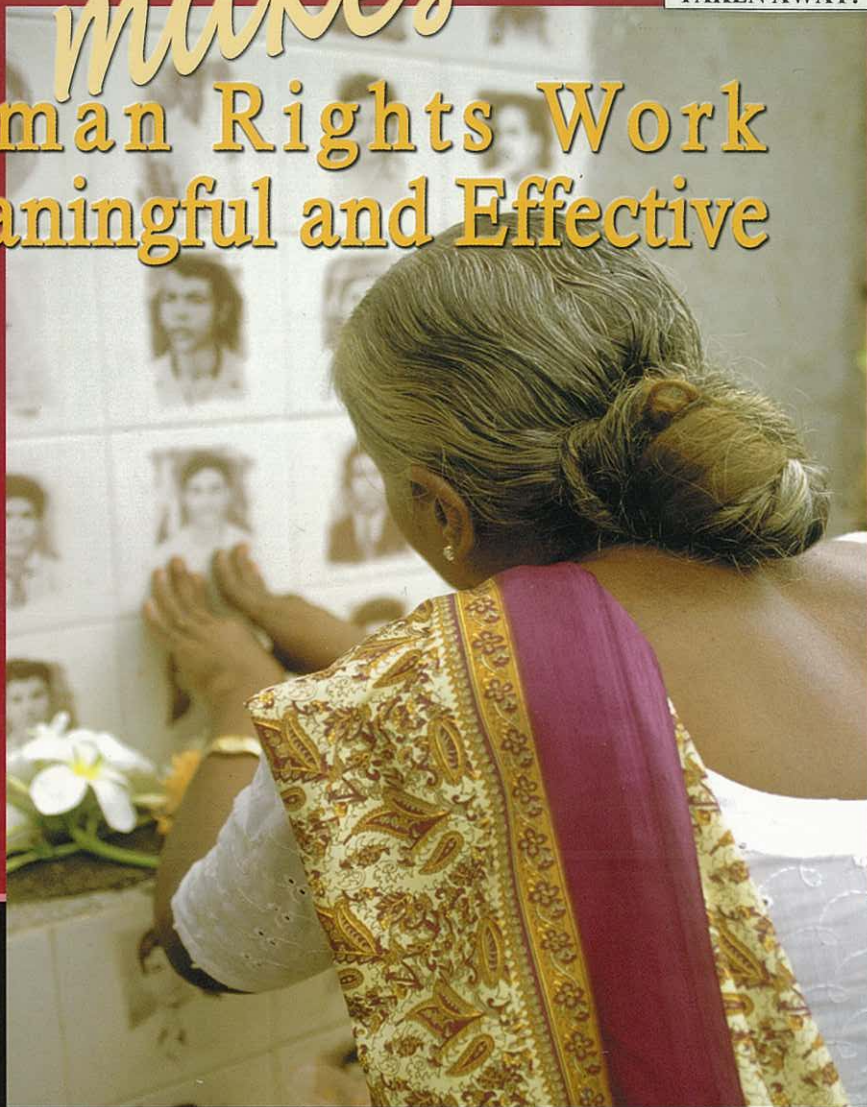


Close Contact With Victims

makes

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Human Rights Work Meaningful and Effective



AN ASIAN HUMAN RIGHTS COMMISSION PUBLICATION

Close Contact With Victims

makes human rights work
meaningful and effective

Edited by
Josefina Bergsten
Philip Setunga
Meryam Dabhoiwala

Photographs by
Josefina Bergsten

A publication based on a workshop on human rights work in Asia,
conducted in Wattala, Sri Lanka on November 14 - 24, 2003,
organised by the Human Rights Correspondence School (HRCS),
Religious Groups for Human Rights (RGHR),
and Rule of Law & Torture Prevention Project of
the Asian Human Rights Commission (AHRC)

Asian Human Rights Commission 2004

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April 2004

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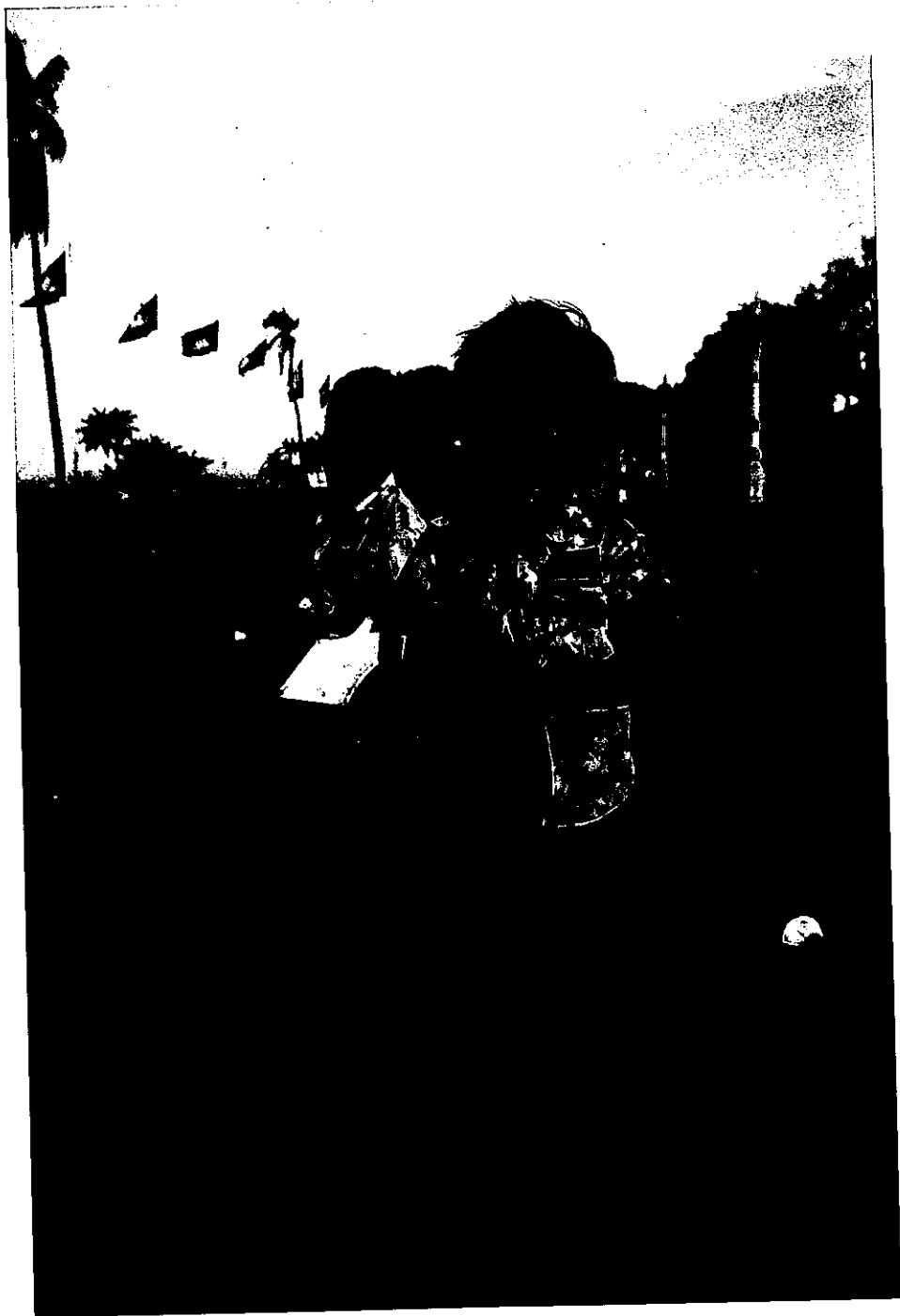
Sanjeeva Liyanage

Cover: *Front:* A mother who has lost her son due to state-sponsored disappearances in Sri Lanka between 1988 and 1992, touches her son's photograph affixed to "The Wall of Tears" behind the Monument for the Disappeared at Seeduwa, Sri Lanka. *Back:* Depiction of a way Sri Lankan police hang a person from his thumbs often resulting in permanent loss of use of victims' arms. Seventeen-year-old Chamila Bandara Jayaratne, whose case is cited in this publication, was hanged this way by the police.

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Introduction & Workshop Concept Paper

In November 2003, a number of people involved in human rights work got together in Wattala, Sri Lanka for a ten-day intensive workshop. The Human Rights School (HRSchool), together with its partner Religious Groups for Human Rights (RGHR), both programs of the Asian Human Rights Commission (AHRC), organized the event and invited human rights activists, lawyers, religious representatives and others involved in human rights work to participate.

This publication aims to detail the issues and methodology used in the workshop, with contributions and views from both organizers and participants on how to improve human rights work in Asia.

The concept paper for the workshop

The Human Rights School started its work on the premise that human rights education must be geared towards generating practical action to eradicate human rights violations of the given societies from which those who receive the education come from. On this basis we have evolved many educational modules: some by way of HR lessons, some by way of regional meetings and others by way of local meetings. The educational materials thus produced have varied from lessons to various forms of audio-visual material, such as newspaper advertisements, video and audio cassettes, posters, e-newsletters, publications, post-cards, statements, petitions, and various forms of action related educational materials.

Each year we have been holding regional gatherings which are called Human Rights School sessions. This year the session will be held in November. In this session we wish to take into consideration the development of our past educational program and to bring in such earlier developments to the HR School session this year. Some of the salient points that will be brought in are as follows:

What is most important for human rights protection is direct research involving the victims conducted on actual human rights violations taking place on a day to day basis. Direct research involves the following things;

Obtaining of detailed statements from the victims and their families. Here a victim is not treated as a figure in statistics. His or her actual story is what the researcher is looking for. It is through this story that the nature of the violation will be revealed. It is to this revealed violation that solutions will be sought. The solution naturally has, on the one hand, to deal with the damage done to the individual person or persons. On the other hand the larger issues related to the violation should also be addressed.

Direct research differs from library research. It had been a practice among many NGOs in the past to go through the reports published by the Governments, other agencies, private researches and to make a summary of facts found in such papers. The main weakness of this approach is that both the original reports and the research material of human rights groups are based on the work done in an urban setting without any direct or in-depth involvement with the victims of various types of violations. In direct research the researcher is a person who constantly meets the victims and records the information directly from them. The researcher is someone who is thoroughly aware of the conditions under which the victims live. Thus the thorough knowledge of the locality is a constant reference point. Such direct research is best done by persons or groups living close to the same locality.

This method of research helps to expose some of the assumptions on which the urban based groups base their work. For example in the case of torture, the urban based group relying mostly on the information generated by the Government often assume the following things: that torture is a marginal problem and not a big issue; that torture is done by

bad policemen and not a product inherent to the policing system itself; that by and large state agencies try to investigate and give redress when such instances occur; that the prosecution system and the judiciary in the countries will not act in a manner that will condone or encourage torture. They may also assume that torture is mainly related to military conflicts and not to routine policing. They may also assume that torture is used only mildly.

The direct researchers who daily confront the victims may find that all such assumptions are unfounded. The actual witnessing of victims and looking into their medical reports may show horrendous and unimaginable forms of torture being routinely inflicted. The researchers may also discover that the root causes of torture are based on the policing system itself. Furthermore they may discover that the State tolerates torture as a method of social control and as a necessary consequence of the failure of the State to modernise the justice systems in terms of modern circumstances.

It may become obvious to him that the judges and the prosecutors and the other responsible persons do not care much about the issue or may accept entrenched torture fatalistically as something unavoidable.

Thus the people who are genuinely interested in the improvement of human rights, must take direct grass-roots research, as against library research, as the core objective of their educational programs. This is the basis for our program for 2003. This aspect will be covered more thoroughly during the workshop. The people who have done such direct research will be among the resource persons who will help at the sessions. The participants will also be exposed to the victims and hopefully be given the opportunity to engage in interviews and other forms of direct research.

This means the study of the application of article 2 of the Inter-



Basil Fernando, AHRC

national Covenant on Economic, Social and Cultural Rights (ICCPR) in relation to human rights education. Article 2 of the ICCPR requires that the state parties make systemic changes in order to implement the obligations they have undertaken in terms of the UN Conventions. In essence this means an improvement in the justice system of the country. The justice system is composed of three components: the police, the prosecution and the judiciary. In the workshop the participants will study various methods through which human rights activists can work towards monitoring the police, the prosecution system and the judiciary. Such monitoring involves understanding how these systems work, what their weaknesses are, in what ways to expose these weaknesses, recommendations for overcoming these weaknesses and how to create lobby groups to ensure the implementation of such recommendations.

The redress involves remedies for the individual persons who suffered the violations and systemic changes to prevent the recurrence of such violations. Thus the redress involves legal aspects as well as social and other aspects. On the one hand people need to be helped to go to courts. On the other hand activists must generate social discourse leading to systemic changes. This year's education program will attempt to concentrate on making the participants become aware of both these components: the legal and the social components of human rights work. We will try to make them realise the different types of methodologies and strategies required in both these areas

The expectation is that the participants will begin to understand the overall strategic plan of AHRC and will become active participants in the AHRC network. It is also expected that the participants will understand the basic concepts of human rights in terms of the UN Conventions. The participants will be helped to think critically of what they have been doing so far and how to improve their practical involvement in human rights work.

As usual the methodology at the workshop will be that of the "folk-school". It will be thoroughly participatory in which the students will discover for themselves the implications of their work and how best individuals can place themselves within the framework of such work.

Close Contact With Victims

The AHRC believes that any human rights groups must never lose sight of the fundamental reason for their activities: to stop human rights violations and help the victims of such abuse. Only the people who have experienced human rights violations first hand – usually poor common people - know how it affects them as members of a society. Thus, any human rights work should always be conducted in close interaction with the victims. Human rights activists need to be emotionally and practically close to the victims and learn from them in order for their work to be relevant.

A person's dedication to achieving some improvement in the human rights situation in his or her country may lose its urgency and passion if closeness with the victims has not been established. If you never hear the personal stories of unspeakable abuse by state authorities from the mouth of the victims, the pain forever etched in their eyes, how can you understand the extent of the damage that is caused by these violations to a society's psyche? Can there be a stronger motivation to not give up trying to improve human rights in the face of huge obstacles than the desire to relieve that pain, if only a little?

The victim and the human rights activist mutually benefit from this interaction. The human rights activist can get an understanding of the real lived experience of the common people who constitute the majority of victims of human rights abuse, while the human rights activist provides a space for the victim to express his or her grievances and hopefully find a way of redress or at least wider national and international attention, via campaigns, urgent appeals, media attention and so on. Spreading

awareness and creating social debate is crucial to reform in any society.

Therefore, throughout the workshop, participants were encouraged to share real life stories of human rights abuse that they had encountered in their work and in their lives in various parts of Asia. The participants also had several opportunities to meet with and talk to victims of torture and families of the so-called disappeared in Sri Lanka – victims of extra-judicial killings, and some of the defenders of human rights who are working extremely hard both to defend and promote human rights in the country.



Victims of human rights abuse and participants meet to discuss issues

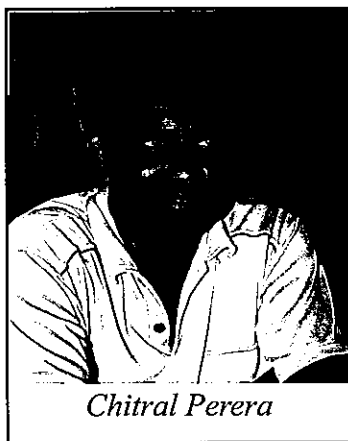
Torture: an Indication of the Breakdown of the Rule of Law

The issue of torture was a dominant theme of discussion during the workshop. The AHRC believes that the elimination of torture - mainly carried out by the police - is one of the keys to eliminate human rights abuse in general and the breakdown of the rule of law. The seriousness of torture is recognized internationally and *systematic torture* has been classified as a crime against humanity by the UN and the International Criminal Court.

Torture is rampant throughout most parts of Asia and has so much become part of the social order that people often consider it a necessary evil, an essential component of criminal investigations. Although a number of Asian countries have signed the UN Convention Against Torture (CAT) and even have corresponding domestic legislation, the police ask how they can do their work and extract confessions without the use of torture. People imagine that torture is necessary in police investigation and to maintain law and order. The reality, of course, is quite the opposite. A society does not reduce its crime levels because of the haphazard threat of police torture, however if criminals know that competent police officers will investigate their crimes and the justice system, including a functioning and non-corrupt prosecution and judiciary, will punish them in accordance with the law, they will no longer thrive on impunity.

Confessions extracted under torture cannot legally be admissible in a court of law in any state that is a signatory of the CAT. Thus, the

widespread use of torture signals the complete breakdown of the justice system. Often, the police are among the least educated in a society, with very little formal training. This makes them cheap labor for the state, but



Chitral Perera

it also means that they have no knowledge in proper investigation techniques. An additional consequence is usually that they would rather spend their time making extra money on the side than conduct time-consuming and laborious investigations with the intention of solving crimes. However, they are still under pressure to find the culprit of a crime. So, rather than start an investigation which may lead them to the real criminal, they apprehend a suspect based on chance, speculation or favors to the rich or powerful, and proceed to beat out a confession.

This creates a society filled with fear of the very institution that is supposed to protect it. It creates a people who are prevented from expressing their grievances freely because they have been intimidated into silence. In many Asian countries police also use torture to punish people who they deem to have not been submissive or subservient enough, such as demonstrators expressing discontent over injustices. It is an expression of power and hierarchy and it is no coincidence that most victims of torture are from the poorest section of society. Thus torture cuts across all other rights and it is torture that hinders the enjoyment of other rights, such as the right to assembly, strike, public opinion, etc.

The participants of the workshop discussed the link between torture and poverty. Poor people who are beaten into submission and fear because of a culture of police violence will never be able to lift themselves out of that poverty. They need first to be given enough protection to be given a chance to regain their confidence and dignity to work their way out of poverty. This is where human rights organizations come into the picture. The AHRC brought up the concept of a protective umbrella needed for the underprivileged people who want greater access to their rights – including civil, political as well as economic, social and

cultural rights. The privileged layer of society who benefit from the poor remaining poor, use the police as instruments to intimidate people into inaction and silence. There is a reason why police are deliberately kept untrained and undisciplined with little or no supervision. This is particularly prevalent in rural areas of many Asian countries.





A Protective Umbrella

Human rights groups need to provide a protective environment where confidence building will help victims overcome their self imposed silence and speak of the atrocities they have experienced at the hands of the police. It is the lack of such protective umbrellas in a number of countries that can explain both the reluctance on the part of the victims to express the violations that they suffer at the hand of state agents or to participate actively in movements or organizations that promote and defend human rights. This point is further discussed in the recent publication *Protection and Participation: Human Rights Approach* (2003) by the Asian Human Rights Commission.

This confidence building takes much time and efforts on the part of human rights groups. Members of a network against torture in Sri Lanka told the participants at the workshop how they had successfully managed to gain the confidence of torture victims over several years and how their tireless work was starting to pay off.

Here is an account of the formation of the Sri Lankan human rights network as described by Fr. Nandana, a member of the network from its initiation.

In the year 1999 Mr Basil Fernando & Mr Philip Setunga of the Asian Human Rights Commission had a very informal meeting with certain interested parties on human rights in Kandy, Sri Lanka. There were about 20 participants for this session and the basics of human rights were explained and discussed. The disappearance issue was the focus and all the discussions were around this. The participants were convinced that this massacre or the mass destruction of human lives could not just be

ignored. The dignity of the human person was highlighted and the participants were invited to work to restore human dignity and protect human lives.

While the group in Negombo and Katunayake concentrated more on the issue of the disappearances, others started working on the issue of torture. During the next few workshops that we had for the activists and the religious representatives both Catholic and others, the discussions centered on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Since 1999 we had two workshops each year organized and facilitated by the Asian Human Rights commission.



Father Nandana of PAT

The participants of these workshops gradually became human rights activists and were involved in actual cases of torture, murder, extra judicial killings and rape. When promoting, protecting and safeguarding the rights of the people, mainly the poor, we learnt the process of following the legal system to bring about justice and redress to the victims. Each activist addressed the issues of torture, murder and rape in his/her own district and the information was shared with others.

During the next few workshops the activists had many unresolved questions and difficulties encountered to share. The executive director of the AHRC, Basil Fernando, and Philip Setunga directed and guided the activists while encouraging them in their work.

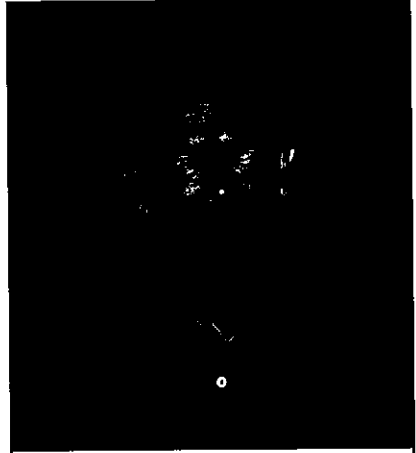
Within a short amount of time, the activists were at cross roads with the law enforcing agencies and discouragement overshadowed them in the face of the defective justice system, which often delivers no justice. However with much determination to bring justice to the victims of torture and rape, the activists campaigned publicly using all types of methods to force the law enforcing agencies to act. The AHRC urgent appeals system helped the activists to lobby and brought about pressure from the international community to implement the torture act, and the conventions already ratified by the State.

By 2003 there were a number of religious representatives, trained lawyers and committed activists working actively to reform the collapsed Justice system in Sri Lanka. They were supported by the AHRC who provided them with all the necessary resources such as literature, legal advice, workshops, urgent appeals, resource material, documentation and submissions to the UN.

During the same year the activists formed the network People Against Torture (PAT) with the agreement to meet each month and share the work lobbying and protest as a group. Victim centered activity was unique within the network. The victims were provided with shelter and security. Often the parents of the victims were also looked after. Each time the victim had to present herself in the court there would be 20-25 people to accompany

her. The victims were not only supported morally but they were provided with security, shelter, medical care, counseling and formal/informal education.

By now the PAT network in Sri Lanka is strong enough to speak out for justice with many fundamental rights cases at the supreme court, police officers being punished and compensation being paid to the victims. The campaign for judicial and police reforms continues at all levels with the support of the Asian Human Rights Commission.



Philip Setunga of the AHRC



Chamila, 17, Victim of Torture

In fact, victims of torture had gained so much confidence in the work of human rights groups in Sri Lanka that several of them came to talk to the participants during the workshop, despite the obvious pain of recounting their stories.

Seventeen-year-old **Chamila Bandara** was one victim of police torture in Sri Lanka who participated in the workshop. This is Chamila's story in his own words:

“At around 4:30-5pm of 20 July 2003, one civilian personnel attached to the Ankumbura police station (Kandy) came to my family's house. At that time I was the only one at home. He told me to come with him and took me to a waiting jeep. There a police officer, whose name I later learned is Sergeant Premasiri, took hold of me and gave me several blows, saying ‘You have scolded someone who helped us to catch some thieves!’ He hit me hard on the face and body about 10 times, then handcuffed me.

I was put in the police jeep, and saw that one of my cousins, Upali, was also there. There were two uniformed officers in the jeep, and one kept the butt of his gun on Upali's head. He said, ‘You tell the truth, otherwise we will kill you.’ Another boy was also in the jeep. We were then taken to the Ankumbura police station.

Inside the station, Sub-Inspector Senevirathna held me, bent my head, and hit me very hard on my spine. Then he hit me on my face with his boots and pushed my head against the wall. I was taken to a hall inside the station, and handcuffed to a bedpost. I was verbally abused in

crude language and told by the same officer that he would come back at midnight and if I didn't tell the truth, he would teach me a lesson. However, nobody came at that time.

The next morning, at about 9am, the Officer in Charge (OIC) of the police station came and told me to tell the truth or I would be assaulted. I was taken to another place where there was a bed, and the OIC told me to remove my shirt and lie face down on the bed. There were several officers present. One person, who was not wearing a uniform, sat on my back. Someone held tight onto my legs. Then the OIC and another officer hit the soles of my feet. The OIC hit me with a cricket stump and the other officer hit me with a cane. I was told to admit to thievery. I said that I didn't know anything about any theft. They continued to hit me. Then petrol was put into a polythene bag and poured out, after which the polythene bag was tied onto my face. I was told that if I didn't tell the truth, I would be burnt. I was hit for about one hour more. I was told to get off the bed and to keep jumping, but because I did not jump high enough, the OIC hit me with a pole. I said that I didn't know about any thefts. Then the OIC said that, 'No one knows you have been arrested', and called out, 'Let's kill him'. He told the others to hang me from the ceiling beam.

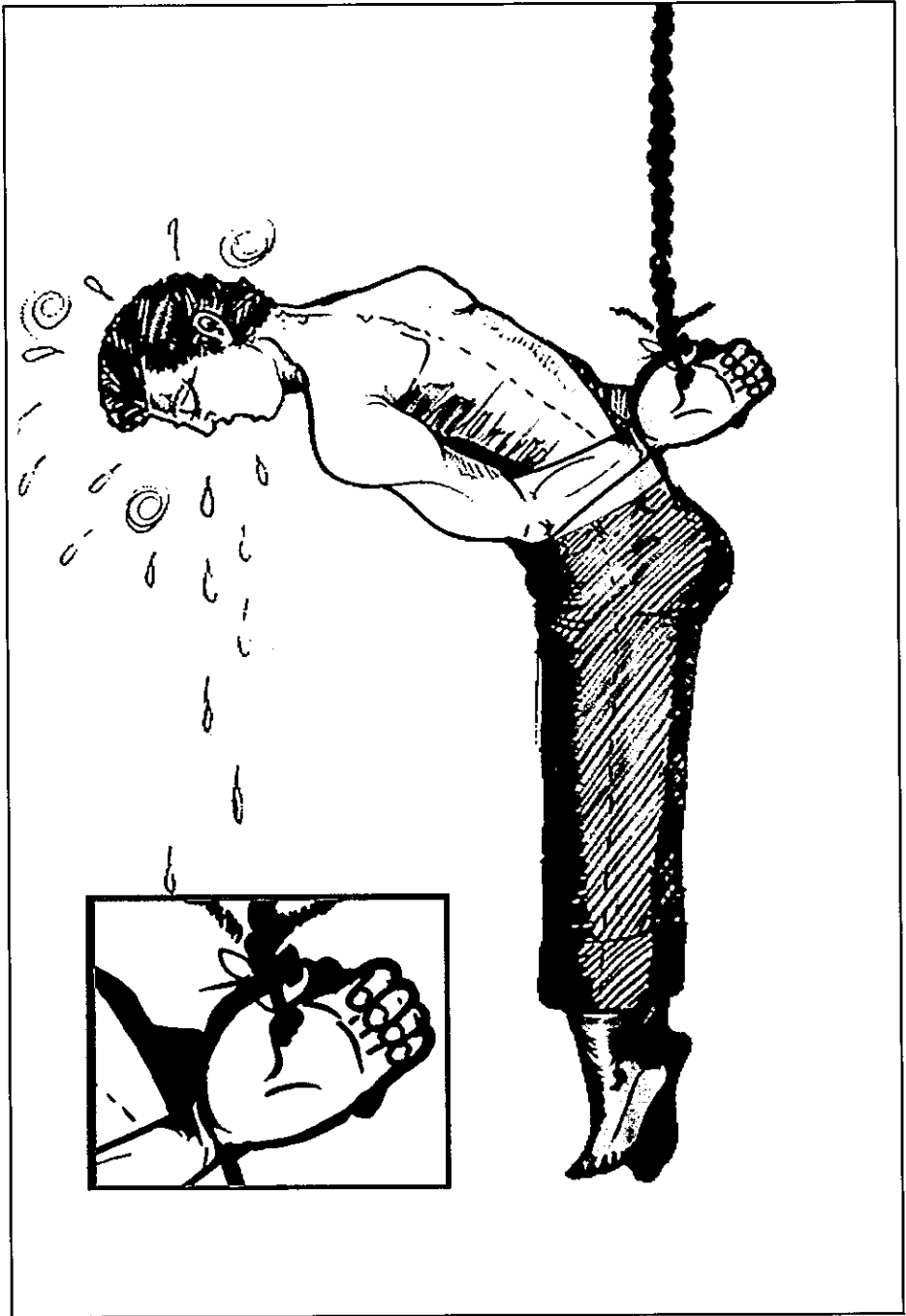
My hands were swung behind my back and my thumbs tied together with a string, then they put a rope between my thumbs and hung me from a ceiling beam. One officer pulled the rope so that I was lifted from the ground. When I was lifted, my hands were twisted at the elbow and they became numb. The OIC kept hitting me on my legs and soles with the cricket stumps. He hit me on my thighs, and asked me who my friends were. Because of the unbearable pain I gave him names and said, 'Though I didn't do any thefts I am willing to admit to anything'. The OIC said, 'That won't do'. Till you tell us about all the thefts you have done, one by one, we will keep you hanging – we will tie a stone to your legs'.

After that I admitted to every theft they told me about, one after the other, just to escape this unbearable situation. The police officers then told me that they would take me to a jewellery shop at Ambathenna. I was told to say that I had stolen two rings and a chain. After about half an hour, four police officers put me along with another person in a jeep and

took us to my friend Saliya's house. Saliya was brought to the jeep. He asked me why I did all this but I didn't say anything. We were all taken to Ambathenna. The police pointed towards a person and told me to say that I had given the stolen items to him. I was again threatened that I would be hung up by one hand. I did as I was told. Although I didn't know the person at all, that person was also taken to the police station with Saliya and I. I later learned that another friend was also brought to the police station. I was brought before these persons and asked whether they had also engaged in robberies. Because of fear I did not dare to answer. They told me that I could be made a state witness so I said that the other two had committed the thefts, but they said I was not to tell anyone that they had tortured me. If a doctor asked me, I was to say that the handcuffs damaged my hands. I was told that if I mentioned anything about the torture there would be trouble in the future. The OIC said that 'everything is in our hands and don't get things messed up'.

On July 27, Upali, my friends and I had our fingerprints taken. After that, we were made to sign in the middle of a page among four or five empty pages. At about 6pm we were all taken near the Ankumbura Government Hospital and while we waited in the jeep, officers went in and brought some papers back to us. We were later taken to the magistrate's official house. The police told the magistrate something and then we were taken to the Bogambara prison, where Saliya and Upali were detained. Three others and I were taken to the remand prison at Rajaveediya. When I was admitted to the prison I informed the prison authorities about the injuries I had suffered at the hands of the police and requested treatment. I was given some tablets but no medical examination was done. I was also not kept in the prison hospital. On July 28 my mother was finally able to meet me there. I was released on bail on July 30.

On July 31, I was admitted to the General Hospital in Kandy and was under treatment for six days. The doctors told me that due to the torture the damage to my left arm is likely to be permanent. When I went to the police post of the General Hospital of Kandy to make a complaint about the torture, the request was refused and I was told that I will have to have an operation to try to correct the injuries caused by the torture."



The participants of the workshop were very pleased to see that Chamila's arm was recovering better than expected, although the mental scars will take much longer to heal. Police have continuously been threatening Chamila and his family because he is pursuing the case.

Through the intervention of the human rights organisations, a case was filed in courts for illegal arrest, detention and torture in police custody. However, consequent to the filing of the case in courts, Chamila's family was threatened by the police. For fear of police reprisals, Chamila's mother decided to flee the village with the children. It was at this stage that the human rights group had to intervene to provide security for them by housing them in places where they would feel secure. Since the children in the family were of a school going age, alternative facilities for schooling had also to be found. All the interventions drive home the point that it is the absence of protective mechanisms that prevent the victims from seeking redress for the human rights violations. Besides, this demonstrates the fact that any interventions by human rights activists or organisations must be holistic taking into consideration all aspects, such as medical, legal, personal, financial and protective.



Tony Fernando with his father, who stood by his son and helped him throughout his ordeal.

The Case of Tony

Michael Anthony Fernando (Tony), whose case truly highlights the breakdown of the justice system in Sri Lanka, also came to the workshop in Wattala and shared his experiences with the participants. Tony's case is quite well-known in Sri Lanka and in human rights circles by now. He was imprisoned in 2003 by the Chief Justice of Sri Lanka and two other judges while pursuing a fundamental rights violation case before the Supreme Court and representing himself. He was subsequently tortured and imprisoned for one year without any hearing for contempt of court. Tony was not given sufficient medical care while in police custody and was so close to death that his elderly father called in a priest to perform the last rites.

The UN Special Rapporteur for the Independence of the Judges and Lawyers condemned his imprisonment as an act of injustice done by the Supreme Court of Sri Lanka, and the judgment provoked many protests. In response to the protests the court asked Tony to apologize as a condition of reducing his sentence, which he refused on the basis that he had not acted in any manner contemptuous of court. He was released from jail after he had completed 10 months of the sentence.

In recognition of his bravery Tony was awarded a Human Rights Defender Award by the AHRC. Even while Tony was in jail he was threatened to withdraw the complaints he had filed. Since his release Tony has received death threats and in February 2003 an attempt was made on his life, which he narrowly escaped. Despite the urgent danger Tony is in, the Sri Lankan authorities have failed to give him sufficient protection

or to try to find the culprit of the attempts to his life.

Here is the sequence of events that developed and the history of the intervention, including excerpts of Urgent Appeals, media reports, letters and statements, indicating also what an "intervention" entails.

1. SRI LANKA: A human rights defender denied of fundamental right to a fair hearing and tortured

URGENT ACTION URGENT ACTION URGENT ACTION
ASIAN HUMAN RIGHTS COMMISSION - URGENT APPEALS PROGRAM

22 February 2003

UA-09-2003: A human rights defender denied of fundamental right to a fair hearing and tortured
SRI LANKA: Right to a fair hearing and torture

SUMMARY

While presenting his petition before the Supreme Court of Sri Lanka, Mr. Anthony Michael Fernando was convicted and imprisoned under contempt of court. His fundamental right to a fair trial was violated as one of the respondents to Mr. Fernando's claim sat in judgement on him, thereby undermining international norms of judicial objectivity. Furthermore, credible evidence exists to show that Mr. Fernando was tortured while being taken to prison. He submitted a complaint of torture and is presently hospitalised, under remand custody.

DETAILS

On 6 February 2003, while Mr. Anthony Michael Fernando was presenting a writ before the court, he was convicted by the Supreme Court of Sri Lanka for contempt of court and sentenced to one-year's rigorous imprisonment. The Court, however, violated several of Mr. Fernando's fundamental rights embodied within the Sri Lankan Constitution and the ICCPR. Though legally entitled, he never obtained a charge sheet clearly stating the offence, possible punishment, summary of the evidence against him, legal advice prior to conviction, sufficient time to prepare his case, a judgement containing the factual and legal basis on which it had been arrived at, and the right to appeal the court's decision.

Moreover, Mr. Fernando was denied a fair hearing because one of the presiding judges was respondent to Mr. Fernando's claim, thereby undermining judicial impartiality. It is a well-accepted norm that judges should not only be impartial but also be seen to be impartial. The purpose of contempt of court proceeding

is to enhance the prestige of the court; this judgement has done the contrary.

Furthermore, evidence exists that Mr. Fernando was tortured while being taken to prison. He was hospitalised in the Prison Hospital and then taken to the Intensive Care Unit of the General Hospital suffering from spinal injuries. Mr. Fernando is presently hospitalised and chained under remand custody, and thereby curtailing the possibility of an effective inquiry of his case. AHRC has been informed that he has not been provided with proper medical care or clothing. Despite official claims, his family still does not have proper access to Mr. Fernando.

Mr. Fernando has stated that attempts have been made to fabricate evidence and to deny that injuries to his spinal cord were due to an assault while he was being taken to prison. On 16 February 2003, he submitted a complaint of torture; AHRC has studied his case and is satisfied that there exists a credible complaint that this case must be investigated by a credible and impartial body.

SUGGESTED ACTION

Please write to the authorities below to express your grave concern regarding the use of torture on Mr. Fernando and the Supreme Court's violation of Mr. Fernando's right to a fair hearing.

Sample Letter

Re: ANTHONY MICHAEL EMMANUEL FERNANDO – SRI LANKA.
Torture and Imprisonment

I am really shocked to learn about both the torture Mr. Anthony Michael Emmanuel Fernando received while in prison custody and the nature of the legal proceedings that led to his one-year prison sentence. The decision needs revision both on legal and humanitarian grounds. Besides, the seriously injured patient needs medical and family care. The animal like treatment given to the victim in this case violates all his rights and norms of decency. I urge that the Supreme Court on its own take initiative to squash this judgement and if it thinks fit to have a fresh inquiry guaranteeing the rights of the aggrieved party within the Sri Lankan law and under the international obligations of Sri Lanka, that Mr. Fernando be freed from prison custody, to obtain proper medical care he is now in dire need due to the assault perpetrated on him; that a credible investigating body be appointed to investigate the complaint in relation to torture and the potential conspiracy in perpetrating such torture; that UN bodies dealing with human rights and international human rights organizations, human rights defenders organizations take this as a matter of serious concern with the Sri Lanka Government.

1. Hon. Chief Justice S. N. Silva,
2. Dato' Param Cumaraswamy, Special Rapporteur on Independence of Judges and Lawyers
3. Registrar of the Supreme Court

4. Her Excellency President Chandrika Bandaranaike Kumaratunga,
5. His Excellency Mr. Ranil Wickremasinghe, Prime Minister of Sri Lanka
6. Mr. Ranjith Abeysuriya PC, Chairman National Police Commission
7. Hon. Mr. K.C. Kamalasinghe Attorney General
8. Mr. T. E. Anandrajah, Inspector General of Police (IGP)
9. Sri Lanka's diplomatic representatives in your country.

2. UPDATE(Sri Lanka): Please Sign the Online Petition to support Michael Anthony Emmanuel Fernando (Tony)

URGENT ACTION URGENT ACTION URGENT ACTION
ASIAN HUMAN RIGHTS COMMISSION - URGENT APPEALS PROGRAM

21 March 2003

UP-13-2003 (UA-09-2003: Human rights defender tortured and denied fundamental right to a fair hearing)

UPDATE (SRI LANKA): Please Sign the Online Petition to support Michael Anthony Emmanuel Fernando (Tony)

Dear Friends,

A local solidarity group for Mr. Michael Anthony Emmanuel Fernando (aka Tony) in Sri Lanka has launched a petition for release of him. AHRC has launched a petition on behalf of Tony on 21 March 2003. When you sign this petition on line, your name will be added to the list of signatories and the following petition will be automatically sent to the president and the prime minister of Sri Lanka.

All of us who are signatories to this document have decided to make a collective appeal to you two in order to invite your early attention to the sad plight of Michael Anthony Emmanuel Fernando (Tony) who has been subjected to a cruel assault after being sentenced to one year's prison term and being sent to prison, and is undergoing medical treatment at the general hospital, Colombo, and for the purpose of getting justice done without delay...

...A brief statement of Tony's case, which UN Rapporteur for Independence of Judges and Lawyers Dato Param Cumaraswamy described as "shocking and stunning", is as follows:

The news of this incident provoked outrage locally and internationally. As a result, the government ordered an investigation and was satisfied that such an assault had taken place. On that basis two prison officers were arrested and a case filed against them. The arrest of the officers provoked a strike by prison officers throughout the country. The government had to intervene to stop the strike.

A fundamental rights violation petition has been filed on Mr. Fernando's

behalf, in which the two prison officers who allegedly assaulted him, the head of the prison and the prison commissioner are the respondents.

Meanwhile Mr. Fernando's mental condition has deteriorated and he was thus taken for treatment. His family confirms that his situation is not normal.

*** Please send a copy of your letter to AHRC Urgent Appeals:

Email: <ua@ahrchk.org>

Fax: +(852) - 26986367

3. UPDATE (SRI LANKA): Michael Anthony Fernando (Tony)

UPDATE ON URGENT APPEAL UPDATE ON URGENT APPEAL
ASIAN HUMAN RIGHTS COMMISSION - URGENT APPEALS PROGRAM

10 April 2003

UP-14-2003 (UA-09-2003: Human rights defender tortured and denied fundamental right to a fair hearing)

UPDATE (SRI LANKA): Michael Anthony Fernando (Tony)

Dear Friends,

Over 2,800 persons have signed the online petition to the President and Prime Minister of Sri Lanka urging immediate action to be taken to undo the blatant injustice suffered by Michael Anthony Fernando. The Asian Legal Resource Centre made an oral submission at the 59th Session of the UN Human Rights Commission on the 9th April, 2003, regarding the case of Michael Anthony Fernando. This statement is available at www.ahrchk.net.

Michael Anthony Fernando (Tony) is a petitioner in a fundamental rights application and was sentenced to one year's imprisonment without trial and was later tortured in prison. This blatant injustice has caused outrage and serious disappointment with the justice system in Sri Lanka. A further fundamental rights application has been filed against the torture of Tony and a revised application on the contempt of court case is being prepared. However, Tony is still being chained to a hospital bed. He is suffering, and his physical and mental condition is serious.

We urge you to join the online petition and to encourage others to do so. Those who have no access to the internet can send their names by email to ua@ahrchk.org or rghr@ahrchk.org. Their names will then be entered on the online list. For further information on this case kindly refer to former issues, or see the original urgent appeal on this case. You can see the online petition at http://www.ahrchk.net/modules.php?name=AHRC_Petition_Srilanka.

4. UPDATE (SRI LANKA): Michael Anthony Fernando (Tony)

UPDATE ON URGENT APPEAL UPDATE ON URGENT APPEAL

29 May 2003

UP-19-2003 (UA-09-2003, UP-14-2003: Human rights defender tortured and denied fundamental right to a fair hearing)

Dear Friends

We are pleased to update you with the following on Michael 'Tony' Fernando:

SET ASIDE 'PATENTLY FLAWED' DECISION SWIFTLY

UN Rapporteur Tells the Supreme Court of Sri Lanka

The UN Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy in a press release issued from Kuala Lumpur on 28 May 2003, stated that Michael Anthony Emmanuel Fernando (Tony), unjustly imprisoned since 6 February 2003, should be swiftly released by setting aside what Mr. Cumaraswamy referred to as the "patently flawed" judgement of the Supreme Court. He called the imprisonment a grave injustice brought about by a flawed judicial process.

UNITED NATIONS, DATO' PARAM COOMARASWAMY

Special Rapporteur on the Independence of Judges and Lawyers

Press Release 28 May 2003

Michael Anthony Emmanuel Fernando

I am pleased to learn that the petition for review of the decision of the Supreme Court in the Michael Fernando case would be heard by the same Court on June 2-3 2003. However, the delay in filing the petition for review and the subsequent delay on the part of the Supreme Court fixing a date for hearing are matters of concern. Where the liberty of the subject is involved, particularly in this case where Mr Fernando was subjected to grave injustice brought about by a flawed judicial process, one would expect the Supreme Court to move swiftly to remedy the same injustice. Four months, during which period Mr Fernando was incarcerated, must necessarily be viewed as an inordinate delay.

Nevertheless, I urge the Supreme Court not to delay this matter any further, hear the petition, set aside the patently flawed decision delivered on February 6, 2003 whereby Mr. Fernando was convicted and sentenced to one year imprisonment for contempt for court.

Signed.

Dato' Param Cumaraswamy

5. A PRISONER OF CONSCIENCE

In a separate move, the Asian Human Rights Commission, in a Press Release issued on the same date, 28 May 2003, stated that it was considering declaring Michael Anthony Emmanuel Fernando as a prisoner of conscience.

The full text of the AHRC Statement is as follows:

A Victim of Injustice and Torture Being Considered as a Prisoner of Conscience and for a Human Rights Award

(Hong Kong, 28 May 2003) — The Asian Human Rights Commission (AHRC) is in the process of considering Michael Anthony Emmanuel Fernando (Tony) as a prisoner of conscience. The circumstances of his imprisonment and subsequent torture are well publicised, both in Sri Lanka and abroad. In considering Mr Fernando as a prisoner of conscience, AHRC has taken into consideration the following facts:

1. The chain of events leading to his imprisonment is based on his insistence that he, Mr Michael Anthony Emmanuel Fernando, should be treated as an equal before the law in terms of Article 12(1) of the Sri Lankan Constitution, which incorporates international law on the matter as expressed in the International Covenant on Civil and Political Rights (ICCPR), which Sri Lanka has ratified. Thus, he was imprisoned for expressing an opinion that he was legally entitled to express.
2. Mr Fernando has at no stage of his life advocated violence.
3. Dato Param Kumaraswamy, the UN Special Rapporteur on the Independence of Judges and Lawyers, has considered his case and has stated that Mr Fernando is a victim of injustice. In the words of Mr Kumaraswamy, "The Supreme Court of Sri Lanka has done an act of injustice." He also called upon the Sri Lankan Bar to rally support for Mr Fernando.
4. Other international organisations, such as Article 19 and the Asian Legal Resource Centre (ALRC), have also strongly condemned his imprisonment.
5. Mr Fernando's imprisonment has caused an outrage in society. However, appeals to the Sri Lankan government have not resulted in any change to his situation.
6. Before AHRC makes a public statement about declaring Mr Fernando a prisoner of conscience, it seek the opinion of you or your organisation on the matter, particularly as to whether there is any reason to object to such a declaration. You are invited to make any representation you so wish. Your requests for confidentiality will be respected.
7. AHRC is also considering Mr Fernando for a human rights award.

6. Responses

AHRC has received the following response from Bijo Francis, an Advocate practicing in Kerala, India:

TO AHRC:

Greetings from India.

I have been curiously observing the case of Mr Tony since it was reported to me by AHRC UA programme. The circumstances which lead to his detention and continuous torture is highly unfortunate and these are acts which should never happen and those which should be condemned at all cause. One cannot justify, for whatever means or reasons the denial of natural and fundamentals rights to a fellow human being. Being a lawyer and coming to know more about the criminal justice dispensation system in Sri Lanka, I earnestly doubt whether such inhuman acts would ever stop in near future. This is the same condition in my country, India as well. But being a bit optimistic, I would say that campaigns like those conducted in the case of Mr Tony would some day yield result. Bombarding the same target again and again should invoke some response. The proposed award and recommendation is yet another method to try to cut loose the shackles and to give that punch which should yield some result in future. Maybe Tony might not receive the immediate benefit of these campaigns. But some day there should not be another Tony who should go through such a rollercoaster ride and languish behind bars, tortured and worn out due to the oppressive, illegal, inhuman and ignorant human behaviour in the name of law.

The framers of the Constitution and the criminal procedure code for Sri Lanka would have held their head low out of shame coming to know the story of Mr Tony. I am told that Mr Tony has suffered much and his mental state has deteriorated to such a stage that a speedy recovery from it is not likely.

The proposed nomination would serve a good purpose in the current campaign against torture, whether it be in Sri Lanka or elsewhere. I, Bijo Francis, Advocate, India, do hereby support the nomination of Mr Michael Anthony Emmanuel Fernando for being considered as a 'Prisoner of Conscience' and for the 'Human Rights Award'.

Bijo Francis

7. UPDATE ON THE ONLINE PETITION TO SUPPORT MICHAEL ANTHONY FERNANDO -- AHRC

Over 3,403 persons have signed the online petition to the President and Prime Minister of Sri Lanka urging immediate action to be taken to undo the blatant injustice suffered by Michael Anthony Fernando. The Asian Legal Resource Centre made an oral submission at the 59th Session of the UN Human Rights Commission on 9 April 2003, regarding the case of Michael Fernando. This statement is available at www.ahrchk.net. Michael Anthony Fernando is a petitioner in a fundamental rights application and was sentenced to one year's sentence without trial and was later tortured in prison. The blatant injustice has caused outrage, and a lot of disappointment with the justice system in Sri Lanka. A further fundamental rights application has been filed against the torture of Tony and a revised application on the contempt of court case

is being prepared. However, Tony is still suffering, and is in a very serious physical and mental condition.

We urge you to join the online petition, and to encourage others to do so. Those who have no access to the internet can send their names by email to ua@ahrchk.net or rgrh@ahrchk.org. The names will be entered to the online list.

For further information on this case, kindly refer to former issues, and the original urgent appeal (UA-09-2003) on this case. View, and sign, the online petition at http://www.ahrchk.net/modules.php?name=AHRC_Petition_Srilanka.

Thank you.
AHRC Urgent Appeals Desk
Asian Human Rights Commission

8. SRI LANKA: Update on Mr. Michael Anthony Emmanuel Fernando ('Tony')

ASIAN HUMAN RIGHTS COMMISSION - URGENT APPEALS PROGRAM

UP-26-2003: SRI LANKA: Update on Mr. Michael Anthony Emmanuel Fernando ('Tony')

Dear Friends

Update on Tony Fernando's case: Select Committee of Parliament- on Contempt of Court Law

We are pleased to give you some good news surrounding the case of Mr Michael Anthony Emmanuel Fernando ('Tony').

A Select Committee has been appointed to inquire into, and report on, the law relating to Contempt of Court and make recommendations regarding the codification of the existing law. This follows a massive protest that arose as a result of the imprisonment of Michael Anthony Emmanuel Fernando (Tony) for contempt of court. This imprisonment was condemned by the UN Rapporteur on Independence of Judges and Lawyers. Ms. Dato' Param Cumaraswamy said it was an act of injustice by the Supreme Court of Sri Lanka; and further stated that the judgement was fundamentally flawed.

The wording of an advertisement which was published in the newspapers, inviting written or oral submissions, is given below. We urge all human rights organizations, lawyers and other interested persons and groups to avail themselves of this opportunity and to make their submissions.

9. Newspaper Advertisement

A Select Committee of Parliament be appointed to inquire into, and report on, the law relating to Contempt of Court and make recommendations regarding the codification of the existing law.

A select Committee of Parliament under the Chairmanship of the Hon. Lakshman Kadiragamar has been appointed to look into, and report on, the law relating to Contempt of Court, and make recommendations regarding the codification of the existing law.

The Select Committee will entertain written public representations on this subject from interested parties within 30 days of the date hereof.

Those interested in making oral representations before the Committee may contact the undersigned within 30 days from the date hereof.

The Secretary,
Select Committee of the Parliament on the Codification of the Law relating to Contempt of Court,
Committee Office,
Parliament of Sri Lanka,
Sri Jayawardanapura, Kotte.
14th July 2003.

Thank you.

Urgent Appeals Desk
Asian Human Rights Commission

10. UPDATE (SRI LANKA): Michael Anthony Fernando freed after being given an Asian human rights award

ASIAN HUMAN RIGHTS COMMISSION - UPDATE ON URGENT APPEAL

20 October 2003

Dear friends

The Asian Human Rights Commission (AHRC) is very happy to inform you that Michael Anthony Fernando (Tony), a trade unionist as well as human rights activist, was freed on 17 October 2003 after being declared as a winner of the inaugural Human Rights Defenders award by AHRC on 16 October. Michael Anthony Fernando (Tony) was a petitioner in a fundamental rights application and was sentenced to one year's

imprisonment without trial and was later tortured in prison. This blatant injustice has caused outrage and serious disappointment with the justice system in Sri Lanka.

Congratulations for all those who helped to keep this issue alive!

This is a proof of the theory that AHRC has tried to promote -the Folk School approach- where by through quite and consistent action, slowly a movement is built that can improve positive reactions in a society. This is how we can break the silence and make powerful voices emerge from the events that were meant to silence people.

AHRC reproduced the articles of media regarding release of Michael Anthony Fernando. They give the clear concept of how critical your support was in freeing Anthony Fernando, and have had a positive impact to the justice system in Sri Lanka.

To see Michael Anthony Fernando's photos, please visit:

<http://www.ahrchk.net/ua/images/20031020-tony/tony01.jpg>

<http://www.ahrchk.net/ua/images/20031020-tony/tony02.jpg>

Urgent Appeals Desk
Asian Human Rights Commission (AHRC)

11. Hero's welcome for man challenging Sri Lanka Chief Justice

Story from AFP Copyright 2003 by Agence France-Presse (via ClariNet)

COLOMBO, Oct 17 (AFP) - A Sri Lankan trade unionist who was jailed for contempt while challenging Sri Lanka's controversial chief justice emerged a free man Friday to be rewarded with an Asian human rights award.

Anthony Fernando was received with a hero's welcome outside the main Welikada jail in Colombo by Buddhist and Catholic priests as well as human rights activists and politicians who had taken up his cause. Fernando was jailed in February for a year for contempt of court while arguing a case he had filed against several supreme court justices, including Chief Justice Sarath Silva. He was released early for good behaviour.

His imprisonment led the UN special rapporteur on the independence of judges and lawyers, Param Cumaraswamy, to express "shock" at Silva hearing a case against himself. "I am not going into the merits of the case. The question here is if it is proper for the chief justice after having been made a party to a case to sit on the panel and adjudicate on the matter," Cumaraswamy said in February.

Fernando said his struggle had been for the freedom of expression and the independence of the judiciary.

The Asian Human Rights Commission (AHRC) said it was presenting its inaugural Asian Human Rights defenders award to Fernando in recognition of his struggle for basic freedoms.

“Fernando has found himself in jail because of his determination to uphold principles of liberty with an uncommon sense of courage, seriousness and self-sacrifice,” AHRC said in a statement. It slammed the Sri Lankan judicial system headed by Silva, who is a personal appointee of President Chandrika Kumaratunga.

“The serious degeneration of Sri Lanka’s judiciary is now a matter of public record, both within the country and internationally,” it said. “While the Supreme Court of Sri Lanka is responding to calls for justice with injustice, to date no serious action has yet been taken to reverse the dangerous effects that it is having on the entire judicial system.

“The lives and liberty of all people in the country remain very much at risk. Mr. Fernando’s example is therefore of supreme importance, and it is for this reason that the AHRC today lauds him as an exemplary human rights defender worthy of recognition, honour and emulation.”

12. Inaugural Asian Human Rights Defenders Award by AHRC

Reid Shelton reidsfdo@dynaweb.lk

Last evening at the Sri Lanka Foundation institute, Mr.Dato Param Cumaraswamy spoke on the Independence of the judiciary and more on the integrity of the Lawyers. He gave many stories of the judges and chief justices in the world through whom the hallowed institution of justice had been corrupted. What is at stake is how to safeguard the integrity, the independence and the impartiality not from what the judges say but from what the people say and feel about them. In Sri Lanka the survey by the Marga institute proves the fact that this institution is corrupt. (later on Mr. Weliamunua pointed out that it is the second most corrupt institution).

Mr. Cumaraswamy added that when Mr.Sarath Silva was appointed to the position of chief justice he objected to this appointment because of the pending cases against him in the supreme court. After relating many experiences from several countries, he came back to the issue of Tony and dwelt on how the non-lawyers acted and dealt with it. He gave instances on how in UK and elsewhere, when the lay people do appear to defend their own cases, there is always a lenient attitude. He explained about the non-functioning of the Bar Council in Sri Lanka how it resulted in the revision of the application being delayed by four months. He also commented on the premature retirement of Justice Mark Fernando and said that the campaign should have been initiated by the Bar Council and the civil society.

Then at the end I read the statement sent by the Asian Human Rights Commission (AHRC) and invited Jayanthi Dandeniya to hand over the plaque and got Mr. Cumaraswamy to hand over the cheque worth Rs 94,250.00, the award from AHRC. Then finally I said that there is the need to begin a campaign to free the judiciary from corruption. "Let this action on behalf of Tony be the stepping stone for a new movement."

13. Jailed activist hailed as hero as he walks tall and free

By Sajeewan Wijewardana (Daily Mirror- Saturday 18 October 2003.)

Activist Tony Fernando who had been jailed by the Supreme Court for contempt emerged from the Welikada Prison at noon yesterday as a virtual Human Rights hero.

Top legal personalities, politicians and members of the clergy had gathered at the main gate of the prison to greet and garland Mr. Fernando as he came out after completing his one year term. Among those present were the internationally known jurist Desmond Fernando, LSSP parliamentarian Ven. Samitha Thero, NSSP leader Vasudeva Nanayakkara and several members of the Catholic clergy.

Mr. Fernando and Mr. Nanayakkara in speeches to mark the occasion hammered out at alleged injustices within the judiciary itself and called for changes and reforms. Mr. Fernando also slashed out at President Kumaratunga who he said was the only person who could have got him released but she failed to do so. He hailed Prime Minister Ranil Wickremesinghe and said he hoped the Premier would soon become the President.

For his struggle to uphold peoples rights, Mr. Fernando has been nominated by the Asian Human Rights Commission for the award titled 'Defender of Judicial Rights and Judicial Freedom'. The crowd at the gates of the prison carried placards and shouted slogans hailing Mr. Fernando as a peoples hero and denouncing injustices.



Tony Fernando

Mr. Fernando said the strong stand he was taking for people's rights and

against injustices was not a personal matter but a stand he was taking on behalf of the people of Sri Lanka.

Mr. Nanayakkara told journalists Mr. Fernando had been jailed for defending his rights. He said he respected the judiciary but he wished to stress that the judiciary belonged to the people and was nobody's personal property.

Mr. Nanayakkara asked why parliament was silent on what many Human Rights activists saw as an injustice to Mr. Fernando.

Mr. Fernando had been jailed for one year by the Supreme Court for contempt when he argued a fundamental rights petition which he himself had filed. The Chief Justice ruled that Mr. Fernando had behaved in a contemptuous way. As he emerged from jail yesterday Mr. Fernando spoke out at what he saw as a shameful jungle law.

Among those who condemned the jailing of Mr. Fernando was Dato Param Coomaraswamy the UN Special Representative on Judiciary and Judicial Freedom.

14. "This is not a private battle, I fought for all" - Anthony Fernando

By Raneer Mohamed (Sunday Leader 19 October 2003)

His cheeks stained with tears, his red eyes squinting in the unfamiliar midday sunlight, this human rights defender walked out of New Magazine Prison Friday, feeling empty about the system of justice in this country.

Making the sign of freedom with his fingers, he looked into the countless cameras before him, with a smile on his face and fresh tears in his eyes.

Michael Anthony Emmanuel Fernando was awarded the Human Rights Defender's Prize by the Asian Human Rights Commission the day before Thursday.

Fernando has served a prison term of more than eight months since his summary sentencing for speaking loudly in court and persisting with his fundamental rights application and his objection that the Chief Justice should not be hearing his case since he had been cited as a respondent in the application.

The review petition against his sentencing was dismissed subsequently by the same panel of three judges who had convicted him for contempt.

Data Param Coomaraswamy, the outgoing UN Special Rapporteur on the Independence of the Judiciary, has stated that Fernando is a victim of injustice, pointing out that "the Supreme Court of Sri Lanka has done an act of injustice."

But walking out of prison on Friday, Fernando tried to walk tall despite the pain

shooting from his spinal cord, which Fernando says is due to being assaulted while serving his sentence.

Permanent mark

"This is not a private battle, I fought for all. I fought for the rights of all the citizens of this country," he said. But the battle seems to have left a mark on Fernando. Struggling to pull out a diagnosis card, which Fernando claimed had false dates, he said: "I was beaten mercilessly by some guard in civil clothing. I am suffering from a spinal problem as a result of this attack."

When asked whether he is taking any medication for the pain and injury suffered as a result of this attack, Fernando said the tablets that he has to take every day may make him feel better, but that it can never heal the psychological wounds that hurt him even more.

As his wife Malini and his parents waited impatiently outside from 11 a.m., it was Fernando's five year old son Christopher who could not hide his happiness. "We told him that his father had gone abroad," said 80 year old Oswald Fernando, the father of this defender. "Anthony Fernando is our only child and we are so proud of him," said Oswald Fernando wiping away tears.

But little Christopher seemed to know something more. "My son saw it all happen. He saw me tied to a bed in the hospital. He saw my suffering," said Fernando, hugging his little son. "He will always remember my cries, my blood, tears and suffering," he said.

Speaking of his assault, Fernando said he had fallen ill and was taken to hospital and that while he was being transferred from the General Hospital he had been mercilessly attacked and as a result he had to be admitted to hospital for 104 days.

He said however that the prison hospital did not take him for treatment regularly.

When asked what it felt like to be free, Fernando said: "It is an experience of a lifetime for a person to be convicted without a just and fair hearing. It is an experience where justice and fairplay should have been upheld in the country. It is the duty of the President to move in the matter. It is a pity that she did not. The Prime Minister is helpless. She should have the decency to pull the proper people up who sentenced me under the Criminal Procedure Act in Sri Lanka without giving me a just and fair trial."

"Today is a victory for all the citizens of this country who love justice and fairplay," he said.

Join hands with PM

"The Prime Minister is engaged in a campaign on educating the masses of Sri Lanka on justice and fairplay and on important national issues. I wish to

join hands at this moment with our Prime Minister, Ranil Wickremesinghe in educating the masses of this country on certain important national issues," he said.

When asked how he was treated in prison, Fernando said: "I was treated well at the New Magazine Prison. I must salute Chief Jailor Gamini Jayasinghe and the Commissioner. But I must say that the same treatment must be given to all prisoners."

"The law is nobody's grandmother's wealth to play around with," Fernando said and a lawyer present commented that the whole sentence is a nullity.

"Recently there was a comment by a legal authority that 96% of the offenders are free. I ask him whether those who kick justice and the law are also included in this 96 percent?" queried Fernando.

Thanking the human rights organisations, the government of Sri Lanka, Desmond Fernando and Elmo Perera, Ravaya Editor Victor Ivan and the media in general for giving him support, Fernando said that while the whole world was squirming at this injustice, he was sad that "the President of this country did not hear of this injustice."

"Please free the judiciary from these corrupt elements. There is only a handful of individuals who are tarnishing the good image of the judiciary. Please do not allow the good officers who are administering the rule of natural justice in our country in a just and fair manner to be insulted in this manner," he appealed.

"When an injustice happens to us where else can we go other than to the Supreme Court or any other court? We go unarmed, we cannot take handbombs and grenades, and demand justice. We are in a democratic institution, the only weapon I took was the country's supreme constitution and I read the country's constitution in the Supreme Court of Sri Lanka but I was sentenced like a criminal and sent to jail. I tried to explain myself after the sentence, and the chair looked at me in an angry manner and said 'if you talk one more word we are going to extend your term of sentence for more than one year.' It was a threat. It was the threat for justice and fairplay," went on Fernando.

Treated as a criminal

Fernando said that he was branded a criminal under the Criminal Procedure Act. "Where has the Criminal Procedure Act stated that a respondent can hear his own case and send an applicant to jail? It is a shameful thing! This is the jungle law," pointed out Fernando.

"I was assaulted for nothing," he cried. "A prisoner cannot be assaulted for nothing. They can be assaulted if they are trying to escape from custody or if there is a riot in prison. I beg that prisoners be treated like human beings," he appealed into the lens' of the countless cameras before him.

Immediately after his release, Fernando was mobbed by the media and support groups. Vasudeva Nanayakkara, several legal personalities and members of the clergy were present to welcome Fernando.

15. BASL members call for removal of Chief Justice

by Deepal Warnakulasuriya (Sunday Observer 19 October 2003)

Lawyers yesterday intervened in a prestigious lecture function of the Bar Association held in Colombo to urge the BASL Chairman to take action concerning both the recent premature retirement of Supreme Court Judge Mark Fernando and what they argued was the need to remove Chief Justice Sarath N. Silva.

The calls for BASL action came during the discussion session after yesterday evening's special BASL lecture delivered by visiting United Nations Special Rapporteur on the Independence of the Judges and Lawyers, Dato Param Cumaraswamy.

Dato Cumaraswamy, out-going UN Special Rapporteur on the Independence of the Judges and Lawyers, gave a lecture on the subject 'The Independence of the Judiciary and the Role of the Legal Profession'.

The UN Special Rapporteur, in his lecture, drew attention to the controversy over the court action against human rights activist Anthony Michael Fernando and challenged the local legal profession to maintain the dignity of the judiciary. Dato Cumaraswamy said he was addressing a wake-up call to the Sri Lankan legal profession and the judiciary.

He claimed that several decades ago the Sri Lanka judiciary had functioned in a manner that was much appreciated but, noted that this quality had deteriorated today.

The discussion time that followed, however, saw several lawyers diverting the discussion to their demand for action by the Association on the twin issues of the premature retirement of Justice Mark Fernando and what they claimed was the need for the removal of Chief Justice Sarath N. Silva.

BASL Chairman Ananda Wijesekara, who chaired the lecture function hosted by the Human Rights Committee of the BASL at the Sri Lanka Foundation Institute, Colombo, urged members to focus on the subject of the lecture and to raise the other issues at the appropriate regular meeting of the Association.

During the lecture function, a special event was held for the award of the prestigious Asian human rights title of 'Human Rights Defender' awarded

annually by the Hongkong-based regional human rights body, Asian Human Rights Commission (AHRC). Sri Lankan human rights activist Anthony Michael Fernando, who has been awarded the AHRC title, was presented the award in the special function chaired by eminent human rights lawyer Desmond Fernando PC.

Why we need a law on contempt

The spectacle of a man walking out from the prison gates, garlanded and spontaneously welcomed by more than hundred and fifty ordinary citizens, followed by speeches made in defence of the freedom of expression of an individual, would be unusual in any country.

In this case, the fact that the man had been sentenced to one year rigorous imprisonment for contempt of court due to his insisting on proceeding with his fundamental rights application which he was supporting in the Supreme Court and 'speaking loudly in court', marks this instance out in a very unique way from others. This case is also distinguishable by the fact that all those well funded civil society organisations based in Colombo lifted nary a finger in aid of this same litigant.

In effect, the saga of Tony Michael Fernando's imprisonment for 'scandalising the court' on February 6, of this year, may not necessarily be over with his release from the Welikada prison this Friday.

The fact that there is currently a Parliamentary Select Committee deliberating on the manner in which the law of contempt could be codified in this country, is of course, con-incidentally but entirely fortuitous, one might add.

It is striking that there are still innocents among us who continue to think, (depleted though their numbers thankfully are), that a Contempt of Court Act is not necessary for Sri Lanka. From one perspective, their position that the legal principles as regards contempt have been adequately set out in the case law in this country, is touchingly, if not a tad annoyingly, naive. On this same reasoning, India should perhaps have hesitated before enacting, particularly, their Contempt of Court Act of 1952 which, (on being found somewhat unsatisfactory), was supplanted by the Act of 1971 which regulates the present law on contempt in that country.

Again, the differing attitudes of the English courts on the issue of contempt was a prime reason why the English Act of 1981 was passed into law in order to bring English law into line with Article 6 of the European Convention on Human Rights. This was, as is widely known, consequent to a finding by the European Court of Human Rights (EUCT) that the British contempt law as declared by the House of Lords, violated Convention guarantees regarding freedom of expression.

Redress before the EUCT is available for any person who believes that his or her rights under the European Convention, (ratified by Britain in 1955 even though she accepted

the enforcement machinery of the Convention only in 1966), have been infringed by a court ruling or an administrative act. If the complaint is upheld, the British government is obliged to change the law that permitted the original infringement.

The Thalidomide case illustrated a difference of opinion on contempt not only between the House of Lords and the European Court, but also between the British courts, in a sufficiently titillating manner. In issue were editorial comments made by The Sunday Times that were critical of the testing and marketing practices of a United Kingdom based manufacturer and marketer of thalidomide, a drug which had caused severe deformities in children born to women who had taken the drug during pregnancy.

The disputed comments urged the manufacturers to agree to a generous settlement and also remarked that The Times would be publishing a further article evaluating the precautions taken by the manufacturers before releasing the drug to the market.

The publication of the editorial comments took place when litigation was pending between the manufacturers and their victims before the court. Would such comments have amounted to contempt of court?

The British courts gave differing answers to this question. In the lower courts, injunction pleaded for by the manufacturers to restrain The Times from publishing the planned evaluation of their testing procedures, was granted. The lower court order was however, overturned in the Court of Appeal where Lord Denning, in classic reasoning on the manner in which contempt powers ought to be exercised, held that in the unique circumstances of a profound national tragedy, it was in the public interest that the case be publicly discussed. Private interests yield to the public interest in these instances.

This appealing reasoning was departed from in the House of Lords which held that restrictions based on the law of contempt pose not so much a conflict between the public interest and private interest but rather, a conflict between two public interests; freedom of speech and the administration of justice. The former has necessarily to give way to the latter. At that time, the House of Lords decision was criticized in Parliament as well as in the media and a Committee, headed by Lord Justice Phillimore, recommended reforms to the law of contempt.

In the meantime, the decision of the law lords went up before the European Court of Human Rights. The EUCT, dissenting from Britain's highest tribunal, stated that what was in issue is not a choice between conflicting principles but with the principle of freedom of expression which is subject to a number of exceptions that must be narrowly construed.

The EUCT concluded that the injunction restraining The Times from publishing violated Convention guarantees to freedom of expression as the thalidomide disaster was a matter of undisputed public interest and publication would

not substantially distort the settlement process. In direct consequence of this decision confirming that the House of Lords ruling ran contrary to Convention rights, the Contempt of Courts Act of 1981 came into existence.

Meanwhile, with the incorporation of the European Convention into UK law by the Human Rights Act of 1998 (which came into force in October 2000), there is a greater obligation on British courts to conform to Convention rights. Thus, by necessary implication, the liberal thinking of the EUCT is slowly being infused into British case law involving the rights of individuals.

In contrast, if some of us are of the opinion that the Sri Lankan courts have demonstrated a greater consistency in laying down principles regarding contempt or in applying those principles to the facts of a case, perhaps such persons belong more in the other-world than in present reality.

This is, after all, a country where on one occasion, a Cabinet Minister, (then Minister of Samurdhi Affairs, SB Dissanayake), was merely 'warned and discharged' by the Supreme Court for saying at a public gathering that the Government will 'close down the courts and ask judges to take long leave if they cannot do what the government wants', in distinct difference to a litigant being handed down one year of hard labour for speaking loudly in court and persisting in his application.

On the other hand, there is truth in the warning that no law can legislate against intemperate judges or discriminatory application of the law and legal principles. Again, while a law can bequeath to the media a particular framework for writing with regard to judgements and the courts, no law can prevent the media from self-censorship with regard to matters affecting the judiciary in a manner that destroys the credibility of that newspaper or that television station.

Laws cannot replace principles of fairness, justice and respect for the rights of others. These are salutary thoughts that we would do well to ponder upon as this country's policy makers prepare legislation codifying principles of contempt of court applicable to Sri Lanka.

16 UPDATE (Sri Lanka): Michael Anthony Fernando receives death threats

ASIAN HUMAN RIGHTS COMMISSION - UPDATE ON URGENT APPEAL

1 December 2003

[RE: UP-45-2003: Michael Anthony Fernando freed and given an Asian human rights award, UP-26-2003: Update on Mr Michael Anthony Emmanuel Fernando ('Tony'), UP-19-2003, UP-14-2003, UA-09-2003: Human rights defender tortured and denied the fundamental right to a fair hearing]

Dear friends

The Asian Human Rights Commission (AHRC) is gravely concerned that Michael Anthony Fernando has received death threats to withdraw the complaints he has filed against those who have violated his rights. It is a bewildering situation for a person pursuing justice to be threatened due to this reason. Your urgent action is required to urge the local authorities to assure Michael Anthony Fernando's safety.

To see the previous urgent appeals regarding Michael Anthony Fernando's case, please visit;

[UA-09-2003: <http://www.ahrchk.net/ua/mainfile.php/2003/408/>

UP-14-2003: <http://www.ahrchk.net/ua/mainfile.php/2003/422/>

UP-19-2003: <http://www.ahrchk.net/ua/mainfile.php/2003/452/>

UP-26-2003: <http://www.ahrchk.net/ua/mainfile.php/2003/486/>

UP-45-2003: <http://www.ahrchk.net/ua/mainfile.php/General/565/>

Urgent Appeals Desk
Asian Human Rights Commission (AHRC)

DETAILED INFORMATION:

On Thursday, 27 November 2003, Michael Anthony Fernando (Tony) received death threats from a unknown person by phone, demanding that he immediately withdraw the three complaints he has filed against those who have violated his rights. All of the cases are currently pending in court. In addition, the next day (28 November), some unidentified persons visited his house and threatened his family to harm if Tony does not withdraw the cases. Tony has lodged a complaint regarding this incident to the local police.

The three cases that relate to the present threats to Tony Fernando are:

An application to the UN Human Rights Committee regarding his imprisonment on alleged contempt of court and torture at the hands of prison authorities,
A case against torture at the Supreme Court of Sri Lanka relating to torture suffered at the hands of the prison authorities,
A criminal case filed by the prosecution against two prison officers regarding the torture of Tony

A Sri Lankan newspaper, *Ravaya*, that has supported Tony throughout his ordeal and has championed the cause of the independence of the judiciary, has also received threatening phone calls. These threats were reported in the latest edition of the newspaper last weekend.

Tony Fernando's case is well-known. He was imprisoned by the Chief Justice of Sri Lanka and two other judges while pursuing a fundamental rights violation case before the Supreme Court and representing himself. He was imprisoned for one year without any hearing. Regarding Tony's case, UN Special Rapporteur for the Independence of the Judiciary and Lawyers condemned his imprisonment as an act of injustice done by the Supreme Court of Sri Lanka, and the judgment provoked a massive protest. Though the court asked Tony to apologize as a condition of reducing his present sentence, he refused on the basis that he had not acted in any manner contemptuous of court. He was released from jail after he had completed ten month full term of the sentence. He was awarded an HRC Human Rights Defender Award by the AHRC.

Over a hundred parliament members signed a recently filed impeachment case against the Chief Justice in the Parliament of Sri Lanka. One of the reasons for impeachment was the sentencing of Tony without just cause. Even while Tony was in jail he was threatened to withdraw the complaints he had filed. Now, upon his release he is receiving death threats and visits at his home by unknown persons.

We also draw your attention to the observations made by the UN Human rights Committee on 6 November 2003. Regarding the threats to victims and witnesses of human rights violations, the committee strongly recommended to the Sri Lankan government that;

"The authorities should diligently enquire into all cases of suspected intimidation of witnesses and establish a witness protection program in order to put an end to the climate of fear that plagues the investigation and prosecution of such cases." (CCPR/CO/79/LKA (future) HUMAN RIGHTS COMMITTEE Seventy-ninth session)

Therefore, AHRC strongly urges the Sri Lankan government to assure the safety of Tony Fernando.

SUGGESTED ACTION:

Please send a letter, fax or email to the local authorities and urge them to take an appropriate action to assure the safety of Michael Anthony Fernando.

Suggested letter:

Dear

Re: Michael Anthony Fernando receives death threats

I am shocked to learn about the death threats to Mr. Michael Anthony Fernando (Tony), who was released from prison only recently after being sentenced unjustly.

According to the information I have received, Tony Fernando received death threats from an unknown person, demanding him to withdraw the three complaints immediately which has filed against those who have violated his rights. All of the cases are currently pending in court. In addition, the next day (28 November), some unidentified persons visited his house and threatened his family to harm if Tony does not withdraw the cases.

The three cases which relate to the present threats to Tony Fernando are:

An application to the UN Human Rights Committee regarding his imprisonment on alleged contempt of court and torture at the hands of prison authorities,
A case against torture at the Supreme Court of Sri Lanka relating to torture suffered at the hands of the prison authorities,
A criminal case filed by the prosecution against two prison officers regarding the torture of Tony

It is a bewildering situation for a person pursuing justice to be threatened for this very reason. I draw your attention to the observations made by the UN Human rights Committee on 6 November 2003 which strongly recommended to the Sri Lankan government that "The authorities should diligently enquire into all cases of suspected intimidation of witnesses and establish a witness protection program in order to put an end to the climate of fear that plagues the investigation and prosecution of such cases." (CCPR/CO/79/LKA (future) HUMAN RIGHTS COMMITTEE Seventy-ninth session).

I urge you to take action on this issue immediately and assure the safety of Tony Fernando. I also urge you to ensure his right to pursue his complaints at legitimate forums.

Kim Soo A

Urgent Appeals Programme

Asian Human Rights Commission (AHRC)

17. UPDATE (Sri Lanka): Michael Anthony Fernando attacked

ASIAN HUMAN RIGHTS COMMISSION - UPDATE ON URGENT APPEAL

2 February 2004

UP-07-2004: SRI LANKA: Michael Anthony Fernando attacked
SRI LANKA: Update on Michael Anthony Fernando (Tony)'s case

Dear friends

The Asian Human Rights Commission (AHRC) has just learned that there was an

attempt on the life of Mr. Michael Anthony Emanuel Fernando (Tony) early this morning (2 February 2004).

Mr. Fernando went to see a friend on the main road Kalubowila Hospital Road. As his friend was not there he went to see another, when a bearded person appeared and held a handkerchief to his face. Tony felt dizzy and ran to a tailor shop that he knew, where he collapsed. Someone from the Tailoring shop informed Tony's father and his father took him to the hospital. He was immediately taken care of by the doctors and is now recovering.

AHRC condemns this attack on Tony's life, and calls for your urgent intervention in this case.

Urgent Appeals Desk
Asian Human Rights Commission (AHRC)

BACKGROUND INFORMATION:

Mr. Fernando has filed several cases of human rights violations by several prison guards who had tortured him while he was in the custody of the prison authorities after being sentenced to a term of one years imprisonment on the basis of alleged contempt of court. Mr. Fernando has also filed a communication before the United Nations Human Rights Committee challenging the validity of the Supreme Court Judgement as having no basis in law and as a violation of his fundamental rights. Former Special Rapporteur for the independence of the Judiciary and Lawyers, Dato Param Curamarswamy publicly denounced the judgement of the Supreme Court as an "act of injustice" done by the Supreme Court of Sri Lanka.

Many requests for pardon on the basis of a compromise of his accepting guilt for contempt of court was rejected by Mr. Fernando who served his full term in prison. On his return from prison he received several death threats about which he complained to the local authorities as well as to the UN Human Rights Committee. On 9 January 2004 the UN Human Rights Committee in pursuant of Rule 86 of the Committee's Rules of Procedure made a request to the Sri Lankan government:

1. to adopt all necessary measures to protect the life, safety and personal integrity of the author and his family members, so as to avoid irreparable damage to them and;
2. to inform the Committee on the measures taken by the State party in compliance with the decision within 30 days from the date of this Note Verbale, that is no later than 9 February 2004.

[United Nations High Commissioner for Human Rights Reference: G/SO 215/51 SRI (7) KF 1189/2003]

The Asian Human Rights Commission condemns this attack on Mr. Fernando as a blatant violation of his rights. The failure of the Sri Lankan government to take action

on the basis of the special request made by the UN Human Rights Committee is quite appalling and is in blatant violation of Sri Lanka's obligations as a state party to the ICCPR and signatory to the Special Protocol. The government and the state authorities have failed to pay any heed to the many thousands of calls for protection of the life of Mr. Fernando and also the final call by the UN Human Rights Committee itself. The Asian Human Rights Commission calls for a thorough inquiry into the conduct of the Sri Lankan government in terms of Rule 86 of the UN Human Rights Committee's Rules of Procedure and calls for the international community to cooperate in making the Sri Lankan government accountable under the international obligations of the ICCPR. Furthermore, we also call upon the Sri Lankan government itself to investigate this matter thoroughly and to arrest and prosecute the offenders, provide due medical care and compensation for Mr. Fernando and to provide the utmost protection to Mr. Fernando and his family.

SUGGESTED ACTION:

Please send a letter, fax or email to the local authorities and urge them to take an appropriate action to assure the safety of Michael Anthony Fernando.

1. Hon. Mr. Ranil Wickremasinghe
Prime Minister
2. Hon. Mr. K. C. Kamalasinghe
Attorney General
3. Mr. Ranjith Abeyseriya PC
Chairman National Police Commission
4. Dr. Radhika Coomaraswamy
National Human Rights Commission of Sri Lanka
5. Mr. Theo C. van Boven
Special Rapporteur on the Question of Torture
6. Mr. Leandro Despouy
Special Rapporteur on the independence of judges and lawyers

Suggested letter:

Dear

I am writing this to inform you that Mr. Michael Anthony Emanuel Fernando, whose case I am sure is well known to you, was today attacked by someone with gas and has been admitted to the Kalubowila Hospital. According to his wife, Mr. Fernando is in an unconscious state and the doctors are trying to revive him. I draw your attention to the request made by the United Nations Human Rights Committee on 9 January, to the Sri Lankan government to provide protection for the life of Mr. Fernando. Mr. Fernando has on several occasions complained about serious threats to his life due to the complaints of human rights violations he has made to Sri Lankan courts as well as to the UN Human rights Committee.

I am writing you to urge that all urgent actions be taken to safeguard the life of Mr. Michael Anthony Emanuel Fernando and to guarantee all medical treatment despite the strike by hospital staff that is currently taking place. I urge you to regard this attack as one of the gravest violations of Mr. Fernando's human rights. He has been constantly attacked despite the many pleas he has made for protection and this latest attack is also a violation of the treaty obligations of Sri Lanka as a state party to the ICCPR. That this action has taken place despite the special request made by the United Nations Human Rights Committee clearly shows that there has been no attempt to provide such protection to Mr. Fernando. I urge you to take all appropriate measures to cause the arrest of the offenders and to ensure due process of law. I also request the utmost protection to him and his family.

Thank you.

Yours sincerely,

18. UPDATE (Sri Lanka): Michael Anthony Fernando is provided no protection even after an attempt on his life

ASIAN HUMAN RIGHTS COMMISSION - UPDATE ON URGENT APPEAL

10 February 2004

UP-08-2004: SRI LANKA: Michael Anthony Fernando is provided no protection even after an attempt on his life

Dear friends

The Asian Human Rights Commission (AHRC) is gravely concerned that an attempt was made on the life of Mr. Michael Anthony Fernando when he failed to withdraw the complaints he had made against those who have violated his rights. Tony was admitted in the hospital after surviving the attempt on his life and on discharge from the hospital the authorities have failed to provide any protection to Tony. His life is in danger. Your urgent action is required to urge the local authorities to assure Michael Anthony Fernando's safety. AHRC received a letter written by Tony today, which is posted below.

UPDATED INFORMATION:

Letter by Tony Fernando received at AHRC on 9th February 2004

9 February 2004

I was discharged from the hospital on 7th Feb at about 12.30 noon. From the 2nd February noon two armed police officers who has come under the instruction of the Ministry of Defense provided me with security, at the Hospital. They were there till I was discharged on 7 Feb. They brought me back home in a three-wheeler. Then they

told me, that they had instructions to give protection only at the hospital and till I was brought back home. They said, there is nothing more that they can do and that if I need further protection, I should talk to higher ups and get such protection. Since then I have had no communication from the ministry of defense or any one else. I am in a completely helpless position. I cannot attend to my daily work or even help my family. I have to go from place to place looking for shelter like a fugitive.

I know that representation has been made on my behalf to H.E. the Present who is in charge of the Ministry of Defense at the moment. Two cases, one against two prison officers at Magistrate Court and another against the same officers by way of a Fundamental Rights Application before the Supreme Court for Torturing while in prison custody have been postponed. At the Magistrate court the date was for filing of charges against the prison officers but charges had not been filed by the prosecution police officers. I feel that I am a victim of a huge conspiracy. I narrowly escaped an attempt on my life. The attempt came at the time of a long holiday and the eve of a big political event by dissolution of parliament.

I am frightened to think of what would have happened to me if the conspirators succeeded in taking me to the van and had taken me away. There were altogether three persons in the Van, which was waiting to take me. So, far no one has been arrested on this though many statements were taken down from me. Though the UN Human Rights Committee have issued Interim Measures to the Government of Sri Lanka to take action to protect my life and my family and report to the HRC by 9th February 2004, I am completely without protection now, having to live in hiding.

I call upon everyone to intervene on my behalf to find protection for me.

Anthony Michael Emmanuel Fernando (Tony Fernando)

Further information:

Tony is now in a totally helpless situation and without any protection whatsoever. He cannot go out of his house and attend work since his life is at threat. He has to keep on shifting from place to place looking for help and support. The representation made to the President, who is also in charge of the Ministry of Defense has yielded no result.

So far no one has been arrested in spite of the complaints lodged by Tony with the authorities. All that has been done was to collect statements from Tony and the action taken on the basis of these statements is yet to be known and going by the practice in Sri Lanka there are no scope for any hope.

The Government of Sri Lanka has not followed the interim directions issued by the UN Human Rights Committee and the Government has not even replied to the Committee. Even though there were special mention by the Committee regarding safety of Tony and his family, nothing was

provided. Tony is now to live in hiding, moving from place to place.

The Asian Human Rights Commission urge you to intervene in the above case requesting the Government of Sri Lanka to provide adequate protection to Tony and his family and to take immediate steps to arrest the accused who tried to endanger Tony's life.

SUGGESTED ACTION:

Please send a letter, fax or email to the local authorities and urge them to take an appropriate action to assure the safety of Michael Anthony Fernando.

1. President
2. Prime Minister
3. Attorney General
4. Chairman National Police Commission
5. President, National Human Rights Commission of Sri Lanka
6. Special Rapporteur on the Question of Torture
7. Ms. Hina Jilani
Special Rapporteur on the Situation of Human Rights Defenders

Sample letter:

Dear

Re: Michael Anthony Fernando receives no protection in spite of an attempt on his life.

I am shocked to learn that in spite of an attempt on Mr. Michael Anthony Fernando's (Tony), life no protection what so ever is provided to him after his discharge from hospital.

According to the information I have received, Tony Fernando was hospitalized due to the injuries he suffered in an attempt on his life on 2nd February 2004. I am aware that Tony had filed two cases before the magistrate Court and the constitutional court against the jail officers who tortured him while he was in custody. Another case is pending before the UN Human Rights Committee.

The gist of the three cases which relate to the present threats to Tony Fernando are:

- An application to the UN Human Rights Committee regarding his imprisonment on alleged contempt of court and torture at the hands of prison authorities,
- A case against torture at the Supreme Court of Sri Lanka relating to torture suffered at the hands of the prison authorities,
- A criminal case filed by the prosecution against two prison officers regarding the torture of Tony.

It is a bewildering situation for a person pursuing justice to be threatened for this very reason. I draw your attention to the observations made by the UN Human rights Committee on 6 November 2003 which strongly recommended to the Sri Lankan government that:

“The authorities should diligently enquire into all cases of suspected intimidation of witnesses and establish a witness protection program in order to put an end to the climate of fear that plagues the investigation and prosecution of such cases.” (CCPR/CO/79/LKA (future) HUMAN RIGHTS COMMITTEE Seventy-ninth session)

I urge you to take action on this issue immediately and assure the safety of Tony Fernando. I urge the Human Rights Commission of Sri Lanka to take charge of the situation and to take immediate steps whatsoever to provide protection to Tony. I also urge the Government of Sri Lanka to direct its head of police to immediately provide unconditional protection to Tony and also to take immediate action upon Tony's complaint and to conduct thorough investigation on the incident. I also urge you to ensure his right to pursue his complaints at legitimate forums.

Sincerely yours,

Urgent Appeals Programme
Asian Human Rights Commission (AHRC)



The Convention Against Torture

The UN Human rights Treaties on torture, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which has been signed by many Asian countries, reads as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as

is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment

or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the

International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members

present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;
 - (a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
 - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has

been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:
 - (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
 - (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
6. The Committee shall hold closed meetings when examining communications under this article.
7. The Committee shall forward its views to the State Party concerned and to the individual.
8. The provisions of this article shall come into force when five States Parties to this

Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the SecretaryGeneral of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession

thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General .

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

- (a) Signatures, ratifications and accessions under articles 25 and 26;
- (b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;
- (c) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.



Corruption: Reform of the Police Key to Overcome Corruption

The participants discussed the issue of corruption in detail and its close link to human rights and the breakdown of the rule of law in most parts of Asia. Corruption seriously violates the human rights principles of equality and non-discrimination, as the rich will have access to rights and services that the poor cannot afford; the rich will enjoy a level of impunity before the law that the poor cannot. The success story of the **Independent Commission Against Corruption (ICAC)** in Hong Kong was used as an example of how corruption can be curbed with a little bit of will and effort on the part of the authorities. The ICAC was established in 1974 and in a few years it had succeeded in transforming Hong Kong from one of the most corrupt cities in Asia to one of the least corrupt cities in the world.

Growing public resentment and pressure forced the government to take steps to combat corruption in Hong Kong. The only way to make this anti-corruption body credible was to make it independent from any other government body, including the police. The ICAC conducts careful preliminary investigations in suspected corruption cases and provides comprehensive witness protection. Prevention campaigns and public education are also large parts of the organisation's methods to fight corruption. Hong Kong police and ICAC officials are well trained and also paid well, which are effective ways of combating corruption.

The ICAC realising that the key to addressing the issue of

corruption is the reform of the police, started in earnest to look for ways and means to get the police reformed. It worked consistently for three years examining all areas of the police, its administrations, chain of command, salary anomalies, training and recruitment, etc., with a view to reform the entire institution. Additionally, all the complaints, past and present against the police were investigated. When the resistance from the police culminated in a police strike, the issue was resolved by offering an amnesty for all previous offences, but henceforth the law would be strictly enforced. Hong Kong's success today is intimately tied to reform of the police through the intervention of ICAC.

The AHRC highlighted the achievements of the ICAC in Hong Kong to illustrate for the participants of the workshop that, given enough pressure and publicity, governments around Asia can be forced to act to curb corruption and improve its legal institutions. There is a burning need for the establishment of anti-corruption mechanisms in most Asian countries. It is not enough simply to pass laws; laws are only the first step. There has to be a functioning administration to carry out the law and to make sure that the law cannot be broken with impunity. It is the job of the criminal justice system - police, prosecution and judiciary - to make sure that crimes are punished according to the law, that compensation is paid and rehabilitation provided to the victim. Human rights can never improve without a properly functioning criminal justice system, free of corruption.



National Police Commission

Sri Lanka formed a National Police Commission (NPC) after much public pressure internationally and locally, including from the AHRC. The NPC functions independently from the police to supervise the behaviour of the police. The Chairman of the NPC, Ranjith Abeysooriya, came to speak to the participants of the workshop.

National Human Rights Commissions

In contrast to the NPC, the National Human Rights Commissions (NHRC) in Sri Lanka and elsewhere in Asia have been hugely disappointing failures. Many governments in Asia set up NHRCs to combat the public perception at home and abroad that they are not acting to protect human rights. Since their inceptions, most NHRCs have been highjacked by interests within governments and police

It is not necessarily the commissioners that are failing but that the governments do not allow the NHRCs to function properly. They do not have any powers and are therefore an institutional failure.

Referring to the NHRCs failure to reduce police torture, the AHRC pointed to the futility of trying to cure a sick police institution with a bad NHRC doctor.

NHRCs should be working much closer with NGOs on human rights issues as well as victims of human rights violations in order to become relevant. This has so far been sorely lacking.

The AHRC has given the Sri Lankan NHRC a list of suggestions



Dr. Radhika Coomaraswamy of the National Human Rights Commission of Sri Lanka came to speak at the workshop.

for improvements, as follows:

1. Structural improvements of the NHRC:

- a. Explicit (expressed procedure) within the law;
- b. Implementation of conclusion of inquiries must be laid down in the law;
- c. Independent investigation unit with no police link;
- d. Human Rights training for NHRC officers;
- e. Complainants should be received by NHRC immediately;
- f. Involve competent human rights activists in NHRC's investigations
- g. Non-discrimination in investigation of vulnerable groups;
- h. Monitoring of investigations;
- i. Prompt inquiry on allegation of negligence and bribery of NHRC's officers
- j. Lack of resources should at no time be excuse for investigation violation
- k. NHRC should prioritise the gross human rights violations
- l. NHRC should provide witness protection for witnesses and allegation of intimidation must be promptly addressed;
- m. Alleged perpetrators should not be placed in position where they can tamper with documents and witnesses;
- n. In case of serious allegations, NHRC can act on its own to hold public hearings; the public hearing should invite the public to participate by way of suggestions and other interventions to discuss matters of human rights violations with the view to make reports and recommendations to correct such violations;
- o. There should not be limits to the inquiries of NHRC by including all state agencies (armed forces).

2. Elements of proper investigation procedure:

- a. Receiving and responding complaints competently and speedily; complaints can be made by telephone, emails and other electronic communications;
- b. Gathering evidence competently and completely;
- c. Investigation should be conducted in consultation with the complainants and the results should be made known as soon as possible;

- d. Necessary steps should be taken such as visiting places, gathering documents, collecting medical evidence and other exhibits in a professional manner;
- e. Without laying the burden of collecting all the evidence by victims, NHRC's officers should actively help the victims to gather all necessary evidence;
- f. Where there is sufficient evidence on serious violations, NHRC can recommend the relief or suspension of the officers under investigation.



The Disappearances of Sri Lanka

Large numbers of disappearances have been reported in Sri Lanka since the mid 1980s. According to statistics published by the Commission of Inquiry Into Involuntary Removal or Disappearance of Persons, over 30,000 people have disappeared in Sri Lanka in the south of the country alone. Added to this is at least as many or more in the north of the country. The disappearances in Sri Lanka basically refers to extra-judicial killings perpetrated by police and army personnel either on their own accord or under instructions by politicians and others who wanted to rid themselves of somebody for whatever reason. In the late 1980s and early 1990s, the obsessive hunt for members of the communist JVP party became a convenient cover for innumerable human rights abuses that had no political origin.

The participants of the workshop in Wattala had the opportunity to talk to many of the family members of the disappeared in Sri Lanka. Jayanthi Dandeniya, whose fiancée and two brothers disappeared in 1989, has been campaigning on behalf of many families for the last decades to pressure the government into action. They want the perpetrators to be brought to justice and a public debate about the crimes against humanity that plagued the country for so long so that it will not be forgotten.

All the participants were taken to the Monument of the Disappeared, erected in 2000 with the help of the AHRC, on the spot where Jayanthi's fiancée was most likely killed. An emotional ceremony was held with many of the families who had lost their loved ones to extra-judicial killings. Flowers were laid by the photographs that cover

the back wall of the monument. The monument marks an important step in the attempt to keep alive the memory of disappeared persons, to create awareness in the community to prevent a similar bloodshed from happening again and to provide a common platform for the members of the families of the disappeared to meet and support each other.

The cruelty of the crimes against these families are particularly distressing as there can never be a sense of closure. The bodies of their loved ones were burned or tossed in the river and never recovered. The families never had the chance to bury their dead or even identify the bodies so they will never stop hoping that one day their son or daughter will return. Here is one such case:

Disappearances of 3 members in a family



Sembukkage Daniel Silva

S. Mahinda Silva

S. Indika Rohan Silva

Victims: Sembukkage Daniel Silva -age 55 (father, working as a mason), S. Mahinda Silva -age 29 (eldest son, working with his father), S. Indika Rohan Silva -age 19 (youngest son, working with his father)

Dates of incident: from 6 December to 7 December 1989

Perpetrators: several police officers and army officers of Uggalbada

Details (based on the statement from the victims' mother, named Nandawathi Dias):

Nandawathi Dias remembers her marriage at 17 years to Sembukkage Daniel Silva. Also her eldest son Mahinda, "he looked like an actor, tall and well made", she says fondly. Her youngest son Indika was a popular and athletic teenager, the laughter

and merriment in her family of nine people. She is left with only memories to console her for the loss of her husband and two sons, who were taken away by the armed forces in December 1989 and who have never been seen again. They are members of the silent, lost group known as the Disappeared, who were taken away by the armed forces and paramilitary groups during the "Reign of Terror" in 1988-89, and who have never returned. Their families, like Nandawathi, are bereft of even a grave to weep over, condemned to live in ignorance of the fate of their loved ones.

As a contractor, Nandawathi's husband had found it difficult to find work and so the couple maintained their large family of seven children, four girls and three boys, as pavement vendors in Kalutara. As the children grew up, the tiny plot of land on which the family lived became insufficient and they moved to Malwatte Road, Uggalbada in 1984. After studying until the 8th grade, her eldest son Mahinda began work as a mason with his father. After he had finished his 10th grade examinations, Indika joined them.

In October 1989, the tragic chain of events began when the police came to Nandawathi's house looking for her eldest son. As he was not at home at the time, they were instructed to hand him over to police custody by October 30. When asked for a reason, the police roughly informed the family that the reason for the police search for Mahinda was not their concern, that they, the police needed him, and to simply hand him over by the stipulated date.

As this time Nandawathi, accompanied by most of her family, went to Colombo to have her eyes, which were troubling her, examined. When they returned, they were greeted with the news that the army had broken into their house, ransacking it and destroying the doors and windows. In the same breath, the family turned back and went to the residence of Nandawathi's married daughter. They lived there for a few months, as Nandawathi says, "in great fear. Everyone was afraid. The government was doing as it liked."

The first to be taken away was the youngest son Indika, 19 years old at the time. On 6 December 1989, when he was on his way to visit his married brother, Indika was taken away in broad daylight. He was questioned and freed, but a group known as "Billo" ("ghost" or informers, local leaders who the police took along with them, shrouded in black hoods to conceal their identity, hence the name, in order to identify people wanted by the police, in a ghastly parody of a police line-up) had given false information about him to the police. "They lied to the police about him", Nandawathi says bitterly, "because of a personal grudge against us." Immediately the police turned back their Jeep and the boy was taken away again. His distraught family searched everywhere for him and on going to the police, were abused and sent away. No details of the boy were released, no record of his disappearance was filed and his family was not even permitted a glimpse of the police detention cells.

The trauma continued the next day, December 7, when the eldest son Mahinda was taken away from a friend's house in Matugama. On the same day, the armed forces broke into the house of Nandawathi's brother-in-law, where she and her family had been staying. It was 2 am when armed men extinguished the lamps in the house and surrounding the household members, had warned them not to make a noise. Daniel Silva, Nandawathi's husband was taken away, covered by rifles, and his family was told

that he would be questioned and sent back the next day, and to lock their doors in the meanwhile. The unfortunate man was not allowed to say a word. "Such was the fear of the times", said Nandawathi, "that there was nothing we could say or do."

The next day Nandawathi went in search of her husband to the police station and was not allowed to file a missing persons' report or a complaint about the incidents. On being chased away from the police station for the second time, Nandawathi then obtained a letter from the Government Office in the district in an effort to see her family members, but again she was abused and was told that "even if I were to bring letters from a higher authority, I would not be allowed to see them". Nandawathi, who had gone to the police station with only her sister, then felt afraid and abandoned any further attempts to obtain information or help from the police.

She speaks of the deathly fear she felt at the time, of her fear that her other children would be taken away too, of the rumors that the land behind the police station resembled a butcher's shop, "a lake of blood" as witnesses described it, of the five or six others in neighboring houses who had also been taken away.

Then began a long and weary journey for Nandawathi, as she trudged from one official to another, from one authority to another, in vehicles hired at a cost that she could ill afford, looking for any meager scrap of information. She sent letters to any source that seemed promising, attended meetings, and appeared before a Commission for the Disappeared, who told her that they could not help because of insufficient evidence. She even resorted to such traditional methods as consulting soothsayers and offering coconuts for vows. Nandawathi also attempted to visit such places as Bussa, Pelwatta and army camps at Kelawela and Welimeda Oya where she had been told that people were detained, but was not even allowed inside. Appeals to politicians on both sides of the political divide and to religious authorities were not successful in eliciting information from the armed forces. In all these efforts, she could rely only on the support of her sister, as everyone else was too frightened to get involved. As she put it, "in those days, so many insurgents from around here were being burnt to death. No one had time for anyone else's sorrow." Nandawathi was told that her eldest son was taken away because he had been involved in insurgent organizations, although she had no knowledge of such activities. Even assuming that he had committed such wrongs, why, she asked, were the other two taken away, when they had done nothing wrong? She blames a Member of Parliament named Lakshman Wijemanne and his henchmen for the disappearances, claiming that they used the police and army as tools for their own ends.

Nandawathi's eldest daughter, who had gone abroad to work two months before the incident, had not been told of her family members' disappearances. The girl would write letters asking why her father and brothers never wrote, not knowing that the money she earned was spent on trying to find them or their corpses. The money she sent to her father, in fact, had to be transferred to her mother's account, on the pretext that her father was too ill to go himself to collect the money. Her brothers' absence was explained away by telling her that they had left home to look for employment. For 5 years, Nandawathi and her remaining family were forced in this way to write untruths to her daughter. Nandawathi describes the girl's frenzied grief on returning home



Jayanthi Dandeniya has been working with the families for many years

and finding her father and brothers missing, her screams whenever she saw vehicles from the nearby army camp. By then, Nandawathi had returned to her own house.

Nadawathi speaks poignantly of the agonies she has suffered since. She remembers all her younger son's friends visiting her on the first New Year's Day since his disappearance and trying to console her, as they embraced her and wept themselves. Her family wept frequently, prompting a priest to tell them that the dead could not rest when their loved ones were constantly weeping for them. She could not sleep at night and endangered her already weakened eyes. She also feared for the safety of her younger daughter, who was then still in school, and so sent the girl to live at a friend's house. After all, she reasoned, when "they" come to take someone away, if that person is not at home, they take away someone else in the house. "They're no better than beasts", she said, "what if they did something to my

daughter?" She continues, "those days when the sun set we would lock our doors and not go out because we were afraid. When we woke up in the morning, we would hear that people had been killed here and killed there."

Sadly, there were those who tried to profit from her grief and her ignorance of her family members' fates. Often, someone would come to her, claiming knowledge of her husband and sons' whereabouts and offering to take her to them. On hearing details such as their brothers' legs being broken and their being unable to move, her daughters would make up parcels of food and give money to the conmen, believing that the items would be given to their brothers. These heartless exploiters lied to Nandawathi and her family, who had lost so much, and taking their money in return for promises of bringing back the disappeared, would disappear themselves, not even bringing back the bodies of those they promised to return to their families.

The Presidential Commission for the Disappeared had paid them a paltry sum as compensation, although, Nandawathi says, no money could ever recompense them for the loss of those who should be with them now. She did everything in her power, with her meager resources, to find her family members. She lived in dread, unable to even speak publicly of those who committed these crimes because she feared for the safety of her other children, lest they, too, would be taken away. "So", she says, "We were silent because we were afraid. Although we can't bear it, we conceal our sorrow in our hearts and we wait, still weeping."



The Seeduwa Monument for the Disappeared: Reason for Hope

Siddhi Raman Aryal, at the workshop representing the Centre for Victims of Torture in Nepal, wrote the following reflection on his visit to the Monument for the Disappeared:

As a participant of the AHRC organized Human Rights Training Session 2003 in Sri Lanka, I had the opportunity to visit the Seeduwa Monument for the disappeared near Colombo. Between the years 1988 through 1991, about 60,000 Sri Lankans, most of them innocent civilians, disappeared at the hands of the various forces working to terrorize and destabilize the country.

While on the one hand AHRC has been raising awareness about the issue of disappearances, it has also facilitated the construction of the monument. The family members and the loved ones of the disappeared frequent the monument and cherish their loved ones. While there, they share the pain and suffering inflicted on them and as a group try to come to terms with their irrecoverable losses.

The monument came into being on 4 February 2000, also the day when Sri Lanka celebrated its independence. Jayanthi Dandeniya was instrumental in getting the monument work started. The monument stands tall at the side of a street on the very spot where Jayanthi Dandeniya's fiancée and his best friend were first murdered, then burned and taken away never to be found again. She was instrumental in founding an

organisation for the people whose family members disappeared and now she works closely with the AHRC. The work for sculpting the monument was commissioned to the acclaimed artist Chandragupta Thennuwara.



Siddhi Raman Aryal

As we approached the venue, I had an overwhelming feeling and I could sense heaviness in the air. Perhaps the energies of the disappeared people combined with the incessant tears and anxiety faced by the family members were greeting me. I felt strange. My eyes got teary.

As I glanced out of the window of the bus, I saw the monument. On a cursory initial glance, I noticed enough of the monument to notice that something was missing from it. The monument looked incomplete. It was as if somebody had

intentionally made the heart of the monument disappear. It looked like an incomplete monument. The monument was thought provoking. There are two curved walls with a hollow in the middle symbolizing the absence of the person who seemingly has been removed by force.

As I walked towards the monument, I saw that there were some people gathered around it. They were mostly elderly. I glanced towards them as I approached them. They looked like they had all been crying. In fact, it looked like they had all been crying for many years.

Walking closer to the monument I came across the epitaph on which were written the following words:

By the Wayside

This wreath
with no name attached
is for you
who has no grave.

As the place of earth

which embraced you
could not be found,
this wreath was placed by the way side.

Forgive me.

Forgive me
for placing a memorial for you
by the roadside

- Basil Fernando

There was a ceremony held when all the people present laid wreaths on the monument for the disappeared. It was a special ceremony and was also an occasion to share the pain felt by the family and friends of the disappeared.

After the ceremony, I met up with the parents of several young people who disappeared without a trace. There was one couple who had just one son and he suddenly disappeared one day, never to be found again. The father and mother both said that everyday they felt like they heard the footsteps of their son, and felt like he came to talk to them. I spoke with several others also. One of them, the mother of a disappeared son, said that she has been to as many temples and shrines as the number of hair strands on her head.

During our conversation, tears were flowing and feelings were being exchanged. Although no amount of work can bring back those who are gone, at least for the families and friends of the disappeared, the monument has provided a space where they can fondly cherish the memories of their loved ones and hope that no such incidents of disappearances occur ever again.

Although I was coming from a different country, not understanding a word of the local languages and very new to the surroundings, I felt a level of comfort I have seldom felt before. The experience left me richer than before, and I took a pledge to take whatever little steps I could to ensure that word is spread about the dark episodes of disappearance and never to forget those who have suffered injustice.



Custodial Deaths in India

Of course, Sri Lanka is not the only country that suffers from serious human rights abuses in the form of extra-judicial killings. Kirity Roy, a lawyer from the human rights organisation MASUM in West Bengal, India, has been campaigning against the many custodial deaths in his home state. He told participants at the workshop that almost two people die every week in custody in West Bengal due to torture, refusal to provide medical aid in custody or overcrowding in the court-lockups. This is Kirity's report on the seriousness of the situation:

Custodial deaths in West Bengal and India's refusal to ratify the Convention against Torture

This February, the families of Nemaï Ghosh and Anesh Das were compensated 100,000 rupees each by the government of West Bengal for their deaths while under police custody at the Malda Magistrates Court on 1 August 2002. The two, who had been arrested on petty charges, were locked in one of two holding cells designed to accommodate around 15 detainees, which on that day were according to police records holding 262 persons. Independent witnesses suggest that the number was closer to 400. The men collapsed in temperatures of over 40 degrees celsius while pleading for water from police officers selling it at 40 rupees per bottle. Over 150 other detainees were hospitalised. According to the *Times of India* (February 17), on 4 July 2003 the Kolkota High Court ordered that compensation be paid within two months, following a Supreme Court ruling that custodial deaths be compensated with at least

100,000 rupees.

While the overdue payments might go some way to meeting the needs of the deceased men's families for a short time, they leave behind a trail of questions. To begin with, why did only the two dead men's families get money? None of the injured persons were compensated for their suffering, nor were any other victims of custodial death in a court lock-up in West Bengal, despite at least four other cases having been thoroughly documented in recent years. Among those, human rights group Manabadhikar Suraksha Mancha (Masum) has reported on the case of Tamal Sanyal, arrested with friends by officers of Bijpur Police Station on 19 May 2003, for drinking alcohol in a public place. The police failed to inform his family members of his arrest, and refused to release him on bail, despite the charges laid against him being bailable offences.



Kirity Roy of MASUM

On May 20, Tamal was sent to the Barrackpur District Court, where at least 200 detainees were being held in a lock-up intended to accommodate not more than 50 persons, and where Nemai Ghosh and Anesh Das suffocated to death. Similarly, on 30 June 2003 officers of Coke Oven Police Station sent Kamal Badyakar to the Durgapur Court, under Bardhaman district, where he was held with about 46 other detainees. According to the police, Kamal committed suicide by hanging himself with his underwear in the latrine. However, a co-prisoner reported that the latrine was so filthy that even the detainees, accustomed to inhuman conditions, were unable to enter it. Neither

family of either man has received anything for their loss.

In fact, everything about the compensation in this case is problematic. Why was it paid so late, despite a High Court order that it be within two months? Why was it paid only by the state and not by the persons in the police and judiciary directly responsible for the deaths? How did the Supreme Court come up with the figure of 100,000 rupees,

when someone injured in a motor vehicle accident is liable to claim much more? Custodial deaths, injuries due to torture and other violations of human rights perpetrated upon victims while in state custody are the most heinous of crimes, and the amount of compensation should reflect this.

More importantly, why has no one been held criminally liable for the deaths and injuries? Despite a thorough judicial inquiry into the incident, the only action taken was for a police superintendent to suspend a number of officers on duty at the time. However, the prisoners were in the court lock-up, and the person ultimately responsible for the detainees, therefore, was the Sub-Divisional Judicial Magistrate at Malda. Yet this person has never been held to account for the deaths and injuries caused to the persons under his duty of care on August 1, despite recognition of state responsibility manifest in the compensation payment.

According to the Police Regulations of Bengal (1943), for each prisoner in a lock-up there should be 36 square feet of space, and immediate medical treatment when required. Nowhere in the state are these provisions met, and despite recent court orders to address the high number of custodial deaths there, the rules are applied only where the rich and influential are concerned. In fact, deaths occur daily in all government facilities, whether court lock-ups, police station lock-ups, prisons or other state centres.

Furthermore, the suffering of a victim and family does not end with death. The following are just some of the obstacles that must be overcome in any attempt to obtain a modicum of justice:

- * First, after the person has died, the Criminal Procedure Code (1973) requires the police to notify a magistrate to carry out an inquest. In practice, police often do not contact any magistrate, and instead conduct the inquest themselves, disposing of it in a manner so as to avoid any responsibility.
- * Secondly, in the case of deaths in police custody, Judicial Magistrates, answerable to the High Court, should carry out the inquest. In West Bengal, however, Executive Magistrates do this job. The Executive Magistrates are under the Home Department, as are the police. Therefore, where inquests do occur, the alleged perpetrator (the police), prosecutor and judge all belong to the

same division.

- * Thirdly, in West Bengal there are no independent judicial officers to handle the filing of complaints of custodial death. Instead, the police themselves are responsible for the keeping of court records. Therefore, when the family members of a victim go to lodge documents to begin a custodial death inquiry, they must give them to uniformed police who may be friends of the accused. Not surprisingly, the documents very often are tampered with, damaged or 'lost'.
- * Fourthly, the victim's body should be taken for a post-mortem examination. However, this is done only on police orders, and under any circumstances the procedure for post-mortems in West Bengal is so defective that it only leads to further horrific abuse of the victim's dead body and contempt for the rights of the family. Most morgues in the state are located in sub-divisional and district hospitals. The conditions defy description: without air conditioning and freezers, or other equipment to deal with the bodies, corpses rot within hours. The doctors assigned to do the post-mortems generally have no training in forensic science, and sometimes are even dentists or psychiatrists. They are not properly paid, and in fact do not actually do it themselves: this is left to a caste group, the Dom, a sub-group of Dalits (so-called untouchables) assigned the task of handling the dead bodies. The Doms, who are usually completely uneducated and often drunk while on the job, open the bodies with hammers, rusty nails and axes, and call out what they see to the doctor, sitting 30, 40 or perhaps 50 metres away. The doctor then records the observations, and the body parts are discarded. The Asian Human Rights Commission recently pointed out that one of the most important rights of a dead victim is for their body to be preserved in a manner that will permit proper medical examination ('Forensic science, mortuaries and the rights of victims of crime', AS-01-2004, January 6). Failure to treat a victim's body with due respect and diligence is a serious violation of the rights of the victim and their family. That an autopsy should be conducted in such a manner as described above not only defies common sense

but is an affront to human dignity.

The case of Netai Das illustrates some of the above-mentioned problems. Netai was reported arrested on 21 February 2002 and he died in the Bally Police Station lock-up on February 25. Upon investigating the case, Masum found that the police had falsely recorded the date of arrest and other details of the case, and that the Netai had in fact been arrested and illegally detained from the night of February 18, during which time he was denied food and water. According to the investigating officer, Netai died by hanging himself, however Masum inspected the place of the alleged suicide and concluded that it was highly unlikely that the victim killed himself as suggested. Furthermore, the investigating officer in Netai's death was the same officer conducting the criminal inquiry after his arrest. The doctor who wrote the initial medical report on the death recorded that the body had no external injuries, despite video footage clearly showing bleeding on the left of the forehead, consistent with allegations from the family that Netai was tortured and murdered by the police. The inquest was held and concluded on February 25, with the magistrate concurring with the police report, and in the absence of any relative of the deceased. After Netai's wife lodged a complaint the following day, the magistrate called for a further report from the police, which was duly submitted and the case closed. Masum has concluded that the magistrate and other authorities in this case colluded with the police to conceal their act of murder.

That conclusion goes to the root of the problems facing the judicial system in West Bengal: the police control every aspect of the judicial system. From the time of arrest to conviction, imprisonment or death, police run the show. Practically speaking, there is no independent judiciary in West Bengal. This runs contrary not only to the principles of the rule of law - to which the government of India claims to adhere - but also contrary to the Criminal Procedure Code, which was rewritten in 1973 with the express intention that the judiciary be severed from other parts of government.

Under these circumstances, India's repeated refusal to ratify the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment on the grounds that there are

adequate provisions in existing laws to prevent torture and attendant abuses is disgraceful. As apparent from the cases above, torture, custodial death and other horrendous abuses during police custody in India go hand in hand. The perpetrators of these acts go free because no law exists to effectively address them, and ensure redress for the victims and their families. As a result, at present the best one can hope for is a few overdue rupees to assuage any sense of further responsibility by the state. It is hardly surprising that justice remains a dream for most and that the payment of a small amount of compensation for a couple of victims be portrayed as an act of magnanimity, rather than a piecemeal gesture from a thoroughly corrupted system.

This must change. Any suggestion that the existing legal system in India is adequately equipped to address custodial abuses of this sort is an insult to the intelligence and human integrity of millions who daily experience otherwise. India must ratify the Convention against Torture without delay, and bring it into domestic law together with the necessary institutional changes to see it implemented. When acts of torture and degrading treatment by the police are at last treated with the gravity they deserve, so too will custodial deaths diminish, conditions in lock-ups be improved, cases properly investigated, victims properly compensated, and perpetrators punished.

Here is one example of a custodial death case in the form of an Urgent Appeal from the AHRC

INDIA: Custodial death of a young man in West Bengal

URGENT ACTION URGENT ACTION URGENT ACTION URGENT
ASIAN HUMAN RIGHTS COMMISSION - URGENT APPEALS PROGRAM

2 March 2004

UA-23-2004: INDIA: Custodial death of a young man in West Bengal
INDIA: Custodial death; Torture; Rule of law

Dear friends

The Asian Human Rights Commission (AHRC) has received information from

Banglar Manabdhikar Suraksha Mancha (MASUM), a human rights organization in West Bengal, that a young man was found dead in police lock-up by the police at Fansideoa Police Station in Darjeeling District in West Bengal on 9 February 2004. He was previously arrested by the police on suspicion of theft without any evidence. The police said the victim committed suicide by hanging himself in a cell. However, the victim's family insisted that the police tortured the victim to death and disguised his death as a suicide to cover up the case. Until now, the report of magisterial inquest and post-mortem examination is not accessible to the public including the victim's family. In addition, it is reported that the victim was detained by the police for three days without being produced before a magistrate.

The West Bengal State has a high number of custodial deaths. In fact, deaths occur daily in all government facilities, whether in court lock-ups, police station lock-ups, prisons or other state centres. We call for you to send a letter to the local authorities requesting a thorough and impartial investigation on this matter.

Urgent Appeals Desk
Asian Human Rights Commission (AHRC)

DETAILED INFORMATION:

Name of the victim: Kamal Sharma, aged about 25 years, a guard of a cement godown, resided at Jangal Basti, Darjeeling District

Alleged perpetrators: Officers attached to the Fansideoa Police Station in Darjeeling District

Period of arrest and detention: From 6 February to 9 February 2004

Date of the custodial death: Around 8:00 pm of 9 February 2004

Case details:

Kamal Sharma was a guard of a cement godown in Jangal Basti at Fansideoa, Darjeeling District, West Bengal. On 6 February 2004, the owner of the cement godown, Mr. Dilip Das, lodged a complaint to Fansideoa Police Station that Rs. 92,000 was stolen from his residence. The police arrested Kamal Sharma as a suspect without any reliable evidence on 6 February 2004 and took him to the police station. No stolen money was found in Kamal Sharma's possession.

According to Article 22(2) of the Indian Constitution as well as Section 57 of Criminal Procedure Code 1973, the police must produce the arrested person before a magistrate within 24 hours of the arrest. However, the police illegally detained Kamal Sharma for three days and only forwarded him to the Court of Sub Divisional Judicial Magistrate (SDJM) Siliguri on 9 February 2004. The SDJM ordered Kamal Sharma seven days remand at the police station for further investigation as per the prayer (written request) of the police. The police brought the victim back to the Fansideoa Police Station and put him in lock-up. It is reported that there was at least one-co-detainee named Jaydeb Sarkar in a cell at that time.

Around 8:00 pm of the same day, Kamal Sharma was found dead by the police hanging himself in the lock-up. The police took the body of the victim to the nearby Fansideoa Hospital where the doctor declared him dead. According to the statement of Dr. Swapan Sarkar - Block Medical Official of Health (BMOH), who examined the victim's body, Kamal was already dead when he brought to the hospital. It is reported Kamal Sharma has no serious physical or mental illness history. He was the only breadwinner of the family.

One executive magistrate Surathal conducted an inquiry about the victim's case under Section 176 of Criminal Procedure Code 1973. After that the body of Kamal was sent to North Bengal Medical College & Hospital for postmortem examination. However, the report of magisterial inquest and postmortem examination is not accessible to the public, including the victim's family by order of the state government.

As per the police version, there was no sentry on-duty in the lock-up at the relevant time, and when the sentry on-duty came back around 8:00 pm, he found Kamal hanging from one rod of the latrine in the lock-up with a rope made by the rug.

However, the victim's mother, Ms. Naynakali Devi, and the victim's sister, Ms. Ganga Devi, said that they believe the victim was tortured to death by the police and the police disguised his death as a suicide. They mentioned that they saw some injury marks on the victim's body. They further raised the question of how the victim could make a strong rope from the rug within a few minutes, while staying with his co-detainee.

A human rights activist of MASUM also raised the question of the credibility of the inquiry conducted by the Executive Magistrate. He said that it was very difficult to expect a fair and independent inquiry by the Executive Magistrates, as they belong to the home department of the state government just as the police do.

On 14 February 2004, several hundred of the people in Jangal Basti area organized a sit-in-demonstration in front of the office of the Additional Superintendent of Police of Darjeeling, Mr. Rajsekharan, demanding a judicial inquiry into Kamal Sharma's case, punishment to the perpetrators and an adequate compensation for the victim's family.

BACKGROUND INFORMATION: *Situation of custodial death in West Bengal*
According to the Police Regulations of Bengal (1943), for each prisoner in a lock-up there should be 36 square feet of space, and immediate medical treatment when required. Nowhere in the state are these provisions met, and despite recent court orders to address the high number of custodial deaths there, the rules are rarely applied. In fact, deaths occur daily in all government facilities, whether court lock-ups, police station lock-ups, prisons and other state centres.

Furthermore, the suffering of a victim and family does not end with death. The following are just some of the other obstacles which must overcome in any attempt to obtain a modicum of justice:

First, after the person has died, the Criminal Procedure Code (1973) requires the police to notify a magistrate to carry out an inquest. In practice, police often do not contact any magistrate, and instead conduct the inquest themselves, disposing of it in a manner as to avoid any responsibility.

Secondly, in the case of deaths in police custody, Judicial Magistrates should carry out the inquest. In West Bengal, however, Executive Magistrates do this job. The Executive Magistrates are under the Home Department, as are the police. Therefore, where inquests do occur, the alleged perpetrator (the police), prosecutor and judge all belong to the same organization.

Thirdly, for a custodial death case to go to court, the families of the victim have to initiate proceedings. However, in West Bengal, there are no independent judicial officers to handle the filing of cases. Instead, the police themselves are responsible for the keeping of records of Judicial (criminal) cases. Therefore, the family members of a victim go to lodge documents to begin a custodial death inquiry to the police, who are often friends and colleagues of the accused. Not surprisingly, the documents often disappear or they are frequently tampered with by the police, and there is no system in place to ensure that they are recorded as having been lodged.

This situation illustrates that the police control every aspect of the judicial system in West Bengal. From the time of arrest to conviction, imprisonment or death, police run the show.

SUGGESTED ACTION:

Send a letter, fax or email to the addresses below and express your concern about this case.

1. Dr. A.P.J. Abdul Kalam

President of INDIA

2. Shri Justice A S Anand

Chairperson, National Human Rights Commission of India

3. Shri Buddhadeb Bhattacharjee

Chief Minister and Minister in Charge of Home (Police) Department of West Bengal

4. Shri Justice Mukul Gopal Mukherji

Chairperson, West Bengal Human Rights Commission

5. Mr. Theo C. van Boven

Special Rapporteur on the Question of Torture OHCHR-UNOG, SWITZERLAND

Sample letter:

Dear

Re: Custodial death of a young man in West Bengal

Name of the victim: Kamal Sharma, aged about 25 years, a guard of a cement godown, resided at Jangal Basti, Darjeeling District

Alleged perpetrators: Officers attached at Fansideoa Police Station in Darjeeling District

Period of arrest and detention: From 6 February to 9 February 2004

Date of the custodial death: Around 8:00 pm of 9 February 2004

I am writing to bring to your attention the custodial death of Kamal Sharma. According to the information I have received, Kamal Sharma was found dead hanging himself in the Fansideoa Police Station lock-up in Darjeeling District in West Bengal on 9 February 2004. He was previously arrested by the police on suspicion of theft without any reliable evidence on 6 February 2004. However, the victim's family insisted that the victim was tortured to death by the police and the police disguised his death as a suicide. They further testified that they saw some injury marks on the victim's body. Further, the police violated the Indian constitution by illegally detaining the victim for three days even though they must produce the arrested within 24 hours of the arrest.

Therefore, I urge you to conduct thorough and independent investigation of this matter and bring the person(s) responsible for the death in custody of Kamal Sharma. The alleged police perpetrators must be suspended from service while independent inquiries are being conducted. I also urge you to award compensation to the victim's family. I further urge the West Bengal government to ensure that in every case, a Judicial Magistrate, not an Executive Magistrate who belongs to the home department like the police do, conduct the inquest into a suspicious death, in accordance with existing regulations. Lastly, I request the Government of India to ratify the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) and implement it into domestic law without delay.

Sincerely yours,

Thank you.

Urgent Appeals Programme

Asian Human Rights Commission (AHRC)

Caste and Gender Discrimination

One session during the workshop was dedicated to discuss Caste-based discrimination in Asia. Around 250 million Dalits (untouchables), mostly in India, Nepal, Sri Lanka and Japan (Buraku), suffer severe discrimination in almost all areas of their lives because of the caste they were born into. In the age-old Hindu class-system, all persons are divided into castes with Brahmins as the highest caste and Dalits as the lowest. Traditionally, no person can change the caste which they have been born into, which is a convenient way for the higher castes to keep their privileged positioning in society and prevent the lower castes from trying to improve their situation.

Although caste discrimination has been illegal for many years in South Asia, the abuse continues unabated in the name of religion and tradition, particularly in rural areas. All religions have been used at one point or another in history to sanction human rights abuses, usually as a means to retain control or prevent change or development. No human rights violations, including any form of discrimination, should be allowed to continue in the name of any religion.

Anita Pariyar, a Nepalese Dalit who represented the Feminist Dalit Organisation in Wattala, gave an emotional talk about the discrimination that she encountered daily growing up in Nepal. The following text comments on her talk:



Anita Pariyar, FEDO

Reflections on Dalit Women in Nepal

They cannot share a meal with their neighbours, or collect water from the same well as the others in the village. Nor can they pray inside the temple of their religion. If they sleep in the home of someone not of the same caste as them, the house is considered contaminated and has to be purified. They cannot even touch someone without being accused of trying to curse or bring bad luck upon them, let alone marry someone not of their kind.

They are the Dalits, those considered so low in the hierarchy of the South Asian caste system that they do not even belong to a caste.

Dalit rights activist, Anita Pariyar, delivered a talk at a Human Rights Training Session in Sri Lanka on November 17, organized by the Asian Human Rights Commission (AHRC) about how Dalits wish to be released from the oppressive and discriminatory social chains that condemn them to remain at the bottom of society, force them to perform the worst jobs, receive the lowest wages, walk long distances to collect water from remote wells away from the villages, castigated and shunned by the higher castes in their society. She focused particularly on the difficulties faced by Dalit women in Nepal and the few organizations trying to advance their situation. Pariyar, a Dalit herself, described

Nepal has signed the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), yet very little is being done by the government and other Nepalese institutions and organizations to eliminate the severe discrimination against Dalits in the country. The few Dalit organizations, including the Feminist Dalit Organisation (FEDO) that Pariyar belongs to, are facing many obstacles and much resistance when trying to conduct their work, including basic things like landlords refusing to rent office space to them because they are Dalits.

Pariyar pointed out that women in general are vulnerable to discrimination in Nepal. She said "Women have no status, no identity, no dignity." If the situation is so bad for women in general in Nepal, one can only imagine how bad it is to be a Dalit woman.

Dalit women are often raped by higher caste men because they

know they can get away with it with impunity. Few police officers are prepared to arrest higher caste men for sexual abuse of Dalit women - it is of course ironic that it seems acceptable for these men to touch a Dalit when it comes to raping her.

At the same human rights training session was former UN Special Rapporteur on Violence Against Women, Dr. Radhika Coomaraswamy. She described the level of progress made in pressuring governments around the world to ratify and implement CEDAW over the last ten years. This is a very comprehensive convention, which covers everything from employment rights, education rights, reproductive rights and family rights.

Coomaraswamy also talked about how they worked on formulating conventions to criminalize violence against women, including sexual violence against women in war, trafficking of women for prostitution, domestic violence and physical and mental violence against women in the name of cultural and religious practices. She reported various levels of success in these fields, with most progress being made in establishing that sexual violence during war is considered a crime against humanity and bringing the issue of domestic violence into the public debate. Trying to change ingrained, gender abusive cultural and religious practices, however, has met with huge resistance.

Caste discrimination against women is one such case, where people who stand to lose a degree of power and domination in their society - i.e. higher castes and men - cite ancient mythology, sacred religious texts and old traditions to defend the status quo.

The ten-day human rights training workshop, conducted by the AHRC, has made it clear to all participants that the most important aspects of human rights activists' work is to focus, not on high-flying theoretical concepts, but rather on giving a voice to the voiceless in each of our countries, to the lower castes and Dalits, the poor, women, children and vulnerable minorities. We need to bring urgent public attention to individual human rights abuse cases and thereby trigger policy changes. More than anything, we need to listen and learn from the stories of hardship and experiences of abuse told by the ordinary people and then campaigning tirelessly by telling these stories to the world to bring redress to the victims

The of women and girls in the name of honour continues unabated in Pakistan



The state watches on while millions are held hostage to this 'tradition'
It is time to stop this conspiracy of silence

Human Rights Education Forum-Pakistan Asian Human Rights Commission-Hong Kong
www.ahrchk.net

Honour Killings

One particularly gruesome consequence of uncontrolled gender discrimination permeating all levels of public and private spheres in Pakistan is the ongoing practice of honour killings

About 2000 women are killed every year in Pakistan in the name of protecting the honour of the husband or the family of the woman. Often it is the husband or close family members who kill their own wife, daughter or sister, while police stand by passively applauding the atrocity. The judicial system is so gender biased that prosecutors and judges often take the side of the murderer and treat him as a hero who stood up for honour and tradition against a wayward woman who deserved the ultimate punishment. Even many members of Parliament vehemently oppose any government motions to combat the trend.

Iqbal Detho, Secretary-General of Amnesty International in Pakistan and the Human Rights Education Forum, held a talk and screened a extremely distressing documentary on the subject at the workshop.

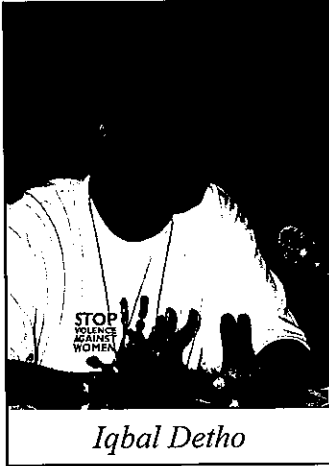
Following is a report by Iqbal on honour killings in Pakistan:

Tradition is Stronger than the Law: a report on Honour Killings

“Honour killing” has been an old custom in this part of the world. Everyday incidents of “honour killings” are reported, particularly in upper Sindh Province. A consensus has evolved in civil society that there is a dire need to devise a comprehensive strategy aimed at tackling this pernicious problem. Moreover, realisation has been increasing in

state institutions to take corrective measures and effectively counter this deplorable custom.

This brief report highlights the most common causes of "honour killings" and looks at the prevailing legal system and the role of state institutions in their failure to deter perpetrators of unabated "honour killings." It further makes appropriate recommendations for safeguarding hapless women against brutal murders committed in the name of "honour."



It is a pity that so-called "honour killings" continue to be reported daily, taking place at an alarming rate in Pakistan and with virtual impunity in the garb of tradition. The killing of girls and women is simply brutal murder, leaving no room for an alternative explanation of the culture or traditions. Even if the tradition had certain norms in the past, this rationale does not preclude tradition from being shaped by new realities. Furthermore, this "honour" system derives from tribal traditions in Pakistan, which are in conflict with other traditions in national life, such as

Islam and liberal democracy.

There is no denying that it is the foremost duty of the State to ensure the protection of the universally recognised fundamental rights of its citizens, including the right to life. The government of Pakistan has positive duties in this connection. The government of Pakistan in the past few years under President Pervez Musharraf has taken some positive steps. Some courts have made progressive rulings benefiting women and have officially condemned these gruesome acts of "honour killings." However, there is an immediate need to focus on this issue with even more sincerity.

The steps required to eradicate the menace of *karo-kari*, or "honour killings," are well within the powers of the government and do not require a large investment of resources but do require political will and the determination that all of these abuses must no longer be tolerated. For this, apart from the government, everyone has a part to

play - political parties, religious groups, all elements of civil society and individuals. Everyone has a responsibility to commit themselves to the equality of all human beings, irrespective of gender, age and social status.

Causes of 'Honour Killings'

Historically Unequal Power Relations;

Political, economic and social processes that have evolved for centuries have kept men in a position of power and have effectively made women second-class citizens. This social hierarchy has resulted in laws and practices that politically and economically put women at a disadvantage.

Control of Women's Sexuality:

Traditionally, women have been subjected to intimidation and grave violations of their physical and mental integrity by members of their families as well as groups and institutions in the community in order to control their sexuality.

Cultural Ideology:

Culture defines gender roles. While some cultural ideologies promote women's rights, conversely, there are customs, traditions and religious values in many societies that are used to justify violence against women.

Doctrines of Privacy:

The persistent belief that violence against women within the family or intimate relationships is a private matter has permitted the practice to continue without hindrance. It is alleged that the State itself enforces the control of women through a legal system that discriminates against women, such as family laws, like those related to marriage, inheritance and custody, and criminal laws.

Government Inaction:

A lack of action on the part of governmental institutions to prevent and end violence against women makes them complicit in the violence and creates an environment where perpetrators act with impunity. Government

negligence establishes a tolerance of violence against women that creates a culture of silence, discouraging women from seeking support and protection from the State and its agents.

Tribal Justice System or the Jirga System:

In most parts of the country, disputes related to *zar* (money), *zin* (women) and *zameen* (land) are settled by conflicting parties in a traditional tribal justice system, or *jirga*, which has become a parallel justice system affecting the rights of women. Usually the *jirgas* are male-dominated, and there is no representation of women permitted. Even when women are the victims, they are not heard, and hence, it is discriminatory in nature.

Gender Bias in the Law:

Although Articles 7 and 25 of the 1973 Constitution explicitly define the equality of women with men and their entitlement to equal protection of the law and with equal opportunities disregarding sexual orientation, the law of *qisas* (retaliation of a similar nature) and *diyat* (compensation) covering offences relating to physical injury and murder does not conform to these standards. Section 302, a penal section for the offence of murder, is a compoundable offence. Usually the accused and the heir of the victim are close relatives. Hence, they are bound to compromise. As a result, the compoundability clause is widely abused to the disadvantage of women who are victims.

Gender Bias of the Police Force:

It is generally believed by human rights activists that no steps have been taken to correct the widespread gender bias of law enforcement personnel, particularly the police, which in some cases may resent and resist filing the victims' complaints and misrecord their statements, which is the primary basis of criminal proceedings.

It is also alleged that the police sometimes act as guardians of traditions and customary morality instead of performing their task when, for instance, husbands appear in the police station with their bloodstained weapons declaring proudly that they have killed their wives.

Recommendations:

The government should recognise women's rights as universal, indivisible, inalienable and integral. The government should guarantee the equality of women in the Constitution and statutory law of Pakistan and should meet its international obligations, like those contained in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), which the government of Pakistan has ratified, that oblige the government to take due diligence to prevent, investigate and punish violence against women and girl children.

The government needs to take measures in the following three areas to eliminate the menace of "honour killings" and to effectively deter perpetrators of this gory crime against humanity:

- * Legal measures, including penal sanctions and compensatory provisions, to protect women against honour-related violence
- * Preventive measures, including educational and media strategies, that will contribute to overcoming discrimination against women
- * Protective measures, including victim counselling, rehabilitation and support services, like shelter for women at risk of honour-related violence

As a first step, the government should firmly, publicly and unequivocally condemn violence in the name of "honour" and should send an unambiguous signal that such violence will not be tolerated. Moreover, the government should also make it clear that anyone taking the law into their own hands to injure or kill another person in the name of "honour" will be brought to justice.

Legal Measures:

- * Undertake a review of the criminal laws, and enact any amendment to ensure equality before the law and extend equal protection of the law to women, including the law of *qisas* and *diyat*, the Evidence Act and the Zina Ordinance
- * Exempt murder from compensability when it is committed for the motive of "honour killing" to avoid its misuse, for, as mentioned above, murder is a compoundable offence in accordance with the Qisas and Diyat Ordinance

- * Amend the law to define a new offence of murder in which the motive is "honour killing," which will deny the culprits the benefit of compensability
- * Adopt legislation which makes domestic violence in all its manifestations a criminal offence, and ensure that all law enforcement officers, police personnel and judicial workers are made fully aware of the obligation to enforce it
- * Provide women who are subjected to violence with access to the mechanisms of justice, to just and effective remedies for the harm they have suffered, and inform women of their rights to seek redress through such mechanisms
- * Consider the adoption of legal reforms in the areas of criminal and family law that were recommended by the Commission of Inquiry for Women in 1997 (Justice Nasir Aslam report)

Preventive Measures:

- * Undertake wide-ranging public awareness programmes through the media, the education system and public announcements to inform both men and women of women's equal rights
- * Provide gender sensitisation training to law enforcement and judicial personnel in particular to enable them to impartially address complaints of violence in the name of "honour"
- * Ensure that data and statistics are collected in a manner that ensures that the problem of "honour killings" is made visible

Protective Measures:

- * Ensure that human rights activists, lawyers and women's rights groups can pursue their legitimate activities without harassment or fear for the physical safety of themselves and their families by providing adequate police protection to those exposed to threats and harassment as well as to public and privately run shelters (Panah Gahs) for women
 - * Expand victim support services provided by the State and non-governmental organisations (NGOs), which should be operated as places of voluntary recourse for women.
- Ms Hidayat is one such victim of honour killings. She was only

30 when she was murdered, allegedly by her husband. Here is the Urgent Appeal sent out by the AHRC on her case:

PAKISTAN:

A young woman killed by her husband on the pretext of honour killing

URGENT ACTION URGENT ACTION URGENT ACTION URGENT ACTION
ASIAN HUMAN RIGHTS COMMISSION - URGENT APPEALS PROGRAM

8 March 2004

UA-28-2004: PAKISTAN: A young woman killed by her husband on the pretext of honour killing

PAKISTAN: Honour Killing; Violence against women; Rule of law

Dear friends,

The Asian Human Rights Commission (AHRC) has received information that a 30-year-old woman named Ms. Hidayat was allegedly killed by her husband, Mr. Momin Ali Mahar in Dal village, Lakhi Ghulam Shah Town, Shikarpur District, Sindh Province, Pakistan on 29 February 2004. The case was registered at the Chak Police Station. However, a human rights organization reported to AHRC that police inaction was worried and the incident might be disposed compoundable under the Ordinance of Qisas and Dayat. (According to the Ordinance of Qisas and Dayat, if the offender provide compensation to the victim's family as they claimed, the offender can be released without any punishment.) In many cases of honour killings, the victim's family often compromises with the accused according to the Ordinance of Qisas and Dayat after receiving big pressure from the society.

Your urgent action is required to pressure the local authorities to conduct impartial investigation in this matter and punish the perpetrator as soon as possible.

Urgent Appeals Desk
Asian Human Rights Commission (AHRC)

DETAILED INFORMATION:

Name of the victim: Ms. Hidayat, 30, married with two children
Alleged perpetrator: Mr. Momin Ali Mahar, a son of Umar Mahar and the victim's husband, the farmer
Date of incident: About 2:00 am on 29 February 2004
Place of incident: Dal Village in Lakhi Ghulam Shah Town, Shikarpur

District, Sindh Province, Pakistan

Case details:

It is reported that Ms. Hidayat (30 years old) was allegedly killed by her husband, Mr. Momin Ali Mahar on 29 February 2004 after a quarrel while both were working in the field. The First Investigation Report (FIR - Case No.20/2004 sanction 302 PPC) of the incident has been lodged by the victim's father, Mr. Karim Dino Mahar at the Chak Police Station at the same day.

In the FIR, Mr. Karim Dino Mahar stated, "My daughter Hidayat got married to Momin Ali Mahar, my nephew and son of Umar Mahar about 10-12 years ago. My son-in law is a farmer and Hidayat used to work with him in the field. Early morning of 29 February 2004, I was working with my two sons, Qalandar Bux and Dilawar in the field. Momin Ali Mahar and Hidayat came to work at their field located near to mine. I saw my son-in-law had a single-barreled-gun in his hand. They worked at the field for some time and at about 2:00 am, they started to quarrel each other. Then Momin Ali Mahar pointed the gun at my daughter. She ran to our side but Momin fired at her and she fell on the ground. I ran to my daughter along with my sons. When we reached the scene, we saw that she was bleeding with injuries on her left buttock. In the meantime, my son-in law had fled. We took her to the Chuk Hospital immediately but she died at the hospital."

The domestic quarrel is outward cause of the murder. However, according to our source who communicated with the victim's relatives and village neighbours, the allegation of honour killing is the underlying cause of the murder. It is unknown about the details of the allegation and if the allegation is true or not.

A human rights organization reported that the case might be disposed compoundable under *the Ordinance of Qisas and Dayat* as usual. *Dayat* (law of compensation) and *Qisas* (law of retaliation) refer to the cases of bodily injury or loss of life. The punishment of the murder case is death or imprisonment by Pakistan law. But according to *the Ordinance of Qisas and Dayat*, if the guardian of the victim forgives the offender and the offender provide compensation to the victim's family or guardian as they claimed, the offender can be released without any punishment.

In Pakistan, the practice of honour killings appears that any action, real or fabricated, if deemed by the family as compromising their honour, may be considered a valid reason to commit murder. While illegal according to national laws and inconsistent with Islamic doctrine in both the Koran and Sharia, the lack of consistent positive action by Pakistani law enforcement agencies and the seemingly commonplace belief in the practice of honour killings, facilitate this inhuman practice.

Moreover, the decisions of such cases are frequently taken by the landlords (tribal court) rather than by the courts of law. In their decisions they impose heavy fines

to the accused male (who allegedly had any relationship with the victim) and the killer receives a light penalty considering that they committed murder to protect their 'honour.' Even though the honour killing case goes to the legal court, the victim's family often receives big pressure from the society to compromise with the accused according to *the Ordinance of Qisas and Dayat*. Therefore, it is difficult for the victims of this case to expect fair trials and justice.

SUGGESTED ACTION:

Please send a letter, fax or email to following addresses and express your concern about this serious case. Stress them for the quick arrest of the accused.

1. Hon. General Pervez Musharraf
President of Pakistan
2. Hon. Mr. Ishrut-ul-Ibad Khan
Governor Government of Sindh
3. Mr. Sayed Kamal Shah
Provincial Police Officer, Sindh Police
4. Mr. Rahoo Khan Brohi
Regional Police Officer, Sukkur Region
5. Syed Sultan Shah
Joint Secretary for Law, Justice and Human Rights
6. Ms. Yakin Erturk
Special Rapporteur on Violence against Women, OHCHR-UNOG

Sample letter:

Re: A young woman killed by her husband on the pretext of honour killing

Name of the victim: Ms. Hidayat, 30, married with two children

Alleged perpetrator: Mr. Momin Ali Mahar, a son of Umar Mahar and the victim's husband, the farmer

Date of incident: About 2:00 am on 29 February 2004

Place of incident: Dal Village in Lakhi Ghulam Shah Town, Shikarpur District, Sindh Province, Pakistan

I am writing to bring to your attention the killing of Ms. Hidayat (30 years old) by her husband Mr. Momin Ali Mahar on 29 February 2004. According to the information I have received, the victim was allegedly killed by her husband on the pretext of honour killings. The incident was registered at the Chak Police Station for further investigation, however the victim's family is worrying police inaction to arrest the murderer.

In Pakistan, although honour killings are illegal according to national laws and inconsistent with Islamic doctrine in both the Koran and Sharia, the



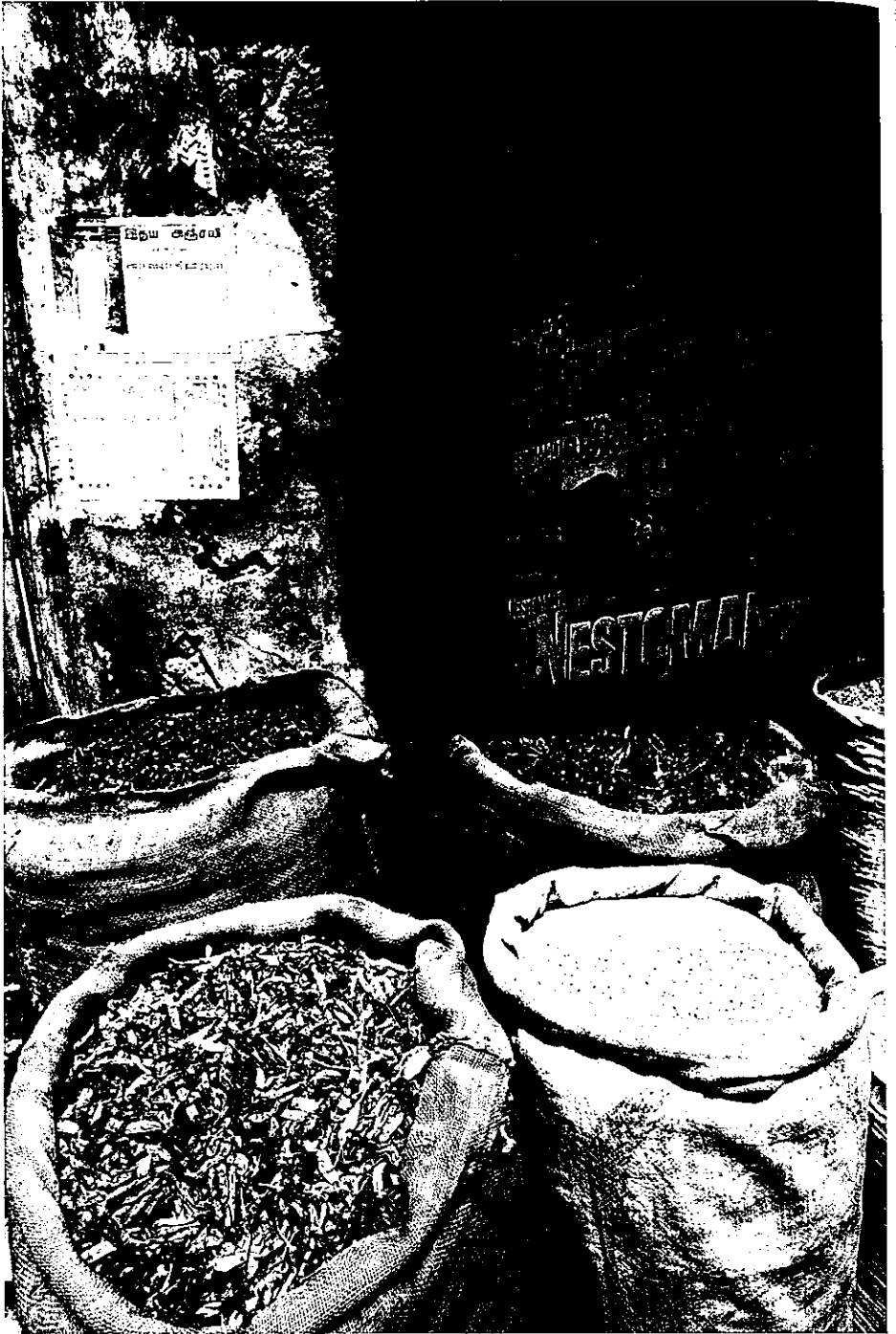
government of Pakistan has failed to eliminate honour killings due to the lack of consistent positive action by Pakistani law enforcement agencies.

Article 2(e) of Convent Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which government of Parkistan is a state party, requests the state government to undertake all appropriate means without delay to eliminate discrimination against women by any person, organization or enterprise. Article 2(f) of CEDAW further mentions that the state government should "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women".

Therefore, I strongly urge you to order a through and impartial investigation into this serious case and bring the perpetrator to justice as soon as possible. I also urge the government of Pakistan to take strong measures to stop tribal courts and ensure that the victims get fair trials and justice. Usually, the decisions of honour killing cases are taken by the landlords (tribal court) rather than by the courts of law and the killers frequently received a light penalty. The government of Pakistan also have to take all possible measures to abolish custom of honour killings by declaring honour killing a "crime" and creating legal provision to prohibit it.

Sincerely yours,

Thank you.



Freedom from Hunger

The right to food is an integral part of the UN Covenant on Economic, Social and Cultural Rights. Nick Cheesman of the AHRC talked about the issue to highlight certain misconceptions about the availability of food. Normally hunger in Asia is not due to natural disasters or the lack of land, water or resources but rather that people are denied access to it. There is a direct link between military rule and the lack of food; government intervention prevents people from accessing food. It is often a question of the breakdown of the rule of law.

Nick used the example of Burma to highlight the connection between military dictatorship, the breakdown of the rule of law and the lack of access to food. Here is one of AHRC's recent reports:

Hunger still rampant in Burma

Burma is a fertile country with abundant resources. In years gone by it was said that nobody ever starves in Burma. This has long ceased to be the case. Evidence suggests that every day millions of people there go hungry, hundreds of thousands are seriously malnourished, and that some are indeed starving. This May,



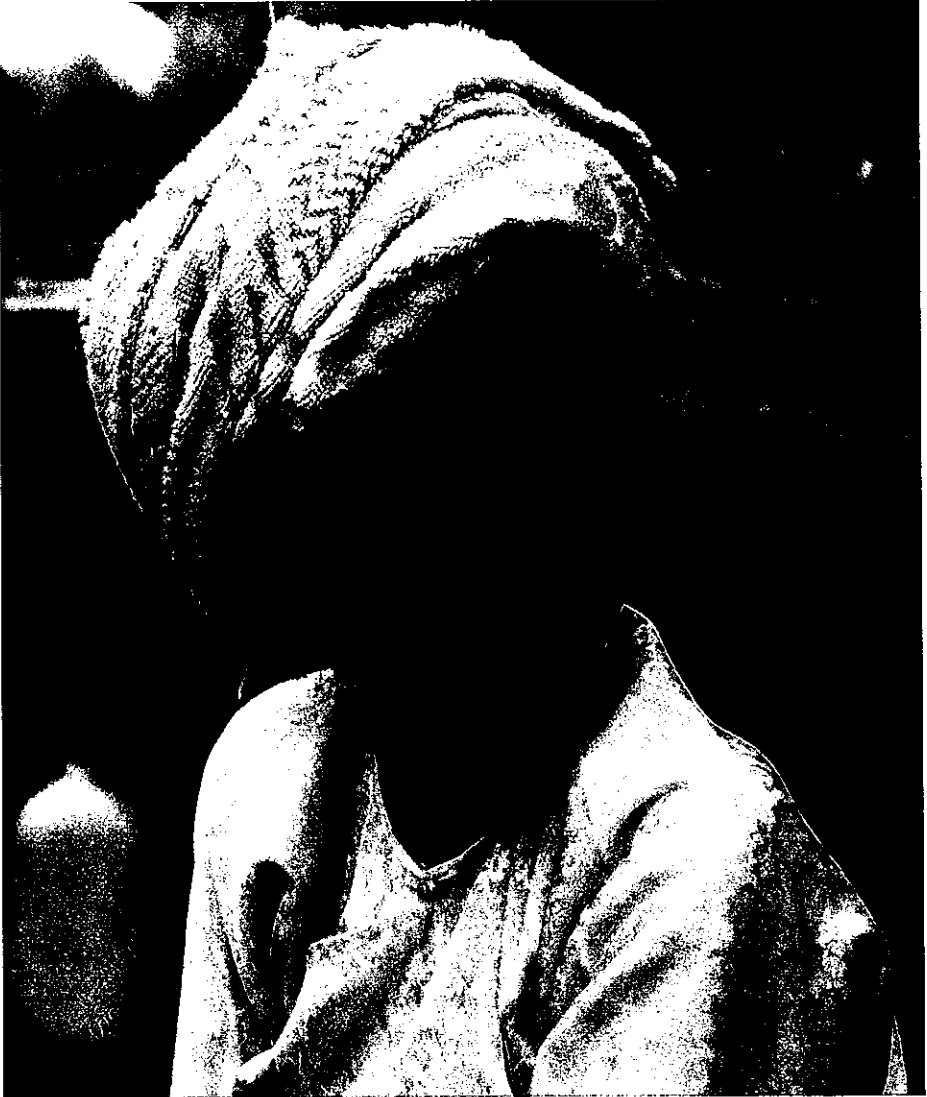
with the launch of the Permanent People's Tribunal on the Right to Food and the Rule of Law in Asia, attention has again been brought to the role of the military government in Burma in denying people the right to food. Extensive research by the secretariat of the new Tribunal suggests that conditions there have not improved since the report of the earlier People's Tribunal on Food Scarcity and Militarization in Burma (*Voice of the Hungry Nation*, October 1999).

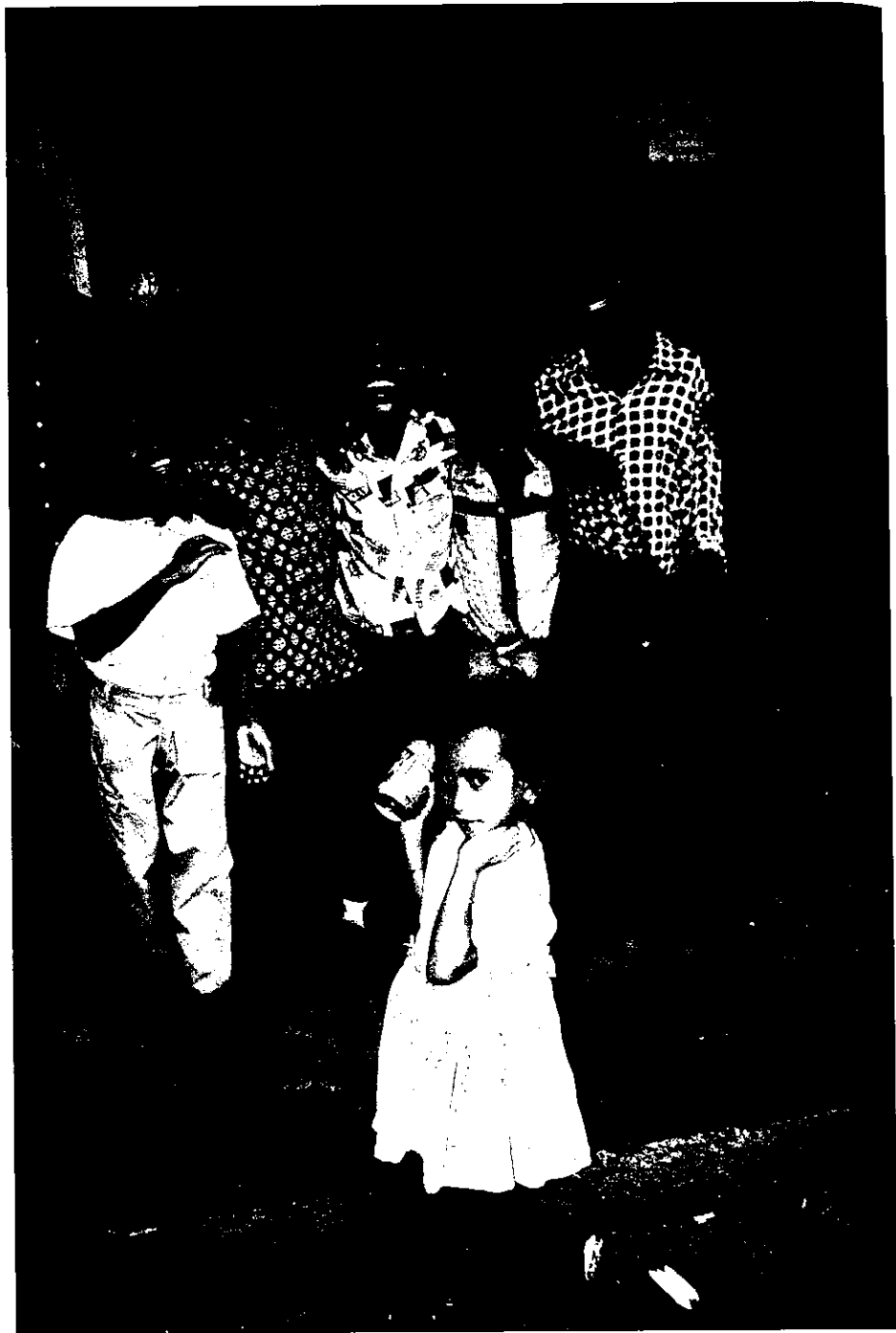
In 2003, a villager in the east of Burma displaced by army operations feels both hunger and the absurdity of going hungry in this land of plenty. Speaking with embarrassment, he tells a researcher, "We can't even feed our own children. I don't like to say such things... I'm a man, but I can't even feed my children." An historian in the capital suggests that religious ritual won't bring economic and social prosperity, and is promptly blacklisted by the authorities. A farmer in another region failing to supply sufficient rice to the authorities is hospitalized after being tortured by the police.

That police can torture a farmer as punishment for a poor crop speaks to how utterly perverted 'law enforcement' becomes in the hands of an authoritarian government. It also points to the universality of rights. In Burma, where every state directive is aimed ultimately at ensuring the supremacy of the armed forces, food is denied through state-managed violence. Torture is used to obtain rice. Fear is instilled to deprive people of basic economic rights and retard their capacity to react. Denial of the right to food is the corollary of the non-rule of law. The fight against the torture of a farmer, the silencing of an historian and the dislocation of a villager is concomitant with the fight to create and maintain the space necessary to struggle for adequate food.

In October 2000, the government of Burma established a human rights committee chaired by the Minister for Home Affairs, Colonel Tin Hlaing. The committee hasn't been heard of much since, despite its ample sub-committees, training programmes conducted by foreign 'experts', and occasional workshops. The Asian Human Rights Commission would be interested to know the position of the committee on the massive violations of economic and social rights in Burma. It would like to ask its chairman what he is doing. Two and a half years of silence are long enough: the credibility of any human rights committee, and its partners,

rests on practical monitoring, reporting and preventing of human rights abuse, not least of all, violations of the right to food. So again, what is the committee doing? The people of Burma need to eat today.





Protection of Children

The UN Human Rights convention on the Rights of the Child was also covered in the workshop. Consequent to that discussion the Sri Lankan participants planned a public hearing on the torture of children, taking into consideration the large number of children whose rights have been violated in the country. This is a report from the hearing.

A public hearing on the torture of children, Sri Lanka

The public hearing it describes reflects the growing outrage at torture committed by the police in Sri Lanka.

On 9 December 2003, eight children gave evidence at a public hearing held in Colombo, Sri Lanka. The presiding panel consisted of two well-known lawyers and a torture victim. The purpose of this public hearing was to provide an opportunity for children and their families to express their grievances openly regarding torture. In previous months, many cases of children being tortured at Sri Lankan police stations have surfaced. This shocking phenomenon has not received the special attention it deserves; this hearing was an attempt to channel public attention towards this important problem.

At the hearing, the victims themselves together with their families expressed their grievances. The forum also provided an opportunity to

other individuals, institutions and groups to express their views. After a four hour session, the panel gave its concluding observations, stating that all child victims were from poor families and were completely innocent. The police who had committed torture appeared to be acting on the instigation of influential persons. The victims were not treated as children by the police, but as criminals. The state agencies, including the National Human Rights Commission, have completely failed to provide any assistance to these children. The only assistance came from a number of committed civil society groups.

The event was organised by Janasansadaya, People against Torture, Families of the Disappeared, Setik, Rule of Law Centre, and Home for the Victims of Torture, as well as several other organisations, in collaboration with the Asian Human Rights Commission.

The panelists were Sunil Cooray, a Senior Attorney, former president of the Vigil Lanka Movement and author of a text on administrative law in Sri Lanka; J.C. Weliamuna, a Senior Attorney and the Chairperson of the Sri Lankan Chapter of Transparency International; and Grissha de Silva, a hotel manager and a torture victim who was subjected to torture out of mistaken identity.

The meeting hall was packed and the audience reacted strongly to the stories that were related by the child victims.

Mr. J.C. Weliamuna made the concluding observations after listening to the victims, their mothers and also comments by the audience. The summary of his observations is as follows:

- a) All the victims were from poor families.
- b) All the children who gave evidence were arrested for no reason.
- c) Even after torture, the police could not find any evidence against the children.
- d) At the time of committing torture, none of the policemen involved were wearing their uniforms.
- e) The higher-ranking officers of the police are quite aware that their subordinate officers engage in torture, but do not take any serious action to prevent such practices by junior officers.
- f) There are third parties involved, including the wealthy, the Mudalali class, politicians and the like, who encourage the police to torture. In return the police receive power, money and support from these groups.

g) The service rendered to the victims by hospital authorities when they sought medical assistance is highly questionable. Those authorities failed to fulfil their professional obligations and often also failed to report the torture to the legal authorities. Instead, they appear to work hand in hand with the police.

h) The victims do not appear to trust state organisations such as the National Human Rights Commission and the National Police Commission. The National Human Rights Commission takes months (and sometimes years) before addressing and acting upon human rights cases. It also frequently advises the victims to take their cases before the Supreme Court. This places the victims in a tight corner against the perpetrators. Additionally, the National Police Commission has failed to put into

place the intended public complaint procedure for the entertaining of, inquiring into and providing of redress for complaints against the police.

i) People turn to NGOs for help, and in all these instances it was the NGOs that took the initiative to protect the rights of these persons.

The observations of the panel clearly point to the police implicating innocent children without any reason other than the fact that they come from poor families. The question then is why such a choice is made; for some reason, the police do not want to arrest the actual culprits and so try to find substitutes. The next question that arises is why would the police fear to arrest the actual culprits? It is not difficult to suggest some answers:

1. The real culprits, if they are interfered with, may retaliate in a dangerous way against the police. There is no such danger if the victims are innocent and powerless persons.
2. The real culprits may bribe the police, which the poorer victims are unable to do. Also, believing in their own innocence, the victims may



Wong Kaishing

feel that by stating their innocence they will be released. It is only later that the poor victims realise the cynical reality of what they have experienced.

3. The actual culprits have social connections; it is commonly said that local politicians intervene on behalf of such persons, as they are supporters of various political parties.

4. Within the social fabric of a Sri Lankan village, there is a close association between the police and 'more important persons', which can even include local monks or priests. None of these persons intervene on behalf of the poorest in their community. Often, the plight of the poor and their families is ignored.

5. Even if the real culprits are actually caught, they are able to obtain legal services quite quickly. Lawyers and others with influence make representations to higher authorities quite efficiently. The poor do not have access to such services.

6. In short, police officers feel assured that there are no repercussions if they harass the children of the poor. Thus there is nothing to restrain them from doing whatever they wish to these persons.

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Urgent Appeals, UN Mechanisms

A very important aim of the workshop in Wattala was to discuss how we could all work better together. How we can become stronger by way of cooperation. It is true that most of the work in human rights work must be done locally – with local grassroots groups who know the people and the community and which have close contact with the victims of abuse. Often, however, these groups can benefit from help from the outside. They may be intimidated and threatened by local authorities and police that do not like what the groups are doing. The victims may be too scared to talk or contact the local organisations for fear of further abuse.

The AHRC has developed a mechanism called Urgent Appeals, which can generate very quick and efficient results by pressuring authorities into action from the outside. Soo A Kim, who is in charge of Urgent Appeals in AHRC's Hong Kong office, told the workshop how it works.

AHRC has developed contact with local organisations around Asia. When a human rights violation has occurred and quick action is essential, for instance in cases of torture, unlawful detention, unlawful eviction or extra-judicial killings, facts will be gathered locally and sent to AHRC's office in Hong Kong. The Urgent Appeals desk will write a letter – including the facts of the case, background information to place the case in a context, and proposed action (usually to write to local and national responsible authorities to voice concern and demand action). The letter will be sent to a network of groups and individuals around

the world, reaching as many as 200,000 people, who will send hundreds of faxes and emails within 24 hours. The sudden intense international attention directed at an individual human rights violation often pressures authorities into action.



Soo A Kim

An exercise was performed during one of the last days of the workshop where the participants interviewed victims – in this case families of the disappeared - after which they practiced writing Urgent Appeals based on their interviews. They learned of the importance of getting as much and as detailed information as possible without exaggerating the cases or using emotional language. Many of the participants have since started to use the Urgent Appeals mechanism to improve results in their local groups and, as a result, many victims have been spared more serious or prolonged violations.

The Urgent Appeals cases are also used by NGOs in their interaction with UN bodies dealing with human rights violations. AHRC uses the cases publicised in Urgent Appeals when preparing Shadow Reports and statements to present to the UN Committees and UN Commission on Human Rights in response to government's propagandistic country reports. Shadow Reports are very important in showing the UN Committees what is really going on in the country as the governments will try to paint as positive a picture as possible to the UN to avoid criticism. At the workshop, it was emphasised how important it is to keep actual cases and clear simple language at the centre of the reports, rather than resorting to the vague, complicated and abstract language that is so common in UN reports. The reason is the lack of knowledge, the distance and emotional detachment these bodies have of the real situation of the local ground level. As NGOs working in intimate connection with the victims of human rights violations, we do not have that distance.

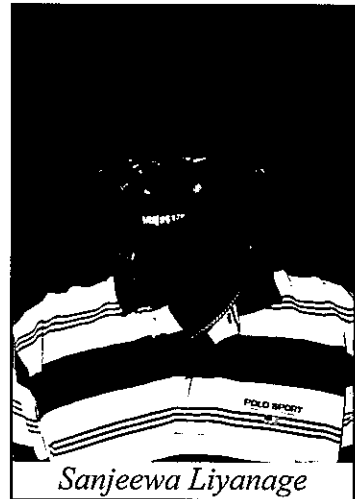
UN Committees make recommendations for improvements and monitor the progress of governments and states in implementing laws

and improve their records. The Committees rely heavily on information from NGOs for these recommendations, so it is very important for NGOs to be familiar with how these mechanisms work. Sometimes it may be better for small and local NGOs to prepare reports together with other NGOs to make the reports stronger or to request the help of an organisation like the AHRC which has experience and the technology to deal with the UN.

Individual cases of human rights violations can also be taken directly to the UN Human Rights Committee if the country has signed the ICCPR and the additional Protocol if local options of justice have been exhausted without result. The Committees can only recommend action to governments but the international pressure is sometimes useful to get results.

Most Asian countries have signed and ratified the majority of the UN's international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of all forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and other Cruel, Inhuman Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC).

The contents of these treaties were discussed at the workshop and the ways which Asian countries failed to live up to them, as well as ways to put pressure on states to bring local legislation in line with the treaties and make them realities. Many states in Asia and around the world have used the American War on Terror as an excuse to reduce the implementation of the treaties on human rights rather than improve them. It is now the task of local groups to mobilise the people to work to protect their rights from the onslaught of state abuse.



Sanjeewa Liyanage



Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) reads as follows:

PART I

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.

PART II

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 legislative 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 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 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

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.

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 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.

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 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.

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.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

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.

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) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

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

4. In the case of juvenile persons, the procedure shall be such as will take account of

their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

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 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.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

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.

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 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

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.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

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.

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.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons.

These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1.

(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present

Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information. 7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46 .

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by

the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.



Response of participants

Some of the participants in Wattala wrote to express their views on the success of the workshop. **Pornpen Noi**, from the Asian Forum for Human Rights & Development wrote the following:

The 30 Asian participants from various human rights organisations joined this year a 10 days study session with participants from South Asia, Southeast Asia, East Asia and local participants from Sri Lanka.

The main issues were UN human rights mechanisms, introduction to CAT, economic social and cultural rights, women's rights, rights of the child, national human rights commissions and national police commissions.

The study sessions also emphasised the human faces and voices behind the victims, practical skill approaches in working in this human rights field. We met a victim-based group on disappearance and tortured victims. We experienced interviewing victims and conduct fact-finding with the victims. The basic components of urgent appeals and writing urgent appeals were taught.

The participants got to work on case studies. The participants have learned how to use and apply HR principles in practice in order to highlight or campaign on issues more effectively with the skill and



Pornpen Noi

networks that have been established.

Besides that, we learned about activism in soul and heart from Basil.

I always think about human faces and people's voices.

I cried with the parents of disappearances while we were talking about their stories.

I thought about the parents and kids of 2000 killings in Thailand during the drug wars in 2003

Thanks for all.

Rita Melecio, from the Taskforce Detainees of the Philippines, wrote the following:

The workshop held in Wattala and the methodology used is very useful to me. I've learned a lot especially in sharing of experiences. It made me draw some insights about human rights work. I know it is not an easy task but dealing with people and serving them especially the less fortunate ones is inspiring and fulfilling. I have gained some ideas and it adds more impact to my work.



Rita Melecio

One thing that especially touched me was the encounter with victims of human rights violations, especially tortured victims. Their eagerness to pursue in filing a case against their torturers in the face of harassment and humiliation. Here in our country, we had a hard time convincing victims to file a case in court, especially when it involves military and police officials.

I thank you for the opportunity.

Hou Yi, from the Legal Aid and Protection Centre of Zhongnan University of Economics and Law in China, gave these comments about how she experienced the workshop:

Till today I have always felt so excited and impressed when I talk about the ten days in Sri Lanka to friends and colleagues. Though it's a little extreme to say the ten days changed my mind on some topics we discussed completely, it certainly gave me a completely new angle of view to observe what are really effective and useful manners to respect and protect human rights. With my limited experiences, it's my first time to participate in a course like the one in Wattala. There was no formal class. We spent most of the time talking with officers, NGOs, and victims. But I have to admit each talk had its unique connotation and illumination to all of us, which was more powerful than any normal class. Also there were no formal teachers, but each person who shared his experiences or stories with us was obviously a competent teacher who touched my soul. I believe it is a good chance that now I can write down my memory and impression in Sri Lanka when they are still so alive. Here again I want to show my most genuine appreciation to AHRC.

One of the most valuable achievements, in my mind, is that the ten days offered a window through which participants can see with their own eyes and hear with their own ears and understand diversified situations of human rights protection in Asian countries that have somewhat similar social problems. Not all experiences of other countries are definitely applicable in my country since the economic and social background and environment is different. However the really important meaning is that I have acquired a comparative eye-sight to view human rights works in China. The workshop has shown me that excellent work and research cannot be undertaken by limited minds. Local research without comparative angles on other countries will have an incomplete conclusion. Take myself as an example: before the workshop in Sri Lanka, I had never taken into account the situation and practices relating to torture in other countries. Accordingly, I self-righteously thought our prevention of torture and compensation of victims were satisfactory.

The ten days in Wattala gave me quite a personal feeling that we can fight against torture through organically meeting victims and their families, and communicate our experiences and shortcomings with people from different areas working for human rights. This not only makes a society more understandable to the foreign world which is increasingly important in such an international world, but also create

chances to envisage and summarise advantages and disadvantages of human rights work in our society. In this connection, there is almost a vacuum in China. We do have criminal or civil mechanisms to punish the perpetrators and compensate the victims of torture. Do we have public and formal communications with victims? Do we have a



Hou Yi

really responsible and serious conclusion to every torture case? Maybe this is part of the reasons for major difficulties to successfully prevent torture, that is, more and more people support victims and become fighters against torture. Therefore I would like to say that the most valuable workshop gave me a new perspective from which to view the present human rights works in my country, with comparative eyes. Though it is unscientific to use experiences from others uncritically, it is wise to compare different work manners and choose the best one.

Another thing I'd like to mention is that, though torture is a topic beyond my normal work field, I am deeply influenced by the work manners there in Wattala which I believe to be useful in our work. What touched me deeply in Wattala also influenced my colleagues. On returning from Sri Lanka I shared my feelings with my colleagues as detailed and as soon as possible. We began to ponder whether such a work manner can be adopted that have more discussions and communications with our clients or victim families and stimulate them to be self-conscious to protect their rights and fearless to fight against any violations.

Developments after the Workshop

As a result of the victims oriented approach of the Asian Human Rights Commission's human rights work, **Taufik Basari** from the Jakarta Legal Aid Institute, encouraged victims of various human rights abuse to formulate their own human rights charter. This is the result:

This Charter is a genuine charter, which comes from the heart of the victims of human rights violation in Indonesia. Reflecting from the victims' bitter experiences, they declare that they are human whose human rights have been taken away, who want to be treated as human beings with dignity.

The victims gathered and formulated the Charter at Jakarta Legal Aid Institute (LBH) on December 3 and 8, 2003. They comprise of labour unions, former political prisoners, victims of eviction, women groups, and individuals who demanded their rights as citizens.



Taufik Basari

Jakarta Human Rights Charter

That a civilised nation will always fulfill the rights of its citizens. These rights can not be disturbed by anyone, because these rights are blessings from Almighty God, which are attached as a person is born. All is obliged to respect, to appreciate, and, in this case, the state, to uphold the rights of its citizen through positive law as part of the improvement of human civilisation;

That rights for housing, land, health, jobs, education, freedom to assemble and speech, religious believe, and other rights declared within the Declaration of Human Right must be fulfilled by the state. The state must fulfill this fundamental rights without discriminating any groups, race, ethnic, cultural, religious or ideological believes;

That acts of ignoring, unfair treatment, cruel conduct, physical violence and/or mental, and anything that disadvantage the citizens, whether it is done by the state or not are forms of human rights violations. All victims of human rights violations has the rights to demand fair settlement through an open and transparent legal system, obtain compensation, name and dignity rehabilitation so that his/her dignity and status within the humane relations can be recovered;

That the awareness of citizens of human rights is the most important aspect in order to establish more civilised Indonesian people. This awareness must exist in each person, which the state must provide through the formulation of legal acknowledgement of human rights in the Constitution and its implementation in nation livelihood.

Citizens awareness and international community solidarity are imperative to ensure the adequate implementation of state's obligation in guaranteeing and protecting citizens' human rights. Since the Indonesian state is a member of the international community, Indonesia is obliged to ratify the International Covenant for Civil and Political Rights, the International Covenant for Economic, Social, Cultural Rights, and make the necessary laws, by-laws and regulations.

PROCLAMATION MONUMENT

Jakarta, December 10, 2003

Christine Susanna Tjhin, Researcher at the Centre for Strategic and International Studies (CSIS) in Jakarta, wrote an article for the Jakarta Post. The emphasis on torture, legal and police reform during the workshop inspired comparisons with the situation in her home country:

Torture, police and legal reform, democratisation

On Nov. 15, 2003, the National Commission on Human Rights (KOMNAS HAM) announced its preliminary findings about human rights abuses by the TNI and National Police in Papua. On the same day, cases of torture and judicial killings by the police in Maluku were also reported.

Torture cases have been “public secrets” for many years. Torture cases with differing gravity can be found in almost all police stations or military posts in areas of conflict all over Indonesia.

Let us clarify what torture means. Article 1 of the International Conventions Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) states that torture is “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person” by state apparatus (police, military and others). The purpose can be to obtain information or confession or to punish that person (or a third person). The person may have committed or have been suspected to have committed a crime. Coercion and intimidation to a point of grave suffering are also considered torture.

Such acceptance - prominent amongst state apparatus as well as the public - is indicative of how disturbing the mindset of the country is in disregarding the fundamental inherent dignity and equality as human beings, simply because one is a criminal. The increasing numbers, varieties and popularity of TV shows, such as: *BUSER*, *PATROLI*, *INVESTIGASI*, *DELIK*, etc, highlight this. Callous comments like, “Those criminals deserve that!” are not uncommon.

What can reduce crime is not the gravity of the punishment, but the certainty of the punishment. In Indonesia, the corrupt system has enabled most perpetrators with financial capacity to buy their way out of penalty thus corroding such certainty. Those without financial capacity would suffer multiplier effect. They either become scapegoats or objects

of exploitation and torture or symbols of “achievements” of the rule of law. The compromises of the system seem to be self-perpetuating. There is no equality before the law, not with torture practices still around.

The path of Indonesian democratization relies heavily in the police as well as civil society reform. Neither, unfortunately, has shown substantial performance despite the increasing numbers of legal instruments and institutions. The Indonesian government ratified CAT on Sept. 23, 1998 with some reservation by the enactment of Law No. 39/1999. Though CAT had been ratified, the law is not legally binding as it only asserts the ratification without addressing any plans/directions for implementation. The protection for citizen from torture cannot be done without comprehensive structural adjustment within the legislative, administrative and judicial system.



Christine Susanna Tjhin

Some fundamental steps can be done. Torture must be explicitly and clearly legalized as a crime through proper legislation of all regulations, in which principles of CAT could be incorporated. This explicit affirmation must be followed with the provision of potent punishment against perpetrators.

The administrative system, e.g. budget allocation, public office administration, etc, should also be consolidated as such that effective enactment of relevant laws could be done. Judicial mechanism - investigation, prosecution and punishment - must be in conformity with the principles of CAT.

. This article raises the importance of police reform due to some considerations. Firstly, the police are the most likely culprit behind most torture cases. In 2002, PBHI (legal aid agency) recorded that 60.16 percent of the 1,398 reported cases of civil and political rights violations by state apparatus was done by the police, while 20.67 percent was done by the military.

The second relates to the inherent role of the police. The police are

supposed to be the sole guarantor of domestic security and civilian safety. Police actions in the name of justice are the mirror of the community sense of justice. If torture is justified within the police corps, the culture of violence will profusely spread to the community.

The third relates to its specific role as investigators in judicial process, which must be conducted humanely, meaning not by applying torture as a means to gain information/confession/testimony, and professionally, meaning the process should be accountable that the police as the executor of judicial process would not manipulate the process so that it could benefit the perpetrators out of sense of loyalty to the force.

The fourth relates to the position of the police before the law. Law No. 2/2002 put the police judicial mechanism under the public criminal court. There is no specific provision for torture cases. The treatment of torture cases as regular criminal cases under KUHAP (351-357) implies distortion. "Normal" criminal cases are about citizen-citizen conflict. Technically, citizens are on equal position.

But torture is about police-citizen conflict, where the balance of power is different by nature. The police hold more power -- as they are assigned to take lawful actions in the name of public safety. Abusing this power must be avoided, thus provision of more severe punishment must be available. This is non-existent with the current system.

A respectable example of ongoing anti-torture movement and comprehensive reform can be learnt from the transition of Sri Lanka's democratization. Gruesome torture cases and disappearances proliferated and have been institutionalized in Sri Lanka.

Various human rights advocates in Sri Lanka took up the initiative to assist torture and disappearance victims, and generated the antitorture movement. One spark of the movement is the integration of CAT in the Law No. 22/1994 (20/12/94). This explicit legal enactment made it possible for the movement to proceed stronger. The second spark is the establishment of the Constitutional Council (CC) through the 17th amendment to the Constitution (03/10/01). CC is less prone to politicization compare to any other state institutions in the country. CC paved the way for comprehensive reform, one of which involving the establishment of the National Police Commission (NPC).

Transparency International Sri Lanka has long recorded the

police as the most corrupt institutions in the Sri Lanka due to the politization from political parties. NPC at the moment can manage to repel politization and has been handling the administration of the police. The credibility of NPC is still reputed in the public eyes, compare to the National Commission of Human Rights. NPC's main challenge is its lack of resources (finance and human). Sri Lanka still faces great trials as torture cases are still widespread. But to a certain extent, Sri Lanka is a couple of steps ahead with their reform. Nobody can guarantee that a similar gruesome situation will not occur in Indonesia. Already we have "similar qualities" in our country, though to a somewhat lesser degree, still they are there -- civil conflict, corrupt system, economic gap, police unprofessionality, politization of reform and human rights issues, etc. Starting from police reform is a good opening.

The recent separation from the military provides greater space for the police to reform. The presence of Law No. 2/2002 gives the police greater authority to operate, which also means greater responsibility and professionalism. It also opens chances for the public to monitor the police's performance though not really well balanced. This is the one essential aspect of police reform, especially if we link it to the blueprint of our own NPC, which is currently under scrutiny.



Professor Yang Songcai who attended the workshop in Wattala was instrumental in consequently organising a Consultation to the Police officers in Wuhan Province in China. One of the key elements in the program was the opportunity given to a victim of police torture to address the group. This was found to be a break through and the reaction of the participants was quite positive.

Close Contact With Victims

makes human rights work meaningful and effective

Statement by the AHRC and the participants of the workshop:

Thirty-eight persons from ten Asian countries gathered together at Wattala, Sri Lanka, from November 14 to 24, 2003, for the annual Human Rights School Session jointly organised by the Religious Groups for Human Rights and Human Rights Correspondence School programmes of the Asian Human Rights Commission.

During the session, the organisers aimed to bring the victims of human rights violations into close contact with the participants. This aim was achieved. The close contact was enlightening and profound. At times participants were in tears, listening to fellow human beings telling about unimaginable cruelties done to them by the guardians of law and order. The poverty of victims, their remoteness from urban areas, and perhaps low education were no barriers. The participants came to understand and respect the victims through common sense and insight into their real conditions.

The participants discovered that acts of gross human rights abuses remain fresh in the minds and hearts of victims after, in some cases, even more than a decade. The victims expressed satisfaction that after a long period of neglect they had the first opportunity to express themselves freely and narrate their ordeals. One father whose son was forcibly disappeared around thirteen years ago said that even up to this date no one has come and apologised for what happened. Such comments brought out a sense of how some terrible wrongs have not yet been

addressed. The participants realised that while they had heard and known of some things, they had not grasped them in depth. Many said that they hope to be more involved and more effective in offering support for the victims.

Throughout the session, participants discussed the need to build protective umbrellas through tight relationships with other support groups, linked by modern technology and closely connected to the victims. Without a protective umbrella the victims cannot fight for justice. Without strong support groups, victims have to keep their grievances inside themselves, or share them only within the privacy of the family and intimate friends. To make their complaints public they need to be assured of security. When it is the state agents who stand against their security, only civil society organisations can offer protection. Often, however, civil society groups forget this and concentrate on activities that fail to build real connections with the victims. When activists are disconnected and emotionally alienated from victims, they are unable to offer genuine support. If these persons are to promote and protect human rights effectively, they must overcome this condition. They can do this only by close contact with victims. There is a vast difference between symbolic links and token gestures and having a real connection with the victims.

In coming into close contact with victims, it is essential to realise that they are in a daily battle against those who have caused them grave injuries. The victims know their rights through the experience of their denial. They are well aware of what has been denied them. This awareness is much deeper and sharper than the human rights groups' awareness of rights based on intellectual knowledge. Recognising the primacy of the victims' consciousness of rights should be the starting point for any effective support. As it is the victims themselves who must take the steps necessary to solve the problems they face, without being aware of their profound sentiments a support group can do nothing. Support groups have to place themselves in relation to the victims. Where the defence of rights is characterised by a lack of respect for victims and their situation, it will result in superficial and meaningless responses. This school session proved that it is possible to abandon superficiality and engage with victims to seek the proper implementation of human

rights. Throughout it, the victims were a source of inspiration and hope for the participants. Via close emotional and intellectual contact, the participants realised that the victims have not abandoned their complaints or grievances.

The need to combine action with knowledge about human rights was also discussed during the session. However, the actions described were not those of human rights groups undertaken simply as a part of their own programmes or projects. They were initiated with a deep understanding of the victims, and were aimed at strengthening them by providing support and protection through widespread contacts. The participants realised how effectively modern technology can be used when human rights work arises from close personal contacts with victims.

Victims and participants alike expressed their concern over the collapse of institutions for the rule of law. Police institutions are commonly held to be a major cause of this breakdown. Torture, extrajudicial killings, disappearances, and illegal arrests and detentions are not random isolated violations, but indicators of an institutional





crisis. The participants concluded that without addressing the collapse in policing throughout the region, human rights and democracy are unattainable. However, governments and public opinion have to date been unresponsive. They blame the actions of a few bad individuals, not substantive institutional problems, for rights violations. The participants felt that for their work to have any meaning, they must build movements that will challenge this false representation. The gross abuses of rights narrated to them by the victims were not merely the actions of a few bad officers, but the result of a massive institutional failure. Bad officers are not exceptions; they are the products of bad systems. Anyone seeking to ensure human rights in the region must address this situation. The participants discussed ways to do this.

The crisis in policing is closely related to defective prosecution systems. While prosecutors pay lip service to human rights, accountability and transparency, they in fact guarantee impunity to perpetrators of rights violations. Anyone today seeking to ensure the rule of law cannot avoid the need to undertake effective independent monitoring of prosecution systems. The participants again felt that governments in the region do not wish to address this problem with any seriousness, lest it upset their authority. It is left to those concerned for the victims, democracy and social stability to bring this issue into sharp focus and push for reforms. The same applies to the judiciary.

The victims and participants felt that human rights violations continue because institutions do not exist to protect them. While several national bodies have come up, they have been unable to seriously challenge the institutional roots of human rights abuses in their respective countries. The participants expressed serious concern about the national human rights commissions in the region. In some instances, officers of these commissions are now blatantly cooperating with the perpetrators of human rights abuses. Most commissions do not have speedy avenues for dealing with such officers. If the credibility of national institutions is to be maintained, they must develop internal systems for accountability. The participants felt that they should take a leading role in provoking critical discussion about these commissions among the public.

This school session raises the question of what is meant by human rights education? Vast resources have been spent on human

rights instruction sessions without any real connection to the victims. These programmes are themselves alienating experiences for the learners. Unfortunately, this is what human rights education means to many persons. This school session was completely different. It demonstrated that if deliberate attempts are taken to have close contact with victims, progress is not difficult. In fact, the victims are in search of real support groups, and society is in need of effective action that can lead to changes. Human rights education can produce change, even within a short time, if deliberate attempts are made to change how it is done.

There was an overwhelming sense of hope and optimism during this session. The victims were themselves largely responsible for this feeling. The participants benefited from the deeper sense of human rights violations that the victims brought with them. There was agreement to take this approach to countries in the region and hold regular school sessions in the future.



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of their denial... This awareness is much deeper and sharper than the human rights groups' awareness of rights based on intellectual knowledge. Recognising the primacy of the victims' consciousness of rights should be the starting point for any effective support. As it is the victims themselves who must take the steps necessary to solve the problems they face, without being aware of their profound sentiments a support group can do nothing. Support groups have to place themselves in relation to the victims. Where the defence of rights is characterised by a lack of respect for victims and their situation, it will result in superficial and meaningless responses.



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