Decades of Injustice

ASIA REPORT 2014

Adikhari Couple, 2014

ASIAN HUMAN RIGHTS COMMISSION

ASIA REPORT

2014

Decades of Injustice

Asia Report 2014

A Report by the

ASIAN HUMAN RIGHTS COMMISSION

on

Bangladesh • Burma

India • Indonesia • Nepal

Pakistan • The Philippines

Sri Lanka

ASIAN HUMAN RIGHTS COMMISSION (AHRC)

*The **Asian Human Rights Commission** (AHRC) works towards the radical rethinking and fundamental redesigning of justice institutions in order to protect and promote human rights in Asia. Established in 1984, the Hong Kong based organisation is a Laureate of the Right Livelihood Award, 2014.*

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PREFACE

The Annual Human Rights Report of the Asian Human Rights Commission (AHRC) is the summary of the AHRC's findings about the human rights situation in the countries where the organization operates. The AHRC is a regional human rights group that closely works with partners in Sri Lanka, India, Nepal, Bangladesh, Burma, Pakistan, China, Cambodia, the Philippines, Thailand, Indonesia, and South Korea.

The findings in this report are the result of the AHRC's close partnership with human rights groups in Asia, with daily engagement and close follow-up of human rights abuses reported through the AHRC's Urgent Appeals Programme. Through this work, the AHRC and its partners have identified that the functioning of the criminal justice process in Asian states suffers from serious defects. These defects vary in intensity between countries, but are a situation common to all.

In 2014, apart from this daily engagement, follow-up, and analysis, the AHRC, along with its sister concern, the Asian Legal Resource Centre, has held a series of consultations with Asian human rights defenders and parliamentarians, on how various stakeholders, especially civil society, can better engage with the fundamental human rights issues in the region.

What is known as the justice framework in Burma, for instance, exists to cater exclusively to the military junta in that country. For the past 67 years, Burma has never had an independent judiciary or an enabling environment within which institutions of justice could function independently. So much so, what exists in Burma today is a justice amnesia affecting the country's lawyers, litigants, prosecutors, and judges.

On the contrary, justice institutions in Sri Lanka, particularly the judiciary, were on a slow path of advancement and independence. The process was thwarted however, by at least two decades of direct and indirect interference in judicial independence by successive governments. Today, the situation is such that unless the incumbent government prioritises justice institution reforms, Sri Lanka could see yet another dictatorial regime take control.

Many who watch Pakistan closely believe, even though a civilian government is in power at present, the military is still in control, particularly concerning the

independence of justice institutions. In Nepal, justice institutions do not have adequate legal or financial resources to undertake basic day-to-day functions. In the Philippines and Indonesia, what is known as the justice process is clearly biased in favour of the rich and politically powerful. In Thailand meanwhile, no independent institutions exist after the military coup.

For reasons apart from State interference, justice institutions in India as well are clearly biased in favour of the rich and politically connected. The Indian justice process is notorious for its corruption and delays. The situation is such that most of the Indian population do not trust their justice institutions.

Without adequately functioning justice institutions, human rights guarantees will remain like a picture drawn on water. Human rights, as a concept, are only valuable to the extent to which individual rights are justiciable.

Even though most Asian states place primacy on guaranteeing human rights to their people, they all turn a blind eye when its comes to establishing independent justice processes at the domestic level that can breathe life into the guarantees made. In countries where the AHRC operates through its partners, this is the central issue that the AHRC and its partners have found most challenging to engage with. It is challenging not only because states refuse to engage on the issue, but also due to the lack of understanding within civil society in the region and internationally.

This report is therefore an attempt to draw the attention of the reader to the primacy of justice institutions, which are gravely lacking in Asia. We hope that the cases cited and the analysis provided in the report will be a catalyst to start a new debate on Asian human rights issues, where justice institutions are understood, their existing functioning and purposes debated, and pushes for reform made, without which there can be no improvement in human rights standards in Asia.

We wish to thank all our partners and donors who have stood by us in our endeavour to recalibrate the Asian human rights debate, a goal towards which this report is yet another milestone.

Bijo Francis

Executive Director
AHRC, Hong Kong

Chapter I

BANGLADESH

Rights Disappear
in Governance Abyss

BANGLADESH

Rights Disappear in Governance Abyss

Introduction

The enjoyment of human rights has disappeared from people's life in Bangladesh. After the illegitimate authoritarian government retained office through the sham 5 January 2014 election, the incumbent government has relentlessly impinged upon the rights of citizens. Basic freedoms that are universally recognized and constitutionally enshrined are now non-existent in Bangladesh. Repressive laws and arbitrary amendments to the Constitution have taken away even the rights that were once guaranteed on paper. The exercising of any freedom and any rights depends entirely on one's political and economic status in Bangladesh; exercising the right to freedom of expression by an ordinary person, or by someone who is a supported of any opposition party, will lead to fabricated criminal charges, detention, and imprisonment.

Policing in the country involves arbitrary arrest and detention, and fabrication of criminal cases. Law-enforcement agencies shoot detainees in their limbs in order to cause permanent physical disability. Endemic torture persists, without any punishment for perpetrators, or remedy for victims, and state agents use all manners of torture as tools of extortion. The anti-torture law passed by Parliament has been rendered useless, both by the government and by civil society groups.

The police directly shoot people participating in peaceful processions conducted by political opponents. Extrajudicial executions are the continuing order of the day, and are given labels synonymous with killings in "crossfire". Enforced disappearances are increasing in Bangladesh day-by-day. The terror this is creating in society will persist for generations. The police, who refuse to register cases, manipulate the complaint mechanisms. Subsequent intimidation and threat for those with the temerity to make a complaint has created further panic in society.

Meanwhile, prosecutors and state attorneys continue to be recruited from the political cadres of the ruling parties to benefit the regime, rather than to uphold the rule of law. The Judiciary decides cases on the basis of the political identities of litigants and their attorneys, in order to please ruling authorities. The Election Commission and the Anti-Corruption Commission are also eager to uphold the partisan agenda of the incumbent government. All of Bangladesh's state institutions are politicized to the extent that they are unable to undertake their true function of serving the people.

Telephone tapping and spying into computers and private Internet communications is legalized in the name of "national security". Workers are denied their fundamental living expenses and regularly become victims of fabricated cases coupled with repression. Violence against women of all ages is manifest. This, in sum, is the state of human rights in Bangladesh in the year 2014.

ICCPR, Article 9

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

2. *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*

3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*

4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*

5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

Right to Liberty & Security of Person

Deprivation of the fundamental rights of personal liberty and security is the way of law-enforcement in Bangladesh. The law-enforcement agencies, the police, and the Rapid Action Battalion (RAB) in particular, arrest people at will and detain them arbitrarily every day. Intelligence agencies also detain people in their detention centers, some of which are known, others secret. Such acts are committed without legitimate warrant from a competent court.

The law-enforcement agencies keep detainees in prolonged detention by distorting their official records in the police stations. The agencies often deny their actions of arbitrary arrest and detention of persons when relatives approach police stations or the camps of the RAB. The question of guaranteeing legal representation of the detainees' choice is unthinkable in Bangladesh. Appearance of the detainee before a competent Magistrate's Court within twenty-four hours depends on the victim's capacity to influence the police through bribery or political pressure. The systemic lack of holding the law-enforcement agencies accountable perpetuates the practice of detaining people arbitrarily. Such infringement of fundamental rights continues despite there being no official proclamation of a state of emergency in the country.

The arbitrary arrests take place mostly due to the chain of corruption within the law-enforcement system. The more the police arrest, the more they earn through extortion and torture. Threats of fabricated charges are used to extort money from victims and their relatives. There are two types of victims of arbitrary arrest and detention: ordinary poor people and political opponents.

Activists of the opposition political parties are regularly detained on fabricated charges. In fact, the incumbent government and the police randomly use the excuse of "conspiracy" against the regime in arresting political leaders and activists. Apart from the regular pattern of arbitrary arrest, law-enforcement agencies arrest hundreds of opposition supporters and ordinary people whenever any political programme protesting against the government is announced.

The trend has reached a level where the police arrest ordinary citizens who do not have any political affiliation, and brand them as opposition activists, as if arresting and detaining the opposition is de facto acceptable. The Judiciary ratifies and justifies such arrests and detentions. Without any credible evidence, the detainees are accused of being involved in "sabotaging" the government.

Different draconian laws like the Anti-Terrorism Act, 2009, Special Powers Act, 1974, and the Information and Communications Technology Act, 2006, are

used to detain people. In all cases, the police bargain with detainees for a higher amount of bribe. Partial or insufficient payment invariably annoys the police or the RAB, and entangles the detainees in prolonged harassment. The law-enforcement agencies implicate the detainees that fail to meet their demands in pending cases, if the victims are lucky. The unlucky victims are eliminated in extrajudicial executions.

The majority of the victims of illegal arrest and arbitrary detentions are poor. If they are implicated in false cases, they languish in prisons for months and years without any remedy, as they cannot afford to pay litigation costs and bribes.

ICCPR, Article 10

1. *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

2. *(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;*

   (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. *The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.*

Right to Human Dignity of Persons

The pattern of arbitrary detention contributes to overcrowding the prisons of Bangladesh. The 67 prisons in Bangladesh have a capacity of 28,000 persons; however, Bangladesh prisons have around 80,000 detainees, including convicts. Apart from this there are uncounted numbers of detainees in the country's 630 plus police stations, the dozens of camps maintained by the Rapid Action Battalion, and in the undisclosed number of secret and private detention centers operated by the intelligence agencies.

The right to security of detainees is presently inconceivable in Bangladesh, with endemic torture and extrajudicial executions being the norm. The basic and inherent dignity of the detainees is systematically denied in numerous ways.

Severe forms of inhuman and ill-treatment are integral to the law-enforcement and prison management system.

Humiliation of the detainees takes place systematically in all courts in the country. For instance, the detainees are primarily kept in court lockups before the hearing of the individual cases start, and during the period between the post-hearing and departure for the prison, where there is no proper place to even sit. In the courtrooms, the detained defendants are deprived of the ability to even sit; they are bound to stand at the time of the hearing of their cases. The only exceptions are the hearings of high profile cases in which the political and financial elites face trial as defendants.

Another humiliation to be suffered by detainees is the police and paramilitary forces identifying them as "criminals", even though many of the complaints are fabricated. Subsequently, detainees are exposed before the print and electronic media during the process of an investigation or even before the investigation, where the police and paramilitary version is parroted. This causes serious social stigmatization to the detainees, even though many end up acquitted by the end of the trial.

In prison, pre-trial detainees, who are detained in fabricated cases or whose investigation is yet to be conducted, are detained in the same cell as convicted prisoners. The conditions in the overcrowded cells are inhuman and amount to the denial of human dignity.

ICCPR, Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Right Against Torture

Despite torture and custodial deaths having been criminalized in October 2013, policing and torture are inseparable in Bangladesh. There are multiple justifications for the torturous policing system commonly cited. The use of colonial laws even after 43 years of independence is often blamed as one of the main reasons of the practice of torture; people are also blamed for being "illiterate" and "unaware" of the law; and it is argued that criminal suspects do not "confess" their crimes to the police unless tortured.

Other excuses given by the police to justify their use of torture are: the police to public ratio (one policeman for 1065 people, as of 2012[1]); the insufficient logistic facilities and poor salaries provided to the police; the 16-18 hour work day; the protocol duties for VIPs; long detachments away from family, due to accommodation shortages; and constant political intervention in the policing system.

Torture victims, meanwhile, observe that the Bangladesh police are mad after money; torture is one of the default tools that the police use to extort the people of Bangladesh. Torture is a must in day-to-day policing in Bangladesh today. It has been found that extortion and bribery are an integral part of the law-enforcement system. Every step, such as registering a General Diary Entry or a complaint, adding or removing one's name from the list of accused of a criminal case, getting the police to investigate a case or recovering a body for autopsy, or getting a police report in one's favour, all requires bribes. Law-enforcement agents such as those under the Rapid Action Battalion (RAB) can be hired as killers to murder persons for financial and political interests.[2]

It is impossible to find a person in Bangladesh who was arrested but not tortured by law-enforcement agents. More than a million people are tortured every year in Bangladesh. There is an underground economy maintained by the law-enforcement agencies in Bangladesh. Each torture victim is forced to pay bribes that may amount to billions of Taka per year. This overwhelming reality has not merited the attention of policy-makers and researchers, although the financial life of Bangladeshi citizens remains crippled by this brutal system. Similarly, the mental health of Bangladeshis continues to remain abysmal, due to the torturous and fearful law-enforcement system that persists in the country.

Torture exists in Bangladeshi society because each incumbent regime likes what it can do. The rulers of successive regimes have all used torture to silence their opponents. The recruitments, promotions, and postings in the law-enforcement agencies are decided mostly based on the candidates' previous record of torturing persons and their ability and willingness to use torture against opponents in the future. For example, Mr. Harun-ur Rashid, an Additional Deputy Commissioner of the Dhaka Metropolitan Police has been promoted to the post of the Deputy Commissioner of Police. He publicly tortured Mr. Zainal Abedin Farooq, a former Chief Whip of the Opposition.

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1 http://www.police.gov.bd/userfiles/file/Statigic_Plan_14-11-12_color_print.pdf

2 http://www.scoop.co.nz/stories/WO1405/S00124/bangladesh-chains-of-corruption-strangle-nation.htm

Chapter II

BURMA

True Democratic Reform
Impossible Without Rule of Law

BURMA

True Democratic Reform Impossible Without Rule of Law

Introduction

Burma has been undergoing political reform since 2010,after decades of military rule. A general election is scheduled in 2015, which its citizens hope will be free and fair. In 2014 alone, however, large numbers of journalists, rights activists, farmers and peaceful protesters have been sentenced to jail. Their basic freedoms have been threatened, including freedom of expression, while there is no guarantee for their right to life. Journalists and peaceful protesters have been targeted by the authorities ahead of the election.

State media censorship officially ended in June 2012, with private newspapers being allowed to publish since 2013. Although Burmese citizens and media welcome these changes, the prosecution of journalists continues in the same vein asduring military rule, whenever journalistspublish news that the authorities dislike. They arebeing be charged underprovisions of national security and defamation of the State.

In a radio speech on 7 July 2014, the President said, "the media [*in Burma*] is one of the freest in South-East Asia". He warned, however, that if press freedom was exploited to endanger national security rather than for the good of the country, effective action under existing law will be taken. At least 11 media workers were imprisoned in 2014.

On 7 October 2014, 3073 prisoners were released under presidential amnesty, but only a few of themwere political prisoners. Although President U Thein Sein granted amnesty 17 timesduring his presidency, 159 political prisoners are still in prison in end December 2014, according to the Assistance Association for Political Prisoners (Burma). Nearly half of them are farmers who protested against the confiscation of their lands.

Although the 2008 Constitution allows peaceful procession and assembly, peaceful farmers' protests faced brutal crackdowns in 2014,while farmers werearrested under criminal charges and one farmer was killed. One of the leaders was tortured to death in custody in 2013. In this instance, unlike other deaths due to torture, aregional High Court overturned the lower court judgment and ruled that the cause of death was not natural. To date, however, no further action has been ordered against the perpetrators.

Burma's dysfunctional justice system allows for the misuse of laws and the use of torture to maintain military control over the population. Until justice institutions are not rendered independent from political control, no amount of reform can establish genuine democracy or rule of law.

ICCPR, Article 6

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medial or scientific experimentation.

Torture used as "investigation"; impunity rife

Where rule of law hardly functions, impunity of the military and the police is guaranteed. When the military personnel and police commit crimes in Burma, they are hardly punished in accordance with the country's criminal law. This encourages and perpetuates human rights abuses like torture.

Due to the absence of credible investigations in Burmese police stations, when a case is opened for a serious crime, many poor people are arrested as accused persons and tortured to "confess". Afterwards, police commonly claim that these persons died as a result of illness, and conspire with medical staff, prosecutors, and judges to cover up their crimes.

While a number of officers have received disciplinary action over custodial death or torture, no criminal action has ever been taken against them. Police disciplinary action under the Myanmar Police Maintenance of Discipline Law,

1995, is the end of any internal inquiry into such abuses. The following are a few torture cases reported by the AHRC:

1. U Kyaw Nyunt, farmer, 67 (at time of incident) and Nyunt Tun, are both residents of Kinpunkha Village, Natkyun Village Tract, Pakokku Township, Magway Region, Myanmar. The police accused the men of stealing a box of gold jewelry the year before. As the police could not find the missing box, and had no other evidence, they tortured the two men to confess to the crime. The police tortured Kyaw Nyunt severely. They tied his hands over his head and pulled him upwards. The police also hit him with rubber sandals, and they kicked him in the face to the point that one of his teeth was dislodged. They hit him on the back and sides with their truncheons. They hit him on the temples of both sides of his head. They also ran an iron bar under pressure up and down his knees, as can be seen in photographs taken at the time, and from the scars left permanently on his legs.

   The police beat Nyunt Tun, and threatened to torture him severely if he did not confess. Nyunt Tun then gave a confessionand the police opened the case in the township court. Nyunt Tun was instructed on what to say and only allowed 20 minutes with the judge.During this time the police were present, even though by law they should have been absent when the judge took the confession. After that the police forced him and Kyaw Nyunt to go to the place where the crime occurred and took photographs, as if they were reenacting the offence.

   In his verdict, the judge did not deny that Kyaw Nyunt had been tortured. In fact, his verdict acknowledges that the police had appeared to torture the elderly man, which was impossible to deny given the eyewitnessesand the photographic and material evidence. However, he wrote that because it was not Kyaw Nyunt but Nyunt Tun who gave the confession, and because there was no evidence that the police had beaten Nyunt Tun and threatened to torture him, he could accept the confession as genuine. Without any other evidence, he sentenced the two men to jail. Other courts dismissed applications for appeal and review of the case. This is just one indication of how courts in Burma are a mere rubber stamp to justify or cover up acts committed by government officers.

2. Soe Lin, minor, a resident of Nawaday Road, Myayatana Quarter, Myaung Mya Township, Ayeyawaddy Region, Myanmar, was accused of murder along with his father. U Kyaw Wai was murdered in the Aung Pan salt factory, where he worked with Soe Lin and his father.The father and son were arrested on the day of his murder. The methods of torture used

on the boy included a lighter to burn his face around his eyes, burning his fingers with a cigarette causing his fingernails to fall off, forcing him to kneel on coarse gravel for an extended period of time, denying him food and water, holding his head underwater, and various beatings that eventually caused bleeding from his ear and blood in his urine. This torture continued for a month and was conducted at least in part by Township Police Commander Inspector Kyawt Han. As a result, the victim is still having difficulty breathing, walking, and relieving himself.

Although Soe Lin was 13 at the time of the incident, the police filed a case against him in the adult court. Moreover, before being brought to the court, he was detained in custody and tortured for nearly a month. Only with the evidence of his headmaster was his case transferred to the juvenile court. Despite all these irregularities and criminal actions by the police, no action has been taken against the errant officers.

3. Ko Nan Win was arrested on 30 May 2013 after a quantity of gold went missing from the house of U Ohn Than and Daw Myint Myint in Thabyebin Village, Pathein Township, where he had been doing some work on their property. Accusing Nan Win of theft, they allegedly proceeded to torture him severely in an attempt to have him admit to stealing the gold. Although the police made no progress in the case against Nan Win, on June 11, they also arrested his wife, Ma Than Than Aye, for alleged involvement and during that time they allegedly tortured her. Throughout this time both her and her husband were held illegally and their relatives were refused access to them.

   On June 17, the police took Than Than Aye by boat to search for the hidden gold in Thabyebin Village: they reportedly looked in three locations and recovered nothing. According to witnesses, at the time of the search, Sub Inspector Naing Aung Kyaw kept beating Than Than Aye. As they were nearing Pathein at around 7p.m. in the dark, she allegedly jumped from the vessel into the Ngawun River and drowned. She was two months pregnant at the time. Although Ko Nan Win filed a case at the Pathein Township Court, under Penal Code Section 380, the accused was acquitted on 30 July 2014 due to lack of evidence. Furthermore, as there is no anti-torture law in Burma, torture victims have no way to seek remedies. Compensation for their loss is unimaginable.

4. U Than Htun, 42, is a resident of Kyar Inn Block (New),Dandalun Tract, Pandaung Township, Pyay District, Bago Region, Myanmar.U Than Htun was among a group of 17 farmers involved in a land dispute, who the police allegedly threatened with violence. U Than Htun was

taken into police custody on 17 May 2013 and died from torture on May 23.Despite all evidence pointing to the contrary, the police claim he assaulted himself as a result of the effects of alcoholism. The doctor confirmed that none of U Than Htun's organs were in a condition that would cause his death. Instead, the post mortem examination showed that the skin of his two wrists was torn apart due to prolonged handcuffing, while the doctor stated that he had died as a result of bleeding inside the lungs due to broken ribs and trauma (Myanmar Police Medical Report TTH/02/13, Pandaung Township Surgeon). Although the regional court judge overturned the judgment from the lower courts and said that the death was not natural, and that someone had caused it, he did not give any instructions for further procedure. As it was not a natural death, the authorities must open a murder case, however, without such a recommendation from the judge, the authorities have not done so.

5. Myo Myint Swe (alias Kalar Gyi, Pyi Soe, Hnin Si), 39, a carpenter and labourer, lived in New Dagon (East) Township, Yangon. On 28 June 2012, 19-year-old flower seller, Ma Poe Poe Mon was murdered at her home in Ward 2 of Mayangone Township, Yangon. A week later, on June 5, police arrested Myo Myint Swe at his residence and took him to the Mayangone Township Police Station for interrogation about the murder. The police tortured him to confess to the crime, resulting in his death. Myo Myint Swe's family members took photographs of his body after the post mortem examination and before he was cremated, which show clearly that he had been severely tortured. The photographs show that the right cheek and forehead of the deceased are heavily bruised and swollen, as is the left jaw and lower cheek. The neck of the deceased is black with bruising, and scars and bruises are obvious on his shoulders and back. In another photograph of the victim's shins, scars and bruising from the rolling of a rubber or bamboo stick or similar instrument, can be seen clearly. Like in many other torture cases, only some officers were demoted, sent to remote areas, and given minor punishment under the Myanmar Police Force Maintenance of Discipline Law.

6. Aung Kyaw Naing (aka) Par Gyi, 49, a freelance journalist and former bodyguard of Aung San Suu Kyi, travelled to Kyaikmayaw Town, Mon State, to report on recent conflicts between the Burmese army and Kayan rebels in the area. He was killed and buried by the military, in direct violation of numerous legal procedures requiredto be followed by the army. He disappeared in endSeptember 2014 and, on October 23, an unofficial statement without the Ministry of Defense Service letterhead was issued from Naypyidaw, stating that on 30 September 2014, at 9:30 a.m., LIB 204 headed by Caption Soe Zayar Lin, together with the

Myanmar Police Force Check Point of Kyaikmayaw Town, saw a suspect, Par Gyi, arrested him, and transferred him to LIB 208 for investigation. The letter further mentions that at 7:45 p.m. on 4 October 2014, Par Gyi requested to use the toilet. When he was allowed to do so, he attempted to grab a gun from one of the guards to escape. In response, he was shot by a guard, and died.

Notably, even though Par Gyi was arrested, neither the military nor the police opened a case against Par Gyi or obtained a court order. This is a breach of military and criminal procedure. Furthermore, if a citizen dies in a military exclusion zone, the military must file a report with the police that details, among other things, the identity of the victim. None of these or other provisions are followed in Burma, allowing police and military officers to get away with human rights violations. This merely serves to encourage further abuse and impunity.

According to a Myanamar National Human Rights statement on 5 May 2015, two soldiers accused of involvement in the killing of Par Gyi were acquitted of any crime by a summary court martial. They were tried and acquitted under Section 71 of the Defence Services Act, concerning the trial of civil offences in military court, and Penal Code Section 304, culpable homicide.

ICCPR, Article 2

1. *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

2. *Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*

3. *Each State Party to the present Covenant undertakes:*

   (a) *To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law…

Doubly Victimized: Farmers Protesting Land Grab Criminalized

A Farmland Investigation Commission report to the National Parliament states that the commission has received 26,371 complaint letters regarding land confiscation from all regions and states of Myanmar. The National Parliament has to solve the problem in accordance with the commission report and give orders to the Administrative Committee to determine who the original owners are and ensure that the land is handed back. The Parliament must further ensure that the Committee's decision is enforced.

President U Thein Sein, however, announced that the government cannot give back over 30,000 acres of paddy land that the State has been using since it was confiscated by the army two decades ago. This is contrary to the President's orders to the State and regional governments and land management committee

to cooperate with Members of Parliament to solve the problem of land grabbing cases. This government conflict is leading to the unfair prosecution and prison sentences for farmers in conflict with the army regarding their land.

According to the Myanmar President's Office official website, the President submitted a report (26-4-2014 to 24-6-2014) to the National Parliament regarding the confiscation of land by the military, ministries, regional governments, and businesses with only small amounts of compensation. There are many more cases of the government neither paying compensation nor returning the land to its owners.

Farmers from the Kanbalu Township, Shwebo District, Sagaing Division, are languishing in prison for ploughing their own fields, with another 350 more are headed for the same fate. This miscarriage of justice continues because, in the words of the No. 1 Kanbalu Township judge, the military is telling the courts what judgments to make. The situation came to a head when the military destroyed the fields of the farmers during a "training exercise", but then charged the farmers with trespass and destruction of military agricultural land. This incident illustrates the reality of the land grabbing culture practiced by Myanmar military officers, which has wreaked havoc on lives and livelihoods of farming communities across Myanmar.

A farmer falsely accused of burning a field has also been sentenced to one-year imprisonment under Penal Code Section 427 and Section 447. On 17 July 2014, 18 farmers were sentenced to jail,and another 14 farmers were sent to jail on July 18. In addition, the court summoned nine other farmers who informed the court they would not be able to attend their hearings in court on 18 July; they were then sentenced to imprisonment without any court procedure, in 18 minutes of court time. Most of them have multiple cases filed against them, despite the charges being essentially the same. Within four days, 65 farmers were sentenced, while nearly 400 farmers are awaiting verdicts. Over 450 farmers in the area have been victimised in this way.

Burmese farmers from Nyaung Wine Village, in Singu Township, Mandalay Region, who were protesting their land being grabbed by the military, were shot by police personnel from Singu Township Police Station on 14 August 2014. These farmers protested publicly several times since June, including ploughing the fields that had been taken from them. On August 14, nearly 50 police personnel with weapons and shields arrived and attacked the farmers.

Ma San Kyin Nu, a 30-year-old mother of two, who was passing by, was shot on her left calf. When villagers of Nyaung Wine Village heard the gunfire, they ran to help the farmers. Together, the villagers and farmers detained 37 police personnel who had attacked the citizens, and by then damaged the primary school and the monastery that still had monks inside. The remainder of the police personnel escaped the scene, taking one farmer, U Myint Kyi, with them to Latpanhla Police Station.

Since the new land law amendment of 30 March 2012, many farmers have attempted to get their land back, and tried to grow other crops in the field. They even sent letters of complaint regarding the confiscated land to the Land Investigation Committee, Farmland Management Committee, and other related committees,but received no response. As a result, they have been forced to make public protests. It is the right of all citizens to make complaints regarding violations of their rights, and to expect effective remedies from the state. Without this most essential aspect of rule of law, no country can truly democratize or modernize.

Conclusion

During the democratic reform period, Burma should move forward by exercising and respecting the basic rights and freedoms of its citizens. If the prosecution of journalists, activists and farmers and interference into the Judiciary by the authorities continues, it will not be possible to talk about the rule of law. To reach its goal of becoming a meaningful democracy, the government must implement domestic law according to international standards.

Chapter III

INDIA

Where Justice Process
Receives Lowest Priority

INDIA

Where Justice Process Receives Lowest Priority

Introduction

India is often cited as an example of a developing country where a stable democracy is in place post the colonial period.[3] It is true that India has held on to a democratic process of electing its governments, whereas the freedom for people to elect their governments through a free and fair process in all other postcolonial Asian states has only made cameo appearances. Is the possibility to elect one's government however, the pinnacle of democracy that can guarantee fundamental human rights? Or are there other equally important processes that define the true character of a state? If the latter is true, it is important to consider what these processes are.[4]

Vital to the true realisation of democracy is an open, transparent, and accountable government.[5] It is only when these three criteria are met, will a state be able to ensure equality, freedom, and dignity—the three foundational human rights guarantees—to its citizens. Only in a state where equality, freedom, and dignity are held as paramount governance principles, can corruption be controlled. Independent and efficient justice institutions play an important role in this process.

Unfortunately, justice institutions in India face a serious crisis. This crisis is rooted in India's unwillingness to provide adequate resources for these institutions to function effectively, and in its failure to reform the criminal justice process. It is this failure that keeps India mired in corruption, which

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3 *The Success of India's Democracy*, Atul Kohli; Ed., Princeton University, Cambridge University Press, 2001

4 *Design, Meaning and Choice in Direct Democracy*, Dr. Shauna Reily, Ashgate Publications, 2010, p.11

5 Id, p. 16

is a defining character of all its public institutions. The effective control of corruption is essential to plug the leak in its governance artery that has denied the Indian people the benefits of development, and their fundamental human rights, for the past 67 years.

The AHRC's annual report on India for 2014 attempts to critically assess the functioning of India's criminal justice process, which the AHRC believes mirrors its human rights performance. For this, the report will review whether fair trial is possible in India. The report will then suggest changes that are vital to make India a safe abode for its people, to develop its economy, and to lead a global process of human development.

ICCPR, Article 6

1. *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

2. *In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.*

3. *When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*

4. *Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*

5. *Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*

6. *Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.*

Right to Life

Article 21 of the Constitution of India guarantees the inherent right to life to all its citizens. To ensure this fundamental right however, it is important that there is a fair process through which any person deprived of her right is able to defend the right, and, it is important that there is an expectation of an open, transparent, and non-arbitrary process. A state can deny a citizen her or his inherent right to life either through direct actions of its agencies (for instance, actions of law enforcement agencies) or as the result of indirect actions (for instance, by the denial of livelihood options). On both these counts, India's performance remains appalling.

India has a high rate of extrajudicial executions,[6] which has not improved since the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Christof Heyns, visited India and published his report in 2012. Law enforcement agencies are not deterred from using lethal force against persons; in fact, legislation like the Armed Forces (Special Powers) Act, 1958, provides statutory impunity to State agencies for using deadly force.

Extrajudicial executions are also reported from Indian states where repressive legislations are not enforced. Often referred to as "encounter killings", executions by law enforcement agencies are discounted as "necessary action" while in "hot pursuit".[7] This has been government policy in dealing with serious crime, and will remain so, unless accountability is fastened as a non-derogable quotient to every State action. At the moment, this is the code of engagement taught to new recruits in law enforcement agencies. The incumbent Home Minister Rajnath Singh has made it clear on more than one occasion that there will be no change to this practice.[8]

This practice is not recognised in law however, with the Supreme Court of India warning the government that "executive elimination" is not acceptable in India. The practice continues nonetheless and there is virtually no punishment. The National Human Rights Commission of India has, in fact, requested the government to report to the Commission each case of extrajudicial execution. A report is to be furnished whenever such an incident occurs, along with a video

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6 *India: Concern expressed about extrajudicial executions* - The Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, New Delhi, 30 March 2012

7 Encounter killings: Middle-class India doesn't care about either blue-collar workers or Muslims, Akar Patel, 12 April 2015, accessible at: http://scroll.in/article/719338/encounter-killings-middle-class-india-doesnt-care-about-either-blue-collar-workers-or-muslims

8 AHRC Weekly Roundup Episode 53, Published 14 November 2014

recording of the autopsy proceedings. The Union government and well as the state governments are not following this procedure either.

A large number of law enforcement officers, politicians, bureaucrats, and members of the general public believe that it is all right for the State to kill persons. The only precondition to this is that the person or persons so murdered should be accused of serious crime. Even today, common sense reasoning that, in such cases, the accuser and the executioner is the same is absent in public debate. It is absent even within the lower ranks of the Judiciary. Hence, after each reported case of extrajudicial execution, the State accuses the person murdered with a crime of serious nature and the matter is closed.

This manner of dealing with State-sponsored elimination of persons has led to its exploitation; it is not uncommon for officers to have committed such killings for private vengeance or at the behest of their political masters. In states like Manipur, where extrajudicial execution is reported almost daily, state officers murder persons to steal money or other valuable artefacts. The relatives of extrajudicial killing victims are often forced to fight two simultaneous battles: one to exonerate the deceased person from the false crime alleged against him, and the other to obtain justice against arbitrary State action. Given the reality of justice institutions and processes in India, both battles are destined to either fail or at best, find no closure for around two decades.

The inherent right to life is also indirectly denied to people, such as through state actions denying people their livelihood options. A classic example is that of those who have lost their hut and hearth to the Narmada Valley Project, which spreads across the states of Madhya Pradesh, Maharashtra, Rajasthan, and Gujarat along the length of the Narmada River.

A majority, i.e. 87%, of the catchment area of the project is in Madhya Pradesh, and the largest numbers of people who have lost their land to the project are also from this state. Since 1979, when the Narmada Water Disputes Tribunal first approved construction of 30 major, 135 medium, and 3,000 small dams, including raising the height of the Sardar Sarovar Dam, there are thousands of peasant farmers waiting for adequate rehabilitation and compensation for the land they have lost to the Project.[9] Many have died subsequently, from acute malnutrition and poverty induced by the submersion of cultivable land.

Such denial of livelihood options is also a negation of the right to life. Unfortunately, in this instance too, the country's justice process has not been able to prevent loss of life.

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9 NBA Report, Published October 2010, updated annually.

ICCPR, Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

2. *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*

3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*

4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*

5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

Right Against Arbitrary Arrest & Torture

Every police station in India engages in arbitrary arrest and torture. One of the foundational principles of crime investigation is to investigate the crime first. The arrest of a suspect is made only when the investigation leads to the accused. In India however, the exact opposite is practiced. This is because crime investigation agencies depend on confession and oral statements to investigate crime, rather than scientific evidence. This has led to the endemic use of torture in India.

Perhaps the least modernised of State institutions in India are its crime investigation apparatuses.[10] Even today, a large number of police officers believe that arresting the accused and questioning the person is the initial step and the best process to investigate crime. This is because developments in criminology have not been adequately introduced to law enforcement agencies.

Misconceived notions like "an accused is the best person who could tell why and how the crime was committed" form substantial parts of police training. Even when an officer is trained to investigate crime scientifically, there are hardly any facilities available for the officer to undertake such scientific crime investigation.

The AHRC has previously reported on the paucity of forensic facilities in India. Forensic facilities in all Indian states are limited to one or two forensic labs, which often also house a fingerprint bureau, an IT division, and a ballistics division. Medico-legal facilities are only available at medical colleges or government hospitals, where often the autopsy examination is undertaken not by a forensic surgeon, but by a helper. The medical doctor who prepares the report often does so at the advice of the helper in the lab. Situations are so grim that in many Indian states even this facility does not exist; often bodies are left to the mercy of the weather and to stray animals like street dogs and to rodents that infest the facilities. It is also common in India for forensic labs to misplace, lose entirely, or contaminate samples received for examination.

There are also not enough forensic pathologists and doctors in the country. Kerala, one of India's most advanced states, has less than 30 such experts in active government service. Furthermore, samples sent from the hospitals take years to be analysed and reports prepared, stalling investigations. The investigating officer, often under pressure to complete the investigation, is therefore compelled to file the case diary in court with findings that contradict the forensic report.

Due to the absence of scientific facilities or the difficulty in accessing them, investigation officers mostly depend on oral testimonies of witnesses in crime investigation. This, coupled with decades long delays before the trial takes place, result in witness statements in courts often contradicting the charges, resulting in acquittal. This process opens up umpteen opportunities for manipulation.[11]

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10 *The Police in India*, M. B. Chande, p. 533

11 *Delays in the Indian Courts: Why the Judges Don't Take Control*, Robert Moog, The Justice System Journal, Vol. 16, No. 1 (1992), p. 19-36

Hence, it is common for the investigating officers to falsify witness testimonies, or arrest the wrong person with the knowledge that he is not the one who has committed the crime. All of this suggests serious problems within the crime investigating apparatus in the country. Unfortunately, addressing this problem has not been the priority of the Union or state governments over the last 67 years.

In this context, where manipulation of records and evidence is rampant, law enforcement agencies also resort to misuse of their authority, either to illegally protect a colleague who is a criminal, or a powerful person, or merely to extort bribes from the person in custody. It is common in Indian police stations for the person in custody or his relatives to bribe the police officer not to torture the person in custody. In fact, police stations in India are not safe places that deliver an essential public service, but are, in fact, dangerous state run institutions where people dread to approach, even in cases of emergencies.

Despite this, cases of torture get reported regularly from India. However, these are often cases of extreme forms of torture, where the person in custody has to be hospitalised due to injuries he has suffered whilst in custody or due to custodial death, which is also common in the country.

India does not have a policing policy. No government in the past 67 years has declared one or even attempted to draft one. In fact, having no policy is also a policy. This is because the absence of a policy helps generate an ambiguous situation that people and political parties in power can exploit. Hence, law enforcement agencies in the country operate in an atmosphere of indiscipline. Most officers are only faithful to the politicians in power, ever interested in making money out of illegal gratifications.

The Indian police is hence one of the most corrupt institutions, where vacancies, promotions, and disciplinary actions all occur without adhering to justiciable norms, but according to the whims of politicians or on the basis of money. Each vacancy in the police is susceptible to be filed according to the bribe an officer can pay to someone in power. The prevailing rates range from rupees 600,000 to one million for the rank of a constable and much higher for officer rank posts. Even for more elite officers appointed through the central police service examinations to the Indian Police Service, money and political connections often become enabling criteria for postings, transfers and promotions.

For the average Indian citizen, a police officer is thus seen as a criminal in uniform. The institution the officer represents generates fear and aversion. It is

an institution that Indians have learned to be afraid of and keep silent about. It is the lynchpin in most corruption scams that steals billions from the public exchequer each year. The institution is the protector of the powerful and the persecutor of the weak.

The institution remains unfit to serve the democratic aspirations of the people, but is used to silence voices of dissent. It is an institution that will continue to resort to torture, even if law criminalises the act.

ICCPR, Article 2

1. *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

2. *Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*

3. *Each State Party to the present Covenant undertakes:*

   (a) *To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*

   (b) *To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*

   (c) *To ensure that the competent authorities shall enforce such remedies when granted.*

Article 14

1. *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*

2. *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law…*

Right to Fair Trial and Adequate Remedies

The first image that comes to anyone's mind speaking about the judicial process in India is the country's crowded courtrooms and the decade long delays. In fact, the average period a case in India will take to complete trial, is anyone's guess. A trial in India could take anywhere between a couple of years to a decade and often more.[12] The situation is such that statements like "at the current rate of disposal of cases, India would take 360 years to clear the existing backlog" is cliché. However, judges and analysts do repeat this, with colourful statistics to support the claim, which are all true.

India is yet to see a Chief Justice who has not lamented about the scandalous delays the Indian court system is plagued with. Likewise, the country is yet to see a judiciary and a government that has taken any meaningful means to address this.

While the government ignores delays in adjudication, the judiciary has devised shoddy methods to address the issue, such as to dismiss cases off the pendency list for minor mistakes, like those made by lawyers and their clients to deposit adequate fees or failing to immediately comply with procedural formalities.

12 Arrears in Trial Courts, Law Commission of India Report, 2013

Others include pressurising litigants to negotiate with each other to arrive at settlements or in criminal cases, encouraging the accused to plead guilty. In fact, plea-bargaining was introduced in India by way of an amendment to the criminal law, as an attempt to reduce delays. The process is one of the most imperfect methods for dispensing justice; however, the judiciary expressing the urgent need to reduce its caseload overshadowed this fact; and the government in turn merrily exploited this.

India's judiciary is one of the most underfunded State institutions. India has one of the poorest judge to people ratios in the developing world.[13] The 2014 Union Budget only allocated 0.04% of the national spending for the country's judiciary.[14] This means that judicial vacancies will remain unfilled, there would be no computerisation and other modernisation of court registries, and no new courts will be setup in India. It is in this context, and in the context of a fallen policing institution analysed in the section above, that fair trial in India needs to be understood.

Fair trial, in practice, does not exist in India. This is reflected in the fact that over the years, less number of people approach courts with expectation that their case would be heard and decided promptly.[15] Delay affects both civil as well as criminal trials. In civil cases, litigants resort to out of court processes. In instances where litigants are institutions or individuals who could employ services of private agencies for settlement of claims, like repossession agencies or persons – often criminals – they do so at their terms. In criminal cases, however, delays have a multifaceted impact.

The situation of crime investigation is such that oral statements are used to prove crimes instead of scientific and technical expertise, delays result in witnesses failing to report in courts for trial, or witnesses are unable to recollect events that occurred at least a decade ago. All of this results in a high number of acquittals even in cases that are investigated reasonably well.

The possibility of stalling the trial opens up an enormous opportunity for an accused with resources to escape conviction. This is the singular reason why

13 At the moment the ratio is 13 judges for 1 million people. In December 2014, the Union Government claimed that it would be taking steps to improve this to 30 judges for 1 million people; such steps have not been implemented.

14 Union Budget, 2014

15 Statistical studies and data, like those released by the Supreme Court of India, indicates a near 16% decrease in the number of litigants approaching courts with civil claims in a period spanning 10 years (2004-2014). Whereas no reduction is seen in the number of criminal cases initiated by the State.

persons with criminal records successfully contest and win elections and form governments in India.[16] Organised delay in criminal trial also allows witnesses to be threatened, killed, or otherwise silenced.

Cases get stalled for lack of judges, prosecutors, or simply because the witness or evidence is not yet available in court. Cases also get stalled due to lawyers exploiting the system. Besides, trial courts in India are overworked. By the time the regular roll call is over, which is mandatory under the law, a trial judge is left with hardly any time to conduct a trial.[17]

One of the foundational principles in criminal trials is that the judge presiding over the court when the evidence is adduced must be the one who decides the case. The same principle applies to prosecutors. Unfortunately, this does not occur in India. Often several judges handle cases; judges retire, get promoted, or get transferred during the trial and between the trial and judgment. Prosecutors also change during this period. Judges and prosecutors have a maximum period of three years in a station. This means, in a criminal trial that last 10 years, at least three judges and prosecutors would have handled the case file, opening huge possibilities for miscarriage of justice.

Delays also affect the accused in various ways. Worst affected are those in pre-trial custody who cannot afford to post bail. This has led to the situation where India's pre-trial detention centres and prisons are 75% full of under-trial detainees. Many of these under-trial detainees have already completed long periods in custody, sometimes twice the maximum possible sentence they would have been awarded had they confessed to the crime at the first instance they were produced in the court.[18] Men make up 96% of all prison inmates. Nearly 2,000 children of women inmates live behind bars, 80% of those women being undertrials.

Police officers understand that the trial in the case they have spent time investigating, will get delayed; they understand that due to delay the accused will be acquitted; and therefore they end up believing that the only punishment the accused would ever get, would be from him. Therefore, police custody

16 54% of the elected representatives in the Indian parliament have criminal records, with trials pending.

17 GOVERNMENT OF INDIA LAW COMMISSION OF INDIA, Expeditious Investigation and Trial of Criminal Cases Against, Influential Public Personalities Report No.239, Submitted to the Supreme Court of India in W P (C) NO. 341/2004, *Virender Kumar Ohri vs. Union of India & Others*. The irony is the Law Commission submitted this report 10 years after the case was instituted.

18 "Two-thirds of prison inmates in India are undertrials", *The Hindu*, October 30, 2014

is treated as opportunity to deliver the punishment. Thus, even sincere police officers, concerned that the accused – who the officer is convinced has committed the crime – would escape punishment, imparts punishment in the form of torture to the accused. Some suspects are killed in custody due to this. Many are permanently maimed from the injuries inflicted. These are acts of gruesome torture and crimes, which nonetheless sometimes receive considerable support from the public as well as the media.

In other instances, spontaneous mobs resort to street justice. Lynching in India is becoming more common. One popular film has been made where women fed-up of the fallen criminal justice system resort to instant street justice where they "deal" with the suspect on their terms, once the person is apprehended.

In sum, India suffers serious defects in its justice dispensation processes. This implies that the possibility of adequate remedies in instances of human rights violations also suffer equally in the country.

Conclusion:

Without immediate corrective actions, India's justice institution framework is destined for a complete collapse. Even the notional trust that many in the country have about the justice process in India will soon erode should conditions remain the same. The impending collapse and its fallout will not differentiate gender, age, or race. Given India's context of social imbalances, it could be the women, children, and the poor who might face the maximum brunt of such a complete collapse. This will certainly affect India as a nation, its security as a state, and therefore its neighbours as well.

Given that India today has a far-right-wing government in power is something that could play the role of catalyst to this impending catastrophe. It is in this context that it becomes the responsibility of every Indian, including its well-placed civil society and the media, to work with the country's government to place primacy upon correcting the serious defects affecting India's justice processes.

If this is delayed, the space available today for the country's civil society to work independently will shrink further. The country's government could become more authoritarian, and India could soon plummet to a bottomless abyss into which most of its neighbours have fallen.

To end this unacceptable status quo, the following must be undertaken immediately:

- Indian civil society and media must consciously develop the habit of critically examining the justice institutions, from the following perspective: without adequately functioning justice institutions no human rights can be guaranteed;

- Abrasions like misuse of power by the police, particularly the practice of torture, must be spoken about widely and acted against;

- Victims of human rights abuses, willing to speak about their plight with justice or the absolute denial of it, must be protected and encouraged to speak loud and strong;

- The country's media should end their self-censorship, and must speak independently about state abuses, irrespective of the government in power;

- The Union as well as state governments must be pressured to place primacy on justice institution reforms, which is currently not even last on a priority list of any of the governments;

- Cases of human rights abuses reported from India must be widely reported, and meticulously followed so that the current practice of international institutions like the UN, which glaze over India's justice institutions, attributing them to be the best in the region, will end;

- People's initiatives in India that speak about injustices must be encouraged to expand and form a formidable voice that Indian politicians can no more ignore.

Chapter IV

INDONESIA

Justice Remains Elusive

INDONESIA

Justice Remains Elusive

Introduction

The year 2014 was momentous for Indonesia, with presidential and parliamentary elections being held. The parliamentary election was held in April, and the presidential election in July. This presidential election was special because two of the candidates had a strong chance to be elected. The first candidate was retired Lieutenant General Prabowo Subianto, a former Special Armed Forces (Danjen Kopassus) commander and also a former Commander of the Army Strategic Reserve Command (Pangkostrad). According to Indonesia's National Human Rights Commission (Komnas HAM), he is the alleged perpetrator of enforced disappearances of student activists in 1997-1998, but he has never been brought to court;rather, he is enjoying impunity. Prabowo established the Great Indonesia Movement Party (Gerindra), which ranked third out of 12 political parties in the legislative election.

The second presidential candidate, Joko Widodo, is a former Governor of Jakarta. Many people voted for him based on the expectation that he would give priority to law enforcement and human rights, due to his mission statement and a supporting nine-priority agenda, Nawacita, particularly the priority on "protection of human rights and fair settlement of past cases of human rights violations".There was also a fear of a return to a Soeharto-style rule as a likely outcome of a Prabowo presidency, which most Indonesians did not want. The Indonesian Democratic Party of Struggle (PDIP), the current ruling party, is the political party that promoted Widodo to be president. It is leading a coalition that includes the People's Conscience Party (Hanura), established by retired General Wiranto, who is strongly alleged to have been involved in the Trisakti student shootings of 1998. Other former military generals close to current President Joko Widodo are Hendro Priyono, alleged perpetrator of Munir's murder (a prominent human rights activist) in 2004, and the Talangsari massacre of 1989, and Lieutenant General Sutiyoso, alleged perpetrator of the brutal attack against the Indonesian Democratic Party (PDI, which later changed to the PDIP).

After President Widodo was inaugurated in September 2014, public expectation has increased significantly. Former President Susilo Bambang Yudhoyono left much homework for his successor, including torture, human rights violations in the mining and plantation area, and the follow up of recommendations made by various United Nations (UN) bodies, such as the2012 Universal Periodic Review, the Human Rights Committee in 2013, and ECOSOC Committee, 2014.

Rights activists meeting with a cabinet member of President Widodo *(AHRC File Photo)*

This report therefore highlights aspects of democracy and human rights that have been missing and overlooked in the last 16 years of reform in Indonesia. In particular, the discussion will focus on the judicial system, torture, and past human rights abuses.

ICCPR, Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

2. *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*

3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and*

shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*

5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

Fragile Judicial System Allows Torture & Fabricated Charges

Although Indonesia has seen political reform (reformasi) for the last 16 years, since the Soeharto regime ended in 1998, the country's judicial system still remains problematic. The general trend noted by the AHRC in 2014 is that the Judiciary did not consistently imposethe standards required for fair trial at every stage of the legal process. Despite Indonesia's ratification of several important international human rights instruments, theyare not being effectively applied in the national legal system. As Suzannah Linton writes, "adopting laws that are riddled with loopholes and setting up hollow institutions administered without commitment to fundamental principles such as transparency, due process, justice and accountability will do more harm than good in Indonesia."

Fabrication of charges and cases occur in almost every stage, and torture continues to be used to obtain confessions from accused persons. Mr. Andro Supriyanto and Mr. Nurdin Prianto for instance, are two of six street singers who were arrested and tortured by the Jakarta Metropolitan Police on 5 February 2014, to get them to confess to the murder of Dicky Maulana.

Law reform is one important requirementneeded to address judicial flaws in Indonesia. As of 2014, Indonesia is still using colonial era laws, such as the Indonesian Penal Code (KUHP). The KUHP does not regulate punishment against fundamental rights violations such as torture and enforced disappearance. Moreover, the KUHP imposes the death penalty. Although formerPresident Susilo Bambang Yudhoyono had introduced a moratorium on the death penalty for some years, this trend is not being followed by current President Widodo;100 days into his presidency in December 2014, the Attorney General announced the intention to execute death row inmates.

Besides the KUHP, the Indonesian Law of Criminal Procedure (KUHAP) No. 8 of 1981 also has some controversial provisions, such as allowingthe Indonesian police to arrest an accused person for 24 hours. The police generally abuse this provision, by arresting persons without any arrest warrant. On 20 January 2014, Mr. Achmad Kasaeri, a villager of Benculuk Kulon Village, Pasuruan Regency, East Java Province, was arrested without arrest warrant, and beaten. The police accused him of being the mastermind of a robbery in another village. The next day, the police returned his dead body to his family without a clear explanation or clarification.

Table 1

Detention Period for Suspects under Indonesia's Criminal Justice System

No.	Detention	Time	Extension Granted	Time	Law of Criminal Procedure	Total Detention
1	Police	20 days	Prosecutor	40 days	Article 24, para 1 & 2	60 days
2	Prosecutor	20 days	Chair of District Court	30 days	Article 25, para 1 & 2	50 days
3	District Court	30 days	Chair of District Court	60 days	Article 26, para 1 & 2	90 days
4	High Court	30 days	Chair of High Court	60 days	Article 27, para 1 & 2	90 days
5	Supreme Court	50 days	Chair of Supreme Court	60 days	Article 28, para 1 & 2	110 days
Total days for suspects in the detention between police examination until verdict of supreme court						400 days

According to Article 29 of KUHAP, the police can detain an accused person for 120 days if he is charged with an offence resulting in more than nine years imprisonment, and 60 days for an offencethat hasless than nine years imprisonment.

The Parliament has not yet finished the revision of the Indonesian Penal Code and the Law of Criminal Procedure, although the drafting processes has been ongoing for almost 10 years.

Torture remained a serious problem in Indonesia in 2014. The AHRC has documented suspects or accused persons found dead in police custody, evidence that torture is still used as a method to obtain confession. In one such case, a detainee, Mr. Eric, was found dead in police custody in Tangerang, Banten Province, Indonesia. When Eric's body was later taken home and washed, a big blue bruise at the lower part of his back was found. A cut was also found on his lip. Three days before his death, Eric told his wife who was visiting him in detention that he had been subjected to beatings and other assaults by several police officers.

In another case, inmate Riko Yeyandra was tortured by two prison guards at Solok Correctional Facility, West Sumatra. The prison guards were found guilty of maltreatment by Solok District Court and sentenced to one year imprisonment.

While the cases of torture increase yearly, the same cannot be said of its punishment. Despite Indonesia's ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with the promulgation of Law No. 5 of 1998, torture is not seriously considered a crime, and State agents who committorture are either unpunished or enjoying light punishment. It is essential that the government revises the KUHP or enacts a separate law to criminalizeand punish torture.

Table 2

Torture, Actors

No.	Year	Police	Military	Prison Guard
1	2010 – 2011	21 cases of torture	31 cases of torture	7 cases of torture
2	2011 – 2012	14 cases of torture	60 cases of torture	12 cases of torture
3	2012 – 2013	55 cases of torture	10 cases of torture	35 cases of torture
4	2013 – 2014	80 cases of torture	10 cases of torture	18 cases of torture

(The Commission for Disappearances and Victims of Violence (KontraS))

Between 2010 and 2014 the cases of torture have increased, with the police committing the most acts of torture, followed by the military and prison officials.

The police and military in Indonesia are both involved in economic and political affairs, which also give rise to abuse of power and torture. In October 2014, the police brutally attacked Takalar peasants in Takalar, South Sulawesi, who were involved in a land conflict with a State plantation (PTPN XIV). As a result of the brutal police kicking and beating, some peasants were seriously injured and suffered from trauma. No legal action or investigation was conducted to resolve the case.

Earlier in Karawang Regency, West Java Province, the Police Mobile Brigade (Brimob) brutally attacked (kicking, beating, and shooting with rubber bullets) and arrested local peasants who were gathering for a peaceful demonstration against land confiscation conducted by a plantation company. As a result, 10 peasants were seriously injured, and 13 peasants were arrested and brought to the Karawang Police Resort.

Abuse of power is a common cause for police violence and torture, as in the attack by members of the Mobile Brigade of the Nabire District Police on three Papuans in Nabire, following a petty dispute between them and the officers at Kalibobo futsal pitch. One of the Papuans was stabbed in his back with a bayonet whereas two others were taken to the police station.

Meanwhile, on 5 March 2014 the Army of Yonif 142 / KJ Jambi Province attacked and tortured to death a member of anak dalam local tribe in the plantation area of Asiatic Persada Company (PT Asiatic Persada).

The lack of accountability within the police and military institutions is a great obstacle in combating torture and violence. Police officers who commit crimes are usually tried through an internal mechanism, PROPAM (Provost and Security), which mostly finds violations of ethics (code of conduct) rather than violations of criminal law. Consequently, many perpetrators enjoy light sentences for grave abuses.

Mr. Tengku Yusri, a parking attendant was tortured and burnt to death by the Army. *(AHRC File Photo)*

The military meanwhile, uses Law No. 31 of 1997, on military courts, for its officers, which treats the military personnel exclusively, no matter the type or pattern of the crimes.Even when the victims are civilian, military personnel will be tried through the military court. This court lacks transparency.

ICCPR, Article 2

1. *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

2. *Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*

3. *Each State Party to the present Covenant undertakes:*

   (a) *To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, not with standing that the violation has been committed by persons acting in an official capacity;*

   (b) *To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*

   (c) *To ensure that the competent authorities shall enforce such remedies when granted.*

Past Abuses Forgotten

More than a decade ago, Komnas Ham completed seven investigation reports of past human rights abuses and submitted these to the Attorney General's

Office (AGO). The reports are regarding: (1) Student shooting in Trisakti and Semanggi, 1998-1999, (2) the case of Wasior and Wamena, 2001-2003, (3) massacre in 1965-1966, (4) the case of mysterious shooting, 1981-1983, (5) Talangsari case, 1989, (6) May riots in 1998 and (7) Enforced disappearances of student activists, 1997-1998. Since then, however, the reports are merely gathering dust, with no follow up by the AGO. Victims of these violations and their family members have thus been desperately awaiting remedies and justice that have not been forthcoming.

Although the AGO is mandated by Law No. 26 of 2000 on Human Rights Court, to follow up Komnas HAM's recommendation to investigate the cases,the AGO incorrectly argues that it needs Parliament's recommendation and a presidential decree to establish an ad hoc human rights court. According to provisions of Law No. 26, the AGO does not have to wait for any such political recommendation. This argument is also contrary to the precedence which exists for the Tanjung Priok and East Timor cases, at which time the AGO immediately followed up Komnas HAM's recommendation, after the Commission submitted its report.

The administration of former President Susilo Bambang Yudhoyono established a Presidential Committee led by the Minister of Politics, Law and Security, to accelerate communication among relevant institutions such as the AGO, Komnas HAM, the President and the House of Representatives to resolve past human rights abuses and provide remedies for victims and families. However,by the end of President Yudhoyono's presidency in September 2014, there were no visible results.

As President Joko Widodo promised that he will prioritize resolving past human rights abuses, victims have more expectations for finally obtaining remedies and justice. Unfortunately, as of the end of 2014, this promise has not been realized, with the President even reluctant to formally meet with the victims.

Victims and human rights groups conduct weekly demonstration in front of presidential palace calling for justice since 2007. *(AHRC File Photo)*

No Justice for Munir 10 Years on, While Perpetrator Walks Free

On 29 November 2014, the Minister of Law and Human Rights, Mr. Yasonna H. Laoly, signed the parole document to release Mr. Pollycarpus Budihari Priyanto, a Garuda pilot and part of the intelligence agency that killed Munir Said Thalib (a prominent Indonesian human rights activist). Pollycarpus' release has pushed back justice for Munir, and it will become a serious obstacle to every effort at reopening Munir's case.

The year 2014 marked the 10th anniversary of Munir's death; he was poisoned with arsenic on 7 September 2004 on board a Garuda flight from Jakarta to the Netherlands. It is also 10 years since the fact finding team (TPF) into Munir's death was established by former President Yudhoyono. Until the end of his presidency, however, President Yudhoyono never publicly shared the TPF findings.

Right activists protest against payroll for Pollycarpus *(AHRC File Photo)*

Until the end of 2014, President Widodo has also not considered reopening Munir's case. Human right groups in Indonesia have expressed concern that reopening the case under President Joko Widodo is getting more difficult, especially since the government has granted parole to Pollycarpus, and since retired General Hendro Priyono, allegedly one of the master minds behind Munir's murder, has close relations with the President as well as the ruling party that promoted and supported President Widodo during the presidential election.President Widodo has requested Hendro to handle a national car project in cooperation with the Malyasian Proton company, and has also promoted Hendro's son-in-law to Commander of the President's guard.

Chapter V

NEPAL

Turning into a Police State

NEPAL

Turning into a Police State

Introduction

The results of the second Constituent Assembly election, held on 19 November 2013, reshuffled Nepal's power equations. The Maoists, which got the highest number of votes in the first Constituent Assembly elections, clocked in third this time. The Nepali Congress (NC) won the most seats, i.e. 105 out of 240 seats, in the First-Past-the-Post system; the Communist Party of Nepal Unified Marxist-Leninist (CPN-UML) followed with 91; and the CPN Maoists only won 26 seats.

The state security agencies, which are closer to the NC and the CPN-UML, having fought a decade-long civil war against the Maoists, became more confident after these elections. The police became more visibly allied to the elite and to the politicians, and displayed more violence. In fact, 2014 was a year marked by the misuse of police power. Custodial torture was a regular phenomenon, being the only form of "investigation" in Nepal. Increasing police brutality and extrajudicial killings were witnessed in the Terai region, during the so-called attempts to "maintain peace and order in society". The violence against innocent villagers at Dho Tarap in the Dolpa district on 4 June 2014, which resulted in two deaths and many injured, is another example of police brutality and political allegiance.

Corruption within the police was exposed when Superintendent of Police (SP) and Head of Kathmandu Police, Ramesh Kharel, asked the ministers present in a program not to entertain officers who are going to visit them with suitcases for their promotion to higher posts. Instead of carrying out an investigation into the open allegation, the police headquarters decided to transfer SP Kharel and send him on a one-month official leave.

The year 2014 was notable in terms of Nepal's Supreme Court (SC) as well. The SC lacked a number of judges for almost six months. Finally, judges with questionable track records and a history of corruption were appointed, despite

huge civil society pressure. These judges were also seen visiting party offices following their appointment. Media exposing the record of corruption and scandals amongst the judges appointed was slapped with contempt of court charges. There is a growing understanding in Nepal that a judiciary cannot remain independent when judges of the apex court are bound politically and appointed despite their dubious records.

Despite huge national and international pressure against enacting a flawed bill on the Truth and Reconciliation Commission (TRC), the government passed the TRC Act, undermining the Supreme Court directive of 2 January 2014, in which the Court clearly cautioned against providing mass amnesty and directed that the Act be drafted as per international law. The TRC Act now stands against even the Interim Constitution and the Comprehensive Peace Agreement (CPA) of 2006. Conflict victims have challenged the Act in the SC. Ignoring all the protests and concerns, the government plans to start work on the TRC from 10 December 2014, stripping even the hope of justice from the conflict victims. The government's response to the hunger protest of the Adhikari parents who lost their son Krishna Prasad Adhikari in 2004, when Maoists shot him dead in broad daylight, is indicative. Nanda Prasad Adhikari (Krishna's father) died on 22 September 2014, after 11 months of hunger strike demanding justice for his son's murder. The parents are now a symbol for victims of the insurgency, who have been asking for investigation and justice. And, the Nepali state has failed its citizens who demand justice.

Nepal's human rights situation deteriorated in 2014. The police visibly turned more violent, while the nexus between the police, judiciary, and political parties became clearer. Impunity for state agents increased, as did insecurity for the poor and vulnerable. With state security agencies and justice institutions becoming more politicized and corrupt, justice remained inaccessible for common people. The fear is real: Nepalhastaken a turn towards becoming a police state.

ICCPR, Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Torture Remains a Major Tool for Investigation

Nepal is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 26 of Nepal's Constitution also recognizes the right against torture as a fundamental right, strictly prohibiting and making legally punishable any form of physical or mental torture or cruel, inhuman or degrading treatment or punishment. A victim of torture is entitled to compensation as specified by law. Even during a state of emergency, this right cannot be suspended.

The Torture Compensation Act (TCA), 1996 is a specific legislation in this respect. The TCA prohibits torture and ill-treatment but does not criminalize it. The Act fails to provide justice to torture survivors or to punish those found guilty. The definition of torture and other provisions in the Act are not in line with the international conventions, including UNCAT. An adult member of the victim's family or his or her legal practitioner may file a petition to the district court if they think that the detainee is subjected to torture while in detention. The court has to promptly take action for ensuring medical examination of the victim within three days.

During the increasingly brutal ten-year conflict, 1996-2006, at least 13,000 people were killed, with a further 1,300 still missing. The final death toll is likely higher; government figures now report 17,000 deaths. It is estimated that both the state security and Maoist forces tortured thousands of people during the conflict.

Torture by state and non-state actors continues in Nepal despite the formal end of the conflict and subsequent political successes. Nepal's human rights situation did not improve as expected since the signing of the peace agreement in 2006. Torture and ill-treatment in government detention facilities continue, and the culture of impunity is becoming further entrenched.

Torture has been a common practice in Nepal to obtain information or maintain social order. It is widely practiced in police custody, with women and children being the most vulnerable groups in this regard. Recently, the National Human Right Commission noted that torture remains a major form of investigation in custody, with police conducting torture "without any hesitation". At the same time, monitoring by local NGOs indicates that torture is largely used to extract bribes, sanction the work of human traffickers, and as a show of power.

The most common methods of physical torture include beatings using the hands, kicking (usually while wearing boots) and using instruments such as

bamboo sticks, plastic pipes and batons. The severity of the torture does not necessarily depend on the use of instruments.

The TCA is inadequate and has failed to provide redress for torture survivors and prosecute those involved in torture. The biggest failure lies in the lack of criminal investigation into the cases of torture. Nepal's investigation process is based on confession, and the confession comes by force or torture. In terms of justice for acts of torture, victims have only the possibility of compensation, and only "departmental actions" such as reprimand, demotions, suspensions, fines, delayed promotions are foreseen for the perpetrators.

While the government has attempted to devolve responsibility for torture to the individual policeman, in reality, it is solely responsible for creating situational forces that shape the characters of the individual policemen. The implicit compact that no one will be prosecuted for the use of torture encourages, or, at the very least, permits the individual policeman to commit torture.

Torture only serves to undermine Nepal's justice system, and this should motivate honest policymakers to take aggressive steps aimed at rooting it out. After the failure of passing the Torture Bill during the last parliament in May 2012, the government has tabled the Bill on Torture in Parliament for discussion. This time around, the government must pass it, and the Torture Bill must be in accordance with UNCAT provisions. Torture must be criminalized and its regular practice discouraged by consistent investigation and punishment.

ICCPR, Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Caste-Based Discrimination

According to Jagaran Media Center (JMC), a partner organization of the AHRC, 2014 saw much discrimination against Dalits. The JMC recorded 100 violent caste-based related incidents in the first three months of 2014, of which 21 were displacement cases due to inter-caste marriages; 11 punishments for alleged witchcraft; 22 for disturbances at the public water tap; seven for

restricted entry into a temple; 29 for discrimination in a public place; and 10 miscellaneous.

There are several laws prohibiting caste-based discrimination and obligating the state to investigate and prosecute cases of such discrimination, such as Schedule I of the 1992 State Cases Act (obligating the state to investigate and prosecute caste-based discrimination offences); the 1963 Muluki Ain, Article 10 (amended in 2007) of which provides that any person discriminated against on the grounds of being labeled "untouchables" or denied access to public areas or utilities on the basis of caste may be punished; and the Caste-based Discrimination and Untouchables (Offence & Punishment) Act, 2011, which criminalizes acts of caste-based discrimination in public and private places, including places of worship.

In practice however, these laws are not enforced. Police officials tend to ignore caste-based discrimination-related crimes, and even use force to dismiss them. They refuse to register complaints, leaving the voices of the Dalit population, humiliated daily in public places, unheard. The three main factors that condemn Dalits to life as second-class citizens are:Dalits' lack of awareness of anti-discrimination laws, Dalits' fear of complaining when they suffer caste-based violence and discrimination, and the in-grained indifference of the authorities. Additionally, a large number of the members of the Dalit community are homeless and landless. They are deprived of citizenship, a long-standing unresolved issue. Many Dalits do not have the right to vote; this prevents them from participating in political life at the village level.

Dalit women face terrible conditions as victims of both gender and caste discrimination. They have no control over land, housing or money and are forced into doing the most demeaning jobs. The women of cerain caste groups, such as Chamars, Badi, and Pode, women are slightly more respected, as they can participate in productive activities and thus become part of the economic chain. Upper caste women, in comparison, are generally considered as nothing but tools of sex (Read more on the section titled "Discrimination Against Women").

Anyone who witnesses discriminatory acts can report the crime to the police. The penalty for practicing caste-based discrimination has been increased to a prison term of up to three years or a fine up to NRs. 25,000, or both, depending on the nature of the offence. However, the prevalence of discriminatory practice at the grassroots level continues to lower the dignity of the Dalit community. Government policies and plans are concerned with this reality.

Nepal's Dalit community also has to struggle against internal discrimination. Within the 25 Dalit castes there exists considerable hierarchy and discriminatory practices.

Dalits continue to be marginalized and excluded from political decision-making. In the first Constituent Assembly (CA) elections held in 2008, seven candidates from the Dalit communities were elected from 240 constituencies, making 50 Dalit members. But the numbers of Dalit lawmakers in the second CA is only two from direct elections, and the overall number has decreased to 41. In fact, the political representation of Dalits in the formal political structure seems to be linked more to the quest for power in the major political parties rather than to the representation of minorities. Party-led factionalism within Dalits is another obstacle. Dalit leaders tend to present themselves as subservient to Nepal's political leaders. As leaders of the Community, unless they stop playing victim and seek to, instead, take up issues of Dalit representation, the status quo will remain.

The Nepalese Dalit Movement, however, is a silver lining.And, Dalit rights activists from South Asian nations have formed the Asian Dalit Rights Forum, an 11-member forum in April 2014. This forum aims to coordinate activities to end racial and caste discrimination in South Asia.

The following cases reported by the AHRC, are indicative of the violence and discrimination faced by Nepal's Dalit community:

Shiva Shankar Das

The parents of Shiva Shankar Das (21), who was allegedly poisoned to death, are still waiting for justice and compensation after two years. Shiva Shankar had a love affair with a 20-year-old woman from an "upper caste" community, and was allegedly poisoned by the girl's relatives on 30 January 2012. The police only registered the case after immense pressure from the Dalit civil society, Dalit NGOs, and the media, but they did not investigate the incident in detail. As of yet, they have not informed the family of any progress in their investigation; in fact, when the father tried to make inquiries, he was threatened with prison. Shiva Shankar's parents continue to knock on the doors of different organizations and the media in the hopes of obtaining justice for their son.

Sabita Bishwakarma

At 8 p.m. on 17 May 2014, Bishnu Chhetri and her two daughters from Mainbagar Sriramtol publicly assaulted pregnant Sabita Bishwakarma for

drawing water from a public water tap. They accused her of being Kamini (belonging to a lower caste). The severe assault left her unconscious and she was immediately taken to the Bhairahawa Medical College. After the police were informed about the case, they took Sabita's mother-in-law and the two perpetrators into custody. Both parties were subsequently released, with the incident termed as "a normal social issue". The case was published in the local newspapers, and an attempt was made to register the case at the Area Police Office, demanding punishment as specified in the Caste Based Discrimination and Untouchables (Offense and Punishment) Act 2011. At first, the police refused to file an FIR because there was a delay in registration. After much pressure, the police facilitated a settlement in the case, at the local level, through consensus.

Intra-Dalit discrimination in Parbat District

On 15 April 2014, a clash erupted between two Dalit communities at Pang VDC-2 in the Parbat District, killing one 15-year-old boy Rajesh Nepali, and injuring 15 others. At the Bratamanda, (a Hindu religious ceremony), of Chandra Bahadur BK's son Ramkrishan, members of the Kami community said that the guests of the Sarki community were of a lower class, sparking the clash.

Such intra-community discrimination amongst Dalits is widespread, with violent incidents occurring at social functions like festivals and marriages, in places of worship and in public places like public water taps and wells. While Dalit human rights defenders and intellectuals chant revolutionary slogans of social harmony, championing marriages between Dalits and non-Dalits, they have failed to fight against discriminatory practices within the Dalit communities.

Saptari Barmajhiya Village Development Committee Case

In January 2014, the AHRC came to know that 32 Dalit families of Barmajhiya Village Development Committee-2 in Saptari District are living in fear of forced displacement, due to the ongoing construction of a drinking water body near their village. These Dalit families have been living in this area since their forefathers cleared the area and turned it into a community. The land however, is not registered in their names. It is feared that the local non-Dalits might have illegally registered the land in their own names. Due to the lack of education and opportunities, these families do not know where to go and how to make formal complaints.

The construction of the drinking water body began around two years ago. These 32 Dalit families are very poor; moving elsewhere and managing an alternative settlement and livelihood will be impossible for them. The area in which the Dalit villagers reside is about two acres. Suresh Chaudhary, who lives near the village, has been claiming that this land belongs to him, thus increasing the worry of the Dalit villagers that he might have registered the land under his name. Although government authorities came and measured the land on 27 December 2013, Chaudhary denied the Dalit villagers access to the land at that time.

ICCPR, Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Discrimination Against Women

Article 13 of Nepal's Interim Constitution provides equality for all citizens, stating that: "All citizens are equal before the law. No person can be denied equal protection of the law because of their sex." Furthermore, Article 20 of the same Constitution can be considered a milestone: it has for the first time guaranteed every woman's right to reproductive health services in Nepal. Additionally, "No physical, mental or any other form of violence is to be inflicted on any woman. Such acts are to be punishable by law. Sons and daughters have equal rights to their ancestral property."

Providing women with special privileges has been given considerable attention, in order to ensure their participation in public life and access to equal work opportunities. It is mandatory for primary schools to have at least one female teacher. In fact, Nepal has been promoting the education of girls since 1975.

Emphasis has been put on vocational training, technical education, as well as providing incentives to girls and disadvantaged people, while focusing on programmes for women.

The Interim Constitution also provides places for women candidates in the Constituent Assembly. For election to the Constituent Assembly, at least one-third of the total number of candidates contesting the election from any organization or party must be women, for the purpose of proportional representation. In addition to the Constitutional provision, the Civil Liberties Act, 1955, the Labor Regulation 1993, the Act Relating to Children, 1992, also guarantee the right to equality. The Local Self-Governance Act, 1996, also promotes the equal rights of women.

The National Women's Commission has been set up as an institutional framework. Formed under an executive order in 2002, the Commission aims to be an impartial and autonomous body to promote women's empowerment, gender equity and social justice. It supports women's participation in mainstream development by preserving and enhancing women's rights and well-being.

Renuka

Renuka (name changed to protect victim), a 16-year-old resident of Rupandehi District, set off from Asuraina VDC to Hatiban VDC, early in the morning of 2 December 2013. She was followed by Binod Yadav, the 25-year-old son of Jhinna (alias Kallu Yadav). Binod approached Renuka when there was no one around, enticing her with promises of a good job, marriage, ornaments, and clothes. Binod proceeded to abduct her.

Renuka was trafficked across the Indian border and kept locked in a house in Siddhartha Nagar for 15 days. Binod allegedly sexually abused her every day before selling her to an unidentified Indian man. She was tortured and sexually abused by this man for two more days, until she managed to escape through the ventilation system and return home.

In the meantime, Renuka's relatives filed an application before the District Police Office (DPO) Rupandehi on 5 December 2013, demanding an investigation into Renuka's abduction, her safe return, and legal action against Binod; they knew by this time that he was behind Renuka's abduction. The police called Binod to the Police Station, but released him the same evening.

Within 5-6 days of her return, Renuka visited the DPO Rupandehi and gave an oral statement against Binod, demanding legal action against him on the charge

of human trafficking, abduction, and rape, and tried to file a First Information Report (FIR). However, the police refused to register a FIR saying they would do so only if an outside settlement failed. They called the alleged perpetrator to discuss the matter.

Binod walks free while Renuka and her family feels threatened. In addition, Binod has filed an application at DPO Rupandehi stating that the victim cannot live in the village until she is divorced from her husband or goes to live in her husband's home (Renuka is legally married, but has not yet moved into her husband's home). Based on this application, the police proceeded to arrest Renuka's uncle (It was Renuka's uncle that filed the 5 December 2013 application against Binod). Renuka's uncle was released that evening following the intervention of a human rights organization.

On 20 August 2014, while speaking to lawyers from the same human rights organization, Superintendent of Police Bikram Singh Thapa, In Charge of DPO Rupandehi, said that the police are still trying to discuss the matter with both sides. If outside settlement fails, they will register an FIR and investigate the case. Renuka and her family have informed the lawyers that they have paid NRs. 50,000 to a civilian mediator to get the FIR registered. They have been visiting DPO Rupandehi on a daily basis to register an FIR but the police are still reluctant to register the case.

ICCPR, Article 19

1. *Everyone shall have the right to hold opinions without interference.*

2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

Threats to Journalists & Cyber Control

Article 15 of Nepal's Constitution guarantees the right relating to publication, broadcasting, and the press as a fundamental right. Censorship of publication, broadcasting, or printing of any news item or audio-visual material, including electronic, is prohibited. Moreover, the Press and Publication Act, 1992, has been designed to safeguard the freedom of opinion and expression. Nepal is one of the few countries in the world, which has, through its Constitution,

guaranteed the right to information to its citizens. With the enactment of the Right to Information Act, 2007, the right to information has become a fully enforceable right, which is essential for the effective exercise of various other rights guaranteed by the Constitution, particularly the right to freedom of speech, the free expression of citizens, and the rights of the mass media.

Despite these constitutional and legal provisions however, attacks on journalists in Nepal are frequent, and the country's media rating has deteriorated. The following cases illustrate the current media environment:

On 23 January 2014, two journalists received death threats in connection with their news reporting in Mahottari. Two locals, Buddhiraj Neupane and Devraj Kafle, threatened the Editor of *Bardibas daily*, Santosh Pokhrel, and Gita Chimoriya, a reporter with *Radio Darpan* with regard to a news report about a road accident. The police arrested Neupane and Kafle after the journalists filed complaints against them with the local police administration. Political parties in the district are reported to have applied pressure on the police to release the men.

On 24 July 2014, Ramesh Rawal from the Kalikot District was forced to leave his home after receiving continuous threats from various officials. The threats were a result of his stories on corruption in government agencies for the *Karobar* economic daily in Kathmandu and the local daily *Hamro Karnali Khabar*.

In September 2014, Justice Gopal Parajuli of the Supreme Court (SC) summoned the Chairman and Managing Director and the Editor-in-Chief of *Kantipur* daily to Court, in response to two different Contempt of Court cases. The 11-page initial order charged the Publication with running an "institutional mission" to defame the Judiciary.

The order came after the newspaper's critical coverage on two issues: the nomination of some controversial judges, including Parajuli, to the country's apex court, and corruption in the Judiciary. Analysts believe that the order against Kantipur Publications is an attempt to quell any critical reporting on the Judiciary. In a contempt of court case filed by Advocate Anjani Kumar Pokhrel in May 2013, the petitioner claimed that columnist Pandey's article "Pad ra pahichan bich ko mahan antar" (Difference between post and posture) defamed the apex court. The article mentions how a Kantipur reporter was barred from entering the SC courtroom during the hearing against the nomination of Lokman Singh Karki to the post of Chief of Commission for the Investigation of Abuse of Authority, on the grounds that he was wearing a "fancy T-shirt".

The misuse of the Electronic Transactions Act (ETA) by authorities is another tactic to maintain social control. In early June 2014, Mohammad Abdul Rahman came across an article on Facebook about the Saptari District's improving security that interested him. Rahman commented, "How is it [*security*] improving when I have to pay NRs. 50,000 simply to get back my own motorbike that had been stolen?" This innocuous comment seemingly irritated the Saptari police, who arrested him for posting "negative" comments and held him in custody for 20 days. He was then brought to the Kathmandu District Court to be prosecuted under the Electronic Transactions Act (ETA) for "cyber crime".

Rahman's story gained widespread traction on social media, where many protested the liberal interpretation of the ETA by the police. People argued that the police had infringed on Rahman's freedom of expression, a right guaranteed by the Interim Constitution.

In another case, bureaucrat Raju Prasad Sah was taken into custody for his online comment, "He should be shot in the back" in relation to a widely-shared photo of Home Minister Bamdev Gautam stepping over a divider in the middle of the street while holding up traffic.

These examples raise important concerns about freedom of expression when using social media. The ETA, which was drafted to regulate electronic financial transactions, states that any person publishing material "prohibited by prevailing law or which may be contrary to public morality or decent behavior or...which may spread hate or jealousy" shall be liable to punishment.

Rahman's comment does not contravene this provision, though Sah's comment could be seen as a threat. This shows that the Act is too vague in its formulation. Furthermore, it appears that individuals are prosecuted over positions that major media houses take on a daily basis. The disparity between the free speech enjoyed by media elites in Kathmandu and individuals on the periphery, like Rahman in Saptari, is stark.

Given the recent spate of cyber crime complaints at the Central Investigation Bureau, there is an urgent need to draft a new law that specifically addresses social media. A comprehensive Act that clearly lays out the parameters of the limits to expression—like hate speech, slander and incitement to violence—must be formulated. However, this Act must not conflict with the broad provisions for free speech enshrined in the Interim Constitution.

Currently, only the Kathmandu District Court has the jurisdiction to hear cyber crime cases. As the Internet, and with it, social media, continues to

spread across the Nepali landscape, it would be wise to delegate this jurisdiction to other district courts as well. The Judiciary and the state organs need to internalize the fact that social media, albeit new, is fast becoming a public space, and an important tool, to share ideas and disseminate information.

ICCPR, Article 8

1. *No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.*

2. *No one shall be held in servitude.*

3. *(a) No one shall be required to perform forced or compulsory labour;*

   (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

   (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

      (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

      (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

      (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

      (iv) Any work or service which forms part of normal civil obligations.

Haliyas & Bonded Labour

Nepal is party to various international instruments prohibiting slavery, servitude, and forced labor, including the Slavery Convention 1926, its 1953 Protocol and 1956 Supplementary Convention, and ILO Convention No. 138 on the Abolition of Forced Labor and No. 182 on Worst Forms of Child Labor. The Constitution guarantees the right against exploitation in the name of any custom, tradition, or usage against slavery, servitude, and forced labour as a fundamental right. Moreover, the Bonded Labour (Prohibition) Act, 2002, has also been enacted to address these matters.

In Nepal, the United Nations Working Group on Contemporary Forms of Slavery estimates that 300,000 to 2 million people work under the *haliya* and *kamaiya systems* as modern slaves. The *kamaiya* system primarily affects a section of the ethnic Tharu population living in five western districts; its *haliya* counterpart exists in the Dalit community, including the Musahar people. They are concentrated in the far-western hill region, and in the eastern Tarai districts often under the name of *haruwa*.

In July 2000, the government outlawed the use of *kamaiya* labor and initiated rehabilitation programs. In September 2008, the *haliya* practice was banned and rehabilitation programs initiated to free people from debt bondage. Yet, both practices remain, and in fact, children's bonded-ness has increased rapidly.

Figures from the Ministry for Peace and Reconstruction indicate that 19,159 Haliyas in 11 districts of the far and mid-western regions were freed on 11 January 2011. The Ministry estimates that 37,954 Haliyas and 52,844 Khaliyas live in the far-western region alone. This data does not include Haruwa and Charuwa from the Terai. The government of Nepal does not have complete data for Haliyas, as the identification process is still incomplete.

The government has done well to address and eliminate the practice of the Kamaiya system. Issues for the Haliya, Haruwa, and Charuwa are not priorities. These communities have been working on the same land for more than 50 years but have no ownership over these lands. Neither the Squatter Problem Resolve Committee nor the Declaration for the Haliya Liberation addresses their problems. As the government has maintained silence on this situation, it has been directly and indirectly supporting this kind of slavery.

The law allows Kamaiyas from Terai and Haliyas from the hilly region to live with a landlord, but in practice, due to caste-based discrimination, Dalits are not allowed to live together with non-Dalit landlords. They live separately

in small huts. Article 2 (Kha) of Kamaiya Labour Prevention Act, 2058 states "Kamaiya labor means Bhaisawar, Gaiwar, Bardiwar, Kekwar, Haruwa, Charuwa, Hali, Gothalo, Kalmaries or any other type of practices as such." If we follow this definition, Haliya should be freed along with Kamaiyas, but this has clearly not been the case.

On 19 June 2008, the Haliyas made 11 demands on the government and political parties. When the government did not address their demands, the Haliyas carried out an 11-day protest program in Kathmandu. As a result, the government called for a meeting on 5 September 2008, in which a five-point agreement was drafted between the government and the National Haliya Federation and endorsed on 6 September 2008 in Parliament.

The Supreme Court has directed the government to introduce a law for the rehabilitation of the Haliyas, but they have turned a deaf ear to these directions. The government cites budget constraints. It dithers even on Haliya identification, so rehabilitation seems impossible at the present time.

The Ministry for Peace and Reconstruction formed a Census Collection Team to collect data on the freed Haliyas. But, the data was not collected for over two years, and then not collected properly, resulting in slow or late rehabilitation and identification. As a result, there are Haliyas with identification, but without proper rehabilitation and relief packages; and there are Haliyas who are yet to be identified. Thus, shoddy data collection has adversely affected the Haliya population as a whole.

There have been many problems with the identification process. Freed Haliyas have been categorized into four levels: those who have neither a house nor land, those who have a house but no land, those who have land but no house, and those who have both a house and land. The monitoring team has classified Haliyas as having house and land even if they have a plastic roofed shack or a thatched roof hovel strung together on public land. Furthermore, the team identified Haliyas as having cultivatable land even when this land is not fit for any cultivation.

Landlords have been asking for repayment of their loans with interest, even after the government has waived both the loan and its interest. They have been using threats and hiring musclemen to get their money back and using outside agricultural laborers to work their lands. This move has been made in order to negate the chief source of livelihood for the freed Haliyas, who then would have no income to feed their families. They would be forced to work again for their landlords as enslaved Haliyas.

Nepal has, with the continuation of this form of slavery, been violating international conventions and mechanisms, existing domestic laws and the Interim Constitution. Article 30 of the Labor Act provided for an end to the feudal land system and announced the beginning of a scientific land reform system. It also contains specific provisions to provide land and socio-economic security management for Kamaiyas, Haliya, Haruwa, and Charuwa. Though the government "freed" the Haliyas on 6 September 2008, it was done without sufficient preparation and research. This lack of groundwork has resulted in the Haliyas being cheated twice over.

Although the Haliyas have been freed on paper for six years, they have not yet tasted this freedom. They were merely removed from the lands in which they were working and the roofs under which they were living. They have not been provided with any land, or a place to live, or alternative employment opportunities. The government has still to introduce a law against the Haliya practices, or initiate programs for Haliya liberation.

Increasing Human Trafficking

Nepal's conflict from 1996-2006 resulted in major displacement of workers and their families. Many people were forced to migrate from their places of origin. Every year 300,000 new job seekers join the labor market. Due to declining economic activities within the country, the only option is foreign employment or migration. Nepal is now facing forced migration of workers on a massive scale.

Nepali men are subjected to forced labor mainly in the Middle East and, to a lesser extent, within the country. Nepali women and girls are subjected to sex trafficking in Nepal, India, and the Middle East. They are subjected to forced labor in Nepal and India, as domestic servants, beggars, factory workers, mineworkers, as well as in the adult entertainment industry. They are subjected to sex trafficking and forced labor in other Asian countries, including Malaysia, Hong Kong, and South Korea.

Numerous cases of intolerable suffering have been recorded amongst Nepali migrants. It is a bitter reality that Nepalese workers are allowed to work menial jobs in east and southeast Asia and the Gulf countries because they are cheap labor, doing whatever jobs they can get. Nepali migrant workers are divided into semi-skilled and unskilled workers. Mostly, the unskilled workers are from low class families going to the Middle East or India for family-survival. They work as industrial and farm laborers, cleaners, sweepers, watchmen or security guards. Many thousands of Nepali women in India have been smuggled, sold

into prostitution, or forcibly employed in the sex trade by criminal groups. The government and social movements, in spite of constant efforts, have not been able to eliminate these practices.

According to government statistics, more Nepalese died in Malaysia between mid-2006 and April 2014 (1,023) than in any other foreign country, and more than 10% of these deaths were classified as suicides, making Malaysia more dangerous for Nepalese than the Gulf countries. The Middle East accounted for 7,500 Nepali deaths, Saudi Arabia for 3,500, during the same period. Nepali workers in Qatar died at the rate of one a day, raising disturbing questions about construction safety—many have even questionedQatar's ability to host the 2022 World Cup because of this. Even if workers have insurance, companies rarely pay compensation when there is an accident. And the government offers no help. There is no one to stand up for the migrant.

Chapter VI

PAKISTAN

Torture & Tyranny
In a Pseudo-Democracy

PAKISTAN

Torture & Tyranny In a Pseudo-Democracy

Introduction

December 2014 has proven to be a deadly month in Pakistan. A blood-curdling event was witnessed at the Army Public School in Peshawar on 16 December 2014, leaving many Pakistanis speechless at the brutality on display. The killing of over 150 persons, most of them children, inside the school located in the Cantonment may well prove to be a watershed in Pakistan, in terms of human rights, and in terms of the see-sawing power equations between the military, democratic institutions, and the judiciary.

In the immediate aftermath of the incident, the military establishment has successfully dissuaded the government from initiating an inquiry into the security failure inside the military's own area of control. Furthermore, the government has been forced by the military to lift the moratorium on executions and looks set to allow for the re-establishment of military courts.

The fact that the government is groping in the dark to curb militancy, a monster that has been appeased and allowed to grow in its own backyard, will be lost on no dispassionate Pakistan observer. The lifting of the moratorium on the death penalty, and the hanging of 16 persons between December 19 and the end of the month, is but evidence of an impotent government looking for scapegoats amidst a façade of action.

Political Upheaval

While the attack on the Army School underlined the true state of Pakistan in 2014, the headlines earlier in the year were marked by the protracted political upheaval that upturned the lives of ordinary Pakistanis. The Nawaz Sharif government battled a political uprising spearheaded by opposition politicians Imran Khan and Moulana Tahir ul Qadri.

Both Khan's and Qadri's parties, Pakistan Tehreek-e-Insaf and Pakistan Awami Tehreek, though they have major political differences, managed to stand together on one platform to try and overthrow the Nawaz government, whose electoral victory is alleged to have been secured with the help of rigging. The slogan "Go Nawaz Go" became a political mantra for the elite and neo-conservatives of Pakistan.

Conspiracy theorists speculated military backing of the whole fiasco, intended to teach the Nawaz led government a lesson for meddling in the affairs of the Military. The procession that began in Lahore on August 12 culminated in a staged sit-in outside the National Assembly in Islamabad The actual number of protestors was debatable, but according to some estimates there were about 10,000 protestors that had arrived from all parts of the country to witness the "inqilab" that was not to be. The political leaders of both Pakistan Tehreek-e-Insaf (PTI) and Pakistan Awami Tehreek (PAT) played on mass emotion and promised gathered crowds that they will not leave Islamabad till Nawaz Sharif tenders his resignation.

On August 31 three protesters were killed and around 534 others injured as violent clashes broke out between PTI and PAT activists and personnel of the law-enforcement agencies in the 'Red Zone' of Islamabad. Moulana Tahir ul Qadri played the religious card well, terming the sit-in a jihad against oppression. The protestors turned violent on 2 September 2014, when they attacked the Pakistan Television Station located nearby, destroying machinery and chanting "Go Nawaz Go".

The political uprising dispersed when on October 21 Maulana Tahir Ul Qadri abruptly called-off the protest amidst allegations of a deal with the government. The supporters of PTI continue with the sit in though their numbers have dwindled significantly.

The sit in bought the country's capital to a complete halt causing the national exchequer billions of dollars in losses. The Chinese premier cancelled his visit to Pakistan in the wake of the protest, choosing instead to visit India.

Rule of Lawlessness

While the Army School attack and the prolonged political protests received understandable attention, what did not get addressed is the routine workings of the Pakistan criminal justice system, and how this contributed to destroy lives of innumerable citizens and demoralized the society daily in 2014.

The dysfunctional nature of the justice system has ensured that all the fundamental human rights to be guaranteed by Pakistan by virtue of enshrined Constitutional Articles, ratification of international instruments, and enacted legislation, were denied to the majority of people in Pakistan in 2014. To help analyze the true state of human rights in Pakistan, this report used several articles of the International Covenant on Civil and Political Rights (ICCPR) to shed light on realities in Pakistan.

> ***ICCPR, Article 7***
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> *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

Torture: An Intrinsic Part of a Torturous Justice System

Human rights can be rooted in a culture only when the ethical and moral foundations of that society are compatible with human rights concepts, norms, and standards. Wherever torture is common, one will find an underdeveloped criminal investigation system, and a society that has become removed from certain foundational principles.

In Pakistan, legal protection against torture is contained in narrow and specific provisions of the law, i.e. only in Section 156 of Police Order and in Article 14 of the Constitution of Pakistan. However, unlawful custody, illegal detention, and torture with complete impunity are what prevail across Pakistan. Under Pakistan's criminal justice system, victims carry the burden of proof in a torture claim, and there are no independent investigating agencies empowered to inquire into a complaint against torture.According to the existing legal framework in Pakistan, a claim for compensation for an act of torture can be settled under Sharia law. As a result, religious minorities are often sidelined; religious minorities, i.e. effectively non-Muslims, are not guaranteed equal rights under Sharia law.

The courts have not dealt with what is routine in the functioning of the police and law enforcement; there is a dearth of serious jurisprudence and interpretation of statute to curb the tide of torture. This further undermines the possibility of using the civilian court proceedings to obtain compensation; the process is hamstrung as it is by the requirement of a police report to substantiate a claim against torture.

In Pakistan, torture is used as a systematic instrument to extract evidence from suspects for different crimes. The *Thana* culture, entrenched in the criminal justice system since the colonial era, is used to maintain the writ of the state. People have to pay bribes to get First Information Reports registered; the investigation process is full of flaws; and those responsible for conducting the investigations are incompetent and dishonest. The majority of low ranking police officials have close links to professional criminals. Torture in custody is, at present, treated as an inevitable part of investigations. Investigators retain the notion that if enough pressure is applied, the accused will confess.

Police and other law enforcement agencies maintain private torture cells where torture is used with complete disregard for fundamental human rights or legal restrictions. Such cells are maintained to hide the arrest from any records and to escape the scrutiny of court bailiffs in cases of illegal detention. The Pakistan army currently runs 57 torture cells, including many in cantonment areas; the Pakistan Air Force maintains large number of torture cells in their bases, including one in their headquarters in Islamabad; and the Pakistan Navy also runs torture cells in Islamabad and Karachi, for instance at the Mehran Base in Karachi.

On 6November 2014, an axe-wielding police officer killed a Shiite man in police custody, claiming he had committed blasphemy. The incident occurred at a police station in the Punjab Province. The Officer Sarfraz Naveed, who killed Syed Tufail Hyder, later gave himself up and said he did it because Hyder repeatedly insulted companions of the prophet Muhammad during questioning in relation to a street fight.

On October 4, a woman died due to torture by police during a raid at her house. Police officials entered the woman's house in Sargodha to arrest her son who had married a woman of his choice. The son escaped before the police arrived. The angry policemen allegedly tortured the woman instead, to obtain information about the whereabouts of her son, resulting in her death. The policemen, fearing retaliation by local people, fled the scene following the woman's death.

On February 18, Sahib Khan Ghoto, a student, died after being tortured in military custody. The mutilated body of Sahib Khan was later dumped near the Railway Station, in Bharia Road District, Sindh Province. Sahib Khan, son of Mr. Dhani Bux was a political activist, nationalist, and a central member of the Executive Committee of Shehri Etihad (Citizens Unity) in Ghotki.

On 14 February 2014, Sahib Khan, along with his brothers Israr Ahmed and Naveed Ahmed, was returning home after a hearing in the Anti-terrorism

Court, Sukkur, at around 12:30 p.m. On the way home, officers of the intelligence agencies and other staff who were in civilian clothes stopped their vehicle near the Navy Park in Rohri. The officers had arrived in a mirrored double cabin vehicle and were waiting for Sahib Khan. In a statement to the police, one of Sahib Khan's brothers said that they stopped their vehicle and identified themselves at the request of the officers. After the introduction, one officer disclosed his identity and told them he was Colonel Ali the In-Charge Officer of the Inter-Services Intelligence (ISI) in the Sukkur region. Sahib Khan was then taken and detained in the Military Cantonment, where he died of torture. The Officers that tortured him were trying to get Sahib Khan to confess his involvement in certain bomb blasts at a Railway Station.

In another incident, on 17 March 2014, the police killed Mohammad Nawaz Lashari by pouring acid into his anus, and disappeared his brother. The "crime" of the Lashari brothers was that they had been unable to pay a bribe to Officers at the Sorah Police Station in Sindh Province. On March 14, Mohammad Nawaz Lashari, 22, and Aijaz Lashari, 25, from Khairpur Mirs, Sindh, were taken into custody on charges of stealing a camel. They were detained in Sorah Police Station, Tehseel Nara, District Khairpur Mirs, Sindh Province, as revealed in one police First Information Report (FIR) lodged by a landlord. The suspects named in the FIR are, however, two brothers from the Hasbani caste. After discovering that they had the wrong persons, the officials told the labourers to pay them Rs. 50,000 (500 USD) for their release and to persuade them to do so, the police beat them.

The brothers were tortured during the entire night of March 14. The next day, they were again asked to pay the amount, or to pay up at least Rs. 25,000 (250 USD). They could not afford to pay up even this reduced extortion amount. During the subsequent two days, they went through severe torture; the police poured acid into the anus of Mohammad Nawaz Lashari; he died in the early hours of March 17. The police transferred his body to a government hospital in Khairpur Mirs in an attempt to show that Mohammad Nawaz died there.

Recommendations

- There is an urgent need to work on the perception and understanding of UNCAT in Pakistan. NGOs should play an active role in raising awareness about the convention amongst the masses and legal professionals.

- Torture complainants should be protected from the institution of frivolous cases against them; the magistrate and judge must be more vigilant and should immediately quash the case if no cause of action is made out.

- Victims should be encouraged to report injuries immediately.
- Victims should be allowed to challenge the Medico Legal Officials (MLO's) report; the report of an experienced private medical practitioner or a certificate should be allowed and admissible as evidence of torture.
- Investigations Officers' (IO) reports are not satisfactory, as the Judiciary has itself noted; police training academies should provide special training to junior officers so that the preparation of quality investigation reports becomes the norm.
- Social science should be taught at the undergraduate level to sensitize the society against human right abuses, especially torture.

ICCPR, Article 18

1. *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, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*

2. *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*

3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*

4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Violence Against Religious Minorities

Religious minorities, such as Christians, Hindus, and Sikhs, make up roughly 5% of Pakistan's population, according to the last census. Shias constitute around 15% of the population. Members of such minority communities that do not profess Sunni Islam, suffer disproportionate violence in Pakistan. And, the government has systematically failed to investigate, prosecute, and redress instances of discrimination and outright violence against ethnic and religious minorities.

Members of the Ahmaddiya, Christian, and other religious minority communities are at acute risk of violent persecution and discrimination in Pakistan. Despite the persecution of members of religious and ethnic minorities, the Pakistani government has shown nothing but contempt for those who have fled the country and sought asylum overseas.

All minorities in the country, including the Ahmadis and Shias, feel that the State has not only failed to protect them, but continues to tolerate the violence perpetrated by religious fanatics. The chronic reluctance of the ruling Pakistan Muslim League in condemning the killings of religious minorities, and the silence of most politicians over the killing of blasphemy victims, illustrates the usual mainstream political disinclination to halt or condemn attacks on minorities.

As a result of the increasing violence, insecurity, and harsh living conditions for religious minorities in Pakistan, members of these communities are abandoning the country and seeking refuge elsewhere. They seek asylum in Asian countries as well as in Western countries, such as Europe, Canada, and America.

Christians and Hindus are specially targeted for acts of terrorism, mass violence, and abuse of blasphemy laws. Thousands of Pakistani Hindus have sought refuge in India, while Christians, Ahmadis, Shias, and other religious groups have been fleeing to other nations in East Asia and South Asia and have registered with the UN High Commissioner for Refugees (UNHCR), hoping to be able to settle in a country where they can enjoy equal rights.

Lately, a number of minority families including Ahmadis, Christians, and Shias, have also begun moving to Sri Lanka. In June 2014, Sri Lankan authorities detained 142 Pakistanis. Human rights groups have requested Sri Lankan authorities not to deport members of Pakistani minority groups until the UN refugee agency (UNHCR) has had access to them and determined whether they need international protection.

The year 2014 witnessed the upward trend of violence against minorities, particularly suicide attacks, target killings, and misuse of blasphemy laws. Blasphemy laws are used against both religious minorities and Muslims, although minorities suffer disproportionately.

Blasphemy

Blasphemy laws are part of the Islamic laws introduced by military dictator General Zia Ul Haq in the 1980s. These constitutional provisions, to "Islamise" laws, education, and culture, and the official dissemination of a particular brand of Islamic ideology, have not only acted against Pakistan's religious diversity but have also bred discrimination against non-Muslim minorities in the country. The laws are increasingly misused to settle personal scores or to grab property.

The blasphemy accused are often lynched and lawyers who appear in their defence have frequently been attacked. Judges have been threatened and attacked for dismissing cases and many of the accused face years in jail as their trials drag on.

Societal intolerance and religious extremism have rapidly taken hostage the already weak administrative and justice system in Pakistan. The police, the lawyers, and the judges are too afraid to act. Without recognizing the diversity of Islam, pluralism, and the constitutional principle of equality for all citizens, regardless of religion or sect, it is hard for the State to establish the practice of religious and sectarian peace in the country.

Instead of empowering liberal and democratic voices, the State has opted to side with the religious right and continues to rely on it to counter civilian opposition. By depriving democratic forces even playing field and by continuing to ignore the need for policies that encourage and reflect the country's religious diversity, the State has allowed religious extremism to flourish. It has failed to protect a vulnerable judiciary and failed to equip its law-enforcment agencies with the right tools they need to eliminate sectarian terrorism.

On 23October 2014, the Lahore High Court upheld the death sentence of a Christian woman Asia Bibi, convicted of blasphemy in November 2010, after she was found guilty of making derogatory remarks about the Holy Prophet Mohammed (pbuh), during an argument with a Muslim woman. And later, a two-judge bench of the Lahore High Court dismissed her appeal.

On 29May 2014, a prominent human rights lawyer Multan Rashid Rehman, who was appearing in Court on behalf of a University Professor accused of

making a blasphemous Facebook post, was shot dead after the prosecution lawyers had threatened to kill him in front of the judge during the court proceedings.

Rashid Rehman was shot and killed in his law office because of his willingness to take on the case of an English Professor accused of blasphemy by hardline student groups. The defendant had been unable to find further legal representation due to the fear surrounding blasphemy, which carries the death penalty in Pakistan. Previously, Hafeez had been in prison without a lawyer, until Rehman agreed to represent him in February 2014, almost a year after he was arrested.

On 18 September 2014, gunmen shot dead a professor of Islamic studies, a liberal, Shakeel Auj, in Karachi. The killing followed years of threats from his colleagues on allegations of blasphemy.

On 23 June 2014, the Editor and Publisher of the *Naya Zamana* magazine, Mr. Muhhamad Shoaib Adil, was taken into custody on alleged charges of having published blasphemous material. Religious extremists reportedly raided his office with a contingent of police officers and took several books. The police were unable to find any blasphemous material, but the extremists coerced the police into arresting Adil for blasphemy anyway. The extremists claimed that the autobiography of a retired judge, Justice Islam Bhatti, published in 2007, was blasphemous, as an Ahmadi had written the autobiography. The book describes Justice Bhatti's career as a lawyer and a judge at the Lahore High Court. The police, however, ultimately refused to file a blasphemy case against the Editor and released him after the militants had dispersed from the area.

On 16 May 2014, Khalil Ahmad who was being held in a police lock-up in Nankana District facing blasphemy charges, was shot dead inside the police station by a teenager disguised in a police uniform. The police said that the assailant had introduced himself as Mubashir, and had told the officers at the Sharqpur Police Station that he wanted to see Khalil Ahmad. He was given access to Khalil, and subsequently he shot him dead after a brief conversation. Nankana District Police Officer Afzaal Kousar told reporters that the assailant, 18-year-old Saim Mubashir, is a seminary student.

The deceased was a member of the Ahmadi community and was among six people named in a blasphemy case on 11 May 2014. Hailing from Sajowal Village, near Sharqpur, he and the other accused men had allegedly assaulted shopkeeper Syed Riaz Hussain Shah and had torn an Islamic calendar. The shopkeeper immediately approached local leaders of the Ahle Sunnat Wal Jamaat, who mounted a protest and blocked the Lahore-Sharqpur Road for

about five hours. They lifted the blockade only after police officers registered a case against the six suspects under blasphemy laws. The Sharqpur police later arrested Khalil.

On 4 April 2014, Additional District and Sessions Judge Toba Tk Singh Amer Habib handed a death sentence and a fine of Rs. 100,000 to a Christian couple in a blasphemy case. The prosecution said that the convicts had sent blasphemous messages (SMS) to a shopkeeper, Malik Muhammad Hussain of Malkanwala Chowk, about a year and a half ago.

Threats to the Shia Community

Pakistan's Shia community has been the target of unprecedented sectarian violence, wherein Sunni militants have killed thousands of Shias across Pakistan since 2008.

The Hazara community in Quetta, Balochistan, which is Shia, is the latest addition to the list of minorities facing persecution and violence in Pakistan. At least 3,000 Hazara men, women, and children have lost their lives and more than 5,000 more have been injured in Quetta in recent years. The Pakistani Sunni Muslim extremist militant group Lashkar-e-Jhangvi is suspected to be behind these attacks.

On 18 June 2014, eight Shia Muslims were killed in Hangu when terrorists opened fire on certain internally displaced persons. According to reports, terrorists belonging to the Ahle Sunnat Wal Jamaat trespassed into a house and killed the eight Shiites on the spot. The victims belonged to the Ali Khel tribe in Orakzai Agency. The FIR stated that the incident could be termed as a sectarian killing. Ali Khel is a mixed Shia-Sunni tribe and its members are scattered across the federally administered tribal areas.

On 9 June 2014, 29 people were killed in combined suicide attacks on Shia pilgrims returning from pilimigrage in Iran and Iraq. Shia pilgrims, mostly hailing from Kohat and Hangu districts and the Orakzai Agency, were staying in two hotels in Taftan, a town near Pakistan's border with Iran, when the unidentified group attacked them.

On 29 May 2014, gunmen ambushed a group of people returning from the funeral of a member of the Shia community in Sepoy Village of Lower Orakzai Agency, killing four people and injuring another. According to the political administration, the group was returning home after attending the funeral prayer of a Shia man in the Lalpura area of lower Orakzai Tehsil when they were attacked from the mountains controlled by the Shiekhan tribe.

On 25 April 2014, at least four people were killed while 30 others, including three Shiites, sustained injuries, in an explosion on Chaudhry Khaliquz Zaman Road in the Delhi Colony area of Clifton Town, Karachi, after a bus was targeted. The bus was carrying Shia passengers on their way back from a Shia Mosque following Friday prayers. According to Inspector General Sindh Iqbal Mehmood, Shia Muslims traveling in a bus were the actual targets of the terrorists.

On 4 February 2014, a suicide blast near Imambargah in Peshawer killed nine Shias and injured 50 others. The powerful bomb blast ripped through a local hotel frequented mostly by Shias in the capital of Khyber Pakhtunkhwa Province. The incident took place at Pak Hotel near Imambargah Alamdar in Kucha Risaldar, a Shia dominated neighbourhood of Peshawar.

On 21 January 2014, at least 24 people, including women, were killed and over 41 were injured when a suicide bomber in Mastung area in Balochistan hit a coach carrying Shia pilgrims from Iran. An explosive-laden car, driven by a suicide bomber, rammed into the bus. Most of the dead and injured were from Marriabad and Hazara Town in Quetta. According to official reports two coaches carrying about 100 pilgrims were arriving in Quetta from Taftan, a town on the border of Iran. When the buses reached Derringer area in Mastung District, one of them was hit by the powerful blast. The bus caught fire and 22 passengers were killed on the spot, while 41 others were injured. The banned militant organisation Lashkar-e-Jhangvi claimed responsibility and warned of more such attacks to follow.

On 3 January 2014, as many as 15 Shiites were injured in a terrorist attack in Pinwal Village in Chakwal. Shia Muslims were planning to hold a majlis and a procession in the village, about 7 km north of Chakwal City. However, leaders of the terrorist group Ahle Sunnat Wal Jamaat (ASWJ) tried to stop them from organizing the congregation. According to Shia leaders, the local court allowed them to carry out the procession, but the leaders of ASWJ had said that the court had only allowed the holding of the Majlis and had not given permission for the procession itself. When the procession led by Shia leader Syed Ahmed Ali Shah reached Pinwal Village, it was ambushed by activists of ASWJ, who pelted the procession with stones.

On 23 February 2014, at least 12 Shiites were killed in an explosion on Hangu Road near Police Lines area in Khyber Pakhtunkhwa's Kohat District. According to the police, five kilograms of explosives planted in a wooden crate placed on the roadside were used in the blast. The explosives were detonated as a passenger wagon reached Peshawar Chowk.

On 16 February 2014, a famous female Shia scholar Tayyaba Khanum Bukhari left Pakistan for an unknown location after receiving threats to her life. The cleric has been receiving death threats for a couple of years from unknown groups, which has recently compelled her to leave Pakistan. Tayyaba Khanum Bukhara is famous for her thoughtful speeches in Majlis'.

Threats to the Ahmadi Community

On 27 July 2014, in Gujranwala, three members of the Ahmadi community and an unborn child were killed and four others were severely injured when an angry mob attacked Ahmadi homes and burnt five houses belonging to members of the community over alleged blasphemy.

Those who died in the attack include a 55-year-old woman, a minor girl, a 7-year-old girl, and a seven-months pregnant woman. According to details, the clash started when an Ahmadi youth, Saqib, allegedly shared a blasphemous picture with another friend, Ejaz, on Facebook. Ejaz along with Zakariya, Imam Jama Masjid Sadiqia Qari Muhammad Hakim, and others gathered outside Saqib's house to protest, following which an angry mob attacked and damaged seven to eight houses belonging to members of the Ahmadi community in protest and set five houses on fire in Arafat Colony, Gujranwala. Following the violence, all Ahmadi families in the area fled in fear for their lives. Six houses and a shop were damaged in the incident. A majority of the male members of the Ahmadi community have still not returned to their homes fearing another unwarranted attack.

On 26 July 2014, four Ahmadis were charged with blasphemy for preaching in Badin, Sindh.Tando Bago police registered a criminal case against four men belonging to the Ahmadi community for allegedly preaching their faith. Mohammad Ramazan Rustmani, a local cleric, who is also an office-bearer of the Jamiat Ulema-i-Islam, lodged an FIR against the four men, Abbas Gurgez, Idrees Gurgez, Mushtaque Ahmed Gurgez, and Mohammad Khan Gurgez, under Pakistani Penal Code Sections 298B (misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places), and 298C (person of Quadiani group, etc., calling himself a Muslim or preaching or propagating his faith).

On 26 May 2014, a Canadian/American Ahmadi doctor, Mehdi Ali Qamar, was killed in front of his wife and his 3-year-old son, when gunmen on motorcycles riddled his body with bullets while he was visiting his mother's grave in the town of Chenab Nagar in Punjab. The doctor had arrived in Pakistan three days before his untimely murder, to provide free medical care to heart patients. The Pakistan Medical Association condemned the murder and termed it a blatant sectarian attack.

On 9 March 2014, local police removed gravestones from several Ahmadi graves at Chak 96-GB, Jaranwala near Faisalabad. The police action was the result of an application, submitted to the police for the removal of the gravestones, claiming that the words written on the Ahmadi graves were hurting the religious feelings of others. Following the complaint, the Ahmadi community leaders were summoned to the police station and were pressured to remove the gravestones. When they refused, the policemen themselves damaged seven gravestones.

Threats to the Christian Community

On 18 May 2014, a 16-year-old Christian girl was gang-raped by four young Muslim men in Kot Mubarik District, Hafizabad. The young girl was visiting her sister's house in Kot Mubarik. When she went to a shop near her sister's house to make a purchase, the accused men, Abid Mehmood, Kameer Cast Mochi, Ali Hassan, and Muhammad Abubakar surrounded her and raped her. Abubakar also attacked the young Christian girl with a sword. When the victim started screaming in pain, the attackers ran away leaving her naked and bleeding. The victim's brother approached the police to register a case, but the police have refused to register an FIR.

On 14 June 2014, Hendry Masih, a Christian member of the Balochistan Assembly, was reportedly shot twice on his neck and chest outside his residence by his own security guard.

On 20 March 2014, a Christian man was handed the death penalty. He was convicted of insulting Prophet Mohammed during a conversation with a Muslim friend in the Joseph Colony neighbourhood of Lahore in March 2013. More than 3,000 Muslims rampaged through Joseph Colony, torching more than 100 Christian homes, following the allegations against Masih.

On 17 May 2014, four Christians, including three women and a male pastor, were arrested after being accused of blasphemy. According to reports, the four Christians were distributing Christian literature at a local railway station, when a Muslim religious leader, belonging to Islamist Sunnatwal Jammat, read the material and, realizing that it was Christian literature, immediately reported the four to the police. A mob of enraged Muslims surrounded the train station shortly after the police detained the four Christians. To prevent violence, the police arrested the four Christians and moved them to the nearest police station. The mob followed, demanding punishment be meted against the Christians immediately. The case is still under inquiry.

On 22 April 2014,authorities demolished a slum mainly inhabited by Christians, situated on the edge of Islamabad. Authorities have decided that these slums are illegal and a haven for terrorists and extremists. Unfortunately, many of the demolished slum's residents were poor Christians. The city's administration has drawn up a list of 14 such slum settlements calling them illegal, and plans to clear them all with no compensation or rehousing plans for the residents.

Threats to the Hindu Community

On 15 March 2014, a mob set a Hindu *Dharmashala* on fire on Jinnah Bagh Road in Larkana over alleged desecration of holy pages from the Quran. The Hindu community in Naudero and Ratodero closed their businesses and did not celebrate Holi due to fear of Muslim demonstrators. They remained confined to their homes, as unruly Muslim mobs continued violent protests in many areas. Personnel of the Market Police Station apprehended a Hindu man said to have committed the sacrilegious act and he was then moved to an undisclosed location.

On 31 March 2014, a large number of Hindus gathered outside the Karachi Press Club to protest against the desecration of their temples. Earlier in the year, Hindu temples were attacked in Hyderabad, Larkana, Tharparkar, and Tando Mohammad Khan, including the arson attack on a Dharmashala in Larkana on March 16, desecration of a Hanuman temple in Hyderabad on March 28, and robbery of Faqir Par Braham's Ashram in Nagarparkar on March 31. The protest was organised by the Pakistan Hindu Council (PHC). The protesters condemned the federal government's "utter indifference" towards the rising incidents of hate crime and the absence of any steps to secure safety for Hindus.

On 28 May 2014, five children of a Hindu trader were abducted in Dera Allah Yar area in the District Jaffarabad in Balochistan. Unidentified armed men kidnapped the children of a local trader, aged between 5 and 10, while the children were returning from school. Jaffarabad is one of the most sensitive Districts in Balochistan and kidnapping for ransom is rampant there.

On 8 March 2014, unidentified arsonists set a yoga centre on fire in the night. The centre is located near Banigala in Islamabad. According to the guard of the Art of Living Yoga Centre, eight armed men with faces covered entered the centre and tied up two guards. According to his witness statement, "The men asked us if there was any cash or valuable[s] in the centre, to which her reply was that there was nothing except blankets, furniture, and documents. They then sprinkled petrol in different rooms and set them ablaze after which they

escaped in two vehicles. There is an impression locally that yoga is a Hindu practice and that Hindu religious leaders were influencing the people at the club.

Threats to the Sikh Community

On 24 May 2014, Islamabad police charged over 200 Sikhs for allegedly attacking, assaulting, and rioting at the Parliament House. The case was registered in response to a complaint lodged by the Station House Officer of the Secretariat Police Station, stating that over 225 Sikhs had staged a protest and had mounted a resistance at Radio Pakistan Chowk. Later, the protesting members of the Sikh community entered the Parliament House breaking its gates. Fifteen Sikhs were named in the FIR, along with 225 unknown protesters.

The police said that they had tried to baton charge the protesters and fired tear gas shells but failed to stop them. Members of the Sikh community were protesting outside the Parliament House, Islamabad against Sikh gurdwaras in Karachi, Shikarpur, and various other cities of Sindh being set on fire. They were demanding that the government provide assurances regarding the safety and security of their gurdwaras.

On 14 February 2014,unidentified gunmen in the limits of Draban Police Station, Dera Ismail Khan, kidnapped four persons including two members of the Sikh community. Pawander Singh, Nand Singh, Amjad, and Arsalan Muhammad were on their way to Bhakkar District of Punjab, travelling from Peshawar in their car, when unidentified gunmen intercepted them near the Draban Road and bundled them into a van. Although Amjad and Arsalan Muhammad were traced the next day, the two kidnapped Sikhs remain missing.

ICCPR, Article 6

1. *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

2. *In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.*

3. *When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*

4. *Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*

5. *Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*

6. *Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.*

Enforced Disappearances & Extrajudicial Killings Flourish

There has been no let up in 2014 as far as acts of disappearances and extrajudicial killings by the law enforcement agencies are concerned. The Balochistan and Sindh provinces remain the most affected. Nationalists and secular forces were the main targets of state violence in the form of enforced disappearances, and following disappearance in many cases the tortured bodies of disappeared persons were found dumped on the streets.

Disappearances Legalized through Pakistan Protection Act

The government of Pakistan has accorded unlimited powers to law enforcement authorities to combat terrorism through the Pakistan Protection Act, 2014. Last year, in the month of September, the government issued the Pakistan Protection Ordinance (PPO) bypassing the National Assembly. The Ordinance gave nine months for law enforcement authorities to operate clandestine operations free from Parliamentary oversight.

The Pakistan Protection Act 2014 (PPA) that has since been passed vests unfettered powers to law enforcement authorities, which include the power to shoot a suspect at sight (with the approval of only a grade -15 official) and the power to detain a suspect for 90 consecutive days without needing to produce them before a judge. The Act has a retrospective effect, which means that law enforcement authorities, be they the police, military, or intelligence services have been granted immunity even for prior actions with regard to enforced disappearances, torture, and extrajudicial killings.

Judiciary Blames Intelligence Agencies

The Pakistani higher judiciary has observed it that intelligence agencies, including Inter Services Intelligence (ISI) and Military Intelligence (MI), have been involved in abducting people and making them disappear. The courts have also pointed out the involvement of agencies such as the Frontier Corps (FC) and other para-military forces in these abductions and enforced disappearances.

Earlier disappearances in Pakistan were a rare occurrence, but after the 9/11 incident and the subsequent war against terror, disappearances following illegal arrest have become common practice. Enforced disappearances in the form flourishing today took root in 2001 during the military government of General Musharraf, on the pretext of combating terrorism, particularly against the Al-Qaida terrorist group. The government instead of attacking Islamic militant groups such as the Al-Qaida and the Taliban, waged a war against secular and nationalist forces in Balochistan, a province that has no terrorist links. As a result, more than 8,000 persons from political and nationalist parties, students, lawyers, doctors, journalists and human rights defenders are reported missing in a little over a decade following their arrest by the Military, the ISI, or other State agencies.

Disappearances Accepted by Authorities as Normal Practice

The trend of increased enforced disappearances has been a direct cause for proportional increase in instances of custodial torture and extrajudicial killings. Enforced disappearances in Pakistan have become a routine occurrence; worse, the authorities have accepted them as a normal practice of law enforcement agencies, including the army and its intelligence agencies. Major political parties, a sizeable number of whom are Members of Parliament, have been silent on enforced disappearances and torture in military detention cells. The distress caused by the disappearances is that, despite the departure of the government of President Musharraf, the menace continues under civilian governments. On average, in Balochistan alone, every month at least five or six persons are abducted and made to disappear by persons dressed in civilian clothing. This is frequently done in the presence of police officers that then refuse to lodge FIRs, admitting verbally that intelligence agencies are involved in such disappearances.

Mass Graves of Disappeared Persons

On 25 January 2014, a shepherd discovered pieces of human bodies and bones. This led to the uncovering of three mass graves. He informed the Levies, a private armed force organised by tribal leaders, and according to Mr. Afzal

Supra Assistant Commissioner in District Khuzdar, Balochistan, the grave was excavated and 15 bodies were found.

It is suspected that these graves are of Baloch missing persons who were arrested and subsequently extrajudicially killed. The bodies were too decomposed to be identified. According to officials, from the three mass graves eight, 17, and 78 bodies were found. However, local reports reveal that a total of 169 bodies have been found.

Local residents have also found more than 100 human bodies in Tootak area, while they were digging there. However, Pakistani military forces stopped the local people from unearthing the mass graves and took control of the area and since then public access to the location has been denied.

According to the press, a security official speaking on the condition of anonymity has said that so far they have found around 56 unidentified graves and that there are many more. It is claimed that these bodies too are those of Baloch missing persons. The government subsequently conducted an inquiry. After nine months, the government has come out with a statement that only three bodies have been found.

Children of Asylum Seekers Made to Disappear

Intelligence agencies have also targeted children of Baloch asylum seekers who are in European countries. The following are some of the cases.

Mr. Nabeel Ahmed, 22 years of age was abducted on 30 August 2014, i.e. on the International Day for the Victims of Enforced Disappearance. He was arrested from Karachi. Mr. Ahmed is the son of Mr. Kachkol Ali, who served as the leader of opposition in the Provincial Assembly of Balochistan during the period of General Musharraf's military government, and also served as Member of the Provincial Assembly on three previous occasions. Mr. Ali left Balochistan in 2010 when the Frontier Corp of the Pakistan Army arrested three prominent Baloch political leaders and after two days their corpses were thrown out from a helicopter. Before he fled the country, Mr. Ali was threatened by persons from an intelligence agency for his decision to inform the media about the abduction of these political leaders.

In yet another incident, the houses of one Baloch asylum seeker in Norway, Mr. Hafeez Hassan Abadi, and his brother, were raided by security forces on August 10. The houses are located in Ahsanabad, Kharan, Balochistan Province. Security forces and persons from intelligence agencies arrested his two nephews, Mr. Najeeb Ullah and 14-year-old Hasan Jan; their whereabouts are still unknown.

Mr. Hafeez Hassan Abadi is a well-known intellectual in Balochistan; he is a teacher and a short story writer. Mr Abadi was compelled to flee the country in the year 2009 when an organization named Tehreek-e-Nefaz-e-Aman Balochistan (TNAB), which was formed by the security establishment to kill nationalists elements under the pretext of fighting terrorism began harassing him. A Pakistani news agency, NNI, has reported that the TNAB has recently threatened to kill every single member of the Baloch intelligentsia and has also threatened to kill Hafeez Hasan Abadi's family.

Two other young persons, Naseem, son of Bibaker, and Sath Nisar, son of Miran, who are all residents of Shapuk Turbat, were forcibly abducted on 29 January 2014 and their whereabouts too are still unknown.

Disappearances in Sindh Province

Secular groups in Sindh Province are the main target of disappearances, torture in custody, and extrajudicial killings by law enforcement agencies. There are many outfits of Taliban and other militant groups operating in Sindh Province but the law enforcement agencies target secular groups. The main targets are MQM, a party that largely represents urban areas in Parliament and the JSMM and JSQM, nationalist Sindhi speaking groups.

The federal government started an operation in Karachi, the capital of Sindh, called "Karachi Targeted Operation", with the support of the police and the Pakistan Rangers. The operation, which commenced on 5 September 2013, was supposedly against the increase in targeted killings, extortions, kidnappings, and incidents of terrorism including bomb blasts. The Pakistan Rangers have been given powers of arrest and detention of suspects, including permission to shoot on sight. The media has reported that more than 16,000 persons have been arrested or taken into custody and only 2,000 persons are reported to have been produced before the courts. The whereabouts of the others are still unknown. It is also reported in the media that either the Pakistan Rangers or police are behind these disappearances, and in some cases may have reached a settlement in exchange for huge bribes.

The Muttahida Qaumi Movement (MQM), a political party with a sizeable number of parliamentarians, has been regularly pointing out the extrajudicial killings of its workers and supporters, who have been arrested, forcibly made to disappear, brutally tortured, killed, with their bodies dumped around the city. The MQM has reported that 45 activists are missing after their arrest since the Operation started.

Security agencies have developed a mindset that Sindhi political activists and nationalists are enemies of the country and they are to be treated worse than prisoners of war. This is the reason that such members of security agencies have adopted a new method of torture, carving the word "Pakistan" onto the chest of the victim, as in the case of a young three-wheeler driver, Mr. Amin Malano. Mr. Malano was abducted by persons wearing civilian clothes on May 24, and kept for three days in the custody of the Military. As a part of the torture he underwent, the word Pakistan was carved into his chest with an electric drill. After his ordeal, he was dumped on a roadside.

Mr. Munir Choliani, the Media Coordinator of the Jeay Sindh Muthida Mahaz (JSMM) was extrajudicially killed on 29 May 2014. He was travelling from his native town Warah, District Larkana, to Sann, District Dadu, in Sindh Province, with his wife and daughter. A white-coloured car followed their car. After some time, persons traveling in the white vehicle stopped them on the Indus Highway.

The victim's wife later identified these persons as being from the intelligence agencies. All three were abducted, and later the wife and daughter were released in a nearby village. The car was abandoned in Gidrchi Forest, Dadu District. Within hours the bullet-riddled body of Munir Choliani was found near Boobak Town, District Dadu. Mr. Choliani was completely defenceless; for many years, he had been wheelchair-bound, as he was paralysed from the waist down.
Rohel Laghari, a 22-year-old JSMM activist was abducted on 1April 2014 from Hyderabad. His bullet-riddled corpse with torture marks was found on November 30, after 10 months of his disappearance.

Sarvech Pirzado was a JSMM activist and an employee of a private medical company. Pirzado was abducted from the Impress Market in Karachi on 12 September 2014 when he was going there to purchase medicines. On the way, persons wearing civilian clothing abducted him. His family filed a petition before the Sindh High Court for his recovery. The court has taken no decision, even after his corpse, bearing gunshot wounds, turned up on December 1.

Government Fails to Ratify International Convention on Disappearances

The government as well as the judiciary has today fully realized the prevalence of enforced disappearances being perpetrated by the military and the intelligence services; it has become an open secret that these agencies of the government are abducting thousands of people from different parts of the country and making them disappear, particularly from Balochistan in staggering numbers. In cases of disappearances that have been brought before it,

the higher judiciary, i.e. the high courts of the four provinces and the Supreme Court, have on many occasions found that personnel from the Pakistan Military and paramilitary organisations are involved in such abductions, enforced detentions, and disappearances. The courts have, on numerous occasions, ordered the officers to be brought before the court. However, the government and its ally military apparatus have never respected these orders. In one such case, the Supreme Court of Pakistan gave an order for the arrest of an Army Brigadier on charges of having been directly involved in an incident of enforced disappearance of persons; that order has never been followed to date.

The government has failed to legislate, or even implement the already existing legal framework, to halt such acts of enforced disappearances and bring those responsible to account before the law. This failure runs counter to Pakistan's commitments to international obligations and the firm commitments made to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

In contravention of such obligations, responsibilities and commitments, government officials have been quoted as saying that because of the well-established military regime and the close links with the armed forces, Pakistan's government is unable to implement such laws on the ground. In its stead, and rather to everyone's bewilderment, the government has opted to adopt a law that has virtually legalized enforced disappearances and extrajudicial killings by armed forces and its intelligence services on the pretext of combating terrorism.

In September 2012, when the UN Working Group on Enforced and Involuntary Disappearances came to Balochistan, a delegation of VBMP met with them regarding the cases of missing persons in Balochistan. After a few days the Chairman and Vice Chairman of VBMP received threats. Nasrullah and others submitted an application in the Supreme Court of Pakistan about the threats they had received and the Chief Justice directed the police to file a First Information Report (FIR) regarding the threats.

Nasrullah personally handed over this Supreme Court order to the Capital City Police Officer (CCPO), Quetta. The CCPO told the Station House Officer (SHO) in front of Nasrullah to register the FIR. However, as some officers told Nasrullah, the police have completely ignored the orders of the court because of the pressure exerted by the military.

Extrajudicial Killings in 2014

Extrajudicial killings, under the guise of police encounters, continued in 2014. The Judiciary paid mere lip service to this state endorsed violence. Law

enforcement officials were given complete impunity to maintain the writ of the state through torture and extrajudicial killings this year as well.

On February 3, MQM Korangi Unit 75's worker, Mohammad Salman, was taken into custody by men dressed as police officers, at the Korangi Crossing. His corpse was found in the Landhi area on 4February 2014; it was pronounced unclaimed and sent to Edhi morgue.The body bore marks of terrible torture in custody, including a broken neck.

On October 10, Ishtiaq, an auto-electrician from Mianwali, was killed while in custody. The police claimed they were taking him to help in the recovery of a stolen car, when his accomplices, in a bid to get him free, opened fire on the police near Qatal Aamara Mor, Bhawalpur. The police said the bullets fired by the attackers hit their own accomplice, who later died in a hospital. The police alleged the deceased was a member of an inter-province car-lifter gang.

On 12 October 2014, a young 15-year-old footballer Shahzeb Razzak was among the four people shot dead in an alleged encounter with the Rangers in Malir. Shahzeb represented Pakistan in two international football events in China and Iran last year. He was asleep at his sister's house in Malir when people dressed in civilian clothes took him away and killed him in an encounter. Shazeb's older brother Faizan had been killed three years ago in an exchange of fire between two gangs in Lyari.

University Dean Assassinated

The menace of "unknown persons" shooting to death innocent civilians grew in 2014.

Prominent was the case of Dr. Shakeel Auj, Dean of the Faculty of Islamic Studies in the University of Karachi, who was shot dead by "unknown persons". Reports reveal that Dr. Auj was shot at point blank range from behind while he was in a moving vehicle. Three other colleagues who were with him in the car at the time miraculously survived the shooting.

Dr. Auj was a well-known personality and a distinguished scholar, renowned for his liberal and enlightened ideas on the philosophy of Islam. He remained a staunch critic of orthodox circles and conservatives. Before the incident, he had received threatening messages from different quarters, including from several professors in University of Karachi. An Islamic seminary had, in recent days, issued a fatwa, declaring him as blasphemous and liable to be killed.

According to reports, the police had themselves claimed to have known of these threats to Dr. Auj's life since he had lodged a police complaint by way of an FIR in 2012. Despite such a complaint being lodged, the police neither provided Dr. Auj any form of protection nor investigated the leaders of the Madrasah against whom the said complaints were made.

A prominent human rights defender and lawyer, Mr. Rashid Rehman, was gunned down in his office by Muslim fundamentalists for defending a professor charged with blasphemy. He had been threatened earlier, by fundamentalists during court proceedings. They said if he did not stop pursuing the case he would not be able to come to court again. The court was informed that Mr. Rehman had been threatened with death, prior to the Court sessions, but the judge did not take any action against the fundamentalists. Mr. Rehman was shot and killed on 9May 2014; the judiciary, government and the police all failed to protect him and failed take any actions against the perpetrators thereafter.

Drone Attacks

Up to 12 October 2014, there were 13 drone attacks in FATA districts, which have claimed the lives of at least 83 persons, while injuring 18. These military actions and offensives have carried with them no process of transparency; no journalists are permitted to freely visit and report and, therefore, an accurate count of how many innocent citizens have been killed in military actions and how many militants these actions have killed is unavailable. The statistics available have been provided in this chart.

Chronology of Drone Attacks

No.	Date	Tehsil	Details	Killed	Injured
1	June 11	Dargah Mandi, FATA	Six suspected militants killed in the USdrone attack in the area considered a stronghold for the Al Qaeda-linked Haqqani network in Dargah Mandi village, NWA of FATA	6	0
2	June 12	Dandy Darpakhel, NWA, FATA	A US drone fired eight missiles in Dandy Darpakhel area of NWA in FATA that killed at least 10 militants while four others were wounded.	10	4
3	June 18	Dargah Mandi, Miranshah, NWA, FATA	Six militants killed in a US drone strike in the early hours in Dargah Mandi Village, Miranshah Tehsil, NWA of FATA.	6	0

4	July 10	Doga Madakhel, Dattakhel, NWA, FATA	Six unidentified militants were killed in a US drone missile strike in Doga Madakhel Village, Dattakhel Tehsil, NWA of FATA	6	0
5	July 19	Mada Khel, Dattakhel, NWA, FATA	A US drone strike, targeting a TTP compound, killed 11 militants in Mada Khel Suburb, Dattakhel Town, NWA of FATA	11	0
6	August 6	Dattakhel, NWA, FATA	At least six suspected militants killed and two others injured when a drone fired two missiles at a village house in Dattakhel area of NWA in FATA	6	2
7	September 24	FATA	10 Uzbek militants killed when a US drone hit a vehicle in the Lowra Mandai area of Dattakhel Tehsil in NWA	10	0
8	September 28	FATA	US drone strike killed four suspected militants, including two Arab militants, in a compound in Wana area of SWA	4	0
9	Oct 5	Shawal, SWA, FATA	At least five militants killed in a US drone strike in Shawal area of SWA in FATA	5	0
10	Oct 6	Bari Mail, Shawal Valley, NWA, FATA	At least eight militants killed and four others injured in a US drone strike in Bari Mail area of Shawal Valley in NWA of FATA	8	4
11	October 7	Madakhel Kunar Sar, Dattakhel, NWA, FATA	At least three militants killed and five others injured in a US drone strike in Madakhel Kunar Sar area of Dattakhel Tehsil in NWA of FATA	3	5
12	October 9	Dattakhel, NWA, FATA	At least four suspected militants killed and three others injured in a US drone strike in Dattakhel area of NWA in FATA	4	3
13	October 11	Shawal, NWA, FATA	At least four suspected militants, including a local Taliban 'commander', killed in US drone strike in Shawal Tehsil of NWA in FATA	4	0

The Order of Militancy

The law and order situation remained grim in 2014. The country witnessed the continuing bloodbath that is part of the operation of *Zarb-e-Azab*, meant to flush out militants from the North Waziristan region. The area was said

to harbour militants from Al Qaeda and other Islamic jihadist groups. The operation has caused a mass exodus from the region, increasing the number of people internally displaced. According to the Fata Disaster Management Authority (FDMA) the number of internally displaced persons in the wake of the Zarb-e-Azab operation has reached 0.8 million (800,000).

On January 20, a suicide bomber killed 13 persons, including eight soldiers and three children, and wounded 29 others in Royal Artillery Bazaar, close to General Headquarters in Rawalpindi District of Punjab.

On January 21, six police officers and a 13-year-old student were killed and nine others injured in a bomb blast near a police mobile station in Sardheri Bazaar of Charsadda Town in Khyber Pakhtunkhwa.

On February 13, at least 13 policemen were killed and 58 others injured in a suicide blast targeting a bus carrying 50 police officers near the gate of Razzakabad Police Training Center in Shah Latif Town of Karachi. The *Tehrik-i-Taliban* (TTP) claimed responsibility for the attack. A statement read: "We carried out the attack against the police because they are killing our people".

On April 8, at least 17 people, including a woman and five children, were killed and 44 others wounded when a passenger train, the Jaffar Express was bombed at Sibi Railway Station in Balochistan.

On September 6, three unidentified militants and one navy officer were killed and six others injured when Pakistan Navy security personnel foiled an attempt by unidentified militants who tried to target Pakistan Navy Dockyard in Karachi.

On November 3, at least 60 people were killed in a blast near Wagah Border. Victims included ten women and seven children, while more than 110 people were injured whenthe bomb exploded outside a restaurant near a paramilitary soldiers' checkpoint at Wagah Border on the outskirts of *Lahore. Jamaat-ul-Ahrar* claimed responsibility for the attack.

Terrorist Casualties

It is evident from a cursory look at the graph below, compiled with data received from Pakistani dailies, that the number of casualties peaked in June and July 2014. Following the launch of the operation 'Zarb-e-Azb' on 15 June 2014, as retaliation against the brazen attack at the Quaid-e-Azam international airport Karachi, the casualties have increased manifold.

Trends in Bomb Blasts

Deadly bomb blasts continued to sow fear in 2014, with the month of January proving to be the deadliest in terms of the rise in incidents of bomb blasts. On February 23, 13 persons, among them a woman and a child, were killed, and 14 others wounded, in a bomb blast at the main gate of Usterzai Suzuki Stand, Hangu Road, near Peshawar Chowk of Kohat Town in Khyber Pakhtunkhwa. On 14March 2014, 10 persons, including nine civilians and one Special Forces Officer, were killed, and 35 others injured in a bomb explosion targeting a Frontier Corps vehicle at Science College Chowk area of Quetta, Balochistan.

Casualties in Suicide Attacks

The year 2014 began with several major suicide attacks. On 1January 2014, three people were killed and 30 others injured in a suicide attack targeting Shia pilgrims in Akhtarabad area, Quetta. On 19 January 2014, 26 soldiers were killed and another 24 were injured when a bomb ripped through a military convoy in the Bannu Town of Khyber Pakhtunkhwa. The very next day, on January 20,a TTP suicide bomber killed 13 persons, including eight soldiers and three children, and wounded 29 others in the Royal Artillery Bazaar, close to General Headquarters in Rawalpindi District of Punjab. The judiciary was also not spared the wrath of the militants when, on 3March 2014, a suicide bomber attacked the courthouse complex in Islamabad. At least 12 people, including an Additional District and Sessions Judge, Rafaqat Awan, a female lawyer, and a policeman were killed and 24 others were injured.

ICCPR, Article 3

The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Unimplemented Laws Keep Women in Slave-like Conditions

Pakistan remains a dismal place for women despite several laws having been enacted for their benefit, namely: Women's Protection Act, Acid Control and Crime Act, Protection Against Harassment at Workplace Act, Law of Inheritance and the government has also ratified the Convention on the Elimination of all Forms of Discrimination Against Women. The structural proclivity of the justice system, which includes the attitude and actions of the police, stop the majority of women from reporting injustices.

Gender-biased practices and discriminatory attitudes have become social norms and have even gained the status of religious diktat. Islam, in its original doctrine and essence, promotes equal recognition and respect for both women and men, and yet deceptive interpretations of religious precepts are used often to justify unjust verdicts. Centuries of patriarchal mindset and inequality have resulted in the boundaries between religion, tradition, and gender-based violence and discrimination becoming grey areas.

Pakistani women are victims of domestic violence, discriminated against on the basis of their sex, sexually abused without any hope of redress from the government. And when the survivors are able to seek help and assistance of the authorities, the authorities often return them to their torturers. Honour killings of women suspected of "dishonoring" their tribe and failing to adhere to customs occur frequently and it is rare for authorities to act against the perpetrators.

Pakistan has become a country where women are victims of Jirgas, illegal courts where young women and even minor girls are traded-off in settlement of feuds, where the local elders have the power of life and death over them. The customs of Winni and Sawara (tradition of trading girls) are treated as Islamic law and the civil courts are not interested in getting involved.

Women are often used as pawns, not only in the illegal courts, but also by the police to obtain confessional statements from suspected criminals. Women face physical torture and humiliation by supposed guardians and enforcers of law and order. There have been instances where wives and daughters have been stripped naked and paraded in front of their husbands and fathers. They have even been raped in front of their husbands and fathers to force confessions from the men.

Arranged marriages are the norm, and marriage by choice is considered a sin, something against Islamic teachings. Girls from religious minority groups are

abducted, raped, and forced to convert to Islam. Such events abound under the patronage of the authorities. Every Friday, and at least once a week, Muslim fundamentalist leaders deliver sermons suggesting that women are responsible for the vast majority of sins committed by males, while there is little or no support for them from society.

In Pakistan, laws that are by chance created for the protection of women are not implemented and enforced in order to keep women in virtual slavery. But, even apart from these laws drafted specifically for women, fundamental rights guaranteed in the Constitution and through Pakistan's ratification of the ICCPR are denied to Pakistani women in the routine functioning of society and the justice system.

Being a woman in Pakistan: deadly statistics

Violence against women is a global issue. However, Pakistani society presents an example where the worst forms of violence against women manifest, and where deeply held beliefs, based on decadent cultures, traditions, norms, and social institutions legitimize continued violence.

According to a report by the Aurat Foundation, the first six months of 2014 have been "truly alarming". According to a non-official count, 3,550 women have been subjected to violence in these six months in Punjab alone: 449 were murdered, 162 killed for "honour", 809 abducted, 687 raped/gang-raped, and 296 driven to suicide.

According to statistics provided by the Ministry of Interior, more than 14,583 rape cases were registered in the country in the past five years and only 1,041 (7%) rapists have been convicted by the Courts so far. The Punjab Province witnessed 12,796 (88%) incidents of rape during the same period while 1,077 (7%) incidents of rape were registered in the Sindh Province.

Malala Yousafzai: Epitome of the fight against religious oppression of women

From amidst the bleak landscape, hope has arisen in the form of Malala Yousufzai, a lone fighter against religious oppression of young girls in Pakistan. Malala became the youngest Nobel Prize winner when she was awarded the Noble Peace Prize for female education in 2014.

Malala, since she was a child, defied religious extremism of the worst kind in Pakistan and continued to demand that girls be allowed to receive education.

For these demands, Taliban gunmen shot her in the head in 2012. Malala miraculously survived the cold-blooded assassination attempt and continued her tireless efforts to be the voice on behalf of all women, to claim the right to an education.

Malala is an exception to the rule imposed by a male dominant society that believes in subjugating and oppressing women as a means of proving manhood. Malala's courage and valor has today inspired many women to carve out their destiny for themselves. The journey of this youngest Nobel laureate has been unlike many teens her age. From a very young age she had a passion that ignited her resolve to fight against extremist elements.

In 2007 the Taliban took hold of the Swat Valley – a pristine tourist destination in the Khyber Pakhtunkhwa Province of Northwest Pakistan – and passed an edict banning education for girls. Hundreds of schools were blown up as a result. Malala, then only 10-years-old, writing under a pseudonym Gul Makai, chronicled her experience of living under Taliban rule. The BBC's Urdu Service later published her diary.

A basic human right, the right to education however, is only a privilege for many children in Pakistan. Malala has stood up as a symbol of the fight against oppression and tyranny in the name of religion, which seeks to deny a basic right to half of the population.

Refusing to bow to the whims of those with an obscurantist view of Islam, Malala risked her life for the cause of girls' education; two men stopped her school van and shot her in the head. She was easily identifiable as she was the only girl not covering her face. In a patriarchal society, twisted norms dictate that a "good" woman is one who suffers in silence and endures every hardship meted without complaint.

Malala elicits a mixed response from the masses in Pakistan, who are divided in their views about her as a champion of human and women's rights or a media darling who wishes to malign Pakistan as an extremist state harboring the Taliban.

"Honour" Killings

While "honour" killings are rampant in Pakistan, there are few credible statistics available about the number of these killings; they are rarely reported and are considered a private family matter. The Aurat Foundation estimates that around 1,000 women are killed in Pakistan by their families in such killings annually.

Women suffer in silence despite laws and edicts deeming the act of "honour" killing as un-Islamic. Tribal *jirgas* continue to pass judgments calling for inhuman punishment against women, including torture and death. Very few cases are prosecuted. Those that do get prosecuted languish for years in courts. Even those cases that do result in a conviction may ultimately end with the killers walking free. The irony in "honour" killings is that most of the time the murderers are the women's own family members.

On 26 May 2014, two pregnant women were gunned down in the name of "honour" in Katlang, Mardan. The police officials claimed that Amjid Ali had allegedly spotted his pregnant wife Huma in an "objectionable state" with his neighbor. The infuriated husband picked up a gun and began shooting indiscriminately, killing Huma on the spot. The neighbour, however, managed to escape. Amjid Ali and his brother Muhammad Ali then barged into their neighbour's house and shot their neighbour's pregnant wife Nozaida Bibi, who died on the spot. Both the killers managed to flee the scene of crime.

On May 27, a 25-year-old woman, Farzana Iqbal, was stoned to death by her family members outside the Lahore High Court for marrying the man she loved. Farzana Iqbal was waiting for the court to open when a group of around dozen men began attacking her with bricks. Her father, two brothers, and former fiancé were among the attackers. Farzana, who was three months pregnant, suffered severe head injuries and was pronounced dead in hospital. The Lahore High Court has taken notice and ordered the police to arrest Farzana's father and ex-fiancé.

On 4August 2014, a man named Yousaf shot dead his sister and her male friend on Airport Road in Quetta, accusing them of having an illicit relationship. Yousaf opened fire on his sister Zar Bibi, 19, and her friend Noor Mohammed, 29, when he found them in his house.

On 16 September 2014, a 22-year-old woman was shot dead by her relative. The woman, who hailed from Karachi, was not happy in her two-year-old marriage to a shopkeeper in Swat. The woman was accused of fleeing her husband's house and marrying another man in the northwestern Swat Valley with the help of her aunt and cousin. The local *jirga* intervened in the matter and decided that all three women should be killed. Relatives shot the three dead at their house.

ICCPR, Article 9

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

2. *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*

3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*

4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*

5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

Activists & Human Rights Defenders Threatened & Harassed

For human rights defenders in Pakistan, 2014 proved to be terrifying; apart from killings, illegal detentions, fabricated charges and cases against them abounded. The judiciary, in many instances, sided with the fundamentalists, showing little courage against these forms of extremism.

Despite ratification of important international treaties for the protection of human rights some four years ago, none of Pakistan's criminal laws have been reviewed with intent to conform them to the international obligations. Committed and courageous persons, men and women in Pakistan who have stood up for the rights of others have been abused, harassed, threatened, and in some instances killed on account of such legitimate activities. The impunity with which such abuses are carried out has made the defence of human rights a dangerous undertaking in Pakistan.

Journalists who uncover human rights violations as part of the peaceful exercise of their professional duties have been in the firing line of state and non-state actors as also stated in a recent report by Amnesty International. Lawyers, too, have been targeted.

Human rights defenders sentenced to life imprisonment

Prominent human rights defender Baba Jan from Gilgit Baltistan and nine other defenders, including the President of the Supreme Court Bar Association of Gilgit Baltistan, have been sentenced by two different Anti-Terrorist Courts to life imprisonment. In one of the cases, Baba Jan and 11 others were sentenced to life imprisonment after they led a public protest in Hunza Valley against the killing of a father and his son by a police firing squad in 2011. The protestors had also demanded just compensation for the families of the victims who were killed and whose entire village was lost in the Atta Abbad Lake Disaster following the landslide that buried the village and blocked the path of the Kabul River.

68 lawyers booked on charges of blasphemy

A total of 68 lawyers from Toba Tek Singh, Punjab Province, were booked for having committed blasphemy. They were booked for raising slogans against the Chief of a police station, whose name is similar to a religious / historical Islamic personality. The government has failed to take action against the police officer for filing a false case of blasphemy against the 68 lawyers. According to a 2005 amendment to the blasphemy laws, filing a false case of blasphemy is a crime.

Civil society and human rights organisations are demanding that the government amend the blasphemy laws that have become a lethal weapon against lawyers, journalists, academics, and human rights defenders, and have restricted freedom of expression. These very blasphemy laws have taken the life of one former Governor of Punjab, Mr. Salman Taseer and a former Federal Minister, Shahbaz Bhatti. Despite these deaths, the government chooses to ignore calls to review the blasphemy laws or make amendments to prevent their misuse.

A student leader is missing after his arrest

Mr. Zahid Baloch, the Chairman of the Baloch Student Organisation Azad (BSO-A) was arrested on 18March 2014 during an ISI raid while he was holding a meeting of the members of the executive committee of the BSO-A in the suburbs of Quetta City, the capital of Balochistan Province. Persons in civilian clothes, who identified themselves as being from the ISI, accompanied

by uniformed FC men, told the participants that since the BSO-A is a banned organization, the meeting was illegal. They had been following Baloch for some time with the intention of arresting him. His whereabouts are still unknown.

A lady lawyer forced to flee the country

Ms. Munaza Bukhari, advocate and prominent human rights defender of Pakpattan, Punjab Province, was forced to flee the country under threat to her life. Those making the threats had allegedly killed two other women under the pretext of honour, after the women were accused of having illicit relationships out of wedlock. Law enforcement refused to provide her with protection.

Baloch human rights defenders under threat

The two prominent human rights defenders from Balochistan who were responsible for organizing the long march of 2,800 kilometers against disappearances, and for documenting disappearances and extrajudicial killings, have been threatened by the security agencies.

Mr. Mama Qadeer, leader of the long march, was arrested by plain clothed persons in Karachi on 26 November 2014 and dragged into a bus and sent back to Balochistan with the threat that if he is seen out of Balochistan he would be killed.

Mr. Nasrullah Baloch, Chairperson of Voice of Baloch Missing Persons (VBMP), also received threats from unknown persons who claimed to be from the ISI. The threats were made for more than a year to dissuade him from the campaign against disappearances and extrajudicial killings. Personnel from intelligence agencies told his two brothers that if they cannot stop their brother then he would be "dealt with".

On 25 and 26 March 2014, Baloch was present in a Supreme Court hearing where he was representing cases filed for the recovery of missing persons. Military and intelligence officers also attended the court proceedings. During the hearing, representatives from the Norwegian mission arrived to attend the hearing regarding a Norwegian citizen, Mr. Ehsan Arjumandi. Mr. Arjumandi has been missing since August 2009, following his arrest by persons in civilian dress, who claimed to be officials from an intelligence agency.

The head of the Norwegian mission also talked to Nasrullah Baloch about the cases proceeding on missing persons during the hour when the court was on break. The military officers present saw this exchange and made angry and threatening signs towards Baloch. At the conclusion of the court proceedings,

Baloch was overtly followed by persons dressed in civilian clothes when he travelled back to his hotel where he was staying in Islamabad.

On March 26, after the court hearing, he went to his travel agent for the confirmation of his flight back to Quetta, Balochistan, and was followed by intelligence officials. At the Blue Area Market, they stopped Nasrullah and demanded that he show them the air ticket. They tore up the air ticket and threatened that if he did not stop maligning the security and intelligence agencies he would be killed.

In the evening, when he was proceeding to the airport, he was stopped at a check post and was thoroughly searched. As he proceeded further after clearance, he was again stopped by persons in civilian clothing who demanded that he produce his luggage for search as they had information that he was carrying arms with him. He was subjected to a body search again before being allowed to go.

As he entered the airport lounge, a person approached and told him that he had been lucky this time because they could have put a pistol in his luggage during the search. He could be arrested for carrying arms into an aircraft if they had bad intentions. He also told Baloch that they had searched his hotel room where he was staying and that no place is out of their reach. Baloch was threatened again not to visit courts for cases of missing persons and not to internationalize the issue or he would suffer severe punishment.

He was also threatened for pursuing the cases of mass graves in a tribunal formed by the orders of the Supreme Court. These mass graves were found in Balochistan. He is helping the Tribunal on the instructions of the Supreme Court as the government has been hiding the actual numbers of mass graves.

Before the incident in Islamabad, on 27 October 2013 when VBMP started the long march from Quetta to Karachi, a distance of 730 kilometers, while Nasrullah was leading the march, his younger brother, Mohammad Sami Ullah, was picked by plain clothed persons and abducted in a vehicle. He was tortured and released after they threatened him to convey a message to his brother to stop the long march, “otherwise”, they said, “they know how to stop such things”.

In the month of November, when Nasrullah Baloch went to hospital for the treatment of his son, his other brother, also younger, Niaz Ahmed Baloch, was sitting outside the hospital in a car. Armed personnel came to him and threatened him that if his brother does not stop activities on the issue of disappearances he will be, “dealt with in a wrong way”. Nasrullah informed

the Supreme Court about the threats he was receiving from the intelligence agencies during the proceedings on 5 and 6 November 2013. The Chief Justice ordered and directed the government to provide him security, but this official order of the court has been ignored by the government and the police.

ICCPR, Article 24

1. *Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.*

2. *Every child shall be registered immediately after birth and shall have a name.*

3. *Every child has the right to acquire a nationality.*

Child Rights Violations Abound Amidst Lawlessness

The year 2014 has been horrid for children in Pakistan. A total of 213 children died in Thar, Sindh Province, due to malnutrition and famine. In Sargodha District Teachings Headquarters Hospital, 81 newborn infants died due to negligence of doctors and the unavailability of oxygen at the neonatal intensive care units. All of these 434 deaths were avoidable, but as these were the children of lesser gods, their deaths are statistics, not a national tragedy.

From their birth, a majority of children in Pakistan are denied basic rights. With an infant mortality rate of 8.6%, Pakistan ranks 26 on the list of countries with the highest mortality rate, according to UNICEF's report on the state of children in 2014. Untrained birth attendants and unhygienic conditions risk the lives of both the child and the mother.

Pakistan, as a society, has failed to protect the health of its children. An alarming rise in polio cases, especially in KPK, has brought Pakistan to the League of Nations that are proving a hurdle in achieving a polio free world. According to WHO statistics, 260 new cases of polio were reported in Pakistan in 2014.

The crises caused in Thar due to famine and drought claimed the lives of many innocent children and yet the government continued to play dirty politics. The Sindh Health MinisterJam Mehtab Dahar rubbed salt into wounds with his

statement to the media that "Children are also dying in Khyber-Pakhtunkhwa. But KP is not on the agenda of the powers on whose agenda the media is working in Thar."

The basic right to education is denied to children in Pakistan thanks to rising poverty, which results in child labor and early marriages. Pakistan's literacy rate has stagnated at 58%. Almost half the country's adult population is unable to read or write, and only 50% of the country's rural population has ever attended school. According to the Pakistan Education Atlas, improvement in the education sector moves at a snail's pace, with 32% of children aged 5-9 years out of school. According to UNESCO, 75% of children in Pakistan drop out before finishing secondary school. Girls are more prone as they are denied basic rights to health and education, and parents consider investing in their education as a waste of precious resources. Given limited income, parents often prefer educating their boys.

In a gruesome act of violence documented by the AHRC this year, a landlord chopped off the arms of a 10-year-old child over a minor matter related to payment of electricity bills. His hands were tied and put into a harvesting machine.

It was on 21 July 2014 at 10:30 a.m. that the child, Shahzad, had gone to the fields where his family worked. The accused, landlord Ghulam Mustafa, was standing there. The landlord called Shahzad over to the tubewell, a peter engine installed in the open. When the child arrived Mustafa caught him, overpowered him, forcibly tied his hands with a scarf, and then proceeded to put both hands down the running belt of a harvesting machine. The boy was stuck to the running belt and both of his arms were crushed, cut, and separated from his body.

The police did not take action for two days and protected the landlord until a media outlet gave hours of extensive coverage to the story. The Chief Minister of the Punjab Province, as is his routine, issued a press release, saying that he has taken serious notice of the incident and has ordered the authorities to provide the best medical treatment to the child. However, the child has remained in a poor condition. The provincial government has promised the family that it will provide artificial limbs but the promise has still not materialized.

In another case, a 17-year-old boy was arrested by the police and killed in a fake police encounter for not paying a bribe. On 12 June 2014, Sachalgoth Karachi Police in Karachi, Sindh Province, arrested Anisur Rehman Soomro, who was the son of Anwer Soomro, and a 10th grade student. Anisur was

arrested along with two of his friends. He was illegally detained for 11 days, and tortured in full view of his father. The police demanded a huge sum of money from the father, who did not have means to pay the amount. He instead made arrangements to pay only a portion of the demand, 10%, which angered the Station House Officer, as being an insult. This led to the boy being shot dead. According to his father, the enraged police officer had taken the boy and three other young men, to an Afghan refugee camp in the late hours of the day and shot him there, point blank, killing his son on the spot. The police later released a statement saying that the killing had taken place in a skirmish with Taliban forces and that explosives had been recovered.

The murder of this boy reveals the nexus that prevails in Pakistan between the police and the courts of law, and the failure to follow the due process of law. The Sessions Court failed to save the young boy while he was being held in police custody, even after the father moved the court to intervene in the release of his son. Critics blame the newly enacted Pakistan Protection Act of 2014, which gives sweeping powers of arrest and detentionto law enforcement agencies, to the extent of giving them powers to shoot on sight.

Chapter VII

SRI LANKA

Conflict Between
ICCPR & Constitution

SRI LANKA

Conflict Between ICCPR & Constitution

Introduction

What emerges in Sri Lanka as a sharp point of contest and debate is the problem of the 1978 Constitution and the system of the executive presidency. In the midst of the looming presidential elections, President Rajapaksa, in a much publicized speech, stated that he would be willing, more than any other person, to abolish the executive presidency, if the TNA and the diaspora give an undertaking that they will not demand a separate state. In doing so, he has tried to create a justification for continuing with the executive presidency, as a measure to stand against any moves for a separate state.

Meanwhile, Athureliye Rathana Thero, Member of Parliament representing the Jathika Hela Urumaya Party, which is a partner in the coalition government, stated in a highly represented public gathering that if it was not for the 1978 Constitution it was most likely that the former JVP leader Rohana Wijeweera and the LTTE leader Velupillai Piripaharan may have ended up as members of Parliament and the bloodshed that the country experienced in the past three decades could have been avoided. He stated this at a meeting where a draft for an alternative constitution was submitted for public discussion. The view over-expressed by several speakers during this meeting was that the 1978 Constitution was introduced purely to achieve the individual ambitions of its originator, former President J.R. Jayawardena and, presently, it serves only the personal interests of the incumbent President Mahinda Rajapaksa and his family. Athureliye Rathana Thero also publicly apologized for voting with the government in passing the 18th Amendment to the Constitution.

While there are many issues of importance in this debate, one particular aspect of interest to all is the public identification of causes for the violence in the past several decades. How far the 1978 Constitution contributed to creating the background for this violence and the ensuing bloodshed is important not

only from the point of view of the debate on a possible election, but also for understanding vital societal issues in Sri Lanka.

As for the President stating that he wants this Constitution to be abolished more than anyone else, is an admission that the Constitution is evil and needs to be abolished. How such an evil constitution could contribute to creating and sustaining a unitary form of government is beyond comprehension. Rather, the President's argument seems to sway in favour of his opponents – that there is no justification for not abolishing this Constitution.

Perhaps the Sri Lankan electorate is finally beginning to understand how the prevailing forms of extreme violence in the country have been the result of the political manipulations of just a few persons, to enjoy the privileges of power and the possibilities of self-aggrandizement. In other words, the Sri Lankan people have been exposed to a politically criminal scheme to achieve the selfish aims of a few unscrupulous persons. Perhaps this is a moment when the nation can come to a greater self-understanding of the factors that have caused this peril. This would create a firm foundation to guide those who will try and resolve the nation's problems in the future. The debate, therefore, is about "arising out of a catastrophe", and not about saving the country from a catastrophe, as President Rajapaksawants to present it.

Athuraliye Rathana Thero also pointed to some of the ongoing consequences of this catastrophe, such as the prevalent lawlessness causing Sri Lanka to be identified as a trading post for narcotics and drugs, money laundering, the sex trade, and the like. The spread of drugs is causing devastation in the villages of Sri Lanka on one hand, and on the other hand there are problems such as the deaths of several persons a week due to kidney ailments, for which no solution has been found.

Sri Lanka is faced with the tragedy of having a constitution that causes lawlessness. The selfish creators of the Constitution manufactured lawlessness for their own "political survival", which has now virtually destroyed the independence of both Sri Lanka's judiciary and legislature. Both these branches of government were a threat to the Executive Presidency. The people have thus lost both the court as a place for settling their disputes, and the parliament as a public forum on matters that concern the nation. President Rajapaksa still argues that this is a necessary condition in order to maintain the unitary state. The Constitution also caused the displacement of all public institutions including the premier institution for the enforcement of the rule of law, a competent and an independent policing system. Daily media reports reveal how low this institution has sunk.

As a result of these and other problems created by the Constitution, genuinely free and fair elections have become impossible. This is perhaps the reason why President Rajapaksa cannot agree to abolish the existing constitutional framework for the executive presidency, though he publicly declares that he wants to abolish it more than anyone else.

Perhaps the nation is beginning to emerge out of the control of the propaganda machinery, which has been attributing all the country's ills to consequences of "the war". The nation perhaps is beginning to see that "the war itself, was a product of the supreme law of the country", the Constitution.

Office of the Executive President is Above the Law

The separation of power doctrine as understood in a liberal democratic framework has been conceptually rejected within the 1978 Constitution of Sri Lanka, and this is seen in the way power distribution is articulated. The Office of the Executive President virtually subsumes every other organ of government. The President is neither answerable to the Courts nor to the Parliament. In other words, the President cannot be held accountable during his/her tenure of office, even for an act of intentional violation of the Constitution. The holder of the Office stands above the law. This has an immediate impact on the realization of internationally accepted human rights as found in the International Covenant on Civil and Political Rights (ICCPR), since the very basic idea of the independence of institutions—including that of the judicial institution—has been seriously undermined.

Complete Displacement of the Principle of Separation of Powers

Universally recognized principles relating to the separation of powers are incapable of being realized in Sri Lanka's constitutional structure. Parliamentary control of the Executive is not effectively exercised due to the overwhelming powers vested in the Office of the Executive President. Separation of power between the executive and the judiciary is also not practically evidenced due to presidential control of the appointments of superior court officers and (indirectly) their transfers, promotions and dismissals. Even though the power over disciplinary control and transfer of judges rests with the Judicial Service Commission (JSC), the control to appoint the Chief Justice and other Superior Court Judges (who constitute the JSC) rests unconditionally and entirely with the President.

Further, the dismissal of these higher-court judges is done through a political process by a Select Committee of Parliament, which is ultimately controlled by the President, again illustrating the preponderance of executive power over

the Parliament. This was highlighted in 2013 when the Chief Justice of Sri Lanka was impeached by government parliamentarians, ejected from office and replaced by the "politically compromised" Attorney General, who is currently Sri Lanka's de facto Chief Justice.

In a context where the Chief Justice and the judges of the Superior Courts hold office at the pleasure of the President, there can be no independence of the judiciary and consequently no realization of the rights enshrined in the ICCPR.

The Judiciary & the Courts

There are no constitutional impediments to obstruct the President and/or the Executive from interfering into the decision-making processes of judges. Similarly, there are no operative Constitutional Conventions to prevent the President or the Executive from giving directions to the judges on the outcome of cases. The practical result of this is the absence of justice that Sri Lankans experience on a daily basis. The JSC does not function independently, but in accordance with the dictates of the government. Moreover, there is no public perception that independent decision-making can be expected from this body. The JSC process is neither transparent nor accountable.

Direct Impact on the Protection of Minority Rights

Currently the continuation of a public security regime in Sri Lanka is effected by regulations under Section 27 of the Prevention of Terrorism Act (PTA), which reflects the earlier Emergency Regulations (ERs) under the Public Security Ordinance (PSO).[19] In fact, "a perpetual state of emergency has been created though subordinate legislation which, unlike the ERs which were subject to periodic parliamentary oversight",[20] has entrenched the counter terrorism agenda within the public security framework in Sri Lanka. The judicial response to upholding rights of minority petitioners on constitutional grounds is abysmal. A common feature is that the anti-terrorism law is used to launch cases against individuals seen as opposing the regime and then, in some

19 The Prevention of Terrorism (Proscription of the Liberation Tigers of Tamil Eelam) Regulations No. 1 of 2011, the Prevention of Terrorism (Proscription of the Tamil Rehabilitation Organisation) No. 2 of 2011, the Prevention of Terrorism (Extension of Application) Regulations No. 3 of 2011, the Prevention of Terrorism (Detainees and Remandees) Regulations No. 4 of 2011, and the Prevention of Terrorism (Surrendees Care and Rehabilitation) Regulations No. 5 of 2011, respectively published in Extraordinary Gazette Notifications 1721/2, 1721/3, 1721/4, and 1721/5 of 29 August 2011.

20 See Jayantha de Almeida Guneratne, Kishali Pinto-Jayawardena and Gehan Gunetilleke, '*The Judicial Mind in Sri Lanka- Responding to Minority Rights*', Law & Society Trust, 2014, at p247.

instances, the power of presidential pardon is employed to free that individual. Here again, what emerges is the supremacy of Presidential rule over the legal process. Some illustrations below indicate this fact:

- ***Detention and rehabilitation of Jaffna University students*** - On 27 November 2012, students of Jaffna University lit candles on Maa Veerar Naal, i.e. Heroes day, traditionally celebrated by the Liberation Tigers of Tamil Eelam (LTTE) to commemorate fallen members of their movement. The following day, the students organised a protest march, which the police suppressed, arresting protestors.[21] Four individuals were detained under the PTA Regulations. Two of the students were released from custody on 22 January 2013 after being 'rehabilitated' at the Centre. The Government stated that the remaining students required further rehabilitation. These students were released later under the pardon of President Mahinda Rajapaksa. The President's "benevolence" was seen as a determinative factor in securing the release of the two students. The case demonstrates a critical departure from precedent, where courts were the prime fora for canvassing rights.[22] Now the onus has shifted from the legal arena to the arbitrary use and abuse of presidential power.

- ***Ganesan Nimalaruban's case*** - In July 2012, Ganesan Nimalaruban and Mariyadas Pevis Delrukshan, two Tamil political prisoners, died in state custody.[23] They were severely beaten by the Special Task Force (STF) of the Police following their involvement in a hostage taking incident at the Vavuniya Prison. Nimalaruban (age 28) succumbed to his injuries in hospital on 4 July 2013 and Delrukshan (age 34), who was in a coma for several days, later succumbed to injuries he sustained as a result of the assault.

  Nimalaruban's father thereafter filed a fundamental rights application, dated 3 August 2012, before the Supreme Court. According to the petition, the Criminal Investigation Unit of the Vavuniya Police arrested Nimalaruban on 5 November 2009; he had been traveling on a motorcycle with a friend along Veppankulam Road, Vavuniya.[24] After being detained at the Criminal Investigation Unit, Vavuniya, for two days, Nimalaruban was taken to the Vavuniya Police Station. Meanwhile, a Detention Order

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21 Ibid.

22 Ibid.

23 Ibid.

24 The petition was reproduced by the Asian Human Rights Commission in: Asian Human Rights Commission, *Sri Lanka: Ganeshan Nimalaruban case: Chief Justice Mohan Peiris denies petitioner's lawyers right to see replies filed by Attorney General*, 22 May 2013.

under Regulation 19(1) of the 2005 ERs was issued by the Additional Secretary to the Ministry of Defence to detain Nimalaruban for a period of 30 days. According to the petition, Nimalaruban was thereafter produced before the Magistrate's Court in Vavuniya and the Magistrate ordered that he be remanded.

Sri Lanka's de facto Chief Justice, Mr. Mohan Peiris, eventually decided the matter on 14 October 2013. The Court proceeded to dismiss the application without citing any reason. Hence, there is no official record of the proceedings or the exchange between counsel and Court. However, unofficial media reports cited by the Asian Human Rights Commission are illustrative of the events that took place.[25] Mr. Peiris is reported to have observed in Court that "if children are brought up well, they won't be involved in these types of activities", thereby displaying what appear to be prejudicial sentiments regarding a case he was yet to hear.[26] He was also reported as saying that the prison authorities needed to use some type of force to quell the riots and rescue prison officers who had been taken hostage. He then reiterated that Nimalaruban was already suffering from a heart ailment, and that this was the cause of his death.[27] The Asian Human Rights Commission pointed out that, at this stage of the case, the Court "did not have all the evidence that would be led by both parties, and that the de facto CJ was not in a position to make his judgment on the facts."[28] Moreover, when Counsel for the petitioner pointed out that there was no material before Court to prove the victim's connection to the incident at the Vavuniya Prison, Mr. Peiris indicated that he had personal knowledge about the incident.[29]

The case remains one of the starkest examples of the capitulation of the Sri Lankan judiciary to so-called public security concerns.[30] When the matter was taken up in Court on 21 May 2013, prior to its dismissal, Mr. Peiris is reported to have stated: "Human rights are there to protect

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25 Asian Human Rights Commission, *Sri Lanka: In Ganeshan Nimalaruban's case the de facto CJ holds that inquiry into a prison death will encourage prisoners to riot*, 15 October 2013, at http://www.humanrights.asia/news/ahrc-news/AHRC-STM-186-2013.

26 Ibid.

27 Ibid.

28 Ibid.

29 Ibid. Also see 'De Facto CJ Exposed Himself In The Worst Possible Manner In Courts', *colombotelegraph.com*, 14 October 2013, at https://www.colombotelegraph.com/index.php/de-facto-cj-exposed-himself-in-the-worst-possible-manner-in-courts/

30 See Jayantha de Almeida Guneratne, Kishali Pinto-Jayawardena and Gehan Gunetilleke, '*The Judicial Mind in Sri Lanka- Responding to Minority Rights*', Law & Society Trust, 2014, at p. 247.

the majority and not the minority of criminals." In effect, the Court was prepared to see Tamil political prisoners as criminals even before they had been tried by a court of law. When Counsel for the petitioner requested access to certain documents filed by the Attorney-General's department, Mr. Peiris responded with the following:

"The court is not a place to get documents for the petitioners. This is the way you all procure the evidence and then circulate to the entire world to tarnish the image of the country. The executive submits confidential reports only for the eyes of judges particularly where national security issues are concerned."[31]

Negation of Remedies of F.R.&Habeas Corpus in Relation to Disappearances

A detailed analytical study of 884 habeas corpus cases, covering the period from 1994-2002, found that the practical inefficacy of the implementation of writs defeats the remedy.[32] For example, the habeas corpus application of "disappeared" journalist Prageeth Eknaligoda illustrates the failure of this remedy as this case has been pending for many years. Petitions filed by Tamil mothers and fathers of those who disappeared during the ending of the conflict in the Wanni in 2009 remain similarly pending before courts. State agents merely deny taking the victims into custody. Earlier, the State was compelled to pay compensation and acknowledge the disappearance where no specific state agent could be held responsible, but this practice has not been evidenced in recent years.

It has been pointed out that solutions require "changes in law, administrative procedures, judicial structure, as well as securing of the independence of the judiciary"[33]. The International Crisis Group[34] has linked the failure of the

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31 See Asian Human Rights Commission, *Sri Lanka: In Ganeshan Nimalaruban's case the de facto CJ holds that inquiry into a prison death will encourage prisoners to riot*, 15 October 2013, at http://www.humanrights.asia/news/ahrc-news/AHRC-STM-186-2013.

32 Kishali Pinto-Jayawardena & Jayantha de Almeida Guneratne, *Habeas Corpus in Sri Lanka: Theory and Practice of the Great Writ in Extraordinary Times* (Sri Lanka: Law and Society Trust, 2011)

33 Basil Fernando, 'SRI LANKA: The politics of habeas corpus and the marginal role of the Sri Lankan courts under the 1978 constitution', Asian Human Rights Commission (2011), http://www.humanrights.asia/news/ahrc-news/AHRC-PAP-001-2011, accessed 10 June 2013.

34 International Crisis Group, 'Sri Lanka's Judiciary: Politicised Courts, Compromised Rights', International Crisis Group Report (June 2009) N° 172, p. 30.

Writ of Habeas Corpus to the overall legal and political milieu that includes the diminishing independence of the courts, the inadequacy of constitutional provisions to empower the courts, the passage of emergency laws that further limit its powers, and the reprehensible political influence exercised by the executive on the judiciary.

The constitutional remedy of fundamental rights has virtually fallen into disuse as the Supreme Court has refrained from asserting its authority against powerful state actors, particularly the Ministry of Defence.

Absence of Effective Legal Mechanism for Corruption Control in Executive & Legislature

Corruption plays a major role in the decision-making processes. The existing system, which is under the Bribery and Corruption Commission, and the relevant laws, are thoroughly ineffective. The functioning of the Commission itself is under direct political control. As in the case of appointments to the higher judiciary, appointments of Commissioners to the Bribery and Corruption Commission are also done entirely at the will and pleasure of the President. The Commission itself has been used to harass political opponents of the ruling party.

Loss of the Meaning of Constitutionalism

There is no effective legal mechanism through which the legality/constitutionality of any decision of the government can be challenged. Consequently, any action by the government remains valid irrespective of it being illegal or unconstitutional.

Negation of Public Institutions

Constitutional commissions, such as the National Police Commission, the Human Rights Commission and the Public Service Commission, are appendages of the government and are unable to function independently. The Commissioners of these bodies also function according to the will and pleasure of the President. Even though a constitutional amendment in 2001 (the 17th Amendment) specified the intervening authority of an independent Constitutional Council into the appointments of members of these bodies, the 18th Amendment effectively decimated the 17th Amendment. Presently the President functions without any fetter in respect to these bodies. During the period under review by the Committee, none of these bodies have exercised their powers in even a single decision that goes contrary to the President or his government.

ICCPR, Article 14

1. *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.[…]*

2. *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*

3. *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*

   (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

   (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

   (c) To be tried without undue delay;

   […]

   (d) Not to be compelled to testify against himself or to confess guilt.

Judiciary Treated as Lesser Power than Executive

It must have been somebody's idea that judicial independence in Sri Lanka should be destroyed, although when the idea was first generated is not known. It is possible that it arose more or less at the same time as the 1962 coup; that was a wild period for some people who had enjoyed privileges at the top. These persons were unanimous in their opinion that everything had gone wrong in Sri Lanka and some extraordinary intervention was therefore needed. The idea behind the coup was that democracy should be replaced, or at least modified, to preserve the privileges enjoyed by the elite from the challenge of people claiming democracy as their own. The coup failed, but the ideas around the coup remained. These ideas were nursed by others who wanted to achieve certain ideals through other means. The opportunity arose when J.R. Jayawardena, a person unanimously considered as representing the epitome of reactionary ideas, obtained 5/6th of the seats in the 1977 parliamentary election. In the following year, a small "clique" of people put their heads

together to create a political model drastically restricting democracy, to either eliminate or push back, the notion of people having a greater say through a democratic form of government.

This small "clique" of persons who designed the 1978 Constitution had their own reasons to oppose the Judiciary as an independent branch of government. Those with a taste of the coup aftermath would remember that a strong Judiciary, protecting the investigative branch, was able to convict the leaders of the 1962 coup. It was the Privy Council in England that finally saved these leaders. If such power rested with the Judiciary, it may object to the realization of the ambitions of the new Constitution's makers. They therefore formulated the idea that development and economic progress necessitated a strong executive. A strong executive implied a weak judiciary and a weak legislature. Thus, the equations found in the 1948 Constitution, based on the classical separation of power concept, needed to be changed in favour of a new equation in which the Executive was a higher power and the Judiciary and the Legislature were lesser powers.

We will never know which individual was more vocal in favour of this new equation. All that we may say with certainty is that it was then Prime Minister J.R. Jayawardena who approved this scheme. He had good reasons to do so; his own personal ambition to retain power for as long as possible could be better achieved under the new equation, where challenges to his authority could not be pursued in the Courts.

In reviewing the currently proposed 19th Amendment to the 1978 Constitution, the basic question to answer is whether it meets the requirements to reestablish the equation between the Executive, the Judiciary, and the Legislature as three separate branches that embody separate powers.

When President Mahinda Rajapaksa says he wants the Constitution to be changed, does he mean that he wants to revert to the classical separation of power doctrine? Have his ideas about the judiciary changed from those consistently exhibited throughout the chain of actions that reduced the judiciary to a position of a lesser power? If this is so, then he is expressing a willingness to undo all the measures he has taken to ensure that the judiciary is in no position to challenge his decisions. It also means that he is willing to abandon the President's arbitrary powers for appointment and dismissal of judges. This, in turn, implies that he wants to eliminate the possibility of the arbitrary removal of judges, as in the case of Chief Justice Shirani Bandaranayake, and of arbitrary appointments, as in the case of Mr. Mohan Peiris.

Such considerations will determine the credibility of his stated willingness to change the Constitution. They will also emphasize that changing or not changing the Constitution depends not on the question of some groups claiming a separate state, but on whether or not the President is ready to stop treating the judiciary and legislature as lesser powers.

Even the worst of criminals have a right to a fair trial before an independent judiciary. In Sri Lanka however, it was witnessed that even a Judge—no lesser than the Chief Justice herself—does not have that right. Article 107 of the Constitution and the standing orders now preclude that right. This brings us to Article 12(1) of the Constitution, which guarantees equality before law to everyone. However, with the recent impeachment proceedings against Chief Justice Shirani Bandaranayake, even judges do not have that equality. What, then, is the quality of the citizenship of a judge? There is a tragi-comic absurdity here, and a fundamental illegality.

Perhaps for the first time in Sri Lankan history, people have taken to the streets in the last few months to protest against the abuse of the judicial process and to demand fairness. Some lawyers were quoted by the media as saying, "Now, we have to demand justice from the gods, unseeing forces, as there is no justice in Sri Lanka". The present regime has acquired the reputation of manipulating justice and punishing opponents without due process. It is proving that the executive president can, indeed, do anything, except making a man into a woman or vice versa, as claimed by the first executive president, J.R. Jayewardene. The denial of fair trial has been both seen and felt by the people, and the street protests demonstrate their frustration against the entire political system based on the 1978 Constitution.

J.R. Jayewardene did not dare in his day to go all out against fair trial. When punishing Mrs. Sirimao Bandaranayaike by depriving her of her civil rights, he made sure that the case did not go before the normal courts; he created a special commission for that purpose. He used emergency laws to arrest and detain her supporters, including Mahinda Rajapakse, Vijaya Kumaratunga and others. They were kept in detention for months but he did not proceed with their trials. Perhaps, he was not so sure that he could get what he wanted from the courts.

When Rohana Wijeweera filed an election petition against him, J.R.J. proceeded to proscribe the JVP and hunt them down through the use of emergency regulations. What developed as the second JVP insurrection, in fact, began in that way, culminating under R. Premadasa into the disappearances of over 30,000 persons. No matter the many theories put forward regarding these events, the core issue was the elimination of the political opponents of

the executive president; any means was excusable to protect this position. This same logic has now been extended to the abuse of justice: the subversion of justice to eliminate political opponents is now deemed justifiable.

Overall Constitutional Structure Defeats the Efficacy of Remedies

In any country based on the rule of law, the judiciary is the most important protector of the individual against the arbitrary exercise of power by the executive. In Sri Lanka, judicial power has been reduced so much that the judiciary can no longer play its role in any significant manner to protect the people who seek legal redress.

Torture by police and extrajudicial killings are among the most common abuses in the country; the same is true for forced disappearances, illegal arrests and detentions. The judiciary is unable to ensure fair trials regarding any of these abuses, because of extraordinary delays and limited resources. It is impossible to protect the rights of women due to the failures of the justice system. A law about domestic violence for instance, has been rendered ineffective during the process of implementation. People in the north and the east are neglected and are without legal protection. They have the right to fair trial, to freedom of expression and freedom of association, to form a government after free and fair elections. They also have a right to the truth, compensation for past violations when they endured the loss of life, liberty and property. None of these rights are being realized or protected by the Sri Lankan courts.

The Sri Lankan Constitution specifies that the exercise of the sovereignty of the people, where judicial power is concerned, shall be by the Parliament through the Courts. This particular wording, "by the Parliament through Courts", privileges the Parliament above the Courts and subordinates the Court to the Parliament. This is of immediate practical concern to the efficacy and availability of remedies.

The Parliament's 2013 impeachment of Sri Lanka's 43rd Chief Justice was ruled against by both the Supreme Court and the Court of Appeal on the basis that one organ of government (i.e. the Parliament) should not be allowed to "punish" the Chief Justice or any Judge of the Supreme Court without due process being followed.

The government's position was that proceedings of Parliament relating to the impeachment of superior court judges are not amenable to judicial review. After disregarding the opinions of the Supreme Court and the Court of Appeal to withdraw from the impeachment, the government put into place a 'compromised Chief Justice', under whom a Bench of the Supreme Court ruled

one year later that the judiciary could not challenge the process or decisions of a parliamentary committee on impeachment.

This question is central to the consideration of Sri Lanka's compliance with the ICCPR and the availability of remedies thereto. In a practical sense the judiciary in Sri Lanka has been made structurally incapable of being independent by the Constitution itself. This has impeded the proper functioning of remedies for individuals whose rights are violated. In a basic sense, it has undermined the independence of the judicial institution, though theoretical remedies exist for fundamental rights violations.

Immunity of the Executive President

The Sri Lankan Constitution provides no remedy for individuals whose rights have been violated when the act in issue is by the Executive President. Article 35(1) of the Constitution provides for the immunity of the President while holding office as President for any acts done either in an official or private capacity.

In terms of the Constitutional structure itself, the Parliament is empowered to make retrospective laws and/or repeal or amend the constitution with minimal accountability. In terms of article 122 of the Constitution, the Supreme Court is mandated to come to a decision on the constitutionality of a Bill within 24 hours in some cases. As a result, there is little space for public comment/ criticism of such Bills.

The 18th Amendment to the Constitution—which repealed the progressive 17th Amendment and returned the power to make appointments to key constitutional commissions and public positions to the president—was passed by the Parliament in such a context.

The Privileging of Public Security Law by the Constitution

Article 15 privileges law relating to public security over the exercise and operation of fundamental rights, including the presumption of innocence and the prohibition of retrospective legislation.

Recommendations Relating to Article 14 of the ICCPR

The Government should provide opportunities to the Sri Lankan public to air their grievances and criticisms relating to the setbacks on fair trial, assess such grievances, and take corrective actions to ensure that article 14 of the ICCPR is respected and implemented in Sri Lanka.

The Government should make amendments to the Constitution to ensure that the judiciary is treated as an independent branch of the government and that the recognition of such independence is manifested through the processes of appointments and promotions, as well as in the disciplinary process and in the dismissals of judges; the prevalent understanding is that the Executive President controls all these functions and, therefore, the appointments, promotions, disciplinary control processes and dismissals of judges, including judges of the Supreme Court, are done for political reasons that act detrimentally to the independence of the judiciary.

The prevalent constitutional provisions and practices which were used in the impeachment of the Chief Justice, Dr. Shirani Bandaranayake, were all done in direct contradiction to the principles relating to the removal of judges followed in countries where the independence of the judiciary is respected and where the separation of powers principle is entrenched. The foul play practiced on the occasion of the Chief Justice's removal has thoroughly shaken public confidence in the judiciary as an independent institution. All constitutional provisions relating to the impeachment of judges must thus be laid down in terms of international norms and practices applicable to such impeachment processes.

The Government should take serious measures to ensure that the principle of open justice is respected in Sri Lanka. The recent practice of holding in camera court proceedings for the examination of the constitutionality of proposed legislation, including proposed amendments to the constitution, is a blatant violation of the judicial process and the notion of open justice. The exclusion of public participation and the absence of lawyers in such judicial actions result in 'judgments which cannot be considered as judicial in nature'. By making such exclusions the judiciary virtually acts as an arm of the Executive. Such judgments can have disastrous effects on the rule of law and democracy. Further, such actions expose the judiciary to public ridicule and decrease confidence in the institution.

The judiciary as a branch of the government must exercise its duty to protect its own independence. In the recent past there have been many instances in which the judiciary itself has acted in a manner that is contrary to the principles of the independence of the judiciary. This was well illustrated in the impeachment of Sri Lanka's 43rd Chief Justice, which was initially ruled to be contrary to constitutional principles relating to due process by Sri Lanka's Court of Appeal and Supreme Court. The Court of Appeal in fact quashed the proceedings of a Parliamentary Select Committee which, through its government parliamentarians, had upheld the impeachment. One year later, another bench of the Supreme Court, under 'a new Chief Justice,' reversed this decision and stated categorically that a Parliamentary Select Committee is not subject to judiciary review. This was a manifest travesty of justice.

The interpretation of the principle of the Supremacy of Parliament as meaning that the Parliament can act in violation of the principle of judicial independence nullifies judicial power in Sri Lanka. The interpretation of these principles by the Parliament, as well as by the judiciary, is contrary to the manner in which these principles are interpreted in other common law jurisdictions. At present, there is a serious crisis in how the judiciary is being treated in Sri Lanka. So long as this matter is not addressed in favour of a proper liberal democratic interpretation, the public in Sri Lanka will have serious doubts about the protection of their rights against arbitrary violations by the Executive through the judicial process. This crisis casts serious doubts on any valid and legitimate roles the legal profession can play in defense of their clients' basic rights.

The Government should take serious action in order to restore the legitimacy and the democratic role of the legal profession in Sri Lanka. The prevalent situation is one in which the role of the legal profession is drastically undermined, not only on constitutional matters, but also in every kind of litigation, including litigation relating to property rights.

The Government should address the serious crisis that exists in the criminal justice process in Sri Lanka. The prevalent situation is one in which the roles of all relevant state actors, such as the police in their investigative role, the Attorney General's Department in its role as the public prosecutor, and the judiciary in its role, have all been undermined due to constitutional provisions resulting in their politicization. These constitutional provisions have also led to the erosion of the power of the police as a civilian policing institution, the Attorney General's Department as an institution working within the rule of law framework, and the judiciary as one that functions within the of principles of open justice.

The Government should re-examine its claim about implementing the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC), to ensure the functioning of the policing system as a civilian policing system by bringing the Department of the Police under a Ministry of Law and Order. However, the prevalent situation is that of a directly politically controlled policing system, where the Inspector General of Police and higher-ranking police officers have lost the command of the institution and the institution is controlled from outside. This has drastic consequences on the rule of law in the country as a whole, and the capacity of the police to bear the responsibility for the control of crime.

The Government should critically examine the deepening militarization within the police. Since the Justice Soertz Commission of 1946, the matter of the militarization of the police has been raised by several subsequent commissions.

However, none of the recommendations of these commissions have been implemented. Instead, the policing system has been allowed to be further militarized, both in its mentality and its practices. The idea of the development of a civilian policing system within the conceptual framework of the British metropolitan police has not even been ventured into in Sri Lanka.

The Government should address the problems relating to the politicization of the Attorney General's Department and its virtual incapacity to act within the framework of the rule of law. The prevalent situation is a result of direct political control of the Executive of this institution, which has brought it directly under the Presidential Secretariat by virtue of a Gazette notification.

The Government should also seriously examine its inability to address some of the perennial failures of the judicial system, particularly in terms of undue delays and archaic procedures that result in dragging litigation on for ten years or more.

The Government should look into several failures of the appellate process, both in the Court of Appeal and in the Supreme Court, and in particular the failures to immediately communicate the decision of the Appellate Court to the relevant trial court, even in instances when the court has ordered fixing of retrials at the trial courts in the relevant cases. A direct case in point is regarding Gerard Perera's case referred to above. It must be emphasized that such failures leave room for corrupt practices with the connivance of certain judges.

ICCPR, Article 19

3. *Everyone shall have the right to hold opinions without interference.*

4. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

Loss of Freedom of Expression & Intimidation of the Media

In the year 2014, killings and abductions of journalists in Sri Lanka remined uninvestigated. The militarization of the state structure resulted in journalists being assaulted, threatened, and intimidated in situations of public disorder (i.e. the attack by the army on unarmed protestors at Weliweriya in 2013 and the

communal violence in Muslim villages by radical Buddhist priests in Sri Lanka's South West in 2014).

Journalists who reported on these matters were routinely questioned and put under surveillance. The Government, in a 2014 circular, prohibited non-governmental organizations from holding training workshops for journalists. Tamil journalists travelling from the North to Colombo to participate in such workshops were detained at checkpoints.

The Government's assertions that the Parliamentary Powers and Privileges Act of 1978 has been repealed is also incorrect. What has been repealed is only a limited amendment to the Act. The Act remains in full force, restricting the power of journalists to report on proceedings in Parliament.

Though the State Party refers to the existence of bodies set up by the media industry in support of its position that freedom of expression is not under threat, mobs stormed the central office of the Sri Lanka Press Institute, situated in Colombo, in July 2014 during the holding of a training programme. Perpetrators responsible for these attacks have not been identified and brought before the Courts.

Widespread abuse of state media and state resources by the Government in election campaigns has also been evident.

The following are some of the interventions made by the AHRC regarding freedom of expression during the year 2014:

AFP Reporter Killed in Her Home

Former AFP reporter Mel Gunasekara's horrendous murder came just two days before the independence-day commemorations in February this year. According to reports, she was killed while she was at home alone on a Sunday morning. She was stabbed and cut. Such crimes are often reported from around the country.

There are many professional killers with developed skills available to be put to use by anyone who wishes to have one of his or her enemies eliminated. Such killers are a 'gift' from the war. A sophisticated killer can be at anyone's door at any time.

As mentioned earlier, senior journalist Prageeth Eknaligoda's whereabouts are still unknown. The allegation by his family, and even some of the newspapers that have reported on the issue of his disappearance, is that a powerful politician of the ruling regime is behind his disappearance. In fact, for several years, Prageeth Eknaligoda's disappearance has been a major embarrassment for the Rajapaksa regime.

It is unfortunate that the media interest in the disappearance of Prageeth Eknaligoda was diverted into controversies about the claims that his disappearance came about due to his journalistic involvements. The issue whether he was a journalist, or whether the cause for his disappearance was his journalism, became the focal point of media controversy. This happened despite virtual unanimity in suspicion of the government's involvement in his disappearance.

The government's campaign to undermine the allegations against it arose from the highest levels. The present Chief Justice Mohan Peiris, who, when participating at the last sessions of the United Nations Committee Against Torture on 9November 2011, officially stated to the Committee that he was aware that Prageeth Eknaligoda was living in a foreign country. He reneged on these words when later questioned in a Court of law. However, despite such constant embarrassments faced at international fora, the government has done nothing to exonerate itself from any of the allegations by ensuring a credible inquiry.

Recently, journalists and lawyers held demonstrations to protest attacks and imminent threats of attack as a reprisal against their engagement in their respective professions.

In another incident, in July 2014, dozens of pro-government activists blocked several Tamil journalists from holding a training program in Sri Lanka. Journalists from the northern Jaffna Peninsula were travelling to Colombo to attend a media workshop when the organizers were forced to stop the program because of intimidation by dozens of protesters. They were stopped by the military and the police at two locations on the way to Colombo and detained for several hours after being falsely accused of transporting cannabis. Police detained the driver of the vehicle and later freed the journalists after questioning them for hours. Military spokesman Brigadier Ruwan Wanigasooriya denied security forces had framed the journalists and insisted that they searched the vehicle on a tip-off that it was transporting narcotics. He also denied that the military was linked to the demonstration outside the Sri Lanka Press Institute, the venue for the training of the ethnic minority Tamil journalists.

The Free Media Movement accused the Military of being behind a new wave of intimidation that has been unseen before. According to reports, the organisers of the workshop had also received death threats over the telephone for holding a press conference to denounce the harassment of Tamil journalists demonstrating yet another incident in the Sri Lankan Government's agenda of keeping up a policy of harassing journalists.

Recommendations

Freedom of opinion and expression are binding on every State party and all branches of State. The executive, legislative, judicial and other public or governmental authorities at whatever level are in a position to engage the responsibility of the State party. Therefore, we urge that the Sri Lankan government ensures that the rights contained in article 19 of the ICCPR are given effect to in the domestic law of the State, and actually implemented.

The State must guarantee the protection of the right to hold opinions without interference. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person freely chooses, and no person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual or perceived opinions.

It is incompatible with the provisions of article 19 to criminalize the holding of an opinion. The harassment, intimidation, or stigmatization of a person, including arrest, detention, trial, or imprisonment for reasons of the opinion they may hold, constitute a violation of article 19.

The government should guarantee the right to freedom of expression including the right to seek, receive, and impart information and ideas of all kinds regardless of frontiers of all citizens. This scope also embraces even expression that may be regarded as deeply offensive.

The government should ensure that public broadcasting services operate in an independent manner, and should guarantee their independence and editorial freedom.

The government must, as per its obligations under the Covenant, put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. This obligation may never be invoked as justification for the muzzling of any advocacy of multi-party democracy, democratic tenets, and human rights. Under no circumstances can a person be attacked for exercising his or her freedom of opinion or expression, including such forms of attacks as arbitrary arrest, torture, threats to life and killing.

ICCPR, Article 22

1. *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*

2. *No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*

3. *Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.*

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Relevance of Freedom of Association & Peaceful Assembly Today

Freedom of association and peaceful assembly saw its worst threats in Sri Lanka in 2014, despite the attempts by state media and "Para state propaganda units" to deny it.

Although the Constitution of Sri Lanka reinforces the ICCPR by guaranteeing freedom of assembly and association (article 14(1) b and c), it also offers exceptions to these guarantees to be restricted in the interests of racial and religious harmony, the national economy (articles 15(3)(4)). Meanwhile, the Prevention of Terrorist Act (PTA) [Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979 as amended by Act Nos. 10 of 1982 and 22 of 1988] threatens the right of freedom of assembly and association.

The Ratawesi Peramuna case record speaks volumes of the importance of human values and human rights. This case took place during the 1990s when Sri Lanka was differently poised. There were insurrections in the North and the South and emergency laws were in operation. As a result, dissenting points of view were subject to suppression. Yet the court system was upheld and courts recognized the value of upholding the Fundamental Rights enjoyed by any citizen. It is thus pertinent to revisit this case.

Malinda Channa Peiris Seneviratne, Athureliye Rathana (Ranjith), Ranawaka Arachchige Patali Champika Ranawaka are prominent personalities in contemporary Sri Lanka. In 1992 they were among 16 other individuals who moved the Supreme Court in 10 Fundamental Rights Applications, now reported in (1994), 1 Sri Lanka Law Reports 1, alleging that they were detained by the police under emergency laws and tortured. Their main complaint however, was that their freedom of association, which they exercised through the Ratawesi Peramuna, a non-political civil society organization, was violated. The Legal Aid unit of the Bar Association of Sri Lanka (BASL) and several other NGOs were at the forefront to protect the rights of the detainees at that time and they had coordinated preparations for this case. These cases were filed pro bono and Sri Lanka's foremost Human Rights Lawyer Mr. R.K.W. Goonesekere and Attorneys-at-Law Manori Muttetuwegama, Suranjit Hewamanne, Methsiri Coorey, LCM Swarnadhipathi and J.C. Weliamuna represented them. Fortunately, unlike today, nobody questioned the rights of the activists and NGOs to raise these issues before the appropriate fora.

Around the same time, another case came up in the Supreme Court, when Mr. Mahinda Rajapakse MP (now the President) was detained at the airport for questioning as he was on his way to Geneva to make a representation before the 31st Session of the Working Group on enforced or involuntary disappearances. This detention was challenged with Mr. R.K.W. Goonesekere leading the team of lawyers (see Mahinda Rajapakse v. Kudahetti 1992 2 SLR 223). All leading NGOs condemned the detention of Mr. Rajapaske. What is notable given the current environment in Sri Lanka however, is that no one questioned the role of civil society in support of Mr. Rajapaksa's visit to Geneva.

The interesting backgrounds of the different petitioners in Ratavesi Peremuna make it important to understand how an association works outside the control of the Government. According to the case record, Malinda Seneviratne (now editor of Nation newspaper and close associate of Sri Lankan Defense establishment) had read fundamental texts of Marxism, and then became a Trotskyite. He entered Dumbara University but went to the United States of America on an exchange to read sociology at Harvard University. Ven. Ratana (now a Member of Parliament from Sihala Urumaya) was the ideological leader

of the group. Champaka Ranawaka (now a Minister and a leading nationalist ideologist), a founding member of Ratawesi Peramuna, took an active part in anti JVP activities in the universities. He wrote articles to Ravaya and Lakbima. He was opposed to the guns of both the JVP and the government, and wanted to prevent the youth from being pushed to violent politics. He also had a scheme to restructure the Peramuna along the lines of a political party. Many other petitioners were involved with Government and held key positions in various ministries. Petitioner Bandara became a Governor of Uva and later a Member of Parliament from UPFA.

In delivering the judgment, Justice Dr. A.R.B. Amerasinghe considered several leading decisions of the US Supreme Court amongst others, and made the following pronouncements, now part of our constitutional law:

- No person or group of persons, not even majorities, can claim to have a monopoly of good ideas. Many a strange and singular idea in its time, through argument and debate, had the power to get accepted as truth.

- It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an indispensable aspect of liberty.

- Freedom such as the right to association are protected not only against obvious heavy handed frontal attack, but also from being smothered or stifled or chilled by more subtle interferences.

- Legitimate agitation cannot be considered as incitement to overthrow the government unlawfully.

Amongst those who were victims of the repression of freedoms of assembly and association in 2014 are families of the disappeared, student activists, workers, lawyers, the clergy, opposition members of Parliament, NGO workers and human rights defenders.

Foremost amongst the attacks on freedom of assembly and association was the alarming event during the first half of the year where the NGO secretariat on the instructions of the Ministry of Defence sent out a circular to all non-governmental organisations in Sri Lanka. The circular warned them to refrain from holding any workshops for journalists, organizing training programmes for journalists, holding press conferences and issuing press releases of any kind. Public notices were also issued by the Department of External Resources of the Ministry of Finance issuing a stern warning to these organizations on accepting funds from overseas donors. Also afoot were plans to introduce new laws on the registering, monitoring and controlling of NGOs.

In other such moves against the freedom of assembly, participants at peaceful protests have faced threats and intimidation, with police and army personnel using maximum force against unarmed protestors engaged in peaceful assembly. Police have resorted to obtaining exparte judicial orders to stop any protests before they take place. Police have also blocked travel to and from the North Eastern Provinces for peaceful assemblies. Some such attacks are elaborated below:

In January 2014, the Colombo Police, Crime Division arrested former Convener of the University Inter Student Federation, Mr. Mahesh Bandara, alleging that he had committed offences of public nuisance by organizing a protest on 13 November 2013, and for disturbing vehicle movement in Colombo. The Colombo Fort Magistrate ordered bail on conditions that he was not to participate in protests or enter universities.

In March 2014, 48 people including women, children and devotees observing precepts at a temple were arrested and many others assaulted by the police, for protesting against drinking water pollution in the area by the rubber factory in Thunnane, Hanwella.

In April 2014, a group of United National Party (opposition party) members of parliament visiting the Magampua Port in Hambanthota, were threatened and pelted with eggs by an armed mob. The mob included the district mayor. The group of parliamentarians abandoned the tour once the mob turned violent.

In May 2014, 17 university students were arrested and several others were assaulted by the police. Four of the students were admitted to the Colombo National Hospital. A student spokesman told media that the students were taken to the police station by police in civilian clothing, and beaten in full view of the public. Students of the Faculty of Allied Health at the University of Peradeniya have been engaged in an ongoing protest against the special degree being reduced from four to three years.

In June 2014, a protest was disturbed by the military by arresting a Tamil Northern Provincial Councillor and trying to prevent people from participating. The protest was organized to demand legal hearings into habeas corpus applications from families of disappeared persons.

In July 2014, journalists who protested against military intimidation on their way to Colombo to attend a media workshop on July 25, were called for questioning by the Omanthai Police.

On 1 July 2014, the National Secretariat for Non-Governmental Organizations, functioning under the Ministry of Defence and Urban Development, issued a letter to all registered Non-Governmental Organisations (NGOs). The letter expressly forbade NGOs from conducting press conferences, workshops, training for journalists, and to stop them disseminating press releases. This came under serious condemnation from many civil society organizations within Sri Lanka and outside, and the United Nations stated that it would inquire into the circumstances under which this letter was issued.

As a result of this condemnation, the Ministry of External Affairs has issued another letter attempting to explain the earlier one. The Ministry for External Affairs' letter attempts to create the impression that the work of NGOs are restricted by several laws under the Voluntary Social Service Organizations [Registration and Supervision] Act Number 31 of 1980, by amendments to the Act, by regulations issued under an Extraordinary Gazette, as well as by a Circular Letter of the Secretary to the President. This letter from the External Affairs' Ministry is a complete misrepresentation of the law in Sri Lanka.

The Constitution of Sri Lanka has a section on the fundamental rights of citizens. All basic human rights enshrined in the ICCPR are recognized as rights of citizens in Sri Lanka. The right to freedom of expression and assembly are recognized as fundamental rights. The functioning of all organisations within Sri Lanka, whether governmental or non-governmental, is subject to these basic laws.

Any regulations made specifically for non-governmental organisations are solely for the purpose of guaranteeing accountability for any funds received for the functioning of these organisations, whether from external or internal sources. There is no other purpose for these regulations and none of these regulations can take away the human rights guaranteed within the basic law of Sri Lanka, and within the international conventions to which Sri Lanka has become a signatory by its own choice.

The Asian Human Rights Commission has previously condemned the attempt to impose any restrictions that curtail the rights of NGOs, and clarified its position on the government's proposal for a law to force the registration of non-governmental organisations with a National Secretariat functioning under the Sri Lankan Ministry of Defence and Urban Development. In our analysis, there were two separate issues involved:

1) Requirement that NGO's be registered under the Ministry of Defence

The Ministry of Defence should not have any power over the functioning of any civil society organisations, for the following reasons:

- The sole purpose of the Ministry of Defence is to control all opposition against the Rajapaksa government. This Ministry will naturally use its power against any sector of society, to cripple and destroy every form of freedom of expression and association that has, as its aim, the protection and promotion of people's interests as against the authoritarian inclinations of the government. Any additional power given to the Ministry will be used to destroy the freedom of NGOs, and they will be unable to function in a manner compatible with democracy, the rule of law, and human rights;

- The Ministry of Defence stands for impunity. And NGOs, by definition, are committed to ensuring accountability and opposing impunity. The Ministry's commitment to preserving impunity does not need much illustration. It has a horrendous record of using violence against citizens. This includes killings, kidnappings, forced disappearances, and violent attacks against any demonstrators. In all such serious violations of law, the Ministry has protected the perpetrators of violence. In fact, there is overwhelming public opinion within Sri Lanka that the Ministry masterminds these operations. Therefore, there is incompatibility between the Ministry and organisations whose mandate emanates from a duty to defend the basic democratic rights and freedoms of the people. It does not require any imagination to comprehend that the Ministry will use all its authority to crush those demanding accountability for human rights violations. Any move to grant power to the Ministry over the functioning of NGOs is manifestly unjust and done without good faith;

- The Ministry of Defence cannot claim that its own actions and expenses have been conducted transparently, as required by the basic principles of constitutional law. The Ministry has more to hide than all Sri Lankan NGOs put together. Handing 'watchdog of transparency' responsibilities to the Ministry is hypocrisy, and certainly not in good faith.

In sum, a move to grant any power over the functioning of NGOs to the Ministry of Defence would be, as the saying goes, asking the fox to guard the chickens.

2) The Transparency of Non-Governmental Organisations

> The AHRC also clarified that its opposition to the Ministry of Defence having control over NGOs does not compromise its position that all NGOs and civil society organisations need to observe the highest standards of transparency. NGOs in particular, as they may receive funds from foreign donors, have an extra obligation to behave impeccably on the subject of transparency. The AHRC repeatedly stated that Sri Lanka is in dire need of a genuine agency committed to inquiry and prosecution of offences relating to corruption. We have constantly pointed out that an agency similar to Hong Kong's Independent Commission against Corruption (ICAC) is the only way to allow all Sri Lankan institutions to perform with the highest levels of responsibility, accountability, and transparency.

On 4 August 2014, a meeting for the families of disappeared persons, held at the Centre for Society and Religion in Colombo, was disrupted by a mob of people led by several Buddhist monks. The families, who had travelled from Mannar, Mulathiu, Killinochi, Vavuniya and Jaffna, had also visited the International Committee of the Red Cross Office prior to this meeting.

According to reports, over 30 family members of disappeared persons, members of civil society and NGOs, several Catholic priests and nuns, as well as members of the diplomatic community, were present when the disruption took place.

Mobilizing mobs led by Buddhist monks to disrupt meetings organized by civil society groups has become a common occurrence. Buddhist monks are being used as provocateurs in such disruptions. The Secretary of the Ministry of Defence and Urban Development divulged use of this method; he told some journalists, such as the former editor of The Sunday Leader, Frederica Jansz, that the people will soon attack them. Through mob attacks, the government can create the impression that these are spontaneous attacks by people and that the government does not have any responsibility regarding such attacks. Another feature of these attacks is the support extended to them by the police. As a consequence, no genuine inquiry is held into the attacks by these 'mobs'.

On 30 August 2014, the International Day of the Victims of Enforced Disappearances, government forces in Vavuniya prevented hundreds of families from protesting against the disappearance of their loved ones, claiming that they did not have permission to state such a protest. As seen from several above incidents, extremist groups have been employed with the connivance of the

government, who work hand in hand in violating people's rights to the freedom of association and assembly.

Also in August 2014, a private, invitation only discussion session at the Centre for Society and Religion in Colombo for the families of the disappeared was disrupted by a mob including several Buddhist monks who threatened the participants to immediately stop the meeting. Police who arrived at the scene refused to offer any protection to the participants from the mob attack.

In another such incident, every year on October 27 a commemoration of the enforced disappearances is held at the Raddoluwa junction in Seeduwa in front of the monument for the victims of enforced disappearances. On this day parents, brothers and sisters and other relatives and friends of the disappeared person gather at this monument where several events are held to commemorate their loss of loved ones. These events include placing of flowers before the wall where the photographs of over 600 disappeared persons are exhibited. It has always been a very emotional moment when mothers, fathers and other relatives and friends place flowers and say their prayers before the images of their loved ones. Other events are religious ceremonies conducted by Buddhist, Christian and Muslim clergy according to their respective religious traditions. Following the local traditions and customs, *dhana* (alms) are offered to a number of Buddhist monks from the nearby temples. Various audio-video footage is shown to remember the tragedy faced by these disappeared persons. Many speakers attend to express their solidarity with the families of the disappeared and to support their call for investigations and justice regarding these disappearances. The monument for the disappeared persons was erected in 2000; this commemoration event has been held annually for the last 14 years, receiving considerable coverage in the media.

Among the persons who have spoken at this commemoration in the past is the incumbent President Mahinda Rajapaksa, who has supported this commemorative event and promised to support the demand for justice by the families of the disappeared. Other guests have included many well-known politicians from all spectrums of political life in Sri Lanka as well as intellectuals and persons committed to the pursuit of human rights in Sri Lanka. Among the guests for this year's commemoration is Victor Ivan, a well-known journalist and editor of the highly respected newspaper '*Ravaya*'.

While the event is being advertised, a poster has been exhibited in Negombo, Colombo and many other parts of the country attacking the commemoration as a work of "*dollar crows*" and exhibiting in the poster photographs of Victor Ivan, Brito Fernando—a founding member of the families of the disappeared

and a spokesman for this cause, Phillip Dissanayake—also a founding member of the group, and five other persons who have appeared as guests at previous commemorations or have actively supported this commemoration. The poster does not carry the names of those who are responsible for the making and publication of the poster, and is therefore illegal under Sri Lankan law. The law enforcement authorities have allowed the posters to be exhibited however, and have not taken any action against the persons responsible for publishing and pasting them.

ICCPR, Article 6

1. *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

2. *In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.*

3. *When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*

4. *Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*

5. *Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*

6. *Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.*

Failure to Provide Enforceable & Effective Remedies to Protect Right to Life

The Absence of a Right to Life in the Constitution

Even though the Supreme Court has recognized a 'limited' right to life, to the extent that the death penalty can be enforced only through a decision of a competent court, this has little impact on a positive recognition of the right to life in Sri Lanka. Moreover, this judicial reasoning was used only in three decisions of the Court several years ago, and has not been reflected in recent jurisprudence. Therefore, limited judicial recognition cannot satisfy the need for express constitutional inclusion of the right to life.

Since 1971 Sri Lanka has experienced large-scale enforced disappearances. The law in Sri Lanka does not prescribe a limitation to the power of the Executive and the Parliament to, respectively, take actions or legislate in a way that undermines the basic right to life. Public security laws, developed in terms of emergency regulations and anti-terrorism laws, empower the security forces to engage in enforced disappearances and other acts that deprive citizens of the right to life. There is no provision in the Sri Lankan Constitution to guarantee article 6 of the ICCPR, which states that '…every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life….' The vast number of enforced disappearances in Sri Lanka demonstrates how officers in the security forces can deprive the life of a person without any reference to a court decision on the matter. Under the pretext of someone being classified as a "terrorist" by the security forces, the decision and action to deprive the person of their life can be taken by the security forces themselves. What is internationally known as the power of the Russian Cheka has been operative in Sri Lanka, leading to large-scale enforced disappearances, over a period of about 40 years.

Failure to Enact Effective Legislation to Prevent Murder

One of the primary duties of a state is to protect the lives of people by creating an effective legal mechanism to prevent murder. Sri Lankan law has such a mechanism under the Penal Code and the Criminal Procedure Code. As the provisions of these laws are not enforced effectively however, there is a widespread sense of insecurity regarding even the protection of life itself.

In Sri Lanka murder is easy to commit and there is a great likelihood that the murderers could escape and carry on their lives freely. This can happen due

to the dysfunctional policing, prosecution and judicial systems. Interventions made by the AHRC during the year regarding this are mentioned briefly below.

The Displacement of the Criminal Justice Process & its Subsequent Collapse

The obligation of the state to investigate all credible allegations of crime is no longer a basic criminal justice principle adhered to in Sri Lanka. The accepted notion that an offense is 'an offense against the state' is not respected; crimes are now treated as private disputes.

In all stages of what should be a functional criminal justice process, an approach advocating settlements of criminal disputes is followed. At the preliminary stage of recording a complaint at a police station, police officers routinely decline to record complaints against state agents and politicians. This applies even in instances of grievous human rights violations, such as torture, enforced disappearances and extrajudicial executions. This is followed through to the second stage of the criminal justice process, the prosecutorial stage, in which officers of the Attorney General's Department decide whether to indict or not based on political realities rather than legal standards. One such case was the indictment filed against journalist J.S. Tissanayagam, under the PTA. He was later convicted and sentenced. A presidential pardon was granted to him thereafter. The use of the power of pardon by the President is in fact another way in which the law is being circumvented. The pattern is that indictments are issued unjustifiably, decisions are given thereafter by compromised judicial officers, and then, to offset public pressure, a Presidential pardon is granted. The meaning of the law is lost in the process.

Indictments are not issued by the Attorney General's Department despite credible allegations about the involvement of state agents in crimes such as torture and disappearances. This is done, despite the fact that under the CAT Act (No. 22 of 1994), torture is recognized as a crime punishable with seven years rigorous imprisonment. From 2010, the practice of conducting inquiries and prosecutions under the above mentioned law has been abandoned, except in extremely rare instances. However, torture and ill treatment take place routinely across the country. The number of convictions under the CAT Act is minimal, largely due to the absence of state will to prosecute. In no case has an officer in charge of a police station been indicted for complicity in acts of torture, even though the High Court, before which indictments are filed under the CAT Act, has castigated the Attorney General for this failure.

Reprisals against witnesses and complainants are widespread, and in some instances, the witness or the complainant is killed so as to prevent them from giving evidence in court. The absence of an effective witness protection law is a major reason for such reprisals. The draft witness protection law advanced by the Government has no practical meaning because it is premised on protection by state agencies in a context where the state itself is incapable of providing protection due to the deep politicization of state agencies, particularly the police.

Drunken Police Officers Gun Down 24-year-old


The injured Police Constable Ajith Weerasooriya

The deceased Police Constable Chandana Sampath (43)

On the night of June 11, officers attached to the Nittambuwa police station gunned down Subash Indika Jayasinghe, a 24-year-old man, for no reason. A friend named Saveen Chathuranga, 18-years-old, was accompanying Indika. Saveen describes the incident as follows: Indika and Saveen were travelling on Indika's motorcycle. As there was significant traffic, they were moving slowly. Some police officers stopped their motorcycle. There were four policemen. They seemed to be drunk. After Indika stopped, both the riders got off the bike. One police officer then put his pistol to Indika's upper torso and shot him point blank. The police officers did not make any attempt to take Indika for medical treatment. Saveen had to stop a passing vehicle to take Indika to the hospital. The officers threatened Saveen and told him not to reveal what happened. Indika did not survive.

After the incident, a police spokesman stated that the motorcycle was being driven very fast, and as the riders did not stop after the police signaled them to do so, the police shot at the vehicle. The generation of such excuses is common when wrongdoings of the police are exposed. In any case, shooting people to stop traffic violations is a ludicrous explanation.

Police officers have been given pistols quite recently. The justification for the move was that there are constant clashes between civilians and the police, and that the police officers could use their pistols to defend themselves. Given this policy, and given the reputation of the Sri Lankan police as poorly disciplined and poorly trained, this murder comes as no surprise.

The officers involved in this shooting have not been charged for murder and a competent and independent investigatory team should conduct criminal investigations. However, what is more likely is that, under various pretexts,

investigations will be delayed, paving the way for these officers to escape responsibility and, in most likelihood, they will continue their work with impunity.

In a separate incident, near the Katunayake area, police recently shot at a moving three-wheeler. The police missed their target and instead shot a bystander.

In another incident , Sri Lankans were this year confronted with the abduction of two policemen, one of whom was assassinated. The other narrowly escaped by struggling and running into the jungle naked in Kurunegala. The immediate reaction of some persons who were interviewed by the press agencies was: if this is what is happening to our policemen, what can we expect for ourselves? Such reactions sum up the extent of the lawlessness that has spread throughout the country.

The abuse of Presidential Pardon is an abdication of the state responsibility to control crime

The Panadura High Court judge, Kusala Sarojani Weerawardana, found ten Presidential Security Division (PSD) officers who were accused of assaulting two famous songsters Rookantha Gunathilike and Chanta Chandraleka Perera to be guilty of the charges and sentenced them to four and a half years of rigorous imprisonment. The PSD officers entered the living premises of the two famous singers, shaved their heads and assaulted them in 2000. The PSD officers did this due to the two singers' public participation at an opposition UNP political rally.

On 11 April 2014, the ten former PSD officers were released from prison as they were granted Presidential Pardons. On an earlier occasion, Mary Juliet Monica Fernando, the wife of the Minister of Parliamentary and Christian Affairs, Melroy Fernando, who was charged and found guilty of murder, was also released on a presidential pardon in 2008.

The pardon by the head of the state is done for specified reasons in any country. Such pardon is not meant to forgive persons who have committed serious crimes and certainly not for the purpose of favouring political allies. However, the Sri Lankan president does not consider himself bound by any conventions or ethical and moral considerations in the use of his extraordinary powers. Above all, it is no longer considered essential to weigh the impact of such pardons on the process of crime control.

A huge list of uninvestigated crimes glaringly speaks of the loss of commitment on the part of the government to stand firmly on the issue of crime control. Throughout the country there are routine complaints and frustration about the failure of the state to deal with crime. Such negligence sends the message that crime control is no longer a priority of the Sri Lankan state. This is the biggest contribution to creating public insecurity.

Prageeth Eknaligoda's case exposes lack of consensus against enforced disappearances

Prageeth Eknaligoda disappeared on 24 January 2010, and to this day there has been no credible investigation into his disappearance, despite many interventions by the United Nations Human Rights agencies, other international organizations, and by local Sri Lankan organizations. Prageeth Eknaligoda's wife, Mrs. Sandya Eknaligoda, while participating in an international conference in London, told the BBC SinhalaService that she has attended court on over 50 occasions to appear in the inquiry into the habeas corpus application filed by her, and that the case has been dragged on, primarily due to police witnesses failing to appear in court. She reportedly said that she cannot even guess how long the case will be made to drag on in this manner, and that it is not possible to expect justice for this disappearance from Sri Lankan courts.

Her complaints of delays and witnesses absconding the proceedings will not surprise anyone in Sri Lanka. Delays and the space for all kinds of manipulations to sabotage justice are inbuilt characteristics of the so-called justice system in Sri Lanka. The UN Human Rights Committee has made several recommendations to the Sri Lankan government to correct this situation, but the government treats delays and unscrupulous maneuvering of the system as incorrigible aspects of the "local system of justice".

It can be said without hesitation that sabotaging all attempts to obtain justice by the families of the disappeared persons is an entrenched government policy. All government agencies involved in delivering justice, such as the police, the attorney general's department, and the judiciary, have demonstrated an impenetrable resistance to all such to seek justice in cases of enforced disappearance. This is not surprising, as the primary suspects for causing these disappearances are none other than government agencies such as the police, the military and other paramilitary agencies.

Recommendations

The government of Sri Lanka must ensure, both by legislation and the enforcement of laws, that only a competent court has the power to order the death sentence. The prevailing practice of the last 40 years of allowing security force officers to be the accuser, investigator, adjudicator, executioner and disposer of bodies, should be specifically outlawed by legislation; particularly in situations in which emergency laws and anti-terrorism laws are in operation. Clear prohibitions must be laid down and enforced to ensure the end of the above-mentioned practice, which can also be summed up as an imitation of the Russian Cheka.

The government should take speedy action to enact legislation criminalizing enforced disappearances. No perpetrator of enforced disappearances should be allowed to avoid prosecution due to the absence of a law criminalizing enforced disappearances, as is the case at present. Sri Lanka should speedily become a signatory to the International Convention for the Protection of All Persons from Enforced Disappearances and enact relevant legislation on the offence of enforced disappearance. The principle against retrospective criminalization should not operate.

Sri Lanka should ensure that the offence of murder would necessarily lead to credible investigation and prosecution through the country's public justice system. Private settlement should be disallowed in instances of the offence of murder, as should the practice of offering and granting suspended sentences. The government should particularly ensure that credible investigations occur in cases of murder alleged to have been motivated by political reasons. All steps must also be taken to ensure that investigating officers are not afraid of reprisals for properly carrying out their duties.

Trials, particularly in the case of murder and other serious offences, should be held from start to finish continuously. The present practice of postponing cases after short hearings, with cases going on for years, should be discontinued forthwith. After the completion of an investigation, indictments should be filed and the case should be held and completed within a period of about a year. The United Nations Human Rights Committee's recommendations regarding undue delay on the holding of trials (expressed through its views on several communications from Sri Lankan petitioners) should be carefully implemented.

Moreover, during investigations and trials relating to murder and other similarly serious offences, the protection of the complainant and the victims should be ensured. Police officers must attend to complaints without the harassment of complainants and witnesses. The government should establish a disciplinary

procedure that will investigate all allegations of bribery and corruption used by the suspects or accused in murder and other serious cases of crime to escape strict law enforcement.

ICCPR, Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Torture Victims Demand Justice

It is disturbing to note the approach adopted by Mahinda Rajapaksa's government to encourage the use of torture and obstruct every attempt by victims to obtain justice. The government has done everything possible to obstruct human right organizations, as well as other concerned groups like journalists, who have exposed the widespread and most brutal forms of torture being used by the police and other security forces. The government has also encouraged reprisals on victims, human rights defenders, and journalists. The government has deliberately ignored the many recommendations made by the United Nation's Human Rights Council and other human rights agencies. Through its propaganda machinery, it has cultivated hostile attitudes towards the United Nations and its human rights agencies, labeling their observations as attempts to destabilize Sri Lanka. Criticism relating to the use of torture and ill-treatment is also treated by the government as hostile propaganda against the nation and its people. The simple message of the government is that victims of torture and human rights organizations should keep silent about what has happened to them and express appreciation for the wonderful work done by the police and security agencies.

Despite such a hostile and dangerous environment, people continued in 2014 to complain against acts of brutality taking place in police stations around the country. They have continued to demand justice and have narrated their experiences through the media and social media networks. And, the human rights organizations have carried on their task of assisting victims and attempted to create a discourse on the causes of torture prevalent in Sri Lanka. A rich discourse on torture and ill-treatment has resulted. Discussions have taken place throughout the country to condemn this assault on human dignity, and there is resolve to work towards a change of the political environment that enables such brutal use of force against people in the country.

A few cases of torture are summarized below:

Commercial sex worker exposes the "rotten" nature of Sri Lankan Police

In September 2014, a video showing a policeman beating a young woman on a public road in Ratnapura, generated heated discussion in the media. Reactions in the media, as well as in other social media, such as Facebook, indicated widespread public contempt of the behavior and conduct of the police.

The manner in which the police spokesman reacted to the video and subsequent developments was almost comic. When the video was first shown, the police spokesperson's reaction was that as this video is not reliable, no action can be taken. As the media heat grew, the police spokesman declared that the policeman seen in the video beating the young woman with a wire has been identified. Sometime later, the police spokesman announced that this particular officer had been interdicted. Thereafter, the police spokesperson's repeated message was that a police team has been deployed in trying to identify and to obtain a statement from a particular woman concerned, but that she appeared to be in hiding and therefore, it was not possible to obtain her statement.

While the police spokesperson was repeating this story, Ganga, the woman who was beaten, emerged and began revealing her ordeal in public. Besides holding a press conference, she also gave an exclusive interview to *Ada Derana*, a local TV channel. She said that she was a resident of Kanadola in Ratnapura and that the particular police sergeant had asked her to come with him to an inappropriate location on several occasions and when she had refused for the third time, he had plotted to extract revenge. She revealed that the police officer had assaulted her with a wire, while uttering filthy and abusive language at her, and he had also kicked her when she had fallen to the ground.

The police sergeant's name has been revealed as P.P. Thissera. A witness with a mobile phone had recorded the incident, which was then distributed widely through social media, making the incident a talking point among Sri Lankans everywhere.

The manner in which several police officers including a Headquarters Inspector (HQI) treated Ganga after the incident was brazen. Ganga revealed how police officers kept her at a police station for several hours attempting to get her to agree to be silent about this incident. At one instance, the policemen offered Rupees 3,000 to her. All her attempts to have a complaint registered failed.

Ganga then filed an application before the Supreme Court claiming the violation of her rights and demanding Rupees 5 million as damages. A team of

lawyers assisted her. After filing the fundamental rights application, she held another press briefing explaining her position. She openly told the press that due to extreme poverty she makes a living as a sex worker.

Despite such enormous publicity, with photographic evidence of brutal police assault, to this date, the police sergeant in question has neither been arrested nor has he been charged with a criminal offence. Clearly, the criminal offence falls under the CAT Act No. 22 of 1994. In terms of this Act, any public officer who commits an act of torture can be charged with an offence punishable with up to seven years rigorous imprisonment and/or a Rupees 10,000 fine. The photographic evidence establishes that there is sufficient evidence to charge the police sergeant under this law. Besides the photographic evidence, there is also the evidence of the victim and several other eye witnesses.

For several years now, the police, as well as the Attorney General's Department, have connived not to file charges under the Torture Act. While a large body of evidence has been revealed regarding incidents of torture by police officers, the Inspector General of Police and the Attorney General have been following a policy of preventing criminal charges being filed against such officers. The shameful behavior of the police sergeant in this incident has merely exposed the ugly manner in which police officers in Sri Lanka generally behave towards citizens.

In dismantling the 17th Amendment to the Constitution, the government has deliberately destroyed the only serious attempt that has been made by the Sri Lankan Parliament to restore discipline in the public services in general, and the police service in particular. The simple reason governments do not want to see an efficiently functioning police force is to prevent free and fair elections. From 1978 onwards, all parties in power have sought to misuse the police in order to engage in electoral mal-practices. Therefore, the destruction of the police force in Sri Lanka has been done for policy reasons. In the modern world, no civilized society can survive without a law abiding and disciplined police force that ensures peace and stability. To allow a police force to descend to such an abyss is to drag the entire society into a similar, or worse, situation.

Sandun Malinga Dies in Brother's Arms Following Assault by Kandeketiya Police

On 9 May 2014, a 17-year-old boy, P.H. Sandun Malinga, from Atturukudua, Meegahakiula, died in his brother's arms following brutal assault and torture by a group of policemen from the Kandeketiya police station. Two days before, on May 7, Sandun Malinga, his brother and another relative were on their way

to see a vehicle which was on sale. They were arrested by a group of around 10 policemen including Sub Inspector (SI) R M P Somaratne, who gave no reason for arrest and brutally assaulted and tortured them after taking them to the police station.

Following the assault and torture, Sandun Malinga's complaints of severe chest pain were ignored and no medical treatment was provided to him. He continued to suffer the pains and complained to his parents at around 2:30 p.m. when they visited him in police custody the next day. His parents pleaded with several police officers including Somaratne, to provide their son with medical attention. These pleadings fell on deaf ears and the police officers requested the parents to come back the next day. On the next day, it was the same story: the parents found their son lying on the floor of the cell and complaining about chest pains, while the police again refused to send Sandun Malinga for medical treatment. Cursing the parents in foul language, the police informed them that both their sons would be produced in Court on the same day. Sandun Malinga, his brother and another person were finally produced in the Passara Magistrates Court's, Magistrate's chambers at around 3 p.m. The police requested the Magistrate that the accused be remanded till May 21. Completely ignoring repeated requests by Sandun Malinga's counsel to provide him with medical treatment, the Magistrate remanded all three till May 21. Prison authorities also ignored pleas from the parents to provide medical care to Sandun Malinga. On the morning of May 9, Sandun Malinga, 16 years old, succumbed to his chest pains, and died in his brother's arms in prison. The following day the boy's body was subjected to a post mortem where the Judicial Medical Officer concluded that the reason for his death was internal bleeding caused by an assault.

This incident depicts the collapse of the public justice system. Not only did the police brutally assault an innocent young man, but the lady magistrate ignored repeated requests for medical treatment even when confronted with first hand testimony from the victim himself. Added to this was the denial of the remand prison officers to send the boy to the prison hospital ward. The negligence of these state officials caused the death of Sandun Malinga.

To date, neither the police officers at the Kandeketiya police station nor the Magistrate of the Passara Magistrate's Court, have been held accountable for this death. All the culprits to the murder remain scot free while the family of the deceased child is further tormented due to the orders of the Magistrate to keep the other family members in remand. The family is aware that Sandun Malinga's brother, in whose arms he died, is in severe mental distress, but they are unable to do anything as he is being kept in remand on court orders.

People in Sri Lanka have today become helpless in the face of police killings and torture. There does not appear to be any inclination on the part of the government to inquire into these grave crimes and rights violations. Under normal circumstances, the function of inquiring into acts of police indiscipline has been the responsibility of the Inspector General of Police (IGP). However, he does not seem to be engaged in these tasks anymore. People do not show any trust on the capacity of the IGP or any other high ranking officers to protect law enforcement. In the past, people used to go before the Courts when faced with grave issues such as police killings, but today the same people have no hope of obtaining redress through due process. Courts in recent times have even decided that custodial killings are legitimate homicides.

Two Persons Brutally Tortured by Chilaw Police

In these circumstances, who is the protector or guardian of the people? Within the short period of one month, two killings occurred due to the police shooting young persons with their pistols. The police reaction to these serious crimes has been to offer various fake explanations, amounting to ridiculing those killed. This is not the prevalence of normalcy. The people themselves and the opposition Members of Parliament who represent them should step forward to protect the people.

The two cases involved acts of torture committed on Mr. Edirisinghe Devayalage Sanjeewa Edirisinghe, resident of No. 164, Heen Agara, Panirendawa, Chilaw, Puttalam District and Mr. Wathuthantreelage Presly Fernando, also from Chilaw. Sanjeewa and Presly were both brutally beaten up by Sergeant Basnayake at the Chilaw police station on two different occasions. Sanjeewa was assaulted at the time of arrest in front of his ailing father and family members and was further assaulted at the Chilaw police station. Sergeant Basnayake urinated on Sanjeewa's face and continued to assault him for over three consecutive days, causing terrible injuries. Chili was placed on his sexual organs, eyes, and other sensitive body parts and he was later also hung from a roof beam and assaulted, due to which he now suffers from nerve damage in both of his arms and is unable to use either arm. After Sanjeewa was released on bail, the police threatened to kill if he were to visit a hospital for treatment. As a result, he did not get immediate medical treatment, further aggravating his injuries. When he later admitted himself to the Chilaw hospital, he was immediately transferred to the Ragama hospital, where his treatment began. According to medical reports, he has suffered extensive nerve injury; a long period of treatment will be needed for him to be able to use his arms again.

The assault of the other victim Mr Presly Fernando had also been led by Sergeant Basnayake of the Chilaw police. Presly too had been assaulted at

the point of arrest, in front of his wife, who, upon witnessing the assault, fell unconscious and recovered only after receiving treatment. She continues to suffer from a mental breakdown as a result of the assault. He was then continuously assaulted at the police station in a separate room where he was held for over three days. Like Sanjeewa, Presly was also hung from a beam in the roof, which caused damage to his shoulder resulting in him being unable to use his arm. He had been further assaulted with sticks, boots, and by Sergeant Basnayake sitting on his chest, causing him to lose consciousness. Presly also received threats following his release, not to avail treatment from any hospital.

The AHRC has learnt that Sergeant Basnayake has had a long record of torture, which he has practiced in his earlier assignments at several other police stations.

Recommendations

One of the primary duties of any state is to protect its citizens. Widespread corruption is in direct contradiction to such a protection function; proper implementation of its protective function thus requires Sri Lanka to implement measures to eradicate corruption as well as torture. Similarly, under article 2 of the ICCPR, governments are required to protect all human rights by providing effective remedies through legislative, judicial, and administrative measures. This role comes into direct contradiction with the use of torture and corruption: an effective remedy requires that policing, prosecution, and judicial functions must exclude the use of torture and corruption.

The government should therefore discontinue all policies and instructions through which the police and other security officers have been allowed/ encouraged to use torture and ill-treatment during interrogations. It should also discontinue with any policies or instructions given to the police to not investigate and prosecute offences under the CAT Act (No. 22 of 1994).

The Inspector General of Police should be directed to take measures to stop the widespread practice of harassing complainants, and refusal to take complaints, by officers at the police stations in Sri Lanka.

The widespread use of torture and ill-treatment by the police for purposes of extortion must be eliminated, with specific attention paid to instances where complainants pay or give favours, to have some persons arrested and tortured.

It is also imperative that the Sri Lankan government ends the practice of extrajudicial and custodial killings. Similarly, violence directed against women by police officers when they seek police assistance, either as complainants or as relatives of arrested persons, must be eliminated.

Particular steps must be taken to immediately stop the following prevalent kinds of torture:

a. Twisting the victim's arms behind their back before hanging them from the ceiling, causing serious injuries, including the loss of the use of the victim's arms, and beating the victim all over their body;

b. The use of chili powder in the eyes, genitals and other sensitive parts of the body, causing extreme forms of pain;

c. Putting books on the head of the victim and beating the books with iron or wooden poles, thereby causing internal injuries to the brain;

d. Using blunt instruments to penetrate the anus, and putting genitals into drawers and slamming them shut;

e. Inserting objects, such as bananas or PVC pipes, into the vaginal entrances of female victims;

f. Getting persons suffering from diseases, such as tuberculosis, to spit into the mouth of victims;

g. Urinating on the face of victims;

h. Stripping a victim, putting them between two poles, tying them there and rotating them while beating them.

With regard to all those engaged in human rights work, it is crucial that they have a thorough grasp of the practical manner in which the Sri Lankan police, prosecution and judiciary function. Empirical knowledge about the country's criminal justice administration is more useful than theoretical knowledge about principles and conventions.

Thorough knowledge about the actual historical changes to 'corruption-ridden systems' where torture was a common practice and how they were transformed into 'consent-based law enforcement systems' capable of crime investigation without torture, is imperative for those who are engaged in human rights monitoring and the elimination of torture.

The development of rehabilitation models including psychological methodologies of trauma counselling and other community based healing methods are also necessary in addressing torture.

Chapter VIII

THE PHILIPPINES

Violations, the Expected Outcome

THE PHILIPPINES

Violations, the Expected Outcome

Introduction

The 2013 report on the Philippines examined the efficacy of rights protection by looking at the strengthening of the legal and normative framework. By examining cases documented in 2013, the report concluded that "impunity is systemic, the strengthening of the legal framework on the protection of rights, has become meaningless" and that perpetrators being indicted in court for violating rights are exceptions and not the norm in the country.

The report made clear that "there is no evidence or precedence that any violations of rights, notably torture, have obtained adequate remedy." The absence of an effective remedy was clearly established based on empirical evidence. In fact, none of the violations involving state officials and its security apparatus cited in the report have resulted in convictions or punishment for the crimes committed.

This year's report will again examine individual cases and seek to show how and why these violations are an expected outcome, and why the strengthening of legal and normative frameworks have failed to protect against this outcome. Unlike last year's report, this year's report will be thematic, in line with the rights under International Covenant on Civil and Political Rights (ICCPR).

In our 2014 report, we will: first, stipulate the rights in the ICCPR that the Philippine government has agreed to protect; second, examine how these rights are enforced in compliance to its obligation to "have an effective remedy" under article 2 of the ICCPR; in conclusion, we will comment on obstacles in enforcing these rights.

ICCPR, Article 1

1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*

3. *The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*

On the Right to Self-determination

In March 2014, the Government and the Moro Islamic Liberation Front (MILF) signed the Comprehensive Agreement on the Bangsamoro, a final peace agreement, ending four decades of armed conflict in Mindanao. The historic peace agreement was a product of 17 years of protracted negotiations for political settlement in Mindanao.

In his speech, Al Haj Murad Ebrahim, Chairman of the MILF, describes the final peace agreement as having: "finally [brought] with it the restoration of the identity, powers and resources of the Bangsamoro." The new political entity—the Bangsamoro Juridical Entity (BJE), being proposed under the Bangsamoro Basic Law, contains their aspirations, and upholds their right to self-determination.

The proposed Bangsamoro territory subsumes the existing Autonomous Region in Muslim Mindanao (ARMM), and covers the provinces of Basilan, Sulu, Tawi Tawi and Lanao del Sur. In the provinces of Lanao del Norte, six municipalities have voted for inclusion; in North Cotabato Province, 39 villages in six municipalities also are included. The cities of Marawi, Lamitan, Cotabato, and Isabela, all in Mindanao, are also included.

Looking at the territory of proposed BJE, it is visible that in the vast land that used to be inhabited by the Bangsamoro they are now a minority—in number

and territorial control—due to colonization and occupation. For decades, this had deprived them of the opportunity to take control of their own future. The widespread systematic oppression and discrimination against the Bangsamoro has underpinned their armed struggle, which began in 1969.

The Muslim's struggle demanding their right to self-determination spans 45 years of protracted conflict. In 1969, the Moro National Liberation Front (MNLF), a political party that campaigned for secession through armed struggle, was created. The oppression against the Muslims, notably the killing of Muslims in the Jabidah massacre in 1968, wherein soldier recruits were killed for refusing to fight against fellow Muslims to reclaim Sabah, ignited the emergence of an armed struggle for independence.

After the bloody and violent conflict, in 1976, the MNLF and the Philippine government signed the 1976 Tripoli agreement. While the agreement has convinced the MNLF to reduce its demand for independence to that of creating an autonomous region, the armed conflict persisted due to deep ideological divisions within the MNLF leadership. In 1977, the Moro Islamic Liberation Front (MILF) split from the MNLF to continue the demand for independence of Mindanao from Philippines sovereignty.

For four decades, the Philippine government was engaged in a protracted war with the MNLF that has been demanding an autonomous region and the MILF that has been demanding an independent Islamic state in Mindanao. MNLF and MILF are the biggest armed insurgent groups in Mindanao.

The MNLF's breakthrough, however, was in 1987, after their demands for an autonomous region was incorporated in Article 10, Section 1, of the 1987 Constitution. The Autonomous Region in Muslim Mindanao (ARMM) was established to pursue "genuine and full autonomy in accordance with the 1996 peace agreement," and to "provide affirmative action to the bangsamoro people [...] for peace and self-determination". The creation of the ARMM, however, did not end the conflict in Mindanao.

Thus, the final peace agreement between the MILF and the Philippine government is historical, as it has provided opportunities for the Bangsamoro people, drawing on experiences and flaws in the administration of the ARMM, to have a higher degree of autonomy, representative of the Bangsamoro aspiration.

Article 6

1. *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

2. *In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.*

3. *When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*

4. *Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*

5. *Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*

6. *Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.*

On the Right to Life

The 2013 report points out that the "police, soldiers and the public officials [commit] criminal acts without repercussion." The lack of accountability amongst public officials accused of committing crimes are reasons why the phenomenon of torture, extrajudicial killings, and enforced disappearances continues unabated. None of the security officers and public officials have been convicted, let alone punished, for their crimes.

This lack of accountability has had an effect of giving government agents de facto license to torture, extrajudicially kill, and forcibly disappear, victims. This pattern continued this year—the perpetrators targeted not only human rights and political activists, but also ordinary people, including those not involved in any political activities. This phenomenon shows how the lack of accountability and the failure to punish perpetrators affects the entire society.

In a report submitted to the Human Rights Council in February, deep concern has been expressed over the failure of the Philippine government to investigate, prosecute, and convict state agents and their accomplices for violating the Anti-Torture Act of 2009. The law has been in operation for five years now; however, none of the perpetrators involved in the dozens of cases documented have been convicted for their crimes.

The lack of conviction is rooted in the government's failure to promptly investigate and prosecute all acts of torture, and protect victims and complainants.

In investigating cases, the five government agencies—the Commission on Human Rights (CHR), the Public Attorney's Office (PAO), the Philippine National Police (PNP), the National Bureau of Investigation (NBI), and Armed Forces of the Philippines (AFP) all have the legal obligation to investigate torture complaints; all of them have failed to comply with this provision in a routine, systematic, and widespread manner.

The failure to "promptly investigate" claims of torture occurs first, by the agencies either not conducting investigations or choosing to ignore complaints of torture submitted to it; second, even if they investigate, the result of their investigation and findings take months or years or do not appear at all. The government's failure to "investigate promptly" violates the absolute and non-derogable nature of the prohibition of torture in the Convention against Torture (CAT).

In terms of prosecution of cases, take the case of a 16-year-old boy caught in the crossfire of the fighting between the rebels and soldiers in Zamboanga City on 20 September 2013. One year after his arrest, no investigation has been conducted. He was interrogated in absence of legal counsel, deprived food, and forced to admit that he is a rebel. His case is akin to that of hundreds of alleged rebels, including ordinary villagers, arrested amidst and in the aftermath of armed conflict. They are presently detained in Camp Bagong Diwa, Taguig City.

A year after the incident, the AHRC is not aware of any investigation having been conducted concerning the boy's allegations of torture or on the conduct meted to the rest of the detainees. Given this failure to prosecute perpetrators of systematic and widespread torture that masquerades as part of daily investigation, torture arising from armed conflict would certainly have little room to be investigated, let alone prosecuted.

On matters of protecting victims and complainants, the government has failed to provide and ensure adequate protection. The witness protection law guarantees victims and complainants "may avail of benefits". In reality, neither the victim nor the complainants have received adequate protection. The absence of protection obstructs investigation and prosecution of cases. The witness protection law is itself not clear about whether the government is obliged to provide protection to all torture victims, such as those still in detention or those being prosecuted based on evidence of torture. The provision of protection fails due to an entrenched mindset amongst some of the police, prosecutors, and judges. They do not make distinction between a torture victim exercising her/his right to remedy by complaining; and a torture victim who complains as a strategy of defence to get away with their crimes. There is a deeply held bias and stereotype that criminals often claim to have been tortured once they are arrested, resulting in law enforcement taking complaints of torture lightly.

ICCPR, Article 9

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

2. *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*

3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*

4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*

5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

On the Right to Liberty & Security

On arbitrary arrest and detention, the mandate of Working Group on Arbitrary Detention (UN Doc, E/CN.4/1998/44, para 8 (a), (b) (c)), defines arbitrary deprivation of liberty, wherein: invoking legal basis is impossible; a result of one's exercise of rights or freedoms, and a total or partial non-observance of fair trial norms.

In the Philippines, there is a clear pattern of routine, systematic, and widespread practice of the police and prosecutors targeting human rights and political activists, filing fabricated charges, and using evidence gathered by torture, resulting in arbitrary arrest and detention.

Legally, Rule 113, Section 1 and 2 of the Revised Rules of Criminal Procedure, defines the purpose of arrest and its legal basis. It stipulates that arrest can be made when persons are to "answer for the commission of an offence" and "violence or unnecessary force" must not be used by arresting officers. Additionally, Republic Act No. 7438 or the Rights of persons under arrest, detention, or custodial investigation, also stipulates the rights of arrested persons and obligations of officers in arresting and detaining persons.

Although the country's legal framework on lawful arrest and detention is robust, this legality has not prevented the occurrence of arbitrary arrest and detention. The AHRC continues to document numerous cases of persons being arrested, detained incommunicado, and tortured, despite not committing any offence and not being liable to answer for any criminal offences.

Take the case of Rolly Panesa, a security guard who was arrested, detained, and tortured in 5 October 2012. Panesa was forced to admit that he and "Benjamin Mendoza", a fugitive communist leader, are the same person. Panesa endured nearly a year of arbitrary detention as he was pursuing legal remedy to prove he is Panesa, not Mendoza. On August 2013, he was released after the court granted his petition for writ of habeas corpus. The Military, the police, and the prosecutors were never held accountable for their unlawful actions.

In granting Panesa's petition for writ of habeas corpus, the court held that he could not be Benjamin Mendoza, a communist leader, rejecting the claim of the police and soldiers that had stood as the basis for his arrest. Though Panesa has regained his liberty through the legal processes of challenging the lawfulness of his detention, it was always clear that, legally, he should not have been arrested, detained, and prosecuted in the first place.

This practice by the police to arrest, detain, and prosecute persons—whether or not they are a real suspects—is routine, widespread, and systematic in the Philippines. The police do so not to pursue perpetrators of criminal offenses, but to collect reward money for an arrest or for consideration for promotion.

The case of Mohjeennar Dagam Cabalo is illustrative. He was arrested while being treated for a heart ailment in a hospital on 5 March 2013. The police claimed he is Aman Kabalu, a person wanted for bombing a public terminal in Kidapawan City on 5 October 2007. But, on 10 December 2013, the court ordered Cabalo's release, because he is not Kabalu, the real accused suspect. Cabalo was arbitrarily detained for nine months. Kabalu has a USD 32,000 bounty for his arrest.

Under Rule 110, Section 5 of the Revised Rules of Criminal Procedure, the prosecutor has power to prosecute "under its direction and control" all criminal actions. The role of the court is not only to accept complaints and evidence from prosecutors; it should also ensure that the evidence is sufficient to begin the adjudication processes. This means the probability that the person has committed an offence must have a clear legal basis. This is established in the case of Santos v Oda wherein the Judiciary is given power "on what to do with the case", and that it has "exclusive jurisdiction" in determining the merit.

The AHRC, however, has documented numerous cases wherein the arrest, detention, and prosecution of persons was allowed by courts, abdicating their exercise of judicial oversight in ensuring a prima facie case and probable cause existed in criminal prosecutions. These cases not only lack sufficient evidence, they also use testimonial evidence from false witnesses and witnesses that are not credible, and include testimony under duress or torture. The police and prosecutors have also arbitrarily added names in their list of accused without the accused knowing about this fact.

Take the case of labour leaders Roy Velez and Amelita Gamara who had fabricated murder charges in connection with the killing of four soldiers in Labo, Camarines Norte, on 29 April 2012. In addition to this case of Velez and Gamara, other activists, namely Randy Vargas, Raul Camposano, and Rene Abiva, were also charged with murder for supposedly attacking a convoy of soldiers on 25 April 2012, killing ten soldiers and a civilian in Tinoc, Ifugao.

In cancelling the arrest order on Velez and Gamara, the court granted their petition for dismissal. They argued that they were never informed about the charges and that they did not receive subpoenas. On 26 July 2013, the court cancelled the order for the arrest of Velez and Gamara, but it did not dismiss the entire case filed by the prosecution. This case exposed over a dozen human

rights and political activists, who were falsely charged together with Velez and Gamara, to the risk of arbitrary arrest. The witness in the case against Velez, Gamara, and others, is a former rebel turned military asset, under the control and influence of the Military.

In the "robbery in band" case against Zara Alvarez, a human rights defender, and Ronald Ian Evidente, a labour leader, the witness in the criminal complaint is, likewise, a former rebel turned military asset. Alvarez and Evidente were charged in connection with a robbery incident in Sagay City, on 16 July 2011. Evidente was able to post bail for robbery, but Alvarez remains in jail as she is facing another murder case, where the witness against her is also a military asset.

The AHRC has also raised concerns regarding the case of indigenous human rights activist Temogen "Cocoy" Tulawie, and four other people. They were charged with murder in connection with a bomb blast in Patikul, Sulu on 13 May 2009. The court proceeded in trying the accused for murder despite the prosecutor admitting that the witness had recanted the testimonial evidence obtained. The prosecutor justified the admissibility of his testimonial evidence as credible.

The AHRC argues that the failure of the court to prevent occurrence of arbitrary detention and false prosecutions result in the arrested persons and detainees that remain in detention being denied their fundamental right to fair trial. The use of torture by police to extract confession from the accused; the use of fake witnesses and witnesses under heavy influence of the police and military; the arrest of persons in lieu of legitimate suspects to get the reward money, are all clear denial of the right to fair trial.

Furthermore, needless delay in the trial of cases and the absence of adequate legal representation not only denies the detainees the fundamental right to fair trial, but also aggravates and prolongs this needless denial of the fundamental right to fair trial.

Chapter IX

ASIA

Cutting Across Boundaries, Hunger Plagues Region

ASIA

Cutting Across Boundaries, Hunger Plagues Region

Introduction

The tale of hunger in Asia is a baffling and repetitive one of the people who have slipped through the cracks. Despite vast differences in Asian countries on account of economic foundations, culture, faith or language, massive hunger remains a constant, plaguing them all, except for the oil rich Middle East, South Korea, and Japan.

With regard to the particular countries the AHRC works in, statistics on hunger, poverty, and other indicators of socioeconomic status expose the pitiable conditions a considerable section of their population live in. Nepal, a poor, landlocked country with severe resource crunch, for instance, ranks 157 on the Human Development Index (HDI) report, while India, one of the largest growing economies of the world ranks inexplicably at 136. Nepal does much better on the Maternal Mortality Rate at 170, compared to Myanmar and India (both at 200), while Pakistan stands at the bottom with 260. Economic progress, or lack of the same, and other conditions like internal insurgency hardly make a difference to the percentage of the population condemned to live below the national poverty line: 25.2 percent in Nepal, 31.5 in Bangladesh, 29.8 in India, 26.5 in the Philippines, and 27.4 in Pakistan.

In fact, economic growth and its various trickle-down theories all have no effect on hunger on the ground in any significant way, attested to by all the statistics. This is most clearly seen in India, with the worst ranking on child malnutrition: 42.5 percent of its children are underweight. All other countries in the region fare much better than that: Myanmar has only 22.6 percent of its children underweight, while Nepal has 38.6, Bangladesh 41, Philippines 21.6, and Pakistan 31.3 (UNDP Human Development Report 2013 & 2014).

Countries like India, Pakistan, and the Philippines have enough resources to pull their citizens out of hunger and at least alleviate absolute and severe poverty, if not eradicate it altogether as China has done in the past. Why these countries do not take the necessary steps to do so can be understood from their colonial history. Their colonizers' rule was dependent on the exploitation of a section of the native population, resulting in all these societies seeing the emergence of two different people, the elite and the dispensable. The colonizers did not need their colonies to be rule of law states; all they needed was to maintain law and order by force. They built a law and justice system that did not need to actually deliver. The consequence was the rise of farcical public institutions. Such a system would not respond to a peasant's complaint against usurpation of his land or a labourer's grievance of low wages.

This system continued even with the end of colonial rule, as it suited the ruling elite. The dispensable slowly turned into a chronically underpaid and underfed labour force, without any access to a grievance redress mechanism, which in turn led to a vicious circle of poverty reinforcing and perpetuating itself. Furthermore, the system perfectly suited the needs of the neo-liberal model of development that depended upon the sweat shops in these countries, after strict labour laws in the western world led to dwindling profits. Multinational corporations rushed to these countries to exploit their cheap labour, and soon became part of the nexus of nonfunctional public institutions, corrupt politicians, and the bureaucracy feeding one another. Big business has thus emerged as a big threat to the poor and vulnerable groups in these countries, by usurping their lands in the name of 'development', forcing governments to cut down expenditure on welfare schemes in the name of rationalization, and through other means.

In the short run, the signing and ratifying of international human rights covenants by these countries will not change much in protecting the dignity and rights of their citizens, due to the lack of functioning public institutions on the ground. How would a family, for instance, get justice against the usurpation of their land, an act that threatens their food security, if the courts are corrupt and inefficient? The struggle for a hunger free Asia therefore, must also be a struggle for building functioning public institutions.

ICESCR, Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving

progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

3. *Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.*

Right to Equality and Non-Discrimination

Discrimination on the grounds of caste, class, ethnicity, sex, and religion remains a major hindrance in ensuring food security for all in Asia. It is unfortunate that the authorities themselves are often found to be complicit in perpetuating such discrimination, rather than working towards its elimination. The AHRC reported in March 2014 about the complicity of the Pakistan government in letting more than 193 children starve to death despite plenty of wheat in its godowns, and how this complicity was partly due to most of the victims being Dalit Hindus, thus carrying the double burden of caste and religious minority status. Any work on the right to food must therefore address the discrimination that predisposes segments of Asian societies to hunger and malnutrition.

Throughout 2014, the AHRC also continuously raised the issue of systemic discrimination against Dalits, tribals, minorities, and other weaker sections of society in India. The organization intervened in the case of social and economic ostracism of Dalits in Sitapat Village of Mhow Tehsil in Indore, Madhya Pradesh, by the so called upper castes culminating in the locally powerful landlords cutting off water supply to the Dalit habitat, and played a role in ending the illegal boycott. The AHRC also intervened against targeted demolitions of Dalit and tribal settlements in Chhipiya and Khairha Nala, Rewa District, Madhya Pradesh.

Systemic discrimination was also seen against tribals and other marginalised communities affected by cyclone Hudhud, which devastated many states in India's east coast like Odisha, Tamil Nadu, and Andhra Pradesh. The discrimination, also witnessed in relief work in the wake of other recent

disasters in India, includes tribals not being disbursed relief material earmarked for them, and the losses suffered not being assessed. Such discrimination following natural disasters has only furthered the impoverishment suffered by tribal groups in India since independence.

ICESCR, Article 6

1. *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

2. *The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.*

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) *Remuneration which provides all workers, as a minimum, with:*

  (i) *Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*

  (ii) *A decent living for themselves and their families in accordance with the provisions of the present Covenant;*

(b) *Safe and healthy working conditions;*

(c) *Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*

(d) *Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*

Right to Work

The AHRC has continued to focus on building solidarity across different countries regarding the right to work in 2014. Particularly in the Philippines, the AHRC together with local partners has been in the forefront of such struggles. Our work there has included fighting for the reinstatement of all illegally dismissed workers of Print Town, and engaging with the struggle of vendors against the government's plan to privatize catering inside the Luneta Park (also called Rizal Park) in Manila, and to evict them since February 2013. The AHRC, both through its local partner Defend Job Philippines and its coordinator have remained in close contact with the community and intervened regularly with the authorities, most recently in January 2015.

Just & favourable conditions of work

Ensuring everyone's right to just and favourable conditions of work has been a theme cutting across all of the AHRC's right to food work. Remuneration of fair wages, equal remuneration for work of equal value without distinction of any kind, and equal pay for women in particular, forms the very core of food security. Though discrimination is decreasing in the formal labour force in most Asian countries, the gains that have been made are being reversed by the increase in countries' informal labour force.

The casualisation of labour coupled with the feudal-politician-bureaucratic nexus in countries like Pakistan has forced a sizable section of their workforce into working under slavery like conditions. Brick kiln owners in Pakistan's Punjab province are one such group found to be perpetuating modern day slavery with impunity. The AHRC has repeatedly reported on their routine indulgence in strong arm tactics, including keeping workers in illegal detention and attacking their representatives.

Ironically, even economically strong countries like India face this problem. Illegal practices like manual scavenging continue in the country, by casualisation of the labour force and then denying legitimate rights. The AHRC issued alerts on the death of two sanitation workers in Hyderabad, who died while cleaning a gutter. These deaths followed the death of one sanitation worker in Uttar Pradesh, and three in Gujarat, in the same year.

ICESCR, Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Right to Collective Bargaining

The neoliberal economic policies adopted by most of countries in the region, and in the rest of the world, have led to increasing attacks on workers' right to unionize and collective bargaining. Union workers, particularly organizers, have been targets of fatal attacks from the Philippines to Pakistan, often losing their lives. Unions too have seen a significant rise of attacks against them. The special economic zones and export processing zones are the worst in this respect, as

these zones often exist with the suspension of local labour laws, making both the workers and unions more vulnerable.

The case of the attack on the NXP Workers Union by the management of NXP Semiconductors Philippines is a typical example of the harsh techniques adopted against workers in many Asian countries. The management dismissed the workers on 5 May 2014 on the pretext of their not reporting to work on April 9, the Day of Valour, and on April 18 and 19, Maundy Thursday and Holy Friday, respectively. These days are declared as non-working holidays every year. Following this, the management terminated the Collective Bargaining Agreement (CBA), froze the union's bank account, and filed charges before the court against the union leaders. It has also pressured the workers to accept the 3.5 percent wage increase, threatening the dissolution of the CBA if they were to refuse.

ICESCR, Article 11

1. *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

2. *The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:*

   (a) *To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;*

   (b) *Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.*

Adequate Standard of Living includes Food, Clothing,& Housing

The right of everyone to an adequate standard of living including adequate food, clothing and housing is a right observed more in exception than in practice. The new discourse on development has led to massive displacement in almost every developing country and the poor and vulnerable have almost always been the worst hit. The state led usurpation of lands for corporations has emerged as the single most important reason behind distress migration, sending the poor populations of the provinces into urban squalor.

Like the targeted demolition drives against Dalit and tribal habitats in India, the urban poor are one of the worst hit in the Philippines. The eviction of an urban poor community living in Factor Compound, Las Pinas city for more than 50 years is just one example of the many attacks on the housing rights of the country's urban poor. The community was served a notice by the Urban Poor Affairs Office of the City Government of Las Pinas. The department also invited them for a "consultation", offering Peso 10,000 to those who voluntarily dismantle their houses and agree to sign a guarantee of not returning to the area, while offering no other compensation to anyone else. As most of the residents did not agree to this proposal, the local government went ahead with the demolition and set the remnants of the houses on fire, to stop people from retuning.

Similarly, another demolition drive targeted roughly 277 houses in Sitio Balacabacan, Laiya, Batangas, Philippines on 3 July 2014. This destruction led fishermen to lose their livelihood, as they can no longer access the sea for fishing and parking their boats on the shores adjacent to the demolished community. For a community dependent upon the sea for their food, this is a major assault on their livelihood security. The community has lived here for more than 100 years. Ninety percent of the residents are dependent on fishing, while others are in farming. The residents suspect that the authorities are conspiring with businessman Federico Campos III, a rich beach resort tycoon and developer who has huge business interests in the Sitio Balacabacan community.

India has seen its own share of massive displacement caused by such projects. Many of these struggles, like that of Narmada Bachao Andolan, are going on for decades. People's increasing frustration is forcing them to take to life threatening modes of protests, like jumping into rivers and protesting by submerging in neck deep water.

ICESCR, Article 13

1. *The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*

2. *The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:*

   (a) *Primary education shall be compulsory and available free to all;*

   (b) *Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*

   (c) *Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;*

   (d) *Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;*

   (e) *The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.*

3. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*

> 4. *No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

Right to Education

It is difficult to assess the impact that living in extreme poverty, being forced into distress migration and becoming victims of repeated demolition and eviction drives has on children. Their education is almost always the first casualty of such actions, as we have consistently reported. Whether it is the urban poor communities in various cities of the Philippines or those victims of displacement drives in India, Nepal or elsewhere, any eviction drives against such communities significantly affect the right to education of their children. In turn, this denies them a chance to escape the pitiable condition they are forced to live in, creating a vicious cycle of poverty hard to escape from.

The right to education of these children also gets adversely affected by many other factors, including the dismal health services they need all the more for living in malnourished or near malnourished conditions. States like Pakistan and India often blame the high number of child fatalities on various diseases which are otherwise easily curable. What they fail to share, though, is the fact that even the annual killer Encephalitis should not take around 1000 lives as it takes in India, let alone diseases such as diarrhea.

Human rights guarantees will remain like a picture drawn on plain water without adequately functioning justice institutions.

Human rights, as a concept, are only valuable to the extent to which rights are justiciable.

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