

LAW opinion



RIGHT column



## RIGHTS GROUPS URGE PROBE OF THAI CARNAGE Muslim detainees were treated inhumanely

BANGKOK, October 27 International rights groups, world capitals and politicians demanded October 27, that an inquiry into the deaths of 84 Muslim protesters in police custody be rigorous and independent.

Rights groups also decried the unapologetically aggressive and belligerent approach taken by Thai security forces in dealing with Muslims of southern Thailand, amid mounting criticism of Thailand's human rights record.

The carnage, meanwhile, threatened a Muslim revolt against Bangkok, in light of repeated blood-letting of Muslim blood in the south.

London-based Amnesty International, for its part, called for an independent inquiry saying there was a disturbing pattern of Thai security forces using excessive force against Muslims in the south.

The human watch group said allegations that authorities may have used excessive force in suppressing the demonstration must be immediately investigated.

In a statement faxed to Malaysian news agency Bernama, Amnesty International Deputy Asia Director Natalie Hill said all deaths related to the incident, including that of at least 78 persons who suffocated after being transported in inhumane conditions after the arrest, must be promptly, effectively and independently investigated.

Those suspected of responsibility should be suspended from duty pending the result of legal proceedings and brought to justice, she said.

Some 1,300 detainees were left piled on top of each other in trucks for at least six hours after the demonstration was broken up, leaving 78 dead, mainly from suffocation but also several with broken necks.



PHOTO: AFP

# Women's perspectives on International Law

BARRISTER HARUN UR RASHID

In recent years, there is an interesting debate among academics on whether current international law reflects women's perspectives. While women scholars find international law is deficient in this respect, some male academics contest the position of women authors.

Most of women authors and scholars have argued that existing international law is male-focused and fails to take account women's perspectives. They have advanced the view that for centuries, legal system including international law, has been shaped, moulded and enforced almost exclusively by men. As a result, the existing legal system, both domestic and international, remains insensitive to many concerns of women.

The same group of women scholars accuses men of formulating international law from their point of view, ignoring the views of women. They make out a case that "men's perspectives" are built into the body structure of international law, ignoring women concerns and this is one of the flaws found in international law.

Women authors question that why will international law be immune to female gender perspective?

### International Law & Women

The central argument is that international law has produced an inadequate legal system for women in general because of the absence of contribution of women in its development and codification. It has been further argued that existing international laws are principally product of men. As a result, international law has provided principally the male version of law.

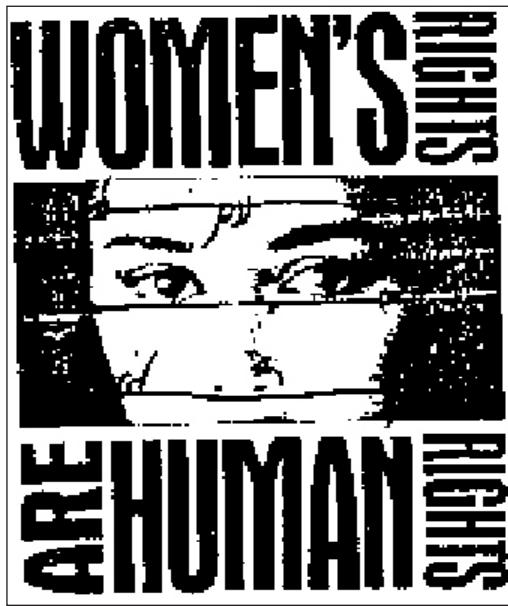
If one runs through the development of international law since the days of Grotius (1583-1645), the father of modern international law, there is hardly any name of women authors of international law in the standard books on the subject. As a result, one may reasonably conclude that international law has been viewed by men writers and not by women.

Women experts claim three factors for such one-sided development:

- (a) processes of formulating international law virtually excluded women,
- (b) content of international law is male-centred, and
- (c) international law has consistently ignored the concerns of women.

According to them, since we live in a male-dominated society, hardly the concerns of women are taken into account in the corpus of international law. Women scholars believe that patriarchal system (opposed to matriarchal system) is the cause of absence of formulating international law from women's point of view. Under patriarchal system, men dominate women and therefore women's concerns are submerged with men's interests. The same approach is prevalent in the development of international law.

International law affects both men and women. Often



it may affect more women than men. For instance, in refugee or internal displacement situations, women have to move with their children to safe areas from armed and personal violence. A glance of TV footage of current Darfur humanitarian crisis in Sudan demonstrates that refugee camps in the neighbouring state, Chad, are mostly crowded with women who were victims of "ethnic cleansing" by Arab Janjaweed militia, allegedly supported by the Khartoum government.

Another instance may be cited when the Taliban regime in Afghanistan perpetrated gross breaches of human rights on women (a girl over age of nine could not get out of the house to school during the period), no international organisations took responsibility for such egregious violations of human rights of women. Some women scholars argue that no single organisation, even not the UN, has come forward to assist the oppressed women as each organisation considered the situation in Afghanistan as "outside its mandate". They argue that this example demonstrates the deficiency of international humanitarian law with regard to women's oppression by an orthodox regime.

### War & Women

A major debate in international law pertains to women in the context of war and peace. Women are naturally averse to wars, partly because they are peace loving and partly because motherhood (nurturing and raising children) and deaths of human beings in wars are opposed to each other. Some say if women run the states, there would be less wars and inter-states dis-

putes would be settled peacefully through negotiation and other peaceful means as contemplated in Article 33 of the UN Charter.

Professor Hilary Charlesworth of Australian National University in her book "The Boundaries of International Law" (2000) explains that there is a considerable empirical evidence that women are affected by wars in ways men are not. In her view, rape has become as one of the spoils of war, designed to humiliate the enemy. Globally, she argues that women constitute 2% per cent of regular army personnel, but they suffer most from wars.

Charlesworth underscores the fact that armed conflicts, say Iraqi war, in fact have gendered effects, that is, wars/armed conflicts affect men and women differently. However, existing international law does not take into account this fact and is based on a system on men's lives. There is a palpable absence of recognition of international law from women's perspectives, she argues.

Another group of women scholars argue that wars are designed to benefit the defence industries and the corporate world is run again by men. The defence industries receive billion dollar contracts for producing "killing machines" (lethal weapons). For example, the Iraqi war has provided a spectacular boost to the US moribund defence industries and they made billions of dollars from the Iraqi war. They don't bother the impact of these lethal weapons on innocent civilians.

The effects of war are devastating for women. The sufferings of women and children are immense when they lose their husbands or brothers or sons in a war. Apart from their deep psychological trauma, if their male relatives are either seriously wounded or lost their limbs, women have to endure the suffering caring them throughout their lives. They lose their source of income and it takes years before women restore their life to an acceptable existence.

There is a view that men do not hesitate to wage wars to settle scores against each other. To some men, war is equated with bravery and heroism. Men often have argued that war is permissible on the basis of "just war". Women in general do not subscribe to this hawkish view and believe that war can never be "just" because it invariably kills human beings. There are no moral reasons for war.

Very few women have been elected to head a government in democratic countries. Although the US is a vibrant democracy, not a single woman has either been elected or nominated as President from the mainstream parties for more than 200 years of its existence.

As for the UN, not a single woman has become the Secretary General until today for the last almost 60 years of its existence. There are many women who are eminently suitable for the highest position in the UN. They are either ignored or sidelined by men-politicians. The reasons are not far to seek for such gross discrimination for women.

Many have argued that if world affairs would be in charge of women, the world order would be more caring

for the poor and will be more peaceful and harmonious.

### Some Dissenting Views

Mostly male scholars do not agree with the views argued by women authors on international law. Professor Tenson says that international law is a vast field and most of the topics are gender-neutral and argues against the view that existing international law ignores the concerns of women. It is not the law itself but the practitioners of law who are at fault for not doing enough for women, he argues.

### Conclusion

It appears that there is merit in the arguments advanced by women authors that the existing norms of international law, in particular laws of war, refugees, migrants and displaced persons, have not adequately reflected the interest of women.

It is argued that the inadequacy can be rectified by incorporating women in the 34-member of the UN International Law Commission, which is entrusted by the UN Charter to "undertake progressive development of international law and its codification".

Law is dynamic and is never static. The same applies to international law and it is necessary to seriously consider in what ways the existing international law can become "user friendly" to women.

Author is a former Bangladesh Ambassador to the UN, Geneva.



## HUMAN RIGHTS analysis

# The Fight to eliminate torture in Sri Lanka

BASIL FERNANDO

THE idea of the police station in Sri Lanka is a very strange one. Perhaps it may be so in all South Asian Countries. The idea is that a police station is a place where all rules of morality applicable to other places are suspended. This idea is based on another idea that brutal behaviour is unavoidable in dealing with crime. This idea is disavowed in the constitutions and in ratification of UN treaties. But in practice, "saying is like this but doing is that" is applied. Some how the incongruity of a law enforcement officer being allowed to act as a brute is ignored. One excuse is that we cannot afford the niceties affordable to developed countries. The Argument seems to be that life around us is brutish and short, so why bother only about niceties of policing. Perhaps, there is another assumption behind that. The poor are treated badly everywhere, so why should they be treated nicely only in police stations. Of course except in very rare occasions it is the poor that receive brutal treatment from the police. Is it not part of condition of being poor to be treated in this way?



Now, in Sri Lanka there is growing rejection of this way of thinking in civil society group. That change, which is rapidly spreading came from a small movement, which gained significant influence in Sri Lanka with in as short time as three to four years. This small movement is known as the "AHRN Network in Sri Lanka", which consists of several human rights groups from the ordinary folk in the country.

In Sri Lanka there had been many human rights groups with big names but they could not achieve what these smaller groups have achieved. Why? Torture was a problem of the poor. The affluent activists had little direct contact with the poor. Lack of contact generates lack of feeling. What you do not feel strongly against, you do not fight strongly against. The poor who are badly treated feel badly about such treatment. The rest of the society feels that it is part of the condition of being poor to be treated badly. Thus, the initiators of the movement against Torture in Sri Lanka decided quite early to build their movement with the assistance of people who are close to the poor and look for people who feel deeply injured by the treatment their fellow beings. So, you see the big NGO names do not appear

in the list of member organisations of this network. But the movement is a dynamic one. Its achievements are as follows:

1. Torture which was a topic on which there was almost absolute silence became the topic of constant discussion. Hundreds of cases have been published. The media, who observed self-censorship on this topic, has changed quite a bit, though there is lot more room for improvement. All most all cases now receive public attention.
2. CAT Act (Act No.22 of 1994), which was only in the books was revived and now the entire country knows about this law. There was heavy public education in which victims demonstrations played an important part.
3. As result of serious criticism of inaction of government institutions there were few changes: Special Unit of Investigations were assigned to Attorney General's department to investigate crimes under the UN Cat Act, which in Sri Lanka Carries a minimum sentence of seven years. Two cases have been prosecuted successfully where two officers including an officer in charge of a police station has been punished with that sentence. About 50 more cases are pending. The newly appointed Inspector General of Police has also expressed the elimination of torture as policy.
4. Also due to serious civil society criticism there has been some, though limited improvements. The Human Rights Commission of Sri Lanka adopted the elimination of torture as their number one priority, and HRC calls it the Zero Tolerance of Torture policy. The National Police Commission has also adopted a similar policy regarding torture. The speed of interdictions and inquiries has become a little faster. The NPC is also discussing speedy implementation of a Public Complaints procedure against the police and some practical steps have already been taken.
5. Within the civil society there is new mood and improvement of morale. More people come to complain and many do not give up complaints due to pressure, intimidation or promised favours.
6. There is improved debate on improving witness protection and thus removing the core obstacle standing in the way of prosecutions.
7. Cases from Supreme Court show increase of compensation and stronger condemnations of practice of torture.
8. There is also scepticism of giving more power to police under various pretexts such as crime prevention as there is realisation that such powers will lead to increase of torture and extra-judicial killings.
9. Instead, there is greater realisation of the weaknesses of the Policing system. For example, it came to light that there aren't a sufficient number of qualified

police investigators; that for the last ten years about 40,000 finger prints have not been examined as the Forensic Department does not have a computer to do that job with, the collapse of disciplinary process within the police has been admitted and there is some discussion on how to address it.

The overall situation is national in place. Where silence existed not long ago, there is lively debate now. This network has contributed to this situation and revived the spirit of many others.

Of course this in no way means that the work is over. Rather it means the work has begun and a good beginning has been made.

During last four decades there has been abuse of police by using them to commit large scale murder, torture and acts of intimidation for political reasons. This happened in the South and the North. Mass murder was common in the South. The official figure of 30,000 persons (unofficially recognised as about variously as 45,000 to 60,000 disappeared and no action was taken to prosecute anyone. Both in the South and the North there are mass graves which are not examined. Many crimes against humanity have been committed and complaints have been ignored.

Asian Legal Resource Centre (ALRC) has named Sri Lanka as country where there is an exceptional collapse of Rule of Law. In a submission made to UN Sub-commission to Human Rights Commission this year ALRC made proposal for study on the exceptional collapse of rule of law in Sri Lanka. This proposal was not accepted on the basis that Sub-Commission has been instructed by the human rights commission to undertake country specific studies. But the AHRN will use this document in trying to create public debate on the issue.

All this means a legacy of violence imbibed to law enforcement agencies. There lack of political will to face up to this past. So, there is long way to go, to make Sri Lanka a safe place to live. But the beginning of that change will not begin with the state. It begins with people who will fight on behalf of people. Such movement now exists. The AHRN is happy to have contributed a little to make this possible.

This is the shorter version of the paper which was presented in the discussion meeting: Criminal responsibility for torture: South Asian perspective.

Basil Fernando is Executive Director of Hong Kong based Asian Human Rights Commission.

THAI forces are accused of using inhumane force against Muslims in the south. Stopping short of apologising for the carnage, Thai Prime Minister Thaksin Shinawatra announced an inquiry into the deaths, but it was not clear who would sit on the panel or how it would be run.

It's most important there are very thorough, independent judicial and legislative inquiries, said Nick Cheesman, project officer of the Hong Kong-based Asian Human Rights Commission (AHRN), according to Agence France-Presse (AFP).

Rights activists have accused Thaksin's government of abuses over the last two years including a war on drugs that left more than 2,500 people dead, a raid on a mosque in April that killed 32 lightly armed rebels and other hard-line tactics in the south.

The AHRN called Monday's deaths at Tak Bai in Thailand's Muslim-majority Narathiwat province most disturbing and utterly inexcusable.

Their deaths speak to the total absence of professional behavior and rudimentary respect for human lives on the part of those leading and carrying out this operation, it said.

Not only the south, but the whole country must now face the bloody consequences of an unapologetically aggressive and belligerent approach to legitimate human rights concerns held by growing numbers of people there.

### Explanation

Thai senator Kaewsan Atipho demanded a thorough explanation from the government as to why dozens of Thai men died in transport from Tak Bai.

If the fact was that people had their hands tied behind their backs and were piled into trucks it was the fault of the government, and the government has to give their families justice, he said.

He also called on authorities to immediately release the remaining 1,200 detainees or give them lawyers and allow them to meet relatives if charges would be pressed against them. They can be held for up to seven days under martial law.

### Premier Under Fire

A defiant Thaksin stopped short of offering Muslims an apology Thailand's human rights commission was to send its own four-person fact-finding mission to Narathiwat this week and submit a letter of complaint Wednesday to Thaksin.

In its letter, the commission rapped Thaksin, saying the use of force was excessive, and someone should be held responsible, commissioner Saneh Jamarik told reporters.

In a blunt assessment, he laid the blame for the southern unrest, which has now left at least 414 people dead this year, squarely on Thaksin's government.

We have analyzed and found that the key problem is government policy. We have proposed advice in previous letters but the government was not interested in our opinions, Saneh said.

He ranked the incident on a par with the brutal April 28 raid on the Krue Se mosque in Pattani province when security forces shot dead 32 lightly armed suspected Muslim militants. A fact-finding commission concluded that troops were too heavy-handed when they stormed the mosque on a day when 108 militants and five security forces were killed in the south. The army commander who ordered the mosque assault, General Pallop Pimmanee, resigned over the controversial raid, but Thaksin stopped short of acknowledging any wrongdoing by Pallop.

### Muslims Fury

Meanwhile, the main Islamic political party in neighboring Malaysia called the deaths a real massacre, warning it could lead to an Islamic uprising in southern Thailand.

This is tragic and a real massacre of a group of people who are just peacefully demonstrating and this will have a great effect on the feelings of southern Thai people, Muhammad Hatta, chairman of the external affairs committee of the Part Islam se-Malaysia (PAS), was quoted by Al-Jazeera.net Web Site as saying.

This latest issue will create more instability and dissatisfaction and we are very worried that people will rise against the government.

Furthermore, a Thai Muslim group threatened of taking the fight to Bangkok to avenge the Monday deaths.

Their capital will be burned down in the same way the Pattani capital has been burned, the Pattani United Liberation Organisation (PULO) said in a statement posted on its Web site.



PHOTO: AFP