The State of Human Rights in Eleven Asian Nations - 2010

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India • Indonesia • Nepal • Pakistan
Philippines • South Korea
Sri Lanka • Thailand

Asian Human Rights Commission

Human Rights Report - 2010

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Front cover: Pakistani flood survivors try to catch food bags from an army helicopter in Lal Pir on August 7, 2010. In 2010, Pakistan faced one of the most serious human rights and humanitarian crises in Asia. Devastating floods affected millions, while many millions more lived in poverty, fear and insecurity due to the widespread human rights abuses, corruption, conflict, discrimination and the lack of effective rule of law or remedies that continue to plague the country, accompanied by a deeply entrenched culture of impunity.

Back cover photo: Police surround a bus involved in a hostage-taking in Metro Manila, the Philippines, on August 23, 2010. In a failed rescue attempt, eight Hong Kong nationals and the hostage-taker, a former police officer, were killed. President Aquino ordered an investigation, but then quashed its findings, preventing the criminal prosecution of senior police officials responsible for the operation. Even in high-profile cases, such as this in the Philippines and many others across the Asian region, impunity typically prevails.

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Foreword

The Asian Human Rights Commission's (AHRC) annual report for 2010 concentrates on the state of human rights in eleven Asian nations. These are Bangladesh, Burma, Cambodia, India, Indonesia, Nepal, Pakistan, the Philippines, South Korea, Sri Lanka and Thailand. The annual report does not purport to cover all human rights issues in these countries, but focuses on the issues, cases and developments that the organization has encountered during the year through its activities and campaigns concerning human rights in each of these countries. On International Human Rights Day, December 10, 2010, the AHRC issued initial versions of these reports, which have since been updated. In a statement at that time, the AHRC noted that the general picture that emerges from the AHRC's work in 2010 is one of the failures of States to carry out their obligations for the protection of people and their human rights.

Serious defects are evident in the area of the judiciary. Judicial functions appear to be adversely affected by the absence of judicial independence as well as structural problems which deny the judiciary a place in terms of the doctrine of separation of powers. Judicial power itself is often restricted by constitutional and legislative limitations. Added to this is the problem of inadequate budgetary allocations for the administration of justice. This in turn affects the areas of the training of the judiciary as well as the availability of adequate numbers of judges to ensure the proper functioning of the justice system. Extraordinary delays often affect the possibility of fair trial. Lack of witness protection prevents many persons from obtaining justice. In achieving a higher degree of protection for human rights the problems relating to the judiciary require much greater attention in terms of the contextual problems that exist in the particular circumstances of many Asian countries.

Impunity is often guaranteed in serious violations of human rights by the prevention of proper inquiries into such violations. Inquiries are prevented, often due to political reasons. Development of the structural framework needed to guarantee credible inquiries into all violations of human rights is prevented by limitations in legislative measures as well as due to failures to ensure proper administrative measures.

Torture replaces proper investigations into crime in most Asian countries. There is widespread torture at the police stations and torture remains the modus operandi that has been quite accepted by the governments. Despite of the ratification of the United Nations conventions, particularly the Convention against Torture, Cruel and Inhuman

Treatment or Punishment, the measures for implementation are seriously lacking. While there are some discussions of bringing legislation to make torture a criminal offense no speedy action is taking to ensure such legislation. Even where legislation is available such laws are often ignored due to the lack of adequate arrangements to ensure investigations into torture and to ensure criminal and disciplinary action against the abusers. The governments in the region and the United Nations' agencies dealing with human rights need to scrutinise this issue carefully and find credible solutions to prevent the widespread use of torture that exists now.

The absence of protection affects not only civil rights but also economic, social and cultural rights. Large scale poverty still exists in Asia. Starvation and malnutrition is often reported. However, there are no speedy mechanisms to deal with such situations. The problems of food and water are caused, not by the absence of resources but are due to administrative failures that allow for neglect. The Millennium Development goals do not appear to have been given adequate attention in the countries of the region.

The poorer sections often complain of problems of arbitrary deprivations of their limited possessions including their places of habitat. Land grabbing and displacement is a problem that is heard from many countries in the region. Adequate legal mechanisms do not appear to exist to safeguard the basic rights of people relating to their lands and adequate protection against arbitrary measures that lead to impoverishment.

All forms of violence committed against women, communities and minorities due to discrimination based on gender, caste, race and religion are practiced in many parts of Asia. In these societies, women have to face the constant threats of sexual harassment, rape, domestic violence, acid throwing, dowry deaths, honour killings and forced marriages. The discriminatory practices in existing legislation, no proper investigation mechanisms and the failures of the judicial system have resulted in the impunity of perpetrators.

Arbitrary deprivation of civil and political rights as well as economic, social and cultural rights is often the cause of the graver forms of human rights abuses such as forced migrations which also often leads to trafficking of women and children. While the reports on all these issues are many there does not appear to be any visible attempts to resolve these long standing problems.

All throughout Asia there are clear signs of the people being more aware of their rights and they are making great efforts to improve the enjoyment of their rights. The hope for a better future lies in these initiatives by the people themselves. However, the governmental response to these initiatives is wholly inadequate. Asian governments should make greater efforts to improve the protection mechanisms for civil, economic, social and cultural rights. The following report highlights the key human rights violations and ways in which they are being perpetrated, as well as the institutional reforms that are required to address them effectively.

BANGLADESH

Election pledges on human rights and the rule of law remain unfulfilled

Introduction

Bangladesh has seen two years of its elected political government in the post-emergency period without any visible change in the area of human rights and rule of law despite the fact that prior to the general election of December 29, 2008 the "grand alliance", which came to the power of the Government for a five year tenure, led by the Bangladesh Awami League, publicly pledged to bring change by establishing rule of law and human rights. Instead, the nation has been experiencing the "rule of ruling political alliance" along with frequent lawless actions by the members of the law-enforcement agencies followed by blatant impunity as usual throughout the whole of 2010.

Bangladesh is a long-standing member of the Human Rights Council and despite it pledges to the international community, given as part of its election to the body and the requirement for the HRC's members to uphold human rights to the highest standards, Bangladesh has allowed widespread and grave human rights to be committed by state agents with total impunity. It is feared that the recorded increase in forced disappearances now marks a new phase in this regrettable record of abuse of rights that are enshrined in the country's constitution as well as its international legal obligations, and of non-cooperation with the Human Rights Council.

Bangladesh acceded to the International Covenant on Civil and Political Rights (ICCPR) on September 6, 2000, that prohibits the grave violations of rights highlighted above. According to Article 6 and 2 of the ICCPR, Bangladesh respectively has the obligation to ensure the right to life of its people and to ensure prompt and effective reparation where violations occur. It is also obliged to bring legislation into conformity with the ICCPR. Article 32 of the Constitution of Bangladesh protects the fundamental right to life and liberty, stating that:

"No person shall be deprived of life or personal liberty, save in accordance with law."

In reality, this has not been implemented and this most fundamental right is being repeatedly violated with complete impunity.

However, there are entrenched problems as partisan politics has been merged into all types of public, academic and rule of law institutions at all levels in the country. Deliberate unlawful interventions into public and rule of law affairs by the leaders and activists of the pro-ruling party and alliance, and their relatives and supporters, have contributed to the further deterioration of the existing human rights situation.

In many cases, such interventions have been the triggering factor to deny access to the minimum possible remedy for the victims of the gross human rights abuses.

Extreme political bias, by default to the ruling political camps, remains as the main characteristic for any kind of benefit or decision. Loyalty to the ruling political group functions as the key indicator for anyone expecting anything from the public systems. A deserving public officer is destined to be sidelined in the promotion race if the person fails to exhibit partisan performance through his or her actions, words and relationship. It is also obvious for a public official to suffer all kinds of discrimination if the same person had been able to occupy lucrative, powerful or comfortable posting in his or her service in the past regimes led by the parties that are opposition to the incumbent ruling party. Merit, efficiency and professionalism, which are also very rare in the public institutions of Bangladesh, are of little assistance to a public service-holder to step forward in their respective departments. This practice has been a contagious disease in the institutional setups as well as in public mindsets. People expect nothing other than arbitrary arrest, detention and harassment in the country without political loyalty to, and relationship with, the ruling parties regardless of whether the matter is related to a promotion or posting or recruitment in public service, or in the police department, or the judiciary.

There is the notorious practice of ensuring impunity to the ruling party political activists for their violent crimes as well as to the members of the law-enforcing agents. There has not yet been a single instance where a pro-ruling party person has been prosecuted with credibility for a reported crime. This process involves manipulation of all steps of the criminal justice system -- for example, the registering of a complaint, investigation of a case, prosecution and trial of the case.

Instead of concentrating on reforms in the criminal justice system including the implementation of the judiciary's independence the government and the main opposition are more concerned with their individual gains and vengeances. For example, the government initiated a dispute over a house occupied by Begum Khaleda Zia, the former Prime Minister and current Leader of Opposition in the Parliament and a widow of assassinated military general Ziaur Rahman, who usurped the office of the President following a series of military coups and countercoups in the mid 1970s, which remained as one of the most important issues for the ruling and opposition political parties. The opposition party placed before the Supreme Court while the government took over the

possession of the 2.72 acre house while the judicial battle remained unfinished. The incident led to further violence in public life that resulted in illegal arrest, arbitrary detention and criminal charges against the opposition political activists while ordinary pedestrians also fell prey to the law-enforcement officers.

Throughout the year the Government, which controls a huge majority having 305 out of a total of 345 seats in the Parliament including its alliances', did not say a single word about the criminalization of torture despite a Bill being pending in the Parliament for more than a year. Torture continued in all the custodies controlled by the law-enforcement agencies as well as the security forces including the secret The torture cells maintained by the armed forces dominated intelligence agencies' and the Rapid Action Battalion (RAB), a paramilitary force composed of officers deputed from the armed forces, border security force and the police but mostly dominated by the military, which was officially termed as an "elite force".

Arbitrary arrests and detentions by the plain clothed members of the law-enforcing agencies, particularly by the RAB, has led to enforced disappearances. The allegations of the illegal arrests and detention and subsequent disappearances of the persons had been only entertained with complete denial by the law-enforces and misguiding statements by the ministers of the government instead of any credible investigation or rescue attempts or effective judicial action providing remedy. For example, in one case, a small businessman named Mohammad Salim Mian was arrested along with two more persons from a house in Gazipur district by the RAB, which was witnessed by dozens of people of the neighbourhood, however, the authorities denied this after Salim was alleged to be disappeared while one his fellow arrestees was released after a week and another one was found detained in an allegedly fabricated criminal cases. In another case, a local government representative named Chowdhury Alam, who was an elected Commissioner of the Dhaka City Corporation, was picked up on 25 June 2010 from the street by plain clothed members who claimed to be the officers of the RAB, has remained disappeared till the time of writing this report.

The judiciary appears to be incapable of protecting the fundamental rights of the citizens in the face of the gross abuses of the human rights -- including torture, extrajudicial killings, enforced disappearances and lynchings – which have gone on unabatedly. Few rulings asking for an end to extrajudicial killings have been heard from the Benches of the High Court Division of the Supreme Court of Bangladesh yielding no successful result. Similarly, the detainees of arbitrary arrest and detention were granted bail from the High Court Division followed by their changes of the authorities' action many detainees were forced to remain in detention due to extralegal intervention allegedly from the office of the Attorney General. It is needless to mention that the subordinate judiciary does not have judicial mindset to protect the rights of the victims of human rights abuses.

At the same time, the higher judiciary has degraded itself to the level of a tool of the extended hand of the government to harass the media for exposing the arbitrariness of the Office of the Attorney General for creating unlawful influence upon the Supreme Court, which imprisoned an editor and a journalist of a national daily newspaper, of the opposition, and fined a monetary penalty for contempt of court beyond the purview of the laws related to contempt of court. In an unprecedented trial the Appellate Division of the Supreme Court, which is the topmost court of the country, spontaneously became the trial court on the issue of the said contempt of court issue bypassing the normal procedure of trial, which should begin from the Courts of Magistrates while the Appellate Division crosschecks and ratifies the verdicts of the lower court.

The attitudes and practices of the prosecution and attorney service are contradictory to the basic principles of rule of law as far Bangladesh's current situation and systems are concerned. The prosecutorial and attorney service urgently need to be made independent from the ruling political party's control and effective measures should be put in place to verifiably combat practices of discrimination and corruption in the judiciary.

The absence of the rule of law as a result of political impunity having the criminal justice system mostly dependent on the policing system, which is highly corrupt and works as hired musclemen of the ruling political party, resulted in the deterioration of the rights of women and girls in the country. Incidents of stalking women and attacking their guardians, including the teachers of the academic institutions for protesting, stalking leading to deaths of girls, guardians and protestors has increased alarmingly.

Finally, during the session of Bangladesh's Universal Periodic Review in 2009 a number of European nations enquired as to whether the country was ready to cooperate with the special procedures of the Human Rights Council. However, there had been no specific time frame for straight answers from the Bangladeshi delegates in response to the queries. Bangladesh should issue a standing invitation to the Special Rapporteur on Torture in order to begin to address its lack of cooperation with the international community and human rights system concerning the issue of torture and human rights more widely. Moreover, various nations asked Bangladesh in the UPR session about the country's decision on commuting death penalty and ending the culture of impunity; improving the rights of the women and girls as well as labourers; strengthening the anti corruption mechanisms, human rights institution and independence of judiciary; however, the replies that came out with positive political rhetoric have not yet been implemented in reality although two years have passed.

Police Remand and Extortion are integral part of policing:

"Police remand" is one of the most familiar terms to the people of Bangladesh in general. The police of the country have established "police remand" as an immediate next procedural "obligation" of the policing system whenever a person is arrested on a criminal charge.

The Constitution of Bangladesh[1] does not include any word like "remand", which is also not included in the Code of Criminal Procedure-1898[2].

The police apply for remand on a plain sheet of paper under Section 167[3] of the Code of Criminal Procedure-1898[4], which reads:

"167.(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the[5] [nearest Judicial Magistrate] a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has no jurisdiction to try the case or[6] [send] it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Government shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

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1 http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367&vol=15
2 http://bdlaws.minlaw.gov.bd/pdf_part.php?id=75&vol=4
3 http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75&sections_id=20861
4 http://www.bdlaws.gov.bd/pd%3Cb%3Epart.php?id=75&vol=4
5 http://bdlaws.minlaw.gov.bd/print_sections.php?id=75&vol=&sections_id=20861
6 http://bdlaws.minlaw.gov.bd/print_sections.php?id=75&vol=&sections_id=20861

[7](4) If such order is given by a Magistrate other than the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, he shall forward a copy of his order, with his reasons for making it to the Chief Metropolitan Magistrate or to the Chief Judicial Magistrate to whom he is subordinate.

[8](4A) If such order is given by a Chief Metropolitan Magistrate or a Chief Judicial Magistrate, he shall forward a copy of his order, with reasons for making it to the Chief Metropolitan Sessions Judge or to the Sessions Judge to whom he is subordinate.]

[9](5) If the investigation is not concluded within one hundred and twenty days from the date of receipt of the information relating to the commission of the offence or the order of the Magistrate for such investigation-

(a) the Magistrate empowered to take cognizance of such offence or making the order for investigation may, if the offence to which the investigation relates is not punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Magistrate; and

(b) the Court of Session may, if the offence to which the investigation relates is punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Court:

Provided that if an accused is not released on bail under this sub-section, the Magistrate or, as the case may be, the Court of Session shall record the reasons for it:

Provided further that in cases in which sanction of appropriate authority is required to be obtained under the provisions of the relevant law for prosecution of the accused, the time taken for obtaining such sanction shall be excluded from the period specified in this sub-section.

Explanation-The time taken for obtaining sanction shall commence from the day the case, with all necessary documents, is submitted for consideration of the appropriate authority and be deemed to end on the day of the receipt of the sanction order of the authority."

But, according to Rule 458 of the Police Regulation of Bengal (PRB)-1943, as a mandatory guideline for the police, which contains the term "remand", the police have

7 http://bdlaws.minlaw.gov.bd/print_sections.php?id=75&vol=&sections_id=20861
8 http://bdlaws.minlaw.gov.bd/print_sections.php?id=75&vol=&sections_id=20861
9 http://bdlaws.minlaw.gov.bd/print_sections.php?id=75&vol=&sections_id=20861

the obligation to apply for remand by completing Bangladesh Police (BP) Form No. 90.[10] The Rule reads:

"458. Previous offence suspected:

(a) Whenever there is good reason to suspect that a person accused of an offence under Chapter XII or XVII of the Penal Code, for which, on reconviction, an enhanced punishment may be awarded under Section 75 has been previously convicted or when the name, residence and antecedents of a person so accused are unverified, an application for remand shall be made in B.P. Form No. 90 (Bangladesh Police Form) by the Court officer pending the result of the inquiry into the prisoner's antecedents. This application will remain with the record.

(b) If a remand is not granted, an immediate report shall be made to the Superintendent, who, if the reasons appear insufficient, shall report the matter to the District Magistrate."

It is usual practice for the police to bring in crime suspects under their custody for interrogation. In reality, the police officers, particularly the Investigation Officers, submit an application on plain paper only, even not on an official letterhead. In it they seek "remand" for the number of days they wish to keep a person under their custody. It means that the police extract the word "remand" from the PRB, but they do not follow the Rule 458 of the PRB, which they are obliged to follow.

In almost all cases, the subordinate courts, particularly the Courts of Magistrates, which deal with more than 70% of the criminal cases in Bangladesh, grant police petitions for remand without checking whether the application was submitted properly by the completion of B.P. Form No. 90 or not. The Magistrates traditionally reduce the number of days in only some cases. For example, when a police officer requests 7 days remand, the Magistrate grants five or three days' remand.

In remand, the police torture detainees for two reasons: to extort money and within certain parameters to obtain a confession statement, regarding one or more specific criminal cases. It happens in almost all cases despite the fact that the country's Constitution, according to Article 35 (4) upholds that:

"No person accused of any offence shall be compelled to be a witness against himself."

If the police intend to fabricate additional charges against the detainees, but the detainee is able to satisfy the police by paying bribes, he is more likely to reduce the amount of

10 http://www.police.gov.bd/form/90.pdf

torture as well as to gain relief from further charges. Failure to pay money endangers the persons' life and brings about further disaster to his socio-economic situation. Thus, remand contributes to keep the "chain of corruption" alive and strengthened within and around the police as a big tool, parallel to torture, in the business of extorting money from the relatives of the detainees.

The Magistrates consent to petitions that cannot be legally entertained by the police as if it is a routine job of responding to the applications of the police officers; but for the detainees or crime suspects, police remand is synonymous with torture leading to death. Moreover, once the detainees die in the custody of the law-enforcement agencies while in police remand the alleged perpetrators try their best to obstruct the victim's relatives from getting access to the complaint mechanism, which mostly under the control of the police. Even, if an aggrieved person attains the courage and ability to file a petition with the Court of Magistrate, the Magistrates mostly leave the complaint to the wish of the police by writing another vague order: "take lawful action followed by inquiry" instead of writing -- "register the complaint as a First Information Report". The Magistrates, in most cases of arbitrary arrest and detention followed by torture and extortion, also do not order a Judicial Magistrate to inquire into the complaint. Rather, they send the complaint back to the police to investigate, which further deteriorates the condition of the victim and his or her family due to continuous harassment, intimidation and threats from the police and their hired men. Thus, the Magistrates prove that they do not have a "judicial mindset" to administer justice to the victims of human rights abuses.

A verdict pronounced by the High Court Division Bench of the Supreme Court of Bangladesh comprising Justice Md. Hamidul Haque and Justice Salma Masud Chowdhruy, as reported in the Dhaka Law Report (DLR) 55, pages 363-381, observed that "[t]he very system of taking an accused on 'remand' for the purpose of interrogation and extorting of information by application of force is totally against the spirit and explicit provisions of the Constitution" as per Article 35 (4)[11], directed the subordinate courts on how to entertain the application for police remand.

According the directives, "the Investigating Officer shall state in details the ground of taking the accused in custody (remand) and shall produce the case diary for consideration of the Magistrate. If the Magistrate is satisfied that the accused be sent back to police custody for a period not exceeding three days, after recording reasons, he (Magistrate) may authorize detention in police custody for that period." It also directed that "the accused, before sending to the Investigating Officer, shall be examined by a doctor designated or medical board constituted for the purpose and the report shall be submitted to the Magistrate concerned."

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11 http://bdlaws.minlaw.gov.bd/sections_detail.php?id=367&sections_id=24583

After taking the accused "in police custody only the Investigating Officer shall be entitled to interrogate the accused" and after the period of remand "if the accused makes any allegation of any torture, the Magistrate shall at once send the accused to the same doctor or Medical Board for examination."

"If the Magistrate finds from the report of the doctor or Medical Board that the accused sustained injury during the period under police custody he shall proceed under Section 190 (1) (c)[12] of the Code of Criminal Procedure-1898[13] against the Investigating Officer for committing offence under Section 330[14] of the Penal Code-1860[15] without filing any petition of complaint by the accused."

In reality, the Magistrates of Bangladesh do neither follow the instructions as per the PRB nor the directives given by the Supreme Court's High Court Division.

Case-1:

Mr. Robiul Hasan Khokon, a suspect of a robbery case, died in police custody from torture while under a two-day remand at the Chatkhil police station. In Khokon's case (AHRC-UAC-072-2010[16]), the police filed a petition, not on the prescribed form (B.P. Form No. 90) but on plain paper. They requested remand for five days while the Magistrate granted two days. However, this was enough time for the police to kill him by applying brutal methods of torture. The police unprecedentedly registered a poorly drafted murder case, which did not include anyone as witness of the incident of torture but claimed that the man was tortured by police officer, at the Chatkhil police regarding Khokon's death to obstruct the family of the deceased victim to file a complaint. As a normal practice in all incidents of custodial death in the history of Bangladesh's complaint mechanism, the police always refuse to register a case of a custodial death or

12 http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75&sections_id=21014
13 http://bdlaws.minlaw.gov.bd/pdf_part.php?id=75&vol=4
14 http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11&sections_id=3182
15 http://bdlaws.minlaw.gov.bd/pdf_part.php?id=11&vol=1
16 http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-072-2010/

an allegation of torture in Bangladesh. The relatives of the victims of custodial deaths are normally forced to go to the Magistrates' Courts to file their cases as the last option. By registering a poorly-drafted, unwitnessed complaint the Chatkhil police did their best to ensure impunity to the alleged perpetrators.

Case-2:

Mr. Mantu Ghosh, a lawyer cum leftist politician, was arbitrarily arrested without any specific warrant of arrest or explanation. He was detained in the police cell of the Detective Branch of the Dhaka Metropolitan Police as well as the Gulshan, Tejgaon and Adabor police stations while four police stations of Dhaka have allegedly fabricated 10 criminal cases against Mantu and applied for bringing him in remand for 58 days though the Magistrates granted 9 days police remand and five days remand in jail.

Torture – an entrenched endemic problem:

Torture is a widespread, endemic and chronic problem in Bangladesh and has been accompanied by systematic impunity for the perpetrators and without any form of legal redress for the victims. The country's law-enforcement agencies, notably the police and military and paramilitary security forces use torture as a key tool for maintaining order.

Torture is neither defined as a crime nor is made punishable in the domestic laws of Bangladesh though the nation has acceded to the Convention against Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment of the United Nation. Instead, the culture of impunity to the perpetrators of torture is so deeply rooted in the country that nothing happens to the state-agents after killing persons by torture while in detention centres. Moreover, the perpetrators are rewarded with gallantry and lucrative promotions after committing such heinous crimes. There have been many examples in which the authorities of Bangladesh sent the members of the law-enforcing agencies and security forces to participate in the UN Peacekeeping Missions, which is considered the best reward for any state official in the country.

Any person targeted or suspected by any member of the police or other agencies, can be illegally arrested, arbitrarily detained and experience torture in custody, which often leads to the death of the person.

Case-3:

A Rapid Action Battalion (RAB) team comprising three plain clothed members - Mr. Anowar, Mr. Babul and Mr. Bishawnath went to the house of Mr. Abdul Mazid in

Pallabi, Dhaka on 24 January, and forced Mazid to have his son, Mr. Mohiuddin Arif, return home. After Arif's arrival the paramilitary force members arrested him and took him to the office of the RAB-4, without giving any specific reason why they were doing so to him or his family members. The officers also warned Mazid not to communicate with anyone else about the incident.

Arif was detained in the custody of RAB-4 from 8AM of 24 January to 8PM of January 25 without any publicly-available record, or 36 hours, which is in violation of Article 33 (2) of the Constitution of Bangladesh and Section 61 of the Code of Criminal Procedure-1898. He was tortured in custody and at his home, where 10 RAB officers had taken him to conduct a search of his home, as they suspected him of possession of weapons. At 8 pm on 25 January, the RAB handed him over to the Pallabi police, who did not allow his family access to him and also allegedly tortured him throughout the night. On 26 January afternoon, the police sent Arif to the Chief Metropolitan Judicial Magistrate's Court of Dhaka. Instead of producing Arif before the court, the police detained him in a cell there. His relatives were able to see Arif there and saw that his eyes and legs were swollen and he was unable to stand or walk. Arif told them that the police officers had stood on his chest and beat his legs causing fractures. The police claimed that Arif was arrested as a suspected robber in a robbery case. The police informed the Court that at the time arrest by the RAB the detainee received some injuries regarding which a medical certificate was attached. The Magistrate ordered Arif to be sent to Dhaka Central Jail without hearing him or checking his physical condition.

On 28 and 31 January the prison authorities sent Arif to Dhaka Medical College Hospital (DMCH) for treatment due to worsening health, but his family members were not allowed to visit him there. On 3 February, the prison authorities sent Arif's body to the DMCH where doctors recorded him as being dead on arrival. On 4 February, Executive Magistrate Mokbul Hossain, prepared an inquest report, which clearly mentioned that the dead body had several injury marks, including a fractured leg, and bruised and swollen feet and eyes. The doctors of the Forensic Medicine Department of the DMCH conducted a post-mortem of Arif's dead body. However, the report of the post-mortem has not yet been available to the family of the victim.

Before Arif's burial his neighbours held a demonstration in the Pallabi area demanding the punishment of the alleged perpetrators from the RAB and the police. In response, the Pallabi police have registered a case against 40 persons including his neighbours and relatives and the police and the RAB have been repeatedly threatening the relatives of Arif over the telephone and in person to silence them. The families are understandably scared

and unlikely to even attempt to seek redress concerning Arif's death.

Upon hearing a Writ Petition filed by a local human rights organization a High Court Division Bench of the Supreme Court ordered the Ministry of Home Affairs to conduct probe into the custodial murder of Arif. The Court specifically ordered to formulate a three member probe committee comprising a member from the civil society excluding the police in it.

The Asian Human Rights Commission had learned from the probe committee that it found the allegation of custodial murder as a result of torture was true when the committee finalized its report. However, the probe report has not yet inspired the authorities to bring any murder charges against the alleged perpetrators who are officers of the RAB and the police. Thus, the hope for justice disappears and the potential possibilities of getting a legal remedy go in vain in Bangladesh.

As with many other cases of this type - carried out in police stations, military garrisons, the intelligence agencies' torture cells, and paramilitary forces camps such as those of the RAB - impunity prevails.

Article 35 (5) of the Constitution of Bangladesh reads:

"No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment."

This provision regarding the prohibition of torture has not been implemented in practice, mainly because of the lack of a law criminalizing torture. There is no culture of protecting human rights in the country, particularly victims who suffer ill-treatment and torture at the hands of the law-enforcement agencies. According to the Rule 75 (3) of the Criminal Rules and Orders-2009, which reads:

"Whenever a person is arrested and brought before the Magistrate, the Magistrate should be satisfied that there has been no unauthorised detention beyond 24 hours as provided in Section 61 of the Code [of Criminal Procedure-1898] and if there be any complaint to the that effect against the police, he shall make an enquiry into the matter and take such actions as may be deemed necessary."

In the afore-mentioned case, the victim was detained for more than 50 hours by the RAB and the police. The Magistrate, as per records of the Court, did not ask the police to bring the person before him in person to hear whether Arif had any complaint against the police. There is no functioning institution or mechanism at present to hold the Magistrates, the police and the RAB accountable for their lawless actions.

Case-4:

Following a collision between a motorcyclist and a car driver on the street an armed police constable suggested Mr. Masud Reza, driver of the car, to complain at the Motijheel police station. Reza did so for insurance purposes but did not name anyone in the complaint.

The constable then demanded a bribe of BDT 25,000.00 (USD362.31) from the motorcyclist, Mr. Kazi Muhammad Zia ul Haque, a banker by profession. Zia informed the policeman that he did not have the money. The constable then sat on the back seat of Zia's motorbike and instructed him to drive home to get the money. However on the way, in a call to his brother, Zia found out that the family didn't have enough money in the house that night. Constable Murad called Sub Inspector (SI) Md. Rafikul Islam, who quickly arrived at the scene and threatened Zia for his lack of cooperation and helped take Zia to the Motijheel police station.

Arriving at the station Constable Murad alleged that Zia had attempted to throw him from the bike while it was in motion. The detained man was taken to the Sub Inspectors' office where around five policemen beat him for around 30 minutes with sticks, while being hit and kicked, as you can photos in the injuries to his back[17], shoulders[18], leg: 1[19] and 2[20], and knees[21] can be seen here.

SI Rafik allegedly then threatened to fabricate a case against Zia and instructed his colleagues to detain him until a 'crossfire' scenario could be arranged in Jheelpar (an isolated area beside a lake in Dhaka). A 'crossfire' in Bangladesh is usually a fake ambush in which police execute detainees.

After a long bargaining Zia's brother paid BDT 8,000.00 (USD 116.00). Rafik in consultation with the Second and the Officer-in-Charge (OC) agreed to release. But, asked to sign on blank pieces of papers, which Zia refused to do. SI Rafik then ordered the sentry to detain him again. Zia and Mazed both later signed the papers. Beyond the settled amount the officers demanded BDT 1,000 extra money, which was not possible for the two brothers as they paid all their money to the police. SI Rafik then registered a case against Zia for failing to pay that amount.

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17 http://www.urgentappeals.net/images/2010/AHRC-UAC-031-2010-01.jpg
18 http://www.urgentappeals.net/images/2010/AHRC-UAC-031-2010-05.jpg
19 http://www.urgentappeals.net/images/2010/AHRC-UAC-031-2010-03.jpg
20 http://www.urgentappeals.net/images/2010/AHRC-UAC-031-2010-02.jpg
21 http://www.urgentappeals.net/images/2010/AHRC-UAC-031-2010-04.jpg

He was released at 3am on 8 March and reportedly had to argue strongly to not have his motorbike confiscated by the officers. Later, a doctor at Dhaka Medical College Hospital (DMCH) recorded Zia's injuries as: "H (History) O (of) P (police) assault falling multiple blunt bruises on diff (different) part of the body".

Few days later the Deputy Commission of the Dhaka Metropolitan Police Mr. Krishna Pada Roy called in Zia in his office for inquiry. The police officer abused language at Zia and his brother and threatened not to communicate with any rights groups or media regarding the matter. He also threatened to fabricate more cases against Zia and his brother.

The country does not have an independent and credible medico-legal system that is able to establish and report the findings of their examinations of victims of torture. Lawyers do not often offer to provide legal assistance to victims of torture, out of fear. In fact there are many instances where the senior members of the bar have suggested that victims of torture not file any case against the authorities concerning torture. Even if a case is registered with a Magistrate's Court, the police by default refuse to record a case of torture against police officers or other state agents such as the armed forces or paramilitary forces. In the rare case that an investigation is carried out by the police, it typically justifies or exonerates the accused. Rarely, if a case reaches a Sessions Court a public prosecutor, who by default belongs to the ruling political party, and therefore seeks to protect the establishment, typically upholds the distorted police investigation report. Moreover, complainants and witnesses routinely face intimidation and threats of extra-judicial killing unless the case is withdrawn.

Bangladesh is a party to Convention against Torture, Other Cruel, Inhuman or Degrading Punishment and Treatment since 5 October 1998. The nation also acceded to the International Covenant on Civil and Political Rights (ICCPR) on 6 September 2000. The country has international obligations under both of these instruments to criminalize torture.

Criminalisation of torture still remains a dream:

A member of the Parliament of Bangladesh, Mr. Saber Hossain Chowdhury, tabled a Bill titled "Torture and Custodial Death (Prohibition) Bill-2009", as a Private Member's Bill, in the house on 10 September 2009 seeking to place the country into compliance with its international obligations.

The Asian Human Rights Commission welcomed the framing of a Bill to criminalize torture in Bangladesh, and believes that this is a key step to combating torture and the

impunity that currently accompanies it. However, this Bill is currently being held up in Parliament, which the political will to pass this significant measure apparently lacking at present despite the fact that the incumbent government has a three fourths majority in the house. Constructive action at this juncture could partially compensate for the ruling and opposition politicians' unfortunate silence concerning human rights in Bangladesh since they all pledge to protect people's rights.

If the government had the level of commitment concerning upholding human rights that its claims to have in its pledges as part of its election bid to the last general election in 2008 or are repeatedly claimed by its representatives to the international arena, this Bill would have been passed by now.

The Asian Human Rights Commission, on several occasions, had urged the authorities of Bangladesh including the country's national parliament as well as the Chairman of the Standing Committee on Private Member's Bill and Resolution to take all necessary measures to ensure that they comply with their international obligations, notably those under the Convention Against Torture, including by criminalizing torture. The tabled "Torture and Custodial Death (Prohibition) Bill-2009" presents a ready-to-go solution for this and the Parliament had been urged to consider this Bill without further delay. There is serious need to initiate necessary reforms to ensure a functioning complaints mechanism that is accessible to all victims of torture without any fear of reprisal, and for an independent investigation unit to be established that is separated from the regular police force.

Case-5:

Mr. Mokles Matbor, a 45-year-old cleaner, was arrested as a suspect of a murder and rape case by the Gosairhat Police Station in Shariatpur district on 29 August 2010. At the time of arrest the police did not produce any warrant either to Mr. Mokles or explain it to his relatives.

The Gosairhat police detained him in the police cell while the Officer-in-Charge (OC) Mr. Md. Ekram Ali Molla told Mikles's relatives that the police were under great pressure from 'high officials' to solve the murder of children and rape case of the woman and promised, "We will ask him questions relating to the case and then release him."

Later, the police demanded huge amount of bribe from Mokles's wife Mrs. Morsheda Begum on condition of keeping her husband safe in custody. Morsheda explained that they belong to an extremely poor family, which was maintained by Mokles as the breadwinner having a job of cleaner, cannot afford paying bribes. At 10pm on the same night, the police led by the OC and SI Abul Kalam allegedly stripped Mokles' clothes off

and hung a brick from his penis. He said, "We will test how much power you (Mokles) have in your penis". The police officers ridiculed and forced him to move around in that condition inside the Goshairhat police station. The police also tortured him by beating him with sticks and kicking him, which Morsheda claims that she saw from a nearby distance.

On 30 August, SI Kalam sought seven days remand for Molkes from the Chief Judicial Magistrate's Court of Shariatpur district. Mokles was not physically produced before the Court at that time as his condition was worse due to custodial torture he suffered the previous night. The Magistrate, Mr. Ashok Kumar Dutta, on 31 August, granted three days remand to the police custody although the petition for remand was not properly submitted on the prescribed B.P. Form No.90. Mokles was brought to Goshairhat police station in remand by around 5pm and he died in the police custody within few hours. The police claim that at around 7pm Mokles committed suicide by hanging himself by tying a blanket about his throat and hanging himself from the ventilator of the police cell.

The Goshairhat police registered a case of "Unnatural Death" after the death of Mokles. Mr. A. F. M. Alauddin Khan, the chief executive officer of the sub-district, as an Executive Magistrate, signed on an Inquest Report of the dead body, which was prepared by a police officer, on the same evening. The Inquest Report claimed that there was no sign of injury on the body of the deceased. The report attempted to establish that Mokles committed suicide in the police cell.

When the allegation of custodial death was verified by human rights it was found that the particular window is around 5 feet 8 inches off the ground while Mokles was at least 5 feet 6 inches in height. Given the disparity in the environment it was quite impossible for the victim to hang himself as, even if he had managed to tie the blanket securely the stretch in the material would have meant that his feet remained on the ground.

The Superintendent of Police (SP) of the Shariatpur district Mr. A K M Shahidur Rahman and other police officers allegedly tamed the administrative officials to make a "fake" Inquest Report to divert the case. The medical doctors of the Sadar Hospital of Shariatpur, namely Dr. Nirmal Chandra Das, Residential Medical Officer, and Dr. Rajesh Mazumder, a Medical officer of the hospital, collaborated with the police officers.

The dead body had a number of marks of injury and the male organ was abnormally swollen, which was excluded in the Inquest Report.

On 3 September, the police officers including Assistant Superintendent of Police (ASP) of Goshairhat Circle Mr. Abul Hasnat, the OC of the Goshairhat police Mr. Md. Ekram Ali

Mollah and a number of policemen, went to Mokles' house and offered BDT 1,000,000.00 (USD 14, 154) by saying that "We are ready to pay you, if you finish the matter (allegation of murder in custody). It is important to save the 'rizik' (livelihood) of police. So, if you help us, we shall help you"(For further details, please see: AHRC-UAC-167-2010[22]).

Extrajudicial killing:

Extrajudicial killing has been made an integral part of the law-enforcement system of Bangladesh for many years. The ongoing trend of extrajudicial killing has few different methods of which killing criminal suspects with point blank gunshots and publicizing stories of so called "crossfire" or "encounter" with few other synonyms like "gun fight", "in the line of fire" etcetera.

Extrajudicial killings have been continued unabatedly because of the absolute and endless impunity provided by the executive authorities including the Prime Minister, Minister as well as State Minister for Home Affairs and the Minister for Law, Justice and Parliamentary Affairs. Persons of these highest portfolios have publicly endorsed their support, including parliamentarian speeches, by not only denying the recurrence of extrajudicial killing, but also argued that the law-enforcing agents have right to protect themselves whenever they come under attack from miscreants.

Every sincere Bangladeshi citizen and minister is aware of the real method of extrajudicial killing but the problems of the politicians of the country is being hyper-sympathetic to fundamental human rights when they are in the opposition and abdicating its own authority to protect the people's rights as soon as they assume the governmental power. The ruling party politicians always believe that their mandatory responsibility is to protect the perpetrators of the State-agents for their crimes even at the cost of uncountable ordinary citizens right to life, liberty and safety and even by disregarding the Constitution and judiciary's image, which also very much fragile. The authorities advise the country's media and concerned human rights groups not to expose the incidents critically; they even threaten the media and rights watchdogs.

Few voices have been heard against extrajudicial killings as well. Mr. Hasanul Haque Inu, a Member of Parliament and an ally of the ruling party, demanded an end of crossfire killings and urged the government to bring the perpetrators to justice in a speech in the Parliament on 13 July 2010. He also demanded judicial probe into all the incidents of crossfire, secret killings and abduction by law-enforcing agents. The speech of this leftist parliamentarian governmental ally was welcomed by the rights groups and aggrieved

22 http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-167-2010/

families; however, the government has not changed its obstinacy for continuing the lawlessness.

Case-6:

Babul Kazi, an auto-rickshaw mechanic cum operator, was accused of having involvement in a business of stolen three-wheelers vehicle in Dhaka by the Rapid Action Battalion. A team RAB-3 had seized an auto-rickshaw and the two drivers who used to drive the vehicles on shifts. The RAB-3 handed over the two arrested drivers and an autorickshaw to the Ramna police, who demanded BDT 200,000 (USD 2900) in bribes for their release from Ramna police custody.

On several occasions Babul paid bribes to police followed by bargaining with Sub Inspector (SI) Alataf, however, the two men namely Md. Karim and Md. Momin and the auto-rickshaw were not released.

On 28 June SI Altaf demanded more money from Babul, who had argued with the police officer after paying BDT 83,000.00 demanding that the men and the rickshaw be released. In the evening the police picked up Babul from his auto-rickshaw garage for more money. Within few hours news came that Babul was dead.

The witnesses observed that the dead body had sustained head injuries when he attempted to jump from the vehicle. They were told to look for him at the Dhaka Medical College Hospital (DMCH).

At the DMCH SI Altaf told the Nasima, Babul's wife, that she would find her husband at the morgue. He repeated the escape story, and said that Babul had been dead on arrival at the hospital.

The intimidation of Nasima by the Deputy Commissioner (DC) of Dhaka Metropolitan Police is unfortunately a stock response among Bangladeshi law enforcers, rather than an exception; it is also typical of Mr. Roy's work ethic. On 3 July the DMP formed an inquiry committee to look into this case, headed by the Additional Deputy Commissioner Mr. Seyed Nurul Islam and comprising Assistant Commissioner Ms. Monalisa Begum of the of Motijheel Zone of the DMP. However the AHRC has no faith in the motives or the mandate of this team. Based on past experience we assert that it will be used to exhaust, intimidate and quiet the victims in the face of any other more credible investigation, conducted by probe committees, human rights organizations or media. Nothing has so far happened aiming to provide reparation to the victims.

Constitutional rights remain valueless to law-enforcing agents:

Under Bangladeshi law it is possible for persons to be arrested without a warrant for small misdemeanours, such as creating public disorder, which allows them to be held for 24 hours and fined. The AHRC suspects that this charge is being presented to Magistrates to explain cases of illegal arrest in which they do not want to admit error, nor create stronger fabricated charges. This would explain the small fine that Ali was asked to pay to the court. The AHRC would like access to the arrest records of Mr. Ali to determine whether his nine day detention was recorded, and on what legal grounds he was detained.

It should be noted that his detention is in violation of Article 33 (2) of the Constitution of Bangladesh and Section 61 of the Code of Criminal Procedure-1898, which obliges arrested persons to be produced before a Magistrate within 24 hours. The disappearance of Salim is violation of Articles 31, 32 and 33 (2) of the Constitution, which guarantees the right to the protection of law, the right to life and personal liberty and acts as safeguards against arbitrary arrest and detention.

Enforced Disappearances:

There have been serious concerns expressed and criticisms made by many local and international human rights organizations about a range of human rights issues in Bangladesh, including mass arbitrary arrests, endemic torture and widespread extra-judicial killings. It has been noted that there is a new trend that is of serious concern: an increase in the number of forced disappearances being reported in the country. It is understood that due to increased local outcry and international attention being given to the hundreds of extra-judicial killings that have been committed by Bangladesh's law-enforcement agencies, they are now increasingly resorting instead to forced disappearances, as this practice makes it harder to find those killed, identify the methods used to kill them or those responsible. In a justice system already crippled by impunity, the practice of forced disappearance makes it even harder for justice to be served.

The Asian Human Rights Commission has documented several recent cases of disappearances that speak to the increase in this practice. These examples should serve as an early warning concerning a problem that, if unchecked, will likely flourish, taking on the dimensions of other related grave abuses such as extra-judicial killings, in the country. The Human Rights Council is there urged to take appropriate action to ensure that Bangladesh puts a halt to this practice and ensures that the whereabouts of the disappeared are located, accompanied by adequate punishment to the perpetrators and redress for the victims and their families.

Case-7:

Mr. Mohammad Salim Mian, a fruit-trading businessman, was picked up by the members of the Rapid Action Battalion (RAB) from Salim's relative's house at Pirojpur village under the jurisdiction of the Kapasia police of the Gazipur distirict early in the morning of February 19, 2010 along with two other persons. The members of the paramilitary RAB force handcuffed and blindfolded the three persons and took them away in vehicles. The three persons were detained in unidentified places for several days without any publicly available official record of their arrest. Later, the other two co-detainees, Mr. Mainul and Mr. Mohammad Ali Hossain, stated that Salim had been held in the custody of the 4th Battalion of the Rapid Action Battalion (RAB-4) at Paikpara, in the Dhaka Metropolitan city jurisdiction.

On February 28, the RAB-4 officials handed over Hossain to the Kafrul police, who fabricated a case against Hossain before producing him before the Chief Metropolitan Judicial Magistrate Court of Dhaka, which released him on payment of a monetary penalty. Mr. Mainul was handed over to the Cantonment police, who charged Mainul in murder and illegal arms possession cases and detained him in prison.

Salim's whereabouts remain unknown. Upon repeated refusal by the local police to record a formal complaint regarding the incident, a Habeas Corpus writ case (Petition No. 2851 of 2010) was registered by Salim's wife Ms. Nazma Begum with the High Court Division Bench of the Supreme Court of Bangladesh regarding the disappearance of her husband.

The Habeas Corpus Petition claims that Mr. Salim Miah disappeared after the Rapid Action Battalion (RAB) arrested him on 19 February 2010 from the Kapasia area under the jurisdiction of Kapasia police station of Gagipur district. The petitioner has asked the court that: "A direction upon the respondents to bring the detenu before the Hon'ble High Court Division so that the Hon'ble Court can be satisfied that the detenu is not being held in custody without lawful authority or in an unlawful manner".

The respondents of the petition were the Secretary of the Ministry of Home Affairs, Inspector General of Police, Director General of Rapid Action Battalion (RAB), Commander of the RAB-4, Deputy Commissioner of Gazipur district, Superintendent of Police of Gazipur district and the Officer-in-Charge (OC) of Kapasia police station of Gazipur district. The petition was supplemented by another petition supported by an affidavit from Mr. Mohammad Ali Hossain, who was also arrested from the same place along with the Mr. Salim.

A Division Bench comprising Justice A H M Shamsuddin Chowdhury and Justice Md. Delwar Hossain heard the case once on 15 April. The country's Attorney General's office

claimed before the Court that according to the official records of the RAB-4, Mr. Salim was not arrested or detained by them. After hearing both parties the Court issued a rule against the government and ordered seven respondents to explain the matter before the court within three weeks. However, the case has not been heard again and Mr. Salim remains disappeared to date.

The Attorney General's office claimed before the Court that "the Rapid Action Battalion (RAB) did not arrest Salim according to their official records". The High Court's Division Bench accepted the Habeas Corpus petition after hearing both parties and issued a rule against the seven respondents. It asked as to why a Rule for Habeas Corpus[23] should not be issued upon the respondents. The Court also had directed the Commander of the RAB-4 to explain within three weeks as to whether they rounded up any person named Salim Miah.

Meanwhile, the lawyers have collected the documents regarding the detention of Mr. Mohammad Ali Hossain, a cousin of the disappeared person; and one of the detainees who were arrested and taken under the RAB-4 custody together with the disappeared victim. (For further information, please see: AHRC-UAC-043-2010[24]).

According to the documents, Assistant Sub Inspector (ASI) of the Kafrul police station of the Dhaka Metropolitan Police (DMP) had produced Mr. Mohammad Ali Hossain before the Chief Metropolitan Judicial Magistrate's Court of Dhaka in a case registered with the Kafrul police on 25 February 2010 along with 28 others. It was learned that the police had brought charges of suspicious movement at the area of the Bangladesh Road Transport Authorities (BRTA). The police claim that such movement was a crime under Section 84 of the Dhaka Metropolitan Police (DMP) Ordinance-1976 and arrested the 29 persons under Section 100 of the same law. The police requested the Court to conduct a non-FIR (First Information Report) prosecution of the case. The Court released the detained persons, including Mohammad Ali Hossain, upon punishing them for the alleged crime and receiving a penalty of BDT 100.00 (USD 1.30), which is the punishment under Section 84 of the DMP Ordinance-1976. Ali Hossain later told that prior to producing before the Court the police suggested all of the 29 accused to "confess" the crime as the charge brought against them if the detainees were willing to get out of the case and the detainees followed the instructions of the police officers.

On 17 May, the lawyers of the Habeas Corpus petition told the AHRC that none of the seven respondents have responded to the Rule of the High Court Division Bench since the Rule was issued on 15 April asking them to respond within three weeks.

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23 http://www.urgentappeals.net/pdf/AHRC-UAU-020-2010-01.pdf

24 http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-043-2010

Case-8:

Mr. Sujon, a businessman and political activist, was allegedly kidnapped by the members of the RAB-2 from a Dhaka city street on March 24, 2010 and remains disappeared to date. When the family attempted to register a case after learning of his abduction, the police refused to record the complaint as the allegations were against the members of the RAB-2, which enjoys impunity by default in the country. Later, following changes to the complaint, in which the RAB was no longer mentioned, a complaint was registered against unidentified persons.

According to the police investigation, three officers of the RAB-2 including Lieutenant Farhad, who was deputed to the RAB-2 from the Bangladesh Navy, and two Deputy Assistant Director (DAD) Rafique and Samsu used a prostitute to lure Sujon to a restaurant in the Farmgate area of Dhaka Metropolitan City, where they arrested, leading to his disappearance.

The police investigation found that from March 19 to 25 the prostitute had 25 conversations with Lieutenant Farhad, 17 conversations with DAD Masud and 3 calls to DAD Samsu's official cell phone numbers. After the allegation Lt. Farhad was sent back to the Bangladesh Navy, however, the issue has not proceeded any further. The police were allegedly forced to stop their investigation regarding this matter, according to anonymous sources within the police. The family of the disappeared person has not yet received any information regarding the whereabouts of Sujan.

Case-9:

Two brothers, Mr. Jalal Uddin and Mr. Lal Babu, were arrested by heavily armed the members of the RAB-4 at around 2 am on March 18, 2010, from an area known as Bihari Camp, where so-called "Stranded Pakistani" families are housed in the Dhaka Metropolitan City. The RAB-4 members cordoned the whole neighbourhood, according to the eye-witnesses of the scene of arresting Jalal Uddin and Lal Babu. The arrests were made without any explanation or the production of any arrest warrants. The local police refused to record a formal complaint by the victims' family members regarding the arrest and disappearance of the two brothers, stating that they "had nothing to do with the complaints against the RAB."

Case-10:

On March 19, 2010, at around 4:30 pm, timber-trader Mr. Akbor Ali Sharder was arrested along with one of his business partners, Mr. Bipin Chandra Sarker, from a sawmill in Thakurgaon district town by plain-clothed persons who identified themselves

as being members of the RAB-5. When Akbor's wife, Ms. Parvin, went to the Thakurgaon police station to file a complaint the police detained her and blamed Akbor's business partner Bipin for kidnapping Akbor. Later, the police forced Bipin's younger brother, Mr. Robin Chandra Sarker, to file an abduction case against Akbor and claimed that they had detained Parvin as the spouse of a suspected criminal.

The following morning Bipin returned home and described that 13 plain-clothed persons arrested him and Akbor. The abductors blindfolded them and tied their hands behind their backs and transported them away in a microbus. The conversations among the plain-clothed persons reportedly identified them as being members of the RAB-5. The abductors demanded 3 million BDT (around 43,000 US$) from Akbor and Bipin.

Akbor remains disappeared to date. Akbor's elder brother, Mr. Ayub Ali Sarder, has told the AHRC that he has lodged a petition case with the Chief Judicial Magistrate's Court of Thakurgaon district and has addressed special complaint letters to high-ranking officials of the government, including the Ministry of Home Affairs and the Inspector General of Police. However, the authorities have not taken any visible actions regarding the disappearance of Akbor.

Ayub Ali reportedly held press conferences on two occasions accusing the RAB of having abducted his brother. According to eyewitnesses, Ayub Ali and a business partner, Mr. Abdur Rahman, were arrested on May 19, 2010, from Banosree area by a group of persons wearing black uniforms that resemble the uniform of the RAB, and also remain missing to date.

Case-11:

Mr. Chowdhury Alam, a counsellor of the Dhaka City Corporation, was stopped by a group of plain clothed persons at around 8:30pm on June 25, 2010. The plain clothed persons introduced themselves as members of the RAB. Alam was dragged out from his car and taken away in a microbus.

When Alam's son went to the local police to register a case regarding the abduction by the members of the RAB, the police recorded the compliant without including the name of the RAB. As Alam has remained disappeared, a Habeas Corpus writ petition was filed by Alam's son; however, as there was no official record found in favour of the incident of arrest by any of the law-enforcement agencies of the country, the Habeas Corpus was not accepted in the High Court Division of the Supreme Court of Bangladesh.

None of the above-mentioned cases have been credibly investigated by the authorities. The law-enforcement agencies, particularly the Rapid Action Battalion that is thought to

be responsible for many of the abductions, continue to enjoy impunity. There has been no official record made publicly available regarding the arrests and detention of victims; all the allegations of abduction or arrest have been denied by the RAB; the police have refused to register formal complaints against the RAB regarding the disappearances and have further harassed the complainants and recorded erroneous information regarding the incidents. This obstructs attempts by relatives to locate their loved ones and seek justice concerning these abuses. Habeas Corpus applications cannot be registered, as the law-enforcement agencies do not maintain or provide any official records regarding the abduction or arrests, detention and whereabouts of the persons.

As there is no information or evidence regarding the victims' deaths, including dead bodies, the relatives cannot file murder charges against the perpetrators. If petition cases are registered with Magistrate's courts, they are investigated by police officers who only cover up crimes by their colleagues. Given Bangladesh's seriously flawed criminal justice system, there is little hope of achieving justice concerning abuse perpetrated by state-actors for victims or their relatives.

Moreover, when the media and human rights defenders have attempted to document cases of enforced disappearances they have been seriously intimidated, obstructed and harassed by law-enforcement agencies and top officials of the government, including the office of Prime Minister, the Ministry of Home Affairs and the Ministry of Information, showing top-level complicity in the growing problem of forced disappearances. The field level human rights defenders come under non-stop surveillance for their works in support of the families of the victims of disappearances Bangladesh has failed to show adequate cooperation with the HRC's Special Procedures, including by failing to grant requests for country visits, inter alia, by the mandates on the independence of judges and lawyers, on extra-judicial killings or on the freedom of expression, all of which have had requests pending for several years. The Human Rights Council is urged to take all necessary steps to ensure that its membership improve their cooperation with its mechanisms.

Bangladesh must be urged to halt the growing phenomenon of enforced disappearances and show its commitment to do so by ratifying the International Convention for the Protection of All Persons from Enforced Disappearance without delay and producing and implementing in full domestic legislation in line with the provisions of this instrument.

Urgent necessity for a witness protection mechanism:

Bangladesh does not have any Witness Protection Mechanism. The victims of crimes committed by State as well as non-state actors and the witnesses of crime scenes and cases face serious intimidation and threats from the alleged perpetrators, interested parties and

their hired men continuously. They remain highly unsecured as well as in an indecisive mental condition and unprotected atmosphere in their individual community and society. This situation compels the witnesses, ultimately, to withdraw from the procedure of the criminal justice system depriving the judiciary to ensure justice for the society and the nation as a whole.

The absence of a Witness Protection Mechanism endangers the lives of the victims of heinous crimes, especially those who suffer human rights abuses perpetrated by the State-agents and witnesses the incidents. The severity of the problems deep-rooted in absence of an effective witness protection mechanism has been ignored by the authorities as well as the civil society in Bangladesh.

Case-12:

A group of four plain clothed members of the Detective Branch (DB) of the Dhaka Metropolitan Police led by Sub-Inspector (SI) Mr. Golam Kibria forcibly took Mr. Md. Zahirul Haque Babul, a 55-years-old businessman, from his private business office at Manda area of the Dhaka City into a police vehicle. The vehicle reached an open-air field of a public housing estate. While in the vehicle he was beaten with sticks and kicked.

Assistant Commissioner (AC) of the DB police, Mr. Motiur Rahman, approached to him from coming out of another private car and introduced himself. SI Kibria demanded 2 million Taka (USD 29,000.00) from Babul, who refused to pay saying that it was unaffordable for him. SI Kibria then showed a box containing 67 Yaba tablets, a Burmese drug which has recently become available and popular among addicts in Bangladesh. The policemen threatened him that if the demanded amount is not paid the police would fabricate a drug trading case against him and will be produced before the Court on the following morning. When Babul again expressed his inability to pay the bribe the police officers blindfolded and handcuffed him and took him by a police vehicle to another open-air field. They again punched and kicked him before attempting to remove Babul's fingernails and toenails and to crush his male organ with nose-pliers. They pointed a pistol at his head and threatened to kill him on the pretext of a "crossfire". Having been scared for his life Babul agreed to pay the demanded ransom to save his life.

His relatives immediately brought BDT 100,000.00 (USD 1,450.00) after Babul's telephonic request. The police took the money from Babul's son-in-law taking him inside a police vehicle. The police dropped Babul onto a street near the Ramna police station of the city of Dhaka at around 2am on 19 May on the condition that Babul withdrew money from his bank to pay the remaining BDT 400,000.00 (USD 5,800.00) by around 11am of the same date. The police forced Babul to sign blank pieces of paper before releasing him.

SI Kibria called Babul's wife's number at noon and demanded the "due" amount asking Babul's relatives to go immediately to the front gate of the DB Police Office at Minto Road to hand over the money to the police. Having no affordable means of paying Babul and his relatives went to the Sabuzbag police station to lodge a complaint regarding the kidnapping and extortion of ransom by the DB police officers. The Officer-in-Charge (OC) of the Sabuzbag police Mr. Asaduzzaman refused to register the complaint saying that "We cannot record a complaint against any police officer without permission from the DC (Deputy Commissioner of the relevant jurisdiction of the DMP)". However, the police kept a copy of the complaint.

Meanwhile, the DB police officers, who were allegedly involved in kidnapping Babul, learned from the Sabuzbag police that Babul went to the station to register a complaint against them. They then repeatedly threatened Babul over the phone saying they would kill him in a "crossfire" if the demanded money not was paid and if there is any attempt to lodge any complaint on this regard.

On 21 May at 10:30pm, the DB Assistant Commissioner (AC) Mr. Motiur Rahman went to Babul's house accompanied by Mr. Mosaraf Hossain Bahar, general secretary of Bangladesh Awami League's Sabuzbag unit, Mr. Mohammed Lutfur Rahman, publicity secretary, and Mohammed Samidul Huq Goga, secretary of Manda union unit. The police officer and the ruling party politicians threatened to kill Babul if he complains about the incident. The AC took Babul's picture with his mobile phone camera as part of intimidation. The police officer also warned Babul's relatives not to take the incident any further.

On 23 May, Babul filed a petition case with the Chief Metropolitan Judicial Magistrate's Court of Dhaka regarding the incident. The Magistrate ordered a judicial probe headed by a Metropolitan Magistrate, however, he did not issue any warrant of arrest against the alleged police officers. Later, it was revealed that Metropolitan Magistrate Ms. Shamima Parvin was assigned to conduct the judicial probe. The head of the one-member judicial probe committee Ms. Shamima Parvin issued a notice to the complainant and all the witnesses of the case, filed by Babul, to appear before the Metropolitan Magistrate's Court No.13 of Dhaka on 14 June to testify.

Since the complaint was registered with the Court the police officers had increased their death threats against Babul via mobile phones and through local leaders of the ruling political party. Due to these continuous death threats Babul had gone into hiding in an undisclosed location (For further details, please see: AHRC-UAC-081-2010[25]).

25 http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-081-2010/

Case-13:

Mr. Mizanur Rahman, a photo-studio businessman in Gulshan area of Dhaka, was illegally arrested and shot dead in the pretext of a so called "gunfight" while in Gulshan police custody. Mr. Mohammad Manik, who was detained together with Mizan in the same custody and received bullet injury in his leg, told that Sub Inspector (SI) Anisur Rahman of the Gulshan police shot at the left legs of Mizan and Manik when both were taken out from the police cell early in the morning of 1 July 2010. The police then asked both wounded persons to run away. Mizan followed the instructions of the police and as soon as attempted to run the police fired at his other leg and he fell to the ground. However, Manik did not run to avoid Mizan's consequence and survived as he was only shot in one leg. Mizan's death was due to continuous bleeding without any treatment after both of them were taken to the Dhaka Medical College Hospital (DMCH) where Manik gave an interview before camera.

Meanwhile, a High Court Division Bench of the Supreme Court of Bangladesh on 5 July 2010, four days after Mizan had been killed, ordered the Ministry of Home Affairs to form a committee to probe three custodial deaths including the death of Mizan within seven days since the Bench passed the order. The Division Bench ordered the government not to include any member from the police in the probe committee. It also ordered to inform the Court that what measures had been taken as per the Code of Criminal Procedure (of 1898) following the deaths and what initiatives had been adopted in order to prevent deaths under the custody of the law-enforcing agencies and security forces. The High Court Bench passed this order following a public interest writ petition (No. 5241/2010) filed by two human rights organisations. The Court directed the ministerial probe committee to record the statements of the eyewitnesses of the incidents of custodial deaths and submit the opinions regarding the said custodial deaths expressed by prominent columnists that were published in the media beforehand. It issued a rule against the respondents – the secretary of the Home Ministry, Inspector General of Police, Commissioner of the Dhaka Metropolitan Police and the Officers-in-Charge of Dar-Us-Salam, Ramna and Gulshan police stations – asking them appear before the Court within two weeks and explain about the custodial deaths. The Court asked the Dhaka Medical College Hospital to submit the post-mortem reports of the three custodial deaths. It also made a panel of 11 prominent lawyers and jurists to assist the Court as ***amici curiae*** regarding the issue.

After the Court's order the Ministry of Home Affairs formed a two-member-probe-committee comprising Mr. Shawkat mostofa, joint Secretary (Law) and Mr. Mozakker Ali, Deputy Secretary (Law) of the Ministry of Home Affairs to inquire into the incident. However, the committee did not visit the crime scene or talked to the family of the victims of custodial death or any of the eye-witnesses in more than a month. Later,

instead, the members of the probe committee insisted the widow of custodial killing victim Ms. Taslima and the witnesses to go to the Ministry of Home Affairs to give testimony. The high-ranking bureaucrats, who have luxurious official vehicles to travel for their official works such as probing the cases, insist the victims and witnesses, who are financially poor and unable to afford their dire necessities let alone the transportation costs, to travel without paying any allowance for transportation (For further information, please see: AHRC-UAC-107-2010[26]).

In Bangladesh nobody expects sincerity and compassion from the officials of the Ministry of Home Affairs other than the judges of the Supreme Court, which itself fails to realize the depth of the problems and have been wasting years after years unsuccessfully to stop custodial deaths, particularly the so called "crossfire" and all other synonymous killings.

The police pretend to obey the High Court's order through its press release. But, in fact, they not only utterly disrespect the order of the court but also manipulate the whole investigation process by creating panic through harassing the witnesses and the family of the victim as they have done in the case of Mizan after the extrajudicial murder.

The Dhaka Metropolitan Police (DMP), in one hand, resisted the family to speak to the media and human rights defenders by snatching the mobile phone of Taslima and seizing her deceased husband's life insurance-related documents, and on the other they intimidate the family as well as tempt them by offering money. The money receipt[27], which was given by the police to Taslima, shows that money was deposited to the Trust Bank on 19 July 2010 under the National Savings Schemes for five years (Registration No. 51/10) and will be payable jointly to Taslima and her sister-in-law Ms. Farida. Both of the co-recipients have nominated Liza Akhter, Taslima's dauther, for the whole amount. The document contains photos of Taslima, Farida and Liza. The police also engaged the local political activists to insist the victim's family to hide the truth related to the murder of Mizan for the sake of saving the job of the alleged policemen, which means that the job of police is more precious than human life, rule of law and justice in the country.

Taslima alleged that the police officers were doing silly jokes with her family regarding the orphanage of her child. One the very first day when the police picked up Taslima, her daughter, her mother-in-law Mrs. Samsun Nahar (deceased Mizan's mother) to the office of AC of Gulshan Zone Mr. Nurul Alam out of several such occasions. Samsun Nahar met the AC and asked him, "You (police) have killed my son (Mizan). Now, my grandchild has been an orphan at this minor age. Whom shall the child call 'father'?" The police officer replied, "You don't have to worry about this. The child can call me 'father'!"

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26 http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-107-2010/

27 http://www.urgentappeals.net/images/2010/AHRC-UAU-035-2010.jpg

Offering a sum of money he said, "We cannot bring the man back to life. But, we will pay you money that will give you a better life." The policeman also took the thumb print of Shamsun Nahar on a paper, which has not been shared with them. The police, in fact, prove how mean they are!

The experiences of the victims of custodial abuses further create a question relating to the protection of the witnesses of criminal offences, particularly the state-sponsored abuses, in Bangladesh. There is no witness protection mechanism, which multiplies the problems of the families and witnesses of the custodial abuses, in the country that cultivate a culture of impunity for the perpetrators.

The long absence of the probe committee formed by the Ministry of Home Affairs to hear the pains of the family as a result of the extrajudicial death of their breadwinner and in the midst of continuous harassment by the police and their allies raises question regarding its purpose. The High Court Division directed the Home Ministry believably to help the victims as well as to the judiciary for finding out the truth. In reality, the Ministry of Home Affairs, which has been failed to control the law-enforcement agencies for decades for its flawed and anti-rule of law policy of extending impunity to the perpetrators, appears to be reluctant to respond to the call for justice even though it is from the highest court of the country.

The Ministry of Home Affairs has emerged as widow-makers, instead of its original position of a superior administrative body; it is not a human being having common sense and rational knowledge. It appears that the Ministries of Bangladesh does not consist of, or operated by, human beings at all. Because, the policy-level bodies like the Ministry of Home Affairs promote extrajudicial killings and protect the killers with its utmost capacities. The Ministry does not have minimum rational sense to count that how many human lives have been finished due to its lawless actions? How many mothers of the country have been lamenting over the untimely murders of their sons and daughters in the name of law-enforcement and cursing the policymakers of the Ministry? How many women have been compelled to be widow for the dull-brained and irresponsible Ministry? What are the latest numbers of state-made-orphans, as achievements of the Ministry? How much grieves have been pouring on the soil and how dense is the sigh in the air of the country? Do the citizens have faith on the Ministry for any lawful cause? Does the Ministry have any credibility to anyone? Does the Ministry have any ability to increase public trust on the criminal justice system by placing law at the barrel of the guns of the police and Rapid Action Battalion? The nation must think about these questions that the victims always ask to the people who try to listen to them.

Shameless political impunity destroys everything:

Bangladesh has ever been prudent to make pledges on human rights issues in the international arena where diplomats of various nations maintain their professional modesty by mostly avoiding harsh criticism to any country for its alienated rhetoric. In its standstill race of promoting human rights the country's representatives boast of its achievements and success.

Bangladesh's Foreign Minister Ms. Dipu Moni told the international community at the UN Human Rights Council on 3 February 2009 during the session of Universal Periodic Review on Bangladesh that "Pursuant to Constitutional obligations and provisions in the CEDAW, the government has been consistently striving to improve women's status in both private and public spheres." (For further details, please see: Paragraph-23, Page no. 6 at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/168/33/PDF/G0816833.pdf?OpenElement)

But, the reality on the ground does not match with the rhetorical statements when the government itself ensures impunity to the people associated with the ruling party in shameless manner.

Case-14:

A nine-year-old handicapped girl was raped by man on 2 August 2010 in an abandoned building of Balua Hospital under the jurisdiction of the Gaibandha Sadar police station in Gaibandha district. After the rape the alleged perpetrator was seen suspiciously leaving the place by pedestrians and onlookers rescued the girl in senseless condition. The girl's paternal aunt lodged a complaint of rape with the Gaibandha police, who sent the girl to the Gaibandha Sadar Hospital for a medical examination.

The alleged rapist was a nephew to the local leader of the ruling political party – Bangladesh Awami League. At the time of medical examination the ruling political party leaders intervened into the process and ensured a negative medical report regarding the allegation of rape. Moreover, Ms. Mahbub Ara Gini, Member of Parliament from that constituency, insisted the police not to arrest the alleged perpetrator and obstructed the investigation of the rape case.

Around four hundred people including inhabitants of the neighbourhood, girl-students of the local schools and human rights defenders spontaneously protested in the area. They demanded arrest and prosecution of the alleged rapist by holding a human chain. A number of social activists spoke against the police inaction. On the contrary, the lady parliamentarian Ms. Mahbub Ara Gini repeatedly intimidated the organizers of

the human chain and protest against the rape. She ordered over mobile phone to stop protesting against the rape. At one stage of the telephonic conversation, the raped girl's father, who was personally acquainted with the parliamentarian and had a hope that if she recognizes him the political interventions will be stopped, asked Mahbub Ara Gini that whether she really wanted to obstruct the case's investigation despite knowing that it was his daughter. Over telephonic conversation the lady recognized the girl's father, who requested not to stop the investigation of the case as the victim of rape was his daughter. The Member of Parliament replied to him, "It is your daughter, so what?" The case has not been investigated by the police till this report has been released.

Meanwhile, the family members had received threats from various groups pressuring them to abandon the complaint or face consequences, including the threat of evicting the complainant's family from the area. Several of the girl's relatives and witnesses of the complaint have been threatened with death and of being expelled from their resident locations. They had been living in fear in the midst of continuous threats from the local leaders of the ruling political party.

The incident reveals the way in which the criminal justice process is hampered by political pressure. Even the rape of a minor girl becomes a matter of politics and the suspects are protected as a priority. The existence of morality can hardly be exposed among the power-centered politicians and the functionality of law in Bangladesh is seriously undermined. The MPs and influential political leaders control the local police stations, criminal investigations, medico-legal examinations and do and undo their bests to destroy the possibility of keeping hope for justice from the available limited options. The ruling party enjoys its power in many ways to keep its own government "stable". If issues like rape, which is a heinous crime, are taken seriously the political "stability" will suffer a great setback. A father outraged by the rape of his minor child should not be allowed to damage the political survival of a member of the parliament. The father's concern for his daughter was of no concern to her as it is her party supporters who are expected to guarantee her success in the next elections. Even being a woman the respect to a girl's dignity does not exist when everything is centered to politics. Aggrieved fathers must learn to control their emotions by burying the aspiration for justice and not disturb the political wellbeing of the MP. If one of the active party men wants protection against criminal prosecution for rape, it is her duty to provide that. Getting or snatching impunity for whatever crimes are committed when the party in power - that is what elections have come to mean in Bangladesh.

This is not the sole method of ensuring impunity in Bangladesh; there are many other ways protect the ruling political party's activists! Apart from the illegal methods of extending impunity as it has been illustrated above there are legal ways at the hands of the ruling political parties.

Code of Criminal Procedure enables rulers to ensure impunity:

The governments of Bangladesh in all regimes regardless of its politically elected or non-political dictatorial identities have been using provisions of the Code of Criminal Procedure to provide impunity on their political choices. One of the best tools for ensuring impunity is Section 494 about "Effect of Withdrawal from Prosecution", a provision made by the British colonial authorities for its cunning purpose of rule the territory by repression. Section 494 reads:

"Any Public Prosecutor may, with the consent of the Court, 1[* * *] before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal,-

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences."

This provision is in wholesale practice at the hands of the ruling political parties whoever takes over the power. The government, as it has been mentioned in previous reports, traditionally announces that it wishes to unburden the judiciary from the "politically motivated" cases that had been allegedly filed by its predecessors aiming to ease the process of administration of justice. Then, the authorities start withdrawing cases. The hidden agenda behind this decision is to protect the ruling group's own musclemen from the prosecution for criminal charges. As days go on everyone of Bangladesh becomes clear about the purpose of the government. Because, only the petitions from persons associated with the ruling political party containing stronger recommendations from the pro-government influential leaders and parliamentarians are entertained with privilege whereas the similar petitions from someone, who belongs to the opposition, gets zero attention in the long run.

The politicians scrutinize the petitions to double check that their own party men get the benefit of the withdrawal of cases. After selection of the cases and potential beneficiaries the government assigns its bureaucrats to send formal letters instructing the Public Prosecutors and Special Public Prosecutors, of whichever jurisdictions the cases might be, to withdraw either certain persons' names from the prosecution or the whole case is withdrawn from the prosecution regardless of the stage of the case. The prosecutors, who are also politically appointed as a hire and fire basis, recommend the concerned courts or tribunals' judge to remove the names from the charge or close the whole case. The judges of the country nod their heads and approve the recommendations for withdrawal. The incumbent government has withdrawn cases.

Such withdrawal is considered as blessings of remaining attached to the ruling political party and a further inspiration to commit crimes more in number and severity as well. It benefits everyone around the vicious cycle of lawlessness – it enables the top politicians to keep "control" on the field level activists compelling them to obey whatever instructions come up; the police, who are the mechanics of criminal complaints and investigation, serve the political masters' purpose to earn undeserving benefits like quick promotion and lucrative posting to make money through "chain of corruption"; the field level beneficiaries enjoying committing crimes one after another again enabling the police to earn money by registering more criminal case; more case enables the police to arrest more people who pay more money for escaping torture and harassments; more case opens the window of opportunity to do more corruption on each of the steps at the court's proceedings; the helpless victims get ruined physically, financially and morally after suffering endless injustice; the poor become poorer emptying their courage to fight for justice; and again the political players continue play their games of grabbing power.

Abuse of President's office to ensure political impunity:

The President of Bangladesh is ornamentally Head of the State since the 11th Amendment of the country's Constitution was passed in 1991 reducing the power of this office to the utmost minimum level. The power of the President has been stipulated in Article 48 (3), which reads:

"In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to clause (3) of article 56[28] and the Chief Justice pursuant to clause (1) of article 95[29], the President shall act in accordance with the advice of the Prime Minister:

Provided that the question whether any, and if so what, advice has been tendered by the Prime Minister to the President shall not be enquired into in any court."

In reality, the President consents to the appointment of the Chief Justice and Judges of the Supreme Court after the candidates are chosen by the ruling political party's most powerful segments followed by the unofficial approval by the Prime Minister, who remain behind the curtain. Ultimately, the President survives as the Head of the State without any actual power over the state machineries.

The political parties having majority in the parliament only nominates a person as a candidate for Presidential post considering the potential candidates' level of "unconditional loyalty" to the head of the respective political party as the politics in

28 http://bdlaws.minlaw.gov.bd/sections_detail.php?id=367&sections_id=24605

29 http://bdlaws.minlaw.gov.bd/sections_detail.php?id=367&sections_id=24652

the country is centered to the heads of the party concerned instead of the practice or norms of democracy within the parties. The incumbent President, who served as the General of Secretary and Member of Presidium of the Bangladesh Awami League on several occasions in the past, has a reputation for his unquestionable loyalty to the head of the party, which enabled him to be the best choice for the office. Traditionally, the persons having strong personality and moral capacity to debate and establish a separate view differing with that of the Prime Minister, who occupies (understood as "owns") the political party, are not good choice for the office of President. In the past, there had been an instance of forcing the President to resign from the office within less than eight months during the last regime led by the Bangladesh Nationalist Party (BNP), which is the main opposition in the 9th Parliament at the moment.

The Office of the President has been used as tool to extend political impunity as the President is empowered to grant pardon according to Article 49 of the Constitution. It reads:

"Prerogative of mercy: 49. The President shall have power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority."

Case-15:

Mr. Sabbir Hossain Gama, a leader of the youth wing of the BNP in January and a nephew to a central leader of the same party, was hacked and shot dead in Natore district on 7 February 2004 when the BNP was in power. The ruling party leaders accused their political opponents as the perpetrators and filed murder charge against 21 activists of the Awami League. The Noldanga police submitted investigation report charging all 21 accused in the case. The case was tried in the Speedy Trial Tribunal-3 of Dhaka. The Judge Mr. Md. Firoz Alam convicted all 21 accused giving death penalty, on 24 August 2006, in a 95-pages judgment. The authorities, meanwhile, detained 5 accused while the rest had become fugitive but later, except one of them, were caught and imprisoned.

The defendants appealed to the High Court Division of the Supreme Court challenging the verdict of the Speedy Trial Tribunal-3 of Dhaka in the same year. When the appeal was pending before the High Court Division there had been change in the country's governmental power – Bangladesh Awami League assumed to office after a huge victory in the general election held in December 2008. The defendants withdrew their appeals from High Court before it had finished its procedure.

On 6 September 2010, the country's media came to know that President of Bangladesh Mr. Md. Jillur Rahman had pardoned 20 convicts by exercising his prerogative power

of clemency and subsequently the order had been implemented immediately. When the media enquired into the matter they learned that the Ministry of Law, Justice and Parliamentary Affairs recommended the President to grant pardon after scrutinizing the Speedy Trial Tribunal's verdict, evidence and documents. Quoting the Law Minister Mr. Shafique Ahmed, who is a barrister by profession but not a Member of Parliament, argued that the President has absolute power to grant clemency in any case and also admitted that his Ministry recommended the President for clemency. "It also considered the convicts' age and financial condition of their families," he added while speaking to the media.

The politicians, particularly the government of Bangladesh recommends for mercy only on behalf of their own political parties even without completing, or going through, the judicial procedure for the sake of saving lives of the convicts, as it happened in the case of Gama murder. At the same time, the politicians do not accept the need of abolishing death penalty as an inhuman and unacceptable form of punishment, in compliance with the Optional Protocol to the Convention Against Torture neglecting consistently made requests by the human rights groups and international community. The nation should have its own conviction about the reality and be inspired to initiate thorough reforms of its criminal justice system so that everyone's right to life is protected instead of abusing the office of the President undermining and bypassing the rule of law institutions.

Constitutional provisions enabling impunity:

The Constitution of Bangladesh empowers the government to extend immunity from prosecution to any state officer on any grounds in Article 46, which reads:

"Notwithstanding anything in the foregoing provisions of this part, Parliament may by the law make provision for indemnifying any person in the service of the Republic or any other person in respect of any act done by him in connection with the national liberation struggle or the maintenance or restoration or order in any area in Bangladesh or validate any sentence passed, punishment inflicted, forfeiture ordered, or other act done in any such area), to make the above-mentioned law."

Originally, at the time of adopting the Constitution, this provision was inserted with reference to the 1971 war for independence from Pakistan, it is now being randomly used to protect police, paramilitary and security forces and other operations units from prosecution for human rights abuses. Notably, the Joint Drive Indemnity Ordinance 2003 removed from the hands of victims and their families the right to take legal action against soldiers, police and other security forces responsible for the gross abuses that occurred from 16 October 2002 to 9 January 2003 under Operation Clean Heart.

The incumbent Awami League Government has also established complete impunity to the armed forces that usurped the power by compelling the President to impose a State of Emergency on January 11 in 2007 to put the nation in an unconstitutional militarized rule for two years. The current government has not taken a single step to punish the perpetrators of gross human rights abuses during the emergency regime.

The most unfortunate part is that the civil society organizations, human rights groups and political critiques who frequently talk about constitutional inconsistencies always miss or ignore the provision of Article 46, which is useless after almost four decades of the country's war of independence. The Constitution of Bangladesh must be freed from any kind of provision that may grant impunity of any forms to any person or groups within or beyond its jurisdiction.

Irresponsible political parties fail to speak out against land grabbing by the military:

In Bangladesh the armed forces, particularly the army is accepted by the politicians as the "controller of power" despite the fact the army had records of disregarding the country's Constitution and undermining democracy in many occasions. The politicians regardless whether they belong to the ruling or the opposition camps, rarely and, superficially criticize the perpetrators of the armed forces, if they are personally attacked or victimized. However, they never attain the courage of prosecuting the perpetrators for the crimes. Rather, both – the incumbent government and the opposition – have always ensured impunity to the perpetrators of the armed forces whenever they had been in power with people's mandate and constitutional obligation to ensure justice to the victims.

Scenerio-1:

The officers of the Bangladesh Army planned to ensure house for them. They chose a place, which is separated from the Dhaka Metropolitan City by the Shitalakkha river, situated under the jurisdiction of Rupganj police station in Narayanganj district in order to implement their project named "Army Housing Scheme" in four villages on the riverbank. The army established a "site office" of the "Army Housing Scheme" in a building in front of the local office of the Land Registry. The army established four temporary camps in Tanmushri, Purbagram, Ichhapur villages and Rupganj town adjacent to the land registry to monitor the purchasing lands from the owners of the lands. The army deployed few hundred solders in those camps despite the fact that the housing project was an unofficial and private project of the officers. The local leaders of the ruling political party reportedly mediated between the army and the land-owners as brokers in certain cases.

On 23 October 2010, around six months after the beginning of purchasing of lands under the surveillance of the army from the camps, there had been protest from the villagers against the army. The soldiers opened fire against the protestors leaving around 50 persons injured by gunfire. Three persons allegedly died in the incident while one person's dead body was handed over to the relatives but two of the bodies – namely Mr. Masum (15) and Mr. Anwar (22) – remained disappeared as per the relatives claim when contacted by the Asian Human Rights Commission. When the bullet injured victims were taken to the Dhaka Medical College Hospital (DMCH) for treatment the Director of the DMCH, a Brigadier of Bangladesh Army, appeared at the main gate of the Emergency Unit to deny media professionals' access to the hospital for information regarding the condition of the victims. Later, the army claimed that two persons "fled from the hospital".

The agitated villagers attacked the army camps, which was later withdrawn when the people set fire to one of the camps and an army vehicle. The police and Rapid Action Battalion filed criminal cases accusing around 3,000 unidentified villagers with the Rupganj police regarding the incident. However, the police registered "Unnatural Death" case regarding the death of Mr. Mostofa Jamal Haider, who was killed by soldiers, instead of a fresh murder case against the army men.

The inhabitants, who had been hiding since the incident, claim that the original market price of land in the areas of four selected villages was around from BDT 3,000,000.00 to 5,000,000.00 for per Bigha (33 decimal). But the army was forcing the land-owners to sell their lands by paying from BDT 1,200,000.00 to BDT 1,500,000.00. In order to compel the villagers to sell their lands only to the Army Housing Scheme project the officers of the army not only intimidated the officials of the land registry department but also they remained physically present in the land registry office to stop any registration of land, which had been targeted for the project. The officers allegedly insisted the high ranking government officials to obey their instructions regarding the land registration. A land-owner alleged that when he attempted to sell his land for managing some money for joining the Hajj pilgrimage an army officer tore off the deed of his land. He alleged that it was land grabbing in the name of purchasing it by the army.

The political parties – both the ruling and the opposition – remained silent about this incident other than a rhetoric made by the State Minister for Home Affairs that the case will be investigated. Referring to the silence from the Prime Minister, who also holds the portfolio of the Ministry of Defence, and her government for six months after deploying the soldiers for a private housing project the inhabitants asserted that nobody believed that any credible investigation would be conducted regarding the brutality and lawless actions of the army.

Scenerio-2:

Former Prime Minister and current Leader of the Opposition in the Parliament Mrs. Khaleda Zia had been living in a house, which was allotted to her for 99 years in 1981 after her husband Ziaur Rahman (a military General turned to a politician) was assassinated in a military coup, for around 38 years. The then BNP government led by Justice Abdus Sattar, which was recommended by army chief General Hussain Muhammad Ershad allotted the house at the cost of a token money on political, emotional and "humanitarian" considerations (General Zia reportedly left no visible assets or money for his widow and two minor children; the house was General Zia's preferred one, where he started residing as a Deputy Chief of Army Staff during the mid 1970s; Zia reportedly liked the house for his personal emotion attached to it as he was confined in this house during military-coup and counter-coup by his colleagues in 1975; he considered it as a historical place of good luck for him and continued staying there avoiding much better official residences even after he became the Chief of Army Staff and the President of the country).

The 2.72 acre house's allotment was cancelled by the Cantonment Board, which was the originally owner, after the Awami League's current government initiated a move of cancellation in the Cabinet and Parliament in 2009. The authorities ordered to vacate the house by serving a notice, the lagality of which which was challenged in the High Court Division in a Writ Petition. A Division Bench, on 13 October 2010, rejected the petition by observing that the allotment itself was unauthorized, and, suggested the Government allow 30 days before evacuating Mrs. Khaleda Zia, who filed a further "Leave to Appeal" petition, which had been set for hearing by the Appellate Division of the Supreme Court on 29 November 2010. However, on 13 November, the government deployed law-enforcement agencies and security forces who broke open the house including its main door and Khaleda Zia's bedroom door and evicted her from that house despite that fact that the matter was pending before the highest court of the country.

Immediately, the opposition called a hartal (general strike) on the following day, 14 November, which was just three days before the Eid (second most important religious festival for the Muslims marked with sacrifice of animals). The strike severely affected the people's homebound rush for meeting their relatives in a poor-managed transportation system for 150 million population as well as the highly-required pre-Eid commercial activities across the country. However, the opposition party, which is more concerned for the dignity of the leader of the opposition and possession of her house while facing vindictive political decisions of its political opponent in the ruling party, was unable to comprehend the potential public agonies before its decision of calling for the strike. The opposition protest against the government's intolerant actions at the cost of tremendous

sufferings of millions who literally get zero benefit of the political programmes. Similarly, the ruling party, which enjoyed its governmental power of evicting even before a final judgment from the court, establishes its hypocrisy by making rhetorical speeches in favour of the rule of law but it always undermines the due process of law and norms of democracy whenever they go for action.

In reality, the politics is confined within the circle of the lust for power and properties controlled by a few privileged individuals. The political parties are more serious to protect their top leaders' undeserving benefits and uncontrollable insanity of repressing critiques, banishing commitment to promote the means for survival of the ordinary poor, who are still the majority of the population, in the country. It, ultimately, fails to help the people in general as it hardly helps democratization and the establishment of a society of justice.

Incapacity of the judiciary to provide justice in criminal cases:

Bangladesh's criminal justice system has manifold problems that expose the system as incapable of establishing justice. Instead, the criminal justice system of the country can merely pass judgments. The system itself has entrenched problems such as:

a. There is an absence of fairness and transparency in its complaint mechanism. The police arbitrarily control the complaint mechanisms, which are subverted by political interference and a chain of command dominated by corruption from the bottom to the top, resulting in abuses of power and injustices in determining who will be charged and for what crime. The fabrication of cases by the police officers for the purpose of extorting money from targeted persons and/or in order to set the real offender free is a common practice. The police deliberately distort facts related to crimes at the time of recording of complaints, which obstructs the already limited avenues available to the victims seeking justice and redress.
b. Equal treatment before law – as a constitutionally enshrined fundamental right and basic norm of justice – does not exist in any level of the judicial procedures of the country at all.
c. Criminal investigations are conducted by the police using primitive methods without acceptable levels of professionalism and efficiency or credibility. As a corrupt and political subservient entity, the police force is mostly used as hired gunmen of the ruling political and other authorities and elites.
d. The prosecutorial system is politicised, inefficient, disposable by nature, and incapable of assisting the judiciary to establish justice at the end of the trial. Every political party recruits their own activists cum lawyers as prosecutors, based on their loyalty to the ruling authorities rather than their knowledge of the law, jurisprudence and commitment to the rule of law. Moreover, the prosecution at the Courts of Judicial Magistrates, where around 70 per cent of the country's criminal cases are disposed

whereas around 90 per cent cases start with, is controlled by the police in a highly corrupted process.

e. The judiciary does not enjoy independence as far as the administration of justice is concerned in terms of logistics, manpower, integrity and the adjudication of the cases. Besides, there is a serious lack of judicial competence and commitment to upholding the rule of law among many judicial officers.
f. The country's medico-legal system remains archaic and far off internationally acceptable standards and modern methods required to effectively assist the judicial process in determining rights or wrongs and forensic evidence accurately.
g. The legal profession is degraded and consists mainly of persons hunting cases to make the maximum money for their professional practices, rather than to assist the judicial procedures to ensure justice to both victims and the defendants in trials in the country's courts.
h. The State's entrenched system designed to protect the perpetrators of gross human rights abuses through and extensive culture of impunity, creates serious grievances and a loss of faith in the justice institutions for victims of, for example, illegal arrests, arbitrary detention, custodial torture, extra-judicial killings and disappearances, as well as for their and the wider public who also live in a climate of fear.
i. The absence of interpersonal respect for each other and adequate cooperation among professionals, including the police that register the complaint, investigators, prosecutors, lawyers, medico-legal experts and supporting staff of the judiciary seriously hamper the effective and timely conduct of trials and administration of justice.
j. Inadequate remuneration and facilities for relevant professional experts as well as their supporting staff, poor infrastructure for maintaining material evidence, and the failure to recruit persons with the required educational, moral and ethical background, or to provide adequate training contributes to the further deterioration of the criminal justice system.

Case-16:

The Dumuria police of Khulna district arrested Mr. Sohrab Hossain, who was visiting his relatives, from Atharomile Bazar, on 7 January 2010, at around 8 pm, without any lawful reason. The police released him after about an hour's interrogation in their custody.

Soon after, another police team of the Tala police station comprising of four unidentified police constables and an officer arrested him along with two other persons: Mr. Hamidur Rahman and Mr. Selim Morol. These two arrested persons were allegedly involved in several cases including murder, robbery, possession of illegal arms and violence against women. At the time of arrest, the police tortured Sohrab in public and claimed that they had arrested Sohrab, who is an inhabitant of Takia village under the Paikgachha police

station in Khulna district, because of his identity as a stranger under the jurisdiction of the Tala police of the Satkhira district. They beat him with sticks, fists, and boots. Although the police later admitted that they wanted the two other persons except Sohrab, who did not have any complaint against him.

The police detained Sohrab overnight at the Tala police station while Sub Inspector (SI) Mr. Md. Lutfor Rahman snatched Sohrab's mobile phone and money. Later, SI Lutfor communicated with the Paikgacha police station under the Khulna district in order to get information regarding the involvement of Sohrab Hossain in criminal offences. The Paikgacha police informed SI Lutfor that there was a person named Mr. Sohrab Par, son of Mr. Abdur Rauf Par, who was from Takia village, who had murder and robbery cases against him (Sohrab Par). Three policemen, then, tortured Sohrab Hossain in custody during the night asking him to confess the crimes. They beat him with sticks on the soles of his feet. As a result, Sohrab's feet were swollen and he was unable to walk. The police did not provide any food to him while in detention.

On 8 January, the Tala police fabricated a pending robbery case against Sohrab before sending him to the Judicial Magistrate's Court of Satkhira. The police handcuffed him and tied a rope about his waist at the time producing before the Court. The police wanted the Court to place Sohrab under police remand for seven days. The Court, however, ordered to detain Sohrab in jail fixing up the 13 January for the hearing on the petition of the police for remand. Accordingly, upon hearing the remand petition the Court ordered that Sohrab be handed over to police remand for two days.

Meanwhile, after having been informed Sohrab's relatives went to the Tala police and saw him unable to walk at Satkhira jail. Sohrab and the two co-detainees were handcuffed and legs were locked with iron rods at the time of commuting to, and from, the Tala police station. The police tortured all three detainees, with sticks on two occasions during the two days' remand. Sohrab's condition deteriorated during the two days in police remand when he was forced to starve.

On 16 January, the police directly sent Sohrab to prison without producing him before any Court. The police officers forced Sohrab's relatives to pay bribes one after another for various reasons. The Court rejected his bail petitions on two occasions without going into the depth of the case and without passing any order for arranging treatment of his injuries or even without checking his wounds (For further details, please see: AHRC-UAC-028-2010[30]). Instead of protecting Sohrab's right to liberty and safety as per law the Courts accepted whatever the police wanted the Magistrate to do for the illegal arrest and arbitrary detention. He remained in detention until he was bailed by the Court of

30 http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-028-2010/

Sessions Judge of Khulna on 12 April. The police failed to produce any evidence before the court against Sohrab, who altogether remained in detention for more than three months.

It was the Magistrate's legal responsibility to follow Section 344 of the Code of Criminal Procedure-1898 as he was not produced before the Court after 16 January. Section 344 (1) reads:

"If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons there for, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time."

This provision clarifies that bringing every detained person physically before the Court within each 15 days, in case the period of detention is longer, is mandatory for the magistrates and judges. In fact, detaining Sohrab for more than 65 days in a row is a clear violation for which the Magistrates concerned of the Satkhira district should be held accountable immediately.

The higher judiciary turns a blind eye to hundreds of similar cases in Bangladesh where the victims languish in jail for many months and years without any legality.

The Asian Human Rights Commission (AHRC) has documented cases on how the police illegally arrest persons and do the business of bribery by detaining arbitrarily and torturing the persons before an incapable judiciary of the country. The AHRC's publication Disconnected policing and the trade of justice in Bangladesh and the Urgent Appeals expose the details of the chain of corruption in the policing system of Bangladesh[31]. Similar cases like AHRC-UAC-157-2009[32] and AHRC-UAC-138-2009[33].

Death Penalty:

Bangladesh has not yet ratified the Optional Protocols to the ICCPR and also does not comply with the international law aiming at the abolition of the death penalty. The

31 http://www.article2.org/mainfile.php/0801/335/

32 http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-157-2009/

33 http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-138-2009/

country has not only executed its citizens for decades, but officials, including Ministers, Parliamentarians and Judges also advocate publicly in favour of this practice, which denies people's right to life, often as the result of trials that do not meet the internationally recognized standards of fair trial.

According to a reliable Home Ministry source who requested anonymity, that there are around 407 convicts currently being detained in prisons across the country that face execution in the upcoming periods. Among the convicts, around 107 are being detained in Dhaka Central Jail, with the rest being detained in the country's other main prisons. The high profile cases of execution to have taken place in Bangladesh include the death by hanging of five convicts on 28 January 2010 for the assassination of Bangladesh's founder, President Sheikh Muzibur Rahman, who was killed by members of the Bangladesh Army along with almost all of his family members on 15 August 1975. In another case, six members of militant groups were hanged after being sentenced to death for the killing of two judges in suicide bomb attacks in Jhalkathi district in 2005. Since its establishment in 1971 the Bangladeshi State has executed by hanging over 250 convicted criminals.

The country's Penal Code-1860 has several provisions that allow the death penalty for capital punishment: Section 121: waging war against Bangladesh; Section 132: abetment of mutiny, if mutiny is committed; Section 194: giving or fabricating false evidence with intent to procure conviction of capital offence; Section 302: murder; Section 305: abetment of suicide of child or insane person; Section 307: attempted murder by life-convicts; and Section 396: robbery with murder.

There are several other laws in Bangladesh that also provide for the death penalty. The draconian Special Powers Act-1974, provides the death penalty for the offences of sabotage under Section 15, counterfeiting currency notes and Government stamps under Section 25A, smuggling under 25B, and adulteration of, or sale of adulterated food, drink, drugs or cosmetics under Section 25C. It is evident from the above that the death penalty is awarded for crimes that do not meet Bangladesh's obligations under the ICCPR's Article 6(2) to ensure that death sentences "may be imposed only for the most serious crimes."

The *Nari o' Shishu Nirjaton Daman Ain*-2000 [Women and Children Repression (Prevention) Act-2000] further provides for the death penalty to be awarded as punishment for offences or attacks committed using corrosive, combustible or poisonous substances that cause burns or physical damage leading to the death of the victim, under Section 4; for trafficking of women and children, as per Sections 5 and 6 respectively; for ransom, according to Section 8; for sexual assaults resulting in the death of any woman or child who dies consequently, as per Section 9(2); causing death for dowry, in Section 11; and maiming or mutilation of children for begging, under Section 12. The Acid Crime

Control Act-2002's Section 5 (KA) also includes the death penalty for acid attacks on women if the victim's eyes, ears, face, chest or sexual organs are fully or partially damaged.

The legislative authorities of Bangladesh argue that the death penalty is necessary for maintaining control over serious crimes in the country and to transmit a message to potential offenders that committing murder will ultimately incur the death penalty. Pro-death penalty advocates in the country claim that the death penalty helps the nation to establish peace and justice in its society as part of upholding the rule of law. This alleged deterrent is shown to be not working effectively, as incidents of serious crimes rise each year. For example, according to the statistic contained in the website of the Bangladesh Police, there were 3592 murders during 2005 and 4219 murders in 2009.

Human rights groups have been opposing the death penalty under all circumstances as a cruel practice that is shown to be an ineffective deterrent and open to serious abuse. No legal system in the world functions well enough to guarantee that errors in awarding the death penalty can be totally avoided, and in countries with deeply flawed criminal justice systems such as Bangladesh and most others in the Asian region, the use of the death penalty gives rise to serious travesties of justice and arbitrary, unjust and irrevocable violations for the right to life.

The reality regarding the criminal justice system must be understood to evaluate how dangerous the use of the death penalty can be in Bangladesh. Realistic policies followed by prompt actions must be in place in order to reduce the recurrence of crimes that are currently punished by the death penalty instead of continuing with this failed deterrent.

Bangladesh's constitution's Article 35 (5) prohibits "torture, cruel, degrading or inhuman punishment or treatment". There can hardly be any debate that the death penalty does not amount to cruel punishment, which is prohibited in the country's supreme law. In fact, such cruel punishment comprises a violation of the Constitution by undermining the natural dignity of human beings.

The Asian Human Rights Commission and its sister organization have previously urged the government of Bangladesh to abolish the death penalty immediately and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and bring its domestic legislation and practices in line with obligations under this instrument. The Bangladeshi authorities should immediately initiate thorough reforms of the country's criminal justice system, in order to establish the rule of law and the enjoyment of rights, justice and peace in its society.

Media pays price for freedom of expression:

Bangladesh's media have been facing a tremendous challenging tenure at the moment when they aspire for freedom of expression and opinion, as one of the most important fundamental rights of human civilization. The government of Bangladesh's Awami League, which pledged in its election manifesto to protect freedom of expression and opinion, came down very harshly on the media and its professional whenever it expressed different views conflicting the interests of the ruling political party's leaders as well as the members of their families. Television channel and newspapers have been banned arbitrarily by the government while the editor of a newspaper and a journalist had been jailed in contempt of court case.

Moreover, journalists have been routinely threatened, intimidated, physically attacked by both – the activists, leaders and lawmakers as well as the law-enforcing agents, security forces and intelligence agencies. In most cases, the attackers completely failed to control their temperament when their bad deeds were exposed in the media although it was very little exposure in comparison to the reality of the ongoing abuse of political and governmental power.

Case-17:

Mr. Saidul Islam Alamgir, a journalist of state-run news agency - Bangladesh Shangbad Shangstha (BSS) in Rangpur district, was brutally beaten by the police writing against the illegal activities of the local political leaders of the ruling party in collaboration with the police. Alamagir, on 10 January 2010, wrote reports criticizing unauthorised gambling at a trade fair occupying school ground for extended period depriving the students to go to their classes. His report included the identities of the public officials, political leaders and businessmen. The report highlighted that how the poor people were being tempted to gamble and were cheated by the hosts of the trade fare in collaboration with the local police and civil administration, who were all making huge money out of the gambling.

The musclemen of the leaders of the ruling political parties and the representatives of the local Chamber of Commerce Association physically attacked on Alamgir, who lodged a complaint about it with the Kotowali police of Rangpur town. The Kotwali police did not immediately record the subsequent complaint as a First Information Report (FIR); it was registered the following morning.

On 12 January, Mr. Abdur Rashid Sarker, the Officer-in-Charge (OC) of the Kotowali police station, phoned Mr. Saidul Islam Alamgir and asked to visit him at his office at 9pm that evening. Alamgir went to meet the OC, who was at the trade fair dealing with a case of public disorder (regarding lottery prizes which had not been awarded).

On his way back Sub Inspector (SI) Mr. Rajendra Chandra Sheel and SI Shariful Islam (the Second Officer of Kotwali police station) called him from behind. After Alamgir reached to the police van he was manhandled into the back of the van, where other officers beat him with their guns, sticks, their boots and their fists. Though all of the officers kept their faces covered with scarves at the time of the attack, Alamgir recognized SI Mustafizur Rahman, SI Nur Alam, Havilder Abdus Sabur and Constable Mehedi Hassan.

The police continued to torture Alamgir between 12:15am and 1:45am while driving around the town of Rangpur. During the ordeal, Constable Mehedi Hassan pressed Alamgir's throat and tried to reach into his mouth to tear out his tongue; several other officers tried to blind him by pushing a stick into his right eye. The police threatened to kill him in a 'crossfire', and he sustained severe injuries to his right eye, both thighs, his right hand, right waist, both shoulders and right leg due to the beatings.

The Kotowali police detained Alamgir in an overcrowded cell with about 35 other detainees. The police cell was soiled with human excreta. Though his arrest had not been explained to him, at 4am SI Shariful Islam visited the cell with two draft complaints containing fabricated dates and times. To Alamgir's questions about the nature of his crime, SI Shariful Islam reportedly responded: "Don't ask questions! Journalism will be pushed through your anus."

The detained were not served any food in the police cell. When Alamgir's condition deteriorated inside the cell the police allowed him to come out of the cell and be cleaned and fed by his colleagues. Later, police took him to the emergency department of the Rangpur Medical College Hospital (RMCH) for first aid.

At 4pm he and other detainees were taken to the building of Judicial Magistrate's Court of Rangpur but were not produced physically before the magistrate as is legally mandated. Without examining or observing the condition of the detainees, the magistrate ordered him to be further detained in Rangpur Central Jail. On 14 January, after a large group of lawyers from the Rangpur District Bar Association appealed bail for him, informing the court of his torture and need for medical treatment; this was granted. (For further details, please see: AHRC-UAC-008-2010[34])

34 http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-008-2010/

Extra-legal punishment by the highest court's judges for the race of political office

The Amar Desh, a national Bangla language daily newspaper based in Dhaka, published a report on 21 April 2010 with a title "Chamber bench means stay order in favour of the government". The report exposed how the Office of the Attorney General influenced the Court of Chamber Judge of the Supreme Court of Bangladesh stay the legal remedies provided by the Division Benches of the High Court Division of the Supreme Court referring a number of orders of the courts – both the High Court Division and the Chamber Judge's Court.

On 5 May, two lawyers of the Supreme Court Bar Association filed contempt petition with the Appellate Division regarding the report published in the Amar Desh. The Appellate Division, which is the highest branch of the judiciary, of the Supreme Court of Bangladesh on 2 June issued a contempt rule against the acting editor of the Amar Desh Mr. Mahmudur Rahman, its publisher Md. Hashmat Ali, Deputy Editor Seyed Abdal Ahmed, New Editor Muztahid Faruki and the writer of the article Mr. Oliullah Noman directing them to show cause as to why they shall not be proceeded with for contempt of court for publishing the report.

On the same day, the government cancelled the declaration of the newspaper and arrested Mahmudur Rahman in a case filed by the newspaper's publisher Md. Hashmat Ali, who alleged that he was forced by the intelligence agencies to do so, regarding the authorization of the publisher, which was supposed to have shifted to Mahmudur from Hashmat but was held by the government despite all procedures had been followed by the time. Before and after arrest, Mahmudur was fabricated in a number of criminal charges and was detained in those cases as the police showed him arrested in all the cases he was yet to receive bail from the courts.

The Appellate Division of the Supreme Court conducted all together five hearings on the contempt case. On 19 August, the Full Bench of the Appellate Division chaired by the then Chief Justice Mohammad Fazlul Karim, comprising Justice Md. Abdul Matin, Justice Shah Abu Nayeem Mominur Rahman, Justice A. B. M. Khairul Haque, Justice Md. Muzammel Hossain and Justice Surendra Kumar Sinha convicted three persons and forgave two of them. Mahmudur was given an unprecedented maximum penalty for contempt of court with a simple imprisonment for six month with a fine of BDT 100,000.00 and default to suffer simple imprisonment for one month more; writer of the article Oliullah was imprisoned for one month with BDT 10,000.00 fine and in default to suffer simple imprisonment for seven more days; and Hashmat was sentenced to pay fine of BDT 10,000.00 and in default to suffer simple imprisonment for seven days. The verdict was passed by 5:1 majority of the Full Bench of the Appellate Division. A short

order was circulated by the Supreme Court after the verdict had been passed directing the prison authority to execute the order with immediate effect. For further details, please see a copy of the short order here: http://www.humanrights.asia/countries/bangladesh/cases/Bangladesh%20Supreme%20Courts%20Short%20Order%20on%20Contempt%20of%20Court%20against%20Journalists%20of%20Amar%20Desh.pdf.

The judgment passed by the Full Bench of the Appellate Division utterly failed to ensure justice to the convicts. Because, firstly, as a common law country the Contempt of Court Act of 1926 (http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=140) in effect in Bangladesh. Section 3 (3) of the Contempt of Court Act reads,

> "a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand [Taka], or with both;
> Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court:
>
> Provided further that notwithstanding anything else where contained in any law [the High Court Division shall not] impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a Court subordinate to it."
> http://bdlaws.minlaw.gov.bd/print_sections.php?id=140&vol=&sections_id=4647

The Appellate Division convicted Mahhumur with six months' simple imprisonment and a fine of BDT 100,000.00, which was beyond legality as the law itself limits the monetary penalty as "Taka 2,000.00". In same manner, Oliullah was punished with one month simple imprisonment and BDT 10,000.00 whereas Taka 8,000.00 was fined extra-legally. Similarly, Hashmat's fine was also beyond the mandate of the law. The convicts were not granted a bail at the time the verdict was passed. Instead, Mahmudur was showed imprisoned since the verdict was announced and Oliullah was asked to surrender before the prison authority as soon as he receives a certified copy of the "short order" of the verdict. From 25 August to 30 September Oliullah served his imprisonment for 37 days as he did not afford the fine of BDT 10,000.00.

In principle of justice, as universally recognized, every defendant must have a right to challenge or review a verdict passed by any court of any country within its national jurisdiction. When Mahumudur and his colleagues were convicted by the highest branch of the judiciary of Bangladesh where no court exists above the Appellate Division and the convicts deserve a fundamental right to seek a review of the judgment, which primarily convicted them, upon the availability of the complete judgment, which did not happen in reality.

Meanwhile, on 29 September, the Chief Justice Mohammad Fazlul Karim went on retirement while government elevated A. B. M. Khairul Haque as the new Chief Justice superseding two senior judges of the Appellate Division. Immediately after the notification of the appointment of the Chief Justice the two superseded judges went on leave willingly withdrawing themselves from the judicial operations of the Supreme Court. All these happened before the complete judgment was prepared and signed by the judges, who participated in the hearings of the contempt of court in the Full Bench of the Appellate Division while Mahmudur and his colleagues' fate was determined by the highest judicial authority of the country.

It should also be mentioned that Bangladesh has a constitutional provision for forming a "Non-Party Care-taker Government" as per Article 58B of the Constitution of Bangladesh. According to Article 58C (3), "last retired Chief Justice" shall be appointed as the Chief Adviser, the head of the government in absence of an elected Prime Minister, by the President of country to hold a general election and will remain in power until a new Prime Minister assumes office. In the 13th Amendment of the Constitution in 1996, following a movement by the then opposition led by Bangladesh Awami League, this provision was introduced aiming to increase the credibility of the general election. Since the amendment was made the successive governments started choosing the most "loyal" candidate for the office of the Chief Justice of the country, always by supersession in the appointment process, aiming to with the upcoming general election.

The judges of the Supreme Court do not want to leave the race for assuming the office of the Chief Justice, as the subsequent calculation of the ages of the serving judges with their dates for retirement from the office have been important matter, in order to jump to the chair of the "Chief Adviser" of the "Non-Party Care-taker Government". The easiest way for the judges to put themselves in the "good book" of the ruling party's policymakers is to please them and sweeten process by passing rule, order and judgments that goes in favour of the ruling party and harming the opposition as grave as possible. As the Amar Desh exposed the level of illegal influence created by the Office of the Attorney General, which has been criticized by civil society and rights groups as having been degraded to the level of a political office instead of a State's attorneys' office, upon the highest judiciary, the newspaper has come under severe attack by the machineries of the State.

As a result of this Mahmudur and his colleagues were denied their fundamental right to have review of the conviction in violation of the universal norms and standards of fair trial and justice. Thus, like many other cases, the highest judiciary of Bangladesh has exposed its incapability of administering justice to the aggrieved persons. Through actions, behavior and judgments Bangladesh's judiciary itself abdicates its independent dignity and frustrates the country's citizens by transmitting a message that the judiciary is for the ruling-party-people only, the rest others do not have any right to get any remedy

from the judicial institutions. When the door of the judiciary is closed for the justice-seekers, which is believed to be the last resort for the victims of crimes, arbitrary actions and human rights abuses, the whole nation has only option to go- "Go to dog"!

Conclusion and recommendations:

The Asian Human Rights Commission (AHRC) once again reminds the incumbent government about its election pledge to improve the governance, human rights and rule of law, which has been largely deteriorated in last two years. The Bangladesh Awami League, as a political party, which promised to end the practice of extrajudicial killings in the pretext of "crossfire" after assuming the power of the government appears to have forgotten its election pledge as well as what the promised before the international community - bringing the perpetrators to book. Now, after two years in the government, several ministers and senior leaders including the Prime Minister have repeatedly endorsed the heinous crimes like "crossfire" and torture in public speeches and in the parliament.

The pledge of combating corruption has been placed in the deep freezer as the government has radically disarmed the Anti Corruption Commission by amending the law relating to the authority of the anti-corruption body. At the same time the withdrawal of innumerous corruption cases, including the cases of the Prime Minister and her relatives, and giving immunities to them, has made the pledges hollow.
The desperate politicization of public service, public development and the criminal justice and rule of law institutions, and the political and non-political office-bearers who actively played roles to make such things happen, should be blamed instead of outsiders, who are not part of the government or related to them in any way or other. The country is gripped under systematic deterioration where merit, honesty and commitment have been replaced by muscle power, political power, and corruption that have been contributing to the complete collapse of everything.

The AHRC strongly urges the nation to look back to the other nations that have already degraded their basic institutions for criminal justice and rule of law mechanism to the level of a phantom limb, which only exists in imagination not in reality. The civil society and professional groups should think very deeply about the existing serious problems of the country and find realistic methods to resolve the problems by initiating thorough reforms of the country's system on the basis of priority to protect the rule of law.

As part of the process of reforms the Parliament of Bangladesh should begin with the legislation of the Torture and Custodial Death (Prohibition) Bill-2009, which has been pending before the Parliament for one and half a year, and its subsequent implementation with immediate effect.

Political interference must be stopped in the matter of criminal justice and rule of law and impunity should be ended with immediate effect.

The complaint mechanism must be made accessible, and free from intimidation and threats from the police, for the victims of the gross human rights abuses immediately.

Repeal or amend, as appropriate, the provisions contained in laws that allow for abuses and ensure impunity, such as the Article 46 of the Constitution of Bangladesh; Sections 46, 54, 132, 151, 156, 157, 161, 167, 190, 197 and 247 of the Code of Criminal Procedure-1898; the Joint Drive Indemnity Act-2003, the Mobile Court Act-2009 and the Special Powers Act-1974;

The ongoing extrajudicial killing, disappearance and torture in known and unknown torture-cells must be stopped without delay. All the past cases should be investigated by a competent probe committee headed by judicial officials of the superior judiciary and the pattern of those crimes as well as the detailed identities of the State-agents, who were responsible for the crimes, shall be exposed publicly so that the society can altogether think about the depth of the problems and find realistic solutions through discussions about the issues concerned. The victims and families should be afforded with justice and adequate compensation for their losses.

Separate prosecutorial and attorney service department should be established ensuring independence of the institution to assist the judiciary to uphold the rule of law beyond discrimination or politicization.

The recruitment and training system of the judges of all branches should be enhanced for establishing "judicial mindsets' among the judicial officials. The required logistic and administrative supports, professional benefits and dignity of the judicial staffs should be improved so that they become capable of administering justice without any interference or constraint.

Effective Witness Protection Mechanism should be adopted in compliance with the international human rights norms and standards.

Issue a standing invitation to all UN Human Rights Council's Special Procedures mandate holders, and ensure that the Special Rapporteurs on torture; extra-judicial and summary executions; and the independence of judges and lawyers are able to conduct country visits to Bangladesh as a priority and without delay or impediment.

B U R M A

Government by confusion & the un-rule of law

The first elections held in Burma for two decades on 7 November 2010 ended as most people thought they would, with the military party, the Union Solidarity and Development Party, taking a vast majority in the national parliament through rigged balloting. Almost a week later, after days of disgruntlement and debate about the outcome of the elections, the military regime released the leader of the National League for Democracy, Daw Aung San Suu Kyi, from house arrest.

Although Aung San Suu Kyi's release was expected, since November 13 was the deadline on the period of imprisonment imposed through a fraudulent criminal case against her in 2009, it perplexed many foreign observers, who asked questions about why the military would acquiesce to her release at a time that it may provoke and create unnecessary problems during the planned transition from full-frontal army dictatorship to authoritarian clique in civilian garb.

What most of these persons have not yet understood about the nature of the state in Burma is that government by confusion is an operating principle. For them, as military strategists and planners who think in terms of threats and enemies, the most effective strategies and plans are those where both outside observers and as many people in the domestic population as possible are left uncertain about what has happened and why, what may or may not happen next, and what it all means.

This principle of government by confusion underpins the un-rule of law in Burma to which the Asian Human Rights Commission has pointed, described and analyzed through careful study of hundreds of cases and attendant information over the last few years. Whereas the rule of law depends upon a minimum degree of certainty by which citizens can organize their lives, the un-rule of law depends upon uncertainty. Whereas rule of law depends upon consistency in how state institutions and their personnel operate, the un-rule of law depends upon arbitrariness. Whereas rule of law is intimately connected to the protection of human rights, the un-rule of law is associated with the denial of rights, and with the absence of norms upon which rights can even by nominally established. In this annual report, the AHRC points more explicitly to the links between this operating principle and the un-rule of law.

Elections without norms

The operating principle of government by confusion was manifest throughout the holding of the November 7 elections and their aftermath: right up to the date of the elections, citizens and participating parties had little—and in some areas no—information on how ballots would be counted, tallied and reported. After the voting was completed and ballots were stuffed with thousands of so-called advance votes to ensure the success of military-backed candidates, there was no information on when and how official results would be made known: these details trickled out through a variety of sources over the coming days. And even with the results becoming known, the manner in which the parliament would be brought to assemble, the date that this would happen and other issues remained obscured, in accordance with the government-by-confusion principle.

But the election process in Burma on 7 November 2010 was farcical not so much because of the manner in which the elections themselves were conducted but because of the absence of a variety of minimum conditions for the holding of elections, which meant that irrespective of the specific procedures adopted for their undertaking, the results could not amount to anything other than what the military regime permitted. These absent minimum conditions included the absence of a judiciary capable of addressing and settling disputes arising from the electoral process; and, the absence of rights to associate or speak freely, or any guarantees for the protection of such rights.

The absence of a judiciary capable of settling disputes arising from the electoral process was manifest long before the elections themselves were held, in the handling of an application from the NLD to the Supreme Court on 23 March 2010. This party won 392 out of 405 seats in the 1990 election, but then—as in 2010—there was no judiciary capable of enforcing results. The party submitted a miscellaneous civil application to the court under the Judiciary Law 2000 and the Specific Relief Act 1887. It asked the court to examine provisions of the new Political Parties Registration Law 2010 that prohibit convicted serving prisoners from establishing or participating in political parties.

Whereas the 2008 Constitution prohibits convicted prisoners from being members of parliament, the new party registration law prohibits these persons from being involved in a political party at all. As the NLD has hundreds of members behind bars—and hundreds of others who could be detained, prosecuted and convicted at any time—its concern over these provisions is obvious. Nor is it the only party in this situation. The leaders of the Shan Nationalities League for Democracy, which obtained the second-largest number of votes in 1990, also remained imprisoned throughout 2010; the Working Group on Arbitrary Detention has opined that their detention is arbitrary (Opinion 26/2008, A/HRC/13/30/Add.1).

The NLD's approach to the court was premised on the notion that the Supreme Court would at very least be able to entertain its plaint. But according to the NLD, the application did not even go before a judge. Instead it was returned by lunchtime on the same day with an official giving the reason that, "We do not have jurisdiction." Subsequently, an attempt to approach the chief justice directly was also rebuffed.

In some countries, courts without effective authority over matters that are technically within their domain go through the pretence of hearing and deciding on these things at least to impress on the government and public that they are cognizant of their responsibilities, even if they cannot carry them out. They may still have a degree of self respect that requires the keeping up of appearances. But the courts in Burma have lost even these minimal qualities of a judiciary. Therefore, it is no exaggeration to say that Burma is without a judiciary—at least as far as any planned elections are concerned—and that as a consequence the notion of an electoral process as understood elsewhere was in Burma not surprisingly an absurdity.

The government also in 2010 set down in new laws conditions for the forming of political parties that would have people associate in order to participate in the elections, but nowhere and in no way was the right to associate itself guaranteed in any of these laws, let alone in reality. While parties were required to have at least a thousand members to enlist for the national election—500 for regional assemblies—a host of extant security laws circumscribed how, when and in what numbers persons can associate. The notion of association without the right to associate is manifest in the Political Parties Registration Law 2010, which has written into it references to some preexisting laws that circumscribe free association. According to section 12,

> "A party that infringes [the law in the manner of] any of the following will cease to have authorization to be a political party: ... (3) Direct or indirect communication with, or support for, armed insurgent organisations and individuals opposing the state; or organisations and individuals that the state has designated as having committed terrorist acts; or associations that have been declared unlawful; or these organisations' members."

As in present-day Burma anybody can be found guilty of having supported insurgents, of having been involved in terrorist acts, and above all, of having contacted unlawful associations, the law effectively allows the authorities to de-register any political party at any time. The Asian Human Rights Commission has documented many such cases. For instance, in 2010 34-year-old tuition teacher Maung Nyo and 27-year-old tour guide Ma Thanda Htun were tried for having travelled illegally to Thailand in 2008 and 2009 where they allegedly met with members of a group of Buddhist monks opposed to the government of Burma. Both of the accused had been involved in arranging for support,

together with religious groups, for victims of Cyclone Nargis in 2008 and according to persons close to the case, it was for this reason that they travelled to Thailand. Notwithstanding, the police took the accused to an interrogation centre where they kept them illegally for over a month, during which time they allegedly tortured the two to get false confessions, upon which they were sentenced to five years' jail in a case that was conducted in a closed court.

Similarly, the AHRC in 2010 issued an appeal on the case of U Gawthita, who along with seven other monks was detained at the airport in Rangoon on return from Taiwan in August 2009. The authorities later released the other monks but accused Gawthita of having met and obtained support from anti-government groups in Thailand. They kept him at a special interrogation facility for a month before he was charged with having allegedly gone to Thailand illegally earlier in the year to meet with and get support from anti-government groups there. Gawthita, who had no involvement in earlier political activism by monks in Burma, denies the charges and according to him he was merely collecting support for relief of cyclone victims and other humanitarian activities. Politically active monks from Burma in Thailand have also denied that he came to meet them. Photographs that the police used in court to show that Gawthita had gone to meet exile monks were not taken in Thailand at all but at an earlier time in Burma. However, the closed court ignored the lack of evidence and a multitude of flaws in the case, and in February 2010 sentenced Gawthita to seven years in jail.

Constitutional un-rule of law

One consequence of the November 7 elections was to usher Burma back into an era of formal constitutionalism. But it is not a constitutionalism that can in any sense of the word be associated with the rule of law. This is because the 2008 Constitution is from a human rights perspective a norm-less constitution. All rights under the type of constitutionalism that the army in Burma aims to practice are qualified with ambiguous language that permits exemptions under circumstances of the state's choosing. For instance, the right to association, described above as absent from the electoral process in 2010, is in the 2008 Constitution confined to whatever the state allows, rather than a right in any sense of the word as ordinarily understood. Under its section 354, citizens have a "right" to form associations that do not contravene statutory law on national security and public morality: which again can be construed to mean literally anything.

Extracts from the 2008 Constitution of Myanmar

11. (a) The three branches of sovereign power namely, legislative power, executive power and judicial power are separated, to the extent possible, and exert reciprocal control, check and balance among themselves.

20. (b) The Defence Services has the right to independently administer and adjudicate all affairs of the armed forces… (f) The Defence Services is mainly responsible for safeguarding the Constitution.

354. Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order [rule of law], community peace and tranquillity or public order and morality: (a) to express and publish freely their convictions and opinions; (b) to assemble peacefully without arms and holding procession; (c) to form associations and organizations; (d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.

376. No person shall, except matters on precautionary measures taken for the security of the Union or prevalence of law and order, peace and tranquillity in accord with the law in the interest of the public, or the matters permitted according to an existing law, be held in custody for more than 24 hours without the remand of a competent magistrate.

417. If there arises or if there is sufficient reason for a state of emergency to arise that may disintegrate the Union or disintegrate national solidarity or that may cause the loss of sovereignty, due to acts or attempts to take over the sovereignty of the Union by insurgency, violence and wrongful forcible means, the President may, after co-ordinating with the National Defence and Security Council, promulgate an ordinance and declare a state of emergency.

418. (a) In the matter concerning the declaration of the state of emergency according to Section 417, the President shall declare the transferring of legislative, executive and judicial powers of the Union to the Commander-in-Chief of the Defence Services to enable him to carry out necessary measures to speedily restore its original situation in the Union…

419. The Commander-in-Chief of the Defence Services to whom the sovereign power has been transferred shall have the right to exercise the powers of legislature, executive and judiciary. The Commander-in-Chief of the Defence Services may exercise the legislative power either by himself or by a body including him. The executive power and the judicial power may be transferred to and exercised by an appropriate body that has been formed or a suitable person.

420. The Commander-in-Chief of the Defence Services may, during the duration of the declaration of a state of emergency, restrict or suspend as required, one or more fundamental rights of the citizens in the required area.

To take another example, the right not to be held in custody for more than 24 hours before being brought before a magistrate, which already exists in the Criminal Procedure Code, is under the new constitution delimited by an exception for "matters on precautionary measures taken for the security of the Union or prevalence of law and order, peace and tranquillity in accord with the law in the interest of the public, or the matters permitted according to an existing law" (section 376). This provision effectively legalizes arbitrary detention of the sort that is already rife in Burma. Other provisions that purport to guarantee rights do so only to the extent permitted by other laws, and in so far as they do not threaten the security of the state or contravene undefined standards of public morality. The constitution allows for rights to be revoked at any time and for their suspension during a state of emergency. The cumulative effect of these qualifications is to render all guarantees of rights meaningless. It is, thus, to introduce a type of constitutional un-rule of law.

A key feature of the constitutional un-rule of law is that ostensibly legal institutions work to prohibit rather than protect the enjoyment of human rights. For instance, the police force does not perform its functions as a discrete professional civilian force but as a paramilitary and intelligence agency under command of the armed forces. Policing functions are also shared among other parts of the state apparatus, including with executive councils at all levels that supervise and oversee other agencies, and with other local bodies, including the fire brigade and a government-organized mass group. At the same time, specialized agencies, in particular the Special Branch, operate as proxies for military intelligence, rather than as autonomous investigators of crime. Consequently, the characteristics of policing and prosecutions in Burma include: routine arbitrary arrest and detention; common use of torture and other forms of cruel and inhuman treatment, and frequent deaths in custody; coerced signing of documents that have no basis in law; baseless and duplicated charges; and fabricated cases.
As the courts are subordinate to the executive, they can neither function in accordance with the laws that they are purported to uphold nor in a manner that can defend, let alone implement human rights. Some of their features include:

a. Closed and unreported trials: The law ostensibly guarantees open trial, but politically motivated cases are tried in closed courts inside prison facilities. Ordinary cases are held in public; however, a lack of media reporting and the enclosed character of the judiciary mitigate the usefulness of open trial even where it occurs.

b. Procedurally-incorrect cases: Breaches of legal procedure are routine in all types of cases. In politically motivated cases, breaches occur because of the imperative to arrive at predetermined verdicts; in ordinary cases, because of the general debasement of the judiciary under the un-rule of law and because of endemic corruption, as discussed further below.

c. Evidence-less cases: Accused persons in criminal cases are routinely imprisoned without evidence for the same reasons that cause procedural incorrectness.

d. Denial of defendants' rights and targeting of defence lawyers: The denial of the right to a defence occurs in two forms. First, defendants are unrepresented in court either because they are unable to afford or find a lawyer or do not know what one is (see 2009 report of the Special Rapporteur, A/HRC/10/19, para. 20); or because despite their efforts to obtain a lawyer they are denied one. Second, defendants are represented in court but the lawyer is unable to present the case in accordance with law. The judge may deny requests to call witnesses, deny cross-examination and threaten to or in fact take disciplinary or legal action against the attorney, by way of suspension or revocation of license, or threat of imprisonment for contempt of court.

e. Lack of means for redress: There are no effective means for redress to victims of human rights through the courts in Burma, other than in certain types of cases that correspond with state directives, such as under the Anti-Trafficking in Persons Law. In these cases, the courts are effectively performing an administrative function, not a judicial one, by implementing policy that has been written into law. Where law does not correspond with policy, the courts do not enforce it. Consequently, many legitimate complainants are instead themselves made the targets of counter-complaints and prosecution by state agents.

The cumulative effect of all these failings is that the legal system becomes completely perverted, with its actual activities more and more remote from stated practices, and thus more and more in conformity with the nature of government through confusion. Since what the system is supposed to do is nowhere to be found in its actual operations, what it in fact does can change from day to day, generating profound uncertainty among all persons caught up in the system and leading to Kafkaesque scenarios in which accused know not of what they are guilty or why, let alone how long they will be made to suffer for some supposed crimes. In particular, the system becomes increasingly directed towards the raising of income for its personnel through endemic corruption, and also becomes increasingly worn down and dangerous through coercive use of force and violence on the part of police and other state security personnel. These two aspects of systemic dysfunction in Burma are discussed in the next two sections.

Endemic corruption

Successive governments in Burma, including the current administration, have themselves acknowledged the incidence of corruption either directly or indirectly, including in the judiciary. However, because this corruption is intimately linked to the operating principle

of government by confusion, it cannot be addressed in any meaningful way. On the contrary, anecdotal evidence points to its persistent increase with the privatization of state-owned enterprises and the increase in market-style economics in Burma. With the emergence of a semi-elected, semi-civilian but undemocratic parliament, this corruption is likely to escalate dramatically, as rampant cronyism and wanton opportunism combine with continued military control of the state in Burma and powerful persons look for every chance they can get to make the largest amount of money through the easiest possible means within the shortest period of time.

Practically every step in an ordinary criminal case in Burma can be accompanied by payments of one kind or another, which have a profound effect on the already extraordinarily limited avenues that citizens have available to them for redress of wrongs. Payments occur to get a case registered, to get it lodged in court, to get it heard as scheduled, to receive copies of documents, to secure a conviction or acquittal, to get the case accepted on appeal, and so on. The following true examples show something of the mechanics of corruption in Burma and how all parts of the system work to defeat the interests of justice and undermine human rights.

1. In 2007 a police special drug squad arrested a notorious dealer in possession of a small amount of amphetamines. The immediate concern of the local police was to help get the accused out of custody. They nominated a lawyer for him. This is a common practice in all types of ordinary criminal cases in Burma, in which there is also a standard commission of 30 per cent that goes back to the police station chief. After being hired, the lawyer went to meet with the judge and prosecutor handling the case. His main function was to act as a broker. This is why the lawyer in such cases needs to be nominated by the police or another official. Judges will only bargain with a lawyer whom they can trust. In this case, the judge explained to the lawyer that the problem was because of the notoriety of his client, there was local and official interest in the case and the judge could not just let the client off without risking accusations of corruption and loosing face in the local community. So they arranged the case in a way that would get the client off, give the judge credibility and make everyone money. Payments were made both to the judge and the prosecutor. During the hearings, they deliberately botched the case. The judge admitted evidence that cast doubt on the allegations, and the prosecutor asked questions that supported the defence. Some prosecution witnesses were made hostile and their evidence recorded fully in the judgement. The judge convicted the accused, and public interest in the case ceased. But the verdict was flawed. The case was appealed to the district court. Here there were no public hearings and no knowledge of what was going on. The judge in the court of first instance had already contacted the judge in the higher court, and had given money to him. The higher court acquitted the accused.

2. A government car driver living with his son in modest conditions, a few years from retirement was in 2007 approached by a group of men, who asked to rent his house. The amount they offered was far above the market value. The occupant consulted with local government administrators whom he knew as friends. They advised him that the group apparently wanted the house for gambling, but that there was nothing to worry about and that he should do it. He rented the house and received a year's payment in advance. After two months a group of special vice squad police arrested the gang. The manager of the gambling operation used his contacts with the police to have the house owner pose as the key accused, securing bail for himself and his men. He told the owner that if he went along with the scheme then he wouldn't have to repay the year's rent, and that he would also get him released after a short time. He also threatened him that if he didn't cooperate then the gang would implicate his son. In the end, the house owner and two junior members of the gang faced court, with the owner in jail and the others on remand. In 2008 the court convicted the owner and freed the other two for lack of evidence. On appeal the elderly man was conditionally released, taking into account time served, but without his knowing the prosecutor appealed to a higher court and the original sentence was re-imposed; the police again arrested him and he is serving the remaining time. The gang has moved elsewhere.

3. The son of an army officer posted to a regional command in 2008 allegedly attempted to rape a classmate together with a companion. The family of the victim took the unusual step of strongly supporting her complaint against the two accused. The case attracted local interest because of the status of the alleged perpetrator as a family member of the ruling military class. At first the charge against the two was attempted rape. They were held as VIP detainees in a room next to the police station chief's own office that the police normally use for playing cards and drinking. The army officer's son received bail on the basis of a supposed health problem that required medical treatment; his companion was held in remand, but in the same room as before. After preliminary hearings and payment of money, the judge ordered that the charge be altered to assault on a woman, which is a much lower offence for which bail is habitually given, and the second accused also was released. Finally both accused were acquitted of that charge on the benefit of the doubt, the judge implying that the victim had misled the two accused and at first consented to sex.

Among the most important parts of the profit-making process in Burma's legal system is the granting of bail. Like in those cases described above, the methods of using and manipulating bail involve all parties in the system, including the police, prosecutor and judge, who at various stages have different important roles to play. In the beginning, the police are the most important persons for an arrestee. The police will initially lodge--or threaten to lodge--a non-bailable charge against the accused. In some cases an accused

may be able to negotiate with the police to switch to a bailable charge. This depends in part on whether or not the police have taken the initiative to lodge the charge, or whether someone has paid them to do it, in which case they may take money only not to maltreat the detainee, but will not take money to alter or drop the charge, depending on the amount paid by the other party. Where a detainee cannot get the police to alter the charge, the matter goes to the prosecutor. The prosecutor, or law officer, is responsible for lodging the charge in court. If the accused is able to negotiate effectively with the prosecutor, through his lawyer, then the prosecutor will agree to lodge a bailable offence in court.

Whether the decision to lodge a bailable offence is made by the police or by the prosecutor, the judge makes the final decision on whether to finally grant bail or not. At this stage the detainee must again have made arrangements through the lawyer to ensure that bail is granted. In fact, it is in the interests of the judge and of all parties not only that the threat of remand is used to identify detainees with the means to pay their way out of custody, but that those detainees who do have the means are given bail. The reason is that once a price is fixed the detainee will usually make a down payment but then have to raise the rest of the money. This is not easy to do while in custody. Therefore, bail is granted so that the defendant can raise the money.

One of the ways in which the institutionalisation of corruption can be identified in Burma is through the standardization of its practices. For instance, fairly standard amounts are paid for certain services, such as the 30 per cent commission from police-nominated lawyers back to the police, and fixed payments per time per person to deliver food to a detainee. Another feature is the itemization of payments. Thus, it is reportedly common for appeal judges to receive payment per annum for imposition or reduction of a sentence. The appellant in a case before the Supreme Court, the plaintiff, paid a judge the equivalent of USD 10,000 to get his opponent imprisoned for five years, calculated not as a lump sum but at the rate of USD2000/year of imprisonment.

An attendant feature of systemic corruption is the failure of procedures on which the system is dependent. When the failure reaches the proportions found in Burma, it ceases to be a justice system at all. Charges are argued even though patently in violation of the law. Judges take up cases involving minors that should be handled by juvenile courts. Sometimes judges are paid to falsify records so that minors appear as adults. Search and seizure forms also are invariably incomplete or wrongly recorded. Under the law, they must be filled out at the place searched and where the items are seized. In fact, police collect items at the site of an incident and bring them back to the police station where they complete the records. They use standard witnesses instead of those at the scene of the search as required by law. And in court, it is a requirement that a witness testimony be read out before he or she sign it; however, very often this requirement is dispensed with

and a witness simply told to sign after they have spoken and the written record is ready. This allows both the judge and the clerk to change the contents of the record to suit one party or another. These methods defeat the whole purpose of these records, as there is no longer any accurate picture of what has happened during the police, prosecution or court work. In the absence of any kind of reliable record keeping, anything else also is possible; confusion reigns, not as a matter of circumstances but as a matter of policy, and with it so too does systemic violence.

Endemic violence & torture

Anecdotally, the use of assault and torture in Burma is extremely common. The police resort to violence quickly and with an expectation that they will escape punishment, as in a case from Pegu, north of Rangoon, on which the AHRC issued an appeal in September 2010. According to the appeal, on the night of 11 August 2010, Maung Kyaw Thura and his brother were travelling by motorcycle when they saw five persons beating up four others at the front of divisional courthouse in Pegu town, north of Rangoon. The four had come from a bar and were urinating on the roadside when the group of five—four police and a civilian approached them and saying that they were police, began beating them.

As none of the police were in uniforms, Maung Kyaw Thura and brother also stopped to see what was happening. At that time the brother received a call on his mobile phone. One of the police, commander of Police Station No. 1 in Pegu, Inspector Kaung Zan, walked over and apparently thinking that Aung Win Htaik was taking a photo of the fight with the mobile, he grabbed the phone and threw it into the street. The police, whose breath smelled of alcohol, then started assaulting the two brothers with fists and sticks.

After the police beat up the six on the roadside, they took them back to the police station via trishaw. According to the victims, inside the barracks the police said that they would "teach [them] to know [their] place" and forced them to lie prone on the floor. Then the four police beat each of the men around 50 times with metal-buckled belts, kicked them and trampled on them. If the victims made any sound or tried to talk, they were beaten more and for longer. The police also broke a second mobile phone and took money.

A victim of police assault shows his injuries

After continuing like this for some time, the police separated the two brothers from the others in the group. Then they ordered the brothers to strip naked and continued to assault them. They also allegedly set fire to newspaper and the station commander himself used it to burn the men's genitalia. At about 3am, the police put the men inside the lockup. At about 9:30am the next morning, they returned only some of the money and a broken telephone and released the men. The brothers then went to get medical treatment at the town hospital, and have detailed medical records and photographs that attest to the alleged assault. At least one of the victims subsequently complained of the alleged assault to the home affairs minister after the incident; however, no action has so far seemingly been taken to investigate or prosecute the police officers involved, despite the medical evidence of assault and detailed depositions of the alleged police violence.

Not long after the above incident occurred, soldiers in Pegu also shot and killed two youths during an argument. The news was widely reported and on September 10 the state-run media announced that the shooting occurred during a "drunken brawl" in which the two victims were among a larger group who assaulted a security officer. The state media accused foreign media and others of misrepresenting the case. According to the government in a letter to the Special Rapporteur on human rights in Myanmar, the soldiers involved in the incident are being court-martialed (A/65/368, 15 September 2010, Annex paragraph 7). In any event, impunity for abuses of this sort is systemic in Burma, and the prospects of justice for most families are very slim indeed.

Torture is committed in various facilities in Burma, and although it is prevalent in a wide variety of cases, many of the cases where the accused suffer the most grievous forms of torture are cases of political or national security concern. In 2010, three cases of extreme torture that the AHRC worked on were the cases of Nyi Nyi Htun, Than Myint Aung and Phyo Wai Aung, as outlined briefly in turn below.

In the contents of a letter from May 2010 Nyi Nyi Htun had a letter of complaint submitted on his behalf to the Minister for Home Affairs, who is responsible for overseeing the police force. Nyi Nyi Htun, a 47-year-old editor of a news journal, explained that the police arrested him in October 2009 and accused him of involvement in a bombing plot. According to the complaint, thereafter the police tortured him continuously for six days at the Rangoon Divisional Police Headquarters in the following manner:

"From the day Nyi Nyi Htun was arrested and thus detained, 16 police including Inspector Aung Soe Naing interrogated him in pairs on rotation continuously for the six days… He was not fed throughout the 6 days and was given only two handfuls of water per day. Nyi Nyi Htun was hit in the face and on the cheeks with shoes; was kicked and stomped on the head while his hands were tied with rope at the rear; was forced to kneel

on gravel for 30 minutes at a time; had his fingers squeezed together with ball pens between them; had a truncheon pushed into his anus; and, was beaten with truncheons on his back, chest and feet, resulting in serious injuries to his body."

Nyi Nyi Htun

Notwithstanding the accused man's complaint of torture, on 13 October 2010, a court convicted Nyi Nyi Htun to a total of eight years in prison for allegedly having had contact with an outlawed group abroad.

Similarly, on 4 March 2010 police arrested Than Myint Aung in relation to a small explosion that caused no deaths or injuries in Sanchaung, and together with his mother took him to the Rangoon Divisional Police Headquarters. They later released Than Myint Aung's mother but accused him of crimes unrelated to the explosion. He was instead accused of having met with outlawed dissidents in Malaysia during 2007 and of having used the Internet illegally.

According to Than Myint Aung's depositions in court, on the way to the police station the officers tied a cloth over his face. At the station, they did not take off the cloth but started interrogating him by punching him repeatedly from different sides. Then one forced him to sit on the floor with his forehead also pressed on the floor while the officer stamped on his spine. After that they assaulted him with a rubber truncheon around his thighs, groin and back, and on his knuckles. They also put ball pens between his fingers and squeezed them together. That night they took him to search his in-laws' house but did not find anything to connect him to the alleged crime.

Than Myint Aung alleged in court that not only on the first day but for the next month of his illegal detention at the division police headquarters (he had not been brought before a judge or charged with any offence within 24 hours as required by the Criminal Procedure Code) he was kept awake at night by police beating him, and that for 15 days straight he was prevented from sleeping by being forced to stand or kneel continuously; if he sat down normally he was hit. He was also stripped naked and had rubber truncheons run up and down his shins. He was allegedly beaten on the soles of his feet and had hot water poured onto his genitals. He was not given food or water, other than being force-fed hot chili.

After a month of torture in custody at the divisional headquarters, Than Myint Aung was transferred to the Sanchaung township police, who noticing his condition took him to the general hospital. X-rays revealed that his skull had been fractured. After that he was sent to Insein Central Prison.

In court the police presented documents that Than Myint Aung was forced to sign while blank, during interrogation and torture. They presented no credible material evidence to support the allegations against him, and a police inspector acknowledged that they had obtained no evidence related to the explosion, but rather, during the course of the investigation had uncovered his connection with other crimes. The policeman also admitted that they had held the accused and interrogated him for almost a month, although he could not recall the exact amount of time.

Despite the detailed depositions that he gave during the trial about torture, the judge in the township court recorded only that he had testified that he had been tortured in order to confess to his offences. Under paragraph 605 of the Courts Manual, the judge had a responsibility not only to hear and record the allegations but also to inquire into them: this would include calling for staff from the hospital, and requesting the records showing Than Myint Aung's injuries, and for other evidence that might shed light on what happened to him; however, she completely ignored all these aspects of his testimony. The district court judge also ignored his allegations and sentenced him to 10 years in prison on 16 July 2010 under the Electronic Transactions Law, in addition to another five years that he had already received in a lower court.

Like Nyi Nyi Htun and Than Myint Aung, Phyo Wai Aung was accused of involvement in a bombing plot, in his case, a series of blasts on 15 April 2010 during a traditional carnival. According to a complaint made on behalf of this accused, a 31-year-old electrical engineer, after he was arrested at his house and taken to the Special Branch facility at Aungthapyay interrogation centre on 22 April 2010. He was unlawfully detained and tortured over approximately nine days, according to the complaint, in the following manner:

"Phyo Wai Aung was forced to stand throughout interrogation for two whole days and nights with his hands cuffed behind his back. He was forced to sit and hit and kicked in the head; stepped on on the crook of the knee and hit with a broom; boxed simultaneously on both ears; stripped naked and forced to kneel on gravel with arms raised; burned on his genitals with paper that had been set alight; had hot wax dripped onto his genitals; was blindfolded throughout various types of torture; was forced to sit down and stand up repeatedly for over an hour at a time; and was forced to stay seated in a chair for five days without sleeping."

Phyo Wai Aung

After Phyo Wai Aung could not tolerate the torture any longer he agreed to confess. The police let him sleep and gave him food for three days, then tutored him on how to

confess and threatened him that if he said something wrong "it will hurt". After that, they took him to the Hlaing Township Court where he confessed on 3 May 2010 and was then taken to the Insein Prison.

On 6 May 2010 before any charges were brought against Phyo Wai Aung, the chief of police, Brigadier General Khin Yi (an army officer), gave a press conference which was reported in the official New Light of Myanmar newspaper the next day under the headline "MPF apprehends one of the offenders" in which he set out the accused man's alleged role in the bomb plot as a matter of fact and described him as a terrorist.

Meanwhile, at the central prison Phyo Wai Aung was put in solitary confinement. His family could visit him for the first time since arrest on May 11, and because he told them that he was innocent and that he was at work, giving details of others who could be witnesses that he was nowhere near the bombing scene, the following day the police again came and interrogated him for another six days straight. The police also used the names of his two alibis and made them come and give advance testimony in court that he was not at work on the day. Although there are many other people who could testify that he was there, the police did not allowed any more witnesses on this matter.

According to further information, the police warned Phyo Wai Aung not to hire a lawyer, and although he got one, he was not able to meet and talk with him freely. Anything they discussed, the prison personnel or police took notes. The lawyer was not able to get access to many of the case file documents and a police officer even ridiculed Phyo Wai Aung during testimony in court, saying that he had no need for a lawyer and what is true or false God alone would know. Also during the trial, when the lawyer tried to cross-examine a witness the judge became angry and reportedly said that, "You can do as you like in other special courts but you cannot in my court. I won't allow you to ask." For this and other reasons, Phyo Wai Aung tried to ask for a change of judge, but when a lawyer and relative went to apply to transfer the court, none of the officials would agree to do it.

The use of torture in criminal inquiries of the sort described above is by no means unique to Burma, and is unfortunately all too common in other countries of Asia and many around the world. However, in Burma the particular problem that complainants face is not only that they have been tortured to confess but also that there are literally no legal and institutional measures to support their complaints or bring action against the alleged torturers. There is no law to prohibit torture or institutions capable of investigating or prosecuting it. On the contrary, the courts and other parts of the legal system encourage the use of torture in cases like this, because they consistently admit evidence and confessions obtained from investigations in which the police have used torture, and because when accused persons retract their confessions and allege torture in court, the judges reject their allegations on the spurious basis that the defendants have no proof.

The institutional encouragement of torture is manifest in the belief in complete impunity among the police officers and other personnel who commit abuses of the sort described above. In Phyo Wai Aung's case, an officer named Inspector Swe Lin allegedly told him that, "If you die it's nothing to us", while another, Police Major Tin Kun, said that, "Since all the accused have absconded abroad, we'll interrogate until you can't take it. We'll call your family and torture you in front of them." These expressions are indicative of thinking in a police force in which torture is endemic and the police are predominant, as in Burma, where their power greatly exceeds that of the judiciary.

The institutional encouragement is also manifest in the complete lack of avenues for complaint or redress in Burma. According to the complaint in the case of Nyi Nyi Htun, after he was transferred into police custody at Aungthapyay camp the officers there in fact recorded his injuries and had a medical examination done before transferring him to prison for trial. In other settings, that an objective record of the injuries sustained to the victim through torture exists would be sufficient grounds to warrant special inquires. The written records and photographs could be scrutinized, the doctor who conducted the medical examination called and other steps taken to ascertain--perhaps under public pressure--what happened. But in Burma the victim can have no such expectations. The second police unit having taken the record seemingly buries it along with everything else, while the victim proceeds to jail, to some kind of trial, and back to jail. The victim may wind up making any number of urgent requests to the highest authorities for action to be taken against the alleged torturers, to no avail.

The lack of legal or judicial avenues for complaint and inquiry into allegations of torture is acknowledged by the fact that complainants in Burma can do no more than submit complaints to the national leadership to request that action be taken against perpetrators. Where these complaints go, who reads them and whether or not any action is ever in fact taken nobody knows. This process of complaint making is feudalistic, in that it resembles the making of plaints to an ancient absolute monarch with discretion to decide whose complaints are acted upon and whose are simply ignored. It is the exact opposite of what the contemporary human rights movement represents and aspires to and indeed, in this respect emblematic of the state of human rights in Burma as a whole.

Despite these feudalistic conditions, the international community has played along with the charade that some sort of means do exist to protect human rights in the country, and shamefully, some agencies have even acted as conduits for government propaganda, claiming that, for instance, the police force in Burma is proactive in efforts to address trafficking or child prostitution. Whether in making such absurd statements these agencies are victims of the confusion that the regime has sought to engender, whether they are cynical and willing participants in its charade or whether they have perhaps bought into their own propaganda is largely beside the point: the fact remains that

through them not only is a dramatically false impression of what is actually going on inside the country being propagated, but the chances for more effective international intervention in the situation of human rights in Burma are being greatly diminished. The limitations and failings of the global human rights movement on Burma are the subject of the next, final section.

Human rights defenders and the limitations of the global human rights movement

In April 2010 the Asian Human Rights Commission wrote to the High Commissioner for Human Rights on the topic of "A human rights defender targeted by medical doctors". The AHRC explained that it had received a copy of a letter from Burma, which had also been copied to the High Commissioner. The letter was dated 23 March 2010 and was from Ma Sandar, and her husband, Zaw Min Htun. It was addressed to Senior General Than Shwe, chairman of the State Peace and Development Council of Burma; U Aung Toe, chief justice of the Supreme Court; and, the minister for health, with copies to other senior officials.

Ma Sandar is a human rights defender who was imprisoned from August 2008 to September 2009 because she made a complaint of corruption against authorities in Twante Township, Rangoon, where she and her husband reside. She was released on completing her sentence. Less than two months later, she was subjected, together with her husband, to new fabricated criminal charges. It is that case which was the subject of the letter. The contents of the letter were, briefly, as follows:

Ma Sandar and Zaw Min Htun

1. On 12 November 2009 as a result of a vehicle accident a young woman named Ma La Yeit Choe (alias Ma Thida Win) went to the Twante Township Hospital to obtain a medical certificate for an injury. At that time there was no doctor present. She waited for two hours before Dr. Daw Hsint Hsint Thi attended to her. The doctor said that she had to do an x-ray. But because there was no electricity supply, they would have to use a generator. The cost of using the generator would be 10,000 Kyat and for medicine, 6000 Kyat; in total about USD16. The doctor said that if the accident victim and family would not pay, they could seek treatment elsewhere, and thereafter allegedly rudely ejected them from the premises.

2. As the township hospital is a public service, the family was unhappy with how they were treated and went to lodge a complaint at the local police station, which was

recorded by Sub-inspector Hlaing Lin Htun, and in which they said that the doctor had failed to perform her duties. They went to the general hospital for treatment.

3. According to the doctor, when Ma Sandar and her husband went to see the accident victim at the hospital, they abused her and threatened her and her staff. Through the township health department head, Dr. U Kyu Khaing, she opened a criminal case against Ma Sandar and Zaw Min Htun (Penal Code, sections 353/506; obscenity and criminal intimidation, each punishable with up to two years' imprisonment).

4. Although the case is a minor one, it has since been investigated by high-ranked council officials, the Bureau of Special Investigation—which is supposed to be concerned with cases of corruption, not ordinary criminal inquiries—and the Criminal Investigation Department, which also is designated for serious crimes. Ma Sandar and her husband emphatically deny the charges. Despite a lack of prima facie evidence with which to open a case, Township Judge U Aye Ko Ko allowed the matter to go to trial. Regrettably but predictably, on 7 May 2010 both Ma Sandar and her husband were convicted and sentenced to one year and one-and-a-half years of imprisonment respectively. The AHRC has since set up a campaign page on their case, which points to a couple of serious difficulties for the global human rights movement in addressing the human rights situation in Burma, and in other countries with similar conditions, both in Asia and in other parts of the world.

The first serious difficulty is one of understanding. Often, cases concerning human rights defenders are treated as some sort of exceptional event, arising from dramatic moments like protest actions or high-profile political stands. But this case shows how the authorities in Burma can make something out of anything. Even the most trivial occurrence, an argument over treatment for a small injury at a hospital, is an excuse and an opportunity for them to get back at a perceived troublemaker.

This same method was also evident in 2010 in the case of 25-year-old Ma Hla Hla Win, who in September 2009 went to Pakokku in upper Burma, where she stayed with a local resident. Her host's brother Maung Myint Naing helped her to visit some places and people, whom she interviewed on video, reportedly to send later to the Democratic Voice of Burma radio and television service based in Norway. However close to midnight on September 10 a group of police and local officials entered the house and arrested her and Myint Naing.

Ma Hla Hla Win

The police originally charged the two of them and Myint Naing's sister with not having declared Hla Hla Win on the local visitors' register, which is officially required by law in Burma but is typically ignored in practice. The police were able keep the two in custody with that charge, and they then made another charge against the two, regarding the use of an unregistered and illegally imported motorcycle. Since Hla Hla Win was not the owner or driver of the motorbike and this second charge should not have been applied to her at all. However in October she and Myint Naing were both given seven years' imprisonment for that offence, and both they and Myint Naing's sister were given 15 days for the failure to register as a visitor. Thus, in the same manner as the case of Ma Sandar, Hla Hla Win and her associate were imprisoned for alleged crimes that were altogether unrelated to the actual reason for their incarceration.

The difficulty of understanding the methods that the state in Burma uses to deal with human rights defenders is also apparent when looking at the persons involved in the case of Ma Sandar. Usually when we think about cases where human rights defenders are targeted, the perpetrators who come to mind are soldiers, police, mafia figures or others acting on behalf of people like these. But in Burma where five decades of military dictatorship have completely poisoned institutions and social life, they are just as likely to be medical doctors or other professionals acting as proxies for government authorities. In fact, with the emergence of a new parliament under military control in the next year or so, this aspect of human rights abuse, and attacks on human rights defenders in Burma, is likely to become more pronounced, making understanding of the real actors and issues even more difficult for people outside the country than it already is.

The second difficulty is what to do. Of course, as much pressure as possible can be brought to bear on the authorities in Burma from outside. Experience has shown that concerted efforts from United Nations agencies, governments abroad, human rights groups, the media and others can have an effect in some instances, for which everyone is grateful. Indeed, in this case it was obviously the hope of Ma Sandar and her husband, in sending a copy of their letter to the High Commissioner, that she personally or the staff of her office would take up the case with the government of Burma: although by the end of the year any such interventions had not yielded results, as she was still being held, and was reportedly in ill-health.

But no matter the amount of pressure, the systemic obstacles to effective intervention into human rights cases in Burma remain, and will remain for the time being, irrespective of superficial political changes following the November 2010 elections. Among these obstacles, the single most pronounced is the absence of an independent judiciary, as discussed above. In the absence of an independent judiciary, it is then pointless to make statements calling for a trial to be fair or for an independent inquiry into some violation of rights, because no institutions exist for these things to happen. The sad fact is that

in the 21st century, conditions for victims of rights abuse in Burma are little different than they were three or four hundred years ago. The availability of computers and email notwithstanding, profound inequality between rulers and ruled underpins all relations and transactions between state and society. This same notion of inequality, and all its anti-human rights and anti-democratic implications, has been woven into the fabric of the 2008 Constitution and the measures being introduced for a proxy semi-civilian parliament.

On top of that sad fact is the added fact that the global human rights movement has been unable to do anything much about it. Burma is an example, together with Sri Lanka, Cambodia, and some other countries in the Asian region, of how a country that is a relatively small player in global affairs is able to make it difficult, even nigh impossible, for the global human rights community to contribute to meaningful change of any sort in its domestic conditions. This fact is now increasingly recognized by people in Myanmar themselves, who up to 2007 had still held strong hopes that a combination of domestic activism and international intervention could bring about change, but who saw with the failed nationwide monk-led uprising of that year and during the massive cyclone that hit them in the next that the United Nations and its apparatus was unable to have any discernible lasting influence on their lives or the future direction of their country.

Where does that leave the global human rights movement? What further role can United Nations human rights agencies play? There are no easy answers to these questions, but clearly there is also a tremendous amount of room for more in-depth studies of developments in Burma over time, approaching the notion of state control there in terms of the basic principle of government by confusion, rather than in terms of generic normative frames—like abstracted concepts of the rule of law and human rights as found in western academic debate—that are completely unrelated to the true situation in the country, and where there are practically no points on which such concepts can be anchored, at least not without extensive study and careful consideration of the real conditions. Failure to undertake such studies and approach the situation there in terms of what is actually going on rather than what ought to be will only result in more commentators and analysts expressing perplexity from afar at events and behaviour that do not correspond with their birds' eye views of government and statecraft. Undertaking such studies and starting with the lessons learned through work on the country—including that government by confusion is deliberate, not coincidental, and therefore for people to be perplexed is precisely the point—may not lead to any easily identified and obtained answers of the sort that think tanks and international agencies need for lists of recommendations, but may lead to a better understanding of what is going on in Burma and why, through which some starting points for further work can be found, and without which any work on human rights and the rule of law will be pointless.

CAMBODIA

Abysmal lawlessness and the powerlessness of the citizens

The first election in post Pol Pot Cambodia was held in May 1993. The new constitution promised a liberal democracy and a system of governance based on the rule of law. However, the country is still in a state of abysmal lawlessness and ordinary Cambodians are powerless. There are no institutions in the country, which can offer them any kind of protection. The Cambodian police is in a rudimentary stage of development, is known to be corrupt and completely under the political control of the regime and those who are rich and powerful. Cambodian courts are also known to be corrupt and are used as instruments of political control by way of jailing opposition politicians; people resisting land grabbing; those who express independent opinions and civil society activists who express solidarity with victims of abuse of power. There are no institutions that people can turn to make any complaints or to turn to any kind of help when faced with injustice. And the injustices that the people face are many.

The major complaint everywhere is that of "Land Grabbing". Having a title to a plot of land is normally the ultimate guarantee of some security in this poor country. However, having a title to land is of little use when the same land can be allotted to some company by a government authority, who does not even inform the original title holder when such allocations are made. It is only when the company begins the operation to redevelop the land that the original owners get to know that the land they rightfully own has been given away.

Naturally they protest and at that stage security forces enter the scene and harassment is the result. As the people literally have nowhere to go, they fight back. Then they are brought to courts on all kinds of charges and many are detained. There are thousands of reports of such happenings from around the country. **In Phnom Penh, 133,000 people, which is more than 10% of its population, are believed to have been evicted since 1990**.

The result of such land evictions is that those who are displaced are excluded from any benefits, and lose their source of income; they are exposed to poor health and the young people go uneducated. In a country, with so little opportunities, eviction from

land implies a transformation, which ends in destitution. For many people any hope for stability and a future is lost. Naturally women, young people and the elderly suffer the most. Consequently, prostitution and other related problems are increasing in today's Cambodia. "The Cambodian courts continue to act on behalf of rich and powerful interests, ignoring the evidence, the Land Law and other relevant legislation, enforcing eviction where ownership remains undecided and imprisoning those who dare to protest", states a report from the well known Cambodian League for the Promotion and Defense of Human Rights (LICAHDO). Many other organizations and most people within the civil society confirm this view. Cambodian courts are not able to protect land titles. Their function is not the protection of the individual but the interests of those who are in power. The idea of the balancing of interests is an alien concept in Cambodia. The role of the authorities is to protect the state, not the people.[1]

Torture

The people of Cambodia continue to face serious problems relating to guaranteed rights against torture. As far as legislation is concerned, Cambodia has been a party to all UN conventions relating to civil rights and rights against torture. Recently, it also ratified the optional protocol relating to prevention of torture, cruel, inhuman, degrading treatment and punishment. However, it is common knowledge in Cambodia that while all these documents are being signed, there are taken no action whatsoever to implement them and they continue to have little practical value for the people.

Cambodia's judiciary and rule of law system are wholly inadequate to deal with this problem. In the recent visit of the UN Special Rapporteur on the situation of human rights in Cambodia, Professor Surya Prasad Subedi, highlighted the inadequacies of the judicial system in Cambodia. Unfortunately, the only response he drew from the country's prime minister was, "Don't tell me it is raining when I am standing in the rain." His comments were interpreted by the media to mean, 'Don't state the obvious.' Clearly, the government shares the view that the country's rule of law and judicial system are inadequate. However, there are no plans of any sort of the improvement of these systems.

As far as torture is concerned, Cambodia still does not have a proper definition of torture incorporated into its domestic legislation. The penal code recognizes torture as a crime, but it has not incorporated a clear definition of torture into its legal framework. It has been the recommendation of UN's Committee against Torture (CAT) as well as local and international human rights organizations that the government should bring about legislation which incorporates a clear definition of torture. Without clear definitions,

1 An AHRC Statement- http://www.humanrights.asia/news/ahrc-news/AHRC-STM-206-2010/.

it is not possible for courts to properly implement the constitutional and penal code provisions relating to torture in Cambodia.

The problem of torture in Cambodia is similar to those in neighboring countries and is rooted in Cambodia's policing system, which is seriously lagging in every way. Criminal investigations still use old methods and there has been no attempt to modernize the policing system of Cambodia. There have been no investments in the improvement of this system. The training of the police as well as the facilities available to the police are entirely inadequate for dealing with criminal investigations in a rational manner. The under-development of the policing system results in the constant use of coercion on people who are arrested by the police.

A characteristic of well-developed policing systems is to have a comprehensive system for receiving complaints against the police and dealing with such complaints in a satisfactory manner. In Cambodia, such a system of public complaints does not exist; it has not developed any internal controls to deal with complaints made against the policing institution. As such, the people have no avenues to make complaints.

The only limited avenue available involves making such complaints to the courts. However, when the alleged victims of torture make complaints, courts inquire from the victims as to whether they want to make a complaint against the police. At this stage, according to lawyers, the general reply of victims is that they do not wish to make any formal complaint. This is due to the fear of serious reprisals following the complaints. The complete absence of any kind of protection for those making complaints prevents people from dare even trying. Bitter experiences of the cruel systems that Cambodia has faced in its recent past act as a psychological and emotional barrier for making complaints. While Cambodia is committed to breaking away from its past, and the constitution itself recognizes this commitment, no measures have been taken to ensure protection for torture victims so that they can make complaints without fear of reprisals.

The deficient facilities of police stations and prisons mean that properly securing detainees is difficult, which further engenders torture. In police stations, there are no proper lockups and prisons are overcrowded, and as a result, people are often shackled to chairs by their legs or arms. Sometimes detainees are shackled for several months; a practice that is commonly discussed in Cambodia. This practice has evolved in order to prevent people from escaping. It is also common knowledge that people who make attempts to escape are punished severely. The development of adequate safeguards for arrested people is a primary need for the protection of victims and prevention of torture at police stations and detention centers.

Forensic pathology has not yet been introduced to Cambodia. Victims of torture are not being examined by doctors and consequently no medical reports of torture are being produced to serve as proof for the victims. The government of Cambodia and the UN agencies operating in Cambodia should collaborate to introduce medical and forensic facilities. Foreign donors should promote education of forensic pathologists. This would be a great contribution to the prevention of torture as well as an improvement of criminal investigations.

The Cambodian government has not acknowledged its duty for the compensation of victims of human rights abuses, including victims of torture. There are no possibilities for victims to bring about suits so as to receive compensation for torture or other cruel and inhuman treatments. Providing legal redress for torture remains a requirement that needs to be developed.

There are no facilities for psychological assistance, such as trauma counseling for torture victims. Some human rights organizations are attempting to provide such help by their own initiatives. However, due to inadequate support from the state and funding agencies, a system of providing psychological rehabilitation for victims has not yet been developed.

Other inadequacies in the legal system for proper investigations into abuses, such as sexual harassment of women and children, are also serious flaws in the Cambodian legal system. In the absence of proper complaint and investigation mechanisms, many crimes are committed in this area and go unaddressed. Thus, from the point of view of guaranteeing the rights of women and children, the government's compliance with the convention against torture, cruel and inhuman treatment remains a necessity.[2]

Recommendations for Prevention of Torture[3]

(1) Prepare and enact specific anti-torture legislation which incorporates into

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2 Reproduced from a statement of AHRC for the commemoration of torture day in 2010

3 This section is re-produced from Joint Cambodian NGO Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Kingdom of Cambodia presented to the UN Committee Against Torture (CAT) prior to Cambodia's second periodic report at the 45th session of CAT, held in Geneva from 1 to 19 November 2010. Jointly prepared by Cambodian Human Rights and Development Association (ADHOC), Cambodian Defenders Projects (CDP),Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Transcultural Psychosocial Organization (TPO), Cambodian Human Rights Action Committee (CHRAC), and endorsed by Asian Human Rights Commission (AHRC); Cambodian Center for Human Rights (CCHR); Coordination of Action Research on AIDS and Mobility (CARAM Cambodia); Community Legal Education Center (CLEC); Cambodian Women in Crisis Center (CWCC); Khmer Institute of Democracy (KID); Khmer Youth Association (KYA); Legal Aid of Cambodia (LAC); People's Center for Development and Peace (PDP); Protection of Juvenile Justice (PJJ); Human Rights Vigilance of Cambodia (VIGILANCE), referred here after as CAT Report.

domestic law the definition of torture set out in Article 1 of the Convention and characterizes in detail acts of torture as a specific crime, punishable by appropriate sanctions;

(2) Take effective measures to establish and ensure a fully independent and professional judiciary in conformity with international standards. Such measures include to immediately expediting the adoption of three fundamental laws: the Organic Law on the Organization and Functioning of the Courts; the Law on the Amendment of the Law on the Supreme Council of Magistracy; and the Law on the Statute of Judges and Prosecutors;

(3) Provide for an adequate and effective legal aid scheme, which provides sufficient resources and independent capacities in order to guarantee access to justice for all the people of Cambodia, particularly for poor and vulnerable populations, and enables any person deprived of his or her liberty the right to be assisted by a lawyer;

(4) Establish a separate juvenile justice system by adopting expeditiously the draft Law on Juvenile Justice and develop corresponding guidelines and directives for judges, prosecutors and judicial police on the concept of a child-friendly justice system;

(5) Amend the Criminal Procedure Code as to guarantee detainees the right to communicate with a lawyer, relative, friend or other person at any time while in police custody, and to have a legal representative present during police questioning;

(6) Immediately close all unlawful detention centers, in particular the so called Social Affairs Centers. These centers exist solely to lock up, without due process, members of society deemed 'undesirable' by the authorities. The existence of these centers has no basis in national or international law;

(7) Immediately stop the practice of shackling persons in police custody and other detention;

(8) Increase without delay the use of non-custodial pretrial measures, for instance supervised release prior to trial, in order to reduce excessive pretrial detention, and comprehensively apply and further develop existing legal provisions on bail;

(9) Take all the necessary measures to reduce and prevent the use of torture and other ill-treatment in police custody, including increased monitoring by prosecutors and independent organizations, and training of law enforcement officials, judges and lawyers in human rights law, and in particular the provisions of the Convention;

(10) Take measures to improve conditions of detention in police stations and prisons, including hygiene, food supply and separate detention of men, women and juveniles;

(11) Immediately disband the so called "prisoner self-management committees," which function as a way for prison officials to outsource critical job functions and disguise state sanctioned torture;

(12) Establish an independent civilian oversight body competent to directly receive and deal with complaints against the police and other law enforcement personnel in a satisfactory manner;

(13) Ensure that law enforcement personnel and other officials of the state accused of torture and other ill-treatment are promptly, impartially and fully investigated and, where appropriate, prosecuted according to the law;
(14) Establish domestic capacities in forensic pathology and other specialized medial facilities allowing for a professional examination of victims of torture and other ill-treatment, if necessary by calling for international cooperation;
(15) Establish an effective state program of victims and witness protection at the courts which assists in ensuring confidentiality and protects those who come forward to report or complain about acts of torture;
(16) Prohibit the use of confessions as admissible evidence in court unless the confessions were made in the presence of a judge or a lawyer, and train law enforcement, judges and lawyers in how to identify and investigate false or forced confessions;
(17) Improve access to medical and psychological services for torture survivors, especially during and after imprisonment, and assure that they receive effective and prompt rehabilitation services;
(18) Increase the capacity of national health agencies in providing specialized rehabilitation services, based on recommended international standards, to survivors of torture, including their family members, specifically in the field of mental health;
(19) Ensure that any national preventative mechanism established in accordance with the Optional Protocol to the Convention against Torture is independent and impartial and also capable of receiving individual complaints about torture and other prohibited ill-treatment, which it can then convey to the competent authorities for follow-up action.

Problems concerning prison conditions

Pre-Trial Detention[4]

The limits on pretrial detention are set forth in Articles 208-14 of the Code of Criminal Procedure. These relatively new provisions provide much longer time limits compared to the previous law. However, excessive pretrial detention continues to be a serious problem in Cambodia. In addition to the reasons for unwarranted prolongation of pre-trial detention stated in the Government's report, lack of proper case management is a major problem. Neither prison management nor court staff follows up on the actual length of pretrial detention. Sometimes suspects who have no legal representation are simply forgotten. In Phnom Penh, this situation is somewhat alleviated through higher level of knowledge on the law among law enforcement officials.

4 This section is reproduced from CAT Report

Excessive pretrial detention has been documented in the following circumstances:

(a) Detention orders are not extended when they have expired. Under Articles 208-14, provisional detention orders must be reviewed periodically by the court and formally extended. For example, an adult felony may be provisionally detained for six months; the detention order may be extended twice, each time for an additional six months. However, such extensions are often presumed by prosecutors, courts and prison officials, and detainees are not given the opportunity to contest the extension. Alternatively, extensions may be made without a proper statement of reasons and/or made for convenience purposes only. The charged persons may not be informed and asked about their observations, depriving them of the opportunity for them to ask the judge for their provisional release.

(b) Persons are detained longer than the maximum time limits for pretrial detention (adults: four months plus a two-month extension for misdemeanors; six months, plus two six-month extensions for felonies; juveniles: 2 to 4 months, depending on age, for misdemeanors; four to six months, depending on age, for felonies). Caseloads at some courts are considerable, and some detainees remain imprisoned for two years or more before trial.

(c) Individuals are kept in pretrial detention longer than the maximum prison term for the charged offense. This problem arises from inadequate recordkeeping and communication between prisons and the courts, and can be exacerbated by corrupt officials who demand payment before processing an inmate's release.

(d) Juvenile prisoners charged with misdemeanors are held in pretrial detention for more than half of the minimum sentence set by the law for the offense. Under Article 214, this is illegal.

(e) Upon the closing order terminating the investigation period, the trial does not start within the prescribed four months upon which the charged person is supposed to be released automatically, and yet the person is maintained in prison. Under Article 249, the trial must begin within four months of the closing of the investigation period.

(f) Even if the trial starts within four months, the court can issue interlocutory orders authorizing further investigation, circumventing the four-month requirement contained in Article 249. This often extends the investigation period beyond the maximum time limit.

(g) In some provinces, prosecutors and courts erroneously interpret Article 249 of the Code of Criminal Procedure to authorize an additional four months of pretrial detention, in addition to the limits set forth in Articles 208-14. Thus, an adult charged with a felony can be kept in pretrial detention for 22 months (six + six + six + four) instead of the 18 months clearly prescribed in Article 208. Articles 208-14 provide for *absolute limits* to the total term of "provisional detention." Article 249 concerns an entirely different subject: the time limit on provisional detention after a judicial investigation is closed.

Ordinarily, the completion of an investigation automatically terminates provisional detention. Article 249 allows the judge to extend detention for four months following the completion of an investigation. It does not add an additional four months to the absolute limits in Articles 208-14. We note that the government's submission to the Committee does not argue that Article 249 provides for an additional four months of pretrial detention. Thus, we hope that the government can ensure that this view of the law is uniformly enforced throughout the country.

LICADHO's monitoring of 19 prisons with an average pretrial population of 3,900 has identified an average of 102 cases of excessive detention per month for the first six months of 2010. In 2009, the average was 80 excessive detention cases per month, with an average pretrial population of 3,670. In addition, trial monitoring of the Cambodian Center for Human Rights (CCHR) revealed that in 176 of the 199 trial monitored during the latest reporting period (Aug – Dec 2009) the accused was detained in pre-trial detention – a rate of 88 percent across the trial monitored. This is notwithstanding the presumption of liberty and against pre-trial detention in Article 203 of the Code of Criminal Procedure (CCP). Of particular relevance is the trial monitoring report's finding that eight out of 199 cases monitored, the duration of detention exceeded the maximum legal limits for provisional detention prescribed in Article 208 and 209 of the CCP. In two cases the accused, who had been charged with felonies, were provisionally detained for over three years.23

Excessive detention is also a problem for convicted prisoners who are imprisoned beyond their release date. This problem can be caused by official corruption, for instance prison officials demanding payment for processing release papers. Prisoners may also be excessively detained when the prosecution appeals a lower court decision. A prosecution appeal almost always triggers the continued detention of the defendant – even if the lower court found the individual not guilty. Appeal courts are woefully overburdened, and scheduling a hearing can take years. Thus, defendants can be imprisoned beyond the maximum possible sentence for the charged crime, *even if they are ultimately found not guilty*.

The problem of chronic excessive detention is closely linked to Cambodia's grown reliance on prison as the default punishment for any transgression. The country has made minimal use of non-custodial alternatives, including bail, community service and suspended sentences. As a result, the judicial system is severely overburdened and the country has seen an unprecedented explosion in the prison population.

Overcrowding

Overcrowding is among the most serious problems facing Cambodia's prison system (see graph). Cambodia's prisons are already starved for resources, and overcrowding has

strained an already broken system to the point of crisis. Cambodia's prison system was operating at approximately 100 percent of capacity in 2004. Taking into account the data of the General Department of Prisons (GDP, see also para. 60) of June 2010, it is now at 173 percent capacity, with an average growth rate of 14 percent. Putting this data into context and comparing it with the information gathered by the International Center for Prison Studies, Cambodia's prison system would now rank among the 25 most crowded in the world. If current growth trends hold, the system could become the world's most crowded by 2018.24

Thus far, the Government's sole response to the overcrowding crisis has been to construct additional prisons and expand existing ones. The GDP's latest attempt to ease overcrowding is the construction of Correctional Center 4 (CC4). This new prison in Pursat Province, opened in January 2010, is designed to eventually house 2,500 inmates. The inmates will engage in forced labor, and there is concern that the labor will be performed for the private rubber industry.

While Cambodia is certainly in need of upgraded detention facilities, building new prisons alone cannot eliminate the problem of overcrowding. Even if the inmate population slows to a growth rate of 10 percent per year and Cambodia builds a new CC4 sized prison every year, this will still never catch up with the total inmate population. Taking a more conservative view – the addition of 400 new beds per year for nine years, together with a population growth rate of 5 percent over that time – Cambodia's prison system would still be at 165 percent of capacity in 2019.

Overcrowding is largely the result Cambodia's over-reliance on prisons as the predominant response to crime. Currently, Cambodia's criminal justice system is focused almost entirely on incarceration, both of convicted criminals and defendants awaiting trial. The default punishment for nearly any crime is imprisonment – even for minor offences, and often for an extended time period. Likewise, release pending trial is rare for criminal defendants who typically end up in pretrial detention.

Sentences of imprisonment routinely lack proportionality to the seriousness of the crime. In a recent case, a man was sentenced to 18 months imprisonment and a $50,000 fine for possession of drugs and possession of US$500 in counterfeit currency. The fine was imposed specifically for the counterfeiting offense. The man could not pay the fine, and as a result was forced to spend an additional two years in prison.

In another case, a 16-year-old boy in Preah Sihanouk Province was imprisoned for breaking a window. According to a source, the boy was addicted to drugs, argued with his family over money, and broke the window in anger. The family, at a loss to deal with his drug problem, reported him to police. He was convicted of property damage and sentenced to six months imprisonment.

Overcrowding contributing to the use of torture

Overcrowding impacts prison security and increases the chance that inmates will be tortured. Current inmates rarely report specific incidents of torture to NGOs or other monitors due to the fear of retribution by prison officials or other prisoners. NGO interviews with inmates are not always confidential.

Despite limited reports, it remains clear that torture and other forms of ill-treatment are still commonly used as form of punishment for certain transgressions, including escape, attempted escape and fighting. The most common techniques include shackling, beating, prolonged placement in isolation, and round-the-clock confinement to a cell for periods exceeding one month.

In early 2010, 15 prisoners at the Kampong Thom provincial prison were shackled to each other after they attempted to escape. Kampong Thom prison is Cambodia's most overcrowded prison, housing 220 prisoners in a space meant for 50. The prisoners were bound together with metal leg cuffs attached to iron bars; one bar held eight prisoners and the other held seven. The shackling lasted 24 hours a day for over one month. The inmates remained shackled while they slept, ate, and relieved themselves. The shackling persisted despite numerous local and high-level intervention attempts from local NGOs and the United Nations Office of the High Commissioner for Human Rights. Prison officials claimed that the shackling was necessary for security reasons, as they had no space to securely house inmates who posed an escape risk. The shackling finally ceased when the inmates were transferred to different prisons.

On 26 September 2008, Heng Touch, aged 24, of Roluos village, Cheung Ek commune, Dangkor district, was arrested and charged of robbery to be sent on 1 October 2008 to custody at Prey Sar prison (M-1) on the outskirts of Phnom Penh. In mid November, Heng fell mildly ill in the prison. When his mother and older brother visited him, the guards suggested that he be moved to another room, but asked USD$200 to effect this transfer. When the mother and brother only offered USD$50, the guards refused. After being told Heng's condition had deteriorated to a serious state, Heng's mother visited him at the prison and reported that his head was swollen, face, body and legs significantly bruised and tongue cut. His mother paid the guards USD$30 to transfer Heng to Monivong Hospital where he later told her that he was severely beaten by five men. Medical scans indicated that he had a suffered a fractured skull and had damaged lungs. His condition continued to worsen until he lost consciousness permanently. It has been alleged (and later denied by the prison director) that Heng was tortured by guards after they failed to solicit a bribe. Heng died on 21 November 2008 at Calmette Hospital.

Prison discipline is increasingly "outsourced" to other inmates who make up so-called "prisoner self-management committees." These committees are made up of senior

prisoners who receive privileges in exchange for keeping other inmates in line. They report directly to prison officials, who may give orders regarding the operation of the prison. These orders may range from distribution of sleeping space in a cell to an order to beat certain inmates. The use of prisoner self-management committees is disturbing, as the practice places an additional layer between torture victims and state actors, making it more difficult to identify mistreatment as state-sponsored torture. This appears to be a conscious effort on the part of the law enforcement officials to disguise their involvement in serious, systematic and institutionalized violations of the Convention. The practice also indicates a deterioration of professionalism in a prison system that already suffers from a dire lack of qualified personnel. Prison guards are growing increasingly reliant on inmates in the execution of their jobs.

In February 2010, two released inmates reported that the prisoner self management committee regularly meted out "initiation beatings" for newly-arrived inmates at CC1 and Kampong Cham prisons. The inmates received such beatings themselves, and stated that the only exceptions were reserved for certain prisoners the guards designated off limits.

In December 2009, a female inmate working in a prison garment factory felt ill one morning during work. The factory area was excessively hot, and she had finished her work, so she went to the doorway to get some fresh air. A female guard responded by cursing her and telling her to get back to her place. The inmate explained that she felt sick, and the guard responded by attacking her. The inmate reported that the guard pulled her down by her hair and beat her about the head with her shoe. A male guard joined the beating, using his belt to strike the inmate three times. Following the attack, the prisoner was ordered to write a letter of apology to the female guard involved. In addition, the inmate was forced during recreation time to exit her cell on her knees, and remain kneeling in the prison compound – in the sun – for the duration of the period of her cell. This continued for 20 days. Following the 20 day period, the prisoner was further disciplined with a total denial of recreation time for an indefinite period. The inmate also lost her job.

The lack of proper food supplies

As mentioned in the Government report, the daily food allowance was increased in 2009 from 1,500 riel per day to 2,800 riel per day. This was an important step in providing for the minimum needs of prisoners. However, prisoners report that the overall quality and quantity of food remains poor. Inmates still require supplementary food supplies – or money to purchase such food – to assure proper nutrition. Protein, such as fish or meat, is rare, and distribution of food is not always conducted in an egalitarian manner. In addition, some prisoners have complained that prison officers eat food intended for inmates. The lack of adequate food supplies can cause malnutrition and diseases such as beriberi.

Hygiene conditions

Due to overcrowding and understaffing, inmates are not given adequate time out of their cells for recreation. As a result, recreation time has become commoditized, with inmates paying for the privilege. Prison officers are also known to charge prisoners for access to rehabilitation programs, medicine, water, and visiting privileges.

Many new prisons were constructed with minimal regard to proper construction and security standards, resulting in hygiene problems. Some facilities are built as part of so-called "land swaps," where a company is given valuable land – typically a central parcel where the former prison was located – in exchange for constructing a new prisons. These companies then use unskilled, and unpaid, inmate labor for much of the work. Key elements of the job are routinely left unfinished, including electricity hookups, water facilities, auxiliary buildings (including medical clinics), and even inmate housing. Within a few years, infrastructure is crumbling and needs upgrading. At the provincial prison in Koh Kong, the sewers are so overburdened that they routinely overflow into inmate living areas. The prison was built by a private firm in 2006.

Water quantity and quality is a recurring problem at many Cambodian prisons, with several lacking adequate wells, pumps, or hookups to city water. Overcrowding in Cambodia's prisons greatly contributes to the spread of communicable diseases such as Tuberculosis, Scabies and upper respiratory infections.

Current statistics, as of June 2010, according to the General Department of Prisons (GDP) are as follow:

Total prisoners: 13,944 (4,443 pretrial [32%], 9,501 sentenced [68%])
Convicts: Male = 8,169 Female = 410
Pretrial Detainees: Male = 3,762 Female = 241
Foreigners: Male convicts = 296 Female convicts = 90
Male pretrial = 151 Female pretrial = 50
Minors: Male convicts = 521 Female convicts = 15
Male pretrial = 189 Female pretrial = 50

Cambodia's legal system

Cambodia still remains an authoritarian state despite of it having a constitution based on liberal democracy and holding periodic elections. Liberal democracy was never a reality due to the nature of the Cambodian judicial system. The Cambodian "judicial system", which was created with the advise of Vietnamese experts during 1980-90 period remain in tact, despite numerous trainings of judges on liberal democratic principles. The over

all system does not allow practice of such principles, the judiciary is expected to be under the complete control of the executive.

The actual model of administration of the country is not based on the constitution introduced in 1993, but it based on a model of administration created during the earlier administration 1980-1993, in which the executive had the complete control over the system. The executive exercised his control through the party. The system of administration controlled by the executive and assisted by the ruling party is what still exists today, as the real political stem of Cambodia. The constitution is only a decorative façade.

The thought control of the "judicial system" is essential to the very survival of the actual political system in operation. All political activity is controlled through "the judicial system." All opposition party members who deviate from the unwritten rules of the system are punished through the court system. The development of opposition parties is thus controlled by the sanctions that are being imposed through the courts.

Therefore possibility of a fair trial does not exist within the system. Outcomes of trials are predetermined. Any judge that may try to deviate from this limitation on the power of courts will suffer the consequences. The "Judiciary" quite well understands this situation and therefore deviations have been few and far between them. Besides, deviators have paid for their transgressions.

Limitations imposed on the Supreme Council of Magistracy and Constitutional Council are not accidents but are of a political nature. These institutions are expected to be of subservient nature of the executive. The reforms of such institutions are not possible as long as the existing model of political administration remains in operation.

Most Western "reformers" have refused to acknowledge the actual nature of the political administration and often try to make the constitution work. Naturally, nothing comes out of such efforts except frustration.

Enactment of new laws do not make much of a difference to this system neither. Law is not an important ingredient of administration. The administration has its own operational rules. Misuse of the New Criminal Code for the purpose of imprisonment of the opponents of the government is warning for wanted attempts to reforms of the system by such means.

What is required for any reform is the understanding of the actual system, as it exists today and the weakness of that system. An international debate on the system based on an actual understanding of it, is more likely to produce results facing real challenges to

the rule of law and democracy, than ad hoc activities introducing new laws and different kind of training.

The Cambodian people, who suffer under the system of tyranny, do understand its nature and the limitations. One can hope that they will become capable of articulating their tribulations and finding ways to overcome them.

Impunity

Impunity remains a major challenge to the rule of law in Cambodia. Cases that involve police, military and prison officials among others rarely make it to court and prosecutions are exceptional. The police often refuse to take the complainants' statements in the first place and complainants are harassed, threatened or bribed to withdraw them. Evidence is withhold or destroyed by authorities and if investigations do take place, they are often arbitrarily conducted and in the favour of the officials. Countless cases of murder, torture or rape go unsolved while evidence is clearly established. The impunity the perpetrators enjoy has a tremendous impact on all aspects of a system claiming to be based on the rule of law.

While all state institutions are afflicted with the lack of separation of powers, most of them are accessible and can be influenced with political or economical power. The government control almost all features of the judicial system and both the government and the Ministry of Justice infringe upon the work of the Constitutional Council and the Supreme Council of the Magistracy, which are supposed to be independent monitoring bodies.

Due to the absence of the law on the statute of judges and prosecutors, the government has exercised its control in the appointment of judges and members of the Supreme Council of the Magistracy, which should be appointed by the Council itself. No age of retirement of judges and prosecutors has been fixed, which have led to cases of favouritism. Corruption is widespread within the judiciary and it is believed that judges and prosecutors bribe their way to their position or to remain in them.[5]

In June 21, 2009, the government retired and replaced four out of eight members of the Supreme Council submitting them to the King. On August 4, 2010 the Minister of Justice proposed the appointments of over 32 judges and prosecutors. In both examples the Supreme Council has been almost completely ignored.

5 Human Rights in Cambodia: The Charade of Justice, a LICADHO Report, December 2007

Since the members of the Supreme Council are partly appointed by the government, there are strong reasons to mistrust their authority. A part of the members of the Constitutional Council are appointed by the Supreme Council, hence, the same might apply to them. It illustrates how all parts of a system designed to hold impartial bodies, which are expected to exercise control on each other, are affected when corruption and power abuse are canalized out crushing the fundamental structure.

The result is a civil society, who has lost trust in and respect for the legal as well as the political system. It implements a fear for using these system among common people as they regard the courts as instruments used by powerful people to remain in power. It encourages crimes among officials and put the use of bribery into common practice to escape punishment or to make political or private enemies scapegoats in cases of their involvement.

Political scapegoats – The case of Born Samnang and Sok Sam Oeun

The use of political scapegoats is common practice in Cambodia. A primer example is the case of Born Samnang and Sok Sam Oeun, who were sentenced to 20 years imprisonment in August 2005 by the Phnom Pehn Municipal Court in on the charges of murdering Chea Vichea, a renowned labour rights activist attached to the Sam Rainsy Party, in January 2004.

A confession from Born Samnang formed the principal evidence, but Samnang retracted the confession as early as the second interrogation claiming that he had been beaten and threaten by the police to confess. Multiply eyewitnesses confirmed that Samnang had been in a different province at the time of the murder. The only evidence against Sok Sam Oeun existed in Samnang's retracted confession.

The investigating judge, Hing Thirith ordered further investigation into the case as well as that the charges against them were dismissed because of lack of evidence. The day after Thirith was removed from his post at the Phnom Penh court due to unspecified judicial mistakes and transferred to a different province, and the charges were reinstated by Thou Mony.

In 2006 even Heng Pov, the former Phnom Penh police commissioner in charge of their arrests and detention, admitted that the suspects had nothing to with the murder. He himself was in 2007 convicted of several crimes committed while he was chief of the Phnom Penh police.

With a 20 months delay the appeal hearing was finally held in April 2007, but the verdict was uphold in what has been labeled as a politically motivated show trial. Despite the presence of several international observers, the case has been highly criticized by the international community as well as local NGO's as violating the legal procedures and human rights standards. The lack of evidence was obvious, the witnesses were treated aggressively, the allegations of torture and threats of the accused during detention were not covered and the judges paid in general little attention during the proceeding.

After enormous domestic and international pressure, the Supreme Court presented a retrial on 31 December, 2008, where Samnang and Oeun were released on provisional bail and ordered the Appeal Court to re-investigate their case.

While the release has been welcomed in Cambodia as well as in the international community, the case still stands as an ugly illustration of how the legal system has become utterly dysfunctional and politicized in Cambodia today.

No legal steps have yet been taken to investigate the murder of Chea Vichea or to compensate Samnang and Ouen for their almost 5 years' wrongful imprisonment. Countless other cases of state officials and their relatives enjoying impunity have been listed by LICADHO in their report covering all from torture cases, illegal smuggling, rape and land-disputes.

Freedom of expression and free assembly

While the media in theory enjoys a relatively large amount of freedom and journalists seldom have their freedom of expression directly violated, there is a tremendous pressure of self-censorship within the media industry and a remarkable increase in the use of defamation charges by the government. In practice most journalists restrict their reports to objective or government friendly issues and rarely criticize or investigate cases related to misconduct or excesses of the government.

Most media houses are more or less controlled by the government or are to a high extent dependent of their favour to uphold the existence of the paper and their position. As in any other industry in the country it is corruption and nepotism, which keep the majority of newspapers, magazines and TV-channels going. The later almost being a CPP monopoly. Exceptions are the few radio programs run by NGO's and the foreign language newspapers in Phnom Penh, which operate fairly freely. However the later only reach a small part of the Cambodian elite and expatriates.

The rights to free assembly and association have faced considerably decline since the Law on Demonstrations were imposed in 1991. It is difficult to grant permission

for a demonstration especially if it is regarded critical of the government and most demonstrations are therefore turned down because of unspecified security concerns. The demonstrations being hold are often facing police crackdown despite the demonstrations carried out according to the law and within peaceful circumstances.

Criminal defamation and libel laws with penal consequences are being freely used by the government to silence critical voices among politicians, human rights defenders and reporters. As a result extreme cautiousness and self-censorship have a strong hold in most journalists. If a media worker gets in state officials' disfavor it almost certainly means the person will be removed from the post, will be sued for defamation or harassed in various other ways. The courts have become popular tools to crack down on critical voices by the government.

During the months preceding an election restrictions of freedom of expression are especially harsh. Obviously organized efforts by the government to crack down on opponents and control all media have been widely reported. The closure of the Angkor Ratha Radio Station in May 2008 preceding the general election in July 2008, was an unmistakable demonstration of this. According to the Ministry of Information the closure was due to the stations alleged selling of airtime to "foreign interests", meaning opposition parties.[6]

What also affected the political climate leading up to the election was the assassination of Khim Sambor and his son on July 11, 2008. Sambor was a journalist for the newspaper, Moneaksekar Khmer (Khmer Consience), affiliated with the Sam Rainsy Party. No legal steps have yet been taken for an investigation into the case; consequently the murder is another illustration of the persistent impunity of political afflicted perpetrators in Cambodia today.

Silencing political opponents – The case of Sam Rainsy

The restricted freedom of expression for media workers also applies on political opponents, which the dreadful case of Sam Rainsy, the main opposition leader, clearly exemplifies.

Rainsy went into self-exile on February 3, 2005 after a vote in the National Assembly removed his parliamentarian immunity along with two other party members. Rainsy was charged with criminal defamation for his accusation of corruption between the CPP and Funcinpec in the formation of the current coalition government. Moreover he accused Prime Minister Hun Sen of involvement in the murder of Chea Vichea in January

6 OHCHR Cambodia Country Office's annual report 2008-9

2004. He was tried in absentia on December 22, 2005 and sentenced to 18 months imprisonment along with a fine of $14,000 as compensation.

However, on February 5, 2006, at Hun Sen's request, Rainsy received a Royal Pardon by King Norodom Sihamoni and returned to Cambodia on February 10, 2006.

In October 2009 Sam Rainsy led a protest against alleged border markings at the Vietnamese border, which Cambodian villagers are said to have lost land to.

Vietnam condemned Rainsy's actions and urged the Cambodian government to protect the treaties and agreements between the two countries. Soon after Rainsy faced a sentence of 2 years imprisonment as the court found him guilty of destruction of property and racial incitement for uprooting markers along the Vietnam border. Rainsy fled to England, where he is currently in exile.

On January 1, 2010 the court issued an arrest warrant after Rainsy failed to appear in court due to his exile. On September 23, 2010, Rainsy was sentenced to 12 years additional imprisonment on forgery and disinformation charges for publishing a map on his party's website of the alleged Vietnamese border encroachment. He also received a fine of more than $15,000 as reparation since he, according to a judge, had posted the map as an act to damage the image of the Cambodian government.

The verdict has been condemned by the international community. However the Government attorney Ky Tech defends the absurd verdict explaining that "the damage caused by Sam Rainsy was very big."[7]

The new sentence of Sam Rainsy will obviously deprive Cambodia of its main opposition leader and therefore weaken the opposition up to the 2012 election.

The case illustrates the government's systematic use of the courts to silence critics and political opponents. It furthermore illustrates the arbitrary use of defamation and disinformation laws. The increased criminalization of defamation and disinformation confirms the fear of a decline in the right to freedom of expression and the right to association and assembly in Cambodia. The government along with state officials seem to have developed a hypersensitivity to criticism as the control of the individual freedom and the political climate for free debates has tightened.

Ironically, while perpetrators of serious crimes remain unpunished, political opponents and dissidents keep facing absurd and severe sentences ruled by court.

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7 VOA Khmer reporting on the sentence on September 23, 2010

Restrictions on the UN

The latest development involving the work of UN I Cambodia demonstrates the governments growing intolerance on constructive criticism and intentions of shrinking the space for exercising fundamental freedoms. On October 27, 2010 Hun Sen ordered UN's Secretary-General Ban Ki-moon to remove the representative of UN's Country Office of the Office of the High Commissioner for Human Rights (OHCHR), Mr. Christophe Peschoux, from the office in Phnom Penh. Cambodia's Foreign Minister, Hor Nam Hongin accused Mr. Peschoux for being a 'spokesman' for the opposition party. Hun Sen further stated that it was the intention of the government to close the office altogether.

The OHCHR Country Office was established in October 1993 in accordance with the Paris Peace Accords by Resolution 1993/6 of the Commission on Human Rights. Peschoux has been the head of the office since September 2007. The office is mandated to work with the government and civil society organizations to support the implementation of ratified human right treaties, which the government is obliged to.

Ironically, the body supposed to support and advise on violations of the right to freedom of expression among other basic rights is now facing this violation itself. The government's demand is put together to intimidate the civil society and strengthen their grab on all public dissent backed up and made available for the public by international bodies like the UN. Exceeding its authority the government has taken a serious step, as the demand completely undermines international law as well as domestic law and the role of UN, while making a mockery out of a system acclaimed to be based on the rule of law.

Awaiting action

The conclusion to be drawn is that the authoritarian tendency within the current government is more evident than ever.

There is a strong need for construction of independent and impartial institutions and for a de-politicization of the courts along with the eradicating of corruption. What were supposed to be impartial bodies such as the Supreme Council, the Constitutional Council among others need to regain authority and an autonomic body to monitor the judiciary should be formed.

Impartial and proper investigations need to be conducted by the police not to let perpetrators go unpunished and eliminate the practice of appointing political scapegoats. A pressure needs to be put on the Cambodian government to recognize the individual's

right to freedom of expression, assembly and association and decriminalize defamation and disinformation.

Land-grabbing

During the last decade there has been a tremendous increase in the cases of appropriation land and the following evictions of the inhabitants. The issues of land grabbing have reached epidemic dimensions with a clear pattern of rich and powerful individuals or private companies depriving the poor and marginalized of the land, they inhabit or farm.

The right to private property was only re-introduced in the Cambodian constitution enacted in 1993 following the first election after the Khmer Rouge regime took power in 1975. In the aftermath the claiming of land titles became a complex puzzle, where especially landowners from the more poor and rural areas never managed to get entitled, as the process was complicated and expensive. Moreover, obtaining the titles have seemed to depend more on the will of the authorities in the changing governments than the actual legal rules on the matter.

Since the 1980's the Cambodian government has privatized numerous state owned companies coinciding with state officials obtaining the ownership of these enterprises. The concomitant evictions are mostly carried out in the name of "development", which remains the prevailing excuse for the government every time a new section of land is handed over to a private enterprise dispossessing numerous people. As almost 80 % of Cambodia's population live in rural areas[8] and consequently rely on farming to sustain themselves, land evictions not only make people homeless, but also entirely deprive them of their livelihood.

While it is certain that the so-called development have profited company owners as well as the state officials reining the land-business, the almost opposite effects apply to the evicted people, whose living conditions and job opportunities are extensively declining. However, many times the acclaimed development seems to be long in coming. It is not uncommon that an area, which is granted for commercial development faces the complete demolishing of villages, but is still found undeveloped years after. In such cases it is hard to understand the apparent, urgent need for a forceful eviction of the inhabitants placing them in slums with no access to their agricultural dependencies, while the farmland is left disused and overgrown.

8 CIA World Factbook, 2010

Standing up for your rights is a dangerous affair

As the forced evictions have increased, so has the government's grab on the protesters. Violations and human rights abuses have become common outcomes of land disputes accompanied by arbitrary arrests and fabricated charges against the protesters.

As described in the section on the courts in Cambodia and the impunity enjoyed by influential perpetrators, legal proceedings in Cambodia rarely rely on impartial investigations of the circumstances or the evidence established as much as political interference with the cases hand in hand with corruption. There have been countless reports on brutal arrests and treatment in custody, illegal extension of pre-trial detentions along with fabricated charges; most common are allegations of property destruction and infringement.

The role of the military in the conductions of the land evictions is especially disturbing. The Royal Cambodian Armed Forces (RCAF) is widely known to assist in the clearings of villages as well as guarding the area for the companies or individuals now in charge of the land.

In the aftermath of the civil war both the government and the ousted Khmer Rouge living in border camps used logging to fund their operations. The practice is still widespread among Cambodia's political elite today for especially private interest resulting in an extensive business of illegal deforestation. RCAF is also found to be involved in these illegal logging operations, why the clearing of land often seem to be in their interest.

According to Cambodia's domestic laws, the military impose no power to carry out law enforcement such as evictions. However, as most evictions are conducted by the government without due process in court, they are already illegal and the use soldiers to accomplish them is just adding to the illegitimate profile of the evictions and continue to enjoy impunity.

The arbitrary and brutal eviction of Spean Ches village and villages in the Choam Ksan district

On January 19, 2007 more than 100 families living in Spean Ches village in Sihanoukville municipality were given 1 week's notice to leave the area. Most of the families had been living in the village since the 1980's and 90's, but suddenly a wife of an adviser to a senior government official claimed to be entitled to the land. Her alleged entitlement was never presented to the villagers and they sent their complaint to relevant authorities to look into the matter.

The Senate Commission of Human Rights concluded that the dispute was a civil matter that had to be tried in court. As the villagers did not have the money to take the case to court, the government shortly after appointed a taskforce to carry out the eviction involving more than 150 members of RCAF. The forceful eviction took place on April 20, 2007 with the arrival of heavily armed military and government forces. People who tried to protect their houses were beaten with sticks and electric batons while shots were fired. Police and military officers confiscated valuables from the villagers including 16 motorbikes, while they burned their houses and the leftovers of their possessions.

18 villagers were badly injured and 13 arrested. All the arrested were imprisoned for more than a year, 9 of them convicted for property destruction and battery with injury. No relocation was ever promised by the government and many of the villagers continue to live under tarpaulins provided by different NGO's.

A similar incident happened on November 15, also in 2007 in Choam Ksan district, Preah Vihear province, where 317 families were evicted. Two people were shot dead by police officers. Mr Oeun Eng was shot in the chest and died almost immediately. Mrs Toeun Chheng was attempting to shield her four children in front of her house, when an officer stepped up to her and shot her with an AK47 riffle in the chest. As she lay bleeding on the ground he ripped of her necklace and also took a motorcycle from the house. Her husband Moeun Chanthon was soon after arrested and brutally beaten. Toeun Chheng later died in hospital.

At least six other people were injured, 5 of them shot. After the looting and burning of houses, the police allegedly celebrated the eviction by killing a cow, cooking its body to eat and burying its head.[9]

Social Land Concession

The Social Land Concession (SLC) is a sub-decree launched in March 2003 as a legal mechanism to transfer private state land for social purposes and/or family farming purposes meant for the landless and poor parts of the population. The decree sat up a legal framework for land disputes and established departmental bodies to manage the concessions. A welcomed piece of legislation in Cambodia, - if just it had managed to carry out its function.

Since the introduction of the sub-decree it has only become more and more evident, that its real intention was not to provide land for the poor, but to dislocate inhabitants from their current locations and let private enterprises enquire the land instead. It is with bitter

9 Reported by LICADHO in their press release on the case November, 22, 2007.

irony many poor villagers in Cambodia have come to experience the dreadful impact on their lives caused by the very same sub-decree, they believed was created to benefit them.

Borei Kella – Victims of the SLC

A tragic demonstration of the sub-decree in practice would be the government's approval of a SLC on the Borei Keila community in late 2003. While the approval process did not follow any of the legal procedures sat out by the sub-decree on consultation and transparency, the proposal itself seemed well intended to begin with. According to an agreement in 2004 between the community and the Phnom Penh municipality, most of the 1776 families in the community were long-time residents and therefore entitled to housing on the land. The project was supposed to be a land-sharing arrangement between the private company, Phanimex, the Ministry of Education and the community. Phanimex would build new apartments on the land to all the families, while the company itself would be granted some land for commercial development. As time has shown, these promises were to good to be true.

In late 2009 only 30% of the families had received the apartment, they were promised. In inconsistency with the agreement between the community and the municipality in the first place, most of them are apparently now disqualified to get apartments. The relocation sites consist of temporary, lousy shelters with little access to basic facilities often far from the original Borei Kella site, consequently far from their jobs calling for expensive transportation.

However, the most ghastly part of the case is the establishment of what has now been labeled "the HIV-villages". Around 45 families living with HIV/AIDS were evicted from Borei Kella in 2007 and allocated to one of the temporary shelter sites. In 2010 this group faced a new eviction as the temporary site was allocated to the Ministry of Tourism for a construction of a ministry building along with a car park and sport facilities for the staff. The HIV/AIDS-affected families now live in the isolated site of Toul Sambo, even more distant from the hospitals or any other medical services, which most of them rely on for their medication to keep them alive. The site posses in general a great health risk as it further lacks access to all basic facilities such as toilets, electricity and clean water.

The whole case has been strongly condemned by several domestic as well as international NGO's and civil society organizations. However, the Cambodian government has so far ignored all complaints and requests on the matter.

I N D I A

Democratic pretentions and administrative follies

Introduction

"It is true that too many children die from malnutrition each year in this country. Some of their parents also die from starvation and hunger. But the children are more vulnerable … one of the reasons is the widespread 'irregularity' in the state and central government services … the Chief Minister of Madhya Pradesh state is a very kind person … the Nutrition Rehabilitation Centres is not a solution for the millions of malnourished children. These centres are not cost effective. But now that the centres are there we must effectively use of them. My suggestion is to appoint a Brahmin priest in each of these centres and require the priest to verify the horoscope of every child brought to the centre. After studying a child's horoscope if the priest is of the opinion that the child will grow into a good citizen of this country, it must be provided treatment at the centre. For the rest, I would say, let us just leave them to their fate … if not where do we stop? … We cannot spend government money like this…" (Statement and opinion of Justice Ms. Sheela Khanna, the Chairperson of Madhya Pradesh State Commission for Protection of Child Rights, made to the AHRC staff members during a visit to the Commission in September 2010).

The Government of Madhya Pradesh appointed Justice Ms. Sheela Khanna as the Commissioner at the State Commission for Protection of Child Rights, after Justice Khanna's retirement from the judicial service. Justice Khanna was the Chief Justice of Madhya Pradesh High Court.[1] The state cabinet's decision, taken in September 2008 to institute a Child Rights Commission took one more year to be implemented, at a limited level, of the appointing of a commissioner. The Chief Minister of the state, Mr. Shivraj Singh Chouhan, while informing the public and the media about the decision of his cabinet to set up the Commission said that the Commission is mandated to help generate

1. The Commissioner, throughout her discussion with the staff members of the AHRC, used the word 'irregularity' referring to corruption. For the Commissioner, corruption is a mere irregularity, not a crime. When a corrupt act, like selling of subsidised food grains intended to be distributed to the poor in black markets, denying it to the poor, that directly results in the death of dozens if not hundreds of children each year in many districts in Madhya Pradesh the act is nothing less than culpable homicide. Yet, for the Commissioner, these are mere irregularities.

an atmosphere conducive to the all-round development of children.[2] The reality today is that Justice Khanna, who entertains the above view of child development chairs the Commission, while the government is yet to appoint the rest of the six members that the Commission requires to function.

India is today a necropolis of human rights for the poor, the marginalised and the underprivileged.[3] Many countries in the world might be the same. What makes India an alarming case is that its poor makes up more than 60 percent of its population, estimated to be 421 million in number[4], which is a third of the world's poor and more than the entire poor living in 26 poorest African states.[5] The Indian government however, wants to claim that the percentage of poor in India living below the poverty line is a mere 25 percent. It has remained so for the past 64 years, the period after the country's independence, and for many years before 1947, particularly under the colonial rule. The colonial government was not concerned about poverty in India, even during the devastating Bengal Famine of 1943 that claimed an estimated three million lives.[6] In fact independence has brought nothing much to this 60 percent of the country's population, other than a ritualistic change of guards in New Delhi and at the state capitals.

For some unfortunate sections of the country's population, this change of rulers has brought far worse. Since 1947, those living in the state of Jammu and Kashmir and

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2 *Madhya Pradesh to setup a child rights commission*; Hindustan Times, 24 September 2008.

3 *Field Notes on Democracy : Listening to Grasshoppers*; Arundhati Roy, Haymarket Books, 2009

4 For further details please see Oxford Poverty and Human Development Initiative, a study that used Multi-dimensional Poverty Index (MPI)

5 *Identity and Violence : The Illusions of Destiny*; Amartya Sen, W.W. Norton & Company, 2006. There are no credible statistics available regarding the exact state of poverty in India. The census data is highly corrupted since many citizens are not counted, due to various prejudices, including but not limited to caste, gender and religion. The district collectors, an apex authority in each district that is responsible for maintaining statistical data of the poor are often under pressure from the state administrations that require these officers to underestimate the severity of poverty so that these states are not categorised as 'under performing' states. In addition, the Government of India has used every trick out of its hat to bring down poverty, statistically, by making calculations after bringing down the per-capita purchase capacity from Rs. 44 per person per day to Rs. 12 per person per day. The government's Millennium Development Goals Report, claims that India has addressed poverty effectively thus by bringing down the number of the poor from 36 percent to 25 percent between 1994 - 2009. Such is development in India.

6 British Prime Minister Winston Churchill and the government he led deliberately let millions of Indians starve to death during the Bengal Famine, motivated in part due to his racial hatred. Churchill's only response to a telegram from the government in Delhi about people perishing in the famine was to ask why Gandhi has not died yet. British imperialism had long justified itself with the pretence that it was conducted for the benefit of the governed. Churchill's conduct in the summer and fall of 1943 gave the lie to this myth. *I hate Indians*, he told the Secretary of State for India, Leopold Amery. *They are a beastly people with a beastly religion. The famine was their own fault*, he declared at a war-cabinet meeting, *for breeding like rabbits*. For further information please read *Ugly Briton*, Sashi Tharoor, 29 November 2010, Times, commenting on *Churchill's Secret War: The British Empire and the Ravaging of India During World War II*; Madhusree Mukerjee, Basic Books, 2010

northeastern states like Manipur have faced atrocious forms of human rights violations. Independent India and its various governments have killed, raped and tortured its own people in such large numbers in the past 64 years, in these two states alone to suppress dissent and political opposition, that the atrocities committed by the colonisers for over two hundred years today look like mere squabbles.[7]

The world's largest democracy is today extremely polarised between the traditional haves and have-nots.[8] Its administration is opportunistic and favours multinational corporations and family-run business empires while conceiving and implementing policies against its own people and their welfare. It is a country that claims itself a democratic republic but authorises the widespread use of torture. It is a state that had once resolved to be a secular democratic republic, but its demographic fault lines are drawn with the crayons of caste and religious prejudices, where millions of its citizens are still considered to be untouchable. It is a country of extreme paradoxes where hundreds of domestic and foreign banking and IT experts queue up for employment in its metros while at the same time, thousands of citizens, women and children included, in the early hours of everyday, work with bare hands cleaning sewers, and often carrying human faeces on their head.

The 2010 Commonwealth Games was *the* showcase where this anomaly was recently exhibited, where billions of tax money was spent to show the prowess of the so-called modern India. Little did the world know, nor was it concerned, that the money earmarked for the development of the Dalits and the poor were spent by the government to undertake the construction of the Games village and sporting venues to host the multinational sporting event.[9] Yet many athletes refused to participate in the games since the games villages where they were supposed to be hosted were found uninhabitable for

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7 A clear statistics regarding the atrocities committed against civilians and suspected extremists in the Indian-Administered Kashmir is not available. Yet UN High Commissioner for Refugees estimates that about 400,000 persons have migrated out of Kashmir due to fear of violence into India since 1947 and about 2 million persons into Pakistan-Administered Kashmir. Estimates made by various agencies and organisations suggest that each year about 400 to 700 persons are murdered extra-judicially in the Indian-Administered Kashmir. None of these cases are investigated and the reports of the officers engaged in these encounters are held to be final. In Manipur on the other hand, the state government itself admits that the state police alone murders about 300 persons extra-judicially each year. Indeed the state administration claims that all of those who get murdered are extremists killed in armed encounters. There has been no inquiry into these claims whatsoever and the state administration for the past ten years has been using countering insurgency as an excuse for claiming and receiving huge amounts of secret funds from the central government. Counter insurgency has become a tool for extracting money by the political administration in Manipur. No wonder, the petty civil contractor, Mr. Ibobi, who became the Chief Minister of Manipur a few years before is now on records the richest person in the Northeast of India.

8 Regional Disparities in India, Planning Commission of India Report, 2010.

9 *In my view, prima facie, that using of 67.891 million rupees out of Schedule Caste Sub Plan (SCSP) to contribute for CWG appears to be wrong*, P. Chidambaram, Union Home Minister, in a speech he made at the Rajya Sabha, August 2010

humans. Many rooms had bathrooms with washbasins stinking with human faeces since the poor construction employees did not know where to defecate and used washbasins to relieve themselves.[10] They had no idea what a water closet is, having only ever used the roadside or the cover of a shrub to answer nature's call.

Corruption in procurement and construction was so rampant that a bridge connecting the main games venue and the car park collapsed a week before the grand opening ceremony.[11] In a country where its 820 million citizens earn less than two USD a day, the government spent 6.8 billion rupees of tax money to organise the Commonwealth Games.[12] Together with corruption, impunity corrupt allowed the organisers and the contractors to inflate expenses on paper so that the cost of a roll of toilet paper was shown 80 USD and that of a soap dispenser 61 USD.[13] Yet, the organising committee of the games, in a miserable gesture of arrogance, justified the horrid state of affairs, accusing the 'west' that their expectations are too high and their hygiene standards abnormal and beyond reasonable human requirements for sanitation.

The explanation perfectly mimed India's position concerning caste based discrimination, the worst form of discrimination known to human history; that it is an internal matter. This position has so far justified social evils like manual scavenging, the cleaning of dry latrines with bare hands and carrying human excreta on their heads, a job conveniently and forcibly allocated to the lowest among the Dalits.[14]

Those amongst the poor who survived the forced eviction prior to the Games and succeeded to remain in New Delhi's slums, found themselves encircled with huge 30-foot-tall plastic hoardings with messages like '*Welcome to India, the world's fastest growing democracy*' so that the unhappy and uncomfortable reality of India was kept away from the world's eye.

Manual scavenging is an extreme derivative of caste-based discrimination that prevails unabated in India despite having more than two dozen government orders, interventions by courts and legislations against it. In fact, many upper caste Hindus -- politicians, judges, journalists, academics and some 'Commissioners' included -- believe that being born a Dalit and thus by default often poor, is one's *karma*, and hence argue that it is not a social evil incompatible with the very notion of liberty, equality, justice and democracy.

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10 *The games villages are filthy and unfit for human inhabitation. Sinks stinking with human faeces and street dogs sleeping on beds*, Time of India, September 2010.

11 See generally: Corruption rid CWG games, Members of the CWG Organising Committee investigated for widespread corruption, Times of India.

12 *Still Game*, Manu Kaushik, Business Today, 1 September, 2010

13 *Toilet paper scandals in India shames Commonwealth Host*, Mehul Srivastawa, Business Week, 19 August 2010

14 For further details please see AHRC Annual Report 2009, India

For these proponents of the *Brahminical* order, caste defines the very existential essence of humans. Fortunately for them, this reasoning has found resonance within the government, irrespective of its political colour; the Congress, the fundamentalist and rightwing Bharatiya Janatha Party, and the Communists, including the so-called central left for the past six decades have supported this.[15] This condition is not likely to change in the near future.

The term 'development' in India is restricted within the four corners of its rigid caste system, an order India's upper caste cherishes and promotes. The perceived notion of wider people's participation and the *much trumpeted* village level administration implemented thorough the Panchayat Raj after the 73rd amendment of the Constitution, has also fallen prey to the deep-rooted caste psyche of India; so much so that decisions made by these bodies are overshadowed with caste prejudice.

The decision of the Lank village panchayat in Muzaffarnagar district of Uttar Pradesh state made on 22 November this year prohibits the use of mobile telephones by unmarried girls, since the panchayat as well as parents are of the opinion that the use of mobile telephones allows girls to have affairs with boys outside their 'caste defined' limits of who marries who.[16] It is alarming that such restrictions are considered to be perfectly normal and even necessary to preserve so-called Indian virtues.

Torture of the poor is one of the pillars of India's social hierarchical structure. It is so widely practiced that none of India's 12,618 police stations and 7,535 police outposts are an exception to it.[17] Other agencies operating in India, like the paramilitary units also engage in brutal forms of torture and other human rights violations like rape and extrajudicial executions. Yet not more than three officers of the Indian paramilitary establishments were subjected to prosecution this year.[18] Draconian laws like the Armed Forces (Special Powers) Act, 1958 provide statutory impunity to paramilitary forces, allowing them to kill anyone on mere suspicion.[19]

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15 Manual scavenging continues unabated in West Bengal, a state ruled by the CPI (M) for the past 33 years. The CPI (M) has more upper caste members in their Polit Bureau. In the state of Kerala however, such practices have seized to exist since the past 30 years, thanks to the reasonable implementation of the land reforms that ended feudalism and educational opportunities made available to the poor, irrespective of caste or religious colours.

16 *Indian village bans single girls from using mobile phones over forbidden marriage fears*; Daily Mail UK, 24 November 2010

17 Statistics provided by *IndiaStat* - Revealing India Statically www.indiastat.com

18 Id.

19 *Armed Forces (Special Powers) Act, 1958 : A Study in National Security Tyranny*, South Asia Human Rights Documentation Centre,

Torture has become not just a crude tool for criminal investigation, but also an instrument used with near absolute impunity for social control in the country.[20] The fear generated in society through its widespread use is employed to retain and enforce authority. All political parties encourage torture, so much so that all of them are unified in thwarting attempts to ensure accountability to police actions. So far torture is not defined as a crime in India and the attempt to legislate on this issue has been farcical; the proposed law to criminalise torture, the Prevention of Torture Bill, 2010 neither defines torture in its true sense nor prescribes any independent mechanism that can investigate a crime of torture.

Despite the absence of a proper law or any independent mechanism that can do justice in a complaint against a police officer by a citizen, it is estimated that slightly more than 50,000 complaints are filed each year against police officers in India. It is no surprise however that out of this large number of complaints only a minuscule two percent result in prosecution. Immediately superior officers inquire into 99 percent of the complaints. In collusion with the accused officer, these officers summarily dismiss 60 percent of the complaints. Of the rest, less than 10 percent are recommended for departmental sanctions, whereby the punishments range from transferring the accused officer from one station to the other or the temporary suspension of a salary increment. Of the two percent of officers prosecuted each year, only a small number, estimated to be less than 30, are convicted by the courts. It is thus no surprise that between 2008-10 only 26 cases of human rights abuses were registered against police officers in India. Even according to the Union Home Ministry, the number of cases registered against police officers in states like Assam, Jammu and Kashmir, Manipur and Chhattisgarh, is far too small; these are states notorious for police brutality and where an alarmingly large number of persons are killed each year in police actions.

A critical analysis of human rights in India therefore must deal with the following three elements -- the widespread use of torture, the denial of the right to food and caste based discrimination.[21] These three issues are also the AHRC's key areas of engagement in the country. The following chapters examine the extent to which these three issues have negated the fundamental premises of democracy. In this process, how these fundamental human rights violations have affected the life of ordinary Indians and what attempt the government has made to address them will also be examined.

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20 Please read further, AHRC statement on India released on 26 June 2010 available at www.ahrchk.net.

21 Torture and the right to food are analysed separately, with caste based discrimination discussed as a common factor as it is closely interrelated and interwoven with both issues to a certain degree of inseparability in India

This report does not however, claim (and nor is it within the capacity of any single organisation) to thoroughly examine the entire human rights scenario of India. Like the socio-cultural and geopolitical landscape and vastness of the country itself, human rights issues in India are diverse and vary in intensity from region to region. The attempt in the following pages is to present what the AHRC has learned from its engagement in India during the past 12 months. It is in no manner an absolute or all inclusive human rights report on India. Sincere such attempts by several organisations interested in India and its people, could together provide one such comprehensive analysis.

Custodial violence and torture

On 23 May 2010, police officers, including a woman police constable tortured and abused a mother and her 12-year-old son in Rajouri Garden Police Outpost in Delhi. The officers forced Mala *(name changed)* to strip naked in front of her minor son who was detained at the station, and ordered her to have sex with him. Upon refusal, one of the police officers demanded Mala to have sex with him. Mala, a slum dweller from Delhi's Mayapuri area had gone to the police outpost with her husband to enquire as to why her two sons were detained at the police station.

The police on May 22 arrested Mala's two sons, aged 12 and 10, on the accusation that they had stolen Rs. 6,000 from a car. The torture and abuse was reportedly to force the 12-year-old boy to confess the crime and return the money. As the result of a complaint lodged by Mala with the help of a local human rights organisation to Mr. Y. S. Dadwal, the Delhi Police Commissioner, the Commissioner suspended the Woman Head Constable, Amrita Singh, from service, as well as Constables Mr. Pramod Kumar and Mr. Santosh of Rajouri Garden Police Post. The Assistant Sub Inspector who was in-charge of the outpost was transferred.

Mala's case in essence reflects what policing in India today has become. An analysis of the case raises several serious issues; first of all, what law allows the police to detain two children aged 10 and 12 in a police lock-up overnight instead of sending them to a juvenile home or presenting them immediately before a magistrate having jurisdiction to deal with cases involving minors? What authorised the police to extract a confession through torture, instead of investigation? After being approached by the human rights group that took up the matter, the police were compelled to take action against the officers. Rather than seeing the case as a horrific indication of what the country's police have become, the superior officers for their own convenience termed the case an instance of '*not following proper procedure while handling juveniles*'. A probe by the Vigilance Department of Delhi Police was ordered to look into the allegations of stripping. What this probe will achieve, as the investigating agency is the same police, is anybody's guess.

The statement of the senior police officer while briefing the media only reaffirms the fear of bias in the probe since he only acknowledged the 'likelihood' of 'extreme verbal abuse' while refusing any possibility of stripping. By saying '*we could have hushed the case up, but the fact that we have suspended the officers involved in the case implies that an impartial investigation will be undertaken*', the officer inadvertently shed light on what the establishment could do. Impartiality in the Indian context means the exact opposite -- the accused investigating the crime, with the judge being the prosecutor, accused, plaintiff, witness and jury. It is unfortunate to note that at present there is no other process available in India where an iota of impartiality can be attributed to police investigations of crimes committed by police officers.

On a deeper level, the case raises serious concerns regarding the rule of law and the notion of democracy.

Most importantly and unfortunately, the case is not a standalone incident of some rogue police officer going astray. Indian police and paramilitary units are infamous for sexually assaulting, including stripping and parading women in public spaces, to instil fear among the masses and to quell dissent.[22] They are also known for looking the other way when locally dominant people, especially from the upper caste and class in rural India, commit crimes.[23] After all, if some police officers can do it in Delhi, the national capital, despite the presence of all its media and civil society organisations, who can guarantee the safety and security of women in faraway places where there is no presence of any similar safety mechanisms? The AHRC this year alone has documented more than 40 such cases, spanning the length and breadth of the country that proves this point.[24]

The case also exposes the culture of silence when the victims belong to the Dalit or tribal communities, who are among the country's most poor, disadvantaged and vulnerable.[25] Rather than being actively supported by the government and civil society, including the media, they are in fact abandoned and left to fend for themselves against all odds. Only a few Indian print media reported Mala's case in their inner pages among several other articles in the 'city news' section. But the 'news value' awarded to the incident was not strong enough to carry it beyond the first day. Apart from the media, there were no women groups or Dalit NGOs interested in the case.

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22 The Indian Police: A Study in Fundamentals; Deoki Nandan Gautam, p. 32-33.

23 *Cultural roots f police corruption in India*; Arvind Verma, 1999 Policing: An International Journal of Police Strategies & Management, volume 22 issue: 3, pp. 264 - 279

24 For further information please see: www.ahrchk.net/ua

25 *The state of the republic is showcased in Manipur*; AHRC-STM-012-2010, 26 January 2010

Mala and her family experienced this traumatic incident on May 23. The family was so terrified by the events that they kept silent for more than two weeks and could not gather the courage to make any complaints to the authorities. It was only when the story reached a local NGO through neighbourhood whispers that the incident came to light and a complaint was filed. Clearly, for every such case that reaches the doors of law, there would be many pushed under the carpet.[26] And with them would be shattered dreams, disbelief in government institutions and perhaps democracy itself.

The case clearly spotlights the ideologies of violence, caste and gender based discrimination that rule India, despite its many claims of being the world's largest democracy.[27] It also reveals that these prejudices are as strong today as they were hundreds of years ago. Even worse is the fact that the caste based value system has remained internalised even amongst educated elites, who are primarily responsible for the constitutional mandate of eradicating it. [28]

What operates in these cases is neither the free and fair implementation of the rule of law, nor even a critical engagement with the issues. When it comes to justice for the poor and the downtrodden -- belonging to the lower castes in most cases as the boundaries between lower caste and lower class in India are very thin -- the reactions often make up two extremes. One is utter disregard and contempt for the idea of justice, while seeing the victims as dehumanised creatures bereft of any dignity. The other is highly patronising benevolence offered in response to qualified inclusion by various ways like *Sanskritisation*. Even this patronising attitude is missing however, when the victim is a Dalit, tribal or a minority woman suffering with the double burden of two underprivileged identities.

The Mathura rape case shows how gender discrimination in India is superimposed on and organised along the skeleton of caste. The basis of the Supreme Court's decision was that the complainant -- an illiterate, orphaned tribal girl -- was of loose character because she had eloped with her boyfriend and was brought to the police station only because of her brother's complaint, and that she was lying about rape. The conditions of 1979 have not changed though the decision caused enormous outrage and led to strong movements for gender justice culminating in a reform of the laws relating to rape in 1983. Unfortunately, the amendment in the law meant little positive change on the ground. Even today the first defence offered by the accused in rape and other cases of sexual assault is the 'loose' character of the woman. In 1995, in the Bhanwari Devi rape case, a trial judge observed

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26 For instance lawyers refuse to appear for victims of police abuse in Manipur. Those who dared are threatened or intimidated. For further details please see Jiten Yumnam's case, reported by the AHRC, AHRC-UAC-098-2009.

27 *Dubey represents a decaying system*; AHRC-STM-031-2010, 19 February, 2101.

28 *Caste and Affirmative Action in an Indian College*; Shobana Sonpar; Centre for the Study of Violence and Reconciliation, 20th Anniversary (1989-2009) papers.

that because Hindu scriptures do not allow upper caste men to touch a low caste woman, the accused could not have raped the Dalit victim.

Close to 30 years later, there is little substantial change in the position and practices facing India's downtrodden, particularly the women. This is so in spite of India having a Dalit Chief Justice.[29] To complicate matters further, Justice K. G. Balakrishnan, after retiring as the Chief Justice of India is now serving as the Chairperson of the National Human Rights Commission. In one of his statements soon after assuming office at the NHRC, Justice Balakrishnan justified capital punishment. According to his opinion, in countries like India, law and order cannot be enforced without severe penalties like capital punishment. It is a pity that India's top judge was unaware of the basic principles of criminal law jurisprudence; it is not the severity of punishment that deters crime, but the certainty of it.[30]

Mala's case, together with thousands of other similar ones, is evidence that the project of nation building through democratisation of society has failed. The India today is not what Dr. B. R. Ambedkar envisioned it to be. The idea of nation to him, and to every rational individual, was not just of political sovereignty but one where the people feel socially bound as a group, not divided by a regressive and pre-modern mode of social organisation. India today is a democracy where any police officer can strip any woman, more so those from the disadvantaged backgrounds with impunity; knowing well that the officer would get the support of the superior officers.

The officers accused in Mala's case knew that in most cases the victim, terrorised and traumatised, would never knock at the doors of law. And even if she does, the case would not get anywhere since the systems of investigation and prosecution are so much biased and rigged in favour of the police. And there are no efforts to change this. As for Mala's case, it is certain that the case would be buried under the files, to be dismissed after a decade or so, because of the lack of evidence.[31]

The so-called reforms

In 2007 the Prime Minister, Dr. Manmohan Singh, promised the nation that India would soon ratify the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[32] While nothing is heard about the

29 For further analysis please see: *Is Justice Balakrishnan holding a devil's brief?*, ALRC-STM-004-2010, 30 July, 2010.

30 *Dei delitti e delle pene*, Cesare Marquis Beccaria-Bonesana

31 *Country's democracy stripped naked by Delhi police*; Avinash Pandey Samar, AHRC-ART-060-2010, 14 June 2010

32 *India will soon ratify CAT*; The Hindu, 3 January 2010

ratification of the Convention any more in New Delhi, the Government of India, after protracted discussions in the Union Cabinet has drafted a Bill, the Torture and Custodial Death (Prohibition) Act, 2010 to criminalise torture.[33] The lack of conceptual clarity and seriousness in approaching the issue is evident in the *two-page and 466 worded text* of the Bill, which the government proposes as a comprehensive law to deal with one of the most serious issues plaguing India today.

When the Union Cabinet debated the Bill in 2008, one of the objections raised by the ministers for enacting a comprehensive law against torture was that such a law, if enacted, would discourage the law enforcement agencies. The ministers argued that criminalising torture will pose an obstruction to law enforcement, particularly in the context of the state agencies fighting Naxalism and other violent insurgent movements. Such parochial views against criminalising torture only suggest the paucity of knowledge of the Indian legislators and further the colonial mindset of India's elite. There is not a single country in the world that has effectively prevented crime or succeeded in containing armed insurgency by the sheer use of force and allowing state agencies to engage in torture. On the contrary, polices followed by countries like Iran, Israel and Burma that allow systematic use of torture upon suspects on various pretexts are criticised worldwide. India has at least half a dozen reasons beyond its despicable records in Kashmir, Manipur and Chhattisgarh to be included in this *exclusive club*.[34]

The outlook of condoning torture illuminates the drastic changes required in the policing policy in India. The Indian Police Act, 1861, by all means a colonial law, and its existing state law variants like the Kerala Police Act, 1960 are legislations that need to be scrapped and rewritten with a view to enable a legislative framework suitable for the police to function within a democratic set up.[35] However, under the pretext of modernising the law, the endeavour is to award unprecedented arbitrary powers to the police in the name of crime control. The Kerala Police Bill, 2010 if enacted into a law will become a statutory framework to create a police state.

This newly proposed law awards the state police authority to infringe almost all fundamental rights of a citizen with statutory impunity. It allows even a police constable to infringe personal privacy at will, arrest and detain persons arbitrarily and interfere in civil disputes, and creates a statutory framework that requires the prior agreement of an accused police officer if a complaint against the officer is to be investigated. This is a proposition unheard so far in the legislative history of the country, even during colonial times. Not a single human rights organisation, opposition political parties or the media

33 The complete text of the Bill is reproduced in the latter part of this chapter.

34 *India Briefing : Staying the Course*, Philip Oldenburg Ed., Asia Society.

35 *The law can be an ass*, Manoj Mitta, Times of India, 28 November 2009.

were interested in this new law. The only study on the Kerala Police Bill, 2010, with comments and recommendations, was made by the AHRC.[36]

Unfortunately, not many human rights organisations or other civil society groups in India are concerned about police torture and the impact it has upon the democratic norms the country decided to practice 64 years before. India has however an influx of self-proclaimed policing experts who lobby for changes in Indian laws. Short-sighted and ill-informed attempts like introducing community policing into a system that has not evolved beyond baton charging everyone in the vicinity to gain control or extra-judicially executing suspects to create a fear psychosis in the community has not benefited anyone other than those who are the proponents of cosmetic police reforms.[37] While such shoddy reforms are referred to with marketable titles in states like Kerala ('community policing'), they are also used to divide the population and gain control based on caste and religious prejudices in states like Chhattisgarh ('Salwa Judum'). Even the mainstream media regularly publish articles justifying the practice of torture. Articles like *Speak Up to Be Silent*, written by a self-proclaimed expert on the subject, lobbying for the relaxation of fundamental principles like the right to remain silent and the presumption of innocence of the accused, will have drastic effects upon the fundamental rights of every citizen.[38] These articles portray the impression that Indian police require more impunity to combat terrorism than their counterparts in the US or the UK.

Each failure by the police affects mostly the poor -- more than 60 percent of the country's population. Most of the so called experts on policing in India have failed to understand what this segment of society sees as necessary changes to be brought into the policing institution.

The proposed law against torture

On 31 August 2010, the upper house of the Indian parliament, the Rajya Sabha, constituted a Parliamentary Select Committee to review the Prevention of Torture

36 Kerala, a police state in the making : Act now!, ALRC-PRL-005-2010, 21 June 2010.

37 The Commonwealth Human Rights Initiative, a New Delhi based NGO is a big-time advocate of 'community policing'. The CHRI, along with the Government of Kerala are seen proposing the so-called *Kerala Model* in policing in national and international seminars. CHRI has no understanding about what policing in Kerala is. Had the retired police officers and other bureaucrats employed by the CHRI taken time to critically examine the functioning of Kerala police -- a state service with senior officers like IGP Mr. Tomin Tachankiri undertaking foreign trips to extract bribes from criminal groups operating in the middle eastern countries -- the CHRI would not have dared to make a proposition that Kerala police is a model policing system to emulate for the rest of India. Unfortunately, the so-called mainstream human rights groups like the CHRI and their careless approach to work causes more hindrances to human rights work than any real work.

38 *Speak up to be silent*; R. K. Raghavan, Frontline, Volume 27, Issue 13; June-July 2010.

Bill, 2010.[39] The Committee, chaired by Mr. Ashwini Kumar has Dr. E. M. Sudarsana Natchiappan, Mr. Shantaram Laxman Naik, Ms. Brinda Karat, Mr. Naresh Gujral, Dr. Janardhan Waghmare, Mr. Ahmad Sayeed Malihabadi, Dr. Vijaylaxmi Sadho, Dr. Ashok S. Ganguly, Ms. Maya Singh, Mr. S. S. Ahluwalia, Mr. Kalraj Mishra and Mr. Satish Chandra Misra as its members.[40]

A notification issued by the Committee invited suggestions and opinions about the Bill to be submitted to the Committee on or before 22 September 2010. The following is the review and suggestions concerning the Bill submitted to the Committee by (1) Nervazhi; (2) the AHRC and (3) the Asian Legal Resource Centre (ALRC), AHRC's sister organisation. Nervazhi is a registered NGO operating in Kerala, India, registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955.

Bill on the anvil

The Prevention of Torture Bill, 2010
A BILL to provide punishment for torture inflicted by public servants or any person inflicting torture with the consent or acquiescence of any public servant, and for matters connected therewith or incidental thereto.

WHEREAS India is a signatory to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

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39 Please see Rajya Sabha Debates dated 31 August 2010, also reproduced by the AHRC with the title *Conscientious review required on the draft law against torture*; ALRC-STM-001-2010, 21 July 2010.

40 The Chairperson of the Committee, Mr. Ashwini Kumar is a Senior Advocate of the Supreme Court of India. Kumar was the Additional Solicitor General of India and has also served as a State Minister in Government of India. Dr. E. M. Sudarsana Natchiappan is also a Senior Advocate of the Supreme Court of India and a former minister. Dr. Natchiappan is a member of FIAN International and has participated and lectured at Geneva-based International Agricultural and Allied Workers Organisation. Mr. Shantaram Laxman Naik is a lawyer and was a member of the Indian delegation to the Special Session of United Nations on Disarmament in 1986. Ms. Brinda Karat is a politician from West Bengal and a member of the Committee on Empowerment of Women. Mr. Naresh Gujral is an industrialist and is a Fellow Charted Accountant (FCA). Dr. Janardhan Waghmare is the former Vice-Chancellor of Swami Ramanand Teerth Marathwada University. Mr. Ahmad Sayeed Malihabadi is a politician from West Bengal. He is the member of Committee on Social Justice and Empowerment and the Consultative Committee for the Ministry of Information and Broadcasting. Dr. Vijaylaxmi Sadho is a qualified medical doctor and a former minister in Madhya Pradesh State Government. Dr. Ashok S. Ganguly (C.B.E) is a Fellow of the Royal Society of Chemistry and an Honorary Fellow of Jawaharlal Nehru Centre for Advanced Scientific Research. Ms. Maya Singh is a politician from Madhya Pradesh. Mr. S. S. Ahluwalia is a lawyer and politician from Jharkhand. Mr. Kalraj Mishra is a politician from Uttar Pradesh. Mr. Satish Chandra Misra is a lawyer from Uttar Pradesh.

AND WHEREAS it is considered necessary to ratify the said Convention and to provide for more effective implementation

Be it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:-

1. *(1) This Act may be called the Prevention of Torture Act, 2010.*
   It extends to the whole of India.
   It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

In this Act, unless the context otherwise requires,
(a) words and expressions used in this Act shall have the same meanings respectively assigned to them in the Indian Penal Code; and
(b) any reference in this Act to any enactment or any provision thereof shall in any area in which such enactment or provision is not in force be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

3. *Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act for the purposes to obtain from him or a third person such information or a confession which causes,*
(i) grievous hurt to any person; or
(ii) danger to life, limb or health (whether mental or physical) of any person, is said to inflict torture:

Provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law or justified by law.

Explanation. For the purposes of this section, 'public servant' shall, without prejudice to section 21 of the Indian Penal Code, also include any person acting in his official capacity under the Central Government or the State Government.

4. *Where the public servant referred to in section 3 or any person abetted by or with the consent or acquiescence of such public servant, tortures any person*
(a) for the purpose of extorting from him or from any other person interested in him, any confession or any information which may lead to the detection of an offence or misconduct; and
(b) on the ground of his religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, shall be punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

5. *Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court shall take cognizance of an offence under this Act unless the complaint is made within six months from the date on which the offence is alleged to have been committed.*

6. *No court shall take cognizance of an offence punishable under this Act, alleged to have been committed by a public servant during the course of his employment, except with the previous sanction,*

(a) in the case of a person, who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person, who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

Statement of objects and reasons:

The Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment was adopted by the United Nations General Assembly on 9th December, 1975 [Resolution 3452(XXX)]. India signed the Convention on 14th October, 1997. Ratification of the Convention requires enabling legislation to reflect the definition and punishment for "torture". Although some provisions relating to the matter exist in the Indian Penal Code yet they neither define "torture" as clearly as in Article 1 of the said Convention nor make it a criminal offence as called for by Article 4 of the said Convention. In the circumstances, it is necessary for the ratification of the Convention that domestic laws of our country are brought in conformity with the Convention. This would necessitate either amendment of the existing laws such as Indian Penal Code or bringing in a new legislation.

2. The matter was examined at length in consultation with the Law Commission of India and the then Learned Attorney General of India. After considerable deliberations on the issue, it was decided to bring in a stand alone legislation so that the aforesaid Convention can be ratified. The proposed legislation, inter alia, defines the expression "torture", provides for punishment to those involved in the incidents of torture and specifies the time limit for taking cognizance of the offence of torture.

The Bill seeks to achieve the above objects.

P. Chidambaram
New Delhi
19 April 2010

Comments on the Bill

Torture being a crime committed by state agencies, it has remained and will remain a subject of intense discussion and condemnation, internationally. It is a crime considered with such seriousness that today, torture is considered as a crime against humanity. At the moment, there is no functioning legal framework in the country that can adequately address the question of torture. Tackling the question of torture involves creating a respectable and independent mechanism where a complaint of torture can be lodged without fear of repercussions to the complainant; whereupon the complaint will be investigated promptly with the assistance of all modern crime investigation tools and the investigation leading into an impartial prosecution that could render a reasonable sentence as punishment to the perpetrator. There must be also a procedure by which a victim of torture can access and receive redress and adequate rehabilitation to regain the balance in life, which every victim of torture is certain to lose, irrespective of gender, social status, race and nationality.

For this framework to be established in India, what is required is a law that forms the basic legislative outline to deal with torture. As mentioned earlier, such a framework does not exist in India at the moment. The Bill under consideration is far too inadequate to pave the foundation for such a legislative and/or procedural framework.

Purpose of the Bill and the definition of 'torture':

The Preamble of the Bill states that the purpose of the Bill is "... to provide punishment for torture inflicted by public servants or any persons inflicting torture with the consent or acquiescence of any public servant, and for matters connected therewith or incidental thereto..." and "... whereas it is considered necessary to ratify the said Convention and to provide for more effective implementation..." of the United Nations Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (CAT). For this to be realised, the primary requisite is to define what amounts to torture.

Section 3 of the Bill defines the 'act' of torture. The Section however qualifies torture to those acts which cause (i) grievous hurt or (ii) danger to life, limb or health (whether mental or physical) of any person. The Bill in Section 2 draws meanings to words and expressions used in the Bill from the Indian Penal Code, 1860.

'Grievous hurt' however, is defined in Section 320 of the Penal Code as "(f)irst - Emasculation; Secondly - Permanent privation of the sight of either eye; Thirdly - Permanent privation of the hearing of either ear; Fourthly - Privation of any member or joint; Fifthly - Destruction or permanent impairing of the powers of any member or joint; Sixthly - Permanent disfiguration of the head or face; Seventhly - Fracture or

dislocation of a bone or tooth; Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

Reading Section 3 of the Bill with Section 320 of the Penal Code, will exclude several forms of torture that are routinely practiced in India. For instance, some of the most common forms of torture practiced in India at the moment are beating, slapping, punching, sleep deprivation and forcing a person to sit, stand or lie down in uncomfortable positions, often generating pain for prolonged periods. All these methods of torture need not always qualify as 'grievous hurt' as envisaged in Section 320 of the Penal Code. Yet all of them would be considered as torture according to the CAT.

Additionally, the test of what amounts to torture has to be subjective as well as objective. It is a settled position in international human rights law since 1978.[41] Indians deserve equal treatment in law in comparison to anyone else, elsewhere in the world.

The Bill fails to address mental torture. A person can be tortured mentally, without the perpetrator having to be in physical contact with the victim. Such practices are widely used particularly against vulnerable communities like religious or racial minorities, children and women. For instance, threatening a woman or girl of rape or forcing a person of any particular religious belief to eat prohibited food -- like a Muslim to eat pork or a Brahmin to eat beef can amount to severe mental torture, which the Bill at the moment omits.

The definition of torture, in its simplest form is provided in the CAT. We urge the Committee to suggest a revision of Sections 2, 3 and 4 to incorporate the letter and spirit of Article 1 of the CAT in the Bill, without which the purpose of the Bill will be defeated.

In this context the UN General Assembly Resolution sponsored by India in 1977 is relevant. The Resolution requested the then UN member states to make unilateral declarations of intent to implement and comply with the Principles of the Declaration on Torture.[42]

On statutory limitation

Section 5 of the Bill places a statutory limitation of six months for taking cognisance of

41 Per Judge Zekia in the European Court of Human Rights (ECHR) trial Ireland v. the United Kingdom; Case No. 5310/71. Here the Court in simple terms establishes the point by comparing the effect of similar treatments that can have different effects upon an old fragile person and upon a wrestler or a boxer.

42 General Assembly Resolution 32/64, 8 December 1977.

an offense punishable under the Bill. India has acceded to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity on 12 January 1971. It is well settled that torture is a crime against humanity. Being party to the above convention, India is bound by the principle of *pacta sunt servanda* not to legislate a law that vitiates its treaty obligations.

It is true however that 'torture' is not explicitly mentioned in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. It must not be for India to pose hindrance to the development of customary international law.[43] In fact it cannot.

Law is not static. By virtue of the developments in international human rights jurisprudence post 1947, culminating in the drafting of the Rome Statute that established the International Criminal Court, torture can now be safely considered as a crime against humanity. Indeed, India has neither ratified nor acceded the Rome Statute. However, India's refusal to accede to the Rome Statute and to submit to the jurisdiction of the International Criminal Court was not because -- at least on records -- of the fact that torture was considered a crime against humanity.

The principal objections by India against ratifying the Rome Statute is mentioned in an explanatory statement on a vote on the adoption of the Statute of the International Criminal Court issued by India's then Additional Secretary to the UN, Mr. Dilip Lahiri, on 17 July 1998. While enumerating India's position against the Rome Statute, Lahiri did not argue against the inclusion of crimes like torture as a crime against humanity, triable by the ICC.

To substantiate further, the settled position of law in India is that the right against torture has attained the status of a fundamental right by virtue of the interpretation of Article 21 by the Supreme Court of India.[44] However, the Constitutional provision to have a 'procedure prescribed by law', which the current Bill is, should not be a procedure to proscribe the scope of a victim to pursue remedies against torture.

Often, as it has been proved in instances where brutal atrocities are committed against persons, victims take time to speak about it, for reasons like fear, extreme state of trauma, displacement, lack of adequate knowledge or sheer absence of congenial circumstances to lodge a complaint. Further, prescribing a statutory period of limitation in the law

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43 India however was the only country that abstained from voting on 22 December 2003, from the UN General Assembly Resolution, 'Protection of Human Rights and Fundamental Freedoms While Countering Terrorism', A/Res/58/187.

44 AIR 1980 SC 1579 Sunil Batra v. Delhi Administration.

contradicts certain existing propositions of law. For instance, at the moment, there is no prescribed period of limitation for initiating prosecution in a case of murder. Torture could often result in murder.

The purpose of the legislation must be to criminalise torture, encourage complaints of torture, prescribe a reasonable procedure for investigation and prosecution and provide punishment for the crime. All this must be conceived as aiming towards ending the practice of torture.

The quotient of reasonableness of a legislation, which is intended to prevent a heinous crime, is judged in the backdrop of the country where the legislation is implemented and the nature of the crime itself. At the moment, India is not a country where a victim of torture has all the congenial circumstances to lodge a complaint. From experience and by virtue of sheer statistics, victims of torture are from the poorest of the poor and from marginalised communities. This stratum of the Indian population itself make up an estimated 60 percent of the total population amounting to millions. Expecting everyone who are otherwise marginalised or having limited or even no resources at all to lodge complaints and pursue them to do so within a short window of time, is destined to defeat the very purpose of the law. Further, this defeat will imply that a victim's right to prosecute a torture perpetrator will be circumscribed by the operation of limitation, unfortunately built into an enabling law.

Requirement of prior sanction

No Indian statute condones the commission of a crime in the course of employment. Neither is torture an act that could be committed 'in the course of employment', since it is expressly barred by existing departmental orders and by virtue of judicial decrees.

Requiring prior sanction from the government to take cognizance of a crime of torture implies that in cases where the government denies the sanction, torture is condoned. It could also mean that if the Bill is enacted, the right against torture and that of a victim to seek redress will be at the mercy of an executive decision. This is a proposition that will defeat the purpose of the law and further, the CAT.

Moreover, Section 6 will be used as an excuse for preventing the initiation of an investigation on a complaint. This will end in the destruction or in the erosion of evidence, which will adversely affect the rights of the victim. Torture can be part of a state regime's clandestine policy, particularly to silence political opposition. Should Section 6 be enacted, it implies the outright denial of prosecution of perpetrators in states where torture is widely used as state policy. No Indian state is an exception to this practice at the moment.

Additionally, the right against torture being interpreted as a fundamental right, requiring a prior sanction to initiate prosecution of the case will imply that Section 6 of the Bill is worded to restrict the realisation of a right. Further, Section 6 will only contribute to the existing delay in the prosecution of cases and will increase the number of cases before the High Courts and the Supreme Court. At the minimum, taking a cue from the Bikari Paswan case from West Bengal and many thousands more, Section 6 of the Bill is destined to defeat the victim and protect the perpetrator.[45] The settled position of law in India at the moment is that public servants can face prosecution without prior sanction of the appropriate authorities, as all their acts in the purported discharge of the official duties cannot be brought under the protective umbrella of Section 197 of the Criminal Procedure Code, 1973 (Cr.P.C).

The Supreme Court of India in January 2009 has settled the law concerning the requirement of prior sanction while deciding, once again a case involving a police officer from West Bengal, Deputy Superintendent of Police Mr. Sahabul Hussain, who was thus far protected from prosecution by the state government. The Court said: "... all acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 Cr.P.C. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him".

Justice Kabir, a judge in the Sahabul Hussain case, perusing an earlier ruling of the apex court said: "*...the underlying object of Section 197 Cr.P.C is to enable the authorities to scrutinise the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the concerned official*."

"*However, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of Section 197 Cr.P.C and have to be considered de hors the duties which a public servant is required to discharge or*

45 Bikari Paswan disappeared in 1993 from West Bengal. Lakichand Paswan, the father of Bikari Paswan contented that Additional Superintendent of Police Mr. Harman Preet Singh and three of Singh's subordinate officers had murdered his son. A complaint filed by Lakichand Paswan was stopped from being investigated or prosecuted due to a misinterpretation of Section 197 of the Code of Criminal Procedure, 1973. The West Bengal State Government never issued a sanction order to prosecute the police officers, despite repeated attempts by Lakichand. A writ application filed by Lakichand at the Kolkata High Court took ten years to decide, though the court only took less than half an hour to decide the case on the final hearing date, 8 July 2004, to conclude that murder is not an act that comes under 'in the course of employment' and directed prosecution of accused. A day prior to the decision of the High Court, Lakichand passed away. This is a thousand times repeated story in India. Section 6 is a yet another attempt to statutorily cement this unfortunate fate of the victims.

perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned." At the minimum, Section 6 of the Bill under review by the Committee is a reintroduction of the 'ruled out' protection of Section 197 of the Cr.P.C, which must not be permitted.

Aspects missing in the Bill relevant to torture and the CAT

The Bill falls short of specifying a mechanism to investigate torture, and any witness protection arrangements. Given the nature of the crime, it is imperative that torture must be investigated by an investigating agency independent of the police and having no officers on deputation from any other law enforcement agencies.

One of the reasons for the failure of successful prosecution of complaints against police is that the investigation is conducted either by police officers directly or indirectly involved in the crime or by their superiors. There is no need to enumerate why a victim or witness having a complaint against a government servant like a police officer in India requires protection. In countries where the practice of torture has been reasonably contained, both these requirements are met. In jurisdictions where these basic requirements are not followed, like in Sri Lanka, the corresponding law has become useless.

Conclusion on the bill

Torture is practiced by law enforcement agencies in India as a crude short-cut for crime investigation. Investigating agencies justify the use of torture arguing that they often lack advanced training and equipment for crime investigation. The concept of modern policing is still a mirage in India, where the police is expected to function as a tool for social control, rather than to serve the citizens.

It can be argued that a large number of law enforcement officers in the country believe that the deterrence quotient against a crime is the possibility of being tortured, rather than the crime being detected, prosecuted and punished in the legal process. Extensive delays in court proceedings and the repeatedly demonstrated professional and intellectual paucity of the country's prosecutors appears to justify the widespread belief among law enforcement officers that torture at the hands of the investigator is the only punishment a criminal might get in India.

In this manner, police officers and other law enforcement officers generally consider torture as an essential investigative tool for investigation. Policy makers and bureaucrats believe that there is nothing wrong in punishing a criminal in custody, not realising the fact that a person under investigation is only an accused, not a convict and further, that even a convict must not be tortured. This is due to the lack of awareness about the crime, its nature and seriousness.

As early as 1981, the Supreme Court of India has said "*...(n)othing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts deeper wound on our constitutional culture than a state official running berserk regardless of human rights*" (Kishore Singh V. State of Rajastan).[46] Internationally, torture is considered as one among the most heinous crimes like slavery, genocide and maritime piracy against which there is an absolute prohibition and the principle of *jus cogens* applies.

When torture is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, torture can also be treated as a crime against humanity under the Rome Statute.

The National Human Rights Commission of India has repeatedly recommended the government to criminalise torture. The Commission said "*(d)aily the Commission receives petitions alleging the use of torture, and even of deaths in custody as a result of the acts of those who are sworn to uphold the laws and the Constitution and to ensure the security of its citizens. Such a situation must end, through the united efforts of the Government....*".[47]

The UN Human Rights Committee as early as 1997 has expressed its concern about the widespread use of torture by the law enforcement agencies in India.[48] The Committee on Elimination of Racial Discrimination has expressed similar concerns in 2007,[49] and the Committee on Economic Social and Cultural Rights in 2008.[50]

In a democratic framework, torture undermines democracy and the rule of law. Its open or clandestine use undermines the fundamentals of democratic governance. Law enforcement agencies, particularly the police, practicing torture reduce itself into an instrument of fear. This image and torture often diminish criminal investigation into a mere charge based on confessions. Fair trial, an important part of the rule of law framework, has no place in such an environment. The practice of torture is not limited to policing. Paramilitary and military units also resort to torture, often brutal. Whether torture is practiced by a military detachment or by the local police, the possibility for a victim of torture to complain is very limited in India.

The absence of witness protection laws, proper investigation mechanisms including medico-legal facilities, and prosecution mechanisms, render complaint making suicidal for a victim. This allows torture to also be used for blackmailing, as a form of revenge and for monetary gain.

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46 AIR 1981 SC 625.

47 Annual report of the National Human Rights Commission 2007.

48 CCPR/C/79/Add.81.

49 CERD/C/IND/CO/19.

50 E/C.12/IND/CO/5.

A domestic law against torture that is capable to deal with the central deficit in India's policing must address all these issues. A proposed Bill that fails to address any of the above concerns is thus a sham.

The culture of state-sponsored violence

On August 25 this year the Union Home Minister, Mr. P. Chidambaram's call to ordinary citizens in the country to come forward to assist law enforcement officers in combating armed militancy and terrorism is unfortunately an illusion. The minister was reiterating his wish and request to his fellow citizens while addressing the top police officers of the country in a meeting organised by the home ministry in New Delhi. The Prime Minister also addressed the two-day meeting, convened to discuss terrorism and armed militancy. It is true that the Union Home Ministry has been consistent in its position of inviting armed groups operating in the country for discussions with the government to end extremist militancy, particularly of the leftist origin.

The approach, in theory, indicates the maturity of a government and underscores the importance of dialogue to resolve issues within a democratic framework. It is unfortunate that the Naxalites operating in the country have refused to accept the call, though they have their own reasons to trash the government's requests for dialogues. The AHRC however is of the opinion that the Naxalites and other armed militia are merely exploiting democratic failures.[51] Unfortunately in India, the list of issues open for exploitation is quite a few, ranging from poverty and malnutrition to loss of livelihood options and brutal forms of caste based discrimination. While it is the duty of a citizen to assist the government and its various agencies to counter anti-national activities, it is equally a citizen's right to expect that the government execute its democratic mandate as promised by the constitution. The government of India has largely failed thus far in complying with this mandate, and governments' failures consistently exploited by corrupt politicians and law enforcement agencies throughout the country. For instance, the public perception of a police officer is that of a uniformed criminal, paid by the exchequer. The practice of torture is consistent and widespread in the country. In places like Jammu and Kashmir and Manipur, extrajudicial executions - encounter killings as it is referred to in India - are rampant. Witness protection is impossible in India due to the absence of any legal framework to provide protection to persons who are willing to depose in courts against criminals.

Going by the widely accepted definition of terrorism - premeditated use or threat of use of violence to obtain political, religious, or ideological ends - the Chief Minister of Manipur, Mr. Okram Ibobi Singh and his government could be prosecuted for engaging

51 Please read further for an deeper analysis on this issue.

in terror acts. So could the Chief Minister of Gujarat, Mr. Narendra Modi, who allegedly masterminded the Gujarat pogrom of 2002. While the state police in Gujarat was plentifully used to facilitate what could be defined as genocide of Muslims, in Manipur, the state police have become a synonym of terror. Yet, those responsible for injuring and murdering citizens at the behest of their political masters and for sheer corrupt means have been largely left free and allowed to continue in their service. While some police officers in Gujarat faced investigation and prosecution, in Manipur none have been prosecuted yet, though every day the state police, in what is often claimed as encounter killing, reportedly murder someone or the other.

The very fact that despite the murder of an estimated 700 'suspected terrorists' each year in Manipur by the security agencies, armed militancy in that state has not reduced. Going by the state government's own reports, armed militancy in the state has instead increased over the past two years. In this backdrop there are also serious allegations against Ibobi and his government that the Chief Minister is posing terrorism as a means to extract money from the central government in the pretext of countering it. The extrajudicial executions carried out by the Manipur state police are suspected to be undertaken at the behest of the Chief Minister and his political allies, to prove to the union government that they need money to counter terrorism, together with statutory impunity in the form of the Armed Forces (Special Powers) Act, 1958 to prevent the security agencies from being investigated or prosecuted for their criminal acts.

The union government's financial aid to state governments amounts to several millions of rupees each year. It is not required to be audited by the Comptroller and Auditor General of India, leaving it to be spent at the absolute whims of the state government. While the tax money is spent in such a fashion, the law enforcement agencies, particularly the state police, continue to remain one of the worst in the world. True, the Indian police might be better in comparison to some of their counterparts in the region, but Indians definitely deserve better.

Yet, it is no one's concern in India to address deep-rooted organisational and performance issues concerning police. Political parties of all colours continue to meticulously resist any attempt to free the police from political control. The police on the other hand let the politicians exploit them and have unilaterally declared their perpetual servitude to the politicians since they also benefit from the resultant cycle of corruption and nepotism. The furore in the Indian parliament about the nuclear bill was not visible when the Prevention of Torture Bill, 2010 was discussed. On the contrary legislators of all colours tried to water down the already weak law. This important piece of legislation is useless if it is enacted in the current form.

The national media have also ignored the subject. There was literally no discussion at all about the proposed Bill against torture in the national press when the Bill was

debated in the lower house of the Indian parliament, the Lok Sabha. Today the Bill is pending consideration of the upper house of the parliament, the Rajya Sabha. Yet, no one is interested in raising this issue. Those who lament that democracy warrants public discussions on proposed legislations through media articles have remained silent about the complete lack of discussion about the proposed law against torture.

The logical question is why is this law against torture so important and what is its connection to the depleting national security? Rampant use of torture is the singular tool with which the police have generated fear among the citizens, so that the average citizen today fears to approach the police even when they are in need. It is the absence of a proper investigating and prosecuting mechanism against torture that lets the police resort to torture even in cases where they can investigate crimes with whatever little training and facilities the police have in India today. While international condemnation of torture today is as serious as that against genocide and other crimes against humanity, a large section of police officers in India still believe that torturing a suspect is their right and that torture is a legitimate form of punishment and tool for crime investigation. These officers receive support from legislators with the 18th century mindset like Mr. K. Radhakrishnan, the current Speaker of the Kerala Legislative Assembly, who has repeatedly addressed police officers assuring them that in a country like India, third degree methods are required to police the people and that human rights is an 'occupational hazard' for the police.

While expecting and requesting support from the common citizens, the Union Home Minister should bear in mind that the people from whom the government expects support are greatly alienated from their police due to the fear the police have generated among the people. For the citizenry there is hardly any difference between the colonial police and that of independent India. Though 1950 gave Indians a democratic socialist republic, the republic still carries the burden of having to be administered with the police and their political masters who operate with a coloniser's mindset. Calling for people's participation without clearly articulated and enforced police reforms will only result in a retarded response from the citizenry. Unless affirmative and visible steps are taken to change the unacceptable status quo, expecting the citizens to perform their duty while the state agencies engage in brutal crimes is sheer illusion.

Extremists exploit democratic failures

In two separate incidents on 7 April 2010 and 17 May 2010, the Maoists operating in India killed 98 Central Reserve Police officers and 11 civilians in Chhattisgarh state. In at least one incident that resulted in the murder of civilians, the Maoists used an Improvised Explosive Device (IEV). Both attacks seriously injured several persons. It is reported that immediately after the explosion that killed 11 civilians on May 17, the

Maoists fired indiscriminately at the injured and at those who tried to escape. The use of IEDs similar to landmines in circumstances as reported in Chingavaram is prohibited in international humanitarian law.[52] The attack also violates Common Article 3 of the Geneva Conventions of 1949, a law that applies to non-international armed conflicts and to extremist groups like the Maoists and Naxalites in India.

The magnitude of the extremist problem, its root causes and the development paradigm

It is estimated that 156 districts in 15 states face 'threats' from armed movements with the states of Uttar Pradesh, Bihar, Orissa, West Bengal, Jharkhand and Chhattisgarh the worst affected. Today the Maoist and Naxalite movements in the country have evolved into an armed and rebelling group, well organised and fighting locally against the 'state'. Though the theory and practice of these movements are questionable, they liberally exploit the anger and frustration from decades of neglect and oppression of the rural populace in India, particularly the tribal communities. Parallels of this form of emotional exploitation can be drawn also to the insurgent activities in the northeastern states in India. The Maoist and Naxalite movements in the country are mostly rooted in the government's failure to guarantee the basic norms of a democratic state to a large section of the country's population, particularly in rural regions and remote villages. This explains why these parallel extremist movements are mainly spread across the remotest villages in the country.

Many such villages are home to various tribal groups. These communities depend upon forest and agricultural produce for their survival. Owing to negligent government policies and the drastic exploitation of natural and forest resources, with complete disregard for the population that depended upon these products for hundreds of generations, large sections of the rural population have lost both their habitat and livelihood options. Brutal police actions were taken to 'deal' with those who resisted.

Many tribal communities today are on the verge of extinction and the government is in no mood to listen or engage in dialogue, as evidenced in the recent attack upon the Anti-POSCO movement in Orissa. Voices of protest, and requests by the native population for consultations with the government, have faced not just rejection, but stiff oppression where state forces were used plentifully. In fact in some incidents, the police officers were hired by private companies to 'deal' with the leaders of protest movements. Police were used to gather information about local resistance movements, thereby reducing the state police to the role of mere mercenaries.

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52 Second Protocol to the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.*

The situation is also plentifully exploited by the extremist movements as evidenced in the events prior to the police assault on the Anti-POSCO protesters. It is reported that minutes before the police charged against the protesters, shots were fired and country bombs hurled at the police.

The government policy on mining is spelled out in the National Mining Policy released in April 2008.[53] The policy aims at boosting national development through mining and disregards completely the concerns and welfare of the original inhabitants of the land. Accepting tenders from corporations with deplorable records and supporting their activities using state resources stands proof to the government's lack of commitment to the people.

Left with no means to survive and their original habitats rapidly being depleted, the rural populations in the country have become more vulnerable to exploitation by landlords and corrupt politicians. Exploitation often takes the shape of bonded labour, a practice criminalised in laws that are hardly enforced. Police and other state agencies, like the forest department, are easily bought over by landlords owing to the widespread corruption in the system. In frustration, the oppressed populations fall prey to extremist ideologies like those promoted and professed by the Maoists and the Naxalites, finding in them a means of fighting back to regain dignity at the very minimum. Such fights, of varying intensity, have spread to an alarmingly large area of the country. Unfortunately, the government response has been equally violent, resulting in murders and widespread loss of property. The legal and moral question the government must answer is can development be forced upon a population?

Exploitation of violence

Lopsided, religiously coloured and politically motivated defence tactics - like the formation of the '*Salwa Judum*'- have resulted either in standoffs between government-backed forces like the *Judum* and the extremists or in combat, in which lives are lost on both sides. In some parts of the country, the *Judum* has replaced the state and those leading the *Judum* are using it as a tool for oppression in the excuse of fighting extremism. It is reported that groups like the *Judum* as well as the Maoists and the Naxalites are armed with weapons that cannot be procured from licensed arms dealers in India and for which no private licences are issued. Procuring weapons and the ammunition required for these weapons is a matter that the state as well as the central government must investigate and plug holes with immediate priority. It could be a hard task since even some parliamentarians and other local political leaders in the extremist affected regions employ

53 Please see Government of Orissa Department of Steel and Mines, released in 2008, in conjunction with National Mining Policy 2008

private militiamen and armed private guards who brandish imported unlicensed weapons. Any attempt to disarm these private armies will be sabotaged by the local politicians. At the core of this is an important question regarding the quality of law enforcement in the country. The Maoists and Naxalites are only exploiting the failure of an important state apparatus, the local police.

An equally worrying factor is the recruitment of tribal youth as members of the village defence forces. On the periphery, volunteering to become a member of the village defence force is a mere gesture to assist the state in combating violence. However the constitution of the village defence force has deeper implications. Often becoming a member of the village defence force is not a matter of choice, but an issue of survival for the tribal youth.

The extremist groups force the tribal youth to join their cadres accusing those who refuse of being state agents. Incidents are common where those who refused to take up arms are murdered, their houses burned, or they are dispossessed of their livestock and forced to flee the villages. On the other hand the state agencies, in particular the state police, seek information from the members of the tribal communities and once again those who refuse to cooperate are accused of being Maoist or Naxalite cadres and are arbitrarily detained, tortured and even executed. Such murders are whitewashed as 'encounter killings', a convenient euphemism used by the state agencies for murdering civilians and circumventing the due process of law in the excuse of combating violence. Caught between these two opposing and equally violent forces, the unemployed tribal youth finds the government's offer as a means of employment and a source of security.

The very concept of village defence force defies accepted norms of state responsibility to offer protection and security to the life and property of the citizens. The members of the village defence force are given inadequate combat training; they are not considered as the employees of the state and their acts, irrespective of its nature, are offered implied impunity. This unique position exposes the members of the village defence force to exploitation to carry out the 'dirty work' for the state agencies. Many tribal youth are recruited with the false promise that after the operation, they would be inducted to the state police. On these grounds the recruitment and deployment of the village defence force have no higher morale or legitimacy than the recruitment strategies used by the Maoists and Naxalites.

In the fight between the state and the extremists, both sides have committed atrocities, as would be the case in any unregulated war where might and connivance make right. Hundreds of policemen have lost their lives or been seriously injured in these wars; a similar number of extremists have also been killed or injured. This is in addition to the large number of innocent persons killed by both sides because of mere accusations and suspicion. Worst of all is the number of innocent persons killed in fake 'encounter

killings' organised by the state agencies. Men and women are almost daily arrested, tortured and killed by state agencies in the name of fighting extremism. Such murders are in no way different from those carried out by the extremist groups. They are equally cold-blooded and criminal. However, so far not a single such case has been investigated or the perpetrators punished.

Encounter killings and the use of torture defy the basic premise of democracy and it negates the fundamentals of fair trial. Encounter killings violate India's legally binding obligations as mandated in the *International Convention on Civil and Political Rights*, an international document to which India is a party. By all means encounter killings have no place of acceptance within the existing legal framework in the country. The National Human Rights Commission of India has repeatedly required state agencies to conduct independent investigations and video document the autopsy of victims of encounter killings and file reports on each incident to the Commission. Though a rule sought to be enforced by the Commission, filing of these reports thus far has remained an exception.

Murder and violence cannot be justified for any reason. On that ground alone, extremist activities in the country have no moral basis, even though they would define their activity as a radical political movement, necessary to fight oppression. When murdering innocent persons and imparting fear among the populace becomes a means to political ends, the Maoist and Naxalite movement runs parallel with other terrorist organisations in the world.

The Naxalite and Maoist problem is complex. A concoction of caste issues, feudalism and lawlessness in rural India intoxicates the people, so their minds become fertile ground for extremist ideologies. The government has responded by opting principally to counter violence with violence, adding fuel to the fire. Between these two diametrically opposing forces is no middle ground, which leaves the common people no way to avoid violence. The murder of civilians and police officers, destruction of private and government property including vital transportation links like the rail network by the Maoists and Naxalites has to be analysed and understood as part of a well calculated and executed strategy to increase state offensive. It appears that the Maoists and the Naxalites look forward more towards the state's use of aerial combat operations, an option the state has refused to initiate until today.

The continuing offer by the Union Home Minister for dialogue and a peaceful way of settling disputes with the extremists shows the intention to deal with the issue in a mature way, a democratic principle the Maoists, Naxalites and the leading opposition parties like the Bharatiya Janata Party and the Communist Party of India (Marxist) repeatedly fails to understand. This is no surprise since the ideological framework based on violence of these two political groups runs parallel to that of the Maoists and the Naxalites. Arbitrary violence used by the state in combating extremism will only inflate the situation, an

opportunity eagerly awaited by the extremists. It will also further alienate the citizens affected by the violence from the state, an essential requirement for the extremist group to expand and sustain.

The democratic way forward

The expanding network of Maoist activities in the country and their improving sophistication in attacks must be an eye-opener to the government. The Prime Minister and the Home Minister have been lamenting against the Maoists, accusing them as "the single largest threat to India's internal security" since 2006. Other than for the failed attempts to engage in a peaceful dialogue with the Maoists, the government's response to the Maoist threat has been largely offensive in nature, with repeatedly demonstrated lack of coordination resulting in loss of life among the security forces, Maoists and that of innocent villagers.

Probably a way of dealing with the Maoists is for the government to take immediate measures to address Maoist recruitment in rural India. Sheer use of force and other ill-conceived tactics adopted by the government so far, like the formation of village defence forces and forced migration of villagers into guarded camps with limited freedom have not only divided the rural population, but has also resulted in generating grievances against the state. Such steps have only benefited the local landlords and those politicians with tainted credentials like some in the Chhattisgarh State Assembly.

It is not only the Maoists who promote violence. The statement issued by Mr. Rajeev Prathap Rudy, the national spokesperson of the Bharatiya Janata Party (BJP), immediately after the April 7 incident demanded an immediate end to the offer of dialogues by the government, and an all-open offensive against the Maoists is an example. Rudy cannot however wash his hands by placing an irresponsible demand on behalf of his party demanding the government to engage the Maoists in an all-offensive war. The Maoist movement gained momentum when Rudy was the Union Minister of State for Commerce and Industry in 1999. Some of the industrial policies Rudy emulated from the Singapore model and conceived and executed in the country have sumptuously helped the Maoists to spread out in the country, expanding the length and breadth of the Maoist red-corridor. Indeed, an offensive as called by the BJP against the Maoists will get complete cooperation from the Chhattisgarh state administration. This is not only because the state is ruled by a BJP led government that has shamelessly lobbied for Maoist support during the election, but also since some of the state's corrupt politicians can use the fight against Maoists as an excuse to wipe off the remaining tribal population from their dwellings. The Chhattisgarh state government has been doing this in the past few years and has a record of selling much of the state's natural resources, including rivers and forests, to private corporations.

Among the manifold causes for the Maoist insurgency in India are extreme poverty, loss of livelihood options, feudalism and caste-based discrimination. Unfortunately, some of the state governments, like the one in Chhattisgarh, have a large number of corrupt politicians who have not spared an opportunity to steal whatever little the poor landless peasants have. While emphasising the country's need to develop, the government must also take measures to provide reasonable and just options for those who do not want to support at all costs the development paradigm. For instance, industrial and infrastructure development must not be an excuse to force distress migration of the rural population and end in loss of livelihood options as the case in Chhattisgarh, Orissa, Madhya Pradesh and West Bengal.

Development that lacks the emotional ownership of the ordinary people cannot sustain itself. Such forced developments alienate the people from the state. Secessionist forces reap the benefit of this intellectual animosity between the state and the citizens, and the Maoists are no exception.

The government of India has a constitutional mandate to guarantee the security and prosperity of its citizens. The constitution that empowers the state to use force to contain internal threats also requires the state to address the threat within the framework of the constitution. Ending feudalism, extreme poverty and landlessness are as equally important as containing internal insecurity. These responsibilities are not to be prioritised by the government at will, but rather given immediate attention.

It is likely that a solution to the Maoist insurgency in India also lies in this. It requires however, the government to have the resolve to address these real problems that affect ordinary Indians. The Maoists know that many of India's mainstream politicians will find it difficult to give away their rural power banks that rest in feudal and corrupt frameworks. It will not be surprising if it is exposed later that the Maoists are in fact supported by some of these corrupt politicians who pretend that they are fighting internal insecurity.

The moral ground for the state to fight the extremist group must not be thus based on the use of counter violence. The fight against extremism must begin from a considered approach of gaining confidence of the citizens, the worst affected rural population in particular. In doing so the government must be able to prove that the country is a matured democracy and not a chaotic state of intense vested interests. One of the important steps towards this is the enactment and prompt implementation of a national land reforms policy augmented by the revision of some existing laws, such as those limiting the rights of the tribal community to use the forest and forest produce as they did for hundreds of generations in the past.

Conclusion

Combating violence has to begin within government agencies. Strict action must be taken against state agents, in particular officers of the police force and the forest department, who commit crimes against innocent civilians. But so far no such action has been taken. In addition there must be a credible and transparent mechanism to listen to the grievances of people caught in the crossfire, and a policy of welcoming armed civilian combatants, including the Maoists and Naxalites, to surrender and be reintegrated into society. The policy of using a village defence force must be reviewed with inputs from civil society organisations that work with tribal communities and the ordinary people who are affected by extremist violence. State run essential services like medical and educational facilities must be provided to the rural population, and state institutions at the rural level should be free from corruption and discriminatory practices like caste based discrimination.

Fundamentalist religious forces resorting to violence in the name of vigilante groups rooted in the extremist affected regions must be banned and actions taken against political parties that support these groups. Policies behind current and future industrial development programmes in extremist affected regions must be reviewed with an intention to realistically assess the environmental as well as human impact of these programmes. Assessments must respect the rights of indigenous communities affected by these programmes. Until the government takes these steps, the Maoist and Naxalite extremism in India has the potential to flare up and burn down the democratic norms the founders of the nation promised to successive generations.

As of now, the country's worst enemy is its own police. The continuing practice of torture and the possibilities that exist for a police officer to carry on committing the offense with relative impunity is the central deficit in realising the true standards of democracy in the country. So far no attempt has been made to change this unacceptable status quo. Unless the government changes its policies on policing, India will continue to remain a pseudo democracy ruled by the whims of its elite. This, for millions of Indians means only that brown skinned Sahibs replaced the British.

Government has no interest to eradicate hunger and child malnutrition

The Government of India's attitude and approach to ensure food security and to eradicate child malnutrition showed no changes this year. For the records, the government's effort in 2009 was pitiable. The government's responses and policies, despite a few positive attempts[54] , neither paid attention to the root causes nor suggested a long-term solution.

54 There has been an increase in the issue of employment cards to the poor this year. But as explained later in this chapter, the implementation of the MNREGS is plagued with corruption and caste prejudices.

Despite India being the county that has the highest number of starvation deaths and child malnutrition, and the highest rate of child mortality in Asia, the government has not put the right to food and health as an issue of priority.[55]

Government agencies and officials from different departments related to the right to food and health do not have a comprehensive and unified policy to eradicate extreme poverty or child malnutrition.[56] There have been no steps to change this situation. Those who have been facing starvation depending on nothing but poorly paid hard labour, or the Dalits, are still the poorest. Communities like the tribals living in the central plains and states like Orissa, who depend on natural resources, are pushed further towards extinction. One of the main reasons for this is the aggravated depletion of natural resources, thanks to government policies concerning mining and exploitation of natural resources.[57]

The tribal communities in India today are increasingly deprived of their natural resources such as forest and land, which they have been economically and socio-culturally dependent on for generations. The government as well as multinational corporations are equally responsible for this.[58] The process of deprivation is often illegal and violent, driving the tribes into extreme poverty and hunger. The deprivation of resources aggravates their food insecurity and further destroys their living pattern and culture. On the other hand, the resistance to protect their lives and resources are either labelled as anti-state activities or extremist acts, or put down by force.[59] Democracy and participatory dialogues are thrown out of the window by the government when it comes to exploitation of natural resources, particularly Bauxite ores in states like Orissa. Neither the government, nor the corporate giants that seek to invest in India are interested in any process that adheres to the principles of the rule of law. Even the World Bank and the UK Department of International Development (DFID) support such steps.[60] Tribal communities having subsistence cultivations in and around forest areas are also confronted with acute hunger and their children are mostly undernourished. Most of these communities as well as farmers with smallholdings depend on natural irrigation, or rainwater. Destruction of natural irrigation sources due to mining and other industrial projects like construction of dams or excavation of land has resulted in distress migration

55 UNDP reports on India, 2007,08,09.

56 Primary Health Care in India : Review of Policy, Plans and Reports, WHO, 2005.

57 See further National Mining Policy 2009, Government of India.

58 *Korean civil society expects the Committee to make a fair and prompt decision on POSCO project in Orissa*, AHRC-FOL-013-2010, 17 September 2010.

59 *Orissa Poverty, Corporate Plunder and Ressistance : Reflections of a Rebel*, Prafulla Samantra & Asit Das, Counter Currents, 24 July 2010.

60 *India: Corporate Crimes and Environmental Plunder*, Champa – the Amiya and B.G.Rao Foundation, 25 December 2009

of millions from rural India to the urban areas. There they end up as bonded labourers, and within a year perish due to acute poverty, malnutrition and hunger.[61] Government schemes like the construction of village ponds, implemented often with the help of entities like the UNDP under the right to work program, Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) are often unfinished and useless due to widespread corruption of government servants as well as that of the UNDP officers working in India.[62]

Instead of ensuring food security at home by providing substantial and sustainable resources such as land or other agricultural assistance for the landless or small-scale farmers whose children are malnourished, the government appears to be emphasising on the child health care system.[63] This is a failing strategy to address child starvation deaths however, as it does not address the root causes of feudalism, caste based discrimination and emergency relief.

In November, the Minister of State for Agriculture, Prof. K. V. Thomas stated in the Parliament that there were no cases of starvation deaths reported to the central government by the state administrations during the past three years.[64] Externally, the government of India still denies that starvation or malnutrition deaths in India take place.[65] In fact the government after being informed about facts concerning certain cases, have taken repressive actions against the victims' families, which is also borne out from the government's reply to the UN Special Rapporteur on the right to food. Yet, the Prime Minister of India recently admitted that malnutrition in India is unacceptably high.[66] However, the Prime Minister, like his predecessors and the government he leads did not spell out any specific actions to address this issue. The fact is, the government does not have a reasonably ironed out process or policy by which the issue can be addressed. This is

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61 Bonded Labour in India, ALRC-CWS-15-12-2010, 30 August 2010.

62 In a field visit of the staff members of the AHRC, they were able to visit three such ponds in Orissa where the ponds were half constructed, but money fully paid. The NGO and the UNDP that was responsible for the construction of the ponds have fixed boards advertising the completion of the project. In one site, there were only three walls for the pond, as the pond was constructed by building earthen walls over a large land area, whereas in two others there was no pond at all. It is a matter of sad irony that UNDP is a UN agency that has conducted the largest number of studies about corruption in India and made recommendations to the government as well as other agencies like the UN itself. There is hardly anything however on the ground to show that the UNDP is not corrupt, whereas the reality is otherwise.

63 Government of India, Health and Family Welfare Department, Policy Document 2009.

64 *No starvation death in India in last 3 years, says minister, others say it is a cover-up*; Bijay Kumar Singh, Tehelka, 12 November 2010.

65 Report of the Special Rapporteur on the right to food, Olivier De Schutter, A/HRC/13/33/Add.1, 26 February 2010, pp. 14-15.

66 Dr. Manmohan Singh speaking at Prime Minister's National Council on India's Nutrition Challenges on 24 November 2010. He said that the problem of malnutrition was a complex, caused by multiple factors and with long-term consequences on the growth, development and well being of the nation.

because such an approach will hamper the interests of the Union and State Governments' 'break-neck-speed' development strategies, the vested interests of the country's politicians - a majority being feudal landlords - and caste based politics - a factor that decides who rules India for how long.

No redress for 'emergency'

In Madhya Pradesh, the Nutrition Rehabilitation Centres (NRC) were established to treat severely malnourished children. The districts from where the AHRC reported cases of child malnutrition this year, like Khandwa, Sidhi, Jhabua, Rewa, and Satna have NRCs running either at the Community Health Centres (CHCs) or at the district government hospitals. Many cases taken up by the AHRC shows that the malnourished children taken to the NRC were denied admission at the NRC due to lack of facilities. In a case reported from Khalwa block of Khandwa district, despite facilities being available and information of severe malnutrition made available to the district administration, the children were not taken to the NRC. [67]

Two year old Dewa, Salidhana village, Khalwa Block in Khandwa district, October, 2010

Owing to difficult realities, parents are sometimes not eager to take their children to the NRC, as happened in the case of two-year-old Dewa, son of Kumar Singh, a Korku tribesman. Failing to produce enough food from one-acre of non-irrigated land affected by drought, Kumar Singh was about to migrate to the distant city seeking work as a bonded labourer. According to him, if his wife took his son to the NRC, there would be no one else to take care of the other children at home. This would force Kumar Singh to stay at home and prevent him from seeking a job, which is essential to the survival of the rest of his family. Kumar Singh was thus willing to *sacrifice* Dewa, letting him die of hunger and malnutrition, so that the rest of the family could be saved.

Even if a parent is willing to take his child to the NRC, often the NRC remains closed or refuses children from being admitted on any day of the month. Most of the severely malnourished children are undernourished from birth. The 14-day treatment such a child might receive at the NRC is no more than temporary relief. The child discharged

67 It is the responsibility of the district administrations to ensure that the children requiring treatment at the NRC are brought to the NRC

after two weeks of treatment at the NRC is brought back to the same living conditions, resulting in the death of many children prior to their discharge from the NRC.

Nanchu, a 16-month-old child from Kirahaipukhri village, Singhpur Panchayat, Majhgawan Block, Satna District of Madhya Pradesh, was refused by the NRC due to a lack of facilities. Nanchu was diagnosed as suffering from Severe Acute Malnutrition (SAM) or grade III malnutrition at that time. Without getting any treatment, the child died on 19 March 2010. This small village, where 42 Mawasi tribe families live, has lost seven children since 2008 due to acute malnutrition. At this moment, five other children in this village are severely malnourished and may die any day, probably even before the report is published, if nothing else is done.

Another district in Madhya Pradesh, Rewa, also exposes similar situations. For instance Java block of Rewa has reportedly 80 percent of the total children malnourished in 2008. Despite constant complaints and reports about child deaths and malnutrition, the state administration has done nothing to address the situation. Two severely malnourished children of the Kol tribe, living in Dhakra village, Laxman (16 months) and Ranjeet (18 months) were refused admission at the local NRC in September this year since the centre did not have adequate facilities. There are eight more children severely malnourished in the same village. The NRC that has to cater to several such villages has merely 10 beds. The facilities in this NRC, like all others in Madhya Pradesh have not improved since 2008.

Ajay Kol, suffering Severe Acute Malnutrition, Dhakra village, Java block, Rewa district, Madhya Pradesh, October 2010

Apart from the lack of facilities, a more fundamental issue is whether the NRCs have the capacity to function as an emergency response system. Mothers often complain that their children show no improvement after the treatment at the NRCs.

Ajay Kol, suffering Severe Acute Malnutrition, Dhakra village, Java block, Rewa district, Madhya Pradesh, October 2010

The villages having a high number of malnourished children are those belonging to the tribal, Dalit or other lower caste communities. This is due to a series of reasons: (1) the consistent denial of facilities like clean drinking water, sanitation, educational and medical institutions; (2) the bonded labour system widely practiced against the tribal and Dalit communities; and (3) the landlessness of the tribals and the Dalits. In most villages of Uttar Pradesh, Madhya Pradesh and Orissa, landed Dalits and tribals work as bonded

labourers in their own land since they are either denied possession of the land by the landlord, who often is from an upper caste community, particularly from the Brahmin caste, or are forced out of their land by the upper caste community in the locality with the help of the local police. Most of these villages do not have an Anganwadi Centre (AWC; child care centre) or only have sub-AWCs that merely provides supplementary food. Furthermore, most of the AWCs reported by the AHRC do not function well. Either the building for the AWC is not completely constructed, or the workers are not properly trained or they discriminate against the tribal and Dalit communities and refuse entry to their children or their mothers. Many centres do not have enough food to meet the requirements of the children in the village where they operate. In many cases when the Anganwadi worker referred children to the NRC, the district administration reprimanded them for reporting such cases. As mentioned earlier, most district administrators are under instructions from their respective state governments to '*under report*' the state of poverty. Under these circumstances, the Anganwadi workers are not able to do anything further and often complain about a demoralised work environment.

No co-responsibility

Whenever a case of child malnutrition or death is reported, the usual practice of the district administration is to suspend the Anganwadi worker. This is an easy way adopted by the district collectors to escape responsibility and to show action has been taken. The district collector of Khandwa in 2008 directed all the state government officials under his jurisdiction that they should provide their vehicle if a child is to be taken to the NRC. The collector issued the order in response to a series of cases reported by the AHRC. Despite the passing of two years, when the AHRC visited villages in the district, it was revealed that in many villages the Anganwadi workers had never visited since they were far off from their area of work, or in cases where the Anganwadi workers have requested for a vehicle to transfer a child from its home to the nearest NRC, no vehicles were made available not only by other departments, but even the district collector himself.

An intervention on the issue by a local human rights group resulted in the suspension of an Anganwadi worker responsible for the village from which the case was reported. Fearing such actions, Anganwadi workers often remove the name of severely malnourished children from their registers. Even until today, not a single district level officer has been punished for a case of starvation death in India.

It appears that for the Government of India, malnutrition and starvation deaths are the responsibility of the victims, a few local NGOs, the UN Rapporteur on the question of right to food and at the most an Anganwadi worker. Beyond that the issue is only good for the Prime Minister to make a statement, affirming that it is unacceptable, or for a Prime Minister in the making, Mr. Rahul Gandhi, to visit a few villages and speak about

it for cheap political gains, or for corrupt politicians like Ms. Mayawati of Uttar Pradesh to contest an election, and indeed win it.[68]

No comprehensive policy

The union budget for 2010-11 has increased the budgetary allocation for the Ministry of Health and Family Welfare from Rs. 19,534 Crores to Rs. 22,300 Crores.[69] This however, is only two percent of the total budget. Some of the proposed schemes for which this money will be spent are to introduce a universalised Integrated Child Development Scheme (ICDS) targeting all children under the age of six by March 2012; to conduct a survey at the district level to identify the beneficiaries and to ensure the overall health insurance of the families living below the poverty line. However, the cases documented by the AHRC prove that these schemes are not properly implemented due to administrative neglect, deep-rooted and widespread corruption, and above all, due to discriminatory practices, particularly those based on gender and caste.

Thus, the policies as well as the programs designed for the poor still do not reach the intended targets. And there are no plans for the government to change this situation. The villagers report that the functioning of institutions like the AWC and public food distribution shops have not improved a bit this year. Neither do they expect that it will improve the next year, or the years after. Despite the increase in the budget for public health care and for the health ministry, all the public health institutions such as the AWC, NRC, Primary Health Centres (PHC) and Community Health Centres (CHC) have unfilled vacancies and they all lack basic facilities to function, even safe drinking water.

The conditions in Sidhi district of Madhya Pradesh state specifically reflect this scenario. While child malnutrition has been alarmingly increasing for the last five years, not a single PHC has been built in the district during this period. Of 4,708 medical officers posts, 1,659 are left vacant, while 1,098 posts of Auxiliary Nursing Mothers (ANM) are yet to be filled. Similar anomalies exist in other government programmes. For the Reproductive and Child Health Programme that aimed at reducing infant and maternal

68 Starvation deaths of children in Uttar Pradesh were a campaign issue for Mayawati during the state assembly elections and at the same time for some NGOs in Uttar Pradesh. Mayawati won the election and like any other politician soon forgot it. Then came Mr. Rahul Gandhi who opposed Mayawati during the Parliamentary elections. With the help of a local NGO, which the NGO plentifully and happily provided for cheap publicity, Rahul Gandhi made use of a couple of cases reported by the AHRC as a political campaign tool against Mayawati. After the elections, the Congress that Rahul Gandhi leads forgot that children continue to die in Uttar Pradesh. So did the local NGO. This NGO is now interested in providing psychological help to victims of torture to recover from trauma, since the funding money is in it. Project driven and short sighted human rights activism, undertaken merely for fame and/or sheer survival or employment is a curse of India's human rights movement

69 100 Crore is 1 Billion.

mortality, the government made a budgetary provision of Rs. 650 million between 2005 and 2010. Only Rs. 379.6 million has been spent from this budget so far. The unspent money had to be returned at the end of the project period.

In August, once again tons of rotten food grains from the government warehouses were to be thrown away in states like Madhya Pradesh, Punjab, West Bengal and Gujarat, an act the country has repeated shamelessly for the past seven years. Indeed, the government has throughout denied that anyone in India has died from a lack of food. In the past ten years, between 1997 and 2007, more than 10 million tons of food grains were damaged in the Food Corporation India (FCI) godowns. More than one billion tons of food grains were reportedly damaged this year.[70] Coming to know about this, the Supreme Court of India ordered the government to immediately distribute food grains to the poor and reprimanded the government for this colossal and shameful waste. The government's response was literally to say "mind your business," to quote the Prime Minister of India.[71] The same person, without an iota of shame, within 90 days said that the present situation of malnutrition is unacceptable. Probably someone in New Delhi should inform the Cambridge and Oxford educated economist; who served as the Governor of the Reserve Bank of India, the Deputy Chairman of the Planning Commission, the Finance Minister and now is the 14th Prime Minister of India, that malnutrition and death from starvation, reported almost daily in India is the result of those policies that results in tons of food grains rotting in the granaries of the country.

The Madhya Pradesh state government on its part initially denied the reports on child death and malnutrition. Later the Union Minister of Public Health and Family Welfare acknowledged in March that 30,000 children under the age of six die of malnutrition every year,[72] whereas the Union Minister of State for Agriculture stated in November that no state government has reported deaths of children from malnutrition during the past three years. The government of Orissa also resorts to such tactics of denial, although after AHRC's intervention, the Nuapada district administration provided help to victims' families, unfortunately after the death was reported.[73]

Endemic corruption

Corruption has eaten up the implementation of the Mahatma Gandhi National Rural Employment Scheme (MGNREGS) like termites in a mud wall. Massive

70 AHRC-STM-188-2010, INDIA: Country rotten with rotting food grains.

71 *The Supreme Court should not get into the realm of policy formulation*, Dr. Manmohan Singh, 7 September 2010.

72 AHRC-STM-053-2010, INDIA: Confessions and blaming will not save 30,000 children destined to die this year.

73 AHRC-STM-042-2010, INDIA: Government of Orissa trying to cover holes with darkness.

misappropriation of government funds was discovered in the construction of village ponds in Kusmal village of Nuapada district, Orissa. Villagers who worked for the ponds' construction are yet to receive wages amounting to Rs. 178,764. The muster rolls prepared for the completion of the work show that the wages have been paid however. A closer examination of the report shows that even government officers like police constables and teachers and even deceased persons were paid money as wages for the construction of the ponds under the MGNREGS.

Multi-purpose pond unfinished with UNDP fund, Bharya, Orissa, October 2010

Wages for similar work for villagers in Kirahaipukhri village also were denied due to corruption. They are yet to get Rs. 31,147 as wages for the construction of a well. The money was disbursed to those whom the district administrators were close with, mostly Brahmins in the locality. The district administration though was awarded the state award for the best district for implementing the MGNREGS this year. Underpayment, delay of payment and the denial of full employment are very common in the implementation of MGNREGS. The government has so far shown no interest to contain corruption.

Most of the villages in which the AHRC have documented cases of unfinished ponds or wells were constructed under the MGNREGS. They are either dried off or the water is not fit for human use. The drought this year has aggravated the situation. Wells or ponds and even deep-water tube wells have dried off. The basic facility for safe drinking water supply in rural areas is one of the key requirements to ensure food and health security as the unsafe drinking water or lack of drinking water causes various diseases such as diarrhoea or cholera resulting in death.

The official death toll from malnutrition induced diarrhoea this year hit 39 in Rayagada district, 27 in Nuapada district, 10 in Nabarangpur, 5 in Koraput, 4 in Kalahandi and 8 in Malkangiri in Orissa. About 355 persons were found infected in Rayagada alone. Cholera has reportedly claimed 140 deaths in Rayagada and Kalahandi. All deaths happened in July and August. Rayagada particularly faces deaths from diarrhoea and cholera every year.

Despite these repeated outbreaks claiming lives in alarming numbers, the administration each year has only taken temporary actions, and this year too was no exception. The Collector of Rayagada district visited the affected villages and ordered drinking water to be supplied by tankers, which stopped coming after just four days. As a result, the villagers were forced to drink water from a contaminated pond. Then the state government sent doctors, medicines, and food, and set up emergency camps in the affected villages. Government funds invested in tube wells to supply drinking water is Rs. 133. 85 Crores to dig 65,680 tube wells. As the depth of the tubes did not meet the standard, many of them were useless. Corruption is the most serious element depriving citizens of their right to food and health.[74]

Not distribution but deprivation or forced displacement

The distribution or re-distribution of resources aggravates the food insecurity of vulnerable communities. Most of the cultivable lands have been occupied by landlords and never re-allocated to landless farmers suffering from food insecurity for generations. In forestland areas where most of the tribal communities reside, it is often found that forest officials exploit the poor tribes by extracting bribes for almost everything, or abusing their power in various ways, including the use of torture, fabrication of charges or even cases of rape.

The Mawasi tribe living in the Kirahaipukhri village of Satna district of Madhya Pradesh are deprived of their right to land after other upper caste persons encroached upon their land. These upper caste persons obtained title to the land by bribing forest department officers. The Mawasi however, did not have any money, so they have no land. In July 2009, twenty-six Mawasi families applied for land titles under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. But the forest department responded only in September 2010, that too by dismissing their claim. The poor Mawasi families were discouraged and only seven families prepared the documents for an appeal. In the process, the Mawasi were threatened and abused by the officials. The Kol tribe living in Dhakra village of Rewa district also applied for land titles under the Forest Rights Act. Only ten out of the 250 Kol families who applied in 2008 were allotted land. The village committee who is supposed to facilitate the proper processing of the land claim is not formed till today. So the families had to depend upon human rights groups to prepare the documents.

Development projects like the construction of dams cause further havoc in rural areas, in this case affecting everyone, irrespective of caste or tribe. Unfortunately again, most of the people living in the catchment areas of these dams are the poor and often the

74 AHRC-STM-196-2010, INDIA: Diarrhea and cholera are social disasters in Orissa.

tribal communities.[75] Whether small or big, these projects are often launched without proper consultation or participation of the villagers who are affected by them. In most cases compensation is simply denied, and in cases where it is paid, only paltry sums are paid out. These projects have caused such devastation and destruction to India's rural population, that their continued existence surpasses common sense.[76] The Suktel Dam project launched in Balangir and Sonepur districts of Orissa affected 29 villages and covers 29,850 hectares of land in Balangir alone. In 2005, the police attacked the villagers and nine women including five minors were assaulted, tortured, and detained for 25 days to threaten the villagers who were by then organising protests. According to the government, the purpose of the dam is to provide irrigation for farmlands. However, even the government's own calculations show that the submerged land for the project is double the size of the land that will benefit from the dam. In any case, the beneficiaries are the rich upper caste farmers, whereas those who are forcibly evicted are the Dalit and tribal villagers. The villagers also suspect that the dam is constructed to provide water for a new nuclear power plant. Without proper consultation and due process concerning land acquisition or payment of compensation, the government tries to force people out of their hut and hearth. These projects are one of the major causes of hunger, malnutrition and distress migration in India.

The residents of Chutka village of Madhya Pradesh were relocated to Chutka in 1980 when their original habitat was lost for the construction of a dam. They are now facing the threat of a second relocation since a new power plant is being constructed where their village will have to be evicted. Though the villagers are yet to receive any notice or information from the government authorities, they came to know through newspaper reports that the survey for a power plant was going on and that they will have to be evicted from Chutka too. Earlier, when the dam was constructed, the villagers were told that they would be provided houses, employment and electricity. Nothing materialised. Thirty years later, the villagers are again in danger of relocation. Mr. Shiv Prasad Thakur living in Chutka is now 64 years old and has once experienced relocation due to the dam project and does not want to be displaced again. Once he had sufficient agricultural land to support his family. But now he depends on daily labour and fishing to fetch food for his family. In the past ten years, the food security of his family has been gradually deteriorating. He does not know what is exactly going on since the information about the project is not shared with the villagers.

75 Ibid. 3.

76 For instance the Narmada valley project is estimated to render 30 million people landless.

Conclusion

Non-transparent and non-participative processes in what the government calls development is one of the biggest poverty creators in India. During the past decade it has played a significant role in aggravating food insecurity in rural India, of which the Dalits, tribals and the rural poor are the primary victims. Coupled with widespread corruption and the complete disregard of the central and state governments for the rural economy, the living conditions of the poor in India, amounting to an estimated 60 percent of the country's 1.2 billion population, is in peril today.

Following the decision of the Ministry of Environment and the Forests concerning the Vedanta Mining Corporation, it had to withdraw from a major project in Orissa. Important committees like the Forest Advisory Committee, N C Saxena Committee and Meena Gupta Committee also recommended the withdrawal of forest clearance for yet another multinational corporation, POSCO. The reports of the Committees pointed to the grave violations of the Forest Rights Act, and other forest related laws by the Orissa state government while undertaking acquisition of land for the project. In the process of land acquisition, the government also used brute police force in May this year to disperse peaceful protests by destitute farmers. Vedanta or POSCO projects are just one of the many illegal development projects that creates food insecurity in the name of 'development' in India.

The National Food Security Act

Civil society groups have been discussing the proposed National Food Security Act and making strong suggestions for the universalisation of the Public Food Distribution System (PDS). The government on the other hand has refused to adopt these suggestions. From the beginning, the government did not undertake open discussions with civil society and more importantly with the general public concerning food security in India. Despite the fact that those who suffer from hunger and malnutrition are not the government agencies but the poor, there was no public space for discussion in the process. The final draft will be submitted to the Parliament soon.

INDONESIA

ONGOING IMPUNITY, MILITARY VIOLENCE AND CHALLENGES FOR THE NEW AG

Introduction

While some progress in the human rights context can be noted in 2010, the problem of impunity was not sufficiently addressed by the government during the year. The judicial mafia taskforce, a mechanism set up by the President in order to root our judicial corruption and the ongoing challenges to the immunity enjoyed by the Indonesian National Police represent positive developments that may yet bear fruit. On the international front, Indonesia signed the International Convention for the Protection of All Persons from Enforced Disappearance in 2010. However, none of these steps have as yet resulted in more accountability for perpetrators of serious human rights violations.

The system of impunity in the country means that rights remain a theoretical, political exercise in many cases, rather than a reality for victims. Human rights violations are often only addressed when public attention requires it. Systematic reforms that ensure accountability are lacking.

In the legislature, years of delays in reviewing the country's criminal code to include human rights violations such as torture, or the failed review of the military law in order to hold members of the military accountable through fair trials in civilian courts, show a lack of vision and political will concerning credible and effective reforms. In 2010, hopes for developments have been replaced by disappointment.

The selection of a new Attorney General (AG) in November 2010 presented new opportunities to address the problem of gross violations of human rights. However, the authorities opted for Mr. Basrief Arief as the new AG, despite civil society groups having campaigned for other candidates. Many activists deplored the selection of this person, as he represents a continuation of the previous, discredited AG and the practices of his office, which had been a serious barrier to human rights and the fight against impunity.

The attempted nomination in 2010 of former dictator Suharto as a national hero portrays the prevalence of Indonesia's past in its present-day life. Addressing the impunity that still

accompanies violations that occurred under Suharto's rule will be the test case of the new AG's ability and the strength of the prosecution system. Discussions concerning human rights issues remained largely a political exercise rather than a technical effort designed to ensure the effective reform of the criminal justice system, which the AHRC considers to be the best means of improving the protection of human rights in Indonesia at present. Several violent attacks on religious minorities were ignored by the police, which represent a clear setback concerning the freedom of religion. While Indonesia showed a strategic commitment to human rights reforms in the country by adopting a National Action Plan for human rights for the period 2004-2009, it has failed to come up with a follow-up plan since 2009. The earlier National Action Plan was not implemented until one year after its expiration.

Most of the cases the Indonesia desk of the Asian Human Rights Commission (AHRC) received in 2010 concerned the use of violence and torture by the police. Case evidence shows that the use of torture by the police or military is not a rare, extreme occurrence. Torture, is used endemically and even systematically, as a routine way to investigate and intimidate persons. Victims are often arbitrarily arrested and held under false charges, enabling the use of torture.

In the Papuan provinces violence by the security forces continued to be a serious concern in 2010. In such remote regions the military enjoys more immunity and is repeatedly involved in cases of torture and killings in the name of the fight against separatists. The case of serious torture of Tuanliwor Kiwo in 2010 in the Papuan highland region attracted considerable media attention and raised the issue of military crimes in the Papuan highland region. Despite international pressure, a detailed victims testimony and a video recording of the torture itself, no members of the military had been held accountable for this case. At the time of writing this report.

Papuan Torture victim Tuanliwor Kiwo gives detailed testimony concerning his torture by the military, which they filmed. No action has been taken against the perpetrators.

Source: local activists

Also of great concern is the rise in the number of reported cases of attacks and reprisals against human rights defenders, notably journalists and anti-corruption activists working to uphold human rights. The AHRC itself became the subject of a cyber-attack on its website in October 2010, which is believed to have been made with the purpose

of making its content inaccessible, after the video showing the Indonesian military torturing indigenous Papuan Tuanliwor Kiwo was posted there. While the origin of the sophisticated attack has not been identified, the AHRC suspects the possible involvement of Indonesian authorities in this attack, which made the AHRC's website unavailable for several days, obstructing many of its urgent campaigns in favour of human rights.

An increase in violent attacks against religious minorities was also witnessed in 2010. The police typically do not intervene to protect victims, often claiming that they do not have the capacity to protect persons from such violence.

In September 2010, Indonesia signed the International Convention for the Protection of all Persons from Enforced Disappearances. This first step into the direction of furthering the application of international human rights norms in the country and is an expression of the acknowledgment of the problem of enforced disappearances in Indonesia.

1. Impunity

The AHRC believes that one of the main reasons why violence and even torture continue to be perpetrated by the police and security forces in Indonesia is the persistence of a system of impunity, which means there is no deterrent against such acts and no consequences for those who perpetrate them. Concerning torture, the fact that torture is not criminalized under the country's law is a major factor ensuring such impunity. The right to be free from torture is recognised in the Constitution, but it has not been integrated into the Penal Code.

Another major component in the system of impunity is the fact that crimes committed by the military against civilians cannot be tried in civilian courts. The lack of transparency of military courts cannot guarantee the effective prosecution of alleged perpetrators in line with international human rights law and fair trial standards. Furthermore, problems with endemic corruption in the criminal justice system make impartial and effective law enforcement elusive.

During Suharto's reign and until 1998, several serious cases of gross human rights violations, including crimes against humanity, took place in Indonesia. Human rights groups were therefore understandably outraged when Suharto was nominated as a recipient of the "Hero of the Nation" award in 2010. NGOs filed a petition to the Constitutional Court challenging the nomination. Following this pressure, President Yudhoyono declined to award the former dictator with the "hero" title. This shows how far away from addressing the crimes of the past Indonesia currently is.

For most of these cases of gross human rights violations in recent decades a process has been initiated under the Human Rights Court Law (Law no. 26 of the year 2000). However, the process to challenge impunity concerning these gross violations of rights, have been obstructed for political reasons. For example between 1997 and 1998, 23 students and other activists were reportedly abducted by the Army Special Forces Command (known as Kopassus) because of their political activism in the struggle for change and democracy under the New Order regime. This movement finally led to the reformation of the Indonesian state towards a modern democracy. 13 of the students remain missing until now. After the National Human Rights Commission had published its inquiry results in 2006 and submitted it to the attorney general, the case has since then been delayed, pending with the AGO. While the AG had taken action to allow for the establishment for an ad-hoc court per human rights court law in the Tanjung Priok case or cases of major abuses in East Timor, he turned the argument around in this sensitive case, claiming that an ad-hoc court would have to be set up first before he would start any investigations. After years of delays a special committee of the parliament recommended in September 2009 the president to take action by setting up the ad-hoc court. No ad-hoc court was set up in 2010 while the legality of the establishment of the special committee in the parliament and thus its recommendation was questioned.

The Attorney General has played a key role in causing these delays. Many of the alleged perpetrators, who have been powerful military leaders, are still actively involved in politics and continue to maintain considerable influence.

In November 2010 Basrief Arief was sworn in as the new Attorney General replacing Henderman Supandji. Conservative groups had been suggesting that the candidate should come from within the previous Attorney General's Office (AGO), while civil society groups and other stakeholders have deplored

Impunity & Freedom of Assembly

Arrest of protesters on September 27. Source: KontraS

On September 28, 2009 the House of Representatives issued several recommendations to the President to bring the perpetrators of the infamous student disappearances of 1998 to justice. Human rights activists who protested against the inaction of the president in Jakarta with a tent action in front of the presidential palace were arrested during the evening of September 27, 2010. The Asian Human Rights Commission strongly condemns the arrest of human rights defenders after a peaceful protest.

the lack of impartiality shown by all in this office, as well as their role in upholding the current culture of impunity in the country. They were therefore calling for the new AG to come from outside of the current AGO department. The selection of Mr. Arief is has been criticised by civil society, as he has worked in the AGO before, and is thus an insider and viewed as being co-responsible for the corrupt practices the AGO has allegedly been involved in the past. However, Mr. Arief has vowed not to be intimidated by political parties when taking office, as requested by the President. Whether he will be able to act independently of political interference will be watched closely and is best measured by whether he will take action on the many cases of gross violations of human rights that are currently filed with his office, and bring them into the human rights court process as is expected under the law.

List of gross violations of human rights that are pending with the attorney general

1965: After Suharto's coup millions of communist suspects and party members were killed or detained for decades. Many continue to be stigmatised and suffer from discrimination.

Mysterious Shootings: Between 1981 and 1984 the New Order regime of President Suharto conducted military operations to increase security and public order. Mysterious shootings occurred in some provinces of Indonesia and, based on a monitoring report by Komnas HAM, around 5000 people were killed during this military operation.

Talangsari case (February 7, 1989): Soldiers from Garuda Hitam Military Resort Command in Lampung Province of Indonesia attacked village Talangsari in Lampung Province. 246 people were killed. Komnas HAM concluded an inquiry in October 2008 and submitted it to the AGO, where it has since stagnated.

Trisakti and Semanggi I+II incidents (1998): On 12 May 1998, four students were shot dead by the armed forces at the University of Trisakti in Jakarta during a demonstration to urge political reform. On November 8 –14, 1998 the armed forces committed violence against students and civilians during a demonstration to reject the Special Session of the House of Representatives (DPR). The armed forces opened fire and as a result more than 14 students died and 109 people were injured. On September 1999, the armed forces shot students who voiced their rejection of the National Security and Safety Bill.

May Riots (13 - 15 May 1998): The May 1998 riots occurred in several places in Indonesia. The armed forces were not deployed to keep the peace and maintain

order. Widespread looting took place and a mall and shopping centre where set on fire. Several local NGOs note that large-scale rapes occurred as well as attacks on members of the Tionghoa (Indonesian-Chinese) ethnic group in several cities across the country.

Abepura case (December 7, 2000): The police conducted an operation against local residents and university students in the Abepura regency of Papua province to find the perpetrators of an attack on the Abepura police station that had taken place earlier. This reportedly lead to torture, police violence, extra-judicial killings, forced eviction, arbitrary arrests and detentions, and unfair trials.

Wasior (June 13, 2001): This case occurred in Wondiboi village of Wasior district, Papua. Five members of Mobil Brigade of the Police (Brimob) and one civilian were killed in base camp of the commercial company CV Vatika Papuana Perkasa. Subsequently a police operation was conducted by Manokwari district police during which grave human rights violations were committed against local residents.

Wamena (April 4, 2003): This incident was triggered by a break-in at the Military District Command 1702 (Kodim) of Jaya Wijaya Regency in Papua. Thieves got away with 29 guns and 3500 bullets. After this incident, the Kodim conducted a military operation during which torture, shootings and summary executions, as well as the burning of a school and clinic took place.

Recent cases of violence in the West Papuan highlands gave more evidence of the systematic nature of human rights violations committed by security forces against indigenous Papuans. The AHRC is of the view that the situation in Papua, consisting of intimidation, destruction of property, arbitrary arrests and detention, torture and extra-judicial killings, amounts to a gross violation of human rights. The AHRC therefore urges Komnas HAM to conduct inquiries regarding these violations with a view to bringing the situation into the human rights court process.

2. Freedom of religion

The AHRC will first highlight the protection of religious freedom, as this has become of increased concern in 2010, due to a series of setbacks experienced during the year. Several attacks by fundamentalist groups against members of religious minorities took place and were accompanied by inaction that equates to acquiescence by the police. The police claimed that it doesn't have enough personnel at the sites of these attacks to prevent them, although the AHRC believes that a major cause for the inaction is the close linkages between the police and the groups that are carrying out the attacks.

The political influence of mainstream religious groups has increased, as has the fundamentalist views among them. Neither the government nor local officials and the police have taken a strong stance concerning the protection of religious minorities.

After members of the Batak Christian Protestant Church (HKBP) in Ciketing, West Java were stabbed and beaten by Islamists in September 2010, the mayor prohibited members of the HKBP from worshiping in the city, justifying this by citing security problems caused by the worship activities. On September 15, the Jakarta area military commander, Jakarta area police, the general secretary and the director general of the Ministry of the Interior, and the Department of Religion decided in a meeting that the church should conduct its worship in a different location. Hundreds of security forces stopped the HKBP from entering their property for the worship service, on the following Sunday rather than protecting their peaceful activities.

In October 2010, the Sepatan Baptist Christian Church (GKB Sepatan) in Banten Province was prohibited from continuing to worship in the congregation pastor's home. Islamic groups had pressured local officials to prohibit worship by the GKB Sepatan completely, but the church resisted threats and harassments.

The National Police have admitted that in many in cases of violent attacks, the Islamic Defenders Front (FPI) is allegedly responsible, but the police have done little to ensure that the FPI halt these attacks. The FPI is reported to maintain close links with police and military and aims at establishing Islamic Sharia law in Indonesia. The former head of the National Police, Police General Bambang Hendarso Danuri, had committed, while still in office, to follow up on the incidents and to address the problem. His successor Police General Timur Pradopo, who is alleged to have close links with FPI will now have to implement this commitment.

3. Human Rights Defenders and Freedom of Expression

Media and the Fight Against Corruption

2010 included a series of incidents that speak to the Indonesian authorities' increased undermining of the freedom of expression, through intimidation and even killing of persons exercising this right. In particular, members of the media who reported on the sensitive issue of corruption faced reprisals by State-agents. Given the effect that corruption has on the delivery of justice and the enjoyment of human rights in Indonesia, the AHRC considers that media efforts to expose corruption are important contributions to the fight against impunity, the reform of public institutions and ensuring accountability. Such activities play a key role in the development of effective systems for the protection of human rights. The discussion of other sensitive issues, such

as the 1965 massacres in Indonesia, the past gross abuses in Timor Leste or the ongoing grave situation in West Papua, have been obstructed by the banning of books through the AG or the censoring of movies. The banning of books was declared void by the Constitutional Court later. This constitutional review presents an important step forward in terms of protection of the freedom of expression in 2010.

The AHRC welcomes the initiative by the Ministry of Law and Human Rights as well as the initiative of the National Human Rights Commission to conduct research and consultations with the view to developing processes and mechanisms to improve the security situation for human rights defenders. The processes have yet to result in the development of legislation or other mechanisms, and the AHRC urges the government to develop and implement an effective protection system for human rights defenders through this initiative. In particular, the Ministry should ensure the timely completion of the draft and its submission to the parliament for adoption.

While the media largely resisted attempts to limit their freedom, journalists in remote areas faced a very hostile climate when reporting on corruption or military issues including killing and threats.

Cover of Tempo issue titled Fat Bank Account of a Police Officer

The State's Witness and Victims Protection Agency has so far failed to act to protect members of the media reporting on corruption and to prevent the attacks that such persons have been subjected to. In July an anti-corruption activist was attacked and injured with a machete, reportedly for his involvement in the preparation of a report by the Jakarta based NGO, Indonesian Corruption Watch. See the AHRC case at the end of this section. Some days earlier on July 7, the headquarters of Indonesia's main weekly political magazine, called Tempo, was attacked with three Molotov cocktails. The incident is widely believed to be a reprisal following the magazine's earlier detailed reporting about six police generals' unexplainably large bank accounts. An unidentified group reportedly bought 30000 copies of the publication by 4am on the day of publication of this issue, resulting in the magazine being unavailable to others for several days while further copies were being printed. It is thought the group were acting on behalf of the police.

On July 30, Mr. Ardiansyah Matra'is, a journalist in Papua who had reported about a controversial investment project supported by local politicians, which is thought to

have involved corruption, was found dead in a river. His injuries give rise to suspicion that he may have been killed. Journalists in the south Papuan Merauke area where he was working had earlier received threatening messages, including death threats. While the police claim that his death was a suicide, the National Human Rights Commission have requested the police to take more testimonies and to investigate all allegations of threatening messages. Five days earlier the bureau chief of Kompas' office - Indonesia's most widely read newspaper - in East Kalimantan was reported dead. He had reported on environmental issues.

Mr. Ardiansyah Matra'is, source: Kebebasan

The law on Securing Printed Material, enacted in 1963, during the Sukarno era, gave the Attorney General the power to ban books in order to protect public order, until the law was reviewed by the Constitutional Court in October 2010. In late December 2009, the Attorney General's Office had announced the banning of five books covering subjects including human rights in Papua, religious diversity, and the 1965 massacres that occurred as part of Suharto's rise to power. According to then-Attorney-General, Hendarman Supandji, these books could "erode public confidence in the government, cause moral decadence or disturb the national ideology, economy, culture and security."

22 books have been banned in the last six years. On December 23, 2009, the Attorney General's Office announced the banning of five books, including Pretext for Mass Murder: The September 30 Movement and Suharto's Coup, by John Roosa.

In October 2010, the Constitutional Court of Indonesia ruled that the law was anti-constitutional and therefore no-longer binding, removing the Attorney General's power to censor books.

However, the film censorship board (LSF) has banned several movies, in particular those covering controversial issues related

Pretext for Mass Murder The September 30 Movement and Suharto's Coup was banned for most of 2010. In it Canadian Dr. John Roosa analyzes the September 30th Movement and explains how it led to mass killings and the overthrow of President Sukarno. In 1965, a rumour spread that a secret communist movement was plotting to overthrow President Sukarno. General Suharto took command of the army and called for a campaign against communist suspects, which led to the killings of thousands of ordinary Indonesians and Suharto's seizure of power.

Read more http://www.humanrights.asia/news/ahrc-news/AHRC-STM-049-2010

to Timor Leste. The body dates back to the Dutch colonial period and is comprised of members of the government, military, religious groups, the police and the national intelligence agency. Its decisions lack transparency. The Australian film Balibo was banned at the end of 2009 from Indonesian cinemas. Mukhlis Paeni, the head of the LSF, said the movie was politically dangerous. It depicts the killing of five Australian journalists by the Indonesian army during the invasion of Timor in 1975. An administrative court upheld the banning in June 2010.

Case examples:

Anti-corruption activist maimed in South Jakarta

Unknown assailants attacked Tama Satrya Langkun, an anti-corruption activist in Jakarta with a machete on July 8, 2010. There are serious concerns that the attack is connected to his contribution to the controversial report published by Indonesia Corruption Watch (ICW) prior to this attack. The attack also follows in the aftermath of the bombing of Tempo magazine's office a few days earlier, when Tempo magazine reported on the matter. Further case details are available here: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-100-2010/

Impunity for military officer in Aceh who threatened to kill a journalist for reporting on illegal logging

After reporting about an illegal logging business and the possible involvement of the police and the army, against the request of Lieutenant Amin, journalist Mr. Ahmadi was summoned on 21 May, 2010, by Lt. Amin. The officer reportedly beat Mr. Ahmadi and threatened him and his family if he didn't change or retract the content of the article. Higher-ranking military officers later apologized to Mr. Ahmadi, but no further legal action had been taken at the time of writing, especially since this case cannot be tried in a civil court. Further case details are available here:
http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-079-2010

Police shut down and revoke the licence of a radio station for broadcasting on rights issues

Radio Era Baru was forcibly shut down on March 4, 2010, by the police, reportedly in response to pressure from Chinese officials, who objected to the station's airing of criticism of Beijing's human rights record. The Indonesian Broadcasting Commission refused to renew the station's licence, ostensibly because there was an overlap of the use of frequencies with other stations. The radio director filed against the cancellation of the broadcasting license to a civilian court in 2008 and lost, and is now appealing the

case before the Supreme Court. On 10 March, 2010, the Indonesian Human Rights Commission (Komnas HAM) publicly urged the Indonesian Broadcasting Commission to explain its actions. Further case details are available here:
http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-045-2010

Dozens are injured in police attacks during protests against alleged land grabbing

On July 15, 2009, the Indonesian police shot at, arrested and intimidated peasants who were protesting against the alleged illegal occupation of their land by a government-owned plantation company, PT Perkebunan Nusantara (PTPN). Dozens of peasants been injured by police violence during the last year with at least 11 shot; 13 face criminal trials for their protest actions, whereas no reports were filed against the PTPN employees. During the following days police reportedly conducted aggressive sweeping operations in the local villages and arrested several more land workers for their role in the protests, while intimidating others. Article 160 (disobedience against public authorities) and 212 (resistance and rebellion) of the Indonesian Penal Code (KUHP) appear to have been used questionably, in violation of the workers' rights to free expression and association. Please see the full case at:
http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-171-2009

4. The Judicial Mafia and the need for effective oversight of the Judiciary

Corruption in the Indonesian judiciary is perceived as endemic and has in recent years been referred to as the Judicial Mafia by the media and civil society.

Organised corruption in judicial matters illustrates a systemic problem that can only be addressed by independent bodies. The judicial mafia is not limited to corrupt activities in the judiciary but plays a role in other institutions of the criminal justice system. At the police level this mafia's presence is felt through arbitrary arrests and detentions, reporting and investigations on fabricated charges, confiscation of documentation etc. At the court level corruption leads to the postponement of sentencing, the manipulation of facts, the non-application of sentences and the application of inappropriate laws. Case examples detailed below show people facing years in prison for petty crimes, while others receive no punishment for serious crimes or bribe their way into luxurious prison cells.

One of the recent corruption cases which illustrates the mafia's power is the attempt to weaken the Corruption Eradication Commission (KPK) by the National Police in October 2009. Criminal charges were filed by the National Police against two KPK commissioners, Chandra M. Hamzah and Bibit Samad Riyanto. However, this case was exposed as being a fabrication concocted by members of Attorney General's office and the

National Police through the public broadcasting of a wiretapped telephone conversation between the plotters. The widely publicised incident forced President Yudhoyono to publicly support the KPK and its work, and is a significant embarrassment for the police and the AG's office. The President, still in his first 100 days in office since his re-election, followed up by promising to put an end to the judicial mafia phenomenon in Indonesia. His first move was to set up a Judicial Mafia Taskforce for 3 years to combat the practices and ensure law enforcement.

In July 2010 several members of the House of Representatives' Commission III on law and human rights demanded that the President dissolve the taskforce, claiming that it had overstepped its authorities by acting as a "super-body" and that it were driven by personal interests[1].. These members of the parliamentary commission stated that the taskforce was not acting concerning cases closely related to the President and his allies, and lacked impartiality as a result. However, while the taskforce lacks direct constitutional power and independence and therefore has shortcomings, the AHRC believes that it does still play an important intermediary role in addressing the issue of judicial corruption.

A significant problem relating to the functioning of the judiciary relates to flaws in the Judicial Commission that are permitting the continuation of corruption and cronyism. With the passing of the 3rd constitutional amendment in November 2001, the Judicial Commission was established as a body to ensure a checks and balances system for the judiciary. It was empowered to recommend candidates for the Indonesian Supreme Court and to monitor the conduct of judges. The current seven members of the Judicial Commission were appointed by the President with the agreement of the People's Representative Council in August 2005.

In December 2010 the parliamentary commission III selected seven new members for the judicial commission. This selection came late due to lack of qualified applications. Prof. Eman Suparman was elected as their chair by the seven commissioners. The commissioners announced to set up new and strong regulations for their internal processes. This could give the commission enough momentum to regain some of its past strength. Indonesia Corruption Watch (ICW) deplores that the delays to the recent selection of the Judicial Commission's membership has resulted in the President prolonging the tenure of the existing commissioners. According to ICW it is an administrative violation that could eventually paralyse the Commission.

The commission's authority had earlier been challenged through an application by Supreme Court judges to the Constitutional Court for a judicial review of the Law

1 For more information concerning this please see here: http://www.thejakartapost.com/news/2010/07/31/dissolution-sought-judicial-mafia-taskforce.html

22/2004 which implements the Commission's constitutional mandate. The application for review claims that the commission interfered with judges' independence in deciding on cases. This lead to the Constitutional Court's decision that nullified the Judicial Commissions monitoring functions as they were laid out in the law, stating that the law's formulation in that regard leaves too much uncertainty. The Judicial Commission's function is currently reduced to the proposal of candidates for the appointment of Supreme Court justices, until the parliament creates a new judicial commission law. This process may take several years.

The AHRC emphasizes the need for an effective, credible and independent body to oversee judicial conduct. The Judicial Commission law should be re-drafted by the parliament to include oversight functions to ensure the proper conduct of the judiciary, in line with the body's Constitutional mandate "of overseeing and upholding the honour, dignity and behaviour of judges."

5. Arbitrary arrests, torture and extra-judicial killings by the police persist

Despite the adoption in 2009 of new police regulations which are supposed to ensure the implementation of Indonesia's human rights obligations and expressively prohibit torture, the use of torture continued to be widespread in the country as of the end of 2010. While the code looks good on paper, it has not been effectively introduced into police practices since there was no internal system to disseminate the code or monitor its implementation. The standard operation procedures have not been reviewed in order to bring them in line with the provisions included in the code. A lack of systems to ensure accountability of members of the police and delays in criminalizing torture through a review of the Penal Code are the main factors that enable the continuing use of torture by the police. The problem is also the same for the military in areas in which it is deployed, such as parts of Indonesia with armed separatist movements. The AHRC published a video showing the military's involvement in the ill-treatment and torture of indigenous Papuans in October 2010, which prompted the military to admit that members of the military were involved in such acts. However, as 2010 came to an end, there was little to indicate that even in such a well-publicised case would impunity be successfully challenged. Please read the section on Papua for more information on this case.

In its approach to overcome the militarised image of the Indonesian National Police, the police set up a long-term strategic plan, according to which it would spend 2005 – 2009 building public trust. 2010 - 2015 would be used to build partnerships and 2015 - 2028 would be a period dedicated to "striving for excellence." Assessments by civil society groups assert that the trust-building phase has not been conducted successfully. The police is still widely regarded as being corrupt and rife with misconduct by individual members of the police.

In order to strengthen the accountability of the police, the National Police Commission (KOMPOLNAS) would have to be given a stronger mandate and greater independence. KOMPOLNAS should be given the power to investigate allegations of police misconduct that are brought to them. I it should be given a role in police internal policy development to allow for internal reforms and it should be given an independent budget. KOMPOLNAS is currently funded by the police.

The planned penal code review has not been completed, and therefore the act of torture has still not been criminalized.

Examples of human rights violations by the Indonesian police:

Innocent man allegedly arrested over false charges after illegal investigation process

Mr. Aan was interrogated by the police a first time on December 7, 2009, in the Artha Graha commercial office building in Jakarta, regarding a drug case. He was interrogated a second time a week later at the same place, for gun possession. During his interrogation, he was severely beaten by a civilian who is allegedly involved in police corruption. The officers did nothing to stop him, which amounts to torture. The police further subjected him to humiliating treatment, forcing him to remove his clothes during interrogation, before taking him to the police station, where he was denied the right to see a lawyer or a doctor and was again interrogated. He was convicted of drug possession without any evidence and detained. His wife and KontraS filed several complaints to several police units and to the National Commission for Human Rights.

In an update to the case issued on 26 May 2010 (AHRC-UAU-022-2010), the AHRC reported that as of May 2010, Mr. Aan had been detained for more than five months, before judges decided that the drugs charge was fabricated and that Mr. Aan should be acquitted. However, no compensation has been arranged, and no legal actions have been taken against the three police officers, despite the complaints Mr. Aan's wife has filed. Further case details are available here:
http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-026-2010

Innocent person arrested on false charges and tortured in police custody

Police officers of the sector police of the Beji sub-district of Depok city in West Java illegally arrested Mr. J.J. Rizal on December 5, 2009, on false charges of being a pickpocket. Some of them did not wear uniforms during the arrest. The victim was publicly beaten by the officers, which resulted in serious injuries, including damage to his hearing. Mr. Rizal filed a complaint against the police and an internal disciplinary unit forced the officers to apologize.

In an update (AHRC-UAU-008-2010) the AHRC reported in February 2010 that the four policemen responsible for Mr. J.J. Rizal's illegal arrest and torture have been charged with police violence and arrested. The case has been delivered to the high office of the public prosecutor in Bandung, West Java, but due to delays in the launching of the pr osecution, all the alleged perpetrators have been released.

In a second update (AHRC-UAU-012-2010) the AHRC reported that on March 3, 2010, three of the four policemen responsible for Mr. J.J. Rizal's illegal arrest and torture have been convicted and sentenced to three months imprisonment each, for violence openly committed by united forces and maltreatment. Torture has not yet been criminalized; therefore perpetrators are not adequately convicted and punished. Further case details are available here:
http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-178-2009

Police officers torture a young woman to force her husband to surrender

On July 24, 2009, Ms. Muliyana, 24, was illegally arrested by Jakarta Metropolitan police officers and interrogated about a bank robbery in which her husband was alleged to have been involved. During her arrest and her two-day detention at the police station, she was tortured using electric shocks. The police officers also beat her and pulled her around by her hair. She was tortured in front of her husband, after he surrendered to the police. She was kept in detention for five more days, without any warrant. After her release, she received threatening phone calls from the police. She filed a report with the internal disciplinary unit of the national police headquarters, with the help of NGOs. Further case details are available here: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-175-2009

Ms. Muliyana shows wounds from electric shocks
Source: KontraS

Extra-judicial killings of two men while in the custody of the Aceh police

Mr. Muhammad Jabal ben Abdul Azis and Mr. Basri were arrested by the police on March 24, 2010, and were beaten during their arrest. Later that night, they were shot to death in what the police claim was a shoot-out between police and militants. However, the victims were unarmed and in custody when they were shot. Moreover, along with the bullet wounds, it appeared that both men had bled profusely from the head before being shot. This is one among many

cases of serious abuses by the police in Aceh. Further case details are available here: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-058-2010

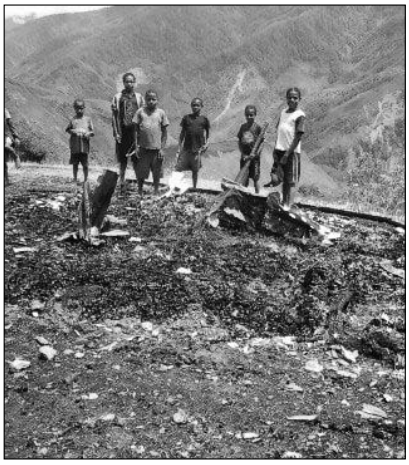
Police shoot to death two farmers in Pekanbaru

During a protest in Koto Cengar village on June 8, 2010 against palm-producing company, Tribakti Sari Mas, Inc. (PT TBS), two villagers, Ms. Yusniar and Mr. Disman were shot dead. The police claims the villagers attacked first, but according to eyewitnesses the police provoked the villagers and then began firing upon them. Further case details are available here:
http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-087-2010.

6. The human rights situation in Papua and the need for reform of the military

The provinces of Papua and West Papua remain beset by high levels of militarisation by the Indonesian authorities, and this continues to be the source of a wide range of serious human rights violations. The military have increased their operations in the Papuan highlands in 2010, according to reports received by the AHRC. In particular, the military has launched repeated "sweeping operations" in the area around Puncak Jaya. These operations have reportedly resulted in the burning of houses, ther killing of livestock, rapes, torture and killings. This show of force by the military is intended to intimidate suspected separatists and forms part of a crack-down on separatist movements in Papua.

In October 2010, the AHRC published a video showing members of the Indonesian military torturing indigenous Papuans who were suspected of supporting separatists. The release of the video triggered strong international outrage concerning the case and the wider actions by the military in Papua. The AHRC also posted the video on Youtube, but this was taken down within 24 hours. After this, the AHRC hosted the video on its website, which then became the target of a sophisticated cyber attack from unidentified sources that aimed at making the site's content unavailable. This attack succeeded in making the AHRC's web-content unavailable for several days. The AHRC suspects the involvement of Indonesian authorities in the attack. Other websites that had also published the video, also reportedly came under similar attacks. A detailed witness testimony



Burned village houses in Papua's highlands. Source: local activists

video concerning torture survivor Tuanliwor Kiwo was published in early November 2010. The military claims not to be able to take action as they can't identify the perpetrators from the video itself.

Scenes from the video of the torture of two indigenous Papuans by Indonesian military

The cases of violence by State security forces, such as the recent shooting by Wamena police into a crowd of protesters (see case below) or use of torture by the military as shown in the video, a clear examples of the authorities' readiness to use excessive force. This can only be enabled in a system where State agents are confident that they will enjoy impunity if they commit even serious abuses.

The military enjoys de jure impunity, through Indonesia's military law, which ensures that members of the military cannot be tried by civilian courts. Military tribunals lack transparency and are incapable of effectively upholding human rights standards. Typically give only very lenient punishments to soldiers, even concerning grave abuses. The national parliament has issued a decree to review the military law, but the discussions concerning this review have stalled due to opposition from some parties who continue to work to ensure that the military retains impunity. A review is urgently needed in order to provide adequate and impartial accountability mechanisms for members of the military, which at present effectively act beyond and above the law, especially in areas such as West Papua where they are deployed and are carrying out regular operations that often result in serious human rights violations against peaceful, innocent civilians.

Three military men accused of violence against indigenous persons in Papua Province, Indonesia, faced trial by a military tribunal in 2010. They received only lenient punishment as a result of the trial. Source: AFP

The authorities have faced increasing criticism after their lack of implementation of the autonomy law for the Papuan provinces. Increasingly, groups of indigenous Papuans increasingly reject the law as a whole as a result. The law is viewed by many as providing the authorities with a smoke-screen that they use to convince critics that they are engaged in protecting the rights and the development

of the indigenous population in Papua. In reality, indigenous Papuans continue to live in poverty and considerable social inequality, while Indonesia continues to plunder the province's significant natural resources.
Examples of human rights violations in Papua and West Papua provinces:

Indiscriminate shooting at a demonstration by Wamena police results in one dead and two injured

On October 4, 2010, the police in Wamena, Papua province, indiscriminately shot live ammunition at a crowd of demonstrators. They killed Ismail Lokobal, seriously wounded Frans Lokobal and Amos Wetipo (which resulted in him slipping into a coma) and arrested at least four other persons. The demonstration resulted from the confiscation of an air cargo delivery to a local community security organization, following which organisation members protested at the airport office to protest against the confiscation. Further case details are available here:
http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-162-2010/

No investigations have been started into the torture of an indigenous Papuan, detained in a case of mistaken identity

Mr. Kiten Tabuni, 23, was arbitrarily arrested after having been mistaken for a suspect in a murder case on July 23, 2009. He was brought to the KP3 airport security unit, the police office at the Wamena airport in Papua, where the officers badly beat him to force a confession, using their fists, regulation weapons and helmets, and kicked his face, head and legs. He was brought to a doctor to be examined only after his family came to the Jayawijaya police headquarters to protest. He was then released and had to spend eight days at the hospital for the torture he suffered. No investigation has been carried out into the allegations of torture and no compensation has been offered to the victim. Further case details are available here: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-168-2009.

Villagers living in famine-affected areas in 2009 have not received adequate food and medical aid

In January 2009, 113 people died of starvation in Yahukimo, Papua province after a devastating crop failure which further aggravated their existing food insecurity. The rice subsidies that had been distributed by the government were woefully inadequate and took too long to arrive. In addition to that, medical assistance has never been distributed to date. It is the Indonesian state's responsibility to guarantee right to food for all people, according to domestic and international law. Further case details are available here:
http://www.humanrights.asia/news/hunger-alerts/AHRC-HAU-001-2010

7. UPR implementation

The Universal Periodic Review mechanism of the UN Human Rights Council, is one of the positive features of the young international body. All the members of the United Nations have to undergo a review of the human rights situation in their countries every four years under this system. All human rights can be considered under the review, so it is not dependent on the State having ratified particular international legal instruments.

The AHRC continued to monitor the implementation of the recommendations made to Indonesia as part of the UPR process in March 2008. [A/HRC/8/23 Report of the Working Group on the Universal Periodic Review – Indonesia: http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/ID/A_HRC_8_23_Indonesia_E.pdf].

The country will again be reviewed in 2012, so 2010 marks the half-way point between reviews and should therefore have already seen some measures by the authorities to implement the UPR's outcomes. The AHRC continues to receive information concerning human rights abuses that allow it to make an assessment of the state of this implementation. As of the end of 2010, over two years after Indonesia promised the international community that it would address a number of UPR recommendations, most of them lack implementation.

Indonesia did not accept the following recommendations made by members of the Human Rights Council UPR Working Group during the review:

- further measures to address the threats against Ahmadiyyah families following a fatwa banning the Ahmadiyyah
- the death penalty be abolished.
- standing invitation to all special procedures

The UPR report states: *These recommendations formulated during the interactive dialogue have been examined by Indonesia and the recommendations listed below enjoy the support of Indonesia:*

1. *Indonesia is commended for its efforts in the field of human rights training and education and is encouraged to continue in this regard, and to provide additional training for law enforcement officials, including prosecutors, police and judges, as well as for security forces.*

While some training activities took place for the security forces that included human rights aspects, there has been little to indicate that any human rights standards or practices have been included in the police or military's methods of work and policies.

2. *Indonesia, in line with its National Plan of Action, is encouraged to follow through on its intention to accede to the Rome Statute of the International Criminal Court, the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, child prostitution and child pornography and the Optional Protocol to the Convention against Torture, Cruel, Inhuman and Other Degrading Treatment. Indonesia is further encouraged to consider signing the International Convention on the Protection of All Persons from Enforced Disappearance.*

Indonesia's 2005 - 2009 National Plan of Action was not implemented until the end of 2010. No successor plan or implementation strategy was devised to follow up on the remaining required reforms since the end of 2009. Indonesia has not acceded to the Rome Statute of the International Criminal Court or to the two Optional Protocols to the Convention on the Rights of the Child. Indonesia had not signed or ratified the Optional Protocol to the Convention against Torture as of the end of 2010, despite demands from national and international civil society groups. Indonesia did, however, sign the International Convention on the Protection of All Persons from Enforced Disappearance in September 2010.

3. *Indonesia is commended for enabling a vibrant civil society, including with respect to those engaged in defending human rights, and is encouraged to support and protect their work, including at the provincial and local level as well as in regions with special autonomy.*

Attacks against human rights defenders including the killing of journalists working on human rights-related themes continued in 2010 as this AHRC report has presented in detail above. The climate for human rights defenders remains oppressive and hostile. This is in particular the case in remote regions such as Papua or the Malukus. Intimidation and arrests in Papua illustrate how this recommendation has not in any sense been implemented to date.

Many bureaucratic hurdles exist for civil society groups who attempt to interact actively in cooperation with the police to bring about human rights reforms. The police continue to be a closed institution in terms of dialogue with civil society.

It is acknowledged that the National Human Rights Commission & the Ministry for law and human rights have conducted research on the problem of human rights defenders. None of this research had resulted in the increased protection of defenders, however, as of the end of 2010. It is expected that possible legislation in this regard may be introduced, but is likely to also suffer from delays in the parliamentary debate that have prevented the criminalisation of torture to date, despite this being a process that has been ongoing for years. As several alleged perpetrators of human rights are still active in politics and

political parties, attempts to delay legislation that could result in accountability have been successful in the past.

4. Welcomes Indonesia's reaffirmation of its commitment to combat impunity and encourages it to continue its efforts in this regard.

While the President of Indonesia made some commitments to formally acknowledge the victimization of many who suffered from serious human rights violations under the Suharto regime, no judicial progress is at present being made in terms of providing effective remedies to the victims. The President and the Attorney General's Office continue to block efforts to bring all cases of gross human rights violations before a human rights court.

5. While acknowledging the efforts made by the Government of Indonesia, it was recommended that such efforts continue to ensure the promotion and protection of all the components of the Indonesian people.

Since the fall of Suharto in 1998 Indonesia has embarked on several important reforms such as the creation of an active national human rights institution, an independent anti-corruption body and other judicial reforms. However, the list of important pending human rights reforms over the last years has not considerably shortened. The criminalization of torture and the reform of the military law to hold members of the military accountable to civil courts in cases of crimes committed against civilians have been discussed for years without legislation being produced.

6. The inclusion of the crime of torture in the new draft criminal code is welcomed and the Government is encouraged to finalize the draft code, taking into account comments received from relevant stakeholders.

The draft code has not yet been adopted. Discussions between the Ministry of Law and Human Rights and the Parliament continue to produce these delays. The adoption of the code in the near future appears unlikely and while this is the cases impunity for torture remains and torture remains widespread and systematically used by the police and the security forces to obtain information and to intimidate populations where they are deployed.

7. Capacity-building/cooperation/sharing of best practices:

(a) Indonesia is encouraged to consider engaging in further dialogue at the regional and international level, and share best practices, as requested by States during the interactive dialogue;

(b) Indonesia is encouraged to identify its capacity building needs related to the Universal Periodic Review follow-up and seek regional and international cooperation in this regard, including through integration of the Universal Periodic Review recommendations, as appropriate, into its national development strategy and into its dialogue with relevant stakeholders through existing mechanisms. Such capacity-building needs could pertain, inter alia, to issues such as harmonization of local laws with national and international standards or to strengthening national human rights institutions;

(c) It was recommended that additional capacity-building measures be taken in support of programmes and projects on women and children.

While a human rights dialogue with the EU and member countries was established, no national development strategy was devised to implement the UPR recommendations in a timely manner. The Sharia law applied in Aceh remains in contradiction with the constitution and international standards. The judiciary has not played an active role to review this situation.

Indonesia furthermore made the following voluntary commitments:

The State under review will involve civil society and national human rights institutions in consultation and socialization of the Universal Periodic Review procedure until its next Universal Periodic Review.

According to the information received, no formal process for interaction between the government and civil society groups has been devised or initiated since this commitment was made. Local human rights groups continue to demand a wider exchange on human rights reforms and the implementation of human rights principles.

8. Recommendations

The AHRC urges the Indonesian Government to take the following key actions in order to begin to effectively address the numerous human rights violations taking place, as well as the deeply entrenched system of impunity in the country:

- Criminalize torture in line with international law and standards
- Bring the military law review back on the national legislation programme for 2011 and reform the military law to enable members of the military to be held accountable for crimes committed against civilians in a civilian court, according to criminal procedure law.
- Ensure the freedom of religion and the protection of all religious minorities, notably by launching full, effective and transparent investigations into all cases in which police

officials have failed to intervene to protect members of such minorities from violent attacks in recent years. The national police must impartially protect the rights of all religious groups and all members of the police that allow violent attacks on religious minorities to be carried out without taking action must be punished, as acquiescence by State agents is a major factor that enables further violence of this type.

- Review the law on the Judicial Commission in order to equip it with clear authority to ensure the proper conduct of judges.
- Ensure that the National Police Commission (KOMPOLNAS) is given a stronger mandate and greater independence, notably by providing it with an independent budget that enables it to be more independent from the police. KOMPOLNAS must be given the power to investigate all allegations of police misconduct that are brought to them, and should be given a role in police internal policy development to allow for internal reforms.
- Draw up a strategic National Action Plan for human rights reforms, as the previous one for 2004-2009 has now come to an end, but many of its objectives have yet to be implemented and a new National Action Plan is therefore required and its implementation closely monitored.

Specifically concerning the Papuan Provinces, the Indonesian Government must:

- Allow international human rights monitors, development organisations and journalists unhindered access to the Papuan provinces.
- Change the "security approach" being used in Papua by the military, which includes sweeping operations and intimidation by the security forces and strong public presence of armed forces. The heavy militarisation in Papua is leading to widespread and grave human rights violations.
- Ensure that the police rather than military are deployed to ensure the rule of law in all areas of the Papuan provinces, including in cases of civil unrest.
- Komnas HAM should conduct inquiries regarding widespread violence by security forces in the Papuan provinces according to the Human Rights Court law.
- Respect and protect the rights to the freedom of expression and assembly, in particular by ensuring that peaceful demonstrations and the peaceful expression of political views are protected. Furthermore, all political prisoners in the Papuan provinces must be released.
- Ensure that a special taskforce under the Anti-Corruption Commission (KPK) investigates the endemic corruption in the public sector in the Papuan provinces, in order to ensure the effective use of autonomy law funds for the public good. This should include the establishment of free health care and access to education, as provided for in the law.

- Halt the use of the article of the penal code concerning "treason" that is being abusively used against Papuans who peacefully voice their views. Opposing political views should be met with dialogue and public consultations rather than repression.
- All past gross violations of human rights that occurred in the Papuan Provinces under the control of the Indonesian military must be promptly and fully investigated Victims must be provided with effective remedies and all perpetrators must be brought to justice.

Annex I - Abbreviations

AG – Attorney General

AGO - Attorney General's Office

Brimob - Mobile Brigades of the Police

CTF – Truth and Friendship Commission

DPR - House of Representatives

ICW - Indonesian Corruption Watch

IDR - Indonesian Rupiah

KASUM - Solidarity Action Committee for Munir

Kodim - District Military Command

Komnas HAM - National Commission for Human Rights

Kopassus - Special Force Command

KPK - Commission against Corruption / Corruption Eradication Commission

LSF - Indonesia's Film Censorship Board

LPSK - Commission for witness and victim protection

OPM - Free Papua Movement

PDP - Papuan Tribal Presidium

POLRI - National Police of Indonesia

TNI - National Army of Indonesia

TRC - Truth and Reconciliation Commission

UPR – Universal Periodic Review

N E P A L

POLITICAL PARALYSIS PREVENTING NEW CONSTITUTION AND THE RESPECT FOR HUMAN RIGHTS

1. Introduction

The Asian Human Rights Commission (AHRC) did not witness any significant evolution in the human rights situation in Nepal in 2010, despite the fact that this year was meant to mark the end of the development of a new Constitution and the beginning of a new era of increased democracy and respect for human rights. However, the transition to a democratic and peaceful society was stalled by political deadlock and increasing questions regarding the future of the peace-process. This trend, which began in 2009, worsened further in 2010 as seen in the failure by Nepal's political parties to draft the Constitution by the May 28 deadline, or to form a new government after the resignation of the Prime Minister on June 30. These failures delayed necessary political and institutional reforms, leaving the peace process in an increasingly vulnerable position and eclipsing human-rights related issues from the political agenda.

In July, the AHRC's sister-organisation, Asian Legal Resource Center (ALRC), submitted a joint report with Nepalese partner-NGO Advocacy Forum, for consideration as part of the United Nations Human Rights Council's Universal Periodic Review system. The human rights situation in Nepal over the previous four years, which coincides with the end of the conflict in the country, will be reviewed under the Universal Periodic Review in 2011. This review will provide an opportunity for the international community to scrutinize Nepal's compliance with international human rights laws and standards. The ALRC reported on priority issues that need to be taken into consideration by the review. Of particular concern are the breakdown of the rule of law and State institutions, which has been taking place against the background of a fragile peace process, political instability and rising insecurity, fuelled by continuing impunity for grave human rights violations, while attempts to fill gaps in national legislation and ensure effective transitional justice remain stalled.

2. Key events in 2010

2.1 The failure of the Constituent Assembly and the political stalemate

Nepal's Constituent Assembly was set a deadline of May 28th 2010, two years after it held its first session, to draft a Constitution that would establish the foundations and institutions of "an independent, indivisible, sovereign, secular and inclusive democratic republic." However, ongoing mistrust between the country's political parties and the use of political brinkmanship have thus far been preventing the completion of the drafting of a new Constitution by the Constituent Assembly within the assigned timeframe. A climate of political violence and threats, notably against journalists, as well as political manipulation of the course of justice, are creating a climate in which it is difficult to envision much-needed political progress. The political actors failed to reach an agreement on issues as crucial as the kind of relationship which should exist between the President and the Parliament, the functioning of the judiciary or the federal structure that Nepal could adopt.

The work of the Constituent Assembly was particularly hampered by the fragile nature of the peace process and a lack of trust among the political parties. In the first half of 2010, local news reports were full of stories about hostile statements made by representatives of different political parties, blaming each other for the political deadlock and the predicted failure of the CA, as well as other stories about clashes between cadres, activists or members of politically affiliated youth groups, or about abductions and killings of party cadres, especially in the Terai (plains) region, creating a climate unfavourable to cooperation and discussion. In addition, the lack of progress over the issue of rehabilitation/integration of former Maoist combatants contributed to tensions between the political parties and obstructed constructive debate and action concerning State-building efforts.

As May 28th 2010 approached (the end-date of mandate of the Constituent Assembly), the Maoist party, which held the majority in the Assembly, declared that it would not vote in favour of the extension of the CA unless Prime Minister Madhav Nepal resigned, in order to pave the way for a national unity government. The other political parties insisted that the Prime Minister should step down only if the Maoist party accepted to fully become a "civilian party," to dismantle its youth wing, the Young Communist League, and to give back the properties it had seized during the war.

In the weeks prior to May 28th, the Maoists called a nationwide indefinite bandh (general strike) to demand the resignation of the Prime Minister, which blocked the country for six days. This bandh was a very significant moment for the country, as political tensions rose to dangerous levels reviving fears of a return to violent conflict. The strike

was, however, called off after six days, following international pressure, without major incident.

A constitutional and political crisis was avoided at the eleventh hour. A three-point agreement was reached between the leaders of the three main political parties: the Nepali Congress, the UCPN-Maoist and the CPN-UML. The agreement stipulated that the Prime Minister should resign to open the way for a national consensus government, which would be tasked with "taking the peace process to a meaningful conclusion" and "accomplishing the historic responsibility of completing the task of writing the constitution". At 1.51 am on May 29th, the term of the Constituent Assembly was extended for one year. Although this agreement allowed the country to avoid a crisis at that time, it did not end the political stalemate that besets the country. Major uncertainty remains concerning the CA's ability to draft a constitution by May 28th, 2011. Then-Prime Minister, Madhav Kumar Nepal, eventually resigned on June 30, 2010. Since then, up until the time of writing of this report in mid-November 2010, sixteen rounds of Prime Ministerial elections had been held in the Parliament, although none of these have been able to successfully elect a new Prime Minister. This political stalemate has also been obstructing other areas of government, including development projects and the creation of important new laws. Significantly, at the time of writing, it remained uncertain whether the caretaker government would be able to convince the parliament to adopt the 2010-2011 budget. The failure to adopt a budget by mid-November would prevent the delivery by the State of public services, the payment of the civil servants' salaries and of State pensions, for example, further destabilizing the already precarious economic, political and social situation in the country.

As an example, when the Finance Minister, Surendra Pandey, came to the parliament on November 19, to table the bill related to the budget, some of the Maoist lawmakers physically attacked him and tried to snatch the briefcase containing the document to prevent it from passing. The week before, the Maoists had agreed that they would vote in favour of the budget but then changed their minds. On November 20, the President was forced to pass the budget through a presidential ordinance, which has since been criticized by opposition parties. Passage of the budget allowed the caretaker government to access new funds immediately, although parliament still was to vote on the bill within 60 days. The passage of the ordinance allowed the country to avoid an economic crisis and the failure of the State. This shows the levels of disagreement currently plaguing Nepal's political scene.

Already weak State institutions have been further destabilised and weakened by this political stasis. It is difficult at present to see where strong political will to tackle issues and ensure a successful peace-process will come from. The CA's inability to draft the new Constitution on time and to elect a Prime Minister have fuelled the public's growing

sense of exclusion from the process and mistrust toward the political parties. As a result, the state and the political parties are considered unable to respond to the needs of the citizens for security and democratisation.

2.2 The peace process

The political stalemate also brought the country's peace process to a standstill, as the political parties could not reach an agreement on key issues. In particular, challenges linked to the future of the two armed forces that had been fighting each other during the country's decade-long conflict still need to be addressed. The demobilization or integration of former Maoist combatants within the Nepal Army and the democratisation[1] of the army have thus far proven difficult. In January 2010, 4008 "Disqualified Maoist Combatants" (which comprises those who had either been minors at the time of the cease-fire or recruited after the signing of the CPA) were sent home. They were provided with limited financial assistance and offered a rehabilitation package comprising vocational training and formal education to facilitate their re-entry into society. Reports of financial hardships faced by discharged combatants, and frustration at having been disqualified is a source of concern, as it risks making such former combatants vulnerable to recruitment by criminal or paramilitary groups. This fuels debate regarding the future of the 19,000 former Maoist fighters who remain in UN-monitored cantonments throughout the country.

Disagreements have persisted among the political parties over this issue, in particular regarding the number of combatants and the modalities and timing of their integrated into the State security forces. This has resulted in this integration being delayed. Tensions further arose after the Nepal Army recruitment advertisement that sought to fill 3,464 positions within its ranks. This was followed by the Maoists' announcing that they would also start recruiting. The United Nations Mission in Nepal (UNMIN) then voiced its concerns and reiterated that recruitment by either side would constitute a breach of the peace agreement. A breakthrough seemed to have been reached under a four-point agreement was signed on September 13, 2010, between the caretaker government and the Maoists. Under this, the peace process should be completed by January 14, 2011, and both parties agreed to conclude the demobilization and rehabilitation process before

1 Concerning the democratisation of the military, under Nepal's Interim Constitution, the control of the army has been placed under civilian control, specifically, under the Council of Ministers. The Interim Constitution asserts the army's "democratic structure and national and inclusive character shall be developed, and training shall be imparted to the army in accordance with the norms and values of democracy and human rights."

that the date, which would also mark the end of the UNMIN's mandate.[2] The possibility of bringing UNMIN's mandate and presence in the country to an end appears to be an incentive that is enabling greater cooperation between the various parties and actors in the country. UNMIN has been supporting and monitoring the peace process since January 2007. According to the four-point agreement, Maoist combatants should be brought under the supervision of a Special Committee formed to supervise, integrate and rehabilitate the combatants. The Maoists have so far agreed to submit information on individual fighters to the Special Committee. However, the AHRC remains concerned that the parties may still not be able to foster the levels of cooperation on this issue, that are required in order to resolve the issue before January 14, 2011, notably as the details of how this integration or rehabilitation of combatants have yet to be agreed upon.

Regarding the democratisation of the Nepal Army and the wider peace process, these cannot be expected to lead to long-term peace, stability and security as long as the current lack of accountability for conflict-related (and post-conflict) human rights violations persists (please see below "impunity").

2.3 Security Issues

Another serious challenge to the protection of human rights in Nepal has been the deteriorating security situation which persists in the Terai (plains) and the eastern hills regions. Since the end of the conflict, there has been a proliferation of armed criminal groups. Some groups are making use of the discontent of members of ethnic groups who are unsatisfied with the way the State has addressed their demands to recruit members. This is contributing to increased lawlessness and degradation of the rule of law in these regions. In 2010, the security situation of the Terai region has became increasingly precarious with growing numbers of reported cases of extortion, abduction and threats to local political actors by armed groups. The AHRC has also been informed of numerous violent clashes between organisations affiliated with different political parties, which has seriously affected everyday life in the region. Incidents of violence committed by members of the Maoist-affiliated Young Communist League have been regularly reported in particular. Between January and March alone, 62 killings were reported in the region, according to a UN Secretary General report published on April 28, 2010.[3]

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2 According to the UN Security Council resolution, the UN, "*Decides further*, in line with the request from the Government of Nepal that UNMIN's mandate will terminate on 15 January 2011 after which date UNMIN will leave Nepal" - http://www.unmin.org.np/downloads/keydocs/SC_Resolution_1939.15Sep2010.ENG.pdf

3 *Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process*, 28 April 2010, URL:http://www.unmin.org.np/downloads/keydocs/SG%20Report%20April%202010.pdf

The government has responded by augmenting the strength of the security forces deployed to the region, through the implementation of a Special Security Policy that was launched in July 2009 with the aim of curbing illegal and disruptive activities. Since that date, the media, NGOs and the UN have expressed concerns that the increased military presence has coincided with an increase in human rights violations committed by security forces.[4] This, in turn, is further fuelling popular discontent with the State.

The inability of the state institutions to ensure security has created a vacuum of power and authority, eroding public trust concerning not only the law enforcement agencies but the State's ability to provide public services and the administration of justice. In the agitated Terai region, the virtual absence of state institutions and the rule of law, as exemplified by their inability to put an end to the violence by armed groups and rights violations by the security forces, are ensuring continuing unrest.

The resignation "en masse" of more than 1,500 Village Development Committees (VDC) Secretaries - the highest government representatives at the local level - in June and July 2010 following threats from an armed criminal group - known as Samyukta Jatiya Mukti Morcha (SJMM) - and repeated attacks and harassment, further aggravated the vacuum of power there. Although most of them have returned to work following government security guarantees, the Ministry of Local Development announced in October 2010 that there were still 800 VDCs without secretaries across the country, making key governmental and services unavailable to the concerned populations. VDC Secretaries possess limited judicial powers to settle petty disputes, for example, and their absence further undermines the reach of the State and its ability to provide justice and the rule of law.

Citizens' rights to movement, to work or to education were also being undermined by the regular calling of bandhs (general strikes) or blockades. Furthermore, the freedoms of the press and of expression are being curtailed, including through the killing of journalists by armed groups. Between February and July 2010, at least three senior media figures were killed without the perpetrators being brought to justice: Jamim Shah, the chairman of the Nepalese television station and satellite network Space Time Network; Arun Singhaniya, chairperson of the Janakpur Today Media Group; and Devi Prasdd Dhital, the owner of Radio Tulsipur FM. All of them were shot dead by unidentified gunmen. In total, at least "28 incidents ranging from intimidation to murder affecting journalists, editors and

4 For example, please see these concerns as raised in the report by local NGO Advocacy Forum AF entitled; "torture and extrajudicial executions amid widespread violence in the Terai" – http://www.advocacyforum.org/TeraiReport_English_English.pdf.
Also, the OHCHR in Nepal also released a list of concerns in July 2010 in "investigating allegations of extrajudicial killings in the Terai" - http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf.

media entrepreneurs" were reported between February and July 2010 according to the Office of the High Commissioner for Human Rights in Nepal.[5] These attacks and the impunity enjoyed by the perpetrators has created a climate of fear and forced journalists to use self-censorship.

3. The ongoing issues of impunity and failure by the State to protect human rights

The effective protection of human rights requires the establishment of functioning rule of law institutions. Developing adequate legislative tools and strengthening the independence of criminal justice institutions are two pre-requisites that are urgently required, if the protection of human rights, the dismantling of the deeply rooted system of impunity, and therefore the prevention of further abuses, are to become a reality in Nepal.

3.1 Legal and normative framework

The extended political wrangling in Nepal and delays to establish a new Constitutional order, are creating a period of stasis concerning much-needed strengthening of State institutions. This is extending the impunity for all perpetrators of human rights violations committed during the conflict as well as those that have been committed since the peace process began. This stasis is also preventing the strengthening of the existing legal framework, which fails to effectively protect human rights in many ways. For years, human rights groups have been advocating for the adoption of legislation criminalizing torture, caste-based discrimination or enforced disappearances, which would allow the effective prosecution of persons alleged to be responsible for such crimes, therefore creating a deterrent against further abuses of this kind.

Significantly, Nepal's legislation still lacks provisions that could ensure the accountability of the country's security forces when they are involved in human rights violations. For instance, the Police Act 1955 and the Army Act 2006 grant immunity to members of the police and military for human rights abuses committed in "good faith" in the course of discharging their duties. Moreover, the Police Act does not set out individual criminal liability for police personnel involved in grave human rights violations, while the Army Act simply states that a special committee shall be formed to investigate such cases.

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5 *UN Human Rights urges arrest of accused in killing of journalist Birendra Sah*, Press Release - 2 May, 2010, Office of the High Commissioner for Human Rights in Nepal.

The criminal investigation system also requires strengthening before being able to effectively address allegations of human rights violations. The lack of provisions for the establishment of independent mechanisms to ensure the impartial and thorough investigation of allegations of human rights violations in the State Cases Act of 1992, is one lacuna that must be corrected, for example.

Concerning Nepal's international human rights legal and normative framework, the country is party to 21 human rights-related international legal instruments, but in many cases their content has still to be implemented in practice. In 2010, Nepal became part of the UN Convention on the rights of persons with disabilities, which is a welcome step in the fight against discrimination against disabled persons. However, the country has still not ratified several key instruments, including the Rome Statute concerning the International Criminal Court, or the new International Convention on the protection of All Persons from Enforced Disappearance, or the Optional Protocol of the Convention Against Torture, which provides for the establishment of a system of monitoring of places of detention. The AHRC believes that the ratification and full implementation of all three of these instruments is crucial if past and ongoing human rights violations are to be addressed effectively by the Nepalese authorities.

Prior to the establishment of an Office of the High Commissioner for Human Rights in Nepal in 2005 and the signing of the Comprehensive Peace Accord by the government of Nepal and the Maoists on November 21, 2006, Nepal had the highest number of documented cases of forced disappearance. The AHRC and other groups have also reported the endemic nature of the use of torture in the country for many years. The ratifications of the afore-mentioned instruments is therefore very important if the government is to have any credibility concerning its aims to ensure that past violations to do not recur and that the country will advance into a new era in which human rights will become a reality.

The Nepalese NGO coalition report to the Universal Periodic Review clearly expressed the magnitude of the issue: "It is alarming that crimes under international law including war crimes, crimes against humanity, disappearance and torture are yet to be criminalized. The Interim Constitution provides a long list of human rights as the fundamental rights. However, in the absence of right to effective remedy these rights are yet to be realized in practice. The parliament is yet to enact a number of pending laws. In addition, a number of national legislation is still in place which directly contradict with the treaties Nepal is party to. There is no comprehensive human rights protection legislation providing effective remedies for human rights violations."[6]

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6 *Nepal NGO Coalition Submission to the United Nations Universal Periodic Review Human Rights Council*, July 2010, URL: http://www.worecnepal.org/sites/default/files/Final%20Report_NNC-UPR_2_.pdf.

There are also concerns regarding the independence of human rights bodies. Although the National Human Rights Commission was given constitutional status under the 2007 Interim Constitution, implementing legislation has not been passed yet. A bill has been pending since October 2009, but concerns have arisen about provisions relating to staff management, the body's financial autonomy and the absence of a reference to "the independence and autonomy" of the commission. It is feared that under this Bill the Commission's independence would not be guaranteed and the body would not comply with the Paris Principles relating to the status of national human rights institutions.[7] The National Human Rights Commission, the National Women Commission and the National Dalit Commission all have a primordial role to play in the creation policies that protect human rights. Their independence and capacity for action must therefore be guaranteed.

3.2 Stalled transitional justice

Transitional justice mechanisms are also being affected by political gamesmanship and a lack of development. In the Comprehensive Peace Accord, both parties committed to establish a Truth and Reconciliation Commission to investigate conflict-related human rights abuses, as well as a Commission on Enforced Disappearances. Both of these were also included in the 2007 Interim Constitution. However, a lack of political will to implement these provisions has ensured that little progress has been made. After a long process, both bills were eventually presented before the Parliament in April 2010, but are still to be discussed and adopted. Moreover, although both Bills have been amended several times since 2007, there are still concerns that they are not in line with international standards and best practices. Questions remain regarding the appointment of commissioners and insufficiency of witness protection mechanisms, for example.

The UN Working Group on Enforced or Involuntary Disappearances (WGEID), in a General Comment, has affirmed that: "*Acts constituting enforced disappearance shall be considered a continuing offence as long as perpetrators continue to conceal the fate and whereabouts of persons who have disappeared.*"[8] For the families of the 1,300 persons who became victims of forced disappearances during the conflict and remain missing to date,[9] the delay to the establishment of the Commission on Enforced Disappearances contributes to their ongoing suffering. These delays can be considered as violations as of themselves. Furthermore, the delay to know the fate of the disappeared can have direct

7 Those principles can be found at: http://www.nhri.net/pdf/ParisPrinciples.english.pdf.

8 Working Group on Enforced or Involuntary Disappearances General Comment on Enforced Disappearance as a Continuous Crime: http://www2.ohchr.org/english/issues/disappear/docs/GC-EDCC.pdf.

9 International Committee of the Red Cross, *Nepal - ICRC Annual Report 2009*, 19 May 2010, URL: http://www.icrc.org/Web/eng/siteeng0.nsf/html/nepal-icrc-annual-report-2009!OpenDocument.

effects on family members' economic and social situations. For example, if, as is often the case, the remaining family member is a woman, she cannot inherit the family property unless the missing person has been declared dead.

3.3 A crippled criminal justice system and the uncooperative attitude of the parties entrench impunity

In 2010, the country's system of impunity remains the biggest challenge to the rule of law and the realization of human rights in Nepal. Despite having committed in the Comprehensive Peace Agreements to put an end to impunity, none of the political parties or successive governments have taken serious steps to ensure accountability concerning all violations of rights that have taken place during and since the conflict.

The fight against impunity following a period of conflict is difficult regardless of the country. However, the political infighting that has been taking place in Nepal since the beginning of the peace process has meant that no discernable progress has been made. It must be recalled that the political parties were given their mandates to negotiate peace and a new Constitution following country-wide popular protests in April 2006. These protests called for an end to conflict and human rights abuses and the establishment of a new democratic system in Nepal. However, since then, the political parties have failed to respect the desires of the people, instead allowing self-preservation and personal interests to prevail. This has led to a gulf between what was promised and what has been achieved. Perhaps the starkest indicator of this is the failure thus far of efforts to create a new Constitution for Nepal. In terms of human rights, the fact that there has been no effective action to protect rights, prevent further abuses and ensure accountability, represents a serious failure by all political actors in respecting the will of the people of Nepal.

The current period is one blighted by a lack of political will to address human rights issues. Only very strong political will can ensure that the Maoists and the Nepal Army won't interfere with criminal prosecutions, or that the policing and justice systems will be able to carry out effective investigations and prosecutions.

In a report released by the National Human Rights Commission of Nepal concerning its recommendations since its establishment a decade ago,[10] the NHRC details the non-implementation of more than 75% of recommendations for prosecutions of or sanctions

10 *Summary Report of the National Human Rights Commission, Nepal, (2000-2010), NHRC Recommendations upon Complaints in a Decade, November, 2010*: http://www.nhrcnepal.org///publication/doc/reports/Sum-Report-NHRC-Recommendation.pdf

against human rights violators.[11] This points to serious failings in the government's record and credibility concerning its will to address human rights.

Furthermore, the Nepalese authorities have taken some symbolic actions that further bolster impunity. For example, the decision to extend the tenure of Colonel Raju Basnet who commands the Maharajgunj Barracks in which grave and massive human rights violations have allegedly been committed during the conflict, sends a clear signal that impunity is still alive and well. The decision was made despite opposition from the OHCHR's Office in Nepal.[12]

A lack of cooperation by the former belligerent forces – the Maoists and the Nepal Army – is increasing the obstacles to any meaningful action concerning impunity. In many cases, both forces have not just been uncooperative in order to shield their members from prosecution, but have actively interfered with the course of justice to ensure impunity. Since the end of the conflict, despite orders from the courts, the police have repeatedly proven unable to arrest and detain members of the Maoists or the Nepal Army that have been accused of human rights violations.

The emblematic case of Maina Sunuwar is a sad example of this. Maina Sunuwar was a 15-year-old school girl who was forcibly disappeared on February 7, 2004, and tortured to death by members of the army. Despite clear-cut evidence pointing to the guilt of members of the military, the Nepal Army continues to shield its members and ignores rulings by the civilian justice system. Although arrest warrants against four army personnel have been pending since January 2008, no one has been prosecuted in this case. After one of the main accused in the crime, Major Nijaran Basnet, was expulsed from the UN Peacekeeping mission in Chad and repatriated to Nepal in December 2009, he was immediately taken under the custody of the military police who committed to bring him before a civilian court the next day. This did not happen. On the contrary, on July 14, 2010, the army announced that Major Basnet had been found innocent by an internal army investigation as the army had been "acting against a common enemy then and functioning under TADA, therefore there is no case against Basnet," according to Major General BA Kumar Sharma, chief of the Nepal Army Legal Department. TADA, which is the Terrorist and Disruptive Activities (Control and Punishment) Act, 2002 (TADA), includes provisions that allow suspects to be taken into custody for interrogation by the Army (Section 2.1) and Section 61 of the 1959 Military Act. TADA also ensures that any

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11 *The Report of the NHRI of Nepal on the UPR Processes*, 5 July 2010, URL : http://www.nhrcnepal.org///publication/doc/reports/UPR_Report-2010.pdf

12 *UN Human Rights Office raises serious concerns with the term extension of Colonel Raju Basnet, 22* October 2010, Office of the High Commissioner for Human Rights in Nepal, URL:http://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202010/October/2010_10_22_PR_Col_Raju_Basnet_E.pdf

offences involving army personnel cannot be tried by civilian courts. This amounts to blanket impunity for members of the military and obviously runs contrary to any possible interpretation of international human rights laws and standards. Therefore, the army believes it can justify the arbitrary arrest and torture to death of a child. The decision was immediately endorsed by the Defence Ministry.

This announcement is consistent with the attitude of the army which has repeatedly denied the alleged human rights violations and hampered the investigation into this case, including by tampering evidence, threatening the victim's family and refusing to abide by court orders. Although the army's decision contradicts a 2007 Supreme Court order for the civilian authorities to carry out investigations and prosecute the perpetrators, no further action has been taken so far by the civilian authorities in reaction to the military's announcement. This illustrates the civilian authorities' unwillingness to do what is required in order to eliminate the impunity, even in cases that have received international condemnation.[13]

An example that speaks to the Maoists' unwillingness to ensure the protection and prevention of human rights and the elimination of impunity concerns Ram Hari Shrestha,[14] a businessman from Kathmandu who was abducted on April 27, 2008, allegedly by members of the Maoists Party, and later died as a result of the severe beatings he was subjected to inside the Maoist People's Liberation Army (PLA) third division's encampment in Chitwan.

In 2008, the Chitwan District Court formally charged five Maoists cadres in relation to the case, but only one was arrested and the other four have been declared as having absconded by the police. In this case, as in a number of other cases involving the Maoists, the lack of police action and the unwillingness of the Maoist party to cooperate with the civilian authorities have ensured a lack of progress in investigations and prosecutions. Despite having launched an internal probe panel to investigate Shrestha's killing and admitted the responsibility of its cadres in the killing, the Maoist party has refused to hand them over to the police. Further, Kali Bahadur Kham, the main accused in this case was promoted within the Maoist party to the position of Central Committee member. The Nepal police's action in the case has been limited to sending two letters to the Maoist leadership.

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13 *NEPAL: The Nepal Army has given absolution to one of Maina Sunuwar's murderers*, AHRC-STM-166-2010, 10 August 2010, URL: http://www.humanrights.asia/news/ahrc-news/AHRC-STM-166-2010/

14 *NEPAL: Police unable to arrest the murderers of Ram Hari Shrestha*, AHRC-UAC-118-2010, 20 August 2010, URL: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-118-2010/

Attention was brought back to the case when the Kathmandu District Court issued another arrest warrant against Kham relating to his involvement in another case, which ordered the police to produce him before the court within seven days. Since then, the Maoists have announced several times that they would investigate the allegations and, if they found him guilty, through their own proceedings, only then would they cooperate with the police. In September, Kham was suspended upon the recommendation of the party's disciplinary commission, but it remains uncertain whether he will ever be produced in court. Although Kham's suspension is welcomed as an initial step, the fact that the justice institutions have to wait for the Maoist party approval before being able to prosecute the case is telling about the capacity of action and the independence of justice in the country. The Maoists have suspended 300 members based on over a large number of complaints against party leaders for misconduct and irregularities. While this internal disciplinary system is welcome in of itself, it cannot be an effective or acceptable substitute for accountability under the law of the land though the State's justice delivery system.

The criminal justice system has, however, thus so far shown itself to be incapable of playing an active and effective role in protecting the rights of and ensuring remedies for victims, as well as in tackling impunity. The constitution-drafting process is an opportunity to establish strong, accessible and accountable justice institutions and to guarantee their independence. In the meanwhile, the proper functioning of the justice system is being hampered by rampant corruption, lack of financial and human resources and infrastructure, and it is now unable to equally protect the rights of all citizens. The rights to fair trial and due process are undermined by delays in the administration of justice, the geographical inaccessibility of the justice institutions in some regions, increasing legal expenses and inadequate legal support services. Political interference within the course of justice remains widespread, especially in a context of extreme politicisation, in which local political party cadres have intervened even in cases which do not have political implication at first sight.

The lack of an adequate witness protection mechanism encourages interference and leaves the victims and witnesses vulnerable to pressure and threats. In cases involving an unbalanced power relationship, such as the murder of Dalit women by Nepal Army soldiers, institutional protection by the State is required so that a fair prosecution can take place. The absence of such a mechanism in Nepal has rendered access to justice very unequal, as powerful groups or individuals can exploit the weaknesses of the policing and justice systems to the disadvantage of weaker individuals or groups, with the most marginalized faring the worst in such situations. The judicial system reproduces the inequalities existing within the society, as the protection it grants to the individuals will depend on the resources and leverage that they possess. In 2010, the consequences of the lack of effective witness protection were strongly felt in several cases, preventing victims of human rights abuses from accessing legal remedies.

For instance, in July 2010, lawyers and human rights defenders working on the case of Arjun Bahadur Lama, a school teacher who was forcibly disappeared and killed by Maoists during the conflict, were threatened by Maoist cadres after one of the main suspects in the case was refused a visa by the US embassy.[15] The attitude of the chairman of the Maoist party, who publicly denounced the accusations as 'false' and accused the human rights organisations of having launched a campaign to 'defame' the Maoists, are believed to have encouraged such threats. Also in July 2010, lawyers defending the case of Ghan Shyam Mahato, a 14-year old domestic helper who had been cruelly abused by his employers, were manhandled and threatened by relatives of the perpetrators who have close links with the Maoists. They threatened to burn down their practice should the perpetrators be sent to jail.[16]

Human rights defenders and lawyers have been working in an increasingly insecure situation and have faced numerous threats, attacks and obstacles from relatives of perpetrators, who are sometimes affiliated to political organisations. The system of impunity is currently enabling attacks on defenders and the responsibility falls upon the Nepalese State to create a climate that is favourable to the protection of the work human rights defenders. The work of defenders is crucial in Nepal's transitional phase, as they will play an essential part in the evolution of Nepal towards a democratic and egalitarian society.

The role played by a crippled policing system in the continuing impunity has also been abundantly illustrated in 2010. A lack of checks and balances mechanisms which would allow police officers to be held accountable for abuses of power and authority, have prevented the police system from performing its role in establishing the rule of law and the protection of rights. The police argue that they are placed under significant pressure by influential individuals and local political leaders who do not hesitate to interfere in the investigation process in to order to protect their interests and persons allied with them – even if these are criminals. A strong feeling of impotence often discourages them from taking any action in cases involving the Nepal Army, the Young Communist League or the political parties. It is therefore frequent for the police to refuse to file a case or to improperly investigate it when the victim belongs to a marginalized and isolated community or when the perpetrators are influential, for instance if they possess strong political connections or belong to powerful organized groups which have resisted attempts to be held accountable, such as the Nepal Army or the YCL. In numerous cases the police have pressured victims into negotiating settlements with the perpetrators.

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15 *NEPAL: Progress stalled in the investigation of Arjun Lama's disappearance*, AHRC-UAU-030-2010, 9 August 2010, URL: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-030-2010/

16 *NEPAL: A child is in danger after he is tortured by the family of a policeman; his lawyers are threatened,* AHRC-UAC-104-2010, 14 July 2010, URL: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-104-2010/

The police's lack of accountability, and the abuses they themselves commit, combine to seriously undermine their credibility and their ability to act as a strong law-enforcement agency.

In 2010, the Bardyia National Park[17] killings show the extent to which a lack of political will to address impunity, the vulnerability of the police to external pressure, the resistance of the army to any attempts to hold its personnel accountable and the lack of witness protection mechanisms, result in the denial of justice to victims. In this case, two Dalit women and one child who belonged to a group of labourers who had come to Bardyia National Park to collect medicinal herbs, were shot dead on 10 March, under circumstances that remain unclear, after they had been detained by 17 members of the army. The Nepal Army claimed that the victims were poachers and were killed during an encounter, although investigations conducted by NGOs and public bodies have reached opposite conclusions. The National Human Rights Commission (NHRC) conducted an investigation in the case, and on April 1, 2010 published a report in which it found that army personnel were responsible of excessive use of force, resulting in the death of the three women. Furthermore, the report suggests that army officials had tampered with crime scene evidence, in order to make the incident appear as an "encounter" with heavily armed poachers. The NHRC report concludes that the alleged perpetrators should be prosecuted in a civilian court, on criminal charges relating to the murder and tampering with crime scene evidence. However, the government failed to implement these recommendations.

Furthermore, a sub-committee of the Legislature Parliament for Women and Children held an investigation into the killings. On April 7, 2010, it released a report in which the army personnel were also found to be responsible for killing the three women.

The military also allegedly pressured the police to make sure that the initial FIR would reproduce their version of events and so that the outcome of the investigation would be favourable to the army's version of events. Apparently, the military claimed that arms and ammunitions were recovered from the bodies. According to the AHRC's information, they had apparently changed the victims' clothes to make them look more like poachers (the victims were changed into trousers, but their original clothes were found at the scene).

In addition, they threatened the victim's families and witnesses until they agreed to sign an agreement in which they promised to withdraw the First Information Report they had filed against the 17 accused.

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17 *NEPAL: Recipe for impunity at work in Bardyia National Park*, AHRC-STM-081-2010, 20 May 2010, URL: http://www.humanrights.asia/news/ahrc-news/AHRC-STM-081-2010/

The consequences of this on-going situation has been analysed by the Office of the High Commissioner for Human Rights in Nepal in its February 2010 report, in which it states that: "persistent impunity for human rights violations has had a corrosive effect on rule of law institutions and has further damaged their credibility. Impunity has contributed directly to widespread failings in public security by sending a message that violence carries no consequences for the perpetrator."[18]

4. Ongoing human rights violations

4. 1 The persistence of torture by the police

The use of torture remains endemic in post-conflict Nepal. At least three people are known to have been tortured to death in custody in 2010. Men and women alike, regardless of their age, are at risk of being subjected to torture in almost all police stations across Nepal. Torture continues to be routinely used as a tool to extract confessions or to punish persons who are accused of having committed a crime. Statements made by the authorities concerning plans to address the problem have failed to materialize into any concrete actions.

Of particular concern is the high incidence of the use of torture against children in Nepal. On the occasion of the UN's International Day in Support of Victims of Torture, Advocacy Forum released a report 'Torture of Juveniles in Nepal' which states that 'Despite some improvement after the introduction in 2006 of the Juvenile Justice Regulations, juvenile detainees are still more frequently tortured than adults in Nepal'. Between April 2009 and March 2010 Advocacy Forum interviewed 957 juveniles in detention: 22.3% – or almost one child out of four – reported having been subjected to 'torture or other ill-treatment at the time of arrest and/or during detention'.[19]

The existing legal framework has serious lacuna concerning torture, which result in victims of torture finding themselves deprived of any available avenues though which to pursue justice. Despite Article 26 of the 2007 Interim Constitution, which prohibits the use of torture and makes provisions for the punishment of perpetrators according to law, such legislation is yet to be adopted. The lack of an implementing law offers protection to perpetrators of torture, as they cannot be prosecuted for this very serious human

18 *Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal*, 5 February 2010, URL : http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-73.pdf

19 "*Torture of Juveniles in Nepal: A serious Challenge to Justice System*", Advocacy Forum, http://www.advocacyforum.org/

rights violation as a crime. The only existing legislation concerning torture, the 1996 Torture Compensation Act, only provides for compensation for victims but does not criminalize torture. Furthermore, the Act contains several flaws which hamper its proper implementation, notably a 35 day limitation on the filing of torture complaints, which has prevented several victims from seeking redress.

The lack of a witness protection mechanism combined with the lack of independent mechanisms to investigate allegations of torture often results in investigations being conducted by police officers from the same police station as the alleged perpetrators. These weaknesses account for the low number of cases in which compensation has actually been granted to the victims. Out of 81 cases filed since 2003 under the Act, compensation has been granted in only 17 cases, and of those only four were actually paid out, although in the recent years a small augmentation of the number of successful torture compensation applications has been noted. In only 3.7 % of cases has departmental action been ordered against the perpetrators, although it remains unknown whether this has actually led to action was taken by the concerned authorities.[20] Of course, such administrative punishment does not meet international standards concerning the levels of punishment that should accompany such serious human rights violations.

The case of torture to death of Dal Bahadur and Bikram Gyanmi Magar, a father and his son, who died in police custody in February 2010 in Panchthar district, illustrates the ways in which police officers can obstruct investigation into torture. In this case, the police and a group of villagers that had initially "arrested" the two men and participated in beating them alongside the police, forced an agreement upon the victims' family, which gave vague promises concerning the prosecution of the perpetrators and compensation for the family. The NHRC saw its investigation obstructed by the villagers, only allowing the NHRC to visit the location once it had given assurances that none of the villagers were on the list of alleged perpetrators. The police also tried to pressure human rights NGOs into not publicizing the case. Eventually an FIR was prepared but following pressure from the police and the villagers the names of the three alleged perpetrators were removed from the report.[21] Similarly, to cover up their responsibility in the death of Sanu Sunar, a 45 year old Dalit man who was tortured to death while in police custody in Kathmandu on 23 May 2010, the police officers from the Kalimati police station arrested Bishnu - the man who had made the complaint against the victim leading to his arrest - and charged him with Sunar's murder. They also prevented the media and human rights activists and

20 Source: Advocacy Forum.

21 *UPDATE (Nepal): Father and son die in custody due to police torture in Panchthar district* - AHRC-UAU-011-2010- 15 March 2010- URL: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-011-2010

even Bishnu's family from meeting him in custody.[22]

The absence of an independent investigation into the circumstances surrounding the custodial death of a minor in Rupendehi District further illustrate the lack of accountability of the policing system in Nepal. Dharmendra Barai (16) was arrested on July 3, 2010, regarding his alleged involvement in a bicycle collision and, although he was a minor, he was kept in detention in the same cell as an adult in Khajuriya Police Post. Under Nepalese law, juveniles are to be kept in specific separate facilities. In the afternoon following his arrest, around 20 persons came to the police station to ask for his release and the boy complained that the police had threatened to shoot him. The victim's family and relatives suspect that the boy was tortured to death, as there were several injuries on his body. Witnesses have reported that the police may have applied electric shocks to the boy during a 45-minute interrogation period that he was subjected to before he died. The investigation team set up to probe the circumstances of his death was composed exclusively of policemen under the leadership of a government official, without including any representative of the deceased's family or civil society, casting doubts over its ability to impartially investigate a case involving police officers. A group of seven prominent NGOs, including Advocacy Forum and Save the Children Norway, wrote to Nepal's Home Minister, Mr. Bhim Bahadur Rawal, on 4 Aug 2010, demanding a fair and independent investigation on the Dharmendra Barai death case. They called for he investigation committee to be restructured and include one representative from Attorney General's office, one representative from a well recognized NGO and one representative from the victim's family. Regrettably, these suggestions were ignored.

The investigation report concluded that it could not establish that torture was the cause of death, and it ignored information concerning the victim's injuries in the post-mortem report. The report limited itself to denouncing minor procedural flaws in the police's behaviour and to recommending departmental actions without specifying the nature of the sanctions or giving the names of those who should be sanctioned, and without denouncing the fact that a minor was kept in the same detention conditions as adults. Moreover, the reliability of the forensic investigation of the victim is also in doubt as it was performed by the Central Forensic Lab of Nepal Police rather than by the National Forensic Lab. The District Police Office and the District Administration Office (whose head also lead the investigation team) both refused to file an FIR in the case under fallacious pretexts.[23] Superintendent of Police Sher Bahadur Basnet refused to file the

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22 *NEPAL: Custodial death of a Dalit from police torture in Kathmandu*, AHRC-UAC-082-2010, 8 June 2010 URL: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-082-2010/

23 *NEPAL: A teenage boy dies in police custody; foul play is suspected*, AHRC-UAC-110-2010, 23 July 2010, URL: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-110-2010/ and *NEPAL: Allegations of torture to death of a minor in Rupendehi District must be independently investigated*, 27 August 2010, AHRC-UAU-034-2010, URL: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-034-2010/

case under the fallacious pretext that the victim's father had already filed an FIR in that DPO regarding the same case. Sub Inspector (SI) of Police Shambhu Upadhaya also pressured the father to drop the case, saying that if he did not the police would re-think their promise to recruit the victim's elder brother. The victim's father then turned to the Rupendehi District Administration Office and met with Deputy CDO (Chief District Officer) Pitamber Ghimire, who refused to register an FIR concerning the case.

Every case of custodial death should lead to an impartial investigation to ensure accountability and prevent torture and resultant deaths in custody. The lack of accountability of the police, combined with the lack of independent investigative systems and witness protection mechanisms enables the police to get away with murder without any repercussions.

The lack of accountability of the police is enabling them to ignore court orders to provide victims with medical treatment, as is shown in the case of Shivadhan Rai, an 18-year old student who was tortured in Hanumandhoka police station in Kathmandu on January 20, 2010. The police ignored an order from the District Court to provide him with a medical check-up within three days, and only brought him to the hospital seven days later, although his health had seriously deteriorate due to torture. [24]

Article 24 of the Interim Constitution of Nepal mandates that an arrested person shall be presented before a judge within 24 hours following his or her arrest. However, there are many instances in which detainees are kept in illegal detention for several days after their arrest, which significantly increased their risk of being subjected to torture. Sanjaya Pulami Magar was arrested on February 12, 2010, and severely tortured by policemen belonging to the Prungbung Area Police Post. He was forced to confess to involvement in a robbery that had taken place that day. He was only brought before the judge on February 21, 2010, following pressure from local NGOs,[25] Having been kept in illegal detention for nine days. Prolonged illegal detention is intrinsically linked with torture as persons that have been tortured upon being arrested are then kept for days until the signs of the torture have faded, before being brought before a court.

4.2 Excessive use of force by security forces in the Terai

The AHRC is particularly concerned by reports of the excessive use of force by security forces in the Terai region of Nepal which have been witnessed following the introduction

24 *NEPAL: Police denies medical treatment to a torture victim*, 2 March 2010, AHRC-UAC-018-2010, URL: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-018-2010/

25 *NEPAL: Police torture a man to extract confession*, 11 March 2010, AHRC-UAC-025-2010, URL: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-025-2010/

of the Special Security Plan in the region. This plan was a reaction by the government to the upsurge of armed groups and the deteriorating security situation in the Terai. In July 2010, the Office of the High Commissioner for Human Rights in Nepal released an investigation report into allegations of extra-judicial killings in the Terai, which reads "though the [Special Security] Plan incorporates a commitment to protecting human rights, credible allegations of unlawful killings have continued to surface, most of which, according to information received by OHCHR, have gone uninvestigated"[26]. The OHCHR reports having received information about 39 such incidents (among those 37 took place in the Terai) resulting in 57 deaths between January 2008 and June 2010, while the statistics of the human rights NGOs indicate even higher numbers.

In February 2010, the AHRC called for the thorough investigation of the circumstances surrounding the killing of Omkar Gosain by Nepali police officers in Banke District on 28 December 2009. Although the police claim that the victim was killed during an encounter, witnesses have asserted that the gunshots they heard sounded "unilateral," which is unlikely in a crossfire situation in which two sides are shooting at each other. The victim was involved in the Jwala Singh Group, an armed resistance group. Local villagers had allegedly accused him of having been involved in extortion, abductions and killings and may have informed the police of the victim's whereabouts.[27]

This case, like most of the cases of alleged extra-judicial killing in the Terai region, follows a clear pattern: the security forces receive information that a person is allegedly involved with such or such criminal group and later the police claim having killed this person during an "encounter" and spread the information in national and local media. However, in most cases, witnesses and evidence suggest that the security forces committed an extra-judicial execution that they then try to claim was an encounter. The police refusal to file a FIR is the first obstacle encountered by families seeking legal remedies; in none of these cases has an impartial and thorough investigation been lead to determine whether the killing was the result of an encounter or the unlawful use of lethal force by security forces. Impunity is provided in much the same way as it is concerning the use of torture, as there is no independent system of investigation that can be used when State agents are the alleged perpetrators of abuses. Similarly, the absence of witness protection mechanisms have created instances in which witnesses have been forced to sign blank statements or threatened not to speak with human rights organizations.

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26 *Investigating Allegations of Extra-Judicial Killings in the Terai - OHCHR-Nepal Summary of Concerns (July 2010)*, Office of the High Commissioner for human rights in Nepal, URL: http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf

27 *NEPAL: Police kill a 25-year-old man in an alleged encounter in Banke-* AHRC-UAC-014-2010- 23 February 2010 URL: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-014-2010/

For example, on 15 August, 2010, in Nawalparasi District, the police allegedly beat and robbed villagers from Sekhuwana chock, severely tortured and illegally arrested one of them and handed another villager to the Indian police who later reportedly extra judicially killed him. 40-year-old farmer, Rudal Yadav, was arrested by 10 policemen, and then handed over to the Indian police, without following any legal extradition procedures. He was later shot dead in the Bihar state, India. The police claimed that the victim was shot while trying to escape from Nepal to India, but witnesses have reported that the victim had been handcuffed beforehand, and the AHRC believes that the victim's death is more likely to have been an unlawful killing. Later the same day, almost 200 policemen encircled the village and beat up villagers, injuring many of them, including four women. The police also reportedly looted cash and valuables from the villagers' houses and scattered their food. Lorik Yadav, the former head of the Village Development Council and the local leader of the Tarai Madhesh Democratic Party, was severely beaten up, arrested and had been refused access to lawyers and NGO representatives since then. Party cadres and supporters held a demonstration to demand his release.[28]

4.3 Difficult access to the justice system for women victims of violence

Violence against women is still a major issue in Nepal, where the patriarchal structure of the society makes it very difficult for women to access the justice system. Women often found themselves deprived of any remedy against sexual and/or domestic violence or trafficking. An annex to the Nepal NGO coalition submission to the UPR[29] indicates that 81% of women report having faced domestic violence at the hands of their husbands. Moreover, although the incidence of some other forms of human rights violations has been decreasing since the signature of the CPA, such as forced disappearance, an increase has been noted in the cases of violence against women. In the majority of violations of women's rights, the perpetrators go unpunished as the justice system has proven inefficient in addressing these cases and as social stigma remains high for women seeking redress. The urgent need to address this issue was publicly acknowledged by the government, which launched a one-year campaign against violence against women on 25 November 2009.

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28 *NEPAL: Police beat and rob villagers in Nawalparasi District, one villager is handed over to the Indian police and killed and another one is detained incommunicado*, AHRC-UAC-146-2010, 21 September 2010 URL: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-146-2010/

29 From the "*Situational Analysis Of Gender-Based Violence in Surkhet and Dang Districts*", 2008 carried out by SAATHI, WHR, UNFPA, and IRC quoted in: *Annex by Coalition of Women Network of Nepal Coordinated by Women Rehabilitation Center (WOREC) Nepal To Nepal NGO Coalition Submission to the United Nations Universal Periodic Review Human Rights Council,* July 2010, URL: http://www.inseconline.org/pics/1278389893.pdf

In terms of legislation, progress has been made: in 2009 the domestic violence act became a law and removed the 35-day limitation on filing rape cases. Nevertheless, one year after it was passed, regulations for the law still need to be set therefore preventing its implementation.

Women that are victims of violence are typically encouraged to look for a settlement outside the formal framework of justice by community leaders or even the police. The policing system needs improvements in order to be able to effectively address the issue of violence against women.

Sabitri Pokhrel, a Nepalese human rights activist working as a coordinator in the national secretariat of the National Women's Rights Forum (WRF) has noted the uncooperative attitude women are confronted with when they try to register a case in the police station: "When we go to a police station to file a case of a violation of women's rights for example, the police officers often deny registering a case". Similarly, Sharmila Lungeli a women rights activist who works with Nari Bikash Sangh (Women's Development Center) reports that: "We never found a police officer willing to assist a helpless woman who desperately needed justice. When police officers are given a bribe they become ready to help the women victims, otherwise they just neglect them and seek excuses to drop their cases. Whenever we go to advocate in favour of the women victims, they treat us like mad people."

The lack of sensitivity of police officers toward the issue also remains problematic: "When victims of domestic violence go to the police station to file a case, instead of getting justice, they are shouted at by the police," says Sharmila Lungeli. Women therefore fear additional abuse if they are to go to the police station. According to Sharmila: "When we go to the police station regarding a case involving a woman, instead of dealing with the case privately, the police officers disclose the information to the public and the media which ultimately affects the victim and makes her suffer more." Similarly, Sabitri Pokhrel reports that "most of the time, the police pose unnecessary questions to women who go to register a case, mostly in cases of domestic violence. They ask questions like, why were you beaten, how were you beaten, in which part were you beaten, when you were beaten. This is a wrong way of enquiring about incidents of violence, and they make women feel more harassed. The way that the police speak to women makes them feel like victims all over again."

The delays in getting access to legal remedies further hamper the prosecutions of violence against women cases. "A strong mechanism should be established which should promptly punish the perpetrators of violations. In our country, if any incident occurs, it usually takes a week, and sometimes even more than that to simply to register a case," according to Sabitri Pokhrel. "For instance, when a woman is raped, if the police take such a long time to register the case, it is harder to get evidence of the crime. Moreover, the police

often act in favour of the perpetrators, not punishing them but rather allowing their release. We have documented numerous cases on this issue. High-ranking officers or political leaders have been found giving orders not to punish the culprits and, if caught, to release them."

Instances in which police themselves have been involving in physical or sexual violence further discourage women's victims from going to a police station for help. Acting within that system, women human rights defenders, whose activities are seen as a direct challenge to the patriarchal system, are particularly exposed to threats.

The case of Muna (name changed) a 16 year old domestic servant in Kathmandu, who is deaf and unable to speak, illustrates how the policing system inadequately addresses the issue of violence against women. On 17 August, her employers reportedly accused her of having stolen a piece of jewellery and brought her to Budha police station. She was kept in police custody for 24 hours, the maximum length that people can be kept in police detention before being brought before a judicial authority. Due to the lack of evidence, she was sent back to her employers' house on 18 August. After Muna was sent back home, her employer's wife reportedly beat her using stinging nettle. She also reportedly tore off Muna's clothes, poured kerosene on her body and continued to hit her with the nettle and with other objects. The employer's wife then locked Muna in a room with her husband for 2 hours. The husband then reportedly raped Muna, who was unable to cry for help. The alleged perpetrators then took the naked victim out of the house and told the neighbours that she was a thief. The perpetrators then again took the victim to Budha Police Station where she was detained for another day.

In spite of visible external injuries, showing that the victim had been subjected to ill-treatment and was in need of medical care, the police did not take her to the hospital and she was kept in custody without being provided with food, a proper bed or any medicine. The two alleged perpetrators were allowed to walk away unpunished. When the victim tried to file a case, supported by a women rights NGO, the Women Foundation, the police first refused to register the case as a rape case and it was only after pressure from human rights defenders that a rape case was eventually registered on 21 August 2010 at Budha Police Station. The police then arrested the two alleged perpetrators but no further action has been taken yet to bring them to justice. A medical examination concluded that the victim had not raped. As its report did not mention any violence or injury on any part of the victim's body in spite of visible external injuries, it has been suspected that the doctors releasing the report had been bribed. As a result of the report, the police have investigated only into the allegations of theft and beating, but dropped the investigation in the case of rape.[30]

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30 *NEPAL: Police negligence in a case of rape and beating of a 16-year-old girl*, AHRC-UAC-123-2010, 31 August 2010, URL: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-123-2010/

4.4 Caste-based discrimination

The irregular implementation of anti-caste based discrimination legislation and the difficulties the Dalit communities are facing to access the justice system, continue to hamper the enjoyment of their fundamental rights.

Although the caste system was officially abolished in Nepal in 1963, it is still in operation in reality and condemns Dalits (members of the lower castes, also known as untouchables) to poverty, illiteracy and discrimination, including in access to education, health and employment. In some rural areas, the rest of the society still give little value to a Dalit's life which enables violent crimes, such as rape, physical assault or even murder, to be carried out with impunity.

Changes in legislation have not been able to dismantle the barriers of caste in the society, as the rule of law remains elusive in the country. The murder of Manisha Harijan illustrates the severity of the problem. According to information the AHRC has received from local NGO the Jagaran Media Center, the victim, an 8-year-old Dalit girl, was found dead on the morning of 4 December 2009, with her throat slit. The circumstances of the crime have led the villagers and the police officers to suspect that a local non-Dalit businessman killed the girl as a human sacrifice in his brick kiln, as part of a superstitious offering. The victim's family and villagers report having encountered resistance from the police, who first refused to file the case. Only after intense pressure from local human rights organisations, was the case was filed and the perpetrators arrested.[31]

Caste-based discrimination is prohibited under national law and international standards. The 1963 Civil Code (Muluki Ain), banned untouchability and declared that every citizen is equal under the law, irrespective of caste, creed and sex. In 1971, Nepal ratified the International Convention on the Elimination of All forms of Racial Discrimination. The 1991 Constitution declared that the act of untouchability was illegal and punishable by law. As a result of these developments, the House of Representatives declared in 2006 that the country was free 'of untouchability and all kinds of discrimination.' The rights against caste discrimination and untouchability have been included as fundamental rights in the 2007 Interim Constitution. Nevertheless, those different steps, although welcomed, have had a limited effect in reality and discrimination which is inherently contained in the hierarchy of the caste system continues to affect every aspect of the life of the Dalit community in Nepal.

31 *NEPAL: Risk of improper investigation into the murder of an 8-year-old Dalit girl, allegedly sacrificed for good omens*, 1 February 2010, AHRC-UAC-006-2010, URL: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-006-2010/

Article 14 of the 2007 Interim Constitution, which guarantees the protection from caste-based discrimination is hampered by the way it addresses the issue, which is included under racial discrimination, without specific emphasis being given to the situation of the Dalits. Section 14 -1 says that a discriminating act shall be punishable by law, but, since 2007 no law specifying the punishment has been adopted. Furthermore, the article focuses only on discrimination that can take place in public places but does not include specific provisions about discrimination in private places.[32]

In January, the appointment of a chairperson and of the members of the National Dalit Commission, after a gap of six months in which the work of the commission was stalled, has been a positive development although insufficient resources still hamper the ability of this entity to more effectively raise the issue of caste-based discrimination and related violence.

In addition to the loopholes contained in the laws, the flaws of the criminal justice system have denied victims of caste-based discrimination the protection of their rights. The police regularly refuse to file cases of discrimination or violence against Dalits and to offer protection to the victims. These obstacles ultimately discourage Dalits from seeking legal redress.

For instance, two groundbreaking court verdicts condemning instances of caste-based violence are still to be implemented. The first concerns a decision issued in January 2009 by the Baitadi District Court, which condemned the main perpetrator in a case of physical assault of 12 Dalits in October 2007 to two years imprisonment and a fine of NRS 25,000. The victims were assaulted as they refused to be subjected to a discriminatory ritual in a temple. The decision was upheld by the Kanchanpur Appellate Court on August 23, 2009. The second verdict concerned a case in which the father of a groom was assaulted for having practiced "rituals reserved for high-caste communities." The main perpetrator was sentenced to one year imprisonment and a fine of NRS 5,000 by the Baitadi District Court on March 9, 2010. Both verdicts strongly condemned acts of violence committed on the basis of caste, which is outlawed in the Interim Constitution. However, neither verdicts have been implemented, in spite of the commitment of the local government officials to do so.[33]

The way that the military pressured the witnesses and the families of the victims in the

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32 *NEPAL: 'If not now maybe never'; Implementation of Anti-caste-based discrimination laws*, AHRC-STM-154-2010, July 23, 2010, URL: http://www.humanrights.asia/news/ahrc-news/AHRC-STM-154-2010/

33 *Government assurances to NDC and OHCHR to implement court verdicts on caste-based discrimination*, 21 July 2010, Press Release National Dalit Commission of Nepal, United Nations Office of the High Commissioner for Human Rights, Nepal URL:http://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202010/July/Joint_PR_NDC_OHCHR_Baitadi_ENG.pdf

Bardyia National Park killings to drop their cases, also shows the vulnerability of such persons and the difficulties they have in accessing the justice system. The victims were all Dalit manual workers and as such belonged to one of the poorest, most vulnerable communities in Nepal. The army and the forest department reportedly pressured the families including threats of arbitrary detention based on fabricated charges and the refusal to pay promised monetary compensation, to force them to drop the prosecutions, and granting impunity to the perpetrators of these killings. [34]

Dalits also suffer from a range of other violations of their rights, including social and economic rights. Data provided by the National Dalit Commission shows the magnitude of the challenge: "*the analysis of Dalits' access to the national resources demonstrates the appalling condition. The literacy level is startlingly low among Dalits with the rate 33.8% in comparison to aggregate national rate 54%. The annual per capita income of Nepal is 210 US$, where the per capita income is inconsistently less among Dalits with the level 39.6 US$. Similarly, out of 17% of the poorest population of Nepal 80% belong to the Dalit Community and most of them are landless. Despite the entrance of societal development in the modern scientific stage, the condition of Nepalese society has become a matter of anxiety and challenge for the state since it has not yet been freed from inhumane behaviors like racial discrimination and untouchability.*"[35]

The situation of those who dare to challenge discriminatory practices is also precarious. Pushpa Karki, a non-Dalit teacher was dismissed for having defended the rights of her non-Dalit students. She had objected to the use of separate facilities for Dalit students and to the banning of Dalit students from attending certain classes, which are common practices in Saraswoti Secondary School in Kailali district. She was sacked from her job in 2008, then prevented by her colleagues from taking up a post in another school. In order to counter allegations that discriminatory practices were being used by the school, the school administration reportedly submitted a report claiming that there were no caste-based discrimination and untouchability practices in the school, forging the signatures of the Dalit students to support their claim. Pushpa Karki has since then reportedly been the victim of a series of threats and intimidation. For one and a half years (at the time of writing in December 2010), this mother of three has not received any salary. During this period, five different Chief Education Officers have been in charge of the District Education Office None of them have taken action concerning her case, and have ordered her to look for a job herself, in a remote part of the country and refused to transfer her to nearby schools. The National Information Commission had sent several letters to the District Education Office-Kailali, ordering them to reinstate Ms. Pushpa Karki. However,

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34 NEPAL: Recipe for impunity at work in Bardiya National Park, AHRC-STM-081-2010, May 20, 2010 URL: http://www.humanrights.asia/news/ahrc-news/AHRC-STM-081-2010/

35 National Dalit Commission website, URL: http://www.ndc.gov.np/opensection.php?secid=423

in spite of the authority of the NIC, its order has not lead to any action by the relevant local authorities. The DEO was eventually fined Rs. 5000.00 for not implementing the NIC decision and has appealed to the court.[36]

5. The right to food

Nepal is a land-locked country and can be divided into three geological areas; the mountainous Himalayan belt (including 8 of the 10 highest mountain peaks in the world), the hill region and the plains region. In the mountainous area, where the only 5% of the land is cultivatable people rely on livestock, collecting herbs and medical plants for food. In the hill region only 20% of the land is cultivatable and maize and potatoes are the major crops there. In the plains area, 41% of the land is used for cultivating food grain.

Nepal is one of the poorest countries in Asia and the fourteenth poorest in the world. The real GDP at producer prices grew by 4.7% according to the Economist Intelligence Unit in 2009. The failure of winter rains, followed by a light and erratic monsoon, slowed agricultural growth. Approximately 80% of the total population live in rural areas and are mostly engaged in agriculture, and more than 60 percent of the farmers are landless labourers. Those who suffer most from a lack of food are members of the lower caste community, or Dalits, indigenous people, the disabled, and some people infected by HIV/AIDS, who are the more marginalized and vulnerable social groups in terms of food security. They are identified as the being Below the Poverty Line (BPL) and are estimated to account for as much as 31% of the population.[37]

About 6 million people, or 23% of Nepal's population, is undernourished. Fifty percent of children under the age of five are malnourished, whereas 49% have stunted growth and nearly 2% are severely malnourished. The World Global Hunger Index (GHI) 2010 has placed Nepal at 56, following India and Bangladesh in South Asia.

5.1 Key events in 2010

1. Domestic legal framework for right to food: It has proposed to include the right to food, as a fundamental right in the Constitution that is currently being drafted\.

36 *NEPAL: Still no relief for the school teacher dismissed for defending the rights of her Dalit students*, 5 October 2010, AHRC-UAU-040-2010, URL: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-040-2010/

37 UNDP, Human Development Report, 2006.

2. Disasters affect food security: The government did not take effective action to assist the many persons affected by the flood (Laxmanpur Dam, Koshi Barrage, and Gandak barrage) as well as the farmers (Bara, Rautahat, Chitwan ,Jajarkot and Jhapa) whose crops failed as a result of the flood. Forty-three districts in Nepal face the problem of food deficiency every year. Among them Bajhang, Bajura Humla and Mugu districts – in the far north western area - suffer chronic hunger problems. This year, 138 deaths resulted from flooding and landslides, while 1600 families were displaced and 43 districts were badly affected during the monsoon season. About 40% of the population in the mountain and hill districts is faced by a severe food crisis. According to the Ministry of Agriculture and Cooperatives, 53% of the people living in the far western region suffer from acute hunger.

3. Food aid:[38] The World Food Programme planned to feed 1.6 million Nepalese persons, providing 45,000 metric tons of food to twenty-six food insecure districts under its protracted Relief and Rehabilitation Operation. The Nepal Food Corporation also distributed about 11,096 metric of rice. However, food aid from foreign agencies is not effectively reach the poor. The government of Nepal expected that more than 1.6 million people would face hunger in 2010 whereas food aid of 2010 was expected to distribute food to three million people.

5.2 Who is hungry?

The caste-based Hindu hierarchy and patriarchal societal values are strongly rooted in Nepal's economic and social structure, which causes systematic exclusion and marginalization of the majority of low caste communities and indigenous groups. The majority of natural resources, including forests, land, and water, belong to high caste groups. In addition, inadequate government policies and poor implementation of government programmes contribute to an increase in food insecurity among these groups.

The National Dalit Commission has listed 22 cultural groups under the category of Dalits. According to the 2001 census, the total Dalit population in the country is 2,973,871 (13 % of the total population of 23.2 million). The Central Development Region (CDR) has the highest Dalit population (800,151) followed by the Western Development Region (719,101).

According to the Laxmi Prasad Prasai, a member of the National Land Reform Commission, there are some 1.4 million people without land. Most of them are squatters, haliyas, freed kamaiyas (which are lower caste communities). 50% of Dalits country-wide

38 For details on food aid, please visit http://www.reliefweb.int/fts (Table ref: R10), Compiled by OCHA on the basis of information provided by donors and appealing organizations

are landless, including 92% of women, 15% of Dalits in the hill area, and 45% of Dalits in the plains area. They are more exposed to food insecurity as they are living below the poverty line.

The landless Gandarva Dalit community in Saharawi Village Development Community (VDC) has been living by the Mankhola river side in Vardiya district. The main occupation of around 43 households in this community living is playing Sarangi (a string instrument) and singing songs. As the utility of their traditional occupation is becoming extinct, the men in the community are compelled to migrate to India to seek employment whereas the women and the elderly are engaged in daily labour in the village. Some of the women have also had to migrate to India as illegal domestic workers. Furthermore, food insecurity in this community also forces children into very early marriages and are forced to migrate to India where they become involved in child labour. The children who are left behind by parents who migrate to India suffer from health insecurity, including mental health problems.

In 1996, the National Land Reform Commission provided small pieces of land for them by the Mankhola river. However, the food they harvest from the land only lasts a month, after the two annual harvests from April to May and from November to December. One of the community members, Mr. Lok Bahadur Gandarva says that during raining season, the Mankhola River often overflows, damaging their crops.

Indigenous people are also vulnerable to food insecurity and are also discriminated against in Nepal. Water sources that supply the indigenous Kumal community in Pipaltar has been diverted to supply upper Bramin and Chhetri caste communities in adjacent villages, who developed irrigation facilities. As a result, Kumal community's harvest was drastically reduced, driving them into food insecurity and hunger. The indigenous groups find it difficult to raise the issue and make complaints with the government. They have received assistance from organisations such as Right to Food Network Dahding or FIAN Nepal, who have organized a joint meeting and made a complaint to the District Irrigation Department.

Women are more vulnerable than men to hunger in Nepal. According to local culture, they eat later than the men in the family and the amount of food available to them is determined by the amount left over by other family members. In rural areas, women have wide-ranging workloads including farming and house-work. A report commissioned by the National Women Commission revealed startling discrimination against women in terms of ownership of assets and properties. The report, which assessed the situation in 68 of 75 districts in Nepal, exposed the skewed nature of property distribution. It revealed that only 0.78% of houses were actually (legally) owned by women (about three women in 500 had houses in their names). Only 5.25% of women had land-ownership

certificates in their name. Likewise, only 5.45% of women owned livestock. About 17% of women had some kind of assets in their name such as ornaments, jewellery, property, or land. Only 16% of women had a regular income. And, only 8% of the civil-service and private-sector workforce is made up of women.[39]

Due to the low productivity of land and limited sources of income in Nepal, a large number of Nepalese persons are forced to migrate to seek employment, particularly to India. During migration, they are at a higher risk of being exposed to unsafe sexual activities and drugs resulting in increased levels of infection with HIV/AIDS. Since 2005, the number of such victims has been noticeably increasing. Approximately 70,000 people living with HIV/AIDS are facing chronic hunger in Nepal. Only 15,000 persons are officially recorded as being infected by the Ministry of Health, among them 4,000 are single women and 1,000 are children. Many of them are poor from Dalit communities, who are further socially and culturally isolated, even within their families and communities, due to their being infected with HIV/AIDS.

Sexual diseases are relatively prevalent in the Dailekh District of Far Western region, where people practicing seasonal migration to India and are at heightened risk of being involved in unsafe sexual activities. HIV/AIDS and other sexual diseases are prevalent among them. After coming home, they transmit the diseases to their family members. To get medicine and food, the affected are forced to sell their land or other assets, and the widows they leave behind if they die face hunger and social discrimination.

The District Development Committee (DDC) in Achham formed a District level "HIV Victims Food Support Fund" funded under the DDC's budget in May 2009. This represents the first time that a local government in Nepal has created a policy ensuring to right to food for HIV Victims. This fund covers 75 VDCs in Achham district and was created following the intervention of human rights groups. The victims get around USD 6.5 per month in financial assistance. The Ministry of Health also distributes anti-retrovirus therapy (ART) medication free to persons with HIV/AIDS once they have registered with the District health Organization.

5.3 Food insecurity in Nepal's far western areas

The hunger situations in Humla district appeared in April after winter crops had been affected by long lasting droughts in the hilly areas of Nepal.[40] In Far-West Baitadi district, the villagers reportedly had to face acute food shortages during the year, notably the Dashain festival period. The northern region of the Baitadi district has been facing a food

39 National Women Commission Nepal 2008.

40 Interview with Dal Bahadur Rawal, a human rights defender working in Humla district

crisis for months, as the three depots of Nepal Food Corporation (NFC), the state-run food agency, at Darchula have run out of supplies. Food sold in the local markets is too expensive for people in this poverty-stricken region. Despite awareness of hunger and a lack of food in far western areas, the government has failed to provide sufficient food aid. The Nepal Food Corporation has reportedly delayed tender announcements and the government has been slow to approve the annual budget, which has resulted in these delays in aid. The Ministry of Agriculture and Cooperatives finds that the main causes of the hunger are irregular monsoons, poor irrigation facilities, unavailability of fertiliser in cultivation season, a shortage of hybrid seeds, settlements in cultivation areas and low investment in research and development.

5.4 Government's response and loopholes in the food policy

The Nepal Food Corporation (NFC) was established in January 1974 with the aim of distributing food grains in emergencies such as floods, drought, heavy rain in order to prevent starvation. The distribution mechanism of the NFC is to collect grain from areas with a food surplus and donations by international agencies. The NFC is establishes depots in districts and villages to distribute this food.

However, the capacity of the NFC to supply food to remote districts is limited by high transportation costs, inadequate funds to purchase food and strict procurement rules. According the office of NFC, a buffer stock of 15,000 tons are reserved every year for domestic consumption, while 4,000 tons are for the South Asian Association for Regional Cooperation (SAARC) food bank, that could be distributed to any neighbouring country if a food crisis occurs there. The question must be raised as to why the government is concerned with food shortages in neighbouring countries when there is such a food shortage in Nepal. The Ministry of Commerce and Supply has directed the Nepal Food Corporation (NFC) to buy 25,000 metric tons of rice from India to reduce the impact of the food shortage, following which 50,000 metric tons of wheat and 25000 metric tons of rice were imported at market prices from India.

The government is being short-sighted in its distribution of food to remote areas, notably concerning the need to plan for emergencies. The corporation uses air routes to supply food to the mid western districts as there is no other means of transportation. It has to pay large amounts to transport and supply food via airways. Given the fact that the NFC delivered about 11,096 metric of rice this year, it must concentrate on building a transportation infrastructure as part of a long-term food delivery and emergency management policy.

The NFC's role is to distribute food during emergencies to vulnerable groups. However, this support often does not reach the remote areas due to poor management. According

to the local human rights defenders, those living in remote areas have to spend three days to reach the headquarters to get food. The NFC is not distributing food to where it is most needed. The AHRC is aware of the difficulties posed by the remoteness of many areas of Nepal, but the NFC and government must do more to reach remote areas in times of grave food shortages. The NFC office's representative, Mr Nawa Raj Uppadhya, has explained that there are insufficient food stocks in the depots and the government has not allocated the budget to supply food through the NFC. However, the reality on the ground tells a different story. Muthura Kuwar, a social activist, claims that most of the food distribution by the NFC allegedly goes to public servants and well-off consumers in district headquarters, including the capital, Kathmandu.

Subsidized food grain distribution has depressed grain market prices for the local farmers and acted as a disincentive for higher food production. In addition, it is observed that distribution of subsidised rice by the government as well as foreign agencies is gradually changing local food culture towards a dependency for subsidised rice, which is cheaper than locally produced traditional grain in Nepal's western region.

The Food and Agriculture Organisation of the United Nations (FAO) provided 103,111 farming households with essential seeds and fertilizers for the summer crop season in 2010. However, the distribution of the dead wheat seeds is likely to affect 37 Village Development Committee (VDC) of Baitadi District and there are concerns that this could lead to hunger there in the coming year.

Private companies are beginning to enter the agriculture sector in Nepal, which in the past was dominated by public institutions. Improved seeds and other fertility enhancement technologies produced by research institutes are now being brought in, but there is a risk that traditional skills, knowledge and practices may be lost as a result.

5.5 Domestic legal framework and policy

In the government's national Tenth Plan (2002-2007), a food nutrition security plan was included, which would be achieved through raising agricultural production and productivity, increasing incomes and reducing poverty. The National Agricultural Policy (2004) added various provisions for marginal and vulnerable groups that had less than half a hectare of land, as a way to improve food security. The government has established the National Food Security Steering Committee under the National Planning Commission and a Food Security Working Group (FSWG) in the Ministry of Agriculture and Cooperatives.

The High Level Scientific Land Reform Commission (HLSLR) announced that some 1.4 million landless people across the country require 421,770s hectares of land. The

HLSLR came up with this prescription while presenting its report on Scientific Land Reform (SLR). According to the commission, there are some 492,851 hectares of land belonging to the government that are not being used productively that could be used to enable 1.4 million landless persons to have access to land and a livelihood. However the 2021 (Nepalese calendar) land use policy is still in use. To ensure food security for the majority of landless persons it is imperative that the government should implement the recommendations of the SLR.

The interim constitution (2006-2007) has recognized food sovereignty as a fundamental human right, which has been reflected in the Three Years Interim Plan (2007-2010) as food security for all citizens.

6. Conclusions and recommendations

2010 has not seen any positive evolution concerning human rights in Nepal. The focus has been on political debacles, which have blocked any efforts to strengthen the rule of law in Nepal. For there to be improvements to the human rights situation, the period of political bickering between political actors in Nepal needs to be replaced by a joint effort to strengthen the ability of the State to protect human rights and to tackle the issue of impunity. The AHRC recalls that the political parties were given their current mandate by Nepal's citizens following the country-wide popular protests in 2006. The people were demanding an end to the conflict and the repressive royal regime, which had seen widespread gross human rights violations including discrimination, disappearance and general insecurity and a lack of development. The people protested in favour of democracy, peace and human rights. The political parties have thus far failed to deliver on their promises to bring about a new Constitution and political era for the country, in which peace, democracy and human rights would flourish. The constitution-drafting process provides a historic opportunity for the country's various actors to participate in establishing a strong, democratic government with independent justice institutions, without which it will be impossible to establish the rule of law and primacy of rights in the country. Instead, the political parties have been pursuing their own narrow interests and shielding themselves and their allies from any form of accountability for past or present abuses. The AHRC therefore calls upon the political parties to desist from these fractious practices, as time is running out for the constitution-drafting process and the country is becoming more and more insecure and unstable as a result. The parties are urged to recall that they have been given a mandate by the people and therefore must engage to create a climate mutual trust that will permit the establishment of a State that is based upon sound democratic principles rather than persisting interests of the powerful few. The establishment of a truly democratic society will depend upon the ability of the state to put an end to the impunity, to guarantee the equal protection of the rights of the citizens and to establish a democratic environment that is free of fear.

All the political parties, groups and organizations, should therefore refrain from interfering with course of justice and from granting protection to human rights abusers. They must commit to fully respecting the freedom of the press and the freedom of expression, and publicly denounce and take appropriate action against members who do not abide by these requirements.

The Maoists, who have been the main political force in the country since the Constituent Assembly elections in 2008, with the largest number of seats in the body, have a corresponding responsibility to show leadership in the establishment of a democratic and peaceful Nepal. The AHRC therefore urges them to do their part to put an end to the impunity enjoyed by their cadres who have been responsible for human rights abuses. In order to enable this, the Maosts must live up to promises made as part of the Comprehensive Peace Accord and cooperate fully with the police and the State's justice institutions. They must also ensure that the members of the Young Communist League abide by the law.

The Nepal Army is at a crossroad in its history, having to turn itself from an army operating in a country beset by internal armed conflict, into a democratic army that contributes to the establishment of a long-lasting peace. This democratisation process can only be accomplished provided the army proves its commitment to the protection of human rights and civilian oversight, by accepting to fully abide by civilian justice institutions' jurisdiction and decisions.

The police force also finds itself in a challenging position, as increasingly organized armed criminal groups are significantly increasing insecurity and therefore require a strong response by the institutions of the rule of law. However, the police must at all times guarantee the respect for human rights, as combating crime with crime will only create further instability and opposition to the State. The police must strictly act in accordance with international standards and stop resorting to the excessive use of force. The government must set up an independent system that is capable of carrying out effective investigations and prosecutions of all human rights violations attributable to State agents and groups working for them. This is an essential ingredient in any efforts to eliminate impunity.

1. Make public past reports by government commissions formed to investigate allegations of human rights violations and ensure the implementation of all of the recommendations produced by these mechanisms that remain relevant in the current context.
2. Establish an independent oversight mechanism to investigate all allegations of human rights abuses committed by the police and security forces, which has the capacity and resources to to receive and act upon complaints made by members of the public. All

custodial deaths, alleged encounter killings at the hands of the security forces and allegations of torture must be properly investigated as a priority.

3. Immediately enact appropriate legislation to establish an effective, independent and well-resourced witness protection system, capable of providing protection to victims and witnesses of crimes, including human rights violations attributable to State agents and members of other powerful and/or armed groups.
4. Investigate in a prompt, impartial and independent manner all allegations of intimidation, threats and attacks against victims, witnesses, lawyers and human rights defenders who are engaged in working to ensure justice and dismantle Nepal's entrenched system of impunity.
5. Ensure the timely implementation of all court decisions.
6. Enact the legislation establishing transitional justice mechanisms, in accordance with international human rights standards.
7. Strengthen the National Human Rights Commission by adopting regulations consistent with the Paris Principles and by implementing its recommendations.
8. Adopt without further delay a law criminalizing torture, in accordance with the dispositions of the interim constitution of Nepal and internationally accepted definitions of torture. The law should also allow the prosecution of those who have allowed the act of torture to take place. The loopholes within the Torture Compensation Act should be removed, as should the 35-day limit for victims to file complaints. An independent and impartial body must be established, with effective powers and sufficient resources, in order to effectively investigate allegations of torture, as mentioned in recommendation number 2 above. At the judicial level, measures should be taken to ensure the protection of the victims of torture and of their witnesses, including the systematic transfer of detainees complaining of ill-treatment or torture to another place of detention within a limited period of time. Those who do not abide by court orders to provide torture victims with financial compensation or medical assistance should be subjected to prosecution.
9. Facilitate the access to justice of marginalized groups or communities. Complaints of caste-based discrimination must be given priority treatment and be properly investigated and prosecuted. Officers who are found to be intentionally negligent in dealing with such cases must be disciplined or discharged from duty. The National Dalit Commission should be strengthened to allow its effective intervention into reported cases of caste based discrimination.
10. Ensure the proper and immediate implementation of the Domestic Violence Act. Ensure that police officers are trained in dealing appropriately with gender-related issues and failure to act effectively in such cases must result in appropriate punishment. The National Women Commission should be strengthened to allow its effective intervention into reported cases of gender based violence.

PAKISTAN

THE SITUATION OF HUMAN RIGHTS IN 2010

Introduction

The situation of human rights in Pakistan is one of the most serious in the Asian region and has amongst the greatest impact on regional and international peace and security. The absence of the rule of law and the jurisdiction of the State in many parts of the country, as well as serious flaws in State institutions, has made Pakistan into a hotbed of conflict and instability. Added to this, the country has suffered from devastating floods during 2010 which has added greatly to the suffering of Pakistan's population.

2010 saw some positive developments concerning human rights, but for the most part grave and widespread human rights violations continued to be perpetrated by the State, with impunity.

The government has taken the positive step of halting executions since November 2008. 2009 and 2010 have been legal execution-free years, as the government has not executed any of the estimated 7500 prisoners still being held on death row. However, it has been unable to commute these death sentences because of strong resistance from powerful groups such as the higher judiciary and the military.

The Asian Human Rights Commission (AHRC) documented a range of grave rights abuses during 2010, which will be presented in detail in the following report. These include: arbitrary arrests and detentions, the endemic use of torture, forced disappearances, discrimination and violence against women, forced marriages and forced religious conversion, the misuse of blasphemy laws against religious minorities, child abuse and bonded labour. The report also covers a range of systemic problems within the policing and judicial systems that are preventing those responsible for committing these violations from being held to account.

On the issue of violence against women, some progress was made during 2010. A bill against sexual harassment was passed into law by the parliament. Bills against domestic violence and acid-throwing were presented in the National Assembly, but opposition

remains from powerful groups, particularly religious fundamentalists, that continue to prevent this legislation from being adopted. The bill against domestic violence has been pending for almost three years before parliament and despite efforts by the government to adopt it during 2010, as of the time of writing this report – December 2010 – this had not been possible. A bill was also passed in 2010 that decentralizes the health care, raising hopes for improved women's health.

The judiciary enjoying freedom without any pressure from the executive but there are complaints that in some cases the government was hesitant to implement the decisions of the Supreme Court. The judiciary was at loggerheads with the government but it asserted its independence from the executive.

The parliament (consisting of national assembly and senate) passed the 18th amendment unanimously deleting all the amendments introduced by the two military governments in the constitution. The Supreme Court has shown its reservations on the appointment of the judicial commission and asked the parliamentary committee to amend the 18th amendment to adjust the reservations of the Supreme Court.

In the middle of 2010 the government of Pakistan ratified the UN International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) but has shown many reservations on the most important articles of the ICCPR and CAT which have totally negated the concept of these covenants.

Torture in custody has become the routine part of life and is now exhibited in open places to show police power with all impunity. There is no move on making torture a crime in the law. The armed forces are running their own torture cells and the cases of torture in custody increased during the year 2010.

The havoc of floods continues after four months. The government and authorities have shown their inabilities to overcome the miseries of the affected people. The plans and strategies failed to provide resettlement. The government also failed to prove its credibility as people of Pakistan do not believe in it to provide funds. The professional organizations, NGOs and social organizations are much more active in collecting their funds. It is also reported that some Pakistani missions abroad are also not contributing in the official funding pool rather preferring to pool through NGOs because of increasing corruption at official levels.

200 million people are directly affected by the floods, around 2000 are dead, the standing crops on 600,000 acres were completely destroyed. The government and international agencies, somehow, controlled the spreading of disease. The amount fixed for affected persons could not be provided to almost anyone. Because of the receding of the flood

waters and winter season people started to return back to their homes without proper aid and help.

The corruption in the government has become endemic and with the passage of time the corruption makes new records. According to Transparency International the corruption in Pakistan jumped from 141 position to 133 among the 178 countries. No mechanism has been evolved to curb the corruption. The Supreme Court is taking cases of corruption but limited it to the present government not across the board.

The media is still under attack from threats from authorities and powerful groups. Journalists were detained and tortured by intelligence agencies.

Still the military has its influence on the civilian matters which does not allow the elected representatives to follow the international norms on human rights.

Pledges by the government to the UN Human Rights Council

Following are the pledges and responses made by Pakistan during the Universal Periodic Review (UPR) 2008; and many of them are yet remained as false promises. Since then situation has not been considerable improved.

About the religious minorities government said that specific steps are being considered to strengthen laws and procedures to reduce incidence of their abuse. The Government has restored the joint electorate system for minorities in federal and provincial assemblies. In addition, ten seats are reserved for minorities in the National Assembly and twenty three in the four Provincial Assemblies.

On the issue of Violence against women it was responded by the government that the Government is pursuing a Policy of Zero Tolerance on Violence against Women (VAW). A Bill on Domestic Violence, tabled in the Parliament, encompasses the issues of marital rape and acid attacks, among others. Meanwhile, grievous hurt/injury as a result of marital rape is covered under Criminal Procedure Code.

On disappearances Pakistan says that the Supreme Court initiated action on cases of disappearances. The new Government has vowed to investigate them.

On impunity it says that it does not condone impunity. Abuses by law enforcement agencies, including security forces, are cognizable offenses.

For human rights defenders it is said that Pakistan attaches importance to ensuring security, safety and freedom of human rights defenders. The Government has benefited

from the active advocacy and substantial work of NGOs in promoting the rights of women, minorities and marginalized segments of society. We have taken note of the suggestions to consider formulating a national policy on protection of human rights defenders, which would focus on a national system for enhanced protection of witnesses and human rights defenders.

National Human Rights Commission it is pledged that the draft legislation on the establishment of a National Commission on Human Rights has been submitted to the Cabinet. A decision in this regard is expected shortly.

For adequate housing rights a vague reply was given that the Prime Minister has announced that every year one million housing units for low income groups will be constructed every year. A revolving fund has been created, which will be expanded through innovative financing.

Government refuses to accept abuses as the human rights issues

On the following human rights abuses the government of Pakistan says that they are neither universally recognized human rights nor conform to its existing laws, pledges and commitments, therefore it cannot accept them; like 1)to repeal provisions of the Hadood, 2) Ordinances that criminalize non-marital consensual sex and fail to recognize marital rape; 3)the decriminalization of defamation, 4) Pakistan review the legislation on blasphemy to align it with the principles of freedom of thought, conscience and religion and inter alia relevant obligations under the ICCPR, 5) Pakistan review the death penalty with the intention of introducing a moratorium and abolishing it, 6) repeal Hadood and Zina Ordinances, 7) declaring an immediate moratorium on all executions, 8) move towards abolishing the death penalty, 9) to decriminalize adultery and nonmarital consensual sex and 10) Pakistan should prohibit in all circumstances the use of the provisions of the Qisas and Diyat law in cases of honour killings.

Diluting the ICCPR and CAT by having reservations against many of their provisions

The President of Pakistan has ratified UN International Covenant on Political and Civil Rights (ICCPR) and the UN convention against Torture (CAT) but with 'reservations'. Even a cursory look at the reservations makes it absolutely clear that ratifying the UN mechanisms was only a window dressing exercise with little meaning.

Through the reservations on UN Convention against Torture, the government of Pakistan has explicitly declared that it will not specify torture as the criminal offence in the domestic law.

The ratification had come after a valiant struggle by the human rights movement and had raised new hopes among the civil society and made them convinced of Pakistan's commitment for restoring the rule of law. The belief, that the ratification was a proof that Pakistan is taking slow but steady steps for consolidating the gains made by the democratic movement, turned out to be a false belief.

The very first reservation in the ICCPR is that Articles 3, 6, 7, 18 and 19 of the convention will be applied to the extent that 'they are not repugnant to the Provisions of the Constitution of Pakistan and the Sharia Laws'. What are the provisions in these articles? Article 3 guarantees equality to men and women while Article 7 ensures the right to life. Are not these rights the cornerstones of democracy? What is there in these two articles that can be 'repugnant' to the Pakistani constitution and the Sharia law?

Further, Article 7 of the ICCPR prohibits the practice of torture, Article 18 ensures the freedom of thought, conscience and religion and Article 19 guarantees the right to freedom of opinion and expression. What is really nauseating is the use of the idea, that any of them could be 'repugnant' to the provisions of Pakistani constitution that guarantees a 'republic'.

The same goes with the government's reservations on the Article 12, which guarantees the right to liberty of movement and freedom to choose residence. Reading Article 25, which ensures participation to public affairs, right to vote and universal or equal suffrage and equal access to public office can fill anyone believing in democracy with horror. The possibility of having any reservations on these rights demonstrates the government's design to control movement of citizenry and betrays the fact that the government has a lot to hide. It is believed that civilian government is operating under the pressure of the army which certainly has a lot to hide?

This hideous game of ratifying the convention on paper while ensuring that it cannot be implemented, reaches its crescendo in the Government of Pakistan's dogged refusal to recognize the competence of the Committee provided for in Article 40 of the Covenant. This time there is no rationale provided, no excuses offered.

Denial to recognize the committee ensures that there would be no mechanism to monitor Pakistan's record in implementing the ICCPR, barring the claims of the government itself. Even leaving the fact of the credibility of the government of Pakistan's claims on the status of human rights, this would result into not having any independent and impartial evaluation of the issues at hand. The reservation on the article 40 of ICCPR shows that all that the Government of Pakistan wants is impunity on its track record of gross violations of human rights, by making a cosmetic change of ratifying the ICCPR.

Similarly, the government has shown its reservations on almost all important articles of the UN Convention against Torture (CAT), which provides protection against torture by the state. The government has conveyed reservations on Articles 3, 4, 6, 8, 12, 13, 28, and 30.

Inexplicably, these reservations are coming from a government whose president himself has been tortured in custody because of the absence of anti-torture law. Most unfortunately, president Zardari has been fighting a case against his custodial torture for more than a decade to bring the perpetrators before the law.

Article 3 of CAT states, that no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The government has declared that the pursuant of this article shall be applied to be in conformity with the provisions of its laws relating to extradition and foreigners. This, in effect, nullifies all protection that CAT could have offered.

Article 4 says that 1) each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person, which constitutes complicity or participation in torture. 2) Each State Party shall make these offences punishable by appropriate penalties, which take into account their grave nature.

Having reservations against this is an explicit demonstration of the denial of the protection from torture to people by the government through law.

Article 6 of CAT emphasizes legal measure against a person who committed an act of torture. Article 12 calls upon the prompt and impartial investigation in the case of torture. Article 13 provides the right to complain and to have his/her case promptly and impartially examined by the competent authorities.

On the article 4, 6, 12 and 13 of the CAT, the government of Islamic Republic of Pakistan declares that the provisions of these articles shall be so applied to the extent, that they are not repugnant to the provisions of the constitution of Pakistan and the Sharia Laws.

The government has not explained what the Sharia Law has got to do with law against torture. On the contrary, the constitution of Pakistan unambiguously prohibits the use of torture. The hidden agenda of the government of Pakistan behind these so called reservations is very clear that government wants to provide armed forces impunity for running their torture centers.

By putting reservations on ICCPR and CAT the Government of Pakistan wants to keep the traditional right to kill, which it has enjoyed. Having problems with a provision that ensures the right to life, meaning that it cannot be taken away without due process of law, exposes the nefarious designs of the government to continue the practice of extrajudicial killings with impunity.

Floods in Pakistan

Floods: reconstruction gives unscrupulous officials opportunities to make money from the misery of the affected population

The negligence of the authorities and improper mechanisms to deal with natural disasters put the lives of millions of people in peril after the heavy rains and flooding in Pakistan. The Pakistani people have been drastically affected by the destruction and loss of vast areas of agriculture lands and the toll of the damage on other forms of livelihood as well as on infrastructure necessary to education and health care.

More than 20 million people—or about 12 percent of the entire population—have been affected by the floods, eclipsing the devastating 2004 Boxing Day tsunami, the 2005 Pakistan earthquake and the January 2010 Haiti earthquake. More than 1 million homes throughout the country have been destroyed or damaged, and more than 1,200 people have been killed.[1] Millions have become homeless and lack clean water, food, and medical supplies. Sanitary conditions have deteriorated and disease poses a serious threat. Up to 3.5 million displaced children risk death from diseases such as cholera, typhoid, and dysentery, resulting from polluted water and lack of sanitation. Approximately 90,000 pregnant flood victims are currently at risk because of lack of medical services and supplies. In addition, women and girls in the flooded regions are suffering from starvation and malnutrition, anemia, poor hygiene and sanitation, and greater vulnerability to disease.[2]

Large-scale displacement and disorganization has left women and children especially vulnerable to human traffickers. Roshni Missing Children Helpline visited several relief camps in Karachi, Thatta, Dadu, and Sukkur and registered more than 26 cases of missing children. Of these 26 missing children, 21 were boys between 5 to 16 years old and five were girls aged between 12 to 17 years. The organization has managed to recover

1 "Flood Disaster in Pakistan," Daily Times, 5 September 2010, http://www.dailytimes.com.pk/default.asp?page=2010%5C09%5C05%5Cstory_5-9-2010_pg3_5

2 "Pakistan: Appeal for Pakistan Flood Relief Funds for Women, Children, and the Elderly," AHRC, 25 August 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2770/

3 children; however, 23 children are still missing. The organization further reported that according to the National Disaster Management Authority, about 400 children went missing during the floods. Various NGOs, especially those working in rural areas of Sindh province, also showed their concern over the increasing number of missing children and women. Due to social context and the centrality of the issue of "honor" in interior parts of Sindh, many families are reluctant to report the cases of their missing girls.[3]

Approximately 6,000 villages were flooded and thousands of people were displaced with no hope of relief from the authorities.[4] More than 160,000 square kilometers are inundated—representing 20 percent of Pakistan's landmass. Of the 50 million acres of cultivable land, more than 10 million acres (about 20 percent) of standing crops, mainly cotton and sugarcane, have been destroyed or severely damaged.[5] Further, cultural treasures were placed at risk or destroyed, as with the 5,000-year-old Mohenjo-Daro archeological treasures.

In the wake of the floods, the government of Pakistan faces institutional, financial and societal destabilization in a terrorism-ridden country reeling under unprecedented damage and injury to lives and livelihoods. Strategic and political uncertainty reinforces hopelessness and chaos in the midst of an ongoing power-struggle among various institutions of the state.[6]

Without any legal mechanisms or infrastructure to deal with natural and man-made disasters, some authorities sought to profit from the floods, demonstrating the necessity of stronger, more comprehensive natural disaster legislation. Passed by resolution by all the four provinces under Article 144 of the Constitution The National Disaster Management Ordinance of 2006 was intended to create strong political and institutional support for disaster management. The bill was amended during the state of emergency of 2007, but in 2009 the Supreme Court declared all the ordinances issued during the state of emergency as illegal. The 2006 ordinance did, however, establish the National Disaster Management Commission (NDMC) and National Disaster Management Authority (NDMA).[7] Unfortunately, existing legislation and institutions proved woefully

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3 "Pakistan: Super floods make children and women vulnerable to trafficking," AHRC, 20 September 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2841/.

4 "Pakistan: Negligence of the authorities exposes the lives of millions to peril," AHRC, 11 August 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2730/.

5 "Flood Disaster in Pakistan," Daily Times, 5 September 2010, http://www.dailytimes.com.pk/default.asp?page=2010%5C09%5C05%5Cstory_5-9-2010_pg3_5.

6 "Pakistan: No to Undemocratic and Unconstitutional Change," AHRC, 29 September 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2851/.

7 "National Assembly Passes Two Bills," Business Recorder, 5 October 2010, http://www.brecorder.com/section/27/1/1108725:national-assembly-passes-two-bills.html.

inadequate to control and respond to the 2010 floods.

In response to the failures of the federal government following the floods, the National Assembly passed the National Disaster Management Bill on October 4, and the Senate passed the legislation on November 11, 2010. According to statement and objects and reasons of The National Disaster Management Bill, 2010, a system of relief commission at provincial level was established. An emergency Relief Cell (ERC) in the Cabinet Division was responsible for organising disaster approach toward disaster risk management. It is too soon following passage of the 2010 disaster legislation to expect a record of unified action to deal with the disaster and the authorities, thus governments continue to expect local people to be self-sufficient in the wake of the floods.[8]

The 2010 floods illustrate just how devastating the effects of the natural disasters that will proliferate and escalate as climate change continues may be, and just how vulnerable Pakistan is to natural threats. The majority of the Pakistani policy makers are not thinking forward to the future and worsening climatic conditions. The country is embroiled in the US-led war on terrorism and now enmeshed in a complex political quagmire where it has found itself fighting a war with itself. Therefore, planners are not able to devote much time to apprise the people of Pakistan on the repercussions of adverse climatic effects.[9]

The Destruction of the Floods and Its Aftermath

The culpability of the federal and all provincial governments can be judged on the basis of their action—or inaction—in the first three days of flooding in Pakhtoon Kha province (formerly the North West Frontier Province). During that time, the federal government took no action. The local people were left to fend for themselves. Approximately 800 people were swept away or killed because of the heavy floods and landslides, which also destroyed more than 100 bridges and inundated thousands of houses.
The floods, which began on July 23, did not reach Punjab province until August 1, a period of eight days. The government in Punjab province nonetheless took no actions to prepare for the water rushing towards them. This incredible negligence resulted in many deaths, the destruction of 171,010 houses, and 1480 villages as well as the destruction of standing crops of cotton, rice, sugarcane, fodder and different types of grains over two million acres. Around 200,000 animals were swept away or killed. Major road links, bridges and embankments along the rivers were broken, and water overtook thousands of acres of land. The embankments were not strong enough to resist the floodwaters. The

8 "National Assembly Passes Two Bills," Business Recorder, 5 October 2010, http://www.brecorder.com/section/27/1/1108725:national-assembly-passes-two-bills.html.

9 "Pakistan: Women are worst hit by climate change," AHRC, 27 October 2009, http://www.ahrchk.net/statements/mainfile.php/2009statements/2272/

first action of the chief minister was to make an aerial reconnaissance of the flood havoc with members of his cabinet and hold photo sessions with the affected people.

Within three days of the passage of the heavy flow of water to some districts in southern Punjab province, the embankments of many rivers were broken, particularly in Muzzafar Gargh, Rajan pur and some parts of the Multan districts, and hundreds of villages were under water. More than 200,000 people were driven from these districts. These floods are the worst in 100 years, and they have stressed the entire irrigation infrastructure on canals and rivers beyond its limits.

In Punjab and elsewhere, it seems clear that the impact could have been mitigated with better planning. According to the media reports, landlords sitting on the provincial cabinet used their powers to close down the doors of barrages or breach the embankments of the rivers and canals to protect their lands from floods, but they left the villagers to face the water. The majority of the villages did not have means to safeguard themselves from the floods and were not informed of any precautionary measures.

In Balochistan, more than 600 villages and towns were affected by torrential rains and flooding, resulting in the deaths of more than 100 persons. People were forced to leave their homes without help or guidelines from the provincial government. Balochistan was the first province affected by the heavy rains, floods and landslides that began in mid-July, but the government failed to plan, respond, or provide protection—despite the fact that Balochistan faced floods and landslides in different parts of the province on three occasions. Around 20,000 houses had been destroyed, according to media.

In the province of Sindh, the government's inability to provide protection to the areas along the Indus River, the largest river of the country, resulted in the destruction of standing crops on hundreds of thousands of acres and the inundation of 2,000 villages. More than 100 persons died. In Sindh as in Punjab, powerful landlords, mainly from the coalition government of the province, allegedly made breaches in the embankments along the rivers and canals to save their own lands.

Lightning, heavy rains and flash floods wreaked havoc in Gilgit-Baltistan, close to the border with China, killing 63 people. Here the landslides caused the deaths of 254 persons, mainly women and children. A third round of heavy rains and floods in Qumara village claimed the lives of 45 people and destroyed 28 houses. At least 45 people lost their lives in rain-related incidents in three villages of Skardu region, while 15 others sustained injuries according to the Deputy Inspector General of Police. Heavy rains and floods destroyed a bridge linking Pakistan with China. The road link between Skardu and the rest of the country had to be closed down.

The next phase of the disaster may be more serious than the havoc created by the floods and torrential rains. UN agencies as well as domestic and international agencies have warned that a new phase of floods is imminent which may more disastrous than the previous one. The government is asking for relief funds from international donors but has raised only US $20 million, which is not in any way sufficient to help the affected victims or lessening the destructions caused by the floods. This support from the world is much less than was asked for by the government but its credibility is shaky, and donors do not trust that the aid or funds will be used to assist the victims.

Famine Following the Floods

Pakistan now faces a scarcity of essential and edible items—a shortage that will affect the poorest people most severely. The destruction of the standing crops and inundation of the arable land will render agricultural lands crucial to food production unusable for many months. Further, the damage to crops, roads, bridges and communication networks together have caused the prices of fruit, vegetables and meat to skyrocket.

There is no chance that the gap of food supplies created during the floods can be filled within the coming years. The villagers have lost thousands of animals; the business in the big cities is at standstill and there are no commercial activities because of huge damage to the roads and linking bridges. Therefore the food shortages will create a huge problem for years.

Suitable drinking water is another issue and people that do not have an available supply will have to rely on anything they can get which will certainly create health problems. Water borne diseases like cholera, skin diseases and malaria are common in the affected areas and the thousands of animal carcasses will spread disease even faster.

Government Failure and Corruption

Following the heavy rains and floods, government officials and bureaucrats have attempted to profit from the reconstruction of damaged bridges, dams and roads. Transportation infrastructure was dilapidated long before the flooding started, thus their destruction has eliminated the evidence of the effects of the corruption that allowed their substandard condition in the first place. Now, this infrastructure must be reconstructed with the help of foreign aid and donations to restore the communication system. Investments in reconstruction have given unscrupulous officials opportunities to make money out of the miseries of the affected population by directing contracts to their own firms or accepting bribes from others in return for assistance securing contracts.

The heavy rains and flooding have exposed authorities who failed to take the floods seriously. It was not until one week after of the floods began that the federal cabinet began to consider the situation and undertake relief work. Consequently, Prime Minister Yousuf Raza Gilani's visit to Mianwali in Punjab province caused him embarrassment rather than creating goodwill. He used a motorboat to visit the affected areas and was then brought to a medical relief camp. As reported by the media, the camp was instructed on how to respond and the crowd paid some money as soon as the prime minister left. Many VIP visits are thus arranged, through the hiring of attendees to engineer a falsely positive atmosphere.

Meanwhile, the Punjab government has not convened any meeting of the cabinet to discuss the losses produced by the floods. Punjab is the most affected province after Pakhtoon Kha. The chief minister has only held prominent photo sessions with the affected persons and made promises yet to be honored. In Balochistan province, the ministers and authorities are more concerned with their security than the wellbeing of the affected population.

The heavy floods caused huge losses of property and the displacement of millions, a situation that can only be improved or resolved through the assistant of international agencies and outside actors. The governments of Pakistan cannot handle the disaster, and ultimately it is the Pakistani people who will suffer.

For its first steps toward long-term relief and resolution, the government should consult all stakeholders and provide immediate help to restore normal life in the affected areas. The government must maintain transparency in distribution of relief, making an effort to reach all of those affected, and its distribution must be monitored by elected representatives.

The flooding -- Serious efforts are needed by the authorities to restore the trust of the people and the international community

It is reported in the Pakistani media that intentional breaches were made in the protective embankments at Ghospur and Thorhee bands, Sukkur district, Sindh province in order to protect the agriculture lands of President Mr. Asif Ali Zardari Mr. Qaim Ali Shah, the chief minister of Sindh province, Mr. Khursheed Shah, the federal minister and other powerful person in the coalition government. The breaches have affected the urban population of Sukkur district and its adjoining areas where many places remain submerged.

It is also reported that Mr. Shahbaz Shareef, the chief minister of Punjab province, and Mr. Nawaz Shareef, the opposition leader, have made the same arrangements to protect

their sugar mills in Jhang district. The media also reported that in different districts, where the flood was in full swing, the provincial ministers and land lords of the Punjab province made breaches in the embankments to save their lands. Please find the details; http://www.ahrchk.net/statements/mainfile.php/2010statements/2736/

A crime by US and Pakistani authorities

It is reported in the media that relief operations for around 700,000 persons could not be carried out because an airbase in Jacobabad district, Sindh province, is controlled by the US forces. The US forces denied permission for the air strips to be used to deliver much-needed relief to the adjoining areas which are submerged in water and where 700,000 people are trapped. As there are no other air strips in the vast area close to Jacobabad and its adjoining areas, the authorities are finding it difficult to drop the relief in the flood-affected areas.

According to the Daily Dawn, the largest circulated English newspaper, Mr. Khushnood Lashari, the health Secretary during an appearance at the Senate Standing Committee on Health, revealed that health relief operations are not possible in the flood-affected areas of Jacobabad because the airbase is under the United States control. The coordinator of the Health Emergency Preparedness and Response Centre, Dr Jahanzeb Aurakzai, told the standing committee of the Senate that foreign health teams could not start relief operations in remote areas because there are no airstrips close to several areas. http://www.ahrchk.net/statements/mainfile.php/2010statements/2751/

Negligence of the authorities exposes the lives of millions to peril

The negligence of the authorities and improper mechanisms to deal with natural disasters has put the lives of millions of people in peril after the heavy rains in Pakistan. As a result the lives of the people have been drastically affected with the destruction and loss of vast areas of agriculture lands. More than 1,600 people have been killed by the flood waters that swept away over 400,000 houses throughout the country. Around 5000 villages were inundated and thousands of people are stranded with no hope of relief from the authorities.

According to the United Nations the massive floods in Pakistan affected 14 million

people eclipsing the devastating 2004 Boxing Day tsunami, the 2005 Pakistan earthquake and the January 2010 Haiti earthquake.

The absence of any legal mechanism to deal with natural and man-made disasters has raised possibilities for the authorities to profit from this latest natural disaster. The National Disaster Management Bill has been pending before the national assembly since February 2010, but it is yet to be passed into law. As a result there has been no unified action to deal with the disaster and the authorities and governments are depending on the local people to handle themselves. Particularly since 2005, Pakistan has been suffering natural disasters in different forms but the development of any unified mechanism to handle the natural and man-made disasters has still not able to catch the attention of the elected representatives. http://www.ahrchk.net/statements/mainfile.php/2010statements/2730/

Super floods make children and women vulnerable to trafficking

The 2010 super floods, which literally ravaged many rural parts of the country, brought countless miseries to the inhabitants of a large number of Pakistani population. It has become very clear that besides provision of shelter, food, clean water and medicines the issue of the protection of women and child rights is increasingly taking attention of civil society organizations as well as government functionaries. However, it is understood that a clear lack in planning, coordination mechanism and concrete measures make children and women vulnerable to all imaginable sorts of violence, including the violence of trafficking.

Mohammad Anwar, a social development consultant, informed that according to definition, trafficking is the recruitment, transfer, transport, harbouring or receipt with or without consent, bogus marriages, false adoptions and kidnapping with a view to exploit women and children in bonded and illegal labour, domestic work, begging, slavish marriages, sex-tourism and entertainment and prostitution for the benefit of traffickers and crime- syndicate. He added that child trafficking means taking the victim with or without consent within or across the borders for the purpose of prostitution, marriages, forced and bonded labor http://www.ahrchk.net/statements/mainfile.php/2010statements/2841/.

Flood-hit women take up the challenge to reconstruct their devastated dwellings

As flood waters are receding in areas of

Kot Addu, Punjab province, the shifting from camps to villages is going to start. After spending two to three weeks in relief camps and experiencing untold miseries, some families have started returning to their ravaged villages only to find their houses collapsed partially or completely. People are seen walking back on foot, cycles, tractor trolleys and donkey carts, loaded with usable items; like empty water cans, boxes, some ration as well as animals, goats and poultry. Broken roads, caved in bridges, tilted railway tracks, ravaged crops and rotten smell of stagnant waters altogether make a sad picture of the land, once lush green with standing crops only a month ago.

Legislative developments

1. Legislation in favour of women

During the year 2010, the government has introduced three important legislations for women. There were good signs that government introduced some bills against the domestic violence, Sexual harassment at workplace and health care for women. The third one is about victims of Acid Throwing but this has yet to be approved by Senate. The national assembly passed the bill against domestic violence in August 2009 but it could not be approved by the senate because of powerful persons in Senate who are opposing the bill. It was expected that during the session of September the bill against domestic violence would be tabled but again it was delayed. This bill is much more resisted from representatives of religious parties and powerful landed aristocracy who are among all political parties.

Mere consideration of a domestic violence bill constitutes a major development in Pakistan, where gender-based violence is rampant. Approximately 80 percent of married women in rural areas fear domestic abuse while 50 percent of women in urban areas report having been subjected to spousal abuse. Some of the same hurdles that led to the bill's lapse in the Senate remain. While some cite the opposition[10] of the Council of Islamic Ideology (CII) to the original bill as a causal factor in its lapse, others accuse critics of playing politics with religion by overstating religious opposition. The CII did classify the bill as "discriminatory,"[11] pointing to the potential for its use by police as a justification for violating the "sanctity of the home," and further objected that the bill would increase divorce rates. Yet the passage of the bill in the National Assembly and support from within Islamist political parties suggest that the obstacles to its passage in the Senate cannot be ascribed to religious opposition solely.

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10 http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/12-ncsw+rejects+cii+reservations+on+violence+bill--bi-09.

11 http://newsblaze.com/story/20100318125344iwfs.nb/topstory.html.

2. Deletion of presidential powers through 18th amendment in the constitution

The remarkable work from the parliamentarians was the passage of 18th amendment in the constitution of Pakistan which was passed unanimously. Through the 18th amendment the government and parliamentarians have struck down all amendments made by military rulers in the constitution. Pakistan's parliament has institutionalized a new political consensus on the country's legal and political framework with the 18th amendment's passage. It gives the parliament, prime minister, judiciary and provincial governments greater autonomy under the constitution. The amendment transfers greater authority to the parliament and prime minister and deleting the powers of the president to dismiss the parliament under article 58/2 (b).

After the adaptation of amendment in the constitution a power struggle between judiciary and parliament has started and judiciary will give its verdict in January 2011 on the petitions challenging the amendment but has given a short verdict for changing the process of judicial commission which was formulated by the parliament.

3. The government has not executed single person during the year, but failed to abolish the death penalty

The government of Pakistan has failed to abolish the death penalty in spite of the pledge it made in 2008 to commute death sentences to life imprisonment. But in a positive move the government has not executed single person since November 2008. The federal government cabinet has decided to commute the death sentences and convert it into life sentence. But still the government failed to introduce any law which can abolish the execution.

The country's parliamentary bodies - the national assembly and senate - in mid-April 2010 approved the eighteenth amendment to the Constitution of Pakistan, deleting the majority of the amendments made by past military rulers, but the parliament has not touched the amendment made to the constitution by General Zia Ulhaq comprising the death penalty. In the 1970s, the government led by the late Zulfikar Ali Bhutto raised the minimum term of a life sentence from 14 to 25 years with the idea that capital punishment would be abolished in the years to come. However, this did not materialize and General Zia, the country's military ruler from 1977 to 1988, kept both the death penalty and the increased life sentence intact through an ordinance which was later incorporated in the Constitution. Mr. Bhutto was later hanged in 1979. Former President Musharraf did nothing to alter either the death sentence or the minimum term.

According to estimates, there are around 7500 prisoners on death row, the largest number in any country in the world. This number constitutes around one third of the death row prisoners in the world. Many among them have already spent more than 10 years

in prison. The prolonged detention on death row is at the very least cruel and inhuman treatment and therefore constitutes a violation of these persons' rights in of itself.

Reports have indicated that in some prisons, prisoners sentenced to death have been moved from death row cells to other barracks, but remain separated from other prisoners.

Pakistan's legislators also did not attempt to commute the death sentence in the eighteenth amendment, allegedly because of pressure by Islamic fundamentalist parties and the judiciary. The federal cabinet decided on July 2, 2008 to commute the death sentence, but due to pressure from Muslim fundamentalists and a Suo Moto action from the then-Chief Justice of Pakistan, Mr. Abdul Hameed Dogar, who had been appointed by former president General Musharraf during the state of emergency, the government avoided issuing a formal notification commuting death sentences. The present judiciary is also showing its gestures against the commutation of death sentences.

When Pakistan was founded 63 years ago, only murder and treason carried the death penalty. Now the death penalty can be handed to persons found guilty of 27 'crimes' including blasphemy, tripping a woman in public, terrorist acts, sabotage of sensitive installations, sabotage of railways, attacks on law enforcement personal, spreading hate against the armed forces, sedition, and many more.

Judiciary and government at loggerheads

After the restoration of the suspended judiciary by former military dictator, General Musharraf, a war between judiciary and government/parliament started. After the six decades of repression against the judiciary it is difficult for the two institutions to understand their constitutional role and barriers. On many occasions the help of chief of army staff was sought to overcome the war kind of situation between the government and judicially. In the presence of independent judiciary and elected forums the military has big role to settle the issues.

At least on three occasions, the chief of the army staff directly intervened to stop the fight between executive and Supreme Court where it was very much clear that democratic set up might be derailed. When Supreme Court declared National Reconciliation ordinance (NRO), issued by former military dictator, as Abe-Initio and ordered to initiate the legal process for the money laundering cases against President Zardari in Switzerland. The government has refused to follow as the president has immunity through the constitution. The case of contempt of court against the prime minister was at final stage in October 210 when it was obvious that court would book the prime minister in contempt of court and would pass order against his government. At this moment the help from military was sought and hearing was put off.

In the same month there was a rumour published in a section of media about the de notification of restored judges. The Supreme Court took strong notice of it and held more than two emergency meetings of the judges and started its own action. At the time when court was suppose to take action a meeting of president, prime minister and chief of army staff was held which conveyed message to Supreme Court and the case was deferred for for hearing in December. The visible anger of the judiciary was thwarted by the intervention of the army.

On the third occasion when Supreme Court of Pakistan took many petitions challenging the 18th amendment in the constitution, a unanimous amendment passed by parliament, and was passing remarks that the judiciary can turn down any amendment or law passed by the legislators, playing down the role of parliament of legislations. The decided to announce judgment on the petitions but again because of some alleged interventions the court restricted itself for the formation of judicial commission and ordered the parliamentary committee of the parliament to amend the suggestion regarding appointment of judges which means another amendment in the constitution. The court has also announced that it would deliver its final decision on the petitions challenging 18th amendment in the third week of January 2011.

The independence of the judiciary is still a big question for the executive to understand and government terms it as judicial activism. The government has resisted many times the decisions of the judiciary but then it has to follow the verdicts of the court. The presence of strong bars has proved as the shield for independent judiciary. The big question still remains unanswered is who has the right to make the laws, the judiciary or parliament.

Statements emanating from Honourable Justices, either during the conduct of formal hearings or while addressing public fora, however, negate the pre-requisites of conduct expected from those entrusted with dispensing formal justice. Particularly unbecoming have been statements made by the Chief Justice of the Lahore High Court. In one instance he stated that: "Former Dictator General (Retd.) Pervez Musharraf, should be executed through hanging in a street square for the alleged crimes committed by him."

On another occasion he was reported to have implied that since President Zardari is the main beneficiary of Benazir Bhutto's death and that his involvement in her murder is possible. Apart from the fact that such partisan and presumptive remarks are unbecoming of a person holding as exalted an office as the Chief Justice of a High Court but it also creates an instance of bias exhibited by someone who can not only be called upon the adjudicate the above matters but also has the power to appoint the benches that may hear the above cases.

Similarly the Chief Justice of the Supreme Court and other senior judges made remarks during the course of hearings that reveal their thinking and their bias to the public and

before the actual judgments are announced. Particular note is taken of two particular instances as reported in the press. During the hearing of the case on the National Reconciliation Ordinance (NRO), the Chief Justice and other judges are reported to have made remarks about getting money back from 'looters and plunderers who had stolen national wealth'. The NRO was applicable to those who were accused of but not convicted of their crimes. As such the universal and basic principle of 'presumption of innocence' is expected to be adhered to by the highest ranking adjudicators of the country. Moreover, the excessive emphasis on and remarks made by the Justices on corruption cases to the exclusion of a much larger number of criminal charges of murder, rape and kidnappings that came under the purview of the NRO exhibited a bias against the political class.

Case backlog increasing despite judicial policy

During the year 2010 there were more than 2.2 million cases are pending before the courts throughout the country. Whereas during the year 2009, when national judicial policy was announced, the total cases pending before the courts were 1.5 and it was announced by the NJP that the purpose of policy was provide speedy justice to the people within limited time.

Pakistan's new National Judicial Policy came into force from June 2009 aiming at clearing a huge backlog of 1.5 million cases in trial courts and close to 140,000 cases at the high court and Supreme Court levels in one year. The new policy, approved by the National Judicial Policy Making Committee (NJPMC), headed by Supreme Court Chief Justice Iftikhar Mohammad Chaudhry, aims at "a year for focus on justice at the grassroots level". The National Judicial Policy (NJP) was proved to have failed as the speedy delivery of justice were not followed by the courts from Supreme Court to the lower courts. The Law minister announced that there are 2.2 million cases pending in the whole of Pakistan.

The Federal Minister for Law and Parliamentary Affairs, Babar Awan has said that at least 2.2 million cases were pending in the higher and lower courts across the country. This he said while talking to the newsmen at the 'Meet the Press' programme of Karachi Press Club (KPC) on November 12. According to media reports, every month around 1000 cases are filed in Supreme Court but hardly 3000 are decided.

According to National Judicial Policy Making Committee and other media reports, till June this year 19,055 cases were pending in the Supreme Court, 2,092 in the Federal Shariat Court, 84,704 in the Lahore High Court, 18,571 in the Sindh High Court, 10,363 in the Peshawar High Court and 4,160 in the Balochistan High Court. This is apart from 1,565,926 cases were pending before the subordinate judiciary in the four provinces. The number of pending cases in High Courts, Supreme Court and the Federal

Shariah Court is 0.185 million and most of these cases have been pending for more than a decade. (UNS)

A British news agency claims that two to three thousand cases are filed in district courts daily but the rate at which the verdicts for these cases are announced is less than 1 percent. The NJP was announced on June 1, 2009 to ensure speedy justice to all and disposal of pending cases within a timeframe, but officials in various departments, especially police officers, seemed reluctant to appear before courts despite repeatedly summons, causing an inordinate delay in the disposal of cases, report said. The report, published in Aaj Kal, mentioned load shedding (power breakdowns) as another factor circumventing the judicial work coupled with acute shortage of judicial officers and lack of proper courtrooms. The report says the lower courts have tried their best to deposed of the pending cases with limited resources.

The poor performance of the presiding officers, corruption in the lower courts at all levels, nexus between presiding officers and police, the usual practice of taking dates by the lawyers from both the sides. The disposal of cases in the country is extremely slow, giving rise to the accumulation of cases before the courts and the inability of the judicial system to deliver justice in an acceptable and timely manner. The disposal of ordinary cases takes a minimum of five to six years in Pakistan's courts. If the cases go through the appeals process, they can take as long as 20 to 25 years, as each appeals court takes six to seven years to decide, and there are three to four such stages before reaching the Supreme Court.

Corruption in the judiciary

The other main object of the National Judicial policy was to eliminate corruption and a special cell will be set up to eliminate corruption from the judiciary. But till yet that cell has not worked for elimination corruption from courts. The chief justice of Pakistan has said that "Unfortunately corruption in lower judiciary not to be controlled so far," Chief Justice of Pakistan addressing the full court reference at the opening of the new judicial year on September 14.

The corruption in the judiciary has increased from the past year because of the increase in pending cases. To get the date to fix date for hearing of the cases the bribe to staff of the court is a common practice, this practice is not limited to lower judiciary but also at the level of higher judiciary with big amount as compare to lower judiciary. In the lower judiciary the readers are openly telling that amount goes to judge also. The lawyers are themselves pressing clients to bribe the staff otherwise their cases would not come. The higher judiciary is silent on the complaints of corruption which is blamed by the lawyer community as the political expediency of the higher judiciary. The corruption has reached its peak.

The courts are taking cases of corruption of government and its functionaries. Because of its intervention the many persons were apprehended and government proceeded to strike against high officials who were involved in corruption. An atmosphere of corruption from the country is diminishing because of strong actions from the Supreme Court.

Redresses of human rights violations

The remarkable work of higher judiciary is providing redress to the human rights victims. The human rights cells in judiciary particularly in the Supreme Court are dealing with the human rights cases. In many cases the higher courts have converted the urgent appeals and violation cases in to the constitutional petitions.
In the cases of disappearances the courts failed to recovered persons despite the identification of perpetrators like state intelligence agencies and paramilitary organisations.

In one case, where 11 persons from a prison were disappeared after their release, the Supreme Court worked to get them back. Initially, the state intelligence agencies refused to follow the orders for their release, however they were eventually surfaced and this represents a milestone in the Supreme Court's work. The ISI admitted to the court these persons were in its custody, having been arrested from the country's northern region.
The Supreme Court is however not advancing with cases of corruption of army personnel. A case of army involvement in politics and the distribution of vast sums of money among politicians to dislodge the elected government is still pending before the Supreme Court since 1999, but court continues to refuse to hear it. There are many cases pending in high courts concerning corruption of officers of the armed forces since 2002, but the courts are not taking them, due to the involvement of the armed forces. http://www.ahrchk.net/statements/mainfile.php/2006statements/2332/

1. Torture

Pakistan has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in June 2010, but in ratifying it, the government made reservations concerning many of the important articles of the convention. The government has made reservations on Articles 3, 4, 6, 8, 12, 13, 28, and 30. These reservations are coming from a government whose president himself has been tortured in custody.

The government has shown its reluctance to make torture a criminal offence in its laws. Article 4 says that 1) each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person, which constitutes complicity or participation in torture. 2) Each State

Party shall make these offences punishable by appropriate penalties, which take into account their grave nature.

Having reservations against this is an explicit demonstration of the denial of the protection from torture to people by the government through law.

Pakistan does not have any specific law relating to torture, though Article 14 (2) of the Constitution[12] expressly prohibits the use of torture for extracting evidence. Many jurists and academics however maintain the opinion, that the provisions in Chapter XVI of the Penal Code[13] (particularly Sections 339, 340 and 349) cover the aspect of torture. But, torture, within the meaning attached to the 'act of torture' as prescribed in the Convention against Torture is not a specific crime in Pakistan.

The domestic jurisprudence concerning the use of torture is underdeveloped in Pakistan. The appreciation to exercise the right, as envisaged under Article 14 (2) of the Constitution, has thus far been minimal. To make matters further worse, in a claim against torture, the victims have the burden of proof, and there are no independent investigating agencies that are empowered to inquire on a complaint against torture.

Physical remand in police custody-a legal way of torture

The Pakistani judiciary and government have adopted a legal way of torture in custody through the method of physical remand in police custody. According to law the judicial magistrate can grant up to 15 days in police custody for further investigation of the case. This method is commonly practiced by the magistrates which provides a way to the police to complete its investigation and the easiest way is to torture the person. The law general known as police remand was introduced in the end of 19th century by colonial powers to get more confessional statement through torture and police brutal way of investigations. This law is continued which gives legal way to police and law enforcement authorities to get confessional statements through physical torture. Police torture is a colonial legacy, and red chili spray was one of the favourite tools by the police then, which used to extract confessions from the accused by applying this method.

The main source of torture in South Asia and particularly in Pakistan is the physical remand in custody. According to law the magistrate has to ask from the accused person whether he/she went through the torture in custody but this practice is generally not followed.

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12 http://www.pakistani.org/pakistan/constitution/.

13 http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html.

The poor training of the police force is one reason for the perpetuation of the use of torture in custody. Because of the lack of awareness and training, investigation officers do not use the basic tools that can help point the investigation in the correct direction. They resort to outdated techniques, which leads to inefficient, slow or even unlawful proceedings. The claim that there is no need to change century-old 'traditions' thus helps the perpetuation of mistakes and abuses, such as torture. There is therefore a great need for better training, awareness-raising and equipping of Pakistani police forces in order to put an end to human rights abuses. A large and thorough reform of the policing system must be implemented.

On compensation:

According to the existing legal framework in Pakistan, a claim for compensation for an act of torture could be settled under the Shari'ah law, an opportunity often subject to absolute misuse in the country. Under the existing circumstances in the country, this procedure often benefits the perpetrator. Often the terms of the compensation are decided by the perpetrator, given the fact that in Pakistan, the law-enforcement officers enjoy a higher degree of authority in the society. By far, the courts in the country have been avoiding dealing with the question of torture. This undermines the possibility of using the civilian court proceedings to obtain compensation, as often the compensation proceedings also require a police report to substantiate a claim against torture.

On witness protection:

There is no specific law concerning witness protection in Pakistan. Due to this and because of the overall failure of the country's justice system, it is a practice in the country for the witnesses to be threatened or even murdered. Murders have happened even within the court premises.

The magnitude of the problem:

Torture in custody is a serious problem affecting the rule of law in Pakistan. It is used as the most common means to obtain confession statements. As yet, there has been no serious effort by the government to make torture a crime in the country. It provides impunity to the perpetrators who are mostly either policemen or members of the armed forces. Furthermore, there is no means for the protection of witnesses. This discourages victims from making complaints. While the international jurisprudence on the issue has evolved into very high standards, the situation in Pakistan resembles the stone ages.

In spite of the prohibition of torture in the constitution, the Pakistan Army is running detention and torture cells in almost every city in the country. The Asian Human Rights

Commission in a report[14] has identified 52 such detention centres which are run by the military, where people who were arrested and disappeared are kept incommunicado and tortured for several months to extract the confession statements.

As of now there are no independent investigation procedures in Pakistan to investigate cases of torture. In addition, there is an alarming level of insensitivity among the legal professionals including the judiciary regarding torture in Pakistan.

It is in the day-to-day work of the lower judiciary that this underdevelopment is mostly visible. One example is the practice of the lower court judges allowing remand custody of the detainees with ease while it is clear that anyone detained will be subjected to torture in Pakistan. The courts even fails to make use of the little space available in the Criminal Procedure Code[15] of Pakistan, where a judge could demand a reason from the investigating agency for demanding the custody of an accused than transferring the accused into judicial custody.

According to a research conducted by a Ph.D. scholar for gauging the total number of police tortures during the last five years in Lahore, capital of Punjab province, alone, 16.42 percent of youth aged between 15 to 19, 25.38 percent adults aged between 20 to 24 and 18.9 percent of adults aged between 25 to 29 years, were tortured by the police, during the period of research. Similarly, 18.62 percent of detainees were subjected to some sort of mechanical torture, including all forms of violence, besides domestic violence and blunt-tools were most commonly used. A similar study on prisons has further noted with concern that 91.54 percent of detained men and 8.46 percent detained women were victims of physical torture by the police therein. Moreover, 12.14 percent of detained women were subjected to psychological torture by the police. Because of their socio-economical helplessness, labour community, followed by the business community, was an easy prey of the police. It was also pointed out that body parts most frequently targeted for battering included buttocks, foot soles, back, front and back of thighs, palms and wrists. The most common tool used to inflict severe pain is the cane-stick and a broad flat leather slipper (dipped in mustard oil to inflict maximum pain) more commonly known as Chhithar.

The year 2010 has witnessed an increase in torture in custody, including torture in armed forces torture cells, torture at open places and in private torture cells of the police. In the presence of independent and powerful judiciary and elected parliament the law enforcement agencies have shown their power through torture in open places. According to reports there is an increase of 13 percent cases of torture in comparison to previous year.

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14 http://www.ahrchk.net/statements/mainfile.php/2008statements/1574/.

15 http://www.ecoi.net/file_upload/1504_1216207715_code-of-criminal-procedure.pdf.

Following are the some reports and videos of torture in custody:

Videos of torture in custody

Army officers torturing in open place
http://www.dailymotion.com/video/xaodvt_video-shows-pakistan-army-abuse_news
http://www.youtube.com/watch?v=Ul7gERJR-Aw&feature=related

Police torture young men in public
http://www.youtube.com/watch?v=-U8s6C3lhQ0&feature=related http://www.youtube.com/verify_age?next_url=http://www.youtube.com/watch%3Fv%3Dg12_bZ9dWDI%26feature%3Drelated
http://www.youtube.com/watch?v=6MrJu5jL_yQ&feature=related

A media person tortured in a police station
http://www.youtube.com/watch?v=M9Ouy4zyfaI
http://www.youtube.com/watch?v=M9Ouy4zyfaI

Women being beaten
http://www.youtube.com/watch?v=BAfyAKpHz9U&feature=related

The ISI severely torture a soldier for five years on false charges of spying for India

The AHRC has been informed of a case in which a soldier was tortured by the Pakistani Inter Services Intelligence (ISI) on the false charges of working for the Research and Analysis Wing (RAW), of the Indian intelligence agencies in Pakistani-held Kashmir. He was arrested by the ISI and then disappeared for five years during which period he was tortured. He lost his teeth, his spine was fractured, his legs were burnt and he had a large injury mark on the head. He cannot walk without the help of at least two persons.

The victim was exonerated from all charges by a court martial at the Kharian cantonment, Punjab province. To-date he has spent more than Rs. 3 Million on his medical treatment but the military and government have refused to pay his medical bills.

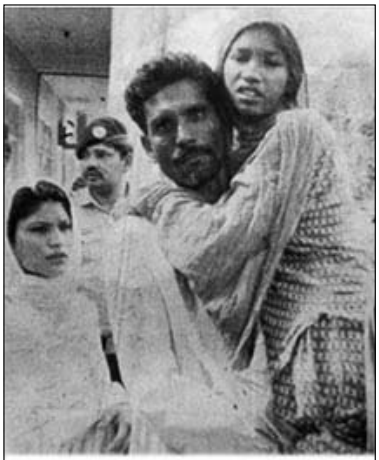
According to the details, Mr. Mohammad Iqbal Awan, 39, son of Mohammad Yaqoob Awan, a resident of Salakan village, Tehseel Athmuqam, Neelam district, (post office Baiyan, Azad Kashmir of Pakistan), was recruited in the army as a Naik, the lowest rank, in February 2, 1990 in the 650 Mujahadeen Battalion. His military serial number was 433683. At some point in time the ISI tried to co-opt him to work for a Jihad (holy war) inside Indian Kashmir but being a professional army man he ignored their offer. http://www.ahrchk.net/statements/mainfile.php/2010statements/2668/

A missing person tells the court that he was tortured in the custody of the Frontier Corp, the judged was dumbfounded but could not do any thing

Mr. Murad Khan Marri was missing for eight months before the Frontier Corp (FC) announced that he had been arrested in March 2010 while crossing the Afghan border into Pakistan. He was produced before the chief justice of the High Court of Balochistan province on May 25. Mr. Marri told the court that he had been kept in different places of detention and severely tortured since his actual arrest on June 27, 2009.

The victim said before the court that during his eight month's detention he was kept in different places and tortured severely. Most of the time during his detention he was kept blind folded so he was unable to say where he had been held. Due to the continuous torture he had fainted many times and on three occasions was brought to the CMH (at the time he did not realise that it was the Combined Military Hospital) for treatment. His statement about his illegal detention of eight months by the FC, his torture at their hands and the declaration by the FC of his fake arrest eight months after his disappearance placed the chief justice in an awkward position. The judge was dumbfounded by his revelations could not even ask him why he was tortured and kept incommunicado. Mr. Marri's lawyer, Mr. Agha, made several requests of the chief justice to order the quashing of the FIR in which he was falsely charged with crossing the Afghan border for the motive of militant activities inside Pakistan, carrying explosive materials and Indian currency. But the chief justice was unable to respond. Further details can be found here: http://www.ahrchk.net/statements/mainfile.php/2010statements/2561/

The Pakistan Air Force is running a torture cell at its Air Headquarters where six members of a Christian family were tortured, a girl lost her legs



Sumera, carried in the arms of her father, is produced in the court

A horrible report of the torture of six persons from a Christian family by officials of the Pakistan Air Force was received by Asian Human Rights Commission. The arrest and torture continued for a period of 18 days and was due to the suspicion that they had stolen gold ornaments from the house of a Wing Commander in the Pakistan Air Force (PAF). A 14 year-old girl and her 16 year-old brother were tortured by the Wing Commander himself. As a result the girl is now disabled and neither she nor her brother is able to walk properly. A Session Court has helped obtain the victims' release but has not initiated any judicial

process against the officials of the PAF even after finding evidence that the family was tortured and being detained illegally in the PAF torture cell. http://www.ahrchk.net/statements/mainfile.php/2010statements/2535/

Police Torture Christians Arrested in Islamic Attack

http://www.compassdirect.org/english/country/pakistan/10973/

Two Christians in Gojra, Pakistan who allegedly fired warning shots as an Islamist mob approached that burned seven Christians to death on Aug. 1 told that they were tortured after police arrested them. Naveed Masih tells that he and his brother were taken to the Police Training Centre in Choong, where they were kept in illegal detention for 18 days and were tortured "in so many ways ruthlessly and in inhumane ways."

"Sometimes we were not given anything to eat or drink except one time, and sometimes we were hung in a dark well while our faces were covered with a cloth," Naveed Masih said. "They beat me with cane sticks on the back of my hands and sometimes hung me upside down and then brutally beat me." Police kept them hungry for days, he said; when they asked for food, officers told them to confess that they had fired, he added. Naveed Masih said police tortured them to try to force them to say they had links with terrorist organizations that provided arms and ammunition to them.

Torturing jail inmates by taping their male organs

The male organ of three prisoners were taped for many hours in such a way that they could no longer urinate. Each was then forced to drink three to four litres of water. The jail dispenser subsequently administered each of the prisoners injections after which they started vomiting and had a strong urge to urinate. The three prisoners developed renal ailments as a result of the torture and one has also developed an infection of the urinary tract. Another prisoner was punished and detained in solitary cell apparently because the jail authorities presumed he had leaked the information of torture. Please see details here: http://www.ahrchk.net/ua/mainfile.php/2010/3587/

A senior journalist was abducted, tortured and kept incommunicado by the intelligence agencies

A shameful act of torture allegedly by the officials of notorious intelligence agencies and the Elite Force, a law enforcement agency of Punjab government was witnessed when

Mr. Umer Cheema, a senior journalist from the newspaper, daily The News International, was abducted, tortured severely and kept in incommunicado to threat and intimidate him from his professional duties. Several media reports suggest that persons from intelligence agencies carried out the act. The government has still not been able to arrest the persons responsible for the abduction and torture. In a routine way the orders to arrest the culprits and form an inquiry committee have been made by the government and the Ministry of Interior and the Lahore High Court has taken suo motto action. However, it appears that the government officials and the courts hesitate to take action against the intelligence agencies due to the culture of impunity.
http://www.ahrchk.net/ua/mainfile.php/2010/3543/

A woman was gang raped and tortured for 50 days in a private detention center of police

On 10 August when Ruby went to attend the court hearing of her case, Constable Ishaq Masih of Mehmoodabad police station, Karachi with the help of constable Shahid and police informers, Shahbaz Masih, Iqbal Masih and Ms. Marium Masih abducted her from outside the court premises in a car. Ruby was taken to Qaidabad, 30 kilometers away from the city court premises, at gun point. She was asked to withdraw the case against police men for occupying her house illegally. On her refusal she was dumped into a house, an illegal detention center used for torture, and was forced to drink a coloured water. She fainted and when she came to she found herself lying naked on a cot. Then constable Ishaque and Marium again asked her to withdraw the case against them. On her refusal constable Shahid, Constable Ishaque, police informers Iqbal Masih, Kamran and Munir allegedly raped her during her illegal detention of 52 days.

On 30 September, she was thrown onto the railway line at Cantonment Railway Station from where she was taken away by an ambulance and admitted in the Jinnah Hospital. She informed her husband and then she was shifted to Civil Hospital on instructions of doctors. Before her release from illegal detention, her husband, Aijaz, has filed an application before the Court of District and Session Magistrate on 19 September, pleading that his wife has been abducted by police constables and their henchmen and police refusing to file case against police officials. On the orders of the court the Korangi Industrial police station lodged an FIR (First Information Report) against the accused police officials and their henchmen for abducting Ruby and keeping her incommunicado. On the same night police officials threw her in the jurisdiction of another police station, the Risala police station so that the FIR at Korangi police station should become ineffective. http://www.ahrchk.net/ua/mainfile.php/2010/3595/

Police torture a young man in front of his mother to elicit a bribe; he dies shortly after

On February 26, plain-clothed police officials of Satellite Town Police Station, Sargodha, Punjab province, raided the house of Mr. Muddasar Iqbal, 24, for his arrest in the case of a motorcycle theft. He was not at home, so his elder brother was illegally arrested instead by the Sub-Inspector of Satellite Town Police Station, Mr. Azmat Joya and his staff: Head Constable Babar Cheema and Constable Amir Abdullah.

Later that day the mother Ms. Zarina Bibi, an uncle Mr. Sher Mohammad and his son Manzoor Illahi went to the police station to enquire about the arrest of her elder son. Inspector Azmat Joya told them that he was a hostage: if she was to bring her younger son, Muddasar Iqbal, to the station, then her elder son would be released. He did not reveal the specific charges. She was told to bring Muddasar to police chowki (kiosk), a sub-police station of Satellite Police Station, and when she did so later that day, Inspector Azmat Joya started to beat the young man, and ordered her to leave. http://www.ahrchk.net/ua/mainfile.php/2010/3401/

A young Christian man has been tortured to death by Karachi police and jail officials for not paying bribes

A 31-year-old electrician, Mr. Abid Javed Francis was arrested without charge as he walked to a job, by Station House Officer (SHO) Khatak and Assistant Sub Inspector (ASI) Abdul Aziz of Ferozabad police station. He was beaten in public during the arrest.

Francis was held at Ferozabad police station and allegedly tortured for two days while requests for Rs10,000 (US$ 125) in bribes were made from his family. The family resides in a slum settlement and the victim's mother was unable to raise the money. According to our information this led the police to blackmail the victim by filing a false case of harbouring illegal arms. This was logged through first investigation report (FIR) number 1273/2009 under section 13/D at 00:40 on November 24, two days after his initial arrest. The method and duration of Francis' arrest and detention and the use of torture are all illegal in Pakistan.
http://www.ahrchk.net/ua/mainfile.php/2010/3348/

An army colonel has had four men abducted and tortured due to a personal dispute, in Pakistan-held Kashmir

Four young men have been illegally arrested, detained and tortured by Inter-Services Intelligence (ISI) officials because of a minor personal dispute. The first victim was allegedly taken hostage by an ISI colonel so that his uncle would pay a debt, and the other three were friends of the victim who inquired about him at the local police station.

Three of the young men are still being held incommunicado and according to the fourth, who was released after six days, they have all been badly tortured by officials in a secluded place. The released victim is in ill health and has been warned against publicising the details of his friends' capture by the perpetrators. Although civilians in Muzaffarabad have held protest rallies, no action has yet been taken by the authorities. Please go through this link; http://www.ahrchk.net/ua/mainfile.php/2009/3339/

Disturbing testimony from Pakistan Police Torture

This is the anonymous testimony of a victim of torture at Dadyal Police Station - a typical story:

"The policemen would take it in turns, beating us for about 10 minutes, and then those policemen would leave and more policemen would come in and just carry on beating us. One beat me and then another beat me. They had sticks – like broom handles, about an inch thick, and bamboo canes. They would beat me on my fingers and on the soles of my feet, and then beat me on the back so that I could not sit or lie down. They had a pile of sticks in the corner of the room so that whenever they broke one, they could just get a new one. One would grab my head from behind and hold my arms behind my head, and another policeman would beat me. They beat me all over. Please see the whole story; http://www.reprieve.org.uk/

Muslim beats Christian employee to death

Will the Islamophobia never end? "Pakistani Muslim Allegedly Beats A Christian Employee to Death, Injures His Brother," from the Pakistan Christian Post, April 29 (thanks to C. Cantoni):

International Christian Concern (ICC) has learned that on April 21, a Muslim employer allegedly beat two Christian siblings with an iron rod killing one and seriously injuring the other in Sargodha, Pakistan.

The Muslim owner of 'Five Star Switches' company, Shafiq-ur-Rehman Khan, allegedly killed Waqas Masih, 14, and seriously injured Zeeshan Masih, 12, after they extended their leave from work for one more day without his permission. http://www.jihadwatch.org/2010/05/pakistan-muslim-beats-christian-employee-to-death.html

Christian barber beaten, sodomized for trimming a Muslim's beard

A Christian barber in this Punjab Province city is still recovering from broken bones and other injuries sustained earlier this month after eight Muslims allegedly beat and sodomized him for cutting the beard of a Muslim.

Marwat Masih, 29, initially refused the request of 19-year-old Qandeel Cheema to cut his beard in Sargodha's Gulshan-e-Bashir town on April 13, knowing that area Sunni Muslims believe the Quran prohibits it. But Cheema, a high school student, told Masih that he had lived and studied in Lahore and therefore wanted a more modern look, the bed-ridden and feeble Masih told Compass.

"I refused to shave his beard, but he showed me his packed bags and said that he would leave the town straight after the shave, and so no one would ever know that I had shaved his beard," Masih said.

Eyewitnesses told Compass that as Masih was cutting Cheema's beard, the client's older brother - - was returning by tractor from his fields and, noting the family Jeep in front of the Marwat Hair Stylist shop, stopped in.

"When Shakeel Cheema, a local radical Muslim land owner Shakeel Cheema, saw me shaving his younger brother's beard, he became angry and started vandalizing mirrors, the sound system and chairs, and he desecrated a wooden cross perched on the top of the front mirrors," Masih said. "He also started beating my head with his shoes." http://www.jihadwatch.org/2010/04/pakistan-christian-barber-beaten-sodomized-for-trimming-a-muslims-beard.html

Police officers charged with torture, but no law exists to prosecute

The whole of Pakistan watched through many television channels the public beating and torture of seven accused persons by the police officials in district Chiniot, Punjab province. The victims were striped naked in public by the station head officer (SHO) and four other officials, three were in plain clothes, of Bhawana police station and beaten with a wide leather strap, known as Chittar. Each accused was punished with 30 hard lashes with full force and two of them fainted on the spot. After this illegal punishments the accused were admitted to hospital on the orders of high officials of the province. The scene was watched by teenage girls and boys students of nearby schools. Please see the following video footage of public torture taken by cell phone: http://www.youtube.com/watch?v=cMO3Kwe8K20&feature=youtube_gdata

The officers of Bhowana police station are notorious for torturing the accused persons. SHO Abdur Razzaq, The SHO is known as an 'encounter specialist'. According to daily The News, Locals allege he beat the detained suspects daily at 11 pm. This is the same police which tortured Mr. Shafiq Dogar, chairperson of Star Welfare, for many days in moth of May 2009. An enquiry into Dogar's torture was ordered by the chief justice of Lahore high court but nothing has happened. The deputy superintendent of police (DSP), Mohammad Akram was suspended briefly but soon he regained the

same position. Please see the details of his http://www.ahrchk.net/statements/mainfile.php/2010statements/2451/

PAKISTAN: Shameful acts by the lawyers to ruin the rule of law

Lawyers have stormed the Lahore Session Courts to show their solidarity with a lawyer and former president of Lahore high court bar association who was arrested in the murder case of a 12-year-old Christian domestic helper. The girl was allegedly tortured. The lawyers, more than three hundred under the leadership of president of the Lahore Bar Association, went to the Session Court and took possession of the accused lawyer, Mr. Naeem. They then scuffled with media personnel and policemen who threatened that they would be punished if they did not leave the court. It then became difficult for the judge to proceed with the legal requirements of the case.

In the presence of so many lawyers, the judge announced the one-day police remand of the accused but when different television channels criticized the session judge by taking sides with the lawyers the judge later on in the afternoon announced that the accused person had been handed over to the police for three days so that they could conduct their investigation. The lawyers then chanted slogans in favour of accused lawyer and against the media to project the case in the media.
According to the Christian right groups and the electronic media, Miss Shazia Bashir Masih, a resident of Islamia Park, Punch Road, Aria Nagar, Samanabad, Lahore, was allegedly tortured and killed by her employer, Mohammad Naeem, the lawyer and his family members. http://www.ahrchk.net/statements/mainfile.php/2010statements/2384/

Disappearances

It is an irony that disappearances could not become a national issue because of an opportunistic and compromising attitude of government, legislators and judiciary.

The disappearances in Pakistan have become a routine matter which looks that it has been accepted by authorities and including the courts that they cannot solve the issue because of the involvement of powerful institution, the Army and its intelligence agencies. The major political parties, who are in sizeable numbers in the parliament, are also silent on the issue of enforced disappearances and torture in military detention cells. The agony of the disappearances is that the menace is continued during the civilian government and every month, averagely, at least 5 to 6 persons are abducted by plain clothe persons and sometimes in presence of police, and disappeared. The police refuse to lodge FIR by saying that intelligence agencies are involved.

The cases of disappearances were pending in the courts particularly, in Supreme Court of Pakistan since 2006 with an increase of many new cases every year since then. It is said

that one of the main issue for the suspension of the chief justice Iftekhar Coudhry during General Musharraf was disappearances. But after the restoration of judiciary, ostensibly on the telephone call from chief of army staff, the pace of hearing the constitutional petitions against disappeared was slowed to that extent that no one was relealed on the order of the court but those who were released were thrown or dumped on the road sides by the abductors themselves. The higher courts never ask from the persons, who were disappeared, that when they were released and where were they kept. Most of the people testified before the courts that they were kept in military torture cells but courts and government did not move to investigate the issue of abduction.

Recently the Supreme Court has taken the case of disappearance of 11 persons from Adiala jail, Rawalpindi who were released from lower court but before their release they were whisked away by the intelligence agencies. This case has exposed the whole drama of disappearances that how intelligence agencies are involved in running their own law in presence of parliament and independent judiciary. The chief secretary of Punjab province said in his statement that intelligence agencies were involved in disappearance of 11 prisoners. The case is still in regular hearing and officials from military do not bother to attend the hearing after receiving several notices from the court.

In another case, a person arrested by army was disappeared and army does not respect the courts order

Mr. Muhammad Azhar, a civilian, working at Signal Battalion-84, Signal Centre Malir, Headquarters25 Mechanised Division, 901 Field Security Section, Karachi, Sindh province, was arrested on May 12, 2010 on the charges pertaining to forgery and misuse of army documents along with others, and in such cases a civilian could be tried under the Army Act. Since then his whereabouts are unknown.

Her wife, Mrs Amina Aslam, has filed a petition in the Sindh high court for her recovery. The Batallion Commander and other officials including defence secretary are continuously ignoring to appear before the court. None of the respondent army officials appeared, nor was the communication supervisor produced in court. The high court found it self in awkward position as the army does not recognize the courts where they should be asked to question.

A disappeared person who was kept in incommunicado in military torture cells narrates the story of his disappearance and torture to the American Reporter Correspondence, Washington. Mr. Sohrab Sarki, a motel business owner from Yuba City, Calif., recalls the horror he felt when he first saw his face in the mirror after 27 months of army torture.

He narrates that he was forced to live like a blind man in a dark dungeon for eight months, so completely denied daylight that he could not know if it was day or night,

after Pakistan's Military Intelligence secretly abducted him on suspicion of promioting U.S. interests.

"I literally lived like a blind man," says Sohrab Sarki, 43, bursting into tears. "I never cried as much [in my life]. I could not recognize my face. I thought I was looking at the skeleton of my father," he said, after he was allowed to shave and provided with a mirror. The major question they asked was that what is the agenda of the USA," he said. "I was made to stand in a three-by-three-foot cell for many days. Once my feet got swollen, they struck it with rods, which hurt in the extreme," he recalls. When Sarki went missing in Pakistan, members of Congress asked Islamabad about his whereabouts. "In a written response, Pakistan government lied to the U.S. Congress that they do not know Sarki's whereabouts," said Iqbal Tareen, chief coordinator of Forum for Justice and Democracy in Pakistan.

Thousands of people have reportedly been disappeared by the state intelligence agencies since 2001 working under the military. Mr. Sarki was among the lucky persons who were released in a mysterious way by the intelligence agencies but there are thousands of people whom whereabouts are unknown after their abduction by the plain clothe men from intelligence agencies with the help of Police.

The disappearances after abduction have never been stopped even after the formation of civilian governments and restoration of independent judiciary. The military being an strong institution does not stop its practices of running torture camps and keeping the opponents in incommunicado for many months. In so many cases, when people were released from military torture cells or dumped on the road sides after severe torture have narrated their stories before the courts and media but no action was taken. The courts have proved themselves as the poodle before the army. Since 2005 the cases of disappearances were pending before the higher courts particularly before Supreme Court of Pakistan but none of them were released by the orders of the courts, instead, the persons were thrown on the road sides and then police arrested them.

Since the elections of 2008 and formation of civilian government the cases of disappearances have been increased and government had failed to stop this practice. Particularly in the province of Balochistan, the law and order was handed over to Frontier Corp (FC), a Para-Military organization, when in 2009 the government has announced to suspend the military operation which was initiated by General Pervez Musharraf, the military ruler since 1999 to 2008. The FC was found very notorious in abduction, disappearances and killings. In its latest drive during this year FC was abducting activists from nationalist groups torturing them and with in some days the bodies of disappeared persons were found.

In the cases of abduction by the law enforcement/intelligence agencies police refuse to lodge the first information report (FIR), a police report for legal process. The chief justice of Pakistan in January 2010 has directed the police to lodge FIR of disappeared persons but police refuse to do because of involvement of powerful military intelligence agencies. The FIRs are mainly lodged on the interventions of higher courts. The breakdown of the rule of law, the corruption of law enforcement agencies and the absence of effective protection mechanisms have combined to enable mass disappearances, carried out with impunity in Pakistan.

The government has admitted to the Supreme Court that around 1,600 persons disappeared in 2008 and the Balochistan Provincial Ministry issued a list that contains 992 names of missing persons, on December 10, 2009. The disappeared are thought to include 168 children and 148 women. The police are complicit in these disappearances as police officers typically refuse to register First Information Reports (FIR) regarding cases of disappearances, eliminating the prospect of having such cases investigated, and therefore enabling impunity. The afore-mentioned list issued by the Ministry resulted from it making a public appeal for people to report missing persons. However, despite the Supreme Court and the Ministry now having lists of disappeared persons, there is only a small chance that any of these will be investigated, the victims' whereabouts located or those responsible prosecuted due to police inaction.

The rise in enforced disappearances and "kill and dump" incidents have only aggravated the already existing political tensions in the region and have already led to the spare of reprisal killings by Baloch armed groups, an end the ongoing militarization and find peaceful ways to resolve the five decades of political rebellion.

It is reported from the different human rights groups, Defence of Human Rights, Islamad and Asian Federation against the Enforced Disappearances (AFAD) that around 8000 people are disappeared from through out Pakistan. The most affected areas are provinces Balochistan and Khyber Pakhtoon Kha (former NWFP). The Balochistan is at top as nationalists groups claim that around 6000 persons are disappeared where as the remaining disappeared people are from Sindh, Khyber Pakhtoon Kha, Punjab and Pakistani Kashmir.

The enforced disappearances are blatant infringes of the Universal Declaration of Human Rights acts, examples relating directly to Pakistan's incommunicado detentions are articles number 5 which states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." And article number 3 that states "Everyone has the right to life, liberty and security of person." How can the Pakistani Government and Military have such blatant disregard for these universal rules of Human Rights? And what can be done to prevent these forcible disappearances, rescue those detained or at the very least bring justice and closure to the families and persons affected?

Failure of the Commission on disappearances

The official commission on probing the cases of disappearance, which was formed in May 2010, proved to be failed as it has not come out with any significant development in probing the disappearances nor it has pointed out the causes the disappearances. Its prescribed time was for three months but during whole year it has sorted out 34 cases from hundreds of disappearances but has not reached to any conclusion.

The commission is consisted of one retired justice from Supreme Court and two retired judges from high courts. The terms and condition of the commission was that it would prepare a comprehensive list of the missing persons with all relevant information. It will collect evidence or testimony of missing persons and examine and compile a list of persons whose custody was at first denied but subsequently admitted and about their present status. The Commission will recommend appropriate procedures for tracing missing persons, and appropriate compensation to the victims of enforced disappearances. It will also fix responsibility on individuals or organisations responsible for enforced disappearance of persons, and will also suggest ways and means to prevent the recurrence of such incidence.

Still no investigation has started in the cases of disappearances of 168 children 148 women

The Commission to probe missing person's cases has not investigated or taken as seriously the lists of 168 children and 148 women. Two lists of disappeared persons were released separately, one by Voice for Baloch Missing Persons (VBMP), an NGO which works to document the cases of missing persons from the area and the other by the Provincial Interior Ministry of Balochistan. The missing people have allegedly been taken by Pakistani intelligence agencies for interrogation over their alleged link to Balochistan separatists and other militant groups in the country.

The Provincial Ministry issued a list of 992 persons on December 10, 2009 who were missing from different areas of Balochistan. Home ministry officials said the list was issued along with bio data provided by the government under the Aghaz-e-Haqooq-e-Balochistan, a package announced by the federal government which is working towards reconciliation with the people of Balochistan. The Chief Minister of the province of Balochistan, Sardar Aslam Raisani, said on January 13th that there are 999 people from Balochistan missing, and only four have been recovered.

VBMP's lists of disappeared persons details the names, fathers' names, age and location

from which the person is said to have disappeared.[16] The age of missing children ranges from four years to eighteen years, and the majority of these children are girls. The list also shows that 148 women are missing.

Disappearances in Balochistan

Two children were abducted, disappeared and killed on charges of links with militants
Cases of abduction and killing of children by the law enforcement agencies were also reported in the media. On October 18 a young man, Master Abdul Majeed, aged 14, son of Haji Mohammad Ramzan Zehri, a well known trader, was abducted, allegedly by the Frontier Corps, as claimed by his family, and on 24 October his body was found in Koshak river at Khuzdar district. There were bullet wounds on his head and chest. He was an activist of the Baloch Student Organisation Azad and was a student in class eight.

Another student, Master Mohammad Khan Zohaib, aged 14, also an activist of Baloch Student Organisation Azad, was abducted in July by plain cloth persons riding in a black coloured Sarf pickup, which is generally used for abduction by the state intelligence agencies. His bullet riddled body was found In Khuzdar, Balochistan province, on 20 October. His family members claim that he was arrested by the personnel from Frontier Corp (FC) for having links with militants who are fighting for the greater autonomy of the province.

Practicing doctor was disappeared for providing treatment to alleged terrorists

From Khuzdar city of Balochistan, a practicing doctor, Fazal Zehri, was abducted from his clinic by unknown persons on 24 October. His relatives claim that he was abducted

16 Please see the following links from the government of Balochistan for the list of the 983 missing persons:
http://www.ahrchk.net/statements/images/2010/AHRC-STM-019-2010-01.jpg;
http://www.ahrchk.net/statements/images/2010/AHRC-STM-019-2010-02.jpg;
http://www.ahrchk.net/statements/images/2010/AHRC-STM-019-2010-03.jpg;
http://www.ahrchk.net/statements/images/2010/AHRC-STM-019-2010-04.jpg;
http://www.ahrchk.net/statements/images/2010/AHRC-STM-019-2010-05.jpg;
http://www.ahrchk.net/statements/images/2010/AHRC-STM-019-2010-06.jpg;
http://www.ahrchk.net/statements/images/2010/AHRC-STM-019-2010-07.jpg;
http://www.ahrchk.net/statements/images/2010/AHRC-STM-019-2010-08.jpg;
http://www.ahrchk.net/statements/images/2010/AHRC-STM-019-2010-09.jpg;
http://www.ahrchk.net/statements/images/2010/AHRC-STM-019-2010-10.jpg;
http://www.ahrchk.net/statements/images/2010/AHRC-STM-019-2010-11.jpg;
http://www.ahrchk.net/statements/images/2010/AHRC-STM-019-2010-12.jpg;
and the lists documented by Voice of Baloch Missing Persons (VBMP) here:
http://material.ahrchk.net/pakistan/AHRC-STM-019-2010-01-BalochMissings.pdf;
http://material.ahrchk.net/pakistan/AHRC-STM-019-2010-02-BalochMisplaced.pdf.

by FC personnel who suspected that he was providing medical aid to injured Baloch insurgents at his clinic. His whereabouts are unknown since then. The clinic of the doctor is now under siege of law enforcement agencies.

A political activist was disappeared

On 2 October, Mr. Ahmed Dad Baloch of the Republican Party was whisked away by FC personnel with the help of police from Gwadar zero point. Ahmed Dad Baloch was travelling along with his family to Karachi on the Javed Coach. When the coach reached Zero point officials of the state intelligence agencies and police stopped it and Ahmed Dad being was taken off in front of his family and shifted him to unknown location. It is the fifth incident of abduction of political activists from Gwadar, Balochistan, during past some months. Previously, Abdul Rehman Arif, Mahboob Wadhela, Ramzan Baloch, Saeed Ahmed were abducted by the Pakistani military intelligence agencies.

During house to house searches around 20 persons are disappeared after arrest, including two children

The FC and army conducted the operation in Mashkay to search for the hideouts of Baloch insurgents who are fighting against the military control on their province. The Mashkay is the home town of one insurgent, Dr. Allah Nazar, and to arrest him and his companions the FC searched each house in Mehi, a small town of the district, and arrested around 20 persons and since then their whereabouts are also unknown. Meanwhile in Mehi, the birthplace of Dr. Allah Nazar Baloch, a school teacher Raza Mohammed Baloch, his relatives Adam Baloch, Aziz Baloch, Rasool Bux Baloch. Bashir Ahmed Baloch, a tailor and his two sons of aged 9 and 13 are also missing after arrest. The Houses of the members of Baloch Student Organisation (Azad) Fida Baloch, Zahoor Baloch, Haroon Baloch, Mustafa Baloch and Gul Hassan Baloch were burned down. Family members of these students, including women and children, were humiliated in public and severely beaten on the roads. For details: http://www.ahrchk.net/ua/mainfile.php/2010/3590/

Government declares that a missing person was released but for almost since one year his whereabouts are unknown

The life of a student leader who was arrested by state intelligence officials is in danger. It is apprehended that he might have been killed. The government of Balochistan says that he was released on January 22, 2010, but his family members have said that he has not yet returned home. They have inquired after him at all local police stations, asking if he was booked under another case, but have not been able to find him.

Mr. Zakir Majeed, a student leader, was allegedly abducted by state intelligence agents on June 8, 2009 from Mastung, near Quetta. Majeed is the senior vice chairperson of the Baloch Student Organization, Azad. His alleged abductors drove up in two cars without number plates and asked the young man a few questions, saying that they were intelligence agents.They took Majeed away with them in their cars without making any charges. One car was a Toyota Vego, the other a Toyota Surf SSR. After UN Special Rapporteurs on Disappearances wrote letters about Mr. Majeed's disappearance, his release was announced by the National Crisis Management Cell (NCMC) For more details: http://www.ahrchk.net/ua/mainfile.php/2009/3175/.

PAKISTAN: Frontier Corp makes missing persons a marketable commodity

A man named Murad Khan Marri was arrested near his house on June 27, 2009. Since then he was kept incommunicado in secret detention and was thought to have disappeared. His name was entered into the official list of missing persons. On March 27th 2010 the Frontier Corp claimed that he had been arrested trying to enter the country from Afghanistan. On this basis the Frontier Corp attempted to claim the reward money. This case clearly exposes the practice of illegal arrest, illegal detention in secret prisons and the exploitation of this later for claiming rewards.

Mr. Murad Khan Marri, who was recovered eight months after his disappearance, a conflict has arisen between the government of Balochistan province and the Frontier Corp (FC) on the head money (reward) for his capture. The FC has shown that they arrested Mr. Marri on March 27, 2010 and are demanding that the Provincial Ministry of the Interior hand over the Rs. 3 Million (USD 36,585) which was announced by the provincial government last year. However, the Ministry claims that Mr. Marri has been missing since June 2009 and that his name was mentioned in the official list of missing persons. Therefore, the Ministry is claiming that it cannot arrange such a large amount without a proper investigation.[17]

Disappeared lawyer and his cousin were killed, another lawyer and four persons remain missing after their abduction

Mr. Zaman Marri, aged 38, a lawyer by profession, was abducted on 19 August 2010

17 For further details please see here: http://www.ahrchk.net/ua/mainfile.php/2010/3407/;
http://www.ahrchk.net/ua/mainfile.php/2010/3407/;
http://www.ahrchk.net/statements/mainfile.php/2010statements/2504/;
http://www.ahrchk.net/statements/mainfile.php/2010statements/2519/.

near his law office on Jinnah Road, Quetta, the capital of Balochistan province, while he was on his way home to Killi Kamaloo, in the outskirts of Quetta. At around 7pm, as he was leaving office with his cousin, two vehicles blocked him and plain clothed persons threw him inside a van. The bystanders protested and tried to stop the van from leaving but the plain clothed persons identified themselves as the officials from the FC (Frontier Corp) and threatened to use their firearms.

The lawyers also boycotted the courts and the Chief Justice of Balochistan High Court took suo moto action against his disappearance. He issued notices to the government and the commander of the FC.

On 5 September, Zaman Marri's bullet-riddled body was found in the Ghuncha Dhori area of Mastung city, 40 kilometers away from Quetta city. His body was so badly mutilated it could not be identified Zaman Marri had been representing many Baloch political detainees and disappeared persons without charge. He had been receiving threats from unknown callers not to follow up the cases of disappearances in the High Courts.

Mr. Zaman Marri was also pursuing a case on behalf of his cousin, Mr. Ali Ahmed Marri alias Alliya Marri, who was arrested by plain clothed persons on 7 April along with his three friends, Kamal Khan Marri, Lala Marri and Lal Mohammd Marri. At the time they were on their way home to Killi Kamaloo, Quetta, from Hazar Ganji fruit and vegetable market when the plain clothed persons who identified themselves as FC officials stopped their car on the Hazar Ganji link road. They were immediately blindfolded and put into a vehicle that been waiting for them at the FC check post. Their Alto car had also been taken away. A few hours later a relative of the abducted men, Mr Azad Marri, was also detained as he was traveling to the Shalkot police station to register an FIR against the forced-disappearance of his relatives. Like the other man Azad was also first stopped by the FC near Qambarani road check post and later handed over to the intelligence agencies.

On 11 September, Alliya Marri's mutilated body was found in the same area where Zaman Marri's body had been found. http://www.ahrchk.net/ua/mainfile.php/2010/3555/

Two Baloch political activists were abducted in April and since then no whereabouts are known

Mahboob Ali Wadela is a senior member of the Baloch National Movement (BNM), which is part of the Baloch National Front (BNF), a nationalist movement struggling for greater autonomy of the province. He had been traveling in a passenger vehicle in Karachi

bound for Gwader, a port city in Balochistan on 2 April for just a few minutes when it was stopped by uniformed police from Maripur station in Yousuf Goth. Since then his whereabouts are unknown and it is apprehended that he might have been killed. According to passengers on the bus two vans resembling army vehicles arrived at the scene almost immediately and plain-clothed persons emerged and began to check the identity cards of the passengers. When they came upon Mahboob they reportedly pulled him from the bus with his luggage and drove him away in one of the unmarked vehicles. The passenger vehicle was then prevented from leaving the area by police for some time.

Mir Bohair Bangulzai, another member of the BNF, was abducted from his car on Thursday 1 April 2010 from Askari Park in Quetta, Balochistan. According to eyewitnesses he was driving home when he was stopped by uniformed police officers. Persons then emerged from a double cabin Toyota Hi-Lux jeep and despite the efforts of passersby to rescue Bangulzai, abducted him and drove away. The vehicle was driven by a person in plain clothes who identified himself as Frontier Corp (FC) personnel. Though man's relatives have contacted the local authorities, Quetta police have illogically and illegally cited false police procedure: they have told relatives that they will investigate the incident before they file an FIR. http://www.ahrchk.net/ua/mainfile.php/2010/3426/

BBC reports about missing persons

Changez Marri, a government servant says to BBC that my brother, Chakar Khan Marri, was picked up by the Frontier Corps [FC] troops in September 2009 because he and eight other students tried to meet the principal of their college in connection with some student grievances."We still don't know where he is. A writ in the court has also not helped because the FC and the intelligence agencies say he is not in their custody."

A retired veterinary surgeon, Dr Abdul Wahab Bungulzai, has been looking for his 20-year-old son, Abdul Hai, since August 2009. "The FC picked up Abdul Hai outside his college in the presence of his colleagues. When I tried to meet the colonel concerned, he refused to see me. We went to the court, but nothing happened," he says.

Dr Abdul Wahab Bungalzai, whose son, Abdul Hai, has been missing since 2001

'Secret cell'

A notorious case of a "forced disappearance" - as they have come to be known - is that of Asghar Bungalzai, a local tailor from the Saryab area of Quetta. He was allegedly picked up by investigators from Pakistani intelligence in October 2001. Between 2003 and

2005 the family was in touch with Brig Siddique of Pakistan's Inter-Services Intelligence (ISI), who acknowledged Mr Bungalzai was in ISI custody and that he would be released soon. That has not yet happened.

Mr Bungalzai's son, Ghulam Farooq, was just 11 when he went missing. He is now 20.

"We know my father is alive. Sometimes we get his news. But we don't know where they have kept him, or whether they will ever release him," Ghulam Farooq says.

Tidings about the missing are often brought to relatives by cell-mates lucky enough to have been released by their captors.
One such person is Shahzeb Baloch. "I was in a (secret) detention cell for three months, and there I met several 'missing' political activists, some of whom are still in captivity," he says.

He says he was severely beaten when he was arrested, then handcuffed, blindfolded and driven to a location about 30 minutes away. Later he was taken to another location after a 12-hour drive.

He says he was interrogated six times during his captivity. On all occasions, he was stripped naked and lashed on the buttocks.

When he was not being interrogated, he was kept in chains, with a hood on his head.
"During those months, I started praying for death because life had become too painful, too undignified," he says.

Most people blame the Frontier Corps for picking up suspects and holding them in their safe houses across the province.

Disappearances in Pakistani part of the Kashmir

The country's notorious Inter Services Intelligence (ISI) has allegedly been involved in orchestrating the disappearance of dozens of persons that they had trained as Jihadis in Pakistani held Kashmir, Azad Kashmir. The intelligence agencies particularly, the Inter Services Intelligence (ISI), is accused of training and sending people inside Indian held Kashmir for the Jihad or providing information of militants working inside other parts of Kashmir. The family members of the disappeared people are also stating that when people who worked for intelligence agencies leave the Jihad and return to their normal lives they are nabbed by the ISI and shifted to unknown places as punishment for not working in the interests of national security. There are also reports that some missing

persons, who were sent to collect information from Indian Kashmir, were also hired for smuggling liquor and other Indian items when they come back to Pakistani Kashmir after completing their assignments. These persons were aware that Zakir was receiving threats from ISI officials.

The close working relationship between the military and its intelligence agencies, the Taliban and other Muslim militants should be of utmost concern to Pakistani citizens, the country's neighbours and the international community as a whole. Despite the democratic change of political leadership in the country, the military remains above the law and able to enjoy impunity for past and ongoing human rights abuses.

During the last six months of 2009 the AHRC has documented cases of disappearances in Kashmir according to which the whereabouts of 15 people arrested by the security forces are not known. They were arrested by security persons in plain clothe from different parts of the Tehsil Kotli along the Indian borders. Among them are six persons who were trained in the camp at Solna village, Kotli and had left the holy war. The family members of Altaf, Qadeer, Qasim, Mushtaq, a resident of refugee camp at Solna area, Kotli, who were disappeared after their arrest by security forces, say that they were told by the local office of ISI that the persons are with them and will be released soon. However, to date no one has been released. The political parties, particularly the United Kashmir Peoples National Party (UKPNP), claim that the people were previously trained for holy war for across the border.Please see the detailed report by visiting this link; http://www.ahrchk.net/statements/mainfile.php/2010statements/2380/

Please also see the following links regarding similar action conducted by the ISI and military in Azad Kashmir: AHRC-UAC-069-2009; AHRC-UAC-172-2009; AHRC-STM-137-2010; AHRC-STM-156-2010 and AHRC-STM-011-2010.

A disappeared young man was killed after release from disappearance for refusing to join Jihad

http://www.ahrchk.net/ua/mainfile.php/2010/3547/

Mr. Asim Zakir, 24, son of late Mr. Mohammad Zakir Khan, a resident of Sangar Hurnamira village, Rawalakote, Poonch district, Azad Kashmir, was employed in the electricity department in Rawalakote, Before joining the electricity department Asim Zakir was a student at a Muslim Madressa (seminary) in Miranshah, the capital of North Waziristan agency, a federally administered region. The Madressa was run by the Taliban, which was also involved in training the students for Jihad or holy war. When his father died Zakir, being the eldest son, joined the electricity department and took up his father's position in order to support his family.

On 10 March 2010, at around 1.30pm, as he was going home, he was picked up by unknown persons at gun point and severely beaten at the scene. The people and his colleagues saw the incident and they chased the abductors. After some distance the abductors took Zakir to a helipad where he was thrown into a helicopter, which took him to unknown destination.

After his abduction the employees of the electricity department protested and went on strike disturbing the electric supply of the city. Seeing the reaction from the employees and civil society of the Azad Kashmir, the Inter Services Intelligence (ISI) released him from incommunicado detention ten days after his abduction. Mr. Zakir told the media and his colleagues that he was kidnapped by the ISI and was tortured. During his illegal detention he was forced to continue his education in the Madressa and participate in Jihad (holy war) against the forces of evil. His ordeal was not extensively covered in the media because of the self censorship of the media houses and their sympathy towards the intelligence agencies. Following his release he was continuously receiving threats from the ISI and some Jihadi elements.

Asim then decided to resign and leave Rawalakote. He traveled to Jandola, South Waziristan, where he started the construction of a school. But he was never free of the threats from unknown persons. He told his younger brother and his friend that he was receiving threats from the ISI that if he did not join the Jihad and his previous Madressa he would face problems or his younger brother Aaqib Zakir would be made shaheed (martyr).

Sindh: The disappearances of Akash Mallah and Khaskheli after their arrest-police ignores the order of chief justice of the country

According to the details received from the victim's family and the media, Mr. Sikander (generally known as Aakash Mallah) and Mr. Noor Mohammad Khaskheli were well known leaders of a Sindh province nationalist party, Jeay Sindh Qaumi Mahaz (JSQM) when they were publicly abducted. Witnesses describe an illegal arrest conducted by 10 to 12 men in total: uniformed Bhittai Nagar police (from Hyderabad) with a number of persons in plain clothes. The victims' party believes the arrest was in connection to an independence march being organized for 7 November in Karachi.

The brother of Mr. Mallah, Mr. Haji Anwar Mallah, filed a habeas corpus petition before the Hyderabad District and Sessions Court on 4 November 2009, and before the Sindh High Court (Hyderabad branch) the following day. This is despite his family receiving threats warning them not to contact media or the courts. The Hyderabad District Police Officer (DPO) denied in writing that the men were in police custody within his jurisdiction, and again when he appeared before the Sindh High Court on 24 November 2009.

The Chief Justice of Pakistan took Sou Moto action on the case on 11 March, ordering the regional police officer (RPO) in Hyderabad to arrest the deputy superintendent of police (DSP) and station head officer (SHO) and produce them the following day. However the two men, Sikandar Bhatti and Ghulam Muhammad Memon respectively, denied having arrested or detained the men. They asked for time to establish the detainees' whereabouts and the bench gave them and two other officers (RPO Fayyaz Leghari and DPO Javed ALam Odho) 15 days to find the two men and produce them before a district and sessions judge.

The deadline for the investigation has now passed and the men have not been located, nor a report been given. The Supreme Court is due to take up the matter shortly. However it is of great concern to the AHRC to note the failure of the Supreme Court and Sindh High Court to effect action in such clear cut cases of disappearance. http://www.ahrchk.net/ua/mainfile.php/2010/3412/

Islamabad: A senior journalist was abducted, tortured and kept incommunicado by the intelligence agencies

Mr. Umer Cheema, a senior journalist from the newspaper, daily The News International, was abducted, tortured severely and kept in incommunicado to threat and intimidate him from his professional duties. Several media reports suggest that persons from intelligence agencies carried out the act. The government has still not been able to arrest the persons responsible for the abduction and torture. In a routine way the orders to arrest the culprits and form an inquiry committee have been made by the government and the Ministry of Interior and the Lahore High Court has taken suo motto action. However, it appears that the government officials and the courts hesitate to take action against the intelligence agencies due to the culture of impunity.

He was kidnapped, tortured and humiliated for six hours on 4 September. He was picked up in cloak-and-dagger style in the wee hours by men in commando uniforms and driven to a "safe house". Here unknown persons took over; he was beaten black and blue, humiliated beyond one's comprehension, made to strip off his clothes, hung upside down and remained in the illegal custody for hours. Finally, he was thrown out on the roadside at Talagang, 120 kilometres from Islamabad with a shaved head and a threatening message for Ansar Abbasi, the head of the newspaper's investigative section.

Umar Cheema was a 2008 Daniel Pearl Fellow. In 2004 during General Musharraf's government, he was deliberately hit by a moving car while doing a story on international inspection of Pakistan's nuclear power installations. http://www.ahrchk.net/ua/mainfile.php/2010/3543/

Masood Janjua missing since 2005-an example of higher courts inability for his recovery

Mr. Masood Janjua and Faisal Faraz disappeared on 30 July 2005 and their families have not seen them since then. Mrs. Amina Janjua's, wife of Masood Janjua, efforts to find her husband and his friend have been met with silence, denial and obstruction. Several people have testified to having seen Masood Janjua in detention, but the authorities continue to deny any knowledge of his whereabouts.

The case of Janjua is pending before Supreme Court since 2006 but court failed to make any progress in the case because of involvement of military intelligence agencies in his abduction. Many times telephone calls from intelligence agencies have told his wife that he and his friend are with them. These information was delivered to court but court shown its apathy. The two men are among hundreds, possibly thousands, of people who became victims of enforced disappearance after Pakistan joined the US-led war on terror in 2001. In November 2009 the Supreme Court started hearing disappearance cases, but in March 2010 these cases were transferred to a newly created Judicial Commission. This body has a narrow mandate and to date has failed to scrutinise the role of the intelligence services the main body accused of involvement in disappearances and to hold them to account. Meanwhile the families of Masood and Faisal continue to fear for the lives of their loved ones.

A young man goes missing in custody after policemen raped him

A young man has disappeared from police custody after being raped by two police officials. The police officials have been arrested after protests by the villagers but the young man has not been recovered. The district police of Naushahro Feroze, Sindh province, have not initiated a proper investigation into his disappearance.
According to the details received on May 20 at 8:30 pm, Mr. Imran Jokhio, (17) a tailor by profession, was stopped by two police officials, Head constable Ilyas Sahito, and Constable Ghulam Rasool Marri, of the Phull Police Station, Naushahro Feroze district, Sindh province, at Mafi Faqir Bridge at Rohri canal while he was travelling in an auto Rickshaw (three wheeler). Since then his whereabouts are unknown. Please see the details in following link; http://www.ahrchk.net/statements/mainfile.php/2010statements/2906/

Extra judicial killings

Because of self censorship by the media houses themselves the extra judicial killings by military and Para-military forces are no more find any space. The Pakistan army is well protected by media, judiciary and politicians in the name of national security. After the 9/11 the extra judicial killings by the army and its Para-military forces have been

increased in many folds. Two provinces, Balochistan and Khyber Pakhtoon Kha (KPK), former NWFP, are much more affected where daily the cases of extra judicial killings are reported.

In one case, the report names a specific unit of the army, the 12th Punjab regiment, as being responsible. According to the report, the regiment detained a resident of the Matta area of Swat, Farman Ali, along with two other men on 28 March this year.

The bodies of the other two men were later produced by the military and presented as Taliban militants who had allegedly been killed in a clash with the army.

Then Mr Ali's body, with a gunshot wound to the head, turned up in a field on 26 May. http://www.bbc.co.uk/news/world-south-asia-10667545

In KPK during the army operations in various parts the army officials are involved in torture and killing of the suspected militants in open places. According to the local journalists and human rights activists, the army officials are making the videos of torture and extra judicial killings and then distribute through their means at large scale to scare the population so that no resistance come from the masses.

In Balochistan province, the Frontier Corp (FC), a Para-military force, has been in charge of law and order situation since 2008 when Army operation was taken back by the civilian government. How ever Army still has over all security responsible against the terrorism and insurgency. The disappearances and extra judicial killings are conducted with the help the of state intelligence agencies run by Pakistan army. In recent months dozens of bodies of disappeared persons were found with bullet and torture marks.

The media generally do not cover the incidents of disappearances allegedly by FC and plain clothe persons about whom the relatives and friends claimed that the plain clothe persons were from intelligence agencies as they have themselves claim during arrests and abduction. The media avoid carrying the news because of involvement of Para-military forces and want of evidences. For extra judicial killings by the army and its organizations can not get the space from media. Media is generally blank because of army. The media has never taken the notice of at least 52 torture cells run by army and some by Pakistan Air force and Pakistan Navy.

The judiciary also does not take any case of extra judicial killings by army and its forces. It was expected that the judiciary after its independence would take Sou Moto (taking action itself) action for extra judicial killings even after receiving the video clips and finding bodies of disappeared persons rather than taking Sou Moto actions on rumors. There is strong criticism on judiciary that it takes quick action against democratically

elected government rather than on torture in army torture centers after the evidences of persons passed through torture in army torture centers.

The Drone missiles attacks by US forces with the consent of Pakistan government are an explicit and latest form of extra judicial killings by foreign forces in Pakistan. A new way, in which no law applies to stop the killings and also does not come in the jurisdiction of courts. During this year around 900 people were killed by drone attacks in more than 100 attacks.

Videos of extra judicial killings by army:

http://www.liveleak.com/view?i=8d7_1285880614
http://www.mefeedia.com/watch/32962677
http://www.youtube.com/watch?v=Pib3jxbcF2E
http://www.youtube.com/watch?v=5xAFJ42CHCE&feature=related

Hundreds of people were killed in extra judicial killings by Pakistan army

The Pakistani army is facing accusations of carrying out extra-judicial killings and torture, claims which could threaten US funding for any units singled out for abuse.

New York-based Human Rights Watch said it had briefed US State Department and congressional officials about mounting evidence of more than 200 summary executions in Swat Valley in the past eight months of suspected Taliban sympathisers.

The Lahore-based Human Rights Commission of Pakistan provided a list of 249 suspected extra-judicial killings from July 30, 2009, to March 22 this year, saying most of the bodies were found in Swat. http://gulfnews.com/news/world/pakistan/pakistan-army-faces-accusations-of-extra-judicial-killings-torture-1.608428

Six young men were killed by army

The video clips show men in uniform of soldiers with foreign weapons, most probably US branded, killing a group of tied and blindfolded detainees, apparently the Taliban. The videos have raised questions about the ethical values and respect for human rights of Pakistan Army.

Meanwhile various factions of the Pakistan government and civil society have condemned posting of the footages and have termed the videos as fake. It is pertinent to note that

the videos do not clearly show that the men in soldier's uniform are in fact the men of Pakistan Army. Majority of the civil and army officials in Pakistan believe that it is an attempt by the Taliban to demoralize the Pakistan Army.

The video, http://www.bbc.co.uk/news/world-south-asia-11500198 which was apparently shot with a mobile phone, appeared on a website several weeks ago. It shows a group of men in army uniform who drag six blindfolded civilians into a line, and then shoot them. The video's authenticity cannot be verified; Pakistan's military said last week it had been fabricated. http://www.allvoices.com/contributed-news/6969342-video-apparent-extra-judicial-killing-of-taliban-by-pakistan-army

Extra judicial killings of children by the law enforcement agencies Balochistan

On October 18 a young man, Master Abdul Majeed, aged 14, son of Haji Mohammad Ramzan Zehri, a well known trader, was abducted, allegedly by the Frontier Corps, as claimed by his family, and on 24 October his body was found in Koshak river at Khuzdar district. There were bullet wounds on his head and chest. He was an activist of the Baloch Student Organisation Azad and was a student in class eight.

Another student, Master Mohammad Khan Zohaib, aged 14, also an activist of Baloch Student Organisation Azad, was abducted in July by plain cloth persons riding in a black coloured Sarf pickup, which is generally used for abduction by the state intelligence agencies. His bullet riddled body was found In Khuzdar, Balochistan province, on 20 October. His family members claim that he was arrested by the personnel from Frontier Corp (FC) for having links with militants who are fighting for the greater autonomy of the province.

A lawyer and his cousin were killed after their disappearances

Mr. Zaman Marri, aged 38, a lawyer by profession, was abducted on 19 August 2010 near his law office on Jinnah Road, Quetta, the capital of Balochistan province, while he was on his way home to Killi Kamaloo, in the outskirts of Quetta. At around 7pm, as he was leaving office with his cousin, two vehicles blocked him and plain clothed persons threw him inside a van. The bystanders protested and tried to stop the van from leaving but the plain clothed persons identified themselves as the officials from the FC (Frontier Corp) and threatened to use their firearms. On 5 September, Zaman Marri's bullet-riddled body was found in the Ghuncha Dhori area of Mastung city, 40 kilometers away from Quetta city. His body was so badly mutilated it could not be identified. http://frontierindia.net/wa/pakistani-agencies-involved-in-the-wave-of-extra-judicial-killings-kill-the-third-baloch-lawyer/1667/

The killing of Baloch leaders exposes the hate attitude of law enforcement agencies towards Balochistan

The two prominent Baloch political leaders have been assassinated within three days by unknown assailants riding on motorbikes. It is alleged by the political and nationalist groups of the province that they were killed by law enforcement agencies to take revenge from the people of Balochistan for demanding greater autonomy.

On July 11, a prominent Baloch leader and former Nazim (Mayor) of Turbat, Mr. Maula Baksh Dashti was assassinated while he was travelling in the car when two unknown persons riding on a motor bike attacked him with AK47 gun. Just three days after his assassination another prominent Baloch leader and former Senator Habib Jalib of Balochistan National Party was assassinated in the same manner in Quetta, the capital of Balochistan. Then Mr. Habib Jalib was murdered in the early morning he went to the shop of his brother to read the newspapers. After the killings of the Baloch leaders the people of the province started protesting and the law enforcement agencies are dealing with them harshly using of tear gas and baton charges. They have arrested hundreds of protestors. http://www.ahrchk.net/statements/mainfile.php/2010statements/2691/

Another lawyer's body found

On June 17th 2010, The Secretary General of Jhalawan Bar Association Munir Ahmed Mirwani was abducted at gun point by Pakistani Intelligence. Mr. Munir Mirwani was having a meal on the road side restaurant in his home town District Khuzdar, Balochistan. The Balochistan High Court Bar Association reported that another lawyer, Mr. Muneer Mirwani was arrested in the presence of another lawyer. In the month of August his bullet riddled body was found from Khuzdar, Balochistan.

A columnist was allegedly killed by Frontier Corp

Various newspapers are reporting the death of Ali Sher who was was abducted by the Pakistani security forces when he was visiting one of his relatives Dr. Salim Kurd in Gilani Road Quetta. (read here). As per reports, his body was recovered in Khuzdar some 300km from Quetta this morning 3 days after being abducted from Quetta. Political analysts believe Columnist/Lawyer Ali Sher has been killed due to his political working and writings. Anyone aware of politics in Balochistan can easily conclude the one who opposes the oppressor in any mean result the same fate. Mr. Sher was a regular contributor to Daily Ostoman.

Rasool Bux Mengal, joint secretary of the Baloch National Movement (BNM), was abducted from Uthal in August. His tortured dead body, slashed and covered in cigarette

burns, was found hanging by a tree near Qalandari Hotel Lasbela. The intention was clear: to terrorise and intimidate the Baloch people. Mengal was the second BMN leader murdered this year. In April, the body of Ghulam Mohammad, chair of the Baloch National Movement, was found partly decomposed in a vat of poisonous chemicals.

In October, medical students were beaten up and arrested by Pakistani forces in a raid on the Bolan Medical College. The same month, eleven innocent civilians, including women and children, were killed in the Dera Bugti district by Pakistan army bombardments.

Three bodies of missing person found on Muslim festive day

Bullet-riddled bodies of three missing persons were found in different parts of Balochistan during the three days of Eid-ul-Azha, a Muslim festive for slaughtering the animals. Lala Hameed Baloch, a journalist and president of the Baloch National Movement (BNM), and Samiullah Mengal, a student, and Hamid Ismail Baloch, a Baloch activist, were among those whose bodies were found. This was the Eid gift that was given to the families of the Baloch men who were picked up by unidentified personnel and later killed brutally.

A former Jihadi was killed in mysterious explosion

Mr. Asim Zakir, 24, son of late Mr. Mohammad Zakir Khan, a resident of Sangar Hurnamira village, Rawalakote, Poonch district, Azad Kashmir, was employed in the electricity department in Rawalakote, Before joining the electricity department Asim Zakir was a student at a Muslim Madressa (seminary) in Miranshah, the capital of North Waziristan agency, a federally administered region. The Madressa was run by the Taliban, which was also involved in training the students for Jihad or holy war. When his father died Zakir, being the eldest son, joined the electricity department and took up his father's position in order to support his family. He was abducted by the intelligence officers in a helicopter from out side his office on March March 2010. During his illegal detention he was forced to continue his education in the Madressa and participate in Jihad (holy war) against the forces of evil. Following his release he was continuously receiving threats from the ISI and some Jihadi elements. On September 11, at around 11.15pm when, Asim was traveling, his jeep was involved in an explosion resulting Asim's death. http://www.ahrchk.net/ua/mainfile.php/2010/3547/

Killed in police station and body was thrown before people to burn it

On March 18, Dera Ghazi Khan police arrested Hafiz Abdullah on the charges of murder and tortured him to confess. He was killed in police station by gun fire by the deputy superintendent of police (DSP) and station house officer (SHO). Ghulam Rasool,

younger brother of Hafiz Abdullah, told Dawn that he was one of the witnesses to the police brutality, especially of Iqbal Chandia, Deputy Superintendent of Police of Choti Zaireen Police Station in Mutafaqir Chahan village who allegedly shot the victim in his head.

The local SHO also fired several shots in his face before the body was put at the mercy of the mob, he said. The incident came to light when a video footage was shown by private TV channels. http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/brother-of-lynched-man-relives-horror-400

The man had shot dead a shop owner, Naseem Abbas, over a petty dispute and surrendered, saying the crime had been committed unintentionally. He said that he saw the DSP shooting his brother, followed by the SHO. Later, the police handed over the body to the mob and two young men tied it with a rope and dragged it with their motorcycles. They took the body to the main market of Choti Zaireen where people threw clothes, bushes and tyres on it and set it on fire in the presence of the DSP and the SHO, he said.

Another man of Dera Ghazi Khan, Simla Khan, alleged that the DSP had killed his 17-year-old son Mohammad Ajmal on March 27, 2008, after declaring that he was a dacoit. A judicial inquiry by the district and sessions judge found that it was a fake encounter. The inquiry report, issued on June 10, 2008, said the DSP and other policemen who took part in the fake encounter were liable to be prosecuted.

Probe in Sialkot killings points finger at Punjab provincial government

As the investigation into the lynching of two brothers in Sialkot, Punjab province, on August 15, 2010, continues, the role of pro-Pakistan Muslim League-Nawaz (PML-N), ruling party of Punjab, police officers is being seen as a major factor that contributed to the incident, informed sources told Daily Times on Friday. http://www.ndtv.com/article/world/four-taliban-militants-killed-in-us-drone-attack-67405

Sources in the joint investigation team (JIT) that is probing the incident disclosed that almost every police official involved directly or indirectly in the incident "has no fear of high-ups due to their strong links" with PML-N parliamentarians. Zulfiqar Ahmed Cheema, who was at that time the Gujranwala deputy inspector general (DIG), is the younger brother of Justice (r) Iftikhar Cheema, the current PML-N Member of National assembly (MNA) from the area. Similarly, Sialkot District Police Officer (DPO) Waqar Chohan is the member of an influential family and Station House Officer (SHO) Rana Ilyas has strong ties with the local PML-N leadership.

During a survey of Sialkot city by Daily Times, a number of citizens directly blamed Shahbaz Sharif, chief minister of Punjab, for the incident, saying his policy of permitting extra-judicial killings by police caused the Sialkot incident. The culture of killings: According to locals, the incidents of fake police encounters started appearing in the area during the first tenure (1997 to 1999) of Shahbaz as chief minister, which encouraged the culture of 'vigilante justice'.

On August 15, robbers shot dead Bilal and injured Zeeshan and later easily escaped. The area police got hold of the two brothers who happened to be at the wrong place, at the wrong time.
Relatives of Bilal and the locals, who were already angry at the failure of police to stop such incidents, gathered at the scene and decided to imitate the police style of dealing with such crimes. Eyewitnesses told Daily Times that the mob then snatched the two boys from the police and beat them to death. The locals said police personnel, instead of doing anything to stop the mob, were closely monitoring the situation. "It was the manifestation of the Gujranwala police's doctrine that if you find a criminal, especially a dacoit, don't arrest him alive. Rather, make an example out of him by parading his body on the streets," they said.

2000 people including terrorists were killed in Drone attacks

The United States government, led by the Central Intelligence Agency's Special Activities Division, has made a series of attacks on targets in Khyber Pakhtoon Kah (KPP), the former North West Frontier Province (NWFP), since 2004 using drones (unmanned aerial vehicles). Most of these attacks are on targets in the Federally Administered Tribal Areas along the Afghan border in Northwest Pakistan.These strikes are mostly carried out by unmanned aerial vehicles (UAVs).

Extra Judicial Killings by Drone attacks

These controversial attacks were called a part of the extra judicial killings by the Pakistani people as without any legal process the suspected terrorists are killed. These are also called a direct interference in the country's affairs where there is no respect for local laws. The US and its forces has started drone attacks in 2004 and since then it is continued with continuous many folds increase in every coming years. In year 2010 more than 100 attacks were recorded in which more than 800 people were killed. The total number of people killed in drone attacks since 2004 around 2000 people were killed where as hardly some hundred terrorists were killed. http://material.ahrchk.net/pakistan/DroneAttacksStatistics.pdf

The extra judicial killings on the cost of innocent citizens are very high and it could not stop the terrorism inside Pakistan or Afghanistan, not even, the killing of US and NATO forces by the terrorists. On the other hand, the drone attacks give insight to the local law enforcement agencies to kill better through extra judicial way rather than following the process of law.

UN official calls for end to CIA drone strikes in Pakistan. Philip Alston, the UN's special rapporteur on extrajudicial killings, said that the CIA's refusal to disclose its criteria for selecting targets and the precautions it takes to prevent civilian casualties makes it impossible to determine whether some of these attacks constituted war crimes. Alston said the US should end the program, but did not say whether or not he considered the program illegal.[18]

Investigative reporter Jane Mayer of *The New Yorker* magazine revealed last week that the number of US drone strikes in Pakistan has risen dramatically under President Obama. During his first nine-and-a-half months in office, Obama authorized at least forty-one CIA missile strikes in Pakistan—a rate of approximately one bombing a week. We speak to one of the most high-profile critics of the US drone program: Philip Alston, the UN special rapporteur on extrajudicial, summary or arbitrary executions. Alston says the US government's use of Predator drones may violate international law.

Target Killings by ruling parties

In the Karachi, capital of Sindh province, every year around 1000 persons, mostly are political activists, are killed in target killings. During 2010, the human rights commission of Pakistan has issued a statement, based on news items, that 1300 persons were killed by target killings, a way of extra judicial killings. The three political parties in the government are said to be involved in killings. The Pakistan Peoples Party (PPP), Mutehda Quomi Movement (MQM) and Awami National Party (ANP) were involved in the target killings.

Violence against Women

The status of women and treatment of religious minorities remains among the greatest human rights issues within Pakistan. These groups lack fundamental rights and the prerogative to exercise those formal rights that have been granted by the state. Women and religious minorities face complex, pervasive forms of discrimination, from social to judicial. For example, a 45-year-old Christian woman, Asia Bibi, asked to fetch water while working in the fields was then told by Muslim women that she should not be

18 http://www.washingtonpost.com/wp-dyn/content/article/2010/06/02/AR2010060201713.html

allowed to touch their water bowl. They later accused Bibi of blasphemy, and a lower court sentenced Bibi to death. This case also exposes the biases of the judges of the lower courts against the religious minority groups as the judge never thought to go according to the law but followed the pressures from extremist Muslim community.[19]

Overview

The history of the status of women in Pakistan is comprised of a series of contradictions. Legally women have enjoyed suffrage since 1947 and the right to vote in national elections since 1956. From 1956 until 1973, the Constitution held quotas for women's representation in Parliament. The 1973 Constitution stated "there shall be no discrimination on the basis of sex alone."[20] In 1979, Pakistan established the Ministry of Women Development (MoWD), elevating it to ministry-level division of government in 1989. In 1988, Pakistan elected the first female Prime Minister of any Muslim country, Benazir Bhutto. Nominally, legislation provides for the protection of women and their rights in the judicial system. On the international level, Pakistan is a member of the UN Human Rights Council and ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in March 1996.[21] Yet overall strides toward the realization of women's equality have been limited at best.

The formal recognition of rights has not translated to the free exercise of these rights. While politics in Pakistan have at times suggested the presence of a unique consciousness of the salience of gender parity to democracy and development, today women continue to suffer systematic discrimination and escalating gender-driven violence.

Violence against women in Pakistan is very commonly the result of sex-related issues, economic and social discrimination, the absence of laws protecting women, a strong feudal system, religious and cultural taboos, tradition, a homogeneous religious society, a vast gender gap, and a broken policing system, and failures of the judicial system.

Thousands of women report being victims of violence across Pakistan each year: From January to June of 2010, the Violence against Women Watch Group of the Aurat Foundation reported 4,069 cases of violence against women. Of these, more than a thousand were cases of abduction; 719 women were murdered; 548 women were sexual assaulted or raped by one or more assailants; 285 women committed suicide; 280 women

19 "Pakistan: Outcry over death sentence for 'blasphemy' mother who offered farmhands water," AHRC, 12 November 2010, http://www.ahrchk.net/pr/mainfile.php/2010mr/800/?print=yes

20 1973 Constitution of Pakistan Articles 25, 27, 32, 34 and 35.

21 "8. Convention on the Elimination of All Forms of Discrimination against Women," United Nations Treaty Collection, 10 October 2010

were killed in the name of honor; and 246 women were victims of instances of domestic violence.[22] Last year, there were 8,548 cases of violence reported nation-wide.[23] All figures were collected from media reports and likely represent only a fraction of cases.

Violence against women is rising in Pakistan, along with attacks on religious minorities: In the first eight months of 2010 in Pakistan, 155,829 crimes "of a heinous nature" were reported as opposed to 124,328 reports over the same period of time in 2009. Within that overall increase, the incidence of rape rose by 10 percent and gang-rape cases increased by 12 percent.[24]

From August to September 2010, a woman was gang-raped by policemen in a private detention facility: A woman who received a stay order from court in a dispute over ownership of her house was picked up by policemen and their informants and taken to a private detention centre where she was gang raped for more than 50 days. The rape victim's cases against the accused policemen and their henchmen were withdrawn due to the controversy of the geographical jurisdiction of the police. The medical report of the rape was not issued for more than one month following the medical examination. The victim and her family are in hiding because of continuous police threats to withdraw the case. The deputy inspector generals (DIGs) of the two districts of Karachi metropolitan city refused to entertain the complaints of the victim on the grounds of jurisdiction.[25]

Lawyers from ruling party in Sindh raped 13-year-old girl to retaliate after a boy from her tribe married a girl from theirs in a love match: Six armed men abducted a 13-year-old girl and gang-raped her, leaving her by the roadside. The Sindh police stopped the investigation into the case because of the assailant's ties to the ruling party. A doctor also affiliated with the ruling party blocked the completion of the medical report, which confirmed the rape. The journalists reporting on the case were threatened by the provincial ministers to stop reporting on the involvement of the lawyers. In retaliation, the perpetrators of the gang rape filed a case of abduction against the victim's father. The district executive health officer (DEO-Health) has shown his inability to issue the

22 Press Briefing, "Incidents of Violence against Women in Pakistan Reported during January to June 2010," Violence against Women Watch Group, 2010.

23 "Statistics of Violence against Women in Pakistan in 2009," Press Statement, Aurat Foundation, 1 February 2010.

24 Jam Sajjard Hussain, "Gang rape cases increase by 12pc in first 8 months," The Nation, 21 September 2010, http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Regional/Lahore/21-Sep-2010/Gang-rape-cases-increase-by-12pc-in-first-8-months.

25 "Pakistan: A woman was gang raped and kept for 50 days in a private detention center of police," AHRC, 10 November 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3595/.

provisional medical report, which was already prepared by the government hospital.[26]

Multiple cases of young Christian girls kidnapped, raped, and murdered: Last year, 13-year-old Kiran Nayyaz was raped and impregnated, and 12-year-old Lubna Masih was kidnapped, raped, and murdered in an Islamic cemetery by a group of five Muslim men in Rawalpindi.[27]

Women from religious minorities are most common and vulnerable targets of violence: Women from religious minorities are the most frequent victims of violence, particularly sexual violence. Members of religious minorities are regularly assaulted, tortured or murdered and their property and place of worship are ransacked and desecrated. The blasphemy laws understand blasphemy only as an offence against Islam and are used by a criminal nexus between the police, the administration and religious fundamentalists to intimidate Christians, Ahmadis and all religious minorities in Pakistan. Women are disproportionately affected. It is becoming common in rural areas for Muslim fundamentalists to abduct, force into marriage, and forcibly convert women to Islam. Abductions made up nearly 30 percent of all crimes against women in the first half of 2010.[28]

Ratification of International Covenant on Political and Civil Rights (ICCPR) and UN Convention Against Torture (CAT) double-edged: The June ratification of the ICCPR and CAT suggested progress in Pakistan on human rights issues, however, The government has expressed reservations regarding the convention. Pakistan's government will not criminalize torture (although it is already banned in the Constitution) and specifies reservations regarding those elements of human rights treaties that potentially come into conflict with Sharia law.[29]

Recent legislation opens window for prosecution of perpetrators of violence against women: Formally, Pakistan's judicial system has protections in place that would allow for the investigation and prosecution of violence against women:

> The civil, criminal, and family court systems provide for public trial, presumption

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26 "Pakistan: Lawyers from ruling party and their henchmen gang raped a girl to revenge a love marriage," AHRC, 7 November 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3593/.

27 Jibran Khan, "Pakistan: Violence against women & attacks against religious minorities are on the rise," Asia News, 13 October 2010, http://www.asianews.it/news-en/Violence-against-women-and-attacks-on-religious-minorities-on-the-rise-in-Pakistan-19725.html.

28 Press Briefing, "Incidents of Violence against Women in Pakistan Reported during January to June 2010," Violence against Women Watch Group, 2010.

29 "Pakistan: The government wants impunity on its track record of gross violations of human rights," AHRC, 15 October 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2882/.

> of innocence, cross-examination by an attorney, and appeal of sentences. There are no jury trials. Defendants have the right to be present and to consult with an attorney. Defendants bear the cost of legal representation in lower courts, but a lawyer can be provided at public expense in session and appellate courts. Defendants can confront or question witnesses against them and present witnesses/evidence on their behalf. Defendants and attorneys have legal access to government-held evidence relevant to their cases. Due to the limited number of judges, heavy backlog of cases, lengthy court procedures, frequent adjournment, and political pressure, cases routinely took years, and defendants had to make frequent court appearances. A case starts over when an attorney changes.[30]

In 2006, the Women's Protection Act (WPA) made rape a matter for criminal rather than Islamic courts, removing the requirement that a woman provide four male witnesses to corroborate any claim of rape. The WPA addresses social coercion and statutory rape as well as specifically raising the penalties for gang rape: "When rape is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death or imprisonment for life." The WPA also requires that all rape cases come before a sessions judge, a district-level judge and makes it more difficult to lodge false allegations.[31] Further, the WPA bans prostitution as well as kidnapping and abduction with the intent of forced marriage or sex trafficking. The WPA also prohibits police from "arrest[ing] or hold[ing] a woman overnight at a police station without a civil court judge's consent."[32] Yet both implicitly and explicitly discriminatory legislation remains in place.[33]

Domestic political developments indicate a prime landscape for activism and advocacy: The Ministry of Women's Development, Social Welfare, and Special Education handles rape and sexual assault issues with assistance from non-governmental organizations. Recent changes in law have created a foundation and revealed momentum for progress against domestic violence in Pakistan. The WPA brought rape under the authority of criminal courts and removed barriers to registering charges as well as attempting to put protections for women against police in place.[34] It may be possible to assist in the implementation of these measures and to build on them for future gains for women.

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30 2009 Human Rights Report Pakistan, State Department, 11 March 2010.

31 2009 Human Rights Report Pakistan, State Department, 11 March 2010; "Protection of Women (Criminal Laws Amendment)," Constitution of Pakistan, 1 December 2006.

32 2009 Human Rights Report Pakistan, State Department, 11 March 2010; "Protection of Women (Criminal Laws Amendment)," Constitution of Pakistan, 1 December 2006

33 2009 Human Rights Report Pakistan, State Department, 11 March 2010

34 2009 Human Rights Report Pakistan, State Department, 11 March 2010

New criminal law legislation broadens definitions of sexual harassment: Last year's Criminal Law (Amendment) Bill[35] broadened definitions of sexual harassment and increased penalties for violators.

Legislature has placed Acid Control and Burn Crime Prevention Bill under consideration: The Acid Control and Burn Crime Prevention Bill 2010 would create a National Acid Control Council and "comprehensively defin[e] hurt and disfigurement" as well as categorizing acids as dangerous substances, restricting their sale, more heavily penalizing "unlawful sales," and increasing the maximum sentence for disfigurement significantly — in addition to setting a minimum sentence of seven years. Medical professionals would be required to report acid-related injuries to police. Further, the bill would define the victims of acid attacks as disabled, entitling them to government benefits, and provide for treatment, rehabilitation, and legal aid. Despite its flaws and the uncertainties and obstacles that lie ahead, the Acid Control and Burn Crime Prevention Bill represents a major step in combating acid terrorism in Pakistan. Its successful passage may also signal increased receptivity to the involvement of civil society and international organizations in policy reform.[36]

National Assembly poised to pass Domestic Violence (Prevention and Protection) Bill: The bill has languished in legislative limbo since the National Assembly passed the bill on August 4, 2009, but the Senate did not vote within the Constitutionally mandated three months and let the bill lapse. The bill would establish protection committees to supervise the provision of legal protections and guarantee medical care for victims of domestic violence. Further, it would increase the consequences for perpetrators by making the accused liable for the financial losses and damages inflicted on victims and their dependents as well as imposing harsher sentences on convicted offenders — with special sentencing guidelines regarding imprisonment and fines for repeat offenders. The bill also requires regular review of domestic violence legislation by the National Commission on the Status of Women.

Some of the same hurdles that led to the bill's lapse in the Senate remain. While some cite the opposition of the Council of Islamic Ideology (CII) to the original bill as a causal factor in its lapse, others accuse critics of playing politics with religion by overstating religious opposition. The CII did classify the bill as "discriminatory," pointing to the potential for its use by police as a justification for violating the "sanctity of the home,"

35 http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/14-sexual-harassment-law-zj-02

36 Asma Ghani, "Govt to introduce Acid Control and Burn Crime Prevention Bill 2010," The Nation, 11 September 2010, http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Islamabad/11-Sep-2010/Govt-to-introduce-Acid-Control-and-Burn-Crime-Prevention-Bill-2010

and further objected that the bill would increase divorce rates. Yet the passage of the bill in the National Assembly and support from within Islamist political parties suggest that the obstacles to its passage in the Senate cannot be ascribed to religious opposition solely. Attempts at implementation will have to address several potential flaws of the legislation as well as contending with cultural resistance, the social legacies of a broken justice system, and warped legal tradition. In particular, the protection committees created by the bill may be inadequate, as the members of the police force who comprise them may be among those contributing to the prevalence of gender-based violence and ensuring impunity for offenders.

Further, there is space for external actors and international organizations such as AHRC and ALRC to contribute to the efforts of supporters of domestic violence legislation in Pakistan. These actors may draw attention to the increase in gender-based violence and escalating severity of crimes as well as explicitly raising the profile of the legislation, which has largely disappeared from the radar of international media.

Sexual Violence

Thousands of women subjected to sexual assault by one or more assailants yearly in Pakistan. Every year more than 3,000 women are subjected to rape or gang rape, and the number of instances of rape, domestic torture, and acid attacks is rising.[37] The Pakistan Human Rights Commission estimates that every two hours a woman is raped—and that every eight hours a woman is gang-raped.[38]

Legal definition of rape continues to deny protection to married and betrothed women: Although rape is a criminal offence, the definition of rape does not include marital rape or rape committed following the creation of a marriage contract. Under current law, the penalty for rape can be anything from a fine to the death penalty; those convicted of gang rape ostensibly face life imprisonment or death.[39] The sentences imposed on offenders are often significantly lighter than law allows or even dictates.

Police discouraged and humiliated rape victims, demonstrating strong gender bias and willful negligence: This year, AHRC discovered that police actively blocked and discriminated against two sisters after they were attacked and sexually assaulted and defamed the victims in their police report. The victims attempted to lodge an FIR several times, but that each time they were blocked by Station Head Officer (SHO) Hassan Ali Abdi, a former MQM member and apparent associate of the perpetrator. A legitimate

37 "Annual Report 2009," Human Rights Commission of Pakistan (HRCP), [DATE], p. 2.
38 "Pakistan Votes to Amend Rape Laws," BBC, 15 November 2006.
39 2009 Human Rights Report Pakistan, State Department, 11 March 2010

investigation being carried out by Inspector Nasir Nawab was reportedly interrupted; he was suspended and his investigation stopped. The police report produced is biased and defamatory and alludes to the private and personal life of the rape victim and her sister. The judgments given in the case were unprofessional and unfounded. In his dismissal of the likelihood of rape he reasons that: "It also seems hard to explain that after such heinous/ serious allegations involving the rape of her daughter, the mother can still maintain cordial relations with her son-in-law." He took none of the social, cultural or economic pressures of the situation into account.[40]

Police discouraged family from attempting to prosecute gang-rape of 14-year-old girl, protected assailants: In May of this year, a group of men gang-raped a 14-year-old girl to punish her father for filing charges against them robbery. The police warned the victim's father against pursuing a case against the perpetrators multiple times because of their relationship to a tribal chief and federal government officials, then refused to issue a letter requiring the local hospital to examine her for sexual assault.[41]

Last year, as reported by the Human Rights Commission of Pakistan, a 13-year-old girl was kidnapped and gang-raped by three men, then poisoned at the hospital where she was recovering.[42]

Prominent cases expose participation of state actors in acts of sexual violence against women and children: In most cases, the perpetrators are state agents and powerful persons.[43] In September, two policemen were sentenced to death for kidnapping, raping, and murdering a three-year-old girl.[44] In 2006, notably, three land-owning men with connections to the police raped the 19-year-old daughter of a blind beggar daily for months, impregnating her. After she filed a rape charge, the men attempted to poison her—along with assailants identifying themselves as police officers—and caused her to miscarry at three months. Only after journalists publicized the case did the Ghotki police make any arrests. Police simultaneously pursued charges filed by her rapists against the victim's family members to pressure them to drop charges.[45]

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40 "Update (Pakistan): A report from the Hyderabad police reveals strong negligence and prejudice in the investigation of a rape case," AHRC, 9 April 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3419/.

41 "PAKISTAN: A girl of 14 year was gang raped to take revenge from her father for nominating accused persons in a theft case," Urgent Appeals, Asian Human Rights Commission, 14 May 2010.

42 "Annual Report 2009," Human Rights Commission of Pakistan (HRCP), [DATE], p. 196.

43 "Annual Report 2009," Human Rights Commission of Pakistan (HRCP), [DATE], p. 196.

44 "Annual Report 2009," Human Rights Commission of Pakistan (HRCP), [DATE], p. 196.

45 "PAKISTAN: The Ghotki police fail to act on the gang rape of a 19 year-old girl," Urgent Appeals, Asian Human Rights Commission, 12 July 2006.

Attacks to disfigure and harm women who refuse sexual relationships or marriage continue unabated: In 2009, a new trend in violence against women appeared in many rural areas: men attempting to force girls and women into sexual relationships either shaved their victims' heads or threw acid on their bodies after removing their clothing if they refused. Men now routinely attempt to disfigure or kill women who refuse to be forced into a sexual relationship or marriage. In 2008, five women[46] who refused forced marriages were shot, then buried alive in Baluchistan—and the province's representative defended the perpetrators' "right" to do so. There has been an increase in abduction, forced marriage, and forcible conversion by extremists in rural areas.

In Dadu, police fail to arrest rapists whose identities are widely known: A related aspect of this increase in violence against women was that police and local administration of state failed to protect the victims. In many cases, police were seen siding with perpetrators instead of arresting them. In one case from Dadu of Sindh province, a father and son who raped a widow were never arrested.

Police participate in punishing love marriage with rape and beatings: One woman, Shahnaz Akhtar, who married by choice instead of marrying the family-appointed suitor, a cousin, was publicly raped by her cousin and held in chains at his house indefinitely following her family's discovery of her marriage. Her family was able to use wealth to enlist the help of police officials, who pursued Akhtar, raided her husband's house in search of her, arrested her husband's relatives, and eventually beat her. She miscarried as a result of their abuses.[47]

Domestic Violence

Domestic violence is endemic and increasing in Pakistan. Approximately 80 percent[48] of married women in rural areas fear domestic abuse while 50 percent of women in urban areas report having been subjected to spousal abuse. The Aurat Foundation[49] reports that gender-based violence increased by 13 percent from 2008 to 2009.

Current law defines abuse narrowly and makes it difficult for victims of domestic violence and assault to prove a case against abusers and stops well short of providing legal guidelines and institutional resources to ensure investigation, prosecution, conviction, and punishment of offenders.

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46 http://www.telegraph.co.uk/news/worldnews/asia/pakistan/2660881/Pakistani-women-buried-alive-for-choosing-husbands.html.

47 "PAKISTAN: Rape victim held against her will for months must be freed," Urgent Appeals, Asian Human Rights Commission, 23 January 2008.

48 http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136092.htm

49 http://www.af.org.pk/mainpage.htm.

As with sexual assault, the refusal to report domestic violence[50] is the most basic hurdle: women often do not report domestic violence because of strong social norms and fear of reprisal. Traditionally, there have been few protections for victims. Filing a report and pressing charges against a male family member in particular can expose victims to abuse, mistreatment, and deprivation of dignity at the hands of police and within the justice system.

Under-reporting and system-wide discrimination stymie efforts to analyze and stop gender-based violence and sexual assault: Discrete elements of the challenge facing Pakistan with regard to preventing and punishing both sexual assault and domestic abuse include endemic under-reporting; discrimination on the basis of gender, class, and religion; police corruption and abuses; legal obstacles; and court corruption. No national statistic on rape incidence exists because of under-reporting, while statistics on domestic abuse are likely significantly lower than true incidence rates.

Discrimination by and within the policing system and courts operates along dimensions of gender, class, and religion. Especially in relation to gender-based crimes, problems within the policing system may extend from refusing to record rape charges and demanding bribes to threatening, abusing, and raping the victims of sexual assault who attempt to register and press charges.[51]

Class and socio-economic resources may also be heavily influential in determining whether a crime is registered, investigated, and prosecuted. While the WPA introduced progressive changes into Pakistani law, the requirement that rape cases be heard at the district level may create barriers for women without resources or access to the judicial system.[52] Discrimination based on caste or land-ownership may affect police and justice system treatment of both victims and perpetrators. Resource limitations hinder police from genuine attempts to investigate. Those police who would investigate also face resource limitations, particularly with regard to forensics.[53]

Abduction, Forced Marriage, and Religious Conversion

The abduction of children and women is not condoned by Pakistani law regardless of religion, nor is the obstruction of the complaint-filing process by police. Under the Pakistan Muslim Family Law Ordinance 1962 a girl must be at least 16 and a boy at least 18 before they marry, and both must consent. The Contract Act of 1872 invalidates

50 http://abcnews.go.com/International/wireStory?id=10317283.
51 http://abcnews.go.com/International/wireStory?id=10317283.
52 http://abcnews.go.com/International/wireStory?id=10317283.
53 http://abcnews.go.com/International/wireStory?id=10317283.

a contract if any of the parties are younger than 18. This has been used in High Court arguments against the forced conversion of minors. Further, Pakistan is a state party to the UN Convention on the Rights of the Child and has adjusted its legal framework accordingly. However such violations continue.

As many as 20 to 25 girls from the Hindu community are abducted every month and converted forcibly, according to Amarnath Motumal, an advocate and council member of the Human Rights Commission of Pakistan. Many abducted girls are raped, others are never heard from again by their families; all cases involved a struggle to access their right to redress. The AHRC has documented numerous cases in which police have ignored or excused themselves from investigating crimes that involve a Madrassa or Muslim cleric. The protection of the national religion does not involve the promotion of its figureheads above the law; this tendency has simply allowed Islam to become a shield behind which human rights violations can take place.

Although Pakistan has few legal protections for religious minorities, the country is bound to a variety of international conventions that bind it to a standard of protection: Pakistan is a state party to the International Covenant on Civil and Political Rights (ICCPR) which claims (in Article 18.1) that: *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice. Article 18. 2 of the ICCPR states that: no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice*. These are both echoed in the Declaration of the General Assembly.

The Convention on the Rights of the Child covers the protection of children of religion minorities: Article. 30 states that children: *shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language*.[54]

Police continue to refuse to investigate disappearance of young, deaf domestic helper: A young deaf girl has been missing since June 2006 and that police have refused to investigate the case; instead they have acted as brokers for the suspected perpetrators. The 17-year-old was hired by a well known politico-religious family in Punjab to assist during a marriage ceremony and has not been seen or heard from since. Her family was told that she had been sent to the house of a relative of the employer – a military officer; all further attempts to find her have been thwarted by the former employers and local police. The mother and her three daughters have moved to sheltered accommodation due to continuous threats, and report being warned against filing a legal case. Although the

54 "Pakistan: A young Hindu girl is detained and forcibly converted by a Madrassa; police refuse to act," AHRC, 23 April 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3431/.

case was recently filed at the request of the Chief Minister, it was quickly closed by police officers. The girl remains missing.[55]

Muslim extremists increasingly forcing marriage and religious conversion on women of religious minorities: Religion can also function both as a primary motivation and as a determinant of criminal complaint outcomes. The increase in forced marriage and forcible conversion by Muslim extremists may owe in part to the aversion of the state to protecting the rights of religious minorities. The U.S. State Department 2009 Human Rights Report for Pakistan concludes that both organic reluctance and outside pressure contribute to the courts' religious bias:

> Courts routinely failed to protect the rights of religious minorities. Judges were pressured to take strong action against any perceived offense to Sunni orthodoxy. The judiciary rarely heard discrimination cases dealing with religious minorities.[56]

Other manifestations of religious bias include socially condoned instances of harassment at work.

Women and men choosing love marriages are persecuted with police collusion: Ms. Gohar Taj was severely beaten by her brothers and taken to a remote part of the province in 2006 when she told her family that she wished to marry Fazal Subhan. Even so, the two went ahead with a court marriage on 13 December 2006 and had a child. Since then a member of Fazal's family has been murdered every year, coinciding with the annual return of Gohar's younger brother Israel, who works in Dubai. The murders were preceded with threats from him and his elder brother Ismail. The AHRC has been informed that the bride herself, who has a young son, has escaped kidnap attempts by the brothers, who have told her of their intention to kill her; however complaints to the local police were not taken up to any degree. We have learned that Israel is now in Pakistan again and has already sent a message to the groom's family demanding that they hand over Ms. Gohar or their last surviving son, Abdul Haleem Khan, will also be killed. The authorities continue in 2010 to neglect and deny protection to the family.[57]

A Christian teacher in Lahore was harassed and assaulted by Muslim colleagues, then dismissed without notice: This year, Julia Austin suffered from harassment and physical assault instigated by a Muslim colleague before she was dismissed without notice or

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55 "Pakistan: A young deaf domestic helper disappears from the home of an army official; police refuse to investigate," AHRC, 15 January 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3350/.

56 2009 Human Rights Report Pakistan, State Department, 11 March 2010.

57 "Pakistan: Urgent protection needed for the survivors of love marriage-related murders; police refuse to investigate," AHRC, 5 March 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3388/.

severance on false ground in clear violation of her rights as an employee. Already having difficulty finding a new job, Ms. Austin was unwilling to file an official complaint for fear of repercussions.[58]

A fifteen-year-old girl was forced to convert to Islam and marry, kept captive at Madrassa: Gajri, 15, disappeared from the home of her Hindu parents in Katchi Mandi, Liaquatpur, in Punjab's Rahim Yar Khan district. They were told that she had been abducted by a neighbor, who after going missing for several days, returned home alone. Soon after her disappearance the station head officer (SHO) of the local police station, Saddar Circle Police Station, Liaquatpur sub-district received a letter and an affidavit from a Madrassa that said that Gajri had embraced Islam and had married the neighbour, a Mr. Mohammad Salim. In January the parents tried to file a case of abduction against their neighbor and the Madrassa but report being refused help by District Police Officer (DPO) Mr. Imtiaz Gul. He allegedly told them that he had no power to intervene in matters of religion conversion, and that their daughter was now the property of the Madrassa. He noted that Islam was a religion that could be entered, but not exited.[59]

Acid-Throwing

Acid-related crimes are increasing. Last year, the Acid Survivors Foundation (ASF) reported 48 acid attacks, as compared with just 30 such incidents in 2007. ASF figures suggest family members perpetrate nearly half of acid attacks (48 percent), rejected suitors are responsible for a quarter (25 percent), and "collateral damage" accounts for 12 percent.[60] Yet Pakistan does not regulate the sale of acid adequately, albeit in part because it is a common household good.

Existing legislation does not address acid-related crime specifically, allowing perpetrators to escape with light sentences – or evade punishment altogether. Enforcement varies by region, the need for federal legislation setting minimum sentences and oversight of local implementation.

The breakdowns that reduce the likelihood of an assailant being brought to justice begin at the local level. Many assaults go unreported because of fear or lack of faith in law enforcement and the judicial system. When victims do report acid attacks, police may demand a bribe to investigate, refuse to investigate, or accept a bribe to drop the case.

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58 "PAKISTAN: A Christian teacher faces systematic discrimination at work and is dismissed without valid ground or lawful compensation," Urgent Appeals, Asian Human Rights Commission, 30 July 2010.

59 "Pakistan: A young Hindu girl is detained and forcibly converted by a Madrassa; police refuse to act," AHRC, 23 April 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3431/.

60 Official Web Site of Acid Survivors Foundation, Accessed 17 November 2010, http://acidsurvivorspakistan.org/

Prosecutors and courts are susceptible to the same extralegal influences. Illegal out-of-court settlements routinely deprive victims of formal justice and keep acid attacks out of the judicial system entirely.

A 22-year-old woman was doused with acid by family members over household chores: After Manzoor, 22, told her mother-in-law that she would do the dishes later so she could attend to her crying daughter, her in-laws beat her unconscious and poured acid onto her body, fusing her chin to her chest and destroying her lower lip, neck, and chest.[61]

Man throws acid on family members after dispute: In May, a man in Saahowali-Sialkot village threw acid on his wife, mother-in-law, and two brothers-in-law following a marital disagreement. His wife and mother were left in critical condition while the perpetrator escaped.[62]

Two young girls survived random acid attack: This April, unknown assailants threw acid on 13-year-old Gul Babo and 12-year-old Durjamal in Dalbandin of district Chaghi, requiring emergency treatment and later referral to Quetta for specialized medical care. The motive was unknown.[63]

Acid attack disfigures three sisters in Kalat: Also this April, assailants threw acid on three sisters, probably as punishment for walking to meet family without a male relative to escort them. The girls had to be rushed to the hospital for emergency treatment, and one of the three was left in critical condition and referred to Quetta for further care.[64]

Honour Killings and Jirgas

Honour killings continue unabated in Pakistan, some sanctioned or even mandated by jirga. The United Nations Population Fund estimates that 5,000 women die each year in honour killings.[65] A special case within forms of assault and gender-based crimes,

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61 Orla Guerin, "Pakistan acid victims rebuild ruined lives," BBC, 13 April 2010, http://news.bbc.co.uk/2/hi/8609512.stm.

62 "Man throws acid on wife, in-laws," The Nation, 23 May 2010, http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/International/23-May-2010/Man-throws-acid-on-wife-inlaws.

63 "Acid thrown at two girls in Dalbandin," The Nation, 14 April 2010, http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/International/14-Apr-2010/Acid-thrown-at-two-girls-in-Dalbandin.

64 "Acid attack defaces three sisters in Kalat," The Nation, 30 April 2010, http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Politics/30-Apr-2010/Acid-attack-defaces-3-sisters-in-Kalat.

65 UNIFEM Facts & Figures on Harmful Traditional Practices. 2007. (UNIFEM drew this figure from pg. 39 of the following report: General Assembly. In-Depth Study on All Forms of Violence against Women: Report of the Secretary-General, 2006. A/61/122/Add.1. July 6, 2006.)

honour crimes are generally assaults motivated by the intent to punish the victim, typically a family member, usually female. Punishment may take the form of deliberate disfigurement and mutilation, sexual assault, beating, or murder. Often the forms of murder are particularly horrific, intended as a graphic example and deterrent. Prominent examples of honour killings include burying victims alive and stoning them to death.

More than 600 women die each year in honour killings, and their perpetrators enjoy impunity: In Pakistan alone, 1,401 women were murdered in 2009, of whom 647 were the victims of honour killings, including karo-kari. In February, a man shot and murdered his married niece because he merely "'suspected' her of loose morals." Meanwhile, the same month, a man murdered his 17-year-old sister, Marvi, also in the name of honor, and although her body was taken to the local hospital, authorities failed to so much as register a case. Similarly, a father, Haji Muhammad Sadiq, killed his daughter by burning her with kerosene for marrying without consent.[66] A couple who married without consent were declared karo-kari for doing so and have been pursued for more than four years by persons from their tribe seeking to kill them.[67] Evidence is not required; suspicion of immoral behavior is sufficient to justify an honour killing, as in the case of Ms. Sabhai, killed by her brother at a bus stop in front of her adult son, over his protests, because he suspected her of illicit sexual relations with a distant relative.[68]

State actors participate or grant impunity to perpetrators of honour killings: Legal and social complicity results in near impunity for those who continue to abide by jirga rather than law and who perpetrate honour killings. This May, a young couple was marked for death by a jirga that included police officers because the woman had denied a suitor selected by her family in favor of her husband, who came from outside of the tribe. Despite an eventual Sindh High Court ruling in favor of the couple, community members and police continued to persecute the couple and the groom's family.[69] The government refused to offer an assurance of protection to another couple forced into hiding after being declared Karo-Kari for an inter-tribal marriage, with the result that they and their infant remain in hiding without income or resources.[70] In September, a man murdered his sister in the judicial complex.[71] Many accounts of honour killings do

66 "Annual Report 2009," Human Rights Commission of Pakistan (HRCP), [DATE], p. 197.

67 "PAKISTAN: Threat of death of a young couple under the name of honour killing," Urgent Appeals, Asian Human Rights Commission, 30 June 2008.

68 "PAKISTAN: A brother killed his sister on the pretext of honour killing," Urgent Appeals, Asian Human Rights Commission, 5 August 2004.

69 "PAKISTAN: A couple is death marked by a jirga court chaired by a policeman," Urgent Appeals, Asian Human Rights Commission, 25 May 2010.

70 "PAKISTAN: A young couple is in hiding after a tribal court sentenced them to death for their inter-tribal marriage," Urgent Appeals, Asian Human Rights Commission, 25 February 2009.

71 "Annual Report 2009," Human Rights Commission of Pakistan (HRCP), [DATE], p. 203.

not even specify the ostensible transgression the victims are accused of committing, much less offering evidence of guilt or justification.

Jirga headed by policemen declared a love-marriage couple 'Karo-Kari' and sentenced them to death: A couple have been declared 'Karo-Kari' and sentenced to death by an illegal tribal court, but cannot get protection or redress from the Pakistan authorities. The tribal court was allegedly chaired by the bride's uncle, a policeman, and includes her father, who is also an officer. Two attempts have already been made to abduct the couple, and the groom's home has been violently attacked and burned, with his young brother and sister both injured. Three of his family members were illegally detained and tortured by local police for more than two weeks. Despite this, all efforts to register complaints with the local police stations have reportedly been blocked, except for the complaint by the bride's father against her new husband. No criminal investigation has been launched in the case and all routes taken by the victims to bypass the police via the Sindh High Court have proven futile. No perpetrators have been arrested and the couple remains in hiding. The relatives of the groom are also still in danger in their village, where they are being widely subjected to a social and economic boycott.

"Pakistan: A couple is death marked by a jirga court chaired by a policeman," AHRC, 25 May 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3459/

Jirga members pressure Hindu teenager raped by Muslim man to marry rapist and convert to Islam—with police complicity: Four men abducted Ms. Kastoori on January 24,, the eldest of whom then raped her. She was recovered the next day from the mens' residence, where she was tied up, by a group from her community. On 26 January Kastoori's parents tried to register a First Information Report at Nagar Parker police station but were turned away. Because of this they could not obtain an official medical checkup for her at the civil hospital or the Nagar Parker hospital, which they attempted to arrange on 27 January. The family rejected an out of court sum offered to them by the father of the three perpetrators, Muhammad Bachaal Khoso, who is an office bearer for the local ruling political party and reportedly wields political influence. He arranged a jirga – an illegal tribal court – on 9 February, allegedly within the knowledge of Nagar Parker police officers. The jirga members allegedly pressured the victim's family to accept the marriage of the victim to her rapist and her conversion Islam. The family rejected this proposal and continued to try to use legal channels.[72]

Murders claimed to be "honour killings" post facto: The use of "honour" as a pretext for murder or a post facto rationalization is widespread and makes investigation of these

72 "Pakistan: A Hindu teenager is told to marry her alleged rapist by jirga members; police and courts fail to act," AHRC, 19 March 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3395/ .

murders even less likely. In September 2004, a man shot his wife after she angered him by not serving dinner quickly enough, then claimed that it was an honour killing because of her "loose moral character." Police did not capture the murderer.[73] In the same month, the AHRC documented the case of a woman shot and killed by her nephew in front of family members. The two were embroiled in a disagreement that the nephew refused to explain as they argued, instead shooting her then claiming that she was guilty of adultery—then fleeing the village.[74]

A complex related issue with regard to the status of women in Pakistan is the phenomenon of so-called "honour suicides," in which a woman is pressured to kill herself—or her death is presented as a suicide to escape punishment. Last year, 563 women committed suicide while 253 attempted suicide.[75]

State fails to act on 2004 ruling of Sindh High Court declaring jirgas illegal: Pakistan's jirga system continues to lead the country in feudal practices that are contrary to legal and human rights principles. The state has refused to implement the 2004 ruling of Sindh High Court declaring jirgas illegal because opposing jirgas would come at the cost of political support. The Supreme Court of Pakistan, the independent judiciary, has not implemented up until now this verdict of the Sindh High Court.

Much of the violence committed against women and children emanates from this jirga system. The practice of honour killing is an atrocious form of violence against women that is committed almost daily within the country. While the jirgas allow and support this practice, it has been almost impossible to take effective legal action against the perpetrators.

Until the Government of Pakistan takes strong steps to implement the April 2004 decision of the Sindh High Court, which ruled jirgas illegal and dictated that law enforcement take action against jirgas, progress cannot be made in improving Pakistan's justice mechanisms and human rights situation. Jirgas also perpetuate crimes against women by promoting the idea that they can be excused and erased by compensation or extrajudicial tribunals.

In some cases, resistance to jirga rulings and extrajudicial settlements punished by death: This June, a young man who supported his 13-year-old sister after she was gang-

73 "PAKISTAN: A young woman killed by her husband with false allegation," Urgent Appeals, Asian Human Rights Commission, 24 September 2004.

74 "PAKISTAN: A woman killed by her nephew on the pretext of honour killing," Urgent Appeals, Asian Human Rights Commission, 9 September 2004.

75 Annual Report 2009, Human Rights Commission of Pakistan, February 2010.

raped and refused settlements was found dead, likely as a result of his resistance to this extrajudicial feudal system.[76]

Human Trafficking Takes Steep Toll on Women and Children

Women and children are especially vulnerable to the terrible effects of human trafficking in Pakistan, which remains one of the primary destination countries for human trafficking in South Asia as well as a source and transit country. As the U.S. State Department Human Rights Report on Pakistan stated, "Widespread trafficking in persons, child labor, and exploitation of indentured and bonded children were ongoing problems."[77] Victims of human trafficking may be forced into not only labor but also begging, sex work, drug smuggling, and organ donation.[78]

The victims of human trafficking are forced primarily into bonded labor, but women are also sold into domestic servitude, prostitution, and forced marriage. Those who purchase women include rich visitors, wealthy Pakistanis, and rural farmers.[79] Other women are given or traded to meet debts or settle disputes among individuals and communities. Children trafficked from Pakistan go to countries such as the United Arab Emirates, where more than 19,000 Pakistani children have been sold into labor or sex work.[80] Meanwhile, to date, more than a million women from Bangladesh and 200,000 from Burma have been trafficked into Pakistan.[81]

Victims of human trafficking are especially vulnerable to failings of the rule of law: Those women and girls from within Pakistan sold into labor and those who have been trafficked into the country are especially vulnerable to victimization by the police and legal system because of their compromised legal status. Further, authorities do not consistently screen those arrested for prostitution to determine if they have been victims of trafficking.[82] In particular, girls and women illegally trafficked into Pakistan may find their situations compounded by illegal immigration charges and imprisonment; those forced into sex work may be charged with adultery or other sex-related legal violations.

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76 "PAKISTAN: The brother of a rape victim has been found murdered three months after his arrest," Urgent Appeals, Asian Human Rights Commission, 29 June 2010.

77 2009 Human Rights Report Pakistan, State Department, 11 March 2010.

78 Amir Murtaza, "Pakistan: Super floods make children and women vulnerable to trafficking," AHRC, 20 September 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2841/.

79 "Trafficking in Women and Prostitution in the Asia Pacific," Asia Pacific, CATW.

80 LHRLA, Indrani Sinha, SANLAAP India, "Paper on Globalization & Human Rights".

81 Indrani Sinha, SANLAAP India, "Paper on Globalization & Human Rights".

82 "Pakistan," Trafficking in Persons Report 2009, U.S. Department of State, June 2009.

A British woman has been slaughtered in public in a family dispute

Pakistani Women Human Rights Organization condemns, Britain, reports that Tania Yousaf, 22, of Nelson Lancashire, was killed on 20 May along with her parents, Mohammed and Pervez Yousaf, at a graveyard near Gujrat. Andrew Stephenson, Member of Parliament in the UK, who has taken up the case, has revealed that Qamar Abbas and Sheraz and Naveed Arif, who were related to the Yousaf family, and arrested for the murders, had "unbelievably" been granted bail. During the brutal attack, which took place during a family visit to Pakistan for a wedding, after dragging Tania from the car, the attackers made her call her husband for help on her mobile phone and killed her with him listening on the line. The sheer brutality of the murders has been reveled at Tania's postmortem, when scores of bullets were recovered from her body. Sheraz and Naveed Arif are the brothers of a woman, who had been married to the eldest brother of Tania, and their marital difficulties are thought to have led to the murder.
Since October 2009, ten British citizens and two other European citizens were murdered in Pakistan.

A 13 year old girl was raped for 21 days by policemen; the ineptness of the courts provide protection to perpetrators

Natasha, 13 year-old girl, was continuously gang-raped, mentally, and physically tortured by police officials during 21 days of illegal detention. After finding that she was pregnant, the policemen produced her before a Session court under false charges. The girl was sent to jail where she was finally released on bail. The judge who heard her case was unable to investigate the perpetrators, as they obtained a "stay order" from the Lahore High Court, which prevents any police action against them. Their barbarian crimes thus remain unpunished.

The News International reported that 13 year old school girl of class-VII student Natasha, daughter of a stone crusher Muhammad Aslam, approached the Additional Sessions Judge (ASJ) of Taxila, Punjab province, Mr. Rao Abdul Jabbar Khan and narrated to him her mental and physical torture in detention. She also told him that she was raped for 21 days by the policemen during her detention and she was pregnant.

After recording her statement, the judge ordered Natasha's medical examination and directed the chief police officer (CPO) Rawalpindi district, Punjab, to register a case against the accused policemen, and complete investigation within 14 days. Police authorities have failed to act against the accused policemen despite the passage of one month. The RPO says the accused obtained a "stay order" from the high court to pre-empt police action, so he is waiting for the day when the court vacates that order. http://www.ahrchk.net/statements/mainfile.php/2010statements/2550/

The brother of a rape victim has been found murdered three months after his arrest

A young man has been found three months after his arrest in the midst of a campaign for legal redress for his sister, Kainat Soomro, who was gang raped in 2007. Sabir Soomro supported his teenage sister throughout a badly and unprofessionally tried rape case, resisting a number of settlement offers from the suspects before they were acquitted in May. He faced harassment and false murder charges – being remanded for nine months for the murder of his wife, who is alive – before being rearrested in March. His body was found on 26 June, the UN international day against torture. His sister and parents took the corpse to the house of the provincial governor but have been stopped from demonstrating by police. No inquiry has yet been announced.

The case of Kainat Soomro led to public outrage after the 13-year-old gang rape victim was cross examined lasciviously, and in front of a large public audience last year. In the years leading up to the trial her family was forced to leave their home town due to threats, and had fought hard to get the case into the legal system after police refused to register the First Information Report (FIR).

Sabir Soomro was discovered dead on 26 June 2010 more that 1000km away in Balochistan, near Khuzdar, which is the home town of Ali Hasan Buledi, the main perpetrator, and others believed to have been supporting the rape suspects.

PAKISTAN: A woman was sentenced to death by stoning through a Jirga on the charges of walking with a man

Women's Action Forum (WAF), an alliance of women organizations in Pakistan, reported that the incident another judgment of Rajm (stoning to death) for illicit relations, pronounced by a self-styled Jirga, an illegal court in Kala Dhaka, Pakhtoonkha province on an accusation that a man and a woman were seen walking together in a field in Madakhail.

The accused man, Zarkat, escaped on hearing the Jirga's verdict of Rajm, the accused woman was captured by the Jirga members and reportedly is being held at a secret place in Manjakot, pending the Rajm punishment. As usual, it is the woman who is made to bear the brunt of such atrocious barbarism, injustice, and inhuman, unIslamic sentences. WAF notes with grave concern that the federal and provincial Governments did not heed the higher judiciary's pronouncement of Jirgas and Punchayats to be illegal and parallel systems of "justice" and instructions to the Government to eradicate them, to punish those who participate in them, and to disallow their so-called judgements to be

implemented (vide Sindh High Court and Supreme Court landmark judgements). This is still happening with total impunity all over the country, showing the Governments' lack of political will and commitment, a disregard for the sanctity of the Constitutional trichotomy of powers, and the helplessness of the law enforcement agencies and legal systems in the face of continuing arrogant political feudal and tribal patriarchal dispensations. http://www.ahrchk.net/statements/mainfile.php/2010statements/2683/

The brother of a rape victim has been found murdered three months after his arrest

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Religious Freedom and Minorities

Pakistan's religious minority groups – including Hindus, Christians, Sikhs, Jews, Ahmedis, and Buddhists – continue to face discrimination and abuse at the hands of both state and non-state actors in 2010. Members of religious minorities are socially, economically, and legally disenfranchised and targeted as victims of abduction, forced conversion, and other forms of assault and violence.

Although Pakistan has adopted legislation nominally guaranteeing religious freedoms, the government still has not taken steps to ensure basic rights or establish protections and

security for minorities. Further, the state has done nothing to amend or revoke those laws and Constitutional provisions that permit and perpetuate discrimination. At local and regional level, illegal actions against religious minorities go unpunished and thus continue to propagate. Fear of reprisal keeps many victims from reporting abuses, while those who do report incidents may have their allegations dismissed or inadequately investigated.

The AHRC finds that a wide range of measures can and should be taken to protect and empower religious minorities—including statements in support of religious tolerance and equality as well as programmes promoting the education of religious minority girls, the restoration of health facilities in predominately minority areas, and the provision of micro-credit loans to entrepreneurs to encourage their empowerment. Ending the bonded labour system, under which women are especially vulnerable to sexual exploitation from employers, is also imperative. Further, the state should seek to prevent and punish instances of abduction and ensure that police officers adequately investigate cases of rape and abduction involving religious minorities or be sanctioned.[83]

Lack of social and economic empowerment puts religious minority women at extreme disadvantage: Recent surveys have revealed for instance that 87 per cent of scheduled caste Hindu women were illiterate compared to 63.5 per cent of males of their community, given that the national illiteracy rate among Pakistani women reaches 58%. The gap between the primary school enrolment rate of the scheduled castes women (10.2%) and the average rate (48% of Pakistani females) also tells much about the huge discrepancy existing between the opportunities offered to women from minority communities and Muslim women. Of course, Pakistan's Muslim women, as such, already face extremely high difficulties in accessing education and in obtaining equal socio-economic opportunities as men.[84]

Religious minority women face incredible discrimination despite CEDAW: Pakistan has already ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), yet the social and economic conditions faced by women of religious minorities are inhumane. In urban areas, women from religious minorities are most often employed as manual scavengers or sanitary workers for insignificant wages—less than $12 US dollars per month. In rural areas, they sometimes handle small agricultural tasks such as picking of cotton and chillies for marginal wages, when their families are not trapped into the system of bonded labour. Moreover, when women manage to generate resources through those activities, their incomes are managed by the

83 Juliette Thibaud, "Religious minority women, the forgotten victims of a fragmented society," AHRC, 3 May 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2524/.

84 Juliette Thibaud, "Religious minority women, the forgotten victims of a fragmented society," AHRC, 3 May 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2524/.

family head. Such practice further marginalizes women from economic empowerment and leads to a somehow paradoxical situation in which those handling the double-work load of low-paid manual labour in agriculture, domestic services or as manual scavenger and of unpaid domestic labour at home are those who benefit the least from the income they generate through it.[85]

Girls and young women are abducted and forced into marriage and religious conversion: The AHRC has documented numerous cases in which police have ignored or excused themselves from investigating crimes that involve a Madrassa or Muslim cleric. The protection of the national religion does not involve the promotion of its figureheads above the law; this tendency has simply allowed Islam to become a shield behind which human rights violations can take place unaddressed. The AHRC is concerned by the lack of legal protection for crimes involving forced conversions, but is also strongly censures the lack of police action in such cases when other laws and fundamental rights are allegedly violated.[86]

Women younger than 16 are not supposed to be married, and it is illegal to force women to marry without their consent: The abduction of children is not permitted under any circumstances in Pakistan. Under the Pakistan Muslim Family Law Ordinance of 1962 a girl must be at least 16 and a boy at least 18 before they marry, and both must consent. The police are duty-bound to investigate the ages of those entering into a marriage following the complaint of a parent. It should also be noted that the Contract Act of 1872 invalidates a contract if any of the parties are younger than 18. This has been used in High Court arguments against the forced conversion of minors.[87]

A Young Hindu woman was forced into marriage and Islam by her parents' landlord: On October 16, 2009, the parents of Miss Gomti (15) went to their landlord's house to ask about their daughter, who worked at the house as a domestic servant. Her parents had not seen her since 12 October. They were told that she had left with the landlord two days earlier, but that he had not mentioned where he was taking her. Miss Gomti's parents are field workers in Ahmedpur Sharqiya, Bahawalpur, Punjab for the landlord, Mr. Asghar Ali.

Gomti's father, Bheeka Ram, and his wife took the case to the Shahi wala police chowki, but were told that she would likely be returned soon. The parents contacted Mr. Ramesh

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85 Juliette Thibaud, "Religious minority women, the forgotten victims of a fragmented society," AHRC, 3 May 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2524/.

86 "Pakistan: A young Hindu girl is detained and forcibly converted by a Madrassa; police refuse to act," AHRC, 23 April 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3431/.

87 "Pakistan: A young Hindu girl is detained and forcibly converted by a Madrassa; police refuse to act," AHRC, 23 April 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3431/.

Jay Pal, the vice president of the National Peace Committee for Interfaith Harmony in Punjab, formed by the federal government. On 18 October 2009 he arranged a Punchayat, a meeting of representatives from different Muslim groups, who resolved to find Gomti and try to help her.

After about six weeks she was found with Asghar Ali at a village called Wali Ka Dera, in the Khanpur sub-district of Rahim Yar Khan, a remote place in the desert about 130 km from the girl's home. Ali told the Punchayat that Gomti had married one of his peasants, a Mr. Liaquat Ali, after converting to Islam. Her marriage certificate claims that she is 19. Her alleged husband could not be produced. When Gomti was presented to the group by staff from the local seminary, her name had been changed to Sughra, a Muslim name. She was not be aware of this change.

Gomti's parents claim that they were only able to meet her in the presence of employees of Asghar Ali. She appeared to be under pressure, and reportedly asked her parents to convert to Islam. The parents were not able to take her home with them and we are told that she has been missing from the village since February.[88]

Jirga members pressure Hindu teenager raped by Muslim man to marry rapist and convert to Islam—with police complicity: Four men abducted Ms. Kastoori on January 24,, the eldest of whom then raped her. She was recovered the next day from the mens' residence, where she was tied up, by a group from her community. On 26 January Kastoori's parents tried to register a First Information Report at Nagar Parker police station but were turned away. Because of this they could not obtain an official medical checkup for her at the civil hospital or the Nagar Parker hospital, which they attempted to arrange on 27 January. The family rejected an out of court sum offered to them by the father of the three perpetrators, Muhammad Bachaal Khoso, who is an office bearer for the local ruling political party and reportedly wields political influence. He arranged a jirga – an illegal tribal court – on 9 February, allegedly within the knowledge of Nagar Parker police officers. The jirga members allegedly pressured the victim's family to accept the marriage of the victim to her rapist and her conversion Islam. The family rejected this proposal and continued to try to use legal channels.[89]

A young Hindu woman was kidnapped and forced to marry and convert to Islam: On 21 December 2009 Gajri (15) was taken from the home of her Hindu parents in Katchi Mandi, Liaquatpur, in Punjab's Rahim Yar Khan district. They were told that she

88 "Pakistan: A Hindu girl has been abducted by a landlord and forcibly converted to Islam; the authorities have refused to intervene," AHRC, 18 April 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3427/.

89 "Pakistan: A Hindu teenager is told to marry her alleged rapist by jirga members; police and courts fail to act," AHRC, 19 March 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3395/.

had been abducted by a neighbor. After several days, the neighbor returned home alone. Gaijri's father, Mengha Ram, and her mother, tried to file a First Information Report (FIR) after she'd gone missing but were discouraged by station staff.

On 26 December the station head officer (SHO) of the local police station, Saddar Circle Police Station, Liaquatpur sub-district, received a letter and an affidavit from a Madrassa that said that Gajri had embraced Islam and had married the neighbour, a Mr. Mohammad Salim. The letter did not enclose a marriage certificate. The police only told the parents about the letter days later when they returned to the station hoping to be allowed to file the case according to their legal rights.

Rejected once more by police officers, Mengha Ram and his wife contacted the vice president of the National Peace Committee for Interfaith Harmony in Punjab, under the federal government. With his help they met the Imam in charge of the Darul-Uloom Madressa in Khan Pur. The Imam, Mr. Maulana Abdul Hafeez, told them that their daughter had embraced Islam and was not allowed to see her parents.

At the insistence of Mr. Ramesh and with the alleged permission of the local police, a meeting was arranged between the girl and her parents, in the presence of many Madrassa members. Her parents reports that Gajri appeared very upset when questioned about her conversion and did not confirm it. The majority of the questions directed at her were answered by Madrassa staff.

In January the parents tried to file a case of abduction against their neighbor and the Madrassa but were refused help by the District Police Officer. He told them that he had no power to intervene in matters of religion conversion, and that their daughter was now the property of the Madrassa. He noted that Islam was a religion that could be entered, but not exited. To date, no marriage certificate has been produced, and Gajri's parents continue to be denied access to their daughter and refused any form of help from the authorities. The police still have not allowed her parents to file an FIR.[90]

Legally Sanctioned Religious Inequality

Pakistan's Constitution and Penal Code have institutionalised inequality between Islam and non-Islamic religions. The Constitution declares Islam to be the state religion and states that sovereignty belongs to Allah, effectively granting the Muslim clergy, who claim that it alone knows the will of Allah, exclusive authority in legislating and interpreting the laws. Islamic provisions of the Constitution, including Articles 227, 228, 229, require

90 "Pakistan: A young Hindu girl is detained and forcibly converted by a Madrassa; police refuse to act," AHRC, 23 April 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3431/

all laws to be interpreted in the light of the Quran and that "all existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Quran and Sunnah." These provisions greatly enhance the authority of the Muslim clergy and are easily exploited by radicals to justify the perpetuation of religious hate and intolerance.

As stated in last year's Annual Report, the AHRC favors action by the government of Pakistan to review its legal provisions and implement legislation that will ensure all individuals' rights to the freedom of thought, conscience and religion as enshrined in Article 18 of the International Covenant on Civil and Political Rights. Article 20 of Pakistan's Constitution also guarantees each citizen's freedom "to profess religion and to manage religious institutions". Article 33 makes it the responsibility of the state to "discourage parochial, racial, tribal, sectarian and provincial prejudices among the citizens, while Article 36 ensures that the state "shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services". These legal principles must be enacted with genuine political will on the part of the government to generate positive impact.

Relevant excerpts from the Constitution of Pakistan:

227. Provisions relating to the Holy Qur'an and Sunnah.

(1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.
[242] [Explanation:- In the application of this clause to the personal law of any Muslim sect, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect.]

(2) Effect shall be given to the provisions of clause (1) only in the manner provided in this Part.

(3) Nothing in this Part shall affect the personal laws of non- Muslim citizens or their status as citizens.

228. Composition, etc. of Islamic Council

(1) There shall be [243] constituted within a period of ninety days from the commencing day a Council of Islamic Ideology, in this part referred to as the Islamic Council.

(2) The Islamic Council shall consist of such members, being not less than eight and not more than [244] [twenty], as the President may appoint from amongst persons

having knowledge of the principles and philosophy of Islam as enunciated in the Holy Quran and Sunnah, or understanding of the economic, political, legal or administrative problems of Pakistan.

(3) While appointing members of the Islamic Council the President shall ensure that:
(a) so far as practicable various schools of thought are represented in the Council;
(b) not less than two of the members are persons each of whom is, or has been, a

Judge of the Supreme Court or of a High Court;
(c) not less than four of the members are persons each of whom has been engaged, for a period of not less than fifteen years, in Islamic research or instruction; and (d) at least one member is a woman.
[245] [(4) The President shall appoint one of the members of the Islamic Council to be the Chairman thereof.]

(5) Subject to clause (6) a member of the Islamic Council shall hold office for a period of three years.

(6) A member may, by writing under his hand addressed to the President, resign his office or may be removed by the President upon the passing of a resolution for his removal by a majority of the total membership of the Islamic Council.

229. Reference by Majlis-e-Shoora (Parliament), etc. to Islamic Council.

The President or the Governor of a Province may, or if two-fifths of its total membership so requires, a House or a Provincial Assembly shall, refer to the Islamic Council for advice any question as to whether a proposed law is or is not repugnant to the Injunctions of Islam.

Seventy-one Dalit families left their ancestral village to protest the forced marriage and conversion of a 15-year-old girl: In March 2010, 400 Dalit Meghwar people left their houses and their ancestral village to protest the abduction of a 15-year old girl, Daya, who was forced to marry an influential Muslim man and convert to Islam. The Muslim abductors threatened the families not to alert the authorities nor resist in the case of future abductions. Fearing for the safety of the other girls of the community, the Meghwar families migrated and asked for protection. They have settled down in the plains near Mithi Town, with the consequence of being deprived of their source of income, food and access to drinkable water. There has been no government response or assistance.[91]

91 Juliette Thibaud, "Religious minority women, the forgotten victims of a fragmented society," AHRC, 3 May 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2524/.

A university professor was attacked by Muslim extremist students and badly injured: According to information from the victim and from civil society group. The Joint Action Committee, Dr. Iftekhar Hussain Baloch was severely injured during an attack by students on 1 April 2010. The professor is the chairman of the disciplinary committee of Punjab University as well as the principal of the Earth and Environment College affiliated with the university. Some of his attackers are reported to have been expelled students, most of them members of Islami Jamiate Tuleba (IJT), the student wing of militant Islamic political party, Jamate Islami (JI).

University officials identified dozens of IJT activists, including six expelled students, ransacking and destroying the office and the home of the university's Vice Chancellor before moving on to the office of Professor Iftekhar. There they began to attack the building and nearby cars while calling out threats to the professor before pulling him from his office and beating him with iron bars and fists. Some are reported to have carried knives. The professor collapsed, bleeding, and the group moved on, chanting, according to eyewitnesses, that an infidel had been killed. Colleagues took the professor to hospital where he received 20 stitches to three head wounds. His right hand and leg were fractured.

However during the incident there was no response from the authorities. Police officers arrived at the hospital two and a half hours after the incident. Following an organised protest by teachers, professors and students in Lahore, police at the Muslim Town police station took the professor's statement at the hospital, which included the names of his assailants; yet we are told that no FIR was initially filed.

In a press conference Punjab University Vice Chancellor Professor Dr Mujahid Kamran labeled the crime as a murder attempt. More civil protests followed, along with class boycotts by professors, and an FIR was filed a week later; it was reportedly illegally back-dated to 1 April.

Along with the questions raised by the lack of immediate police action and protection, the resistance of police to filing the case, and the lack on intervention on the part of the authorities, the AHRC also questions the adequacy of the cases that were filed by police. They do not appear to be in proportion to the crime committed. Instead of filing a case of attempted murder and intentional attempt to murder (sections 307 and 324 of the Pakistan Penal Code), police used more minor offences, ranging from public disturbance (sections 290 and 29), the continuance of the disturbance despite orders to stop, plus the obstruction of a public servant in the discharge of public functions, along with criminal intimidation and rioting (sections 148 and 149). There are also charges related to the use of a deadly weapon (427 and 337). It also took police more than two weeks to arrest two persons on 16 April. The others named in the FIR remain at large.

Furthermore, the vice chancellor of the university received threats from Mr. Munnawar Hassan, who heads JI. Other professors and teachers report being too afraid to become involved: their family members have been threatened, and some of the attackers are still seen displaying arms in the university hallways and on motorbikes in the city.[92]

The Blasphemy Laws

This year, Pakistan's infamous Blasphemy Laws remain in effect. Charges of blasphemy are still punishable with the death penalty, while desecration of the Holy Quran carries a life sentence. The laws were a British colonial legacy introduced in 1885 to prohibit the instigation of religious hatred, and became part of Pakistan Penal Code as Section 295 in 1927. The provision granted equal protection to all religious groups, until General Zia ul Haq, in deference to demands made by radical Islamists, introduced two new clauses (295-B and C) in 1982 and 1986 that specifically outlaw desecration of the Holy Quran and defilement of the name of the Holy Prophet Muhammad.

The deliberate institutionalisation of Islam's status as protected and predominant promoted the perpetuation of religious intolerance by Islamic fundamentalists. According to data collected by the National Commission for Justice and Peace (NCJP), at least 964 persons were alleged under these anti-blasphemy clauses from 1986 to August 2009, while over 30 persons were killed extra-judicially by the angry mob or by individuals.

Militant Muslim organizations are using the tool of blasphemy as the best way to keep religious minority groups under pressure and even forcibly take land. The State is failing to protect the lives and property of the minority community. The blasphemy law has made it compulsory that no police officer below the level of Superintendent of Police can investigate the charges but this is rarely adhered to.[93]

In April 2001 an attempt was made by the Musharraf government to amend the procedures in the registration of blasphemy cases, but he quickly withdrew the new order upon vehement opposition from Islamic fundamentalists. In August 2009 after the Gojra attack in which seven Christians were burnt alive, the current Prime Minister Yousuf Raza Gilani again announced plans to review "laws detrimental to religious harmony" in a committee comprising of constitutional experts, the minister for minorities, the religious affairs minister and other representatives, but the government has again hesitated to

92 "Pakistan: Punjab authorities respond weakly to another violent attack on a university professor by radical religious students," AHRC, 21 April 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3430/.

93 "Pakistan: A Hindu community is attacked and evicted on fabricated Blasphemy charges, houses burned causing death of person by firing," AHRC, 25 August 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3527/.

initiate change due to their unwillingness to antagonize fundamentalist groups.

Recent cases in Pakistan suggest a criminal collaboration among government authorities, police, and fundamentalist organizations, in which the Muslim clergy, on receiving bribes from land-grabbers in the National and Provincial Assemblies, colluded with local police to expropriate land owned by minorities by bringing blasphemy allegations against them. The situation is especially worrying in Punjab province after the formation of the PML-N government, which has a record of intolerant policies against Christians and Ahmadis in particular.

In multiple instances, Muslim attackers have used blasphemy laws as a pretext for seizing land from Hindus: Last year, during the Hindu festival of Holy (colour festival), two Hindu communities, the Kohli para and Bheel Para, were attacked on the false charges of writing blasphemous words by land grabbers in Soomra of Mirpurkhas. The Hindus had to leave the area and move to other places. The land grabbers then were able to purchase the land from these two communities at exploitatively low prices.[94]

Hindu community attacked and evicted, their houses burned, because of fictitious blasphemy charges: A Muslim group attacked on a Hindu community that had been established for a century in order to annex land occupied by the Hindu community in Sindh Province. Members of the Hindu community were forced to vacate their houses and assets from the area. Muslim attackers burned three houses. Many women and children were assaulted, and seven Hindu men were arrested on fabricated charges of blasphemy, accused of writing abusive language against the last prophet (peace be upon him) of Islam on the walls around the mosque. The loudspeakers of the mosque were used to provoke the Muslim residents to attack on the Hindu community. A young Muslim man was killed during the exchange of firing between the attackers and the Pakistan Rangers.[95]

Two Christian brothers illegally charged with blasphemy in Punjab: Mr. Rashid Emmanuel (32) is a pastor. On the evening of 2 July he received a telephone call from a man who claimed to be from the La Salle School, a prominent Christian educational centre. He asked to meet Mr. Rashid about an urgent matter. When Rashid arrived he saw four persons standing in the dark, then ten uniformed police officers reportedly emerged and arrested him.

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94 "Pakistan: A Hindu community is attacked and evicted on fabricated Blasphemy charges, houses burned causing death of person by firing," AHRC, 25 August 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3527/.

95 "Pakistan: A Hindu community is attacked and evicted on fabricated Blasphemy charges, houses burned causing death of person by firing," AHRC, 25 August 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3527/.

He was taken to the Civil Lines Police Station nearby and shown a photocopy of a four-page handwritten pamphlet that criticized Islam and its last prophet, Muhammad (peace be upon him). The pamphlet appeared to be signed by Rashid and his younger brother Sajid Emmanuel. The police detained Rashid on the basis of a blasphemy complaint filed by a printer who declared that his assistant had seen a man distributing the pamphlets at Lari Adda. Based on this information the police filed a First Information Report (FIR).

A representative of the Christian community – Mr. Atif Jamil Pagan, the Chief of Pakistan Minorities Democratic Harmony Foundation – contacted the police and was told by the SHO that a sub inspector and an assistant superintendent had been chosen for the investigation; he allegedly acknowledged that they were not complying with section 295C of the PPC because they were under pressure from extremist Muslim groups in the community. The sub inspector, a Mr. Mohammad Hessian, later told Atif that the accused was being detained without evidence against him because the case was a sensitive one.

On 3 July the police took Rashid to the Anti Terrorist Court (ATC) for police remand, where the case was correctly refused. Religious matters are no longer under the authority of the ATC, as maintained in clause 780 of the Anti Terrorist Act (ATA) 1997. Rashid was taken to a duty magistrate in the Civil Lines jurisdiction, who agreed to his two-day remand in police custody, despite the breach of procedure. The sub inspector also summoned Atif Pagan to the police station and asked that he produce Rashid's young brother. The police then asked the brothers to handwrite each pamphlets three times. On 7 July the writing samples were sent to experts in Lahore, but the experts reportedly replied that they could not work from photocopies.

During this time groups of organized Muslim activists started to rally against the brothers in public: we are told that the loudspeakers from a number of mosques were used illegally to do so, and to incite violence against local Christians (in violation of Section 3 of the Loud Speaker Act 1965). On 7 July a procession in Warispura saw local Muslim residents chanting threatening slogans against Christians. The mob also attacked a Catholic church. On 10 July persons in another procession burned tires on the streets and declared that Christians would not be allowed to live in Warispura. At 1am that night a procession of motorbikes harassed Christians who were leaving their homes with their belongings.

The AHRC was told that the police began efforts to address the protestors on 10 July, and that after a number of meetings it was agreed that the rallies and threats should stop. However protest gatherings continued on 11 July and united at noon when Muslim leaders from various religious political parties, among them Khatme-e-Nabowat, Jamiat Ulema-ePakistan and Namoos-e-Risalat reiterated death threats against the brothers, because the government had not sentenced them to death. We are told that among the

speakers were Sahibzada Abulkhair Mahumed Zubair and Syed Hidayat Hussain Shah, who are known for inciting violence in the area. At the meeting it was announced that a set of gallows had been set up at the tower of Ghanta Ghar, in preparation for the hanging of blasphemous Christians. The brothers remained in detention at the police station without adequate protection against mob violence or co-detainees, who also threatened them.[96]

A Christian woman was sentenced to death under blasphemy laws after an accusation by vindictive co-workers: A 45-year-old Christian woman, Asia Bibi, asked to fetch water while working in the fields was then told by Muslim women that she should not be allowed to touch their water bowl. They later accused Bibi of blasphemy, and a lower court sentenced Bibi to death.[97]

A female Christian teacher told that if she protested discrimination she would be charged with blasphemy: Ms. Julia Austin (32) has taught mathematics for 11 years and has been employed at Bahria Town School, a private educational institute in Lahore since February 1, 2007. Her principal, Ms. Naghmana Ambreen, was a Muslim woman known for her hatred for Christians, repeatedly abused and humiliated Ms. Austin since 2007, then dismissed her in June 2010.

After the AHRC issued an Urgent Appeal an inquiry was ordered by the Inspector General Police (IGP), Punjab province, and an Assistant Sub Inspector (ASI), Mr. Khadim Hussain of Sundus Police station, Lahore, was assigned to conduct the inquiry. The ASI asked the principal Ms. Naghmana for her comments and the principal agreed that the inquiry should be held inside Bahria Town, a private housing scheme, on 31 August. On the day of inquiry the principal refused to attend but the teacher, Julia Austin, was present. The chief security officer of the Bahria Town, Colonel Hamid, a retired army officer, stopped the police officer from record any statements and started threatening the victim to retract her claim, otherwise being a Christian lady she would face drastic consequences.

The ASI subsequently filed a report that as Principal Naghmana was not available the inquiry was not possible. These remarks infuriated the principal and she complained to Mr. Riaz Malik, the owner of Bahria Town about the police inquiry. Mr. Malik being an influential personality, allegedly used his connections to have the inquiry officer

96 "Pakistan: The Christian community in Punjab is under threat from extremist groups again; two brothers are illegally charged with blasphemy," AHRC, 14 July 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3503/.

97 "Pakistan: Outcry over death sentence for 'blasphemy' mother who offered farmhands water," AHRC, 12 November 2010, http://www.ahrchk.net/pr/mainfile.php/2010mr/800/?print=yes

transferred. The ASI had suggested to the school authorities that the termination of Ms. Austin was not according to legal process therefore she should either be restored to her position or be paid all her dues. The new inquiry officer, ASI Mumtaz Ali has still not started his inquiry.

The principal, Ms. Naghmana, also threatened Ms. Austin her and her parents that if she does not apologise then, being Christian, the family would face severe consequences. After receiving continuous threats it occurred to Ms. Austin and her parents that they may be charged under the blasphemy law which is frequently used against members of the religious minorities in Pakistan.[98]

Continuing discrimination and violence against Ahmadis

The second amendment of Pakistan's Constitution (1974) adopts an exclusionary definition of Islam and declares Ahmadis a non-Muslim minority. Clause C (b) of Article 260 states that "'non-Muslim' means a person who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Buddhist or Parsi community, a person of the Qadiani group or Lahori group (who will call themselves 'Ahmadis' or by any other name), or a Baha'I, and a person belonging to any of the scheduled castes."

The Ahmadi Muslims do not have the right to vote under the eighth amendment of the 1973 Constitution and have no freedom to practice their faith, belief, practice or worship. This discriminatory electoral system based on religious beliefs is in violation of national and international legislations, as well as the spirit of democracy itself. Under the Pakistani Constitution, every Pakistani citizen should have the right to vote irrespective of race, religion, creed or belief. Article 25 of the International Covenant on Civil and Political Rights also states that "every citizen shall have the right and opportunity to vote and to be elected." Articles 19 and 21 of the Universal Declaration of Human Rights also guarantee the right to vote to every citizen. The right to vote is one of the most basic and fundamental rights that must be guaranteed to every citizen and without which a state cannot call itself a democracy.[99]

The Pakistan Penal Code contains legal provisions that institutionalize explicit discrimination against the Ahmadi sect, including Section 298-C, which stipulates that

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98 "Pakistan: A teacher is warned that Christians have no future in the country by school principal and chief security guard of a housing project, AHRC, 21 September 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3558/; "Pakistan: A Christian teacher faces systemic discrimination at work and is dismissed without valid ground or lawful compensation," AHRC, 30 July 2010, http://www.ahrchk.net/ua/mainfile.php/2010/3515/.

99 "Pakistan: The electoral process is self-contradictory and denies the Ahmadi minority its right to vote," AHRC, 19 March 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2474/.

"any person of the Quadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name), who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine." This provision stands in direct contradiction to the right to freedom of speech and religion enshrined in Articles 19 and 20of the Constitution. In March, fifteen men from Sillanwali tehsil, Sargodha district, Punjab province were booked under Section 298-C for attending a place of worship that resembles a mosque, thus for the "impersonation of Muslims".

The blasphemy laws are also widely used against the Ahmadis, with about 340 out of the 964 persons alleged under blasphemy laws from 1986 to August 2009 being members of the sect, according to a NCJP report. At present more than one thousand Ahmadis are estimated to be in Pakistan's jails on charges of blasphemy.

In spite of its claim to be a democracy the government of Pakistan has shown no inclination to repeal its disgraceful laws and regulations against the Ahmadi Muslims. The fundamentalist and extremist Mullahs and religious fanatics continue to perpetrate and encourage the murder, persecution and harassment of Ahmadis throughout Pakistan. These fundamentalists hold religious conferences with the intent of inciting the masses against the Ahmadis and openly challenging the government. The government has stood by passively and let these atrocities continue. The result is de facto state sponsored terrorism. AHRC would advocate for the government of Pakistan to stand up and adopt a zero tolerance approach to deal with this issue once and for all by giving Ahmadis the same rights enjoyed by other citizens of Pakistan instead of capitulating to the demands of extremists.

On 28 May 2010, Muslim extremists killed more than 80 Ahmadis during their Friday congregation: While the Friday worship service was being conducted in their principal mosque on Allama Iqbal Road and another mosque in Model Town in Lahore, anti-Ahmadiyya assailants supported by the extremist groups and protected by the government authorities attacked both mosques. The worshipers were attacked with hand grenades and sprayed with bullets. Further, suicide bombers detonated bombs inside the mosques killing more than eighty worshipers and injuring hundreds.[100]

100 "Pakistan: The tragedy continues—the killing of more than eight Ahmadis by Muslim extremists," AHRC, 29 May 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2565/.

Three Ahmadis murdered in targeted shooting, and police fail to investigate: On April 1, at around 10:00 p.m., Sheikh Ashraf Pervaiz and Sheikh Masood Javaid, sons of late Sheikh Bashir Ahmad; and Asif Masood son of Sheikh Masood Javaid closed their businesses -Murad Cloth House and Murad Jewellers situated in Rail Bazaar, Faisalabad. They were on their way home when their car reached Faisal Hospital, Canal Road where there was a white car waiting. Four or five persons jumped out of the white car and started shooting indiscriminately at the businessmen. As a result, all three were seriously injured and died on the way to hospital.[101]

Punjab provincial government complicit in inciting intolerance and violence against Ahmadis: The Punjab provincial government declared Ahmadis as Wajabi Qatl (liable to be murdered). In the month of February, the Punjab government released notorious murderers belonging to a banned religious group, the Sipahe Shaba Pakistan (SSP). The provincial government used them during the by elections in two different electoral constituencies. They were the foot soldiers of the provincial law minister. The government of the Punjab sponsored and held an 'End of the prophet hood' conference at the Badshahi Mosque in the provincial capital city of Lahore on April 11, 2009. On this occasion, they also burnt an effigy of the founder of the Ahmadiyya community. Clerics, one after another, unrestrainedly proposed the denial of religious freedom to Ahmadis and indulged in slander and abuse. The conference was paid for with public funds. The Federal Minister of Religious Affairs also addressed the conference.[102]

Courts also discriminate against Ahmadis at behest of fundamentalists: Early in 2010, the sessions court of Mirpukhas district, Sindh province, awarded three years rigorous imprisonment and slapped a fine of Rs. 50,000 each on three Ahmadis, Mr. Masood Chandio, Mr. Abdul Khaliq and Mr. Abdul Ghani on the basis of a complaint of a fundamental religious group that these persons were impersonating as Muslims and preaching Islam.[103]

Children

In Pakistan, children face immediate threats in the form of malnutrition and other health concerns, lack of access to education, violence, and human trafficking as well as growing long-term challenges. Nationally, 40 percent of children are underweight and 13 percent are severely malnourished—with 42 percent of under-five children showing signs of

101 "Pakistan: Three more Ahmadis murdered in target killings. No arrests have been made," AHRC, 7 April 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2491/.

102 "Pakistan: Three more Ahmadis murdered in target killings. No arrests have been made," AHRC, 7 April 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2491/.

103 "Pakistan: Three more Ahmadis murdered in target killings. No arrests have been made," AHRC, 7 April 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2491/.

stunted growth.[104] In the North-West Frontier Province (NWFP), for example, 1 in 10 children dies before the age of five, one in three children is underweight, and 16 percent are severely malnourished.[105] According to UNICEF, 465,000 children under five die in Pakistan each year. Approximately one-third of infants have low birth weight.

Untold thousands of children go missing in Pakistan each year. No nationwide data exists, however, in 2009 alone, 2,582 cases of missing children were registered in over 100 police stations in Karachi. Police are of little or no assistance to parents and family following disappearances and offer no protection. The police say that since children's going missing is not a cognisable offence without evidence of unwilling abduction, it is difficult to follow up. The insensitive attitude of the police adds to the misery of those whose children have been kidnapped. Without professional help, parents are unable to do much to recover their children. Further, even should police attempt to assist, police are not trained or equipped to investigate the disappearance of children.[106]

An 11-year-old boy went missing, and the police refused to help: Eleven- year old Mohammad Sameer, a resident of Liaquatabad, Karachi, Sindh province, went missing in October 2009. After searching for him without any success his parents approached the police to register an FIR, but were denied this. What the police did do was register their complaint in the daily dairy (roznamcha) and asked the couple to return if they received a call for ransom or any other hint about Sameer. "But shouldn't this be their job?! If I do get some information, why should I contact the police? Wouldn't I go to recover my child myself?" asks Naseem. These are some questions the police have no answers to. Naseem told *The Express Tribune* that after repeatedly being turned down by the police, he and his wife sought the help of various clairvoyants in the city to recover their child as well, but in vain.[107]

Approximately 10 million children—some of whom have been trafficked from Afghanistan, Bangladesh, and Burma—are engaged in child labour in Pakistan:[108] The majority of child labourers are engaged in agricultural work; others work in brick

104 Pakistan: Statistics, UNICEF, Accessed 26 November 2010, http://www.unicef.org/infobycountry/pakistan_pakistan_statistics.html.

105 Antonia Paradela, "Help for displaced and malnourished children in Pakistan," 10 March 2009, http://www.unicef.org/infobycountry/pakistan_48558.html.

106 Aroosa Masroor, "Pakistan: 2,582 children were reported missing and cases were registered in over 100 police stations last year," AHRC, 12 May 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2538/.

107 Aroosa Masroor, "Pakistan: 2,582 children were reported missing and cases were registered in over 100 police stations last year," AHRC, 12 May 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2538/.

108 "Ten million engaged in child labour in Pakistan," Express Tribune, 10 November 2010, http://tribune.com.pk/story/75061/ten-million-engaged-in-child-labour-in-pakistan/.

kilns, mines, fisheries, carpet factories, and other urban factories manufacturing a variety of products, from surgical goods to footwear.[109] Children forced into bonded labour are frequently exposed to hazardous conditions, particularly in agricultural work. Seven percent of child labourers frequently incur injuries or contract an illness while 28 percent occasionally do so.[110]

The government of Pakistan must enforce anti-bonded labour rulings and statutes, which have existed for nearly two decades but never been implemented. The Pakistan Supreme Court abolished the "peshgi" (bonded) system in September 1988, but did not absolve labourers of past debts. In 1992, the Bonded Labor (Abolition) Act made bonded labor illegal and cancelled bonded laborers' debts to their employers.[111]

Child marriage is illegal but common in Pakistan: According to the 1961 Pakistan Family Act, women must be 16 and men 18 to marry, and in 1990, Pakistan ratified the Convention on the Rights of the Child, which prohibits child marriage. However, in early arranged or forced marriages the family or partner will often falsify documents and do so with impunity.

Through rulings by a *jirga*, *vani* and *swara*, girls and women are forced into marriage as a substitution for monetary compensation, to settle conflicts, and even as restitution for crimes. Girls may also be married to much older men for money. Both boys and girls may be married very young to ensure they remain close to the family and responsible to the family rather than leaving. The ease with which families and men are able to avoid legal repercussions for their actions guarantees the continuation of these practices.

Islamic extremists recruit children as young as 5, and the recruitment of children as militants is increasing. In PBS documentary Children of the Taliban, director Sharmeen Obaid Chinoy interviewed Taliban commander Qari Abdullah, who stated that he recruits children from the age of 5: "Children are tools to achieve God's will. And whatever comes your way, you sacrifice it." Children are recruited to be soldiers and suicide bombers with brightly colored paintings depicting their rewards in Paradise after their death, then placed in separate camps by age.[112]

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109 "Pakistan," U.S. Department of Labor, Accessed 26 November 2010, http://www.dol.gov/ilab/media/reports/iclp/sweat/pakistan.htm.

110 Mashal Sahir, "VIEW: Child Labour: A Threat to the Future," Daily Times, 13 November 2010, http://www.dailytimes.com.pk/default.asp?page=2010\11\13\story_13-11-2010_pg3_6.

111 Mashal Sahir, "VIEW: Child Labour: A Threat to the Future," Daily Times, 13 November 2010, http://www.dailytimes.com.pk/default.asp?page=2010\11\13\story_13-11-2010_pg3_6.

112 Kalsoom Lakhani, "Pakistan's Child Soldiers," Foreign Policy, 29 March 2010, http://afpak.foreignpolicy.com/posts/2010/03/29/pakistans_child_soldiers.

The vast majority of suicide bombers in Pakistan are children and teenagers: Islamic extremists, like human traffickers, take advantage of displacement and chaos to attempt to recruit children to adopt their beliefs and sometimes commit acts of violence. According to Pakistani journalist Zahid Hussain, 90 percent of Pakistani suicide bombers are between 12 and 18 years old.[113]

The government of Pakistan must make progress toward the enforcement of existing legislations and treaties as well as introducing new legislation to ensure a more robust framework for the protection of children. To that end, the AHRC favors the creation of a Child Affairs Ministry, an action also strongly supported by the Children's Parliament Pakistan (CCP), Society for the Protection of the Rights of the Child (SPARC), and Strengthening Democracy through Parliamentary Development (SDPD).[114] To abolish the recruitment and retention of children as soldiers and suicide bombers, Pakistan can and should establish deradicalization programs and follow the example of Sri Lanka in creating transit centers to rehabilitate former child soldiers.[115]

The Effects of Conflict and Disaster on Children

As of last year, at least three million Pakistanis had already been displaced by conflict with the Taliban in the Swat, Buner, and Lower Dir districts.[116] This year's floods directly affected 20 million people. Furthermore, they have monopolized the attention of the media, diminishing the resources available to bring violations and crimes to public attention or publicize human rights abuses.

Dealt the double blow of on-going armed conflict and natural disasters, women and children are extremely vulnerable to human trafficking. Many have been displaced and lack structural security and protectors. In families displaced by armed conflict and affected by the floods, in many cases, older men attempt to remain with land and protect their livelihoods while women and children flee the area. As a consequence, these displaced persons and refugee populations are especially vulnerable to sexual assault, violence, and human trafficking.

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113 Kalsoom Lakhani, "Pakistan's Child Soldiers," Foreign Policy, 29 March 2010, http://afpak.foreignpolicy.com/posts/2010/03/29/pakistans_child_soldiers.

114 "Children Parliamentarians Demand Child Affairs Ministry," Daily Times, 25 November 2010, http://www.dailytimes.com.pk/default.asp?page=2010\11\25\story_25-11-2010_pg11_6.

115 Kalsoom Lakhani, "Pakistan's Child Soldiers," Foreign Policy, 29 March 2010, http://afpak.foreignpolicy.com/posts/2010/03/29/pakistans_child_soldiers.

116 "Children in Pakistan," Boston Globe, 10 June 2009, http://www.boston.com/bigpicture/2009/06/children_in_pakistan.html.

The disorganization inherent in displacement and relocation camps—as well as corruption—creates opportunities for human traffickers to prey on and kidnap victims with impunity. Various NGOs and civil society partners have expressed concern over the increasing number of missing children and women. The scale of the problem is unknown, because due to social context and the importance of honor, many families are reluctant to report missing girls.[117]

More than 400 children went missing during floods: As mentioned in the sub-chapter on the 2010 floods, when the Roshni Missing Children Helpline visited several relief camps in Karachi, Thatta, Dadu, and Sukkur, they registered more than 26 cases of missing children. Of these 26 missing children, 21 were boys between 5 to 16 years old and five were girls aged between 12 to 17 years. The organization has managed to recover 3 children; however, 23 children are still missing. The organization further reported that according to the National Disaster Management Authority, about 400 children went missing during the floods.

Child Abuse

Children have few legal or practical protections in Pakistan. As a result, in addition to forms of human rights violations like child labor and forced marriage, children suffer extremely high of physical, sexual, and mental abuse as well as neglect from an early age. Like rates of violence against women, the incidence of child abuse is rising. These forms of abuse abrogate the rights of the child to protection, development, and consent, intractably violating their human rights and causing long-term developmental damage that affects propensity to seek higher education, attain professional success, marry and have a family, commit crimes, and perpetuate the cycle of abuse.

Child abuse is not limited to any class, caste, ethnicity, and religion but a nation-wide problem in Pakistan, although certain factors do increase the likelihood of abuse occurring, including a history of abuse and extreme poverty.[118] Poorer families are also more likely to sell their children into abusive employment situations and to human traffickers.[119] The prevalence of child abuse is an enormous public health threat and a primary contributing factor to Pakistan's extremely high child mortality rates—one of the

117 "Pakistan: Super floods make children and women vulnerable to trafficking," AHRC, 20 September 2010, http://www.ahrchk.net/statements/mainfile.php/2010statements/2841/.

118 Ch Aamer Waqas, "9.4pc rise in child abuse cases in Pakistan," 27 November 2010, http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Politics/27-Nov-2010/94pc-rise-in-child-abuse-cases-in-Pakistan.

119 "Child trafficking ring unmasked in Pakistan after murder of Christian girl," Catholic News Agency, 18 February 2010, http://www.catholicnewsagency.com/news/child_trafficking_ring_unmasked_in_pakistan_after_murder_of_christian_girl/.

four highest child mortality rates in the world.[120]

A complicated but important form of physical abuse is that perpetrated in schools in the form of corporal punishment. The harshness of punishments dispensed in schools in Pakistan has left children with serious injuries requiring medication or treatment and has been blamed for causing its sky-high drop-out rates. In Islamabad, the Society for the Protection of the Rights of the Child (SPARC) has found that 35,000 secondary-school students drop out as a direct result of corporal punishment each year.[121]

Ten-year-old boy beaten with shoe by science teacher drops out: A 10-year-old boy who previously loved studying mathematics, Bilal Javed, was beaten so badly by a science teacher for talking in class that his father had to give him a painkiller so that he could sleep that night, and Bilal stopped attending school afterward.[122]

A lack of data and monitoring systems makes it difficult to quantify the scale of the child abuse problem in Pakistan. However, in November 2010, it was reported that in 2009 there had been 2,012 child sexual abuse cases, a nearly 10 percent rise from 2008 meaning that 3.3 children were being sexually abused each day. Of the children abused, 68 percent were girls and 32 percent were boys. The incidence of child abuse is concentrated and varies by region, with Punjab comprising 62 percent of all cases followed by Sindh (28 percent) and Islamabad (7 percent). Of the cases known, 81 percent were reported to the police while at least 6 percent were not registered and the status of 13 percent was unclear.[123]

Because many or most instances of child abuse occur within families or are perpetrated by other caretakers, principles of honor, shame, and privacy preclude the families of victims reporting the abuse. The damage caused by child abuse is compounded by the failure to acknowledge and treat that abuse. Further, when cases of child abuse make it to the judicial system, much of the time children are subjected to additional neglect and mistreatment without any ultimate resolution or justice. Sexual abuse presents a special problem because it is difficult to discuss sexual issues in public forums.

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120 "Pakistan amongst countries with highest child mortality rate," PPI, 9 December 2009, http://www.onepakistan.com/news/health/26194-pakistan-amongst-countries-with-highest-child-mortality-rate.html.

121 "School beatings make Pakistani students dropout," OneWorld South Asia, 22 May 2008, http://southasia.oneworld.net/Article/school-beatings-make-pakistani-students-dropout.

122 "School beatings make Pakistani students dropout," OneWorld South Asia, 22 May 2008, http://southasia.oneworld.net/Article/school-beatings-make-pakistani-students-dropout.

123 Ch Aamer Waqas, "9.4pc rise in child abuse cases in Pakistan," 27 November 2010, http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Politics/27-Nov-2010/94pc-rise-in-child-abuse-cases-in-Pakistan

The AHRC supports the enforcement of laws prohibiting the abuse of children and increasing efforts to raise public awareness and reduce the stigma surrounding child abuse as well as the creation of a Ministry of Children's Affairs that will oversee national and regional efforts to identify the causes and incidence of child abuse and address them through public policy and public outreach.

Freedom of expression

The year 2010 was no different year for journalist community from the previous years of military regime of General Musharraf. Journalists and media houses had faced attacks, manhandling, abduction, torture and murder by the state and non state actors. Some journalists were abducted and tortured by intelligence agencies and non state actors whereas some journalists were killed in blasts and targeted by militants. In the absence of any proper mechanism of security for the working journalists the incidents of violence has increased and they have become easy target. The government has failed to provide protection to the media persons. The media houses are least concerned with the security of their staff so for journalists it is difficult to find secured atmosphere.

The freedom of expression in Pakistan is very much restricted by the constitution of the country itself. The article 19 of the constitution says, Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by the law in the interest of the Islam or the integrity, security of defence of Pakistan or any part thereof, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court or incitement to an offence.

The freedom of expression is restricted mainly by three groups; the media houses, government and religious and political groups who have their militant groups. The government works against freedom of expression through Pakistan Electronic Media Regulatory Authority but above to it is the private cable operators who works much more under religious and political militant groups and they decide what to show and what not by putting self censorship.

The religious groups are always domination on the limitations of the freedom of expression. Because of which the journalists and media houses do not want to confront on the limitations prescribed by the religious groups. In the name of Islam and ideology of Pakistan the freedom of expression was suppressed by the state on the instigation of religious bigotries since the creation of the country in 1947. The first speech of the founder of Pakistan, Mohammad Ali Jinnah, was censored though he was the governor general of the newly created country. Since then always the religious leaders were determining the scope of freedom of expression, which is still continued.

After the elimination of military government and formation of elected governments a new tussel has started between the government, politicians and the media houses. Still no institution denies the freedom of media and access to information but it is difficult to understand the freedom of expression or freedom itself. The media houses are very much open to criticize government and its functionaries but have their own self censorship system for example media houses refuse to report the human rights violations by the army and security agencies even do not carry those violations which were already published in foreign media or reports of human rights organisations for example the killings during army operation and finding of mass graves in those articles. The media also do not provide space to working journalists in the cases of low wages, denial of wage board awards since 2000 and security of the journalists.

It is also difficult for the ruling party/parties to coup with broader sense of freedom of expression. The first time in the history of the country that the ruling party has made total boycott of a media house for taking a very critical opposition against the government. The level of tolerance in respect of criticism has went so level by both the sides, the government and media, that both cannot balance themselves to the requirement of the freedom of expression which already has many limitations according to the constitution of Pakistan.

In the presence of all these restrictions the freedom of expression has very little space to show its existence. The main problem with freedom of expression is that nor do media houses, journalists nor politicians need freedom of expression in its pure form. They have much reservations about freedom as they do not like to talk on religious issues and also cannot tolerate open discussions on religious issues. The same is with army, gender issues, rights of women (only wants to discuss in the context of Shariah and Quran, the holy book) gays rights and security issues. The media and its houses need advertisements from government without any accountability and without any taxations. If any time government does not provide such things the media houses become champions of freedom of expression.

The overall situation of freedom of expression/media during 2010

According to the Pakistan Federal Union of Journalists (PFUJ), the sole representatives of journalists in Pakistan, claims that during 2010, eleven journalists were killed while are performing the duties. Following journalists were killed mostly by bomb blasts or terrorists attacks and intelligence agencies;

November 18, the body of Abdul Hameed Hayatan, a young Baloch journalist who was kidnapped in the southwestern port city of Gwadar, Pakistan, on 25 October was found beside the River Sami in Turbat, 40 km to the east, on 18 November. His reporting

critical of the Pakistani authorities and his support for the Baloch national movement were almost certainly the motive for his abduction and murder. Hayatan was shot in the head and chest. Marks on his body clearly indicated that he was tortured before being killed. The body of a student, Hamid Ismail, was found alongside Hayatan's.

September 21, Mujeebur Rehman Saddiqui, 39, was a senior correspondent for the newspaper Daily Pakistan. He was shot dead on 16 September by unidentified gunmen as he was leaving the mosque after evening prayers in the north-western province of Khyber Pakhtunkhwa.

Misri Khan Orakzai, 48, was correspondent in Hangdu for several newspapers, including *Jinnah* in Islamabad and *Mashriq* in Peshawar, and president of the Hangdu Union of Journalists. He was killed on 14 September by three unidentified gunmen outside the Hangdu press club, also in Khyber Pakhtunkhwa province. Shot four times, he died at the scene. According to international media watchdog Reporters Without Borders (RSF), the Taliban have claimed responsibility for his murder.

May 13, Birhamani, 30, was found murdered on Monday outside his hometown of Wahi Pandhi, Sindh province, after being kidnapped the day before. He was a local reporter for a small newspaper, the *Daily Sindhu Hyderabad*, in a country where violence is routine.

Mr. Johra, a 45-year-old reporter for the Royal TV network, was dragged from his home by six armed men on 3 November and killed. Local drug dealers are believed responsible for the killing.

On August 10, Azeem Leghari, a correspondent for local leghari for local Sindhi tv channel, Darthi tv was killed while sitting with some local tribesmen, doing a strory on the ongoing dispute between the two tribes. Five people were killed in the incident.

On Feb. 29, a local journalist Sirajuddin Ahmed was killed when a suicide bomber blown himself at a funeral killing 42 people.

On 16 April Samaa TV cameraman Malik Arif was killed in a suicide bombing at a Quetta hospital and five journalists – Noor Elahi Bugti of Samaa TV, Salman Ashraf of Geo TV, Fareed Ahmed of Dunya TV, Khalil Ahmed of Express TV and Malik Sohail of Aaj TV – were wounded. The journalists were at the hospital to film a gathering by Shiites in support of a Shiite businessman who had been the target of a murder attempt. Seven other people were killed in the bombing, which bore the hallmarks of a Sunni jihadist action. "When all the businessman's friends and all the journalists had gathered at the hospital, a suicide bomber came up, opened fire and then blew himself up in the middle of the crowd," Quetta-based journalist Malik Siraj told Reporters Without Borders.

On May10, Police found the body of journalist Ghulam Rasool Birhamani, 30, a reporter for the daily "Sindhu Hyderabad", at a deserted place two kilometres from Dadu. Hospital officials said death was caused by fatal injuries to the head. There were torture marks on the body. Ghulam Bhind, president of the Dadu Press Club, told the Pakistan Press Foundation (PPF) that Ghulam Rasool Birhamani had received threats from members of the Lashari tribe some days ago after he reported on the marriage of an underage girl from the tribe.

On June 29, Faiz Muhammad Sasoli, a reporter based in Khuzdar District, in the south-western province of Balochistan, was killed by submachinegun fire. Sasoli, who worked for the Aaj Kal daily newspaper and the Independent News of Pakistan agency, had escaped two previous murder attempts. He is the sixth media worker to be killed in Pakistan since the start of this year.

Four foreign journalists were killed in blast

On February 4, 2010, at least four foreign journalists were killed and several people injured when a security forces' convoy was targeted by with a bomb in Dir district of Khyber Pakhtoon Kha province (former north west frontier province). The foreign journalists were killed and several others were injured, the Geo News channel reported. Some local journalists and security personnel were among the injured.

Torture of journalists

A senior journalist was abducted, tortured and kept incommunicado by the intelligence agencies

A shameful act of torture allegedly by the officials of notorious intelligence agencies and the Elite Force, a law enforcement agency of Punjab government was witnessed when Mr. Umer Cheema, a senior journalist from the newspaper, daily The News International, was abducted, tortured severely and kept in incommunicado to threat and intimidate him from his professional duties. Several media reports suggest that persons from intelligence agencies carried out the act. The government has still not been able to arrest the persons responsible for the abduction and torture. In a routine way the orders to arrest the culprits and form an inquiry committee have been made by the government and the Ministry of Interior and the Lahore High Court has taken suo motto action. However, it appears that the government officials and the courts hesitate to take action against the intelligence agencies due to the culture of impunity.

http://www.ahrchk.net/ua/mainfile.php/2010/3543/

A journalist was tortured by aviation authorities

The officials of the Civil Aviation Authority (CAA) has ruthlessly tortured and inflected more than 31 injurers on various parts of the body of a journalist of Din TV channel. Fasial Shoukat Ali Rajput, who is in the journalism profession for over 15 years, went to the Karachi Airport to cover a spot coverage of fire incident that occurred at the VIP Lounge on Oct. 9 evening. The media teams were prevented by the officials of the CAA to enter the VIP Lounge to shoot the fire footage, on the pretext that the area was sensitive and cannot be allowed to be shown on TV screens. However, Faisal insisted on coverage of the fire and somehow prepared film. Upon this, about half a dozen officials of the CAA severely thrashed him and took him to an unknown destination. He was kept in illegal conferment for more than 20 hours where he was severely tortured with iron rod, wooden sticks and inflicted more than 24 injures on various parts of the body.

The 100 journalists were sacked

The JS Group,a media house, has illegally sacked without notice or pay of more than 100 staff at Pakistan's Business Day newspaper. According to IFJ affiliate the Pakistan Federal Union of Journalists (PFUJ), the Karachi-based national English daily was closed suddenly on February 27.

All staff were reportedly locked out of the paper's premises. Many had worked at the paper for more than four years. It demanded governing authorities hold the owners accountable in accordance with the law and common decency.

The lawyer's vandalism against media persons

The lawyers, after the great victory of restoring independence of judiciary, they use their muscles against the freedom of expression. On three different occasions they beaten, dragged the journalists who were covering the court proceedings and broken their cameras and vehicles. In February the TV crew of a renowned channel was maltreated by a group of lawyers in Lahore. The lawyers, without any provocation and justification, attacked the Geo media team, damaged camera and manhandled other members of the team and prevented them from discharging their professional assignments, the lawyers tortured a Geo correspondent and Anarkali Police SHO on the premises of the District and Session Judge Court. It is said that Smanabad police arrested two people who happen to be brothers of a women lawyer in a case.

In July 2009, the lawyers did same the journalists by attacking on them and breaking cameras at the premises of Lahore high court injuring two journalists. At Multan bar the lawyers did the same. The chief justice of Lahore High Court cancelled the license of

lawyers involved in the attack on media and asked them to remove their black coats and ties in the court room. But later, a four-member disciplinary committee of the Punjab Bar Council restored the licenses of four lawyers involved in thrashing a policeman and journalists in the court. The Lahore Bar Association office banned journalists in the bar and the ban still continues.

In the presence of powerful groups, religious militant groups and self censorship imposed by media houses themselves it is difficult to have freedom of expression in the country. The country where every thing is judged on the basis of religion (Islam) the people find difficulties to express their opinions freely. But, even, then the limited freedom of expression is not acceptable to authorities and the powerful groups. The intolerance is another factor in the limited scope of freedom of express which is so common that from minister to ordinary citizen do not want to except the others point of view and rather use threatening language against each other.

Corruption

In Pakistan, corruption remains a huge concern and a threat to human and overall development. Transparency International recently downgraded Pakistan to rank 143rd in the world in its Corruption Perceptions Index 2010.[124] In one survey, 18 percent of Pakistanis reported having paid a bribe in the past year.[125] The cost of corruption takes up more than Rs150 billion of Pakistan's development budget each year.[126] Altogether, the corruption total rose from Rs195 billion in 2009 to Rs223 billion in 2010.

Dr. Asad Sayeed of the Collective for Social Science Research in Karachi identifies three primary types of corruption: private sector-state collusion, in which private interests appropriate public resources; state actors' corruption; and institutionalized corruption.[127]

The most salient of this form of corruption in Pakistan has been allocation of state land to private interests, as well as land transactions. The practice started immediately after partition, when millions of refugees came to Pakistani territory from post-partition India. The state adopted a policy of granting land and housing left behind by Hindus who migrated to India to refugees based on claims of property they left behind in India. The practice of land grabbing—both urban and rural—has continued in different ways over

124 "Corruptions Perceptions Index 2010," Transparency International, 2010.

125 "2009 Global Corruption Barometer," Transparency International, May 2009, pg. 8, 33.

126 "Global Corruption Report 2009: Corruption and the Private Sector," Transparency International, Cambridge: Cambridge University Press, 2009, pg. 281.

127 Asad Sayeed, "The nature of corruption and anti-corruption strategies in Pakistan," Collective for Social Science Research, 29 March 2010.

the years. Its modern manifestation is in different arms of the state using the Acquisition of Land Act in ways it was not intended so as to sell acquired land cheaply to mafia-like groups of land developers and builders, who subsequently sell it at a premium to prospective home dwellers or for commercial purposes.

Moreover land transactions are a typical way of whitening black money acquired through corruption and criminal activities. Due to taxation loopholes, more than two-thirds of the money paid in land or property taxation is unrecorded. Other forms of private sector-state interface that breed corruption have occurred due to state control over allocation of resources. In the pre-liberalization period, bribery in acquiring industrial and commercial licenses and later in willfully defaulting on loans acquired from state-owned banks and financial institutions frequently hit the headlines in Pakistan. The cost of this type of corruption has been borne by the consumer, in high prices paid for goods and services as a result of inefficiency and monopoly pricing. In the post-liberalization period, a lack of regulation on cartels—particularly in banking services, and the automobile, cement, fertilizer and sugar sectors—has also hit consumers hard.

At all levels, the private sector exerts considerable influence over government through corruption, which also thrives within the private sector and distorts markets with government complicity. In Pakistan, a majority of businessmen, more than 60 percent, report having been asked for bribes by government officials.[128] Those who report corporate transgressions and illegal activity, whistleblowers, are not protected by law.[129]

Overall, the private-sector economic development of Pakistan has been substantially hindered by corruption. The cost of corruption is as high for the private sector as the public as a proportion of expenditures. Further, corruption allows for the creation and survival of monopolies and cartels, leading to severe market distortions that prohibit economic development. The Competition Commission established in October 2007 only represents a first step toward controlling the practices that are distorting Pakistan's markets and precluding competition, as corruption lies at the root of these issues and remains rampant.[130] More than two thirds of Pakistanis would be willing to pay more to buy from corruption-free companies.[131]

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128 "Global Corruption Report 2009: Corruption and the Private Sector," Transparency International, Cambridge: Cambridge University Press, 2009, pg. 4.

129 "Global Corruption Report 2009: Corruption and the Private Sector," Transparency International, Cambridge: Cambridge University Press, 2009, pg. 95.

130 "Global Corruption Report 2009: Corruption and the Private Sector," Transparency International, Cambridge: Cambridge University Press, 2009, pg. 281-82.

131 "2009 Global Corruption Barometer," Transparency International, May 2009, pg. 16.

State personnel across different institutions of the state engage in various forms of corrupt practices. These range from straightforward bribery and extortion of individuals and businesses to various forms of domestic and international kickbacks on procurement of materials and services. For the sake of clarity we will distinguish state-led corruption by civil bureaucrats, the armed forces and politicians. These state officials and civil servants have been consistently perceived as the most corrupt element in Pakistan.[132] The state does little to root out these elements of corruption. More than half of Pakistanis report that they consider the current governments actions to fight corruption to be "ineffective."[133] Moreover, seven in ten respondents in Pakistan say that they believe. In 2010, Pakistan's government threatened to force the closure of Transparency International in-country because of its agreement to monitor the distribution and use of US aid.[134]

Much of the bribery and extortion carried out by the state is executed through the civil bureaucracy. Ranging from petty bribes to the policeman or building authority clerk to major kickbacks on procurement, civil bureaucrats are the 'deal executors? They are in the loop for the simple reason that they carry out the documentation and are most familiar with rules and regulations, as well as the loopholes and lacunae that exist. However, apart from the petty bribes and extortion, for the most part the civil bureaucrat is not the sole claimant of big-ticket corruption. Over the years, the civil bureaucracy in Pakistan has lost its clout and political power to the executive and legislature, whether military or civilian.

The central protagonists in state-led corruption are the military and politicians. Arguably, civilian politicians are more accountable than the military for three reasons. First, the logic of electoral democracy itself holds politicians accountable for their misdeeds and lack of delivery to the electorate. Although this proposition may be contested in the case of Pakistan, where politicians with tainted reputations are re-elected time and again, the fact that electoral democracy has not had a fair run—in the sense that an incumbent government has not yet gone back to the electorate after completion of its term and been subjected to a largely fair election process—means that this contention has not been put to a robust test. Second, audit and accountability laws apply to politicians, which makes them relatively more susceptible to legal provisions than their uniformed counterparts. Third, their conduct is more in the public eye because of their greater interface with the public as well as the media.

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132 "2009 Global Corruption Barometer," Transparency International, May 2009, pg. 6; "Corruptions Perceptions Index 2010," Transparency International, 2010.

133 "2009 Global Corruption Barometer," Transparency International, May 2009, pg. 33.

134 Tom Wright, "Graft Fighter Alleges Pakistan Threat," WSJ, 29 November 2010, http://online.wsj.com/article/SB10001424052748704584804575644190159232132.html?mod=googlenews_wsj.

The military, on the other hand, is powerful enough to evade public accountability. The military's budget in Pakistan is neither presented in detail to parliament nor have public representatives so far been able to debate it. Moreover, civilian audit authorities do not audit the military budget, and to top it all, serving military personnel have been exempted from investigation by civilian anti-corruption watchdogs by law. Also, because of the very nature of the civilian-military imbalance in Pakistan, demanding accountability in military scandals is a much more hazardous proposition for an otherwise free media than it is from civilian politicians.

Finally, there are a number of areas in Pakistan in which corruption is institutionalized as part of law and governance. As mentioned earlier, enough tax and legal lacunae exist through which black money can be laundered. The most salient in this regard is the "no questions asked" private remittance in foreign exchange. According to law, an individual can get as much foreign exchange into the country tax-free as they wish without being questioned over the source of funds. This is the most-used conduit for laundering money obtained through land transactions, tax evasion, and criminal activity. In addition, the state periodically provides a window through which to "whiten" black money at a nominal rate of taxation by announcing a "whitening" scheme where black money can be declared at a minimal rate of taxation that is lower than for those who earn legitimate taxable income (last time, December 2008, the rate was two per cent). That the state provides this facility every few years creates an incentive to accumulate black money rather than pose any threat of penalization.

The other form of institutionalized corruption is land grants given to military personnel. Officers of the armed forces are entitled to residential, commercial and agricultural land at highly subsidized prices. In the case of residential land, numerous societies developed by the armed forces dot Pakistan's urban landscape where infrastructure is developed (largely at state expense) and land is allotted to military personnel at subsidized rates, who in turn can sell it at the market rate and extract a hefty premium. Similarly, developed agricultural land is provided at subsidized rates and in some cases army personnel are deputed to tend the land at state expense. (See Military Inc: Inside Pakistan's Military Economy by Ayesha Siddiqua, Oxford University Press, 2007, for details on land allotment to military personnel as well as the process through which it takes place.)

Another feature of institutionalized corruption in Pakistan is located in the country's security and foreign policy. For the last three decades, the Pakistani state has been involved in a number of major covert operations as part of its foreign and security policy. Perhaps the most elaborate has been the country's nuclear program. The confession of Dr. A.Q. Khan—one of the main protagonists in Pakistan's nuclear program—in 2004 that he supplied contraband material to other countries in return for cash may be the tip of the iceberg so far as money laundering and clandestine activity for this purpose

is concerned. In the formative phase of the program, material and equipment were purchased illegally from the international market. This process would have involved a large number of state and non-state actors laundering state money.

The other major element has been covert warfare conducted in Afghanistan and Kashmir. A large chunk of state resources was diverted to conduct the entire war effort through non-state actors (including training, provision of arms and ammunition as well as logistic support). Much of this money would have made its way back to Pakistan through re-laundering and into land, real estate and other 'legal' activities as well as criminal ones.

The most important implication of institutionalized corruption is that powerful actors—whether state or non-state—cannot be investigated and prosecuted under anti-corruption laws if the entrepreneurial class (in the case of big business) and state personnel (in the case of covert policy operations) have the imperative to protect important state and economic interests against these laws. There are three board analytical areas where the prevalence of corruption needs to be understood in Pakistan. This particular categorization will also help us in assessing the effectiveness or otherwise of anti-corruption mechanisms adopted in the country.

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PHILIPPINES

The perversion of the justice system as a cause of rights violations

The Asian Human Rights Commission (AHRC) has documented a range of serious violations of human rights in the Philippines over the last year. Despite some very high profile cases - such as the November 23, 2009, massacre in Maguindanao or the Manila bus hostage incident that left eight Hong Kong nationals dead - assurances by the authorities that investigations would be launched and that justice would be delivered - no significant developments have ensued. The AHRC notes that despite general elections that resulted in a change of leadership, the situation has not improved in any meaningful way. The AHRC has argued in previous years that systemic problems in the country's institutions that are supposed to protect human rights mean that it is virtually impossible to expect the effective protection of human rights in the Philippines. The following report will examine in detail how the country's system of impunity is guaranteed by a perverted justice delivery system. Only when serious efforts are made to correct this problem will it be possible to envisage human rights as a reality in the Philippines.

As things stand at present, the country's system of justice had been used to violate human rights or to provide impunity and justify such violations, allowing the perpetrators of the worst forms of violations to go unpunished. The rights of victims have been systematically denied, not because the country lacks laws or that its system of justice is structurally incapable of holding perpetrators to account, but because its institutions are perverted. The police, the prosecution and the judiciary, all allow grave human rights violations to take place with impunity, and as such are responsible for the continuing high incidence of grave violations that plagues the country.

State agents, including the military, the police and government officials, make use of the State institutions that should be working to protect human rights to instead protect the perpetrators of such violations. The justice system in reality rarely functions to uphold human rights, even though structurally it carries the tradition of rule of law and human rights. Where violations of human rights are concerned, it mainly functions to preserve perpetrators rather than to protect the rights of victims.

The country's system of impunity is permitting the continuation of numerous grave human rights, including: the routine of filing fabricated and politically-motivated charges against human rights defenders and political activists; the reoccurrence of extra-judicial killings of human rights and political activists, a phenomenon that has drawn worldwide condemnation over the last decade; enforced disappearances; and the widespread use of torture by the police as part of routine criminal investigations. The change of political leadership as a result of the May 2010 general elections was meant to result in governmental policy changes designed to ensure the protection of human rights. As 2010 grew to a close, the effects of these promised changes had not been seen, and the AHRC believes that this is down to the fact that the necessary steps to address the problems facing the justice system have not at all been addressed. It is all very well to promise to improve human rights, and the AHRC welcomes such declarations as a starting point, but unless systemic blockages and lacuna are tackled head-on, such promises will remain meaningless.

The widely reported Manila bus hostage incident that left eight Hong Kong nationals dead illustrates how the newly-elected government is failing to address deep-rooted problems within the country's system of justice. President Benigno Aquino III's decision not to file criminal charges against the public officials and policemen involved in the hostage incident demonstrates the continuing lack of accountability of public officials and law enforcement agents, even in such a high-profile case involving foreign relations.

This report will examine in detail the systemic failings of the country's system of justice that render it incapable of effectively ensuring the protection and enjoyment of human rights. This will start by looking at two key situations that give insight into these systemic failings, even in high-profile cases:

The Manila bus hostage incident: No prosecutions for mass murder

On August 23, 2010, a former police officer and eight Hong Kong nationals whom the former had taken hostage were killed in a failed rescue operation in Metro Manila. The hostage-taker, Rolando Mendoza, was demanding to be reinstated in police service in exchange for freeing the hostages. He claimed to be a victim of wrongful prosecution that resulted in his termination from police service. But the hostage-taking ended in the killing of Mendoza and his eight hostages when the negotiation with the police failed.

President Benigno S. Aquino III then gave orders on the Department of Justice to (DoJ) to investigate the case to determine who could be held liable. The DoJ formed the Incident Investigation and Review Committee (IIRC) "to find the viable legal actions

which can be taken against the concerned parties."[1] The IIRC conducted a series of public hearings, summoning about 116 persons including government and police officials, witnesses, media practitioners and others who were involved in the incident. The IIRC submitted their investigation report to President Aquino on September 17, 2010.

President Aquino did not adopt the IIRC recommendations in full. He also did not release to the public the full the text of the IIRC's report. Thus, the basis of President Aquino's decision not to prosecute criminal charges against the government and police officials involved, were kept confidential from the public. His decision also prevented public scrutiny into the legality and the merit of his decision not to prosecute.

It is reported that the IIRC had originally recommended the criminal prosecution of Director General Jesus Verzosa, the former chief of the Philippine National Police (PNP); Rico Puno, the undersecretary of the Department of Interior and Local Government (DILG) and Alfredo Lim, the Mayor of Manila. Versoza and Puno were originally recommended for prosecution for being responsible for the police actions. Lim, on the other hand, was recommended for criminal prosecution for having ordered the arrest of the hostage-taker's brother that angered the former and led to the breakdown on negotiations; and for "leaving the scene for a restaurant before the hostage-taker started shooting the captives."[2]

President Aquino did not adopt in full the IIRC's recommendation to initiate the criminal prosecution. He instead subjected the IIRC's recommendation to a further review by a legal panel and adopted the latter's recommendations rescinding the IIRC's original report. While President Aquino endorsed the filing of administrative charges against the government officials and policemen involved, not of them were prosecuted for their responsibility for the murder of the eight victims.

President Aquino's decision has further subjected the role of the Department of Justice (DoJ) and its attached agency, the National Prosecution Service (NPS), to political influence and control. These agencies, which are responsible for the investigation and prosecution of criminal cases in court, are in reality at the mercy of the President. This order reaffirmed the vulnerability of the justice department and the prosecution system from political interference. The very structure of the country's system of justice is deeply politicised. The NPS is under the DoJ. The head of the DoJ is a political appointee of the President. The President's power and control extends, not only to the secretary of the DoJ, but to all the state and public prosecutors under the DoJ.

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1 Statement of President Benigno S. Aquino III: http://www.gov.ph/2010/10/11/statement-of-president-aquino-on-the-recommended-actions-after-reviewing-the-iirc-report-on-the-quirino-hostage-taking/

2 No criminal charges over hostage fiasco: http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20101012-297221/No-criminal-charges-over-hostage-fiasco

In the Philippines, the Office of the President (OP) has the power to impose disciplinary sanctions, like removing salaries and benefits, and suspending any senior state prosecutors and public prosecutors anywhere in the country. The President also has the power to order the DoJ and the NPS to review cases they are handling. The DoJ secretary serves at the disposal of the President, including reporting to him on the functioning of the prosecution service and, for example here, the decision whether or not to pursue criminal cases in court.

Given the fact that the report has not been made public, it is impossible to challenge the President's decisions and evaluate the extent to which it was based on merit and evidence gathered by the DoJ and the NPS. The system of justice in reality legally and structurally permits the Head of State to take over and usurp the role of the prosecution. There was no need to create the IIRC. The DoJ and the NPS are legally and structurally mandated to investigate and prosecute cases that breach the country's penal and statutory laws, regardless of the nature or the severity of the offence and the identities of the victims. The IIRC was in reality created as a legal theatrical exercise which would amount to nothing. President Aquino's decision to rescind the IIRC recommendation have shown that the intention in setting up this body was primarily as a faced, with no expectation of it leading to any accountability for members of the authorities.

Maguindanao Massacre: Trial could last for decades

Another high-profile human rights situation that is a test of the governments will and ability to address abuses and impunity concerns the massacre of 57 people and the disappearance of one person on November 23, 2009 in Ampatuan, Maguindanao province in Mindanao. Thirty two of the murdered victims were journalists. A member of the Ampatuan family, Datu Andal Ampatuan Jr., was identified as the principal suspect in the massacre, and was arrested on November 26, 2009.

On February 5, 2010, the Department of Justice (DoJ) indicted for 57 counts of murder the 195[3] individuals that they identified as being responsible for the massacre. 66 of these were policemen and five were soldiers. There were also 560 "John Does"; policemen and members of the paramilitary forces whose identities have not been ascertained but were also included in the murder charges. The list of those indicted is telling of the state of law enforcement and the rule of law in the country, where State agents function contrary to their lawful obligations to protect lives, and the liberty and property of the country's citizens. Instead, they serve the interests of the local political elite.

3 Copy of the unsigned Joint Resolution by the Department of Justice, February 5, 2010: http://campaigns.ahrchk.net/mm/docs/20100205-JointResolution.pdf

Of these 195 accused, 82 had been arrested as of November 10, 2010.[4] Fifty of those already arrested have so far been arraigned in court, while over a hundred others remain at large. Some of the accused have had pending petitions in court to have their names excluded from the criminal charges delaying the commencement of their trial in court. Due to the large number of accused concerning the massacre, particularly elected officials, policemen, soldiers and members of paramilitary forces, the trial of the case in court suffers from delays, due to a variety of reasons. For example, the accused were being arraigned one batch after the other rather than all together. Furthermore, pending petitions to have their names excluded from the case have also created delays.

While the DoJ has pursued the prosecution concerning the 57 murders, based on charges of Abduction, Multiple Murder and Damage to Property, the presumed murder of Reynaldo "Bebot" Momay, a journalist whose body has not been found, has not been included in the prosecution. In the Philippines, murder charges can only be prosecuted when there is evidence of the person's death. In Reynaldo's case, although it is strongly believed that he was among those murdered, the failure to produce his body as proof of his death has deprived his family of the opportunity to seek legal remedies.

The DoJ's decision to prosecute the accused for multiple murders based on "positive identification" could become a concern during the trial. In order for the case to have the possibility of securing a conviction, the prosecution cannot afford to depend largely on witnesses' oral testimonies and on the principle of "positive identification" alone. Public prosecutors and court judges still rely heavily on oral testimonies for deciding a "probable cause" to go for trial or to convict a person. This creates a risk that the cases may be dismissed for a lack of evidence, or that the entire case could collapse if witnesses recant their testimonies, are killed or have their credibility questioned.

The killing on June 14, 2010 of Suwaib Upham (nickname Jessie), one of the key witnesses for the prosecution, illustrates the gross failure by the DoJ's witness protection system in responding to applications requiring an urgent response. At the time of his murder, Suwaib was not officially yet under the program. He had been awaiting for the DoJ's decision for his inclusion in the program since March, after submitting the necessary application papers, but the DoJ rejected his application in April 2010, after a long delay, without giving adequate explanations.

In many cases the failure by the government to provide interim protection prior to DoJ approval of applications has been preventing most witnesses from coming forward. It also therefore prevents cases from being filed in court for prosecution, even if there are

4 113 Suspect in Massacre still in hinding: http://www.manilatimes.net/index.php/component/content/article/42-rokstories/32380-113-suspects-in-massacre-still-in-hiding

witnesses available, or leads to them being dismissed due to a lack of witnesses willing to testify.

In order for the "positive identification" method to be effective in trial, it requires not only the visual identification of the accused by the witness, but also adequate proof that the witness knew of or had met the accused before the crime took place. In the argument contained in the DoJ's resolution, however, this reasoning has not been fully explained unless the prosecutors have had sufficient evidence to ensure the possibility of conviction without heavily depending on positive identification. The fundamental requirement for each witness should have knowledge of each of the accused has not been adequately detailed, leading to concerns that this process may prove ineffective.

The country has a reputation for poor conviction rates in cases of extra-judicial killings of human rights and political activists. For example, of over 1,000 cases of killings of activists reported since 2001, only three are known to have resulted in convictions. Most of the cases involving extra-judicial killings were either not filed in court or were dismissed for lack of evidence. The failure to protect witnesses or the failure by the police to collect and preserve needed forensic evidence from the crime scene has been responsible for this situation. Investigations into the massacre will likely face numerous hurdles, as the policemen involved also attempted to cover up the massacre by deliberately failing to record details in their daily logs, according to the findings of a prosecution panel. The exhumation and recovery of bodies was reportedly also carried out in ways that have destroyed vital forensic evidence. The AHRC therefore remains seriously concerned by the fact that the systemic failings in the justice system, from the investigation phase through to the trial phase, will prevent justice being delivered in even this high-profile case. The endemic and systemic delays in the holding of hearings in courts is currently undermining the prosecution of the case, adding to concerns.

The police and prosecutors acting outside of the law

Despite documenting hundreds of cases of grave human rights violations over the years in the Philippines, the AHRC has seen little evidence of effective investigations into these or prosecutions of those thought to be responsible. Investigations and prosecutions of cases are typically performed without any semblance of due process. They are conducted outside the legal framework of the institutions of the rule of law that are responsible for conducting such essential components of justice delivery. Members of the Philippine National Police (PNP) are not held accountable for illegally arresting and detaining persons or the use of torture in criminal investigations. Prosecutors file cases in court based on evidence that has been gathered using illegal means by the police. Cases are prosecuted without basic legal requirements being met, including standards concerning evidence and whether there is probably cause concerning alleged crimes.

The PNP and the National Prosecution Service (NPS), which is under the Department of Justice (DoJ), enjoy institutional protection that shelters them from any repercussions for their use of illegal methods. Abuses of authority by the police and NPS prosecutors of the NPS, and the vulnerability of these institutions to political control, however, permit the prosecution of human rights and political activists in politically-motivated and fabricated cases. Such individuals and their organizations are targeted by the government's justice system, particularly when the military and the police take a keen interest in prosecuting them. Such prosecutions are usually preceded by the accused being labelled or publicly accused of involvement with communist rebellion - regardless of whether these allegations are supported by any evidence.

The principle that witnesses must be credible and that their testimonies must be supported by evidence is routinely ignored in the prosecution of cases, notably when the investigation and the prosecution of cases are backed by the military and the police. At the early stages of deciding whether or not a case can proceed to a prosecution in court, in such cases, prosecutors typically fail to exercise their authority to protect the fundamental statutory and Constitutional rights of the accused.

The use by the police and the military of false witness has also been widespread. For example, former rebels and acquaintance of the accused are used to concoct and make false testimonies, which provide the prosecutors with the legal basis to subpoena the accused. These witnesses are persons who enjoy benefits, including money from the military and the police. The prosecutors abdicate from their power to dismiss cases based on a lack of evidence by not thorough examining whether the charges meet acceptable standards. An evaluation should be made to assess whether the evidence presented is enough to show that a crime has been committed. Such due diligence would prevent the filing of legally incoherent and fabricated cases in court. However, prosecutors typically leave it up to the courts to decide on the merits of the case.

Prosecutors are subservient and allow themselves to be co-opted by the police and the military. Prosecutors have been conducting inquest proceedings inside military camps, when the military have illegally arrested persons. This is a violation of section 2 of the Department of Justice's (DoJ) Department Circular No. 61 that stipulates that "(prosecutors) assigned to inquest duties shall discharge their functions during the hours of designated assignments and only at the police stations/headquarters of the PNP". This practice is therefore illegal and undermines the civilian nature of the prosecution service. Prosecutors that act illegally are however not being held accountable.

Flawed prosecutions of demonstrators and activists

The following are some examples of the prosecution of activists that the AHRC has documented in 2010:

Fabricated charges against eleven activists

Mr. Esperidion R. Solano, assistant provincial prosecutor in Camarines Sur, sent subpoenas to eleven activists on August 16, 2010, requiring them to respond to allegations of murder that the military had filed. The key witnesses in the murder complaint were persons who are known supporters of the military. The attack, which killed a military officer, a civilian and wounded four other soldiers, took place on May 25, 2006 at 10pm in Barangay (village) Pawili, Pili, Camarines Sur.

In a complaint filed by Captain Allan Cornejo, a member of the 9th Infantry Division of the Philippine Army attached to the Camp Elias Angeles, Caboclodan, San Jose, Pili, the investigating prosecutor heavily relied on the testimony of one of his witnesses, Edwin Nazarionda. Nazarionda claimed that prior to the attack the eleven activists took part in a meeting on April 28, 2006 unanimously agreeing to launch a tactical offensive against the Armed Forces of the Philippines (AFP) Intelligence Camp in Pawili, Pili, Albay.

Nazarionda also claimed he knew the accused as he was a former New People's Army (NPA) and at the time was working as a pastor for the United Methodist Church. He claimed that he personally knew them, particularly Leo Caballero. Apart from him, two other witnesses, Eleazar Cells and Renante Legata, also claiming to be former NPA rebels, accused them in sworn statements recorded at the Pili Municipal Police (PNP) of being involved in the attack at the military camp.

Apart from stating that the persons knew the eleven accused and that the latter allegedly plotted the attack, the testimonies did not contain information that could have satisfied the legal requirements to establish 'probable cause' that a crime had been committed, enabling prosecutors to take action. The prosecutor could have dismissed the complaint following a summary investigation after it was filed, but he did not.

Those included in the complaint, which concerned two counts of murder, four counts of frustrated (attempted) murder, three counts of 'carnapping' (stealing a vehicle) and a special case of malicious mischief, were:

1. Leo Caballero, correspondent for the Center for Trade Union and Human Rights (CTUHR) in Bicol region and also the head of the Human Rights Department of Kilusang Mayo Uno (KMU)-Bicol
2. Maria Agnes Pacres, regional coordinator of Alliance for the Advancement of People's Rights (KARAPATAN)
3. Beverly Quintillan, Bagong Alyansang Makabayan (BAYAN)
4. Felix Paz, chairperson of Kilusang Magbubukid ng Pilipinas-Bikol (KMP)
5. Jose Pernia, chairperson of Bayan Muna-Bikol

6. Jariz Vida, secretary-general of Bayan Muna-Camarines Sur
7. Eric Torrecampo, Bayan Muna-Camarines Sur
8. Neptali Morada
9. Reynaldo Hugo
10. Edgar Calag
11. and Ka Boris Taba

The prosecutor's decision to proceed with the prosecution process and subpoena the accused solely based on subpoena witnesses testimonies undermined safeguards concerning the protection from being falsely charged and subsequently deprived of liberty.

The case also raises the legal question about how an individual or group of persons can be held liable for the crime of murder, based only on the fact that they had made a declaration, without any further evidence. If such testimony is sufficient to charge accused persons in courts, anyone could be prosecuted for any crime based on any testimony, without any supporting evidence. The absence of any credible evidence requirement shows how corrupted the justice process can be, and how it can bend to fit the interests of the State. The AHRC also believes that the idea that a group of key leaders and organizers of human rights and political organizations would come together to launch an armed offensive on a military camp is preposterous.

Torture and false charges filed against three activists

Peasant community organizers and activists Charity Diño (29 years old), Billy Batrina (29) and Sonny Rogelio were illegally arrested on November 23, 2009 and tortured and faced false charges. When their case was reported in March 2010 they were in detention at the provincial jail in Batangas, where they remain to date. They had previously been held for 17 days in a military camp, instead of legal detention facilities as required by the law, under the pretext that they were security risk. They were tortured before they were transferred to proper jail facilities.

At the time of their arrests in Talisay, Batangas, they had been inviting local community members to participate in Urban Poor week. They are members of Samahan ng Magbubukid ng Batangas (SAMBAT), a local peasant group. Soldiers attached to the 730th Combat Group of the Philippine Air Force Camp in Palico, Batangas forced them into vans. Their whereabouts were not immediately known following their forcible abduction. The day after their arrest, November 24, they were taken to the Office of the Prosecutor in Batangas, where they were subjected to inquest proceedings.

The victims in this case were held for 17 days by the military and were tortured. They were blindfolded with adhesive tape and handcuffed. Two of the victims, Batrina and

Rogelio, had their heads hit against a wall. ; Charity had her finger squeezed hard with bullets inserted in between them. Several military men interrogated them one after the other. They were forced to admit that they are members of the NPA rebel group and questioned about other alleged members of the group.

The manner of their arrest was a violation of Rule 113, section 5 of the Revised Rules on Criminal Procedure, which allows arrest without warrants only when: a person is attempting to, or is in the act of committing or has committed a crime. Any person arrested under such provisions should be subjected to an inquest, but the charges must satisfactorily establish a credible level of probability that a crime had been committed in order to allow the launching of a prosecution.

On November 26, charges of illegal possession of firearms and explosives were filed against the three at the Regional Trial Court (RTC), Branch 6 in Tanauan, Batangas;. Charges of illegal possession of drugs were also filed against Diño at the Municipal Trial Court (MTC) in Talisay, Batangas. The soldiers allegedly planted evidence, which they used to enable the filing of charges.

The manner of the arrests and the subsequent filing of charges under the inquest proceedings did not meet the requirements under the existing Rules. The three victims were initially abducted and were not properly and adequately informed of the nature of charges against them. Evidence was allegedly planted on them. They were also held in a military camp instead of a legally sanctioned detention centre

The military usurped the authority of the police by arresting these persons and investigating their alleged crimes. The police station that is supposed to have primary jurisdiction in the area, the Talisay Police Office (TPO), was apparently not even aware of the military operation.

The case of the 'Morong 43'

On February 6, 2010, 43 health workers, collectively known as the 'Morong 43',[5] were illegally arrested while they were holding a training workshop on health skills in Morong, Rizal, and detained and subsequently laid with questionable charges in court. The training was organised by the Community Medicine Development Foundation (COMMED) and the Council for Health and Development (CHD) to provide community organisers and volunteer health personnel with skills they could use in their communities.

5 For more information about this case see an AHRC urgent appeal http://www.ahrchk.net/ua/mainfile.php/2010/3366/; and a campaign page set up concerning this case: http://freethehealthworkers.blogspot.com/

Among those arrested were physicians Dr. Alexis Montes of COMMED; Dr. Merry Mia of the CHD; Mr. Gary Liberal, a nurse; Ms. Teresa Quinawayan, a midwife; and CHD staff-members. Physicians Montes and Mia had been working with their respective NGOs for many years. The 43 victims were blindfolded before they were taken to Camp Capinpin in Tanay, Rizal, where they were still being arbitrarily detained as of the end of 2010.

The military and police who arrested them have been accused of planting firearms and explosives on them. Those arresting them – approximately 300 military and policemen attached to the 202nd Infantry Brigade of Armed Forces of the Philippines (AFP) and the Philippines National Police (PNP) Provincial Police Office (PPPO) of Rizal province – have claimed in various media interview that the 43 victims were members of the New People's Army and that the training they were conducting was for the making of explosives.

There were irregularities in the manner of arrest, the securing of evidence and the filing of criminal cases against the victims. According to reports from KARAPATAN, a local human rights organisation, when the policemen and the military came to serve the search warrant, they forced their way into where the training was being held. At gunpoint, the military forced the caretaker to open the gates and they also kicked open the main door to get into the building. None of the persons involved in the training had any arrest warrants pending against them, so this use of force is unjustifiable.

When the police have a court order to conduct searches they have a legal obligation to present them to the person who owns or occupies the place that is to be searched. In this case, the police only presented the document after they had finished the search. Furthermore, the search warrant did not specify the exact location to be searched or the names of any of the persons that were arrested.

The police and the military handcuffed the 43 victims, conducted a body search, questioned them, took their photographs and recorded a video while they were being questioned. The male victims were blindfolded and all of their personal belongings were also taken by the military. The military and police conducted the search of the compound without supervision, allegedly enabling them to plant evidence.

The victims were then taken to Camp Capinpin in Tanay, Rizal, the headquarters of the 202nd Infantry Brigade of the Philippine Army (PA), by a convoy of military vehicles composed of four 6 x 6 military trucks, two military Armoured Personnel Carrier (APC), a car and an ambulance. Some of the vehicles had no licence-plate numbers, while the others were either covered or smeared with mud.

All 43 victims have now been charged with the Illegal Possession of Explosives at a local prosecutor's office. The manner in which the inquest proceedings were carried out is of concern. The public prosecutor went to the military camp to conduct the inquests, instead of the police and the military going to the prosecutor's office.

As mentioned above, under section 2 of Department of Justice's (DoJ) Department Circular No. 61, public prosecutors can only conduct inquests in police stations, not in military camps.

In February 2010, the victims' legal counsel filed a petition for the writ of habeas corpus with the Court of Appeal (CA). However, in ruling on the petition, the appellate court upheld the legality of the filing of charges against the victims, by invoking an old decision produced during Martial Law in the Ilagan vs. Enrile case.[6] According to this, once a charged in filed against the accused, their detention can no longer be questioned because criminal charges have already been filed against them in court. The legality of their arrest and detention, and the validity of evidence used by the prosecution, is a matter for the court to decide upon in hearing the case. This enables cases that should have been dismissed prior to reaching the court for legal flaws and insufficiency of evidence, are allowed to go to trial. This allows cases that are the product of torture and flawed due process to be tried in court and can then result in travesties of justice.

Karnation workers imprisoned based on false charges

In August 2009 the AHRC first reported the detention and filing of fabricated charges against 20 workers of Karnation Industries and Export, Inc.[7] They were charged with Illegal Detention after they held a protest in front of their factory in May 2007 concerning the illegal dismissal of fellow workers, the non-payment of salaries, holiday pay, their 13th month's pay and night differential payments. They were only being paid Pesos 160, which is half of the Pesos 320 (USD 6.6) mandated as the daily minimum wage in the area.

The hearing of their case had been pending for two years, during which two of their number had died in prison after contracting tuberculosis. The evidence used by the prosecution in pursuing the charges against them was only pictures of the gate the complainants had claimed the workers had padlocked. The pictures showed workers on strike outside the compound. The workers, however, argued that the pictures and the

6 Laurente C. Ilagan vs. Juan Ponce Enrile; http://www.lawphil.net/judjuris/juri1985/oct1985/gr_70748_1985.html

7 http://www.ahrchk.net/ua/mainfile.php/2009/3238/

persons in the said picture are not known to them and, in fact, did not resemble any of them.

It is only after the workers were represented by a lawyer in court that the hearing of their case progressed. On November 20, 2009, the court judge hearing the detainees' case, Ma. Teresa Cruz San Gabriel of the Regional Trial Court (RTC) Branch 80, in Morong, Rizal, granted the workers' petition to post bail allowing temporary liberty. Judge San Gabriel recommended P60, 000 (USD 1,292) as bail for each of the detainees. Their employer filed a petition on December 28, 2009, asking the court to reverse its decision granting them bail. The complainants also asked the court to increase the bail to an amount the workers could not possibly afford. On January 26, 2010, the court rejected the complainants' appeal but did increase the bail amount from P60,000 to P80,000 (USD 1,760). Despite these attempts, by March 30, 2010, all of them had been released on bail by posting a surety bond.

Under article 3, section 13 of the Bill of Rights of the 1987 Philippine Constitution it is clearly stipulated that "the right (of the accused) to bail shall not be impaired" and that "excessive bail shall not be required". Only in cases where the 'evidence of guilt is strong' and where there is a serious risk that the accused may attempt to escape from prosecution, can the right to bail may be denied by the court hearing the case.

In this case, none of these conditions exist. The evidence against the detainees is not strong and they are not likely to escape from being prosecuted. Also, to increase the amount of bail to P200, 000 as had been requested by their employer, would amount to an excessive bail level for the accused, who were ordinary factory workers, with no wealth or properties. The reason they were being prosecuted in the first place stemmed from their making demands to be paid the minimum wage and other lawful benefits due to them.

There are questions as to the admissibility of the evidence against the workers. As mentioned above, in the photographs used as evidence showing workers padlocking the factory gate, none of the persons in the picture resembled any of the workers charged. While the workers were holding their strike outside the establishment, any persons seeking to enter or exit the establishment were reportedly not prevented from doing so, including the employers and other workers.

Use of torture in criminal investigations

The following section will present examples of how the police use torture as part of routine investigations and how such abuses are conducted with impunity.

Police force torture victim to withdraw his complaint

Anuar Hasim was arbitrarily arrested by the police in General Santos City on April 4, 2010. When carrying out the arrest, the police did not show him their order to arrest him or inform him of the charges motivating his arrest. Anuar had been riding his motorcycle, when two plain-clothed persons riding on another motorcycle stopped him. One of them grabbed his left arm and told him to, "Come with us, do not attempt to run otherwise you will be killed". When Anuar asked the two men what he had done wrong and why he was being arrested, they simply told him to "just come with us". The police brought him to the GSCPO's Police Station No. 6 located in Barangay (village) Bula, where they tortured him for seven days following his arrest in order to force him to admit to being a commander of the Moro Islamic Liberation Front (MILF) rebel group. He was He was kicked in the chest, was burned with lit cigarettes, was suffocated with cellophane wrapped around his face and head. He was also blindfolded and strangled and forced to squat, while handcuffed and punched and kicked in this position.

Anuar was finally remanded in custody at the Provincial jail in Alabel, Sarangani Province on April 12, 2010. He later learned that he had been charged with murder, arson, robbery with violence, and intimidation of persons, before the Regional Trial Court (RTC) Branch 38 in Alabel, Sarangani Province.

On July 27 an investigator from the Commission on Human Rights (CHR XII) from Cotabato City was dispatched to visit the victim in the Alabel jail to investigate a complaint of violation of the Anti-torture Act of 2009. However, before the CHR could commence its investigation, Senior Police Officer 2 (SPO2) Argie Miraflores of the Regional Intelligence and Detective Management (RIDM XII) and SPO1 Israel Lantingan of the Municipal Police Station in Alabel made the victim sign an Affidavit of Desistance on June 8. This is a sworn statement declaring that he will no longer testify in court about his torture complaint or bring witnesses to testify for him.

Before he signed the document two other policemen one of whom was reportedly called Jamael Amykulot, attached to the Police Regional Office (PRO XII) of the Philippine National Police (PNP) - visited and interviewed the victim in jail. They had drafted the Affidavit-Complaint concerning his torture that Hasim had signed. These policemen were supposedly tasked with investigating his torture complaint. They did obtain his testimony, but when they were to take the victim to the prosecutor's office to file the charges relating to the complaint, as per the law, the victim was afraid of what these policemen may do to him. He refused to go with them, out of fear, and the police then used this to block the filing of his complaint.

Furthermore, his lawyer was not present during the signing of the documents relating to his complaint and his family-members were not properly informed of the actions the police had taken.

When the CHR visited the victim at the jail, he was too frightened and no longer wanted to be interviewed, after learning that the CHR investigator, who had introduced himself as being attached to the government, wanted to interview him again. Having been tortured by the police and later forced to sign the document in the absence of his legal counsel, Anuar was understandably fearful of persons from government agencies.

Before Anuar was transferred to prison on April 12, he had informed Ma. Antoinetta Odi, the medical health officer who examined him, that he had been tortured. However, she deliberately ignored the information and declared him "physically fit for commitment (to jail)". She did record the contusions that were visible on the left side of his chest.

Police torture a man and plant evidence to frame him

Misuari Kamid is a utility man employed by the Sarangani provincial government. When he was illegally arrested on April 30, 2010, he had been waiting for a ride on a motorcycle in Silway, Barangay (village) Dadiangas West, General Santos City. He was with two others who had attended a feast earlier that day at 'Baraks', a police reservation settlement.

While Misuari was waiting a man, who he later learnt was Richard Autor, an informant of the Philippine Drug Enforcement Agency (PDEA), approached him and started asking him questions. Richard asked Misuari whether he was familiar with some persons they were looking in the area. Intelligence Officer 3 (I03) Arce Adam, then arrived in a red car (with license plate number UED 147) and having got out of the vehicle, drew his firearm and pointed it at Misuari. Misuari's was handcuffed behind his back and he was forced to get into the vehicle. Misuari refused and IO3 Adam hit the back of his neck with the handle of his handgun. They took Misuari to the regional headquarters of the Philippine Drug Enforcement Agency (PDEA), General Santos City.

In his sworn statement Misuari stated: "When we reached the PDEA compound, they brought me to a cottage and I heard Richard Autor call the PDEA agents. When they came, they took turns in hitting and boxing me. They boxed my face, left and right side of my chest, left and right thighs".

Misuari identified those who had assaulted him as Intelligence Officer 1 (IO1) Rodrick Gualisa, S02 Frederick Ocana, I01 Vincent Quilinderino, I03 Arce Adam, I01 Eleazar Arapoc, SI2 Raymund Parama and two of their informants - Luisito Epino and Richard

Autor. I03 Adam was trying to get him to admit to being a drug dealer Misuari pleaded for them to stop assaulting him.

He was later Misuari was taken to a parking lot where he saw the officers place two plastic sachets containing cannabis and a 500 peso bill on the ground. They then forced Misuari to kneel beside the evidence, so that photographs could be taken. When he struggled against them S12 Parama hit him with the handle of an Armalite rifle.

That evening, Misuari was detained inside the detention cell of the PDEA. He was unable to sleep due to the pain caused by the torture. The injuries that he suffered were later documented in a medical certificate issued following an examination by government physician Ma. Antoinetta Odi, on May 18, 2010.

At 9 a.m. on May 1, 2010, Misuari was taken to the office of the PDEA where some journalists were waiting for him. When he was presented to them, Misuari saw the evidence they had planted on him on a table which the officers claimed were confiscated from him. Misuari is presently being detained at the General Santos City Reformatory Center (GSCRC).

Farmer detained incommunicado for six days

Farmer Abdulbayan Guiamblang was arbitrarily arrested by members of the military on February 26, 2010, on suspicion that he was a commander of a rebel group. He was tortured and held incommunicado for six days. The soldiers did not turn him over promptly to police custody, as they should have done, but illegally detained him. The military refused to inform his wife and the head of his village about his whereabouts.

He was arrested while travelling between his home and his farm, which takes him through the 38th Infantry Battalion's detachment in Sultan Mastura, Maguindanao. On this occasion a soldier guarding the detachment stopped him, took him to a nearby community centre, handcuffed him, tied his legs with adhesive tape and blindfolded him. He later loaded into a military 6x6 truck and driven for about 20 minutes to an unknown place, where he was interrogated and severely tortured. He was told that the military had been looking for him and that orders for his arrest were pending in court, due to his allegedly being a commander of the MILF rebel group. He admitted that he is a member of the MILF, which in itself is not a crime, but denied being an MILF commander.

During questioning, he was hit several times on the head with a bottle of water. His interrogation lasted from the time of his arrest at 4.30 pm on the 26th of February until 12 midnight the same day. He was detained incommunicado until March 4, when he was produced before the Regional Trial Court (RTC) Branch 18 court in Midsayap, North

Cotabato, where charges had been filed against him. These concerned frustrated murder, attempted murder,[8] kidnapping and serious illegal detention, robbery and arson.

Police deny the existence of human rights

Five men, Lenin Salas, Jerry Simbulan, Daniel Joseph Navarro, Jose Llones Gomez and Rodwin Tala were arbitrarily arrested by the police in San Fernando, Pampanga, on August 3, 2010. They were tortured while in police custody. One of the victims, who revealed his ordeal in an interview, said the police suffocated him, severely assaulted him, burnt his skin with lit cigarettes and threatened to kill members of his family.

They were arrested by members of San Fernando City Police and the Provincial Public Safety Office, under Superintendent (Supt) Madzgani Mukaram, in Villa Barcelona Subdivision Barangay Sindalan, in relation to their alleged involvement with the Marxist Leninist Party of the Philippines (MLPP-RHB), an illegal armed group.

When the group of Supt. Madzgani Mukaram arrived, the men were forced to lie down faced to the ground and were kicked and assaulted by the police, including Supt. Mukaram. They were then put into separate vehicles and continued to be assaulted, including with sticks, while being transported to the Provincial Police Office (PPO), where they were blindfolded and suffered various forms of torture. Lenin, for example, claims to have been beaten with a gun, burnt with lit cigarettes, suffocated with cellophane and kicked in the genitals. The police reportedly also threatened to kill him with a gun. Supt. Mukaram also allegedly threatened to harm Lenin's family members if he refused to cooperate.

When Lenin asked Supt. Mukaram to respect his human rights, he was told that "There are no human rights for us. We will kill each of your contacts in the media and other groups and we will just bury them." Supt. Mukaram also reportedly told Lenin that to kill his sister would not take long and that even if he decides to visit his sister's wake, he would not be able to because he will make sure he could not get out of jail. On August 4, the five men were taken to the Provincial Prosecutor's Office in San Fernando, Pampanga where they were charged with Illegal Possession of Firearms, Ammunitions and Explosives.

8 Under the law, frustrated murder is when injury has been caused to a victim that could have been enough to kill him/her, yet the victim survived. Attempted murder is where a fatal injury was not caused but the intention to kill has been established.

The failure to investigate and prosecute killers

Investigations into extra-judicial killings by the police, military, paramilitary groups and individuals working for all of these, have not resulted in successful prosecutions of alleged perpetrators. The failure of such prosecutions is due to the inability of the justice system to effectively identify perpetrators and due to lacuna in the law and its implementation. Specifically, the prosecution of cases cannot take place if the police cannot identify the crime under the penal code. Legal loopholes allow the police to dodge cases of extra-judicial killings.

Impunity being granted for killings through the use of unproven justifications

When a person dies in custody or is killed in an armed encounter with the police or the military in the Philippines, such deaths are typically not investigated. The country's criminal justice system takes at face value the justifications given by the involved State agents and the deaths are not considered to have resulted from any crime. The AHRC condemns this practice, as it provides impunity to possible perpetrators of torture and extra-judicial killing, and completely side-steps the judicial process. It therefore also encourages the use of torture and extra-judicial killings by the State.

If a person dies under any circumstances while in the custody of the State, it is imperative that an immediate, impartial investigation be launched in order to determine whether there has been any foul play and whether the State is in any way responsible for the death. In such a case, those responsible should be prosecuted for extra-judicial killing. The burden should be on the State to prove that it was not responsible for the death of any person that dies while under their custody. However, in the Philippines at present, deaths in custody are rarely investigated thoroughly. If investigations are conducted, they are superficial and intended to show that action has been taken rather than to establish the cause of death. The investigations are conducted by members of the police that are in not sufficiently independent from those potentially responsible for the deaths.

Similarly, when the a person is killed in an encounter with State agents, it is imperative that an immediate, impartial investigation be launched in order to assess whether the killing took place in a legitimate fashion, for example if an armed person attacked a member of the security forces they could legitimately, as a last resort, kill this person in self defence. Only under very strict circumstances can State agents legitimately kill persons. However, in the Philippines, these conditions have not been clearly defined under laws or procedures, which leads to these justifications been abused to cover up extra-judicial killings.

'Legitimate encounters' in theory involves the death of persons who have exchange fire with the police or military during there operations. This happens when the military conducts offensives against rebels, when policemen are in pursuit of suspected criminals or in the process of carrying out arrest orders, or any deaths which involve a person being killed after having exchanged gunfire with the authorities. As will be seen in the examples below, the authorities frequently claim that killings were legitimate encounters, thus halting any further investigation into killing.

However, it is not up to those that carried out the killing to define whether it is a legitimate use of force resulting in a killing. The evidence proving that the encounter was legitimate must be gathered by an impartial investigation. This evidence must prove that the strict conditions permitting the State agent to kill the person have been met.

At present, however, in the Philippines, the military or police simply claim that the killings were legitimate and no further investigation is launched to verify this. Therefore, State agents can get away with murder, as there is no system allowing the independent investigation of such killings to take place, and it is therefore impossible for the relatives of victims to seek legal remedies or for those responsible to be held accountable.

The lack of credible investigations into human rights violations by State agents is a fundamental and insurmountable obstacle to the protection of human rights, to any efforts to seek justice by victims and to any attempts to eradicate torture, extra-judicial killings and forced disappearances, as well as impunity for these acts. There is an obvious, glaring need for an independent investigation mechanism that can be used when State agents, such as members of the police or the military, are accused of human rights violations. Such independent investigation is evidently required in cases that must by default be deemed suspicious, such as custodial deaths or encounter killings.

Numerous cases have been documented in which the killing of farmers, villagers and human rights activists have been justified as being the result of 'legitimate encounters,' for example:

In February 2005, three people from the B'laan Tribe, in Barangay Abnate, Kiblawan, Davao del Sur, were killed and three others were wounded, when the soldiers opened fire at them. The soldiers claimed that the deaths and wounding were a result of a legitimate encounter. However, an investigation later revealed that the victims had been summarily executed.

In November 2005, nine farmers and several others were wounded when soldiers in Palo, Leyte, Visayas opened fire on a group of people holding a protest vigil. The soldiers claimed the shooting was also a result of a legitimate encounter. However, an investigation later revealed it was not the case and led to the prosecution of the soldiers.

On May 21, 2006, the killing of Reverend Andy Pawican, a human rights defender, had been justified as coming as the result of a 'legitimate encounter'. He was forcibly taken, allegedly by military agents, after concluding a mass in Pantabangan, Nueva Ecija. His body, which bore visible signs of torture, was found six hours later.

In February 2008, eight people, including a four year old girl and a pregnant woman, were killed by soldiers in an incident branded a legitimate encounter in a coastal village in Maimbong, Sulu. The soldiers claimed that shooting was supposedly exchanged with an illegal armed group holding a kidnap victim.

On March 2009, two persons, a man and a woman were killed in a so-called 'legitimate encounter' that took place between rebels and government soldiers. The victims were farmers living in Maramag, Bukidnon. The body of one of the victims bore evidence indicating he might have been tortured and summarily executed.

In 2010, the AHRC documented cases of such false encounter killings, including the following:

On June 2, 2010, three brothers - Eric Miraflores, 27; Raymond, 23; and Rosmil, 16 – were shot at their farm in Sitio (a sub-section of the village) Hobol, Masinloc town, Zambales.

After less than an hour of having left to the farm they were returned to their parents, Roosevelt and Mila, in a hearse. Their faces were barely recognizable because they were badly bruised and had suffered numerous gunshot wounds. The bodies of the victims showed visible signs of torture. When the corpses were returned, they were wearing camouflage uniforms, clothes which the three were not wearing when they were last seen alive. It is believed that the corpses were dressed in camouflage uniforms to create the impression that they were members of an illegal armed group.

The Miraflores couple were later been told that their three sons were killed by the policemen attached to the Zambales Provincial Mobile Group (ZPMG) of the Philippine National Police (PMG-PNP). Inspector Rolando Delizo of the PMG-PNP announced that the three victims were killed in an 'encounter' during a police operation. The Miraflores couple argued that their sons could not be members of an illegal armed group and had never been affiliated with any organizations or owned guns.

In another example, on September 7, 2010, at around 12:30pm neighbours Vicente Flores, Richard Oliva and Melecio Monacillo and his son, Jonathan, were resting at the house of Eliseo and Rosie Albao after having been hunting near Barangays (village) Mapuyo and Mabuhay, in Mobo, Masbate. An undetermined number of soldiers, reportedly attached to the 9th Infantry Battalion of the Philippine Army (IBPA), were

passing by Rosie's house, and suddenly open fired on the house, instantly killing three of the occupants, Vicente, Melecio and his son, Jonathan. The soldiers shot at the house even though they had in no way been provoked.

Richard, who initially suffered gunshot wounds from the first volley of gunfire, tried to run for his life by jumping out the window. The soldiers finished him off after seeing him escaping. Rosie and her children, shocked by the assault ran for their lives away from their house. Vicente had his genitalia smashed by the impact of the bullets; his abdominal area also burst open and one of his hands was almost severed. One of Melecio's shoulders was shattered, and his leg bore gunshot wounds. Jonathan suffered gunshot wounds to his jaw, which pierced his skull, and to his back.

The soldiers, who left the area after ensuring that the victims were all dead, proceeded in the direction of Barangay Sta. Maria. Upon arriving there, they informed village officials that they had killed four New People's Army (NPA) rebels during an encounter.

The AHRC has documented numerous cases in which the police's failure to investigate the perpetrators of these killings shows a deeply rooted problem within the policing system that is directly responsible for the lack of successful prosecutions and therefore impunity. At the root of the problem is that there is no effective system of accountability within the police, which could ensure that the failure to investigate killings would have an impact on the police officers that failed in their duties.

Recommendations have been made concerning the need for the government of the Philippines to ensure investigations and prosecutions concerning all forms of killings, by Professor Philip Alston, the UN Special Rapporteur on extra-judicial, summary or arbitrary executions in April 2008, as well as in the Report of the Working Group on the Universal Periodic Review of the Philippines in May 2008. The government continues to ignore these recommendations and has not taken the required steps to ensure a system that is capable of carrying out effective investigations. As a result, the police and military continue to justify the torture to death of persons in custody or summary executions, without fear of being challenged and held accountable.

These defects within the structure of the police investigation mechanisms do not only affect the investigation and prosecution of cases involving human rights and political activists, but also the killings of ordinary, poor persons. In fact, political killings are more likely to at least receive some form of cursory investigation, due to the greater attention that they receive. In cases of killings of poor persons, with no political party or organizational affiliations, no legal aid or persons to document their cases, there is little chance of even getting basic investigations.

Even concerning the killings of persons with organizational affiliations and political connections, their relatives find it difficult to have their cases investigated by the police. The families and colleagues often have to gather evidence themselves, locate witnesses and provide them with protection in order to build a case.

The killing of human rights and political activists

Edward Panganiban: Target of overt surveillance

Edward Panganiban is the secretary of independent union Samahang Lakas ng Manggagawa sa Takata Philippines (SALAMAT-Independent), a labour union in Takata Philippines Incorporated in Laguna Technopark Incorporated. The company is owned by Japanese employers.

On June 2, 2010, after 5 p.m. he was on his way to Santa Rosa City when gunmen riding on a motorcycle shot him dead. His motorcycle stopped due to traffic. The gunmen took advantage of this by overtaking his motorcycle and shooting him dead. The gunmen knew the victim's identity, because one of them was heard to have called his name before he was shot. Panganiban died instantly from 12 gunshot wounds.

Before Panganiban was murdered, two reportedly well-built persons wearing balaclavas or other things covering their heads and riding on a motorcycle had been seen acting suspiciously near where he lived

Police investigators arrived at the crime scene about ten minutes later. There were eye witnesses to Panganiban's killings that could have helped the investigation in identifying the perpetrators. However, the police or prosecutors appear to have made no effort to locate the witnesses and provide them with security should they cooperate in the investigation, to ensure the prosecution of the case.

Furthermore, no adequate investigations have been made into reports by Panganiban's colleagues that his fellow union officers and union members have been palced under surveillance by the Intelligence Service of the Armed Forces of the Philippines (ISAFP) following his death. The ISAFP has reportedly been intimidating workers from participating in union activities since 2007.

Reynaldo Labrador: shot in front of his wife, children

Reynaldo was 39 years old, had 3 children and was a member of the Paquibato District Farmers Association (PADIFA), a local chapter of Kilusang Magbubukid ng Pilipinas (KMP) or Philippine Peasant Movement. He was shot dead at 7:30 p.m. on September 3,

2010 in front of his wife, Leonisa and his daughters Reylon, 10; Raquel, 8; and Jennifer, 4, at their home in Paquibato District, Davao City.

Labrador was inside his house when two men, one of whom was identified as Berto Repe, a member of the Citizen Armed Forces Geographical Unit (Cafgu), came looking for him. Cafgu is a paramilitary unit under the immediate control and command of the military. Repe is attached to the 69th Infantry Battalion of the 1003rd Infantry Brigade of the 10th Infantry Division Philippine Army (IDPA).

The two were met by Labrador's wife, Leonisa, and they told her that they were carrying documents for her husband to receive. When she offered to received them, they insisted that they could only give the documents to her husband. She then called to her husband who was resting inside. When he emerged, Repe's companion pulled out his handgun and shot him in the head and chest. He died instantly.

Reylon, the victim's eldest daughter, tried to go to her father after hearing the gunshot, but after seeing her father dead she jumped out of the house. She immediately called for their neighbours help. Leonisa immediately took the other two children, Raquel and Jennifer, to safety. The gunmen escaped after the shooting. They left a note at the victim's house that read: "Demonyo ka! Hiposon ka!" (You're evil! You must be killed!)

On the 6th of September, a group of soldiers came to Labrador's house. The victim's family believes that the soldiers had come to see them to intimidate them from taking part in any demand for an investigation. This was after a local human rights group, Karapatan in Davao City, had sought the help of the local government to look into the case. The city's legislative body commenced an inquiry in aid of legislation on 9 September. The elected members of local legislative bodies, such as City Councils, have the right to conduct an 'inquiry in aid of legislation.' The purpose of this type of inquiry is to assist local legislative councils in the development of local laws that can address problems and provide remedies to victims. However, these local laws have to remain within the ambit of national laws. This kind of inquiry is not a criminal investigation and cannot be used as the sole basis for prosecutions, although they can support cases.

<u>Vicente Felisilda: shot in front of his brother</u>

38 year-old Felisilda was a farmer with four children and member of a political party, Bayan Muna. On September 9, 2010 at 7pm, he and his elder brother, Allan, were resting inside a small hut in Mawab town, Compostela Valley after working on their farm.

Two gunmen arrived wearing plain clothes and armed with .45 calibre pistols. One of them shot Vicente at close range. Allan ran for safety, but he could hear his younger

brother moaning in pain. About 20 minutes later, he heard another gunshot, as the perpetrators finished his younger brother off.

The following day, Felisilda's body was taken to a local funeral parlour to be embalmed. Here, there were four police investigators from Mawab Municipal Police Station who conducted an investigation; however, the victim's family did not report the shooting to the police. No post mortem examination was conducted before the burial.

Rene Quirante: executed by soldiers

48 year-old Rene Quirante, a farmer with five children lived in Sitio Labaklabakan, Barangay Trinidad, Guihulngan, Negros Oriental. He was the chairperson of Kapunungan Alang sa Ugma sa mga Mag-uuma sa Oriental Negros (KAUGMAON), an affiliate of Kilusang Magbubukid ng Pilipinas (KMP) - the "Philippine Peasant Movement."

On 30 September 2010, Quirante and Romeo Gador went to Sitio Amomoyong to meet with the members of his organization. Quirante and Gador decided to stay overnight at the house of the latter's relative, Neneng Nilles, in sitio Amomoyong when their meeting ended late in the afternoon. The place is far from Sitio Labaklabakan, where Quirante lived.

At 2 am those inside heard someone, who claimed to be a member of a rebel group New People's Army (NPA), calling them from outside asking them to open the door. They did not pay attention to the call. Then the caller forced himself in by opening the door's lock. Quirante and Gador tried to prevent them from entering but they were overpowered.

Once it was open, they saw a group of about 30 soldiers, in full uniform and armed with rifles, outside the house. One of those in the group was identified as Dennis, a rebel returnee working for the military. Neneng and her nine children, the youngest of whom is aged 2, were awakened by what was happening. The perpetrators, however, went straight to Quirante, beating him with their rifles butts. They forced him to admit that he is an NPA member. When Romeo and Neneng tried to help him the soldiers too assaulted them in open view of the frightened children.

The soldiers dragged Quirante towards the veranda where they continued to assault him, after which, the soldiers allegedly executed him by shooting him at close range twice in the head and once on the chest. The soldiers, who were heard by Gador to have said: "Tinlo na!" (It's clear!), left after shooting the victim dead.

Prior to his murder, Quirante was been detained on 24 March 2007 after the military

laid fabricated charges against him for Illegal Possession of Firearms. They accused him of involvement in an ambush that killed 3 soldiers attached to the 11th Infantry Battalion of the Philippine Army (IBPA). The case, however, did not reach court as the prosecutor rejected it.

At the time of his death, Quirante had been very vocal against the installation of a military detachment and Barangay Defense System (BDS), a paramilitary unit under the control of the military, in the interior villages of Guihulngan, Negros Oriental. He was also the object of public vilification by the military in their radio programs.

Benjamin Bayles: soldiers shot him in public

43 year-old Benjamin Bayles was lived in Himamaylan City, Negros Occidental. He was a leader and district coordinator of the Aglipayan Forum, the organization of members of Iglesia Filipina Independiente (the Independent Church of the Philippines). He was active in campaigns against mining and a community organizer of the National Federation of Sugar Workers (NFSW). He was also a local leader of Bayan Muna, a political party.

On June 14, 2010 at 4:30 p.m. Bayles was waiting for a ride in Barangay Su-ay, Himamaylan City, when two men riding a motorcycle stopped nearby. They were wearing helmets and their motorcycle did not have license plate. The person riding at the back walked towards Bayles and shot him repeatedly. The driver also came close and shot him as he fell to the ground, to finish him off. Then the gunmen escaped onboard their motorcycle.

After the shooting, bystanders took Bayles to the Valeriano Gatuslao District Hospital but he was already dead. One of the bystanders, a government employee, immediately called someone he knew from the Himamaylan City Police Office (HCPO) to report the incident. The policemen there immediately also alerted the policemen at the adjacent city, the Kabankalan City Police Office (KCPO), who subsequently arrested the gunmen, Ronnie Caurino and Roger Bajon, having identified a description given by witnesses.

The police confiscated from Caurino a .45 caliber pistol, an STI Custom Shop model with serial number 129528. They confiscated another .45 caliber pistol and a lightweight Colt Defender Series 90 model with serial number 195879 from Bajon. The two were positively identified by witnesses as the ones who shot Bayles. They have since been identified as being members of the 61st Infantry Battalion of the Philippine Army. The perpetrators are facing charges of murder before the Regional Trial Court (RTC) in Himamaylan City.

The lack of effective witness protection

Beyond the lack of investigations and prosecutions, another systemic failure that is preventing the protection of human rights and upholding impunity is the lack of effective witness protection. In many cases that the AHRC documented in 2010, one significant obstacle preventing the justice delivery system from functioning has been the unwillingness of witnesses to come forwards and testify in court. This is understandable given the lack of adequate protection provided to them by the State. The government has failed to implement the Witness Protection Security and Benefit Act (RA 6981).

Since 2005, the AHRC has been urging the government to ensure adequate protection for witnesses if it is serious about holding promises made nationally and at the international level about investigating extra-judicial killings. The AHRC urges the government not only to effectively implement the provision of RA 6981, but to also introduce amendments to the law in order to make it effective in providing protection. For example, the law must be amended to enable interim protection to be provided to witnesses while their application for coverage under the witness protection program is being decided. Witnesses have been killed due to a lack of protection while waiting for extended periods while their applications are being considered.

Furthermore, under the Witness Protection Law, a witness can only be provided with protection once the case they are testifying in has been filed in court. During the lengthy period while the police conduct an investigation and before the prosecutors are able to filed charges in court, witnesses are exposed to unnecessary risk. This lack of interim protection allows the State to claim that it is not responsible for the witnesses, as they have not yet entered the witness protection system, and the State can therefore not be held accountable for anything that happens to them during this time. This is effectively acting as a green light for perpetrators to intimidate or even kill witnesses before they have had a chance to testify and represents a significant blockage to the justice system, as this system is overly dependent on witness testimony as part of court cases. A lack of witnesses equates with a lack of effective prosecutions and continuing impunity.

No investigation, no witness, no arrest

Edwin Bargamento: "we killed your father"

Edwin Bargamento had five children and was a community organizer of the National Federation of Sugar Workers (NFSW), a local farmer organization.

Bargamento was killed on April 13, 2005. He and his nephew, Sandro, were on their way home when gunmen attacked them. The gunmen had been waiting to attack them at the

roadside as they had parked their motorcycle. Sandro had noticed the gunmen, but before he could say something they had already shot his uncle, Edwin, with a.45 calibre pistol.

Bargamento tried to run away despite suffering injuries but they finished him off when he fell into a canal. The gunmen did not stop shooting at him until they were sure he was dead. Bargamento suffered 21 gunshot wounds. Sandro, however, was able to escape from the attack by running to a nearby house.

The delay on part of the police to arrive at the crime-scene resulted in evidence that could have been useful in the investigation being spoiled. A crowd of people had gathered at the place before the police could start investigating. It took them six hours to respond to the shooting incident.

By 2006, the victim's elder brother, Susanito, was also killed, after he had testified to an international fact finding mission which was investigating the killing of activists there in May 2006. Gunmen shot him dead in a crowded place. There were many eyewitnesses, including the victim's wife, who was present during the shooting, but neither Edwin nor Susanito's case have advanced in court.

In 2009, a person name Ryan (nickname Kenneth) told one of the victim's children that he was the one who had killed their father and uncle. The family has not taken action against this person, but remain willing to pursue the prosecution of the case.

The case of Manuel Bartolina:

Manuel Bartolina had three children and was a resident of Hacienda Sanay, Barangay Purisima, Manapla, Negros Occidental.

On June 13, 2005, Bartolina was shot dead as he was resting inside a hut on his farm. Before he was killed, his wife Lourdes noticed the suspicious movements of two persons who were selling goods as she was tending their store. In the village, most people knew each other, however, she had not seen these two men before.

Later his wife ran to their farm after she heard of gunshots coming from their farm. At that time, there was an electricity failure in their village. When she arrived at the hut, she found her husband dead. He had gunshots to the soles of his feet that exited from his belly.

No one witnessed the killing, but the victims' family believes that the he had been the subject of surveillance before he was killed. Although the victim's wife had seen the two persons she suspected of having carried out the killing, she could not recognize their faces

again. There have been no further investigations conducted into the victim's case five years on.

The case of Carlito Dacudao:

Carlito Dacudao was 50 years old, had seven children, and earned a living by selling fish. He was also a community organizer of the National Federation of Sugar Workers (NFSW), living in Victorias, Negros Occidental. He was helping farmers to claim ownership to the land that they cultivate.

At 7am on August 21, 2009, after buying his fish stocks to sell from Victorias, Negros Occidental, he was on his way home driving his motorcycle. Along the road, Anastacio Dios, reportedly pretended to want to buy fish from him and stopped him. 12 armed men had positioned themselves to attack him.

The gunmen are allegedly former members of the Revolutionary Proletarian Army (RPA), former rebels who had been integrated under the military. They are under the direct control and command of the military unit which they are attached to.

After learning about the shooting incident, Carlito Dacudao's wife Norma went to the crime scene but was prevented from coming close to her husband until the police arrived. Shortly after, the military also arrived and took the victim's belongingd and mobile phone. When she asked why the soldiers were taking them from her husband, they told her that they were only borrowing it to check his SIM card and phone. When she asked the police about it, they did not know anything about it.

The police did take custody of one suspect named De Dios, whom witnesses had identified as being involved in the killing. However, he was later release for lack of witnesses willing to testify, despite many people have seen the murder. De Dios was allegedly involved because his son is a member of the RPA.

Living in fear – the problem of threats to activists

Remedies cannot work without complaints

Many human rights or political activists in the Philippines are subjected to a range of threats by State agents or those working for them. These result in such persons living in fear, as many of these threats, including death threats, are carried out, as shown by the hundreds of reported cases of extra-judicial killings of such activists over the last decade.

The protection of human rights and political activists who are the subject of threats is not at all effective in the Philippines. Institutionally, it is the utmost responsibility of the Philippine National Police (PNP) to protect individuals.

The cases below illustrate how a lack of accountability by the police means that there are no repercussions when they fail to protect activists. This results in a lack of confidence by activists leading to complaints rarely being made when they receive threats. The extent of fear, distrust, and the lack of confidence in public institutions run so deep that victims do not expect the police to investigate cases.

The making of complaints at police stations has been reduced to nothing more than keeping records. The victims who are object of threats may report them to bring attention to their situation, but they typically don't expect the police to provide effective protection.

Judicial remedies: The Writ of Amparo is a judicial remedy that grants temporary protection orders (TPO) to individuals whose security and life is threatened. The Writ of Habeas Data is a remedy that provides for the correction to or production of records of persons subjected to false profiling by the authority. While these have been heralded as important developments in the remedies available to victims in the Philippines, as with many other laws, remedies and rights, they are not being effectively implemented. In these cases, the limitations come from beyond the authority of the judiciary.

These remedies promulgated by the Supreme Court (SC) do not function if victims do not file complaints in court or do not have the resources to do so. The continuing extra-judicial killings and impunity in the country have instilled deeply-rooted fear and apathy amongst victims and witnesses, which has meant that remedies that may have a chance of proving effective have not been used effectively.

The cases below demonstrate how institutions and mechanisms alone cannot protect persons if those who are to be protected have little confidence in the system. The government of the Philippines must work not only to put in place effective protection mechanisms but also work to ensure that the public develop confidence in these systems – this remains a significant task.

Yolanda Pineda: marked for death

On April 9, 2010, Yolanda Pineda received a letter laced with black ribbon with her nickname, "Let Pineda", written on it. She got it from her eldest daughter who had found it. The sender was supposedly a certain Ka Diego Magtanggol. The message in the letter, written in Tagalog, has been unofficially translated below:

"We are giving you reasonable time after receiving this notice to clear your name. Your failure to comply would mean you are not interested in clearing your name and it will mean a bold forceful move or DEATH!"

The sender claimed to know Yolanda and accused her of having connections with an illegal armed group, the Marxist Leninist Party of the Philippines (MLPP-RHB / Marxista Leninista Partido ng Pilipinas – Rebolusyonaryong Hukbong Bayan). It also accused her participating in demonstrations alongside this as a member of Kilusan para sa Pambansang Demokrasya (KPD - Movement for Nationalism and Democracy).

Yolanda Pineda is a day care teacher for Antonio Day Care Center in Barangay San Antonio, Lubao. Since the military established an army detachment adjacent to the day care center where she was teaching, June 2008, she had been very critical and been actively demanding the removal of the detachment. She had also organized the parents of the preschool students in joining her.

She also led in the submission of a petition letter filed with the Commission on Human Rights (CHR) and the Local Government Units (LGUs) which demanded the removal of the military detachment. It is believed that this is the reason why the army attached to the 3rd Infantry Battalion of the Philippine Army (IBPA) has subjected her to continuing harassment and intimidation.

Bernardino Patigas: he is worth 50,000 pesos

In November 2009, Bernardino Patigas received a letter from a person who claimed to know him, which stated: "Beware because the people led by Efren Amarilla will kill you. Efren is a member of an organisation (Guardians) established by the military".

In January 2010, he received another letter containing a threat, claiming that Efren Amarilla, Boy Palabrica, Tolendoy and two others whose names were not mentioned, would kill him. The letter also attached a mission order from Efren and signed by the chief of the Intelligence Special Action Force (ISAFP). They were reportedly to be given 50,000 pesos by Timoteo Ballesteros if they killed him. Patigas' colleague spoke with Boy Palabrica, one of those paid by Tim Ballesteros, who admitted that the message in the letters was true. However, this colleague does not want to stand as a witness in court.

Apart from the letters, Patigas has also been portrayed in numerous leaflets distributed in Escalante City showing him carrying a coffin towards a person in the mountain that is carrying firearms. There are also leaflets showing him carrying a firearm stepping on dead bodies.

Patigas, nickname Toto, is the secretary general of the Northern Negros Alliance of Human Rights (NNAHRA) in Negros Island and former organiser of fishermen in one of the districts in Negros Occidental province. Part of NAHRA's advocacy is education about why human rights violations are happening and for people to learn what they should be doing in cases of violations.

Cerila Anding: soldiers repeatedly vilify her

Cerila Anding is the president of the Nagkahiusang Mamumuo sa Osmena (Namaos)-Kilusang Mayo, a banana plantation workers union in Compostela, Compostela Valley Province.

Since 2008, Anding and her union members have been systematically targeted with vilification by soldiers attached to the 66th Infantry Battalion of the Philippine Army, lead by 1st Lt. Mark Tema as well as the Workers for Industrial Peace and Economic Reform (WIPER), a unit under the military's control that reportedly has orders to eliminate any activities that threaten 'industrial peace' in the plantation areas.

The soldiers had been conducting meetings in the villages to tell the villagers that Anding and her union are working as a front for the communists. The soldiers had gone to each of the houses of the union members and their officers to convince them to cease membership and affiliation with the National Federation of Labor Unions (Naflu) and the KMU respectively. The soldiers told them that union dues that Namaos were giving to these groups were used to support a rebel group. Such vilification has in many cases in the Philippines later resulted in the extra-judicial killing of persons who have been thus targeted, so this remains a serious concern.

Vicente Barrios: gunmen hired to kill him

Vicente Barrios is the president of the Nagkahiusang Mamumuo sa Suyafa Farms (Namasufa) in Compostela, Compostela Valley Province. Namasufa is an association of banana plantation workers in the area.

On September 16, 2010, at 8pm a man (name withheld for security reasons) came looking for Barrios at his office in Barangay Siocon, Compostela. This person warned Barrios that the SUMIFRU Company had hired two persons to kill him.

According to this man, the manager of the company was angry at the protest that the union had held at the head offices of SUMIFRU in Tibungco, Davao City on September 13, 2010. The workers held a protest demanding the implementation of the Collective Bargaining Agreement (CBA) and protesting the refusal to open the Election Ballot Box

of Namasufa that would determine their eligibility to negotiate the collective demands of the workers, as well as and the company's refusal to acknowledge that there existed an employer-employee relationship between them. The man also claimed that on September 14 and 15, 2010, he spoke with the two hired killers allegedly hired by the company to kill Barrios.

Three activists disappear in soldier's custody

On March 9, 2010, at 9 pm, five unknown persons armed with pistols reportedly entered the house of the Landingin family in Sitio Matalvis, Barangay (village) Inhobol, Masinloc, while the entire community was in darkness due to an electricity blackout. The armed persons forcibly took the victims, Ronron Landingin, Jinky Garcia and Daryl Fortuna, to a waiting car.

Three days later, on 12 March, the victims' whereabouts were located by villagers in Barangay Inhobol and Barangay Bamban, Masinloc. Persons fitting their description had been seen in the custody of the 24th Infantry Battalion, Philippine Army (PA), with their hands cuffed, during a military operation in the area. It appeared that the three victims were being used as guides by the soldiers. They were easily recognizable as they were well known community organizers in the area.

One of the witnesses was able to speak with one of the army soldiers on foot patrol, to confirm that the three persons were with them. On March 15, 2010, Ronron's parents were able to speak to him via his mobile phone, and he told them that he believed that the soldiers had taken him to Pangasinan, another province. They were helped at this point by the regional office of the Commission on Human Rights (CHR-III).

Meanwhile, the relatives of Jinky Garcia and Daryl Fortuna were unable to locate them despite going to the headquarters of the Philippine Army 24th Infantry Battalion and the Philippine National Police (PNP). They were also pursuing legal action against the soldiers to help secure the victims' release. Despite having been positively identified by witnesses and villagers as being directly involved in the victims' disappearance, Col. Wilfredo Patarata, the commander of 24th IBPA, denied having them in custody. He committed himself to cooperating with the investigation.

Since April 17, the victims' organization has been seeking a Writ of Amparo. This was to be lodged on behalf of the three victims after two witnesses had initially expressed their willingness to testify. Since then the witnesses have expressed concern for their safety and have been reluctant to cooperate. In March 2010, Ronron's parents withdraw from pursuing the case due to feelings of insecurity and had gone into hiding.

Lawlessness and the abandonment of due process

The problems arising from a lawless law-enforcement system

The Police

Members of the police routinely ignore elementary procedures when carrying out searches, arrests, detention. The nature of crimes that are prosecuted are even legally incoherent at times, as has been shown above. They conduct searches and arrests without considering whether they have court orders. However, there are no effective systems in place at present to hold policemen accountable when they do violate procedures.

Routine arrest without orders: Arrest can only be legal if they comply with Rule 13, section 1 of the Philippine Revised Rules of Criminal Procedures, under which the arresting officer must be in possession of a court order to justify the arrestee's deprivation of liberty. The arrest order must be shown to the person to be arrested, and the specific charges must also be included in the written order.

In reality, members of the police arrests persons without such orders and the charges are often concocted later. The case of Misuari Kamid above illustrates this problem clearly. When PDEA agents took custody of Kamid, he was neither in the act of committing a crime nor had he just committed a crime. These are conditions that could justify his being arrested without a warrant.

Kamid was illegally arrested by PDEA agents based on information provided by their informer that he was selling illegal drugs, without any firm evidence that this was the case. The agents did not have any legal grounds that could justify his arrest. In order to fabricate evidence to be used in the prosecution of the case, they tortured him and then forced him to have a photograph beside the evidence that the agents had planted. The photographs were used by the agents in filing charges of illegal drugs on him.

Examples of legal and procedural violations by the police

Legally incoherent charges: Police charge farmers in legally incoherent cases

On May 21, 2010, 11 farmers, including four minors, were arbitrarily arrested by the police and detained. Legally invalid and non-existent charges were laid against them following their arrest. The farmers were requesting the landowner's representative, who had was accompanied by members of the policemen in Calamba City, Laguna, to refrain from entering property that was being contested in a land dispute under agrarian reforms. Not only was this request ignored, but the police forced the farmers to disperse and later arrested them.

The farmers and their children were at a makeshift camping site that they had erected in Sitio (subsection of the village) Buntog, Barangay Canlubang, Calamba City in Laguna, when the police arrested them. The farmers had been camping in the area since April 5, 2010, to protest against the cutting down of coconut trees in the Hacienda Yulo coconut plantation that they were cultivating.

The cutting down of the coconut trees was seen by the farmers as part of the landowners' attempts to convert the contested farm land into residential, industrial and commercial land, allowing them to construct expensive housing subdivisions. The farmers depend on the coconut plantation for their livelihoods.

On the day of the incident, the farmers were positioned at the main road entrance to the Sitio when land surveyors arrived. At least 20 private security guards, a composite team of about 30 members of the Special Weapons and Army Tactics (SWAT), policemen from the Calamba City Police Station and the Police Regional Office of the Philippine National Police (PRO-PNP), accompanied the land surveyors. When the farmers presented them a petition that had been sent to the Office of the President (OP), asking for the revocation of the questionable order of the Department of Agrarian Reform (DAR) issued in 1992, they refused to consider it. The DAR had issued an order exempting the Hacienda Yulo from distribution under the Comprehensive Agrarian Reform Program (CARP) to the landless farmers, which these farmers were now contesting.

During the negotiation, policemen and private security guards were all carrying heavy firearms. They allegedly began violently pushing the residents away and subsequently arrested the protesting farmers one by one. The policemen arrested Maria Garcia (39 years old), Dorotea Mangubat (46), Annabel Natanauan (28), Mario Mangubat (36), Gilbert Caraan (25), Lamberto Caraan (40) and 71-year-old Francisca Mangubat, and took them to the Calamba City Police Station.

They also arrested four minors, namely Roger Nidia (16), Reyson Jeffrey De Leon (15), Melvin Natanauan (16) and Jorge Mangubat (12). Jorge is the grandson of Franscisca; Reyson Jeffrey and Melvin were sons of farmers Wilfredo and Reynaldo respectively.

In filing charges in a Complaint-Affidavit against the farmers to the court, the police did not give information or make any allegations as to how the farmers had committed the cited offence of 'Grave Coercion and Alarms and Scandal,' despite this being a requirement under the Revised Penal Code (RPC). The policemen were not able to prove sufficiently that the farmers had used violence to justify charges of "Grave Coercion." Furthermore, nothing in the police statement contained acts that showed that they had committed "Alarms and Scandal".

Also, one of the charges the police and prosecutors filed against the farmers was, "serious resistance and disobedience." This offence does not exist under the RPC, but they nevertheless pursued the prosecution of this charge. The AHRC views the detention of all of the accused as being arbitrary, given the above.

The inclusion of the 71-year-old Francisca Mangubat and four minors under these charges raises further questions. Francisca's inclusion in the charge was simply based on the fact that the police saw her walking along the road where the policemen and farmers were also present, while the minors were reportedly sitting in the middle of the road. None of these actions can have justified the filing of charges in court.

The four minors were taken into the custody of the Department of Social Welfare and Development (DSWD). Instead of having them excluded from criminal liability because they were minors, they were included as respondents along with the adults.

Under section 6 of the Juvenile Justice and Welfare Act of 2006 (Republic Act 9344), children who are below 15 years of age should have been "exempt[ed] from criminal liability". Although those between 15 and 18 years old could be criminally liable, in order for the prosecution to proceed, the prosecutors and the police must establish that the child had "acted with discernment" in committing the offence.

However, nothing in the complaint that the policemen filed included information about the three of the four minors who were 15 or above having acted with discernment, as is required by the Republic Act 9344. Therefore, the prosecution of the four minors together with the adults runs contrary to the law. All of the accused were temporarily released on May 25, 2010 after posting bail of Php 6,500 (USD 140) and a processing fee Php 1,500 (USD 32).

Court acquits victims following numerous due process violations by the police

In another case, four men, three of whom were illegally arrested and detained, were acquitted by a local court concerning two charges of illegal possession of explosives. The court found that the case "exhibits a straightforward violation of due process". Jejhon Macalinsal, Abubakar Amilhasan and Arsul Ginta were illegally arrested during a police raid on April 24, 2002 in Barangay (village) Calumpang, General Santos City. They were charged with illegal possession of explosives, based on evidence planted in their place of residence by a group of policemen led by Police Superintendent Bartolome Baluyot, the former director of the Regional Police Office (PRO XII). They were later able to post bail.

In a 16-page decision read in open court on October 29, 2010, Judge Oscar Noel Jr., presiding judge of the Regional Trial Court (RTC), stated: "As gleaned from records

of these cases the pieces of evidence presented by the prosecution fall short of the constitutional guarantee, the execution of search warrants suffers from several fatal flows, which is equally deadly."

The due process violations that the policemen committed include:

1. Use of false witnesses: When the police served the court order in order to search the houses where the accused where staying, the two village officials who stood as witnesses were legally unacceptable. The two officials, Sabina Castomayor and Jose Arrojo, who accompanied the policemen, were officials of Barangay Labangal, not from Calumpang. When conducting searches, policemen are required to have village officials from the same village as witnesses.

2. Conspiracy and planting of evidence: The issuance by another court of an order to conduct searches at 3am on April 24, 2002, were found to be the result of a scheme by the police that culminated in their planting evidence.

Firstly, at 11 am on April 23, 2002, a day before the police raid, two gunmen wearing balaclavas entered one of the three houses occupied by the victims. One of them forced Jejhon Macalinsal to dial a telephone number written on a piece of paper and to say that "there's a bomb in the front and at the back of your office". The gunmen then left.

The telephone number was later found to belong to the office of Bayan Telecommunications (BayanTel), a local telecommunications company in the city. The company had a caller Identification System that enabled them to determine the telephone number and identity of the persons that called them and made the bomb threat. The policemen used this to falsely charge the four accused. In numerous media interviews, Supt. Baluyot declared that these persons were responsible for the bombing of the Fitmart Mall in General Santos City on April 21, 2002. However, none of the accused were charged with murder in relation to the death of civilians in that bombing incident.

Secondly, the policemen managed to successfully apply for search orders from Judge Antonio Lubao of RTC, General Santos City Branch 22, by claiming, without any evidence, that the occupants of the house were keeping M14 and M16 armalite rifles.

3. Arbitrary charges: The court then issued orders for the policemen to search the house owned by Aron Sala. Sala was not physically present during the raid, as he was studying in Marawi City, more than ten hours away from General Santos City, but was included in the charges anyway. Aron Salawas arbitrarily charged in the case for the simple reason that the telephone number used by Macalinsal to make a fake bomb threat upon the instruction of the armed men is registered in his name. The police also searched two

other houses that were not part of the court order and prevented three of the accused and other occupants from supervising them during these searches, enabling them to plant evidence.

The policemen who stood as witnesses for the prosecution did not deny or challenge the claim made by the accused that they were not in possession of the evidence used against them, namely a mortar and a grenade. The court ruled that they had been planted by "three persons wearing black bonnets and combat shoes who entered the compound together with the raiding team and who threw a sack full of something in the house of one of the accused persons' mother-in-law."

4. The policemen could not identify where they found the evidence or the accused in court: During the court hearings, the two policemen who served the search orders (Senior Police Officer 1 (SPO1) Rex Diongon and Police Inspector (PI) Harrison Martinez,), "did not point categorically to where in particular they seized the pieces of evidence they presented in support of their cases." Martinez could also not identify in open court which of the accused was Amilhasan and which one was Macalinsal.

5. Police try to extort money in exchange for the dropping of cases: On May 12, 2002, while Arsul Ginta was in custody, he was approached by three persons who introduced themselves as police officers. He was told that they had been given instructions by Supt. Baluyot to negotiate the dropping of charges against him. He was told that they could withdraw the complaint if he paid Php 150,000 (USD 3,500). Ginta refused to do so.

Before Supt. Baluyot retired from service, he had previously been accused of illegal arrests and detention, planting evidence and torturing persons arrested during police operations. He is also one of the policemen the Commission on Human Rights (CHR) found had tortured and otherwise violated the rights of the Abadilla Five while they were in police custody.[9] Supt. Baluyot enjoyed impunity for all of these acts.

Court acquits four torture victims after seven year trial

Five persons, two of whom were minors at the time of their arrest, have been tried after having been charged with multiple murders and frustrated murders in connection with the March and April 2003 bombing incidents in Davao City, which killed dozens of

9 See more about the famous case of the Abadilla Five here: http://campaigns.ahrchk.net/abadilla5/. The five men were sentenced to death for the murder of an influential police colonel, Rolando Abadilla, but have since protested their innocence. The court convicted them without giving them opportunity to submit further evidence that could have proved their innocence. An open admission by a rebel group claiming responsibility for the murder exonerating the five men was also not given due consideration in the trial. This case is emblematic of the failings of the justice system in the Philippines.

people. They were arrested illegally, tortured and tried under fabricated charges. On 29 January 2010 the media reported that four of the victims, namely Tohamie Ulong, Ting Idar, Jimmy Balulao and Esmael Mamalangkas, had been acquitted by Judge Pelagio Paguican of the Regional Trial Court Branch 12 in Davao City, from two charges because "the prosecution was unable to provide sufficient evidence that would prove the guilt of all the accused beyond reasonable doubt". Tohamie and Jimmy were minors when they were arrested in 2003.

Judge Paguican convicted one of the five, Toto Akmad, for his 'direct participation' in the 4 March 2003 bomb blast, which took place in the waiting area of Davao International Airport, killing 22 persons and wounding 145 others. Like the four others, Akmad was tortured after his arrest.

The military and the police deliberately covered up their use of torture. However several days after their arrest, a member of local NGO Task Force Detainees of the Philippines (TFDP), was able to interview each of the victims while they were being held at the Criminal Investigation and Detection Group (CIDG XI) headquarters in Davao City. However, Senior Police Officer 2 (SPO2) Gabunada of the CIDG had their signed, sworn statements confiscated the following day. Fortunately an electronic copy of three of the victim's statements had been kept by the TFDP in Davao City. Although SPO2 Gabunada was reprimanded following an administrative complaint filed by TFDP, the statements have never been returned. The reprimand involved this perpetrator of torture receiving a verbal admonishment. No suspension, prosecution or penalty was imposed. The AHRC deplores this serious failure by the authorities to punish the torture of five persons, including two children. This case is symbolic of the lack of effective action by the authorities to prevent torture.

Examples of due process violations and extra-legal actions by the military

Members of the Armed Forces of the Philippines (AFP) routinely take extra-legal actions that undermine the role of the police and the very notion of due process. For example, the military has no legal authority to arrest and detain persons. However, the military frequently abduct and detain persons, and conduct custodial investigations inside illegal detention facilities that they maintain.

The Philippine National Police (PNP) and the National Prosecution Service (NPS) have abdicated their authority, by tolerating the illegal practices of the military establishment. The

Justifications concerning arrests conducted by the military: The military abuse powers granted to them to conduct arrests under rare and specific circumstances to justify

routine arrests. Regardless of whether they had court orders to conduct arrest or not, the soldiers could 'legally' routinely justify their actions under various pretexts: a. on counter insurgency and terrorism operations; b. support unit of the police; c. arrest on 'hot pursuit'. Once a person is labelled in public to have been arrested and investigated in any of these three pretexts, their arrest and detention is justified regardless of merit. The legality of the arrest, detention and authority of the soldier could not be challenged before the complaints reaches to court for trial of the case.

The case of Abdulbayan Guiamblang cited above (Farmer detained incommunicado for six days), is a good illustration of how the military detain civilians extra-judicially. In this case, the victim was held in detention inside a military detachment, where he was tortured, deprived of food, refused contact with his family and legal counsel and criminal charges against him were concocted by the military. He was only brought before a court after fabricated charges had been filed and after the injuries he sustained as the result of torture had healed.

The illegal arrests of activists Charity Diño, 29; Billy Batrina, 29 and Sonny Rogelio (see above under Torture and false charges filed against three activists) by members of the Air Force further demonstrates this pattern of extra-judicial action in disregard for due process. The circumstances under which they were detained did not meet the special requirements that allow the military to arrest persons; they were arrested without court orders and none of the accused was in the act of committing or had just committed a crime. Their arrest and detention inside the air force headquarters are outright violation of the Rules on Criminal Procedure, despite which they were subsequently charged in court.

Invitation for questioning: The military also routinely use the pretext of 'invitation for questioning', particularly targeting human rights and political activists, as a prelude to illegally arresting and detaining persons. A person who is 'invited' in this way is placed in a difficult situation. There is a dilemma about whether to accept the invitation and risk arrest and worse, or to ignore it, which could also have grave consequences.
Once a person's arrest and detention is linked to countering an insurgency and terrorism, the media and the community do not tend to contest the arrests and go along with the military's story. The military has been labelling persons as 'rebels' or 'terrorists' regardless of whether they have evidence or not, in order to justify any arbitrary and illegal actions they take against these persons.

The military's lack of authority to so invite persons for questioning in this fashion is not being discussed and needs public attention, notably as this practice has become so common in remote areas that it has gained a semblance of legality.

Inquests inside military headquarters: Under section 2 of the Department of Justice's (DoJ) Department Circular No. 61, public prosecutors can only conduct inquests proceedings concerning cases in police stations, not in military camps: "…those assigned to inquest duties shall discharge their functions during the hours of designated assignments and only at the police stations/headquarters of the PNP in order to expedite and facilitate the disposition of inquest cases."

The police and prosecutors routinely disregard this Circular by tolerating the use of illegal inquest proceedings inside military headquarters. They blindly accept justifications by the military that holding these outside the military camps will be a security risk, for example. The accused, with the tacit approval of the prosecutors and the police, are not turned over to the proper judicial authorities and detention facilities, as required by the country's criminal procedures.

The inquest proceedings in the cases filed against the 'Morong 43' mentioned previously in this report were conducted in this manner. The detainees in this case were held in a military camp, before they were transferred to the regular detention facilities following appeals by their legal counsel in court. But when the detainees' legal counsel challenged the legality of arrest, detention and the filing of charges against their clients, the Court of Appeals dismissed their argumentation. The court ruled, by invoking jurisprudence concerning the Ilagan vs. Enrile case, that once a charge is filed, the detention can no longer be questioned because charges have already been filed in court.

This explains that within the system of justice, there is no legal remedy for victims of illegal arrest, detention and filing of fabricated charges, once charges against them have been filed in court. Persons in the Philippines run the risk of being deprived of their liberty and needlessly face trial over fabricated cases as a result of the prosecutor and the police abdicating their authority provided by the rules on criminal procedures.

SOUTH KOREA

GOVERNMENT CONTINUES TO UNDERMINE HUMAN RIGHTS INSTITUTION AND FREEDOM OF EXPRESSION IN 2010

As 2010 drew to a close, tensions between North Korea and South Korea had increased significantly following an exchange of artillery fire on November 23, 2010, after the North shelled an island near their disputed sea border, killing two South Korean marines and two civilians, setting dozens of buildings ablaze and sending civilians fleeing for shelter. This is viewed as being one of the most dramatic incidents between the North and South in recent times.

The AHRC is concerned that the increased tensions will result in greater polarisation within South Korea's society, between conservative, nationalist elements and progressive voices. Already, there has been increasing action taken against progressive organisations and activists under the current government, which has been accompanied by a deterioration of the situation of human rights in the country, notably with regard to the freedom of expression and assembly.

2010 has seen further constraints on such key freedoms and the AHRC is concerned that the government appears to be trading off the important advances in human rights that set South Korea apart from many other countries in the region, including North Korea, in favour of narrow political interests. South Korea must hold on to the democratic institutions it has fought so hard to create in the past. Further acts by the government to undermine the National Human Rights Commission of Korea are a serious concerning this regard. Economic development that is not also matched by increased democratisation and the development of the rights of the country's people, is ill-advised and likely to be unsustainable. The following report will look at some of the notable events that have taken place in 2010 that affect the enjoyment of rights and democracy in South Korea.

Deterioration of the independence of National Human Rights Commission of Korea

The AHRC has been concerned about the South Korean government's actions to undermine the independence of the National Human Rights Commission of Korea

(NHRCK) since it came into power. In 2009, the AHRC addressed two open letters to the chairperson of the International Coordinating Committee of National Human Rights Institutions, requesting the downgrading of the NHRCK's status due to its dwindling independence, and highlighting the need for the ICC to look into the NHRCK's increasing subordination to the government.

In 2010, the current administration is continuing its efforts to eradicate any notion of independence for the NHRCK, including though efforts to alter the NHRCK's internal regulations in ways that the AHRC considers to be of serious concern. Before Mr. Ahn Kyung-Whan, the former chairperson of the NHRCK resigned, the NHRCK petitioned the Constitutional Court requesting an "Adjudication on Jurisdiction Disputes" regarding the around 21 percent downsizing of the NHRCK by the Ministry of Public Administration and Security that was in process. The Constitutional Court dismissed the petition on October 28, 2010 based on the findings that the NHRCK is not a constitutional body and therefore is not qualified to file such petition to the Constitutional Court.

In the meantime, the NHRCK, led by Mr. Hyun Byung-Chul, the current chairperson, together with some non-standing commissioners, proposed a draft amendment to the NHRCK's managerial regulations to its Plenary Committee.

According to the current managerial regulations, the standing committee considers and deliberates on matters relating to human rights, expresses opinions and make recommendations on urgent matters and decides on whether to refer matters to the plenary committee. If three standing commissioners agree, the NHRCK shall make a recommendation on a particular issue without intervention or influence from either chairperson, who is appointed by the President, or non-standing commissioners. At the time of this regulation in 2006, the standing commissioners were appointed among people who had good knowledge on human rights according to the NHRCK Act.

However, the essence of the draft amendment is that it gives power to the chairperson to decide whether or not the NHRCK will express opinions or make recommendations and restricts power of the standing committee. In protest, two standing commissioners - Mr. Yu Nam-Young and Ms. Mun Kyung-Ran - left a meeting and resigned soon afterwards, on November 1. Mr. Cho Kuk, a non-standing commissioner then also resigned on November 10, 2010. 67 out of the 160 members of various committees including the specialised committee, the advisory organ and the conciliation committee appointed by the NHRCK returned their appointment letters and resigned on November 15.

All political parties, except the ruling party, strongly opposed the draft amendment and called for the resignation of Chairperson Hyun Byung-Chul. 15 former commissioners,

334 legal scholars and lawyers and 660 civil and human rights organisations such as women's groups and persons with disabilities' groups also joined these calls.

In resigning, Mr. Yu explained his decision based on problems relating to the institution's internal management, including:

1. A statement denying the independence of the NHRCK by the chairperson to the National Assembly;
2. The Chairperson's unjust denial of a request to holding temporary plenary committee and standing committee under article 5(2) of the managerial regulations;
3. The dismissal of staff on the request of the Ministry of Public Administration and Security;
4. The Chairperson's unilateral suspension of a meeting discussing the submission of the NHRCK's opinion on the Youngsan case, and the resignation of staff who helped to prepare the draft of the opinion;
5. The Chairperson's submission to members of parliaments of an opinion about a matter which the plenary committee had been discussing , without a resolution by the committee, making his opinion appear to be the NHRCK's official opinion, in February 2010;
6. When three standing commissioners took up the matter relating to No. 5 above, they were instead subjected to an investigation;
7. Plenary committee's decision that a standing commissioner is unable to submit a matter to the standing committee.

It is reported that the NHRCK has kept silent on sensitive human rights violations cases or issues that are directly related to the current government, such as: the case of Mr. Park Won-Soon, the prosecution's investigation into the report about mad cow disease by the Munwha Broadcasting Corporation's programme, PD Notebook; a formal request on the constitutionality of the Act on Assembly and Demonstration concerning night time assembly; the landmark Minerva case; and the surveillance by the government of civilians, including UN Special Rapporteur on freedom of expression, Mr. Frank La Rue, during his official mission to South Korea in May 2010. While the chairperson of the NHRCK met Mr. La Rue, he prohibited standing commissioners from doing so. Concerns about the cases above were also found in his findings after his mission to South Korea.

The AHRC believes that there are many more issues of concern that were not cited above, however, which are also of concern and therefore has called for a thorough investigation into developments at the NHRCK.

In this context, the attempt to amend the managerial regulations is being seen as an attempt by the Chairperson to exert authority and nullify the standing committee. The proposed amendment is seen as being a move by the chairperson of the NHRCK, and

some commissioners recommended by the ruling party, to be able to block issues they do not want to speak about from being submitted for discussion. Under the amended regulations, the NHRCK's Chairperson will have excessive power concerning decision making relating to the consideration of human rights matters. While the standing committee has often made recommendations about the government's policy and laws concerning sensitive issues, there are concerns that the plenary committee is now unlikely to do so.

The AHRC is forced to conclude that this national institution, which had been hailed as a model for other countries in the region, has now significantly deteriorated, notably due to the appointment of commission members who have limited or no expertise or prior involvement in the protection and promotion of human rights. The NHRCK's increasing subordination to the government and executive has been accompanied by growing self-censorship and inaction concerning sensitive human rights issues mentioned above. The AHRC fears that the NHRCK is becoming completely incapable of defending human rights or fulfilling its mandate, and will instead become another appendage of government that will only function to praise the government locally and internationally.

On November 11, a new standing commissioner was appointed by President Lee Myung-Bak, from an organisation that supports government policy and is linked to the ruling party. Statements and press releases issued by this organisation - called "Lawyers for citizens" - are of concern, as they show no regard for recommendations or views made by international human rights instruments.

In its letter, the AHRC called on the International Coordinating Committee (ICC) to look into the decline of the independence of the NHRCK. Having already requested the downgrade of the NHRCK, the AHRC believes that the worsening situation requires that the ICC intervene with the government and the chairperson of the NHRCK, and take all measures available to it to shed light on the worsening situation of the institution. In particular, the government must ensure the independence of the NHRCK and put a halt to all actions taken to undermine this. It is imperative that the ICC determine whether the NHRCK complies with the Paris Principles, notably concerning its competence and responsibilities, composition and guarantees of independence and pluralism, and methods of operation. Without action, the AHRC is concerned that the ICC will have lost an opportunity to save this institution from damage that will be long-lasting and severely detrimental to the protection of human rights in the country.

Legal attacks used to target human rights activists

Two human rights activists, Mr. Park Lae-gun and Mr. Lee Jong-hoi, were arrested on January 11, 2010. They are representatives of a coalition of around 100 civil and human rights organizations asking for a thorough investigation into the high-profile Youngsan

case.[1] This case involved the planned forced eviction of numerous persons in order to enable a property development project to go ahead. The planned eviction led to protests. A 1500 strong police force was dispatched to disperse about 50 protesters, who dug in. During the police's actions to oust the protestors, a fire broke out. The police continued their operation regardless and this resulted in the death of 5 protesters and 1 police officer.

The civil society coalition organized demonstrations concerning this incident. The arrest warrant against the two human rights activists was issued in March 2009 and they were finally arrested and detained on January 11, 2010. The charges laid against them were under the Act on Assembly and Demonstration as well as Road Traffic Act. However, article 10 of the Act on Assembly and Demonstration, which was found to be unconstitutional by the Constitutional Court on 24 September, 2009, was the core article used to enable the arrest warrant. They were released on bail on April 30, 2010 and their cases are still going on.

Separately, lawyer Mr. Kwon Young-Gook, was on his way to take part in a press conference concerning the mass dismissal of workers form Ssangyong Motors Company in Pyeongtaek-si on June 26, 2009, when he witnessed six labour activists being arrested. The persons were being arrested without due process; they were not being informed by the police what the reason for their arrest was. Mr. Kwon, as a lawyer, intervened in this process and requested to speak with the persons that had been arrested. He was then arrested for obstructing the police's carrying out of their official duties. This case (No.: 2009KODAN1660: Article 136 of Criminal Act), is still pending.

The sinking of the Cheonan and legal threats to organizations calling for transparency

On March 26, 2010, the Cheonan, a South Korean Navy vessel sank in the Yellow Sea. The government immediately constituted a team to investigate the causes of the sinking of the vessel. The preliminary results concluded that it was struck by a North Korean torpedo. Independent experts and local civil society groups have questioned aspects of the report produced by the government. Two NGOs, the People's Solidarity for Participatory Democracy (PSPD) – which has special consultative ECOSOC status – and Solidarity for Peace and Reunification of Korea, sent letters to the Security Council in which they expressed doubts concerning the credibility of elements within the investigation report produced by the Korean government-led international investigation team. The government has failed to respond concerning these legitimate questions.

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1 For more details concerning the Youngsan case, please see: http://www.ahrchk.net/ua/mainfile.php/2009/3101/

Following this, government officials have made public statements that amount to incitement to attack these NGOs. For example, Prime Minister Jeong Un-Chan, has stated at the National Assembly that, "If they (the NGOs) were patriotic they would not say that the government's investigation report was incorrect at the UN." He went on to say, "I doubt which country they belong to. I express my grave concern that this will never benefit the national interest". An anonymous government official has added that, "This is an act benefiting an enemy state. It distributes ashes over the government's efforts". The Ministry of Foreign Affairs and Trade further stated that the NGOs' action would hinder the diplomacy that the government was engaged in.

Such statements and others accusing the NGO and its staff of being supporters of North Korea and acting on this country's behalf against South Korea are highly inflammatory and encourage reprisals against the NGOs. Following the comments by the authorities being broadcast, some 200 people belonging to conservative groups attempted to raid the offices of the PSPD on June 16, with other such attacks having been repeated since then. Even though around 100 police officers were deployed to guard the building housing the PSPD's offices, there are reports that members of the NGO's staff were assaulted. There have also been threatening phone calls made to the PSPD's staff who remain seriously concerned for their own security and personal integrity.

The State Prosecutor's office reportedly leaked to newspapers that there was a possibility that the staff of the PSPD might be prosecuted under the National Security Act, if a case were to be filed. In doing so, and through other actions, the Prosecutor's office has taken an actively biased role in encouraging conservative groups to file complaints against the NGOs in order to enable the authorities to legitimise the launching of investigations against them.

It is also understood that the Prosecutor's office has similarly approached one of the experts who worked on the government-led report in order for this expert to submit a complaint concerning alleged criminal defamation by the NGOs.

However, after several concerns raised by both local and international rights groups about this, the government, in particular the prosecutor's office, have yet to take action against the two activists.

Country visit by the Special Rapporteur on the freedom of opinion and expression.

Mr. Frank La Rue, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, on 17 May, 2010 issued a statement on his findings during his official visit to South Korea. The AHRC has chosen to reproduce

key elements in his findings as they are of significant importance for the protection of human rights in the months and years to come, as the freedom of expression continued to come under attack in the country. The AHRC urges the South Korean government to give serious consideration to the issues raised by the Special Rapporteur and ensure the full and prompt implementation of all recommendations made by this important UN mandate.[2] Here follow some of the Special Rapporteur's key findings and recommendations:

Freedom of expression on the Internet

As mentioned previously, the Republic of Korea has one of the highest levels of Internet connectivity in the region and the world, where more than 80 percent of households have access to fast, broadband Internet connection. I have been impressed by the level of active "Netizens" in the country and the emergence of an active and vibrant online culture, including the exchange of diverse views and opinions on online discussion forums. The Internet has thus become an indispensable tool to exercise the right to seek, receive, and impart information and ideas and to mobilize social change. However, I am concerned that in the last few years, there have been increasing criminal prosecutions and restrictions on freedom of expression on the Internet, which I will now briefly outline.

Prohibition to spread false information

Article 47 of the Framework Act on Telecommunications prohibits individuals to make a "false communication" over the Internet with the intention of harming the public interest, punishable by imprisonment of up to five years or a fine of up to fifty million won. Although this legislation had not been used for decades, in January last year, blogger Park Dae-sung, known as "Minerva", was arrested for violating this provision after he posted online articles predicting the economic crisis and criticising the Government's economic policy. He was accused of "posting fraudulent information on the Internet that harmed public welfare by negatively influencing South Korea's foreign exchange markets".

Although he was found innocent, the Prosecutor's Office has appealed this decision. The case has been put on hold until the Constitutional Court gives a ruling on the legality of this provision. There are two concerns that I would like to raise in relation to this issue. First, terms such as "false communication" and "public interest" are not clearly defined and are thus subject to undue limitations on the exercise of the right to freedom of expression. Second, no one should be prosecuted for the mere expression of opinions, even though it may be incorrect.

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2 http://www2.ohchr.org/english/issues/opinion/docs/ROK-Pressstatement17052010.pdf

In this regard, the United Nations Human Rights Committee has expressed that the prohibition by law of untrue and unverified information constitutes a disproportionate restriction on the right to freedom of expression. I would also like to point out that had the press played a more active role in investigating and criticising the role of financial institutions, the impact of the global financial crisis might have been mitigated. **I recommend the Government of the Republic of Korea to abolish this provision.**

Arbitrary procedures for the deletion of information on the Internet

Based on the Act on Promotion of Information and Communications Network Utilisation and Information Protection (hereafter "Network Act"), any person alleging a violation of his or her privacy or reputation by information disclosed to the public through the Internet may request the Internet Service Provider (ISP) to immediately delete or temporarily block access to the information for up to thirty days.

The Korea Communications Standards Commission (KCSC), established in 2008 and considered to be an independent private body, assesses Internet content on various grounds including obscenity, defamation, threats to national security, and recommends ISPs and notice board operators to undertake correctional measures, such as deletion of postings. If the ISPs reject the recommendation by the KCSC, the KCSC can issue administrative orders to suspend the websites, and thus cases of non-compliance are rare.

I am concerned that the there are no clear provisions to determine whether the information on the Internet violates another person's right or reputation, or other non-permissible grounds, and that the ISPs and the KCSC are given the discretionary power to make that decision. Moreover, the KCSC essentially operates as a censorship body, and there is a risk that information that is critical of the Government may be deleted on the grounds of privacy violation or defamation through an opaque process. According to the statistics of the KCSC, since its establishment, over 2,000 posts have been deleted on the grounds of defamation, and over 1,500 posts have been deleted for violating the National Security Act.

In addition, article 44(7) of the Network Act, which lists the types of information that can be deleted or censored on the Internet, can encompass a broad range of crimes, including the obstruction of business, which itself is problematic. This has been illustrated in the case of 24 members of a boycott campaign who posted a list of companies putting advertisements in three newspapers, which they believed were biased towards the Government. On the basis of article 44(7) of the Network Act, the KCSC ordered the deletion of 58 postings which allegedly encouraged the boycott, and some of the individuals involved were sentenced to imprisonment, or were fined.

I have also been informed that Mr. Choi Byung-sung posted articles on the Internet exposing that the cement used by certain companies contains electronic waste products with carcinogenic substances. The KCSC ordered the deletion of these articles on the ground that they defamed the cement companies, despite the fact that as a result of his articles, the National Assembly deliberated on this issue and requested a national audit to be conducted, which has resulted in improved safety standards. In this case, the public interest and the obligation of the Government to protect the health of its population should outweigh the protection of the reputation of a particular company. I am also aware that other types of online information that are in the public interest have been recommended for deletion by the KCSC.

I would like to stress that States should never delegate the responsibility to private entities on such matters. **Any guidelines and the decision to determine what articles can be deleted or temporarily blocked should be made by an independent State body.**

Real name identification system

The Network Act requires identity verification in order to post messages on websites with more than 100,000 visitors per day. The Public Official Election Act also stipulates that online newspaper notice boards must register users and confirm their real names before they can post messages prior to elections, to prevent the spread of false information or slander, which risks undermining the freedom of expression of political views during the election period, when public debate is essential.

In February 2004, the NHRCK adopted a decision that the real-name identification system "clearly qualifies as pre-censorship, restricts freedom of Internet-based expression rooted in anonymity, inhibits public opinion formation, and contravenes freedom of expression". Although the specific details of the real name identification have been changed since July 2007, I am concerned that the real name identification system has the potential to undermine individuals' right to express opinions, particularly criticisms of the Government, as well as the right to privacy. While there are legitimate concerns regarding crimes that are perpetrated via the Internet and the responsibility of the Government to identify such persons, **I recommend the Government to consider other means to identify a person and only after a crime has been committed, rather than a prior requirement, so as to minimize the infringement of human rights**.

Defamation

In the Republic of Korea, defamation is a criminal offence under the Criminal Code and an "unlawful act" under the Civil Code. Although criminal prosecutions have decreased, the filing of civil defamation suits and accusations of criminal defamation exert a significant chilling effect on freedom of expression.

During my visit, many cases of defamation have been brought to my attention. This includes the case of four producers and one scriptwriter from the Munwha Broadcasting Corporation (MBC)'s investigative programme, PD Notebook, who reported on the alleged risk of mad cow disease associated with beef import from the United States of America and criticized Government officials who were in charge of negotiations. As a result, they were arrested and charged with defaming Government officials from the Ministry of Agriculture in 2009. Although the Central District Court acquitted all staff in January 2010, the Prosecutor's Office has appealed, and the case is currently pending.

In another case, Mr. Park Won-soon, director of a non-governmental organisation, was sued for allegedly defaming the "nation" by stating in an interview that the National Intelligence Service (NIS) is pressuring corporations not to financially support civil society groups. This is an unprecedented case in that the "nation" itself has filed a lawsuit as a plaintiff and is claiming two hundred million won in damages.

As stated in article 19(3) of the ICCPR, the protection of the reputation of individuals is a legitimate ground for limiting the exercise of the right to freedom of expression. However, to fulfil the criteria of necessity and proportionality, there are specific conditions that need to be met.

First, the statement must be intentionally false, and must injure another person's reputation. Secondly, public bodies and public officials of all kinds – including all individuals of the legislative, executive or judicial branches of Government or who otherwise perform public functions – should be prohibited altogether from bringing defamation actions. Public office entails public scrutiny, as part of checks and balances of any democratic system. Thirdly, States should abolish all criminal defamation laws. The threat of harsh criminal sanctions, especially imprisonment, exerts a profound chilling effect on freedom of expression, which cannot be justified particularly in light of the adequacy of non-criminal sanctions in redressing any harm to individuals' reputations. Such measures include an issuance of apology, correction or reply, or publication of any judgment which finds statements to be defamatory.

Hence, **I recommend the Government to remove the crime of defamation from its Criminal Code, and to promote a culture of tolerance regarding criticism**. Moreover, I would like to emphasize the principle that defamation cannot be brought by a third party or a State institution as a plaintiff.

Freedom of assembly

The right to freedom of expression includes the right to collective expression in the form of peaceful assemblies. In the Republic of Korea, this right is guaranteed in Article 21

of the Constitution, which explicitly prohibits a license system for assemblies. However, although the Assembly and Demonstrations Act stipulate that individuals should only report assemblies beforehand to the police, there is a de facto license system whereby assemblies may be banned and deemed illegal in advance for fear of traffic disruption and probable violence. I would like to highlight the June 2009 statement made by the former Chairperson of the NHRCK that "the Government claims to protect peaceful assemblies and demonstrations and only prohibits ones that may give rise to illegal and violent actions. Yet, by presuming that certain demonstrations will become violent and cracking down on them before violence occurs, the Government violates the fundamental right to freedom of assembly and demonstration."

In addition, the use of Seoul Square and Gwang-hwa-moon Square for assemblies, including press conferences, requires approval from the Seoul City Government, and acted upon by the National Police.

I welcome the decision by the Constitutional Court that the prohibition of assemblies after sunset and before sunrise in the Assembly Act is unconstitutional. The National Assembly has thus been requested to revise this law by June 2010. While I recognize efforts made by the National Police Agency to investigate allegations of the use of violence by riot police officials, I am concerned that investigations and prosecutions of allegations of excessive use of force is hindered by the fact that there are no visible name badges, identification numbers or any other identifiable information on the uniform of riot police. I have also been informed that the police do not wear badges, which makes it impossible to bring individuals to account. I therefore call upon the Government to ensure that **all law enforcement officials must wear some form of identification that is clearly displayed during assemblies and demonstrations to prevent impunity**.

Freedom of expression before elections

Article 93 of the Public Officials Election Act prohibits individuals to distribute or post photographs, documents, drawings, printed matter, "or the like", which contains contents supporting or opposing a political party or candidate with the intention of influencing the election from 180 days before the election day to the election day. At the same time, article 58 of the Act provides that a simple statement of opinion or manifestation of an intention on the election do not constitute an election campaign and is thus allowed.

On 26 April 2010, the National Election Commission (NEC) issued guidelines entitled "Announcement on the activities of various organizations with respect to election issues", which prohibits organizations, including non-governmental organizations (NGOs) and religious groups, from installing, posting or distributing advertisements, posters, photographs, documents "or the like" on the main election issues. Hence, some of the

activities of NGOs and religious groups have been restricted, as they are not permitted to disseminate information or hold a rally on key election issues such as the "Four Major Rivers Restoration Project" and "Free School Meals".

I am concerned that the restrictive interpretation of the provisions of the Public Officials Election Act in the recent guidelines may limit communication on key election issues and public policies. I am also alarmed by the fact that such activities are prohibited six months ahead of elections.

National Security Act

I am very much aware of the security concerns faced by the Republic of Korea, particularly in light of the recent Cheonan incident, and believe that all States have the legitimate right and obligation to have national security laws in place to protect its population. However, any national security law that restricts the right to freedom of expression must fulfil the criteria that I have mentioned previously, including the requirement that the law must be clear and drawn narrowly. Thus, while I welcome the fact that the number of charges and prosecutions on the basis of the National Security Act has decreased, I would like to reiterate the recommendations made by my predecessor fifteen years ago, by the UN Human Rights Committee, and by the NHRCK to revise article 7 of the National Security Act, as it remains vague and can be misinterpreted.

In addition, the Human Rights Committee has found the use of the National Security Law to be in breach of the right to freedom of opinion or expression in three individual cases (Mr. Tae Hoon Park, Mr. Keun-Tae Kim, and Mr. Hak Chul Shin). However, I have been informed that **the measures have not been taken to give effect to the Human Rights Committee's Views**, including two other cases where the Human Rights Committee found a violation of article 19 of the ICCPR (Mr. Jong-Kyu Sohn, Mr. Yong-Joo Kang), and the dialogue remains open in all five cases. I hope that the Government will demonstrate its commitment in upholding international human rights standards by implementing the Committee's Views.

Although this case is not directly related to the National Security Act, I would like to draw attention to the banning of 23 books by the Minister of National Defence in the military in July 2008, as these books were considered seditious. Seven military judicial officers filed a Constitutional Complaint regarding this prohibition, and as a consequence, two were expelled from the military on the grounds that they did not adhere to internal regulations and procedures of the military. Currently, the case is pending before the administrative court, as well as the Constitutional Court. I would also like to stress that the right to seek and receive information includes the freedom to select the types of books one may read. As the NHRCK stated in its decision of September

2009, "one's status as a human being takes precedence over one's status as a soldier in uniform". The banning of books is an undemocratic practice in any part of the world.

I would like to underscore that the strongest nations of the world are those that are truly democratic and protect the fundamental rights and freedoms, and therefore encourage the Republic of Korea to ensure that its national security policies go hand in hand with the respect of human rights.

Public broadcasting

There are also signs that the independence of the public broadcasting corporations and the diversity of the media are being undermined in the Republic of Korea. I would like to stress that to ensure the independence of public broadcasting corporations, there must be an effective appointment procedure which ensures that its head and management does not change from one administration to the next. I am aware that the Act on Development of Newspaper, etc., and the Broadcasting Act were proposed by the ruling party and adopted in July 2009 by the National Assembly in breach of regular deliberation procedures. I am concerned that these legislation allow conglomerates, newspaper companies and foreign capital to enter the broadcasting sector, which is contrary to the principles of diversity and plurality of the media.

National Human Rights Commission of Korea

Since the establishment of the NHRCK in 2001, it has played an active role in advocating for the promotion and protection of human rights in the Republic of Korea. I welcome the decisions of the NHRCK in finding a violation on thirteen cases related to freedom of opinion, expression and assembly between 2004 and 2009.

However, I am disappointed that since the appointment of new Commissioners in February 2010, **the majority has allegedly maintained that the Commission should not adopt a decision on three key cases involving violations of the right to freedom of expression on the basis that the Commission should wait until the cases are resolved in the courts**. This includes the defamation lawsuits filed against the producers of MBC's PD Notebook; the prohibition of assemblies and demonstrations after sunset; and the case of Mr. Park Wonsoon. However, it is my understanding that the Founding Act of the Commission stipulates that it has the power to submit its opinion to the courts even when the cases are still pending.

Given the crucial role of the Commission to enhance human rights protection in the country, I hope that the Commission will play a more proactive role to adopt decisions in the future. I also look forward to the improvement of the appointment process of the

Commissioners, and note that the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights stated in its most recent report that the process of appointing Commissioners does not provide for formal consultation in the recruitment and scrutiny of candidates nor for the participation of civil society. I would also like to add that the appointment of Commissioners with human rights expertise is essential in ensuring a strong and independent NHRCK.

The right to freedom of opinion and expression of public officials

I am concerned that public officials, including Government officials and teachers of public schools, are prohibited from expressing their opinions on the basis that they should remain politically neutral. However, based on the principle of neutrality, I would like to emphasize that no one should be prohibited from expressing an opinion including public officials, especially on an individual basis and after working hours, even if they are members of trade unions.

The above findings by the Special Rapporteur address many crucial issues that continue to require action by the South Korean government. According to the AHRC's information the government has thus far not shown any intent to take the required action to implement the Special Rapporteur's recommendations. The AHRC therefore reiterates the need for the government to begin to address these issues, without which its credibility as a developed, democratic actor in the region will be further tarnished.

The Death Penalty

A series of the child abuse cases have shocked public opinion in South Korea in 2010 and have led to calls for those responsible to be executed. In response, Mr. Lee Gui-Nam, the Minister of Justice, ordered a study into the establishment of new facilities to carry out executions when he visited the Cheongsong correctional institution on March 16, 2010.

The AHCR recalls that while the death penalty remains under South Korean law, and the State already has facilities in which executions can be carried out. However, the State has refrained from carrying our executions for some 13 years, which the AHRC welcomes. The fact that the Minister of Justice is even considering the building of new facilities is a grave concern. The return to the use of the death penalty would represent a significant backward step in South Korea's progress concerning human rights.

When the South Korean government presented its candidature for membership in the Human Rights Council in May 2008, it submitted a national action plan (2007-2011)

for the promotion and protection of human rights. Concerning the death penalty, the government pledged to examine current law and practices and consider the desirability of maintaining the death penalty or introduce a substitute punishment. Regretfully, no action has been taken in this regard as of the end of 2010. The AHRC urges the government to make good on its promises to the international community and take action to abolish the death penalty. It can show its commitment to do this by ratifying the second Optional Protocol to the International Covenant on Civil and Political Rights concerning the death penalty. In addition, a draft law of the abolition of death penalty pending at the National Assembly should be adopted.

The government should not make knee-jerk reactions to public opinion when considering, but must consider the validity of the death penalty in general. The AHRC deplores the use of the death penalty and believes that it constitutes inhuman treatment in its own right, but is also concerned about the fact that given that no legal system in the world is perfect, the death penalty leads to irreversible punishment of innocent persons. It has also been shown to not be effective in providing an effective deterrent concerning crimes and is therefore not a practice that is worthy of any society built on the values of justice and democracy. The government of South Korea is urged to abolish the death penalty and instead find ways to address the root causes of crime and ensure justice and reparation for victims.

No protection in government's redevelopment project

The current government has announced that its main focus is on creating a business-friendly environment in South Korea. The AHRC is concerned that the government is giving the priority to business over consideration for citizen's rights. This can be seen most clearly in the many redevelopment projects that have been launched between local government authorities and private companies. The following example, concerning forced evictions and intimidation, shows how such projects are undermining the primacy of rights and the rule of law in the country.

The tenants in the Gocheck traditional business market located in Gocheck Shopping Centre, Gocheck-dong, Guro-gu, Seoul have been evicted since April 2008. They were wrongly informed of their rights by the Guro district administration when they inquired about these. The administration said the market building was not part of the urban plan designed by the administration. However, it was later found out the by the tenants that the market is officially protected under the Special Act on Improvement for Traditional Business Markets or Commercial Areas (Special Act), which was enacted in 2006, and which places the market under the urban plan. Under the Act, there are a number of measures to restrict renovations that can be done to such buildings, and any renovation work must be agreed on by the concerned party – the tenants in this case – and the relevant Guro District authorities.

To evict the tenants, the owner of the market building filed a lawsuit at the lower court, which issued an execution writ in favour of the owner. The court recommended, however, that the eviction process should be conducted in consultation with the administration and the tenants. The tenants filed an appeal in opposition of the court decision and the owner filed another lawsuit against the tenants who did not pay the rent for months during protests against the eviction. On 16 April 2010, the vice-mayor of Guro District officially announced that the Gocheck market was part of an urban development plan, but has so far failed to produce an official document.[3]

While the tenants had been waiting for a response from the administration as well as the results from the court cases, the eviction process had already begun. The eviction involved the use of violence and the police reportedly stood by and let the attacks happen unhindered. During the eviction process, which started in early 2008, it is alleged that a group of thugs hired by Jung Sung E&G, the owner of Gocheck market building threatened the tenants and their customers. They destroyed and stole the tenants' property at the market, assaulting the tenants, following the delivery of an execution writ by the lower court. The fact that some of tenants were not included in execution writ was ignored. The tenants filed a complaint to the police who failed to prevent the thugs' actions and identify them so that they could be held to account.

The Gocheck case documented by the AHRC was the first case in which business tenants filed a lawsuit regarding the unjust development process that excludes poor tenants in South Korea, as a result of their depending on an urban plan facility managed by the administration as well as a private company. It shows negligence by the administration authorities concerning urban planning, as well as how violence is being used as a tool to enable the authorities' development projects. The case is also an example of forced eviction in which tenants have not had access to the proper legal process in order to receive due compensation. The administration did not keep to its initial agreement with the tenants, which is one of the main reasons leading to the tenants protesting against the development project.

The administration denied the fact that the Gocheck market was an urban plan facility or public area until the tenants had submitted the relevant documents. In the court process, as there was no clear process regarding reconstruction or renovation for development between the administration and the company, which is legally required according to the Special Act, a mere verbal statement from the company was accepted. It allowed the company to change its plan for development at will. The administration has a duty to

3 For more information on this case please see the following two statements by the AHRC: http://www.ahrchk.net/statements/mainfile.php/2010statements/2677/ and http://www.ahrchk.net/statements/mainfile.php/2010statements/2973/

ensure the appropriate legal process regarding development plans for urban facilities and apply the legal process including by providing a temporary market for the tenants, with proper consultation with them tenants as well as the company in the cases involving a traditional market, such as Gocheck market. In conclusion, however, the company has used legal loopholes, and succeeded in evicting the tenants before making a clear decision on development plan, which has been allowed as a result of negligence by the administration.

After a long protest by the tenants, the newly elected administration has pledged to provide a loan with low interest for the tenants who want to rent shops for their business near Gochek market. However, the administration again broke its official promise, saying that they will provide the loan depending on the tenants' credit. This attitude proves that the administration does not have any willingness and moral responsibility to support the poor tenants, as it is practically impossible for the poor older tenants, who are aged between 50 up to in their 80s, to get such credit. In addition, the company recently agreed to provide the tenants with a street market near Gocheck market, but the administration has not allowed this, stating that the area is designated for urban beautification.

The AHRC is concerning by the violence that has gone unpunished, the forced evictions and by the fact that the administration appears to repeatedly be breaking promises made to tenants and South Korean citizens. A series of forced evictions that occurred in November 2010, immediately after G20 submit, are a further example of the loopholes in the domestic legal framework that fail to prevent violence-based forced evictions and ignore the human rights.[4]

Conclusions and recommendations:

The AHRC therefore urges the government of South Korea to take the following key steps as a priority in order to address the most pressing human rights issues facing the country:

- To implement without fail or delay the recommendations made by the Special Rapporteur on the freedom of opinion and expression made as part of his country visit in 2010, as well as all other recommendations by other UN human rights mechanisms;
- To establish a procedure for appointments of commission members for the NHRCK that is in accordance with the Paris Principles;

4 For more information about the recent forced eviction, please see the statement reported by the AHRC: http://www.humanrights.asia/news/ahrc-news/AHRC-STM-246-2010

- To abolish the Article 47 of the Framework Act on Telecommunications;
- To decriminalize defamation;
- To remove all the articles of the Act on Assembly and Demonstration that restrict the freedom of opinion and expression;
- To abolish the death penalty;
- To ensure that local administration's actions are properly monitored, notably concerning all evictions related to redevelopment projects.

SRI LANKA

THE STATE OF HUMAN RIGHTS IN 2010

Constitutionally entrenched impunity

Sri Lankan state has abdicated its duty to protect human rights, through its constitution which places the head of state, the executive president of Sri Lankan completely outside the jurisdiction of courts; thus head of state is above the law and judiciary has been reduced to marginal role; the redirect result is that there is no institution with authority to investigate and prosecute human rights violations. The basic principle of Magna Carta, which is that state cannot deprive personal and property rights of individual with due process of law is no longer adhered to by the Sri Lankan state. The constitutional abdication of rule of law, independence of judiciary and the duty to protect human rights, in favor of having a head of state with absolute power has manifested itself in every aspect of life, where complaints of human rights violations are heard from citizens of all parts of the country. However, there is no room for redress or justice. Complaints related to personal liberties as well as to property rights. There includes, allegations of forced disappearances, extra-judicial killings, endemic torture, denial of rights to fair trials, violations of freedom of expression and association, violations of rights to free and fair elections, violations of rights of women even to the extent of failure to investigate and prosecute rape and sexual abuse effectively, abuse of children's rights and in fact abuse of all sections of society. Complaints of violations of minority rights and lack of possibility of finding solution to this issue have remained a major concern. There are also allegations of war crimes, crimes against humanity, which are also prevented from being investigated and prosecuted. In all these areas, even the possibility of seeking a credible solution is absent, with in the present constitutional framework. Willingness as well as the capacity is missing on the part of the Sri Lankan state.

We have in our previous years reports continuously reported on these issues. This year's report is connected to our previous year's reports. Issues we have raised in our past reports have not been resolved. In fact, continuous failure to deal with the problem of constitutionally entrenched impunity, has contributed to the aggravations of the violations and abuses.

This year's report consists of following parts;

- An over view of the situations of rule of law
- Constructional issue and marginalization of judiciary
- A report of extra judicial rights
- A report on torture
- A report on pre-trial detention

1. The Breakdown of the Rule of Law in Sri Lanka: An Overview

Prepared by the Sri Lanka Campaign on Peace and Justice [1]

This review analyzes the state and the underlying causes of the current breakdown of the rule of law in Sri Lanka.

The information herein is drawn primarily (but not exclusively) from three sources: Basil Fernando's recently published book entitled *Sri Lanka: Impunity, Criminal Justice & Human Rights* (Hong Kong: Asian Human Rights Commission, 2010); the International Bar Association Human Rights Institute's May 2009 report entitled *Justice in retreat: A report on the independence of the legal profession and the rule of law in Sri Lanka* (hereinafter referred to as 'IBAHRI'); and Kishali Pinto-Jayawardena's *The Rule of Law in Decline in Sri Lanka – Study on the Prevalence, Determinants and Causes of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka*, a 2009 study commissioned by the Rehabilitation and Research Centre for Torture Victims (hereinafter 'Pinto-Jayawardena'). The latter probably provides the most detailed analysis of the causes behind the breakdown of the rule of law in Sri Lanka (with a focus on addressing and preventing torture), while the former provides a conceptual and critical analysis of overarching themes that is extremely useful for understanding the situation in Sri Lanka.

Facts and figures were also drawn from a wealth of other reports and analyses published by other institutions such as, *inter alia*, Amnesty International, Human Rights Watch, Reporters Without Borders, the United Nations High Commissioner for Refugees, and the United States Department of State.

In his book, Basil Fernando describes the current situation in Sri Lanka as one of "abysmal lawlessness." Use of the word "abysmal" is explained as follows:

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1 This was published as an paper of the Sri Lanka Canka Campaign on 10 September 2010. See details about the Sri Lanka Campaign at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1682133

> Lawlessness of this sort differs from simple illegality or disregard for law, which to differing degrees can happen anywhere. Lawlessness is abysmal when law ceases to be a reference. What would normally be crime ceases to be thought of as crime and lawlessness becomes routine.

Under circumstances of abysmal lawlessness, according to Fernando, the concept of legal redress – which is vital to the proper functioning of any legal system – has in fact been completely decoupled from whatever may be called law. In Sri Lanka, the primary cause of this decoupling has been the fundamental failure of the institutions ostensibly designed to implement and enforce legal redress. Fernando characterizes the failure of Sri Lanka's human rights justice and accountability apparatus by drawing an analogy to art:

> Leo Tolstoy once wrote that the art of his time in Europe was counterfeit. In counterfeit art, the artist believes himself to be creating a work of art but is in fact only creating impressions of art. These impressions are derived from an understanding of some external qualities of art, which the artist tries to recreate. The work produced in this manner appears to have the external characteristics of genuine art. By imitation, artwork was mass-produced to suit the appetites of people willing to pay for it.

Similarly, Sri Lanka's justice and accountability institutions have been eroded to the point that they have become dysfunctional sham institutions which are little more than hollow impressions that merely approximate some of the external characteristics of genuine functional institutions. Sri Lanka does not lack for a constitution, a court system, and other formal mechanisms for legal redress; however, none of these institutions have any more depth or substance to them than a Hollywood film set.

The numerous Commissions of Inquiry that have been appointed over the past several decades to address human rights concerns in Sri Lanka illustrate this phenomenon perfectly. Outwardly, they are designed to resemble other similar institutions around the world that undertake credible investigations and produce meaningful findings, which are then used by the government of the day to achieve tangible results.

However, as incarnated in Sri Lanka they currently serve little more real purpose than to either relieve domestic pressure or to discredit a previous government. Governments frequently are so brazen as to tailor a particular Commission's mandate to specifically restrict its investigations to a time period coinciding with a particular predecessor regime. Evidence is also frequently manipulated, such as in one instance where the government influenced many victims' testimony by making compensation available only where the victims claimed the perpetrator was a non-state actor; when these victims later testified in court that the perpetrators were actually state actors, their accounts were disbelieved

on the basis of the prior conflicting statement. Recommendations are usually ignored and preliminary findings of responsibility are rarely followed through with judicial proceedings. Reports are frequently released to the public only after long delays, or in certain cases not at all.

Institutional limitations also abound. The pre-war Commissions of Inquiry Act was envisioned more to enable investigations into individual actions of public officials rather than large-scale systemic human rights violations. There are no built-in safeguards to protect the safety of victims and witnesses. Commissioners can be removed at the unreviewable discretion of the president, and therefore lack independence.

In 2007, the Commission of Inquiry to Investigate and Inquire into Alleged Serious Violations of Human Rights was established. In response to concerns over the problems associated with past Commissions, the president invited a panel of eleven international experts to supervise the Commission's process and ensure its integrity.

By November 2007, the experts had had enough. Citing persistent interference by the Attorney General, lack of effective victim and witness protection, lack of transparency and timeliness in the proceedings, uncooperative state bodies, and lack of financial independence, they tendered their resignations en masse. Noting further that the recommendations contained in their interim reports had largely gone ignored, they concluded that there was "an absence of political and institutional will on the part of the Government to pursue with vigour the cases under review" – definitively putting to rest any lingering doubts as to the true nature of Sri Lankan Commissions of Inquiry.

The Attorney General's response to the international experts' criticism was to release a statement accusing the international experts of being involved in an international 'sinister plot.'

In his book, Fernando identifies six themes which, in his opinion, lie at the heart of the current situation of abysmal lawlessness in Sri Lanka: the lost meaning of legality; the predominance of the security apparatus; the disappearance of truth through propaganda; the extraordinary concentration of power in the hands of the executive president (termed 'the superman controller'); destroyed public institutions; and the zero status of citizens.

This review will borrow these six themes as a tool to organize the discussion, because they provide a useful analytical lens with which to gain perspective on the breakdown in the rule of law in Sri Lanka today. While other accounts of the present situation in Sri Lanka do not necessarily organize their discussion the same way, they all invoke these themes in some way or another.

The Lost Meaning of Legality

Fernando describes the law in Sri Lanka today as an "exercise in futility." He traces this problem back to the 1978 Constitution, which, according to him, "destroyed constitutional law" by negating all checks and balances over the executive. This has slowly led to the irrelevance of the supreme law and, gradually, all other law. Public institutions have also accordingly lost all their power and value. As Fernando puts it:

> When there is a loss of meaning in legality, terms such as "judge", "lawyer", "state counsel" and "police officer" are superficially used as in the past; however, their inner meanings are substantially changed. Those who bear such titles no longer have similar authority, power and responsibility as their counterparts had before, when law still had meaning as an organizing principle.

What Fernando means to say here is that while such individuals hold the same nominal office, the manner in which they discharge their official duties has changed. That is, they no longer carry out their duties in conformity with the rule of law. For instance, under standard criminal procedure there is normally an obligation to investigate all crimes. In Sri Lanka, however, such investigations are carried out selectively. This unofficial expansion of investigative discretion has in turn made possible the now-commonplace tactic of harassing an enemy or political opponent by causing completely bogus criminal inquiries to be launched. In this way, the criminal investigation process has been co-opted from a mode of maintaining law and order to a tool through which not only to withhold protection from citizens but also to actively intimidate and victimize them. For instance, when 133 well-known Sri Lankans signed a letter condemning death threats against a civil society activist, the Criminal Investigation Division carried out an investigation not of the death threats but of the propriety of the signatories' actions.

The ineffectiveness of public institutions of law has allowed underground elements to take over the functions of 'law enforcement.' More and more actors, both private and institutional, turn to criminal elements to achieve their ends. This is reflected in the "government policy to abduct and kill… [individuals] to be eliminated for political advantage. The method of killing is, like the collecting of debts, now cheaper, quicker and less risky than going through the courts." (Fernando, 23) As this downward cycle continues and legal redress becomes more the exception than the rule, the meaning of legality becomes corrupted further and further.

The Predominance of the Security Apparatus

Beginning with the insurgencies in Sri Lanka in 1971, and continuing through the conflict with the Liberation Tigers of Tamil Eelam (LTTE), the country's security

apparatus has emerged as a very powerful actor – which status is not expected to diminish notwithstanding the declared end of the conflict. For instance, many of the 'emergency' measures introduced during the course of the conflict have not been repealed, even though fighting officially ended more than a year ago.

The targets of the security apparatus are ordinary citizens. Trade unionists, journalists, members of civil society organizations, officials and activists in opposition political parties, and even citizens engaged in simple protest are all of special concern – but all aspects of Sri Lankan life have now come under its surveillance. It is particularly keen to exert control over the electoral process, and does so by targeting the grassroots activities of opposition parties and even of members of the ruling party where internal competition arises.

Legislative measures such as the Prevention of Terrorism Act (PTA) have given the security apparatus much of the power it now holds. However, it is important to note that the security apparatus is by no means constrained by the legal limits of its statutorily conferred authority and moves beyond even these broad powers without inhibition. With the loss of the meaning of legality there is nothing to prevent it from continuing to do so. Accordingly, extrajudicial disappearances and killings are commonplace. At the same time, there has been no investigation of complaints against the security apparatus in recent years, and a culture has arisen where any calls for accountability are denounced as anti-patriotic and akin to treason, sabotage, or aiding and abetting terrorism.

Meanwhile, to this day, over a year after the purported end of the conflict, 8-10,000 detainees still languish in detention camps accused of being members of the LTTE. However, they have not been formally charged, nor have they been allowed legal representation or access to any procedure to review the legality of their detention. Allegations of mistreatment also abound, but the International Committee of the Red Cross has not been allowed access to the detainees, in flagrant violation of international law.

The Disappearance of Truth through Propaganda

Years of conflict have exerted a calamitous effect on the propagation and dissemination of truth in Sri Lanka. Equal in strategic importance to the struggle for control over territory during the conflict was the struggle for control over information. The military and the LTTE both vied to cast their polarized propagandistic perspectives as the single version of the truth.

The state has learned to excel at creating and controlling a single, official version of the truth. Society, for its part, has largely accepted the state's self-anointed role as arbiter

of truth and falsehood. As Fernando observes, "Those who run the media also usually comply with demands to reproduce and disseminate government propaganda. Those who do not comply are threatened."

IBAHRI notes that the media has reached this point, in part, through years of intimidation and harassment. Journalistic voices critical of the government's security measures are routinely named by the Ministry of Defence as 'Tiger sympathisers', 'LTTE supporters' or 'terrorists'. Frequently, this is a precursor to a threat or physical attack against the journalist or media outlet. At least 14 media workers have been murdered since the beginning of 2006, with many others receiving death threats, being physically assaulted, having their offices burned, and/or being forced to flee the country. The state has also proven adept at using institutional channels to subvert press freedom. For instance, in August 2009, J.S. Tissainayagam, a journalist who had written critically of the government's military campaign, was sentenced to 20 years' hard labour in what was the first conviction of a journalist for his writings under the PTA. So dismal is the situation, in fact, that Reporters Without Borders ranked Sri Lanka 162 of 175 countries in its 2009 Press Freedom Index.

The legal profession has been similarly conditioned through years of intimidation. On 28 January 2009, Amitha Arayatne, who had acted in several prominent human rights cases, received death threats from police officers. Two days later, his house was burned. Such incidents have been effective at reducing the number of lawyers willing to take on human rights cases. In March 2009, for instance, the lawyer representing Sunil Shantha, who was accusing the police of torture, suddenly withdrew from the case on account of threats from police.

As a result of these dynamics, there is a general level of societal disinterest in truth itself. When the truth is so cynically manipulated, Fernando explains, "[p]eople cease expecting to know the truth of anything." As a result, government spokespeople automatically deny any allegations of human rights violations, knowing that no one will come forward to speak what they know, either out of fear or a sense of sheer futility.

Many observers cite the dwindling critical voices in the media, the legal profession, and Sri Lankan civil society in general as a key factor in the degeneration of the rule of law in Sri Lanka.

The Concentration of Power in the Hands of the President

Fernando traces the current breakdown of the rule of law in Sri Lanka today in part to the high concentration of power conferred upon the executive president under the 1978 Constitution. Under that document, the president gained absolute immunity

from lawsuits of any kind, and all the powers of cabinet, including control over the civil service, were consolidated in the president's hands. Moreover, the prime minister could be appointed or dismissed at will, and parliament dissolved a year after its election.

According to Fernando, the underlying principle of such a heavy concentration of power in the hands of the presidency is rooted in the belief that such a system is the only effective way to govern the country. However, with all the checks and balances on executive presidential power removed, this system has also exposed the office of president to arbitrariness and abuses of power. Further, the concentration in the executive presidency of responsibilities far greater than one person can possibly manage effectively has led to poor oversight and dysfunction in public institutions, exacerbating the breakdown in the rule of law.

To partially address this problem, Parliament in 2001 passed the 17th Amendment to the Constitution, creating a Constitutional Council with the power to recommend or approve the appointment of a number of senior positions in the public service, including the Attorney General, the Inspector General of Police, and the Chief Justice and other justices of the Court of Appeal and Supreme Court. This was intended to restore a measure of independence to institutions of governance, as the appointment process had by then become extensively politicized, with the executive using its powers of appointments to name party supporters to top posts. However, the CC has been in abeyance since 2005 when the term of the first CC lapsed and the President, in defiance of his constitutional obligations, refused to appoint the successors duly selected by the various parties constitutionally empowered to make the nominations. Further, the President's failure to do so cannot be directly challenged in court due to his immunity from suit under Article 35 of the Constitution. Nevertheless, litigation has been launched alleging that the non-implementation of the 17th Amendment is a violation of the constitutional right to equality before the law, and it is as yet unresolved whether the Chief Justice has the power to make the appointments if the President refuses to do so himself. Meanwhile, according to the IBAHRI, "[t]he non-implementation of the 17th Amendment represents one of the most critical unresolved rule of law issues in the country."[2]

A culmination of this concentration of unchecked power in the hands of one person is plainly evident in the current initiative of President Rajapaksa to have Parliament adopt an 18th Amendment to remove the current constitutional limitations on the number of terms a president – i.e., he – can serve.

2 The situation has not improved since the release of the IBAHRI report in 2009. In fact, the Sri Lankan government recently indicated it would move to abolish the Constitutional Council altogether in a constitutional amendment, and devolve all its powers to the executive presidency.

Destroyed Public Institutions

Fernando argues that through the combined effect of the above four elements, Sri Lanka's public institutions for the administration of justice have been effectively destroyed. This topic has been the subject of much of the work of the Asian Human Rights Comission (AHRC) and the Asian Legal Resource Centre (ALRC). In his book, Fernando reviews this work in order to catalogue the descent into disgrace of the police, the Attorney General's department, and the judiciary. In each case, the institution has gradually degenerated to the point where today it appears to serve no other purpose than to provide cover for abuses of power and rights violations perpetrated by the state. As a result of this situation, "there is nothing sacrosanct or predetermined about any institutional practices now, and the citizen who goes before public institutions knows not what to expect."

Pinto-Jayawardena identifies two factors in particular that lie at the root of Sri Lanka's failed public institutions. These are a lack of independence from political interference from the executive, and a lack of public resources.

Lack of Independence

The key to any successfully functioning judiciary is judicial independence. However, the judiciary in Sri Lanka cannot be said to enjoy judicial independence. Institutionally, any judge of the Court of Appeal or Supreme Court can be removed by an order of the President supported by a simple majority in Parliament.

The executive also interferes habitually in the affairs of the judiciary. For instance, the IBAHRI notes that in one speech, the President issued thinly-veiled threats of public lynchings and impeachment to the judges of the Supreme Court.

While there have always been tensions between the executive and the judiciary, many observers point to the 1999 appointment of then-Attorney General Sarath N. Silva – who had close ties to the President – to the office of Chief Justice as a watershed moment in the degeneration of the judiciary, once a credible defender of fundamental rights and an important check on executive power, into its current weakened and docile state. Silva's appointment, which came in the midst of a flurry of executive backlash against a Supreme Court which it saw as unduly intrusive in government affairs, was accompanied almost immediately by a perceptible shift in the Court's attitude towards fundamental rights petitions. According to the IBAHRI, Chief Justice Silva had a domineering personality and wielded enormous influence over his colleagues, which he used to maximum effect by assigning the most politically sensitive cases to himself and the most junior judges. Notably, a petition against his appointment to the Supreme Court was dismissed by a five-judge bench constituted (by his own order) of himself and the four most junior

judges. On two other occasions, Parliament attempted to effect his removal with impeachment motions, only to be thwarted by the President's summary dissolution of the legislature.

The lack of judicial independence for the judiciary has led to its politicization, and is just one example of the erosion of public institutions occurring in Sri Lanka.

It is not only the judiciary, however, that suffers from a lack of independence. All institutions which are ostensibly set up to act as checks upon state action lack proper insulation from political interference. The section above has already described how the Constitutional Council, designed to inject a measure of impartiality in the heavily politicized appointments process, has been deliberately (and unconstitutionally) thwarted and undermined by the executive. Further, the various elements of the state security apparatus are not properly insulated from the various institutions that are ostensibly designed to investigate and address complaints against them. For instance, the unit responsible for investigating allegations of torture against police is composed of police officers – who are often transferred in and out of the unit – effectively assigned to investigate their own colleagues. Under such circumstances it is impossible to expect fully independent and impartial investigations. The result, unsurprisingly, has been a near-complete failure to investigate and prosecute allegations of torture against police.

Lack of Resources

The lack of resources is a major problem that severely compromises the capacity of public institutions to fulfill their roles. Due to lack of resources public institutions are understaffed and underequipped, and their personnel lack the proper education and training for their posts. This impairs the ability of these personnel to perform the functions required of them, and it only adds to the Sisyphean challenge of resurrecting these institutions from their already dysfunctional state.

The Zero Status of Citizens

As the country's public institutions have fallen to zero, so has the status of its citizens. Where there are no effective public institutions there can be no individual rights. The rights that citizens enjoy under the statute books have no actual relevance, because there is no effective mechanism to guarantee and protect them. Thus, insofar as the nation's public institutions have vanished, so has any conception of Sri Lankans' individual rights.

Perhaps the starkest example of this zero status can be seen in the detention camps discussed above where, at the height of the situation, hundreds of thousands of internally displaced persons were housed and detained. These camps were operated without any

lawful authority under either domestic or international law, and in fact contravened a number of fundamental rules of international human rights and humanitarian law. This situation was merely a high-profile manifestation of what is more generally the current reality in Sri Lanka – that its citizens are subject not to the rule of law but to the naked political power of the ruling government.

Although the detention camps provided a dramatic illustration, it is important to reiterate that it is not just internally displaced persons in Sri Lanka that have zero status, but all citizens right up to the members of the privileged elite. For these individuals, even their relative wealth and power cannot afford them access to public institutions that have been destroyed. The rule of law has vanished with respect to all Sri Lankans. Fernando chronicles how from time to time members of the ruling class are surprised to learn that their position in the hierarchy does not make them invulnerable to (legally) arbitrary treatment. Often – as in the case of the prosecution for sedition of General Fonseka (who has not, on the other hand, been tried for what were almost certainly massive violations of the laws of war by the Sri Lankan military during the final stages of the war that he oversaw) – these individuals were themselves active in the repressive state structure before the system turned against them. Of course, they are perhaps on the opposite end of the spectrum from internally displaced persons with respect to the actual magnitude of misfortunes visited upon them and. However, this does not make their treatment any less arbitrary or lawless.

Summary

In broad strokes, the collapse of the rule of law in Sri Lanka can be reduced to the following. The effectiveness and legitimacy of Sri Lanka's public institutions has been destroyed through years of undue political interference from the executive and through involvement in the perpetration of repression by some of those institutions. There is a lack of institutional independence as well as a lack of resources. Mechanisms that could partially address deficiencies in institutional independence, such as the Constitutional Council or the courts, have been systematically undermined and sabotaged by the executive. Further, perceived security threats give the government an excuse to maintain much of the power it now holds.

As a result of this situation, Sri Lankans' expectations of their public institutions have fallen to the point that the very notion of legality has been lost; that is, there is no longer an expectation on the part of Sri Lankans that their public institutions will operate according to the rule of law. At the same time, the concept of individual rights itself has also been lost, and Sri Lankans' expectations that they will have anything above and beyond zero status has also gradually been eroded. When this mentality pervades not just the general public but also those who hold office in public institutions, the rule of law is

extensively compromised. Meanwhile, because of the disappearance of truth as a public enterprise – effected by years of government propaganda, manipulation and outright intimidation of the media – there is little organized pressure on the government to address the situation, and what little resistance is offered is crushed.

All this is to say that the problem is broadly based: there are problems in how public institutions are set up, there are problems in how public institutions operate in practice, there are problems in how public institutions are supported financially, and the problem even runs as deep as the very mentality of those who staff these institutions as well as Sri Lankans in general.

Further Reading

As a final note, it has been impossible here to exhaustively catalogue specific details of all the factors behind the collapse of the rule of law in Sri Lanka. To this end, a brief review of the executive summary and recommendations contained in both the 2009 IBAHRI report as well as the 2009 report of Kishali Pinto-Jayawardena would be very useful reading for anyone wishing to gain some quick insight into the current situation on the rule of law in Sri Lanka and the kinds of problems that need to be addressed. Also recommended is Basil Fernando's online article, "A three-part study on the crisis in institutions for administration of justice in Sri Lanka and its consequences for the realisation of human rights in Asia", which summarizes the analysis in a trilogy of books – the above-mentioned Sri Lanka: Impunity, Criminal Justice & Human Rights as well as two preceding works published in 2009, The Phantom Limb and Recovering the Authority of Public Institutions; this article was prepared for Article2.org in June 2010.

2. SRI LANKA : The politics of habeas corpus and the marginal role of the Sri Lankan courts under the 1978 Constitution [3]

"LIBERTY RIGHTS AT STAKE: THE VIRTUAL ECLIPSE OF THE HABEAS CORPUS REMEDY IN SRI LANKA" is a study of 880 judgements of various courts of Sri Lanka on habeas corpus applications from independence (1948) up to present period (2009). It studies all the important judgments on habeas corpus during this period.[4] Kishali Pinto-Jayawardene and Dr. Jayantha Almeida Gunaratne conducted the study. This article is based on their findings.

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3 This section is written by Basil Fernando as a chapter for a book to be published in Sri Lanka.

4 According to the two authors, the cases for the study were not selected from various sources but taken from a book that was bound and is maintained at the Sri Lankan Court of Appeal.

The basic conclusion that the study arrives at is that Sri Lankan courts in recent decades have failed to give effect to habeas corpus as a judicial remedy. Their decisions are markedly different from the way that habeas corpus was dealt with in the pre-independence period, as evidenced, for example, by the famous Bracegirdle case, which demonstrated the will of the Supreme Court at the time to defend the freedom of the individual as against the arbitrary actions of the state. It also demonstrated the court's power to stand against the state to protect the freedom of the individual. This study concludes that in recent decades the approach of the courts has changed substantially. In almost all cases studied, with a few exceptions, courts have dismissed cases rather casually and shown little sympathy for the applicants.[5] The basic conclusion is that habeas corpus as a judicial remedy for the protection of the freedom of the individual has failed in Sri Lanka, and as the title of the study suggests this important writ may disappear altogether from the country. This failure is not due only to factors such as scandalous and shocking delays but also due to much more important changes of attitudes towards the remedy itself.

The failure of the remedy of habeas corpus in Sri Lanka as evidenced by this study needs to be examined against the background of the political changes that have come about in the country since the 1978 Constitution in particular. Most persons on whose behalf these cases have been filed in this period fall within the category of disappeared persons. The important judgements come from the Court of Appeal from 1994 to 2002. Out of a total of 844 cases for this period there were 368 applications for 1994; 127 applications for 1995; 142 applications for 1996; 137 applications in 1997; 31 applications in 1998; 6 applications in 1999; 11 applications in 2000; 7 applications in 2001, and 15 applications in 2002.[6]

The study of habeas corpus in Sri Lanka cannot be delinked from a political understanding of the forced disappearances that took place during this time, and the

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5 According to the two authors, in a taped interview at the Asian Human Rights Commission, Hong Kong, "The analysis combines a very academic, in-depth analysis, arriving at particular conclusions which show indisputably and deliberately that the courts' response has been marked by a distinct lack of judicial sympathy for the petitioner… Now the most alarming factor in this particular study in that segment is the cursory manner in which the court dismisses applications of petitioners across the board for various reasons—and all the reasons are looked at in the study—ranging from failing to name a respondent correctly in the petition, failure to put a surname of the respondent in the petition".

6 From 1987 to 1991, the south of Sri Lanka suffered extreme political violence. According to the reports from a number of presidential commissions of inquiry, the total number of involuntary disappearances during this period was around 30,000 persons. From 1978 up to May 2009, there was military action in the north and east, where there was a continuous insurgency. Arrests, detentions and other forms of repression were commonplace throughout that time. From 1994 to 2002 the orders in habeas corpus cases were primarily concerning Sinhalese caught up in the southern insurrection, but there were a fair number also from the ongoing conflict in the north-east as well. From that point onwards, probably from about 1998 onwards, the majority of the cases were from the north-east.

approach of the state in dealing with certain issues of perceived security in which the use of forced disappearances was an approved practice for curbing insurgency. On the one hand mass disappearances were a result of a political approach to national security during which the use of forced disappearances was an approved practice. On the other hand, the courts, which are also a branch of the state, were called upon to examine this phenomenon from a legal and judicial perspective. The study finds that in the application of legal principles the courts have tended to favour the state over the liberty of the citizen when determining these cases. This seeming legal problem, if seen within the political atmosphere in which the disappearances were carried out seems less of a surprise, as the courts would have had to go against this approved policy of causing disappearances if they were to protect the rights of the individual as against the interests of the state.

In a classical sense the remedy of habeas corpus is meant to protect the individual against the abuse of authority by the state. If there is a failure in this regard it is a failure of the very concept of the protection of the individual. However, the assumption that the courts could have protected the rights of the individual in a situation where there was an approved policy of the state relating to causing forced disappearances is to expect the courts to be at loggerheads with the state on a very important issue of policy at a time that it is impossible for them to be in this position.

Here we see a fundamental contradiction. On the one hand if the country was a liberal democracy and if its constitution was based on the principles of the rule of law then it was the obligation of the courts to uphold the rights of the individual even against an approved policy of the state to the contrary. Within a liberal democracy where the law and the policy contradict one another it is the duty of the courts to uphold the law as against policy. This is possible only if we assume that the 1978 Constitution was that of a democracy and that Sri Lankan democracy was, even during this period, based on the rule of law. However, is this assumption itself correct? This is the issue that we should first examine relating to the 1978 Constitution.

Article 35 and its impact on the entire constitutional structure

For almost 32 years there has not been a discussion of the impact of article 35 on the Constitution of Sri Lanka on the constitutional law as a whole. Much of the discussion has been confined to the issue of the immunity from prosecution of the president without consideration of the very impact of this immunity.

Article 35 reads as follows:
"35. (1) While any person holds office as President, no proceedings shall he instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity."

The executive president is head of the state, the head of the executive, of the government, and is commander in chief of the armed forces. Under the earlier constitutions, though the president was head of state, the prime minister was head of the cabinet. The prime minster was answerable to court. Under the 1978 Constitution the head of the executive, who is also the head of the government, is not answerable to court.

All decisions relating to national security are those of the head of the executive. All policy decisions relating to national security are also those of the head of the executive. Under article 35, the executive president as head of the executive is not answerable to the courts.

The executive president of Sri Lanka is not subjected to any controls by cabinet or any other constitutional body. In fact, the executive president controls the ministers and all public authorities. The entire aim of the 1978 Constitution was to place the president in charge of everything. He has the right to place the ministers and to control the ministries themselves. In view of this, the public institutions that are run by the ministries are under his direct control. When article 35 made the president unanswerable to the courts of Sri Lanka it placed all decisions on the governance of the country attributable to him outside the control of the judiciary.

Within a rule of law-based system, a nation functions through its public institutions and the manner in which they are subjected to control is the discipline that controls the lives of the people. The laws that govern these institutions, the laws that are developed and the commands that are given by those who are responsible to these authorities are the aspects that govern the people of the country and the institutions. The internal running of the country and the institutions must have an independent life of its own based on a legal process that is not subjected to the control of those in political power. The running of this internal structure of public institutions needs the supervision of the public to ensure that basic notions of protection of peoples' liberties and freedoms are superior, while governance is carried out from day to day.

The protection of the freedoms of individuals and the functioning of public institutions are therefore deeply linked. The public institutions, if they are run for the achievement of various goals of the government, such as development, national security and the like, should at all times protect the freedoms of individuals. Therefore in the running of public institutions there are two factors to consider. On the one hand there are the objectives of the government, which tries to achieve various targets at a particular time. It may be a particular development target in relation to various public institutions such as the speedy recovery of taxes, or projects such as roads or markets or housing projects. Or it may be national security objectives such as ensuring that political sabotage or insurgent activities are not interfering with or obstructing the smooth functioning of the institutions to achieve their normal objectives.

On the other hand, at the same time the institutions must protect the liberties and the freedoms of individuals, who have certain entitlements and expectations. The public institutions at all times should respect these entitlements, even in a conflict over the performance of a public institution working towards any development or security objective. If there is a conflict between the freedoms of the individual by way of denial of entitlements then it is the function of the courts to intervene and to deal with this problem in order to safeguard the freedom of the individual. The executive pursues various objectives, such as national security. It is the judiciary that protects the freedoms of individuals so that the objectives of the state will not crush the entitlements of the people.

In Sri Lanka, by placing the executive president, who is the controller of public life under the 1978 Constitution, outside the jurisdiction of courts what was in fact achieved was the removal of the judicial function to protect individual liberties. The idea was that the president, as the driver of national objectives through various development and security projects, like anti-terrorism activities, is not under the control of the judiciary.
Therefore, the protection of the individual, as opposed to the pursuit of objectives of the government, has been removed through article 35. What can be construed from this article is that if an attack on the freedom and liberties of an individual can be attributed to the decisions of the executive president, such actions are outside the jurisdiction of courts. In such instances, the courts are functionless.

The 1978 Constitution itself removed from the jurisdiction of the courts the bases for the protection of the freedom of the individual. It is the character of this fundamental attack on the idea of constitutionalism under liberal democratic government, in which the protection of the individual is a primary objective of the constitution, which has been lost sight of amid public debates relating to the 1978 Constitution.

Article 35 was a profound deviation from the notion of constitutionalism as understood within the liberal democratic discourse. In the liberal democratic discourse, protection of the liberties of the individual is a primary objective. Whatever other objectives the executive may aim to achieve in a particular context and at a particular time, it cannot infringe on the liberties of the individual in the manner made possible under this section of the 1978 Constitution.

Consequently, the role of the Sri Lankan courts on constitutional matters, including those relating to the protection of individuals, is marginal. The courts no longer have the position they enjoyed under the 1948 and 1972 constitutions. The role of the executive president has been enlarged and the role of the courts reduced. Many Sri Lankans still are imagining a situation in which the courts enjoy similar powers, authority and prestige as in the past. However the actual situation has changed substantially. In an earlier

publication entitled *The Phantom Limb: Failing Judicial Systems, Torture and Human Rights Work in Sri Lanka*,[7] I have explained this situation. The protective power of the judiciary over the freedoms and the rights of the individual has diminished, while the power of executive to encroach on their rights has increased enormously through the constitutional invention of the executive president.

Limited jurisdiction on fundamental rights relating to human rights violations is not binding to the executive president

Article 126 of the 1978 Constitution was a new creation:
"126. (1) The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right or language right declared and recognized by Chapter III or Chapter IV."

This jurisdiction does not extend to executive and administrative actions attributable to the executive president as the head of the executive, since article 35 covers such actions.

The addition of judicial remedies such as the fundamental rights jurisdiction under article 126 was no substitute for the removal of liberties by article 35. The fundamental rights jurisdiction does not extend to the executive president. Its jurisdiction is limited to certain rights that are called fundamental and therefore it is binding on certain acts of the administration, which may affect those rights. However, this jurisdiction does not extend to the acts of the executive president, who is the total controller of the entire apparatus of the government without any kind of limitations to his power and without checks and balances.

If the Bracegirdle case were heard under the 1978 Constitution

M.A.L. Bracegirdle was young Australian planter in Sri Lanka who became an activist in a leftist party, the Lanka Samasamaja Party, because he supported workers' struggles. The colonial government issued an order of deportation on him in 1937, which required that he leave the country in 48 hours. He resisted and went into hiding. A writ of habeas corpus was filed before the Supreme Court and the court quashed the governor's order. It established habeas corpus as prestigious remedy for the protection of the individual against the state.

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7 By Basil Fernando and Morten Koch Andersen, published in 2009 jointly by the Asian Human Rights Commission, Hong Kong and the Rehabilitation and Research Centre for Torture Victims, Denmark.

If the Bracegirdle case were heard before a court under the 1978 Constitution, the state would raise an objection under article 35. As the executive president now occupies the place that the governor once took, it would be argued that the courts have no power to hear the case. The courts would uphold the objection as it has upheld similar objections when they have been raised.

The Bracegirdle judgment was based on the principles of the Magna Carta. As stated by Abraham CJ,

"There can be no doubt that in British territory there is the fundamental principle of law enshrined in Magna Carta that no person can be deprived of his liberty except by judicial process. The following passage from The Government of the British Empire by Professor Berriedale Keith, is illuminating and instructive. In Chapter VII of Part I., he discusses 'The Rule of Law and the Rights of the Subject' p. 234. He says: -

'Throughout the Empire the system of Government is distinguished by the predominance of the rule of law. The most obvious side of this conception is afforded by the principles that no man can be made to suffer in person or property save through the action of the ordinary Courts after a public trial by established legal rules, and that there is a definite body of well known legal principles, excluding arbitrary executive action. The value of the principles was made obvious enough during the war when vast powers were necessarily conferred on the executive by statute, under which rights of individual liberty were severely curtailed both in the United Kingdom and in the oversea territories. Persons both British and alien were deprived legally but more or less arbitrarily of liberty on grounds of suspicion of enemy connections or inclinations, and the movements of aliens were severely-restricted and supervised; the courts of the Empire recognized the validity of such powers under war conditions, but it is clear that a complete change would be effected in the security of personal rights if executive officers in time of peace were permitted the discretion they exercised during the war, and which in foreign countries they often exercise even in time of peace.'" [8]

What is disturbed by article 35 is the basic principle underpinning habeas corpus that is contained in the Magna Carta itself, which is the rule of law that *"no man can be made to suffer in person or property save through the action of the ordinary Courts after a public trial by established legal rules, and that there is a definite body of well known legal principles, excluding arbitrary executive action."* By the operation of article 35, the executive president has arbitrarily removed the rights of subjects and deprived them also of recourse to court.

8 By Basil Fernando and Morten Koch Andersen, published in 2009 jointly by the Asian Human Rights Commission, Hong Kong and the Rehabilitation and Research Centre for Torture Victims, Denmark.

Under a rule of law system deprivation of personal and property rights can be done only through courts, which are obliged to adhere to due process. Under the 1978 Constitution this very principle has been rejected. There are things that the executive president can do which also include the deprivation of life and liberty of subjects without any legal process and the judiciary can be deprived of the right to intervene on such matters by excluding its jurisdiction via article 35. The 1978 Constitution thus violates the basic principles underpinning habeas corpus in the Magna Carta.

The design of the executive presidential system is such that government objectives, for example, those for the achievement of various development projects or national security, could infringe on the liberties of the individual by the removal of the possibilities of judicial intervention into these areas. The very notion of the centrality of the liberties of the individual as a primary aspect of the national life and a primary aspect of constitutionalism was removed from the Constitution of Sri Lanka in 1978.

Structural contradictions

The judicial failure to protect the remedy of habeas corpus in Sri Lanka is the result of the structural contradictions in the 1978 Constitution, which removed the idea of the freedom of the individual as a fundamental aspect of the constitution while claiming to do the opposite. The protection of rights has been confined to a minor area with enormous limitations and the judiciary can operate only within that limited area for the protection of rights. Therefore, within the 1978 Constitution the judiciary has only a marginal role in the protection of individual liberties. The executive president is at liberty to pursue whatever objectives and policies he thinks fit without the burden of having to be concerned with the freedoms of the individual, which would otherwise be protected by the judiciary. The judiciary is granted the power to interfere in only a marginal way.

It is these structural contradictions in the 1978 Constitution that have not been brought into constitutional discourse in any meaningful way and since the constitution was passed this discourse has in fact been greatly diminished. This is despite the fact that in recent times the structural contradictions whereby fundamental rights are ostensibly protected but judicial intervention is denied in many important matters affecting personal and property rights have been glaringly obvious. Witness the whole issue of displaced persons in the North and East, who were placed outside jurisdiction of courts after the end of the military intervention in May 2009; the government's refusal to investigate alleged forced disappearances, extra-judicial killings, torture and alleged crimes against humanity and war crimes; forced evacuations of persons from properties without any legal process in many parts of the country; the manifest failure to investigate crimes in many parts of the country accompanied by a program to kill rather than prosecute alleged offenders; and, failure to implement constitutional provisions as demonstrated by way of the non-operation of the 13th and 17th Amendments to the constitution.

The 880 cases in the *Liberty Rights at Stake* study that were pursued by way of habeas corpus applications fall into this same category, as enforced disappearance was approved and pursued as policy for perceived security reasons. Forced disappearances constitute the worse form of deprivation of the liberties of individuals without any intervention of courts and without any reference to legal process. International law considers causing of such disappearances as a most heinous crime and a crime against humanity. However, such acts are not against the "legal order" established under the 1978 Constitution, which excludes the jurisdiction of courts on such matters by way of the operation of article 35.

The executive president's role as the policy maker

Under the 1978 Constitution the executive president, as the head of the state as well as the head of the political ruling party, is also the chief policy maker. All matters of public security are policies that are developed by the president himself. Perceived insurgencies and all other matters of national security are under the purview of the executive president. The whole period from 1978 is marked by the extensive use of emergency and national security regulations together with legal and constitutional amendments to suit the policies that the head of state insists are necessary for the nation. This vast body of regulations by way of emergency or national security laws has imposed heavy limitations on the power of the judiciary to deal with matters concerning freedoms of the individual. A large body of rules depriving the judiciary power to interfere in matters of arrest and detention, and also even to enable the creation of various extraordinary places of detention and to put entire areas of the country outside the jurisdiction of the courts was built up through government policy decisions.

A vast number of forced disappearances took place during the time since the 1978 Constitution was passed into law, within the spaces created by the national security laws that follow from the executive president's role as policy maker. These laws removed the courts' supervisory role. Thus, the abductions of persons by various secret agencies with no regard for the law and normal regulations; the interrogation of these persons in detention centres with no records as required by the law; the conduct of these interrogations without any kind of supervision which gave room for torture as well as cruel and inhuman treatment; and, the final killing and disposal of the person all happened within a policy framework that the executive president approved, and were enabled by security laws and regulations which were also designed and approved by the executive president. The courts of Sri Lanka have no jurisdiction to challenge any of these policies whatever the consequences for individual liberties. Thus even completely immoral decisions that could shock the conscience of any civilised nation can be made by the executive president of Sri Lanka without the possibility of these being reviewed or scrutinised by the courts. This is the basis for the incapacity of the courts to deal with various illegalities that result from arrest and detention and other actions that are supposed to be addressed by habeas corpus applications.

The limitations on law-making processes and the role of the executive president

Prior to the 1978 Constitution, the 1972 Constitution already removed the powers of judicial review from the ordinary courts of Sri Lanka. It established a new Constitutional Court to deal with matters relating to the constitution. The 1978 Constitution removed the Constitutional Court and removed the limits on judicial review created by the 1972 Constitution. Under the 1978 Constitution a bill to be passed by the parliament had to be submitted to the Supreme Court, which in turn had to look into the constitutionality of the bill within a short period. Other than this it gave no scope for the Supreme Court to look into the legality or otherwise of a bill. Under its article 122(1) the 1978 Constitution put further limits on the power of the Supreme Court to look into a constitutional bill where the president submits a letter to the court asking for the review to be done within one to three days, if the president considers the bill important enough to be introduced through an emergency process.

When J. R. Jayawardene needed to remove the civil rights of his chief rival, Sirimao Bandaranaike, and there were certain limits due to the law relating to this in Sri Lanka, he referred to this section to introduce a bill in parliament for the amendment of the constitution, known as the 3rd Amendment, on an emergency basis. The same procedure was later followed in 2010 when the 18th Amendment was introduced to the parliament. Thus the passing of laws to amend the constitution itself has been brought under the ambit of emergency procedure, giving the Supreme Court no more than three days to conduct judicial review. Thus, the law making process was changed to deny possibilities of consultation on legal change with the people as well as so as to limit the powers of the courts to the review the possible implications of new laws.

The fundamental notion of the rule of law is that laws are made with the consent of the people. The consent of the people is given by way of public discussions within which the public express their considered views on whatever law is to be passed. This consent of lawmaking is at the heart of the notion of the sovereignty of the people. The people cannot be sovereign when they cannot give consent to the laws by which they will be bound in the future. Thus, more than any other aspect of lawmaking in a democracy it is the consent of the people that makes or destroys democracy. The 1978 Constitution took away this process of lawmaking, and with it, Sri Lankan democracy and the rule of law.

Differences between countries with courts having a marginal role and those with no effective judicial power at all

As against Sri Lanka, contemporary Cambodia and Burma are countries where the courts have no effective judicial power at all. These countries arrived at this situation through

different historical factors, which are instructive for the purposes of comparison with countries where the courts have a marginal role.

From 1975 to 1979 Cambodian society went through one of the worst tragedies that humanity faced in modern times, when the Khmer Rouge was in power. The entirety of the urban Cambodian population was ordered to vacate the cities and move to the countryside. In the years and months that followed the Khmer Rouge pursued a ruthless collectivisation programme according to socialist ideas. The use of money was abolished, as were private kitchens. Children were separated from their parents and brought up by others. This experiment killed at least two million Cambodians out of a population of seven million.

Those who were pursued most ruthlessly were the educated classes as well as those who had any connection with the military. Although the arrival of the Vietnamese by the end of 1979 brought this catastrophe to an end, by that time the entire population was impoverished and in the coming ten years or so a large number of people lived in refugee camps along the Thai-Cambodian border. Many who belonged to the more educated sections that had survived also fled to other countries. Doctors, lawyers, judges and all types of professionals were lost to the country.

This process also destroyed what system of justice had existed in the country. The previous system was a short-lived one introduced by the French. The Vietnamese who took control of Cambodia assisted in the reorganisation of Cambodian society through their experts, who planned all aspects of Cambodian life at that time. The organized courts according to a socialist model which was introduced to Vietnam from the communist bloc.[9] Under their system, the interests of the government and those of the public were presumed to be in alignment. In these circumstances, the concept of the judiciary as a defender of rights against the intrusiveness of other parts of the state apparatus was an absurdity. As the architect of Soviet justice, Andrei Vyshinsky, put it,

"Under socialism the interests of the state and those of the vast majority of citizens are not, as they are in exploiter countries, mutually contradictory… Safeguarding the interests of the socialist state, the court thereby safeguards also the interests of citizens for whom the might of the state is the primary conditions essential for their individual well-being. Safeguarding the interests of separate citizens, the court thereby safeguards also the interests of the socialist state wherein the development of the material and cultural level of the life of the citizens is the state's

9 For an overview of the transplantation of Soviet law into Vietnam, see Borrowing Court Systems: The experience of Socialist Vietnam, by Penelope Nicholson, Leiden; Boston: Martinus Nijhoff Publishers, c2007.

most important task." [10]

The system that was established was aimed at ensuring some form of stability for the state, and within this system the idea of the protection of the individual from the state was a totally alien concept. The interests of the individual were protected, it was presumed, when those of the state were protected. Thus, the system of courts that was introduced by the Vietnamese from around 1980 to 1993 was a system that was meant to carry out administrative functions on behalf of the state, and the very concept of the protection of the individual against the state was missing.

In May 1993 an election was held under the UN Transitional Authority for Cambodia, which created a new government. A new constitution was adopted based on liberal democratic principles. However, the basic infrastructure of the administration remained the same and remains so even up to now. Some training was given to judges and some new laws introduced. However, almost all human rights organisations in Cambodia have observed and have mentioned in their reports that the ground reality did not change at all. Basically the Cambodian court system as it exists today cannot protect individual freedoms against the state. In fact, it is an instrumentality through which the political regime enforces its will against its opponents as seen by the prosecution of the opposition political leaders through various cases filed in these courts.[11] Thus the system as it stands in Cambodia today is unable to realise the protection of the individual against the executive in any manner.

The story of the Burmese system of courts and justice as it exists today began with the coup that brought General Ne Win into power in 1962. Prior to this, the superior courts that emerged at time of independence in 1948 struggled hard to establish liberal democratic principles, including through the writ jurisdiction of the Supreme Court, established under the 1947 Constitution, and the appellate criminal jurisdiction of the High Court, under section 491 of the Criminal Procedure Code. The situation is described in a recent article by a researcher of the Burmese criminal justice system:

"In the two years immediately after independence… the courts interpreted their role liberally. Justice E Maung in the definitive 1948 G. N. Banerji ruling described the authority of the Supreme Court in issuing habeas corpus writs to be 'whole and unimpaired in extent but shorn of antiquated technicalities in procedure' (pp. 203–04). In 1950 as chief justice he stressed in

10 Andrei Y. Vyshinsky, The Law of the Soviet State, translated by Hugh W. Babb, Westport, Cn.: Greenwood Press, 1948, pages 497–98.

11 The views of successive UN Special Representatives on human rights in Cambodia that support this statement are available on the website of the Office of the High Commissioner for Human Rights: http://www.ohchr.org/EN/countries/AsiaRegion/Pages/KHIndex.aspx

the Tinsa Maw Naing case that, 'The personal liberty of a citizen, guaranteed to him by the Constitution, is not lightly to be interfered with and the conditions and circumstances under which the legislature allows such interference must be clearly satisfied and present' (p. 37). He and other senior judges ruled to release many detainees on various grounds, including that orders for arrest had been improperly prepared or implemented, that indefinitely detaining someone was illegal, and that police or prison officers were without grounds to justify arrest, be it of an alleged insurgent sympathizer or notorious criminal." [12]

After the coup, the new regime did not remove the established laws but restructured the judicial system according to ostensibly socialist principles based on the same notions as were used in Cambodia, but according to a conservative rather than a radical agenda, so that the earlier protections for individual rights were no longer operative in the courts. Ne Win's chief jurist, Dr. Maung Maung, provided ideological justifications for the defeat of judicial independence and the supremacy of the executive powers. The superior judiciary's writ jurisdiction fell into disuse, and was completely removed from the 1974 Constitution that established a one-party authoritarian state under military control.[13] While the courts maintained a façade of socialist legality on the one hand and continue to apply many of the same laws as before the coup, the structural rearrangement of the political and legal systems by the regime eliminated the possibility of protecting individual rights against intrusion by the state.

Although the military regime that took over from its predecessor in 1988 demolished the one-party system and made changes to the courts that were purported to bring them back into line with what existed at the time of Ne Win's takeover, in fact the system that exists today is functionally a continuation of what existed in Ne Win's time, since its purpose is to incarcerate political opponents or perceived opponents of military rule and maintain social order through the threat of sanctions against persons who do not enjoy the privileges and protections of executive authority. Internally there is no capacity for the courts to protect the individual against the state, since the courts are no more than bureaucratic arms of the state and judges are also legally mere public servants under the same authorities as departmental officers. Nor will this situation change with the creation of another façade in the form of a semi-elected parliament in the near future.

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12 Citation from, "The incongruous return of habeas corpus to Myanmar", by Nick Cheesman, in Ruling Myanmar: from Cyclone Nargis to national elections, Singapore: ISEAS, 2010.

13 For a discussion see "Ne Win, Maung Maung and how to drive a legal system crazy in two short decades", article 2, vol. 7, no. 3, September 2008, available online at http://www.article2.org/mainfile.php/0703/

Differences in situation between systems where judicial power is non-existent as against systems where judicial power is marginal

In systems like those operative in Cambodia and Burma today, the memory of a functioning justice system in the liberal democratic tradition does not exist. Law is not equated with the protection of individual rights but with transgression of any kind from any order by anyone representing authority, irrespective of the contents of that order or its degree of rationality. They are aware that any such transgression can lead to punishment, with or without judicial sanction. State authorities have full power to decide on punishment as they wish, and although there are superficially rules, procedures and structures for deciding punishment, how all these things operate in essence is completely arbitrary. There is no serious attempt to prevent arbitrariness, and in fact the systems in these countries are dependent on it, as people are forced to adjust their habitual behaviour to respond to official whims on short notice. Why somebody in authority does something one way today and a different way tomorrow is not questioned. It is just the usual form of behaviour. Thus there is not even a conceptual basis for making a distinction between what is arbitrary and what is not. The whole notion of constancy through legality has departed from the way that the state operates.

In contrast to systems where judicial power is non-existent, the system in Sri Lanka today is one where judicial power is marginal, in that people still have memories of times when courts had greater influence than in the present. This memory often creates expectations that the system can still operate in certain ways that are in fact beyond it. People with such memories may get confused when courts act arbitrarily. The idea of law still exists, yet it is not operative to the extent or in the manner as it was in the past. Students may be educated to believe that laws are present and working. External references to law and legal habits based on various practices that had validity in former times may be repeated. This also often confuses participants in the system, who may be unable to comprehend whether law still really exists or not.

In countries where courts have no judicial power, the executive authorities have no fear of the courts at all. They consider courts as part of the same unitary system to which they belong. They are aware that they are highly unlikely to have to face contest in courts from the citizens asserting their rights, and certainly not as equals. In contrast, in courts with marginal power persons representing state authorities do fear the prospect of contests from citizens in courts, since they cannot be completely sure of the outcome of such contests.

Likewise, where courts only have administrative functions, the authorities are more secure and do not need great use of force to control persons, except in very exceptional situations, since they can rely upon the judiciary to carry out their bidding against individuals who threaten the established order. On the other hand, where courts

have even marginal power, authorities are less secure, since they cannot be certain of compliance. This causes those authorities to resort to more extralegal actions than might be the case as in the other situation, since they feel the need to take care of things themselves than rely upon judges to cover up crimes on their behalf. In such cases, forced disappearances in particular are more likely to occur, as the state officers are obliged to commit crimes rather than resort to judicial measures to remove threats to their authority, and then must also take a certain number of steps to cover up such crimes.

On the other hand, where courts have no effective power, the use of the judiciary for bargaining and negotiating is likely to be greater than in places where their authority is marginal. Bribery becomes the customary way of dealing with accusations in courts, other than in high-profile cases that have political qualities. Citizens, either directly or through intermediaries such as lawyers, engage in such bargains routinely and without thought to any alternative. There are no genuine legal impediments to such bargains, and on the contrary, such bargains are essential for success. In contrast, in countries where courts still have marginal power bargaining takes place less and with less certainty of outcome. However, people do realize that space for bargaining is wide and there will be more and experiment in that direction as courts' power wanes. Consequently, political influence extends to the courts through indirect methods, rather than through direct control of the courts as in the first category of cases.

3. Extrajudicial killings

Arbitrary arrests and extrajudicial killings are almost daily occurrence in Sri Lanka today. The police system and additional institutions expected to be the protectors of law have become so dysfunctional and politicized that illegalities predominantly are carried out in their names.

Extrajudicial killings are marked illustrations of how lawlessness reigns in the country after the rule of law system has broken down. The killings are symbols of the exceptional lack of respect for legal procedures and the rights of the citizens to such within the security agencies.

When essential mechanisms in what was supposed to be a rule of law system have ceased to function, the police do not have options or resources to conduct proper investigations. However, they are still required to clear up the cases. Killing as a solution is thereby a simple rationale.

In some cases dead occurs due to 'the heat of the moment' where police officers might not have had the intention to kill, but violence and frustrations get out of hand. However, as

just a quick overview of the cases AHRC has reported in 2010 shows, most killings are clearly intended as a pattern of characteristic police procedure becomes visible.

Extrajudicial killings under the pretext of eliminating organized crimes

Legislative measures such as the Prevention of Terrorism Act (PTA) have given the security agencies much of the power, they now hold. These legislatures were introduced during the conflict with LTTE as emergency measures under which a countless number of people disappeared and were extrajudicial killed. Despite the conflict officially ended more than a year ago, they have not been repealed. Many cases of extrajudicial killings are justified by these acts and the danger the suspect poses as a part of a bigger group of organized criminals and potential terrorists.

One of the most dreadful parts of the police's use of the measures is the story presented by them to the Magistrate. The stories are coincidently enough almost always similar. Either the suspect was shot while trying to escape or the police were taking him to a location, where he was supposed to convey a weapon shelter, when he turned on them with a weapon of some description, often something as remarkable as a hand grenade. The police never provide explanations of how the suspect could disguise the weapon and why he was not guarded more carefully. The victim is presented as a hardcore criminal with weapon shelters available all over the country, but he is neither supervised properly nor handcuffed.

The story's aspect of organized crime is constructed so the police likely will avoid further investigations into the case. Questioning abolitions of potential terrorists has often led to accusations of anti-patriotisms or traitorous business; labels used by state officials when civilian Sri Lankan's make claims of violations by governmental institutions or forces.

The detainee with a hand grenade in handy

An example, which illustrates the absurdity and atrociousness of the situation and reveals the pattern of the police procedure, is the case of Dhammala Arachchige Lakshman from Dematagoda, Colombo. He was arrested by a Special Unit of the Hanwella Police Station without a warrant on September 20, 2010. His time in custody was spent at the Hanwella Police Station. Lakshman was not produced before a Magistrate at any time during his detention and neither was his arrest informed to one.

On September 22 he was brought to a location at Diddeniya in Hanwella by the police officers under the supervision of the Officer in Charge (OIC), R. Pushpakumara. The OIC was furthermore under the supervision of Inspector General (DIG), Daya Samaraweera and the Superintendent (SP), Deshabandu Tenneko. According to the

police version of the incident, they tried to uncover a weapons shelter, which Lakshman allegedly had connections to. During the journey to the shelter Lakshman tried to escape by throwing a hand grenade at the officers whereupon the officers shot him. Lakshman was rushed to the Avissawella hospital but he was dead on admission.

This case covers many of the key indicators and problems in the exertion of extrajudicial killings by the police in Sri Lanka.

First of all, according to the Criminal Procedure Code the police are supposed to produce a suspect arrested on suspicion of committing a crime before a Magistrate within 24 hours. In Lakshmans' case, his arrest was not even reported to one. While a suspect is in police custody, the officers are legally bound to report details on all developments of the detainee including his movements and wellbeing. They do not hold the authority to take a suspect out of the police station without permission from the Magistrate.

The police have not provided any information on how Lakshman was able to get his hands on a hand grenade while supervised by three well-trained police officers and why he was not handcuffed. Furthermore, there is no explanation of how the officers could all escape without injuries from the explosion that the hand grenade must have caused.

As described, this is not an isolated case. The same explanation has been used by the police in countless other cases. If the precise same situation keeps occurring, one would think that the police had learned by now to keep the suspect under better supervision. In the case of Laksman even a high-ranking OIC, a SP and a DIG were present. If the explanations were true, it should be regarded as a huge embarrassment for the police as it shows the continuously lack of professionalism.

Please note the following cases:

SRI LANKA: A man is shot dead by officers attached to the Pitigala Police Station
October 11, 2010, AHRC-UAC-164-2010
When police officers tried to arrest Mr. Chathurathantri Viraj Tharanga (25) on August 27, 2010, he was shot dead as he allegedly attempted to throw a bomb at them. The police never revealed any injuries to any of the officers.

SRI LANKA: A man is shot dead while in the police custody of Special Task Force
September 29, 2010, AHRC-UAC-154-2010
Mr. Jayakody Arachchilage Oman Perera was arrested 31 August 2010 by police officers attached to the Special Task Force (STF) and taken by jeep to Colombo. During the journey one of the officers shot Jayakody because of an allegedly attempted escape. He died in hospital the same day.

SRI LANKA: A man is shot dead while in the police custody of Embilipitiya Police
September 27, 2010, AHRC-UAC-150-2010
Mr. Ranmukage Ajith Prasanna (30) was arrested by police officers on 17 September 2010. While in police custody he was according to the police taken to uncover a weapons shelter. The police claim that on the way Ajith tried to snap a weapon from an officer whereupon the officer shot him. Soon after he succumbed to his injuries in hospital.

SRI LANKA: A man is shot dead while in the police custody of Sapugaskanda Police
September 22, 2010, AHRC-UAC-147-2010
Mr. Suresh Kumar (24) was arrested by police officers on 4 September 2010 and taken to uncover an alleged weapon shelter. According to the police he attempted to throw a hand grenade in direction of the police officers during the journey. Later he was found dead on the roadside.

Killing of beggars
(AHRC-STM-136-2010) The suspicious dead of a significant number of beggars also suggest that scapegoats are invented under the pretext of preventing terrorism.

A news report from Colombo published on June 11, 2010 presents the following statement by Sri Lanka's Prime Minister D.M. Jayaratne: "Members of the vanquished Tamil Tiger terrorist organization, Liberation Tigers of Tamil Eelam (LTTE) are posing as beggars in the cities throughout the country to gather information". At a ceremony to launch welfare loan schemes for the families of war heroes some weeks later, he further stated that the government intelligence services had identified that these beggars had been trained and deployed by the LTTE. Jayaratne stressed that the intelligence units should be constantly vigilant on such movements.

In late June 2010 a disabled person who moved on a wheelchair was found dead in Colombo with severe head injuries. Five other similar dead of beggars were also reported in previous months. No accidental circumstances have surfaced in any of the cases and the injuries on their bodies strongly suggest they were cases of murder.

Custodial deaths

Another common used explanation to cover killings carried out by the police is to state that the suspected committed suicide in custody.

(AHRC-UAC-155-2010) Mr. Pattiyage Komako Lalan Peiris (34) was arrested by police officers attached to Kottawa Police Station in the evening of May 23, 2010. His arrest was allegedly a case of mistaken identity, which is common occurrence in Sri Lanka. At the time of his arrest, he was with his friend Ruwan, who the police asked for identity

papers, but he failed to submit them. The officers asked Lalan, who was able to produce his identity card and the officers brought both of them to the station. Lanan's relatives came to the station later to inquire about him, but the police denied his arrest. However, he was found dead in a cell the following morning handcuffed to a table. The body was brought to South Colombo Teaching Hospital, where the police tried to prevent a post mortem and explained the death to the media as a heart attack. Nevertheless Lalan's family insisted upon an autopsy to be carried out by the Colombo Judicial Medical Officer at the National Hospital, which revealed that the death was due to torture.

A similar story is the one of Mr. Appuhandhi Kotahewage Nayanajith Prasanna (AHRC-UAC-152-2010), who was arrested without charges by police officers attached to the Moratuwa Police Stationon September 22, 2010. He was never produced before a magistrate and neither was his arrest reported. On September 25 he was found in his cell with severe cuts to the abdomen. He was admitted to the Kalubowila Teaching Hospital where he succumbed to his injuries the day after. The police claim he committed suicide while in custody by slashing his stomach with a shard of glass, which was on the table in the cell.

According to the Departmental Orders of the Sri Lankan Police Department it is the duty of the Officer-in-Charge (OIC) of the relevant station to provide protection to the detainee under his custody. Any article or item, which may be used to harm either the detainee himself or used by the detainee to attack an officer, should have been removed. If the case unlikely was a case of suicide, it then clearly illustrates the police's neglect of their responsibilities with very little or no supervision of the detainee.

Please note the following cases:

SRI LANKA: A man is killed after being tortured by the Kiribathgoda police
September 20, AHRC-UAC-144-2010
Jayasekara Arachchige Roshan Jayasekara (35) was arrested by police officers on August 25, 2010. On August 26 an officer brought Jayasekara's body to the hospital. The post mortem examination revealed marks of numerous blunt force trauma injuries.

SRI LANKA: A man succumbs to his injuries of torture by the Kirindiwela police
September 16, 2010, AHRC-UAC-140-2010
Amarasinghe Arachchige David was arrested on August 12, 2010 by police officers. On the way to the station the police stopped to search some villagers. David left the car to watch whereupon the police officer gave him a brutal beating. The incident was witnessed by a large group of people. He later succumbed to his injuries at the hospital

The simple logic behind complex killings

The prevailing mentality at the police stations accepts torture as a method of interrogation. Many times it is regarded a necessity to eliminate the crimes the detainee is suspected of. Ghastly enough, in cases of deliberate, fabricated charges, torture is in fact a necessity. It is simple logic that it might be the only mean to obtain a confession from an innocent person.

Fabricated charges are common practise in Sri Lanka. The police often produce a false statement and force the detainee to sign or set his fingerprint on it. While torture can get you far in confessions, killings will obviously speed up the process even more.

Many times the Sri Lankan police might know the identity of the culprit, but are not interested in identifying them. It regularly results in arrests of utterly random people, although it may also come in handy for the police or other parties involved to get rid of someone they planned to eliminate anyway as an act of revenge or out of political interest. Killing is convenient as further investigation into the case is unlikely to happen after the death of the accused. Basically you kill two birds with one stone; the case will have a culprit plus the wanted person gets eliminated.

Furthermore extrajudicial killings set an example and function as clear warnings to people likely to follow in the killed person's footsteps. It is a common tool for security agencies and politicians to silence opposition politicians or journalists.

It is important to note, that the police not only practise arbitrary arrests of innocent persons, but obviously also detain persons guilty of murder, rape and other serious crimes. However the problem is that these atrocities are used by the police as justifications for torture and even killings.

As the degree of the crime increases, the vindication of torture or killings does not. According to the law of evidence any statement taken by the use of torture cannot be used in court. The use of torture and extrajudicial killings can never be compromised. They are nothing more than symbols of a dysfunctional and corrupted police system with no check and balances available.

The killings happens because the security agencies have a fear of the case being taken to court receiving an impartial trial, that neither the police nor other parties involved hold the power to influence. The killings happen because a degree of judicial power still exists in Sri Lanka. Even though it is declining, the memory of it is strong. In a country where it is common acknowledged that the courts hold no power at all, but only function as a part of the administrative system, the security agencies will not have to kill continuously to cover up their crimes. The amount of extrajudicial killings in Sri Lanka today is a

symbol of the conceptual trust in the marginal judicial power, which is now in the state of transforming to no judicial power.

A constitution with room for extrajudicial acts

The last attempt for a reform of the police system to de-politicize it was taken with the 17'th Amendment in 2001. It provided checks on the powers of the President, providing for high-level appointments like the Chief Justice, the National Police Commission, Public Service Commission and the National Human Rights Commission under the supervision of the Constitutional Council. The Constitutional Council was also expected to deal with promotions and dismissals of police officers to secure independence between the governing institutions.

However, President Rajapakse blocked the implementation of the Amendment as he refused to appoint the Council's successors, when their first term lapsed in 2005 although the members had already been selected by various parties constitutionally empowered to make the nominations. Despite Rajapakse's constitutional obligations to appoint the nominee's, his immunity made it impossible to challenge the negligence in court and the Council has been in abeyance ever since.

There are no platforms for complaints against the police system today. It is the officers themselves or their colleagues, who occupy the desks for complaints at the police stations. The sections work as a part of the police system and not as an impartial, controlling division. There are countless examples of the police officers ignoring their statutory duty and refuse to file the complaint. Neither is it uncommon, that the few who dare to try their luck, experience harassment and threats from the officers. Maintenance of the official records is further neglected and there is no assurance that a person, who successes in filing a complaint, will ever encounter any legal action being taken.

While the initial steps for a victim and witness protection bill were taken in 2007, the reading of the draft bill has been at a standstill ever since. The introduction of the bill came most likely as a reaction of the international pressure on the Sri Lankan government for a piece of legislation on victim and witness protection. As soon as the attention subsided, no further action has been taken to pass the bill and the government has been exceptionally silent about the undue delay.

Even the limited inquiries that were conducted by the Human Rights Commission of Sri Lanka have almost ended. With a stop to the Commission's fundings and the power to appoint the members given to Rajapakse himself, the Commission still exist in name, but its content and intended function are gone. The only purpose it holds today is symbolizing the function, which it should have had.

Rajapakse saw the Constitutional Council as an obstacle to his absolute power as an executive president. The passing of the 18th Amendment on September 8, 2010 has only exceeded the Presidential power by removing the Presidential term limits and given the President the power to regularly attend and address Parliament. Consequently, any hope of a revival of the Constitutional Council or any such monitoring bodies has died.

Sri Lanka is a Constitutional state, which for many people is identical with a rule of law system. But in Sri Lanka today it is the Constitution itself that has eroded the rule of law and left room for the police and politicians' extraordinary practise of torture and extrajudicial killings.

Undermining judicial reservations

When security agencies carry out executions as a part of their practice, they have taken on the power reserved the Judiciary. The police hand out death sentences without any legal process and take authorization to judge on the detained person right to life. The killings are mostly carried out in secrecy and information of the circumstances of the killings is deliberately hidden and the detainee and the relatives right to truth trough a legal process is denied. The security agencies have hereby sat themselves above the judicial sector including Chief Justice and High Court and made judgments on capital punishments a political and regulatory matter and not a legal reservation.

The matter is further taken to civilian grounds as lawlessness gets canalised to the Sri Lankan civil society. When there is no legal defence to serious crimes, many people take the law into their own hands. It is cheaper, faster and more "efficient" than the struggle of starting legal procedures; the lack of accountability and impartibility within the police and the possible prospects of proceedings running for years or even decades. This has resulted in underground groups taking over certain parts of law enforcement in public life and a so-called judicial mafia is slowly emerging offering quick gateways to justice.

It is a fundamental concept in all civilized societies that deprivation of life can be effected only by a competent judicial body, and through due process of law. Death sentences are still handed out by the courts in Sri Lanka and as the abolition of capital punishment in Sri Lanka of course should be pursued by all means, no legal execution has actually taken place since the 1970's as the sentences always are commuted to life imprisonments. This has been an official policy by the state.

However by not pursuing enquiries or official investigations into the frequent custodial deaths and suspicious killings by the police or other state agencies, the state has declared its approval of these illegal executions. It is extremely unsettling that this has become an accepted, common practice denying the victim the right to a fair trial, which is the basic norm of justice, on which all others norms depend on.

One of the basic ideas in a rule of law system is the separation of powers. When the separation is not respected, the system breaks down. The practice of extrajudicial killings as is an exceptional threat to the fundamental believes of justice, equality and human responsibility whereupon a civilized society is build. It influences the understanding and perception of the Sri Lankan society and the Sri Lankan identity.

To understand the profound impact this development will have, the issue has to be closely analyzed, exposed and debated widely.

Additional cases:

SRI LANKA: A seven year old child gunned down by Maharagama Police
September 30, 2010, AHRC-UAC-156-2010
On September 15, 2010, police officers opened fire in a crowded market place and shot dead Sudil Nilupul Silva (7). The officers, who were wearing civilian clothes and drove in a private car, were apparently chasing a gang of theft suspects. They belonged to a police station from another area and had no jurisdictional right to be in Beruwala town. Nilupul's father was also injured in the shooting.

SRI LANKA: A man is shot dead by Trincomalee police during a botched arrest
May 12, 2010, AHRC-UAC-060-2010
Living in a conflict area Balage Rusiru Reggie Vijaya Bandula fired a warning shot out of the window of his house in response to sustained and unidentified banging on his door and around his house on 3 March 2010. Shortly after police officers broke down the door and shot Reggie. He died soon after at the hospital.

SRI LANKA: The murder of a witness by police must be independently investigated
April 26, 2010, AHRC-UAC-052-2010
In 2008 Saman Thialakasiri had reported cases of illegal logging in his neighbourhood with suspected connections to the local police. Ever since he was harassed and receiving death threat. On a few occasions he was arrested by police officers on fabricated charges, which they tried to bribe him to plea guilty of. At night on February 21, 2010 two police officers picked up Saman. His body was found near a lake the next morning. A post mortem by a Judicial Medical Officer reveals that the victim was drowned and suffered severe blows to his head.

Police Torture

Sri Lankan citizens are protected against torture and arbitrary arrest in sections 11, 12 and 13 of the Constitution of Sri Lanka. According to Article 11 "No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article

12 (1) of the Constitution of Sri Lanka states that, "All persons are equal before the law and are entitled to the equal protection of the law". Moreover Article 13 (1) declares, "No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest." In addition Sri Lanka also ratified the United Nations Convention against Torture and Cruel and Inhuman Treatment in 1994.

While the legislation is there, the effectuation is not. The gap between the rights set out on paper and the daily practice at the police stations is tremendous. As the previous parts of this report demonstrates the systematically use of torture and extrajudicial killings in the politicized police system deprive from a constitution which leave room for these misconducts to occur and offers impunity to the prosecutors. While the core of the problems is to find in legislative measures many structural and social factors contribute to the extent and intensity of such procedures and their expansion and development.

The hierarchy within the police

There is strong hierarchy within the police. The hierarchy is one of the contributing factors to the officers' power abuse exercised on the public. It is common practise that senior officers exercise violence and verbal harassment on the lower ranking officers.

A retired Woman Police Constable (WPC), who does not want to be named, but who served the Police Department of Sri Lanka for 28 years in different areas like Kegalle, Kandy, Matale, Serunuara and Kanthale, blames the polices' use of arbitrary power and their violent attitude on the pecking order within the police and the lack of resources, which particularly affects the lower ranking officers.

As she explains, "Although we are suppose to work only an 8 hours shift it is usually extended for up to 12 hours most of the time due to the heavy work load and the lack of officers in service. No additional allowance is allocated to the officers. Under these kinds of situations, it is usual for the officers to get deep frustrations and mental traumas. We are not allowed to communicate with higher-ranking officers regarding our situation or to make claims for relief. The senior officers in service treat the lower ranking officers with no sense of humanity or kindness. Most of the times they treat us like slaves."

The WPC stresses that when violence and punishment are the lessons given among the officers, naturally the methods will be exposed in their work as well. The frustration and anger the lower ranking officers encounter subsequently get directed at the people they feel superior to, which in this case is the public. Citizens coming to the police stations are many times already victims and therefore already vulnerable and easy targets.

As discussed in the section on education of officers, the officer school do provide classes in proper methods of interrogation and investigation. However, after years with harassment from higher ranking officers, when the lower ranks become senior themselves, the methods will be so deeply rooted and regarded as the only means to uphold their position. Consequentially the system keeps reproducing itself.

The politicization of the institution further destroys any possibilities for independent and qualified investigations. The politicians have a huge interest in controlling the police system and prevent investigation of cases concerning crimes against opposition politician or critical journalists. In the same way police officers have interest in good relations to the politicians, who can see to their promotions or provide convenient supplements to their salaries. Naturally, when there are no bodies to control the system and uphold the separation of powers, the system will design itself, so these exchanges become easier.

Lack of training and education

(AHRC-ETC-027-2010) Mrs. Rmar is a retired police sergeant. According to her view, one of the dominant problems within the police system is the lack of proper education and continuous training of the officers. She believes the core to the use of torture lies as a fundamental error in the methods and procedures of interrogation and investigation.

Mrs. Ramar emphasizes that instead of trying to get all possible facts from the suspected, the officers should work to investigate the surrounding facts and reasons for the arrest and collect the necessary evidence. According to her there is a strong need for a systematic technique in the investigation procedure and for a discipline to follow that procedure.

She explains that, "The officers need to have much patience and a scientific approach. They should collect information without breaking the chains of evidence. For that they have to develop their research skills and be able to analyse facts. (..) If they do not pay attention at the very beginning of a crime scene investigation evidence can easily be destroyed."

Mrs. Ramar notes that training in use of DNA evidence or rudimentary techniques as the taking footprints or fingerprints are included in the basic training of police officers, but with time many of the techniques are forgotten. Without a continuously training of the officers, they will go for the easier method of torturing the suspect in order to conclude the investigation.

(The training period for an officer is six month. For a sub-inspector it is 9 months. To put it in a perspective most police education in Europe is at least 3 years with a mix of schooling and trainee service.)

Lack of resources

Many public institutions are undermanned and under equipped due to the lack of resources. The police might get training in advanced equipment for investigations at the officer school, but many stations do not provide the gear.

The lack of personnel results in heavy workload and continuously overtime. The pressure creates frustration and anger within the police force and is a causative factor to the senior officers exploitation of the lower ranks. As a consequence, many times the officers are not able to perform the functions required of them, which contributes to the practice of neglecting mandatory procedures and measures such as maintaining the records of complaints or filing mandatory papers during an arrest.

It has long been a requirement that police stations contain a separate union for women and children with female officers attached, but with lack of resources the maintenance of the units is not prioritized. This obviously makes the women more vulnerable to harassment and physical and mental abuse by the officers.

While overtime is an almost daily occurrence and there is nothing as overtime pay, corruption become normal practise. Taking bribes is considered a supplement to their salary and as justification of their bad working conditions. It is not uncommon that influential people or politicians can bribe their way to the torture of an opponent or an enemy to "teach a person a lesson".

Methods of torture

The physical torture, which takes place at the stations, does not only involve beatings, but "advanced" methods of torture, which requires tools and detailed knowledge of techniques.

The most prevalent form is beatings with blunt weapons like batons or poles. Sometimes the victim is hanged with rope from the roof in either arms or legs or handcuffed to a furniture, or a tree if outside, while they suffer beatings. The so-called 'Palestinian hanging" is also commonly used, which describes a method where the whole shoulder joint is rotated backwards so the nerves going through the arms to the hands are rotated and the limbs paralyzed. Another common method is the so-called Dharma Chakra technique, where the handcuffed person is suspended on a pole inserted into the crooks of the bound knees and elbows. Furthermore there are reports of waterboarding, sexual molestation etc.

Most of the times the police do not wish to cause permanent damage to the detainee, as it can be used as a proof for prosecution of the officers, so they often use tools or methods,

which only cause injuries to the surface of the body, noting that often the mental scars from the torture are deeper than the psychical ones. If the person is remanded for a longer period of time, it is also common for the police to use severe physical torture in the beginning of the period, while shifting to mental torture in the end giving the injuries time to heal before the person will see a magistrate or a Judicial Medical Officer (JMO).

These kind of well-developed techniques do not just appear in the "heat of the moment". They are being deliberately performed with tools being present at the stations. The methods are passed down from senior officers as a part of their teachings and regular practises.

The role of the medical system

The police often deny the detainee medical treatment as a punishment and an extension of the torture. However in cases where the detainee is brought to hospital, the doctors in many cases merely do more than give treatment to the victim. The detainee has the right to see a JMO and the doctors are also obliged to report any suspicious injuries. But neither are the hospitals independent institutions nor are the doctors and JMO's immune to threats and bribing. Furthermore, there is a lack of JMO's and especially in rural areas where hospitals cannot provide a fulltime JMO, which mean there might not even be one available when the detainee is admitted to hospital.

If the hospitalization is due to ill treatment by the police, the officers will most likely try to prevent the detainee to see a JMO or at least they will guard the consultation. Even if the JMO compiles a Medico-Legal Examination Form (MLEF) there is no assurance that the document will get further than the hospital. The police can force doctors and JMO's to file a false MLEF or the officer can dictate the form himself. There are even examples of detainee's trying to convey torture and as a result being denied medical treatment by the doctors.

When every part of the system fail to perform their duty

A case, which illustrates the very deliberate and continuously use of torture at the police stations is the one of Wanni Athapaththu Mudiyanselage Nilantha Saman Kumara (31) from Galgamuwa. It also clearly confirm, how all the stages from the arrest to the court work as a chain of entwined events with everyone involved complicit in the failure of performing anything that could even claim to get near an official requisite procedure for an arrest. The case demonstrates that these failures shall not be looked upon as secluded, exceptionable incidents, but instead regarded as a part of a system in favour of the people in charge, but configures to fail legal functioning.

(AHRC-UAC-166-2009) On October 26, 2009, Nilantha and a big group of villagers were helping the police and the village chief searching the jungle near the city for stolen goods from a shop, which had been robbed the previous day. At night Nilantha was stopped by police officers and taken to the police station, where he was jailed without an official arrest and with no charges read to him.

For two days he suffered brutal methods of torture conducted by Inspector (IP) Ataputtu, Police Constable Wijeratne and two other police constables all in civilian clothes. They were trying to make him confess the robbery of the shop and a water pump. Under the direction of IP Atapattu, he was allegedly tortured in a manner known as the Palestinian Hanging. He was tied up and hung from a ceiling beam suspended from his hands in the air. The officers told him he would hang there until he confessed. About two hours later, he was taken down, but the hanging was repeated later the same day and after he was beat and kicked for around three hours. Nilantha believes that the officers were drunk.

The next day he was told that if he gave back the stolen goods, he would not have to go to court the following day, as he had been told he would and could go home instead. Nilantha kept denying. Then he was subjected to the Dharma Chakra method, where his hands were laid over his knees, a metal pipe was put through the crooks of knees and elbows, and the pipe suspended and balanced on two tables with his head hanging close to the floor. Meanwhile a bottle of petrol was being poured into his anus.

Nilantha was admitted to Galgamuwa hospital on October 28 and provided some treatment, but the JMO filled out the MLEF without even seeing him. Nilantha was then taken to Magistrate's Court in Galgamuwa, but kept outside the Magistrates office and denied his right of speaking to one. Because of his critical condition he was again admitted to hospital on October 29. This time Nilantha told the doctor about the torture he had suffered, but the doctor accused him of lying and refused to examine him even though his body was covered with evidence

Furthermore during his detention Nilantha was denied proper food and only provided with a few bread lumps. He was released on bail November 6 and warded in hospital for six days but he still suffers great complications. Nilantha has furthermore reported that one of the officers involved has shown up as his house and is apparently monitoring him.

Nilantha's case clearly illustrates how torture is deliberately used at police stations with the involvement of many officers confident of their impunity with magistrates and doctors complicit in the misconduct. In this case they might have been threatened by the police, they might have had "no choice" if they wanted to keep their jobs or their families to stay safe, they might have been bribed or done it out of own interest in the case. Whatever the reasons, the fact is that these are the bodies supposed to monitor the police, but as a

result of the institutional room for this lawlessness, they have become deeply implicated with the horrendous police procedure.

First of all, 13.1 of the Sri Lankan Constitution notes that, "No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest". In 13.2 one finds that, "Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law."

The Code of Criminal Procedure Act, section 37 states, that an arrested person shall be produced before a magistrate within 24-hours from his arrest.

The responsibility of officers to provide adequate food to detainees is noted in the Ceylon Police Departmental Order.

Moreover, denying an injured person medical treatment is also considered a form of torture. Principle 24 in The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 in 1988, states that, "A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge." This is further enshrined in the Ceylon Police Departmental Order No. A. 20, including section 5 g. As the doctor neglected her duty to examine and treat Nilantha, she may also be criminally liable for torture and grave misconduct.

Torture as a symbol of the institutional nuisance

As Nilanthas case illustrates the failure of the system, do not only lie within the police, but at almost every stage leading up to a legal process. Claiming that the deficient and corrupt security system is only caused by the insufficient education and lack of resources in the police would be to distort the problems. The training could in fact be very professional, but if the realities at the stations do not correspond with the ethics in the books, no newly minted officers will have the slightest chance to implement it.

The core of the problems lies in the breakdown of essential institutional structures. As the police system's fundamental check and balances have been removed, there are no safeguards of the laws and therefore no common responsibility. The political design of the institution prevents independent investigations by any law enforcement agencies and

repress the will to carry out such investigations within the police. While people in the police system might regard themselves as guardians of the law, when there is no law to protect, they become the guardians of their own interests.

As faith is lost in the administration of justice, the morality within the police also seems to thin out. While the politicians or the judiciary even encourage officers to the use of criminal methods, one would be naïve to believe even a well-trained officer would be able to uphold a responsible and accountable practise.

Please note the following cases:

SRI LANKA: A man was illegally arrested, detained, tortured and refused medical treatment by the Ahangama Police
October 6, 2010, AHRC-UAC-160-2010
Due to a family dispute Mr. Ganegoda Sinhage Haritha Lakmal (30) was arrested by police officers on May 26, 2010. He was brutally tortured, denied proper treatment and forced to sign a document. Later he was admitted to hospital in a very critical condition and warded for 13 days. The police released him without bail. The Sri Lanka Human Rights Commission has taken up the case for inquiry, but the agreed compensation has not yet been paid and Lakmal and his family keep receiving threats from the police not to proceed with the case. Lakmal suffers from great complication due to the torture and goes to the hospital regularly.

SRI LANKA: A complainant was illegally arrested, detained and tortured by officers of the Ma Oya Police Post
October 4, 2010, AHRC-UAC-158-2010
On April 26, 2010, Mr. Henayaka Arachchilage Parackrama Karunaratne (28) went to the police station to make a complaint about a gambling den close to his house. Since no action was taken he returned the following day, which provoked the constables on duty. They cuffed Parackrama to a tree and assaulted him severely. He was brought to hospital, but the doctor denied him proper treatment after talking to the sergeant. Later the Headquarters Inspector of Police sent him to hospital where he was warded until April 28. A fabricated charge has been filed against him by the officers while released on bail April 30.

SRI LANKA: A man died in the custody of the Kottawa police
September 30, 2010, AHRC-UAC-155-2010
Mr. Pattiyage Komako Lalan Peiris (34) was arrested by the police officers on 23 May 2010. His arrest was allegedly a case of mistaken identity. He was found dead the following morning while handcuffed to a table in a police cell. The police explain the death as a heart attack but an autopsy carried out later at the insistence of the family reveals signs of torture.

SRI LANKA: A man severely tortured by the Urubokka police
September 21, 2010, AHRC-UAC-145-2010
Mr. Jayasuriyage Samira Desapriya (24) was arrested by police officers on June 1, 2010. Illegal goods were planted with him in the police car and at the station he was tortured severely. He was released on June 2 and warded in hospital until June 5. The police keep following and threaten him. He has never been charged and no statement was ever taken from him.

SRI LANKA: A man is killed after being tortured by the Kiribathgoda police
September 20, AHRC-UAC-144-2010
Jayasekara Arachchige Roshan Jayasekara (35) was arrested by police officers on August 25, 2010. On August 26 an officer brought Jayasekara's body to the hospital. The post mortem examination revealed marks of numerous blunt force trauma injuries.

SRI LANKA: Criminal Investigation Department officers torture a man then attempt to kill him
September 17, 2010, AHRC-UAC-143-2010
W.A. Lasantha Pradeep Wijerathna was arrested by Navy officers on August 14, 2010 and handed over to the criminal Investigation Department (CID). He was in critical condition due to severe torture, but was not admitted to hospital before August 31 when his relatives got an Attorney-at-Law to appear on his behalf. No legal steps to investigate the case have yet been taken.

SRI LANKA: A man succumbs to his injuries of torture by the Kirindiwela police
September 16, 2010, AHRC-UAC-140-2010
Amarasinghe Arachchige David was arrested on August 12, 2010 by police officers. On the way to the station the police stopped to search some villagers. David left the car to watch whereupon the police officer gave him a brutal beating. The incident was witnessed by a large group of people. He later succumbed to his injuries at the hospital.

SRI LANKA: A man was severely tortured, illegally arrested and detained by the Welipenna police who then filed fabricated charges against him
September 15, 2010, AHRC-UAC-139-2010
On August 9, 2010, Mr. Hewawasam Sarukkalige Rathnasiri Fernando (50) was looked up by police in civil clothes at his workplace. One officer tried to grab Rathnasiri's working knife and accidentally received a minor cut on his hand. The officers thereupon cut Rathnasiri severely with the knife and beat him up. He was later warded in hospital. The police filed a fabricated charge against him and remanded him until August 17, where he was released on bail.

SRI LANKA: Criminal Investigation Department officers illegally arrested, detained and tortured a man and denied him the right to medical treatment
September 9, 2010, AHRC-UAC-134-2010
Balapuwaduge Suresh Sumith Kumar Mendis was arrested by officers of the Sri Lankan Navy on August 14, 2010 and handed over to the CID allegedly due to a failed attempt to seek asylum in Australia. During his present detention he has been critically tortured, denied medical treatment and meetings with his lawyer.

SRI LANKA: Ganemulla police illegally arrested, detained, tortured and filed fabricated charges against a civilian
September 8, 2010, AHRC-UAC-131-2010
Balapu Waduge Lakshman Mendis (39) was beaten up severely by police officers in public and charged with a fabricated case on April 25, 2010 due to a small inquiry with the OIC's son earlier the same day. He was discharged to the hospital April 29 and released on bail May 4. The state authorities have failed to launch an investigation. An application to the Supreme Court was supported August 7 and next hearing set to December 6. The long interim period poses a great threat to the victim and witnesses who do not receive any state protection.

SRI LANKA: Pussellawa Police illegally arrested, detained, tortured, and filed fabricated charges against an estate labourer
September 7, 2010, AHRC-UAC-129-2010
Manivel Saundrarasau (46) was arrested and tortured by police officers on August 10 2010 on fabricated charges with illegal goods planted as evidence at the police station. Later he was released on bail. While waiting for delayed court proceedings, he and his family members are being harassed and threatened by police officers.

SRI LANKA: Panwila Police illegally arrested, detained and tortured an innocent civilian
September 1, 2010, AHRC-UAC-126-2010
Mr. Jesu Andrew (28) was arrested by police officers on August 23, 2010 on a fabricated charge. He was tortured severely, forced to sign a document in Singhalese, which he cannot read or write, and kept illegally detained until released on bail on August 25.

SRI LANKA: Anamaduwa Police illegally arrested, detained and tortured a school-boy and filed fabricated criminal charges
September 1, 2010, AHRC-UAC-125-2010
On June 4, 2010 Koronchilage Sujith Aruna Shantha (17) had an inquiry with an older schoolmate, which father, Stanley Joseph, is a well-known businessman. Later he was arrested by six policemen in civilian clothes and brought to the police station, where he was tortured. He was produced before court with fabricated charges on June 5 and

released on bail on June 10. Due to his critical condition he was warded in hospital until June 14. Stanley's family has openly admitted to be behind the arrest.

SRI LANKA: A man is arbitrarily detained and assaulted by Urubokka Police
August 3, 2010, AHRC-UAC-115-2010
Upon a request from a police officer on May 16, 2010 Samarasinghage Koranelis reported at the station on May 21, 2010 on a complaint filed by his brother, who used to work at the station. He was assaulted severely during questioning but released soon after by the OIC. Koranelis has since been suffering great damage to his hearings and requires regularly treatment at the hospital.

SRI LANKA: Balagolla police officers beat, humiliate and arbitrarily arrest another civilian
August 3, 2010, AHRC-UAC-114-2010
Mr. Alhaj Farook Mohomad Ikram was violently and arbitrary arrested on June 17, 2010 by officers and two civilians. He was released the next day without charge or bail, but because of the assault he has afterwards suffered severe damages to his ears and spend days in hospitals.

SRI LANKA: Baduraliya police illegally arrest and torture a man
July 28, 2010, AHRC-UAC-111-2010
Seelawansha Hitihamilage Don Samantha Priyalal (38) was arrested on June 29, 2010 by police officers including a constable in plain clothes. At the station he was exposed to brutal torture and afterwards denied medical treatment despite his critical condition. He was released the next day pleading not guilty and warded in hospital until July 2.

SRI LANKA: Two men are beaten and tortured with leeches by Matugama police; one faces fabricated charges
July 15, 2010, AHRC-UAC-105-2010
Mr. Anthoni Ayiya Devaraj (44) and Mr. Mannikkam Sandana were arrested by policemen in plain clothes on June 7, 2010 and taken to a rural pit, where they were handcuffed, badly beaten and pushed into the leech-infested pit. As a result of intervention by a police friend, Sandana was later released without charges. Devaraj was forced to plead guilty to fabricated charges and later released on bail.

SRI LANKA: A man is badly beaten by Saliyawewa police during an illegal arrest and is denied medical treatment
July 15, 2010, AHRC-UAC-103-2010
On May 11, 2010 police officers in plain cloth arrived at Undiya Ralalage Premaratne's house, where they arrested him, beat him up and rob of his jewellery before taking him to the station. Later a doctor saw him, but allegedly filled a false Medico Legal form

dictated by the police. On May 12 he was released on bail and admitted to hospital for 3 days. The doctors were reluctant to report the police's treatment and he was not seen by a Judicial Medical Officer.

SRI LANKA: Stop the torture of detainees at Rajangana Police Station
July 8, 2010, AHRC-UAC-098-2010
At least four cases of torture and illegal arrest took place at Rajangana police station between in April and May 2010. On May 8, 2010, Suba Hewage Samantha Bandara (23) was arrested, brutally tortured and released on bail May 11. On April 21, 2010, Dissanayake Mudiyanselage Nishantha Dissanayake (27) was arrested, tortured and detained until May 27. Mannikawasagar Thawadan (27) was arrested on April 21, 2010 and remains in prison, where reports of torture. Mangala Prabat was also remanded in this period and suffered severe torture. All have been seen by a judicial medical officer and despite lodging complaints no inquiries have been launched in any of their cases.

SRI LANKA: An officer assaults a witness to police violence outside his home; no investigation is taken up
July 2, 2010, AHRC-UAC-095-2010
On April 24, 2010, Mallawa Arachchige Gamini Sisira Kumara (47) witnessed police officers beating two handcuffed persons in front of his house. The officers attacked Kumara with a pole breaking his left hand, which now disables him from his work. He was discharged from hospital April 29. After filing a complaint at the office Deputy Inspector General, he has regularly received threats by the police.

SRI LANKA: The trial of a three-wheeler driver lags; his allegations of torture are not investigated
June 30, 2010, AHRC-UAU-028-2010
An update on AHRC-UAC-022-2010 published on March 5, 2010.
A three-wheel taxi driver, Upul Palitha Mawalag, was arrested along with his two passengers in May 2009 during a police routine search. The passengers were found possessing drugs, but were released after allegedly paying a bribe. Mawalag suffered severe torture by the police. The case has been routinely postponed by the request of the prosecution and his bail took until January 2010 to be awarded. Neither has any legal steps been taken to investigate the torture of Mawalag by the police.

SRI LANKA: A man is badly beaten by Kolonna police officers but denied a judicial remedy
June 11, 2010, AHRC-UAC-085-2010
Karasinghe Arachchilage Kumarasinghe Appuhamy (55) was arrested on April 30, 2010. During questioning he was badly beaten and threatened with fabricated charges. He was brought to hospital, but denied medical treatment after police interfered with the doctors.

He was released in the evening after being forced to sign a statement and stayed in hospital from May 2 to 5. His complaint has been accepted by the relevant authorities, but no action has been taken.

SRI LANKA: A man is beaten by Panadura police but denied a judicial remedy
May 13, 2010, AHRC-UAC-063-2010
Malawiarachchige Mahinda (32) was picked up on April 2, 2010 by police officers. They refused to give him any information of the charges against him and beat him unconscious. He was taken to hospital under police guard but denied to collect his prescribed medicine. He was released on bail April 5 after seeing a magistrate, who however, denied taking his statement or launching an investigation. He has not received any official response to the complaint made to the relevant authorities.

SRI LANKA: A group of officers brutally assault a visitor to Polpithigama police station
May 13, 2010, AHRC-UAC-061-2010
Gamage Sarath Gamini went to the police station after an arrest of his cousins on March 1, 2010. Upon Sarath's request to see them, the police officers started threaten him and brutally beat him up. He was warded in hospital until March 4 and again from March 10 to 12. Only The Human Rights Commission of Sri Lanka has launched an investigation and Sarath has received various threats from the police to settle the case.

SRI LANKA: A man is tortured by police and held without bail for two years
April 20, 2010, AHRC-UAC-049-2010
Gayan Thusitha Kumar (30) was arrested by police officers on September 17, 2010. He was accused of theft and forced to confess by severe torture. Following an intervention by the Human Rights Commission of Sri Lanka to secure him treatment or release, the officers obtained a detention order for by planting the victim's fingerprints on explosives. He was detained for 40 days at the station. On October 30, 2007 he was produced at court and sent to prison, where he spent more than 2 years waiting for trial. He was released on bail November 10, 2009.

SRI LANKA: Police torture and fabricate charges against a young man for revenge
April 1, 2010, AHRC-UAC-039-2010
On March 28, 2009, Tharidu Nishan (21) and his friend Nuwan Madusanka were taken to the police station and interrogated by a sergeant about an earlier incident where Tharidu had slapped his girlfriend; the daughter of the sergeant. They were both accused on theft and tortured severely. After being illegally detained for two days and receiving threats of fabricated charges, they were forced to sign a document before going to court. They were released on bail May 19. In Novermber 2009, Tharidu faced further fabricated charges and was remanded, but again released on bail December 8. He continues to be subject to harassment by police officers.

SRI LANKA: Police strip and sexually torture man in custody to force confession
March 31, 2010, AHRC-UAC-037-2010
Mudugamuwa Manage Piyal (20) was arrested on August 2, 2009 accused of theft. He was kept in custody at the station, where he allegedly suffered brutal beatings and sexual molestation until he was released without bail August 4. Upon his release a police officer forced him to give him his bicycle.

SRI LANKA: An inspector assaults a fisheries union leader
March 24, 2010, AHRC-UAC-030-2010
Naidappulage Aruna Roshantha Fernando (39), a president of the fisheries union was active in the reveal of a case of illegal fishing in November 2009. He faced a complaint of theft from a claimed owner of some of the nets and was taken into police custody on November 21 and beaten by an officer. He was taken to hospital and kept in remand chained to the hospital bed until granting bail on November 26.

SRI LANKA: Two men are abused by police for carrying opposition posters during the presidential election; one is arbitrarily arrested
March 4, 2010, AHRC-UAC-021-2010
On December 19, 2009, Mr. Kankonana Arachchige Hemasiri, manager of the United National Party in Hakmana constituency, and partymembers Mr. Somadasa Jayasuriya and Mr. Jayatissa Palagasinghe were stopped by the police because of the party posters, the carried. According to the 17'th Amendment posters with symbols of political parties or photos of their candidates cannot be shown publicly between the time of nomination and voting. The police beat up Hemasiri and Palagasinghe and arrested Palagasinghe charging him with possession of illegal posters. He was released on bail December 20.

SRI LANKA: Police, doctors and magistrates are complicit in a man's torture
December 2, 2010, AHRC-UAC-166-2009
On October 26, 2009, Wanni Athapaththu Mudiyanselage Nilantha Saman Kumara (31) was jailed by police officers without charges or an official arrest. For two days he suffered brutal methods of torture conducted by officers in civilian clothes trying to make him confess a theft case. He was admitted to hospital on October 29, but when Nilantha told the doctor about the torture, she accused him of lying and refused to treat him. He was released on bail November 6 and warded in hospital for six days but still suffers complications. The officers involved are monitoring him.

5. Gender-related violence

5.a. Rape

A decriminalization of rape: Court delays and impunity of perpetrators

While there are heard countless allegations of rape and violence against women, this high number is not reflected in the cases reported. The rape cases AHRC have reported on are of course a marginal amount of the rape incidents that are doubtless taking place every day.

The patriarchal traditions of the Sri Lankan society are deep-rooted and prevalent in all aspects of society. Marital and domestic rapes are everyday life for many married women and hardly ever reported, as they are not even considered rapes, but the right of a married man. Rapes outside the marriage are also rarely reported. Mostly the women will give in to fate and trust her life being better not revealing it.

As with the victims of all forms of violence and abuse, the persons most exposed to be victims of rape are the ones already victimized by being regarded as societies lowest; in Sri Lanka this group is especially young women from a low caste and ethnic minority. While they are already afflicted by a low social status they are further vulnerable to the social ostracism relating to victims of sexual abuses. They are many times not considered victims but instead blamed for the incident.

While rape is in itself a horrible and degrading experience, the traumas and complications that follow are often at least as eminent. One aspect is that by depriving young girls their virginity, the perpetrators also deprive them of their future. In Sri Lanka a girl's virginity has a crucial impact on her future in terms of her social status and reputation and thereby her options of marriage. Education and the virginity are for many girls the two qualities that can secure them a reasonable future. The rapes and the endless court proceedings deprive them of both as well as general wellbeing, reserves of energy, and self-esteem.

Impunity as a remnant of the past

During Sri Lanka's civil war rape was used in a massive scale as a weapon to spread fear and terror and to humiliate and demoralize especially the Tamil communities. Soldiers in the Sri Lankan army were even encouraged using rape as a tool during the conflict by its military leaders not to forget government officials. This has resulted in the use of rape a deeply rooted method inside the security forces, which is further canalized to the civil society. The impunity the soldiers previously enjoyed as a part of the military remains in the legal system today and encourages potential new perpetrators and facilitates the perception of rape not being a crime.

Delayed remedy

One of the cases AHRC has followed and reported on is the case of Sandamalee from Pallekele, Kandy. The case is a success as it is finally concluded delivering some reconciliation and justice to the implicated, but at the same time shows problems relating to the prolonged court delays.

Sandamalee (13) was raped by her father (37) 6 times in the period between on September 2 and September 26, 2002. Sandamalee's father used to beat up the mother when he got drunk and Sandamelee had often overseen these incidents. Before he raped Sandamalee, he threated her with a knife. The rape incidents were revealed after the mother (34) witnessed it on September 26 and she reported it to the police on September 27. The father was arrested on October 2, 2002 by the Kandy police and handed to the Manikhinna police, who remanded him and he was produced in court on October 11, 2002. Sandamalee was admitted to Kandy hospital for a medical examination and stayed there for four days.

At the time of the rape Sandamalee was in 8'th grade in a college near Kandy where the family lived. Out fear that the father would harm or even kill Sandamalee or herself, the mother removed her from school and sought protection at The Kandy Human Right Office, who helped to provide them shelter for a period of time. The Kandy Human Rights Office is the only refugee for victims in Sri Lanka and was established by Father Nandana Manatunga in 2001 after frustration over lack of state initiatives to provide shelter for victim protection

After many delays Sandamalee's trial was brought to High Court in 2005, where it was called 23 times. Sandamalee and her mother have been regularly threatened and harassed by acquaintances of the father, who want them to settle things outside court. On these grounds a new judge finally decided to conclude the case on November 17, 2009. The perpetrator had already spent four years in remand and was further sentenced to ten years' imprisonment and fined Rs. 20,000.

While it is a decent achievement that the case has finally come to a conclusion, the fact that it has taken more than 7 years is not adequate. At the time of the rape Sandamalee was 13 years old. At the time of the courts verdict, she was 20. Her teenage years have been spent in and out of hiding and courts and consequently she has missed a great amount of school. Both Sandamalee and her mother have lived in constant fear, not to mention the social stigma they have experienced, which is greatly attached to cases of this character.

The unlucky combination of being a female, a minor and a Tamil

To let a case of this character run for 7 years is to bring undue suffering and humiliation to the people concerned and not least to make a mockery of the rule of law system. However the distressing fact is that Sandamalee's case is actually a relative success compared to the amount of similar cases still pending.

Jesudasa Rita from Talawakelle in Central Province has waited almost a decade for a verdict to be delivered in her case and she is still waiting. While her patience is incredible so is the absurdity of the case, which illustrates the tremendous impact the continuosly court proceedings have on the life of the implicated and the lack of sensibility in the legal system.

Rita, who was 16-years old at the time of the incident, was raped on her way home from confirmation class on August 12, 2001 by two young men. She was dragged into a car and the men took turns to rape her.
Afterwards Rita, who is a Tamil, managed to get to the police station, but even though the police stations are required to provide Tamil speaking personnel, the station in Talakawelle did not. As a result Rita had to make her statement with an unauthorized interpreter and sign a Singhalese complaint. Nevertheless the culprits were quickly identified (as Rameez and Piyal Nalaka) and arrested by the police. Rita was taken to the hospital, where the case of rape was confirmed.

It took the Magistrate Court 4 years to conclude, in the not to complicated case, that there was evidence enough to charge the perpetrators. As a result the case was finally given to the Attorney General in 2005 to draft the indictment. However this took another three years. In 2008 the Attorney General charged the suspected in the Kandy High Court, but to date their has been no progress and the case is still pending.

The incident changed all aspects of Rita's life. At the time of the incident Rita had to move far away from her family and hometown to hide at shelters, again provided by The Kandy Human Rights Office. Rita has been living in hiding shelters including convents ever since. The perpetrators, who quickly were released on bail, are affluent men who are using their wealth and rank to delay the case. Her family has been looked up on several occasions and is experiencing threats and harassment from the perpetrators and acquaintances, who are also pressuring them to reveal Rita's place of hiding.

At the time of the incident Rita was about to finish 10th grade. Over the next 1,5 month the case was periodically heard by court with Rita spending days travelling to and from court, which meant she missed her final examinations and consequently did not graduate that year.

As Rita's case illustrates the legal system is neither minority, gender nor child sensitive. The police station did not provide Tamil speaking personnel, but at many times the court procedure also only took place in Singhalese and not everything have been translated to Rita. The 16-year old Rita would had to repeat the description of the traumatic experience again and again as the defence lawyer would question her in a humiliating and sometimes degrading manner. The case is public and attracts a big audience, which intensify the social stigma Rita experiences.

Rita has now spent almost a decade in hiding and in constant fear. The incident of the rape was a nightmare, but with no conclusion coming to the case, she is still living in the middle of it.

Memories cease as proceedings are prolonged

A huge problem with the prolonged court proceedings is the dissolve of details of the case. Many of the victims have a hard time remembering the incident clearly as it is painful reliving it and the mind naturally starts to suppress traumatic experiences. The details further starts to blur with time and the victim may find it hard to remember what actually happen or what the dim memory might have constructed over time. Especially children and young people will start to confuse details, as they are even more susceptible and sensitive to the development of memory and the distress of going through a trauma.

This means that in many cases it happens that the victim will give statements that differ from previous ones and make the judges doubt her claims. This is of course an effect the perpetrators wish for and is a contributing factor for them pushing for delays.

Reporting rape

Generally there is very little general trust in the police in Sri Lanka and as the stations are mostly male-dominated, it requires tremendous courage and strength from a women to decide to report a rape incident while she do not have any insurance that her statement will be taken seriously or that she will not be harassed. There have been many reports of police officers refusing the rape victim to file her complaint and verbally or physically harassing her claiming that the rape was self-induced or blaming her for being a prostitute.

((The AHRC has even reported the case of Iresha Sandamali Ariyaratne, a 15-year old rape victim, who was refused entry to her school by the school Principal after the rape incident became publicly known. The principal stated that she was a disgrace and a bad example for other students (see UA-187-2007: SRI LANKA: Denial of right to education to 15-year-old rape victim).))

Furthermore, with no official victim or witness protection, the women expose herself to great danger of further violence from the perpetrator or his acquaintances by reporting the case. She has to be sure that she either has relatives, who can hide her or provide shelter far away or she has to rely on the very limited support from the existences of only a few NGO's providing refugee for victims.

The security system deeply implicit perpetrators impunity

An 18-year-old resident of Thumba Kara Vila Yaya village in Central Province, for security reason named Ms. X, got to feel the very unfortunate and absurd logic regarding rape cases at a police station. On November 16, 2008 she was abducted by Mr. Sanjit, a staff member of the Civil Defense. He followed Ms. X on the street, etherized her and brought her to his house where he raped her and kept her to the next day trying to convince her to marry him. He eventually let her go to the police station, but the officer present at the station refused to take her complaint, scolding her of making such allegation about Mr. Sanjit. Later she filed one, but got Ms. X to sign it without letting her read it. Later other officers joined in and started treating her with 20 years imprisonment and even killing her if she did not withdrew her complaint. By pressure from the relatives she was nevertheless taken to hospital, where rape was certified and she stayed for treatment for 9 days.

The police have since failed to take any legal steps to investigate the case and the police keep insisting that Ms. X should withdraw her complaint and marry Mr. Sanjit. Despite petitions have been written by Ms. X to several official authorities, no action has been taken.

The case demonstrates the highly politicized security system, where corruption is obviously prevalent. It further exemplifies how violence against women is encouraged by the legal system as well as the security system.

Decriminalizing rape

The denial of the victims to seek redress and the extensive court delays entirely undermines the rule of law and the victims right to an effective remedy stated in Article 2 of the ICCPR. The incongruous court delays and the impunity enjoyed by the perpetrators illustrates a tremendous gender and minority discrimination in the Sri Lankan society, promotes a continuing practise of rape as a method of practising power and spreading terror as well as corruption and lawlessness. They are all contributing factors in decriminalizing rape in Sri Lanka and depriving people their sense of legality in what was supposed to be a rule of law system.

SRI LANKA: A rape victim was intimidated and harassed by the police to marry her abductor and rapist
AHRC-UAC-263-2008, December 11, 2008,
http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-263-2008

SRI LANKA: Risk of life; Need protection and counselling for the victim of rape and family by the state
UA-51-2002, October 25, 2002,
http://www.ahrchk.net/ua/mainfile.php/2002/314/

SRI LANKA: A man is sentenced for the rape of his daughter after a five-year trial
AHRC-UAU-036-2009, December 8, 2009
http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-036-2009

SRI LANKA: A thorough investigation is required in the case of the rape of a minor
AHRC-UAC-210-2008, September 18, 2008
http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-210-2008

SRI LANKA: Police refused to take action on rape of girls
AHRC-UAC-111-2008, May 23, 2008
http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-111-2008

SRI LANKA: Police officer reportedly rapes a woman while conducting inquiry
AHRC-UAC-095-2008, May 13, 2008
http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-095-2008

SRI LANKA: Protection urgently needed for the family of a rape victim
AHRC-UAC-059-2008, March 27, 2010
http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-059-2008

SRI LANKA: Rattota police mishandle case of child rape victim
November 26, 2007, UA-330-2007
http://www.humanrights.asia/news/urgent-appeals/UA-330-2007

SRI LANKA: Police's inaction to investigate abduction of a rape victim
August 21, 2007, UP-112-2007
http://www.humanrights.asia/news/urgent-appeals/UP-112-2007

SRI LANKA: 15 year-old girl allegedly raped and forgotten by the courts
November 22, 2006, UA-376-2006
http://www.humanrights.asia/news/urgent-appeals/UA-376-2006

5.b. Domestic Violence

The right without remedy: The Prevention of Domestic Violence Act

In Sri Lanka as globally, the most prevalent form of violence against women is domestic violence. According to a survey from 2006 by the Ministry of Child Development and Women's Empowerment more than 60 percent of women across Sri Lanka are victims of domestic violence while 44 per cent of pregnant women are also subjected to harassment. Commonly perpetrated forms of domestic violence include physical and sexual violence, threats and intimidation, emotional and social abuse and economic deprivation.

In Sri Lanka a new law on domestic violence, The Prevention of Domestic Violence Act came into operation on 3 October 2005. The Act is an outcome of years struggle of different women's group throughout the country.

The Act provides for the issue of Protection Orders by the Magistrate's Court to prevent an aggressor from inflicting harm to persons within defined relationships inside the household as well as outside. Any person, irrespective of gender, who is subjected to or likely to be subjected to domestic violence, may seek a Protection Order. On behalf of a child, a parent, a guardian, a person with whom the child resides or a person authorized by the National Child Protection Authority can also seek a PO. In addition a police officer holds the authority to intervene on behalf of an aggrieved person.

While the legislation is there, the effectuation is not. The gap between the rights set out on paper and the daily life in the household is tremendous.

The problem is not a lack of legal instruments to protect women and girls from violence including the domestic sphere. Gender equality and non-discrimination of women are key principles of the Amendment to the Sri Lankan Constitution from 1978. In 1981, Sri Lanka ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Sri Lanka is also signatory to the International Covenant on Civil and Political Rights; the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the Vienna Declaration on the Elimination of Violence Against Women (1993). Further, Sri Lanka has subscribed to the Beijing Declaration and Platform for Action (1995).

Neither is it a problem of lack of institutions to ensure the enforcement of the declarations. Many state institutions and private organizations have been established to work on the matter, including The Women's Bureau of Sri Lanka (1978); The Sri Lankan Women's Charter (1993); the National Committee on Women (1994), the provision of Ministry Status to Women's Affairs in 1997 (from 2005 a part of the Ministry for Child

Development and Women's Empowerment), the Centre for Gender Complaints at the National Committee on Women (1999) and Women and Children's Bureaus in Police Stations.

Gender and culture

However, the framework does not correspond with society. Culturally Sri Lanka is a male-centred society and although women in larger cities have become more educated and independent, especially families in rural areas, from cultural minorities or lower castes are still very male dominated with domestic violence being more prevalent. The courts are by no means minority, gender or child sensitive and discrimination and harassment are daily fares in the legal system. Even though Tamil is recognized as an official language, there is still a lack of Tamil speakers in official institutions and translators are rarely provided in police stations.

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According to Munasinghe there is a great need for awareness about the Act, not only its existence, but also a proper understanding of its functions. Traditionally, family matters would never be dealt with publicly, women are expected to protect the family under any circumstances and it is considered a great failure and humiliation if they do not manage to. "When we intervene on behalf of women the objection that has been brought is, are you not hurting the institution of the family through this law? Is it not better to settle these things privately and amicably? It is necessary to bring the matter to court? So if even the lawyers take this kind of view, then we can see that within society there cannot be that much appreciation of this law", Munasinghe emphasize.

Policing system

This perception of women and their family roles penetrates most of the Sri Lankan society including police stations, which are often very male-dominated. Generally there is a little trust in the police system and many people fear to go to the stations to make any kind of complaints. It has long been a requirement that police stations contain a separate union for women and children with female officers attached, but while most stations are undermanned there are no resources to maintain the units.

The police do not consider domestic violence a serious matter and especially in undermanned stations they are likely to neglect cases of domestic violence or put them

low on the priority list. The husband might have connections in the station or he is an influential person in the area. As a result, the enforcement of a PO is a major challenge. Even though a police officer has the authority to issue a PO on an aggrieved person it is very unlikely he will do so.

As Munasinghe points out, "This law gives power to the police to intervene in women's complaints. However, problems arise because of the nature of the policing system in Sri Lanka. The organizations that try to help women experience a lot of difficulties from the police who sometimes even refuse to give copies of the complaints made by the victims. This is because the alleged perpetrators influence the police and build relationships with them so that the police harass the victim."

Tamara, a mother, is one of these victims. She went to the police station to report a case of domestic violence. She was told that the officer who was dealing with cases on the matter was not there. The police made some inquiries, but afterwards nothing happened. While she was at the station she saw another woman who was talking about an incident where her husband got drunk and beat her. The police went to arrest the man but returned, saying that they could not find him. Later the woman returned to the police station to complain that her husband was threatening to hurt her. According to Tamara the police officer said, "So you haven't actually been beaten up yet, you are only afraid that you will be beaten up? So come back after he beats you up".

The example clearly states how the prevention element of the Act finds no sympathy within the police. Tamara concludes, "This is obviously not the right attitude. If the woman gets beaten up, or perhaps even killed, then what is the use of the police taking action then? A woman does not go to a police station just for fun. She goes because things are very bad and even desperate."

Victim protection

Another big challenge of the effectiveness of the Act is the lack of victim protection. Most women depend almost solely on their partner economically. They have no means to provide housing for themselves and their children or to sustain their livelihood, which means the alternative to a violent husband is homelessness.

No shelter or housing is offered by law enforcers or by the legal system itself. The law stipulates that the court may order, if the aggrieved person requests, that she can be placed in a shelter or provided with temporary accommodation. However only private organizations such as Welcome House, Women's Development centre in Kandy, Women In Need and the Salvation Army run shelters for abused women and children.

The NGO sector cannot be expected to take sole responsibility for the provision of such services. Magistrates are reluctant to refer abused women and their children to privately run shelters, who they do not always find accountable. The judiciary would be more likely to refer women to state run shelters. Besides, the rights of a woman for adequate housing should not only focus on shelter options for her, but also the possibility of removing the violent partner.

It is nevertheless an extremely hard choice for a woman to choose to live her life in shelter, even for those who can afford it, due to fear of harassment, loss of status, social stigma or concerns of the children's future. In many cases the need is for family counselling and advising and if the woman choose to stay with her husband, she should be referred to these avenues by the police and the courts. An efficient system will in itself generate prevention, but major steps also have to be taken to push forward for campaigns on prevention

Recognizing rights

The Prevention of Domestic Violence Act is a great step forward for the recognition of the rights of women and the problems within the perception of the social hierarchy of families. However, cultural patterns that have existed for centuries do not transform overnight.

For a woman to get the courage to go to the police station and file a complaint, she needs assurance that she will be met with respect and a patient hearing. She needs assurance that her case is taken seriously and inquiries will be taken. Furthermore she needs a guarantee of protection through shelter or housing to her and her children as well as proper counselling and support during the court case.

As with so many other pieces of legislations in Sri Lanka like the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified in 1980, the Act itself does not change a society's perception. The changes come with the implementation of the Act in actual practice. It is an obligation of the state to support and protect the rights of women, establish and upgrade facilities and secure proper remedies for the victims of domestic violence in Sri Lanka.

6. Major Problems Relating to pre-trial detention

The purpose of this article is to discuss the issue of pre- trial detention conditions in Sri Lanka and explain the major problems relating to free trial detentions

I believe that such a discussion could provide the background to answering other questions, namely, the question of the major problems relating to pre- trial detention in Sri Lanka, as compared to other neighbouring countries. I will discuss this issue under two topics, the facts of the problems and the causes of these problems.

The major problems relating to pre- trial detention in Sri Lanka?

A. The power of the magistrates in the control of pre- trial detention has diminished enormously.

In a common law system, detention was kept within the framework of the law through control exercised by magistrates. The magistrate was known as the kingpin of the system. However, this is no longer the case. Over the past several decades, the magistrates have faced enormous professional limitations which has altered the understanding of magistrates in the eyes of lawyers, litigants and for the magistrates themselves.

These limitations arose due to emergency regulations, anti-terrorism regulations and other limitations created in the name of separating special crimes which needed to be handled differently to other crimes specified in the criminal procedure code. These emergency laws, anti-terrorism laws and special laws, particularly in drafts control and other special crimes, created limitations on the power of magistrates to give bail. Before these limitations were created, a magistrate should allow a suspect to be released on bail as a matter of rule; this was restricted only under special circumstances. Magistrates, effectively, had control. This centuries-old tradition allowed magistrates to exercise the necessary discretion in a liberal manner.

These limitations mentioned above created restrictions on bail and magistrates were either forbidden from giving bail or were given powers of bail which were subject to serious limitations. In many of these cases, the power to give bail was removed from almost all court, not just magistrate courts. Instead, the power was vested in the ministry of defence and detention letters issued by the ministry of defence had a binding nature on magistrates and on other courts. Due to emergency regulations and anti-terrorism laws, this factor was extensively used and many suspects brought before magistrates were characterized as coming under national security or special laws. As such, the magistrates did not have the right to interfere in these cases.

Along with the emergency laws were special laws where people were charged under offences such as a drugs ordinance or for serious crimes like murder. Other offences they could be charged under included forest ordinances or control of the transport of materials and other such matters where the magistrate did not have power to give bail. Instead, bail had to be obtained from superior court; a high court or a court of appeal.

These special laws as well as emergency laws and anti-terrorism laws provided an avenue for the police to extensively abuse their power. They could easily term a suspect to fall under a special category after arrest. To sort out disputes on these charges required the intervention of the ministry of defence or a higher court. Thus on these matters, magistrates became functionless.

B. The second issue relating to detentions in Sri Lanka is the breakdown of the supervisory function of higher police officers.

In other words, this refers to a serious breakdown of commander responsibility within the policing system. This system has been maintained under departmental orders which have remained for over a century within the Sri Lankan policing department, and have been renewed to meet changing circumstances. Arrest and early detention takes place at a police station. Here, the Officer in Charge of a police station is responsible for the goings-on in his station; they are the the main controller of the police station. Above the Officer in Charge (OIC) is the ASP (Assistant Superintendent of Police) who is the immediate supervisor of each Officer in Charge of the stations in his area. The duties of the ASP include regular visits at short intervals to the police stations, inspection of all documents maintained by the police stations, (such as complaint books,) examination of all arrangements within the station, (such as weapons) and the supervision of detainees. The ASP is supposed to inspect all police cells and to examine the manner in which the regulations relating to the inmates of these cells are being met. The ASP is also required to supervise games and other arrangements of the station. As such, the ASP is a vital component in the smooth functioning of a local police station. If the ASP conducts his role in the proper manner, there would be adherence to all regulations and basic maintenance of the law within stations.

Above the ASP is the SP (Superintendent of Police) who is in control of the ASP and deals with issues which are brought to their attention. The job of the SP is to ensure that the system functions smoothly. The SP also has a direct supervisory function over arrest and detention. Above these officers are the DIG, Deputy Inspector General of Police, and the IGP, Inspector General of Police. They are the ultimate superiors of the organization, and their job is to deal with problematic matters so as to ensure that the system functions according to regulations and the law.

It is a well researched and widely admitted fact that this entire system has been in shambles since 1978. This process of breaking down is due to the politicization of police. The overall higher superiors, such as the IGP virtually function under political control of the country's president of country. By extension, the lower officers function under members of parliament of the ruling party. They also come under the influence of other

political figures. Their lives and the wellbeing of their families could face serious harm if they do not comply with orders coming from political authorities, who under normal circumstances are outsiders to the policing system.

As a result of this politicization, if a person is arrested and detained and a problem arises, there is no effective mechanism for lawyers or for the affected person to complain to a higher authority. Complaints are treated frivolously. If the person is arrested for wrong reasons, is badly treated in detention, is subjected to false charges which could jeopardize their chances of getting bail or is implicated under anti-terrorism, emergency or special laws where the magistrate cannot give bail, there is little possibility of immediate intervention from superior officers in resolving this matter.

Before 1978, under such circumstances, lawyers would resort to the highest officer, the ASP and others by meeting them or writing to them and asking them to immediately intervene. If the ASP is to look into allegations of illegal arrest, detention or harassments while they are in jail, then the ASP would be able to take steps to stop this problem at an early stage. Now, this possibility does not exist. In hundreds of instances known to the AHRC, complaints have been made to higher authorities, but they are ignored or delayed and people languish in detention for long periods of time when they are innocent of the crimes they have been accused of.
This also applies to torture cases where higher police authorities do not act and carry out necessary obligations relating to the prevention of torture. Torture happens on a routine basis throughout all police stations. Due to false allegations, people go to courts under false charges where bail is forbidden and they also languish in jail. There is also the abuse of corruption and bribery. These are matters that superiors beginning with the ASP should address directly, but this does not happen. The capacity of these officers to prevent illegal arrest, detention and torture using the criminal procedure code under normal circumstances is greatly limited. This virtual collapse of the traditional command of responsibility allows for illegal arrest, detention, fabricated charges, bribery, corruption, rampant torture and engenders abuse of the entire criminal process.

C. Limitations to the role of lawyers

In Sri Lanka, lawyers do not have statutory rights to represent a client until he is produced before a court of law; in other words, after arrest and detention. During the time when the person is under arrest and is being held in a police station or another place of detention, lawyers do not have statutory rights to represent this person. The arresting authority is not under obligation to inform the arrested person of their right to representation by a lawyer. The Bar Association of Sri Lanka argues that although there is no statutory right, there is right of representation by way of convention, since the tradition has been for lawyers to represent an arrested person after arrest and detention.

However, the actual situation follows that even when the family of the arrested person tries to get a lawyer to go to the police station to represent their relative, the lawyer's capacity to represent their relative depends upon the discretion of the police. The study of many cases shows that the police can adapt numerous methodologies so as to prevent lawyers from representing clients during detention at the police station. The various methodologies are adapted to defeat the possibility of lawyers' representation whenever the police do not want such representation. In some cases, the police officers will talk to the lawyer for a short while and thereafter proceed with the interrogation in the way that they wish after the lawyer leaves. Alternatively, the relevant officers can absent themselves and say that they are busy and are unable to meet with the lawyer.

Even when a lawyer is allowed to go to the police station, she/he would have no right to represent their client during an interrogation or when a statement is being recorded. This means that even when the lawyer is able to inform the police of her/his interest in a particular case, the police are not under obligation to allow them to do their necessary work, other than to state why the person has been arrested. Thereafter, the police will proceed with an interrogation on their own without the presence of legal representation on behalf of the arrested person.

As the use of torture is frequent at police stations, allowing lawyers to be present will stem this practice. Indeed, the police's resistance of allowing a lawyer is not a mere legality but is inextricably intertwined with the methodologies of interrogations that are normally practiced at police stations. The use of interrogation under duress, (and often using torture) and the presence of a lawyer to represent the arrested person are two practices which are incompatible with each other. The resistance of the police and the authorities to allow lawyers to represent clients at detention centers is directly associated with the implicit approval of practices of torture and other forms of cruel, inhuman treatment and other coercive methods during interrogation.

Any real discussion on the right of representation must to be associated with the issue of methods of interrogation which relate to torture and other cruel, inhuman, degrading treatment and punishment. So long as these methods remain normal practices, there will not be any real possibility of allowing legal representation for detainees.

D. The approved practice of extrajudicial killings of certain categories of alleged suspects

In recent years in Sri Lanka, the killing of certain suspects after arrest has become an approved practice. Even though the practice is not allowed by statutory provisions of written regulation, the practice is approved by way of its routine happening. It is frequently reported that someone who was arrested for criminal activities tried to escape

while he was taken to identify some object, and that in the course of struggle, the officers who were in charge of him shot him dead. Often, the newspaper publications on such cases are accompanied by statements that the person was a notorious criminal who was wanted by the police for a number of crimes. There are, of course, no further investigations. Thus, whether the person was in fact wanted for any earlier crimes, what these crimes were and why there is certainty that this is the person who committed them, are never fully examined.

One category of people who have been killed in this manner are suspects who are arrested after a crime has taken place. For example, there are cases of child abduction for ransom. This causes serious concern among the public, and the media widely publicizes these cases. Thereafter, a new report appears that an alleged suspect of the crime has been arrested and the suspect in his statement has said that there are weapons hidden in a particular locale, and that several police officers have taken the suspect to the scene in order to find these weapons. At that point, the suspect is said to have attacked the officers and the officers in retaliation shot them dead. As such, the public is satisfied that something has been done regarding the initial incident which caused public scandal. Then the matter is forgotten until the next incident takes place, the next suspect is arrested and the arrested suspect is dealt with in the same way.

The cases come before magistrates with only the version about the incident given by police officers. In a few instances, there were relatives of suspects who wanted to give evidence, but they were prevented by the police from doing so. Either the police would not give them the correct date of the hearing, or they would create some other excuse which would prevent the magistrate from hearing the evidence of these people. Therefore, on the basis of the evidence presented to them, magistrates make an order that a suspect has been killed in a lawful manner and no further investigation are necessary. As a result, no enquiry takes place and the actual circumstances under which people are killed are never revealed. The actual circumstances are only known to small circles of people engaged in these killings. This practice has become regular, and there is no way to know whether suspects were the actual people who were involved in these crimes or not. There is public suspicion that the police accept bribes from the actual suspect, and then charge an innocent person with the crime, and then dispose of this innocent person.

The entire exercise of killings and subsequent publications take place to satisfy the public that something has been done about a crime. There is a vast area of extrajudicial killings that do not get examined. As such, people who are arrested and detained do not have any kind of lawful protection. Sometimes after incidents, families give different versions of arrests and lawyers claim they have surrendered the person to the police. However, as the state has given tacit approval to this practice, none of these cases are subjected to scrutiny.

7. People in the north and east as people outside the law

After a prolonged and devastating military conflict, people in the north and east remain now as a people outside law. Their situation has arisen due to the following reasons. As shown above, Sri Lanka as a whole faces a crisis of law due to the constitution itself. Further, a long period of undermining institutions has also contributed to this situation. People in the north and east, while sharing this common condition with the rest of the nation, are facing this problem in a more aggravated manner due to the consequences of the internal conflict. As a result of the military conflict, there has been displacement.

There is no likelihood of returning to the status quo in any near future. Large numbers of persons are still in detention camps. How long they will continue to be there and what kind of resettlement there will be thereafter has not been revealed. In fact, there is nothing to indicate that there is any kind of worked out plans for a resettlement which would bring the lives of the people into some kind of normalcy within which they could return to their livelihoods and other normal activities of living, such as education for the children. Inside the camps themselves, judging by the reports, the conditions are harsh in terms of housing and food as well as facilities for sanitation, and the situation is worse for the children. As a former Chief Justice pointed out, people in the camps are not under the jurisdiction of any law except various rules that are being imposed by the military. In fact, the people in the camps have life regimented by the military.

There is no judicial apparatus within the camps to deal with the problems of the inhabitants within any legal framework. They also have no real access to the ordinary courts of the country. There have been very few cases in which persons outside the camps have gone to courts on behalf of persons in the camps to plead for some remedies to bring their relatives in the camps back home. The government has not provided any services of lawyers for any persons within the camps who may wish to get legal advice on various matters that are affecting them.

For example, many of these persons are reported to have lost many of their belongings. Some have deposited their cash or valuable items with the LTTE at one time when they were held hostage by them. Some of these items like their gold ornaments could be among the items that the government has recovered from LTTE held areas earlier. If any of the persons within the camps want to make appeals for judicial recourse in order to deal with matters such as these, they need the assistance of lawyers. Naturally in their condition it is not possible for them to get the private services of lawyers. Access to lawyers is not provided and restrictions exist for anyone who wishes to visit the camps. There may also be many persons who may want recourse to the courts for various violations they may have suffered in the course of their detention in the camps. It is also known that there any many who have lost their title deeds and other documents relating

to their personal properties. In all these matters, legal advice could play a significant role if the people are to have access to courts. Such a possibility does not exist.

Then there are those persons who have been resettled. In the media, many complaints have been heard about the conditions of such resettlements. There are particularly complaints about the housing conditions of the returnees. Some representatives of the Tamil people have complained that the conditions are often not suitable for human living. Then there are other complaints, like the damage that has been done to their former properties, some of which were occupied by the military. There are many other complaints which the people would have brought to the attention of judicial authorities if they had access to the courts. However, the access of these persons is mostly limited to the public authorities, which often means military authorities. The kind of security needed for the persons to pursue their claims does not exist. Under these circumstances, these returnees too do not have any possibilities of any kind of legal redress.

Both in the north and the east, the basic administrative facilities such as policing and civil service have not been established to any adequate level. While there are plans for the establishment of courts, what exists at the moments is only of a rudimentary nature. Reports often appear armed gangs who still dominate these areas. The type of political compromises that have been arrived at in the government has brought some former rebel groups into powerful political positions in these areas. There are many cadres of these groups who have had arms training and who still possess weapons. This results in complaints of many crimes and other situations which suggest the existence of widespread lawlessness.

There were several instances in which there were shocking reports of kidnapping small girls for ransom. In two famous instances, the girls were found dead several days after their kidnapping while the kidnappers were conducting various kinds of negotiations with their families for ransom. The fear of kidnapping prevails among many groups, including the business community. There were times when there were strikes by shop owners and other businessmen in order to protest against various kinds of extortionist demands that had been made to them. There were also complaints from the lawyers in some areas of similar threats. People with any means often live within a context of heavy intimidation in which they have to make various compromises with the armed gangs and other powerful persons for their protection. Often, young children are sent away by their families to places outside the north and east for their security. Families are thus separated and the kind of psychological conditions that exist are those of persons struggling hard to survive as they have no option on the one hand of leaving these areas due to various reasons, and on the other hand, living in the area has become a nightmare.

What makes life most difficult for most of the inhabitants of the north and east is the absence of an opportunity to speak out about the conditions they have lived in for a long period now and being subject to extremely harsh problems, such as the killings of their family members, the injuries that have been suffered by many survivors and various kinds of abuses they have suffered at the hands of the former militant groups including the LTTE, as well as from the military, under whose control they have come to be after the war.

It is most natural for persons who live under these tragic circumstances to want to speak out the stories of their sufferings and to make some collective sense out of their prolonged tragedy. Such a process is essential for the development of the psychological conditions necessary to rebuild their lives and return to some kind of normalcy. This situation has been denied to them.

The military occupation creates an overall intimidating atmosphere within which people remain afraid to speak out the truth of their lives. Suppression of their memories, their emotions, their sense of loss, and their grievances have now become necessary conditions for survival. The fear that anything that they say even in their private circles may lead to great suspicions which may bring them new harm is the kind of psychological ethos that prevails. The few studies on the conditions of these people reveal an extremely sad and pathetic situation. If there was free access to observers, these conditions would have gotten to be better known to the world. However, even such access to observers and sympathetic humanists is being denied. Those who keep some kind of relationship in order to deliver services for religious purposes are doing so on the condition that they maintain silence on what they see and what they hear. Thus, the basic humanist relationships are being denied to the people of the north and east.

The government's basic approach to the area is governed by an enormous fear of the possible revelation of information that may lead to war crime investigations about the period of conflict, particularly the last part of the conflict. The government fears that any information gathered in the areas may be used against the government and the military regarding the alleged war crimes. The silence imposed on the people is primarily motivated by this factor. Thus, preventing a return to normal conditions and the prevention of the possibility of people having access to justice is overall strategic considerations of the state in dealing with these areas. As such, a harsh form of militarism and intimidation of the persons are likely to continue over a long period of time.

The people of the north and east are not only people who are living outside the law, but they are also people who are likely to be kept outside the law for a long time until the threats of the demand for justice may disappear. As the memory of such events do not disappear so soon, it is quite likely that the present repression against the people of t

8. Review of the Recommendations made to Sri Lanka Report at the UN Universal Periodic Review in June 2008

Going through the recommendations it becomes stark clear that Sri Lanka has not only refused to implement any of the important recommendations but also it has developed an overall approach within which none of these recommendations can ever be realised. As shown in this report an overall development towards the rejection of the rule of law and the human rights frameworks has already taken place in Sri Lanka. The completion of this took place by way of the 18th Amendment to the Constitution. The impunity entrenched by the constitution has now displaced the possible arrangement within the system through institutional balances to protect the citizens from arbitrary deprivations of the personal liberties and property rights.

We may go through some of the main recommendations to illustrate this.

Sri Lanka was recommended to:

- enhance the capacity building of the national human rights institutions with the international community including OCHR;
- empower various institutional and human rights infrastructures;
- cooperate actively with international mechanisms to implement human rights at all levels and consider participation in core human rights treatises;
- take into account recommendations of the Human Rights Committee and to incorporate all substantive elements of the ICCPR into national regulation;
- ensure compliance with the CAT, the Convention on the Rights of the Child and the full implementation of international human rights instruments;
- ensure that all civil society organisations including those from the conflict affected areas to be involved in the implementation process of the UPR;
- take measures to access humanitarian assistance to vulnerable populations;
- ensure the adequate completion of the investigation into the killings of the aid workers;
- implement the recommendations of the Special Rapporteur on the question of torture;
- ensure a safe environment for human rights defenders and investigate and punish perpetrators of the murders, attacks, threats and harassment of human rights defenders;
- make efforts to prevent cases of kidnapping, forced disappearances, extrajudicial killings and to bring all perpetrators to justice;
- prevent ill treatment and torture of persons in detention centres;
- take steps to rehabilitate all former child soldiers;
- adopt measures to investigate, prosecute and punish those involved in serious

human rights crimes such as the recruitment of child soldiers;
- investigate and prosecute all allegations of extrajudicial killings, summary or arbitrary killings and forced disappearances and bring perpetrators to justice;
- adopt measures to ensure effective implementation of witness and victim protection;
- take necessary measures to prosecute violators of international human rights law and humanitarian law;
- enter into agreements with countries hosting migrant workers;
- ensure the return and restitution of housing and lands in conformity with international standards for internally displaced persons;
- take measures to protect the rights of IDPs including measures to ensure their voluntary and safe return with adequate restitution;
- give special attention to the rights of women and promote education and development and their representation in politics and public life;
- pursue programmes in the former conflict zones and bring the afflicted communities in par with others;
- ensure that there is no discrimination against ethnic minorities;
- take measures to ensure freedom of expression and effective investigate allegations of attacks on journalists, media personnel and human rights defenders;
- ensure the freedom of the press;
- work with the international community to ensure disaster management, HIV/AIDS and capacity building;
- work closely with OCHR to build the capacity of national institutions and seek the state's assistance on counter-terrorism strategies.

As mentioned above, none of the recommendations were given any serious consideration and the recent development (the 18th Amendment) has made it impossible for the realisation of any of these until a fundamental constitutional reform for the protection of the rule of law and democracy takes place.

10. Some considerations for international and local advocacy on human rights

For several decades, Sri Lankan has attracted international attention due to the intensity of the violence that has prevailed in the south as well as in the north and east. Massive violence relating to the conflict with the JVP in the south and the military conflict with the LTTE in the north and east was caused during these decades. One unfortunate consequence of this violence was that the international community for the most part understood the problem of Sri Lanka as one resulting from an ethnic conflict. Violence camouflaged the situation and was able to hide the internal dynamics of a vast change that was taking place in the entire country, in which the whole structure of the rule of law

and democracy was being destroyed throughout. The development of authoritarianism within the country went unnoticed. The radical nature of the 1978 constitution in dismantling the parliamentary democracy and the independence of judiciary went unnoticed. The international community mostly thought that if some kind of solution could be brought to 'the ethnic conflict', the country may return to the 'paradise' from before.

This misunderstanding of the overall crisis of Sri Lanka prevented any strong intervention to resist the authoritarianism that was taking root in Sri Lanka. Thus, the 1978 Constitution was able to make its devastating and destabilizing impact on the country, resulting in drastically undermining the limited democratic tradition that had been introduced through the political reforms in the early part of the twentieth century. By the time the military conflict was over, the 1978 Constitution had achieved its goals of closing the electoral map of Sri Lanka and dismantling its rule of law structure through displacement of all its public institutions (such as the court system, the policing system, the system of civil administration and the system of the election commissioner, which has been built over decades of hard work to make free and fair elections possible in Sri Lanka).

By the time the war was over, the judicial power had been reduced to a marginal power, and it was not able to resist the executive to any significant degree; policing had become one of the most corrupt and inefficient institutions in the country; the civil service had come extremely destabilized and politicized; and the election commissioner's system was made incapable of ensuring a free and fair election. The condition of Sri Lanka's system has not yet been understood by the international community. Thus, in dealing with Sri Lanka, a paradigm shift is required if democracy and rule of law and the respect of human rights is to have any chance within Sri Lanka. In the international discourse, this paradigm shift is essential for any meaningful discourse to be developed that will be able to address the problems of the north and east effectively. If, for whatever reason, the totality of the crisis is not understood, no benefit will arise for any section of Sri Lanka and the authoritarian system will survive and cause further devastation in the country.

Sri Lanka was once considered by the international community as a model for development of rule of law and democracy. It was also seen as a successful development model in which infant mortality was reduced, lifespan was increased with better healthcare, educational facilities were better developed and basic infrastructure for human development was established. However, today all these achievements are at risk. The free healthcare system has been abandoned and the capacity of the country to fight disease has been reduced despite of development of local talent through medical education. The free education system is also under challenge and grave economic problems are threatening the livelihoods of the people. Mass migrations of the poorer sections of society, including

women, for work as domestic helpers in the Middle East is one of the clearest indications of the acute conditions of poverty that is developing in Sri Lanka.

There is no internal organization capacity to resist such developments as the very constitution on which the political system is organized is the source of disorganizing and source of displacing the very legal foundations of the country. Constitutionally caused lawlessness can, in the next stage of development, cause tragic economic crises and other disasters in Sri Lanka.

Once a model for development, Sri Lanka is now nearing the same conditions as those of Burma and Cambodia, which are results of disasters within those countries. This vast change cries for understanding, both at international and local levels. Human rights advocacy, if it is to bring any benefits to Sri Lanka, must be based on a deep understanding of these conditions.

THAILAND

THE INTERNAL-SECURITY STATE DIGS IN

In its 2009 annual report, the Asian Human Rights Commission described the emergence of a new internal-security state in Thailand, which began to consolidate following the September 2006 coup. This state is characterized by the firm re-entrenchment of regressive anti-human rights forces and their allies in all parts of government, including in agencies ostensibly established to protect human rights. The resurgence of the internal-security state is reminiscent of its forebears of earlier decades, exhibiting an original authoritarian style, with more refined public relations and a sharper concern for new types of political and technological threats to its authority.

When 2010 began, the human rights situation in Thailand was already in a state of crisis, with continued martial law and emergency rule in the three southern-most provinces, the recent conviction of Darunee Charnchoengsilpakul for speech alleged offensive to the monarchy, pending charges against Chiranuch Premchaiporn, webmaster of the independent news site Prachatai, and a persistent lack of resolution and continued impunity in the cases of Somchai Neelaphaichit and Imam Yapa Kaseng, to name a few cases of special concern to rights defenders. The events of April-May 2010, in which a government crackdown on protestors in Bangkok left at least 91 dead and over 2100 injured, rapidly deepened the crisis. Among the features of the entrenched internal-security state are expanded use of emergency regulations to legitimate all state actions while also producing impunity; failure to meet obligations under international human rights law; the obfuscation of truth and curtailment of justice; and failure of the country's human rights institutions to perform according to their mandate. Also of great concern in 2009 was the eliminating of any middle ground in which citizens might express their views without fear of criminalization or violence.

A state of emergency to re-militarize the state

Under the Emergency Decree on Government Administration in a State of Emergency (2005), the government of Thailand decreed a state of emergency in Bangkok and surrounding areas on 7 April 2010. On 13 May 2010, the state of emergency was expanded to include another 17 provinces in northern, northeastern, and central Thailand (for a chronology of the emergency decree's enforcement and phased withdrawal

see the box in this section). The Emergency Decree, which at time of writing remains in force in Bangkok and three neighbouring provinces, gives blanket powers to state actors to take a wide range of actions, including making arrests, censoring the press, restricting movement and using armed force.

Three days after the emergency was declared, on 10 April 2010 at least 25 people were reported killed and over 800 wounded. Then, after a month of continuing protests, the state decided to end the protests with force. Between 13 and 17 May 2010, the government reported that at least 35 people were killed, all civilians, and at least 232 wounded as the military moved in to crush the protests with armed force, including through the use of snipers with high powered rifles and live ammunition against largely unarmed or poorly armed protestors, evidently with the express intention to carry out targeted assassinations under the cover of officially sanctioned but more generally directed violence. According to conservative estimates, at least 91 persons were killed in all. Other accounts put the numbers higher, and at time of writing there are at least three fact-finding bodies collecting and analyzing differing accounts of the violence: one official commission, and two set up by civil society organizations. Meantime, the army has promoted dozens of officers who had orchestrated and participated in the killings.

During the week of 26 April 2010, the authorities claimed that behind the protests in Bangkok was a plan to overthrow the monarchy. The institution of the monarchy is a highly contentious one in Thailand, and in both the language of the Emergency Decree and other state rhetoric, is linked explicitly to national security. In addition to alleging that such a plan existed, the government released a diagram of uncertain authorship showing the alleged involved parties; the alleged participants were wide-ranging, with specific individuals, including former premiers and academics named, as well as broad categories such as the antigovernment protest group.

The release of this diagram was a highly threatening action in an already extremely charged atmosphere. On April 27, Deputy Prime Minister Suthep Thaugsuban, in his capacity as Director of the CRES, said of individuals and entities named in the diagram, that in any cases in which there was sufficient evidence then an arrest warrant would be issued. If it were necessary, orders forbidding these individuals from leaving Thailand would also be issued. Mr. Suthep did not explicate how much evidence would be sufficient for a warrant, how it would be procured, or if its existence would be made public.

At the same time, the Centre for the Resolution of the Emergency Situation (CRES), an agency that has been run out of an army base under the authority of the Internal Security Operations Command, began using the Emergency Decree to order citizens arbitrarily identified as dissident—or potentially dissident—to "report" themselves and submit to

questioning by the authorities. Orders to "report" cited authority under section 11(2) of the decree, which pertains to the designation of a Serious State of Emergency, defined as a situation which "involves terrorism, use of force, harm to life, body or property, or there are reasonable grounds to believe that there exists acts of violence which affects the security of state, the safety of life, or property of the state or person, and there is a necessity to resolve the problem in an efficient and timely manner". Subsection 2 makes it possible for state actors "to issue a notification that a competent official shall have the power to summon any person to report to the competent official or to give an oral statement or submit any documents or evidence relevant to the emergency situation".

Such arbitrary orders for interrogation and detention have over many decades been associated with gross and widespread human rights violations in Thailand, and their re-emergence into plain view during the violence in Bangkok speaks to the entrenchment of the internal security state in 2010, and the re-militarization of ordinary policing, security and administrative functions there. In 2010, most individuals received a written order to report the night before being required to go to the army base. Upon arrival at the base, they were typically questioned individually. Most were interrogated for 2-3 hours, although some sessions lasted for up to 6 hours. Many of the questions concerned the acquaintances of the person being interrogated, and if the person knew or was somehow connected to protest organizers. Some of those interrogated reported being asked about the planned activities of the protest movement and lectured about the purported illegality of the protests. The interrogators appear to have come from a variety of government agencies, including regular police, the army, and the Department of Special Investigation, Ministry of Justice.

Individuals held under the decree have been subsequently charged with a variety of offences under the penal code, as well as with violating sections 9(1)(2) of the Emergency Decree, which prohibits gatherings of groups of five people or more, instigating unrest, disseminating information which might scare the public, or intentionally distorting information to create misunderstanding about the state of emergency to a degree that affects national security, public order or public morals. Some have already been sentenced to periods of one, two or three years' imprisonment.

To take one specific case, on 2 May 2010, three students, including Mr. Anuthee Dejthevaporn, secretary general of the Student Federation of Thailand (SFT), Ms. Suluck Lamubol, a fourth-year history student at Chulalongkorn University and SFT executive committee member, and Mr. Sanat Noklek reported to the CRES as ordered. At a public seminar on May 5 they explained what had happened to them.

According to Suluck, six policemen had visited her house and told her that if she did not go, an official arrest warrant would be issued against her. She said that the students

were not allowed to bring a lawyer with them, and according to a report on the online independent news site Prachatai, they "were told not to worry as it was just for talks with police and there was no need for lawyers". They were questioned for five hours about their political commitments and acquaintances, without learning the identities of their interrogators.

Anuthee explained that two policeman came to his house, gave him the document ordering him to report the next morning, and told him that if he did not do so, an arrest warrant would be secured. Anuthee also claimed that he had been followed by Thai intelligence officers prior to this time. During his interrogation, he was asked about the protests, including how much money people were paid to attend.

Sanat was not at home when two policemen came to his house to present him with the order to report the next morning, and so his grandmother received it for him. The policemen harassed his grandmother, and told her that her grandson should not support the red-shirt protestors. He and the other students reported that the regular police, DSI, and army officers who interrogated them used a mixture of intimidation and attempted friendliness. At no point did they give any of the students any knowledge of what evidence had been collected against them or the reasons that they in particular had been called.

On 16 May 2010, Krishna Thanchayapong, 34, and Surachai Phringpong, 19, left the main protest site in Bangkok at Ratchaprasong and shortly after were stopped with a younger friend while travelling by car through a nearby military checkpoint. On October 9, Prachatai gave an account of their arrest, torture, sentencing and imprisonment, which is worth citing at length:

> "Krishna, the driver, said that when all three got out of the car, about 20 military troops suddenly surrounded them and searched them, seizing their mobile phones and cameras. The troops tied their hands behind their backs and forced them to face a wall and kneel down. During that time, they felt that guns were pointed at them, so they did not dare look round.
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> After a while, a military officer asked them what they knew about 'the mob', who the key red-shirt guards were, where weapons were hidden, and which red-shirt guards had fought the military with weapons. All the while, they were questioned at gunpoint.
>
> Krishna told them that he did not know what they were asking, and he was just a demonstrator sympathetic to the cause of the red shirts.

Less than a minute later, a hooded military officer appeared and threatened that if they did not tell the truth, they would be strangled to death. They, however, did not provide the answers which the military wanted. So the troops strangled them. According to Krishna, they were also kicked and trampled on their backs. The physical abuse went on for about 45 minutes, all filmed by a military photographer.

Afterwards, a military officer appeared whom Krishna assumed to be their commander, as the other soldiers saluted him.

The officer poured Ronson lighter fuel on their heads and faces, stepped back about one metre from them, and lit a lighter. With the lit lighter, he tucked fireworks in their backs, and threatened to set fire to them if they did not provide information.

Meanwhile, they were whipped with a rope, and data from their mobile phone cameras was loaded onto the soldiers' notebook computer. This included photos of them taken when they were waiting to go on the red-shirt stage at Ratchaprasong and of Surachai when he was giving his speech. When the soldiers saw the photos, they accused them of lying, and shouted to their comrades that the three of them were involved with the red shirts, and asked them how much they had been paid. After the soldiers were satisfied with the beating given to them, they were given papers to sign. Krishna and Surachai did not read the content as they feared being shot or disappeared if they were too slow. The hooded soldier threatened that if they did not confess in front of the press, they would be killed.

Krishna then noticed that the soldiers were not displaying any name tags or ranks. Later, they were ordered to turn and look toward soldiers forming a line. They saw the soldiers place several items on a piece of cloth on the ground including fireworks, cigarette lighters, slingshots, pellets and fuel bottles.

The soldiers told them that the press would be called, and if they did not confess in front of the press, or said anything different from what they were instructed to say, they would be killed.

About 10 minutes later, about 5-6 reporters arrived, and Krishna told them just that they had come to join the red-shirt rally.

After the reporters left, the soldiers told them that they were asking for trouble for lying to them and not answering the reporters as they had been told to do. They were forced to sign another set of papers, which they again signed without

reading as they thought that it was futile and they wanted to be sent to the police immediately so they could survive.

The police came and they were taken to Pathumwan Police Station in a police detention vehicle. About 10 soldiers followed them there and told police to make a report as the soldiers dictated it. Krishna said that the police did not interrogate them at all, but just copied what had been written by the soldiers. They were denied the right to contact a lawyer or family members.

…

The police woke them at about 4-5 am to sign more papers. Drowsy, they again signed without reading them as they thought it would make no difference.
In the morning, the police took Surachai and Krishna to Pathumwan District Court…

At the District Court, the indictment was read out and they confessed, as they had no one to consult, and were afraid as a result of the soldiers' intimidation.

The District Court ruled that day that they had violated Section 9(2)(4) of the Emergency Decree, which prohibits assembly and use of public roads, and Section 83 of the Penal Code for conspiring to commit a crime. They were sentenced, according to Section 18 of the Emergency Decree to two years' imprisonment, and as they had pleaded guilty, the sentence was commuted to one year.

The court cited a list of items which were claimed to have been seized from them, including 3 knives, a slingshot with 20 metal pellets, a brass knuckle, makeshift guns, a firework, a lighter, a bottle of gasoline, a mobile phone, and 3 cameras.
They insisted that they had no such things.

Their case is now on appeal. Their bail requests have been denied by the District Court which claimed that they might jump bail and commit more crimes.

They are currently detained in Zone 8 of Khlong Prem Prison with other 7 red shirts who were also accused of violating the Emergency Decree.

The prison allows only family members to visit them. Others can visit only when a family member signs to endorse them as relatives. And visits are allowed only on Tuesdays."

The description of this case mirrors the type of systemic abuses and denials of basic rights at all levels found in the judicial system of neighbouring Burma, where courts are in no way independent and state officials operate free from qualms about the possibility that action might be at any time taken against them for arbitrary arrest, detention, torture and violations of human dignity in the name of state security. It is a searing indictment on the government of Thailand, and an indicator of the extent to which the internal security state has again taken hold of it, that there is little to distinguish the account given above—apart from the personal and place names—from the accounts of arrest, torture and imprisonment that followed the crackdown on monk-led protests in Rangoon during 2007, only a few hundred miles distant and, it seems, not so far apart in terms of the impunity that state officers enjoy and the extent to which the courts are willing to be complaisant with executive demands.

The arrest of Mr. Sombat Boonngammanong on 27 June 2010 also clearly illustrates the arbitrary nature of detention under the Emergency Decree and the threat to liberty posed by it. After the ouster of former Prime Minister Thaksin Shinawatra in the 19 September 2006 coup, Sombat ran a political commentary website critical of both the former PM and the military coup which ousted him. On June 26, Sombat held a peaceful memorial at the site of killings that took place during the crackdown on anti-government protestors in Bangkok during April-May 2010. He tied ribbons to a signpost in remembrance of those who were killed, while some of those with him carried photographs of the violence.

Sombat Boonngammanong, Amornwan Charoenkij & friend (Source-Prachatai)

In response, a court issued an order for his detention under the Emergency Decree. Because he could not be detained at an ordinary detention facility under the terms of decree, he was taken to the Border Patrol Police 1st Region Command Office in Pathumthani province. On June 29, Sombat filed a motion against his detention, requesting his release on the grounds that his detention was in violation of his rights to freedom of expression and peaceful gathering, as provided for in the 2007 constitution and international law. Although the court allowed the motion, on July 2 it ordered that Sombat be kept in custody for another seven days, stating that he had violated the terms of the decree prohibiting gatherings of more than five persons. Finally, on July 9, Sombat was released from detention. At this time he was

formally charged with violating the Emergency Decree by assembling in a group of more than five people. At time of writing, the criminal case is pending against him.

Meanwhile, on 16 July 2010, five students in Chiang Rai province (four from university, and one from high school) walked around the market, the clock tower, and the entrance to the provincial hall carrying signs criticising the Emergency Decree, reading, "I saw people killed at Ratchaprasong." On July 20, two participants, Chiang Rai University Rajabhat students Kittipong Nakakade, age 24, and Nitimethapon Muangmulkuldee, 23, as well as the high school student (name withheld), 16, were summoned and interrogated by the police.

On the evening of the protest, Pol. Lt. Col. Banyat Thamthong, Acting Deputy Provincial Police Commander of Chiang Rai, called the high school student's mother to ask for her husband's telephone number. After the mother hung up the telephone, three men appeared at her front door and identified themselves as plainclothes police. They asked her son who had persuaded him to join the protest and looked at her son's computer. Although they asked her and her son to come with them to the police station, she refused and requested that they return with an official summons. Then, in the same evening, the police lieutenant colonel came to the house with a woman and they also searched her son's computer.

On the morning of 19 July 2010, police returned to the house with a summons and a search warrant. They took photos of the high school student's bedroom and seized his notebook computer. The mother was instructed to bring her son to the police station on July 20 at 10am. She did so, and her son was then ordered to report to the Juvenile Observation and Protection Centre on 21 July 2010. Under law, the centre is required to be involved in cases involving minors under the age of 18.

On July 21 and 30, the high school student reported to the centre for questioning. He was asked about his family and his parents' income. He was asked about his friends and behaviour, including whether he had ever been arrested for a criminal offence, whether he drinks and smokes, whether he had modified his motorcycle, how many close friends he has, and whether he goes out late at night. In addition, he was also again asked why he joined the protest on 16 July, and advised to confess to obtain leniency from the court.

The high school student was ordered to return to the centre for a psychological examination on 2 August 2010. The examination took over three hours, and included answering questions and drawing and matching pictures. At the conclusion, he was instructed to report for psychotherapy for two days on 16 and 17 August 2010. This order to report for psychotherapy was made before the test results were interpreted fully. At this time, the high school student felt concerned that the timing of the psychotherapy

would cause him to miss additional days of school, as he had already missed many days of school due to the interrogation and examination. The order was subsequently revoked after the case received a high level of attention. What is striking about the case of Sombat Boonngammanong and the harassment and intimidation experienced by the high school student in Chiang Rai is that mourning the loss of life and calling for accountability in the wake of the violence in April-May 2010 was at the centre of their actions, which have come to be seen as dangerously dissident.

As of September 2010, more than 200 people were officially still being detained in connection with the protests—compared to an official figure of over 400 in June—with most still being under investigation and scattered across prisons throughout the country. Many, perhaps most, were poor persons who received no legal advice and had allegedly been threatened, coerced and tortured to confess to a variety of crimes. Some were convicted on the basis of concocted evidence. Those convicted in summary trials had mostly not sought to appeal or had not known how to do so.

By way of another outlandish example that speaks to the psychology of the emergent internal security state, persons selling flip-flops bearing the image of the premier, Abhisit Vejajiva, have also been charged with offences under the state of emergency. According to Prachatai, on 3 October 2010, police arrested Amornwan Charoenkij, 42, for an offence under Section 9(3) of the Emergency Decree for selling such flip-flops, which are intended to be derogatory, as in wearing them the user is walking on the face of the prime minister, who obtained his position through a series of judicial coups under the regressive 2007 Constitution of Thailand, as discussed in the Asian Human Rights Commission's 2009 annual report.

In fact, the flip-flops were imitative of earlier ones made by opponents of the former premier, Thaksin Shinawatra, whose face also emblazoned footwear peddled by opponents of his government. But whereas those flip-flops did not attract legal sanction, in a sign of the continued double standards in application of law for groups of protestors of different political persuasions, Amornwan was reportedly charged with distorting facts about the killings in May, and for offending traditional Thai morals with the flip-flops. According to Pol. Maj. Col. Chakkraphan Thupatemi of the Ayutthaya Police Station, the flip-flops implied that the prime minister and deputy had somehow been responsible for deaths during the violence—which is in fact the case as they are the persons responsible for the imposition of the state of emergency, which the prime minister signed into effect—and that selling the flip flops amounted to an act of dissemination of distorted facts and immoral conduct under the emergency decree. Thereafter, another three persons were reportedly arrested for selling similar flip-flops in Chiang Rai, among them one of the five students whose arrest is described above.

Chronology of the Emergency Decree 2010

7 April 2010: the government of Thailand imposed a state of emergency on all or part of 5 provinces under the Emergency Decree BE 2548 (2005), in response to protests. They were Bangkok, Nonthaburi, 6 districts in Samut Prakan, 5 distiricts in Pathum Thani, 1 district in Nakon Pathom and 4 districts in Ayutthaya.

13 May 2010: the government extended the state of emergency for the entire area of the 5 provinces above and for 12 other provinces. The total 17 provinces were Bangkok, Nonthaburi, Samut Prakan, Pathum Thani, Nakon Pathom, Ayutthaya, Chon Buri, Chiang Mai, Chiang Rai, Lampang, Nakhon Sawan, Nan, Khon Kaen, Udon Thani, Chaiyaphum, Nakhon Ratchasima and Si Sa Ket.

16 May 2010: the government further extended the state of emergency to another 5 provinces. These were Ubon Ratchathani, Maha Sarakham, Roi Et, Nong Bua Lamphu and Sakon Nakhon.

19 May 2010: the government again extended the state of emergency to another 2 provinces. These were Kalasin and Mukdahan.

7 July 2010: under the Emergency Decree, the declaration of a state of emergency must be renewed every 3 months. Therefore, the government renewed the decree for another 3 months in 19 of the above provinces, not renewing it in Nan, Kalasin, Si Sa Ket, Nakon Pathom and Nakhon Sawan.

20 July 2010: the government revoked the decree in another 3 provinces. These were Lampang, Roi Et and Sakon Nakhon.

29 July 2010: the government revoked the decree in another 6 provinces. These were Ayutthaya, Nong Bua Lamphu, Chon Buri, Mukdahan, Maha Sarakham and Chaiyaphum.

16 August 2010: the government revoked the decree in another 3 provinces. These were Chiang Mai, Chiang Rai and Ubon Ratchathani.

1 October 2010: the government revoked the decree in another 3 provinces. These were Udon Thani, Khon Kaen and Nakon Ratchasima.

At time of writing a state of emergency remains in force in 4 provinces including Bangkok and 3 neighbouring provinces: Nonthaburi, Pathum Thani and Samut Prakarn.

[Source: http://thailand.ahrchk.net/emergency2010/]

International law and international inaction

The arbitrary nature of interrogations, arrests, detentions and charges under the emergency regulations has raised serious concerns about the risk of denial of liberty and abuse of state power in Thailand and point to the likelihood of further grave violations of human rights under the cover of the Emergency Decree and related analogous state security provisions in the coming years. The orders, like those to the police during the war on drugs and those in the context of counterinsurgency in the south of the country, placed officials outside of the ordinary legal system, denying citizens opportunities to question the circumstances of their detention and interrogation and thereby denying them means of redress in accordance with article 2 of the International Covenant on Civil and Political Rights (ICCPR).

The probability of such abuses during a state of emergency is something to which the UN Working Group on Arbitrary Detention has pointed out previously, warning that the rights under the Covenant can be greatly endangered during states of emergency (A/HRC/7/4, 10 January 2008; A/HRC/13/30, 18 January 2010). In particular, it has expressed concern that:

> "The continuing tendency towards deprivation of liberty by States abusing states of emergency or derogation, invoking special powers specific to states of emergency without formal declaration, having recourse to military, special, or emergency courts, not observing the principle of proportionality between the severity of the measures taken and the situation concerned, and employing vague definitions of offences allegedly designed to protect State security and combat terrorism" (A/HRC/7/4, para. 59).

The government of Thailand has claimed to be complying with the Covenant in the application of its state of emergency. In an announcement dated 29 June 2010 posted on its website, the Ministry of Foreign Affairs, Thailand responding to an open letter of the Asian Human Rights Commission (AHRC) on the reported shackling of detainees under the state of emergency imposed via the Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005) wrote that,

> "The fundamental human rights of those arrested during the protests by the United Front for Democracy against Dictatorship (UDD) have been fully respected in accordance with the Thai Constitution and within the parameters of the International Covenant on Civil and Political Rights (ICCPR) and other relevant international human rights instruments to which Thailand is a party. Indeed, the Emergency Decree contains various safeguards that prevent any arbitrary actions by state officers."

This statement is remarkable, because in fact the Emergency Decree was from the start explicitly intended both to guarantee state officers impunity for arbitrary actions, and to place actions under its auspices firmly outside the parameters of the ICCPR. This has been the opinion not only of the AHRC since the law for issuance of states of emergency was passed in 2005 by Thaksin Shinawatra, but also of United Nations experts who monitor compliance with international law. The UN Human Rights Committee, which is responsible for reviewing state parties' human rights records in terms of the ICCPR, wrote clearly with regards to the law back in 2005 at time of its introduction that:

> "The Committee is concerned that the Emergency Decree on Government Administration in States of Emergency which came into immediate effect on 16 July 2005... does not explicitly specify, or place sufficient limits, on the derogations from the rights protected by the Covenant that may be made in emergencies and does not guarantee full implementation of article 4 of the Covenant. It is especially concerned that the Decree provides for officials enforcing the state of emergency to be exempt from legal and disciplinary actions, thus exacerbating the problem of impunity. Detention without external safeguards beyond 48 hours should be prohibited (art. 4). The State party [Thailand] should ensure that all the requirements of article 4 of the Covenant are complied with in its law and practice, including the prohibition of derogation from the rights listed in its paragraph 2. In this regard, the Committee draws the attention of the State party to its general comment No. 29..." (CCRP.CO.84, 8 July 2005, para. 13)

General Comment No. 29 interprets aspects of article 4, which allows countries to derogate from their human rights obligations under the Covenant in certain specific circumstances. Among them, it points to the requirement that "the situation must amount to a public emergency which threatens the life of the nation", underscoring that, "Not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation, as required by article 4, paragraph 1" (CCPR/C/21/Rev.1/Add.11, 24 July 2001, para. 2, 3).

The UN Special Rapporteur on the independence of judges and lawyers has explained that for the above criterion to be met, the situation must consist of "an exceptional danger, current or imminent, real and specific, which affects the entire nation to the extent that the measures for restricting or limiting rights allowed under normal circumstances are clearly inadequate" (A/HRC/4/25, 18 January 2007, para. 44). Any departures from the Covenant under a state of emergency must not only be justified by exceptional circumstances but must also be temporary. Once the immediate threat has passed that led to the emergency being imposed, it must be lifted. Again as put by the Special Rapporteur:

> "The principle of temporality implies a close connection between the duration of the state of emergency and the circumstance that gave rise to its introduction. Through violation of the principle of temporality states of emergency become permanent in nature, as a result of which the executive holds extraordinary powers" (A/HRC/4/25, para. 43).

It is doubtful that the protests in Bangkok against which the state of emergency was invoked meet any of the criteria set by international law. Certainly they were threatening to the life of the government towards which they were directed; however, there is no evidence that the life of the entire nation was in any way at risk, and therefore the justification for the state of emergency under article 4 was from the beginning at best tenuous. In any event, the government of Thailand has never taken any discernible steps in response to the recommendations of the Human Rights Committee concerning aspects of the Emergency Decree that are not in compliance with the ICCPR, and indeed it has not taken any discernible steps in response to any of the committee's recommendations, as discussed below. Therefore, for the foreign ministry to claim that it is working within the parameters of the ICCPR through the Emergency Decree is patently false.

The committee's recommendation to the government of Thailand concerning article 4 and the Emergency Decree was carefully noted by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, who on 18 July 2006 issued a press release calling on it "to repeal emergency regulations that violate human rights law". Studying the application of the Emergency Decree in the three southernmost provinces, where it has been in effect since 2005—having been renewed more than 20 times at three month intervals, making an utter mockery of the pretence that it might be a temporary measure—the Special Rapporteur noted that the government had "failed to act on previous calls to bring its emergency regulations into compliance with human rights law" and that,

"The emergency decree makes it possible for soldiers and police officers get away with murder… Impunity for violence committed by the security forces has been an ongoing problem in Thailand, but the emergency decree has gone even further and makes impunity look like the official policy."

Again, there has been no discernible response or change in official policy concerning use of the decree since the time that the Special Rapporteur made this statement, and his analysis stands, as does his request to be able to make an official visit to Thailand, which has been pending for over five years.

Despite the persistent and flagrant violation of international law through application of these states of emergency, and notwithstanding the calls of human rights organizations,

the UN Human Rights Council has remained mute on the rapidly deteriorating situation of human rights in Thailand. This is due in part to the fact that, perversely, the ambassador of Thailand to the Council took over its presidency in the middle of the year, having described the conflict in his country as "settled" (Bangkok Post, 29 June 2010).

The one-year appointment of Thailand's ambassador in Geneva, Sihasak Phuangketkeow, to head the Council was a victory for diplomacy over the human rights that the Council is supposed to uphold, at precisely the time that the government of Thailand needed to block avenues for criticism of its appalling human rights record from abroad.

The new president of the Council is himself an apologist for the perpetrators of rights abuses. Since taking up the ambassadorship at the Human Rights Council three years ago Sihasak has denied the extent and systemic character of rights abuse in his country, as the AHRC already adverted to in its 2009 annual report. And in 2003, Sihasak was government spokesman during the infamous "war on drugs" of the Thaksin government. Sihasak described the operation, in which thousands of alleged dealers were extrajudicially killed, as being conducted "within a legal framework". The perpetrators of killings during and after the "war" have never been brought to justice: the difficulties associated with bringing such cases against police and other persons involved in the killings are discussed below, with reference to killings in Kalasin Province, on which the AHRC has worked closely for a number of years.

Sihasak was elected to the presidency even though the country that he has represented for the last few years in the Human Rights Council has failed abjectly to fulfill any of its obligations under international human rights treaties. The most indicative of these is the set of recommendations that the Human Rights Committee made in 2005, as discussed above. Five years have passed since the committee made its recommendations. Five years should be sufficient time for any state party to the ICCPR with a serious commitment to its provisions to demonstrate some progress. But not only has Thailand abjectly failed to make any progress on the Committee's recommendations, but in a number of respects it has seriously regressed since 2005. Take for instance the recommendations in paragraph 10 of the Committee's findings:

> "The Committee is concerned at the persistent allegations of serious human rights violations, including the Tak Bai incident in October 2004, the Krue Se mosque incident on 28 April 2004 and the extraordinarily large number of killings during the 'war on drugs'. The State party should conduct full and impartial investigations into these and such other events and should, depending on the findings of the investigations, institute proceedings against the perpetrators. The State party should also ensure that victims and their families, including the relatives of missing and disappeared persons, receive adequate redress. Furthermore, it should continue

> its efforts to train police officers, members of the military and prison officers to scrupulously respect applicable international standards. The State party should actively pursue the idea of establishing an independent civilian body to investigate complaints filed against law enforcement officials."

Some politically motivated inquiries were established after the Tak Bai and Krue Se killings, and later into the war on drugs, but none of these led to the prosecution or conviction of perpetrators. Attempts to bring senior army and police officers responsible for the killings to justice have failed, despite ample evidence and legal grounds upon which to rest cases. The families of victims have not received any adequate redress in accordance with international standards. No significant changes have been made to the training of officers so as to protect human rights, although with the culture of impunity prevalent in Thailand such training would make no difference if not accompanied by effective measures for sanctions of perpetrators. The government has at no time actively pursued the idea of establishing an independent civilian body to investigate complaints filed against law enforcement officials, nor is there evidence of any intent to do so in the future. Paragraph 15 is also instructive:

> "The State party should guarantee in practice unimpeded access to legal counsel and doctors immediately after arrest and during detention. The arrested person should have an opportunity immediately to inform the family about the arrest and place of detention. Provision should be made for a medical examination at the beginning and end of the detention period. Provision should also be made for prompt and effective remedies to allow detainees to challenge the legality of their detention. Anyone arrested or detained on a criminal charge must be brought promptly before a judge. The State party should ensure that all alleged cases of torture, ill-treatment, disproportionate use of force by police and death in custody are fully and promptly investigated, that those found responsible are brought to justice, and that compensation is provided to the victims or their families."

Despite becoming a party to the Convention against Torture, the government has failed to make changes to domestic law that would prevent the incidence of torture, punish torturers or provide redress to victims in accordance either with that Convention or with the ICCPR. Alleged cases of torture, ill-treatment and deaths in custody are not investigated in a manner that brings any of the perpetrators to court or secures convictions. Nor are cases of threats or violence against human rights defenders, as the Committee urged in paragraph 19:

> "The State party must take measures to immediately halt and protect against harassment and attacks against human rights defenders and community leaders. The State party must systematically investigate all reported instances of

> intimidation, harassment and attacks and guarantee effective remedies to victims and their families."

The resounding failure of the Government to resolve the single-most important case of a targeted human rights defender in recent years, the police abduction and presumed killing of lawyer Somchai Neelaphaijit, is indicative of its non-compliance with this recommendation. It also speaks to the deep, entrenched, institutionalized impunity that law-enforcement officers in Thailand enjoy, as the case has dragged on over successive competing administrations without any satisfactory answers for his family, whose members have themselves been subject to repeated threats and harassment: the subject of the next section.

No truth, no justice, no protection

While various groups and individuals claim to be searching for the truth and justice for the victims of the political violence in Thailand during 2010, the elusive nature of truth and justice in Thailand even in far simpler cases that have been in plain view for a long time speaks to the enormous obstacles for victims and human rights defenders seeking answers and redress.

The case of abducted human rights lawyer Somchai Neelaphaijit is in a great many respects emblematic of the institutional refusal to entertain seriously claims to truth and justice of victims of gross human rights abuse in Thailand. More than six years after police abducted Somchai and presumably killed him, his family still has obtained neither the truth—despite the fact that many state officials, including the former prime minister, Thaksin, appear to know what happened—nor justice.

On 24 September 2010 the Criminal Court in Bangkok was scheduled to read out the verdict of the Appeal Court in the case against five police officers related to Somchai's disappearance, in which one of the five, Pol. Maj. Ngern Thongsuk, was convicted of coercion—there is no offence for the forcible abduction and disappearance of a person in Thailand—and sentenced to three years' imprisonment. However, Ngern appealed the sentence and obtained bail. In the meantime, on 19 September 2008 he mysteriously disappeared in an accident; his family has claimed that he is dead, but human rights defenders familiar with the case suspect that he may have faked his death and with the assistance of other police has changed his identity and gone into hiding, since his body has never been recovered.

As two years had passed since the convicted police officer's purported accident, just days before the Criminal Court was due to read the appeal court verdict the family lodged an application for the officer to be declared legally dead. When Ngern's lawyer came to the

court, he then requested that the court remove Ngern from the list of defendants on the ground that he was no longer alive. Consequently, the court failed to read the verdict as scheduled, instead referring the matter back to the Appeal Court for its consideration.

The Department of Special Investigation (DSI), Ministry of Justice has meanwhile failed to make any further progress into the case of Somchai's disappearance, or the alleged police torture of his clients, Mr Makata Harong, Mr Sukree Maming, Mr Manasae Mama, Mr Suderueman Malae and Mr Abdulloh Abukaree. Indeed, the plight of these five men is indicative of the extent to which the criminal justice system works against the interests of victims of gross human rights abuse, even when giving the pretence of the contrary. Of the five, Sukree is still under detention charged with attempted murder, as he awaits a Supreme Court decision on his case. Another, Abdulloh, had been under the DSI's witness protection programme, but when he returned to his home in Narathiwat Province he too was abducted, and he has not been seen since 11 December 2009. The lives of the others have all been deeply and irrevocably affected by the failure of the state to resolve the case of Somchai, or to bring their torturers to justice.

Although the DSI presented an investigation report on their alleged torture to the Office of the National Counter Corruption Commission (NCCC), which subsequently called for more than 10 police officers to be investigated, instead of action being taken against the police, one of the remaining victims has instead himself been charged with making a false statement and is facing criminal charges. Pol. Maj. Gen. Chakthip Chaijinda lodged a charge against Suderueman for allegedly giving false information, but the Criminal Court rejected it. Now another case has been lodged and accepted, this time from Pol. Gen. Panupong Singhara na Ayutthaya, who in October 2010 was promoted to the post of deputy police commander for the entire Royal Thai Police. According to Suderueman, both Pol. Gen. Panupong and Pol. Gen. Chaktip were among the group who tortured him and the other four victims.

As commissioner of Police Region 5, Pol. Gen. Panupong in 2005 defended his officers against allegations that three detainees in a police station in Lamphun had been murdered rather than having simultaneously committed suicide by hanging themselves, as the police insisted. Having successfully covered up the crimes of police murderers, he is now doing the same for police torturers—among them allegedly himself—going after Somchai's clients apparently in order to further undermine the case against the police over the lawyer's disappearance, to discredit the legal process, and further threaten and psychologically traumatize the victim. As a result of these developments, Angkhana Neelaphaijit, wife of Somchai and head of the Justice for Peace Foundation, submitted a letter to Mr. Wicha Mahakhum of the NCCC to request the NCCC not to send the testimony of the defendants contained in the investigation report to the plaintiffs, as requested, since to do so would pose a further threat to their already jeopardized security.

The case of Somchai Neelaphaijit and his clients is just one instance of how persons who have attempted to challenge the impunity of the police in Thailand have themselves ended up exposed and threatened. In every case where ordinary citizens and residents of Thailand have taken on the police that the AHRC has documented to date, in whatever part of the country, and irrespective of other factors, the police have escaped culpability and the victims have themselves been made to pay the price for their demands for truth and justice.

Angkhana Neelaphaijit

The cases of alleged forced disappearances and extrajudicial killings in the northeastern province of Kalasin during and after the so-called "war in drugs" in 2003 are indicative. Out of at least 28 alleged victims of police killings in this period, so far only the case of Mr. Kiettisak Thitboonkrong has reached court, thanks to the tireless efforts of relatives and supporters and due to the presence of an eyewitness who could verify that police denials of responsibility contradicted the facts on the night of his disappearance.

Kiettisak Thitboonkrong

The six defendants in this case, Pol. Snr. Sgt. Maj. Angkarn Kammoonna, Pol. Snr. Sgt. Maj. Sutthinant Noenthing, Pol. Snr. Sgt. Maj. Phansilp Uppanant, Pol. Lt. Col. Samphao Indee, Pol. Col. Montree Sriboonloue, and Pol. Lt. Col. Sumitr Nanthasathit, have been released on bail awaiting the outcome of the trial, and both the relatives and eyewitness have been subject to continuous threats, and the latter is under protection. Meanwhile, observers of the trial process have complained that the prosecutor has failed to undertake responsibilities properly. They cite his not knowing which witnesses were called to appear on a particular day and evidently not having fully read the case briefs or having prepared arguments adequately as examples of his poor performance. The accused also have manipulated the court process without criticism or sanction by the judge: for example, the eyewitness had identified Pol. Snr. Sgt. Maj. Angkarn as present in the police station when Kiettisak disappeared. On the day of her giving testimony, a court monitor for the AHRC observed that the accused officer came to the court in a black jacket and sat behind the eyewitness, making sure that she had seen him there. He then switched clothes and location with another man, and when the witness was asked to identify him in court she promptly

turned and pointed to the other man who was wearing the jacket and sitting in the same place that the accused officer had been located.

Such behaviour by police in court is aimed at undermining the credibility of the prosecution case against them, but the effect it has is also to undermine the credibility of the judicial process itself, since it becomes clear to everyone concerned that the police can run the show even in the courtroom, and without receiving so much as a warning from judicial officers. Other high profile cases where the capacity of the police to obstruct a reluctant judiciary, usually with the complicity of the prosecution, include the case of Imam Yapa Kaseng, who died in a police vehicle parked at an army compound in March 2009, and the Krue Se and Tak Bai killings of 2004. Each of these cases has languished with the prosecutors' office after flawed coronial inquiries conducted at provincial courts.

In the case of Imam Yapa, the Narathiwat Provincial Court on 2 September 2010 concluded regarding the criminal case that his wife brought against five army personnel and a policeman responsible for the torture and death in custody of her husband on the basis that they were acting in accordance with regulations and because so far as the soldiers were concerned the matter would have to go to a military court; however, only military officials, not private citizens, can initiate cases in a military court. Imam Yapa's wife is appealing the verdict.

Meanwhile, according to sources of the AHRC, the prosecutor has reportedly recommended that no charges be lodged against any officials over the deaths of 85 men during and after the protests outside the Tak Bai police station—78 in army custody—on the grounds that there is insufficient evidence to hold any one official culpable. This is despite the literally thousands of witnesses that could be called to testify, including over a thousand survivors and hundreds of state officers, and the existence of extensive video footage of the events, which clearly shows officials on the scene shooting, assaulting detainees, and forcing arrested men to lie face down with arms tied behind their backs first on the ground and then in the trucks in which they were transported to an army camp in another province, in which the 78 suffocated and died. The inevitable conclusion to be reached from all of this is that, in a case where the state officers do not actually want to investigate anything then of course there is no evidence to be collected or brought to court.

As the state has failed to discharge its responsibilities and bring anyone to justice for this act of extraordinary violence, relatives of survivors of Tak Bai, among others, have sought the help of the National Human Rights Commission (NHRC) of Thailand, which under the 2007 Constitution has the power to bring cases directly to court. The AHRC has learned that a complaint to the NHRC from the Tak Bai relatives is one among dozens that is languishing in sub-committees of the commission, awaiting action. However,

there are few causes for optimism or for expectation of action any time soon, since the commission comprises not of human rights defenders but apologists of human rights violators, of elite anti-human rights sections of the society in Thailand, and of at least one named human rights violator, as discussed further in the next section.

When will the UN downgrade the NHRC?

Since the time that the new National Human Rights Commission was established under the 2007 Constitution of Thailand in 2009, the Asian Human Rights Commission has called for its international standing to be downgraded and for its removal from participation in United Nations forums on grounds that it no longer complies with the minimum standards for national human rights institutions under the Paris Principles, whether in terms of process of selection of the commissioners or their composition. The commissioners include among them a senior police officer, two bureaucrats and a businessman whose sole contribution to human rights prior to appointment was to be named as a violator in a report of the previous commission. None of the commissioners have a track record of advocacy and promotion of human rights, and only one has any credentials to suggest himself to the body.

It is therefore not surprising that the NHRC has failed to play a meaningful role to address any of the serious, persistent and entrenched obstacles to the enjoyment of human rights in Thailand, let alone any of the serious problems that it faced as a consequence of political violence in 2010. Whereas a functioning national human rights institution might have been expected to intervene to a maximum possible extent in the events of April and May, the abject failure of the extant commission to play any kind of meaningful role in these events speaks to what can only be charitably described as its irrelevance to the situation of human rights in Thailand. In fact, the only notable contribution of the NHRC at the time was for one commissioner to make a public statement to the effect that owners of businesses and other persons who had suffered losses due to the destruction of property could submit complaints to the NHRC and the commission would assist them to obtain compensation. Persons without property whose lives were lost or rights otherwise grossly violated in the course of the violence and subsequent crackdown on anti-government protestors were apparently not within the commission's narrow range of vision; nor do they appear to have fallen within it at any time since.

The role of the NHRC as an agency to trivialize rather than uphold human rights in Thailand was clearly illustrated in October 2010 in the response of one commissioner to the flip flops case brought under the state of emergency which has been described above. According to a report on Prachatai, National Human Rights Commissioner Paiboon Varahapaitoon said that by putting the face of the prime minister on the flip flops, the manufacturers and vendors had violated his human dignity as guaranteed under

the constitution. Therefore, the former judicial bureaucrat and drafter of the regressive 2007 Constitution said it was right for the case to go to court. Paiboon has not, to the knowledge of the AHRC, made any interventions concerning the rights of the victims of political violence in 2010, the fundamental civil rights of the vendor that have been violated under the absurd and nebulous provisions of the Emergency Decree, or for that matter made any intervention of any importance on any matter of human rights in his country. But in this he is merely representing the elite-centred, anti-human rights and anti-poor perspective of his commission as a whole, and reflecting its dysfunctional organizational culture, which is now completely dominated by bureaucrats, police and other persons aligned to the interests of state agents and agencies, rather than the public interests that the commission is supposed to represent.

In its voluntary but empty pledges to the UN Human Rights Council during its campaign for election to the council in 2010, the government of Thailand stated in paragraph 4(a) with regards to the NHRC that,

> "In order to strengthen the Commission's work, the 2007 Constitution has given the Commission additional mandates for the protection of human rights. These are the power to submit cases to the Constitutional Court and the Administrative Court when it is found that the provisions of any law, rule, order or administrative act are detrimental to human rights, and the power to bring cases to the Court of Justice on behalf of victims of human rights violations."

The statement is correct, and yet also it is a precise illustration of how government commitments to international human rights bodies are empty of substance, since at time of writing only a single case out of the hundreds of complaints that the commission is know to have received has been submitted to the Administrative Court. From observance of the human rights situation in Thailand during the last few years it might be presumed that the commission would be concerned to submit as its first case one on an important and pressing human rights issue, such as the hundreds of unaddressed extrajudicial killings during the "war on drugs" or the violence in the south. Yet the case that the commission took as its flagship relates not to any of these topics but to the petition of a student disqualified from sitting a medical exam due to incomplete application papers.

Although this case might be one of special concern to the student, it is hard to see how it fits with the criterion that the chairwoman of the commission has, according to AHRC sources, set for the consideration of cases to go to court: that they be of special relevance to the human rights situation of the country as a whole. It also again throws up questions about the NHRC's priorities, given that there are at least 20 cases of serious miscarriages of justice reportedly pending with the subcommittee on justice issues, none of which is known to have proceeded to the stage of investigation or report-making, let alone to the

point that it might get submitted to court. The inference that human rights defenders and others concerned with human rights in Thailand can but draw is that the student whose case the NHRC has chosen to champion is a person with rights to protect, whereas the flip flop vendor, the victims of torture who are now being accused of lying, the victims of extrajudicial killings in Kalasin and countless others in Thailand whose rights have been grossly and flagrantly violated are not.

The UN Human Rights Committee in its 2005 findings cited above stated in paragraph 9 that:

> "The State party should ensure that recommendations of the National Human Rights Commission are given full and serious follow-up. It should also ensure that the Commission is endowed with sufficient resources to enable it effectively to discharge all of its mandated activities in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)."

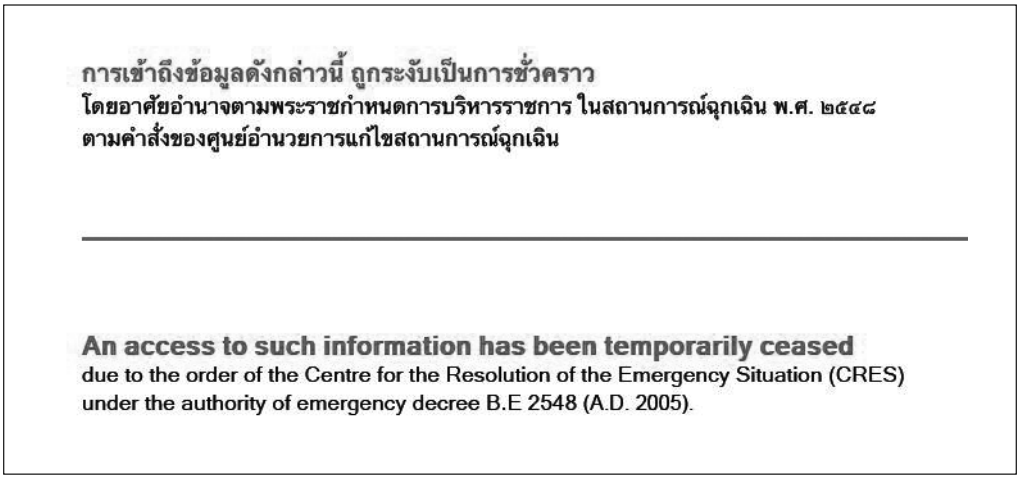
Despite these observations and despite the National Human Rights Commission's persistent non-compliance with international standards, at the time of writing the United Nations had not yet downgraded the NHRC of Thailand and removed it from an active role in UN bodies. It is difficult for the Asian Human Rights Commission to ascertain as to why it has so far failed to take this step, for the NHRC is not only an embarrassment to the people of Thailand but for as long as it is entitled to participate in United Nations forums a blight on the international human rights system as well.

Defence of the realm through elimination of middle ground

As the political situation in Thailand has become more polarized, not only have state agencies pursued persons perceived as threats to the established order but also persons occupying the middle ground, ultimately with the effect that any middle ground is itself being eliminated. Independent voices and actors have also been targeted in increasingly frequent, increasingly cynical and increasingly ridiculous criminal actions that are having the effect of greatly reducing the opportunities for sensible and informed debate on the serious problems that the country is facing, as well as pushing the judicial system further and further into a system for the pursuit of blatant political ends through superficially legal means.

Almost immediately after the state of emergency came into effect on April 7, the authorities responsible for its enforcement issued orders to block and shut down some 36 websites. Most belonged to or were closely aligned with the anti-government protestors, but among them were the independent news and commentary sites Prachatai and

Fah Diew Kan (Same Sky), and its affiliate. An attempt by Prachatai to launch a legal challenge to the block of its site and claim damages was thrown out of court without even a single witness being examined on the ground that the block was in accordance with the ample terms of the Emergency Decree. At time of writing, some of these sites are partly or fully operating, or are operating on mirror sites. Some can be accessed outside Thailand, but not in the country. Persons in Thailand attempting to access not only the main sites of these groups but also archived contents on third party sites are met with a message indicating that the contents are informed that access to the information at the address has "temporarily ceased" under the Emergency Decree.



Message posted on websites blocked under the Emergency Decree

As the AHRC wrote in its 2009 report, the director of Prachatai, Chiranuch Premchaiporn, has been made the subject of a series of criminal cases under the Computer Crimes Act and also for lese-majesty under the Criminal Code. On the afternoon of 24 September 2010, immigration police at Suvarnabhumi Airport suddenly detained Chiranuch, who was just returning to Thailand from a conference on Internet freedom. After being detained, she learned that she was to be taken to Khon Kaen province, in the northeastern part of Thailand, in response to a warrant issued by police there. However, the arresting officers declined to tell her the nature of the charges against her. After being driven to Khon Kaen, interrogated and formally charged, she learned of the charges and was released on bail. She must report back at the same police station monthly. Her trial will begin in February 2011 and she faces a possible total sentence of 80 years' imprisonment. Meanwhile, Prachatai has been forced to shut down its web chat board to avoid possible further charges against its staff or persons using the site.

Chiranuch Premchaiporn

The lese-majesty charges against Chiranuch were made not over anything that she herself did but for her failure to remove comments that were posted to the site that she manages. These comments, which the AHRC has seen, are not of a violent or threatening manner. What appears to be the crime of the author, rather, is that he or she writes about the institution of the monarchy and specific individuals within the institution in an informal and intimate fashion. Using slang words to refer to the institution as well as specific individuals within it, and coarse words to describe their actions, the author of the comments questions the forms of power exercised by and involvement in politics of the institution. Rather then preserving the distance and untouchable hierarchy between the ordinary citizen and the institution, the author writes about the members of the institution as if they too are ordinary, and subject to observation and criticism. That she has been singled out because of the character of the website has all along been obvious, and even more so given that Internet service providers hosting sites with allegedly anti-monarchy contents—which have increased dramatically in number in recent times—have not also faced charges but have been asked to cooperate with the government. On the other hand, in a surreal extension of the same principle used to charge Chiranuch and a further sign of the resurgent internal security state, Meechai Ruechupan, an ultra-conservative senior lawyer who has been close to successive military regimes in Thailand and was among the drafters of the regressive 2007 Constitution, reportedly recently told journalists that a petrol station owner who knowing about anti-monarchy graffiti in his toilet failed to remove it could also plausibly be prosecuted for lese-majesty.

This last story is striking, since in its voluntary commitments to the Human Rights Council the government of Thailand acknowledged under its point 10 that there had been "instances when the lèse-majesté law might have been too liberally interpreted and abused by individuals" but added that a "review process is also underway to study aspects that should be improved and the best way to enforce the lèse majesté law with fairness". The problem is, of course, that the lese-majesty law is not a law that has been designed to be enforced with fairness. It is not a fair law. In fact, it is a law that has been designed not to be enforced at all, but to frighten people from saying or doing anything that would require its enforcement. In the current highly conflicted political situation in Thailand this is untenable, and consequently not only is the law being used but used with increasing frequency, including, for instance, in at least one case concerning alleged lese-majesty through the use of messaging on a mobile phone.

The case of Chiranuch and others like it aimed at silencing independent voices in Thailand is another example of how the government of the country with an ambassador currently holding the UN Human Rights Council presidency has not only ignored but gone directly against the advices of the Human Rights Committee in 2005, in this instance in paragraph 18 of its report, in which the committee wrote that

> "The State party should take adequate measures to prevent further erosion of freedom of expression, in particular, threats to and harassment of media personnel and journalists, and ensure that such cases are investigated promptly and that suitable action is taken against those responsible, regardless of rank or status."

However, it is not only through attacks on online media and other channels for communication and communicators whom the state finds problematic that the middle ground is being eliminated, but through the pursuit of equally ridiculous criminal cases—given the context in which they are being prosecuted—against practically anybody who is either not cheerleading for the incumbent government or staying silent.

One example of such a case is in the criminal prosecution of 10 civil society activists who on 12 December 2007 climbed the fence of parliament when a military-appointed legislature was in its final hours, aiming to pass an odious Internal Security Act under cover of an interim undemocratic constitution. Whereas the leaders of crowds of persons who barricaded themselves into Government House for three months and then the international airport for a week during 2008 in protest against an elected civilian government—resulting in massive destruction of property and deaths and injuries—have not been brought to court to face charges for their actions, this group of 10 persons who briefly entered the parliamentary premises to protest the authoritarian actions of an unelected army-backed assembly—causing no damage to public property nor injury to any person—are being tried for a package of alleged offences. The trial of the 10, which opened on 2 November 2010, includes allegations that despite the entirely peaceful nature of their protest they acted to

"bring about a change in the laws of the country or the government by the use of force or violence" and sought "to raise unrest and disaffection amongst the people in a manner likely to cause disturbance in the country". The offence carries a penalty of seven years' imprisonment.

Thus, in today's resurgent internal security state of Thailand a peaceful protest from the middle ground may land the protestor in jail for at least seven years, and the establishing of a website for the voicing of independent opinion can risk the site director half a century of prison time. But to abduct and kill a human rights defender carries

the prospect of no more than a year or two behind bars—if the perpetrator can even be brought to court—and the assault, torture and sharp-shooting in the name of the Kingdom of red-shirted protestors armed with catapults, fireworks, sharpened sticks and smelly fish is an act of bravery, deserving not of punishment but of promotion.

The Asian Human Rights Commission's (AHRC) 2010 annual report comprises an in-depth assessment of the state of human rights in eleven Asian nations: Bangladesh, Burma, Cambodia, India, Indonesia, Nepal, Pakistan, the Philippines, South Korea, Sri Lanka and Thailand.

The AHRC works on a wide range of civil, economic, social, cultural and political rights and analyses how violations are perpetrated, as well as the extent to which victims of violations are able to seek justice and redress through the different national legal systems. In identifying obstacles to justice and those that permit impunity for perpetrators of grave human rights abuses, the AHRC gains a picture of the functioning of different countries' legislative frameworks and institutions of the rule of law – notably the police, prosecution and judiciary – and recommends reforms to these to enable the more effective protection of human rights.

Issues such as endemic torture by State agents, forced disappearances, extra-judicial killings, discrimination, corruption, violence against women, hunger and violations of the right to food, land-grabbing and forced evictions, press freedom, freedom of assembly and freedom of expression, are all of major concern. The AHRC documents grave violations associated with these issues in the majority of Asian countries. In this report, the AHRC presents in detail the human rights violations and systemic failings in eleven different national contexts in Asia, in order to show the particularities of each, as well as the many common elements between them. Without a precise understanding of the systems that underpin situations in which grave and widespread human rights violations can take place with impunity, it is impossible to effectively address such problems. Through its work, and this report, the AHRC hopes to contribute to the understanding of the systems of abuse that prevail in Asia, in the hope of contributing towards the greater protection of rights, improved and more predictable governance, and justice for Asia's many victims of grave human rights violations.

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