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focus

defending the *human rights defender:*



standing up
FMA Razzak *for*

**NEW CAMPAIGN:
Protecting human rights defender: FMA Razzak**



The Asian Human Rights Commission launches a campaign website calling for the protection of human rights defender Mr. FMA Razzak, as well as calling for holding genuine criminal investigations regarding the attack on Mr. Razzak.

This campaign site will contain materials regarding the brutal attack on Mr. Razzak and subsequent actions taken by the authorities, as well as news published by the national and international media in this regard.

<http://www.humanrights.asia/campaigns/attack-on-fma-razzak>

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The problems of human rights defenders under repressive states

Basil Fernando, Director, Policy & Programme Development, Asian Human Rights Commission & Asian Legal Resource Centre, Hong Kong

This edition of *article 2* (vol. 10, no. 2, June 2011) is dedicated to the story of FMA Razzak, a Bangaldeshi who was savagely attacked and partly blinded for his work as a human rights defender. But in order to understand the case of Razzak properly, we need to look at it in the context in which he was working. That is to say, what is the difference in roles between a human rights defender under a basically democratic state as against that of one under a basically repressive state?

Distinction between the administration of justice under a basically democratic state and a repressive state

When human rights activists and legal professionals from countries within North America and Western Europe think of the administration of justice, they often picture judicial systems with qualified judges who have been selected through reasonably rigorous processes, where their knowledge and their capacity to truthfully and effectively engage with the public without corruption is, generally speaking, taken for granted. Similarly, they may think of police forces with reasonably functioning disciplinary systems, supervision by the parliament, under scrutiny from the press. They may also think of prosecuting systems in which professionals—whether in a civil or common law system—are sufficiently qualified, reasonably independent and again subject to external controls and scrutiny.

Under repressive states, the administration of justice is not of this sort. Instead, what we usually see are judges perhaps qualified in the field of law (an accreditation that cannot be taken for granted) but who expect and calculate that corruption is inbuilt into the process of adjudication. Delays impede the process of justice. Complaint investigations often take months;

passage through prosecutors' offices often takes years, and then the passage of the case through court, many more years. Meantime, there are no witness protection programs, so witnesses who experience pressure and threats from those who committed the crimes have no guarantees of security. They might be offered money so that they will not testify or might be subject to physical assault, abuse and even murder in order to keep a case under wraps.

In a repressive state, perhaps the worst aspect of the system is the local police. Police officers who are supposed to investigate offences do not work under any sense of obligation to the public, to ensure the effective maintenance of control mechanisms. Complainants are sometimes chased away, made to wait, asked to come back several times or asked for bribes. Every complaint presents an occasion for extortion of the complainants, the accused and others who might be involved. The police become experts at finding opportunities for their own financial benefit. Women are subject to sexual harassment. As such, just getting a complaint lodged is an ordeal.

Additionally, there is in the repressive state the problem of political influence. Under basically democratic states policing and judicial institutions tend to function independently. Interference into their affairs by higher politicians or state officials may constitute a criminal offence, or at the very least be considered a serious breach of accepted norms that, generally speaking, politicians do not interfere in the day-to-day affairs of police stations or courts. In the repressive state, by contrast, politicians become involved whenever a powerful person who has been accused of a crime calls in a favour. Politicians call the local police and tell them what to do in response to requests for assistance from members of the power elite. In general, the police are not in a position to ignore these instructions, since their transfers, promotions and often their very livelihoods depend upon political backing.

Distinctive risks and threats under a repressive state

A person under a repressive state who tries to seek justice faces a great ordeal. The person must oftentimes make a choice: do I search for justice and risk my own safety and that of my family, or do I forget about it? In such times, a person may turn to human rights activists for support and guidance. Human rights defenders assist by writing down the person's complaint, advising the person on how to proceed, and accompanying the person to higher authorities and prosecutors, as well as going to court.

Those in the legal profession often feel that becoming involved in activities that could encourage the ire of the police (such as addressing torture) will cause them to lose favour with state officials and this could become problematic for them in the future.

“Complainants are sometimes chased away, made to wait, asked to come back several times or asked for bribes. Every complaint presents an occasion for extortion of the complainants”

“Torture is most often used not to extract information but to terrify and extort”

For example, a lawyer who has tried to bring a policeman to justice for torturing an innocent civilian may want to bail out a client in an unrelated case, but may find that the client is denied bail because the lawyer in question has attempted to challenge the authority of the police. As people learn that this lawyer is one whose clients do not get bail because of conflict with the police, the lawyer loses business. Other lawyers learn that if they do not want to end up the same way then they ought to avoid becoming involved in human rights issues.

Witnesses of crimes also face a number of difficulties. If a citizen complains about a policeman, the witness of the crime as well as their relatives and friends might be visited by the policeman who would pressure them to encourage the witness to withdraw the charge. Cases might be fabricated against them and they might be threatened with fines and jail time if they do not withdraw the case. Often, witnesses are themselves arrested, detained and tortured. Although torture is in Western Europe and North America thought of as a relatively rare practice, or one confined to certain types of cases, under repressive states it is routinized and mundane. Torture is most often used not to extract information but to terrify and extort.

In such circumstances, the only people willing to take up questions of torture and related abuses are human rights defenders. Yet, such people may not be appreciated for this effort. Under repressive states, trying to help people facing threats coming from state agencies can be considered a tremendously wrong thing to do. Indeed, this lack of appreciation for their role is often the most difficult problem faced by human rights activists working in these countries. The problem is essentially that their simple attempts to help their neighbours to deal with problems posed by agents of the state itself are not seen as legitimate activity.

Compounding of problems caused by failed rule of law

In repressive states with failed rule-of-law systems, insecurity prevails at all levels of society. Among the people who most forcefully express their insecurity are the more affluent members of society. They engage in various kinds of pressure to reveal their insecurity to the state. However, the state is unable to deal with the insecurity because it arises from its own repressive anti-rule-of-law model for control. The scale and character of the problems also are profound, requiring enormous political will on the part of the state to undertake serious reform. Yet, such will is absent.

In these conditions, what does the state do? Facing this crisis of confidence caused by insecurity and relying on an anti-rule-of-law model for control, lacking political will to address the systemic problems in any meaningful way it resorts to pacification methods. These may often involve the establishing

of special paramilitary or military security groups, enabling to act in ways that are outside of the normal law, thereby further compounding the failed rule of law of the repressive state. Paramilitary groups are encouraged to kill, and such killings are treated as unavoidable necessities in order to address the prevailing insecurity that the state itself has encouraged. Justifications are put forward for the use of other types of extraordinary violence.

So far as Bangladesh is concerned, this accounts for the existence and practices of the Rapid Action Battalions, which operate with extraordinary powers in part because of demands from the more affluent sections of society for some type of security, no matter how it is obtained.

When these paramilitary groups begin to operate they kill not only criminals but also many ordinary folk. In fact, there is no attempt to distinguish between the criminal and the innocent person. The paramilitary group does not have the capacity or a process by which to arrive at such a distinction. On the contrary, its operations are premised on the notion that whoever is targeted must suffer the consequences. Therefore random killing is allowed and becomes an acceptable part of the practices of these paramilitary groups.

When random killings increase in number, so too social uproar increases. Despite the repressive social conditions in which people are situated, many try to find a way to make their voices heard against such policies. Human rights organisations and others take up the issue of the victims and make demands on the government that such killings cease. The repressive state, which is hemmed in by its own anti-rule-of-law methods and the demands from affluent sections of the society for some kind of security, comes to regard human rights organisations as its enemies. Opposition to extrajudicial killing and other gross abuses of human rights committed in the name of public security becomes some sort of subversive activity.

Razzak's story

With this general understanding, we can go to the specifics of what happened to Razzak in Bangladesh this 2011. Razzak had for some years been working as a human rights defender. He helped people to make complaints, he accompanied them to court and he liaised with lawyers. Over time, he was seen as a great threat to the local police, who went out of their way to make his work as difficult as possible. Indeed, his interference cost the police and other officials money, lost opportunities for promotions and lost favour with politicians.

On one occasion, the police charged Razzak with the abduction of a young girl. There was no complaint filed by the young girl or her family against him. They had complained that she was missing, but even though the suspects did not include Razzak, the police went after him anyway. Numerous people

“Opposition to extrajudicial killing and other gross abuses of human rights committed in the name of public security becomes some sort of subversive activity”

“Three hospitals refused to take Razzak, because of pressure from the attackers, as well as a desire to avoid becoming involved in the difficulties Razzak faced with the police”

intervened on his behalf, including a number of international human rights organizations. Shortly thereafter, the young girl was located with a family friend in a village some miles away. The girl maintained that she did not know Razzak, and said that she had left the village voluntarily because her father had brought a new wife into the home. By then Razzak had been in police custody for two weeks. His family had to pay a bribe of USD 2000 for his release, and his wife had to sell her jewellery in order to raise the money. This happened two years ago.

Subsequently, a military officer engaged in land grabbing practices seized the property of Razzak’s father. When Razzak took records to the police station to file a complaint, the police ignored his complaints and took the side of the military officer. They ignored Razzak’s requests for help for more than two months. During that time, Razzak and his family had to live in hiding. The case was brought to the attention of the government, the official national human rights commission and a number of international human rights organizations, but Razzak and his family did not receive assistance. In the meantime, Razzak ventured out of his hiding place to meet senior members of the community whom he wanted to ask for guidance and support. On his journey, a gang of men waylaid Razzak and his brother. The men severely assaulted the two and attempted to gouge out Razzak’s eyes. This was done with the full knowledge of the police. The police then came and escorted the perpetrators of the crime to take Razzak’s body to the hospital, as if to show they had performed their duties in some way. Three hospitals refused to take Razzak, because of pressure from the attackers, as well as a desire to avoid becoming involved in the difficulties Razzak faced with the police. It took the intervention of a member of parliament to find a place in a hospital for Razzak to receive proper treatment. Once he was admitted, it was discovered that his eyes had been badly damaged, and he had to be hospitalized for a few weeks.

This story, although brutal, is familiar to human rights defenders working under repressive states. Unless volunteers for justice like Razzak work to raise awareness about the difficulties ordinary people face in their search for justice, the unequal balance of power between the state authorities and members of the public never changes. But when human rights defenders do this work, their own safety is compromised.

International solidarity, a challenge to the repressive state

Once Razzak was in hospital, his case received a great deal of publicity from international human rights organizations and embassies, urging government intervention. The government was inundated with complaints about this case. A few people came forward to help Razzak, one of them a young pacifist. After this man helped Razzak he was himself abducted and threatened with killing by persons who were evidently secret state agents.

Some details of his case are mentioned in this edition of *article 2*, as are those of another man who was similarly warned that if he kept up working on Razzak's case then he would be killed and his body disposed of in the sea. Both men have now fled to safety.

Although we might on the one hand ask whether the risks taken by Razzak and these two men for relatively small and simple actions in defence of human rights are acceptable risks, ultimately movements to safeguard the rights and dignity of ordinary civilians can never emerge without a few people like Razzak who are prepared to take these types of risks. Indeed, the struggle of a human rights defender under the repressive state is inherently risky.

If human rights are to be defended, human rights defenders must also be protected. This is an extremely pressing problem; it is not just the issue of a few people, it is a societal problem. Although it is to one degree or another a problem of all societies, it is one of peculiar difficulty under repressive states. Therefore, as human rights defenders worldwide we must work to build up as many new measures as possible to build international solidarity and provide support for such persons in order to better enable them to work under circumstances that entail and necessitate risk.

“If human rights are to be defended, human rights defenders must also be protected”

In defence of the human rights defender: FMA Razzak's story

Asian Human Rights Commission, Hong Kong

States and state agents have historically used violence to stifle public debate, and silence their critics. In many countries around the world today, states no longer rely heavily upon overtly coercive methods and instead acknowledge the need for authentic debate. But in many others, states and state agents continue to resort primarily to coercive methods.

In such countries, some persons try to break the silence on matters of importance that threaten repressive systems for social control. These persons we honour with the title, “human rights defender”. Oftentimes, the efforts of these persons seem small, especially to people in countries where authentic debate is taken for granted. Yet, such efforts necessarily begin small, and build up only with years of hard work.

Despite their appearance of smallness, such efforts challenge fundamental principles on which the state's power is based. For this reason, human rights defenders in these countries inevitably become targets for violence. Sometimes the violence seems arbitrary. Sometimes it seems grossly disproportionate to the small efforts of the person.

People unfamiliar with the milieu in which the human rights defender has been working naturally have trouble seeing how apparently small efforts to change society can provoke savagery. At such moments, those people who work with the human rights defender have a special responsibility to delineate the person sharply from his social and political environment, and in so doing, to set out some features of that environment, so that others can also understand why the person has been made the subject of violence.

For this reason, the Asian Human Rights Commission is issuing this short narrative on the work of a Bangladeshi human rights defender, FMA Razzak.

The story of how members of an army officer's family barbarically attacked and almost killed Razzak, gouging at his eyes and breaking his limbs, is now internationally known. The AHRC has set up a campaign webpage, which it is updating constantly, providing the latest details on the case and on subsequent events.

The purpose of this narrative is not to iterate all the contents of statements and appeals on the attack against Razzak, but to explain what motivated the attack, and to show how the police, judiciary and National Human Rights Commission in Bangladesh are working not to defend this human rights defender but to enable the continuance of violence and impunity in their country. To do this, we must begin with the story of Razzak, the human rights defender. That story, although specifically the story of Razzak, is more generally the story of the human rights defender as Bangladeshi; the story of anyone who sincerely believes and fights for human rights in such a country.

A life thrice endangered

Three times FMA Razzak has been in imminent danger of losing his life because of his work as a human rights defender.

The first time that Razzak escaped with his life was in 2002. Razzak by then had been taking an interest in human rights issues for five or six years. His interest had been sparked by a visit to his district of Khulna, on the western seaboard of Bangladesh, by a retired appellate division judge of the Supreme Court, Justice KM Subhan. The former judge, a firm human rights advocate, had spoken to a group of local journalists, Razzak among them. The journalists had given a commitment to the senior jurist that they would do their best to work on human rights issues in the region.

Razzak took this commitment seriously. He began documenting and reporting on human rights abuses in and around his home area. This task was not a minor one. With a populace of over two million in Khulna district alone, stories of abuse were all too easy to hear. Yet, too few people were listening, let alone doing anything about them. Most people with stories to tell were poor and socially isolated. Hardly any journalists took an interest in them. Some considered the stories trivial, others deliberately ignored them, preferring to ally themselves with money and power.

If they were going to be serious about their commitment to Justice Subhan, Razzak and a few others realized, they would have to take the work to the next level. They set up and registered a new organization, the Human Rights Development Centre.

In Bangladesh, a country with a current population of over 160 million, groups like the Human Rights Development Centre are integral links in the chain of human rights defenders from the village to the national level. Professional organizations in

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the capital, like the Bangladesh Rehabilitation Centre for Trauma Victims, or BRCT, depend on human rights defenders in the districts for information and support.

Razzak and his colleagues took to the work in Khulna enthusiastically, devoting what spare time they had to the human rights cause. They documented cases and wrote petition letters to BRCT and other groups in Dhaka. They took poor victims of assault to hospital, and collected money with which to purchase medicines for them.

The work continued in this way up to 2002. Then the government initiated a notorious drive to capture “wanted criminals”. Codenamed Operation Clean Heart, the 86-day campaign provided a perfect opportunity for people nursing grudges to point their fingers at others. The army received an anonymous letter accusing Razzak of belonging to a banned political party. Razzak got wind of the letter and went into hiding. By the time soldiers arrived at his house, he was gone. His family paid a high price for his absence. Soldiers ransacked the house. They tied up and beat Razzak’s father and younger brother. His wife they also assaulted and kicked, and stomped on her feet, crushing her toes. Then they poured cold water over her body and forced her to stand in the winter’s night for over two hours. Razzak’s seven-year-old daughter witnessed the assaults and suffered trauma as a result. Later, the army again came and took Razzak’s father into custody. They sent him to the local police station. The police held him for a month.

Only once Clean Heart ended was Razzak able to return home. During the operation, the army held and brutalized at least 11,000 persons. Fifty-eight of them died in custody. Had Razzak not escaped capture, he might have become another statistic.

Rather than frightening Razzak away from his work as a human rights defender, the threat of possible death in custody and the vicious attacks on his family only hardened his resolve. He went from being a human rights defender in his spare time to a fully dedicated participant in the struggle against impunity. He cultivated his contacts with national-level groups, and became actively involved in fact-finding missions around his region.

The BRCT took interest in Razzak’s work. He went for training, and became the organisation’s first point of contact in Khulna and surrounding districts. Now Razzak had to travel widely across an area of some 20 million people, visiting the victims of custodial torture, investigating and making preliminary reports as part of a small unit of professionals. Being a journalist, he had a knack with words. The BRCT appreciated the clarity and quality of his writing.

But beyond his professional skills, what distinguished Razzak’s work in this period was his heartfelt concern for the plight of the victims. Although his home was 60 kilometers distant from Khulna city, he became better known within the city limits than

people there that represented themselves as human rights activists. He never failed to take responsibility for a case that was brought to his notice, and travelled around neighbouring districts with the same unflagging energy. He took people to hospital, helped them to get treatment, to get medical certificates and to file cases against perpetrators. Anyone in need received Razzak's assistance, no matter age, gender, religion or social standing.

The second time that Razzak narrowly escaped with his life was during 2004. In June of that year, the government set up the Rapid Action Battalions. The battalions, which comprise of both military and police personnel, adopted the extralegal practices of Operation Clean Heart, making them a permanent feature of law enforcement in Bangladesh. The RAB quickly became notorious for killing arrestees in staged "crossfires". In the first days of the RAB, few persons who were taken into their custody returned home alive. (For a discussion of Operation Clean Heart, the emergence of the RAB and related issues see the special report published in *article 2*, "Lawless law enforcement and the parody of judiciary in Bangladesh", vol. 5, no. 4, August 2006.)

When a RAB unit took Razzak away, witnesses frightened for his safety promptly contacted the BRCT. Someone at the organisation got through to the unit's commander. They impressed on the officer that witnesses had seen the RAB personnel taking Razzak and that the details of his arrest and other facts had already been documented. The BRCT's quick work probably saved Razzak's life. Realizing that the man in their custody was known, after just a couple of hours, the RAB handed him over to the police. A case against him failed in court, and he walked free.

Again Razzak proved his credentials as a human rights defender, redoubling his efforts to document and report on torture cases. He also brought victims personally to the BRCT in Dhaka, where professionally trained staff gave them treatment. Sometimes he organized for them to go to the centre with others.

In this period he documented a number of important cases. Soldiers beat a street vendor to death on the roadside. Apart from Razzak, nobody published news of the case. Another time, army personnel tied two men to a tree and assaulted them to extract information on the whereabouts of a wanted criminal. He also investigated and reported on corruption among officialdom; about police backing of illegal land grabbers, and about sectarian attacks on the minority Hindu community that the local authorities failed to halt or address.

A link with abroad

Around this time, in 2006, Razzak began voluntarily sending cases directly to the Asian Human Rights Commission. Soon, the AHRC was issuing urgent appeals on cases from Khulna that

“Anyone in need received Razzak's assistance, no matter age, gender, religion or social standing”

Razzak had documented. The following February, Razzak himself became the subject of an appeal, when he and his father were forced into hiding after an army officer falsely accused them of extortion. Observing his strong energy and efforts, the AHRC subsequently invited Razzak to its office in Hong Kong, where he participated actively in a programme for human rights defenders from across Asia.

Razzak had become a major pain to the local military and police. From his beginning as an interested but relatively inactive journalist he had become a tireless advocate for victims' rights. He had gone from being a local activist to a point of contact for a major national organisation. He also had found an international voice through the AHRC. Earlier attempts at frightening the troublemaker off or quietly getting rid of him had not succeeded. Now the police and military resorted to a systematic campaign, which continues to the present day, aimed at blackening Razzak's name by painting him as a criminal. They also camouflaged attacks motivated by his work as a human rights defender, characterizing them as mere personal disputes.

In 2008, police brought a fabricated case against Razzak, alleging that he had abducted a young girl. The case was motivated by Razzak's support for a widow who had lost her land to illegal interlopers. The interlopers had the backing of the officer in charge of the local police station. When the facts of the case came out in court, the police transferred the officer in charge as punishment. The punishment, although mild, encouraged local reporters and other human rights defenders. The newspapers

began publishing more stories about the officer's role in other land grabbing incidents, and his part in various illegal enterprises.

Embittered, the police manufactured the case against Razzak. Because the fake case was the work of the police themselves, it fell to Razzak's family and fellow rights defenders to search for the girl and bring her to court, where she testified that nobody had abducted her. This time, Razzak and another rights defender spent three weeks in detention. The Asian Legal Resource Centre documented the case in the March 2009 edition of *article 2* ("Disconnected policing and the justice trade in Bangladesh", vol. 8, no. 1). The article on the case

FMA Razzak, during his four-month internship with the AHRC



includes tabulated details of the amounts of money that the families of both men had to spend to secure their release, including by way of bribes to various officials.

During 2009, Razzak came back to Hong Kong, this time for a four-month internship. Basil Fernando, director of programmes and policy at the AHRC, remembers him well:

“When Razzak came for the internship, his capacity to use the computer, to use the Internet, was basically zero. As a journalist he had been writing in longhand, using couriers to send his stories for print. Up to then, to send information to us also he had been relying on outmoded technology. I saw a tremendous fighter, but one frustrated by an inability to do more, and a man demoralized at the repeated attempts to silence him.

“In Hong Kong he gradually began to participate, to learn new techniques and new skills. He got into dialogue with people from around our region facing similar problems, and he shared ideas and experiences. I watched as some of the strength that had gone out of him after recent events returned. He regained his belief in his own ability, and on top of that realized how much more he could do.

“So, Razzak went back to Bangladesh invigorated, and also more skilled and knowledgeable than he was before. He went back to Khulna and in this new phase of his development as a human rights defender, whenever he took up an issue it went out faster and got even more backing than ever before. So he had by now become much more of a nuisance than earlier. And this would have caused a lot of confusion and annoyance among the fellows responsible for attacking him. For years they had been escalating the campaign to stop his human rights activities, to the point of beating his family members and perhaps intending to kill him, yet still he had kept fighting, and each time had bounced back stronger.

“The whole point of these attacks on Razzak was to force him to give up, or to get rid of him completely. When the police or army attacks, the person is supposed to realize that whatever they are doing, they should stop it. But this fellow did not stop. So it is this atypical aspect of his behaviour that confused the perpetrators of abuses and their allies, and which led to the madly brutal attempt on his life in 2011.”

The ceaseless efforts of Razzak for human rights, which had begun in a small way some 15 years earlier, now provoked a response of such savagery that it has shocked people all around the world.

A savage attack with state agencies' complicity

The 2011 attack was the third time that Razzak escaped with his life. On this occasion, the escape was narrow.

“ The ceaseless efforts of Razzak for human rights, which had begun in a small way some 15 years earlier, now provoked a response of such savagery that it has shocked people all around the world ”

“On the contrary, the function of the criminal justice system was to terrorize the family and enable the attacks to continue if Razzak refused to give up”

After returning to Khulna from Hong Kong, Razzak immediately set about looking for new ways and new opportunities to promote human rights. The publisher of a local fortnightly newspaper had decided to give up the business. He offered it to Razzak, who took up the paper, both as publisher and chief editor.

In the meantime, Razzak had gone back to study. After years of entanglement with the legal system, he had decided to learn the law, so as to be better equipped to work on human rights cases. At the time, he explained to a friend that although his region had many good lawyers who were sympathetic to the victims of rights abuses, they lacked the enthusiasm needed to travel long distances and represent people with no money to pay for their services.

Razzak successfully completed a bachelor of law through a private university in Dhaka, and began working with a senior advocate in Khulna, drafting legal documents. The quality of Razzak's written skills combined with the legal knowledge he had obtained from the LLB proved formidable. His senior was very much impressed by the quality of the work, and did not make changes to Razzak's drafts before submitting them to court, as he would have done ordinarily. Meantime, Razzak set about trying to obtain a licence to practice.

All this was a bridge too far for the local police and military. In February 2011, they conspired to make yet another fabricated criminal case against Razzak and his family. This time, the complaint was of arson and destroying of property. With this new case underway, mobs led by the brother of an army major began a series of concerted attacks on Razzak's family and his property, culminating in the eye gouging assault in which he nearly lost his life.

On February 18, the brother of the army major led a mob to attack Razzak's house and its occupants, injuring his wife, brother and sister-in-law. The entire family went into hiding. On February 28 a mob led by the same man came to the unoccupied house, damaged property and carried off timber from the yard. In early March, someone apparently poisoned poultry owned by the family. And, on March 14 the officer's brother broke into the house with a group of others and looted it, carrying off a laptop, camera, jewelry and even a refrigerator.

Throughout this time, the police and courts took no action to stop the perpetrators. On the contrary, the function of the criminal justice system was to terrorize the family and enable the attacks to continue if Razzak refused to give up. The state agencies were fully arrayed against this human rights defender and his loved ones, including children and the elderly. The prelude to the third attempt on Razzak's life was, in hindsight, a portent of what would come after the attack. The prerequisites for impunity were already in place. In fact, the major attack could not have occurred without guarantees that the attackers would be protected.

The attack, when it came, was horrific. After some time in hiding, Razzak and his younger brother had again ventured out into public, and on April 29 had been travelling to meet with police and other local authorities, to appeal for help and to try to resolve the latest concocted case against them. Perhaps because they had been travelling to meet state officials, rather than trying to evade them, the men had not expected that the attack would come when it did.

The attack is described in full on the AHRC website. Briefly, according to Razzak, around 40 men surrounded the two brothers as they were trying to hire a car to travel for meetings with officials the next day. Razzak recognized them as men attached to the family of the army officer who had led the attacks of the previous two months. Kazal, the major's brother, was again present to coordinate the assault. Razzak vividly describes what happened next:

“Immediately, the gang jumped on me. They began to indiscriminately hit me: my head, back, chest, hands, legs—every part of the body. Kazal and his gang tried to push fingers into my eyes to gouge the eyes out. I tried to block the eyes with my hands. Then, they severely pressed on my testicles. I was about to die! I had to move my hands from the eyes to the testicles at that moment. Immediately, they pushed fingers and a rod into my eyes and kept moving the rod inside the eyes. They tried to take out my eyeballs.

FMA Razzak is in critical condition following the latest brutal attack





Bodiuzzaman, brother of FMA Razzak, was also a victim

“Simultaneously, many others were hitting me with rod and stick. I cried out for help. But nobody responded to my cry. Only my younger brother tried to rescue me. But the gang caught him and brutally beat him, taking him a few yards far from where I was being beaten. I had no scope to follow or understand what was happening to my brother. I could do nothing to save myself. They knocked me down to the ground and jumped on my body and hit me as they wished.

“They constantly hit my right leg, which broke on the scene as I fell. When I tried to block the hits with my right hand, they hit my right hand, which also broke. I became completely motionless. They took away my mobile phone and some money that I had in my pockets. I was almost dead there.”

At this moment, what saved Razzak was his own sense to feign death. Had he continued to fight or cry out, the mob would surely have killed him. But knowing that

nobody would come to help him, that the arrangements had already all been made to get rid of him once and for all, he lay still and listened to the men talk. Kazal called his brother, Major Mustafizur Rahman Bokul. He put the phone on speaker so the others could listen, and Razzak also heard the exchange. It began with Kazal:

“Brother, the kuttar bachha (son of dog) is caught in our hands now!”

“Only caught? What do you mean? Break his legs and hands! Take out his eyes!”

“We have already taken out his eyeballs making him blind and have broken his hands and legs!”

“Where are you now?”

“We are in front of the paribahan (long route bus) counter.”

“Throw his body into some ditch!”

Instead of following the order, Kazal and the mob took Razzak in a van to a place where other members of the officer’s family and more people were present. The group again assaulted him. They again called the major on speaker phone, who said that he would arrange for the RAB in Khulna to take the body and make it look as if Razzak had been killed in crossfire. But, his brother advised that it would take too long and that the matter had to be sorted out before then. Kazal instead called the officer in charge of the Paikgachha police, OIC Enamul, who asked,

“Kazal, what are you doing now?”

“We have already taken out his eyes and broken his hands and legs.”

“Very good! Bhalo kaz korecho (a great job)! Don't kill him on the scene; I am sending police there.”

After two police arrived, they began coordinating with the attackers. Neither the police nor the family wanted to take Razzak's body away. Finally, the police agreed to escort the attackers to the hospital, with the latter bringing Razzak by van. At this time it seemed that he was dead, or would soon die. Hospital staff kept him on the verandah and offered no help. Later, they sent him on to Dhaka, where at last he received treatment, and from where he could tell his story. According to medical tests, Razzak has lost 75 per cent of his right vision.

The most elementary things not done

Let us now take a moment to consider the role of state agencies during and following the attack on this human rights defender. What we find is that across all of these agencies, even the most elementary things that should have been done have not been done.

The role of the police in enabling the attack and colluding with the attackers is obvious. After the attack, with a large amount of national and international news on the incident, it would be reasonable to expect that the police would feign an investigation. But even this seems to be unnecessary. A month on from the assault, no police officer has yet recorded Razzak's testimony. The police did record a First Information Report about the incident, which listed 38 persons as accused, Kazal at the top of the list. Despite this, to date no charges have been brought against any of the 38. By contrast, on top of the fabricated case against Razzak pending from February, in April and May the police lodged two further concocted cases against him, his brother, wife and some other relatives and supporters. One journalist implicated in these cases they detained.

The local judiciary has so far done its job to protect the perpetrators. Although some of the accused it initially placed in custody, because Razzak's lawyers could not bring a proper medico-legal certificate to court in time, the judge released 14 out of the 15 persons detained. Whereas the criminal justice system has the responsibility to see that official medical examinations are recorded according to procedure and evidence brought to court, in this case the judge transferred his own duty onto the victim as a means to enable some of the accused to walk free.

The army for its part has seen no reason to suspend, investigate or even comment upon Major Bokul. He continues in his post as usual, despite requests for him to be suspended coming from high levels inside the country and abroad, and despite public rallies in Khulna calling for his dismissal.

“Whereas the criminal justice system has the responsibility to see that official medical examinations are recorded according to procedure in this case the judge transferred his own duty onto the victim as a means to enable the accused to walk free”

“The National Human Rights Commission has joined the ranks of the propagandists for the perpetrators of this heinous attack”

Perhaps the most scandalous part in the business following the attack has been the role played by the National Human Rights Commission. Despite repeated requests from the AHRC, as well as from other persons and groups in the country and outside, it has failed to act on the case. The NHRC chairman, Professor Mizanur Rahman, in a discussion with AHRC staff iterated the lies of the army major: that Razzak was a criminal, and the attack related to a personal dispute rather than human rights work. Although he promised to visit Razzak in hospital, the chairman failed to appear, and his commission failed to record a statement from the victim. The NHRC, in short, has joined the ranks of the propagandists for the perpetrators of this heinous attack.

Yet, none of this is exceptional to Razzak’s case. On the contrary, these are the routine methods of the criminal justice system in Bangladesh: precisely the methods against which Razzak had been fighting for years. The police give various excuses for being unable to complete an investigation. The court puts the onus on the victim. Other agencies that in principle should come to his aid instead rally around the perpetrators. This is the milieu into which Razzak first tentatively took steps as a human rights defender in the 1990s. It is the system of violence against which he has struggled since, and against which he is today forced to struggle for his own survival.

The violence continues

Within days of the attack on Razzak, the threats of further violence spread. Two of the attackers visited eyewitnesses who had joined rallies to call for the arrest of the perpetrators, and brandishing long knives told the witnesses that they would be killed if they did not remain silent. The eyewitnesses and families were forced into hiding.

That the attack on Razzak was motivated by his human rights work, and not a personal dispute—as people attached to the perpetrators have tried to portray it—is painfully obvious from what has since happened to two of his colleagues. Both of the two had been working closely with the AHRC on the campaign for Razzak following the attack of April. Both were in recent days abducted and threatened with death by unidentified members of the state security forces. One has suffered trauma from his experience and has gone into hiding. The other has spoken out.

That young man, Dipal Barua, was returning from a friend’s house on May 24 when a group of men pulled him into a waiting car. They blindfolded and handcuffed him, drove him to an unknown place, and stripped him naked. The men locked him in a room for about seven hours, without food, water or a toilet.

After this time, men took Dipal to another room. He thinks that the time was midnight or early morning. There were, he thinks, seven to eight persons inside this room, judging by the voices he heard. They questioned him: why had he visited Razzak

in hospital many times? Why was Razzak shifted from the Dhaka Medical College Hospital to a private hospital? How much money was paid to Razzak by the AHRC? How long has he been engaged in the work of the AHRC? Who are the other persons working for the AHRC in Bangladesh? Where do these persons reside and where are they based? Are the persons currently living in Bangladesh or not? Who is the boss of the AHRC's Bangladesh work? When does that boss visit Bangladesh? When is the boss coming to Bangladesh for the next visit? Who came from Hong Kong to visit Razzak after his hospitalization? Whom did the AHRC team meet during their visit? Had not ten million Taka (about USD 140,000) been sent to Dipal and his friends from abroad for human rights work and where is the money?

Similar questions were repeatedly asked for an hour or so. Thereafter, the interrogators told Dipal that they were going to kill him. He got frightened and told them that he has aged parents and appealed to them not to kill him. He said that he is willing to do whatever they ask and asked them to spare his life.

Then the men told Dipal to sever all connections with the AHRC. They mentioned the names of several other persons, and told him not to have any contact with them either. They told him that they were going to give him a chance and that he should use it, that if he again had contact with those persons, he would not have such a chance. Then they put him back in the room until the afternoon time, when they took him back to the same place from where they had picked him up on the previous day.

Dipal's terrifying story speaks for itself. Not only are the attacks on human rights defenders in Bangladesh organized, systematic and life threatening, but they are also targeting persons connected to the AHRC because of the pressure of the campaign for Razzak.

No other strategies

Today, not only FMA Razzak and his family but also all human rights defenders in Bangladesh who have rallied to his side face real danger. One reason that the danger has spread is that the system has no strategies to deal with a man like Razzak, who will not stop his fight. The system's methods are premised on the idea that the person against whom they are directed will eventually give up. When a person refuses to give up, they system is bereft of alternative strategies. Its personnel know only to escalate and widen the violence.

Others will be subjected to harassment and also possibly to further abductions and interrogations. In a country where extrajudicial killings are commonplace, we can also assume that the persons responsible for these threats are prepared to make good upon them. For these reasons, the solidarity of the international human rights community is vital for the human rights defenders of Bangladesh at this precarious time.

“The solidarity of the international human rights community is vital for the human rights defenders of Bangladesh at this precarious time”

“In this sense, the attack on Razzak must be understood not as an attack upon an individual but as an attack upon society”

But it is also vital that this solidarity be informed by an understanding that the violence ultimately is rooted in centuries of oppression, and in the struggle, oftentimes seemingly small, to break open the silences which enable oppressive structures. In a society where most people are inert or disinterested in the plight of the ordinary victim of state violence, when the voice of a person like Razzak is heard, it echoes through the empty space that in another society may be filled with many disparate voices. It attracts the notice of many people, including those who do not want to hear such a voice, and will go to lengths to silence it again.

In this sense, the attack on Razzak must be understood not as an attack upon an individual but as an attack upon society. Its objective is to silence many by silencing one. The attackers know full well that if such a man as Razzak can be forced into quietude, others also will remain that way. In response to such an attack, the duty of all other persons who identify themselves as human rights defenders, both in Bangladesh and around the world, is to ensure that this objective does not succeed.

The attack on FMA Razzak as told by Razzak himself

Yesterday [29 April 2011, at about 10pm], I left from my current residence in Paikgachha municipal town for the Paikgachha Bazar, accompanying my younger brother Bodiuzzaman by motorbike. I wanted to use the Internet from a shop, to communicate with friends from human rights organizations. I also planned to meet the senior police and administrative officials, including the DIG [Deputy Inspector General] of Police, SP [Superintendent of Police] and DC [District Commissioner] in Khulna the following morning, along with a number of local elites and public representatives of Paikgachha. I wanted to tell the senior officials during that planned meeting that I have been ousted from home with my family and have been hiding here and there to save our lives for the last two and half months but that the whole administration maintains silence despite the fact that I appealed to them on several occasions. [For reasons why Razzak was in hiding, see Asian Human Rights Commission appeal AHRC-UAU-016-2011.]

As part of the preparation, I was trying to rent a car for the following morning so that I would not get attacked in public buses that stop almost everywhere. I went to the Dhaka Bus Stand of Paikgachha. There were a number of persons there, including Mr. Amzad Hossain Golder, former mayor of Paikgachha municipality and a leader of Chhatra Dal [opposition student wing]; Mr. Salim, councillor of municipality; and Mr. Shankar Kumar Dhali, a contractor. While I was talking with these persons I saw around 40 people arrived behind us in a two-engine-van. Most among them were from my own village [Godaipur] and close associates of Kazal, who is the younger brother to Major Mustafizur Rahman Bokul [the person responsible for chasing Razzak and family from their home].

This article consists of a translated transcription made from the recording of a statement by Bangladeshi human rights defender FMA Razzak, recorded at hospital where he was receiving treatment on 30 April 2011, the day after the attack. For more details visit the campaign webpage: <http://www.humanrights.asia/campaigns/attack-on-fma-razzak>.

“I could do nothing to save myself. They knocked me down to the ground and jumped on my body and hit me as they wished”

They all took positions surrounding us. Immediately, I realized that unexpected things were going to happen. I requested the persons whom I was discussing with to stay, saying, “Please do not leave me alone here!” But, Kazal whispered something to the former mayor and councillors of the municipality, and I believe that they were asked to leave the place. They [the former mayor and councillors] observed their attitudes and left us [my brother and I] within the circle of the gang where my younger brother and I did not have any possibility to flee away.

Immediately, the gang jumped on me. They began to hit me indiscriminately: my head, back, chest, hands, legs—every part of the body. Kazal and his gang tried to push fingers into my eyes to gouge the eyes out. I tried to block the eyes with my hands. Then, they severely pressed on my testicles. I was about to die! I had to move my hands from the eyes to the testicles at that moment. Immediately, they pushed fingers and a rod into my eyes and kept moving the rod inside the eyes. They tried to take out my eyeballs.

Simultaneously, many others were hitting me with rods and sticks. I cried out for help. But nobody responded to my cry. Only my younger brother tried to rescue me. But the gang caught him and brutally beat him, taking him a few yards from where I was being beaten. I had no scope to follow or understand what was happening to my brother. I could do nothing to save myself. They knocked me down the ground and jumped on my body and hit me as they wished.

They constantly hit my right leg, which broke on the scene as I fell. When I tried to block the hits with my right hand, they hit my right hand, which also broke. I became completely motionless. They took away my mobile phone and some money that I had in my pockets. I was almost dead there.

They were talking about my condition, asking whether I was dead or alive. I could hear their conversation as I still had my senses. Then I decided to keep holding my breath so that they did not hit me any further, although they continued hitting me in that condition. During the ongoing brutality Kazal called his brother Major Mustafizur Rahman from his cell phone. [The victim heard the full conversation as the phone was set to speaker so that the other participants could hear the instructions.]

Kazal said, “Brother, the kuttar bachha (son of dog) is caught in our hands now!”

Major Mustafizur replied, “Only caught? What do you mean? Break his legs and hands! Take out his eyes!”

In response Kazal replied, “We have already taken out his eyeballs making him blind and have broken his hands and legs!”

“Where are you now?” asked the major.

“We are in front of the paribahan [long distance bus] counter”, Kazal replied.

The major instructed his brother saying, “Throw his body into some ditch!”

Then they put me into a van and started driving to an unknown destination. I could see only very hazily at that time. After arriving at a certain place they all shouted in joy. I was unsure about what was going to happen then. I tried to see and realized that it was the house of Major Mustafizur Rahman, where his father Abdur Rouf Sarder, uncles Rezaul Sarder and Rabiul Sarder, mother and all other members of their family along with a huge group of people who have previous records of having been convicted in criminal cases were present.

Kazal shouted to them, saying that, “Kuttar bachha [son of dog] has been brought here!”

All awaiting people shouted in reply saying, “Well done!”

Then every one of Major Mustafizur’s family started to hit me with the sticks they already had in their hands. In a dying condition I could only hear the noise and words of the people. I was bleeding from my eyes. Some of the women from the village who were present there cried in fear when they saw my face. Kazal's gang then beat some of the women for crying and chased them away.

Then they started discussing what to do with my body, as they assumed that I had already died. They again called Major Bokul and asked what to do at that point.

Bokul said, “I am asking the RAB [Rapid Action Battalion] in Khulna; RAB will take him and put an arms with his body and publicise that he was killed in crossfire. Police may send him to hospital, which will spoil everything.”

Kazal said to his brother, “RAB will take a long time to arrive here if they drive now from Khulna. Before that time if any unexpected thing happens, how to solve it?”

Then Bokul suggested calling the Paikgachha police and said that he would also discuss with the police.

Kazal called OC [Officer-in-Charge] Enamul of the Paikgachha police. All these conversations were made handset-free to let the crowd hear the instructions from Major Bokul and the police officers. Everyone kept me encircled while I was lying on the ground.

OC Enamul asked, “Kazal, what are you doing now?”

“We have already taken out his eyes and broken his hands and legs”, Kazal replied.

The OC said, “Very good! Bhalo kaz korecho [a great job]! Don't kill him on the scene; I am sending police there.”

“I was bleeding from my eyes. Some of the women from the village who were present there cried in fear when they saw my face”

Then, they stopped further beating until the police, including Sub Inspector (SI) Idris Ali and SI Tarob, arrived there.

The police pushed my body slightly and called me, “Razzak Bhai, Razzak Bhai! How are you?”

They called to me in the same way for a while. But I maintained holding my breath. At one stage, they started asking each other whether I was already dead or not.

The police said to Kazal’s family, “If he is dead, then your whole family will be in trouble!”

The police worriedly asked each other what they could do.

The father and uncles of the major told the police, “You take his body away.”

The police refused to take the responsibility.

The police officers said, “We cannot take him at this condition. You caught and tortured him. So you have to take him up to the hospital.”

Then the army officer’s relatives said to the police, “The information has already been spread around in the area. If we go to the hospital carrying his body, how shall we return home? If the people attack us, how shall we be protected?”

Two police officers told them, “We will provide security to you staying in the front and at the end [of the journey] for your round trip to and from hospital. Take him to hospital.”

Accordingly, I was taken to the hospital. I was left on the floor of the hospital without any treatment or attempts to confirm my death. Kazal and his gang waited outside of the hospital.

Meanwhile, my relatives arrived at the hospital. I heard from the latter that they closed all the gates of the hospital with the help of the local neighbours and tried to get confirmation about my condition, about whether I was alive or dead. The doctors started to examine me. When they found that I was alive and in a highly critical condition they arranged the ambulance to send me to the Khulna Medical College Hospital. From outside, Kazal and his gang observed that the ambulance was being prepared to take me elsewhere and they became sure that I was not dead. They took positions in front of the gate of the hospital, declaring that they wanted my dead body. Kazal announced that they would not leave any scope for treatment.

By that time, the leaders of the Paikgachha Press Club, including its president, along with journalists and local elite persons entered into the hospital. The situation became very

FMA Razzak is hospitalized after an attack on April 30, 2011





alarming for the police, who feared that a direct clash might start shortly, and they told the journalists and local elites that the police would escort the ambulance to leave the jurisdiction of the Paikgachha area. But, before doing that, another team of the police escorted Kazal's gang to return to their place safely, as the local public became outraged.

Journalists hold human chain in Paikgachha
(source: Khulna Correspondent of The Daily Karatoa)

The police vehicle and journalists escorted my ambulance until the Godaipur area. In the midst of tremendous fear of further attack on the road, with insecurity, the ambulance reached the hospital in Khulna city. Prior to my arrival, the army officer, Major Bokul and his colleagues pressured the doctors of Khulna hospital. So the doctors did not allow my relatives to take me out of the ambulance. The doctors came to the door of the ambulance and expressed their inability to treat me there. They said that my condition was extremely serious and could not be treated in that hospital. They formally referred me to the Dhaka Medical College Hospital. My family then arranged another ambulance from Khulna city to Dhaka.

By around 10am we reached the Dhaka Medical College Hospital, where the treatment process started very slowly, with pushing saline. Meanwhile, a large number of media gathered at the hospital. As I tried to respond to one or two questions from the journalists regarding the identity of the attackers, including the army and police officers, a large number of intelligence agency people surrounded me. The people from intelligence agencies kept quizzing me endlessly, which made me afraid for my life. I suspected that they would kill me by slow poisoning and by depriving me of proper treatment. I became afraid of further kidnapping by them from the hospital. My dead body could be disappeared in the usual way.

“Don’t I have the fundamental rights enshrined by the constitution? Why I did not get justice despite repeated requests to the authorities?”

I told some of the journalists that I had appealed to the Prime Minister, Home Minister, Chief Justice, IGP [Inspector General of Police, DIG of Police and the chief of army, explaining the situation that my family and I had been facing for two and a half months. I had been ousted from my ancestral home for last two and half months due to continuous attacks from the same group who did this to me.

My wife and I wrote letters to the chief of the army seeking proper investigation of Major Bokul’s involvement in instigating attacks against my family and I. Not a single institution or official from any level of the country’s government has responded to my appeals in last two and half months. The major of the army and the local police continuously supported the attackers to do this, to kill me. Such a deadly attack on me for the purpose of killing me is not the end.

In the hospital I get threats that Kazal’s gang is going to kidnap and kill my children, who are hiding elsewhere. My whole family and I have been under extreme insecurity... I have made my utmost demand to the government of Bangladesh, international human rights organizations and everyone to ensure my security.

During the conversation the police officers said, “Break his hand into pieces so that he cannot write any further! Beat and take out his eyes and give him lessons about humanity!” As a journalist and human rights activist, I expose the injustice. Is that a crime? Don’t I have the fundamental rights enshrined by the constitution? Why have I been homeless for the last two and half months, when all levels of the administration have been informed about it? Why I did not get justice despite repeated requests to the authorities? I want to learn from the government whether the country is operated and ruled by any government or ruled by terrorists... I want justice.

A precarious time: Responses to the attack on FMA Razzak

Urgent Appeals Desk, Asian Human Rights Commission,
Hong Kong

The attempted eye-gouging incident at Paikgachha village, where a human rights defender and journalist, FMA Razzak and his brother were attacked on 29 April 2011 by about 40 persons mobilized by a major in the Bangladesh army, Mustafizur Rahman Bokul, is a painful experience to all. It is necessary to learn from this experience so that effective action can be taken to address the very serious threats to everyone that are manifest through this extraordinarily inhumane attack.

There were glaring inefficiencies and carelessness in the police conduct prior to, during and after the incident. Razzak complained to the police about harassment from Major Mustafizur Rahman Bokul's family for months. However, the police failed to make any reasonable intervention. It is the duty of the police to enforce the law and to keep the peace and when they fail to do so violence and chaos are the inevitable result. Everyone that the Asian Human Rights Commission has talked to about this incident has expressed frustration and disappointment with the way the policing system is functioning in Bangladesh. Police reform therefore is one of the major tasks for the country.

One of the things revealed in dealing with Razzak's case is the absence of facilities to make complaints against the failures of the police. In most countries there are official channels open for making complaints against erring police officers. A citizen in Bangladesh who faces problems due to actions or omissions of the police has no avenue to bring this to the higher authorities and to get the services that one is entitled to. This creates

This article consists of materials on the response of the Asian Human Rights Commission and partners to the attack on Bangladeshi human rights defender FMA Razzak of 29 April 2011. It has been compiled from urgent appeals, statements and other interventions. For more details visit the campaign webpage: <http://www.humanrights.asia/campaigns/attack-on-fma-razzak>.

“We have often been told that the military has such influence on everything that it is pointless to demand investigations into crimes if one of the perpetrators is from the military”

helplessness among the victims. The creation of a mechanism to receive and to investigate complaints against police is a dire need in the country if police indiscipline is to be brought under control.

The attack on Razzak took place on April 29. Despite complaints made locally and by international organizations, at the time of writing in June no one has yet recorded a statement from Razzak. The AHRC has learned that police posts are not attached to hospitals in Bangladesh and hospitals do not take it as their obligation to report to a police station when the victim of a crime is brought to a hospital. This is a serious defect that necessarily has serious adverse effects on criminal investigations.

A further shocking deficiency is the lack of facilities for forensic examination. Despite serious injury to his eyes and legs no judicial medical officer has examined Razzak or his brother. It appears that such an examination is very unlikely. The AHRC has learned that it is only at the Dhaka Medical College and laboratory that such an examination is possible, but that happens only if the police take the victim there. Without such forensic examination, valuable evidence that could be brought before courts is lost. Only criminals benefit from this absence of forensic examinations.

The AHRC is aware of how widespread the practice of fabricating cases is in Bangladesh. With the help of the police, anyone can file a fabricated case and get their opponents arrested and remanded. Fabricated charges are also filed by powerful persons who face charges for serious crimes, with the expectation of trying to settle one case as a bargain for the other. Such bargaining corrupts the system of justice and places victims of serious crimes in a severely disadvantageous position.

In attempting to help the victims of the attack on FMA Razzak, the AHRC has found fear everywhere, and an all-pervading sense of futility in pursuing justice. We have often been told that the military has such influence on everything that it is pointless to demand investigations into crimes if one of the perpetrators is from the military. We have also been told that a police-military nexus exists and that the ordinary citizen is in a helpless situation.

Despite such odds, Razzak and many others are struggling for justice. Despite widespread fear, many citizens come forward to protect people from injustice and assist victims such as Razzak and others. Hope lies with these ordinary folk who are trying to face up to a difficult problem.

Outraged calls

Both in Bangladesh and abroad, the attack on FMA Razzak prompted many calls for action against the perpetrators and for an end to impunity.



On May 4, hundreds of men, women and children at Paikgachha took to the streets demanding the arrest of Major Mustafizur and his gang. They participated in a procession in protest of the attack on Razzak and his brother, carrying a banner entitled: “People’s enraged demonstration in protest at the mysterious role of the administration on the gouging of two eyes and fracturing of hands and legs of newspaper editor and human rights defender FMA Razzak and his brother Bodiar”.

People of Paikgachha demand arrest of army major Mustafizur and other attackers in a procession on May 4, 2011

Speakers at the rally also demanded the removal of the police officers involved, including the Officer-in-Charge (OC) Enamul Haque and sub inspectors who assisted the perpetrators for the last two and half months to commit this latest heinous crime.

The following day, people again rallied to make the same calls. Around five hundred people, including journalists, public representatives of the local government units, businessmen and people of all walks of life took part in the rally. The procession chanted slogans and speakers in the rally demanded the immediate termination of the major from service in the armed forces.

On May 6, citizens of Paikgachha had formed the Committee to Fight for Justice and Protection of Human Rights Defender and Journalist Razzak. On the same day, Muslim citizens of Paikgachha also arranged for a special prayer for Razzak and his family after the Friday midday prayer.



The following day, May 7, Mr. Sohrab Ali Sana, Member of Parliament for the Paikgachha-Koyra (Khulna-6) constituency, demanded the arrest of all suspects relating to the attack. The MP said that all suspects should be arrested and brought before the courts immediately. He explained that he himself is a lawyer and he is aware of what needs to be done under such circumstances. He further said that he

Citizens of Paikgachha formed the Committee to Fight for Justice and Protection of Human Rights Defender and Journalist Razzak

would himself assist in ensuring justice.

Several other persons also spoke at this meeting. Mr. Mostofa Kamal Jahangir, president of the Paikgachha press club, stated that Major Mustafizur Rahman Bokul and several of his family members who are responsible for this attack on Razzak should be immediately arrested and brought to justice. Several other speakers who also spoke at this meeting condemned this brutal attack and demanded the police to act responsibly and ensure that a proper legal process be carried out. Among others the president of the Paikgachha Bar Association Abul Hossain Joardar, secretary Kamrul Islam, former president GA Sabur, Government Pleader (GP) Chitta Ranjan Sarker, freedom fighters Mohammad Shahjahan Sharder, Shahadat Hossain Bachchu, former municipal mayor Sheikh Kamrul Hasan Tipu, press club secretary Bidhan Chandra Ghosh, social worker Abu Sayeed and many politicians, journalists and professionals attended and spoke.

Calls go unheeded by authorities

Despite the many calls for action against the main perpetrators of the attack on Razzak, the alleged perpetrators roam free in the days and weeks afterwards, repeatedly threatening his relatives and local citizens who participated in protest rallies demanding protection and justice for Razzak.

On 6 May, the mother of Major Mustafizur Rahman Bokul led a demonstration of a group of persons, most of who were among the persons who were in the group that attacked Razzak and his brother, shouting that Razzak should be skinned alive. This group entered the Paikgachha police station and had a discussion with the Officer-in-Charge (OC) of the police station, Enamul Haque. OC Enamul, who was complicit in the barbaric attack, has been

boastfully and publicly claiming that nothing will happen to him as he is a close relative of Mr. Tofael Ahmed, a former minister, Member of Parliament and a leader of the ruling political party.

The following day, apparently in an arrangement from the prior discussion, the police—under intense pressure to appear to be doing something—arrested the father of Major Mustafizur Rahaman Bokul and three others.

Subsequently two persons, Mr. Razab Behara and Azibor Sarder, who were named as the accused in the complaint filed on the attack on Razzak, went into the house of Mr. Azibor Gazi, a man who was with Razzak at the time when he was attacked and saw the whole incident. Azibor Gazi had attended several of the protest meetings demanding the arrest of suspects relating to the incident and met with the local MP about the case. The two accused that visited Azibor's house carried long sharp knives and told Azibor's father that his son was responsible for the arrest of the father of Major Mustafizur, and threatened to kill him. Azibor and his family fled from the house and went into hiding.

Meantime, the AHRC issued a series of open letters and made other interventions in the days and weeks following the attack on Razzak.

On May 9 and 25, the AHRC sent letters to the chairman of the National Human Rights Commission of Bangladesh, Professor Mizanur Rahman. Representatives of the AHRC also met the chairman on a visit in response to the attack. Despite these interventions, the NHRC failed to take any effective action on the case, the chairman even failing to do so much as visit Razzak in hospital, despite promising to the AHRC representatives in person that he would do so.

In the letter of May 9, the director of policy and programmes at the AHRC, Basil Fernando, wrote as follows:

Today several representatives of the Asian Human Rights Commission met the Consul General of Bangladesh in Hong Kong, His Excellency Mr. Ashud Ahmed, at his offices in the Bangladesh Consulate. During the discussion with the Consul General the AHRC representatives said that they were visiting the Consulate on the occasion of the 150th anniversary of the birth of Rabindranath Tagore and under normal



A special prayer was arranged for Razzak and his family by Muslim citizens of Paikgachha

“What is as shocking as the meanness and brutality of this attack is the active cooperation that this Major and his family received from the Paikgachha police”

circumstances that would have been for the purpose of congratulating Bangladesh on the achievements of this great man who is admired by all. However, the representatives stated that the purpose for which they had come was to talk about something which Tagore himself would have cried aloud over and felt shame for his country. This was the attempt to gouge out the eyes of a human rights activist and journalist who had been doing nothing worse than trying to help the poor people of the country to make complaints to the authorities about the problems they face.

The representatives explained to the Consul General the circumstances of the attack on Mr. FMA Razzak and his brother. The Consul after reading the letter that was handed to him stated that now in Bangladesh the government is taking complaints regarding human rights very seriously and that therefore, he expected that this problem would be looked into in all seriousness. He went on to say that there was now a very learned and respected professor who has been appointed as the chairperson of Human Rights Commission, Prof. Mizanur Rahman. He was, in fact, referring to you. He thought that you would certainly take very serious action on this matter.

Sir, the Asian Human Rights Commission has brought to your notice the problem with regard to FMA Razzak in several communications. We have also brought to your notice the long series of harassments Mr. Razzak has faced, particularly during the last three months by Major Mustafizur Rahman Bokul and his family. We are hoping, that as the Consul General stated, you will look into this matter in all seriousness. For your ease of reference we are attaching some of our earlier correspondence.

What is as shocking as the meanness and the brutality of this attack is the active cooperation that this Major and his family received from the police officers of the Paikgachha Police Station. Had it not been for their active support of this military officer this incident could not have taken place.

We are copying here a letter written to the SP of Khulna relating to the culpability of the police with regard to this incident.

“We are shocked by the brutal attack on him, where there was an attempt to gouge out his eyes and also an attempt to assassinate him. You would agree that in any country this kind of an attack would be considered an exceptionally cruel act that would require prompt action on the part of the police, who have the obligation to investigate into such a crime on behalf of the State. Unfortunately, the officers of the Paikgachha police station have not shown any kind of energy and enthusiasm to act promptly and quickly and with impartiality and competence in dealing with this case.

“This is not a surprise, as the Officer in Charge (OC) of the police station and also some other police officers are hostile to FMA Razzak because he has been an independent journalist and a committed human rights activist who has in the past pointed out some of the deficiencies of the police in dealing with several matters. Quite clearly during the last three months (since late February) after the first attack was carried out against FMA Razzak and his family, the officers of this police station have quite clearly failed in their duties to carry out a proper investigation into that incident. This may be because, among other things, the attackers are an Army Major and his family. As you may know by now, the Army Major’s name is Mustafizur Rahman Bokul. Had the police conducted a proper

investigation into that first incident, which took place on February 18th, the latest incident could easily have been averted. Police inaction, relating to the investigative actions that they are bound to take by law, into the incident in February created the background for the brutal attack which took place on the 29th of April.

“The failure to investigate into the incident in February was due to the assignment of the Sup-Inspector (SI) Idris Ali, a man just promoted to the rank of Sub Inspector from an Assistant Sub Inspector without any skill of investigation, to investigate into the matter. This assignment of SI Idris Ali to investigate was made by the OC Enamul Haque, who was fully aware of the inefficiency of SI Idris Ali.

“The result of all this was the continuous harassment of Mr. Razzak and his family in March and April. The police were informed by Mr. Razzak and his families that they have been chased out of their house and that all their belongings have been destroyed and part of their possessions had been taken away by the attackers from the house of Major Mustafizur Rahman Bokul. Among the valuable possessions removed from Mr. Razzak’s house are deeds relating to the properties of the Razzak family, the jewelry belonging to the women of the Razzak family, and many other documents, including the passport of Mr. Razzak.

“Razzak and his family have been prevented from entering their own house and premises for over two and a half months and the police have been informed of this.

“On one occasion, some members of Razzak’s family were attacked by Kazal Sarder, the brother of Major Mustafizur Rahman Bokul. This happened in the presence of your subordinate, the ASP of the Dakope Circle, who had invited Razzak’s family as well as some other villagers to come to Razzak’s village to participate in the investigation.

“Despite of such knowledge of continuous harassment on the Razzak family, the police in fact took the side of Major Mustafizur Rahman Bokul’s family and did nothing to restore Razzak’s family back to their home, from which they were compelled out by force.

“It is on the strength of the support that the Major Mustafizur Rahman Bokul’s family had on the police that the attack on April 29th was carried out so openly without a crowd of over 40 persons mobilized by Major Mustafizur Rahman Bokul to launch an attack on Mr. Razzak and his brother, who were unarmed and merely trying to find a vehicle for a trip the next day. From what transpired, Mr. Razzak and his family are firmly of the view that some of the officers of the Paikgachha police station were aware of the attack that was going to take place. It is their view that this attack was carried out with the knowledge of some of the police officers. In fact, the Second Officer SI Tarok Chandra Biswas, SI Idris Ali, SI Nur Islam, SI Delwar Hossain and some other officers came to the place of the incident, that is, to the house of Major Mustafizur Rahman Bokul, where Razzak had been carried by Kazal Sarder and others. SI Idris Ali and another police constable assaulted Razzak’s brother Bodiuzzaman Bodiar.

“Even after Razzak had faced this serious attack on his eyes and he was completely motionless, the police did nothing to assist him or to get him medical assistance. The police in fact assumed that Razzak was dead and treated him as a dead body. They did not even take the body. Instead, they got Major Mustafizur Rahman Bokul’s family to take Razzak in a

“Even after Razzak had faced this serious attack on his eyes and he was completely motionless, the police did nothing to assist him or to get him medical assistance”

“When a cognizable offence takes place in front of the police officers, it is their duty to arrest them there and then. However, days have gone by and these attackers are roaming free”

van, thus leaving him to the mercy of his attackers. When he was brought to Paikgachha hospital, he was left on the floor as a dead body and the police did not intervene to ensure that he would be looked after by medical officers, even at that stage. The police also did not try to assist him to be admitted to the hospital for treatment.

“At the hospital premises, the group of persons who attacked Razzak were the surrounding the hospital. The police, instead of arresting the attackers, in fact were providing them security. At the end, when other people gathered against them, the police protected the attackers and escorted them back to their home, that of Major Mustafizur Rahman Bokul.

“Shortly after the crime had taken place on April 29th, police arrived and all the attackers, including Major Mustafizur Rahman Bokul’s brother Kazal Sarder, were present at the scene. These police officers saw the attackers and in fact negotiated with the attackers. But they failed to arrest these attackers. When a cognizable offence takes place in front of the police officers, it is their duty to arrest them there and then. However, days have gone by and these attackers are roaming free.

Under these circumstances, it is quite reasonable for Razzak and his family and also all others, including his associates, not to expect an impartial inquiry into this crime by the present OC and other officers of the Paikgachha police station. It is therefore reasonable to request an appointment of an impartial and competent investigator into this serious crime.

“Kindly note that despite the police having accompanying the perpetrators to the hospital and being aware of this incident, no one has yet recorded a statement from Mr. Razzak or his brother. However, Mr. Razzak, as soon as he was able, made a recorded statement on the 30th of April and I herewith attach a transcript and a copy of a CD of this statement.

“Please be kind enough to take this inquiry under your charge and to ensure that competent and impartial officers will inquire into this incident in all thoroughness, including also an inquiry into the police complicity in this crime.

We hope that all the perpetrators will be arrested and be charged as early as possible.”

Sir, we are hoping that you will take urgent action to:

- a. To secure the arrest of Major Mustafizur Rahman Bokul, his family members and other persons in the gang that were actively involved in this brutal attack.
- b. That you will visit FMA Razzak at the hospital and inquire into his medical condition and that you will take all measures to ensure that he will receive the necessary medical assistance.
- c. That you will do your utmost to ensure the security of FMA Razzak and his family which includes two children who are living in hiding out of fear of the attackers.
- d. That you will do all within your mandate to ensure justice against the perpetrators and also the provision of compensation for this attack, although it is simply impossible to compensate one for a crime such as this.

Some gouge out the eyes of others

Basil Fernando

(A poem written for the 150th anniversary of Rabindranath Tagore)

Cry, Tagore, cry.
Your nation knows you not.

Yes, they have ceremonies,
Exhibiting your photos,
Repeating your songs.
Talking about the 150th anniversary,
They may even build
a temple for you, these days.

But your brain,
Your voice,
Your love for the people,
Your vision for humanity,
Your dream for your nation,
That, dear sir, is dead-dead-dead.

Some gouge out the eyes of others.
During daylight people disappear
In darkened limousines.
Blindfolded, they take away people.
Naked, kneeling in mortuary-like places
they recall your verses.

Cry, Tagore, cry.
Your nation knows you not.
Your poems matter not.
You are so soon forgotten.
Yes, truly forgotten.
Dead-Dead-Dead.

“The very purpose of a human rights commission is to promote and protect human rights and this implies protection of victims of human rights abuse”

Despite this and other extensive communications and efforts on the part not only of the AHRC but numerous other persons and organizations in the country and around the world, the NHRC chairman took no action. On the contrary, he sided with the army officer responsible for the attack, taking the view offered up by the perpetrator that the victim was himself a criminal and that the matter was in any event a personal one and unrelated to the NHRC mandate. Consequently, on May 25 Basil Fernando again wrote to the chairman:

I refer to my earlier letter to you dated May 9, 2011 informing you about the attack on FMA Razzak and his brother, which Razzak believes to be initiated by Army Major Mustafizur Rahman Bokul and carried out by a large group of persons led by his brother, at which there was attempt to gouge out his eyes and very serious injuries were caused to his legs, arms and many parts of his body. He was hospitalized at Trauma Centre in Dhaka. I suggested to you to visit Razzak and inquire into this matter. I later informed you that no one has recorded a statement from Razzak, no judicial medical examination was conducted and that police officers conducting the inquiry have been observed to be partial towards the alleged perpetrators.

The Asian Human Rights Commission thereafter informed you about the visit of a member of its staff Bijo Francis. He met you on 19 May.

At this meeting you agreed to visit and see Razzak on 23 May. However, we have learned that you did not visit him on that day or thereafter.

THE NATIONAL HUMAN RIGHTS COMMISSION'S OBLIGATIONS TO VICTIMS

The very purpose of a human rights Commission is to promote and protect human rights and this implies protection of victims of human rights abuse. An attack attempting to gouge out eyes and cause physical injuries is a serious human rights abuse.

When you met the AHRC representatives you told them that you have called the army officer, who is the alleged perpetrator, who instigated the attack against Razzak, and then you narrated what this man told about Razzak—that you summoned the major and questioned him. As expected the officer has a counter case, starting from the claim that “had he been such an influential person, his father would not have been in custody now”. You pretty much parroted what he has been told by the major, including that Razzak is a criminal, used to extort money from the people threatening that he would file cases against them, has been expelled from a former organisation he has been working with and so on as if you were in an attempt to convince the AHRC’s representatives that the major’s accusations are true. You also informed us that after being informed about the case you had taken the initiative to enquire about Razzak through a local organisation that the NHRC has been working with, and that you have received information confirming the Major’s allegations against Razzak. You finished off by saying that Razzak is misusing his association with the AHRC to damage the name of the AHRC.

Thus, you had formed your opinion even without talking to the victim or his witnesses.

AUDI ALTERAM PARTEM RULE

The most basic principle of natural law is to give a hearing to the parties. Here Mr. Razzak requested you to give him a hearing about this brutal attack. You did not think that it is your duty to do so. Instead you formed an opinion against him by listening to the very person who is accused of being the instigator of this criminal attack.

A National Human Right Commission should conduct a genuine inquiry when the victims complain about abuse of rights.

The views you expressed on Razzak are unfair, baseless and false.

If you took the trouble to talk to Razzak and conducted a genuine inquiry, you would have found that Razzak does not have any criminal record at all. Further, you would have found that he is a popular human rights activist, who has engaged in helping local persons, mostly the poor, to write their petitions against wrong doings of the police and other authorities. For a well-documented proof of this position kindly see <http://www.article2.org/pdf/v08n01.pdf>.

We recall that the law-enforcement agencies including the army, Rapid Action Battalion (RAB) and the police made attempts to kill him and harass him in fabricated criminal cases.

In December 2002 during the Operation Clean Heart the army raided Razzak's house and brutally tortured his wife, brother and aged father, who was arbitrarily detained in prison for several months under the Special Power Act-1974 when the armed forces failed to arrest Razzak while he was away. In late 2004 the RAB arrested Razzak arbitrarily, without any legal ground, with an alleged attempt to kill him in the pretext of crossfire. Fortunately, the human rights groups were informed by his family and intervened immediately, which compelled the RAB to release him within few hours on the same day. For further details, please see AHRC's Urgent Appeal: <http://www.humanrights.asia/news/urgent-appeals/UA-035-2007>.

In November 2008, the Paikgachha police fabricated a criminal case of abduction and trafficking a teen-aged girl. The girl, who was the so called victim of abduction, was recovered later and told the police and the court that she did not know Razzak while she left her house due to certain family problems. The court discharged Razzak from the case for which he had to stay in jail for 27 days. The AHRC documented the whole issue in several publications...

Are even attempted eye gouging and brutal attacks a matter of no concern to the Human Rights Commission of Bangladesh?

The attack on Razzak was brought to the notice of the NHRC of Bangladesh through many sources, with the request

- (1) For a genuine inquiry into the allegations
- (2) For medical and psychological assistance to the victims
- (3) For causing Judicial Medical Examination of the injuries of the victim
- (4) For providing protection to the victim

We regretfully note that, so far no action has been taken, despite so many interventions with the NHRC.

“Are even attempted eye gouging and brutal attacks a matter of no concern to the Human Rights Commission of Bangladesh?”

Questions about role of army officer in Bangladesh remain unanswered

“The series of incidents in which Major Mustafizur has been involved with regard to FMA Razzak comprises a very dismal picture of army discipline”

The job of a military officer is to defend his country under the command of his higher officers and for this purpose the citizens of Bangladesh pay these officers their salaries. The position of an army officer carries heavy responsibilities. Among such responsibilities one of the most important ones is not to meddle in the lives of the civilians or to abuse the position for personal advantage.

Military officers for the purpose of their duties carry arms and this in itself imposes greater duties on them in their relationship with the rest of the population. Due to their right to carry and use these weapons the general population has some fear of such officers. It is therefore their obligation not to exploit such fear but, in fact, to create a contrary impression of trust and confidence in the people.

Great discipline is expected from officers of any armed forces, and the higher-ranking officers have the duty to ensure such discipline. Within the armed forces those who break this discipline are normally punished harshly.

However, in Bangladesh the series of incidents in which Major Mustafizur has been involved with regard to FMA Razzak comprises a very dismal picture of army discipline. Here, Major Mustafizur is involved in land grabbing and for that purpose he had already brutally attacked many persons, flouting the country's laws over a long period of time. These attacks have now culminated in his use of a gang of criminals for extremely violent acts, the latest being the attempted murder of Razzak and the gouging of his eyes.

Major Mustafizur's behavior has been reported not only to his military superiors but also to the government. Complaints had been made many times by Razzak himself, his family members and several human rights organizations.

However Major Mustafizur is still wearing his military uniform and remains in the military. Is this due to such behaviour being considered consistent with military conduct in Bangladesh? Is Major Mustafizur's behavior common among the country's military officers, and therefore not warranting of any special attention? These questions remain unanswered.

Threats to other human rights defenders

The AHRC on May 25 issued a statement of extreme concern for the life of one of Razzak's strong supporters in Bangladesh, Dipal Barua, a human rights activist who went missing from near his house the morning before.

Dipal Barua, 24, had attended a human rights training course in Bangladesh organised by the AHRC in December 2009. A keen and conscientious human rights activist and devout Buddhist, he showed himself to be a person totally against any use of



violence. Consequently, when he learned of the attack on Razzak and his brother, Dipal visited Razzak in hospital, and met two representatives of the AHRC during their visit to investigate the attack on Razzak from May 17 to 21.

On the afternoon of the same day that the AHRC issued its statement, Dipal returned home, and the AHRC learned that he had in fact been abducted, held illegally by unidentified government forces, and threatened that he would be killed if he did not stop his human rights work.

The story of Dipal's terrifying ordeal reveals that the concerted attacks on human rights defenders in Bangladesh are part of a programme by agencies of the government of Bangladesh, operating in secret, to counter the campaign of the AHRC and its partners who have acted to protect the life of FMA Razzak and demand that his perpetrators be brought to justice.

The details of his abduction and interrogation are briefly as follows.

Dipal was returning from a friend's house at Sayeedabad in the city of Dhaka between 11am and noon yesterday when on the road next to the Sayeedabad Bus Terminal a man wearing black sunglasses called to him. The man asked him where the counter of Hanif Enterprises was located. Dipal pointed in the direction of the counter. Then, the person requested Dipal to go

Dipal Barua, a human rights activist, was abducted and threatened to be killed by unidentified government forces

“Sir, why do you take me like this? What crime have I committed?” They did not answer the questions. Instead, they used abusive language at him”

and show the place. Dipal walked with him to show the place. They walked a very short distance and as they were passing a black jeep, someone opened the door from within and pulled Dipal inside. Both the person whom he was accompanying and someone inside said, “Get in!” Then the door closed and the jeep started moving.

Inside the vehicle there were four men, including the driver. One man sitting to the left of the driver was talking into a wireless radio. One man sat on the left hand side and one on the right hand side of Dipal. The windows of the car were tinted so that people could not see inside and Dipal could not see outside.

Immediately after taking Dipal inside the car the men snatched away his mobile phone and blindfolded him with black cloth. They also covered his head with a black hood and handcuffed him. The car drove for about an hour. On the way, Dipal asked the men, “Sir, why do you take me like this? What crime have I committed?” They did not answer the questions. Instead, they used abusive language at him.

At an unknown place, they took Dipal out of the car, and into what seemed like a room. There, they took off the handcuffs and told him to remove his clothes. He removed his shirt but not his pants. He told them that he did not want to be naked. They told him, “You should decide on that, otherwise we know how to do it”. Then he removed his pants. The men put him inside a cold room naked, and the door was closed.

Dipal thinks that he was kept in the room for about seven hours. After some time, he was thirsty. He shouted to get water but no one responded. He also wanted to urinate and shouted for help. As there was again no response, he had to urinate inside the room.

After this time, men took Dipal to another room. He thinks that the time was midnight or early morning. There were, he thinks, seven to eight persons inside this room, judging by the voices he heard.

The men in the room questioned Dipal: why had he visited Razzak in hospital many times? Why was Razzak shifted from the Dhaka Medical College Hospital to a private hospital? How much money was paid to Razzak by the AHRC? How long he has been engaged in the work of the AHRC? Who are the other persons working for the AHRC in Bangladesh? Where do these persons reside and where are they based? Are the persons currently living in Bangladesh or not? Who is the boss of the AHRC’s Bangladesh work? When does that boss visit to Bangladesh? When is the boss coming to Bangladesh for the next visit? Who came from Hong Kong to visit Razzak after his hospitalization? Whom did the AHRC team meet during their visit? Had not ten million Taka (about USD 140,000) been sent to Dipal and his friends from abroad for human rights work and where is the money?

Similar questions were repeatedly asked for an hour or so. Thereafter, the interrogators told Dipal that they were going to kill him. He got frightened and told them that he has aged parents and appealed to them not to kill him. He said that he is willing to do whatever they ask and asked them to spare his life.

Then the men told Dipal to sever all connections with all persons associated with the AHRC and not to visit any of them. The men mentioned the names of several other persons, and told him not to have any contact with them either. Among them, they specifically accused him of having contact with the leader of the political opposition in the country, Khaleda Zia, and of having met her on several occasions as part of a conspiracy to bring her to power. They told him that they were going to give him a chance and that he should use it, that if he again had contact with those persons, he would not have such a chance.

During the interrogation Dipal asked for some water and the men gave him a little. They gave two slices of bread in the morning. Then they put him back in the cold room until the afternoon time, when they took him back to the same place from where they had picked him up on the previous day.

The story of this abduction and interrogation speaks for itself. It reveals that not only are the attacks on human rights defenders in Bangladesh organized, systematic and life threatening, but they are also in particular targeting persons connected to the AHRC, or persons suspected of contact with the AHRC, presumably because of the intense pressure being brought on the perpetrators of the brutal eye-gouging attack on FMA Razzak. These attacks on human rights defenders are the response of the agents of a system of deeply entrenched impunity to an attempt in one single case to challenge the impunity of one among their numbers.

The AHRC has condemned in the strongest possible terms this sinister programme of attacks upon human rights activists and calls for all groups and individuals in both the Bangladeshi domestic and international communities to do the same. We urge that there at once be a full investigation launched into this latest incident, and for guarantees of protection for Dipal Barua and other persons associated with the AHRC in Bangladesh. We also especially request all diplomatic missions in Bangladesh to take up this matter with the government directly, and as a top priority.

The situation for these human rights defenders is extremely dangerous. As of this moment, it is very likely that many others will be subjected to harassment and also possibly to further abductions and interrogations. It is also entirely conceivable in a country where extrajudicial killings are commonplace that the persons responsible for these threats are fully prepared to make good upon them. For these reasons, the solidarity of the international human rights community is vital for the human rights defenders of Bangladesh at this precarious time.

“Then the men told Dipal to sever all connections with all persons associated with the AHRC and not to visit any of them”

Who guards the guards? The experience of Judiciary Watch, South Korea

Han Sang Hie, Former Director, Judiciary Watch;
Professor, Law School, Konkuk University, South Korea

Electoral democracy and the emergence of Judiciary Watch

The Korean people have successfully achieved industrialization and democratization at the same time, which was unprecedented in the new and emerging countries that were liberated from colonial rule after World War Two. As Samuel Huntington pointed out, Kenya and South Korea were among the poorest nations in the whole world in the 1960s, but these days, the latter has become a developed country with the 13th largest economy in the world whereas the former has remained as it was.

South Korea's transformation from authoritarian regime to electoral democracy in 1987 deserves more attention from the developing countries in Asia. The division of the Korean Peninsula into two regimes based on conflicting political ideology provided lots of rationales for the authoritarian rule in the south of right-wing dictators such as Dr. SM Rhee, General Park, and General DH Chun. The student uprising in 1960 could expel the despotic President Rhee and establish a more democratic regime; however, a military coup led by General Park the following year put an end to it. One military regime after another then ruled the southern part of the Korean Peninsula for more than 27 years.

After the assassination in 1979 of President Park, General Chun sent Special Forces to the city of Kwangju and violently crushed the Democratization Movement in 1980. Then in June 1987 the situation totally changed. Waves of pro-democracy demonstrations took place one after another against Chun's regime. Under the leadership of the "National Movement Headquarters for the Attaining of a Democratic Movement" the Korean people were united to demand democracy, regardless of class, occupation, region and religion. What became known as

the June Democratic Struggle culminated in the Constitution of 1987, which has been valid till now, and with it electoral democracy.

Even though the first presidential election under the new constitution resulted in making TW Roh—a retired general and an accomplice in the 1980 coup—the 13th President of Korea, people could for the first time vote and choose according to their free will. When a former advocate of democracy, DJ Kim, was elected 14th President in 1997, the Korean people could say that they had achieved a kind of electoral democracy, reinforced by the fact that a former human rights attorney, MH Roh, succeeded Kim in 2002.

But it was just the beginning. The Korean people had to face lots of problems in the way towards true democracy. Consolidation of democracy in Korean society has required protection of human rights, due and fair process of law, transitional justice and reconciliation, deregulation and rearrangement of the over-centralized state power, local self-government, as well as rule of law. To be a more democratized society, any arbitrary powers exercised by the state should be replaced with laws, which are democratically enacted, fairly executed, and independently adjusted. It is the reason why the transition from authoritarian “rule by law” to more democratic rule of law cannot be carried out without the independence of the judiciary and judges.

The new constitution has several clauses that guarantee the independence of the judiciary: fundamental right to fair trial by ordinary judges whose legal status and independence should be protected by statute, substantial independence of appointment procedure of justices and judges, exclusion of pending cases from the objects of legislative investigation, and establishment of the Constitutional Court with the power of judicial review, all which introduces a kind of judicial supremacy over other powers in Korea.

People’s demand for Judiciary Watch comes from this transformed legal system. State power was overdeveloped since the time of Japanese rule and under authoritarianism. But replacing such a power with law is one thing and doing so with the power of the judiciary is another. Because the Korean legal system is based on a bureaucratic model adapted from Germany via Japan, the rule of law may mean the rule of the bureaucratic judges and/or the prosecutors. What the Korean people really want is democracy not juristocracy: this is the ultimate end of the activities of the Judiciary Watch Centre: the rule of democratic law.

The next section consists of a brief history of the Korean legal system, especially the judicial system, in order to explain the background of the JWC, which will be followed by the history and purpose of the JWC as well as a brief description of its main strategies. The following section will describe important activities of the JWC.

“What the Korean people really want is democracy not juristocracy: this is the ultimate end of the activities of the Judiciary Watch Centre: the rule of democratic law”

Rule of law and consolidation of democracy

The era of rule by law

“Law and legal rules were thoroughly subordinated to the police powers of those coercive organs. Judges and prosecutors were a kind of vending machine, which vended any legal decisions or measures that were ordered by those organs”

Since the Japanese colonial rule of Korea, the Korean legal system has adopted the Romano-German legal system, where bureaucratized lawyers operate the legal system. But what was different in Korea from Germany and Japan was the status under this system of the lawyers. They did not have any independence from political power or even from police power. Under Japanese rule, the lawyers, whether they were judges, prosecutors, or attorneys, could not be more than auxiliary agents of the Japanese law bureaucrats as well as Japanese police power.

After liberation from colonial occupation the situation was not changed. Authoritarian regimes relied more on the direct use of various police powers to control and mobilize the Korean people. The first regime led by President Rhee preferred regular police power and, sometimes, political hoodlums. The military regime of President Park established the Korean Central Intelligence Agency (KCIA) along with the existing police power to suppress any opposition, in addition to which the Defense Security Command (DSC) played the same role in the fifth regime of President Chun.

Through all the time of authoritarian rule, the law was just a convenient expedient for such coercive powers to be exercised, which might be described as “rule by law”. Law and legal rules were thoroughly subordinated to the police powers of those coercive organs. Judges and prosecutors were a kind of vending machine, which vended any legal decisions or measures that were ordered by those organs. The anti-communist framework that has defined the Korean political system since 1948 limited the judiciary as well as the prosecutor’s office to ancillary positions under the ruling powers. Politically salient cases relating to national security, labour movements, student movements, assemblies and parades to protest as well as some assemblies with political orientation, were treated as guilty parties by those organs, and the prosecutor’s offices and the courts could do nothing more than handle the cases under the guise of law and justice.

At the same time, however, the lawyers were power-holders, who ‘reigned’ over the people with their power of executing law. The prosecutors’ power especially was stronger than the judges’. They had substantial power to detain suspects, absolute power to investigate any cases, and absolute power to indict suspects or to release detainees, against which the court hardly intervened. That was why they were referred to with an honorific “Your Excellency”; they were a kind of “noblesse de robe”.

The attorneys-at-law were not different from those law bureaucrats. Actually, they shared the power with judges and prosecutors, because they were senior lawyers who had taught and led the judges and prosecutors into their current posts. They

were alumni who had all passed the most difficult bar exam in the world (only three per cent of applicants could pass it) and graduated from the Judicial Research and Training Institute. In other words, they were all a family and “the devil knows each other”. The phenomena of “revolving doors” was everywhere, so that everyone was talking about “not guilty with money, guilty without money”, meaning that one who was so rich to hire a lawyer who retired recently would be decided not guilty or released from detention, and vice versa.

Democratization and rule of law bureaucrats

Electoral democracy could not automatically change the situation into genuine rule of law. Rather, to some extent it drove things in the wrong direction. It is true that the authoritarian exercise of coercive powers had been expelled. The KCIA was transformed to the National Intelligence Service, and the powers of the DSC confined to the military affairs. The investigation powers of the National Police had been substantially controlled by the prosecutor’s office. It seemed that the rule of law had been established. But the power of the lawyers filled up the gaps left by missing authoritarian powers. The power apparatus of the old regime was filled with more moderate organs that are controlled by laws.

The growth of the prosecutor’s power constitutes the most extreme case. Since the Sixth Republic (1987-1992), the prosecutors had no competing power in executing the criminal law, which covers every part of Korean people’s lives from love affairs to political ‘deals’. They could punish (and so, threaten) politicians (especially members of the National Assembly) according to the Public Office Election Act, which forbids almost every kind of monetary transaction unreported to the relevant electoral board. As noted before, they monopolized all the criminal investigation power, with which they could control the judicial police, and they had complete discretion in indictment. They had no rivals in capturing political powers: the prosecutors were the most efficient state apparatus for regimes that have wanted to control and mobilize the political system according to the “law”.

The other parts of the judiciary had not changed either. The courts remained weak and reluctant to reform themselves. They seemed to get some independence from the other branches of the regime, but the traditional internal structure hampered such progress: the power of the chief justice was so strengthened and expanded that none of the courts could refuse instructions from the Supreme Court. The bureaucratic and hierarchal system deepened the problem. Every judge wanted to be promoted to chief judge of the High Court, but the promotion was dependent on the discretion of the chief justice, who had all-mighty power over personal affairs of the judiciary. Under this structure, any president of a court could control the judges who worked for his court, with the power of assessment of the judge’s performance, according to which the judge’s eligibility for promotion would be

“Since the Sixth Republic (1987-1992), the prosecutors had no competing power in executing the criminal law, which covers every part of Korean people’s lives from love affairs to political ‘deals’”

“This is why the first civil movement for judicial reform in Korean society in 1994 used the catchphrase, “The judiciary shall serve the civil society””

decided. Actually the junior judge could not be independent from the senior judge, which resulted in a very homogenous and monolithic judge family, closed against the ordinary people.

The bar was still content with the status quo, in which it monopolized the legal services market in the guise of serving the public interest. Even though Korean society was democratized, the legal system was still captured by lawyers, and the people were not the sovereign power in executing the law; they were just the objects of the lawyers' power. What the democratization of 1987 brought into the civil society was not the rule of law but the rule of the lawyers—a kind of juristocracy.

This is why the first civil movement for judicial reform in Korean society in 1994 used the catchphrase, “The judiciary shall serve the civil society”. The Korean people wanted the courts and the prosecutor's office not to be part of the power apparatus but legal services providing organs with more accessibility and familiarity, which could contribute to rule of law and to establishing justice. They wanted to set up a more rational and democratic judiciary, which could reflect the people's sense of justice and the market's demand for lessening the cost of transactions. They wanted to hire attorneys-at-law who would charge reasonable amounts. They wanted to instruct their lawyers instead of being ordered by the lawyers they hired. They wanted a true rule of law instead of the rule of lawyers. They wanted to consolidate democracy by reforming the judicial system.

The Judiciary Watch Centre as watchdog

It was at this point that People's Solidarity for Participatory Democracy (PSPD) was established with more than 200 members as one of the most key players in consolidating democracy in Korea. Its main orientation was to serve as a watchdog against the abuse of state and/or economic powers; to evoke public awareness about those powers through various campaigns; to oversee important state actions, policies and measures, to petition for legislation; and to file public interest litigation. It aimed to dedicate itself to promoting justice and human rights in Korean society through the participation of the people.

The PSPD is comprised of 11 departments. Each department is composed of executive committee members, of whom some are progressive scholars, attorneys, accountants, etc. It has three watchdog centres: the Centre for Judiciary Watch; Centre for National Assembly Watch which watches the activity of the National Assembly and its members, and operates an on-line archive, and aims at participatory democracy through civil participation in national politics; and the Centre for Government Administration Watch, which works on making the society and the government transparent and accountable while stamping out corruption and fraud, and organizes anti-corruption campaigns, plans legislation, researches policies and monitors government

officials. It also works tirelessly to uphold the Freedom of Information Act and supports whistle-blowers who provide information on corrupt activities.

The Centre for Judiciary Watch, or Judiciary Watch Centre, was a main part of this newborn NGO. The JWC used one catchphrase to describe its main target: “Judicial reform for the people”. There had been several occasions of judicial reform, all of which, however, served only the judiciary itself or the regime, and were driven by the government, especially, the Ministry of Justice. The JWC wanted to get rid of any authoritarian residue from the judiciary: changing the bureaucratic structure of the judicial system into a more independent and autonomous one. It wanted to reform the judiciary to be more democratic, making the courts more representative and responsive to the will of the people, and more devoted to the people’s interests.

In 1995, the JWC set up 50 tasks for judicial reform, of which the five main tasks were to:

1. Establish monism of the legal profession: Discard the pure-bloodedness of the court and recruit judges from the pool made up of career lawyers and prosecutors;
2. Democratize the judicial system: Open the judicial system to the people and make a more representative and responsive judiciary according to the will of the people;
3. Radically increase in quantity as well as quality the legal profession: Remove the highest entry barrier to the legal profession in the world and increase the supply of legal services;
4. Human rights protecting judiciary: Make the judiciary not part of the power apparatus but the guardian of human rights against the state; and,
5. Orient the judicial system towards the future: Reform the judiciary according to universal standards, and let it function as a facilitator of the country’s competitiveness in the globalizing world.

The JWC took the biggest newspaper—the Chosun Daily—as partner and serially published a “Joint Plan for Judicial Reform” in order to develop such tasks into a social agenda for the consolidating of democracy. The JWC collected and accumulated public opinions on such issues from a wide range of fields and strata, and encouraged the involvement of renowned public figures in round-table talks, which were summarized and published in the newspaper with appropriate materials, statistics, and/or comments.

The project resulted in unexpected success, making the JWC familiar to the public and returning the agenda for judicial reform to the hands of the people. The JWC was not content in presenting a reform agenda, but it provided more specific and concrete material and references to the public. For example, it calculated

“The JWC wanted to reform the judiciary to be more democratic, making the courts more representative and responsive to the will of the people, and more devoted to the people’s interests”

“People are apt to be isolated from the world of law. As the people’s accessibility to law is one of the prerequisites of the rule of law, such discrepancies should be reduced as much as possible ”

the number of judges and lawyers per 10,000 residents and compared it with that of other developed nations, based on which it made a more reliable report on the optimum number of judges and lawyers in Korean society in easy language, in order to be easily read by the ordinary people.

Such activities gathered a huge amount of public support, which drove judicial reform. The government and the courts could not resist the demands: they established relevant committees for reformation of each branch, and the JWC’s reports and resources were seriously scrutinized in the policy-making process.

But such success could not satisfy the JWC. It was just a starting point on the long journey toward a truly democratized judicial system. Encouraged by this success, the JWC set up 5 main strategic activities to watch and check the power of the judiciary and democratize the judicial and legal system of Korea: monitoring; agenda setting; participation in judicial reform activities; campaigns and education, and networking for solidarity. These activities will be discussed below. At this point, the organizational and operational strategy deserves a more detailed explanation.

The JWC consists of a board system with two groups of members: one consists of two attorneys-at-law and one judicial subscriber, and the other consists of 12 law professors whose specialism is constitutional law and human rights, criminal law and criminal procedures law, criminal law and police law, civil law, and so on. Three full-time staff members are recruited by the PSPD. All of the members have specialty in law and legal affairs, which means that the JWC is a highly professionalized entity for watching the judiciary.

What makes the JWC different from any other law institute is its orientation toward liberal values. In not a few countries, judicial behaviour and legal affairs are usually regarded as an island: they are considered too specialized in legal terms and logics for the people to understand. People are apt to be isolated from the world of law. As the people’s accessibility to law is one of the prerequisites of the rule of law, such discrepancies should be reduced as much as possible. The JWC tries to provide effective human interfaces that connect the lay people’s will to legal system with the specialized world of law and judicial decision-making. The JWC and its members translate law and legal decisions into plain words, which lay people easily access and understand. Moreover, the JWC transforms the people’s demands to the legal system into more legalistic and more legalized form that jurists and lawyers such as judges, prosecutors, and members of the National Assembly can accept as salient resources for their decision (policy)-making.

The specialty of the members of the JWC is another merit for its business. The JWC tries to make its criticism of judicial behaviour resonate with all the members of the law community,

and to get agreement to reform the problems from the majority of the members, with which the JWC can drive judicial reform more actively. Uniting the will and demands of the people with jurisprudence and legal doctrines prevailing within the legal community, the JWC's specialized members can induce co-understanding of lawyers in that community and activate some discussions on the issues with their colleagues, in some cases leading them to make agreements on the necessity of reform. The JWC's task is, in such occasions, to transmit the messages of the people and provide some relevant materials and resources for lawyers to base their opinions and policy alternatives upon.

“Monitoring is my middle name”

Among the activities of the NGOs with attention on government policies and performance, monitoring is one of the most indispensable and important tasks. Most NGOs monitor and oversee the process of getting people's demands into the government's activities, the process of decision/policy-making, the outputs that the government makes, and the outcomes that are made in real world. So does the JWC, but with its own methods: profiling lawyers and constructing database files, and so on.

Database: Who's who?

The first step to monitoring the judiciary is constructing a database of information on most of the judges and prosecutors as well as major cases (especially investigation and prosecution). The database includes personal information such as date and region of birth, and school and university name he/she attended, careers information such as year of bar exam, year of entry to the Judicial Training and Research Institute, the name of the court or prosecutor's office where they worked, last place of work and year retired, location of law office, partners in the law office, and information on court decisions, trial briefs, cases investigated or indicted, and miscellaneous information such as newspaper articles about the person, rumours, and reputation. Even though such collection of information is no longer unique and so efficient, because there are several alternative law databases that are provided commercially, the JWC's database still provides so many useful resources on evaluating and criticizing lawyers.

Along with the database, the JWC has published several “white papers” on prosecutors, and more than 120 comments about the government's measures on the personal affairs of prosecutors, as well as 132 comments about those of justice and judges since the year 2000. Among them, two papers have attracted special attention: the white papers of 2003 and of 2008-2009. The first one, which reported and criticized the five years of achievements in legal affairs and prosecutions under Kim Dae-Jung's regime triggered nationwide demands for reformation of the prosecutorial system, while the latter blamed the government of the day for a “retrogression of the rule of law” because of abuse of the prosecutor's power to repress people's criticism of the regime.

“ The first step to monitoring the judiciary is constructing a database of information on most of the judges and prosecutors as well as major cases”

“ The JWC wants every person to feel free in reading and judging legal documents and judicial decisions. And, it wants to send the judiciary a message, “I still know what you did last summer” ”

The JWC is also outing prosecutors responsible for cases that had been criticized widely. “Name & shame” and “Who spoiled the case?” are the most aggressive activities in a shame culture of the sort in South Korea, in which the names hidden behind the cases are revealed. Prosecutors generally try to hide behind legal principles and avoid responsibility for what they do, keeping their names concealed. These days, the JWC is preparing to construct an online database of “The case and that prosecutor”, which will take on this aspect of the system.

Lay people’s review of the judgment

Any judicial decision should not be the exclusive property of lawyers. It should be shared with the people, and it should be accountable to the judgment of the people. When the courts make socially salient decisions, the JWC opens mock trials. It invites lay persons to discuss the rulings that the court rendered. It wants to break out the stereotype that the judicial judgment can be made and assessed only by the legal profession. It wants every person to feel free in reading and judging legal documents and judicial decisions. And, it wants to send the judiciary a message, “I still know what you did last summer”. The last review was criticism of the appellate court’s decisions that reversed the verdict of a jury trial (“citizens’ participatory trial”). The contents and outcomes of the discussions are published in the JWC’s homepages.

Annual Award of the Best Cases and the Worst Cases

As the end of every year is almost upon us, the JWC becomes busy to review the judicial cases of the year, and the grand finale of that works is the holding of the Annual Award of the Best and the Worst Cases. Some of the board members and staff of the JWC gather all the cases that attracted public attention and/or socially controversial discussions and publications on such cases with help of some volunteers, who come from the JTRI, law schools, and universities. They classify the cases into groups of “good cases” and “bad cases”, and circulate the lists of each group to the board members via e-mail, which stirs serious online-discussions among them about which one should be scored how much. At the same time, it gathers the opinions of lawyers, law professors, and journalists outside the centre who are concerned in such activities as well.

Usually ten cases from each group are selected as the year’s good cases and the year’s bad cases, which are called “Stepping stone cases” and “Stumbling block cases” each. Of course, there is the Grand Prix, i.e., the best case and the worst case. These cases are reported on the JWC’s homepages with introducing comments and brief description of the cases and their meaning in the social contexts. Almost every time, they are covered by major mass media.

Warning! “Do you really want to hire a shark?”

If there is an imbalance in information between a buyer and seller, there is a market failure, which will cause unjust additional costs to the inferior party. As far as the legal services market is concerned, this market failure is not exceptional but usual, because the information on the legal profession as well as law itself is rarely opened to the public. Such information asymmetry means that the lawyer is in a superior position to the client.

This is true of the disciplinary measures concerning lawyers. The Korean Bar Association exercises this disciplinary power. But the information on the bar’s disciplinary measures is not easily accessed by lay-people, because it is published only in the bar journals and only in part, without detailed description of the case. So, anyone who wants to know about a lawyer whom he or she may retain cannot get any relevant information on whether the lawyer is good or bad.

The JWC wants to ease the burden on people who are searching for a legal representative. It requested the bar to provide more detailed information on disciplinary measures in order to publish the information on its homepage. But the bar denied the request. The JWC had to find another way: it has surveyed all the materials which dealt with such information, such as newspapers, magazines, web-pages, hearsay, and so on, and succeeded in gathering reliable data on this subject. In 2007, it constructed a website (<http://www.peoplepower21.org/?sub=lawyer>) with the name, “Finding the information on your lawyer’s disciplinary history: Be wise in selecting your lawyer”. Anyone who visits this website and puts a lawyer’s name in the search machine can get information on the lawyer’s record of disciplinary measures since 1993 to the present, that contains the date of the measure, verdict, number of case, name of the lawyer, name of the law firm where the lawyer worked, the date of birth of the lawyer, bar registration number, brief description of the case, and the year when the lawyer graduated from the JTRI.

The Journal of Judiciary Watch

The Journal of Judiciary Watch is one of the most influential journals in the Korean law community. It is an irregular journal, which reports monitoring findings of courts, prosecutors and lawyers, and the JWC’s stance on pending issues. It is distributed to more than 3000 jurists including judges, prosecutors, lawyers, and members of the National Assembly, who are the objects of the Judiciary Watch. This explains why this journal attracts so much attention from the law community: the object of surveillance is usually bound to pay close attention to those conducting surveillance. This is especially the case when the

“Anyone who wants to know about a lawyer whom he or she may retain cannot get any relevant information on whether the lawyer is good or bad”

result of the surveillance is published in his/her own community and evokes the sympathy or antipathy of the public and his/her peers based on plausible grounds.

“The journal functions as a conduit through which the people’s demands can go into the legal system”

The journal reports reliable data and gives resources from constantly watching cases, and evaluates them according to the constitutional and democratic values and the orientations of the people. Actually, a few lawyers have been dissatisfied with the JWC’s stance, but all they can do is confess that they have a different ideology or principles from the JWC. None could ever make objections against the logical or factual findings that the journal has articulated. In short, the journal is regarded as reliable, creditable and respectable, even among lawyers who do not like the JWC.

The journal conveys lots of voices of the people into the legal community, in legal terminology and methodology. It functions as a conduit through which the people’s demands can go into the legal system. It provides materials and gives the basis of an argument for lawyers to criticize themselves. It enhances the possibility of reformation from inside the legal community. It gives valuable opportunities for the lawyers and the public to unite and cooperate to make a more accountable and responsive system of law.

The JWC could not publish the journal for the last three years because of financial shortfall. The current issue (vol. 30) was published on 30 November 2010, and distributed to 2297 judges and 1421 prosecutors as well as to bar associations, law professors, libraries and several administrative organs. Its main issues were reports on the prosecutors’ abuse of investigation and indictment powers against citizens’ exercise of the right to free expression on the Internet, introduction to the web database of disciplinary information on lawyers, and a report on the revolving doors phenomenon caused by ex-senior judges who opened law offices in front of the court building where they had worked just a few weeks earlier.

Participation for more democratic rule of law

Agenda-setting and participation in judicial policy-making process

Aggregating the people’s demands of the legal system and criticizing judicial behaviour would be of little use without any constructive policy alternatives. Therefore, the JWC has actively come up with practical alternatives for democratic judicial reform.

When the JWC finds some problems, it conducts intensive study on those issues through various surveys as well as through documentary research to find salient alternatives, which, in turn, are circulated through the board and cooperative volunteers specialized in law and in the legal system. Once the validity and efficiency of the alternatives is verified, the JWC usually calls

hearings and/or forums, which are open to the public, where it tries to hear various voices and opinions from as many panels as possible. Sometimes, the JWC proposes to the relevant governmental organs to conduct such procedures, in which it actively participates. The final stage is filing petitions to the relevant authorities. Usually the JWC has press interviews to inform the public of petitions before filing them, and occasionally it seeks to band together like-minded lawyers, NGOs, academic associations and so on in order to maximize the possibility of success in making the petition a reality.

“The JWC has played a key player’s role in policy-making processes”

The following are some examples of proposals that the JWC has made in the past:

1. Reform the judicial hierarchy: to abolish the promotion system of judges, which has resulted in the subordination of junior judges to senior judges with the power of assessment over the former;

2. Strengthen judicial accessibility: to establish a public defender system and increase the quantity and quality of free representation financed by the national budget;

3. Change the relationship between the public prosecutor’s office and the Ministry of Justice: to make the MoJ completely separate from the public prosecutors, i.e., to make the MoJ a more public oriented organ rather than an organ dominated by law bureaucrats;

4. Reform the prosecution: to petition for the Amendment of Public Prosecutor’s Office Act (1997), to introduce a system of independent counsel for investigation of high-ranked officials and politicians (1999), and to abolish the Principle of Prosecutor’s Unity and Indivisibility (2004);

5. Remove the entry barriers to the legal services market: to reform the system of recruitment and training of lawyers; to increase the number of lawyers, which is the smallest among the OECD countries, and to make the legal services market more accessible to the ordinary people, and;

6. Establish a law school system: to improve legal education and training, which means the transformation of the system of legal bureaucrats to one of a legal profession.

These efforts have obtained significant support from the public, and have been the most important subjects for the attention of officials involved in making judicial policy making. As such, the JWC has played a key player’s role in policy-making processes, including the Presidential Advisory Committee for Judicial Reform (1999); Commission on Judicial Reform (2003); and, Presidential Committee on Judicial Reform (2005). From such activities, the JWC has had several big successes, including the Citizens’ Participatory Trial in Criminal Procedure (2003); increase in the number of passers in the bar exam, from 300 to 1000 (1995); Law School System (2003); adversarial system of

“There should be more diversity in the composition of the courts in order to make them more representative of real society”

criminal trial (2003), for reforming of the Criminal Evidence System, which used to favour the prosecutor over the defendant; and, the Special (ad hoc) Prosecutor System (1999 to present), to investigate high-ranking officials, politicians, and on several occasions, some prosecutors who were corrupt or who had abused their power.

Participation in the process of appointing justices

To achieve rule of law in reality, one should not overlook the importance of the question, “Who should be a justice?” The justices are heads of the Supreme Court or the Constitutional Court who have powers to determine the fate of the domestic legal system. They make final decisions on what should be the law, and such decisions can have direct or indirect effects upon the existing structure of the society.

In South Korea, there are two groups of justices: that of the Supreme Court and of the Constitutional Court. The chief justice of the Supreme Court, the president appoints with approval of the National Assembly, and the other justices the president appoints on the nomination of the chief justice. The justices of the Constitutional Court, the president appoints, three from nominations of the National Assembly and the other three from the chief justice. All the justices must be lawyers who have passed the bar exam and graduated from the JTRI.

Because the justices have made their careers in the bureaucratized system of the court or prosecutor’s office, they are not regarded, in any sense, as representatives of civil society. The JWC has argued that there should be more diversity in the composition of the courts in order to make them more representative of real society. It argued that the post of justice should not be regarded as just the result of the ordinary promotion system of judges and prosecutors, but a seat in a kind of senate which reflects various interests and opinions of the society, and translates them into legal norms.

The JWC has opened two tracks for public participation in the appointment process of justices. The first track is for recommendation. It hosts an open seminar to set up the standards and guidelines to select the candidates for justice-ship. Through several meetings of the board members, it prepares pilot papers on such standards and lets one of its members present the papers in the seminar, the results of which are scrutinized by all the members and reflected in revising the standards. In 2003, candidate selection criteria for justice of the Supreme Court covered personal orientation toward judicial reform; willingness and ability to represent and increase the interests of the underprivileged sectors such as women, labourers and the disabled, as well as interests on issues such as the environment; ability to check the administrative and legislative powers; and, ability to understand and resolve various social problems based on his/her experience.

Once the standards are set up, the JWC begins to collect reliable data on senior lawyers who apparently have some merits to be justices, at which point the database on lawyers it has constructed is of special use. The reputation of candidates among lawyers, their performance as lawyers, their social origins, their relationships with other parts of society, their value orientations—if possible—and any other salient factors are scrutinized as closely as possible. The opinions of lawyers, law professors, journalists and any other parts of relevant groups are widely collected and reflected as well. And the result of all these processes is published under the title of, “We recommend these lawyers for new justices”.

The second track is activated when the candidates are officially determined. This is an evaluation process that results in a ‘pro’ or ‘con’ finding. The JWC gathers data and information on the candidates and evaluates them according to the standards established before, whereby a wide range of lawyers, jurists, law professors, NGOs and journalists as well as its members participate. The JWC publishes brief white papers which contain the results of the evaluation processes and the opinions of the JWC that conclude with expressions of “Totally Agree” “Partly (Conditional) Agree”, “Neutral”, “Partly Disagree” and “Totally Disagree” to the candidacy.

The JWC thinks that such activities have produced several meaningful outcomes, including appointment of the first female justices in the Supreme Court (2004) and the Constitutional Court (2003) and substantial abolition of the system of seniority in appointing Supreme Court justices.

Judiciary Watch of the people and by the people

Campaigns and public education

Alienation of the people from the legal world is partly caused by the people’s lack of knowledge about law and the legal system, as well as by the exclusion strategy of the lawyers’ professional group. The JWC has tried to deconstruct such barriers against entry to the legal world. Raising legal issues as social issues that people can more easily access, and providing better opportunities for people to participate in the judicial processes and/or policy making processes on the judiciary: these are central strategies that the JWC has taken on for its activities as the “Judiciary Watch of the people”.

Holding seminars and public hearings is the everyday business of the JWC, through which it communicates with the public: gathering public opinions and providing the public with useful information to think about current legal issues. Open lectures for laypersons and public meetings for discussion on current legal issues serve the same purpose, mostly in collaboration with other sections of the PSPD.

“Alienation of the people from the legal world is partly caused by the people’s lack of knowledge about law and the legal system, as well as by the exclusion strategy of the lawyers’ professional group”

“The Open Court is a moot trial in which a case is reconstructed from the view of the people not from the perspectives of lawyers, and in which the decision is revised according to common sense of justice and rightness.”

The JWC is campaigning to attract more public attention toward the Citizen’s Participatory Criminal Trial, which is being tried out to test whether the jury system can be good in the Korean legal system. It gathers a small audience to the trial, and holds discussion meetings with the participants after observing the trial. Recently the JWC went a little further: it ‘summoned’ a shadow jury from the public, which attended a trial and made another verdict. Previously, the JWC used to arrange just for attending to the trial and giving some instructions on the proceedings. In that case, the participants are nothing but passive bystanders. But the participants in the shadow jury get a totally different experience by actively participating in the judicial process. They listen to the instructions that the JWC gives to them more attentively, watch the case more closely in the courtroom, and discuss the case more sincerely in the conference room in the court building. They are all recommended to write the report of that experience, and all the reports are published in the Center’s Home Page.

The Open Court

The Open Court is a meeting for citizens’ criticism of a court’s decision. It is a moot trial in which a case is reconstructed from the view of the people not from the perspectives of lawyers, and in which the decision is revised according to common sense of justice and rightness. This serves two objects simultaneously: it enables the public to monitor and criticize judicial decisions, and to encourage the public to participate actively in the judicial decision-making process. There have been 25 cases tried by the Open Court since 13 March 2005, when the first one held.

The Open Court begins with public sensation: When a judicial decision is rendered of social relevance, vigorous discussion begins among JWC board members via e-mail. Sometimes, a member or full-time staff person suggests that the case may be eligible to be scrutinized by the board. Once the board decides to file the case to the Open Court, it chooses who will write review articles on the case from inside and outside of the board. Usually two or three writers are selected and strongly recommended to write their opinions on the case from the perspective of the public, not that of the lawyers.

Take the 19th Open Court (1 November 2007) case. It dealt with the Seoul High Court’s decision that a company’s dismissal of its employee who committed sexual harassment was illegal, and declared it annulled. The High Court accepted the plaintiff’s argument that the actions that allegedly constituted sexual harassment were actually an expression of encouragement and the other office ladies there accepted the same behaviour at that time. What was problematic in the case was the question of who should decide that an action was expression of warm encouragement or sexual harassment: whose feelings should be taken into consideration? A male boss can express his feeling

of intimacy in his own way, but this may constitute sexual humiliation for the woman. The High Court took the first view and the defendant and the public took the second one.

We accuse the lawyers in the name of the people

Corruption and other illegal actions of legal bureaucrats are condemned more than the misdeeds of the ordinary person, because officials should be guarding citizens from such misdeeds, not committing them themselves. Nevertheless, the wrong behaviour of legal bureaucrats may not be punished through ordinary legal procedure. Sometimes, colleagues pretend to close their eyes and cover the behaviour up for their counterparts. Such evil customs of mutual concealment are one of the main obstacles to the realization of rule of law in this respect. They weaken people's confidence in law and the legal system, and go to the age-old problem of "who guards the guards?"

The JWC chose its own method to solve the problem: the Citizen's Movement of Accusation. On behalf of citizens, the JWC has driven so many campaigns to accuse corrupted prosecutors or judges, and has filed several joint petitions of accusation in the name of the people. In addition, it has proposed some legislation on the Special Prosecutor's Office Act, according to which a special prosecutor was appointed by the president to conduct intensive investigation of cases in which legal bureaucrats are involved. Some notable accusations in which it has been involved include an accusation that judges were accepting bribes from lawyers practicing in their jurisdiction regularly (Uijeongbu District Court, 1998); that a prosecutor assaulted a criminal suspect during interrogation (1998); that a judge in Kwangjoo District Court was involved in bribery (1998); and, that had received money and lavish entertainment from a local businessman, who insisted that he had sponsored all those prosecutors (2010).

Networking and publications

The JWC has a close relationship with Minbyun – Lawyers for a Democratic Society, which was established in 1988 with 51 human rights lawyers, and which embraces most liberal lawyers now, one of whom was the 16th President, Roh. Minbyun has represented JWC pro bono in most of the public interest litigation (more than 200 cases) that it has filed.

Some political parties like the Democratic Party, the Democratic Labor Party, and the New Jinbo (progressive) Party are ad hoc partners who offer solidarity on a case-by-case basis. These parties' members have introduced more than a hundred of the JWC's draft legislative bills to the National Assembly. Sometimes, they collect valuable information and data on the judiciary while doing the work of legislative oversight and inspection of the administration of the Supreme Court, the Constitutional Court, or the Prosecutor's Office, and hand it over to the JWC.

“Corruption and other illegal actions of legal bureaucrats are condemned more than the misdeeds of the ordinary person, because officials should be guarding citizens from such misdeeds, not committing them themselves”

The JWC and journalists have a kind of “symbiotic relationship”. The JWC can publicize what it wants to publish with the help of journalists, and the latter can get information and knowledge of news value from the former. Sometimes, they conflict each other, but infrequently.

Conclusion

The watchdog activities of various NGOs are important for consolidation of democracy in a newly democratized country, because watchdogs can awaken people to the exercise of powers by the state, and power-holders are compelled to be always conscious of the eyes of the people. Where the judiciary is concerned, such watchdog activities are of special importance, because the judiciary may hide itself behind legalism and jurisprudential professionalism, which are unfamiliar to ordinary citizens. Any judiciary that is outside of people’s oversight, can be easily mobilized to serve the political powers and/or their own interests, not those of the people. So, people have to oversee a judiciary on which they have little information and knowledge. The strategy of the JWC is to serve as an intermediary in the watchdog role.

Although the JWC is made up of legal professionals, its special quality is that it must be backed up with the common will of the people. Actually, the work of the JWC is above all controlled by the standing committee of the PSPD, which consists of ordinary citizens who represent diverse sectors of the society. The JWC itself does its best to communicate with the public through open panels for discussion, seminars, webpages, journals, and face-to-face talking as well. Such willingness and endeavours to stay among the people are the basis of the people’s credence in the JWC. Keeping in constant touch with the public and mobilizing its members are efficiently combined together in the JWC’s activity – that must be the real strength of the JWC.

An Appeal for Assistance by Asian Human Rights Commission



Save Human Rights Defender **FMA Razzak** Ensure Justice

Asian Human Rights Commission (AHRC) based in Hong Kong is launching this appeal to request your assistance for FMA Razzak, whose both eyes were gouged by a group of persons working on behalf of a military Major of the Bangladesh Army.

The Assistance is needed for his medical expenses, legal expenses and for security arrangements for him and his family.

Asian Human Rights Commission takes the responsibility for the management of this fund

For information on making a donation to this campaign, please visit:
<http://www.humanrights.asia/campaigns/attack-on-fma-razzak>

NEW VIDEO:

Defending Human Rights Defenders

Societies are silenced by the use of violence by the state. This has gone on for centuries in many countries. Such silencing ended in North America and Western Europe by the end of the 19th century, but that is not the case in many other countries. Those who try to break the silence are suppressed by physical violence. Thus, at one time or another this suppression has to be defeated. Such defeating begins with small efforts. Those who make the initial efforts are called Human Rights Defenders. Thus, by the very nature of their initial work they expose themselves to physical violence perpetrated by their many opponents. If they are to be sustained they need to be defended and supported. This presentation discusses the complex problems relating to defending these Human Rights Defenders.



Watch this video at:

<http://www.humanrights.asia/resources/videos/AHRC-VID-013-2011>

A SERIES OF VIDEO LECTURES:

How to improve the discourse of human rights between developed and less developed countries -

Why have the international interventions for investigations and prosecutions of human rights abuses in less developed countries failed to obtain positive responses? Is this only due to bad rulers or the absence of political will as is often said or should we look deeper for the actual reasons? In this short presentation, failures in the discourse on human rights between developed countries and less developed countries are discussed under the theme of the primacy of the rule of law.

To protect the law is to protect the nation -

In this presentation, the failure of the Sri Lankan state to protect the law is discussed as the greatest threat to Sri Lankan society remaining as a nation. Despite much rhetoric about the protection of the nation, the nation has been disintegrating, primarily because of the failure of successive governments to protect law and the institutions that are vital to the protection of rule of law. Thus, much of the discourse on patriotism in Sri Lanka is purely sentimental, when in fact the rule of law has reached its lowest depths. The cause of this disintegration is discussed in terms of the displacement of law by the 1978 Constitution, which has created an Executive President who is outside the jurisdiction of the courts.

The death of law -

This is a discussion on the serious crisis of law in Sri Lanka. 33 years of the promulgation of the present Constitution, what is legal and what is not has been obliterated in Sri Lanka. Three incidents of the crisis of law are discussed. Each of these incidents is discussed in terms of the law that prevailed before 1978 and the absence of law now. The implications of lawlessness on the security of the citizens who are now without the protection of law is discussed in detail by Mr. Basil Fernando, a Sri Lankan lawyer and the Director for Policy and Programme Development at the Asian Human Rights Commission.

Please visit our website for more online videos:
<http://www.humanrights.asia/resources/videos>

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Asian Human Rights Commission & Asian Legal Resource
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Asian Human Rights Commission, Hong Kong

- In defence of the human rights defender: FMA Razzak's story
- A precarious time: Responses to the attack on FMA Razzak

*Han Sang Hie, Former Director, Judiciary Watch; Professor, Law
School, Konkuk University, South Korea*

- Who guards the guards? The experience of Judiciary Watch, South Korea

And

- The attack on FMA Razzak as told by Razzak himself

*Cover photo: People's Spontaneous Protest against Major Bokul's
Brutality*

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ALRC invites submissions to *article 2* by interested persons and organisations concerned with implementation of human rights standards in the region.

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