

Constitutional Democracies or Authoritarian Regimes:
Dysfunctional Law and Human Rights in Cambodia, Sri Lanka and Thailand

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On May 3, 2008, the Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities went into force with the support of 127 signatories with 71 states agreeing to the optional protocol (OHCHR 2007). At its inception, the convention was further ratified by 38 states making it a legally binding document to these parties. To mark the occasion, United Nations High Commissioner for Human Rights Louise Arbour introduced the treaty as a “ground-breaking Convention, which fills an important gap in international human rights legislation affecting millions of people around the world” (OHCHR 2008). The treaty has been well received by the international community and it is the latest step in the codification of human rights law. Despite the obvious success in furthering international jurisprudence, there remains a fundamental gap between the development of universal human rights law and the implementation of treaty law at the domestic level. While nation states may sign and ratify international conventions, many continue to ignore their obligations to uphold and promote these legally binding agreements. These states may also claim to be liberal democracies struggling to develop their economies and lift their citizenry out of poverty; however, there are clear authoritarian tendencies happening at the institutional level of state management including the police, the judiciary and the administration. By presenting a general survey of these institutions in Cambodia, Sri Lanka and Thailand, this paper uses a human rights perspective to argue that these constitutional democracies are in fact quasiauthoritarian regimes. This paper further argues that international law is failing to protect local people and that the human rights situation will not improve until domestic law is strengthened through institution building, social movements and private sector support. The international human rights movement should therefore shift more attention to building the capacity of local institutions rather than strengthening international law.

Defining Human Rights

Donnelly (2004) defines human rights as “the rights that one has simply because one is human” (80). For the purpose of this paper, human rights will be defined as the basic fundamental freedoms that are guaranteed to each and every human being on earth. They are enshrined in the United Nations (UN) covenants and conventions as inalienable, universal and absolute. The Universal Declaration on Human Rights (UDHR) defines these rights as “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” (UNHCHR 2005).

Although there are many interpretations of what human rights and fundamental freedoms actually mean, there is a clear consensus that they are inherently associated with a Westernised concept of morality and have historically evolved through the European and American legal traditions (Dunne and Wheeler 2004; Donnelly 2004; Brown 2004). Since the modern human rights movement is a Western abstraction, there has been fierce debate surrounding the discipline’s universal practicality for three main reasons. First, since contemporary human rights are a Western idea, the thought of applying its theories to other societies around the world has significant cultural implications. Second, there is serious doubt that human rights can be as relevant to poorer countries that are struggling to feed its own people. Finally, the claim that people

have a duty to protect citizens of a foreign country has become a major contention. These three views are at the heart of challenging the universality of human rights.

The first claim is human rights are not culturally relevant. It is true, scholars around the world have questioned the true universalism of the concept after governments demanded that their way of life be regarded as legitimate even if it does not fall within the international human rights framework. Concepts promoting Asian values and religious customs have been at the forefront of rejecting the Western concept of universal human rights. Although this idea of cultural pluralism is strong, it also has its critics who rightly point out that governments use culture as a mechanism to impose authoritarian rule and to continue violating rights (Booth 2004: 40). Booth (2004) argues that even though human rights started in the West, it does not necessarily mean that the West should also be its ending point (53). While some governments such as Singapore's may claim that human rights are not universal, this view is reflected by an elite class and arguably does not reflect the general view of the citizenry. Similarly, while some predatory governments may claim that human rights doctrine is a form of Western imperialism, the victims of human rights violations will generally disagree. The convergence of global culture should be seen as an opportunity to develop universal concepts through local consultation. The human rights discourse has done just that.

Other human rights sceptics suggest that poverty and underdevelopment justify the state's inability to comply with international human rights norms. However, as Peter Baehr (*quoted in* Booth 2004) showed, anyone who claims that the developing world is not ready for human rights plays into the hands of the oppressor (54). Human rights should not be reduced to a luxury. For example, to deny people the right to clean water based on the government's view that the state is poor must be rejected since most often the state is appropriating public funds. This has been the case in most Asian states, where the people remain poor but the military and political elites are millionaires. This is especially seen in Pakistan where the military is the largest enterprise in the country involved in the production of everything from breakfast cereal to books (Malik 2008). Dunne and Wheeler (2004) support this view and argue that underdevelopment is not an excuse to violate international human rights law, especially when the state has signed international conventions (15).

Meanwhile, Dunne and Wheeler (2004) see the contemporary challenges to the human rights movement in terms of natural law and human nature (5). They argue that "The fundamental problem with defending the human rights regime in terms of natural rights thinking is the failure of its advocates to provide a convincing theory of human nature which would ground notions of human dignity"(5). Convincing sceptics that human nature is good and that strangers have a duty to help those who are suffering in foreign lands has been a major barrier for the rights movement. Governments aside, international organisations such as Amnesty International and Human Rights Watch have to spend a great deal of time campaigning in their pursuit to gain basic support for international solidarity. Despite the difficulty, perceptions are changing with evidence of this being seen by the UN's recent initiative on appointing a Special Advisor on the Responsibility to Protect (R2P). R2P is an organic concept that describes "the duties of governments to prevent and end unconscionable acts of violence against the people of the world, wherever they occur" (R2P 2008).

Even though there are many challenges for the universal acceptance of human rights, the world witnessed many great successes during the past century. Donnelly (2004) suggests that the adoption of new international laws that are conceived in the form of conventions and treaties have been a milestone for human rights defenders. He goes on to claim that the fundamental success of the movement has been its ability to discredit moral and political decree that is inherently repressive. Donnelly also notes that Western notions of self-determination of the individual have played a major role in the evolution of nationhood, all which have pushed the human rights agenda forward and have forced governments to condemn arguments criticising international human rights as being misguided (97-99). This progress has brought human rights into the mainstream international relations discourse and has forced even the worst human rights abusers to acknowledge that it is a legitimate issue that must not be ignored in the international arena (Booth 2004: 59).

The nation state has only existed for sixteen of the past 5,000 generations and it is true that human wrongs are more universal than human rights, in that it is generally easier to identify a wrong than it is to agree on a right (Booth 2004: 60-2). For example, it is easy for any observer to see when the military is abusing its power by opening fire on a group of protesters; however, it is less easy for society to universally claim that those protesters had a right to be there in the first place. Regardless, the 20th century will be partly remembered for the convergence of human rights discourse and the strengthening of international law.

While human rights have become entrenched in international law, nation states continue to violate these international conventions. Cambodia, Sri Lanka and Thailand have all ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR); and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Despite these legally binding commitments, dysfunctional domestic law and quasiauthoritarian rule make it impossible for international law to protect individuals within the state. International law has become nothing more than political lip service for government elites who have little ambition to improve the domestic human rights situation.

International Human Rights Law

There are many definitions of law with Martin Dixon (2005) seeing it as the binding force of a society and is necessary for any community to function (17). The 19th Century jurist John Austin saw law as the will of the state backed by force (Dixon 2005: 15). Whatever definition is applied one thing becomes clear: the law is about order and international law is about international order.

There is no question that the last century has experienced remarkable progress when it comes to the codification of international law. Human rights law is no exception, as George Ulrich (2007) notes that the codification of human rights laws is one of the great achievements of contemporary international relations (39). Meanwhile, Martin Dixon (2005) sees human rights law as one of the greatest achievements of international law since states can no longer hide behind Westphalian ideology. What was once considered immoral is now considered illegal (322-23). Dixon rightly points out, for the

first time individuals have a mechanism to challenge national laws in court (80). This has tremendous implications since states can now be held accountable for internal actions that may be seen as harmful to citizens.

Human rights law can be found in international conventions, customs and the general principles of law (Dixon 2005: 21). Treaties are one of the most important sources of international law (Dixon 2005: 49). Although treaties are voluntary and can only hold states accountable that have signed and ratified the agreement, all nations have ratified at least one convention (OHCHR 2008). Moreover out of the 192 UN member-states, there are currently 161 signatories to UN Convention on Civil and Political Rights (ICCPR) with another 158 signatories to the Covenant on Economic, Social and Cultural Rights (ICESC). However, it remains to be seen if these treaties are actually creating genuine law or promoting obligations. Dixon points out that many human rights treaties are considered soft law since the international community has not reached consensus on how or what the treaties mean. The content of the treaties is vague since there are no clear norms. An example of soft law is seen in Article 2 of ICESC, which demands that nations “take steps, individually and through international assistance ...with a view of achieving progressively these rights...” (Dixon 2005: 47). Although there is a clear demand for human rights protection, there may be many different interpretations on how to achieve this end. Nonetheless, international human rights law matters.

Even though countries may violate their citizens’ human rights, most governments’ feel a need to project the image that international law is binding and should not be broken. Nations continue to use the language of human rights and strive to achieve memberships to international bodies such as the UN Human Rights Council. This is done by states to help build their reputation as a responsible global citizen. This binding rule (*pacta sunt servanda*) is the essential part of international law since it would be impossible to enforce treaties if states did not see this as legitimate (Dixon 2005: 61). It should be noted that treaties are different from resolutions, as UN General Assembly resolutions are not binding, even when there is total consensus of a vote (Dixon 2005: 45). This points out a clear difficulty in international relations and possibly explains why so many global citizens may become confused when they see nations acting against General Assembly resolutions. The public may interpret this as illegal, when in fact the resolution has no legality whatsoever.

While this section has tried to show the source of international human rights law, this paper argues that these laws are for the most part unsuccessful in improving human rights. In fact, governments who are committing human rights violations are using international legal mechanisms to legitimise their authority. This is being seen throughout Asia, with Cambodia, Sri Lanka and Thailand being no exceptions. What this paper questions is the human rights movement’s faith in international law by arguing that dysfunctional law at the domestic level is what drives human rights abuse. International law does not protect nationals of a country that is on the brink of collapse or is governed by a democratically elected illiberal regime. In fact, international law is retroactive in that it seeks to punish after the fact. It does little to build domestic legal institutions other than provide idealistic goals for governments who have no intention to incorporate sustainable legal reform. Many governments may appear committed to liberal democratic institutions such as independent judiciaries, when in fact they are nothing more than despotic regimes that have learned how to manipulate the democratic process.

Constitutional Democracy, Liberalism and Authoritarian Rule

Democracy is a term that has been defined and re-defined since the time of Plato. David Beetham (1999) points out that defining democracy is difficult since there are so many definitions of what it means (1). This paper borrows a definition from the Vienna Declaration which states “Democracy is based on the freely expressed will of the people to determine their own political, economic, social, and cultural systems and their full participation in all aspects of their lives” (*quoted in Donnelly 2003: 188*). Amos Peaslee (1950) defines a constitution as “a single written document or documents intended as the outline of the form of government of the nation and as the supreme definition of the functions and powers of the legislative, executive, and judicial organs of government”(3-4).

Walter Murphy (2007) expands on the concept of a constitution by rightly pointing out that they are meant to protect the people, while constitutionalism is a normative political creed consisting of negative and positive perspectives. Negative constitutionalism is when government acts more as night watchmen, while positive constitutionalism is where government acts proactive and moves towards the advancement of society (2-7). Murphy goes on to say “Constitutional democracy, the most common arrangement in industrial societies, unites beliefs that, although the people’s freely chosen representatives should govern, those officials must respect certain substantive limitations on their authority”(10). John Stuart Mill (1991) recognised the importance of restricting government power and argued:

Political checks will no more act themselves than a bridle will direct a horse without a rider. If the checking functionaries are as corrupt or as negligent as those whom they ought to check, and if the public, the mainspring of the whole checking machinery, are too ignorant, too passive, or too careless and inattentive to do their part, little benefit will be derived from the best administrative apparatus

(41-2).

For Mill (1985), freedom of the press was one of the greatest safeguards against state power (75). He argued that it was vitally important for good government to allow citizens to flourish or what he calls the promotion of intelligence (Mill 1991: 39-40). Mill believed that good governments must hold back its power, to allow free press and let society function as if it were governing itself (Mill 1985: 60). He further argued that the only way power should be used against a society is to prevent harm within the community (Mill 1985: 68). Montesquieu (1949) also championed the separation of powers and argued:

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehension may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty, if the judiciary power be not separated from the legislative and executive

(151-52).

Montesquieu and Mill both discuss the term liberty. Like democracy, there is no universally agreed upon definition of what liberty represents. Bentham (*quoted in* Burns and Hart 1996) sees liberty as many things such as privilege, immunity, exemption and right (241). While Fareed Zakaria (2003) defines liberty as “freedom of the individual from arbitrary authority, which has meant for most of history, from the brute power of the state” (31-2). While citizens living within advanced industrialized democracies will rarely experience the brute power of the state, authoritarian governments often use this force on its own people to exert the regime’s mandate. Cambodia, Sri Lanka and Thailand are no exceptions to this authoritarian method of domestic statecraft.

While the world appears to be becoming more democratic, Samuel Huntington (1993) rightly pointed out that many of these emerging democracies are in fact ‘semidemocracies’ as they show undemocratic and illiberal tendencies (12-13). These types of states have also been referred to as quasi-authoritarian states and hybrid regimes. Amos Perlmutter (1981) defines an authoritarian government as “collective dictatorship, an oligarchy, or military government. The term connotes collective rule, though supreme power may be vested in a single person...” (1). Moreover, authoritarianism demands that no independent political organization exist outside the state. The governments often come to power during crisis and are best known to repress individual freedoms and rights and are clearly linked to the military (51; 174).

Authoritarian regimes use many subversive methods to deny liberty and justice. Birch (2007) identifies four types of political power used by the state including coercion, authority, influence and manipulation (201-209). Although these may all be legitimate areas of concern, he fails to expand on the concept of violence. Birch’s concept of coercion only touches on state violence through the use of intimidation. Birch does not discuss the significance state sanctioned violence through extrajudicial killings, forced disappearances and torture. These issues are at the heart of human rights and dysfunctional law in South and Southeast Asia. Moreover, state sanctioned violence against its own people continues in these regions despite the protection of international law.

Dysfunctional Law and Human Rights in Three Asian States

This paper argues that international law is failing to protect people from human rights violators. In South and Southeast Asia, the primary human rights violators are the police and military. These agencies often act out on the orders of government and are protected by the courts. Human rights violators are institutionally entrenched within a system that protects the perpetrator, punishes the victim and rewards officials who cover-up the crime. The practice is systemic and many within the international community are demanding change. International human rights law is one strategy that is highly supported by many governments, NGOs and Academics. However as this section hopes to show, international law has its limitations when it comes to implementation. David Beetham (1999) highlights this problem by arguing:

Deficiencies in the implementation of human rights derive as much from the systematic inequalities between states and regions in their ability to guarantee subsistence, security and respect as from the particularism of the nation state

per se. In other words, it is the structuring of the global system...that is a major source of problems for human rights implementation

(144).

He also claims that how a state treats its own citizens should no longer be seen as an internal matter (140). Following the great wars of the last century, it comes as no surprise that the human rights movement has called for post-Westphalian intervention when states are committing crimes against humanity. The following three case studies are meant to shed light on the current human rights situation in Cambodia, Sri Lanka and Thailand. It should be noted that the Asian Human Rights Commission (AHRC) is used as a primary source, since the author of this paper was working with the organization between 2005 and 2007. Many of the examples used in these case studies were researched and drafted by the author for the organization's distribution.

The Kingdom of Cambodia

Although Cambodia has one of the smallest populations in Southeast Asia, it has experienced one of the worst atrocities of the 20th century. Throughout the late 1970s, millions of Cambodians were killed in a genocide led by Pol Pot and his ruling Communist Party of Kampuchea. It was not until the 1990s that the international community officially started to rebuild the nation by sending multiple UN missions, billions of dollars in post-conflict reconstruction aid and a blueprint for creating the world's newest liberal democracy. Despite these efforts, Cambodia remains a fragile state. For the past decade, the country has been ruled by the Cambodian Peoples Party (CPP) and is led by Prime Minister Hun Sen. Hun Sen's government has been described by the non-governmental organization (NGO) Global Witness (2007) as a kleptocratic regime that is plundering the country (6). Duncan McCargo (2005) has argued that "Elections in Hun Sen's Cambodia have become an exercise in political theater that the CPP uses to legitimise its power (100)". This section looks at three areas where the CPP can be found institutionalising its power through quasiauthoritarian means including the judiciary, the police and the administration itself. Many of these measures are in opposition to international law and are causing widespread human rights violations throughout the state.

In 2007, the UN Special Rapporteur on Human Rights in Cambodia reported that "recent judicial appointments appear not to have been made in accordance with the Constitution, casting doubt on whether the constitutionally guaranteed principle of judicial independence is being fully respected in Cambodia" (UNHCHR 2007). Meanwhile, the AHRC reported that 99 per cent of judges are members of the CCP including the Chief Justice (AHRC 2007c). With a politically compromised judiciary, any prospect of an independent court system in Cambodia seems impossible. This is a fundamental concern for human rights defenders since in any authoritarian state, it would be difficult for a judge to rule against the governing party, placing the opposition leaders and critics in a dangerous situation. Mill (1991) exposed this conflict of interest and argued that the difference between a good and bad judiciary is the ability to reflect the peoples' needs by having highly trained judges who are independent (40-41).

Law enforcement in Cambodia is another institution that is being used to entrench quasiauthoritarian rule. Police in Cambodia are at the forefront of human rights violations and have been accused by many organisations of committing torture, arbitrary arrest, illegal detention and carrying out intimidation campaigns that have resulted in the killing of civilians. Corruption is endemic with private firms' often hiring police to carry out land seizures from the public and to act as the company's private security guards. When police moonlight as security guards and conduct evictions for the private sector, human rights is placed at risk since these officers may be involved in committing an offence. Since the perpetrators are police, victims are afraid to file a complaint at the station where the perpetrators regularly work. In Cambodia, police are regularly involved in illegal land seizures at the direction of local government authorities (AHRC 2007b: 55-90). There is a clear link between dysfunctional policing and Cambodia's weak judiciary. Montesquieu (1949) understood this and argued that when the police abuse their power, the magistrate must be held responsible since it is the court's duty to regulate the police (79). Yet, the Cambodia experience has shown that it is nearly impossible to safeguard against police brutality when there are no checks and balances on government power itself.

Political power in Cambodia is in the hands of the few. Global Witness (2007) exposed this in their damning report on the Prime Minister's family and their involvement in the illegal logging. The NGO was commissioned by the World Bank to monitor the logging trade. When the group's findings became public in 2004, military officers started threatening their staff and confiscated material. Prime Minister Hun Sen later branded the organization as "finished" and expelled them from the county (16). Kheang Un (2006) reinforces Global Witness's claims by arguing that political elites continue to advance their interests through corruption and the strengthening of their person networks through political institutions (244). He also stresses that these elites use fear tactics to intimidate the judiciary so the courts rule in the government's favour, thereby exercising the executive branch of government's power over the judiciary (232-33). Cambodia's political landscape has seemingly become an illiberal democracy in which the judiciary and police are manipulated into sustaining the government's quasiauthoritarian rule.

Democratic Socialist Republic of Sri Lanka

With Sri Lanka's government trapped in a seemingly perpetual civil war against the Liberation Tigers of Tamil Eelam (LTTE), many international organisations and governments continue to call for renewed peace talks. Many observers see conflict resolution and mediation as viable options in bringing an end to the two and half decade old conflict. With over 70,000 lives lost, it comes as no surprise that many security analysts see this as Sri Lanka's largest human security threat. This view has regrettably overshadowed a much deeper crisis that is affecting the entire state. That is, Sri Lanka's dysfunctional rule of law. No sustainable peace process could ever be implemented in the current situation since the courts and police would be unable to enforce any law that was passed. The government has instilled authoritarian powers at the executive level, corruption plagues the courts and the police are the primary violators of human rights.

In June 2007, the International Crisis Group (ICG) argued that the Sri Lankan government was more becoming authoritarian in its dealings with critics (ICG 2007: 15). This was not the first time the government has heard such claims, with Jasmine Joseph (2007) recently commenting:

The concentration of power on the Executive Presidency makes the legislature ineffective. The immunity of the President makes him beyond the reach of the judiciary. A crippled review makes the courts ineffective and in turn the Constitution is impaired. The situation of emergency makes the executive overtly powerful...what Sri Lanka witnesses is the naked abuse of power concentrated in the hands of the judiciary

(8).

Evidence of authoritarianism in Sri Lanka can be seen in the government's policy of allowing forced disappearances and arbitrary arrests (ICG 2007: 15). For example on June 7, 2007, the Sri Lankan security forces arrested up to 376 Tamil residences without giving a valid reason or providing identification, then sending them out of Colombo on buses. Although arbitrary arrest is common in Sri Lanka, this incident would have been approved by the higher levels of government, a move the government would later express regret over (ICG 2007: 15). Another example showing the government's authoritarian nature was in 2006, when President Mahinda Rajapakse violated the 17th Amendment of the Sri Lankan Constitution by making personal appointments to the National Police Commission and the Public Service Commission (AHRC 2006). Moreover, the Sri Lankan government's authoritarianism can be seen in its heavy-handed security mechanism. Human Rights Watch (2008) recently stated in its Universal Periodic Review of Sri Lanka "In the vast majority of the [disappearances] cases we documented, the evidence indicates the involvement of government security forces—army, navy, or police". Human Rights Watch goes on to say that the government has clearly failed to show any political will to investigate and prosecute those responsible.

At the heart of Sri Lanka's dysfunctional justice system is the judiciary. In 2005, the national criminal conviction rate was considered below 10 per cent, with recent claims that it is as low as four percent (AHRC 2007c: 306). Over the years, there have been countless court cases that have experienced prolonged delays. Due process is not happening in Sri Lanka's court system, with some cases taking over 5 years to finish. Often, the victims of human rights violations who are pursuing cases in the system lose the will to continue. The Sri Lankan justice system is directed by the Supreme Court, whose Chief Justice is Hon. Sarath Nanda Silva. The Chief Justice's integrity has been called into question many times, resulting in two impeachment hearings. Although he survived the inquests, many organizations continue to challenge his legitimacy saying that his judgements are arbitrary, especially when he consolidated his power on the Judicial Service Commission by appointing junior judges who should not have been appointed. The United Nations Special Rapporteur on the Independence of the Judiciary later expressed concern over the conduct of the Chief Justice (AHRC 2008: 317). Transparency International (TI) further commented on Sri Lanka's judiciary saying that there is no conflict of interest policy at the Supreme Court level, a situation that has allowed the Chief Justice to maintain total person control over the courts and continue to

rule arbitrarily. TI notes that since Sri Lanka has no contempt of court laws, this has allowed judges to create their own version of the law, which has led to the silencing of many journalists and critics (TI 2007: 277).

For the most part, the Sri Lankan police have managed to develop a culture of fear throughout the country. They are the primary source of human rights violations and have been accused and proven guilty of the most brutal forms of torture on the Sri Lankan people. The AHRC reports that “Police torture is endemic and routinely practiced at all police stations in Sri Lanka” (AHRC 2007b: 28). Like many developing states, Sri Lankan law enforcement lacks modern investigative tools and must rely on alternative methods such as torture to extract information. Often, this results in the imprisonment of innocent people since the police are more concerned about finding an accused for a crime. Corruption is rampant within the police force and collusion with organised crime is routine (AHRC 2004). Witness Protection was only introduced in May 2008, and there is no formal independent mechanism to investigate torture claims. In fact, the police are responsible for investigating human rights violations committed by the police themselves. Indeed, Sri Lanka’s law enforcement has become one of the state’s most notorious institutions.

Kingdom of Thailand

While Thailand has experienced a relatively promising development process, the country’s democratic institutions have been compromised by quasiauthoritarian rule. The judiciary, police and government administrators continue to threaten democracy, while human rights violations have become widespread and politically acceptable. James Ockey (2007) rightly points out how Thai democracy has experienced major setbacks as a consequence of the 2006 coup (133). On the other hand, Kevin Hewison (2008) argues that prior to the coup many Thais believed that the former democratically elected government of Thaksin Shinawatra was authoritarian to start (200). Regardless, the Thai government’s human rights record has suffered at the hands of the state’s heavy-handed policies.

The Thai judiciary has become a point of contention for many human rights activists. Following the 2006 coup, the Supreme Court was given greater authority by the military rulers. The AHRC (2007b) argued that the military purposely did this to improve the government’s ability to monitor and manipulate the court’s power. Ultimately, placing the Supreme Court at the mercy of the executive branch (362). Moreover, the coup exposed Thailand’s weak political situation since the Supreme Court was unable to protect the 1997 constitution. Rather, the court disbanded Thaksin’s Thai Rak Thai party and legitimized the military’s actions. Although TI’s Global Corruption Report 2007 perceives the judiciary in Thailand as being less corrupt, trust between the public and Thai law enforcement has been headed in the opposite direction (12).

Police in Thailand have been implicated in some of the worst kinds of human rights violations, although this is not uniformed practice throughout the country. In 2004, five police officers were implicated in kidnapping and causing the forced disappearance of human rights lawyer Somchai Neelaphaijit. The case was eventually brought to trial after witness came forward and identified the accused. Four of the accused police officers then had their cases dismissed after witnesses later retracted their story and

refused to testify in court. Only one police officer was charged and later to be released on bail pending appeal. Nick Cheeseman (2006) stated that when the witness appeared before the court, she froze on the stand and became physically distraught. When the judge realised that the witness was afraid for her life since the courtroom was full of police officers, he decided to allow her original statement to be included and disregarded her courtroom testimony. Weak witness protection continues to be a major hurdle in bringing police brutality to an end.

Despite Thailand's weak judiciary and unruly policing, the country's rulers have shown the strongest signs of authoritarianism. The emergency decree in the south has given complete powers to the security forces, with torture and disappearances being consistently reported by local observers and media. Many organizations have all called the action unconstitutional and contributing to the gross violations of human rights. For example, Section 12 of the emergency decree states:

In arresting and detaining suspected persons under section 11(1), the competent official shall apply for leave of the court of competent jurisdiction or the Criminal Court. Upon obtaining leave of the court, the competent official shall be empowered to arrest and detain the suspected persons for a period not exceeding seven days. The suspected persons shall be detained in a designated place which is not a police station, detention centre, penal institution or prison and shall not be treated as a convict

(AHRC 2005)

Since Section 12 states that detainees cannot be held in public detention, they are often brought to secret military institutions where they are subjected to torture (AHRC 2006). Another example of Thai authoritarianism can be seen in 2003, when the government killed more than 2,270 alleged drug dealers and arrested over 50,000 people over the course of 10 weeks (HRW 2003). This shoot-to-kill policy was widely condemned by the international community and praised by the Thai government. More recent examples of the state's authoritarian can be seen in the imposing of Marshall law following the coup, which was not lifted until April 2008. The country's new Prime Minister Samak Sundaravej is already building a hard reputation. When asked how he would deal with drug dealers, the BBC reported him saying that he would use the same tactic as his predecessor Thaksin Shinawatra. He was quoted as saying "I will not set a target for how many people should die...We will pursue a suppression campaign rigorously. There will be consequences"(BBC 2008). Overall, democracy in Thailand appears to be on the retreat with human rights issues seen once again as expendable by another ruling regime.

The Way Out

Firstly, liberal democratic institutions need to be strengthened. This is especially the case with forming an independent judiciary and strong parliament. Without the separation of powers, authoritarianism will prevail. Law enforcement agencies need to be properly trained and human rights must be regularly and consistently taught to all officers. Moreover, all state officers need to be equipped with strategies on how to avoid corruption. Corruption is endemic in many Asian states, contributing to elite politics that

undermine human rights. The human rights movement can achieve this by pressuring governments to allow international monitoring missions to observe how domestic institutions are functioning. While this is happening on a small scale in all three states discussed here, more effort is needed to seriously address the issues. Another strategy is for aid donors to shift the majority of their funding to institution building. For example, donors can facilitate training sessions on the rule of law and human rights. Foreign aid needs to be repositioned to deal with building the capacity of the state. Moreover, donors must be committed for the long term. Democracy, liberty and human rights have been developing in the West for hundreds of years (Zakaria 2003: 29-58). It would be unreasonable to expect that many of these developing states can change their political approach overnight or even in 20 years for that matter. What is important is that human rights and quality of life are improved. It is imperative that human rights are not made political if the international community is serious about changing the practice of human wrongs. States can have human rights without democracy as Hong Kong has proven. However, Hong Kong also has democratic institutions such as free press, strong rule of law and good governance. Human rights can improve if realistic expectations and strategic development goals are developed.

A second factor for improving human rights is the emergence of national social movements from within states that are experiencing human rights violations. Jackie Smith (2008) argues that social movements “pursue more ‘transformational’ goals that alter power relations in society (109). They try to win the hearts and minds of the public through education and activism. This is a critical component for the success of human rights. As Koen De Feyter (2007) argues, human rights need to be localised and developed through grassroots initiatives that are supported by layers of support at the national and international level (67). This was seen recently in Pakistan with the lawyers’ movement when President General Musharraf unconstitutionally dismissed the Chief Justice. Muneer Malik (2008), the former president of Pakistan’s Supreme Court Bar Association observed that the movement needed to change the mindset of the entire Pakistani population. He argued that the movement needed to speak the language of the people and disregard legal jargon, while using media, the Internet and satellite technology to spread the message. While challenging authoritarian governments through social movements is a difficult venture, it is absolutely necessary that these movements develop and are led by local people. Meanwhile, the international human rights movement can stand in solidarity with victims, document and record violations for future prosecution, and share experiences that have worked in other parts of the world. Human rights education is also essential and the international community can continue working with local educators to help spread the concept of rights, but the movement must be organised and led by local people if human rights law is to ever have any credibility. It should be mentioned that the author recognises that foreign-state intervention may be needed under R2P theory, especially during times of complex emergency or genocide. However this discussion is well beyond the scope of this paper.

Finally, human rights will not improve until business leaders decide to promote the rule of law. The business community can play a pivotal role in the development of the state. Business not only has the ability to influence policy makers, but also has a vested interest in the developmental success of nation states. Lesley Sklare (*quoted in* Bendell and Bendell: 2007) notes that corporations “work, quite deliberately and often rather

covertly, as political actors, and often have direct access to those at the highest levels of formal political and administrative power with considerable success” (62). This influence can be used to help develop legal systems within developing countries through corporate social responsibility (CSR) projects. CSR can be defined as “a company’s commitment to operating in an economically, socially and environmentally sustainable manner whilst balancing the interests of diverse stakeholders” (CSR Asia 2008). Although many business leaders may take the classic Milton Friedman view that the business of business is business, Friedman was a strong supporter of law. Friedman (2002) argued

There is only one social responsibility – to use its resources to engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition, without deception or fraud...Similarly, the social responsibility of labour leaders is to serve the interests of the members of their unions. It is the responsibility of the rest of us to establish a framework of law

(133).

It is often overlooked that this statement denounces corruption and promotes the rule of law in unison. In fact, the corporation is already playing an indirect role in shaping international human rights law. For example, Bendell and Bendell (2007) argue that although child labour and deforestation have been around for thousands of years, the corporation suddenly became responsible for changing the practice since society felt that communities and government could no longer enforce such regulations. They argue that the community turned to the corporation for leadership (68). McMillan (2007) further stresses that corporations’ act as a collective voice for action as well as inaction. They are therefore understood by these characteristics (16). This explains why some companies have developed positive images within the community, while others have been projected as malicious or even downright criminal. Regardless, the corporation plays an ever increasingly important role through the convergence of globalization and international development. Zakaria (2003) used a historical approach to show how the business community played a central role in strengthening the rule of law in the West (59-87). This same strategy can be used in other parts of the world. From a risk management perspective, the business community may be the largest foreign entity operating in the developing world that has the most to lose if rule of law and human rights are not improved.

Conclusion

This paper has tried to argue that human rights violations are essentially a product of dysfunctional law, which is proliferated by quasiauthoritarian regimes. It has further contended that the human rights movement has lost sight of a fundamental cause of human rights violations, which is the collapse of domestic law. More research is needed on how the executive manipulates the judiciary while crippling the legislature. To this end, international human rights law is unable to protect people who are victimised by governments who are unable or unwilling to bide by their international legal obligations.

Despite the shortcomings of international human rights law, it has provided a remarkably clear set of basic standards that all governments should implement. This paper has also attempted to offer a brief overview of the current human rights situation in Cambodia, Sri Lanka and Thailand. Furthermore, this paper argues that human rights will not improve in these states until democratic institutions are developed, domestic social movements take hold and the private sector takes a leadership role in promoting the rule of law. Human rights will continue to be a hot topic within the international community for many years to come, the critical point remains that what has been set out in the international covenants and conventions is now translated to the people who need them the most.

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