on the following:

1. Establishment of the Commission prior to the establishment of the human rights body; the status of the Commission would be reviewed with the establishment of the human rights body with the option for it to be subsumed under the body;
2. Await the establishment of the human rights body first and then consider the establishment of the Commission (or an alternative mechanism) after;
3. Review the ASEAN Committee on Women (ACW)'s mandate and ensure that it covers all function of the Commission on Women and establish a new ASEAN Committee on Children to oversee issues related to the child.

The outcome of the Joint Roundtable was sent to the ASEAN Committee for Women (ACW) and SOMSWD for endorsement and was subsequently submitted to the 41st AMM in July 2008.⁹⁾

In addition to women and children rights mechanism there is also a track under the VAP 2004 to explore the establishment of regional instrument and mechanism on the protection of migrant workers. This track came into the picture after ASEAN adopt a declaration on the protection of Migrant workers in January 2007. The Leaders of the ASEAN nations set out a provision (program area 1.1.4.6) in the Vientiane Action Programme which called for the "elaboration of an ASEAN instrument for the protection and promotion of the rights of migrant workers." ASEAN also requested the Working Group on the ASEAN Human Rights Mechanism to take this effort forward, and the former ASEAN Secretary-General specifically requested that the Singapore focal point of the Working Group take the lead. The Singapore focal point oversaw the establishment of the Task Force on ASEAN

9) See ASEAN Secretariat's Discussion paper for the Joint Roundtable Discussion Recommendations on the Establishment of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, 7~8 April 2008 at the ASEAN Secretariat.

Migrant Workers, composed of regional networks of civil society organizations and trade unions. The ASEAN bodies taking a lead in this process are ASEAN-SLOM (Senior Labour Ministers) and ASEAN Labour minister Meeting (ALMM).

Although SAPA TFHR is focusing its engagement with the process of establishing ASEAN human rights body through its engagement with HLP of ASEAN for drafting the TOR of AHRB, some members of the task force particularly members from women, children and migrant workers rights groups are also engaging themselves with the process on the discussion of establishing ASEAN commission on women and children and ASEAN Committee on Migrant Workers.

Actors in Engagement and Development of the ASEAN Human Rights Body

With regards to the ASEAN human rights body/mechanism, there have been several major groups who played key roles in monitoring and advocacy for the creation of the ASEAN human rights mechanism. This part will explain the brief background of each group and the work that each group has done with respect to the process of the establishment of the ASEAN human rights body.

The first player is the ASEAN ISIS Colloquium on Human Rights (AICOHR), which is an annual platform organised by the national members of the ASEAN Institute for Strategic and International Studies (ASEAN-ISIS). It has held annual meetings since 1993. The AICOHR, however, does not conclude or recommend what can or cannot be used for submission to the ASEAN. But it has provided the initial venue for human rights defenders and government officials to meet and discuss about human rights.

AICOHR held its 15th Meeting in Manila, the Philippines on 1-2 May 2008 with the theme, "Towards Implementing the Human Rights Provisions in the ASEAN Charter: Views from Human Rights Advocates."

The second actor is the Working Group for an ASEAN Human Rights Mechanism (Working Group). As mentioned earlier, this is a coalition of national working groups comprising representative of government

institutions, parliamentary human rights committees, national human rights institutions, the academe, and NGOs set up in 1995. It follows a step by step, constructive and consultative approach when dealing with the government. The Working Group convenes annually for two main events—a) the Workshop on ASEAN Regional Human Rights Mechanism, and b) the Roundtable Discussion on Human Rights in ASEAN. The first is a forum for governments, NHRIs, the ASEAN Secretariat, and NGOs to discuss updates on the implementation of VAP and the ASEAN human rights body. The second forum involved only the government, NHRIs, and the members of the Working Group.

The Working Group has access to meetings of the ASEAN SOM in every ASEAN ministerial meeting. In the 2000 SOM, the Working Group submitted a draft agreement on the setting up of the ASEAN Human Rights Commission; however, there has been no feedback from the SOM.¹⁰⁾

The third actor is four national human rights institutions (NHRIs) which have been established in the following ASEAN member states: Indonesia, Malaysia, Philippines, and Thailand. These NHRIs have set up their network and regularly meet in the ASEAN NHRIs Forum. So far, four meetings have been held since its formation in 2007. These NHRIs held their 4th Consultative Meeting and Conference in Manila, Philippines from 29–31 January 2008 while its Technical Working Group (TWG) meeting was held from 28–30 April 2008 in Cebu City, the Philippines.

The meeting of the TWG in April 2008 resulted in the terms of reference (TOR) for the ASEAN Human Rights Commission (AHRC). It recommended that the AHRC should be the first body that should be set up. It is believed that the TOR has been submitted to the 41st AMM in Singapore. Some of the key points in the TOR include:

1. The AHRC shall advise and assist ASEAN in formulating directives and procedures and recommend measures to be taken in addressing human rights issues as well as the ratification of international treaties;

10) See the Draft Agreement at <http://www.aseanhrmech.org/downloads/draft-agreement.pdf>

2. It shall promote, protect, and monitor human rights consistent with the UDHR;
3. It will cooperate with NHRIs, NGOs, civil society organisations, regional institutions, and international institutions concerned with human rights;
4. It shall receive, analyse, investigate and take action on complaints of alleged violations by any person(s) or group of persons and others.

Civil Society Engagement in the Establishment of ASEAN Human Rights Body

On 12 December 2005, the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter was adopted to start the charter drafting process to transform ASEAN into a ruled-based inter-governmental body. This came into fruition on 20 November 2007 when, in conjunction with ASEAN's 40th anniversary, the ASEAN Charter was officially adopted at the ASEAN Summit in Singapore. The Charter explicitly states that a human rights body will be established under ASEAN (Article 14). However, the terms of reference of the human rights body with regards to its mandate, powers, and composition are not outlined in the Charter. By 18 April 2008, six ASEAN countries have ratified the Charter, namely Cambodia, Brunei, Malaysia, Laos, Singapore, and Vietnam and by November 2008 all 10 countries have finalized their ratification process.

The ASEAN governments have since decided to establish a High Level Panel (HLP) to draft the terms of reference for the "human rights body" mentioned in the ASEAN Charter. At the same time, an ongoing process of finalizing the last two pillars of ASEAN is in place with regards to the drafting of the blueprints for the political and security pillar and the socio-cultural pillar. The blueprint for the economic pillar was adopted in the 13th ASEAN Summit in Singapore last November.

Part of the civil society processes on the establishment of an ASEAN human rights mechanism started earlier than that of the inter-

governmental body. In 1995, NGOs coalesced with representatives from government institutions, parliamentary human rights committees, and the academe to establish the Working Group on an ASEAN Human Rights Mechanism. This hybrid body's goal is the establishment of an intergovernmental human rights commission for ASEAN through a step-by-step approach.

When ASEAN declared their intention to draft an ASEAN Charter, civil society at the regional and national levels began to consider ASEAN as an arena through which they can pursue their objectives for the promotion and protection of human rights of ASEAN peoples at the regional level. In response to the ASEAN Charter drafting process, the Solidarity for Asian People's Advocacy (SAPA)¹¹⁾ decided to establish a Working Group on ASEAN to coordinate collective initiatives on ASEAN advocacy and actions.

Throughout 2006–2007, the Southeast Asian Committee for Advocacy (SEACA) based in Manila, together with the SAPA Working Group on ASEAN, supported national consultations on ASEAN and its proposed Charter with civil society actors from Burma, Cambodia, Indonesia, Laos, Malaysia, Philippines, Thailand and Vietnam. These inputs were brought together at the 2nd and 3rd ASEAN Civil Society Conferences, held parallel to the ASEAN Summits for maximum publicity, in Cebu (2006), and again in Singapore (2007), respectively. SAPA has also sought to influence the Charter's drafting process by making individual submissions on the three pillars of an ASEAN Community to the Eminent Persons Group and the High Level Task Force.

The Solidarity for Asia People's Advocacy (SAPA) is a network of Asian national and regional NGOs and people's organisation operating at regional (and international) level. The motivation for this network was to improve communication, cooperation, and coordination between Asian civil society groups in order to enhance the influence on regional inter-governmental structures. The SAPA Working Groups were set up in specific areas to share relevant information and news

11) SAPA is a regional network of Asian civil society groups that was formed in February 2006 to enhance the effectiveness and impact of civil society advocacy with inter-governmental structures at the regional level.

and to coordinate activities. Three Working Groups are currently operating: the Working Group on UN Human Rights, Working Group on ASEAN, and Working Group on Migration and Labour.

On 26-28 August 2007, the first Regional Consultation on ASEAN and Human Rights was held by Asian Forum for Human Rights and Development (FORUM-ASIA) in Kuala Lumpur. In the meeting, civil society actors in ASEAN came together to set up the Task Force on ASEAN and Human Rights (TF-AHR). This is a network of civil society organisations under SAPA Working Group on ASEAN, which focuses on the creation of the ASEAN human rights body. Its objectives are:

1. To hold ASEAN member states accountable to their international and domestic human rights obligations; and
2. To make the ASEAN human rights mechanisms more accountable and effective. The meeting produced the Kuala Lumpur Action Points as a basis for an action agenda.

From May to November 2008, national workshops on AHRB have taken place in 6 countries namely: Cambodia (20 May 2008), Indonesia (23-24 July 2008), Malaysia (27-28 July 2008), Philippines (9 May and 10 June 2008), Thailand (5-6 July 2008), and Burma's border with Thailand, Mae sot (8-9 July 2008). The civil society inputs of these national consultations were submitted to the AMM in Singapore on 18-24 July 2008 which highlighted:

1. The composition of HLP shall include independent human rights experts from each of the ASEAN member states, who will participate in all meetings of the HLP in order to provide necessary advice;
2. The HLP shall engage in a democratic and inclusive process of consultation with relevant groups, to include;
3. National and regional civil society consultations which gather views on the powers, responsibilities and structure of the ASEAN human rights body in order to ensure that the body serves the needs and interests of the people of ASEAN;

4. The establishment of appropriate mechanisms for these consultations;
5. Creative forms of communication to reach the largest number of people possible within ASEAN. Such forms of communication should enable concerned citizens who otherwise were not able to participate directly in consultation meetings to register their views on the powers, responsibilities and structure of the ASEAN human rights.

Engaging wider groups of CSO

A small group meeting for leaders of indigenous peoples' organizations has been convened on 28 July by the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests (IAITPTF) in Chiang Mai, Thailand to update IP regional leaders on civil society initiatives on the ASEAN and hopefully to get them to undertake a process to bring their inputs into the SAPA process. Followed by a Regional strategy meeting on ASEAN and Indigenous Peoples (29-30 October 2008), Bangkok, attended by 25 participants from Cambodia, Indonesia, Malaysia, the Philippines, Thailand, Vietnam, Thailand-based Burma ethnic nationality organizations, and regional indigenous peoples networks.

Regional Caucus on Women and Children on the ASEAN Human Rights Mechanism (4 August 2008), Jakarta, attended by 30 participants from women and children's rights organizations in Burma, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam.

The following is the list of the activities both at national and regional level of the SAPA Task Force on ASEAN and Human Rights to mobilize the inputs and raise awareness of the civil society organizations in the region on the creation of the ASEAN human rights body.

Regional processes

1. The 2nd Regional Consultation on the ASEAN and Human Rights (5-7 August 2008), Jakarta, Indonesia, attended by 75 participants from 10 countries in Southeast Asia (without Brunei Darussalam but included Timor Leste), Japan, United Kingdom and United States;
2. Strategy Meeting of the TFAHR during the 3rd HLP meeting (12-13 September 2008), Manila attended by 12 focal points representing Burma, Indonesia, Malaysia, Philippines, Thailand, indigenous peoples and women's rights;
3. Regional Consultation on the ASEAN Commission on the protection and the promotion of the rights of women and children and the AHRB (15-17 September 2008), Bangkok, attended by 65 participants from nine countries in Southeast Asia;
4. Strategy meeting of the TFAHR (28-29 October 2008), Jakarta, attended by 13 participants representing Burma, Indonesia, Malaysia, Philippines, Singapore, Thailand, women's rights, and housing rights.

Dialog of National CSO with HLP Member at the National Level

1. The Thailand Focal Point of the SAPA TFAHR met the HLP Thailand, H.E. Sihasak Phuanketkeow in a CSO consultation on 13 August 2008;
2. The Philippine Focal Point of the SAPA TFAHR met the HLP Philippine assistant, H.E. Mariylin Alarilla in a CSO consultation on 10 October 2008;
3. The Malaysian Focal Point of the SAPA TFAHR met the HLP Malaysia, H.E. Ahmad Fuzy in a CSO consultation on 16 October 2008;
4. Indonesian Focal Point of SAPA TFHR met the HLP in CSO consultation in Bali 15 November 2008.

Opportunities on Human Rights Advocacy at the Sub-Regional Level

When it comes to discussing what we can really do to ensure the implementation of the human rights provisions in the ASEAN Charter? This should be done through continuous engagements with ASEAN by engaging at different levels.

Generally, among the human rights defenders, it has become an unwritten practice to use any documents, declarations, or statements made by the governments to keep government keep their political commitments into practice. National HRDs have used the promises governments used when they take office to keep them to task, this is similar with HRDs advocating at the UN level, by using the promises and pledges that the governments had once said to pressure them to implement. With ASEAN, this is another entry point since ASEAN has mentioned that this will be a people centred ASEAN, civil society can use this promises which is quite solid to make sure that ASEAN will truly work toward the promotion and protection of human rights.

There have been open entry points to engage with ASEAN through different channels such as through the ASEAN secretariat to ensure that all human rights related instruments within ASEAN will be taken into action. There has been recently the open-up of national ASEAN department to guarantee a more inclusiveness of the civil society such as for the case of Indonesia and Thailand when the Director-General of ASEAN Department held meeting with civil society directly to share plans of ASEAN and how CSOs can submit opinions and inputs. This was followed by HLP from Malaysia inviting Malaysian CSO on September 16, 2008 to give their input to the 15 elements of AHRB.

The critical, intensive and participatory engagement of various groups of CSO from ASEAN countries is gaining more recognition from ASEAN member-states as well as ASEAN Secretariat. There are still big challenges in the near future on the promotion, protection and realization of human rights in all ASEAN countries knowing the fact that various human rights violations, ranging from serious violations

of economic and social rights, cross border human rights violations and even to the level of gross violations of human rights are still taking place in different countries of ASEAN particularly in Burma, Philippines and Southern-Thailand. Ensuring the genuine critical engagement of CSO with this intergovernmental process is one choice that has to be sustained to help make freedom from fear and freedom from want a reality in ASEAN.

11. State Violence and the Pakistan Polity

Muneer A. Malik

Ravi Pinjani

One of the defining characters of a 'State' is its claim and pursuit of 'monopoly over violence' within its own territory. The use of violence may be both moral and legitimate, such as penal laws prescribing penalties for offences which are *malum in se*. However, often this monopoly of violence is used to deny to large numbers of its own citizens their universally recognized human rights out of fear that an empowered people may strike at the power structures that control the organs of the state itself. This latter type of state violence that runs counter to the supremacy of the Rule of Law is the focus of this paper.

Pakistan's history, albeit short, is replete with prolonged instances of glaring and clandestine use of state machinery by its rulers and power-brokers to further their reign and suppress democratic and other rights-based movements. While a chronicle of the events of state violence is essential to highlight the severity of the phenomenon, it is more important to understand its underlying roots and causes. Why is it that Pakistan has been for the larger part of its history been ruled by army generals or autocrats and why is it that more than half of Pakistan's population and a substantive part of its land seceded from Pakistan in 1971 giving rise to the new state of Bangladesh?

Before adverting to events of state violence it will be useful to bear in mind certain aspects relating to the constitutional history of Pakistan. Although the struggle for Indian independence from British

rule is generally considered to have commenced with the 1857 War of Independence,¹⁾ the struggle for Pakistan an independent homeland for the Muslims of the sub continent is generally traced to the founding of the All India Muslim League in 1906 to protect Muslim interests in India. In March 1940 the Muslim League adopted the Pakistan Resolution which, inter alia, provided for the establishment of a separate homeland for the Muslims of India comprising of geographically contiguous districts within the sub-continent in which the Muslims were in a numerical majority. The Indian Independence Act of 1947 passed by the British Parliament provided for the establishment of two Dominions, namely, India and Pakistan with the legislatures of the two Dominions having sovereign authority. Under the said Act, until the framing of a Constitution for the Dominion the Government of Pakistan was to be carried on under the Government of India Act, 1935 subject to such adaptations and modifications as were consequential on her attaining the status of an independent Dominion. A Governor-General was to represent His Majesty for the purposes of the government of the Dominion. The functions of the legislature of the Dominion, including making of the Constitution, were to be performed by a Constituent Assembly which also had to function as the Federal legislature under the said Act of 1935. The Dominion of Pakistan comprised of the territories of Sindh, Balauchistan, Punjab, North West Frontier and Bengal. However, Bengal and Punjab provinces were further sub-divided between India and Pakistan. The princely states, including Kashmir were free to join either Dominion. The state of Pakistan was thus a federation between different units and each unit had its own cultural and linguistic heritage glued by the common bond of the Muslim religion. In terms of numerical strength Bengal was larger than all the other federating units put together Bengal was not contiguous to the other units being separated by India which lay between the “two wings” of Pakistan. Punjab was the most prosperous while Balauchistan had the largest land area. Large areas of Punjab, Sindh and Balauchistan were dominated by the feudal lords whose combined power made them the political elite that stepped in the

1) The British refer to this as The Indian Mutiny.

shoes of the departing British rulers. The birth of the new state witnessed a large scale migration of Muslims from the areas that were to form a part of India into Pakistan and of Hindus to India from the parts that were now Pakistan. This unprecedented migration came in the wake of communal riots that followed the birth of Pakistan. Soon there was to be war (1948) between the newly independent Dominions over the accession of the princely state of Kashmir. The new state was thus faced with dangers to its existence and grew up with the political mindset of a national security state as opposed to a welfare state. Located in proximity to the Soviet Union it was quick to align itself with the United States by entering a number of military alliances ostensibly to safeguard its independence from Indian designs. The rulers openly boasted that Pakistan was the most allied ally of the United States in Asia. It is not the task of this paper to analyze the effects of foreign domination on the political and economic development of the country but it would be incorrect to discount it all together.

The new state was immediately confronted with what type of a constitution it should adopt to suit the genius of its people and their national aspirations. The Constituent Assembly, which was also the first legislature, comprised of the 1946 pre-independence Constituent Assembly members that belonged to the areas that were now to form Pakistan. Notwithstanding the difficult ground realities relating to the war in Kashmir and the integration of refugees that flooded the new state from India, the Constituent Assembly adopted the Objectives Resolution in 1949 that was to be the grund norm of the constitution. This resolution provided that the constitution to be framed would provide for representative democracy, freedom, equality, tolerance and social justice as enunciated in Islam protection of the cultural and religious tights of the minorities, fundamental rights would be guaranteed, Pakistan would be a federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed and the independence of the Judiciary shall be fully secured.

Regretfully, the Constituent Assembly failed to frame a constitution for Pakistan had tragic results. The failure can be attributed to a number of reasons which we need not canvass here save to point out that the feudal lords who dominated the Constituent Assembly were reluctant to build institutions that would truly empower the people.²⁾ In the absence of institutions that derived their legitimacy from constitutionalism the state was run on an autocratic basis where the rule of law was subservient to the dictates of individuals and thus we saw a government that was not representative in character resort to state violence to strengthen its grip over the country by inviting the army to take over parts of the country to secure law and order to quell the disturbances that the government had itself clandestinely fermented.

March 6th, 1953, The First Martial Law—in Lahore

The 1953 political scene of West Pakistan witnessed two very different kinds of state-violence. First, it is commonly believed that, the Government clandestinely supported the radical anti Ahmediya movement, which it later quelled by use of brutal force and set the stage for Army rule in the country.

While East Pakistan was dominated by the positive movement of language rights, in the West, Pakistani radicals were rallying to persuade the Government to declare Ahmadiyas/Qadianis (a sect formerly known as part of the Muslim community) as a non-Muslim minority, dismiss Sir Zafrullah Khan—the then Foreign Minister, and to bar all members of Ahmediya community from high public office. The anti-Ahmediya movement concentrated on Lahore, where a sizable part of the Ahmediya community lived. The movement continued to gain momentum before the eyes of the Punjab and the Central Governments, so much so that its radical leaders even gave the Prime Minister an ultimatum of one-month, declaring direct action otherwise. The Government supported the anti-Ahmediya sentiment by looking away,

2) Even 61 years after independence income tax is not levied on agricultural income.

presenting a blind eye and a deaf ear. The Prime Minister and the Chief Minister of Punjab, both ignoring the warning,³⁾ the then Defence Secretary, Iskander Mirza, took matters into his own hands and directed the Army commander of Lahore, Major General Azam Khan to take over immediately and declare Martial Law in Lahore, without waiting for any further orders. This was March 6, 1953. On that very day, Mumtaz Daultana and his cabinet were dismissed and Malik Firoz Khan Noon was named as chief minister of Punjab.⁴⁾ The Army got the first chance to run civil administration directly and reign of terror shook the city for weeks in which countless men were shot down in the streets.⁵⁾

May 29th, 1954 — East Pakistan's Elected Provincial Government Dismissed:

Although almost 7 years had elapsed since Pakistan had been born, the Constituent Assembly had failed to frame a constitution for the country. With the feudal aristocracy of the minority Western wing of the country in control of the state power structure the economic and political grievances of the larger in numerical strength Eastern wing were justifiably increasing. Among the prominent grievances were non-recognition of the Bengali language as an official one; economic disparity between the East and the West, despite the fact that East Pakistan's jute was the biggest export of Pakistan; disproportionate representation in the Constitutional Assembly, the armed forces and the civil services. All of which were being reinforced by the fact that East Pakistan was singularly more populated than all the provinces combined in the West. These and many other grievances led to the formation of the Junto (United) Front in late 1953, in anticipation of the provincial elections scheduled for February 16, 1954. In order to challenge the ruling Muslim League, three popular

3) Dawn's special supplement of '60 years of publication,' 31st December 2007, "The First Martial Law in Lahore"

4) Ibid.

5) Fn.1 ibid.

leaders, A K Fazlul Haq, Husayn Shaheed Suhrawardy and Maulana Bhashani came to the forefront for the formation of the Front. Their opposition campaign gained considerable momentum, with big public meetings addressed by the three Bengali leaders all over the province, their key manifesto point being provincial autonomy.⁶⁾

The elections were held in March 1954. The Daily Dawn reports that “Almost the entire cabinet took a hand in the pre-election campaign. The Constituent Assembly suspended its sittings so that members could take part in canvassing. But such desperate measures proved of no avail.”⁷⁾ The ruling party was badly defeated and reduced to only 10 of the 309 seats. The then Chief Minister, Nurul Amin was defeated by a young student, and the United Front secured 223 seats. The victorious United Front formed the Ministry of East Pakistan under the premiership of Fazlul Haq on 2nd April 1954. This was the first non-league ministry and provincial government in Pakistan.⁸⁾

This was obviously not taken well by the power-brokers in the West, and less than 2 months since the formation of the provincial government, and after riots in industrial areas of East Pakistan between Bengali and nonBengali Muslims, the provincial government was dismissed after imposing Emergency in East Pakistan. None other than Major General Iskander Mirza was sent to East Pakistan as its governor and a one-man government was formed.⁹⁾

This was perhaps the first instance of directly infringing the people’s right to democracy. But of course this was only the beginning of another dark practice of the state.

6) Time Magazine, U.S. ed. 29th March 1954—“Division Affirmed”; Dawn’s Special Supplement—“Dhaka Assembly sent packing,” 31st December, 2007

7) Dawn’s special supplement of ‘60 years of publication,’ 31st December 2007—“Dhaka assembly sent packing”

8) Ibid.

9) Ibid.

The Dismissal of the Constituent Assembly

The Constituent Assembly, without having framed a constitution, in purported exercise of its sovereign power passed a bill amending the Government of India Act of 1935 whereby it conferred on the High Courts of West Pakistan and East Pakistan the power of judicial review through the exercise of the writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It also passed another amendment to the Government of India Act which limited the powers of the Governor General making him a nominal head of state while the Prime Minister was to be the head of government. Faced with this situation the Governor General dissolved the Constituent Assembly and appointed a new Council of Ministers. The Governor General enjoyed the support of the armed forces. The action was challenged in court and annulled by the Sindh Chief Court's full bench,¹⁰⁾ however the decision was overturned and the action upheld in appeal before the then apex court.¹¹⁾ In an astounding decision the Federal Court (then the highest court of the land) dismissed the challenge on the technical ground that the High Court had no power to issue writs against the Governor General as the Governor General did not give his assent to bill giving such power to the High Court. In essence it held that the appointed Governor General stood on a higher pedestal than the Constituent Assembly. In practical terms the superior judiciary wilted before the might of armed force and by abdicating the power of judicial review paved the way for future military interventions. It was a political decision without doubt, with politics playing a substantive role in the decision making. The dangerous, anti-democratic and suppressive trend of dissolving assemblies and dismissing popularly elected governments had therefore been set very early in Pakistan's history and was surely followed.

10) Maulvi Tamizuddin's case reported at PLD 1955 Sindh Chief Court 96

11) PLD 1955 Federal Court 240; and PLD 1955 Federal Court 435

Ayub Khan's Martial Law 1958, His Rule until 1969 and the 'One-Unit' Plan

By 1958, Major General Iskander Mirza had become the President of Pakistan, and on 7th October 1958, following the assassination of the deputy speaker of East Pakistan and the consequent riots, the Major-General abrogated the first and newly made 1956 Constitution of Pakistan and declared Martial Law, appointing Commander in Chief, General Ayub Khan as the Chief Martial Law Administrator. The person behind this act was of course General Ayub himself, as he himself declared in an interview, even when Iskander Mirza was still the President. "I said to the President: Are you going to act or are you not going to act? It is your responsibility to bring about change and if you do not, which heaven forbid, we shall force a change."¹² With the imposition of the 1958 Martial Law, it was settled that in Pakistan, for times to come, the real power of the state, not only as against any outsiders, but also viz a viz the people of the state, vested with the Army.

State power having passed into the hands of the army the Supreme Court of Pakistan proceeded to declare the army take over as a successful revolution and General Ayub Khan proceeded to promulgate a new constitution to perpetuate his power. Under the 1962 constitution, in the framing of which the people had no part, Pakistan was to be comprised of two units, West Pakistan and East Pakistan with each unit having equal representation in the national legislature. The President who was to be the Chief Executive was not elected on the basis of adult franchise but through a carefully crafted electoral college having equal representation from the two provinces. The Constitution of 1962 was opposed to the popular will for two principal reasons; firstly, it disregarded the numerical superiority of East Pakistanis (residents of Bengal) and secondly, it disregarded the essential fact that the country was composed of five federating units, namely, Bengal, Sindh, Baluchistan, Punjab and the North West

12) Dawn's special supplement of '60 years of publication,' 31st December 2007—"Who Imposed Martial Law in 1958"

Frontier, each having its distinct cultural heritage, language and desire for control of its resources. Discontent with the dispensation grew rapidly, particularly in East Pakistan which justifiably complained of exploitation by the ruling clique that represented the interests of Punjab.

The 1970 General Elections, the Civil War and the Secession of East Pakistan into Bangladesh

Upon taking over from General Ayub Khan, and imposing a fresh Martial Law in 1969, General Yayha Khan declared Pakistan's first ever general elections on the basis of adult franchise. This was seen as ray of hope against the otherwise prevalent bitterness. The Awami League was the popular party hailing from the Eastern wing of Pakistan under the auspices of Sheikh Mujibur Rehman, while the newly formed Pakistan Peoples Party under the leadership of Zulfikar Ali Bhutto was popular in the western wing of Pakistan. The total registered voters in the country were 56.9 million, out of which 31.2 million were from the eastern wing. Awami League emerged as the single largest party in the National Assembly by winning 160 seats. It was also able to win 288 out of 300 seats in the East Pakistan Assembly; but without winning even a single seat in any of the four provincial assemblies of the western wing of Pakistan.¹³⁾

The Awami League had campaigned throughout on the basis of its six-point agenda, seeking for maximum provincial autonomy and reducing the role of the Centre to Defense and Foreign Affairs. This was not acceptable to both the elected and the non-elected powers of the western wing. Amidst all this, General Yayha Khan on 1st March 1971 announced the postponement of the first session of the National Assembly, which was otherwise to be held on the 3rd of March.¹⁴⁾ Following which, the Awami League declared protest resorting to violence and cruelty against non-Bengalis in East Pakistan. The Hamood

13) www.storyofpakistan.com

14) The Supplementary report of Hamood-ur-Rehman Commission, 1974

ur Rehman Commission's supplementary report on the events of 1971 states that, "from the 1st of March to the 3rd of March 1971, the Awami League had taken complete control of East Pakistan, paralyzing the authority of the federal government. There is reliable evidence to show that during this period the miscreants indulged in large scale massacres and rape against pro-Pakistan elements in the towns of Dacca, Narayanganj, Chittagong...and several other smaller places."¹⁵⁾

The Commission very rightly pointed out that the acts of the Awami League miscreants cannot be treated as justification for the actions of the Army that followed.¹⁶⁾ The supplementary report further states:

"According to the allegations generally made, the excesses committed by the Pakistani Army fall into the following categories:

- a. Excessive use of force and fire power in Dacca during the night of the 25th and the 26th of March 1971 when the military operation was launched.
- b. Senseless and wanton arson and killings in the country side during the course of the "sweeping operations" following the military action.
- c. Killing of intellectuals and professionals like doctors, engineers etc and burying them in mass graves not only during early phases of military action but also during the critical days of the war in December 1971.
- d. Killing of Bengali Officers and men of the units of East Bengal Regiment, East Pakistan Rifles and East Pakistan Police force in the process of disarming them, or on pretence of quelling their rebellion.
- e. Killing of East Pakistani civilian officers, businessmen, and industrialists or their mysterious disappearance from their homes by or at the instance of Army Officers performing Martial Law duties.

15) Ibid. 'Misdeeds of the Awami League,' paragraph 2.

16) Ibid. paragraph 7.

- f. Raping of a large number of East Pakistani women by the officers and men of the Pakistan army as a deliberate act of revenge, retaliation and torture; and
- g. Deliberate killing of members of the Hindu minority.”¹⁷⁾

The Commission after considering evidence available to it concluded, though expressing the possibility of exaggeration, that approximately 26,000 persons were killed during the action by the Pakistan Army¹⁸⁾ and observed that “it is clear there is substance in the allegations that during and after the military action excesses were indeed committed on the people of East Pakistan, but the versions and estimates put forward by the Dacca authorities are highly coloured and exaggerated...We have also found that strong provocation was offered to the Army owing to the misdeeds of the Awami League. It has also been stated that use of force was undoubtedly inherent in the military action required to restore the authority of the Federal Government. Nevertheless, in spite of all these factors we are of the view that the officers charged with the task of restoring law and order were under an obligation to act with restraint and to employ only the minimum force necessary for the purpose. No amount of provocation by the militants of the Awami League or other miscreants could justify retaliation by a disciplined army against its own people. The Pakistan Army was called upon to operate in Pakistan territory and could not, therefore, be permitted to behave as if it was dealing with external aggression or operating on enemy soil. Irrespective, therefore, of the magnitude of the atrocities, we are of the considered opinion that it’s necessary for the Government of Pakistan to take effective action to punish those who were responsible for the commission of these alleged excesses and atrocities.”¹⁹⁾

Nothing happened! This supplementary report, made in 1974, accidentally got published only in 2000, while the main report remains classified to date.

17) Ibid. paragraph 8.

18) Ibid. paragraph 33.

19) Ibid. paragraph 38.

The 1977 Direct General Elections and Zia's Imposition of Martial Law

With the secession of East Pakistan, and Zulfikar Ali Bhutto being the most popular leader in the Western wing of Pakistan as evidenced by the 1970 general election results,²⁰⁾ Bhutto took over the country as the first ever civilian Chief Martial Law Administrator. In April 1972, Bhutto lifted martial law and convened the National Assembly, which consisted of members elected from the West Wing in December 1970 (plus two from the East Wing who decided their loyalties were with a united Pakistan), which approved the third Constitution of Pakistan on 10th April 1973, and effective from 14th August 1973,²¹⁾ with Bhutto as the Prime Minister.

Although the expectations were high, the promises made to the people even taller²²⁾ and the responsibility of getting the country on its feet after its worst crises very heavy, Bhutto, despite having done many a good things for the country, like a military dictator used the state machinery to further his power and prolong his tenure to the detriment of institutionalism and democracy. In 'The Guardian,' Martin Wolcott wrote on 7th March 1977 under the title "Ruthless Concentration of Power" that "When faced with an independent institution, or social group—whether it was big business, the judiciary, the press, the Balochi aristocracy, the Punjabi middle-class, or even his own party—Mr. Bhutto's instinct has been either to take it over, if that was not possible, to destroy it. Thus he achieved "control" over the press, over the courts whose independence has been reduced and over the Civil Service, whose security of tenure has been abolished. He has tamed the big business families by nationalizing the industries, which were the basis of the prominence. He has vigorously attacked any kind of independent regional politics, sending Pathan and Balochi political leaders to jail, and curbing regional tendencies even within his own party."²³⁾ Bhutto's admirers, however, argue that his conduct

20) www.storyofpakistan.com

21) US Country Studies on Pakistan-Zulfikar Ali Bhutto" (source U. S. Library of Congress).

22) "Uncensored" by Burhanuddin Hasan, ISBN: 969-407-245-X

was partly the result of his view of himself as a revolutionary leader trying to build a new order, intending to secularize Pakistan.²⁴⁾

Although the next general elections were due sometime in April 1978, Bhutto, on persistent encouragement of the Inter Services Intelligence Agency (the ISI) announced March 7th 1977 to be the date for the next general elections, with provincial elections to be held on 10th March. The Pakistan Army and its intelligence assessments showed that Bhutto was certain to succeed even in free and fair elections, but with a simple majority and may not be able to secure a 2/3rd majority required to amend the Constitution.²⁵⁾ However, Bhutto desired the constitutional majority of 2/3rd. Bhutto was in power and his party had unlimited funds. The government machinery was entirely at his disposal.²⁶⁾ He had the powerful network of TV and radio besides the entire press to support him.²⁷⁾ He had demoralized and subjugated the bureaucracy and terrorized the people.²⁸⁾

The 1977 elections were rigged, and even partially so admitted by Bhutto.²⁹⁾ Severe agitation and riots followed in the months to come. In order to curb the agitation, Bhutto called in the Army in Karachi, Lahore and Multan under selective Martial Law. Although Bhutto and the opposition thereafter entered into negotiations, with agitation and rioting almost ceasing, Bhutto agreed to hold fresh elections. But before the agreement could materialize, on 5th July 1977 by way of “Operation Fairplay”³⁰⁾ by way of a coup d’état, the Army took over the government, held the Constitution in “abeyance” and declared Martial Law through out the country.

General Zia ul Haq declared: “I want to make it absolutely clear that neither I have any political ambitions nor does the army want

23) As quoted in the book ‘Betrayals of another kind—Islam, Democracy and The Army in Pakistan’ by Lt. Gen. Faiz Ali Chisti (Retired) (Lahore: Jang Publishers, 1996) pp. 86-7

24) “Pakistan—Between Mosque and Military” by Husain Haqqani, ISBN: 969-402-498-6

25) Fn 25, *ibid*.

26) See Fn. 26 *ibid* (Haqqani).

27) “Uncensored” by Burhanuddin Hasan, ISBN: 969-407-245-X

28) Fn 25, *ibid*.

29) Fn 25 *ibid*, p.98

30) Fn 25, *ibid* (Chisti), p.133

to be taken away from its profession of soldiering ...My sole aim is to organize free and fair elections, which would be held, in October this year...Soon after the polls, power will be transferred to the elected representatives of the people. I give my solemn assurance that I will not deviate from this schedule. During the next three months my total attention will be concentrated on the holding of elections and I would not like to dissipate my energies as Chief Martial Law Administrator on anything else.”³¹⁾

Immediately after holding the Constitution in abeyance General Zia, anticipating a challenge to the legality of his actions, set out to purge the courts by requiring them to swear allegiance to his Martial Law and the purge court meekly complied and in the process gave to a military ruler the power to amend the Basic Law of the country. Having obtained legitimacy for this seizure of state power from the courts, he postponed the elections, and one year later included the Islamist opposition parties in his cabinet. He initiated the process of Islamizing the country's laws and institutions. In 1979, Gen. Zia had Zulfikar Ali Bhutto executed after trying him for plotting to murder a political opponent – the trial itself was of dubious legality³²⁾ – and was confirmed by a reconstituted Supreme Court. General elections were not held until 1985, only after excluding all political parties from the election process.³³⁾

General Zia's Regime (1977~1988)

General Zia's regime, as Chief Martial Law Administrator and later President, while throughout being the Chief of Army Staff was unique in its use of state machinery and resources. Although General Zia's Islamization per se may not be termed as a scheme of state violence, but certain aspects of it and its consequences have had such a far reaching and devastating impact on our society that to leave out

31) Fn 26, *ibid* (Haqqani), p.123, see also Fn 25 *ibid* (Chisti), p.140.

32) See Victoria Schofield, *Bhutto: Trial and Execution* (London: Cassell, 1979); and T. W. Rajaratnam, "A Judiciary in crises: The Trial of Zulfikar Ali Bhutto" (Madras: Kaanthalakam, 1988).

33) Fn 26 *ibid*. (Haqqani), p.123-4

Zia's tenure from a discussion of state violence would be to do injustice to the project. General Zia used the tools of legislation, media and education to subjugate the entire secular population, with women being the worst sufferers of his time and thereafter.

Burhanuddin Hasan, who served in the top ranks of state controlled television during the days of Bhutto and Zia notes that General Zia "cracked down real hard on the press. Over a hundred journalists were arrested and tried by summary military courts. Four of them were flogged for the first time in Pakistan's history. Ten senior journalists working in NPT [National Press Trust] papers were sacked during the MRD [Movement for Restoration of Democracy] for signing a memorandum in support of a demand for restoration of democracy in the country." "General Zia-ul-Haq put Major General Mujibur Rehman, psychological warfare specialist of the army, in charge of the Ministry of Information and Broadcasting, who revived the Press advice system with full force, closed all doors on freedom of expression and created a rift among the rank and file of journalists by building up rightist elements which supported General Zia's regime, heralding the emergence of a theocratic state and determined to eliminate all "un-Islamic" institutions such as political parties and democracy." "With the support of some hired Ulema (Islamic scholars) of the Islamic Ideology Council ... he declared that the concept of political parties did not exist in Islam and that the democratic system of governance was un-Islamic. With one master stroke Zia ul-Haq changed the entire ideological complexion of Pakistan from a modern secular and progressive state to a theocratic one to be run by an all-powerful "Amirul Mominin," (that is himself) with the advice and consent of the same group of Ulema who had opposed the creation of Pakistan as conceived by the Quaid-e-Azam [Muhammad Ali Jinnah]. The religious political parties, which due to their treacherous role in the past had always been rejected by the people of Pakistan, ganged up around Zia and became his bastion of power."³⁴⁾

34) Burhanuddin Hasan, "Uncensored—An eyewitness account of abuse of power and media in Pakistan" (Karachi: Royal Book Company, 2000) pp.183 and 187

General Zia continued with the past trend of mandatory books for all public schools from the first standard to college. These textbooks were rewritten with an Islamist ideological agenda.³⁵⁾ Pakistani historian K. K. Aziz describes these textbooks as being replete with historic errors and suggests that their mandatory study amounted to teaching of “prescribed myths.”³⁶⁾ After examining sixty-six books textbooks for social and Pakistan studies, Aziz argued that these textbooks aimed at supporting military rule in Pakistan, including hatred for Hindus, glorifying wars, and distorting the pre-1947 history of the area constituting Pakistan.³⁷⁾ The communal riots at the time of Pakistan’s independence were described as ‘Hindu and Sikh massacres of unarmed Muslims.’ The 1965 war with India was wrongly described as a Pakistani victory, which ended only when ‘India sued for peace’ because it was ‘frightened of the Pakistan Army and the people of Pakistan.’ The separation of East Pakistan was explained away as the result of collaboration between Pakistan’s ‘external and internal enemies’ and Indian aggression. The U.S. and the Soviet Union were both presented as enemies of Pakistan’s Islamic ideology. Zulfikar Ali Bhutto was demonized as ‘a dictator’ who did nothing ‘to satisfy public aspirations.’ Zia ul-Haq was credited with making a valuable contribution towards implementing the “Islamic system dreamed by the founders of Pakistan.”³⁸⁾ “This Islamist bias in textbooks ensured that Zia ul-Haq’s ideological influence on the hearts and minds of Pakistanis lasted well beyond his period in power.”³⁹⁾

To this end he even banned the media from airing Mr. Jinnah’s historic speech at the inaugural session of the first Constituent Assembly, which argues Burhanuddin Hasan, was “the Magna Carta for a secular Pakistan.” Mr. Jinnah, while addressing the Assembly on 11 August 1947 said:

35) Fn 26 *ibid*, p.149 (Haqqani)

36) K. K. Aziz, “The Murder of History in Pakistan” (Lahore: Vanguard Books, 1993), p.1.

37) *ibid* pp 188-205.

38) *Ibid* (Aziz)

39) Hussain Haqqani, “Pakistan—between Mosque and Military” (Lahore: Vanguard Books, 2005), p.149-150

“You are free; you are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion or caste or creed—that has nothing to do with the fundamental principle that we are all citizens and equal citizens of one State ...Now, I think we should keep that in front of us as our ideal, and you will find that in course of time, Hindus would cease to be Hindus, and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State.”⁴⁰⁾

Social engineering of the masses through falsifying history and historical ideology was a unique mode of furthering personal power and political agenda. Although such an act is certainly an abuse of state power, I have gone further, with the benefit of hindsight, to characterize it also as an act of prolonged indirect state violence, as by these and other measures he opened the Pandora’s box of sectarian strife and obscurantism, which ultimately led to the creation of fanatic and armed militant groups, who are still killing in the name of Islam.

Women’s Rights and their Status in Pakistan, before, during and after Zia

In order to better appreciate how women’s rights and status in Pakistan have progressed and regressed, I endeavor to discuss briefly the historical position of women in this area as well.

In this male-dominated society, the pre-1947 status of women in this part of the world may well be appreciated from the following excerpts from the letter written by the British Vice Chancellor in 1936 and from the words of the great reformist poet, Allama Iqbal respectively: -

“The lucky girls who get a higher education instead of being pioneers of women’s welfare work and making education popular by demonstrating that the educated girl is a better wife and housekeeper, utilize their education

40) Fn 37, *ibid*, pp.187-8

to escape from their responsibilities and do not even bring up their own children ... Would it not be possible to make the women's education of a far more practical kind than it is now, so that no woman can obtain any kind of degree or diploma without being really well trained for what is bound to be the main occupation of 99% of her sex? I do not see how we can avoid the conclusion that education has got to fit people for the battle of life, but if education is going to unfit women for the places they will have to occupy in life, it will become harder and harder to obtain a strong public opinion in favour of female education."⁴¹⁾

Iqbal's comments on suffragettes:

"Superfluous women ...are compelled to "conceive" ideas instead of children. Recently they have conceived the inspiring idea of "votes for women" ...The Suffragist movement in Europe is at bottom a cry for husbands rather than votes. To me it is nothing more than the riots of the unemployed."⁴²⁾

The anti-colonialism movement in general and the movement for Pakistan in particular brought about a much needed change in the political life of Muslim women of the sub-continent. In 1941, the Muslim Girls' Student federation was formed to muster support for a separate Muslim homeland. The student federation generated interest among Muslim families in sending their daughters to schools and colleges and added an influential women's sub-committee to the All India Muslim League. In collecting funds, selling badges and propagating the idea of Pakistan, all the women and girls involved, by appearing in public and interacting with strangers, were violating the unwritten but centuries' old rule of purdah (cover) and confinement for Muslim women.⁴³⁾ Mr. Jinnah's speech in 1944 indicates the growing importance of women's participation in worldly affairs outside the house:

41) As quoted in "Gender, Nation, State in Pakistan—Shifting body politics," Shahnaz Rouse (Lahore: Vanguard Books, 2006—ISBN: 969-402-505-2) p.15

42) Ibid, p.18

43) Iftikhar H. Malik, "State and Civil Society in Pakistan—Politics of authority, ideology and ethnicity" (New York: At. Martin's Press, Inc. 1997) p.144

“No nation can rise to the height of glory unless your women are side by side with you. We are victims of evil customs. It is a crime against humanity that our women are shut up within the four walls of the house as prisoners. There is no sanction anywhere for the deplorable condition in which our women live. You should take your women along with you as comrades in every sphere of life.”⁴⁴⁾

Soon after independence of Pakistan a number of women’s organizations aimed at improving the community at large were found including the still existing All Pakistan Women’s Association (APWA). In 1953 these women’s organizations urged the reservation of ten special women’s seats in the national and provincial assemblies, and later were instrumental in establishing the Family Laws Commission, which eventually led to the Family Laws Ordinance 1961. This Ordinance discourages polygamy by requiring the husband to seek the first wife’s consent to his second marriage. It seeks to prevent the divorce from materializing for three months, intended to be a ‘cooling-off’ period for a possible reconciliation. All marriages are required to be registered with proper provisions on a nikahnama (marriage contract), such as a woman’s delegated right to divorce, dower etc. It rose the marriageable age from 14 to 16 for girls and from 18 to 21 for boys. Despite its weaknesses, the Ordinance was a milestone in safeguarding women’s positions in marital relationships and was widely opposed by religious groups who felt that their influence had been taken away from them.⁴⁵⁾

The decades of hard-earned progress made in ameliorating women’s status and affirming their rights, took a U-turn under General Zia’s regime. The Soviet invasion of Afghanistan changed the entire dynamics of the situation in Pakistan as it became a frontline state against the Soviet occupation supporting the Afghan resistance principally led by the orthodox Mujahedeen. It did not suit General Musharraf to open the political process in Pakistan to risk pluralism. Declaring his first priority to be Islamization of the Pakistani polity he courted the theocratic forces both to gain support for the Mujahedeen and

44) Fn. 44, *ibid*, p.20

45) Fn. 46, *ibid*, p.145

to perpetuate his rule. By closing the political process (banning political parties, students unions, clamping on the media and severely restricting trade union activities) the State became partisan and rather than playing an integrative role it encouraged fissiparous and segmentary forces. Fundamental rights remained suspended, there was no representative legislature and in any event the courts to come to the aid of the weaker sections of society in realizing their fundamental rights. The weakest elements of the society—particularly the poor rural women—paid the highest cost. Debates on topics such as whether women should be ‘allowed’ to drive cars, attend co-educational institutions or simply go shopping became major issues for the government and its apologists. Plans for a separate women’s university, compulsory wearing of chaddar (cloth cover), women’s exclusion from sports and advertising, or punishments for sharing a car ride with one’s own husband without a marriage certificate were the new barometers of Islamization.⁴⁶⁾ It was officially given out ‘that the rights, role and status of women hitherto accepted were not Islamic and that the status, role and rights of women differ from those of men.’⁴⁷⁾

In 1979, in the name of Islamization, General Zia’s regime legislated several Ordinances dealing directly with women’s domain. Of these the most alarming has been the Offence of Zina (Enforcement of Haddood) Ordinance, 1979. Zina is defined as willful sexual intercourse between a man and a woman without being married to each other or wrongfully believing to have been married to each other, while ‘Zina-bil-jabr’ is rape.⁴⁸⁾ Punishment for Zina was prescribed as stoning to death in case of married persons and lashing in case of those who were unmarried. However, for such punishment to be imposed the Ordinance requires four Muslim men to have witnessed the act of penetration, or a voluntary confession before the Court. Be that as it may, the most alarming aspect of this law had been that a woman complaining of rape, if not able to prove the allegation may

46) Ibid, p.147

47) Khawar Mumtaz and Farida Shaheed, “Women of Pakistan. Two steps forward, One step back?” London, 1987, p.73

48) Ordinance VII of 1979

be presumed to have at least confessed to the act of sexual intercourse with a person other than her husband. Irrespective of whether she is eventually sentenced or not, very often women have languished in jails by reason of having complained of rape in view of lack of substantive evidence against the accused. As in the case of one Safia Bibi, a blind maid-servant who became pregnant following multiple rape. She was sentenced to 15 lashes, while the two accused—father and son—were acquitted for the case not having been proven against them beyond reasonable doubt. Although the Federal Shariat Court eventually set aside Safia Bibi's sentence. Lal Mai from Liaquatpur in Bahawalpur District was the first woman to be publicly whipped on 30th September 1983, on charges of adultery. About 8000 men watched her receive 15 lashes. Another woman in Swat was sentenced to receive 80 lashes while the men involved in both the cases were acquitted for lack of evidence. The fact of pregnancy of woman is evidential of her actions.⁴⁹⁾

Studies have shown that prior to the promulgation of the Sharia Ordinances, only 70 women had been incarcerated in Pakistan, while by 1991 there were about 2000 women imprisoned, with 60 to 80 percent of these women imprisoned under the Hudood Ordinances.⁵⁰⁾ At least 70 percent of the incarcerated women were sexually abused.⁵¹⁾ 'Reported abuses include beating and slapping; suspension in mid-air with hands tied behind victim's back; the insertion of foreign objects, including police batons and chili peppers, into the vagina and rectum; and gang rape.'⁵²⁾ According to the same report a senior police official claimed that "in 95 percent of the cases the women themselves are at fault." The case of Aasia Ayoub is illustrative of this 'practice.' 'She was a housewife, picked up by police in Rawalpindi on allegation of stealing her neighbor's purse. Without any FIR or warrant, she had been arrested and put in the lock-up at the police station on

49) Fn.46 *ibid*, pp147-148

50) Asia Watch, "Double Jeopardy. Police abuse of women in Pakistan." (New York, 1993, pp.2 and 3

51) Fn.46 *ibid* p.166

52) Fn.53 *ibid*, p.2; for a brief description of certain case studies, see also Fn.46 *ibid*, pp 303-4

3rd September 1991 along with her husband and 14 year old son. The Station House Officer pulled her hair, while his constables brought chilies and threatened to spray her vagina. She had already been subjected to policemen kissing and fondling her body. She was released the next day and warned not to disclose her ordeal to anybody. She ended up in hospital with a nervous break-down. Under public pressure the case was registered in a magistrate's court following an inquiry which established that Police had sexually tortured Aasia. Under Police pressure the Magistrate was transferred and, despite Nawaz Sharif's personal intervention, the court dismissed the allegations against the police for lack of evidence.⁵³⁾

On 2nd January 2005, Dr. Shazia Khalid, a doctor working for Pakistan Petroleum Ltd. was raped allegedly by an officer of the Pakistan Army's Defence Services Group at Sui in Dera Bugti, in a heavily-guarded government owned natural-gas plant in the province of Balochistan. Instead of being provided with medical care, for some days she was held in a house at Karachi in "unofficial protection" of the police and the Army without being allowed access to doctors, lawyers or visitors of her choice.⁵⁴⁾ Her case led to a violent uprising by the Bugti tribe in Baluchistan province, disrupting the supply of gas to much of the country for several weeks. By some accounts, up to 10,000 soldiers and police were brought in to quell the rebellion.

In an interview with the BBC, Dr. Shazia said that she was threatened many times. "I cannot tell you how many times I was threatened. My life was made impossible. I am still terrified." "My whole career was destroyed, as was my husband's. That was why we left our country." "Instead of getting justice, I was hounded out of Pakistan. I never wanted to leave Pakistan, but had no choice."⁵⁵⁾

After years of agitation and persistent persuasion by many women's rights groups and members of the civil society, finally in 2006 under the regime of General Musharaff 'Protection of Women (Criminal Laws Amendment) Act 2006 was passed to remove the biting effect of

53) Fn.46 ibid p.303-4 (Iftikhar)

54) Amnesty International, 15th February 2005 (Index Number: ASA 33/002/2005)

55) BBC News, International version, Wednesday, 29th June 2005

the Hudood Ordinances against women by making the offences of Adultery and fornication as non-cognizable by the police and cognizable by the Court of Competent Jurisdiction only on a complaint made in writing and statement on Oath by four male Muslim witnesses to the act of penetration in case of Adultery and two eye-witnesses in case of fornication.⁵⁶⁾

Though the 2006 Act has been successful disallowing the police to arrest women on charges of adultery and like matters, the Asian Human Rights Commission referring to Act states that “The newly made Women’s Protection Act has failed to deter acts of violence against women who continue to fall victim to honour killings. State violence also continued against women and at least 181 women were arrested under different minor allegations and 71 women were physically tortured by the police in the provinces. This clearly indicates that the mere making of laws does not make any difference relating to violations of human rights including domestic violence. The actual problem lies in the collapse of the law and the serious defects of the law enforcement system.”⁵⁷⁾

One of the very alarming occurrences of honour killings recently surfaced, wherein five women were buried alive in the name of honour. Three of the victims had opted for court marriage of their own free will. The Women’s action forum claims that “Like many other ‘honour’ killings, this one has also been perpetrated with the knowledge, permission and active support of the local government head—District Nazim ... and the brother of the Minister of State for Housing from that area, who are all PPP stalwarts (the party in power these days). Consequently, the villagers are too terrified to give a statement, and the local journalist who was the first to report the incident is being harassed and threatened.”⁵⁸⁾

A lot happens in this country in the name of honour and the government miserably fails to protect its women citizens from these excesses,

56) Section 8 of the Protection of Women (Criminal Laws Amendment) Act 2006

57) Asian Human Rights Commission—statement “Pakistan: Women are main victims of the War on Terror,” March 07, 2008

58) Daily Dawn, September 01, 2008—“Honour Killing of Baloch women condemned”

or rather chooses not to. Apart from killings in the name of honour, minor girls are given in marriage to settle family feuds and also as payment for misdeeds of men of the house. Recently a Jirga (a locally constituted unofficial council of elders) of Sindh directed that three minor girls, Tasleema, Aneela and Shaneela, aged 5, 3 and 2 years respectively be given to the family whose male members had been killed by the family members of the minor girls.⁵⁹⁾ Similarly another Jirga held in June on the Balochistan-Sindh border directed that 15 minor girls (one of them only four days old), be given as compensation to end an age-old dispute between two rival tribes.⁶⁰⁾ This custom is known as 'Sang Chatti' in Sindh, 'Wanni' in Punjab and 'Swara' in N.W.F.P. 'The girl taken in Sang Chatti is likely to be forced to live in the home of the 'enemy.' It is left to the aggrieved party to pick a girl and if the dead man had high standing in society, his heirs may even take away two as compensation. The process is overseen by the Jirga which usually favors the more influential family. The whole procedure violates Islamic matrimonial law which requires the consent of both the man and woman to enter into marriage. These are pre-Islamic customs and have no room in Islam.'⁶¹⁾

Women are also subjects of official ignorance in many matters, increasing their plight. 'They bear the brunt of increasing poverty, colossal human deprivation, poor governance; discrimination based on custom, tradition, and civil and military strife. Women comprise 49% of the population of Pakistan. This huge percentage is ignored or discriminated against by the political, social and economical structures of the country. The vast numbers of poor people in the region are starved of sustainable livelihoods and deprived of basic needs. While both sexes suffer from poverty, the women pay the price in a much more obvious way. Women comprise of 30% of the total labor force, but 65.7% of this female labour force is officially accounted for in the informal sector. For many informal sector workers, perhaps the majority, working conditions and terms of labour are exploitative,

59) Ibid (1.9.08)

60) Ibid. (1.9.08 Dawn)

61) Daily Dawn, May 24th 2007, "Incidents of Swara rising after action against CJP"

characterized by low wages and long working hours with no protective laws. The informal sector has grown 8 to 9 times since 1978-79. One example of this problem is that of the brick kiln workers in Pakistan. An estimated 100,000 women work in brick kilns, but they are not “officially” employed because whole families work in a form of bonded labour, in which only the male head of the family is registered.’⁶²)

General Pervez Musharaff, the War on Terrorism and the Lawyers’ Movement.

General Pervez Musharaff took over the country by way of a military coup d’état on 12.10.1999 displacing the elected government of Nawaz Sharif, who enjoyed a 2/3rd majority in the Parliament at the time of the coup. It had only been eleven years since the rule of the last military dictator General Zia-ul-Haq had ended. The reason again was national security and the purpose restoration of true democracy. He promised to restore the Constitution, hold elections and leave by the end of three years, however that was not to be and he stayed on for eight long years, as the Chief of Army Staff (COAS) and the Chief Executive at first, later as COAS and the President and eventually as the President.

After the bombing of the World Trade Center on September 11th, 2001, Pakistan assumed a central role in the war on terror. Severe curtailment of civil liberties in the areas bordering Afghanistan was a direct consequence. By holding the Constitution in so-called ‘abeyance,’ Law had already lost its supremacy.

Many people went missing on a daily basis, allegedly being picked up by intelligence and law enforcement agencies. Pakistan Army launched operations in the tribal areas of the N.W.F.P, particularly the areas bordering Afghanistan. The loss of lives kept mounting. How many of them were innocent, we wouldn’t know, for these were not executions consequent to trials but raids on ‘suspected’ militant hideouts. The loss of innocent lives that would have occurred may

62) Fn.60, *ibid* (AHRC).

perhaps be termed as ‘casualties of war.’ However, the unique feature of this war is that this country’s own Army is conducting raids in its own country, which is normally the realm of Police followed by trials and sentencing. This mistake was once made in 1971, when the Pakistan Army conducted raids and operations in Eastern wing of Pakistan; this resulted in civil war and secession of East Pakistan into Bangladesh. But we don’t seem to learn from history.

Be that as it may, the Anti-Terrorism Act, 1997 defines the term “Terrorist Act’ in such wide terms that it can include almost any act of violence including damage to property.⁶³⁾ It also empowers the government to call in the armed forces of the country,⁶⁴⁾ sets up special courts for speedy disposal of terrorism related offences.⁶⁵⁾ Despite the Government having sweeping powers of arrest, seizure, forfeiture and special trials under this Act, there has been an alarming rise in the number ‘missing persons’ or ‘forced disappearances.’ According to a 2006 report of the Human Rights Commission of Pakistan, ‘the trend of organized disappearances started around 2001 and since then at least 400 persons had gone missing. However, the Commission feared that the figure was only ‘the tip of the iceberg.’⁶⁶⁾ This indeed was only the tip of the iceberg, as in November 2008 (by now the Musharraf government had already departed) the Baluchistan government alone sent a list of 849 missing persons to the Interior Ministry.⁶⁷⁾ The HRCP report said people suspected of being involved in attacks

63) Section 6 of the Anti-Terrorism Act: “Terrorist act—Whoever, to strike in the people, or any section of the people, or to alienate any section of the people or adversely affect, harmony among different sections of the people, does any act or thing by using bombs, dynamite or other explosive or inflammable substances, or firearms, or other lethal weapons or poisons or noxious gasses or chemicals or other substances of a hazardous nature in such a manner as to cause, or be likely to cause the death of, or injury to, any person or persons, or damage to or destruction of property or disruption of any supplies of service essential to the life of the community or displays fire-arms, or threatens with the use of force against public servants in order to prevent them from discharging their lawful duties commits a terrorist act.”

64) Section 4 of the Anti-Terrorism Act 1997

65) Section 13 of the Anti-Terrorism Act 1997.

66) Daily Dawn, February 9th, 2007 “Disappearances new form of abuse: HRCP”

67) Daily Times, November 21st, 2008—“Baluchistan sends missing persons’ list to army, Interior Ministry”

on the President, the Baloch Nationalist struggle and those struggling for the rights of Sindhi people were frequently targeted. Prolonged and illegal detention and torture and humiliation of the detainees were growing problems. Most of the disappeared were not suspected militants but government opponents, with torture of the missing persons being a rule rather than an exception.⁶⁸⁾

An independent judiciary under an Army rule is indeed an anomaly. This anomaly was witnessed in Pakistan when the Chief Justice, Chaudhry Iftikhar assumed his Constitutional task of protecting the citizen's lives and liberties. He started taking suo moto notice (i.e. taking notice of a matter of its own initiative) of complaints of family members of the missing persons. He summoned officials to Court and directed the intelligence agencies to disclose the whereabouts of the missing persons, release them or regularize their cases. By 29th October 2007 hearing of one of the cases of missing persons the government lawyers maintained that 186 people had so far been traced and released.⁶⁹⁾ The Human Rights Commission of Pakistan in its report on the year 2007 notes that '99 out of 198 missing persons on HRCP's list before Supreme Court had been traced before November 3rd, 2007,⁷⁰⁾ when Musharraf imposed a second Martial Law in Pakistan, wherein 55 of the 95 superior courts judges, including the CJ and 12 judges of the SC and the Chief Justices of SHC and PHC⁷¹⁾ were unconstitutionally removed from office.

However, this was not his first unconstitutional move to remove the Chief Justice in 2007 and the missing persons' cases were not the only matters that invited the wrath of the Chief of Army Staff. The Chief Justice's decision against the privatization of the Steel Mills of Pakistan,⁷²⁾ for instance, was widely perceived as challenging the hitherto unchallenged will of the establishment. Earlier, on Friday March 9th, 2007, the then Chief of Army Staff and President, General Pervez Musharraf had summoned the Chief Justice to the Army Camp

68) Ibid Fn.69 (dawn HRCP)

69) Daily Dawn, October 30th, 2007 "CJ vows to ensure release of the missing"

70) HRCP Annual Report—State of Human Rights in 2007

71) Ibid (HRCP 2007)

72) Reported at PLD 2008 SC ____;

Office where he was asked to resign or face charges. The Chief Justice claimed innocence and expressed his readiness to face any Reference.⁷³⁾ ‘This ignited the fury of the General who stood up angrily and left the room along with his Military Secretary, Chief of Staff and the Prime Minister, saying that the others would show him the evidence. The Director General Military Intelligence (DGMI), the Director General Inter Services Intelligence (DGISI) and the Director General Intelligence Bureau (DGIB) insisted remained behind and continued to sit with the Chief Justice. The Chief Justice was kept there against his will till 5 pm,⁷⁴⁾ by when Justice Javed Iqbal had been sworn in as the Acting Chief Justice. After which time the Chief Justice tried to go to the apex Court, but a strong police posse chased his car and prevented him from doing so and escorted him to the official residence.⁷⁵⁾ Since then he was held incommunicado⁷⁶⁾ until the first hearing of the Supreme Judicial Council. The trend of unofficial detentions had reached the house of the Chief Justice.

The unprecedented refusal of a Chief Justice to bow down to the will of the executive and his consequent illegal suspension and unofficial detention sparked an equally unprecedented movement across Pakistan—the Lawyers’ Movement. The Pakistan Bar Council and the Supreme Court Bar Association gave a joint call for a complete boycott of the Courts on March 12th, 2007. Heavy contingents of police were seen outside all courts in all major cities. The protesting lawyers of Lahore were brutally baton charged by the Police, injuring at least 40 of them and arresting about 25.⁷⁷⁾ The first strike was very successful and had set the stage for the onslaught that was to follow.

73) Under Article 209 of the Constitution, the President may send a reference containing allegations of misconduct against a judge of the Superior Courts to the Supreme Judicial Council, which may then recommend removal of the Judge, if the charges are proved.

74) These events are described in detail in the Chief Justice’s sworn affidavit in Constitutional Petition 21 of 2007—Chief Justice of Pakistan Vs. The President of Pakistan and others; also in “The Pakistan Lawyers’ Movement—An Unfinished Agenda” by Muneer A. Malik (Karachi: Pakistan Law House, 2008)

75) Daily Dawn, March 10th, 2007 “CJ Suspended, escorted home”

76) Ibid.

77) Daily Dawn, March 13th, 2007 “Nationwide Protest by Lawyers; 40 hurt in Lahore Baton charge”

On March 13th, 2007, the day of first hearing of the reference against the Chief Justice in the Supreme Judicial Council (SJC)—the Chief Justice set out on foot with his wife towards the Supreme Court to attend the hearing. The police officials in their attempt to make the Chief Justice sit in Police vehicle manhandled him. In the process his coat was torn and his hair pulled.⁷⁸⁾ Consequently another successful country wide strike and boycott of courts followed and it was also declared that every Thursday would be a strike, while every day the lawyers were to observe a token strike by boycotting all courts for an hour each day.⁷⁹⁾

In the month of April the Chief Justice along with his team of lawyers hit the roads. They toured the major Bar Associations of the country and everywhere they went they got rousing welcomes. Thousands of lawyers, members of civil society, political workers and ordinary citizen thronged to the streets in support of the Chief Justice. On 5th May 2007, the whole of Lahore was bustling with political activity and hundreds of thousands of people had come out in support of the Chief Justice. All major television channels were taken off air in all major cities of Sindh by the provincial government to avoid any ripple effect here. Although Lahore on May 5th gave an impression of a carnival, in Karachi on May 12th carnage took place. The Chief Justice decided that he would address the Sindh High Court Bar on 12th May 2007 and accordingly this was made public on 7th May 2007. Later, the MQM leadership which was allied to General Musharraf also chose the 12th May 2007 as the day of their rally. The lawyers feared that the Chief Justice's cavalcade may not be allowed clear passage from the airport to the Sindh High Court building, hence approached the Sindh High Court for appropriate directions to the police. The police were duly directed to ensure a clear passage and fool-proof security to the Chief Justice.⁸⁰⁾ That was not to be. By dawn of 12th May, all the major roads leading to the Sindh High

78) Muneer A. Malik, "The Pakistan Lawyers' Movement—An Unfinished Agenda" (Karachi: Pakistan Law House, 2008), p.55; Daily Dawn, March 14th, 2007 "Justice Iftikhar seeks reconstituted SJC; CJ roughed up; Overwhelming support by lawyers' PBC strike today"

79) Muneer A. Malik op. cit. p.63

80) Daily Dawn, May 12th, 2007 "SHC directs government to ensure security"

Court had been blocked. During the course of the day various political parties had taken to the roads and eventually clashed with unscrupulous elements having a field day. At least 34 people died and at least 140 were injured. An office of a local TV channel “AAJ TV” was attacked by armed men. Law enforcement agencies were either not present or just stood by; and the Chief Justice was not allowed to step out of the airport.⁸¹⁾ Official figures submitted in Constitutional Petition 1020 of 2007 indicate that 50 persons had died that day; 234 were injured; 110 vehicles were torched; four properties were burnt down and the office of AAJ TV came under gunfire that lasted for hours.⁸²⁾

On the night of 12th May, General Pervez Musharraf spoke at a public rally behind a bullet-proof glass panel in front of the Parliament building at Islamabad. He held the Chief Justice and opposition parties responsible for the Karachi carnage, the former on account of his refusal to accept the government’s advice against traveling to Karachi, and added “if they are powerful then they should know that people’s power is with us.”⁸³⁾

Between 9th of March 2007 and 19th July 2007 the lawyers’ movement energized the people of Pakistan who had expressed their confidence in the Chief Justice on the streets of Pakistan. In this backdrop of peoples power the hitherto fore compliant courts chose to side with the people and on 20th July 2007, the full bench of the Supreme Court gave its verdict setting aside the Reference against the Chief Justice by a majority of 10 to 3, and declared that the Chief Justice of Pakistan “shall be deemed to be holding the said office and shall always be deemed to be so holding the same.”⁸⁴⁾

The Chief Justice resumed office and the Supreme Court started working with full swing, but the Lawyers’ movement did not end there. The fight for Constitutionalism was still on, as General Musharraf continued to hold dual offices of the Chief of Army Staff and the

81) Daily Dawn, May 13th, 2007; The News International, May 13th, 2007; Daily Times, May 13th, 2007

82) Muneer A. Malik, *opt cit.* p.158

83) Daily Dawn May 13th, 2007

84) Extract from the short order of the Court in COP 21 of 2007

Presidency, which the Constitution did not allow, but for the dubious 17th Amendment to it. Even that did not allow him to run for the Presidency for the third time. Moreover, Musharraf sought to get re-elected from the then existing assemblies, hand-picked by him, which had already elected him once and whose own tenure was expiring and no longer represented the will of the people.

The lawyers in this phase of their struggle floated Justice (retired) Wajihuddin Ahmed as a candidate for Presidency against General Pervez Musharraf, primarily to be able to legally challenge General's election in Court. Simultaneously, the lawyers on 29th September 2007—the day nomination papers were to be filed, boycotted the courts throughout the country and demonstrated against candidacy of General Musharraf. In Karachi police baton charged protesting lawyers wounding three and arresting ten. Lawyers in Lahore, Quetta, Peshawar, Multan, Bahawalpur, Attock, Taxila, Faisalabad and other cities took to the streets in protest. While many lawyers, also from Islamabad, Rawalpindi, Taxila, Attock, Peshawar and other cities gathered in front of the Supreme Court building to join the march to the Election Commission of Pakistan. Members of civil society also joined in. To stop this lot of lawyers and other people from reaching the Election Commission there were a large number of policemen both in plain clothes and riot gear, and also members of anti-terrorist squads. Barely a 100 yards had been walked when the law enforcing agencies baton charged the lawyers. The police in plain clothes attacked the lawyers with bricks, stones and batons. Many lawyers were arrested, including senior members of the legal fraternity, some of whom were detained in undisclosed locations. The law enforcing agencies abused not only the lawyers and members of the civil society but also journalists, leaving over 70 injured.⁸⁵⁾ The Supreme Court took suo moto notice of the events and initiated contempt proceedings against concerned officers of the law-enforcing agencies.

Around the same time a Constitutional Petition was filed in the Supreme Court with Justice (retired) Wajihuddin Ahmed as the petitioner challenging General Musharraf's candidacy. The Court on 2nd

85) Muneer A. Malik, *op cit.* pp221-222

October 2007, although allowed the presidential elections to go ahead as scheduled on 6th October, but prohibited the Election Commission from issuing the official notification of its results until the disposal of this petition. But that was not to be, as General Musharraf in his capacity as the Chief of Army Staff once again imposed a Martial Law disguising it under the name of an 'Emergency plus'; this time against his own system of governance and the judiciary.

55 judges of the superior Courts including the Chief Justice of Pakistan and 12 judges of the Supreme Court along with the Chief Justices of the Sindh High Court and the Peshawar High Court were illegally removed from office.

Country-wide arrests were made and all the leaders of the lawyers' movement and other active lawyers were arrested and put behind bars. Some were even kept in very inhuman conditions, like Justice (retired) Tariq Mehmood who was picked up from his residence and sent to Sahiwal Jail where he was held in solitary confinement in a rat infested cell and had to sleep on the floor in biting cold.⁸⁶⁾ Many were detained for indefinite periods including the Chief Justice, who was kept in house arrest along with his family for over 100 days. On 5th November 2007 the Sindh High Court was besieged by police and rangers personnel to arrest the protesting lawyers, who met the same fate as their friends across the country. TV channels were taken off air and remained so for over a month. After which stringent conditions were imposed upon each before allowing them to be broadcasted again.

The Supreme Court was taken over by Justice Abdul Hameed Dogar as the so-called new Chief Justice. New judges were appointed under the Provisional Constitutional Order 1 of 2007.

General Musharraf gave up his uniform in November 2007 declaring himself to continue as President and giving the power to lift the Martial Law to the President – i.e. unto himself, and also retaining with himself the power to appoint the Chiefs of Army, Naval and Air Staffs.

86) Ibid. p.240

General Musharraf did all that and more just to remain in power. But that did not last long as he was forced by the circumstances to resign on 18th August 2008 in the face impeachment proceedings threatened against him by the PPP and PML (N) coalition that had won the February 18th 2008 elections after the assassination of Benazir Bhutto on 27th December 2007.

The chequered history of the last 60 years suggests that the executive representing the interests of a particular class has operated outside the limits of constitutionalism and that the judicial organ of the state has been powerless to exercise its authority to advance the rule of law. Although an elected government and elected President have been installed since March 2008, the rulers have yet to claim the mantle of being democratic. The elected government has reneged on promises to undo the effects of the Proclamation of Emergency, also known as the second coup of General Musharraf. While the legislators took oath promising to defend and uphold the Constitution as it stood on 2nd November 2007 the Parliament and the Executive continue to recognize the judges and the courts installed by General Musharraf as *de jure*. The Executive prefers to legislate through ordinances despite beating the drum of the sovereignty of Parliament which in the last 8 months has hardly enacted any legislation. The judges deposed by Musharraf continue to be non-functional while those who betrayed their oath to the Constitution are heralded as legitimate. The return of the deposed judges has been conditioned upon their taking a fresh oath for “re-appointment” thereby asking them to first acknowledge that were rightfully removed. Persons who have defended archaic customs such as “honour killings” have been inducted into the Federal cabinet and the retired General Musharraf continues to enjoy official protocol. Predictably, the process of democratization faces a long and tortuous road ahead but in the wake of the lawyers’ movement we have seen the birth of a new consciousness for the Rule of Law spread amongst the people.

The Lessons

After the secession of East Pakistan, the remaining federating units of Baluchistan, Sindh, North West Frontier and Punjab through their elected representatives agreed upon a new constitution known as the Constitution of the Islamic Republic of Pakistan, 1973. Article 6 of this Constitution provides that any person who abrogates or attempts or conspires to abrogate the Constitution by use of force or show of force or by other unconstitutional means shall be guilty of high treason. The fundamental rights enshrined in the Constitution provide for the security of person, safeguards as to arrest and detention, prohibition against slavery and forced labour, protection against ex post facto punishment, double jeopardy and self-incrimination, the inviolability of the dignity of man, freedom of movement, freedom of assembly, freedom of association, freedom of trade, business or profession, freedom of speech, safeguards against taxation for purposes of any particular religion, safeguard as to educational institutions in respect of religion and religious institutions, holding of property, protection of property rights, equality of citizens before law, non-discrimination in respect of access to public places, safeguard against discrimination in services and prohibition of language, script and culture. The judicature is vested with the power of judicial review and to strike down any law that is in derogation of fundamental rights or the Constitution. The superior courts are vested with wide ranging powers to issue appropriate writs for the enforcement of fundamental rights. Why it is then that in the presence of these constitutional provisions the Pakistani State has resorted to violence against its people and why is it that civilian supremacy over the State does not practically exist for all intents and purposes? The answer is rather complex but in our view is to be found particularly in the militarization of the State, be it on account of regional conflicts or threats to its security and particularly in the failure of the institutions set up by the people for their empowerment. Far from performing its role as the guardian of the Constitution, the superior judiciary of the country has time and again validated extra constitutional interventions

by the armed forces. The judiciary has failed to accept the simple notion that it writ runs not by any coercive power, for it lacks its own but by the moral authority that it enjoys with the people. Beginning with the Constituent Assembly to the present time, the feudal class has dominated the parliament, which has miserably failed function as a legislative body exercising sovereign authority to make laws for the empowerment of the people, particularly the weaker sections of the society. The teeming masses remain uneducated as only a miniscule fraction of the national resources is earmarked for education, health and social services.

It is imperative to energize civil society so that it can sensitize the masses of their fundamental and human rights available to them under the Constitution and to encourage them to organize themselves to fight for their rights before the parliament and through the judicial process. Perhaps it is in this context it has been said that in the final analysis courts do not protect the constitution but the people do.

12. People-to-People Relations and Confronting the Challenges of Democratization in the Philippines¹⁾

Teresa S. Encarnacion Tadem

Introduction

A key in the democratization process in the Philippines is the manner in which people-to-people relations between the Filipino people, through various forms such as revolutionary movements, social movements, non-governmental organizations and civil society, have forged ties with their counterparts with the other peoples of the world to push for the democratization process in the Philippines. Politically, the Philippines' people-to-people relations have witnessed support given to repressed victims of society such as the workers and the peasants through the establishment of solidarity movements. During the martial law years, it has also seen the emergence of an anti-dictatorship movement valuable support of which came from foreign social movements as well as non-governmental organizations (NGOs). The martial law years also witnessed the rise of people to people relations based on non class issues such as the peace and the human rights movements. The former brought about a solidarity movement with people's around the world against the U.S. military bases. This also

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gave birth to the “no nukes” movement which advocated peaceful against military means to resolve conflict within and outside societies. The latter, on the other hand, unified people around the globe, from Southeast Asia to Latin America against the military abuses and repression of brutal dictatorships. Economically, people-to-people relations were best expressed through the emergence of non-governmental organizations (NGOs) engaged in development work in the Philippines, particularly in the countryside, where underdevelopment and poverty prevailed amidst the growing wealth of a few particularly during the martial law period. Support for this mainly came from foreign governments as well as foreign NGOs. In the country’s transition from authoritarianism to a democracy, NGOs continued to persist with support from other fellow NGOs as the re-establishment of an “elite” democracy failed to address the glaring socio-economic inequalities in Philippine society. This phenomenon was further reinforced with the growth of the anti-globalization movement which challenged the emerging neo-liberal order emphasizing the supremacy of market forces, privatization and rapid liberalization.

Socio-cultural concerns and people-to-people relations, on the other hand, are best expressed through generally non-class concerns which cut across class interests. These include the women’s movement, the environmental movement and the rights of indigenous peoples. Their incipience was laid during the martial law period in the Philippines and grew with further importance after that in characterizing the nature of the country’s people-to-people relations. This paper, will therefore, touch on these three general aspects of people-to-people relations, i.e., the political, the economic and the socio-cultural which have helped push the democratization process in the Philippines. These aspects, however, are not mutually exclusive and intertwined with one another. It will focus briefly on four periods in the Philippines, that is, the pre-martial and martial law periods and the transition from authoritarianism to a democracy as well as the advent of neo-liberalism in the country.

The Pre-Martial Law Period

The evolution of people-to-people relations evolved during the pre-martial law period with the emergence of the trade union and peasant movements. This was initially seen during American colonial rule in the Philippines with the emergence of socialist/communist movements. Their emergence came about with the U.S. failure to enforce an effective land reform program. Aggravating this were the landowners who benefited from the free trade relations initiated by the U.S. exacerbating further the wide gap between the rich and the poor (Tadem 2006, 7). The culmination of these movements was seen in the emergence of the Communist Party of the Philippines (CPP), or more popularly known as the Partido Komunista ng Pilipinas (PKP) on November 7, 1930. The PKP's link with the Communist Internationale marked the incipience of people-to-people relations which was framed within the context of working class solidarity movements. Although the links of these workers' movements to the outside world was facilitated by the Soviet Union's workers' solidarity movement, it also paved the way for them to establish relationships with other workers in the world with regards to their fight against American imperialism and the repression of the working class by the Filipino elites. Such a solidarity movement was, however, transformed from working-class solidarity to the solidarity of communist parties in the world.

The repression and exploitation of the Filipino people were largely blamed on U.S. colonial rule in collaboration with the local elites. Thus, people-to-people efforts also greatly supported the growing nationalist movement in county which included members of the elites such as Senator Claro M. Recto (Tadem 2006, 14). This provided a fertile ground for people-to-people relations as this came at a time "when countries in the region were demanding the end of colonial rule and national liberation movements were on the rise against their colonizers not only in Asia but also in Latin America and Africa" (Tadem 2006, 14). "The fight against neocolonialism was epitomized by the Vietnam War in the 1960s which was opposed by majority of the

American people themselves” (Tadem 2006, 14). Thus, the nurturing of people-to-people relations continued under an anti-imperialist framework and the call for nationalism. For peoples in the countries who were colonizers, the call was for “peace and not war.”

The Martial Law Period (1972~1986)

During the martial law period (1972~1986), poverty and the widening socio-economic gap in Philippine society was exacerbated. Added to this was the repression and human rights violations of the Marcos dictatorship. During this period, an added dimension by which people-to-people relations were framed was not only in terms of the anti-imperialist and nationalist struggle as the U.S. supported the Marcos dictatorship to perpetuate the U.S. military bases in the country, but also in terms of the anti-dictatorship struggle. Such a movement received support from other countries in Southeast Asia and in Latin American which were also experiencing military rule. Moreover, people's in the First World, e.g., in Europe and in the U.S. also denounced the atrociousness of the Marcos dictatorship in particular and the human rights violations of the other dictatorships in general. This led to the emergence of solidarity movements against the Marcos dictatorship in these countries despite their governments' support for the dictator. Such solidarity movements were carried out by the new Communist Party of the Philippine's and its illegal united front arm, the National Democratic Front (NDF). The NDF established chapters in various parts of the world soliciting financial and logistical support to fight the Marcos dictatorship mainly through the armed struggle.

The anti-dictatorship struggle gave birth to three other people-to-people solidarity movements. These were the human rights movement which campaigned against the atrocities of the Marcos dictatorship; the anti-nuke movement which called for the removal of the U.S. military bases as the U.S. was seen as mainly responsible for perpetuating the Marcos dictatorship financially and militarily in exchange for the retention of the U.S. bases in Clark Air Base and

the Subic Naval Base. The anti-nuke movement also called for the end of nuclear means to settle differences particularly during the Cold War; and closely allied to this was the peace movement which called for the end of military violence in authoritarian regimes like the Philippines. Thus, people-to-people relations were framed in accordance to these movements which emerged.

Particular people-to-people solidarity movements which emerged in these areas were the human rights lawyers' groups, e.g., Free Legal Assistance Group (FLAG) which had networks regionally and internationally to fight against dictatorships; the anti-bases coalition movements and the Task Force Detainees of the Philippines (TFD) which had an international network of support. The National Secretariat for Social Action (NASSA) and the Luzon Secretariat for Social Action (LUSSA) were also established under the auspices of militant church members in fighting against the human rights abuses of the Marcos dictatorship. Cultural and theater groups like the Philippine Education and Theater Arts (PETA) emerged which received funding from abroad and presented nationalist plays which depicted the atrocities of martial law rule as well as anti-imperialist sentiments.

NGOs and Development Work and People-to-People Relations

The failure of the martial law regime to also implement a genuine agrarian reform program as well as unbridled corruption as epitomized by crony capitalism, and failed economic policies leading to the accumulation of massive debt led to further poverty situation and the widening gap between the rich and the poor. This brought about a new dimension to people-to-people relations which was the entry of foreign NGOs bringing in development work into the countryside. These were allegedly done through the CPP's NDF. These foreign NGOs sought to channel funds into the Philippines directly through the countryside and they did not want this to be coursed through the corrupt Philippine government. They were also concerned with the militarization going on in the countryside which deprived people of their sources of livelihood. Most of these foreign NGOs were European and

this could be traced with rise of European NGOs doing development work in the Third World in general and in the Philippines in particular.

The first generation of NGOs and people-to-people relations which were established between foreign and Philippine NGOs as well as foreign NGOs and the Philippine left movement, were initially perceived “to be an act of charity or altruism more than anything else...” (Encarnacion 1988, 10). This in particular witnessed the entry of Church-backed development NGOs in the countryside. The second generation NGOs and people-to-people relations emerged from this type of NGO-to-NGO relations which were linked into the anti-dictatorship movement because of the militarization in the countryside where these types of NGOs were found. In the forefront of this were the Basic Christian Communities (BCC) in the rural areas which fought for the peasants whose lands were illegally expropriated by multinational corporations (mnecs) and whose villages were plundered by the military (Tadem 2006, 34). A third generation of NGO-to-NGO relations emerged with the realization of the need to provide a means of livelihood and not just charity to peasants who were victims of martial law repression. The BCCs transformed themselves, for example, to this type of third generation NGOs which found support from foreign NGOs which these could tap for this purpose. This strand could be referred to as development approach whereby the NGOs in the 1970s began to emphasize the development of self-reliant, small-scale local communities. Emphasis was placed on the micro. The problem with this scheme, however, was that any positive change in the quality of life in these smaller communities could easily be wiped out by a single policy at the national level (Diliman Review Staff 1988, 33). This concern was part and parcel of a bigger development debate which was challenging the traditional paradigm of development. The NGOs were among those reacting to the failure of the modernization approach to development which espouse a natural progression from “backward” agrarian to advanced industrialization as experienced by Western nations (CPD 1991, 2).

This concern led to the emergence of the fourth dimension of people-to-people relations in NGO development work which saw the need

to link the political with the economic. That is, the need to politically empower the recipient communities so as they will be able to ward off political constraints to pursue their economic endeavors and vice versa, i.e., their economic endeavors will also politically empower them. This has an international dimension whereby North-South cooperation was viewed as one of the more important ways of lessening the tensions of superpower rivalry” (Bottazi 1986). This perspective could also be linked to the fourth strand of the relationship of European NGOs with Third World NGOs and Philippine NGOs in particular. This is referred to as the empowerment approach which views poverty as a result of political constraints. This scheme includes assisting members of local communities to articulate their needs. The rationale for this is that “economic development is only possible when all sections of the populace are allowed to freely express themselves and exercise their individual creativity” (Bottazi 1986, 4).

This particular strand in European NGO relations with local NGOs is also found in the involvement of the Japan Committee for Negros Campaign (JCNC) in fair trade in the Philippines during the martial law period. The JCNC was one of the international NGOs who responded to hunger crisis in Negros, a province in the Philippines characterized by large sugar haciendas ruled by landlords and exploited tenants. This therefore provide a fertile ground for the communist insurgency and consequently, the militarization in the area leading to dislocation and massive poverty. This was further aggravated in the 1980s when there was a sugar crisis, and the price of sugar plummeted in the world market. The worst hit were the sugar tenants who were laid off in these haciendas (Cabilo 2009).

The initial efforts of the JCNC could be best described as one of charity in helping stave off the starvation of the Negros people but because of the realization that aid failed to bring about sustainable livelihoods to the people of Negros in the aftermath of the 1980s sugar crisis in the region, JCNC was prompted to engage in alternative trading as a response . Thus, the Alter Trade Corporation (ATC) was created. This was a joint undertaking of the JCNC with local-partner

NGOs led by people who were identified with the progressive Left movement (Cabilo, 2009).

Because the economic cannot be separated from the political, the JCNC also became part of the anti-dictatorship movement. Thus, here is an example of people-to-people relations which initially began as charity and then transformed into development work as well as a political relationship between a foreign and local NGO leading to the anti-dictatorship struggle.

Political Advocacy and People-to-People Relations

In fighting the abuses of the dictatorship, there was also a need for people to people relations to engage in political advocacy work. There were French NGOs, for example, like Freres des Hommes, which focused on assisting NGOs in particular and the Left movement in general, to organize workers, peasants among others to fight the dictatorship. There were also French political movements like the Trotskyites. These NGOs are not rooted at the grassroots level but link up with NGOs, activist academics among others at the national to the local levels.

At the same time, there was also a need to combine these consciousness-raising activities to the development of the community's capabilities for self-reliance to protect it from the militarization happening most specially in the countryside which will undermine its development efforts. The nature of this people-to-people relations, therefore, takes the form of NGOs activity which is considered as a natural off-shoot of development work whose objective is to create an environment which is favorable for sustainable development. This approach was initially seen during the martial law years whereby the NGOs' energies were directed towards developing the "independent capacities of target groups, rather than in engaging government in a dialogue towards reforms (CPD 1991, 2, 8 and 14-15)." It is for this reason that the ultimate goal of these NGOs is "the creation of a viable movement of general people's organizations that will have the capacity to democratically intervene in national affairs (Constantino-David 1991, 11). Thus, NGOs are also perceived to carry with it the principle of empower-

ment, i.e., seeks to “alter the status quo and shift power from the elite to the poor” (KABALIKAT 1990, 4). Furthermore, it aims to harness the people’s own potential to allow them to “take responsibility for their own development” (Morales 1990, 25).

These NGOs were also anti-feudal (for land reform), nationalist and against traditional politicians. NGOs sought to bring about changes in the national government not only through the “seizure of state power” paradigm but also through cooperation for mainly utilitarian and tactical terms. The disadvantaged classes as represented by the urban poor and the peasantry were the main targets of their organizing. A popular form of NGO advocacy work would come in the form of mobilization and mass protest (also referred to as “parliament of the streets” or “pressure politics”). A number of NGOs viewed themselves as part of the “people’s war” strategy of the armed underground (Rocamora 1994, 50).

People-to-people relations were, therefore, also nurtured through NGOs which would also come to integrate these issue of new politics into their work. Campaigns, for example, were not only launched against poverty and land reform but also for environmental protection and women’s rights (Serrano 1994, 70). The NGOs’ integration of socio-political activities with economic ones paved the way for the partnership between people’s organization (POs) and NGOs. The former, which is composed of society’s disadvantaged members and mostly formed along sectoral lines, assumed the primary responsibility of the struggle for mass empowerment and participatory development. The latter, on the other hand, act as social development agencies whose commitment to the causes of people’s organizations is expressed by their extension of various services to POs (NGO-CCD 1988, 6).

People-to-People Relations and the Transition from Authoritarianism to Democracy

During the post-martial law period, people-to-people relations continued to be pursued through NGO-to-NGO relations whereby ideological forces found important expression in NGO work. This was viewed

as an integral part of a larger progressive movement that aimed to relieve problems of inequality and injustice at the grassroots when neither militant anti-government nor nationwide and substantial reforms seem likely avenues for change. What has emerged are NGOs developing autonomous relationships from political formations as they strengthen their ties with mass communities and people's organization (POs) (CPD 1991, 13).

Despite the overthrow of the dictatorship through the 1986 People Power Revolution, there continued to be the problem of poverty and socio-economic inequalities prompting some to say that what emerged in the Philippines was an elite democracy. This new political dispensation ushered in a debated within the Communist Party of the Philippines (CPP) between two major factions. The reaffirm or R.A. faction wanted to uphold the primacy of the armed struggle (Kessler 1989, 94). This position did not augur well for Party members who believed that the Philippines was now entering a different kind of political dispensation which allowed for the primacy of legal means such as through development work. This group was called the 'rejectionists' or the RJs. Such a group was led by the popular democrats, also known as the popdems, and found allies with a faction of the Party known as "insurrectionists" who also saw the worth of united front coalition and the shifting of the struggle from rural to urban areas (Rocamora 1994, 28). CPP members, like the popdems, wanted to shift to development work which has always been viewed as secondary to the armed struggle

This turn of events seems to also complement the thrust of foreign NGOs which believed that after the overthrow of Marcos, now was the time to focus on development work and this was where their financial assistance was to be channeled. People-to-people relations as characterized by NGO-to-NGO relations through development aid from foreign NGOs to local NGOs were also redefined with the end of the martial law period. These redefinition took on three major characteristics: One was the bias towards development work rather than funding for organizing the workers and the peasants. The reasons for this was the perception that since democracy has been "restored"

in the Philippines, development assistance should now be channeled for economic and development purposes rather than for political purposes, e.g., organization. There were local NGOs, however, which did not agree with this and argued that there was still an important need to channel funds for organizing the workers and the peasants so as to empower them. Thus, Dutch NGOs such as CEBEMO, ICCO and NOVIB which continued to be active in the Philippines during the post-martial law period were geared towards this.

A second strand is for foreign NGOs to channel funds directly to the popular Aquino government instead of through NGOs like during the martial law period. The reason for this is that the Aquino government, having risen to power through people's power, "must be given all the assistance it needs to realize the aspirations of the revolution which she symbolized (David 1988, 21). These NGOs, therefore, have to give strong reasons "to justify the continued channeling of development assistance to NGOs instead of coursing it directly to the Aquino government." Furthermore, these foreign NGOs must also take greater care that "their assistance is wittingly or not wittingly diverted to those who might be planning to overthrow the Aquino government" (David 1988, 22).

A third example was the funding for strengthening and consolidating the democratization process such as activities concerned with the electoral process and conferences which foster dialogue between civil society and government officials at the local and regional level, e.g., the ASEAN People's Assembly. These can be seen in the German Stiftungs which among the European NGOs are the more highly politicized, i.e., German political parties generally have their own NGOs. For example, the Friedrich Ebert Stiftung is linked with the Social Democratic Party of West Germany, while the Konrad Adenauer Foundation is associated with the country's Christian Democratic Union Party. The Stiftungen in general, administer half of the German government's aid program which are all channeled through NGOs. It is not rare to find the German Federal Ministry for Economic Cooperation financing 100% of their NGOs projects in the Third World (Stevens and Verloren van Thermaat 1985).

Empowering local communities. The transition from dictatorship to democracy also witnessed the continuing problem of empowering local communities in the light of the resurgence of elite dominated politics particularly through political dynasties. People-to-people relations sought to address this through the empowerment of local communities particularly through livelihood programs. A major goal was to make use of the people's minor resources while also dealing with those who monopolize these resources such as land. These were supported by foreign NGOs which assisted various popular initiatives such as cooperatives which in turn may or may not be related to the peasant movements or trade unions. Thus, there was people-to-people support for the establishment of democratic organizations, management and cooperation to promote people's empowerment by enhancing the communities own capacity to use and control vital resources.

People-to-people relations and political advocacy. A major concern expressed by NGOs during the transition from authoritarianism to democracy was that there was a need to combine these economic efforts with political ones to protect the gains of the 1986 People Power Revolution which has enabled the Filipinos to bring about political changes and to allow them to focus more on their economic endeavors. Thus, development should go hand-in hand with the country's re-democratization process. Focus is therefore placed on popular empowerment. An important element of this framework is the realization that democratization will not come from the state but from people's movements which are the major catalysts for strengthening civil society. People empowerment is thus seen in the "process of building up a 'parallel power' in 'civil society' that would reduce class power and ultimately transform the exercise of state power (FOPA 1993, 17).

With the downfall of the dictatorship, NGOs were also able to focus on political and social problems which were relegated in the background during the martial law period but which continued to persist after the 1986 People Power Revolution. These included the rights of women

and indigenous peoples. They also continued to fund human rights and peace movements in the country. An important area which emerged was the funding for the environmental movement in the country. Such issues were referred to as “new politics,” i.e., concerns which go beyond class barriers which do not speak of seizure of state power. People-to-people relations were also fostered with funding from foreign NGOs going to the organization of workers and peasants but to a much lesser degree than during the martial law period. Other new areas of organizing which were supported was the organization of migrant workers.

Under the Aquino Administration, there were two important concerns which NGO's campaigned for. One was the campaign for debt relief. This was directed towards the massive amount debt accumulated by the country because of the corruption of the Marcos dictatorship as well as the faulty economic policies of the government together with the International Monetary Fund (IMF) and the World Bank. An important NGO which emerged was the Freedom from Debt Coalition (FDC). FDC, which is supported by funding from foreign NGOs, were campaigning for a debt moratorium towards debts which did not go to the Filipino people. It also argued that there was a need to first allocate the resources of the country to the alleviate of poverty, before paying for this. But the Aquino Administration decided to pay the debt of the Marcos government for fear that it will lose its credit from the IMF and the World Bank.

The other major shortcoming of the Aquino government was its inability to implement a genuine agrarian reform program which could reduce the glaring socio-economic inequalities in Philippine society. Thus, NGOs which represented the various ideological fronts in the country's social movements formed the Comprehensive Program for Agrarian Reform (CPAR) to pressure the government for a land distribution that would address this. CPAR was funded by foreign NGOs. The Aquino government, despite declaring that agrarian reform was not the cornerstone of its administration, however, failed to do so and came up with a watered down Comprehensive Agrarian Reform Program (CARP). Thus, until today, seventy per cent (70%) of the

members of the Philippine Congress still all come from landed families or political dynasties.

The Advent of Globalization

Such a situation has been further aggravated with the advent of globalization which had placed emphasis on liberalization, privatization and unhindered market competition as espoused by the neo-liberal ideology. A concern was countries have lost their “sovereignty” to external forces and has rendered economies vulnerable to their uncertain “whims” (Tadem and Tadem 2003, pp. 164). Other issues against globalization which has nurtured people-to-people relations is that globalization has not addressed the socio-economic inequalities within and among societies. This is opposed to the view that a globalized society will bring about economic development “which would result into the emergence of a progressive middle-class which... would challenge the authoritarian regimes in Southeast Asia” (Tadem and Tadem 2003, 169). The anti-globalization movement has also brought with it the advocacy for the liberation of women, the preservation of the environment and the rights of workers. Globalization, for example, has facilitated the migration of women workers from Southeast Asia in general and the Philippines in particular to other countries. Filipino women workers are made to work as entertainers and prostitutes in Japan for example and numerous cases have been reported of physical and sexual abuse by employers. There has also been the trafficking of women and children in the Southeast Asian region (Tadem and Tadem 2003, 177). Philippine social movements, have therefore, joined hands with other social movements in participating as well as following the Battle of Seattle demonstrations in 1999 with “their own protests against the principal agents of globalization – the IMF, the World Bank, the World Trade Organization (WTO) and the Asian Development Bank (Tadem and Tadem 2003, 168).

People-to-people relations and advocacies against globalization.
People-to-people relations have been formed with regards to cam-

paings against the conditionalities imposed by the International Monetary Fund (IMF) and the World Bank which actually began during the martial law period. But during this period, this concern was subsumed under the anti-dictatorship struggle. That is, once the dictator is gone, everything will be alright but this was not the case for countries like the Philippines. After the 1997 Asian financial crisis, campaigns against the Asian Development Bank (ADB) have heightened because of the ADB's primary role with regards to the "rescue packages" for countries which were adversely affected by the financial crisis. The anti-globalization movement is not only limited to the Southeast Asian region, but is worldwide and after the Battle of Seattle, people-to-people relations were also nurtured in anti-globalization demonstrations waged during the meetings of "the IMF, WB, Group of Eight, United Nations Conference on Trade and Development (UNCTAD), and Asia and Pacific Economic Cooperation (APEC) meetings in Washington, Milan, Melbourne Prague, Bangkok, Seoul and Nice" (Tadem and Tadem 2003, 181).

Other non governmental organizations and social movements which have nurtured people-to-people relations in the anti-globalization struggle are the following: 1) The Freedom from Debt Coalition (FDC), which has nurtured people-to-people relations through its campaign for debt relief. It is a leading member of the Jubilee South which is an international campaign for debt moratorium; 2) the Stop-the-New-Round Coalition which is a "broad grouping of public interest groups and individuals that spearheaded a Philippine campaign against the launching of a new round of negotiations in the WTO" (Quinsaas 2009). Linking up with the Our World Is Not for Sale (OWINFS) transnational movement, it worked "to force the Philippine government to break the consensus at the Fifth Ministerial Conference of the WTO in Cancun, Mexico on 10-14 September 2003" (Quinsaas 2009); and the 3) fair trade movement which seeks to bring safety nets to small-and medium-based enterprises which cannot compete with big corporations in a period of globalization. Democratizing the Philippines at the international level through people-to-people relations can also be found in the intervention of civil society players

in the negotiations of the World Trade Organizations. Filipino anti-globalization activists have been involved in international NGOs, e.g., the South Center, which help developing countries assume a better negotiating position vis-à-vis the developed countries in the WTO.

People to people relations and regional anti globalization movements. People-to-people relations have also been nurtured through regional anti-globalization movements. Examples of this are FOCUS on the Global South, founded by Walden Bello, a former Professor of Sociology at the University of the Philippines, Diliman, which works out of Chulalongkorn University in Bangkok and has been prominent in research, publication, networking and advocacy work with regards to anti-globalization campaigns (Tadem and Tadem 2003 183). Another is the Third World Network was started by Martin Khor in Penang and is now an international movement with offices in several countries around the world. A third example is the Asian NGO Coalition for Agrarian Reform and Rural Development, (ANGOC) which was established in 1988 to systematically question the ADB projects in the region. Together with the Environmental Policy Institute (now Friends of the Earth-US/FoE-US) ANGOC criticized the ADB's badly designed and destructive projects. They also noted the absence of dialogue on policy reforms and the need for greater transparency and public accountability. The NGOs also called for greater public awareness and debate on social and environmental impacts of the Bank lending on local communities (Quizon And Perez-Corral 1995).

Thus, people-to-people relations have been nurtured through regional NGOs "with significant Southeast Asian constituencies against globalization and its inimical effects on the Asian peoples and societies" (Tadem and Tadem 2003 183). There has also been the emergence of the Asian People's Assembly to intervene with the economic decision making of the Association of Southeast Asian Nations (ASEAN) which has been in the forefront of implementing the neo-liberal development paradigm in the region. Another group which has sought to challenge the ASEAN is the People's Plan 21 or the PP21.

People to people relations and specific anti globalization advocacies.

People to-people relations have also further pushed for the democratization process in the Philippines by nurturing specific anti-globalization advocacies. These include specific issues which include the following 1) the plight of workers such as migrant contract workers as exemplified by the campaigns of the Asian Migrant Center; 2) the rights of workers as exemplified by the campaigns of the Asia Monitor Research Center (AMRC); 3) Human rights and social issues as exemplified by the Asian Cultural Forum for Development (ACFOD); 4) Gender and women's concerns as advocated by the Committee for Asian Women (CAW) which organizes research studies and conducts seminars on gender issues; 5) international campaigns against biotechnology as exemplified by the campaigns of the Manila-based Southeast Asian Resource Institute for Community Education (SEARICE); 6) social development as exemplified by the campaigns of Social Watch Asia, part of the international NGO coalition which monitors implementation by governments of the Copenhagen Social Summit; and 7) the environment as exemplified by the campaigns of Greenpeace International has also established a Southeast Asian branch in Bangkok (Tadem and Tadem 2003, 183-184).

Conclusion

This paper, therefore, sought to examine the factors which enabled people to people relations in the Philippines to advance the democratization process in the country. During the martial law period, U.S. colonialism exacerbated the gap between the rich and the poor in the Philippines and contributed to the further impoverishment of majority of the Filipinos, particularly the workers and the peasants. A major reason for this was the failure to implement agrarian reform in the country. This brought about the rise of workers and peasant movements which found support from the communist movements which have emerged worldwide particularly in Europe. People to people relations during this period was framed within the socialist/communist perspective and found solidarity with the Communist Internationale.

The particular support which the communist movement in the Philippines received during this period came from the government and the peoples of the Soviet Union and later on from China when it supported the new Communist Party of the Philippines.

People to people relations during the martial law period. The martial law period witnessed the continuing and deepening of poverty and socio-economic inequalities in the Philippines. Thus, people-to-people relations were aimed to address these mainly through the communist movement under the auspices of the CPP and support from China and the Chinese people. The themes of anti-imperialism and nationalism continued to characterize the thrust in democratizing international relations because of neo-colonialism which was exemplified in the Philippines with the two U.S. military bases and the U.S. domination of the local economy. A new dimension to the democratization process through people-to-people relations, however, was the anti-dictatorship movement which found support from countries in Latin America, Africa and Asia which were under dictatorial rule as well as from the European peoples with the support from their respective governments which abhorred human rights violations. Together with this was the support given to the anti-nuke and peace movements in the Philippines by peoples all over the world who were opposed to the use of military means in resolving conflict. This reached its peak with the anti Vietnam war movement. Support for these movements in the Philippines mainly came from socialist and communist movements in Europe. European NGOs, even those supported by their government, provided for financial support in supporting advocacy campaigns against the dictatorship.

A new dimension which emerged with regards to the democratization process through people-to-people relations was brought about by NGOs involved in development work. The major concern was the failure of the government to address poverty and socio-economic inequalities. This led to the emergence of four generations of NGOs involved in nurturing people-to-people relations to bring about development particularly in the countryside. The first generation was mainly concerned

with welfare and charity for those starving. The second generation of development NGOs, on the other hand, so the need to politically empower communities so as to fight the military oppression and repression of the dictatorship. As for the third generation of NGO, this saw the need to introduce sources of livelihood which are sustainable and the fourth generation of NGOs saw the need to combine the political and the economic for development to occur in the countryside. The nature of people-to-people relations through NGO development work was nurtured not only by foreign NGOs but also by their respective governments.

The push for the democratization process through people-to-people relations was also made through political advocacy. These involved NGOs which focused on organizing workers, peasants and students as well as other movements which were non-class based and identified with “new politics,” e.g., the environmental, women and human rights movements. The emphasis was that the movement should not only be micro or community-based but also national. Thus, these movements were part of the “parliament of the streets.” Political advocacy was carried out at the local and national levels as well as regionally and internationally and were carried out by NGO, academic and professional activists.

People to people relations and the transition from authoritarianism to democracy. In the transition from authoritarianism to a democracy, the push for the democratization process through people to people relations continued to be nurtured because of sympathy for the communist insurgency, support for NGO development work and political advocacy. This is understandable as poverty continued in the country and the glaring socio-economic inequalities continued to persist. But these people-to-people relations were however re-defined by the following: One was the split in the CPP because of the debate on the primacy of the armed struggle vis-a-vis development work among others. This has led to the emergence of other political formations. Thus, people to people relations was “pluralized” and no longer centered on cadres or sympathizers of the CPP as during the martial

law period. Another factor which re-defined the nature of people to people relations was the nature of the political dispensation, i.e., "liberal democracy," thus foreign NGOs wanted to focus financial assistance more on development work, e.g., livelihood projects rather than political organizing. Furthermore, there was a sentiment among foreign NGOs and governments to channel funds to the popular Aquino government than to NGOs. They also encouraged dialogue among NGOs and the government. Since there was also a concern among foreign NGOs to strengthen the "democratic" institutions in the country, funding was also channeled to political parties which carry the same ideological leanings of the funding agencies as well as to strengthen the electoral process. These were new dimensions, therefore, in democratizing international relations through people-to-people relations. The end of the Cold War and the decline in communism worldwide and the ultimate collapse of communism in the Soviet Union and Eastern Europe also shifted people-to-people collaboration with the communist movement to "new politics" concerns such as women and the environment.

Nevertheless, the general themes of the democratization process through people to people relations which marked the martial law period continued. Focus was on the empowerment of local communities through NGO development work combining the economic and the political which characterized the third and fourth generation NGOs. Political advocacy continued for organizing peasants and workers and non-class based advocacies. The communist insurgency continued to be suspect as a recipient of funding from foreign NGOs through local NGOs identified with the CPP. There were also new issues which characterized people to people relations which was the movement for debt relief and the implementation of a genuine agrarian reform movement.

People to people relations and the advent of globalization. The advent of globalization has also impacted on the democratization process through people-to-people relations. The mains issues, however, remain i.e., socio-economic inequalities and poverty. Focus has also been on class-based and non-class based issues but this time

seen within the prism of the criticism of the neo-liberal paradigm which emphasizes on liberalization, free enterprise and privatization which have not addressed the problem of underdevelopment. People-to-people relations, have therefore been nurtured through political advocacies against globalization particularly through demonstrations during IMF/World Bank and WTO meetings. Old concerns such as fair trade, the movement for debt relief, class-based issues such as workers and peasant rights and new issues such as the rights of women, indigenous peoples and migrant workers, have been framed within the anti-globalization struggle. There are also new movements such as the Stop-the-New-Round Coalition which seeks to stop WTO negotiations and promote civil society intervention in the WTO negotiations. Globalization has also witnessed the rapid expansion of transnational social movements at the regional and international levels. These movements have theoretically challenged the neo-liberal paradigm as well as put their thoughts into action, i.e., praxis. At the same time there has also been the search for alternative paradigms through dialogue with international financial institutions, alternative sources of livelihood and intellectual exchanges among academic, NGO and professional activists and public intellectuals.

The push for the democratization process through people-to-people relations has therefore encompassed the different stages of the country's political and economic history. For as long as poverty and social injustice continue in the Philippines, one can expect the pursuit for meaningful change both at the national and international levels to be defined by people and not by states.

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13. Problems and Tasks in ‘Asian Solidarity Movements’ of Korean Civil Society

Je Seong Jeon¹⁾

Introduction

Ever since ‘Asian solidarity’ became a key word among Korean civil society organizations (CSOs), there have been diverse discussion and reflection on the term. However, because the history of its practice is rather short, there are still insufficiencies. Korean CSOs started international solidarity activities in earnest in early 1990’s, so apart from a minority of pioneers with a longer history, Asian solidarity only has a decade of history in Korea. OH Jae Shik, who has long experienced Asian solidarity, pointed out Korean CSOs were “still only teenagers” and “the body has grown but it is still mentally immature.” Nevertheless, activists have continuously practiced Asian solidarity in various fields. This article looks into the problems that arise from Asian solidarity movements on the ground, and aims to propose solutions to those problems. The once distant term ‘Asia’ has once again drawn the attention and consumed the time of activists, however,

1) This paper is a translated and revised version of Korean article published in *East Asian Studies* Vol. 30, No. 1 (February 2011). Most of the detailed citations from Korean references have been deleted to enhance non-Korean’s readability. I would like to thank the Seonam Forum for giving me a chance to start this study, the People’s Solidarity for Participatory Democracy (PSPD) International Solidarity Committee for stimulating my research, activists who were interviewed for sharing their experiences and KIM Hyun Kyoung, a master course student in my department for helping with literature review. Nevertheless, responsibility for any errors and overlook in this paper lie entirely with the author.

academic analyses into related activities are surprisingly rare. I myself have sometimes voiced my opinion and written critiques on the issue, but later recognized that a longer article was needed in order to minimize misunderstanding and to make my case more convincing. Thus, this article is a comprehensive version of my previous contemplations.

Survey analysis, literature review and activist interviews were the main methods I had used for this paper. First of all, the results of a survey conducted by the Seonam Forum on activists involved in East Asia solidarity movements (Seonam Forum 2006, 330-43) were used to analyze some of the difficulties faced in solidarity activities. The Seonam Forum distributed a questionnaire to 123 organizations and 52 activists in charge of solidarity/outreach responded. This survey, in which I also participated, is significant in that it was the first of such surveys, however, there are no academic papers looking into the results. The results of another survey, conducted in 2008 by the Korea Democracy Foundation (KDF) on 310 employees, activists and graduate students of international cooperation related institutions(LEE Jung Ok, KIM Sang Don, 2008), was also used as supplement data. This survey, to which 140 CSO activists responded, was helpful in finding out some of the favoured programs of solidarity movements on ground. In regard to literature review, I analyzed articles or discussion records of a few scholars who were interested in solidarity movements. Reviewed literature include presentations from the 'East Asia Solidarity Movement Evaluation Meetings' that were ambitiously organized by Seonam Forum at the end of 2005 and 2006, articles in *Almanac of the East Asian Solidarity Movement Organizations in Korea* (Seonam Forum 2006). Interviews were conducted with Korean activists conducting Asian solidarity activities, and also activists from Thailand and Indonesia who had experience exchanging with Korean organizations, either directly or through email. Literature review and interviews contributed to deeper understanding of issues and challenges faced by solidarity movements.

This thesis does not stop simply at introducing and analyzing existing survey results or literature. I have also submitted my own opinion.

Since 1995, for 15 years, I had participated in Asian solidarity movements through various organizations, so based on my on-ground experience and comradeship, I have tried to develop an 'internal critique' approach. I will call this position a 'participating researcher' position. It can mean participant cum researcher, or participant-turned-researcher. My experience is limited to advocacy NGOs, meaning my analysis is limited to such organizations and therefore does not include developmental NGOs.

The main part of this paper is twofold. The first part introduces the problems and tasks of Asian solidarity movements as seen through surveys and literature. The second part is my own re-interpretation through connecting between problems and tasks towards alternative exit. This paper will conclude by making proposals on further academic research. I sincerely hope this article will not only stimulate international activities of Korean CSOs but also contribute to furthering research and participation of area specialists in the solidarity movements.

'Problems' and 'Tasks'

Problems

(1) **Lack of resources and public attention: 2006 Seonam Forum survey.** Seonam Forum, which is supported by Seonam Foundation, conducted the "Survey on East Asia Solidarity Movement Activists" in 2006, the first of its kind in Korea. The number of respondents was rather low at 52 persons, however, they were all working on international solidarity and 39 (75%) of them were highly committed to East Asia solidarity movements. They can be seen as activists in the forefront of these movements and it would be no exaggeration to say they are the entire human resources in Asian solidarity movements. There were 8 questions on 'satisfaction level' of solidarity movement achievements, 13 on 'internal environment' of solidarity organizations, 15 on 'external environment' and 8 on 'East Asian discourse.'

Answers to questions relating to 'satisfaction level' show many activists feeling alienated. 40.4% replied they felt their organizations

were making 'high' achievements, while 51.9% responded to 'medium level' and 7.6% to 'low level.' Surprisingly, only 11.5% of activists felt personal accomplishment and satisfaction whereas 32.7% answered negatively to the same question. 55.8% answered 'medium' to this question, which is higher than for other questions.²⁾

Why were these highly committed and hard working activists feeling only medium level of achievement and satisfaction? The reasons seem to be internal lack of resources and external lack of interest, as can be seen from questions regarding 'internal environment' and 'external environment' respectively. To questions regarding "internal environment of solidarity organizations," 73.1% answered there was a lack of human resources and 65.4% that physical resources were insufficient, meaning solidarity movements were pursued under difficult circumstances. Activists seem to feel lack of human resources to be more pronounced than physical resources. As much as 44.2% replied there were not enough "internal education programs to enhance understanding of the region," meaning such fallbacks may continue in the long run. Respondents also said solidarity movement experience was well shared within the organization but only 21.1% felt the same for between organizations.

As for "external environment," most activists replied that neither the general public nor the media were interested (57.7% answered negatively for public attention, 75% for newspaper, and 80.7% for broadcasting) and that there was not enough external support. There were many who thought corporate sponsorship was needed (54.3%) while the majority (82.7%) replied that actual support was far below what was expected. Many activists (55.7%) believed nationalism was posing a negative impact on solidarity movements while only a very small minority (3.5%) answered it to have a positive effect. These answers help explain why many activists do not feel a sense of accomplishment from their solidarity activities. Many respondents also pointed out the low participation of experts in solidarity movements. 52%

2) Lack of satisfaction with Asian solidarity activities could also be confirmed through KDF's survey (LEE Jung Ok, KIM Sang Don, 2009). Only 4% of respondents were satisfied with international cooperation programs, while 52% were dissatisfied. A higher 57% was recorded for dissatisfaction with international cooperation in the Asia-Pacific.

said participation of scholars and professionals was low in their organizations whereas only 8% replied the participation to be sufficient. Under such circumstances, it is not surprising that activists were negative towards area studies. 61.5% responded that local knowledge accumulated by Korean academics was insufficient.

(2) Ethnocentrism of Korean CSOs: Literature review and interviews.

While internal lack of resources and external lack of interest were highlighted by these surveys, literature and interviews point out the narrow-mindedness of Korean movements. The survey results show complaints of activists regarding their poor environment as well as lack of participation of scholars and others. On the other hand, various literature point to activists, forming an interesting juxtaposition. The major roundtable discussion that saw the outpour of various issues in early stages of solidarity movements was probably the 2000 roundtable organized by a journal *Dangdae Bipyong* or *Contemporary Criticism*, just after the ASEM People's Forum in Seoul. However, the criticisms against one-off, superficial solidarity, as pointed out then, disappeared as solidarity activities evolved and deepened with time. However, the journal had also criticized the narrow-mindedness of Korean CSOs—to quote directly, “Aren't Korean movements still excessively focused on national issues?”—valid even today due to its deep roots.

One reason may be a 'language barrier.' Since there are so many diverse languages in Asia and no common one, language issues are inevitably more pronounced than in other regions. However, the more fundamental reason is ethnocentrism. In Seonam Forum's *Almanac of the East Asian Solidarity Movement Organizations in Korea*, Professor BAIK Young Seo pointed out that Korean CSO activists were “too ethnocentric” and that they had “statist and nationalist perspectives” where international solidarity is seen to be “an extension of national interests.” Professor YI Kiho also noted such “statist perspective based on nationalism” while Professor SHIN Yoon Hwan raised the problems of “nation-centrism” and “ethnocentrism.” Scholars

pointed out the “lack of reciprocity” even among Koreans, for example in solidarity activities with overseas Koreans.

It seems that even CSOs are not free from nationalism that is prevalent throughout Korean society, to the extent that some CSOs even adopt nationalistic ideas and praxis. Activists also recognize this ethnocentrism inside movements. For example, NA Hyo Woo, head of Operational Committee at Asian Bridge said, “Korean social movements have the habit of coming up with their agendas first and then meeting others based on those agendas.” “They only have their own agendas and their own interpretations.” KIM Chanho, the director of Culture and Solidarity Team at the May 18 Memorial Foundation pointed out Korean activists’ attempt to “interpret all Asian regional issues from a Korean perspective” was the problem. Asian activists also think similarly. Somyot Pruksakasemsuk, Director of Thai Labour Service and Training Centre, criticized, “A weakness of Korean CSOs is that they are only interested in national contents.” Maung Zaw, a Burmese democracy activist in Korea, said, “International solidarity is about doing something you have to do rather than something you want to do. It’s also about doing something that others need and want.”

Some activists have long been concerned that ethnocentrism could lead to the idea of ‘exporting movements.’ For example, LEE Daehoon of Asian Regional Exchange for New Alternatives (ARENA) said, “Some Korean organizations argue that it’s now time for us to export our movements. An NGO newspaper, *NGO Times*, even published an article saying we need to teach others our advanced movement.” He added, “Solidarity in itself may not always bring good results, and nationalism can even become stronger through international solidarity.” He went on to say that Korean international solidarity movements “lack basic capacities.” “Enhancing our basic capacities means our reference expanding in East Asia.” Therefore, “We need solidarity that avoids unilateral talk, poses challenging questions and manifests divergences and debates.”

PARK Jin Young (aka Jini), a Korean activist who worked in Bangkok as program coordinator for Committee for Asian Women (CAW), made clear her opposition to ‘exporting movements.’ “Solidarity is recip-

rocal” and should be “exchange not export.” “Exporting is basically supplanting, with lack of understanding that comes from exchange.” “Such supplanted movement cannot survive in new places,” she said. She called on movements to introspect on whether perhaps the wish to export movements emanated from a sense of “superiority” as a “country with advanced movements” and a condescending perspective towards Asian neighbours. YANG Youngmi of Korean CSOs Network warned that Asian solidarity movements could fall into “quasi-imperialism, with its dichotomies of developed vs. developing (underdeveloped), rich vs. poor, civilized vs. barbaric.”

Lack of regional understanding is also seen as evidence to the narrow-mindedness of Korean CSOs, meaning Korean activists seek Asian solidarity but do not really understand the region. Professor SHIN Yoon Hwan pointed out that compared to high levels of economic size, capital investments and movement of persons, “the scope and depth of perception [...] of the media, students and intellectuals, CSOs and other social opinion leaders and groups [...] are rather narrow and shallow,” when it comes to Asia’s “democracy, human rights, war, violence, poverty, hunger, environment and other global issues.” Asian solidarity activists are not free from the intellectual limitations of Korean society as a whole.

Ethnocentrism and lack of regional understanding are interrelated. Lack of knowledge about solidarity partners leads to ethnocentrism, and ethnocentrism can bar activists from learning about their counterparts. YANG Youngmi has said “Ignorance breeds condescendence.” Likewise, condescendence can lead to ignorance. It seems Korean activists do not properly analyze and research Asia, leading to the continued lack of understanding. KIM Chanho has pointed out Korean CSOs consider Asian solidarity as activities based on ‘pity,’ in that they do not consider Asia as a ‘center of wisdom’ but rather as ‘periphery of underdevelopment.’ Solidarity is a valuable opportunity through which one can learn the interpretation, strategies and alternative development initiatives of one’s neighbours. It is indeed unfortunate if learning does not come out of activities that require so much time, resources and effort.

Tasks

(1) **Value-oriented and education-centered programs: 2008 Korea Democracy Foundation survey.** The results of the 2008 survey conducted by Korea Democracy Foundation (KDF) on 310 Korean international coordinators (LEE Jung Ok & KIM Sang Don, 2008) show preferences on-ground within Asian solidarity movements. Respondents answered Asia to be the region most requiring international cooperation. 66.8% answered 'Asia-Pacific,' which is far higher than the next highest answer of Europe at 19.7%. Among preferred issues for international cooperation in the Asia-Pacific, 'realization of democracy and enhancing peace' ranked highest (32.3%), 'humanitarian aid and relief' second (27.4%), 'mutual understanding and cultural exchange' third (23.6%) and 'economic development' fourth (11.4%) whereas 'financial support' ranked the lowest (4.6%). Expected outcome from exchange and cooperation in Asia-Pacific region included 'mutual understanding' (36%), 'expert exchange and access to new information' (21%), 'realization of democratic values' (17%) and 'status upgrade in international community' (15%) whereas 'financial benefit' recorded the lowest at 7%.

The largest number of respondents (62%) chose 'education-training programs' as the most effective form of international cooperation, and the least number (1%) chose 'financial support.' Respondents who chose 'personnel exchange' were not high either (10%), signifying activists did not value personnel exchange in the absence of education-training. Interestingly, in a survey conducted by the same organization on 1,400 activists from 10 countries—Mongolia, Bangladesh, Cambodia, India, Indonesia, Malaysia, Nepal, Philippines, Sri Lanka, Taiwan—regarding the needs of Asian CSOs (LEE Jung Ok & KWON Dae-guen 2008), activists and researchers working in regional pro-democracy organizations also replied they mostly prefer education-training programs. For example, the highest number of Indonesian respondents (77.1%) replied education-training to be the most needed form of international cooperation with Korea to enhance their democracy. Personnel exchange programs were considered the least

effective method (20.8%). Financial support was second least effective program (13.2%).

Despite some discrepancies, the KDF surveys show international coordinators both in Korea and elsewhere in Asia are overall committed and have high expectations for programs that realize common values, promote mutual understanding and provide education-training, rather than seek profit, financial support and superficial personnel exchange.

(2) Experience-sympathy-understanding for self-reflection: Literature review and interviews. As tasks to further develop Asian solidarity movements, existing literature encapsulates and proposes interrelated concepts of 'reflection,' 'experience,' 'sympathy' and 'understanding.' First of all, critics require activists to reflection themselves. To advance international solidarity, "the most basic elements of solidarity are widening our perspective and opening our hearts," and "continuous self-reflection on one's roots and background is needed." A "post-nationalistic imagination" for Asian solidarity is also required for the same reasons. In fact, Pravit Rojanaphruk, a senior reporter of *The Nation* (November 28, 2005) in Thailand has said, in order to promote Asian solidarity, "Korean activists need to first of all introspect on discriminations within Korean society and then open the door to accept other people and cultures."

Secondly, some state that experience and sympathy are necessary for both international and Asian solidarity. Solidarity can be strengthen only when "emotional sympathy is strengthened" through direct exchange of activists. "To make an East Asia enriched not by the states but by the people, then activists must interact with and experience one another." It is also necessary to get "hands on experience and a real sense of Asia," and "based on actions and experience of small but more players," "we need to make this region more alive as a space of living rather than as a group of nation states."

Thirdly, there is a call for deeper understanding of partners. "Understanding of individuals (partners-author) is prerequisite to forming solidarity" and "the most important task" is forming a "foundation to enhance understanding of one another." "We need to recognize

that we don't know anything about our neighbours," and "must start making efforts to understand and learn from each other."

As can be seen above, 'Asian solidarity movements' of Korean CSOs face difficulties due to lack of resources and interest, and are criticized for ethnocentrism and narrow-mindedness due to their lack of regional understanding. The fundamental task raised by diverse discourse of Asian solidarity movements is self-reflection. More concrete tasks include realization of common values such as democracy and peace, cognitive improvement through education-training as well as deeper understanding.

I personally do not have any fundamental disagreements to the existing critique. However, I would like to make a couple of additions. First is that there seems to a disconnection between the needs of those on ground and the tasks proposed by related literature. Task-setting can be convincing only when it is based on attempts to alleviate some of the difficulties faced on-ground. Secondly, the proposals seem rather vague and are thus limited in becoming concrete solutions to problems. An effective proposal needs to be expressed in a direct and honest way and to have concrete plans. These problems and tasks will be reinterpreted in the next section, in order to deepen the discussion.

Reinterpretation of 'Problems' and 'Tasks'

Linking 'problems' and 'tasks'

Tasks of Asian solidarity movements must be able to contribute to alleviating challenges felt on the ground, in order to be truly effective. Many activists, out of responsibility, are promoting Asian solidarity despite the lack of resources. Therefore, in the short term, we need to recognize the limitations of resource-poor movements and thus base our activities on this recognition. But in the long run, measures to overcome such limitations must be gradually promoted.

(1) **Fostering activists.** Before anything else, there has to be a solution to the lack of human resources, which seems to be a bigger problem than lack of physical resources. I want to emphasize that when talking about lack of human resources, I refer not only to quantitative lack of international solidarity activists but also to qualitative insufficiencies. Asian solidarity coordinators need special abilities and sensitivities. He or she needs to speak English, and requires experience in order to prevent becoming distant from the movement's mass base. He or she also needs Asian sensitivities that help to overcome ethnocentrism.

In order to resolve the lack of human resources, a mindset that 'solidarity is about people' is needed. KIM Ki Shik, at a People's Solidarity for Participatory Democracy (PSPD) strategy meeting, once said there is a need for an "Asian solidarity movement that fosters activists and results in more activists." In other words, long term aims of educating existing activists and fostering next generation activists must be reflected in the process of designing outreach and solidarity activities. No matter how ambitious international solidarity activities may be, they are performed by people. Good activists lead to good solidarity programs. There can be no development if activists are not educated and trained through international solidarity. Of course, immediate concerns about how best to implement Asian solidarity may be overwhelming, nevertheless, solidarity activities must foster development of activists and their next generation, in order to sustain the movements. In light of the fact that most international solidarity activists have not gone through any Asia exposure programs and that most do not speak another Asian language, special education-training programs need to be provided to enhance Asian solidarity.

On the other hand, the quantitative lack of Asian solidarity activists can partially be solved by increasing connectivity inside CSOs. To be more specific, the idea that Asian solidarity is a separate field implemented by international coordinators needs to disappear. Most Korean CSOs tend to structurally separate local activities and international activities. However, I have consistently argued that the barrier between local and international activities must be dismantled. I have

gone as far as to say there should be no department or personnel exclusively for international solidarity. Many organizations form a separate team for international solidarity and delegate the job to a small number of activists. Even a large organization like PSPD has an International Solidarity Committee with one coordinator. It will be difficult to resolve the lack of human resources with such an entrenched division of labour. Asian solidarity should not be considered as a job for international coordinators alone, but of all activists.

(2) **Inducing public interest.** Lack of public interest in Asian solidarity movements and the lack of a mass base are two sides of the same coin. Because international solidarity is considered to be a special field of just a few outreach activists, the call for a more mass-based international solidarity may seem unrealistic. However, it is possible to find examples where this sort of work is already being implemented. NGO programs with Asian migrants in response to the emergence of ‘multicultural society’ in Korea are major examples.

Another way of expanding the mass base of Asian solidarity activities is promoting campaigns that stimulate public interest but under the initiative of activists. One example would be the Official Development Assistance (ODA) Monitoring Campaign, started by the Citizens’ Coalition for Economic Justice (CCEJ) and PSPD. Korea, in order to fulfill its role as a member of the OECD, has been increasing the amount of ODA and giving support to Asian, especially to Southeast Asian, countries. Monitoring where this financial aid is being spent, whether it is truly helpful and whether the ODA does not result in human rights abuse are diplomatically very important, therefore, the issues can attract a lot of attention from the general public, just as in other OECD countries.

Similarly, I would like to propose three other monitoring activities—on ‘diplomacy on Asia,’ ‘education on Asia’ and ‘media-reporting on Asia.’ First of all, in regard to ‘Monitoring of diplomacy on Asia,’ we can take reference from Professor PARK Eunhong’s call for “human rights diplomacy” from Korea, especially for Burma. Another reference would be Professor CHO Hyo Je’s argument that “We need to start

discussion on democratization of diplomatic relations and development of a more citizen-participatory international relations model.” Monitoring Korea’s diplomacy towards Asia can be a starting point for democratization of diplomatic relations and development of a more citizen-participatory international relations model. Korean public is always interested in international relations, because their fortune has depended on diplomacy and trade. Furthermore, Asian diplomacy monitoring is timely, since current Korean government is promoting its “New Asia Initiative” as a diplomatic policy.³⁾

We must take note that diplomacy encompasses both bilateral and multilateral relations. In particular, the East Asian regional cooperation is an important issue for Korean diplomacy since KIM Dae Jung government. Nonetheless, it is unfortunate that, most Korean NGOs concerned Asian solidarity don’t closely follow developments of East Asian regionalism or feel the necessity to intervene. Korean civil society must recognize the political opportunities in inter-governmental regional cooperation, being promoted with the goal of establishing an “East Asian community” towards “peace, prosperity and progress.” As Professor LEE Nam Ju has pointed out, East Asian regionalism “has not overcome a developmentalist framework based on nation states,” and “there is a huge lag in socio-cultural exchange, compared to the progress made in economic cooperation.” Therefore, as Professor Park Eunhong also commented, Korean civil society organizations “should jointly monitor and keep the APT(ASEAN Plus Three[Korea, Japan, China]) cooperation in check, and intervene to overcome the limitations.”

The second proposal is ‘Asia education monitoring.’ Asian solidarity must entail self-reflection and reassessment of our perspective towards Asia, which naturally requires looking into how our education on Asia is being implemented. We need to cooperate with area specialists,

3) So-called “local diplomacy,” which local governments are proactively pursuing as part of their exchange programs or sister-city relationships, should also be monitored. Local diplomacy monitoring can be effectively implemented by local CSOs. As Japan’s Sasaki Ichiro had said, if East Asian solidarity is to “root down in broader communities and become substantive,” then strategies to link local government projects with civil society visions are needed. Monitoring local diplomacy can be a starting point for such strategies.

teachers and education-related CSOs to assess educational curricula and the appropriateness and proportion of contents on Asia in textbooks. Undergraduate and graduate programs must also be included in the assessment and critique since university education is also severely biased in terms of education on Asia. Because Koreans are highly interested in education, education monitoring can resonate with the general public.

Thirdly, 'Monitoring of media-reports on Asia' is another idea. CSOs can start monitoring influential TV programs together with media critics. Organizations can start with analyzing the proportion of reports and programs on Asia quantitatively, then identifying any biases qualitatively, or selecting the best program or report of the year positively, and publishing regular reports. This monitoring can stimulate the media to produce appropriate contents related to Asia.

Monitoring activities in these three fields are crucial for self-reflection. NGOs concerned Asian solidarity need to build network with organizations and scholars working on diplomacy, education and media, with the mindset 'international solidarity is domestic solidarity.' When implementing these monitoring activities, activists need to focus not only on what has been done in diplomacy, education and media, but also what has not been done. In other words of power theory taught in political science, "the two faces of power"—not only "decisions" but also "non-decisions" (Bacharch and Baratz 1962)—must be monitored.

(3) Developing frugal methods. Korean organizations need to promote activities within their financial capacities but try to get the most out of such low-cost solidarity. Internet is a low-cost tool for Korean. Furthermore, online information is open and accumulative. Korean Federation of Environmental Movements (KFEM) and Asia-Pacific Workers Solidarity Link (APWSL) have long experimented with information exchange over the internet. In fact, I had already specially mentioned their information exchange site (www.enviroasia.net laborasia.net) in my other paper (Jeon, 2008).

Nevertheless, direct meetings are necessary from time to time. Face-to-face meetings lead to deeper relationships and longer discussion. That does not mean Korean organizations need to spend a lot of money inviting Asian activists to Korea. As Anselmo Lee of Forum Asia has said, "The problem with Asian solidarity is that there's no one to take initiative. There are no leaders, no ideas." Does this mean Korea has to take the initiative? I have met a Thai labour activist (Somyot 2006) and a former Indonesian minister (Anwar 2009) who seem to think so. However, due to above-mentioned limitations of Korean CSOs, that would be neither possible nor desirable.

Of course, programs to invite Asian activists to conferences organized by Korean organizations are necessary and beneficial, but Korean activists proactively participating in conferences held elsewhere in Asia, organized by other Asian organizations, would also be cost-effective. Therefore, Korean organizations need not lament that they don't have enough budget to invite Asian activists. In my view, Solidarity for Asian People's Advocacy (SAPA), set up by Southeast Asian CSOs, is a cost-effective platform for consultation. This platform is still in its beginning stages and shows certain limitations, but nevertheless, it provides an opportunity for activists to freely voice their opinion, simultaneously meet hundreds of Asian activists and develop specialized networking through the meetings by sectors and issues. SAPA is also beneficial in that we can learn from Southeast Asian CSOs' politics of engagement regarding the ASEAN or the East Asian regionalism.

Another affordable way of forging solidarity is discussion and debate. I personally have never met any Asian CSOs that expect large amounts of financial benefit when Korean organizations propose solidarity activities. Rather, Asian organizations want to know about Korea and talk with Korean activists. The fact Asian activists imagine Koreans as 'friends' rather than 'donors' is very positive. If our Asian neighbors consider us to be friends, then we just become friends, requiring 'in-depth dialogue.' We need to listen as friends, talk and argue. We can strengthen solidarity by investing 'time' rather than 'money' and by enjoying the friendship.

Overcoming an abstract 'ethical perspective'

Making statements on various tasks should not stop at abstract 'ethical perspective' on attitudes and stance. Of course, they are absolutely appropriate and relevant recommendations as well as being prerequisites for Asian solidarity movements. However, expression of ethical perspective is quite sophisticated, euphemistic and so abstract that the criticisms do not seem substantive or able to relate to concrete action. In other words, overcoming ethnocentrism will not come from repetitiously calling for it but rather from more direct and concrete task-setting.

(1) **Making a 'code of conduct.'** If recommendations are to have an ethical perspective, one can start from creating a 'solidarity code of conduct.' Listening to experiences Southeast Asian activists had with Korean CSOs when collaborating, it was not difficult to realize that problems were not really about Asian sensitivities, but rather about basic manners. There were a few occasions where I had to apologize instead, such as the following.

I sent an email but there was no answer. They invited me but didn't provide any details beforehand. They didn't care for meals of Muslims and vegetarians. They had invited us but the Koreans talked mainly among themselves. They wanted to teach us about Korea, and there was not enough discussion. I wanted to know details about strategies of Korean civil society but they simply poured out their thoughts. They said they were coming for field trips here but didn't give us any detail about the visitors. They had to travel a long distance but the visit to our organization was too short. Interpretation was terrible and there weren't any back-up material. Korean delegations had come here several times but they ask us repeatedly about basic information of our organization whenever they came.

Anecdotes about expectations and disappointment towards Korean organizations are about very simple matters and directly related to manners, so I believe making and implementing a solidarity guideline can improve circumstances a great deal. In other words, we need to recognize that in many cases, even the most basic principles are

not adhered to, which can be improved by being honest and making a guideline.

(2) **Overcoming ethnocentrism through learning.** If Korean CSOs are to overcome ethnocentrism, 'sympathy' through 'experience' will not suffice. Every year, at various conferences held in Korea and elsewhere around the world, Korean activists frequently meet Asian activists. Sometimes, special teams are formed for exchange visits, even for long term internships and exchange programs. The international activities of the May 18 Memorial Foundation (www.518.org)—Korea's best 'full package' program—are a good example. In this regard, Korean CSOs are already moving beyond the stage of feeling sympathy based on experience. However, ethnocentrism still persists. In other words, Korean organizations have overcome the type of ethnocentrism that can be transcended through direct experience. Korean activists now know cultural and behavioral norms such as the fact that Muslims do not consume pork or alcohol, and that one should not offer his or her left hand to an Indonesian. Koreans also have access to information such as circumstances of partner organizations, and feel that they need to know more in order to strengthen solidarity. Then what else is needed? A process of learning.

A process of learning enables activists to overcome ethnocentrism. In my job of political science, comparative political studies have long been proposed as a solution to ethnocentrism (Dogan and Pelassy 1984). In order to go beyond ethnocentrism, a comparative perspective is necessary, such as that which comparative political researchers have attained through repetitious comparative studies. Self-reflection is about looking into oneself, which requires looking into a 'mirror,' and others act as that mirror. In order to look at Korea, one needs to look at the mirror reflection of other countries. Mirror of comparison is mirror of knowledge, and that knowledge is the local knowledge of other countries. Experience is one way to accumulate such knowledge and is an appropriate starting point. However, experience on its own leads to superficial knowledge.

(3) **Linking activism and knowledge.** The reason ethnocentrism is so entrenched is because lack of knowledge about the region is entrenched. To overcome this challenge, a civil society-area studies link has to be formed. It is no news that academics have an important role to play in Asian solidarity. There have been claims such as “Intellectuals must exert more effort in forming a community of common values” or “There has to be more exchange and cooperation between intellectuals within a multilateral cooperative framework.” CSOs have also sought solidarity between activists and experts, and along with lawyers, academics were considered solidarity partners. However, these partnerships were focused on academics easily supporting the activities in question, or those who were “local” rather than “international” experts. On the other hand, activists tend to be rather passive in linking with area specialists.

I believe that we need to form a ‘special’ experts’ network for Asian solidarity rather than a ‘general’ one for national social movements. We need area studies and international relations experts who can consistently observe Asia. However, these scholars tend not to want to take the lead, meaning there has to be a change in how activists and experts form relationships. Businesses, foundations and government agencies proactively contact area specialists to get advice and to use their knowledge by asking for their participation in planning, lectures and evaluations. CSOs are less active in creating relationships with such experts.

Area specialists, in particular those focusing on areas neglected in Korea, usually welcome opportunities to talk about their area of expertise. Thus, if activists eagerly contact such experts to ask for help, then a mutually beneficial and positive relationship can be formed. Of course, activists must take into account that they may have differing views and opinions. Being accommodative to such divergences is a necessary virtue not only when relating to Asian organizations and activists but also when meeting Asia researchers within Korea. One should also remember that researchers are not activists. Researchers may have a different set of values, aims and preferences.

If activists do not take these differences into account, then the relationship may run into difficulties.

(4) **Networking with area studies students.** Civil society needs to pay interest in fostering future area specialists, in addition to fostering future activists. If area studies students are organized as volunteers, they can contribute not only to solving the lack of human resources in solidarity organizations but also to linking next generation activism and knowledge by helping to create researchers who have understanding of social movements.

Everyone knows the importance of recruiting volunteers in CSOs, however, it is easier said than done. There are more and more undergraduate and graduate students, and even high school students who are interested and ambitious about international activities but nevertheless are not organized by civil society's international solidarity activists. Activists should send letters yearly to nearby universities –to international relations and political science departments, Asian-language related majors, graduate school of international studies etc. –or even directly visit related departments to expose students to Asian solidarity movements and to recruit volunteers. Also, CSOs should make an effort to find Korean students conducting field research for their theses in Asia and induce their participation. They are the ones who have on-ground experience and implementation know-how. In this process, CSOs must also be able to provide information and offer help to their research and academic work.

I suggest at least volunteer, who speaks the language of a partner country, to be organized per language bloc. True Asian solidarity cannot be realized when the use of English is unquestioned and considered the norm of international solidarity work. Not only Korean activists but also our neighbors may feel alienation when Asians have to communicate in English only and face other forms of 'language barriers.'

Let's go back to the idea of 'solidarity that fosters activists.' Overcoming ethnocentrism through education and learning might be an unrealistic proposition for activists who are already over-tired. Circumstances seem even more gloomy if indeed "there is neither

system to foster international solidarity activists nor sufficient investment,” as KIM Chanho had said. Under such circumstances, the immediate solution can be networking with researchers and students of area studies, and communicating with them as much as possible. We already know that entering graduate school is not the only way for activists to learn and link activism with knowledge.

In search of practical arena for Korea's Asian solidarity

Just as ‘reflection’ is important, so is ‘practice.’ The need for reflection comes from errors committed by Korea’s Asian solidarity movements that have been pointed out, in the process of hastily promoting some projects. However, solidarity has to be practiced for it to be reflected upon. ‘You can learn to play the piano while you play it.’ Korean activists can learn from practicing solidarity even if aimed at ‘exporting’ movements because they realize the difficulties of exporting movements and encounter the need for communication with Asian people. Furthermore, there are some ‘demand’ in Asian civil societies which want to know more about Korean social movements and call for a more active role of Korean side. How can Korean activists remain silent when Asian activists ask questions about Korean civil society? Korean should answer. Asian neighbor activists also have the right to know more about Korean society and the need to overcome their own ethnocentrism through mirror of comparison.

Korean activists, however, need to differentiate what they can do well and what they can’t. Through mirror of comparison provided by Asian solidarity movements, Korean can see them better. The problem is unilateral ‘monologue,’ not exposing and sharing oneself. Talking about Korean experience and strategies is recommendable. The problem is that this is the ultimate goal. Overcoming ethnocentrism is not giving up being Korean but perceiving comparatively. Overcoming ethnocentrism is not heading for ‘universalism,’ but rather searching for peculiar intersection between Korean and Asian neighbors.

(1) **Comparative perception of Korean civil society.** Basic method of comparison is finding similarities and differences. However, organ-

izations tend to focus more on finding similarities due to their emphasis on sympathy, common goals and values, leading to negligence of existing differences. Comparison enables us to identify that we don't have. Furthermore, we must realize that solidarity not only comes from similarities but can also be stimulated and strengthened by differences.

For example, CHANG So Young, who had worked in a CSO in Thailand, said, "local and village communities," which are "roots of society," "still remain in many parts of Asia, in diverse forms." She found potential alternative ways of living, whereby "Local residents and nature peacefully coexist." Late LEE Sungkyung, a labor activist who had visited Indonesia, was inspired by the abundant social capital of Surabaya local workers movements, which had showcased a cultural performance with various local organizations, and lamented the lack of such resources among Korean local workers movements. As such, compared to Korea, our Asian neighbours have stronger local grassroots movements as well as great potential for alternative development. These possibilities are some of the things Korea had lost amidst the rapid economic growth that some Koreans are so proud of.

It is not too difficult to notice that internationalization of Asian CSOs is more advanced than Korean CSOs. The major example would be the Philippines, which 'exports' not only singers and helpers but also activists. Although Malaysia may be less democratic than Korea, it also has many international activists, while Bangkok, with a hub airport, hosts headquarters of many transnational organizations. The populous Indonesia is also home to branches of various UN agencies, which form close relationships with local NGOs. One indirect explanation may be that while most Asian countries were exposed to centuries of Western colonial rule, Korea was not. A more direct reason may be that Korea joined the UN only in early 1990's when international travel also became easier. Only with Korea's membership into the UN was Korean NGOs invited to various UN conferences and events, and with easing of regulations on international travel, Korean activists were able to easily accept invitation from organizations abroad. In this sense, Korea's international solidarity capacities obviously fall far behind those of our Asian neighbours since it has only

been 20 years since internationalization of Korean CSOs was earnestly promoted.

In addition, through comparison, we are able to better identify our past achievements and our future potential. Sometimes, modest Asian activists see these achievements and potential, and inform us. For example, Korean social movements are assessed to have developed militant demonstration tactics. Some also say Korean labor unions are less divisive in structure and more active in politics. Some take interest in that Korean organizations don't rely on international funding but rather successfully mobilize domestic funds. Some laud and want to know how Korean victims of state violence were able to lead transitional justice in Asia, by fervently calling for past history to be re-interpreted. Transitional justice is a dynamic institutional area that Korea is deemed to be superior. Korea's transitional justice has focused on investigation into human rights violations under authoritarian regimes, bringing perpetrators to justice, compensation for victims and revival of victims' reputation, memorial projects etc. Asia has a wide range of state violence, meaning there are many tasks to be done pertaining to settling and reinterpreting history. The Korean civil society can and should contribute to the discussion on these issues and galvanize wisdom. These evaluations all come from comparison. Korean CSOs, through such comparison, can identify what they can contribute and what they need to ask of others, thereby come up with befitting, unique and creative solidarity movements.

(2) An application: 'Asian political power monitoring project.' Flowering of democracy is one of the common yearnings of Asia's civil societies. Last year, PSPD Korea proposed a project of 'Asian political power monitoring project,' as part of Solidarity for Democratization Movement in Asia (SDMA) activities set up by the May 18 Memorial Foundation on the occasion of 30th anniversary of the Gwangju Uprising. Collaboration on three areas—monitoring of administrative, legislative and judicial processes—were proposed and discussed with Asian activists who were invited to Gwangju. Among the three, judicial monitoring was welcomed by the Asian activists

and is likely to be prioritized in on-going discussions. The fact that activists had not only self-reflected but had also proactively made collaborative proposals is commendable. I want to add five comments for the proposal based on comparative perspectives.

First of all, it is essential to understand that Asia is diverse in terms of political regime. There are all possible regimes—from 'liberal democracy,' 'electoral democracy' and 'electoral authoritarianism' to 'politically closed authoritarianism' (Diamond 2002). Authoritarianism itself has all sub-types such as military dictatorship, single party rule and absolute monarchy. Only a few countries—namely Indonesia, Philippines and Thailand in Southeast Asia—actually have electoral democracy where elections are actually significant. Therefore, political strategy of legislative monitoring may be limited in its scope and efficacy. One must take into account the contextual differences between the diverse political systems in Asia as well study into the 'viability of authoritarianism' and institutional legacies of authoritarianism that continue to exert influence longer than expected, even after democratization (Slater 2008).

Secondly, it is necessary to go beyond mere criticism of authoritarian regimes and observe what kinds of alternative political organizations or forces are being formed inside the societies (Carothers 2002). In other words, we need not only 'monitoring of power' but also 'exploration into society.' Lack of alternative political forces during democratization may allow revival and return of the old regime forces. Political society, not just civil society, is very important in this process, and the importance of political parties increases after democratization. However, NGOs or NPOs (non-profit organizations) tend not be interested in political parties. By maintaining such distance, they may be able to save their 'souls,' however, such attitude constraints effective implementation of politics to promote democracy in Asia.

Thirdly, democratization is not limited to simply driving out authoritarian forces and replacing them with democratic ones, but rather, requires making new political institutions, which in many cases may entail a huge overhaul, commensurate to establishing a new state (Carothers 2002). One must consider that the tasks of transitional

democracy are quite different from monitoring already established, post-transition institutions. The monitoring projects are inevitably limited in reflecting a dynamic transition period.

Fourthly, because democratization is not a panacea for all problems, we need to recognize and prepare for possible new social conflicts and heightened violence. In particular, countries with severe religious and ethnic cleavages can face increased horizontal violence, meaning societies must search for institutional design that can alleviate religious or ethnic conflicts. Korean civil society, being rather insensitive to conflicts arising from plural or multicultural societies, lacks knowledge about and application of consociational democracy or consensus model (Lijphart 1999), which is viewed to be a solution to such challenges. Therefore, the Korean civil society has a lot to learn from activists of more plural societies in Asia about primordial conflicts and their solutions.

Fifthly, if democracy cannot substantively contribute to improving the lives of Asian peoples, it will eventually wither away. Monitoring power and related campaigns will likely focus mostly on function of constitutional institutions and will not cover welfare issues. However, in order to bring about a democratic solidarity in Asia, it is essential to cover welfare, among which education and healthcare are the core issues. Some may say welfare policies are unrealistic aims for developing countries in Asia, but this is not the case. The concept of 'social safety net,' which became widely used since the East Asia financial crisis a decade ago, is another expression for welfare. The Thai Prime Minister Thaksin Shinawatra gained huge popularity during the 2000's due to his initiatives on welfare reform. Welfare was also one of the most contested issues during the 2004 general election and 2009 presidential election in Indonesia, which is now undergoing intense debate on social security system reform. There are many development NGOs active in many Asian countries, and their activities are also related to welfare. Therefore, advocacy NGOs and development NGOs or welfare-aid NPOs need to permeate into one another and formulate co-related tasks for promoting democracy in Asia.

Conclusion

Asian solidarity movements face difficulties due to lack of physical and human resources as well as social inattention while many commentators criticize the narrow-minded ethnocentrism of Korean civil society. As ways forward, activists show preference for cognitive enhancement such as education-training as well as realization of common values of democracy and peace. Commentators proposed a self-reflective process that leads to experience, sympathy and understanding of Asia, as ways to overcome existing problems. In addition to these recommendations, I have proposed task-setting that contributes to solving problems on-ground, and more specifically, solidarity that fosters human resources, induces public interest, and becomes friends of Asia. I have also suggested that we need to go beyond an abstract ethical perspective to a comparative one through networking of regional knowledge and learning, so that we may overcome our ethnocentrism.

This article is merely an introduction contradicted by insufficient research and challenging statements. In order to further studies, I would like to propose the following as topics. Firstly, the question "Why Asia?" is still pending. Some humanities scholars, stimulated by ending of the cold war, have been leading efforts to find answers to this question. Later, due to the economic crisis and deepening of regional cooperation, social scientists also joined, thereby widening the scope of research and diversifying the discussion. On the other hand, Asian solidarity movements of CSOs implemented their own activities without direct regard for the evolution of these discourses. A decade has passed, and I believe the time is ripe for humanities scholars, social scientists and activists to jointly come to a conclusion about this question.

Secondly, we need to conduct regular surveys and to organize regular discussions. Asian solidarity movements are taking place in truly diverse fields. Therefore, I suggest a survey every 5 years on trends of Asian solidarity movements in Korea and a yearly forum for Korean scholars and activists to gather and discuss. Surveys have to be continued on

demands and reactions of Asian neighbors because solidarity is not unilateral but bilateral. The survey implemented by KDF in 2008 provided a starting point. We can take this further to in-depth case studies of various Asian solidarity movements through qualitative methods such as activist interviews or participatory observations.

Thirdly, we need to attempt an evaluation into the practical arena of regional human rights cooperation. In particular, a follow-up research into SAPA is needed. Research and assessment into various networking activities such as the yearly Gwangju Asia Forum in Korea or the Bali Democracy Forum, held 3 times in Indonesia, should also be pursued. Another area of research is of the ASEAN Intergovernmental Commission on Human Rights (AICHR), which officially took off in March 2010. It can offer an effective route for engagement into Southeast Asia human rights issues. Research on AICHR can provide reference for Korean CSOs in forging a scheme of Asian human rights cooperation in the long run.

Asia area specialists who participate in these researches will be recognized for their double commitment of responding to the needs of both Korean civil society as well as other Asian neighbors. They can get fresh motivations from information and networks provided by Asian solidarity movements, and identify topics that urgently need to be addressed. Moreover, they can feel the joy coming from collaboration while overcoming the solitude of research.

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IV

EMERGING SITUATIONS

14. China's New Role at the Top

Dorothy-Grace Guerrero

China is now an indispensable global power. Although it still belongs to the “developing country” category, it is also the world’s second largest economy at the same time. Any international discussion and decision making process be it about managing (or saving) the world economy, governing international institutions, ensuring security or thwarting global warming—is marked by China’s presence or absence. This probably indicates that it is now the world’s second most important country next to the US. China’s rise is a popular subject of development discourse and analysis. Rich and poor countries alike adjust their strategies to imitate its success. It is now the manufacturing center of the world and it will be difficult to imagine anything that is not produced in China.

Great changes happened and are still happening in China since it’s opening to world trade and implementation of economic reforms. Its major achievement is that of lifting 400 million of its people out of poverty, a feat incomparable to any country at any time. Economic figures or statistics coming from this “risen dragon” will likely have a ripple effect worldwide. This year, Chinese leader Hu Jintao was named by Forbes magazine as the most powerful man in the planet. As explained by Forbes, in addition to near dictatorial leadership of the most populous country that comprises one fifth of the population of this planet, Hu “can divert rivers, build cities, jail dissidents and censor Internet without meddling from pesky bureaucrats and courts”¹⁾.

1) Forbes Magazine, 2010

Despite the recent disastrous financial crisis that drove major economies to recession, China's gross domestic product grew by more than 9 percent in 2009. It has maintained a double digit GDP growth and a 20% or more average growth in exports since 2002. China's high savings, rapid industrialization and integration to the world economy have four enormous consequences.

First, it heightened the competition for resources between major producers. China is now the top consumer of key resources since 2006: 32% of the world's steel, 25% of the world's aluminum, 23% of the world's copper, 30% of the world's zinc and 18% of the world's nickel. It is the world's second biggest oil consumer next only to the US. Second, it contributed to the environmental degradation. It is already the world's biggest emitter of greenhouse gases and sulphur dioxide, which causes acid rain. Chinese scholars blame the country's rapid economic growth, its role as the manufacturing center of the world, and the fact that China relies on coal for 70 percent of its energy needs for this situation. This two factors were emphasized by developed countries in the climate debate to argue that China as a major economy should also be subjected to binding obligations for climate mitigation. What is missing in the argument however is the fact that China is producing cheaply for transnational and local companies for the world's use.

Third, it realigned world trade. China is already the world's largest exporter of goods, after it surpassed Germany last year. Its annual gross merchandise in 2007 was €760.7 Bn, which was five times higher than its 2000 record. China is also major capital exporter. Its 2007 current account surplus is around €252 Bn or 11.9% of its GDP.²⁾ Fourth, China's entry to the global economy profoundly changed the ratio of global capital stock to labour. The availability of a vast army of cheap and efficient Chinese workers into the international system of production and trade has affected the bargaining power of workers in developed and developing countries alike. Foreign investments from the US, EU and Japan has been shifting from South East Asia to China

2) World Bank 2007 Report

since 2001 due to an assured increase of after-tax profits of investments.

China's phenomenal achievements are not instant but rather a result of a process that spans three decades. Nonetheless, the dramatic economic leap that was gained is equivalent to what Western economies made for over a century. It is important to understand how the transition came about and at what costs.

China's Shift to Capitalist Development and Its Rise as a Global Economic Power

The transition of socialist countries from a planned economy to a market economy is one of the most important shifts that happened in modern history. China is considered as the most successful case of such conversion. Compared to Russia, China managed to avoid Jeffrey Sachs' "shock therapy" of rapid liberalisation of internal and external market forces. It has learned from the Japanese model how to manage the process of slowing the entry of foreign firms while simultaneously preparing local companies for the transition. Modern foreign industries were allowed in to enable Chinese companies to learn new technologies as well as labour and management skills.

Starting from 1978, it adopted an alternative gradual, evolutionary, approach to the transition through series of economic reforms. The Chinese approach is piecemeal, partial, incremental, often experimental, and especially without large-scale privatization.³⁾ Liberalisation was done gradually in selected sectors and at first confined to a selected local area. Failed experiments were suspended or revised and successful ones were quickly expanded and replicated in other areas. The biggest lesson that China imparts to other developing countries is the central role of the state in managing transitions.

China's reform process can be divided into four phases: Phase one is gradual opening to the global economy and policy reformulation from 1978 to 1986; Second, the application of what is called as the

3) Justin Yifu Lin, *Lessons of China's Transition from a Planned Economy to a Market Economy*, China Center for Economic Research Working Paper Series, February 2, 2004.

“Twenty Two Regulations” that created a beneficial environment for foreign investors from 1986–1992; Third, China’s emergence as a global trading power and major recipient of FDIs from 1992–2001; and Fourth, its accession to the WTO from 2001 and onwards.⁴⁾ This gradual type of reform allowed the government to retain its role as a stabilising force in the transition and enabled it to facilitate a measured de-centralisation. Contrary to the advocacy of neo-liberal scholars, China’s gradual marketization showed that this model is less harmful than the total shock of sudden and total privatization.

The commune system was dissolved, State-owned enterprises were dismantled (read corporatized) and state-owned properties were privatized in 1984. Export production started in four Special Economic Zones (SEZs) in the Pearl River Delta. In the agricultural sector, liberalization started allowing farmers to carry out individual production and sale of produce.

China’s courtship of foreign investment dramatically affected state-owned enterprises (SOEs). According to Hart-Landsberg and Burkett’s book *China and Socialism* the loss of profitability of state enterprises is connected with the increased reliance to foreign investors. Since state enterprises became saddled with relatively high tax rates as well as employment, investment and employee-welfare responsibilities (pension, housing, health care) they appeared increasingly inefficient and uncompetitive compared to private enterprises. The decrease in the SOEs profitability, coupled with management problems as well as corruption resulted to their indebtedness. As their overdue debts increased in volume, the government was left with no other option but to privatize them as a way to unload the government burden.⁵⁾

Exports took a leading role and to continue the rapid growth, the economy relied on foreign enterprises especially in high-tech industries. The increasing centrality of exports and foreign investments rationalized the economy’s dependency to global trade and investment

4) Breslin, Shaun (2004) *Capitalism with Chinese Characteristics: the Public, the private and the International*. Working Paper No. 14, Asia Research Centre, Murdoch University.

5) Burkett and Landsberg’s *China and Socialism: Market Reforms and Class Struggle*, Monthly Review Press, 2005

agreements, and above all the WTO. It took 15 years of negotiations and institutional preparations before China became a member of the WTO. The domestic market was opened up for foreign goods and services and foreign investments were granted favorable conditions. The liberalization of its economy within two decades can be easily grasped in the percentage share of China's exports attributable to foreign-invested enterprises. The 1986 level showed that it was at 1.9%, this increased to 57% by 2004.⁶⁾ From the time that China joined the WTO in 2001, it already amended more than 2,500 of its national laws and regulations and abolished more than 800 others to fulfill WTO rules.⁷⁾

Chinese pre-reform period was marked by universal access to land, health care and primary education. After the reforms and integration to the global market economy, class relations and social conditions changed. China offered benefits to foreign direct investments that included tax rates adjustments and good conditions for guaranteed profits for transnational corporations (TNCs) like low rent, cheap natural resources, low wages, absence of genuine trade unions, no-strike laws, etc.

Since 2006, China overtook Japan as the largest holder of foreign currency reserves 70% of it is in US dollars with majority in US treasury bonds.⁸⁾ In 2007 China has set up an investment fund, the China Investment Corporation, which has an initial €133.33 billion capital to be invested around the world.

China's leaders call their vision "heping jueqi" or the peaceful rise of China. According to its foreign policy, this peaceful rise is being pursued through trade, confidence building measures, development cooperation and assistance. It states that as a developing country, it shares the status with other developing countries so its trade, investment, and development engagements with other developing countries are being pursued in the spirit of South-South cooperation.

6) Van Jackson, China Unlearns US Trade Lessons, Far Eastern Economic Review Jan/Feb 2008.

7) "China Tackling Challenges in WTO Transition," Xinhua News, December 11, 2004

8) Kerry Brown, "China Goes Global," Open Democracy, August 02, 2007 www.opendemocracy.net/article/democracy_power/china/foreign_investment

China assures its Southern partners that its rise should be seen as a non-threatening one because it also suffered from similar semi-colonial past and therefore will not become a colonizer/dominant power. Chinese officials always point out that China is expanding its political influence through the institutional approach, that is, by means of international co-operation and integration into the international community.

China's Trade and Investment

China's aggressive economic expansion through bilateral free trade agreements is now being seen as a sign of an increasing competition that could develop into wider rivalries between China and the old centers of capitalist power (the US, the EU and Japan). For countries in the South, the more important question is whether such rivalry is making other developing countries more prosperous and stable or if it is leading to more desperate competition to the bottom among the weak.

China's rise followed more than 20 years trail of huge foreign direct investment (FDI) inflows. The Chinese development discourse identify two complementary phases with which to achieve modernization: the first phase is the period that a country allows more FDI inflow to develop the surplus capital for export, this is followed by the second phase where the FDI inflow have successfully interacted with the domestic market and made it possible and necessary to build TNCs and carry out overseas investment.

In 2001 Premier Zhu Rongji officially used the term going out⁹⁾, in reference to FDI and foreign portfolio investment (from hereon FPI) outflows, in his policy address to the People's Congress concerning the strategy of Chinese multinationals. Going out is actually the other half or the complementary strategy of inviting in (inflow of FDI) of China's economic growth plan. Inviting in and going out strategies

9) Zhongguo zouchuqu de fazhan celue (the China Strategy of 'Going Out')

integrates China into economic globalization. Inviting in is the base for going out and going out is the necessary result of inviting in.¹⁰⁾

The Going out Strategy aims to create and expand the market space for Chinese exports, increase commercial learning for its transnational corporations (TNCs), secure resources, obtain technology and raise the prestige of Chinese brands. China accounted for approximately 5% of the world GDP and had recently graduated in status to a middle-income country. It is now negotiating various Free Trade Agreements in the Asia Pacific region including the ASEAN countries, Australia, and New Zealand. China's aggressive FTAs are influenced by two objectives. The first is to secure long-term energy supply and establish sources of other natural resources that it needs for its manufacturing exports. The second objective is to expand its market to various regions to enable it to continue its growth.

The need to find a stable supply of oil and a diverse source of oil prompted it to negotiate oil and gas deals with various countries like Indonesia and Burma in Southeast Asia, energy rich countries in Central Asia, as well as with Sudan, and some countries in Latin America. As we can see from this linkage it can be summarized that China enters into FTAs to secure the natural resources from its partner countries and increase its exports to its trade partners to pay for its oil and other resources imports.

China's export credit and guarantee agencies, particularly China EximBank and Sinosure are now playing a crucial role in fostering the rapid expansion of Chinese trade and overseas investments. The China EximBank is now the world's third largest export credit agency. China Development Bank, the world's largest development institution by assets, is putting more resources behind the overseas expansion of Chinese enterprises, particularly in natural resource projects. China's emergence as the new source of financing is felt not just by its Asian neighbors, but also in Africa where it is one of the main sources of goods and finance. China is funding mines, dams and many big infrastructure projects in the continent.

10) Globalization Monitor, Preliminary Report on China Going Out Strategy—A Labor and Hong Kong Perspective, November 2007.

Many developing country governments view China's new role in the world as that of an alternative to western pressure, and a source of financing without the usual conditional ties by other international financial institutions like the International Monetary Fund and the World Bank. However, many criticize its no-strings aid approach, arguing that China is encouraging an investment climate that ignores social and environmental impacts, human rights, corrupt governance, etc. Non governmental organizations and campaign groups are also worried that China's emergence as a new source of funds, without standards, could be used by rough regimes in prolonging their stay in power and thereby extend the agony of the people that are suffering from their abusive rules.

The lack of benchmarks in Chinese investments and development financing is indeed worrisome. However, many are also asking the question whether the concern being raised is genuinely about the developing countries and the welfare of the people there or whether it is actually about protecting Western interests.

At the same time, it is not yet clear how effective China's role will be in fostering development given that it seems to be following the development approach of the west while ignoring corrupt practices. In the Philippines, the scandal in the early part of 2008 about 11 corruption-ridden projects funded by China has thrown the country in another state of political crisis as various campaign groups seized the opportunity to revive campaigns to oust the then president Gloria Macapagal Arroyo.

The fact that China can mobilize about \$1.4 trillion capital investment and that it is still going up and will soon exceed half of GDP is no longer news. What will be more interesting to follow is how this massive amount of money is transforming Chinese companies into global players through foreign and domestic private equity funds. If current trends in global capital flows and accumulation continue, China will become an exporter of capital with global impact that rivals its status as the world's dominant exporter of goods.¹¹⁾

11) Ken De Woskin and Chris S. Cooper, Private Equity Transforms China, Far Eastern Economic Review Vol. 171 No. 1, Jan/Feb 2008.

Although China's economy is getting more and more integrated into the world capitalist system, the government still directs 70% of all investment spending in the country and keeping strategic control over companies that are in energy, telecommunications, shipping and defense industries. Chinese TNCs are increasingly felt worldwide as they seek new markets. China may be the largest single source of new multinationals within this decade. Aside from Lenovo, which bought IBM's personal computer division, Haier is emerging in appliances, Huawei Technologies is competing against other established companies that used to dominate telecommunications equipment around the world, just to name a few.

There are mainly four types of Chinese TNCs: trading companies, manufacturing enterprises, financial institutions, and construction companies. Many analysts are saying that what we are seeing now is a rebalancing of the global economy back to where it was before the Industrial Revolution when China and India were major powers in the world.

The Perils of China's Explosive Growth and the Challenges of Environmental Sustainability and Social Justice

According to Lee, China's market socialism in its modern form is a predatory, dysfunctional and grossly inefficient system that is enormously wasteful and unsustainable.¹²⁾ However, China's model merely reflects 21st century capitalism, which is characterized by high speed accumulation by the few, dispossession of the majority's access to resources and voice in the management of resources. Majority of the current analysis about China's role in the changing global political economy failed to problematize China in the current context of neo-liberal globalization system. As long as the institutional and structural forces of globalization is dominated by the exploitative bias for accumulation of natural resources without due regard to people, their live-

12) J. Lee, Will China Fail? The Limits and Contradictions of Market Socialism, Center for Independent Studies, 2007

lihood and environment – China and other new actors will continue to go after the natural resources of other developing countries.

The issue here is about the nature of current globalization as much as China's growth by integrating itself in the global market system. In the context of the ongoing debate about China's increasing environmental footprints in other developing countries, two aspects are seldom discussed:

The first is that much of the natural resources imported into China are re exported in the form of value-added inputs of final products for consumption in other countries, mostly in the west. In effect, the emergence of China as the factory of the world is upholding the unsustainable consumption and production patterns in the developed world. China of course must also be held responsible and must assure the world that its resource extraction in other developing countries is carried out in a sustainable manner. However, the reality of the power held by transnational corporations in maintaining the current order of production and consumption must also be put into consideration.

Secondly, like any developing country, China has a legitimate claim to lift its population out of poverty and to increase its wealth, and is doing so at a rapid pace. This will also mean an increase in the demand for resources. These two aspects pose challenges not only for China's aspiration to become a rich country, but for rich countries whose consumption and production patterns are unsustainable. This fact becomes more evident as China is rising and legitimately aspiring to the same standards of living. The common argument is that if China will follow the same model as the western world this would threaten global environmental sustainability.

China's Tremendous Challenges

According to the World Bank, since China's opening up policy in the late 1970s China has lifted around 400 hundred million people out of absolute poverty, with the result that China alone accounted for over 75% of poverty reduction in the developing world over the last

20 years.¹³⁾ Since 1981, the estimated share of the population living on less than \$1 per day has been slashed from 64% to 16%.¹⁴⁾ The eleventh Five Year Plan (2006–2010), which guides government policies, states that the government tried to address some of these challenges. China's aim is to quadruple its 2000 level GDP by 2020.

Does China's development model offer an alternative to other developing countries? Figures and statistics shows there has been economic growth. However such growth was also achieved at the expense of many social and environmental costs.

In terms of production, China supplies more than one-third of the world's steel, half of its cement, and about a third of its aluminum. Chinese authorities recognize that its economic achievements as well as its current role as the manufacturing center of the world produced many environmental and social risks. China is now the largest producer of CO₂ and chemical oxygen demand (COD) emissions.

Many local and foreign-development analysts agree that China's unsustainable and reckless approach to growth was putting the country and the world on the brink of environmental catastrophe. China was already coping with limited natural resources that were fast disappearing. In addition, not everyone was sharing the benefits of growth—about 135 million people or one-tenth of the population, still lived below the international absolute poverty line of \$1 per day.¹⁵⁾ Although the challenges are similar to many developing countries, Chinese organisations working on development and poverty reduction stress that the scale of the problems are huge since China is such a vast country.

There is huge inequality between the urban and rural population, as well as between the poor and the rich. The increasing number of protests (termed mass incidents in China) was attributed to both environmental causes and experiences of injustice. If these social problems remained, it could imperil the "harmonious development,"

13) World Bank Office Beijing, 2007.

14) "UNDP China wins 2006 Poverty Eradication Awards"

15) Social Sciences Academy Press, "The Development Report of Over-all Well-Off Society in China, 2006"

or Hexie Fazhan, project of the government and eventually erode the Communist Party of China's continued monopoly of political power.

Among the environmental costs of China's economic growth, the most serious and apparent are those caused by pollution. China relied on coal for 70% of its energy needs. More than 300,000 premature deaths annually were attributed to airborne pollution. The changing lifestyle of the increasing number of middle-class families also contributed to the problem. In Beijing alone, 1,000 new cars were added to the roads every day.¹⁶⁾ Seven of the 10 most polluted cities in the world were located in China. Emissions continue to increase as treatment for pollutants remain inadequate. In the last couple of years environmental protection mechanisms were put in place but those are still limited in scope.

The Chinese government is beginning to realize, however, that its growth path was not cost-free. According to the State Environmental Protection Administration and the World Bank, air and water pollution was costing China 5.8% of its GDP. Though the Chinese government carried the responsibility for fixing the overwhelming environmental consequences of China's breakneck growth, help, if offered, from the transnational companies and consumers from industrialized countries that benefited greatly from China's cheap labor and polluting industries could also be utilized in the challenging cleanup task.

When the Chinese government in 2004 began setting targets for reducing energy use and cutting emissions, the idea of adopting a slower growth model and the predictions about the looming environmental disaster were not received with enthusiasm at first. By 2007, however, targets had been established for shifting to renewable energy, for employing energy conservation, and for embracing emission-control schemes. The target was to produce 16% of energy needs from alternative fuels (hydro and other renewable sources) by 2020.¹⁷⁾

16) China Daily, September 22, 2007

17) Peter Ford, "China moves to shrink its carbon footprint" Christian Science Monitor, 26 April 2007.

Too Much Growth, Too Little Development

Despite the Chinese government's claim of "socialist" market economy, the liberalization that followed after WTO accession and the increasing power of local elites and foreign enterprises in China's economy are now producing growing tensions and contradictions that are creating an increasing divide between the winners and losers of such growth. The UNDP's Human Development Report for 2005, which showed an alarming increase in the income disparity, was an eye opener for many Chinese people. China's gini coefficient in 1981 was around 0.29, this increased to 0.39 in the mid 1990s and hit 0.47 in 2005.¹⁸⁾

Economic growth has been uneven and was unfair to those in the agricultural sectors. The stagnation of agricultural wages and the allure of newly modernized cities are continuing to drive urban migration. Unemployment in the rural area reached an alarming state. It is now estimated to be around 10 to 12 percent. The so-called "floating population" of underemployed and unemployed labour in the rural areas number around 100-120 million.¹⁹⁾ The more than 700 million people that are currently involved in agriculture would have to undergo adjustments to cope with urbanization. The Amnesty International March 1, 2007 report says that since the 1980s, the number of migrants has surged from 2 million to 150-200 million. By 2015, it is estimated to hit 300 million. This would be one of the largest migrations in human history.

In many cities, particularly the Pearl River delta, migrants already make up the majority of the population. But most are denied full rights to housing, education and medical care because they can register only as temporary residents. Many are working illegally, so it is hard for them to challenge their employers. The work conditions of Chinese laborers—the people who provide the world with every affordable consumer products from T-shirts and bras to home appliances and

18) Shaun Breslin, *The Political Economy of Development in China: Political agendas and economic realities*, in *Development*, 2007, 50 (3), p.3-10.

19) Dale Wen, "China Copes with Globalization," a report published by the International Forum on Globalization, December, 2005.

computers—are far from pleasant. They often work between 60 to 70 hours weekly.

Migrant women workers face triple discrimination for being poor labor, female and rural in origin. Urban migration is producing various social problems like crime, prostitution, drug trafficking, etc. in the overstretched cities. China's problems about its "surplus labor" present many daunting challenges as it transforms itself into a knowledge and service-based economy. It is not easy to create productive employment for its 744 million-strong labor force. China needs to create 300 million new jobs within the next decade to absorb or re-employ those who lost their jobs in the agricultural sector as well as former state-owned enterprises (SOEs) and provide work for the new members of the labor force.²⁰⁾

The future of the agricultural sector was one of the most important concerns during the 2005 WTO negotiations in Hong Kong. Some economists within China think that agriculture is comparatively unimportant relative to other promising and more beneficial sectors since China is not a major exporter of agricultural products. The agricultural sector only contributes 15 percent to China's GDP. However, the number of people that depends on agriculture for survival and development is still huge.

A number of policy measures to improve the situation in the countryside are starting to generate some positive results. However, the general development in the rural areas is still lagging behind the urban areas by ten years. The state of the environment is also deteriorating and this is increasingly affecting people's health and livelihoods. Protests and rioting triggered by generally felt injustice and environmental problems are now an almost daily occurrence in the countryside.

A 2005 World Bank study notes that China's farmers were already suffering declining income in the years before WTO entry.²¹⁾ But the linking of China's fortunes to foreign markets has aggravated the trend, particularly as China removes tariffs that once protected local

20) Douglas Shihua Zheng, "China's Employment Challenges and Strategies after the WTO Accession," World Bank Policy Research Working Paper 3522, February 2005

21) WTO Status Hurts China's Rural Poor: World Bank, Agence France-Presse, February 22, 2005

farmers from imports. China cut its overall agricultural tariffs from 54 percent in 2001 to 15.2 percent in 2006. No single member has made such a huge cut in such a short period of time in the WTO history. The average agricultural tariff worldwide is now 62 per cent.

It would be difficult to argue that China's development is unreal, but it should be argued that it is wrong to celebrate China as an economic success story or development model.

Growing Social and Environmental Justice Awareness

Does inequality under the current Chinese condition matter? For the Chinese elite, it does. In fact it is a focus of internal political discourses in China in the last few years. The Chinese state should not be underestimated in how it could accommodate and effect change, especially when its legitimacy and long-term survival is concerned. It is aware of the environmental and social impacts of its growth strategies and it understands very well that the growing inequality is incompatible with social stability. However there is much to be desired in the balance between wealth creation and addressing social justice issues.

For those in the lower strata of society the growing inequality and the increasing pressure to the environment is much felt. The poor who rely on the environment for their survival and livelihood are more and more realizing the connection between their poverty and environmental problems.

Considering the political environment in China, reports of public protests shows an increasing albeit unorganized questioning of the social conditions. The Chinese people are now clamoring for the fruits of the past decades of growth to be more equitable. The alarm bells that are ringing in various policy circles, the academic community and activist groups emanates from what appears to be China's duplication of the same social and environmentally destructive economic model already followed by the West.

Despite the difficulty of opposing the government, the increase in the number of people who are expressing their resistance to what they perceive as injustices against them is constant. It is still difficult

however to raise the mobilizations into national actions. Domestic opposition groups and individuals who might challenge the party's authority are left isolated and powerless. At the same time the Chinese Communist Party's is still very successful in its charm campaign of recruiting the intelligentsia into the party. The social groups that are normally the forces of democratization have been politically neutralized.

There is a burgeoning Chinese civil society groups that are trying to improve the living condition of rural communities, women, workers, etc. There is also an increasing number of engaged academics, a "Chinese alternative to the neoliberal market economy; as well as some progressive people in the media. There are real, remarkable, and significant movements that are seeking to promote social justice ideals. Many environmental groups are using environment-related issues as a link to development issues. Some groups are starting to see the need to link their local advocacy with regional and global calls for social justice. However, concerns about social, gender and regional inequality remain local issues.

To analyse the state of civil society in China, it is important to bear in mind the following conditions in the political environment:

First, the processes through which citizens can express their dissent and release their grievances are very few and not well established. At the same time, there is no available mechanism for the authority to adequately respond to grievances so individuals and groups resort to disruptive tactics such as raids (like those being adopted by villagers against mines and other polluters), riots, and even suicides. Second, The authorities still holds absolute legitimacy in dealing with protests, while organisers and participants of collective actions do not have very clear legal status with regard to their right to organise public protests. Because of this leaders of protest actions normally spend years in jail when they are caught.

The Many Facet of Dissent

Although there have been numerous strikes in export processing zones, in general few of workers involve themselves in any long-term organising effort even when their action succeed in forcing concession from the management. Strikes break out spontaneously and then end abruptly after the repression or some concession from the management.

Western multinationals have devised measures to introduce "corporate codes of conduct," which set a floor for labour standards. This is one effect of the global anti-sweatshop movement. Foreign-run enterprises, even Wal-Mart, are slowly allowing the organisation of enterprise-level trade union elections. The development of a strong labour movement have an enormous potential in China since out of the 30 million employed EPZ workers in the world, 20 million work in China for 12 to 14 hours a day. Out this workforce, 70% are women. The problem is that most of these workers only have a temporary status in the cities and can be easily deported back to their origins.

In the 1990s, many environmental NGOs and groups enjoyed good moral support even from the government because they are not seen as a dangerous movement that will seek to topple the party leadership. Many of the militant riots of late have an environmental tone (dismantling of mines, destruction of pollutant factories, etc.). There is also a consensus that the environmental trade-off of China's development must stop now. This evolving movement could develop as a strong plank of future anti-neoliberalism or anti-globalisation movement in the country.

NGO campaigners, especially in Beijing, are now starting to build cooperative and solidarity endeavors between Chinese civil society and regional and international social justice movements. For international activists, partnerships with Chinese civil society organizations are seen as important. They see that if the Chinese government and business interests in the developing regions are to be moderated by concerns for local people, the environment, human rights, etc., international voices arguing for this must be joined by a constituency of people within China who are also concerned about such principles.

What is also urgent is that there should be Chinese civil society participation in the discussion for solutions and building of alternatives

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15. The Red Shirt Rebellion in Thailand

Johannes Dragsbaek Schmidt

Welcome to Thailand. The global image of the happy-go-lucky 'Land of smiles' has recently been cast in jeopardy. This carefully crafted global icon was created by global media posters and CNN commercials portraying smiling Thai ladies with a joyful glimpse in their eyes and a friendly and docile working class with a 'no problem attitude.' This constructed image of the Southeast Asian gem of peace, harmony and tranquillity has been promoted by the elite in an attempt to attract tourism and open doors towards foreign investment and a monarchy based on mystique and sacrosanct paternalism, societal stability and attractiveness to the world.

It is remarkable and has to be acknowledged that this deliberately crafted discourse and strategy has been rather successful both externally by the imposition of a positive commercial image and internally as a nation-building strategy and social contract based on national identity and consent. Many foreign and Thai observers are referring to Thailand as a haven for investors and a strong protector of political freedom and human rights in an otherwise volatile region famous of authoritarianism and repressive regimes. The success of these strategies is witnessed by high economic growth which in the 1980s and 1990s reached two digit numbers and Thailand was frequently hailed as the Fifth Tiger economy. The creation of wealth became the yardstick of political legitimacy albeit without welfare and decent levels of equality (Schmidt 1993; 1996).

Recent events have turned the 'Thai Smiles brand' upside down and led to the implosion of these carefully elite crafted iconographic

images. Three conjunctural sequences have put Thailand on the front page of the international media again and again and not always in a favourable spotlight. First, the Asian financial crisis erupted in Bangkok in 1997 and later on spread to the rest of region. The crisis and its aftermath sowed the seeds of the second, in a Thai context, series of unprecedented events where the same Prime Minister and the same political party Thaksin Shinawatra's Thai Rak Thai (Thai's Love Thailand) party won three elections in a row. Since 1932 the people of Thailand have had to face more than 20 attempted or successful military coups, 18 constitutions and 27 Prime Ministers – most of them military generals. Thaksin's premiership ended in a military coup d'état in 2006 and led to the present inter-factional conflicts between the Red and Yellow camps within the elite, civil society and bureaucracy. The third and last event occurred when the pro-Thaksin movement the so-called Red shirts (United Front for Democracy against Dictatorship (UDD) objected to the illegitimacy of the Abhisit Government. The Red shirts mounted 6 mass uprisings in spring and summer 2010 against what they regard the unlawful, illegal and military installed democrat led coalition government. The last rally from March 12–May 19, 2010 was crushed by the Army and resulted in 91 death and 2000 injured and what was seen as a massacre by the pro-Thaksin allies and an attempt to restore law and order by the Yellow shirts (People's Alliance for Democracy (PAD), the government and the Military.

Setting the Stage

The bloodshed in May 2010 was the latest violent outcome of a military coup in Thailand in 2006 against Thaksin Shinawatra's Thai Rak Thai led government and the subsequent fall of two Thaksin aligned proxy-parties and rise of an anti-Thaksin Democrat party led government that left the country in a more or less permanent state of crises.

Thailand in 2010 is characterised by an extreme inequality crisis, an urban-rural split; a regional division between the poor North and

Northeast and centrally located Bangkok where money and power is located; an unresolved political crisis; and a war of position regarding the role of the monarchy in the future of Thai politics. On the one side are royalists and nationalists who claim that King Bhumipol Adulyadej (Rama IX) is above politics and only retains a constitutionally defined neutral role in Thai politics. He does not exercise executive power and only reigns (Suchit 1987: 59). On the other side are those who see the Thai monarchy and the King as the preserver and vanguard of conservative and nationalist values (Hewison 1997). The King is depicted as the last bastion of royally-defined Thai nationalism and the ruler of last resort. Key to his achievement has been the power of traditional symbolism, the dynamics of the Cold War, the evolution of Bhumipol's own thought, the little known world of the King's spirituality, and the palace's even less known capitalism (Handley 2006: 10).

Thailand's stability and prospects have become dependent on the legitimacy of the King, the throne and the monarchy that has emerged as the ultimate arbiter in times of emergency. The crises also tap into Thailand's inherent resistance to foreign influence that is perceived as threatening the traditional elite's authority.

Critique of the Royal House has been banned—from movies to international magazines, books and bibliographies, and internet websites. Blogs and chat sites are difficult to censor and some debate about the monarchy is seemingly taking place despite the danger of being accused of *lese majesté* or even worse. The mandates or 'royal prescriptions' *phraratchaniyom* have promulgated "what would constitute treasonous activity, for example revealing information to foreigners that might be damaging to the nation or acting against the national interest as agents of spokesmen for foreign governments" (Reynolds 1991: 5–6). This edict from 1939, later translated into legislation, articulates the belief in the ruling elite and the popular masses, "that certain political groups or political activity—most notably communist—was 'un-Thai' or even 'anti-Thai' and thus dangerous, subversive, and destabilizing" (Reynolds 1991: 6). The implication of the mandates and legislation was and is inevitably that Thai national identity and

national security has been amalgamated and later on become synonymous with stability of the monarchy.

The royalist defenders of censorship and the *lese majesté* laws claim that, without the sacralisation of the neutral status of the monarchy, Thailand will be destroyed. What is interesting in the aftermath of September 2006, the removal of Prime ministers Samak Sundaravej and Somchai Wongsawat, and the current crisis in 2010, is that according to a number of observers the King gave his blessing to the military coup d'état (Thongchai 2006; Ukrist 2007; Hewison 2008: 200; Thompson 2008). This has created a new situation for the status of the throne in the sense that it has been dragged into politics and become part and parcel of both solutions and problems in the political realm.

The crisis in Thai politics is further exacerbated by the striking regional imbalances and uneven development which also taps into Thaksin's charismatic popularity as promoter of social change in contrast to the monarch's traditional symbolism as promoter of social order. The military's deliberate resurrection of the Thai monarchy serves as a means of creating a social contract and coherence among regions with divergent interests.

The internal divide between supporters of Thaksin and anti-Thaksin groups is thus related to the status of the Privy Council and King Bhumipol but also the unresolved question about royal succession which essentially can be viewed in the context of power politics (Handley 2006b). The King turns 84 in December 2010 and reportedly is in poor health. The unresolved succession theme also touches on a related anxiety about who is going to preside over the informal and formal institutional influence of the monarchy on the future of Thai politics and economics (Ockey 2005)? As Bowring (2006) notes: "After 60 years on the throne, King Bhumibol Adulyadej's prestige has never been higher, nor his political influence greater (the palace overtly supported the recent coup makers). Yet the Thai monarchy has come close to extinction before, whether at the hands of democrats or generals, so Bhumipol's successor, whoever that may be, will need

to understand that a monarch's political power in a modern state is more."

Military Coup d'états

Many Thai specialists thought that the country's 1997 constitutional democracy and the strength of representatives of civil society, the middle class, private capital in politics inevitably would prevent another military intervention (Schmidt 2010). The reality shows that confrontations between the Prime Minister and the palace became more and more prominent not least because of the attempts by Thaksin to remove high-ranking bureaucrats close to the crown. In effect Thaksin's moves diminished the monarch's influence inside the bureaucracy and seemingly "tried to consolidate his power in anticipation of the post-Bhumibol era" (Kavi 2007a). For months, Thaksin had rivalries with the sovereign and blamed an unnamed 'charismatic figure' for his troubles. Thaksin tried to promote his own loyal faction from the pre-Cadet Class 10 loyalists to the pivotal 1st Army Division. The reshuffle, if accomplished, would have given Thaksin an unbroken chain of command over crack troops responsible for Bangkok's security" (Kavi 2007a). These attempts to attain the upper hand on the state's monopoly of the means of violence showed that the military is not a monolithic entity but rather composed of opposing factions—some pro palace and others more inclined towards constitutional based democracy and still others with agendas for personal or kleptocratic gain. These rivalries went so far that after the King was hospitalized Thaksin offered him a free health insurance-card to the 30-baht health scheme perhaps as a provocation but more likely in order to demystify the traditional aura and mythology of the throne in the eyes of the people.

The palace's intervention and de facto legitimating the coup led one prominent academic to call the event 'a royal plot' (Thongchai 2006). In addition, during the night of the coup, all radio stations and television channels played songs composed by the King, interspersed with pictures of the monarch's activities in rural development

projects. This display has led another observer to shrewdly call it “the ‘unread announcements’ of the coup leaders” (Chairat 2007).

With one exception, the coup in 1976, the main difference between the other 18 coups since 1932 and the military takeover in 2006 was that this time King Bhumibol not only implicitly endorsed the coup, but also through the Privy Council and army proxies appeared to gain absolute control. As Hewison notes about the role of the King’s right hand Privy councillor Prem Tinsulanonda, “the palace’s footprints litter the trail to the coup. Prem’s critical role has been noted and it is impossible that he would act without palace approval” (2008: 204). The Privy Council “as a body can institutionalise not only the formal role of the monarchy but to some degree, as we saw with Prem, it can take on the informal constitutional role of the monarch as well” (Ockey 2005: 123). The Privy Council is the King’s “eyes and ears into society” (Handley 2008: 7) and a key focus of lobbying for the palace’s support and this way it disseminates his message to all corners of society. General Prem Tinsulanonda, Thailand’s still living ‘Master-of-military-coups’ was Prime Minister from 1980-1988. Since 1998, he has been President of the King’s Privy Council. About half of the 18-member Privy Council is comprised of Army Chiefs of Staff, the remainder being former Chief Justices, Prime Ministers etc. All are appointed by the King

The power and influence the monarchy exercises can be interpreted through a dual perspective on the informal and formal institutions of the palace. The throne would not be able to act as patronage of Thai national identity and preserver of social order without real financial and ideological clout. It is not only the symbolic or informal power which is important to understand but also the real institutions of the monarchy (Ockey 2005: 117).

With certain modifications there is some truth in the statement that “Thailand’s civil servants literally serve the King” (Vatikiotis 2006) and seen in this light the coup was a predictable outcome of Thaksin’s threats against the power circles of King Bhumipol’s “network monarchy” (McCargo 2005). Bhumibol had over the years maintained his authority over elected politicians through so-called ‘monarchic net-

works' of loyal royalists strategically positioned inside the bureaucracy, including the highest echelons of the military. September 19, 2010 marked the 4th Anniversary of the last coup d'état in Thailand which led to the worst socio-political crisis in Thailand's history and questioned the hitherto unspoken legitimacy of the nation's political cultural matrix—the King, the nation and the Buddhist Sangha.

The coup and its aftermath was different from previous coup d'états. It was supported by intellectuals, the middle class citizenry and most major Thai media outlets. Secondly a civil society movement, the People's Alliance for Democracy, spearheaded the ideological conceit that justified the coup. Sondhi Limthongkul lead the PAD and its ideology of "New Politics" which was based on "elite" elements of society, supposedly incorruptible, holding sway over much of the Thai political and governmental landscape. Finally and most alarming was the intervention of the Royal Privy Council in Thai politics. They escorted the Military leaders of the coup to an audience with the King at midnight and got his consent to legitimize the coup (Jaran 2010). The instalment of the Democrat collation government led by Prime minister Abhisit and the bloodshed in the streets of Bangkok in May 2010 was exactly the outcome of these characteristics of the military coup d'état in 2006 which is why it is important to understand the conflict as a sequence of connected events and the background and underlying causes of these events.

In a review of Paul Handley's *The King Never Smiles*, a banned but widely discussed book in Thailand, it is stressed that the "King remains the ultimate arbiter of power" and citizens expect "that in a crisis it is the King, and not his government, who comes to the people's rescue" (Buruma 2007). Because Thaksin's redistributive and populist ideology became a threat to the hegemony of the palace it would inevitably create a backlash. It was the King's network—their ideology and political sympathies which determined the outcome and later on it is also here we find the underlying causes for the brutal clampdown on civilians in Bangkok in May 2010.

The paper attempts to highlight the background of the conflict which gave rise to the military takeover in 2006 and the subsequent

tensions and contradictions in Thai politics; it further explores the ideological and politico-economic confrontation between the palace and Thaksin and the subsequent Red shirt movement? The question in the end is whether the non-elected “anachronistic, neofeudal” trinity of monarchy, military and bureaucrats (Thitinan 2008: 144) will be able to control and direct Thai societal change into a more peaceful future?

The main findings of the paper confirms Ukrist (2007) conclusions who sees the intervention by the Privy Council and the army factions loyal to the King as part of an inter-factional confrontation between opposing capital interests and the always lurking issue of foreign capital ownership conveniently manufactured as a threat by anti-Thaksin groups. The power politics perspective is complemented with a historical understanding of the ideology and political cultural matrix of the throne in Thailand in order to analyse the competition between the opposing factions’ interpretation of Thailand’s future political and economic direction and the impact of the rivalry between the two camps in Thai society on human right issues.

The Ideology of the Throne

King Bhumipol has always had historical close ties with the United States. Born and raised in Cambridge, Massachusetts and later on educated in Switzerland his political awareness was sharpened during the Cold War (Handley 2006a: 187–189). It is probably not wrong to suggest that the anti-communism of the old conservative generation of the Privy Council and the King himself has strong influence on their thinking today and Cold War support from the United States has been a keystone of Thai security (Chairat 1985; Surachart 1988). As various observers have argued the monarch values stability over democracy and has been traditionally conservative in his ideological orientation. The construction of the ideology of the throne can be intercepted as an active political force working towards a ‘conservative capitalist state’ (Hewison 1997) or what others have termed a gate-

keeper state (Lynch 2004) that “protects itself from threats, but less from tangible military threats than ideological ones” (Fong 2009: 674).

Because of the fragmentation and competition in and between the state and the bourgeoisie the monarchy remains a key force for integration. “This dual position, as an agent of political and economic interests, and as a symbol transfigured as the soul and destiny of the nation, requires an iron regime of controlled imagery, given the glaring disparity between the rich and the poor” (Connors 2003: 132–133). It may be argued that the shared societal discourse against progressive taxation, redistribution, social welfare and social rights is a direct outcome of the ideology of conservatism and philanthropy. This type of thinking is articulated in discourses of ‘sufficiency economy’ which in reality is an ideological value against a socialised economy and a general belief that civil society, the family and the household can replace the role of the state as provider of collective goods. This particular ideology is used to discipline labour’s demands for social security and, in general, demands that could humanize and socialize work and living conditions and economic relations (Schmidt 2002: 103).

The reason behind US direct support and recognition of governments in Thailand that came to power by military force, while the monarchy over time came to engage itself deeply in the Thai political, economic, and social structure has been its staunch anti-communism and can only be seen as an attempt to keep alternative discourses at bay. The accusations against the Privy council and especially former Prime Minister and current Chief Privy councillor Prem Tinsulanonda of masterminding military alliances, the palace’s control of the Crown Property Bureau with its vast empire of land holdings and companies, and co-optation of the Buddhist sangha, have all led to unclear boundaries between the informal extra-constitutional power of the monarchy and the real institutions belonging to the crown. The support from Washington during and after the Vietnam War has led to the construction of a vast and complex network of modern royalist political, economic and security interests which are entrenched into the national economy. The alliance between the conservative elite and important factions

within the military and the formal and informal power structure of the monarchy has required a coordinated formula. “To rationalise military rule while attempting to give it somewhat of a popular face, US and Thai elites consciously promoted reassertion of the monarchy” (Glassman 2007: 2040).

This evolution culminated with the historic ‘break’ of the popular movement of 1973, on 14 October and with the collapse of the Thanom-Praphat regime (Anderson 1990:40). The ideological restoration started with the bloody coup of October 6, 1976 which implicated all of the major rightwing forces (the palace and King, CIA, Village Scouts, right-wing neo-fascist elements in the military and Supreme Command). The unusual level of brutality and violence (for which no-one has so far been made accountable) was an effort to eradicate and discredit all the groups who would resist the existing order. In the aftermath came the reinforcement of the *lese majesté* laws and it became clear that the royal family had been closely involved in the incidents or even orchestrated the process that led to the return of military rule and the bloody massacre at Thammasat University in October 1976. In this way the formal intervention by King Bhumipol shows in a contradictory way that, “... ‘Royalism’ in the sense of an active quest for real power in the political system by the royal family—i.e. the role of a political ‘subject’—persists in a curiously antique form in contemporary Siam... This is all the odder since the present ruler’s accession to the throne was a product purely of formal lineage and accident and should therefore have made him an ideal political subject” (Anderson 1977 cf Handley 2006a: 428). King Bhumipol persistently favours weak governments of doubtful competence, inept and usually short-lived regimes that leave his own influence and mystique unchallenged (McCargo 2007: 140). There has been a royal tradition to regain political control and an impulse towards authoritarianism with the result that new laws on *lese majesté*, blasphemy etc. make it almost impossible to raise a free and meaningful debate about the establishment of a republic or other alternatives.

It is also of interest to note that Prem himself has strong Cold War ties to several leading neo-conservative hawks from the Republican

Party such as Paul Wolfowitz (Crispin 2006; 2007). The pro-US Prem has furthermore a strong influence in the military and has for decades dominated promotions and reshuffles with the result that civil-military relations are very unstable and problematic (Ockey 2005). It is clear that Prem in the weeks leading to the coup in September 2006 met with top brass from the army in full military uniform and repeated that soldiers should be loyal to the King and not the government. Prem was furthermore accused of masterminding the brutal clampdown on the Red shirts in Bangkok May 2010.

The Crown Property Bureau (CPB)

It remains a puzzle whether there is a connection between the coup against Thaksin and the outcome of the financial crisis in 1997 where the King's private wealth was estimated to be US\$ 1.8 billion. In 1998 it appeared to have evaporated as he had been bumped of the Forbes magazine list, "presumably on account of the effects of Asia's economic crisis" (Backman 1999: 249). CPB is owned by the King and the immediate members of the family hold shares in several Thai listed companies. CPB ensures that the Thai royal family remains financially independent of the state. "It also helped keep the family's assets out of reach of Thai politicians and the military" (Backman 1999: 249) and insulated it from political pressures that would be exerted on a monarchy that depends heavily on state funding (Porphant 2008: 167). CPB controls Siam Cement – an industrial multinational conglomerate with 69 subsidiaries and 37 associated companies and several other key companies including Siam Commercial Bank Pcl (SCB) Thailand's third-biggest lender, which is 21 percent owned by the King.

The financial crash on July 2, 1997 saw the baht plunge to 55 to the U.S. dollar from a rate of 25 to the dollar six months earlier. Half of the loans held by Thai banks defaulted. Hundreds of companies collapsed and the King's companies didn't escape. Siam Cement's debt totaled \$6 billion, \$4.5 billion of it in dollars, and at a stroke the Crown Property Bureau "lost some 75% of its income and was

forced to borrow heavily to cover royal household expenses” (Porphant 2008: 175).

Today King Bhumibol with an official fortune of \$5 billion is the fifth richest among the royals in the world (Pendleton et al. 2007), but as Bachman notes “Crisis or no crisis, the King’s private wealth seems to have been wildly under-estimated. Real estate investments and massive holdings of Thai blue-chip stocks have underwritten much of the Thai royal family’s private riches. The true figure of the family’s personal wealth is likely to be closer to US\$ 8 billion (split roughly between Thai blue chips and Bangkok real estate ... [1999 figures J.D.S.]) (Backman 1999: 249) while others estimate that the total value of the CPB is closer to US\$ 41 billion or around a trillion in baht terms (Porphant 2008: 184). Moreover, the company has a special status as it is not bound by any rules like state-owned enterprises, a listed company, or even an ordinary unlisted business (Porphant 2008: 174) which makes the secrecy of the institution and its value almost complete.

The CPB, and hence the King, is the single biggest landlord in Thailand. They own enormous holdings in most of the provinces ... “and as much as one quarter of all Bangkok’s central business land is in the hands of the bureau..... the bureau is sitting on a land bank in the middle of Bangkok of some 2.5 million square meters” (Backman 1999: 251). A further income of the monarchy comes from donations and the budget allocation from the government which “makes the majority of the income of the monarchy dependent on the success of the economy in general and of its specific investments in particular” (Ockey 2005: 119). It is furthermore important to note that the part of the income generated is spend on benevolent royal development and other types of projects which enhance national identity, but these projects are also a mean to influence and enhance the prestige of the monarchy. The royal projects, along with low rents and media campaigns, are an orchestrated effort by the palace to win political support for the throne. This can also be seen from the many villagers who petitioned the King directly to help them (Handley 2006a).

Foreign capital interests are very rosy in the way they characterize the importance of the throne: “The crown is the one single unifying force in Thailand,” says Korn Chatikavanij, former chairman in Thailand of JPMorgan Chase & Co. Related to the question about succession: “Every change means uncertainty, but the Thai people’s respect for the King transcends the person and reflects a deep, instinctive respect for the institution” (Mellor 2007).

It seems quite evident that questions related to the role of foreign capital and rivalry between domestic capital interest played an important role in terms of the decision of the monarchy network to support an authoritarian solution in 2006 and again in 2010 and thus run the risk of tarnishing the international image of a benevolent King.

According to data compiled by Bloomberg in 2006, in total, the companies controlled by CPB account for more than 7.5 percent of the market capitalization of the Stock Exchange of Thailand (SET). Before Thaksin and his family owned Shin Corporation sold their biggest holdings they accounted for as much as 10 percent of the SET.

Thaksin’s Shin Corporation

Thaksin had not only managed to become the richest man in the country but he very well knew palace weaknesses and already in 1997 he was aware of the fact that the throne depended on the government to save palace-controlled SCB after the financial crash (Handley 2006c). This was further exacerbated by what could be seen as Thaksin’s attempt to challenge the King as the new charismatic symbol of salvation of the nation and his attempt to acclaim the same prestige and power as the monarch as an enlightened and benevolent leader. The sale of Shin Corporation to Singapore became his last mistake. Thaksin was considered a threat to the traditional elites not only because his “charismatic” legitimacy was overshadowing the elites’ “traditional legitimacy” but also controversial because of his flamboyant and provocative style.

One of the accusations against Thaksin was that he sold national assets to a state-owned Singaporean company (Pethanet 2006). A report in 2006 indicated that the accusations against Thaksin eventually both have a security and a real capital interest issue. The sale itself involved a 'who's who' with the biggest political and business names in Thailand and Singapore. The US investment banking firm Goldman Sachs was the adviser of the deal and the CPB owned SCB alone pocketed about Bt800 million for the advisory deal (Thanong 2006).

Thaksin was accused of selling national assets to Singapore because Shin corporation through its affiliates, controlled a mobile phone concession, a satellite concession, a TV concession (formerly owned by the King's CPB) and aviation rights. To make matters worse he was accused of not paying any tax of the deal (Thanong 2006). Most criticism, however, centered on the complicated shareholding structure Temasek used to purchase Shin in such a way that it could bypass Thai law on foreign ownership restrictions. An anonymous correspondent noted that: "Despite these interlocking interests, public anger was directed solely at Thaksin for "selling off" a valuable Thai national asset to foreigners. SCB and CPB were barely mentioned in the local press, even though they actively helped Temasek allegedly violate the law" (Asia Sentinel 2007).

It also has to be taken into account that another important outcome of the 1997 financial crisis brought a very significant change to the ownership structure of Thai commercial banks. Before they were monopolized by tycoon families and the CPB, but now a considerable portion of assets had been transferred to foreign shareholders, especially Singaporean financial institutions (Kitti 2006: 17). It means that foreign ownership became a contested issue not only in the domestic political economy but even more as a sensitive security related issue involving manipulation of popular sentiment from a variety of interests.

These deliberations show that 13 years after the financial crisis there are still important implications which involve regional players like Singapore and others as well. As a close friend of Prem and affiliate with the monarchy network Anand Panyarachun wrote in the Nation "the well-being of the people is tantamount to the well-be-

ing of the sovereign. The two are inseparable and inter-related.” He furthermore put stress on the concern of the King for the “security and stability of the Thai nation” (2006).

This is not to underestimate the importance of Thaksin’s challenges to the King and CPB. Thaksin became a rival to the palace both in terms of popularity, as a benevolent donor of social welfare, and simply because he became one of the richest men in the country. Not only the ‘monarchy network’ but intellectuals and union leaders as well (Kasian 2006) considered Thaksin as a more dangerous threat than the communist insurgency in the 1970s and a threat to the image and popular appeal of the King’s ‘sufficiency economy’ as well. The King’s and Prem’s privileged position in Thai society began to decline after Thaksin became Prime Minister. The monarchy network was threatened by the assertiveness of Thaksin’s new political economy network—ideologically, politically and economically (McCargo and Ukrist 2005:chp. 6). The competing ideologies of the King’s ‘sufficiency economy’ as a response to globalization and Thaksin’s state funded social welfare programmes to the poor were essentially a struggle over who would control the hearts and minds of the masses.

The Stony Road to Democratization

The military take-over in 2006, the Privy-Council appointed Supreme Court and the post coup Constitution of 2007, drafted under military sponsorship, bears antidemocratic traits (Thitinan 2008: 142). The result is an amalgamation of military and judicial power (Kate 2007) and together with the imposition of an authoritarian Internal Security Act it had grave ramifications for the dissemination of political and social change and norms in Southeast Asia and beyond. In this way, the military intervention and the current tensions between Thaksin’s followers and Royalist Democrats lends greater legitimacy to authoritarian regimes in the region.

A good illustration came when monks and students went to the streets in Yangon in 2007. Then Prime Minister Surayud Chulanont wrote a letter to the Burmese General Than Shwe expressing solidarity

with him and stressing that he was speaking as one soldier to another. According to a report in the *Nation* it “was a shameful gesture from a leader who claims to be democratic. Such hypocrisy at the personal level has further hampered Thai diplomacy on Burma” (Kavi 2007). Such sentiments also seem to be embodied in the palace where King Bhumipol on earlier occasions “surprised a group of visiting statesmen by making a stern defence of the military regime in Burma and branding the Nobel Peace Prize winner Aung San Suu Kyi a troublemaker” (*Irish Times* February 6, 2007). This illustrates the almost predatory view of a split civil society and a weak political system is preferable.

Civil society in Thailand is not that different from other countries. It is split between civic and progressive forces and a more conservative – and in some cases anti-democratic and illiberal – sector. Although the elite does pay lip-service to participation and empowerment it is essentially a strategy of ‘anti-politics.’ A conscious strategy leading to marginalisation of political contestation it envisages a more active role for the state as a regulator for civil society seeking to promote the disciplines of the market.

The Thai case shows that crises can set in motion events that cause institutions to deteriorate. The 2009–2010 crises has increased distrust and fear, and weakened the prospects for democratisation. Today the Thai economy is in low gear with slow growth and sluggish demand. This is also connected to the political situation, which remains unresolved. The problems of the important tourism sector are not so much related to the crisis as such, but are a result of the clashes between pro- and anti-Thaksin forces.

However, the Thai crisis in 2010 is more a political crisis than an economic one, but behind this fault line is a structural problem related to re-distribution and inequality. There is a fear among the elite that the hegemony of the traditional paternalist Thai aristocratic elite is coming to an end. The challenge from the rebellion of the poor and marginalised – symbolised by billionaire Thaksin as a leadership figure – threatens to tear apart Thai society and, in the worst-case scenario, it will end in civil strife and more violence. The levels of corruption and kleptocracy amongst members of the elite appear

to have reached endemic heights—and this includes both camps: the royalist aristocrats and the more neo-liberal oriented, but social-protection aware, camp of Thaksin reminding us of the predatory stage of Thai political evolution.

Civil society appears to be paralysed by the present political crisis and can to large degree be characterised by its anti-Thaksin doctrine but also a split with other factions supporting the Red shirt movement. Great parts of civil society groups, NGOs and community based organizations originally supported him but turned against his sift towards neo-liberal policies and abuse of human rights and in the end they actually supported the military coup against Thaksin as they saw him as a corrupt politician and an unreliable person. For some he is even seen as an anti-monarchy politician, a threat to national unity and his social welfare policy as a cover for populist policies and self-enrichment.

In this way Thaksin is accused of using the social welfare programmes in a strategic way to pursue what was termed his populist spending programmes in the sense that his support for local initiatives was a way to exploit rural dissidence and protest which evolved into a rural movement—but once he came into power he revealed his lack of interest in the rural and local causes. His main strategy for rural change was to pump in capital funds. He had no interest in land reform, land-to-the-tiller programmes, tax reforms, or other policies to shift the structural position of peasants within the national economy and in this way Thaksin appears to have more in common with the aristocratic elite than differences when it comes to more substantial issues such as social re-distribution, equality and not least human rights.

One should not forget that Human rights groups also condemned Thaksin for media suppression and a violent counternarcotics campaign that resulted in at least 2,500 killings in a three-month period in 2003. However, this ‘War on Drugs’ he pursued in cooperation with the most reactionary elements of the Establishment. The countryside was ‘cleaned up’ for a while, but in that process some 2,500 people, innocent and otherwise, lost their lives, often brutally and mercilessly.

This brought him many enemies, especially amongst the NGOs. Needless to say, the drug trade is flourishing again.

In 2004, separatist violence increased in Thailand's four southernmost provinces, home to most of the country's four million Muslims. Thaksin mounted a hard-line response, and the provinces of Narathiwat, Yala, and Pattani were placed under martial law that year. The government was accused of human rights abuses in its effort to put down the insurgency, with two cases in particular, known as the Krue Se and Tak Bai incidents, resulting in the deaths of 191 people and drawing international condemnation of the regime.

What seems strange today is the absence of international condemnation of the Abhisit government's abuse of human rights. There seems to be a degree of double-standards involved. Western governments have only vaguely protested the serious crimes being committed by the military and the Committee for the Resolution of the Emergency Situation (CRES). The crackdown on anti-monarchy elements in Thai society appears as if the monarchy is used as a means to demonize political opponents. Without a strong reaction from abroad the current regime can continue unhindered with its abuse of human rights.

A new much-criticized public gatherings bill seems to be approved in parliament in the near future. This bill would mean that only police-approved rallies of more than 10 people would be legal. As one anonymous commentator remarked in Bangkok Post forum: "Human rights in Thailand—the few that remain—would suffer yet another kick down the road of the fascist state."

Thailand's broadcast media are also subject to restrictions; the six main television stations and all 525 radio frequencies are controlled by the government and military. The abuse of the Computer Crimes Act has complemented prosecutions of *lèse majesté*. Police Colonel Suchart Wongananchai, Inspector of the Ministry of Information and Communications Technology, recently admitted to blocking over fifty thousand websites found by Ministry employees to have violated the Act.

In its "Freedom in the World 2010" survey, for instance, Freedom House stated that Thailand is not an "electoral democracy," owing

to the constant interference of the military in the political process as well as the Democrat Party's insistence on governing the country in the absence of an electoral mandate. Freedom House further chastised the Democrat-led administration for its "use of the country's lèse majesté laws to stifle freedom of expression," particularly against "activists, scholars, students, journalists, foreign authors, and politicians who were critical of the government." In a report released earlier this year, similarly, Human Rights Watch lamented the "serious backsliding" observed in Thailand's human rights record over the course of Abhisit's first year in office, arguing that the Abhisit administration "continually undermined respect for human rights and due process of law."

Meanwhile, Thailand slipped 23 places to a ranking of 153rd in the 2010 World Press Freedom Index of Reporters Sans Frontières (RSF). Thailand was ranked 84 out of 180 countries surveyed in Transparency International's 2009 Corruption Perceptions Index. Since May 19 many bookstores and newsagents are refusing to carry red-shirt titles either out of fear of upsetting the authorities or because of their anti-red stance. Thailand is steadily becoming "a censored society" where some trains of thought can be illegal, or even a crime, making speaking about certain taboo topics and exercise in political courage.

Censorship is prevalent in societies that cannot deal with differences openly and peacefully. If those in power can't accept your views, they try to shut you up. If you refuse to shut up, then you end up in jail either over charges of violating the emergency decree, the lese majeste law or the computer crime law. In extreme cases, you can die just like the red-shirt protesters did earlier this year. Killing can be a form of censorship too and extra-judicial killings are now again common practice all over the Kingdom.

Among other important human rights issues are the treatment and forced repatriation of Rohingya migrants from Burma. Concern has also been raised regarding the conduct of the Thai military in its counterinsurgency operations in Thailand's southern provinces.

Concluding Remarks

Shortly after the coup, Philip Bowring noted that in 1976 and again in 1991, the military has not specifically acted in the name of King Bhumibol Adulyadej but his consent is generally assumed. That will be interpreted by some as further evidence of his stabilizing influence, saving Thailand from the designs of corrupt politicians and ambitious military men. Others, however, will see it as evidence of the palace's distaste for democracy and its determination to preserve its own influence, rebuilt by the king after a period when it had been sidelined by both democrats and dictators (Bowring 2006b). The may 2010 incident has added to the speculation whether this will lead to further loss of royal legitimacy and in the end will break the power of the monarchy in Thailand.

Thaksin became a major competitor with the palace both economically, politically and not least symbolically at the ideological level. This would sooner or later create a political backlash as the threat of undermining the throne became apparent.

It seems that the reason why King Bhumipol and the 'monarchy network' decided to oust Thaksin depended on a number of incidents. It also seems that the informal institutions were not enough and hence the formal power and influence had to be activated. Not only did Thaksin mishandle the situation in the Muslim Southern provinces, and the economy was heading towards shackles, but his social and economic policy was also an outright provocation to the conservative ideology of the palace. The question about succession is also important.

The palace is seen by many Thais as having taken sides against Thaksin and his followers. The intervention has formally been accomplished by the Privy Council which has proven a new type of royally endorsed overt political authoritarianism. The result being that the King and his heirs have become part and parcel of the conflictual realm of participatory politics and cast doubt about the future appropriate role of the monarchy. Following is the potential for conflict with competing factions vying of power with a highly volatile impact or contagion effect in Southeast Asia and a critical domestic and

international debate about the charisma, symbolism and constitutional role of the palace in Thailand.

The question is which parts of society will be affected the most by the current stalemate? Is there a classical winner and loser divide? This depends on the outcome of the current confrontation between the red and the yellow shirts and the UDD, the caretaker of Thak rai Thai, Puea Thai party on the one side and the government and the military on the other. A quick look at recent Thai history would tell us that the progressive and pro-poor forces in civil society will lose and after the military crackdown on the protesters in Bangkok and the UDD have been branded terrorists and hunting down thousands of sympathisers. The winners will be the middle class and the pro-US and conservative elite. Another scenario is a compromise between the factions of the Thai elite and a re-imposition of a weak but democratically elected government unable to touch the privileged minority elite. The losers in both scenarios are the peasantry and poor working people.

Basically it is up to the Thai people to decide their own destiny. My personal view is that Thailand must re-think its current overreliance on EOI and foreign capital. To address the issue of social justice, which is one of the most pertinent structural problems in Thai society, by the introduction of a fair tax and redistribution policy including a variety of social protection programmes and to lift restrictions in the Thai legal system which obstruct the establishment of free and autonomous trade unions and political parties which adopt a social profile are two ways to overcome the impacts of the present and future crises.

Another important issue is related to the draconian and anachronistic *lèse majesté* laws, which prohibit any discussion about the role of the monarchy in Thai society and politics. One of the results of the 1997 crisis was the introduction of Thaksin's social policies and his courting of the heirs to the Throne. In reality the competition between benevolent elite-directed discourses is a question about winning the hearts and minds of the rural poor—especially in the North-eastern Isan region; in this equation Thaksin became a threat to the old con-

servative elite and this threat is still very influential in Thai politics. It seems that the majority of ordinary citizen's vote for social change and it is important to keep in mind that organisation according to (economic) interests as opposed to other lines is one important avenue of change and a way to avoid the social pitfalls of crises.

It is too early to judge whether Thaksin can return to Thai politics or not. He remains an important political and symbolic figure for the UDD Red shirts in the sense that he stands for social and political change. As long as the stalemate continues, Thaksin and his supporters must be included in a compromise—and it is not impossible that the Puea Thai party will win the next election. However behind it all is the question about succession to the Throne. The Thai monarchy is in crisis partly because Thaksin became a rival and interfered in the succession and partly because the Crown Prince is disliked by many Thais. As long as this issue cannot be debated openly, Thaksin, the UDD and the Puea Thai party will remain a formidable opposition to the ruling elite.

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