MAN OR MONSTER?
THE TRIAL OF A KHMER ROUGE TORTURER
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MAN OR MONSTER?

THE TRIAL OF A KHMER ROUGE TORTURER

ALEXANDER LABAN HINTON
During Democratic Kampuchea (DK), the period of Khmer Rouge rule in Cambodia, over 12,000 people passed through the gates of S-21, which Duch ran beginning in March 1976. Almost all of the prisoners were executed, many after being interrogated and tortured into making a confession. Evil. A picture is worth a thousand words, the saying goes. One look tells the story. What more needs to be said?

MARCH 11, 2011, TUOL SLENG GENOCIDE MUSEUM, PHNOM PENH

I look again. I stand in an exhibition room at Tuol Sleng staring at Duch’s photo. Two years before, on March 29, 2009, the day before Duch’s trial at an international hybrid tribunal commenced, I passed through this room and, without much thought, photographed the wall on which Duch’s photo graph hung. His image was unmarked. Over the course of 2009, the Extraordinary Chambers in the Courts of Cambodia (ECCC), more colloquially referred to as the Khmer Rouge Tribunal, held seventy- seven sessions that included the testimony of thirty- five witnesses and twenty- two victims.¹

Duch spoke extensively during his trial, making observations and offering his own version of events. Closing arguments concluded on November 27, 2009. The verdict, delivered on July 26, 2010, was appealed by all sides, a process that is ongoing as I stand in the exhibition room. Like many others, I won der if this sixty- nine- year- old man, who ran this camp where so much death and suffering had taken place, might end up walking free. Lurking in the background were other questions. Who is this man? Will his trial deliver justice? What sort of a person runs a place like S-21?

During the course of Duch’s trial, I considered these questions as I attended dozens of trial sessions and interviewed court officials, civil society workers, and ordinary Cambodians from the city and the countryside. Sometimes during an interview, I would ask which moments in the trial of Duch most stood out. I received many answers. Some noted his ability to recite French poetry in the original or the time he chastised one of his former deputies for not telling the truth—bringing the dreaded dozens of trial sessions remarked on the testimony of the survivor and artist Vann Nath, whose description of S-21 undercut some of Duch’s key claims; still more noted a startling turn of events on the last day of the trial.

Now, as I stand in front of the defaced photo graph, I reread the caption that spells out Duch’s name in capital lettering. It reminds me of a moment on the fourth day of Duch’s trial, when he was given the floor to tell his story and discussed the origin of his name.

Wearing a white, long- sleeved dress shirt, the color associated with purity and clarity of thought and often worn by teachers and lay religious practitioners in Cambodia, Duch stood in the dock describing his path to M-13, the prison he had run during the civil war that preceded DK. His dark trousers were pulled high at the waist, covering a slight paunch. When Duch had finished his remarks, the Cambodian president of the five- person Trial Chamber, Nonn Nil, asked him to be seated in the dock and turned the floor over to Judge Jean- Marc Lavergne, the international judge from France who sat to Nonn Nil’s far left. Each time the Trial Chamber entered and exited the court, Judge Lavergne’s height was apparent: he towered over the other judges. Judge Lavergne had a boyish face, brown hair, and glasses. In a soft, almost delicate tone that belied his size, he often asked questions about trauma, character, and suffering, perhaps in part because of his past experience working with victims as a judge in France. When necessary, however, he could be direct, probing, and challenging, especially when moral issues arose.

Judge Lavergne was the first person afforded the opportunity to directly question Duch during the trial proceedings. As he posed his questions, he sometimes gesti culated, exposing the sleeves of his blue- and- white- striped dress shirt beneath his undersized red court robe. If he at first asked Duch about the historical context that had led him to M-13, Judge Lavergne soon turned to other factors that had influenced Duch to become a revolutionary, including the teachers who had sparked Duch’s interest in politics and his possible exposure to violence while imprisoned shortly after joining the Khmer Rouge.

After returning to the topic of the oath Duch had sworn to the Party, Judge Lavergne asked Duch if that was when he had changed his name. “My revolutionary name,” Duch replied, “was the name they had me select in 1967 while I was secretly undertaking political study.”² Judge Lavergne asked him to elaborate.

“This name,” Duch replied, glancing at the court camera, “is commonly used by Cambodians and doesn’t have any special meaning.” Pausing for emphasis, Duch continued, “But for me, it did. I loved this name.” His oratorical skills, honed during years of teaching, were on full display, leading some observers to comment that he sounded pedantic, rehearsed, or even disingenuous. He explained that when he was young, his grandfather had praised the work of a local sculptor who had this name.

Duch had also encountered the name in a primary school text. In one passage, he told the court, “The teacher instructs Duch to read from a book. Duch rises and stands straight, his head turned face forward and

¹ ECCC, “Kaing Guek Eav.”

² ECCC, “Transcript of Proceedings— ‘Duch’ Trial Public.” Hereafter the specific transcript will be indicated by the trial day and transcript page number if in English, or, if in Khmer, “Khmer” will be specified, followed by the transcript page numbers: in this case, Duch Trial Day 4, 48; Khmer-language transcript, 38, which is shortened to “Day 4, 48; Khmer, 38.”
unwavering, as he reads carefully and clearly. It was the first essay in the text. So I was interested in the name Duch. It was a good name and a Khmer name.3

Shifting back to 1967, he explained that when he was asked to select a revolutionary name, he chose “Duch” because “I knew that the name Kaing Guek Eav was a Chinese name. I was becoming part of the Khmer Revolution so I had to use a Khmer name.” Then, raising his maimed left hand, fingers extended, Duch, as if having concluded a lesson, returned to Judge Lavergne’s original question and summarised the key points of his answer: “Thus, with regard to the name Duch, in terms of its exact meaning, it is a name that I liked because I respected the work of the artisan Duch and I believed that the child Duch from the book was a good student.” Duch punctuated each point with a wave of his hand in the air, then leaned back in his seat and turned off his microphone.

“So the reference,” said Judge Lavergne, seeking clarity about the memory of events that took place more than 40 years before, is to a student “who is particularly disciplined, particularly obedient, who is always ready to answer questions asked to him, who is always ready to learn, who is always willing to do what he’s told. Was that the reference?” Duch replied, “Your Honour is correct. I liked the name Duch because I wanted to be like this pupil who was orderly and disciplined, a student who feared, respected and obeyed his teacher, a youth who was waiting to fulfill his duty, whatever it might be, well.”

Returning to the time when Duch joined the revolution, Judge Lavergne asked Duch which qualities his superiors saw in him when they chose him to run a security center. “The most important quality,” he replied, “was loyalty to the Party. My patron, teacher Son Sen, knew me clearly, as did Elder Chhay Kim Hor and, later, Elder Vorn (Vorn Vet). They knew I was straight with them and would not dare to hide anything.” The Communist Party, Duch then added, also looked for those who “paid attention and did their work responsibly and precisely.”

He had begun to speak in short bursts with sharp intakes of breath; Duch then raised his voice and quickly finished, “For my entire life, if I’m not able to do something, I won’t do it. But if I am able to do it, I do it meticulously and well.”

Meticulous. This word was often used to describe Duch. It seemed to fit in many ways. He arrived in court prepared, sometimes carrying stacks of documents with color-coded annotations. On occasion, he corrected lawyers or recited court document numbers by heart. His memory was unsettling, both for its detail and selectivity.

But as soon as it seemed possible to get a fix on Duch, his image suddenly shifted, like his name. The revolution was not the last time he would change it. At the end of DK, when the Vietnamese-backed army routed the Khmer Rouge, Duch fled in haste into the jungle, where he remained for years, continuing to serve the Khmer Rouge, who waged war against the new People’s Republic of Kampuchea (PRK) government. He also returned to education, and he was teaching at a primary school in Samlaut district by 1985.4

In 1986, Duch changed his name to “Hang Pin,” when he was sent to China to teach Khmer literature.5 During the 1990s, he again returned to education, teaching at a high school and working in a district education office. Several of his children also became teachers. Duch claimed that he had begun seeking a way to leave the Khmer Rouge as his relations with the group had begun to fray in the 1990s, pointing to a 1995 incident in which he had been injured and his wife stabbed to death, during a robbery that he thought had been an assassination attempt.6

Duch had converted to Christianity the following year. During his trial he met with his pastor, who also served as one of his character witnesses. In 1999, photographer Nic Dunlop stumbled on Duch in a remote village.7 He subsequently told Dunlop and journalist Nate Thayer: “It is God’s will you are here. . . I have done very bad things before in my life. Now it is time for les représailles [to bear the consequences] of my actions.”8 Duch said that he wanted to reveal the truth about S-21, whose existence Khmer Rouge leader Pol Pot had denied, claiming that it was a Vietnamese fabrication.9 Shortly thereafter, Duch was also interviewed by the representative of the UN high commissioner for human rights, Christophe Peschoux. During his trial, Duch claimed he had been deceived and “interrogated” by Peschoux, perhaps worried that his comments during this interview suggested he had been more actively involved in the day-to-day operations of S-21 than he would acknowledge during his trial.10 He was soon detained and locked in jail, where he would remain for many years as negotiations to establish a tribunal dragged on.

As his replies to Judge Lavergne illustrated, Duch made a number of disquieting claims. A man accused of mass murder appeared to be portraying himself as a hero, almost a martyr; someone who embodied qualities that everyone would applaud: hard work, diligence, resolve, devotion to nation, trustworthiness, and the accomplishment of duties. This paradox often found expression in descriptions of Duch, including the comment that he was a “Man or Monster?”

Given the salience of this question in popular discourse and as a key undercurrent of Duch’s trial, I have chosen it as the title of this book. Beyond the apparent “either-or” choice the question demands, it has a second sense that asks to think critically about the framing and the opposition it suggests. More broadly, this question speaks to larger issues in the study of perpetrators, to arguments at the heart of this book, and, relatedly, to our humanity and everyday ways of thought. As I discuss in the epilogue, the question is provocative and haunting, offering two narrow alternatives to characterise a complex person—in a manner that parallels the reductive categorisation and transformation of people into “enemies” that took place at S-21.

For many observers, both the heinousness of Duch’s alleged crimes and their seeming incomprehensibility were heightened by the fact he was a teacher, a person immersed in learning and knowledge. This is particularly true in Cambodia, where teachers

3 Day 4, 48; Khmer, 38.
4 Day 4, 49; Khmer, 38.
5 Day 4, 49; Khmer, 39.
6 Day 4, 51; Khmer, 38.
7 Day 4, 51; Khmer, 39.
8 Day 4, 51; Khmer, 40.
9 Day 69, 40.
10 Day 69, 41.
11 Dunlop, Lost Executioner.
13 Day 10, 47.
15 Rearing, “Man or Monster?”

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8 Day 69, 40.
9 Day 69, 41.
10 Day 69, 41–42.
11 Dunlop, Lost Executioner.
13 Day 10, 47.
15 Rearing, “Man or Monster?”
are highly esteemed. In fact, the Khmer term for “teacher,” krou, is etymologically related to the root of the Sanskrit guru, sometimes connoting a learned “master.” This is how Duch often described his krou, Son Sen, who he also described as his patron (me-), a term that means “mother” while also connoting the idea of a leader, supervisor, or master.16 Indeed, Duch’s background as a star mathematics student and later teacher repeatedly emerged at the trial, suggesting that to more fully understand what happened at S-21 it was necessary to always bear in mind his background.

Like Son Sen, who was Duch’s teacher at the National Institute of Pedagogy in Phnom Penh, Duch joined the revolution as part of what he identified as a group of intellectuals. Indeed, many of the leaders of the Khmer Rouge, including Pol Pot, were intellectuals who had been teachers.17 Duch’s own teachers, including Chhay Kim Hor and Ke Kim Huot, helped inspire his interest in revolution and politics. Later, two of Duch’s top interrogators at S-21 were former teachers, including one who also taught math.

His pedagogical practices had also seemed to suffuse his work. When describing interrogations, he depicted the back- and forth exchanges with the prisoners almost as mind games. He said his goal was to create a “system, concept, or text.”18

In other words, the reductive frames that Duch and his associates brought to bear at S-21 parallel our everyday ways of thinking, including, as illustrated in Duch’s photo, characterising another person as “evil.”

Now, as I gaze at Duch’s defaced photo at Tuol Sleng, I glimpse a trace of this connection. At Tuol Sleng, many of the exhibitions, ranging from display cases to paintings, are bordered in black by a square wooden frame. Duch’s photo, in contrast, is “frameless,” lacking such a clearly visible border. Looking closely, I notice a background rectangular trim suggesting the photo is mounted from behind on a frame that is otherwise out of sight. If a frame colloquially refers to a “structure surrounding a picture, door, etc.,” it more abstractly suggests a “basic underlying or supporting structure of a system, concept, or text,” including our ways of thinking about the world. To frame something is to place it in a surround, thereby sharpening the image, a notion that may be extended to the articulation or formulation of a “system, concept, or text.”19 As it “confers structure,” a frame encloses that which is depicted within, as illustrated by the images framed in the Tuol Sleng exhibitions, including Duch’s photograph. At the same time that the frame renders something visible, however, it also forms a border cordoning it off from, even as it neverthless

16 Headley, Cambodian-English Dictionary, 760.
17 Chandler, Tragedy of Cambodian History.
18 Military Court, “Record of Interrogation,” 3.
19 “Frame,” oed Online.
20 The use of the meta phrase of the frame in social science dates back at least as far as the pioneering work of Batsion, Steps to an Ecology of Mind, and Goffman, Frame Analysis.
For these events and the pioneering study of S-21, see lists, and other materials that came to serve as the symbol of confessions, photographs, memoranda, execution of Duch and his men in Phnom Penh on January 7, 1979. Startled by the sudden arrival of Vietnamese troops took power and escalated the conflict that began soon after the Khmer Rouge were deposed by over 100,000 Vietnam ese troops following an off - on military conflict that began soon after the Khmer Rouge took power and escalated into outright war in 1978. According to the sudden arrival of Vietnamese troops in Phnom Penh on January 7, 1979, Duch and his men fled the S-21 compound, leaving behind thousands of confessions, photographs, memoranda, execution lists, and other materials that came to serve as the Cambodian government’s motivation for agreeing to the establishment of the ECCC. The Tuol Sleng Genocide Museum, in turn, reframes this past in a different way, one linked to a specific politics of memory. In the PRK, the regime that replaced DK after the Khmer Rouge were deposed by over 100,000 Vietnam ese troops following an off - on military conflict that began soon after the Khmer Rouge took power and escalated into outright war in 1978.

Tuol Sleng is suggestive about such “thick frames.” At one time today’s Tuol Sleng compound was part of S-21, where tremendous political pressures asserted the legitimacy of given DK frames for viewing the enemy. These DK “thick frames” are illustrated in the first half of this book. The Tuol Sleng Genocide Museum, in turn, reframes this past in a different way, one linked to a specific politics of memory. In the PRK, the regime that replaced DK after the Khmer Rouge were deposed by over 100,000 Vietnam ese troops following an off - on military conflict that began soon after the Khmer Rouge took power and escalated into outright war in 1978.

I see Vann Nath, whose health is poor, slowly walking along the path toward Building D, one arm knotted behind his back to clasp the other. Soon after the DK regime was toppled, Vann Nath returned to work at Tuol Sleng, painting portraits relating to S-21 that are among the most powerful exhibits at the museum. Now I watch him dis appear into Building D, where his paintings still hang. He reemerges on the third - story balcony of Building D and gazes at the tourists below.

I think about how Vann Nath stands in a corridor along which young students walked in pre - DK times, then S-21 guards and prisoners, and now tourists. From a distance, the open entrances and windows of the classrooms appear blacked out and impenetrable, connected only by the exterior balcony passageways. The chipped grey - and white concrete buildings are fronted by a courtyard of yellowed grass, palm trees, and clean yellow and red brick paths.

Here and there, visitors sit on benches, chatting or in silence. As usual, many of the Western tourists below are dressed in shorts and carry backpacks, water bottles, and cameras. I notice a child, perhaps five years old, get a smack from his father after dropping the family’s guidebook. A group of Muslims, perhaps Cambodian Chams, a group directly targeted by the Khmer Rouge, are gathered in front of a sign near Building E, where people sometimes begin their visits before walking to Building A. In Khmer, English, and French, the sign describes how the prison was established by Pol Pot and his “clique”.

The Tuol Sleng Genocide Museum

As a guest tours Tuol Sleng, this PRK political frame is immediately evident. The genocide museum consists of four main buildings, lettered A - D, which are laid out in the shape of the two legs (A and D) and top (B and C) of a rectangle. Each of the four buildings has three stories, though the primary exhibitions are located on the bottom floors. Guests usually proceed sequentially, starting with Building A. Duch’s photo hangs in a second - floor room of Building D, in an exhibition area that is noted by signage but is not on this main tourist circuit. Buildings A - D enclose a fifth single - story building (Building E), which is not open to the public and now hosts Tuol Sleng administrative offices. During DK, some of the rooms in Building E were also used to process prisoners and included a room where, in 1978, several prisoner - artisans worked. At the time of Duch’s trial two of these artist - prisoners, Vann Nath and Bou Meng, were still alive and testified, presenting their own perspective on life in the prison. Over the years they have also periodically returned to Tuol Sleng.

In the past “TUOL SLENG” Museum was one of the secondary schools in the capital, called ‘Tuol Savy Prey’ high - School. After the 17th, April 1975 Pol Pot clique had transformed it into a prison called ‘S-21’ (Security office 21) which was the biggest in Kampuchea Democratic. It was surrounded with the double wall of corrugated iron, surrounded by dense barbed wires. The classrooms on the ground and the first floors were pierced and divided into individuals cells, whereas the ones on the second floor used for mass detention.

There are a lot of evidences here proving the atrocities of Pol Pot clique: cells, instrument of torture, documents, lists of prisoner’s names, mugshots of victims, their clothes and their belonging’s. We founded the mass graves surrounding, and in particular, the most ones situated 15 Km in the south - west of Phnom Penh, in the village of Chhoeung Ek, District Dankgor, Kandal Province. Both the prose and the broken English translation highlight the fact that the museum has not been renovated in the manner of the con temporary Holocaust. Instead, Built in some ways came to occupy a place similar to that of Adolf Eichmann, the Nazi bureaucrat who arranged the transport of the Jews to the death camps and came to serve as a symbol of Nazi atrocity.22

For these events and the pioneering study of S-21, see Chandler, Voices from S-21. On the history of the museum, see also Caswell, Archiving the Unspeakable; Ledgerwood, “Cambodian Tuol Sleng Museum of Genocidal Crimes.”

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22 ECCC, “Ms. Chea Leang.”
with the aid of terse captions, tell the story of DK. The students pass a series of photographic panels that, and then interrogators at S-21. The teacher leads the black uniforms, toward Building B. I think of Duch a class of teenage students, dressed in white- and- a Cambodian schoolteacher with a megaphone leads other Tuol Sleng exhibits, were fabrications. Ahead, lashes or electrification you must not cry at all.”

during a trial, such as how a person could raise children while running a center where entire families were killed and babies smashed against trees.

The time frame of the PKR narrative begins with “The Arrival of Kampuchea Democratic 1975,” a panel that includes photos of children clapping for heavily armed and stern-faced Khmer Rouge who, after the long civil war (1968–1975), victoriously entered Phnom Penh on April 17, 1975. Little is said about the civil war itself, when Cambodia, caught up in the currents of the Vietnam War, was rent by violent upheaval.23 Homes and communities were destroyed, and hundreds of thousands of Cambodians perished during this conflict, which was exacerbated by intensive US bombing. The Khmer Rouge movement gained momentum in early 1970, after Prince Sihanouk was deposed by General Lon Nol and joined the revolutionaries in a united front, calling on his peasant followers to fight Lon Nol’s Khmer Republic. As the ranks and territorial control of the Khmer Rouge rapidly increased in the early 1970s, Duch was running M-13 prison and developing methods of interrogation he would bring to S-21.

The evacuations and arrests were just part of a larger Khmer Rouge project of mass social engineering, which involved obliterating everything that smacked of capitalism, “privatism,” and class oppression.24 Broadly, the Khmer Rouge targeted Buddhism, the family, village structure, economic activity, and public education—key sociocultural institutions in prerevolutionary Cambodia. More specifically, they sought to eliminate corrupting influences from the past by banning nonrevolutionary art and styles, destroying and damaging temples, curtailing media and communication, ending traditional holidays and rituals, separating family members, homogenising clothing, and eliminating private property, including photos and other mementos. A series of black and white photographs in a panel titled “Forced Work in Kampuchea Democratic” depict one dimension of the Khmer Rouge’s efforts to destroy and replace the rest of the white-walled rooms of Building B. The narrative starts with an attribution of guilt: a panel of “Kampuchea Democratic Leaders” that includes photographs of “Brother Number One” Pol Pot, the French educated leader of the Khmer Rouge, and top associates of his, such as “Brother Number Two” Nuon Chea; Pol Pot’s brother- in-law and later foreign minister Ieng Sary; and Duch’s patron, defense minister Son Sen, another French-educated intellectual. In a group shot, several of the leaders stand in front of a limousine, dressed in black as they await the arrival of a foreign delegation. The panel includes two photos of Duch that were discussed during his trial. In one, he stands before a microphone, a slight smile on his face, as he lectures at S-21. Photographer Nic Dunlop carried this photo with him in the Cambodian jungles, hoping he would one day find Duch. In the other photo, Duch stands, solemn, with his wife and the families of three of his S-21 comrades.

The photos raise questions that were asked during his trial, such as how a person could raise children while running a center where entire families were killed and babies smashed against trees.

The Khmer Rouge called this “tempering” people, literally “to harden” their consciousness that accorded with the Party line and history. Those showing signs of being unable to rid themselves of vestiges of the past— dwelling too much on one’s former life, complaining, appearing unenthusiastic about the revolution, making mistakes, or missing work— were sometimes said to have “memory sickness” (comngii satiaramma).25

If the sickness was chronic or did not heal rapidly, it was “cured” by execution. Indeed, execution served as the most direct means of obliterating counterrevolutionary memories. After economic failures, suspected treason, and disagreements over the pace and direction of the revolution, the list of enemies widened, eventually expanding far into the ranks of the Khmer Rouge. At S-21, Duch and his cadre played a key role in this process, extracting confessions that implicated others.

At Tuol Sleng, I follow the students through the rest of the white-walled rooms of Building B. The victims, represented as depersonalised corpses in Building A, are given faces, though ones frozen in the frames of black- and white mug shots. Most are

23 ECCC, “Ms. Chea Leang.”


25 Day 2, 5.

26 The following statistics on S-21 are taken from Day 2, 29–30. See also ocl “Closing Order Indicting Kaing Guek Eav alias Duch (Public Redacted Version),” 13–14.
set in checkerboard panels, a panorama of suffering and humanity. If a visitor looks closely, clues about the victims come into sight. Women crop their hair and wear black, revolutionary- style. No one smiles. The faces of some prisoners are swollen and bruised. Many have numbers affixed to their shirts. In a few cases, the pins are stuck into skin.

Some of the photos have been enlarged, including ones of foreigners, a little boy with an iron chain around his neck, dead prisoners lying on the ground. Other photos reveal blindfolded mothers and children, including an almost iconic photo of a mother holding a sleeping infant. A placard on her chest states her name, Chan Kim Sun, and date of arrest, March 14, 1978. She looks as if she is about to cry. There is almost no explanatory text. Lacking captions, the photographs are left to speak for themselves.

The students and I continue to Building C, which is marked by a cobweb of barbed wire. The bottom floor classrooms are filled with small, dark, brick- and- cement cells; the ones on the floor above are made of wood. A sign notes that the barbed wire was used to prevent “desperate victims” from jumping to their deaths, a point the guide also makes while telling the group about female prisoners who attempted suicide. A smaller sign with a bar crossing out a hand holding pliers instructs: “Do not write or paint on the photos and wall.”

Through much of Building D, Vann Nath’s paintings, based on what he witnessed, heard, or was told about by other prisoners, provide a thread depicting the atrocities that took place at the prison. In one room, portraits of a baby being taken from a mother and a detainee being whipped are positioned next to a display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axe. A display case filled with instruments of torture: iron bars, rope and wire, shackles, a shovel, even an axle. A large photograph of a mother holding a sleeping infant. A placard on her chest states her name, Chan Kim Sun, and date of arrest, March 14, 1978. She looks as if she is about to cry. There is almost no explanatory text. Lacking captions, the photographs are left to speak for themselves.

The third room’s exhibition, “ Victims and Perpetrators? Testimony of Young Khmer Rouge Comrades,” profiles several people who worked at S-21. I pause by a photograph of a man I recognize, Him Huy, a former S-21 guard who oversaw the transport of detainees to an execution site.

Duch made the same claim.

PEOPLE’S REPUBLIC OF KAMPUCHEA (PRK) ATROCITY FRAME

Duch’s photo hangs in the fourth room. I gaze at it, consider how his photograph is framed within the museum, which was created soon after DK by the new PRK. This backdrop reflects not just Duch’s defaced photograph but also his trial and the ECCC.

In advance of their invasion of Cambodia, the Vietnamese pieced together a small, pro-Vietnamese group of Cambodian communist leaders, marked up of longtime Cambodian revolutionaries who had been living in Vietnam for years and Khmer Rouge defectors who had fled the DK purges, to create the Kampuchean United Front for National Salvation. This group, which included Hun Sen, the then young Khmer Rouge defector who has effectively ruled Cambodia since becoming prime minister in 1985, formed the nucleus of the PRK, which next came to power.

Almost immediately the new regime was beset by problems of legitimacy. The PRK government, initially headed by Heng Samrin, was closely linked to Vietnam, which had supplied roughly 150,000 troops for the invasion and wielded obvious influence over the government, including the appointment of its top leaders. While initially welcoming Vietnam’s help in overthrowing the Khmer Rouge, many Cambodians remained suspicious of a country that was often viewed as a historical enemy coveting Cambodian land.

Some Cambodians also viewed the PRK regime with suspicion both because, like DK, it was socialist and because, like Heng Samrin and Hun Sen, a number of high- ranking officials were former Khmer Rouge. Finally, the PRK government was increasingly threatened by new resistance groups and a resurgent Khmer Rouge army that, after arriving in tatters at the Thai border, was propped up by foreign powers.

Memory mixed with politics as the PRK regime set out to articulate a narrative of the recent past that would buttress their legitimacy both domestically and
abroad.” Genocidal atrocity stood at the center of this narrative. The new PKR political narrative centered around the theme of a magnificent revolution subverted by a small group of evil doers, led by the “Pol Pot” or “Pol Pot– Jeng Sary– Khieu Samphan clique.”31 Inspired by a deviant Maoist strain of socialism, the narrative went, this clique had misled or coerced lower-ranking cadre into unwitting participation in a misdirected campaign of genocide.

As a result, most former Khmer Rouge cadre, including by implication many PRK officials, were said to be not ultimately responsible for the DK violence and suffering. Socialist discourses remained central to this narrative, as the PKR regime could still speak of how the revolutionary movement had “won the glorious victory of 17 April 1975, totally liberating our country” from “the yoke of colonialism, imperialism, and feudalism.”32 With a growing Khmer Rouge insurgency on the border, this PKR role as liberator also denied that the Khmer Rouge had carried out a genocide, stating that “in all of Cambodia perhaps some thousands” had been killed. Instead, it was Vietnam that was carrying out “a genocide of our race and nation.”33

The United States and other Western powers did little to refute such denials, with diplomats often avoiding the use of the term “genocide” when referring to the Khmer Rouge.34 Cambodia’s seat at the UN was even awarded to the Khmer Rouge, creating a situation in which the DK delegation was given international legitimacy while the PKR regime became diplomatically isolated and was prevented from receiving needed international aid.

In this context, the Tuol Sleng Genocide Museum was established. Just days after Duch and his men fled, Vietnamese soldiers noticed a bad smell coming from the compound and were shocked to discover dead bodies and the trove of documentation that had been left behind. Under the guidance of Vietnamese experts, the Tuol Sleng Genocide Museum was quickly created to provide domestic and international audiences with evidence of the atrocities of the “Pol Pot clique.”35 By mid-1979, groups of officials and journalists were being taken to the site, which soon opened to receive friendly foreign delegations and the Cambodian public.

The PKR regime asserted this atrocity narrative in a variety of domains, ranging from the construction of memorials to the creation of highly politicised schoolbooks, some of which taught young students to learn and write using short vignettes demonstrating the atrocities of the “Pol Pot clique.”

One lesson focused specifically on S-21. On the Tuol Sleng wall where Duch’s photograph hangs, other photographs depict related PKR commemorative initiatives. Several show scenes from the August 1979 People’s Revolutionary Tribunal, at which the PKR regime convicted Pol Pot and Jeng Sary in absentia of genocide. Another photo shows a woman with her fist pressed against her forehead as she speaks into a large microphone at a PKR genocide remembrance event, likely the annual “Day to Remain Tied in Anger” against the “Pol Pot clique.” The woman sobs. Rows of skulls are displayed behind her. The eye sockets, dark and empty, stare.

32 Gottesman, Cambodia after the Khmer Rouge; Ledgerwood, “Cambodian Tuol Sleng Museum of Genocidal Crimes,” 82.

33 See Kamn, “Aide Says Pol Pot Regime Is Ready to Join Old Foes against Vietnam.”

34 See, for example, Fawthrop and Jarvis, Getting Away with Genocide, 86ff.

31 The following quotations from Heng Samrin’s speech are cited in Gottesman, Cambodia all or the Khmer Rouge, 7-8; see also spk Radio, “Front Issues Declaration,” H3, H7.


29 Gottesman, Cambodia after the Khmer Rouge; Ledgerwood, “Cambodian Tuol Sleng Museum of Genocidal Crimes.”
VIOLENCE AMERICA’S PASTIME

by HENRY A. GIROUX
Popular culture not only trades in violence as entertainment, it also delivers violence to a society addicted to an endless barrage of sensations, the lure of instant gratification and a pleasure principle steeped in graphic and extreme images of human suffering, mayhem and torture. Violence is now represented without the need for either subtlety or critical examination.

In spite of the media’s ample reporting of gun violence, what has flown under the radar is that in the last three years 1 child under 12 years-old has been killed every other day by a firearm, which amounts to 555 children killed by guns in three years. An even more frightening statistic and example of a shocking moral and political perversity was noted in data provided by the Centers for Disease control and Prevention (CDC), which stated that 2,525 children and teens died by gunfire in [the United States] in 2014; one child or teen death every 3 hours and 28 minutes, nearly 7 a day, 48 a week. In addition, 58 people are lost to firearms every day. Such figures indicate that too many youth in America occupy what might be called war zones in which guns and violence proliferate. In this scenario, guns and its insane culture of violence and hyper-masculinity are given more support than young people and life itself.

The predominance of a relatively unchecked gun culture and a morally perverse and politically obscene culture of violence is particularly evident in the power of the gun lobby and its gun rights political advocates to pass legislation in eight states that allow students and faculty to carry concealed weapons “into classrooms, dormitories and other buildings” on campuses. Texas lawmakers, for instance, passed one such “campus carry bill,” which will take effect in August of 2016. Such laws not only reflect “the seemingly limitless legislative clout of gun interests,” but also a rather deranged return to the violence-laden culture of the “wild west.” As in the past, individuals will be allowed to walk the streets openly carrying guns as a measure of their love of guns and their reliance upon violence as the best way to address any perceived threat to their security. This return to the deadly practices of the “wild west” is neither a matter of individual choice nor some far-fetched yet allegedly legitimate appeal to the second amendment. On the contrary, mass violence in America has to be placed within a broader historical, economic and political context in order to address the totality of forces that produce it. Focusing merely on the mass shootings, or the passing of potentially dangerous gun legislation, does not get to the root of the systemic forces that produce America’s love affair with violence and the ideologies and criminogenic institutions that produce it.

Imperial policies that promote aggression all across the globe are now matched by increasing levels of lawlessness and state repression, which mutually feed each other. On the home front, civil society is degenerating into a military organisation, a space of lawlessness and war-like practices, organised primarily for the production of violence. For instance, as Steve Martinot observes, police now use the discourse of command and power to criminalise behaviour; in addition, they use military weapons and surveillance tools as if they are preparing for war, and create a culture of fear in which militaristic principles replace legal principles.

He writes:

This suggests that there is an institutional insecurity that seeks to cover itself through social control, for which individual interactions with the police are the means. Indeed, with their command over people, the cops act out this insecurity by criminalising individuals in advance. No legal principle need be involved. There is only the militarist principle. When the pregnant woman

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4 See for instance, Robert M. Pallitto, Ed., Torture and State Violence in the United States; A Short Documentary History (Baltimore: Johns Hopkins University, 2011) and Howard Zinn, A People’s History of the United States (New York: Harper Perennial Modern Classics, 2010).
steps away from the cop, she is breaking no law. To force her to ground and handcuff her is far from anything intended by the principle of due process in the Constitution. The Constitution provided for law enforcement, but not for police impunity. When police shoot a fleeing subject and claim they are acting in self-defense (i.e. threatened), it is not their person but the command and control principle that is threatened. To defend that control through assault or murderous action against a disobedient person implies that the cop’s own identity is wholly immersed in its paradigm. There is nothing psychological about this. Self-worth or insecurity is not the issue. There is only the military ethic of power, imposed on civil society through an assumption of impunity. It is the ethos of democracy, of human self-respect, that is the threat.6

Violence feeds on corporate controlled disimagination machines that celebrate it as a sport while upping the pleasure quotient for the public. Americans do not merely engage in violence, they are also entertained by it. This kind of toxic irrationality and lure of violence is mimicked in America’s aggressive foreign policy, in the sanctioning of state torture, and the lure of violence is mimicked in America’s aggressive foreign policy, in the sanctioning of state torture, and the gruesom killings of civilians by drones. As one colleague David L. Clark pointed out to me in a private email correspondence, “bombing make-believe countries is not a symptom of muddled confusion but, quite to the contrary, a sign of unerring psychological about this. Self-worth or insecurity is not the issue. There is only the military ethic of power, imposed on civil society through an assumption of impunity. It is the ethos of democracy, of human self-respect, that is the threat.5

However, the fact that “30,000 Americans die in gun violence every year (compared to the 17 who died [in 2012] in terrorist attacks).”4 It gets worse. As the threat of terrorism is used by the American government to construct a surveillance state, suspend civil liberties and accelerate the forces of authoritarianism, the fear of personal and collective violence has no rational bearing on addressing the morbidity acceleration of gun and other forms of unnecessary violence in the United States. In fact, the fear of terrorism specifically as it applies to immigrants and Muslims appears to feed, recuperate, and expand a toxic culture of violence produced, in part, by the wide and unchecked availability of guns. America’s fascination with guns and violence functions as a form of sport and entertainment, while offering the false promise of security, which even trumps a more general fear of violence on the part of terrorists. In this logic one not only kills terrorists with drones, but also makes sure that patriotic Americans are individually armed so they can use force to protect themselves against the dangers whipped up in a culture of fear and hysteria promoted by right-wing politicians, pundits and the corporate controlled media. Rather than bring violence into a political debate that would limit its production, various states increase its possibilities by taking a plunge into insanity with the passing of laws that allow “guns at places from bars to houses of worship.” 7 Florida’s “Stand Your Ground” law, based on the notion that one should shoot first and ask questions later is a morbid reflection of America’s national psychosis regarding the adulation of gun culture and the paranoid fears that fuel it. This fascination with guns and violence has produced a pathology that reaches the highest levels of government and serves to further anti-democratic and authoritarian forces. The U. S. government’s warfare state is propelled by a military-industrial complex that cannot spend enough on weapons of death and destruction. Super modern planes such as the F-35 Joint Strike Fighter cost up to $228 million each and are plagued by mechanical problems and yet are supported by a military and defence establishment.

As Gabriel Kolko observes such war-like investments “reflect a pathology and culture that is expressed in spending more money regardless8” of how it contributes to running up the debt or for that matter thrives on “the energies of the dead.”9 Militarism provides ideological support for policies that protect gun owners and sellers rather than children. The Children’s Defense Fund is right in stating “Where is our anti-war movement here at home? Why does the nation with the largest military budget in the world refuse to protect its children from relentless gun violence and terrorism at home? No external enemy ever killed thousands of children in their neighborhoods, streets and schools year in and year out.”10

There is not so hidden structure of politics at work in this type of sanctioned irrationality. Advocating for gun rights provides a convenient discourse for ignoring a “harsh neoliberal corporate-state order that routinely generates pervasive material suffering, social dislocation, and psychological despair — worsening conditions that ensure violence in its many expressions.”11 It says nothing about the corrupt bankers and hedge fund managers who invest in the industries of death and trade in profits at the expense of human life, all the while contributing to the United States being the largest arms exporter in the world.12 More specifically, the call for gun rights also conveniently side steps and ignores criticising a popular culture and corporate controlled media which uses violence to attract viewers, increase television ratings, produce Hollywood blockbusters and sell video games that celebrate first person shooters.

While it would be wrong to suggest that the violence that saturates popular culture directly causes violence in the larger society, it is arguable that such violence serves not only to produce an insensitivity to real life violence but also functions to normalise violence as both a source of pleasure and as a practice for addressing social issues. When young people and others begin to believe that a world of extreme violence, vengeance, lawlessness and revenge is the only world they inhabit, the culture and practice of real-life violence is more difficult to scrutinise, resist and transform. Many critics have argued that a popular culture that endlessly trades in violence runs the risk of blurring the lines between the world of fantasies and the world we live in. What they often miss is that when violence is celebrated in its myriad registers and platforms in a society, even though it lacks any sense of rationality, a formatable culture

13 Ibid., Martinot, “Police Torture and the Real Militarization of Society.”
is put in place that is amenable to the pathology of totalitarianism. That is, a culture that thrives on violence runs the risk of losing its capacity to separate politics from violence: A. O. Scott recognises such a connection between gun violence and popular culture, but he fails to register the deeper significance of the relationship. He writes:

…it is absurd to pretend that gun culture is unrelated to popular culture, or that make-believe violence has nothing to do with its real-world correlate. Guns have symbolic as well as actual power, and the practical business of hunting, law enforcement and self-defence has less purchase in our civic life than fantasies of righteous vengeance or brave resistance…. [Violent] fantasies have proliferated and intensified even as our daily existence has become more regulated and standardised – and also less dangerous. Perhaps they offer an escape from the boredom and regimentation of work and consumption.13

Popular culture not only trades in violence as entertainment, it also delivers violence to a society addicted to an endless barrage of sensations, the lure of instant gratification and a pleasure principle steeped in graphic and extreme images of human suffering, mayhem and torture. Violence is now represented without the need for either subtlety or necessity to instruct, violence is split from its moral authority now rules American society and wages totalitarian practices and social relations. Brutal masculine violence thrives. Surely, two of the major crises of our times are the crisis of agency and civic literacy, political or regulatory issue than it is to ask what the only value that matters. Consumerism becomes a form of soma, memory no longer serves as a moral witness and politics is in the hands of the 1 percent, utterly corrupted by money and power. Traces of a totalitarianism now appear, stripped of memory and the horrors they produced. In their new forms, the threats they pose go unrecognisable and are tolerated as politics as usual, only with less civility. Under such conditions, the social withers, solidarity is replaced by shark like competition and state violence and the spectacle of violence become normalised. We live in a time of monsters and Trump is simply symptomatic of this.

In the current historical conjuncture, war, bigotry and the call to violence is embraced by many including Donald Trump, the leading Republican Party presidential candidate, making it clear as John Pilger has argued that in America “an insidious modern fascism is now an accelerating danger.” It is difficult to watch both Trump and the corporate coverage of his fascist assaults and actions. What is truly crucial to recognise is that there are ideological, economic, social, political and cultural forces at work in the United States that have created the formative culture in which this kind of authoritarian populism and its embrace of symbolic and material violence thrives. Surely, two of the major crises of our times are the crisis of agency and civic literacy, on the one hand, and the withering of public values, trust and democratic public spheres on the other. The current drumbeat of fascism and its embrace of violence does not rely only on mimicking the infamous brownshirts of Nazi Germany but also on the collapse of democratic politics, the concentration of power in the hands of the few, the myth that only individuals are responsible for the systemic assaults they have to weather and that self-interest is the only value that matters. Consumerism becomes a form of soma, memory no longer serves as a moral witness and politics is in the hands of the 1 percent, utterly corrupted by money and power. Traces of a totalitarianism now appear, stripped of memory and the horrors they produced. In their new forms, the threats they pose go unrecognisable and are tolerated as politics as usual, only with less civility. Under such conditions, the social withers, solidarity is replaced by shark like competition and state violence and the spectacle of violence become normalised. We live in a time of monsters and Trump is simply symptomatic of the financial class he represents and the history we refuse to learn from.

As I have said elsewhere, violence has arisen from the breakdown of public space, the erasure of public goods, the embrace of a deadly war psychology and a growing disdain for the common good. Gratuitous violence has become central to a society that trades on fear and fetishises hyper-violent and punitive practices and social relations. Brutal masculine authority now rules American society and wages a war against women’s reproductive rights, civil liberties, poor black and brown youth, and Mexican immigrants. Americans inhabit a society run by a financial elite that refuses to recognise that war is a descent into madness and the scope and breadth of the violence it produces infect our language, values, social relations, and democracy itself. War has become an all-embracing ideal that feeds the most totalitarian practices and shores up an authoritarian state. As an organising principle of society, the politics and culture of violence unravels the fabric of democracy suggesting that America is at war with itself, its children and its future. The political stooges who have become lapdogs of corporate and financial elites must be held accountable for the deaths taking place in a toxic culture of gun violence. The condemnation of violence cannot be limited to


15 Ibid., Bauman and Bordoni, p. 122.

16 Brad Evans and Henry A. Giroux, Disposable Futures: The Seduction of Violence in the Age of the Spectacle (San Francisco: City Lights Books, 2015).


Police brutality. Violence does not just come from the police. In the United States there are other dangers emanating from state power that punishes whistle blowers, intelligence agencies that encourage the arrests of those who protest against the abuse of corporate and state power, and a corporate controlled media that that trades in ignorance, lies and falsehoods, all the while demanding and generally “receiving unwavering support from their citizens.”

State violence aimed at terrorism is too often code for using force against black protesters as in Ferguson, Baltimore and other cities. At the same time, when white right-wing anti-government protestors waging a struggle against what they call the “tyranny of the federal government and take over the Malheur National Wildlife refuge in Oregon, their actions backed by the threat of using weapons and ammunition they are labeled by the mainstream media as protesters rather than terrorists. White men with guns, disregarding the law, and seizing government property are left untouched by the government while black protesters march in the streets in opposition to police violence are met by the national guard loaded up with tanks and high tech weapons.

Yet, the only reforms we hear about are for safer gun policies, mandatory body cameras worn by the police and more background checks. These may be well-intentioned reforms but they do not get to the root of the problem, which is a social and economic system that trades in death in order to accumulate profits. What we don’t hear about are the people who trade their conscience for supporting the gun lobby particularly the National Rifle Association. These are the politicians in congress who create the conditions for mass shootings and gun violence because they have been bought and sold by the apostles of the death industry. These utterly corrupted politicians are killers in suits whose test of courage and toughness was captured in one of the recent Republican Party presidential debates, when Ben Carson, was asked by Hugh Hewett, a reactionary right-wing talk show host, if he would be willing to kill thousands of children in the name of exercising tough leadership. As if killing innocent children is a legitimate test for leadership. This is what the war-mongering politics of hysterical fear with its unbridled focus on terrorism has come to – a future that will be defined by moral and political zombies who represent the real face of terrorism, domestic and otherwise.

Clearly the cause of violence in America will not disappear by merely holding the politicians responsible. America has become a society in which the illegitimacy of violence is matched by the illegitimacy and lawlessness of politics. What is needed is a mass political movement willing to challenge and replace a broken system that gives corrupt and warmongering politicians excessive and corrupting political and economic power. Democracy and justice are on life support and the challenge is to bring them back to life not by reforming the system but by replacing it. This will only take place with the development of politics in which the obligation to justice is matched by an endless responsibility to collective struggle, one with a politics and social formation that speaks to the highest ideals of a democratic socialism.

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ENFORCED DISAPPEARANCES OF PERSONS IN SRI LANKA

BY M.C.M. IQBAL

LEGACY AND ONGOING CHALLENGES
Enforced disappearance of persons remains one of the widely known human rights violations in Sri Lanka. The war that ended in May 2009 took the figure of the alleged abductions and disappearances to alarming proportions. However, the end of the war did not bring such incidents to an end. Whether they would come to a full stop still remains to be seen despite the change in the leadership of the country in 2015.

The machinery that had been set up during the past to perpetuate such incidents appears to have slowed down as a consequence to the passing of a Resolution at the UNHRC in September, 2015 following a report of an UN investigation regarding accountability of the Government of Sri Lanka and the LTTE to human rights violations beginning from February, 2002 and lasting until November, 2011. However the machinery could be switched on again if those in authority shine a green light. The presence of this machinery could be switched on again if those in authority continue to deal with the law and order issues during peace time. Extracting information and/or confessions from suspects through torture continues to be the norm. They appear to know no other way in which investigations into allegations against suspects could be conducted. The government is now left with a legacy of a police force with experience in performing more military duties than civilian functions. Bringing about a metamorphosis in their mentality and methods of investigation is another challenge the Government has to face without delay to bring about normalcy in the law and order situation in the country.

In the meanwhile the government has to deal with the untenable number of complaints of disappearances that have been lodged with various national and international institutions calling for help to trace those disappeared. The current Commission of Inquiry into Missing Persons issued a statement on 2nd May, 2016 that it has so far received 25,000 complaints of which it has been able to investigate only 8000. Most of the complaints relate to disappearances of persons either after being abducted or handed to the security forces by wives or other relatives in response to a call by the military during the closing days of the war, or had surrendered to them in the presence of witnesses. There are also allegations of torture and sexual abuse of persons who had been in the custody of the military and had subsequently either escaped or been released. Having to deal with these complaints along with those of enforced disappearances, to the satisfaction of the victims, is a daunting legacy the government has to confront.

Long years of Emergency Rule and the availing of the obnoxious provisions of the Prevention of Terrorism Act have blunted the knowledge of the police and the security forces as to the manner in which they should deal with law and order issues during peace time. Extracting information and/or confessions from suspects through torture continues to be the norm. They appear to know no other way in which investigations into allegations against suspects could be conducted. The government is now left with a legacy of a police force with experience in performing more military duties than civilian functions. Bringing about a metamorphosis in their mentality and methods of investigation is another challenge the Government has to face without delay to bring about normalcy in the law and order situation in the country.

Persistent pressure on the Government to get rid of the Emergency Regulations (ER) made the previous regime ostensibly remove it. But soon afterwards the much maligned provisions of the ER were tagged on to the provisions of the Prevention of Terrorism Act (PTA) rendering it more virulent than before. It is the provisions of the PTA that facilitate the causing of enforced disappearances with ease. It enabled persons to be abducted and detained instead of being arrested. A few of those abducted supposedly by ‘unknown persons’ have subsequently been produced in Courts, confirming the fact that the abductors were agents of the state. The whereabouts of untold others is unknown.

Consequently there has arisen a need to remove the PTA from the laws of the land. That is another of the legacies the current government has to deal with. Among many voices, the UNHRC too has stressed the need to do this. Perhaps to show that the request has been heeded, the Prime Minister of Sri Lanka has stated that British style anti-terrorism laws will be introduced in place of the existing PTA. Let us hope that the new laws do not turn out to be the same medicine in different bottles.

The culture of impunity became endemic among the police and the security forces of Sri Lanka some years ago. This in turn contributed to enforced disappearances becoming so widespread. Many members of the Police and Security Forces who perpetrated abductions, torture and enforced disappearances in the past, have a belief that they will not be made to face the consequences of their misconduct. It is understandable that to deal with the persons responsible for such misconduct, the courts would require evidence beyond reasonable doubt. Consequently, the Zonal Commission for the Central, North Western, North Central and the Uva Provinces made a specific recommendation to take disciplinary action against police officers who had violated departmental procedures in dealing with cases of enforced disappearances. This Commission pointed out instances such as the Police Information Book for the relevant period having been destroyed in some Police Stations despite a specific circular issued by the Inspector General of Police to preserve them

2 Ibid.
3 Daily Mirror of 2nd May, 2016.
4 This is from the personal knowledge of the writer who was the Secretary to that Commission

The need to become so is one of the recommendations of the Commissions of 1994.
A military officer who testified in that case had been heard at the Magistrate’s Court of Mullaitivu. who went missing after surrendering to the army was a case where a writ of mandamus regarding persons
It would be appropriate here to pay attention to a contents of the published and the unpublished parts of
That is a challenge that must be met if impunity is to
among the findings of the last government. These ultra-nationalists are branded in this manner remains to be seen.
32 33
5 Whether any persons resident in the Northern and Eastern Provinces during the period June 30, 1989 to May 19, 2009 have been abducted or have disappeared from their places of residence – Government Gazette No: 1823/42 – Thursday, August 15, 2013.
6 That includes the three Zonal Commissions appointed in 1994 and the All Island Commission appointed in 1998.

 Among the findings of the set of Commissions appointed during President Chandrika Bandaranaike’s time, is evidence on the many mass graves that exist in different parts of the country and on the torture chambers of the relevant period. If the government wishes to look into the cases of enforced disappearances with sincerity and deal effectively with impunity that had its beginnings as far back as in the late 1980s, the contents of the published and the unpublished parts of the reports of those Commissions must be re-visited. That is a challenge that must be met if impunity is to be wiped out, enforced disappearances made a thing of the past and the rule of law in the country is to be re-established.

It would be appropriate here to pay attention to a case where a writ of mandamus regarding persons who went missing after surrendering to the army was heard at the Magistrate’s Court of Mullaitivu. A military officer who testified in that case had made a statement in December 2015 that the names of the persons referred to in the case were not in a list of the names of persons who had surrendered. When this case came up before the Magistrate on 17th February, 2016, the officer concerned was ordered by Court to furnish the list to Court on the next date, viz. April 20th. However it is reported that on date neither the witness nor the State Counsel attended Court. Therefore the case was postponed for 17th May 2016. Whether the document would actually be produced on that date was anybody’s guess. This incident shows how the military is, as always, shirking its responsibility to help the judiciary deal with enforced disappearances. The list concerned would have helped confirm the persons who had surrendered and are now alleged to have disappeared. This brings us to another legacy the government is faced with – the absence of co-operation by the military to allow the judiciary to deal effectively with cases concerning enforced disappearances.

In spite of the widespread incidents of enforced disappearances occurring during the past several years, it is not a crime in the Penal Code of Sri Lanka. The need to become so is one of the recommendations of the Commissions of 1994. Yet it is only in September 2015 that Sri Lanka finally agreed to ratify the UN Convention on Disappearances of Persons and did so in December 2015. The Convention is still to be made part of the domestic laws of the country. According to international law, the crime of enforced disappearance is a continuous crime. It is completed as a crime only at the point at which the fate and whereabouts of a disappeared person is finally determined. In the absence of retrospective legislation, there will be a juridical barrier to prosecutions in such cases. In other words, where the ‘crimes’ had been committed before enforced disappearance was made a crime in Sri Lanka they cannot be considered to be criminal acts. So no perpetrators can be prosecuted for this offence under the prevailing law in Sri Lanka. This legacy has to be dealt with if the government is keen to put an end to the continuing agitation of the families of the victims of enforced disappearances. They are still waiting for justice.

Unless meaningful steps are taken to render justice by taking appropriate accountability measures and providing adequate reparations, these families cannot be expected cease their agitations and live peacefully. Perhaps it is to deal with this matter that the Government has stated recently that a law to create a permanent office on missing persons is in the process of being finalised. Let us hope that it is not going to be another mirage.

There is another option available to deal with this matter, which is to deal with perpetrators using the laws relating to universal jurisdiction and arraign the perpetrators before a Hybrid Tribunal. This was recommended in the Resolution jointly sponsored by the US Government and the Government of Sri Lanka at the UNHRC to deal with the human rights violations that took place during the conflict. Having agreed to create such a Tribunal at an international forum, the Government appears to have reneged on the undertaking. Apparently this is due to pressure from the ultra-nationalists in the country. Such ultra-nationalists groups have had the patronage of the last government. These ultra-nationalists are among the legacies the current government has to manage effectively, if it is to bring about the change necessary to appropriately deal with human rights violations in general and the perpetrators of enforced disappearances of persons in particular.

Let us now look at the situation with regard to taking legal action against those whom the Commissions of Inquiry have found have already ‘credible material indicative of their responsibility’ for causing disappearances. Commissions of Inquiry appointed under the relevant Act do not exercise judicial powers. They are fact-finding bodies. They come to conclusions based on an assessment of evidence placed before them, on a balance of probabilities. However, a court of law has to look for evidence beyond reasonable doubt. Therefore it is left for the Government to refer the cases where perpetrators had been identified to the Attorney General. He has to initiate action to tie up the loose ends of the evidence to secure the proof a court would need to convict an accused. The Attorney General has to harness the services of the Police Department to get the necessary additional statements recorded. Whether the police would cooperate in doing so, especially in cases where the perpetrator is a person of influence, is a debatable. Past performance of the police in such matters speaks for itself. Besides, can the present government deal with such cases diligently while the Attorney-General’s Department consists of personnel mostly loyal to the regime that allowed widespread disappearances with such impunity? This was one of the issues raised by the International Independent Group of Eminent Persons when they found the Attorney General’s representative leading evidence in the Commission of Inquiry into Certain cases of serious human rights violations9. That eventually led to IIEGP to abort their mission, stating that the government does not have the will to promote or protect human rights. Whether the current government would strive to avoid being branded in this manner remains to be seen.

The government should take a serious note of a recommendation made in Reports of the Western, Southern and Sabaragamuwa Disappearances Commission10 in 1994 and the All Island Disappearances Commission11 in 1998 regarding the creation of an independent Public Prosecutor with security of tenure and supporting staff of its own. It was recommended that this position be created under the ambit of the National Human Rights Commission (HRC) by an amendment to the HRC Act. The public prosecutor could then institute criminal prosecutions after collecting sufficient evidence through their own investigating officers and/or those the Human Rights Commission. The creation of a Public Prosecutor to deal with cases of enforced disappearances, instead of letting the Attorney-General do so, is one of the
challenges the government must undertake in this regard.

Instances of witnesses to enforced disappearances being threatened before or after giving evidence in Courts or before Commissions of Inquiry have been reported. Amnesty International has pointed out that intimidation of witnesses can rise to the level of the witnesses themselves being abducted and disappeared. Such instances have occurred at the hands of the police and the military even during normal times, with witnesses being taken into custody and killed. Effectively protecting witnesses in general, and those of enforced disappearances in particular, is another challenge which the present government has to tackle. The need for this remains imperative.

It is yet to be seen if the recently established Witness Protection Authority can perform this function effectively.

Another legacy for the government when dealing with enforced disappearance of persons is the non-inclusion of the doctrine of command responsibility in the penal laws of Sri Lanka. This is a significant inheritance that has to be dealt with. The principle of command responsibility is well established in international law. Article 6 of the UN Convention on EnforcedDisappearances makes it obligatory for Governments to take ‘measures to hold any person who commits, orders, solicits, induces the commission of, or attempts to commit’ criminally responsible for the offence. It also imposes a liability on any superior ‘who knew or consciously disregarded information which clearly indicated’ that his subordinates were committing or about to commit the offence of enforced disappearances. In view of this and other similar provisions in theDisappearances Convention, the Government will have to face the challenge of adopting appropriate laws after ratifying the agreed-upon Convention.

In view of the contradictory statements that are being issued by the Government on which judicial body would investigate and inquire into the cases of alleged disappearances of persons, the government will encounter the dilemma of having to appease ultranationalists both within the government and outside, if it sincerely sets out to honour the undertakings assured to the UNHRC.

The Government is confronted with the legacy of persistent misrule by a regime that believed itself invincible. Condoning and overlooking the breaches of the rule of law by regime agents led to its demise. If that pattern is allowed to continue unchecked and appropriate remedial measures are not undertaken diligently, the perpetrators of human rights abuses and disappearances will continue to be a law unto themselves. The current regime has to face the challenge of disciplining the very same state machinery that brought disrepute to the previous regime. The lessons learnt should not be in vain. The state should henceforth be seen as the protector of its citizens and not as the perpetrator of abductions, torture and enforced disappearances. It should not also be seen as a protector of those responsible for enforced disappearances or other offences. TheDisappearances Convention does not condone enforced disappearances even when the country is at war or in situations of internal political instability.

Past events clearly show that when the reports of Commissions of Inquiries into Enforced Disappearances were made public none of the major political parties in the Parliament pressed for the implementation of the recommendations and appropriate actions against the perpetrators identified. Let us hope that this situation has now changed and the current government – saddled with so many sordid legacies of the past – will face these challenges and change the course of history by boldly enforcing accountability and providing adequate reparations to the victims of enforced disappearances.

13 Sanjeewa v. Suraweera [2003] 1 Sri LR 317

“When making this series I went through my mental journey in the past years by picturing it as a dystopian society. Little human facing a faceless society was an easy role to play. I have taken a lot of self-portraits so it was obvious that I play the role of a human in these pictures myself. Looking at the world now, the pictures also work on a larger scale and not just as one man’s battle inside his head.”

M.C.M. Iqbal, former Secretary of two Presidential Commissions of Inquiry into Disappearances and Secretary to the Committee of Inquiry into Disappearances Of the Human Rights Commission of Sri Lanka.
The award-winning series Dystopia is a creation of Petri Damstén, a talented self-taught photographer, artist and computer engineer, who creates images as a therapy after his retirement. Based in Finland, he put his feelings into photography when he started a different life after his daily work. Ana Belén González of Stitch, an online contemporary lifestyle photography platform, caught up with Petri Damstén. We have reproduced the following excerpts of the interview with the permission of the Stitch.

Question (Q): You started taking these kinds of photographs as therapy after your retirement as an engineer. How did you learn photography?

Answer (A): As a photographer, I’m self-taught. I bought my first DSLR in 2010 and started learning. Before that my photography was mainly snapshots. I have read magazines, books and watched countless youtube videos. I also follow some photography sites daily to get inspiration and to see what kind of photos and styles others are doing.

Q: What did you want to tell with Dystopia and why?

A: The Dystopia series started from one character and from one image. But soon after that more ideas started filling my head and I realised that these ideas are my feelings from the past years during the retirement process. When you are down the pressure from the outside world, it feel quite overwhelming and the things that were meant to help you sometimes felt like a punishment.

These images are, at some point, self-portraits.

Q: Why did you want to tell this story from your vision of yourself? And how that could be connected with the entire society?

A: I have done lot of self-portraits. Since this was such a personal project it felt quite natural to play the part of a small human myself. When you look at the news there are still countries where this kind of behaviour is a reality and not just a feeling. The handling of people with mental illness can be really cruel in some parts of the world. I was lucky enough to live in a country where I could get help for my depression and I could continue my life.

Q: Why do you find conceptual photography to be a therapeutic tool?
A: I think it helps me in two ways. The more personal pictures help me to purge my brains from the things that are or have been problematic. I feel it’s much like a therapy session where you talk about things. I just put those words in a picture form which is actually more natural to me.

I also do a lot of less personal pictures which includes humour. Image creation as a whole helps me in providing meaningful content to my days and a feeling that I’m still good at something. This boosts my mentality and keeps me going.

Q: Why do you enjoy creating more surreal images?

A: I think that the feelings the picture awakens in you are more important than the reality. I guess I also make images more like a painter. Images start from an idea in my head and those ideas are not always very realistic but more on a surreal side. Images are important to me, not photography in itself. In the end, the camera and computer are just tools that suit me best.

Q: Which is your favourite of your photographs and why?

A: I’m really happy how this Dystopia series worked out so it is currently my favorite work. I like the dark mood that I managed to get to those images and also it’s so personal. There are also some humor images that I still like and I will be making more of those too. As an opposite to more serious things it’s good to have a good laugh once in a while. Hopefully the best images are still to come.

There are so many great image makers out there but since I have a soft spot for darker moods, I have especially enjoyed the work of Karina Marandjian, Erlend Mørk and Juha Arvid Helminen.

Assistant: Jan Peter Palmunen.

Contact the photographer at torturedmind.org

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When you look at the news there are still countries where this kind of behaviour is a reality and not just a feeling. The handling of people with mental illness can be really cruel in some parts of the world.
The promulgation of a new legislation without carefully reviewing the effectiveness of the existing one will not bring any benefit to law enforcement officers. Rather, it might cause more problems in enforcement.
On 26 January 2016, Prime Minister General Prayuth Chan-ocha wrote a letter to the Chairperson of the National Legislative Assembly (NLA) regarding the draft Act on Trafficking in Persons Procedure Code. He wrote about the rationale behind the Act, provided a summary of the main issues and urged the NLA to give priority to the Bill. As a result, on 11 March 2016, in its third read, the NLA reportedly voted to endorse the draft Act. Nevertheless, on 26 March 2016, a rights coalition submitted an Migrant Working Group (MWG), submitted an and Development Foundation (HRDF) and the Human Rights and Development Foundation (HRDF). She was working with the Thailand desk at the Law Reform Commission of Thailand (LRCT) and Anti-Labor Trafficking project at Human Right and Development Foundation (HRDF). The Cabinet expressed a wish to move to an accusatorial procedure, whereby both parties have direct interaction with the defendant, and the prosecutor would assist the Court in establishing the facts. The aim is that the procedure would also provide for the taking of evidence from various sources, which may help accelerate the process in compliance with the safeguard of the rights of trafficking victims, as per the 2008 Anti-Trafficking in Persons Act.

The Cabinet expressed a wish to move to an inquisitorial procedure, whereby the Court would have direct interaction with the defendant, and the prosecutor would assist the Court in establishing the facts. The aim is that the procedure would also provide for the taking of evidence from various sources, which may help accelerate the process in compliance with the safeguard of the rights of trafficking victims, as per the 2008 Anti-Trafficking in Persons Act.

According to the legislative process of the draft Act on Trafficking in Persons Procedure Code B.E., the government should begin by reviewing problems stemming from the enforcement of the existing Criminal Procedure Code. The government should first establish if the delay could be attributed to the accusatorial procedure itself, or whether it is due to other problems in its enforcement. The promulgation of a new legislation without carefully reviewing the effectiveness of the existing one will not bring any benefit to law enforcement officers. Rather, it might cause more problems in enforcement. In addition, the rights coalition found that the drafting process was devoid of input from various concerned agencies, particularly law enforcement agencies. Also, no attempts have been made to publicise the contents of the Bill. It is not feasible now to seek judicial review regarding constitutionality, but given that the content of the Bill may severely infringe upon the rights and liberty of those who have to undergo the new criminal justice proceedings, the agencies proposing the Bill should pay due attention to their concerns instead of just focusing on pushing through a legislation to suppress trafficking offences. Furthermore, the 2000 United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, only define a serious offence as one that carries the punishment of imprisonment of four years or more and when the offence involves transnational organised criminal syndicates participating in trafficking offences.

Conversely, according to the domestic law of Thailand, a trafficking offence is treated as an offence related to “the public order and moral high ground of society”. Therefore, it is included in the same category of offences concerning arson and illegal drugs. Only drug-related offences have their own procedure code, according to the 2007 Narcotics Act, separate from the Criminal Procedure Code. Still, the Narcotic Act relates chiefly on the accusatorial procedure. Apart from promptness, the rights coalition deems it unnecessary to replace the accusatorial procedure with the inquisitorial procedure in trafficking offences, particularly in light of the practice for similar offences, as aforementioned.

Likewise, the definition of trafficking offences, the scope of application, advance witness examination, the determination of reparation and other damages, the temporary release, the taking of evidence in the Court and the appeal of the verdict at the Appeal and Supreme levels have all been adjusted to make them consistent with the inquisitorial procedure according to the Bill.

On this front, the rights coalition has found that several major provisions in the Bill deprive the defendant of their rights by treating them as an object of proceedings without applying the general rule of the Criminal Procedure Code. For instance, prior conditions have been set forth for the temporary release of an alleged offender or a defendant: the requirement that the defendant has to, by himself, adduce to establish his innocence; the design of the proceeding in which the defendant is assumed a guilty party since the beginning; the waiver of the presumption of innocence rule; the admissibility of the evidence given by the defendant for his own incrimination; and by defining the defendant as a direct party with the Court, all of which have made it more challenging for the defendant to defend themselves. This coalition of rights has stated that the “inquisitorial procedure” in the Bill focuses on punishing the defendant without according due respect to his rights. This makes it vulnerable to the infringement of human rights. A criminal proceeding, in breach of the rule of law and the human rights principles, is not considered proper by civilised nations. It certainly is a deviation from democracy and the rule of law. Therefore, for the aforementioned reasons, the Thai government, the Cabinet, the NLA, and other concerned agencies should review the principle of the draft Act on Trafficking in Persons Procedure Code B.E. and reconsider the necessity to promulgate the Act. In addition, an attempt should be made to provide for public consultation, allowing concerned agencies from the State, public sector, and academics working to promote and assist the State to protect the rights of trafficking victims, to provide their input regarding the Bill.

This will benefit future solutions to the problem of trafficking in persons, making them more effective and compliant with both domestic laws and international obligations.

The organisation Voice for Baloch Missing Persons (VBMP) has observed misdeeds by the state of Pakistan in form of enforced disappearances, displacement of population and extra judicial killings in Balochistan, which are documented in detail and salient features are inscribed hereby for conveying information to international bodies with anticipation of provision of justice for wrenched masses in Balochistan. Some information collected is outlined below:

Thousands of Baloch people have been abducted and many of them have been killed extra judicially with mutilated bodies found after being discarded. Instead of the abolition of such despicable acts, the state apparatus has constituted inhumane laws under the pretence of state sovereignty, such as the Pakistan Protection Ordinance (PPO). Such constitutional amendments are directly against human rights, and provide ground to the state forces to commit human rights abuses in Balochistan with full impunity. After the enforcement of the mentioned law, state authorities confessed to the arrest of more than 12000 people in Baluchistan area by security forces in period of one and half years. No details of detainees have been given and their family members have not been informed of the whereabouts of their disappeared beloved ones. The forcibly disappeared people have not yet been brought before any judicial body.

In Balochistan, many areas have been beleaguered by state forces for long time, the people like captives. In some areas, government forces arrest individuals from time to time without reason, mentioning guilt afterwards. Many are killed and their mutilated bodies disposed of without ceremony. Such terror has produced fearful migrants, yet the poorest are unable to flee. Due to constant army operations in Kohlu, Dera Bugti, Mashkey, Awaran, Tump, Jahu and in other areas a great proportion of population have migrated to other parts of the province or country where they live as Internally Displaced Persons.

While the government claims to have killed militants or separatists, relatives identify victims as having been abducted by state forces for long periods despite being civilians and uninvolved in any subversive activity. The arrests of women and children have also been reported. On November 8th 2015, in Bolan area the government forces arrested around 28 women and children who were shifted to Quetta the capital of the Balochistan. The arrest of Baloch women and children was witnessed by the residents of Mach that is situated within Bolan. Security forces during their operations set fire to crops and looted the valuables of the inmates. Footage of these heinous human rights violations has been shared through social media.

Recently, the government used local papers to notify disappeared people that they must appear before the courts or their area’s local police station and prove their innocence, else they will be treated as miscreants. For the families of the disappeared people, registered last year with Voice for Baloch Missing Persons (VBMP), Human Rights Commission of Pakistan (HRCP) and International Commission of Jurist (ICJ), there is the worry that their loved ones will be killed in fake encounters, trapped in fabricated cases or sent for trial by military courts which do not have to follow judicial formalities and have a very loose interpretation of justice.

Relatives of missing persons who attempt to register a First Information Report (FIR) in their police station are threatened that their loved one will be killed, and that they themselves will also face dire consequences. As Pakistani state institutions lack autonomy, their practices and attitudes under pressure from security forces confirm the speculation of victims’ families that justice will not be served.

As mutilated bodies are found they are buried without identification from concerned relatives. The government has take no initiative to preserve...
or deliver details of the deceased, and hand their duty of burial over to charitable organisations. Thus, aggrieved families never discover the fate of their missing relative.

Organisations speaking out also suffer abuses; Jail Reki was killed as his father, Qadeer Baloch, the vice chairman of VBMP protested on behalf of the organisation. Other officials in Voice for Baloch Missing Persons are also being threatened by state authorities in various ways to suspend their activities regarding the defence of human rights.

Governments Commission role about missing persons:

In June 2010, the government established a commission consisting of two members and other institutions’ representatives could also participate in its sessions. The commission could not perform anything remarkable about missing person’s case in Balochistan and its achievement is equal to none. The commission prejudicially takes side of state institutions despite presence of solid evidence about theirs offences. This attitude disappointed missing person’s families and enforced disappearing persons have not been resurfaced except one or two among the thousands by the commission.

In 2012, the current head of Government Commission Retired Justice Javed Iqbal conducted three days hearing about Balochistan’s Missing Persons and in haste made a decision that in province of Balochistan the government agencies are not involved in abduction and Enforced Disappearances but the Supreme Court headed by Iftikhar Choudary in the perspective of solid evidences remarked that all indications go against government agencies, hence they are behind abduction, enforced disappearances and extra judicial killings in Balochistan.

Poor performance of Government/politicians about human rights observation:

The politicians in government totally have failed in release of Baloch Missing Persons. Former chief minister Dr. Malik Baloch openly admitted his government’s failure about this. They are not capable to implement the Supreme Court’s decisions regarding missing person’s release and which were made against the security agencies. It is experienced that before joining the government, politicians express sympathies for relatives of missing persons and they also declared this act gross human rights violation in province of Balochistan but when they get certain government positions, they turn blind eyes toward this human issue and remain silent and they speak in contradiction to their past statements. Apart from this, they have paid heavy fees to senior lawyers to bring complications in missing person’s case, intentionally to get wearisome the organization VBMP official and now this is discouraging them, too. They do as commanded by the establishment to secure their positions, get incentives and pursue their personal interests.

The constituted committee about human rights at the upper house, Senate, complained that government has not facilitated the body; consequently, no session has been conducted and no developments are made about the assigned task.

In Tutak-Khuzdar, mass graves were discovered and many dead were exhumed and among them two were identified who were abducted by security agencies and their details were registered with VBMP. At the time, the Human Right Commission of Pakistan (HRCP) and the VBMP asked the government for permission to visit mass grave’s site for fact finding but it was not permitted by the relevant politicians in the government.

Most of the found mutilated bodies in Balochistan are of Missing Baloch, but the government has not done anything for preservation of these before the relative could know about their death and to receive the corpse for burial after identification with human dignity. Astonishingly, for these decomposed bodies the government has not made any arrangement to conserve them for a period of a month and to deliver the details to relatives, and then they will receive those. The discussed dead are being handed over to altruistic organization for burial without identifications and in this way human dignity is being tarnished worst. The politicians and government also turned face toward this pitiful issue maliciously.

The role of Courts about case of missing persons:

The courts are also powerless to maintain human rights in Balochistan. The Supreme Court in its judicial inquiry through Inspector General Police Balochistan found the security agencies responsible for abduction of people. It should be remembered, that the police probed the matter in light of registered FIRs by victim families. After thorough investigation police submitted a report in court and in that it was mentioned the state institutions’ official picked people and they also provided footage in that security institutions official were nabbing people and loading them onto their vehicles and afterward mutilated bodies of those arrested people were found. Beside this, at Supreme Court, after judicial inquiries, the state institutions were declared guilty for abduction of people in Balochistan, but the decision of the court couldn’t be materialized by politicians and administration. All judicial process and ground realities imply offences by security institutions; subsequently, after the retirement of former chief justice the missing persons’ case was disposed-off with remarks that long proceedings have taken place about the case.

On April 7, 2016, the VBMP appealed in court for review of the decision about the disposal of missing person’s case that was accepted for hearing. The organization in appeal mentioned that the series of throwing mutilated bodies and abduction of people in Balochistan is continuing with the same pace.

At Supreme Court there is a cell which monitors the human rights practices and deal relevant affairs. Presently, this cell is inactive; hence it is causing great suffering for common citizens that who they should contact for their problems.

Displacement of population:

The state authorities also do not consider people’s interests and theirs wishes. The state of Pakistan has made agreements with the Chinese government about the province of Balochistan. In this regard, the government in its media briefing proclaimed a special security plan, with the formation of security divisions and deployment of a large number of forces in Balochistan. Specifically, in Gwadar and along the under-constructed China-Pakistan Economic Corridor (CPEC) project, security forces are prevalent. Such efforts are indicative of the discontent of the people in Balochistan about this agreement with China.

The long route linking the Chinese city of Kashghar to Balochistan’s coastal city of Gwadar is under construction amid strong dissent about this controversial project. Construction has been assigned to organisations related to the military, while security forces have evacuated many towns and displaced populations in the name of security measures. While many left out of fear, the defiant have been tortured and killed. The worst human rights violations have been committed in Mekuran area of Baluchistan where, in the name of economic benefits, people have been deprived of their historical heritage, land, business, property and belongings stretching back centuries.

Similarly, in the city of Gwadar, local people receive an identity card and cannot move away without the permission of security forces, while outsiders are denied entry. Despite the city’s fisheries-based economy, fishermen are banned from autonomously moving into deep waters aside from within a strict time period. Resistance, as in other places, is met with human rights violations and torture.

Baloch Inter Displaced Persons (IDPs):

In Pakistan, civil society and political parties are not seeking to pressurise the establishment about the provision of justice to Baloch in the case of missing persons and other matters. The international community has not paid sufficient attention to the issue of Baloch Missing Persons which is a human catastrophe. No pressure has been placed on the Pakistani establishment to change their actions. The international community, civil society and the people of Pakistan should take initiatives on an urgent basis to put an end to the severe human crises in Balochistan.

(1) [Image: “Fasten Your Seatbelts” is sound advice on a highway. Unfortunately most donkey carts are not equipped with any! Photo courtesy via www.flickr.com/photos/wenchagonet]
The Manipulation of Fear

It is presidential election season here in the United States. What this means for those who live here is that the media is saturated with poll numbers, politician’s lies and braggadocio, and a type of posturing that reminds many US residents of a schoolboy pissing contest. In that regard, one of this year’s more embarrassing instances occurred during the Republican Party debates where the question of various male candidates’ penis size was actually part of the discussion. Unfortunately, in terms of intellectual depth, the discussion of political positions in that party did not move much beyond this childish discussion of each other’s anatomy.

The performance of the candidates in the Democratic Party’s race for the nomination was certainly more erudite. In addition, it even included one of the more substantial challenges to the dominant order seen in more than a generation. I am referring to the campaign of US Senator Bernie Sanders. Although those on the Left continue to disagree as to whether Sanders is truly a socialist, the fact is that his campaign was based on a direct challenge to the neoliberal capitalist order in the United States. It was this fact that captivated millions of US voters and turned his campaign into a serious challenge to the Party’s current champion of neoliberalism, Hillary Clinton. Sanders will not get the nomination. I am not as cynical as those who continue to believe that Sanders’ role was always one of shepherding left-leaning voters into the Democrats fold. However, the nominating process of primary elections and party caucuses that nominates candidates in the US is so obviously rigged to ensure that the nominee will be the person who best represents the financier-corporate leadership of the party that Sanders might as well have played that role as if he were cast in it.

In the world of neoliberal capitalism, elections have become just one more piece of the endless entertainment cycle. Substance is discarded in favour of outrage and personality; it seems the more unlikeable a candidate’s personality is, the more coverage they get. The best example this US election year is the uber-capitalist television personality Donald Trump, a man with tremendous appeal among certain sets of Americans. This might be inconsequential except for the fact that the politics he preaches relies on the hatred of immigrants and Muslims, misogyny and an aggressive nationalism. Simultaneously, he casts himself as a friend of the working man (which in the US is still defined as the white-skinned working man) despite the fact that his history as a billionaire businessman indicates a chronic lack of understanding their needs and lives. Clinton’s previously mentioned role as the champion of neoliberal capitalism does nothing to make her the friend of working people either. In short, the US election is a contest between two wealthy people fighting to represent other wealthy people and convince the rest of the populace that they somehow have the latter’s best interests at heart.

The lack of substance and depth in the two presumptive nominees’ campaigns has been made more apparent by Bernie Sanders’ insistence on not only making economic issues – from labour to education to income inequality and medical care – the foundation of his campaign. The fact that he has presented them in terms of class and argued for them from an anti-ruling class perspective (or at least what passes for it) is the clinching element. Indeed, if Donald Trump wins in the United States, it will be the fear of immigrants that will put him over the top, too. The irony of a nation of immigrants fearing immigration is lost not only on those who support Trump, but also on most of the mainstream media in the US.

Earlier in 2016, I attended a protest against a Donald Trump rally in Vermont. Although tensions were high among some protesters and some Trump supporters, there was no violence. As I walked around the two-block area near the theatre where Mr. Trump was speaking, I eavesdropped on several arguments between Trump’s supporters and those who opposed him and his ideas. Of all the reasons I heard from Trump supporters as to why they were going to vote for him, there was one almost universal sentiment: That sentiment was simple: Donald Trump would keep them safe. He would do so by fighting ISIS and keeping Muslims out. In short, he would be their protector. The thought that came to mind while I considered this reasoning was how this represented a longing for an authoritarian figure in their lives. In their yearning for the security such a leader represented, they seem willing to forsake their own independence and ignore the more hateful humans and groups they were aligning themselves with. It seems the same mind-set also determined the Brexit vote in Britain. The manipulation of fear is a dangerous tool.
THE term ‘honour killing’ is an oxymoron. There is no honour in killing, certainly none in the cold blooded murder of an unarmed and defenceless human being.

The violation of human rights in general, and torture in particular, is not just what rulers do to people inside a police station, a military barrack or some other government installation. Human rights violations, including torture, can be done by people too, as individuals, communities and organisations. In Sri Lanka, the first victim of the Second JVP Insurgency ‘was not a government politician or a military man, but a radical student leader, who was abducted and tortured to death by other students like him. In many parts of Asia, torture in the private, familial sphere is as much of a threat as torture by governments and their agents.

This month Qandeel Baloch, a Pakistani model and social media star, a young woman from a working class background who risked her life to expose the hypocrisy and oppression embedded in Pakistani society, was murdered in the house she bought with her own earnings for her family. Her killer was her own brother, a drug addict who subsisted on her earnings (she was the family’s sole breadwinner). Muhammad Waseem drugged and strangled his sister, to save the honour of her family, as he told the media afterwards.

Honour killings are a plague affecting Pakistan, claiming about a thousand victims annually, almost all of them women. Yet the country has been unable to pass a law unequivocally criminalising this horrendous habit from its tribal past. Pressure from religious extremists, the lack of political will on the part of the ruling classes and societal tolerance have all played a role in keeping this brutally archaic practice alive and thriving in the second decade of the twenty first century.

The struggle to promote basic human rights in Asia must also encompass battles against acts of cruel and unusual punishments inflicted on children and women behind the closed doors of family homes. The perpetrators of these acts hide behind the ramparts of religion and tradition, of ancient values and immutable moral dictums. They deny the universality of any rights or obligations, and decry attempts to introduce such protections as external/imperialist intervention. They wave the flag of progressivism to conceal attitudes, practices and laws which are retrogressive and reactionary.

The struggle to end torture in Asia cannot be successful unless the attempts to excise torture in the private sphere by using history and religion are confronted and defeated. The habit of using physical, at times lethal, violence against those who are seen as transgressors of political, economic, socio-cultural or religious norms is deeply embedded in the popular psyche throughout many parts of Asia. This habit is a major impediment to any serious effort to eradicate torture in Asia, be it in its police stations and military installations or her homes.

FEAR FACTOR

The spectacle of a supposedly liberal democratic country embracing torture is being enacted in Cleveland, USA, at the national convention of the Republican Party. Though many Republican grandees were uncomfortable with presidential candidate Donald Trump’s open advocacy of torture as a way to prevent acts of terror on American soil, the recent spate of IS and IS-inspired attacks in the US and Europe has made it near impossible for those dissenting views to be aired. Trump has artfully used the fear factor to silence whatever legal and humane qualms are extant in the base of the Republican Party. He promises to make America safe again, and insists that torturing terrorist suspects is essential to usher in that promised safety.

Those who justify the use of torture in the private/familial sphere in parts of Asia use an identical argument. They also talk about things endangered; values, religions, cultures. They also promise to bring about safety, by using extreme measures against those who violate long established beliefs and taboos. The advocates of official torture in the US and the defenders of personal/familial torture in Asia appeal to deep seated fears in their countries and communities, fears about threats from the ‘Other’ and resultant physical, cultural or religious oblivion.

For almost the entirety of recorded human history, from East to West, torture was an accepted practice in statecraft. Its outlawing began with the French Revolution. The arguments used against torture, arguments about individual and personal rights, derive in the main from the values popularised by the Enlightenment. The battle against official and personal/familial torture must go hand in hand; it must be a universal one, waged in coordination, from the Orient to the Occident.

It is as a result of such a globalised effort that change can come. And change does come even though it arrives too late for many. In Pakistan honour killers escape justice by using a legal loophole which enables the family of the victim to forgive the murderer. In response to the national and global outrage against the murder of Qandeel Baloch, the Pakistani government has announced that her murderer will not be permitted to use that loophole to escape the legal consequences of his act.

That is not enough, but it is a beginning.
Turkey and Spectre of Torture

With the failed military coup in Turkey against the Erdogan regime, the state is facing the gravest human rights crisis in decades. Infamously bad in terms of treating journalists, suspicious of various perspectives of history and ever hostage to flashpoints of authoritarianism, the current Republic is now undergoing its next grave challenge.

Within days of the coup’s launch on July 15, the government in Ankara engaged in an aggressive campaign of sackings, expulsions, mass arrests and detentions. Newspapers deemed sympathetic to the US-based cleric Fethullah Gulen, a figure suspected of having a hand in the challenge to Erdogan, were shut down. Six hundred schools were closed.

During the subsequent declaration of emergency, Ankara announced that it would suspend Turkey’s involvement with the European Convention on Human Rights and the European Court of Human Rights. This might stand to reason, given that Turkey has received more judgments against it from the ECHR than any other state in Europe. It doesn’t want enemies able to avail themselves of such legal avenues.

States of emergency tend to be inimical to human rights, sometimes in the most acute fashion. This point was well acknowledged by the drafters of the Convention, who inserted Article 15 to combat the overstretch security states invariably bring. The Convention makes it clear that the derogation itself, while permitted in certain circumstances, cannot apply to various recognised norms such as the right to life, extrajudicial assessment and importantly, the ban on torture and degrading treatment.

As a manifestation of state-directed power, torture’s only justification is a self-based one, ever circular in its purposes. The aftermath of coups in Turkey has historically been littered with instances of torture, often an outcome of frustrated power trippers and fanatics keen to defend the higher ideals of the Kemalist state. A thesis has been advanced that the guiding Turkification programme of the state has lent its purposes. The aftermath of coups in Turkey has become the subject of legal action against the surviving coup leaders twenty years later. The statistical record also shows that 171 died under the gruesome torture conditions they faced. As Isa Tektin recounted, after being jailed at the notorious Diyarbakir prison, soldiers present performed acts of torture “beyond any person’s imagination.”

Correspondents such as Deniz Yuzel are already concerned that instances of torture might have been used against the false account of coup plotters. He cites the case of a Turkish general who emerged bloodied and battered after confessing that he had been a member of the Gulenist group. “[The question arises to] as to the circumstances under which this [confession] may have come about.”

Similar concerns have emanated from the Council of Europe’s Commissioner for Human Rights, Nils Muižnieks. “I am alarmed by images showing torture and ill-treatment being inflicted on suspected perpetrators, as well as signs of torture on persons taken into custody, which were published in various media” (Statement, Jul 20).

The curt response from the Brussels based ambassador Erdogan Icspan took issue with those “prejudicial remarks based on unconfirmed assumptions and allegations. In your words, you are ‘unable to determine the veracity of such allegations’.”

For those more familiar with recent Turkish history, the idea of an emergency rough on law and those claiming protection under it was far from novel.

Verifiable or not, traditional justifications were also cited: that Turkey had survived a vicious challenge from forces linked to the Fethullah Gulen Terrorist Organisation “to overthrow the democratically elected government in Turkey.” The Turkish Grand National Assembly had been attacked by heavy weapons; the Turkish people had been fired upon.

For those more familiar with recent Turkish history, the idea of an emergency rough on law and those claiming protection under it was far from novel. Turkey has been living in what effectively amounts to such a state for years, making any assertion to the contrary feeble.

As Die Welt noted, “the state of emergency is going to have to work hard to get noticed at all.” The danger here is whether the environment has become all too rich for officials to do their worst in achieving what they might consider best. The precedents are all too clear: torture is both system and pattern.

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

1 Medical Foundation for Care of Victims of Torture, Staying Alive by Accident: Torture Survivors from Turkey in the UK (London: Medical Foundation, 1999), 23.
3 http://mufah.org/i-only-remember-fear-the-legacy-of-the-1980-coup-in-turkey/#V5GmVh96tU
I was beaten black and blue and administered electric shocks in my private parts till they bled, they would also insert chilli powder in them. I was forced to stand for days with my hands tied to the pole. The police officers used to hit the soles of my feet with bamboo sticks. I don’t know if I should consider myself lucky to be alive to tell the tale of torture for there is not a single night since the past three years that I have slept peacefully."

This is not the tale of a Gitmo inmate; rather it is the account of an innocent Pakistani who suffered for no fault of his own. This is the story of Fiaz, 27, son of an industrial worker and daily wage earner who makes his living washing cars at a service station in Hattar Industrial Estate, Hazara Khyber Pakhtun Khuwa (KPK) province. On 12 August, 2013 he was returning home from work when two police riders intercepted him and asked for his identification. For not having his ID card with him at the time he became suspet in the eyes of the police. They offered to extend him a favour in exchange for greasing their beneficiaries using the police as proxy forces to subdue their opponents. The purpose of torture is not to get information. It is to inculcate fear. The lack of protection for an individual from torture and abuse of power by police and other law enforcement agencies is a matter of deep concern in a free society. In a state where the death of the sister of founder of the nation, Qaid e Azam, was allegedly caused by torture, one can hardly expect the common man to escape such a brutal fate.

Use of torture as an investigative tool is the legacy of British Raj when the police force was entrusted to oppress the populace and maintain the writ of the state. Despite the advancement in medical and legal jurisprudence in torture worldwide, criminal forensics in Pakistan remain rudimentary at best. Police routinely employ torture as a whole and sole means of investigation; instead of beginning by investigating the circumstances and evidence, the police generally start their investigation by arresting and extorting confessions from innocent bystanders. The police used third degree torture on Fiaz; beating him with bamboo sticks, kicking and slapping him, beating him on the soles of his feet so he was unable to walk, using abusive language towards him and depriving him of food and sleep. Though Fiaz was later released the physical and psychological scars are permanently etched on his soul.

Torture is not construed as a crime of the state in Pakistan. Rather, it is an accepted and expected norm in the investigative process of the ever-degenerating criminal justice system. That is why International Day in Support of Victims of Torture – commemorated throughout the world in a condemnation of atrocities in the name of maintaining law and order – garners little in the way of popular interest and support.

The significance of the day is lost in a country where the majority of the common people do not associate torture with being illegal or unconstitutional. The legislators themselves have been dragging their feet in enacting anti-torture laws, citing a deteriorating law and order situation as if torture will have any impact on the terrorism and terrorist factions in Pakistan.

Police custody is legally custody of the state and is the most dangerous situation for an individual to be in. Deprived of constitutional rights, the accused is at the mercy of their captors. Political interests and personal vendettas may be gratified by deep pocketed beneficiaries using the police as proxy forces to subdue their opponents. The purpose of torture is not to get information. It is to inculcate fear. The lack of protection for an individual from torture and abuse of power by police and other law enforcement agencies is a matter of deep concern in a free society. In a state where the death of the sister of founder of the nation, Qaid e Azam, was allegedly caused by torture, one can hardly expect the common man to escape such a brutal fate.

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EVIL, THE BANAL NIHILISM OF CRAVEN VAIN

How I survived childhood trauma of rape, sodomy, murder attempts and tortures and then adulthood trauma of being branded insane and locked-up to hush it all up, to remain unbroken and un-victimized.

Note from editor: this is a first-person account from a torture survivor which some readers may find disturbing. It has been edited for length and clarity with passages removed for publication. For the full text please consult our website: www.torturemag.org

by ARJUN MISHRA*

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urviving the trauma of terror was easy for me now that I think about it. Not that it was easy in the sense that I did suffer horrendously, the ceaseless horror of my life. But each experience of the horror after being unleashed on me would have to immediately make space for newer experiences of horror. The torrents of terror were so very rapid and so very intense and so very relentless that I just internalised the experience as the way it was to be - a very part of my life. After all I have been tortured and sought to be murdered from the time I can remember of. As I grew older the tortures and murder attempts were so very de rigueur of my life that it actually almost became the inseparable and so very nihilistic compared to their different avatar that these people were projecting otherwise, when not assailing me - but they always afraid of exposure, always fearful of being ousted, so very pathetic. Evil is but banal nihilism of these craven vain.

I find it hard to call the person who gave birth to me “mother”. My “mother” and her older child, my “brother”, were the tormentors of my life. In all somber realisation, these people sought to murder me and tortured me relentlessly from the time I can remember of myself till arguably today - as they always preferred to keep this “new trauma” late into adulthood, flung open as others spoke out for me, the enormity of abuse I had endured might just be exposed – despite my lack of comprehension. I was framed as insane, forcibly locked-up in a psychiatric ward of a private clinic in collusion with a doctor, who himself feared being exposed of him forcing his wife to undergo four sex-selective abortions to have a son. Soon released as others spoke out for me, the enormity of this “new trauma” late into adulthood, flung open the memory vault and I began writing what I could remember, first as snippets of memories, and then clearer remembrances of events, and then still later the context behind those events.

As I started writing my diary of these abuses, what struck me most powerfully was that I was never a victim; even while I endured one of the most unimaginably barbaric tortures and near constant murder attempts including violent rape and sodomy. Perhaps because I was abused from my early formative years it became normalised within my existence, and opposite to its intended effects - I was strengthened in time, like adding an invisible cloak to my body that could withstand any amount of torture and abuse.

Overall two things kept me going, my innate thirst for writing and then quest for writing.

While I was sought to be blinded, by being pricked by sharp piece of stick on each of my eyeball in succession; I couldn’t quite be - making me even more of a keen reader, albeit at first with struggle before and now with more ease. While I was sought to be crippled on my hands, by forcing me to switch hand to write, by beating my hand and twisting my fingers, attempting to bite the fingers off my left hand, twisting the middle finger I started using that instead of my much mutilated index finger, and then my thumb, and then by having relived torture while retracing the events, itself a harrowing experience, albeit very cathartic at the end - and most importantly so very empowering - I can now remember and confront what happened.

I am still in my journey to discover what motivated the vilest fiendish and remorseless tortures heaped on me from my earliest memory, when I was thrown into that warm pool of water. But much more importantly for me, my life will be vindicated through taking up the challenge of the intellectual study of evil, this impulse itself borne out of my own close and personal experiences.

*This name has been changed.
ON the weekend of tenth anniversary of the attacks of September 11, 2001, a panel of four Guantanamo defence lawyers spoke to the audience before the premiere performance of my play “Another Life” which is a surreal retelling of the U.S. torture programme. This was the opening event of weekend long Art of Justice: 9/11 Performance Project at John Jay College of Criminal Justice in New York City. The lawyers, Martha Rayner, Fordham University, Jonathan Hafetz and Alex Abdo, Seton Hall, and Gitanajali Guittierrez from the Center for Constitutional Rights, had each won major legal battles in defence of their clients but they looked tired and dejected. “The justice system is broken,” Rayner said. One by one the others, grim faced, agreed.

A relatively new President Obama had already announced that it was time to “look forward, not back” and that no one involved in the illegal and immoral torture and rendition programmes was to be prosecuted. As writer Mark Danner would later explain to another theatre audience, “Torture is now a policy choice.” And, although, the new President had vowed to close Guantanamo, that prison remained open.

Six years later and in the midst of the most bizarre US presidential election campaign the nation has ever witnessed, we might say it is not only the justice system that has been broken by the US “war on terror,” but that the soul of the nation has been largely destroyed. Republican candidates vie with each other vowing to bring even more brutal torture back; they propose carpet bombing ISIL, banning refugees and other extreme responses to the perceived “threat”. The leading Democratic candidate calls her 2002 vote authorizing the illegal invasion of Iraq a mere “mistake”; describes the overthrow and brutal extra-judicial murder of Qaddafi she championed resulting in Libya’s failed state in the most glib terms possible, “we came, we saw, he died,” holds up the murder of Osama bin Laden as a supreme accomplishment, and is silent on the coup in Honduras she supported which has made that nation one of the most violent on the American continent. While some recoil from the blatant xenophobia and war mongering of the Republicans, few in the United States seem bothered by Hilary Clinton’s record as Senator or as Secretary of State for four years in the Obama Administration. Whoever wins the coming election we are virtually assured that the United States will continue to violate the laws of war and international human rights law with impunity — a grim prospect for the world.

Bernie Sanders, who got my vote in the NYC primary he lost, was against the invasion of Iraq though he seems supportive of extrajudicial assassinations by drones. Despite being unlikely to initiate it himself, Sanders is the sole candidate who might be responsive to a populist voice calling for accountability for the creators of the US torture programme, including the two psychologists, Bruce Jessen and James Mitchel, who sold the torture “protocol” to the CIA, oversaw

Rebecca Gordon seeks to redeem the soul of America in American Nuremberg: The US Officials Who Should Stand Trial for Post-9/11 War Crimes

by KAREN MALPEDE
some of the worst torture and made 81 million dollars violating the Hippocratic Oath. Yet first there need to be a populist outcry.

In her previous book, **Mainstreaming Torture**, Rebecca Gordon forcefully made the point about American’s growing cowardice — our national willingness to commit torture, and under President Obama to ignore the crimes of the past while using drones to kill from the sky, both suspected “militants” and many, many civilians, even bombarding hospitals and wedding parties — in order to keep ourselves “safe”. Few among us ask if we are “safer” now that much of the world reviles these policies or that our Iraq invasion and torture of detainees in Abu Ghraib prison has actually spawned the previously non-existent ISIL.

We should and must create a citizen’s tribunal, modelled on the Nuremberg trial but also on the Russell Tribunal, named for Bertrand Russell, held in Europe during the Vietnam War to adjudicate in the court of public opinion the crimes the US committed. Otherwise, Gordon argues, injustice shall permanently triumph and crimes will continue to be committed in the name of national security.

A people’s tribunal, unable actually to sentence anyone, or even to call them into court, is nevertheless important for the survivors of our torture and our drone attacks. First and foremost on the road to healing and forgiveness from a heinous crime there must come acknowledgment of wrong-doing and a public apology to reason, to think and also truly to act in our defence and human comfort, to those who were from in dark and festering places outside the reach of legal acknowledgment of wrong-doing and a public apology to international law, an apology must be offered and to those who bear the scars of years of imprisonment they have, indeed, committed criminal acts. According to a New America Foundation report Gordon quotes, in Pakistan alone (a nation with which we are not at war), “The Obama administration has ordered 351 strikes, killing between 1,864 and 3,066 civilians and between 1,981 and 2,634 ‘militants.’” A citizen’s tribunal could apologise to surviving family members at the very least.

Sometimes while teaching my theatre and justice classes, I ask my students to imagine what might have happened had Osama bin Laden been turned over by the Taliban and put on trial at the International Criminal Court for his crimes against humanity on 9/11. The Taliban did indeed offer this in order to avoid the assault on Afghanistan. After all, the Greek tragic trilogy Aeschylus’ *Oresteia* celebrates creation of a court of law precisely as the only means to end the cycle of revenge. But my students, many of whom are veterans, will enter the armed forces or find work in the domestic criminal justice systems, are like all Americans. They have been so inculcated to believe in our mortal danger from a spectre of unknown persons they have learned to call “the terrorists” that they have difficulty even comprehending what I’m asking. A trial of bin Laden in the International Criminal Court, to which the US does not belong so that our own international crimes cannot be held accountable there, would have ruined the Bush administration’s justification for the invasion of Afghanistan and would have ended any chance to use the attacks of 9/11 to drum up, often by torture, the lies that led to and were intended to give credence to the invasion of Iraq.

One of the most chilling parts of Gordon’s carefully legally argued book is the trip she takes us on through the history of the heinous torture of “high value” detainees like Abu Zubaydah (no charges were ever brought against him and he languishes indefinitely in Guantanamo, unable to stand trial because “evidence” elicited by torture is not admissible in court). These “high value” “folks,” as President Obama would later call them were brutalised in order to force them to state the two lies supporting the Iraq war: that Saddam Hussein had weapons of mass destruction and that Hussein and bin Laden were in cahoots, with Hussein training Al Qaeda operatives. As neither “justification” was true the detained victims of American foreign policy, many of whom had been sold for bounty to the Americans, had no real information to offer up. But as the invasion floundered, not liberating Iraq, but destroying it, the will to support the “reasons” behind the military assault grew more urgent, with torture to “get the truth” in the form of the confession of the desired lies from hapless detainees was “ramped up.”

Thus does illegality beget illegality and this is, of course, Gordon’s point. Without some form of justice, even a people’s tribunal that addresses crimes our government will not, such crimes will multiply. There has been a revolving door between US prisons and torture sites abroad, a personnel cycle between domestic and international detention centres for learning and sharing torture methods. American citizens meant to be protected by torture abroad if they are arrested domestically often end up becoming its victims. And the people of the United States devoid of any moral compass simply become quiescent and pliant consumers of political cant. We lose our abilities by calling to account the presidents and their men and women who violate basic tenets of rule by law. She has written an extraordinarily brave and necessary book. Would that her call be heeded.

Karen Malpede is a play writer and visit her website at www.theaterthreecollaborative.org.


[921x370]Oresteia celebrates creation not at war but in peace. By the circle of human non-violence we can still hear. She asks us to stand and defend justice by individuals in our government.

Only now from the Black Lives Matter movement we have begun to hear sustained public outrage over a domestic criminal justice system run amuck, that kills and often tortures with impunity. Gordon suggests that we might build on this growing awareness of domestic abuse to create a people’s movement against extrajudicial murder and torture leading to the creation of a people’s tribunal to address war crimes and crimes against human rights committed by individuals in our government.

Gordon has issued a call to our better natures, if only we can still hear. She asks us to stand and defend justice by calling to account the presidents and their men and women who violate basic tenets of rule by law. She has written an extraordinarily brave and necessary book. Would that her call be heeded.
We are familiar with the concept of Natural Disasters. Unfortunately, the problems associated with a system of justice becoming dysfunctional to human communities have yet to be recognised as a similar or worse catastrophe than that of a ‘Natural Disaster’.

The content of the disaster caused by a Dysfunctional System of Justice is as follows:

1. Organised way of life becomes impossible;
2. The maintenance of a system of values becomes impossible;
3. The preservation of the rule of law becomes practically impossible;
4. With the consequential effects that:
   • It becomes impossible to prevent widespread corruption. This in itself becomes the primary source of almost all social problems;
   • The use of torture and ill treatment becomes widespread and such use of torture and ill treatment begins to be used as an alternative form of justice: thus, the state relies on illegal use of coercive methods. In situations of crisis, this leads to the use of extrajudicial killings of various kinds including the use of enforce disappearances. As a result, a culture of fear and impunity become widespread;
   • The state also permits powerful groups to use violence as a means of suppressing those that they want to suppress. The suppressing of minorities by violence becomes normal. One classic example of this is the suppression of the Dalits by the upper castes in India;
   • Good Governance becomes impossible for it requires accountability and transparency, and it is not possible to have these under an existing dysfunctional system of justice;
   • Democratic forms of governance become impossible;
   • Prevention of violence becomes impossible;
   • Dealing with unequal treatment becomes difficult;
   • It becomes impossible to solve any of the social evils.

DEFINING A SOCIAL DISASTER

One definition of a natural disaster is as follows:

“The United Nations defines a disaster as a serious disruption of the functioning of a community or a society. Disasters involve widespread human, material, economic or environmental impacts, which exceed the ability of the affected community or society to cope using its own resources.”

A dysfunctional justice system possesses all these aforementioned characteristics, causing widespread human, material, economic or environmental impacts. The very existence of a dysfunctional justice system also removes away the ability of the affected communities to cope with such impacts.

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1 See the submission made on behalf of Asian Human Rights Commission by Basil Fernando to The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

2 http://www.wcpt.org/disaster-management/what-is-disaster-management
community or society to cope using its own resources. A closer study of any country which suffers from a dysfunctional justice system illustrates the depth of the widespread human, material, economic or environmental impacts.

As for the inability of such a society to overcome these problems on its own resources and efforts, this is due to many factors. Due to the very dysfunction of the justice system there results a deterioration of the intellect on understanding legal justice issues and the manner of administration of justice within a framework of a value system based on equality and fairness. In such a situation the very quality of human life and human relationships degenerates, with the dysfunctional justice system dehumanising the society itself.

Further, the absence of protection deprives a society of the means for the settlement of disputes in a fair manner, creating a favourable environment for the mighty and disadvantage for the weak. We find a framework of a value system based on equality and fairness loses its validity. A natural consequence of this is the existence of a system of rights common to all also lose any possibility of existing practically. In turn, this produces potential for violence. Lacking a functional legal system, the very possibility of controlling violence by just means ceases to exist. In such an environment, the deepening of distances between the powerful and the powerless gives rise to permanent forms of discrimination and separation of peoples. Neglect of natural resources management is an unavoidable consequence, paving the way for every kind of man-made natural disaster. This is indicative of the kinds of disasters a dysfunctional justice system can generate.

DEFINING A DYSFUNCTIONAL JUSTICE SYSTEM

The three basic components of a modern justice system are policing, prosecution and judiciary. When these basic components suffer from extreme defects such that these institutions can no longer function in a manner to protect the basic values system upon which they were created, and the interactions among the three components fail to coordinate to such an extent that the purposes of justice cannot be served, then such a system could be called dysfunctional.

Generic definitions of the word dysfunctional are as follows:

1. not performing normally, as an organ or structure of the body; malfunctioning
2. Having a malfunctioning part or element
3. Behaving or acting outside social norms

A dysfunctional justice system would have the same characteristics. Here a distinction must be made between defects which may occur in one or more institutions of the justice system which are curable by ordinary and normal means and extraordinary issues which cannot be cured except by way of fundamental institutional reform and redesign. It is quite normal for reality to not quite comply with the ideal. It is dysfunctional when actual and expected results are mutually contradictory; when policing, prosecution and judicial systems ultimately perform in a manner contrary to what is expected and produce results opposite than expected.

A few illustrations are in order:

- A rape victim goes to a police station with the view to make a complaint about what happened to her, in the hope that the police will record her statement and begin an inquiry to arrest and ultimately prosecute the offender. However, at the police station the inquiring officer beats her up and insists that she should not disclose the name of the actual culprit but instead name another. Here the police officer is attempting to save the transgressor and thus deny justice to the victim.
- A Dalit woman makes a complaint about a rape. The police investigate and finally an indictment is filed against a culprit charging him of rape. There are enormous delays in the courts and the culprit remains at large on bail. The culprit then abducts the victim, rapes her again and forces her to drink acid. The victim dies as a result of her injuries.
- A Dalit boy marries a girl belonging to an upper caste. After marriage the girl is taken away by her parents, within few days of which the boy is abducted by a gang and buried. The police file a report that the boy committed suicide. However, due to local and international pressure the body is exhumed with the autopsy revealing injuries indicating that he was murdered.
- The police are under pressure to solve some crimes yet they lack adequate training in modern investigation methods, as well as adequate human and material resources. As a result, they fail to solve many of these crimes. This brings mounting public criticism. Higher ranking police officers exert pressures on lower rankers to produce results and outcomes, no matter how they are achieved.

- In a country where lawyers' representation for clients was very restricted for a long time some space is created for such representations. A group of human rights minded lawyers take their task seriously and begin to appear for their clients. The result is that they are all arrested, with some detained for long periods before being charged in courts and made to confess to committing crimes against the state, resulting in various punitive sentences.
- A woman marries a man of her choice without the approval of her family. Knowing this, they go into hiding. After several months, the family files a case against the couple with the court issuing summonses for their appearance. By this time, the woman is pregnant. Upon arrival the couple are dragged from the court and the woman dies of her injuries. In this case, the subterfuge of the court summons was used in order to bring the couple out of hiding.

5 Asian Legal Resource Center and Asian Human Rights Commission have over the years published extensively on the link between violence and dysfunctional legal systems in many of the Asian countries, such as Bangladesh, Pakistan, Sri Lanka, Philippines Burma, Nepal and Indonesia. These can be found in the regular publications of ALRC title Article 2 which has published 45 issues since the inception of the publication in 2002. These issues constitute a rich resource for the study of various aspects of the problem of the dysfunctional justice systems.
6 http://www.dictionary.com/browse/dysfunctional
more pressure on the investigating police who, knowing they are unable to identify the actual culprits, begin arresting innocent persons and induce them to confess guilt through violence. Gradually, this becomes a normalised mode of policing.10

• The police investigation of a triple murder fails to turn up clues as to the identity of the culprits. The police randomly arrest persons and beat them up in an attempt to find evidence. One innocent man who was arrested suffers kidney failure and files a complaint against the police. Following investigation, the attorney general files an indictment against the police officers involved. Before the victim can give evidence in court he is murdered by the police.

• Large scale disappearances take place during an internal conflict. The police, prosecution and para-military groups all engage in the practice. Public pressure from local and internal sources demands inquiries into the missing persons. The government is aware of the involvement of their armed forces and police and so refuse to investigate. People lose faith in the system of justice and reconciliation becomes nearly impossible.

• A government declares arrangements for a referendum on a new constitution in a country where the military has taken power. A group of lawyers decide to campaign for provisions for democratic reforms in the constitution. While travelling they are arrested, with their published materials confiscated by the police. Despite not finding any illegal material, the police have been given instructions to prosecute these lawyers and so file charges under completely irrelevant provisions of the constitution.

• A woman reading material on the internet about the royal family in her country leaves a comment with the single word, “yes”. She is arrested and charged under Lese Majeste, which envisages very serious punishments11.

• A Supreme Court presided over by the Chief Justice makes some judgements perceived as adverse to the government in power. The government threatens to impeach the Chief Justice and employs electronic and other media to publicly humiliate her. Despite many demands to resign, she does not. An impeachment is filed and the investigation against the Chief Justice is carried out by a group of politicians close to the president. Denied the right to properly defend herself, the Chief Justice is impeached and removed from her position.

• A rape victim goes to court seeking relief for the crimes committed against her. The court proceedings take 17 years. The court order holds the accused guilty. However the girl was 14 when she was raped, and is now 31. This meant she had to suffer 17 years of humiliation, embarrassment, insults and social stigma before the court gave her justice. In some countries this process can take even longer and often there are no witness protection laws or practices. Obtaining compensation for harm can take place only through civil litigations which takes even longer and requires even greater expenses.

• In developing countries there is no effective legal aid scheme. The result is that the poor are unable to pursue justice.

• In many countries allegations of corruption against the police, prosecution and judiciary are common, resulting in a loss of faith in the judicial system.

• Under a failed judicial system, the powerful resort to criminal elements to achieve their ends, often employing violence. Thus, instead of the resort to law we find the resort to violence developing.

• After many decades under a dysfunctional justice system, policemen, judges, lawyers and prosecutors lose the memory of law and legal process. New forms of settlements and negotiations contrary to legal principles may replace justice with a fundamental deform of the justice system taking place.

• In one country with a loss of faith in the judicial system, resulting from failure, corruption and delays, the president has authorised the extrajudicial killings of drug dealers and other criminals. Reports indicate that about 7000 people have been killed.

• In a country where the government has failed to take control of the law and order situation, violence has spread and vast number of arbitrary killing have taken place. In response, the government has called upon the people of the capital to bear arms and deal with the situation themselves.

HOW A DYSFUNCTIONAL SYSTEM OF JUSTICE CHALLENGES THE HUMAN RIGHTS MOVEMENT

Since 1948 with the Universal Declaration of the Human Rights, the United Nations has attempted to develop international law for the protection and promotion of human rights. The International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights were adopted by the international committee to this end. These UN mechanisms are distinct from domestic mechanisms which entail methods to grant redress at a national level for human rights violations.

The main approach for the human rights community was therefore to help victims of human rights abuses to find redress. To this end, human rights organisations engage in the education of people in general, and victims in particular. As a newer addition, national institutions also hold the duty of helping victims seek redress.

Yet, particularly in developing countries, a common problem has emerged where the dysfunctional nature of justice institutions frustrates efforts to obtain redress for rights violations.

IDENTIFICATION OF THE PROBLEM

The universal system promoted by the United Nations was based on the assumption that in all countries there were justice systems capable of providing redress to human rights violations. However, this simply is not true.

The developed countries were ahead with at least three to four hundred years of development of their political institutions and justice institutions. It is these institutions that provide redress to the people in their countries. When the normative framework is improved in these developed countries, they have a system of justice that is capable of practically implementing the requirements of the normative framework. However, the concrete situation of developing countries is different. Justice systems have serious defects which prevent the granting of redress.

MEETING THE CHALLENGE

Such a challenge needs to be met. It is in this context that the Asian Human Rights Commission has articulated its mission to support the justice system reform that is imperative if the rights articulated in the UN Conventions are to be practically available to citizens of developing countries.

10 Narrative of Justice in Sri Lanka, Basil Fernando, Asian Legal Resource Centre. Internet link: http://www.humanrights-asia/resources/books/ALRC-PUB-061-2013/1searchterm=Narrative%20of%20Justice%20through%20torture%20%20VICTIMS

The AHRC’s proposal is that in development countries, the primary aim of the human rights community should be to work towards reforming the institutions of justice. This basic idea has been illustrated and articulated further in the AHRC literature.

To achieve this goal substantial assistance is required from developed countries to develop jurisprudence. The UN human rights mechanisms such as UN Human Rights Council, mandate holders and treaty bodies should focus on justice institutional reform in developing countries so people can practically enjoy human rights.

Human rights communities in developing countries face great challenges in the nature of their justice systems and have had to learn advocacy techniques to build mass pressure on governments and induce the reform of justice systems.

The mission statement of the Asian Human Rights Commission expresses the organisation’s approach to these challenges.

**OUR MISSION**

The Asian Human Rights Commission / Asian Legal Resource Centre works towards the radical rethinking and fundamental redesigning of justice institutions in Asia, in order to render the transformed institutions capable of providing relief and redress to victims of human rights violations, as expected in Common Article 2 of the International Conventions, making them effective instruments of human rights protection and guarantors of the rule of law and democracy.

In 1984, the Founders of AHRC / ALRC envisioned the upholding of broad aspects of human rights, which they expressed as objectives in abstract terms. In 1984, the Founders of AHRC / ALRC envisioned the upholding of broad aspects of human rights, which they expressed as objectives in abstract terms.

To achieve the overall goal, of radical rethinking and fundamental redesigning of justice institutions in Asia, the AHRC / ALRC is engaged in the following work:

- Identifying the defects of Asian justice institutions, i.e. police, prosecution, and judiciary, and making recommendations and suggestions for changes, in terms of international human rights norms and standards, for legal and institutional reforms;
- Building and equipping a large advocacy group in each country, to enable consistent work to achieve the desired changes; assisting these groups to articulate their demands for change clearly; and spreading their ideas widely;
- Creating international awareness and support for justice institution changes in Asia;
- Engaging in advocacy in concrete cases of human rights violations, and protecting human rights defenders;
- Assembling a people’s narrative of human rights and, through this, promoting knowledge about human rights, particularly from the point of view of equality before law and fair trial;
- Intervening in cases of torture, and all forms of custodial abuses and state excesses, such as extrajudicial executions and disappearances;
- Paying special attention to vulnerable groups, such as women, children, minorities, and indigenous people, so as to ensure their protection;
- Using the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to highlight fundamental defects of justice institutions;
- Building a wide network of partnerships and contacts, and assisting civil society and victims of human rights abuses, in order to achieve the aforementioned work in light of the overall goal.

**WINNING INTERNATIONAL SUPPORT**

In order to win the support for the perspective articulated above AHRC has, together with its Danish partner DIGNITY, developed a concept for a think tank. This jointly agreed think tank concept is as follows:

**Think Tank for the Prevention of Torture through the Promotion of the Rule of Law**

**PROBLEM**

There is a common feeling among those who have been playing an active role in working towards the improvement of protection and promotion of human rights in developing countries, that at the implementation level, the global human rights project faces serious obstacles to progress.

The core issue that needs to be addressed from a human rights point of view is the virtual futility of arriving at agreements to protect and promote human rights and reform programmes fail or succeed in protecting human rights and ending torture.

**OVERALL OBJECTIVE OF THE THINK TANK**

To transform global and national discourse, policies, and practices, on criminal justice in order to end torture.

**Specific Objectives**

The specific objectives of the Think Tank are:

- To establish a platform for discussion, based on research, with a view to gaining a more comprehensive and nuanced understanding of how and why criminal justice processes and reform programmes fail or succeed in protecting human rights and ending torture.
- To use this research to influence the way in which international development and human rights actors understand why national criminal justice processes succeed or fail to protect human rights and end torture, and to transform the ways in which these actors develop approaches, policies, and programmes for criminal justice reform.
- To influence national discourses and practices, through research and analysis, on challenges and obstacles to effective, accountable, and inclusive criminal justice processes.

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- To influence national discourses and practices, through research and analysis, on challenges and obstacles to effective, accountable, and inclusive criminal justice processes.
The Asian Human Rights Commission, through many years of work, has developed what can be called a new vision for improvement of the protection of human rights in developing countries. This paper has attempted to illustrate our vision, which we place before all the governments of developing countries.

We place this vision before the governments of developed countries and urge them to consider this in the development of policies and practices aimed at assisting the protection of human rights in developing countries.

We place this vision before international development agencies and argue that without incorporating justice reform as an integral part of their philosophy, the sustainable development they intend will not be achieved.

We place this vision before the United Nations, particularly the human rights agencies of the United Nations such as the UN High Commissioner’s Office, United Nations Human Rights Council mandate holders and all treaty bodies. We advocate policy expansion, concept development and the progress of international law to ensure practical resolution of dysfunctional justice systems.

We place this vision before the European Union, which is engaged in many rights promotion efforts worldwide. We beseech the EU authorities to critically evaluate the failures of past contributions and interventions and to examine the centrality of dysfunctional justice systems in such failures.

Above all, we place this vision before the human rights community. If the problem of dysfunctional justice systems becomes part of the global conversation then soon after many initiatives will develop which will further the pursuit of justice in the world.

We believe that the work of the Asian Human Rights Commission has adequate literature for the pursuit of this goal. We hope that by the involvement of many a much larger body of literature will go on to generate and enlighten opinion on human rights and justice issues in the developing world.

Basil Fernando is the director for policies and programmes both Asian Human Rights Commission and Asian Legal Resource Centre.

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**BOOK RACK**

**THE GREAT FEAR: STALIN’S TERROR OF THE 1930S**

James Harris

- The first major English language monograph on Stalin’s Terror for nearly 20 years
- Presents a new and original explanation of the Stalin’s Terror as a destructive force in terms of human life, and in terms of the State which provoked the Terror
- Uncovers new evidence from the Russian archives
- Takes an exciting approach that will appeal to academics and general readers of modern Russian history

**FACTS**

Published: 25 February 2016
224 Pages
216x135mm
ISBN: 9780199695768

**WHAT IS A HUMAN?: WHAT THE ANSWERS MEAN FOR HUMAN RIGHTS**

John H. Evans

- The first ever study of the impact of how people define a human
- Makes a controversial finding that those who believe in biological and philosophical definitions of a human are less likely to be supportive of human rights
- Despite people making claims for decades or even hundreds of years about the link between defining a human and human treatment, this book actually provides evidence

**FACTS**

Published: 18 August 2016
272 Pages
235x156mm
ISBN: 9780190608071
This special issue of article 2 features an abridged and edited version of a landmark report on the use of torture by the military, paramilitary and other state security forces in the far south of Thailand. The report, which was prepared by three locally based groups of human rights defenders—the Cross Cultural Foundation (CrCF), Duayjai, and the Patani Human Rights Organisation (HAP)—features excerpts from 54 cases of torture documented in Thailand’s southernmost provinces, on its border with Malaysia, during 2014-15. The cases were all documented in accordance with the Istanbul Protocol for working with survivors of torture, and with the support of the United Nations Voluntary Fund for Victims of Torture.

Available for free download at www.alrc.asia/article2
JUSTICE DELAYED IS JUSTICE DENIED

DYSTOPIA

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