Annex A

Democracy & Human Rights in India

The Role of Caste-based Politics in Retreating or Progressing Human Rights of Dalits
What is the Caste System?

The caste system is based on hereditary occupational stratifications (varnas) in the Hindu society – however, not a religious system – conversion does not mean loss of caste.

Four varnas, the first three entitled to education whereas the last (Shudras) meant to serve them.

Untouchables/Dalits are a class born out of Shudras who were considered impure due to the menial, degrading jobs they undertook. Outside the caste system completely.
Characteristics

- Based on recognition of inequality in the society; crystallized through rigid rules governing inter-caste interaction and marriage – to protect the caste system institution and in the interest of ‘harmony’ and ‘order’ within the society – led to deep pervasion of caste within societal mindset.

- Human rights not at the forefront, especially for the lower castes – focus on community rights.

- Born out of occupational significance to society where each person’s role is pre-ordained – today this has become irrelevant except in the case of Dalits.

- Impossible to escape from caste identity
Human Rights Violations against Dalits

- Perpetration of systematic violence as a form of subjugation of their rights
- Restrictive access to public spaces
- Degrading practices relating to interaction with upper castes
- Denial of basic amenities such as housing, education, medical care, adequate water supply, electricity, redressal rights
Mahatma Gandhi:
“I believe that if Hindu society has been able to stand, it is because it is founded on the caste system... To destroy the caste system and adopt the western European social system means that Hindus must give up the principle of hereditary occupation which is the soul of the caste system. Hereditary principle is an eternal principle. To change it is to create disorder.”

Dr. B.R. Ambedkar:
"The Out-caste is a bye-product of the Caste-system. There will be out-castes as long as there are castes. Nothing can emancipate the Out-caste except the destruction of the Caste-system. Nothing can help to save Hindus and ensure their survival in the coming struggle except the purging of the Hindu Faith of this odious and vicious dogma."
Measures under the Indian Constitution

- Right to equality (Article 14)
- Non-discrimination on the grounds of caste (Article 15)
- Abolishment of untouchability (Article 17)
- Affirmative action/Positive Discrimination, Articles 15,16 (esp. reservations in higher educational institutions, government jobs, seats in the parliament) – classification as Scheduled Castes
- Under Part IV, protection from social injustice and all forms of exploitation (Article 46)
- Right to democratic participation, universal adult suffrage
Role of Democracy and Politics

- Dalits still extremely vulnerable minority – poverty, victims of caste-based violence and socially degrading practices, etc.
- Democracy has given an opportunity to mainstream their concerns – equal voting rights and participation in democracy.
- In India, when people cast their votes, they vote their castes. Rural voting turnout consistently more than urban – led to birth of caste-based politics.
- Caste-based politics is keeping alive the stratification in society when other factors (urbanisation, education, economic development) are diluting the significance of caste.
Dalit fined for drawing water

Balasore: Upper caste people of an Orissa village slapped a fine of Rs 1,001 on a dalit woman soon after she fetched water from a community tubewell on Saturday. A case was registered only after a group of dalit women gheraoed Chandabali police station in Bhadrak district demanding justice. A probe was also ordered.

“We are investigating the fresh charges. We will definitely take action if anyone is found guilty,” assured Pradip Choudhury, inspector-in-charge of Chandabali police station.

Sources said the upper caste people asked her to pay the fine after she fetched a bucket of water from the community tubewell.

‘WILL YOU LET AN SC ENTER YOUR KITCHEN, USE YOUR UTENSILS?’

THOSE WHO SAY NO

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* Share of households reporting practising untouchability, all India
* All figures in per cent
Annex B

Death Penalty in Japan
Breaking down the barriers of secrecy

15 March 2015
Teppei ONO
Japan Legal Support Centre
Contents

■ Recent Opinion Poll
■ Limited Access to Death Row Inmates
■ Litigation against Japanese Government
■ Conclusion
Public Opinion survey on 24th January 2015

- **YES**: 80.3%
- **NO**: 9.7%
- **I don't know**: 9.7%

Legend:
- Yes
- No
- I don't know
Detention Centre (Prison)

Registered persons

Lawyers

Non-registered persons

- Journalists
- Supporters
- Politicians
- Secretaries of Lawyers
- European Commissioner

OK
Dear Dad

7th September 2013
With Love, Sonomi
東京拘置所に対する国家賠償請求に関する信書
（法127条2項3号該当信書）
開封厳禁

〒110-0034
東京都新宿区西新宿1-4

支社

支社長 本所 信守
そして、第2条第1項に「書簡等」を「書簡、書状、書類等を含む」と定義しています。折山さんの手紙は「その家書等に」と解釈することが可能で、この手紙を送付したとき、東京裁判所法129号1項3号に基づいて検査したということです。

はっきりしたことは申し上げられませんが、これは折山家様の手紙の内容と関連しているかと思います。折山さんの手紙を通読した際、折山家様は手紙の内容を検査するように述べられています。

あと、伊藤先生さんで方の様です。折山さんからの手紙、同封します。この方が参考となるでしょう。

この条件からすると、折山さんは手紙の内容で透視するよりも折山さんの手紙を通読することの方が良い、と言われたのだからと思います。折山さんの手紙を読みましたと。

このように、折山さん家様は上記の条件から主に折山さんの手紙を同封しているので、折山さんの手紙を含めて「折山さん家の信書」と捉えたのですかないでしょうか。だからこそ法129条（信書の内容による差止等）に基づいて実効的にしたのだと思います。

もっとも、根拠文書が異なっても問題の所在自体はほとんど変わりません。法129条1項3号も「発送によって、刑事処置の規律及び秩序を害する結果を生ずるおそれがあるとき」と定められており、要するに規律・秩序を害する
Conclusion

- Background of overwhelming public support
  - No chance to know reality of Death Penalty
  - Huge obstacle to enhance civil movement

- Progressing or Retreating?
  - Not progress in the past several decades
  - Role of lawyers and human rights activists
Annex C
Democracy & Cultural Relativism in Islam: Some Arguments' by Raabia Abuzer Shams

• One of the major dynamics that shape any kind of discourse on Islam is the idea of its incompatibility with democracy. Today, I will attempt to identify and address some of these arguments.

• (Important to note: Examples given –

• (a) do NOT present the totality of Islamic ideology;
• (b) taken out of context, in time frame it is not possible to explain each example's context; (c) comparison to other cultures and traditions not an excuse - means of attempting to show that such practices are cultural rather than religious)

• Muslim “relativist critics” claim:

• 'Moral claims derive their meaning and legitimacy from the particular cultural tradition in which they are embedded. What we call “universal” human rights, are, in fact, an expression above all of Western values derived from the enlightenment. Understood in this light, the human rights idea is at best misguided in its core claim that it embodies universal values – and at worst a blend of moral hubris and cultural imperialism.
• Three things that most influence cultural relativism – philosophy, religion and culture. Most literature focuses on cultural diversity and the challenges it poses to HR and democratic government.

• Often argued that democracy and HR have roots in Christian theology – every religion has similar foundational principles. They cannot be overlooked or ignored. Human rights and democracy, even in Muslim countries, includes diverse cultural and religious elements. Both human rights and culture can co-exist.

• Common issue faced by all religious communities – division between those who believe that the traditional values have to be upheld and followed and those who think religion should be construed in a way that fits the changing society. Ex – Roman Catholic Church – papacy engages in debates on the ability of priests to marry, birth control and abortion issues, ability of women to become priests, etc. Hinduism – current govt. (BJP) is attempting to reform Indian society by taking it 'back to its roots' (forced conversions of Muslims into Hinduism, etc.)
• Historical argument against compatibility of Islam and democracy – Critics expect Muslim countries to follow the exact pattern that European countries did, in setting up their democracies – that there should be religious reformation leading to political democratization.

• Ex – European countries – Church – Reformation – 'Enlightenment'. Divine monarchy of the Catholic Church – toned down over a period of time, through activism of scholars (Locke, Kant, Rousseau) and leaders.

• The way Islam is presented before media + fact that a link between the religion and the State is explicitly provided for in Islam has (possibly) slowed down this process in Muslim countries.

• Political issue rather than religious – Muslim countries, due to several overreaching factors, declined after their Golden Age – political rulers blamed 'Western idea of rights and democracy' and made claims of returning to Sharia in order to gain popular support from masses. Political issue (way of winning over masses and gaining political momentum), not religious.

• Ex – Algeria's 1st ever elections, when the Islamic Salvation Front won, they were prevented from taking power by the Army, led to a decade long civil war.
In all cultures, there are always going to be intellectual and ideological sources that can easily justify a wide range of governing models – including absolute monarchy and democracy.

Quote from Qura’n used by critics: (basis of most anti-democratic arguments)

“It is not fitting for a Believer, man or woman, when a matter has been decided by Alaah and his Messenger, to have any options about their decision.”

This quote is from the chapter of the Qura’n discussing spousal rights and the relations that person keeps with his or her family.

Two sources of Islamic law – Qura’n and Hadith/Sunnat (practices observed by our Prophet Mohammed P.B.U.H.).

3:159 and 42:38 – “Each one of you is a shephard of the community; And all of you are to be responisble for its development”.

Any decision that the Prophet made for the community/tribe/village – followed the processes of shura (consultation with community-elected representatives), ijma (consensus) and ijtihad (reflection period, interpretation of religion in context of issue at hand).
• Democratic practices adopted by Muslim countries before others – adult suffrage given to women in Turkey in 1934 – a full decade before women in France were allowed by law to vote.

• **Ex** – Protestors at Tahrir square chanted claims for a “universal democracy”.

• **Ex** – Muslim countries have more elected female leaders: P.M. of Pakistan, Turkey, Bangladesh; Presidents of Indonesia and Kosovo.

• Muslim jurists fall into three groups -
  • Reject democracy and secularism
  • Try to imbibe the true tenets of Islam into the existing political system
  • Call for re-interpreting the religion to fit the present day (Khursheed Ahmed, Allama Iqbal, Fetullah Gulen)

• Islam, like any other religion, is meant to guide its followers' lives and personal conduct, not the conduct of an entire nation. Any religious law is bound to be as mysterious as the religion itself.
Conclusion: What is needed for Muslim countries to progress into proper democracy?

Citizens of the Arab world first require a change from the ground up in the way their religion is approached and instituted socially, politically, and economically. With the rise of free-thinking youth and exposure to new ways of interpreting Islam, a secularized and modernized Islam adapted to modern democratic principles must emerge.

Second, the Arab world needs egalitarian economic development that distances itself from tribal, clannish, and centralizing hegemonic models and seeks to build a strong middle class provided with basic social support in education and health care.

Third, the Arab world needs, perhaps more than anything, time. We must bear in mind that it took centuries for the Western world to free itself from the bondages of religious ignorance and the divine right of kings. But it won't take centuries for Arab states to emerge from the past and grow into functioning democracies because unlike the West, it does not need to wait for the concurrent advances in social, physical, and political sciences that paved the way for the industrial revolution and the information age. The Arab youth are already exposed to new technologies, thus accelerating their ascent to democracy and the supremacy of reason, not revelation, in political discourse.
• It is not enough, in the long term, for a country to have just economic development, like Saudi Arabia, or just elections, like Egypt and Iraq. Without balanced development, extremism in even one of the three social institutions (civil society, general population, govt.) will, left unchecked, color the other two.

• Gaps in democracy and causes for deficit in political freedom of people – need to be addressed differently in context of each specific country (cannot generalize on the basis of 'religion of the majority population').
Annex D

Southeast Asia’s Shrinking Democratic Space
CASES FROM THE PHILIPPINES, MALAYSIA, SINGAPORE
Philippines: 101,024,100
Asia’s 2nd fastest growing economy

Malaysia: 30,518,000
Cross-section of three Asian races

Singapore: 5,469,700
World’s 3rd wealthiest country GDP per capita of nearly $56,700
The Philippines

ARTICLE III BILL OF RIGHTS Section 4
No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

The Philippine constitution supports freedom of expression and press. However, libel is a criminal offense under penal code which can punish journalists with prison terms and large amount of fines.
The world’s single most deadly attack on journalists and media workers in modern history

- Over 50 people, including 32/33 journalists and media workers ambushed and murdered as they were covering an election-related story
- The perpetrators thought they would get away with it.
- They are. Getting away with it.
• https://www.youtube.com/watch?v=-oEQRtSuF34
• Maguindanao massacre interview
Coming out of the Dark
Philippines: Impunity as a weapon against free press

- The Maguindanao massacre trials, in which state-armed militias led by government officials killed 58 people including 32/33 media workers continued. But most of the proceedings were bail hearings only.

- By December 2014, 85 of the 197 suspects for whom arrest warrants had been issued remained at large.

- 0 convictions had been handed down.

- Witnesses to the massacre and their families remained at risk of attacks, including killings. At least 8 witnesses and their family members had been killed since November 2009.

- No one was held accountable for these killings.
Malaysia

Article 10 - Freedom of speech, assembly and association
(1a). Every citizen has the right to freedom of speech and expression.

Free expression is guaranteed by article 10 (1.a) of the constitution, however clause 2 (a) of article 10 provides, restrictions are necessary in the interest of the security of the Federation, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence. Therefore, there are restrictions with laws on these rights.
Malaysia: the 1948 Sedition Act, a tool for political repression

- A colonial-era law that criminalizes criticism of the government, to target peaceful dissidents.

- Criminalizes a wide array of acts, including those “with a tendency to excite disaffection against any Ruler or government” or to “question any matter” protected by Malaysia’s Constitution.

- Those found guilty can face three years in jail, be fined up to MYR 5,000 (approximately USD 1,570) or both.

- In 2012, Prime Minister Najib Tun Razak publically committed to repealing the draconian law stating that it represented “a bygone era”, but made a u-turn in 2014.

The Sedition Act does not comply with international human rights law, and violates the right to freedom of expression, enshrined in UDHR (Art. 19), and guaranteed in Malaysia’s Constitution (Art. 10).
Malaysia’s Sedition Act

• A crackdown started in August 2014, using the Sedition Act to investigate, charge and imprison human rights defenders, opposition politicians, a journalist, academics and students.

• At least 3 people were known convicted by end of 2014, 16 charged, and 29 put under investigation, creating a chilling effect on freedom of speech.

• So far in 2015, 12 have been investigated for sedition, 1 charged and 1 convicted.

• In September 2014, student activists Adam Adli and Safwan Anang were sentenced to one year imprisonment and 10 months’ imprisonment, respectively.
Eric Paulsen

- a human rights lawyer and co-founder of Malaysian NGO Lawyers for Liberty, was charged with sedition for a tweet he sent in January 2015 that called on the government to prevent the Department of Islamic Development (Jakim) from “promoting extremism”.

If convicted, Paulsen faces a jail term of up to three years, a fine of up to RM5,000, or both.
Ali Abdul Jalil
- Student arrested for posting “seditious” comments on Facebook.

Ali was arrested and charged in September 2014 under the Sedition Act for posting “seditious” comments on Facebook which insulted a sultan. He posted bail but was immediately rearrested and charged in another court, again for sedition.

Ali was sent to prison where a prison officer punched him in the stomach, slapped his face and hit his leg with a police baton and rubber pipe. Al adopted him as a Prisoner of Conscience, jailed solely for the peaceful expression of his beliefs.

He is currently in Sweden, seeking asylum.
Singapore

Article 14 - Freedom of speech, assembly and association (1a). Every citizen of Singapore has the right to freedom of speech and expression.

This article 14 of Singapore constitution is exactly the same as article 10 of Malaysian constitution as Singapore was a part of Malaysia in the past.
Singapore: Defamation suits’ chilling effect on free expression

Singapore's leaders have in the past sued or settled out of court with several foreign media publications including The New York Times, Wall Street Journal, Bloomberg and The Economist for alleged defamatory remarks. The Singaporean government has also used the defamation suits to silence an opposition politician, who was forced to go bankrupt because of legal costs.

In 2014, for the first time an ordinary person --a blogger-- has faced such action.

Roy Ngerng interview
In May 2014 the Prime Minister sued blogger Roy Ngerng Yi Leng for defamation. Ngerng allegedly accused the PM of "criminal misappropriation" of public retirement funds in his blog.

Despite a retraction and a public apology, and an offer of damages, the PM called for a summary judgment on the case in July.

Ngerng was dismissed from his job with a public hospital in June. In view of financially ruinous outcomes from previous suits against critics, Ngerng turned to crowdfunding to finance his legal defence.

In November, the Prime Minister won the defamation case.
“Freedom of expression – in particular, freedom of the press – guarantees popular participation in the decisions and actions of government, and popular participation is the essence of our democracy.”

- Corazon Aquino, former Philippine President and first female president in Asia
“What is freedom of expression? Without the freedom to offend, it ceases to exist.”

- Salman Rushdie
Freedom of Information and Expression in Japan: Secrecy Law, Fukushima and Hate Speech

15th March 2015
Human Rights in Asia Conference
Sanae Fujita
Population of regions

**European Union (EU)**
- 28 countries, 504 million

**Council of Europe**
- 47 countries, 820 million

**African Union (AU)**
- 54 countries, 895 million

**Organisation of American States (OAS)**
- 35 countries, 910 million

How about **Indonesia**?
- 250 million
Population of Asian countries

- **Indonesia** 250 million
- **India** 1.257 billion
- **China** 1.357 billion

**Association of South East Asian Nations (ASEAN)**

10 countries---600 million

**South Asian Association for Regional Cooperation (SAARC)** 7 countries

---16 billion (20% of world population)
There are more people living inside this circle than outside of it.
Ratification

Source; COE-CAS research paper by Tetsuya Ouchi (2007)
In Asia;

• No regional Human Rights Court/ mechanism (cf ASEAN)
• Not ratify individual complaint mechanism

Japan ratified;

• ICCPR, ICSECR, CAT, CEDAW,CERD,CRC, Refugee Convention, Convention of R of Disability, etc
BUT NO individual complaint mechanism
Has NO national HR institution
Japanese Secret Protection Law---Allows Gov to hide information for national security etc.

Only 2 weeks for public comments; 90,480 comments and 60,579 against it (Sep 2013)

Drafting process was NOT transparent
No proper discussion/consultation with (International) experts.

Definition of “Secret” is broad and unclear.

Gov rammed the bill (6Dec2013) only after 6 weeks of discussion in Parliament
ICCPR Art 19

• “freedom of expression and freedom to seek, receive and impart information and ideas of all kinds”

• Limitation should be by law and defined clearly and narrowly

Clearly and narrowly

→ Japanese secrecy law—Violation of ICCPR Art19
ARTICLE 19 (NGO in London)
Re-Tweet ➔ 100,000 people
Urgent Appeal of the UN Special Procedure → Joint statement to Japanese Government
(21 Nov. 2013)

Frank La Rue
(Freedom of Expression)

Anand Grover
(Right to Health)


News, questions by MP in Diet (Parliament)
• “The draft bill not only appears to establish very broad and vague grounds for secrecy but also include serious threats to whistle-blowers and even journalists reporting on secrets.”
Navi Pillay, HCHR, press conference, 3 Dec 2013

“Japanese Government should not rush through the law without first putting in proper safeguards for access of information and freedom of expression as guaranteed in Japan's constitution and international human rights law,”

“Japanese Government should listen to people’s concern”

→ Upset Japanese Government very much
Quickly pushed through the Bill (6 Dec 2013)
Protest against the law

Government’s Secret and deception caused the previous war

“No more same mistake”

But....
Want to:
End pacifism
Send Defense Forces to the war
Sell weapon
Reform history
Change Pacifist constitution

“Why don’t’ we follow Nazi’s technic to change constitution?” (Deputy Prime Minister)
Draft constitution by Japanese ruling party (LDP)

• Rejecting the universality of human rights

• Elevating maintenance of “public order” over all individual rights

• More limitations on free speech

• Allow torture — remove “absolutely” from “The infliction of torture by any public officer and cruel punishments are absolutely forbidden”
Index of freedom of journalism
Japanese PM and Freedom of Journalism Index
Pressure to media

Japanese Media Self-Censorship Grows in PM Abe's Reign

Worries are growing in Japan about a trend of media self-censorship as journalists and experts say news organisations are toning down criticism of Prime Minister Shinzo Abe's government for fear of...

NYTIMES.COM  I  作成: REUTERS
11 March 2011
Earthquake & Tsunami

20,000 people were killed
Fukushima Nuclear Plants explosion
Caesium
Plutonium
Strontium
Iodine
and other radioactive materials

--- 168 X Hiroshima
Speech (Sep 2013) in the Int’l Olympic Committee for Tokyo’s bid to host the 2020 Olympics

“radioactive waste water leak at Fukushima is ‘under control’”

→ NO!!!

After Tokyo won the bid, “the contamination of Strontium” was announced.
Information about Fukushima plants requested by a MP ---- 135 pages, all black
Effect of contamination
“Support by eating products "policy
“Let’s eat Fukushima Rice”

Gov’t encourages people to buy and eat food from disaster area – the food is contaminated.
I eat Fukushima Products so You also should eat!”
Prince Williams was also used
Thyroid Cancer of Children

Average --- 1 in 1 million
Fukushima --- 12 in 170,000
→ 68.9 times more than average
Sevier criticisms of Cartoon; “damage caused by rumor” of Fukushima?

Freedom of Expression of Information based on research and medical reasons

「ビッグコミックスピリッツ」22・23合併号に掲載された「美味しんぼ」のワンシーン。
Hate Speech – No regulation in Japan

“Good Korean, Bad Korean, We will Kill Both”

“I hope Korean disappear from TV”

“We will bury you, Korean”
Annex F

Freedom of Expression & Assembly in the context of Elections: SAME OLD GOVERNMENT, SAME OLD WAYS MALAYSIA 4/6/13
BACKGROUND

- One government in power for 56 years since independence (National Front Coalition)

- Plagued by issues of authoritarian rule, poor governance, spiralling corruption, race politics and worsening human rights violations

- Since 2008, in Malaysia everyone including CSOs, political parties and mainly Malaysians have been working for change and next election
BACKGROUND

• Malaysia's recent 13th General election (GE13) on 5th May 2013 has come under intense scrutiny internationally
• Emerging evidence indicates that the outcome of the GE13 was marred by electoral fraud, phantom voters, irregularities of the electoral roll and ineffective indelible ink.
BACKGROUND

• Opposition won 51% popular vote, ruling National Coalition 47% of the popular vote but government still retained power through allegedly unfair electoral practices & gerry mandering

• The opposition parties are in the midst of filing 31 election petitions to the High Court challenging the results and paving way for by-elections in the constituents and state seats affected
Many argued the outcome of the GE13 were marred with fraud, phantom voters, washable indelible ink, irregularities in the gazetted electoral roll and heightened political violence which saw bomb blasts at campaign sites and even a murder case throughout the campaign period. At the same time, various forms of harassment of human rights defenders took place.

Serious matters which require immediate attention to were kept in view by the police. These include the death by murder of Murugan, a Parti Keadilan Rakyat’s campaigner, several bomb blasts at campaign sites, countless reports and complaints made to the police against the EC, seditious “Chinese Tsunami” statements made by Ministers and the investigation on Utusan Malaysia’s “Apa Lagi Cina Mahu” (“What else do the Chinese want?”) headline, the racist group attacks on anti-racism student group in Penang, and the investigation on bloggers Papagomo and MiloSuam, just to name a few.
BACKGROUND

• Independent election watchdog BERSIH, has formed a people's tribunal to investigate the allegations of electoral fraud saying eye-witness accounts, photographs and video recordings have "led us to question the legitimacy of some of the results. We have no doubt that the election was not clean and fair."
BACKGROUND

• In the election aftermath, the Malaysian government continues to use repressive legislation namely the Sedition Act 1948, the Peaceful Assembly Act 2012, the Penal Code and the Printing Presses and Publications Act 1984 as tools to suppress the legitimate dissent of voters, human rights defenders, and leaders of the Opposition.
Government led crackdown on Freedom of Assembly /Association

• The crackdown on FOAs started even before election-
• BERSIH 2.0/3.0 rallies/PAA 2012 (right after bersih 3.0)
• SUARAM harassment
• Police continuous harassment on organiser of any big rallies- change of places-charged organiser/investigation
Aftermath

- Following GE13, a series of peaceful opposition led rallies to protest against electoral fraud, known as ‘Blackout 505’ were held throughout Malaysia, attended by nearly 500,000 Malaysians. On 17/5/2013, National Justice Party Assemblyperson Nik Nazmi Nik Ahmad was charged under the Peaceful Assembly Act (2012) with serving the police with insufficient notice for a rally held in Kelana Jaya on the 8th of May 2013.

- On 27th May 2013, six other opposition leaders were charged under the Peaceful Assembly Act (2012) for similar peaceful gatherings in the states of Perak, Johor, Pahang and Negeri Sembilan. Those charged included Opposition Coalition executive secretary Ong Eu Leong, Democratic Action Party Member of Parliament Thomas Su, National Justice Party member Mohammad Anuar Zakaria, Kamarzaman Md Yunus, Youth chief Nazree Yunus and state executive secretary R Yuneswaran secretary.
The RoS, which had harassed SUARAM for seven months before ceasing following a Judicial Review in the High Court was commissioned again to harass the Democratic Action Party at the eleventh hour prior to GE13 nomination day. DAP’s eligibility and qualification to contest in the GE13 were threatened, and even more absurd, ridiculous tasks were given at the very last minute with a tight deadline.
The new Inspector-General of Police and Home Minister’s comments were worrying for the people. Home Minister, Zahid Hamidi’s suggestions to revamp the Ministry were of SUARAM’s grave concern as the police would now join the ranks of army in training to reduce crime and to ensure public order. It was made public shortly after the present IGP Khalid Abu Bakar had complimented former IGP Ismail Omar’s Ops Daulat operation in Lahad Datu, Sabah. Instead of focussing on how to reduce fatalities of suspects in police lock-ups and fatal police shootings, the police would now undergo their training with the military in firearms related situations to combat crime.
Government led crackdown on Freedom of Expression
Censorship and Seizing of Publications
Freedom of Movement
Conclusions
Annex G

ASEAN Human Rights System & Civil and Political Rights in Southeast Asia

Human Rights in Asia Conference
15 March 2015
ASEAN Organogram

AICHR
(ASEAN Intergovernmental Commission on Human Rights)

• Legal basis: Art. 14 of ASEAN Charter
• A regional human rights body.
• Vienna Declaration and Programme of Action 1993.
• Inaugurated on 23 October 2009 (ToR entry into force)
• Consultative body.
• Consensus decision making.
AICHR

• Consists of 10 commissioners, each is appointed by and responsible to their respective government.
• Most of the representatives are ex or current government official, and do not have any human rights background.
• Some individual reps (Indonesia, Thai, Malaysia) has regularly conducted consultation with the CSOs at the domestic level.
AICHR’s Mandates

Human rights protection

Obtaining information
To consult with national, regional and international institutions and entities concerned with the promotion and protection of human rights

Human rights promotion

Dissemination and education
Standard setting
Advisory services
Technical assistance
ASEAN Commission on the Promotion and Protection of Women and Children’s Rights (ACWC)

- All ASEAN Member States are parties to CEDAW and CRC
- ToR adopted on 23 October 2009, the Commissioners inaugurated on 7 April 2010.
- Consists of 20 commissioners (10 for children, 10 for women)
- Most of the commissioners have no human rights background
ACWC

• Consultative body
• Non-intervention & consensus
• To complement, rather than duplicate, the function of CEDAW and CRC Committees
• 2 meetings annually
ASEAN Human Rights Declaration

• Article 4.2 of the TOR of AICHR:

  To develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights.

• Has been adopted in the 21st ASEAN Summit in Phnom Penh, on 18 November 2012
Includes civil & political rights:

- Right to life
- Personal liberty & security
- Protection from slavery, trafficking, organs trafficking
- Protection from torture
- Freedom of movement
- Right to seek asylum
- Right to property
- Right to nationality
- Right to marry & dissolve a marriage
- Presumption of innocence, nullum crimen sine lege, ne bis in idem
- Right to privacy
- Freedom of thought, conscience, religion. Hate speech.
- Freedom of expression
- Freedom of peaceful assembly (association)
- Right to participate in government & the right to vote
Issues

1. Cases that has been submitted to the AICHR:
   • Enforced disappearance of Sombath Sompone

2. Right to participate:
   • Lack of transparency & access for the people in the development of ASEAN Human Rights System
Opportunities

• People-centered ASEAN
• The AICHR & ACWC shall keep the public regularly informed of its work and activities through appropriate public information materials produced by the AICHR & ACWC.
• AICHR Reps in Indonesia & Thailand are regularly holding consultation with the public
• ACWC Reps in Indonesia also holding consultation
‘After the Peacekeepers Left’

The UN and Transitional Justice in Timor-Leste
Transitional Justice

• Can Justice be Transitional?

• Justice in times of Transition
  • Truth and fact finding
  • Criminal prosecutions
  • Restorative justice / reparations
  • Reconciliation / memorialization
  • Institutional reform & institution building
  • Vulnerable people (women, children, refugees)
UN Secretary General

• Transitional justice is the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.
Transitional justice is not a ‘special’ kind of justice, but an approach to achieving justice in times of transition from conflict and/or state repression.

By trying to achieve accountability and redressing victims, transitional justice provides recognition of the rights of victims, promotes civic trust and strengthens the democratic rule of law.
Why Study Timor-Leste?

• Timor-Leste as a pawn in the Cold War
  • ‘Forgotten’ Portuguese Colony until 1974 / Carnation Revolution
  • Fretilin versus interests of Indonesia, Australia, and the USA
  • Brutal Indonesian occupation from 1975 until 1999

• UN involvement in Timor-Leste
  • UN organized 1999 referendum (following end of Suharto regime)
  • UNTAET transitional government
  • Successor UN missions with broad mandates
  • Deployment: too late entry and (initially) too early exit?
  • UN mission ended in December 2012

• Issues
  • The UN and Transitional Justice
  • The Perception of Security
The UN and Transitional Justice in Timor-Leste

• Truth and fact finding
  • 1974-99: Commission on Reception, Truth and Reconciliation of Timor-Leste (CAVR)
  • 100,000+ (20,000+ killings; 80,000+ hunger/illness)

• Criminal prosecutions: Prosecution of Indonesian officials / militia incomplete

• Restorative justice / reparations: Veterans

• Reconciliation / memorialization
  • CAVR museum in Dili (but only rarely open to public)
  • Prominent role for local justice

• Institutional reform & institution building
  • 2006 crisis linked to security sector
  • Puzzle: ‘high’ levels of perceived security vs. ‘trauma’

• Vulnerable people (women, children, refugees)
  • Refugees: local networks
  • Women and children: persistent concerns
Local Perception of Security
Perception of Insecurity

• Personal factors:
  • Poverty, Domestic Violence, Displacement

• Local conflict dynamics:
  • Historical cleavages, security sector, national versus local institutions

• External involvement:
  • ‘Tropical bakery school of international capacity building’ (Peake)
Survey of security perception and the role of the UN

- Small, pilot survey
  - N = 285
  - Six neighbourhoods (aldeia) in four districts (suco)
    - Dili, Dare, Baucau (2x), Liquica, Ermera
  - September / October 2013 (after the UN left)
  - With help from students from UNTL

- Topics
  - Security Perception (Fears, Disputes, Contacts)
  - Evaluation of Police and Military
  - Evaluation of UN (and the possible impact on security)
  - Socio-Economic Variable
  - List Experiment: anonymity
Timor-Leste Districts
Perceived Improvement of Security Situation

63% think that security has improved over last three years

- Location: Dili and Ermera less improvement
- Gender: fewer women perceive improvement
- Socio-Economic condition: not correlated
- Political preference: FRETILIN voters perceive less improvement
- Personal Conflict History: more violent past / recent disputes -> less improvement
- Local Justice: people who trust *adat* perceive more improvement
Evaluating the Police, Military, and the UN PKO

- 70% police performs good or very good
  - 60% police performs better now UN has left
- 86% military performs good or very good
  - 70% military performs better now UN has left
- 50% says that they regularly saw the UNPOL
- 36% says that they regularly saw the ISF
- Nearly everybody grateful for UN but only 20% wished that they were still present
- 70% says that the mission should have ended earlier
• Bias in self-reporting resulting for social desirability and non-response
Evaluation UN PKO

- 1. I am grateful to the UN
- 2. I wished that the UN mission had not yet concluded
- 3. The UN has helped Timor-Leste becoming independent but the mission should have ended earlier
- 4. The UN mission had many problems and I am happy that they have left
- 5. Now the UN mission has been concluded, Timor-Leste has finally become an independent country
List Experiment: Police (PNTL)

• 1. The police (PNTL) are effective in maintaining security in my community

• 2. The police (PNTL) regularly beat up people who are in their custody

• 3. The Chefe de Aldeia and Chefe de Suco are more important than the police (PNTL) to maintain law and order in my area

• 4. The police (PNTL) was able to resolve a problem or dispute that you (or any member of your family) experienced in the last three years

• 5. I am less confident in the police (PNTL) now UNPOL has left
List Experiment: Military (FDTL)

• 1. The military (F-FDTL) are important for maintaining security in my community

• 2. The military (F-FDTL) are regularly verbally abusive or even physically violent

• 3. The military (F-FDTL) play only a minor role in maintaining law and order in my community

• 4. The military (F-FDTL) will protect my community in case of a natural disaster (earthquake, flooding, fire)

• 5. I am less confident in the military (F-FDTL) now ISF has left
Vulnerable People and the Exit of the UN

• Broad consensus that Timor-Leste is able to cope on its own

• General confidence in the police and military

• ‘Vulnerable’ respondents: women, people with dispute experience, and poorer people were more concerned about their security, possible abusive behavior of the police and military, and the performance of the police and military after the exit of the UN

• These results are stronger correcting for possible bias in self-reporting
Conclusions

• The importance of managing expectations
  • International community
  • Local population

• The importance of local and personal networks:
  • for providing justice and security
  • for providing impunity and insecurity
Annex I
Transitional Justice in Sri Lanka
[Alex Wilks, IBAHRI]

- **Introduction**
- • First and last visit to Sri Lanka in 2009/prohibited entry/demonstrates attitude of Government
- • Recent change of Government opportunity to heal wounds and find a lasting solution to ethnic conflict. Sirisena former MOD
- • Sri Lanka’s TJ journey long/deal with many issues such as political reconciliation, devolution, resettlement of IDPs, truth-telling and justice/reparations
- • I’d like to talk about some of benchmarks that need to be considered to ensure credibility of process, with focus on justice sector
• **Background and context**

• Origins to colonial times Tamil-Hindu minority favored over Sinhala-Buddhist majority (language/divide and rule)

• Gained independence in 1948 and passed 1956 *Sinhala Only Act*, which made Sinhala the official language/1971 ‘Standardization Policy’ setting higher benchmarks for Tamil students/conflict roots in ethnic discrimination, particularly access to education. LLTE brutal/before lost military conflict lost support of Tamil population

• 2009 end of conflict/100,000 deaths overall, 40,000 (UN estimate)/north-east of country (No Fire Zone)

• Window of opportunity for political reconciliation yet instead inflamed extreme Buddhist-Sinhala nationalism - linking himself with Mahavamsa (tell story of Sri Lankan Buddhism 4-6th Centuries) and King Dutugemunu defeated Tamils. Trying to weave history.

• Disappearances continued, journalists murdered, lawyers attacked, seized control of courts, suffocating civil society/ Militarizing north/ looked like sowing seeds of future conflict. Now history has given Sri Lanka a second chance.
• **Constitutional reforms by now ex president Rajapakse**

• Rajapakse systematically dismantled independent institutions/ One of most critical unresolved rule of law issues in Sri Lanka is that of the Constitutional Council (17th Amendment), which is mandated to appoint senior judges and important institutions such as the Electoral, Police and Human Rights Commissions, but has been in abeyance since 2005.

• Rajapakse given himself power (18th Amendment)/ draft 19th Amendment/ central component of the new Government’s ambitious 100-day reform program and its passage and effective implementation will be essential in re-laying Sri Lanka’s democratic foundations and safeguarding the independence of institutions that will play a prominent role in its transitional justice process.

• 13th Amendment unimplemented for three decades/ allows for limited devolution political power to northern Tamil states. Other legal reforms PTA.
• Truth and justice

• The Government must embark on the highly-sensitive task of addressing truth and justice for victims of the atrocities/Rajapakse denied any involvement of military/set up LLRC ‘to look at causes of failure 2002 Ceasefire Agreement and sequence of events up to . Although to be fair it took quite an expansive interpretation of its mandate it wasn’t set up to investigate HR violations. UN found that didn’t meet standards of independence and ultimately was a white wash, absolving military of all responsibility.

• New Government has already pledged a domestic investigation which will require further changes to the legal framework/Commission of Inquiry Act gives broad executive control over investigations and their outcomes, and it should be amended to ensure independence, transparency and that findings are made public. Sirisena recently confirmed that UN investigators would not be participating in any inquiry, but that technical advice and assistance would be welcome. The extent and nature of such assistance will be extremely important in ensuring the credibility of any domestic investigation.
• The lack of a comprehensive victim and witness protection mechanism has proved a major impediment/recent enactment of long-awaited Assistance to and Protection of Victims to Crimes and Witnesses bill is an important step forward. Needs to be properly implemented.

• In order to initiate a meaningful truth-seeking process and to provide an opportunity for victims and communities to be involved/independent and credible truth commission should be established with strong powers including to make recommendations for next steps, such as reparations and trials.

• Look at other examples - much has been made of South African experience. Not convinced - apart different contexts the South African Amnesty covered international crimes, no longer acceptable and High Commission HR already said that would not be permissible for any truth commission to grant amnesties. Look at experience of Argentina ‘Nunca Mas’ which paved way for prosecutions or Brazil’s recent truth commission, which had strong legal powers and has recommended prosecutions.
• **Prosecutions and trials**

• Already indicated that it is opposed to international trials and the possibility of ‘hybrid’ tribunals with the participation of foreign judges is looking increasingly remote, however it may be open to domestic trials with some international technical support.

• Whichever process it decides upon, in order to prosecute atrocities according to international law, the penal code will need to be amended to include war crimes and crimes against humanity. [Sri Lankan constitution contains an exception to retroactivity in respect of ‘any act which was at the time it was committed, was criminal accordant to general principles of law recognized by community of nations’]

• Given the Attorney-General’s department’s inability to effectively investigate or prosecute any serious human rights violations to date and the consequential lack of public trust in it, the Government should establish an independent, special prosecutor’s office with a clear mandate and prosecutorial strategy, and provide it with proper resourcing and technical expertise.

• Effective investigations and successful prosecutions would not only provide justice for victims, but also send out a clear message to the wider public that the Government is serious about ending the culture of impunity, which took root under the Rajapakse regime.
• **Reparations**

• Government also will have to deal not only with reparations for human rights violations also return to land. Despite end of conflict, impeded return of Tamil families to land and Sri Lankan army and paramilitary groups illegally occupied Tamil and Muslim land.

• Recalling experience of Colombia, lessons learned Victim’s Law ‘classification of victims’ and issues with recognition of land title and lack of safeguards for people returning to lands.
• **Conclusion**
  
  • Role of UN. Slow to respond - original resolution. Eventually allowed High Commissioner to Sri Lanka and report instrumental in last years resolution allowing for international CoI. Change of policy new government internationally, still holding reckoning must be domestic. Report of Commission of Inquiry will be important and as mentioned extent to which international community interacts with domestic processes.
  
  • The Sirisena Government faces many challenges in its transitional justice program, including political reconciliation, resettlement of IDPs and land restitution, truth-telling and accountability. It must be given time to plan its reforms and this has been recognized by the UN Human Rights Council, which has delayed the publication of the report of its Commission of Inquiry until September. Whilst the Government’s 100-day reform program has been broadly welcomed domestically, there is mounting concern from civil society at the opacity of the process and the lack of public consultation.
As the Government seeks to rebuild trust, it will become increasingly important to ensure that it communicates and engages with all sectors of Sri Lankan society on its transitional justice and reform initiatives. This will require time and patience. It will have to meet both the urgent demand for truth and justice that has been denied for too long for victims of its bloody conflict and the need for incremental, strategic reform in a process that is transparent and inclusive. If it can achieve this, then Sri Lanka at last has a genuine opportunity to achieve an enduring, sustainable peace.