

**Right Livelihood Award Ceremony,
Stockholm, Sweden
Acceptance Speech by Basil Fernando
1st December 2014**

Honourable guests, Members of the Swedish Parliament, ladies and gentlemen.

I am humbled and honored to be one of the recipients of the Right Livelihood Award – both for myself as well as for the organization that I represent – the Asian Human Rights Commission.

Some two decades back, the Asian Human Rights Commission was confronted with the problem of widespread impunity in most Asian countries: perpetrators of such grave crimes as enforced disappearances, extrajudicial killings, torture and ill-treatment, or sexual abuse of women got away without legal consequences. It appeared we were powerless.

Then we posed ourselves a question and posted it on an office wall: “What can we do when it appears nothing can be done?” All that we did subsequently can be traced back to this question. In short, the solution we found was that “the ambulance approach” to human rights violations, must be combined with “an institutional reform approach.” Let me explain.

The first recipient of this award from my country, Sri Lanka, Judge Christopher Weeramantry, [who is honoring us with his presence here today,]

stated in his address to this Parliament in December 2007 that “the gulf between law and reality, between professions of good intentions and the practice of them, between what is proclaimed in the books and what is practiced in the field has grown to abysmal proportions.” Our work reveals that this ‘abysmal gap’ is greater and far more starkly visible in the developing countries.

The work we have done began with a personal experience of mine, that of being confronted with the imminent risk of disappearance as a result of the work I did as a lawyer, just the ordinary duties on behalf of my clients. Knowing the pattern of what was going on, I knew my turn would soon come. Therefore, as the time was extremely limited, I left my country in the shortest time possible.

I tried to grasp the problem of the certainty of a disappearance where innocence is not a defense. Then I tried to understand the problem of protection of citizens, which is the duty of the State. I realized that it is not the laws set out in the books that protect people. We have such laws in abundance, but the existence of those laws did not prevent widespread lawlessness. The presence or absence of protection is determined by and dependent on functioning institutions of justice, meaning a functional police system, prosecution system and judicial system.

This realization I had reached was further confirmed during the period of nearly three years when I worked as a Senior Officer of the United Nations Transitional Authority in Cambodia, where I saw what Alexander Solzhenitsyn has called ‘abysmal lawlessness.’ In Cambodia the police, the

prosecution system, and the judiciary were all aligned against the people and liberty was criminalized. When the responsibility of leading the Asian Human Rights Commission fell upon me in 1994, I was determined to pursue this single issue of protection, with the goal of trying to articulate the problem as clearly as we could, as well as seeking ways to solve this problem. In essence, that is what we have done and are doing.

The method we have adopted is, first of all, to meticulously document the individual violations and to tell the story of each individual as to what happened to them when they sought justice. We called this the “story approach,” as opposed to the then prevalent “statistical approach.” Then we tried to support as many victims as possible by issuing urgent appeals, by helping in litigation and by providing psychological assistance, thereby actually learning victims’ agonies and frustration. This way we saw the appalling condition of the policing, prosecutions and judicial systems that prevailed in almost all countries in Asia.

We also observed that the beneficiaries of a bad system of justice are the criminals. When criminals benefit from this type of policing, prosecutions, and a judiciary, every aspect of life becomes directly or indirectly criminalized; the electoral system becomes so permeated with multiple forms of criminality and corruption that any aspiration for a free and fair election becomes an illusion; violence becomes entrenched into political life; public perception of politicians becomes negative and the expectation of corruption spreads into everyday life. Those who exercise the freedom of speech and publication become targets of violence and the culture of fear begins to pervade. The drug trade flourishes; money laundering and other kinds of

commercial crimes become imbedded in the economy; the sex industry including trafficking of persons is facilitated; the right to life and property is threatened; murder, rape and every other form of serious crime becomes easy?. Money making through the abuse of the powers of arrest and detention and fabrication of charges contaminate every aspect of the 'justice mechanism'.

It is this problem of '*the justice system itself being a contributor to violence*' that has been the bewildering experience of all (most?) citizens, in particular the poor, in Asia. The poor constitute the majority of the people in most developing countries. Our documentation clearly reveals that repressive political systems shape the police, prosecution, and the judicial systems in their own image so that they are used to intimidating the poor.

We observed how this situation negatively affects civic consciousness and civic activism. Neighbours fear to come to each others' assistance. Terrorized by unjust public institutions, people begin to shun public life and thus social cooperation is crippled.

Wherever we intervene, we repeatedly hear the same question from victims and onlookers: "You tell us of human rights; where do we find them?" We see this not just as a challenge to us, but a challenge to the prevailing model of human rights practice: this model is based on the assumption that prevalent conditions relating to justice institutions in developed countries also prevail in less developed countries. This false assumption fails to recognize that what many countries in Europe and North America achieved by way of institutional redesigning in the 19th century has not yet been

achieved in developing countries. Thus, there is the need to make such institutional change the prime goal of all human rights work in developing countries.

To achieve this we think that we must have an influence on the public opinion in these countries, as well as globally. So we try to share everything we learn through our documentation with a large audience by using new communication technologies. This is the strategy we follow and all the rest of our activities, which are numerous, are just the details.

We chose to make observations about the practice of torture and ill-treatment the core of our work. The rationale for that choice is that the extent and manner of torture, and the attitudes that support such a practice, are clear manifestations of the true nature of justice institutions in a country. With the extensive knowledge gained from 12 countries in Asia, including the two largest countries, India and China, we are in a position to say that the use of torture and ill-treatment and associated extra-judicial killings of various sorts is the backbone of the practices of so-called “systems of justice”. Investigation into crimes is inseparable from the use of torture; prosecutors and judges accept such practices as an inevitable part of “the system.” And those systems resist all attempts by UN agencies and others who call for the elimination of the use of torture, to investigate and prosecute those who violate this injunction.

The documentation available to us is adequate to illustrate this narrative vividly. The triple evils of torture, corruption, and abuse of power are interlinked and inseparable. It is not surprising that those persons from

developed countries who have been brought up in an environment where the state obligation to protect persons is entrenched, are at a loss when confronted with what actually occurs in places where this triple evil determines the environment. The gap in understanding the human rights situation between many from developed countries, with notable exceptions, and those from developing countries arises from the life experiences of those living under two different political and social environments.

One of the lessons we have learned is that if the justice problem in developing countries is to be resolved everything possible must be done to create a greater dialogue among those in developed and developing countries who care for democracy and human rights. The mainstream human rights movement needs to respond positively and dynamically to the problem of institutional reforms.

Many colleagues, volunteers, supporters, and, above all, victims of all forms of violations of human rights, have joined us and have contributed to our efforts. It is on their behalf that I accept this prestigious award. The Right Livelihood Award Foundation's recognition of our work will help spread the message of the pressing need for institutional change in the policing, prosecution and judicial systems in developing countries. I hope that the need for the institutional change of those justice systems will receive the much needed attention in Sweden and other developed countries. We can give assurance that efforts contributing to this aim will bear fruit a thousand fold.

Thank you.