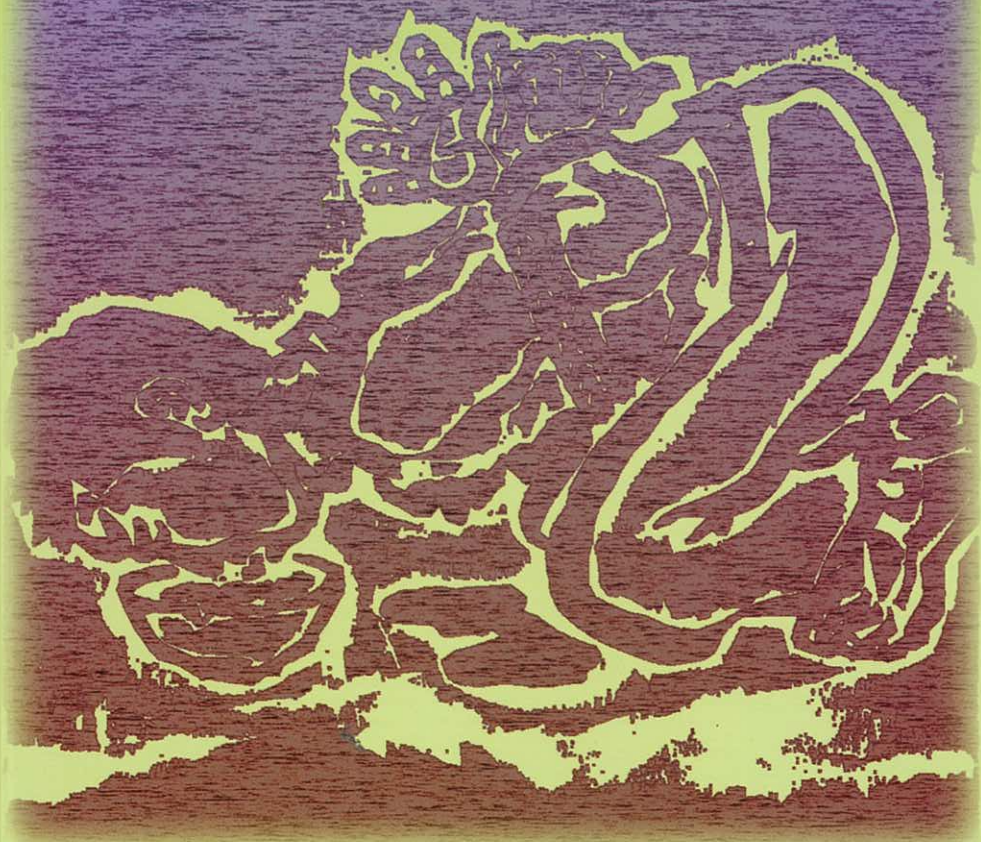


# TORTURE:

## A Crime *Against* Humanity

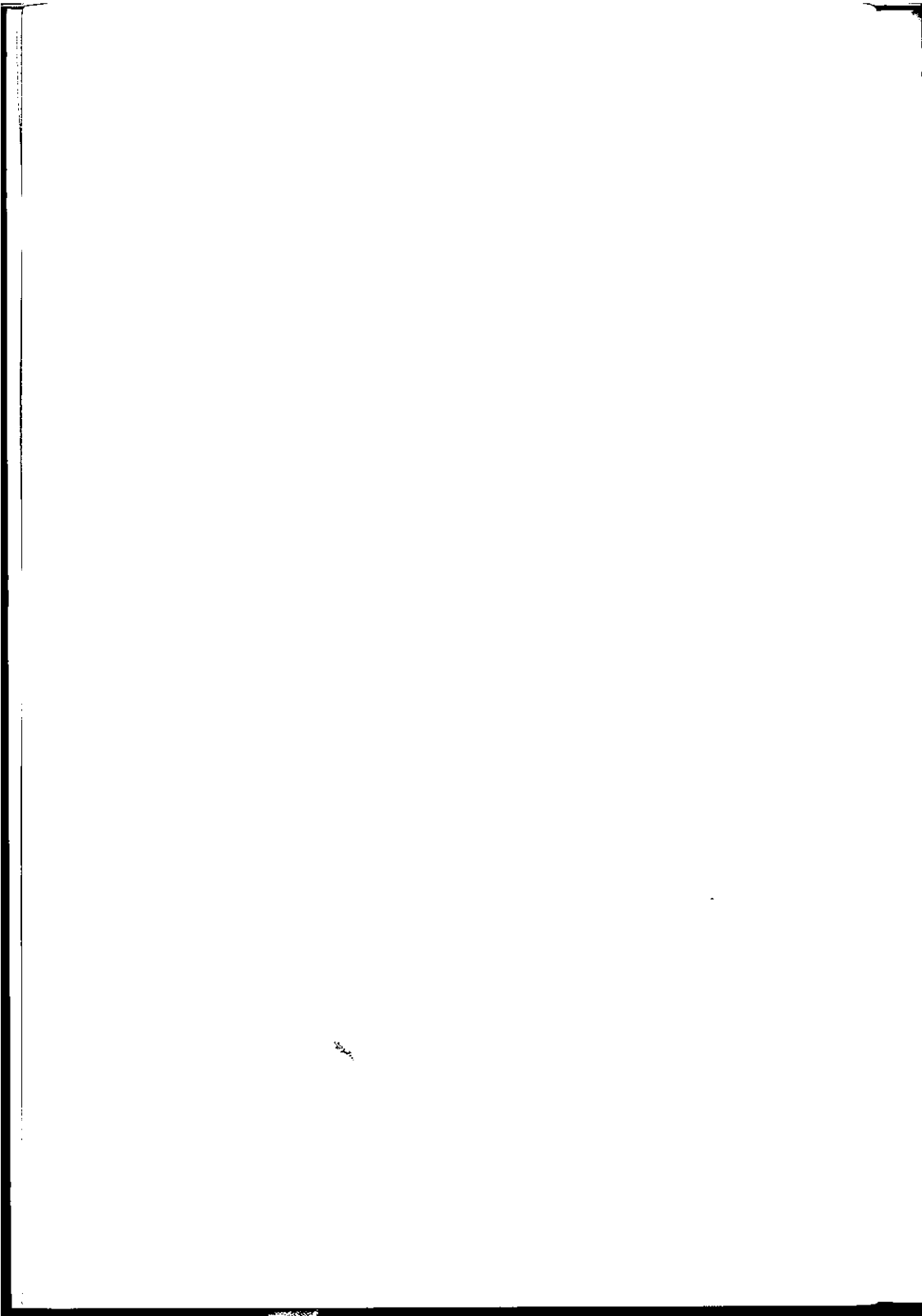


Dog Food by Hong Seong-Dam

**An Asian Human Rights Commission Publication**



TORTURE:  
A CRIME AGAINST  
HUMANITY



TORTURE:  
A CRIME AGAINST  
HUMANITY

Edited by

Philip Setunga  
&  
Nick Cheesman

A book based on the the Workshop on The UN  
Convention Against Torture held between April 2-7,  
2001 at Thrissur, Kerala, India, organised by the  
Religious Groups for Human Rights (RGHR) a project of  
the Asian Human Rights Commission and hosted by  
Jananeethi, Thrissur, India

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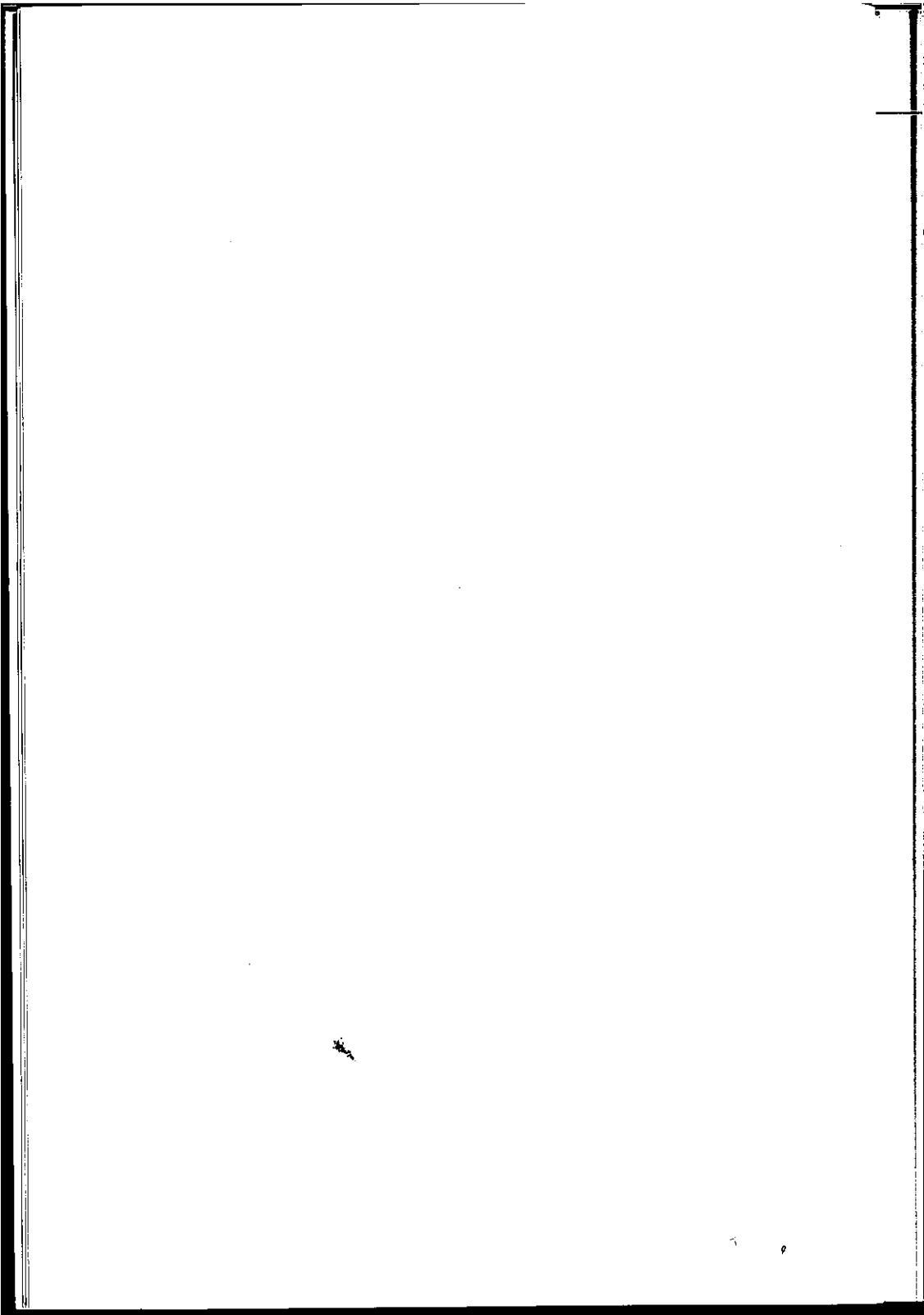
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Edited by Philip Setunga  
and Nick Cheesman

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## INTRODUCTION

We are happy to present this booklet containing the proceedings of the Third Workshop on the UN Convention Against Torture (CAT). This series of workshops form an integral part of our ongoing campaign to stamp out torture from society. Our intention in publishing the proceedings is to broaden the debate on the issue of torture and not be restricted to the limited number of participants in the workshop.

Initiating a national dialogue requires the participation of persons from various segments of the population who can influence the thinking of the larger society. Thus in selecting participants for the workshop we made an effort to ensure that lawyers, journalists, human rights activists, clergy and victims of torture were present. The participants were also from various religious persuasions. This diversity of participants ensures that the discussion can be taken to the larger society where the actual debate must take place if effective remedies are to be achieved.

The main objectives of these workshops have been to emphasize the gravity of torture, to examine the breakdown of law and order that it stems from, and to provoke a response regarding its elimination. Attending to the needs of the victims of torture is also a priority. The workshops serve as a common platform for all persons to meet, irrespective of their differences based on ethnic, religious or other grounds.

Our own experience at the workshops has been that some of the participants share a tacit approval of torture—that “a bit of torture is alright”, and that “getting the truth out is

difficult without recourse to torture". Such comments reflect broadly held perceptions. They reflect ordinary persons' sense of impotence to effect any change amid the moral decadence and breakdown in law and order in our societies. Only through an enlightened discussion on various facets of torture have the participants come to fathom its intrinsic injustice. This has confirmed our own conviction that a conscious effort is necessary for the inherent injustice of torture to be made to emerge.

The methodology followed in our workshops allows the initial perceptions of the participants to be re-examined in light of basic human rights, so that the gravity of torture is revealed. Torture is thus discovered not merely as physical violence, but violence against the victim's family, the society, the torturer and the whole system of justice. It is a crime against the whole of humanity. As persons committing a crime against humanity, torturers may be tried by any judiciary in any country. What the present Pope wrote about torture in "Right to Physical and Psychic Integrity: The Prohibition of Torture" (p. 273b), is relevant:

The condemnation by the Magisterium could not be clearer regarding one of the most intolerable offenses against human dignity. It is the very image of Christ crucified which motives Christians to reject this heinous practice which ultimately wreaks havoc not only with the person tortured but also with the torturer.

Conversely, attempts at stamping out torture are also attempts at promoting the right to life, freedom, security and personal safety, trust and confidence in the judicial system, respect for the law and order, and establishment of the credibility of law enforcement officers.

Basil Fernando has remarked that

Human rights can be rooted in a culture only when the ethical and moral foundations of that society are compatible with human rights concepts, norms and

standards. The religions play a significant role in the formation of the ethical and moral foundation of all societies. Religion can play either a positive or a negative role in making the ethical and moral norms of society compatible with human rights.

The following statement by British Jurist Sir Ivor Jennings, who was well known in South Asia in the middle of twentieth century (as he played a role in writing some constitutions in the region), is useful to illustrate this point. What he said about the role of public opinion relating to crime applies equally to all human rights violations:

The establishment of a sound public opinion about crime is obviously not an easy matter. Perhaps at this stage I ought to try to explain how the change occurred in England during the nineteenth century. It seems to me to have been almost entirely a religious movement which became secularised late in the century. So far as the wealthier classes were concerned it was an evangelical revival within the Church of England which produced among many an acute social conscience.

Thus behind the campaign against torture is the attempt to drive home the need to initiate ethical and religious movements founded on the centrality of the dignity of persons. This booklet, we hope, will contribute to the ongoing debate on the reform of justice delivery systems and on the promotion of the rights of all. We would appreciate if this book is read and passed onto others for their comments and reflection.

Philip Setunga  
Religious Groups for Human Rights  
Asian Human Rights Commission  
Hong Kong  
August 16, 2001



## STATEMENT OF THE WORKSHOP

Twenty-five participants from five countries gathered at this conference discussed the issue of torture in the region of south Asia.

The discussions were extensive and deep. The participants issued the following statement in order to draw the attention of the public to some very serious problems faced by the people in the region due to the defective nature of their justice systems.

Enlightenment on the system of administration of justice in the countries in South Asia has become a dire need. The unenlightened systems that exist today are creating grave crises in all South Asian countries and these systems have become a grave threat to the peace, security and stability of the societies in the region. People in the region are facing an utterly helpless situation, with a high degree of despair regarding justice. The law enforcement agencies have become the cause for intense fear, trauma and insecurity among the people. Immediate and effective reforms are needed to restore rational functioning of these systems.

Torture is practiced to a very high degree in the countries of the region. In fact torture remains the main method of criminal investigations in the countries. As compared to some other parts of the world criminal investigation machinery in these countries are extremely and shamefully primitive. These investigations are for most part carried out by quite incompetent persons whose educational qualifications are generally very low. Professional training too is for most part

inadequate. Above all, the institutional arrangements encourage the use of illegal methods such as torture and there are no effective systems of real control in operation. Wherever written rules and regulations for better functioning of the system exist, these are by and large ignored.

Among the personnel belonging to the law enforcement agencies, often the sensitivity towards people does not exist. Except for the upper ranks in society no respect is shown to human persons. The rough manner even the women are treated is quite common.

In fact allowing the law enforcement agencies to become ineffective has become a deliberate policy. This policy has as its objective, the displacement of legal obstruction to many forms of economic and social activities which in normal times would be considered anti-social. People perceive links between anti-social elements and the law enforcement agencies. The consequent demoralization seems to be created on purpose to make the faith in justice system as a whole to collapse. This policy has by and large succeeded in most countries in the region and in some countries the degree of its collapse has reached dangerous levels. A significant result of this situation is that the civic-minded citizen, on whose cooperation the system rests, has begun to withdraw his/her cooperation in sheer frustration.

Such a situation leads not only to an increase of human rights abuse but also the increase in serious crimes. Even senior judicial officers have observed the failure of the justice system to control crime in Sri Lanka. Warnings have been made of serious spread of lawlessness and break down of the rule of law. Sri Lanka is only a manifestation of what might happen in other countries if the situation is not addressed seriously.

Some sections of the society have always remained victims of the abuse of the system. The Dalits and indigenous peoples of India continue to suffer from extreme forms of police brutality and are neglected by other agencies of the

justice system. Though there are some laws for their protection, such as Atrocities against the schedule castes in India, these laws are not been enforced in an effective manner. In fact being neglected by the justice system is itself an added element of the insult and repression heaped upon these persons.

Another section of the society that is constantly subjected to ill treatment by the agencies of the justice system is the women. Rape remains a major problem. The treatment the victims have received in the hand of such agencies have left in them a taste of extreme insensitivity and frustration. Jurisprudence as practiced in the cases of rape has not kept up with the developments of the international law which considers rape as torture. The procedural developments regarding investigation and trials also have been neglected and the way that the matters are dealt with, remain very primitive. The people belonging to the marginalised groups, such as workers in the informal sector are also often been abused. Among these are also found the persons working for the church organisations.

The same situation remains regarding children. The neglect of children's rights is present through out the justice system. It is particularly evident in the case of the sexually abused children. The investigation in child abuses is primitive and the prevailing system of trial can cause trauma for children. There has been resistance to adopt the more developed system of trial by way of video camera with safeguards to the children. Deep cynicism leading to inhuman attitudes exists against all modern development at the heart of the justice systems.

In dealing with all these matters, one of the weakest links in the justice system, is the *prosecution systems* prevailing in South Asian countries. The prosecution departments often place the entire matter of investigation on the police and blame the lack of evidence as the reason for non-prosecution in serious crimes. The police inefficiency

provides the reason for prosecutors to wash their hands off. The arrangement adopted by more developed legal systems that place responsibility for prosecution of all crimes on the *Prosecution Departments* should be adopted and provision must be made to scrutinize all claims of absence of evidence.

In the case of torture the investigations by law enforcement agencies alone cannot be relied upon. Special units functioning under the supervision of the prosecution department must be given the responsibility for such investigations. The prosecution department must specially be held responsible for prosecution of torture cases.

**In the International law, torture is regarded as a crime falling under *Jus Cogens* that is among the highest of crimes. However, Jurisprudence expressed by law and by interpretation in the courts does not reflect the adoption of these developments in the international law. Instead, torture is treated in a trite manner. Most complaints of torture are neglected. In the few cases that succeed, only the compensation is paid and that too in no way proportionate to the crime. It is essential to make the legal provision to prosecute torture on the basis of '*Jus Cogens*' and the culprits should be subjected to imprisonment. The soft way torturers are been treated is only an encouragement to engage in this crime.**

The solution to the problems mentioned above can come only from the people themselves. It is time, that the people wake up to the grave dangers faced by their societies due to defective justice systems. The people must monitor all the agencies in the justice system; the police – the prosecutions and the judiciary. People must scrutinize the performance of the system and engage in making serious criticism of it. Mass mobilizations for the reform of the system of justice is a primary need. Only the people can bring about the change of the system from its primitive stage to an enlightened one adequate to meet the needs of the times.



Thus the implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment require quite a lot of initiatives on the part of the Governments as well as of the people in the region. Even India, which is the largest country in the region, and which describes itself as the largest democracy in the world has not even ratified the Convention. Sri Lanka which has ratified the Convention and enacted domestic law for its implementation (Act No.22 of 1994) has not successfully prosecuted any torturers, though the Supreme Court of Sri Lanka, and the National Human Rights Commission have declared after inquiry that many persons have committed torture and other cruel, inhuman or degrading treatment or punishment. Thus the proper implementation of the Convention requires;

- a) That torture be treated as a criminal offence and be punished with Imprisonment: with the need for compensation being paid to the victims of this serious criminal act. The seriousness of the criminal act must be recognized by the penalties imposed against it. Besides, imprisonment may result in quick reduction of the torture among the law enforcement agencies.
- b) That the Prosecutor General or its equivalent (for example the Attorney General in some countries) must bear the legal responsibility for prosecution of all cases of torture and other cruel, inhuman or degrading treatment or punishment.
- c) An independent investigation unit must be given the legal responsibility of investigation of all cases of torture and other, inhuman or degrading treatment or punishment.
- d) The National Human Rights Commissions – NHRC must constantly supervise the enforcement of the Convention against torture and other cruel, inhuman or degrading treatment or punishment or other related domestic laws. The NHRC can play a very positive role in promoting the Convention through education, investigations and making recommendations for the proper implementation of the

provisions of the Convention.

- e) Civil society organisations must take a very active role in promoting and monitoring the implementation of the Convention. They must particularly monitor the way the Prosecutors and the Investigators perform their duties and must expose the failures of such agencies.
- f) The religious leaders and groups can play a vital role in promoting the Convention and doing all that they can to see to its proper implementation. Besides, they can educate the masses on ways that they can get themselves engaged for the elimination of torture.

## PROCEEDINGS OF THE WORKSHOP

After a few words of welcome by Mr Basil Fernando the facilitator, the statement of the previous Seminar on the UN Convention Against Torture (hereafter referred to as the Convention) was read out, thus setting the tone for the discussion and indicating the continuity of our work regarding the Convention Against Torture.

### **Folk-School: The Working Methodolgy For The Workshop**

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Basil(Facilitator): We began with the statement of the previous workshop so as to maintain continuity. We also would like to mention that this is not a learning meeting but an occasion to reflect on our own thoughts—not to repeat what you have borrowed from other people—so that we can discover how to intervene in cases of violation of rights and in cases of torture.

Our approach here is based on the work of two prominent persons: **Ambedkar** and **Gruntvig**. The latter promoted **folk-schools for peasants** to come together to discuss their problems. By the way, Martin Luther King grew up in the



Highlanders School, which was inspired by the folk schools of Gruntvig. Similarly, the **effort of Ambedkar was to get the Dalits to speak up for themselves.**

Despite a few patches of brightness, our part of the world has seen the cruelest of civilisations; but for Gautama Buddha and Emperor Asoka, the cruelest of histories. **At this meeting we give up pretensions and speak honestly about the vast amounts of people who have been treated in the most barbaric manners for centuries.** We give up pretensions and discuss openly the issues that we face. When we speak to the West in a disparaging manner, extolling ourselves, let us be bold enough to ask some honest questions about our own societies, how we treat our own fellow humans.

I come from a country where the law enforcement system is at its lowest ebb, which in fact made *a senior lawyer remark that "the civic-minded citizen on whom the system rests has withdrawn support because we have not protected him"*. **This is what happens when law enforcement authorities take to crime.** Torture is a crime. We are not talking about the abuse of power. Torture is considered one of the highest of crimes by the international community. It is considered so high that if a crime of torture is committed in one country you can be tried in another country. We cannot have law enforcement authorities commit that type of crime in our countries.

Here, out of your own experiences, we can see that which is happening, so that we can discuss ways to address it. The Convention is clear and is well known but we need to discuss how we want to address it and what we want to do about it. So the discussion of what you see in your city, in your village, is more important, while not dispensing the study of the Convention, much of which is known to you already.

So let us give more importance to our own experiences, hoping they will provide the basis for a fruitful discussion which will, by and by, expand across Asia leading to a wider debate on the issue.

## Personal Introductions:

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· *Mr Sabur* represents the Youth Foundation trying to highlight the plight of members of the Muslim community and particularly women whose rights are denied;

· *Mucha Shim* represents the Muslim Network, which monitors the human rights situation in Asia;

· *Dr. Zaid* is teaching political science in Maharashtra College and also working with the Justice and Peace Commission of the Church in Bombay and 13 other human rights organisations in the region. There are 200,000 street children in Bombay, some of whom are arrested and tortured, which calls for our intervention: "Torture is ripe, and those that perpetrate torture are criminals who need to be punished; if the law enforcement agencies commit these crimes, who is going to punish them?" The Bombay University started a human rights diploma course and many senior officers have expressed their willingness to take part;

· *Mr.P.O. George* is vice-president of Jananeethi, which seeks means to recognise the rights of unorganised workers, and is also in charge of a suicide prevention program. 132 children killed themselves in Kerala in 1992;

· *Dr Nandi Joseph* from Andhra Pradesh works with the Dalit Human Rights Centre there, which deals particularly with land rights, fighting police atrocities, fighting for Dalit rights in the Church, job training and rehabilitation;

· *Ms Arokya Mary* is a teacher working for the dignity, education and employment of Dalits;

· *Nandana Manatunga* from Kandy is working on development rights, focusing on the rights of plantation workers. Due to the politicisation of the Sri Lankan judiciary it is very difficult to expect justice in cases of violations;

· *Fr Camillus* from Kandy, Nawalapitiya, is working among people from the plantations who are deprived of education and proper housing conditions and are undergoing mental torture and harassment when they have to deal with legal and security matters;

· *Chandana Tennekoon*, from the Human Rights Development Centre, Sri Lanka, would like to highlight the plight of plantation workers who face problems due to non-possession of national identity cards. The girls from the plantations are taken for domestic work in the south and there are cases where their whereabouts are unknown, even to their parents.

· *Ms Chandanie Watawala* from SEDEC, Colombo has been with the Justice and Peace Desk for over ten years.

· *Ms Seema Bhaskaran*, a journalist and a former staff member of Jananeethi.

· *Fr. George*, the Executive Director of Jananeethi.

· *Ms Nilanka Rodrigo*, a Lawyer attached to the Justice and Peace Desk in Colombo.

· *Sr. Neelmino Thomas*, a school teacher from Colombo

· *Prof. Buddhadeb Chaudhuri*, Calcutta University And Center for Alternative Research In Development

· *Fr. Lawrence N. Das CSC*, Justice & Peace Commission, Bangladesh

· *Pooja Shrestha* Program Officer, Center for Legal Research & Resource Development (CeLRRD)

· *Sudeep Gautam*, Advocate, Supreme Court of Nepal

· *Chirendra Sathyal*, UCA News, Nepal

· *Fr. Mani Parampett C.S.T.*, Gramsaram,

· *Dr. Francis Xavier*, Joint Secretary, Jananeethi

· *Basil Fernando*, Executive Director AHRC. The facilitator at the Workshop

· *Philip Setunga*, Coordinator of the program "Religious groups for human rights", a program of AHRC

**Theme: Human rights campaigns**

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The facilitator introduced the topic of Human Rights Campaigns and invited the participants to share their experiences using the following questionnaire:

**QUESTIONNAIRE FOR THE EVENING DISCUSSION -  
3<sup>RD</sup> APRIL****Do you make a record of the stories of victims of human rights violations?**

- Do you use the tape recorder and transmit the story later?
- Do you use any other method of recording?
- Do you use the camera for making necessary photos?
- Do you use computer?

**What is your capacity in reducing a story into writing?**

- In your language?
- In English?
- If you have difficulties in writing do you have anyone in your organization to assist you?

**Do you share this story, and if so how? What is your network?- about how many persons and groups?**

- By word of mouth?
- By post?
- By e-mail?

**Do you have access to e-mail? On your own, through a friend, through an organisation?**

- Do you know how to use it?
- How often do you use it for human rights purposes?

**Do you have an access to a centre – in your locality or in your country- which will help with the communications; documentation, sending to networks, making reports to national and international bodies?**

- What facilities does such a center provide you with? – scanning, preserving documents, sending documents to networks, organizing fed -backs.?

**Do you have access to such centres in the region or internationally?**

- How often do you contact them?

**Do you have access to human rights websites?**

#### COMMENTS

*Mucha Shim:* It is hard to deal with “traditional media” and the need now is for alternative media and new forms of communication using video recording, photos and even street drama. The activists from the Martial Law times in the Philippines have formed an e-group and have started writing down their experiences for the benefit of the younger generations.

*Mary:* Public expressions of solidarity by the Dalits are always resented by the authorities and the police, and often their reactions are brutal.

*Dr. Joseph:* Comics are a new way to popularize issues. Another would be street drama, which provides both entertainment and education.

*Dr. Zaid:* Police ignorance of human rights instruments, even among the officers, is quite shocking. At times certain draconian laws, such as the Maharashtra Organized Crime Control Act, are implemented despite the fact that they flout UN conventions that the country has ratified. A three-day workshop organised for police officers was an occasion to discuss openly such instances, at which they publicly



acknowledged their ignorance. Hence the need to conduct workshops for police officers on the existing human rights instruments.

Ms. Seema : Reporting of rape or sexual abuse cases by the mainstream media has been quite detrimental to the victims. The mental trauma and agony suffered by the victim and her family is rarely portrayed. The reporting has not only been non-educative but also provocative in trying to make it sensational.

Fr. George: The media are never neutral. They have vested interests and are controlled by a small section of the people with their own agenda.

Facilitator: In our discussions we have tried to emphasise:

1. how to produce authentic material and prepare reports suitable for campaigns;
2. how to disseminate such material.

In the past we depended on traditional media, but today we have reached a stage where we can make use of new technology to disseminate our information, stories and research. With facilities like websites, the information can become quickly accessible. If we do serious reporting the chances are that journalists will pick up on it.

However we need to guard ourselves against nationalism, to prevent biases. Take the Dalit issue, for instance: the government acknowledges it, but does not want it to be discussed outside of the country. Or the case of the encounter-killings that took place in Maharashtra a few years ago: according to the perpetrators' general view, the murders were carried out to avoid the possibility that the victims—accused of being culprits in other crimes—might escape the law either by hiring expert lawyers or due to weak judges.



On a positive note, there are human rights activists who are journalists, or journalists who are human rights activists, or have that orientation. For instance, the Times of India has a human rights section that covers matters relating to violations of rights. We need to sensitise the media personnel along these lines.



*Mr Sabur:* Human rights work must integrate other related aspects, like democracy, good governance, environment and accountability.

*Ms. Ilanka:* It is impractical and difficult to explain legal matters to the grassroots groups, and hence the effort to use videos to initiate these

discussions. Human rights education is the most important thing, and must be done by all civil society organisations.



As a young lawyer I have lost confidence with the justice system in Sri Lanka. That is one of the reasons why I joined a non-government organisation. Our lawyers are more concerned with money than with people.

*Ms Chandani:* I would like to add that in our work we have been able to educate ordinary persons to file cases in the event of certain violations.



*Mr Chirendra:* The media play a crucial role in bringing about changes in the system of government. The role of the mainstream media is not to be downplayed, as the information it carries is not confined to national borders.

*Fr Mani:* The use of drama and folk songs are quite popular among the tribal people and can be used in education.

*Fr George:* Physical action is more important than the media, which is only secondary. The authenticity of our work comes from our commitment. We need to come to the field on issues of tribals and Dalits and fight for them in courts.

*Facilitator:* **Documentation implies involvement. Involvement without communication is ineffective. We need to make the victim vocal.** Thus the struggle and communication are different now compared to before. Mere martyrdom is insufficient. Action is incomplete without communication. Take Ambedkar and his struggle: without his speeches and writings it would only have been as half (or less) effective. Now the actor can also be the communicator, with the new technology that is available. We also can make use of persons with the skills to disseminate the information. Together we can make an impact.

We also need to discuss national human rights commissions when contemplating effective remedies. The challenge is how to make use of information for new forms of solidarity. Immediate action on the basis of communication and information can make a difference.

On the first day, discussion raised the question of the use of poster campaigns. How many poster campaigns have there been, for instance, on the need for forensic reports in investigations? Our campaigning is on a more generalised level, and not focused on specific issues. The campaigns are geared towards strengthening the bottom layer in the society. The success of our campaigns is in the strength they give to people at the bottom, who will feel secure and empowered to speak for themselves. For instance, if there is a rape case in one area can some persons in the vicinity come together to find out what is happening here, what can be done and how to help and support the victims? Non-government organisations and civil society must come to a new level of acting and intervention.

How did Asoka create a Buddhist society? The historian Romula Thapar says that a social movement grew up and no clever person could have ignored the undercurrent. We should be the creators of undercurrents: undercurrents for justice and human rights, and if there is any achievement and we can tell by changes at the bottom. The Dalit movement did not rely on the changes from the top but got things from the top by being strong at the bottom. And this is the essential thing about the folk school movement. Let the people create things for people: create the undercurrent and the result will come. We must criticise ourselves and ask why things are the way they are. We need to examine and critique ourselves.

*Basil:* We see that there are limited remedies, and even these remedies are not effective. We have discussed that torture is the highest of crimes, but what are the remedies in Nepal, for instance, if there are no remedies in the penal law? One thing that all states must undertake is ratification of the Convention. Nepal, India and Bangladesh have not yet ratified it. While there is vociferous talk about torture there is hardly any development in the field. So I think by any recommendation we need to campaign that the Convention be ratified and made law in the country. Secondly we will examine that where it is made law, how has it been implemented. For example, in Sri Lanka the law is in the books and eight cases have been filed, but none have been investigated or prosecuted.

## THE RIGHT AGAINST TORTURE IS AN ABSOLUTE ONE

Facilitator-(F) The first point for discussion is, **“What do you understand by the statement that the right against torture is an absolute one?”**

Under general circumstances we all agree torture is wrong, but there are circumstances under which it is problematic. For example, should a person who is accused of torturing others enjoy this right? Or if a person is withholding information vital to public safety, are the police entitled to use force to extract the information?

According to Article 2 of the ICCPR, under certain circumstances a state may limit individual rights, but only in accordance with the principles of a democratic society and only to the extent necessary. The courts decide what constitutes that extent, not the government. But an **absolute right** cannot be limited under any circumstances. So if we ask, **“Can a torturer be tortured?”**, of course not. Barbarism cannot be fought with barbarism. There are certain principles that cannot be limited, because once you admit a limit, the principle itself will be destroyed. The principle is very important. When you campaign, if you base your work on the principle, other people can take very little objection. If you start with a certain situation, it may be very difficult to argue one side or the other, but if you start with the principle and apply it to any situation, then you cannot make exceptions.

Torture was once quite common in Europe, and then there was an intense debate surrounding it. There was an Italian lawyer named Cesare Beccaria who wrote a book published around 1775 called "An Essay on Crimes and Punishments". He argued that a criminal justice system needs not harshness of punishment but certainty of punishment for crime. He argued that to treat a few people harshly as an example for others does not work; it is not the true purpose of law. What really works is that if someone commits a crime they know that punishment will follow. This book captured the attention of intellectuals at the time and within a short time all European countries began adopting laws against torture. And at that time in British colonies in South Asia law officers were trained under this principle. Unfortunately, the colonial powers found it convenient to allow torture to occur in practice, so the principle did not become entrenched in our societies.

Torture is not merely a matter for legal principles, but also a matter for civilisation. This means that criminal investigation systems must be developed. **Wherever there is torture there is an underdeveloped criminal investigation system.** That is a tremendous disadvantage for social transformation.

Participant (p): In many Islamic countries they have medieval punishments such as stoning. Do these not violate the UN conventions?

F: The problem is that most of these countries have not ratified these instruments, so they don't consider them binding. Part of the conflict is between religious versus secular law. Changing religious law is much more difficult. Ultimately the change can only come from within the society, not from outside.

When we campaign on human rights we usually get the question, "Why should the criminal be protected, not the victim?" How can we convince people that this is an absolute right?

**F: Any campaign against torture where the legal system is not properly developed has to be accompanied by other campaigns to improve investigations of rights.** If you only campaign on torture naturally people will raise questions about this. So we have to campaign on reforms to criminal investigation and prosecution. It's no good to answer people by argument. You have to say that torture should be prohibited and criminal investigation should be improved. Police officers must be trained. If law enforcement people know only how to use their hands and feet then society is in danger and people will ask this question. If you only argue that people shouldn't torture criminals, naturally this question will be raised. But if you argue that the criminal justice system shouldn't be run by thugs in uniform, people will understand this, because they themselves didn't implement this situation.

It seems that torture is being committed by higher and more professional people, and victims feel like they have absolutely no way of getting to the people who have committed these crimes?

F: We need to work to introduce the principle of equality, through education, through culture—which is also an Islamic principle—that what I love for myself I love for others. And as a part of the campaign, we should work for abolition of all forms of capital punishment, because toleration of this kind of punishment is part of the problem.

P: One of the best reports by Amnesty International is its 2000 "Transforming Words Into Action" report on torture in **India**. It again draws us back to causes for torture and the legal system. India used to boast that its legal system was equal to any in the world. But when it comes to the criminal legal system this is not so. And this report for the first time raised questions about the system: **it recognised that here even the idea of equal justice for every person is absent.** So it is not the fault of the officer committing the violation, it is a problem of the system, because even the idea that everybody should be brought in for a crime is absent. The

officer is not to be blamed, because he is merely carrying out what he has been indoctrinated to do. That is why he may go to a certain point and then stop: because that is what he has been trained to do. **So for the criminal investigation system to develop you need to develop the concept of justice.** Not just on paper, but as an agreement in society, by interaction. And what that means is that everyone will be accountable. The question of criminal investigation is one of power, not of efficiency.

F: **Hong Kong** in the 1950s was one of the most illegal places in Asia. But they realised that without development of a legal system, economic development would only reach a certain limited point. They set up a commission into corruption, the ICAC, and its first target was the police. Within three years the police held a strike, as they felt they were all under attack. A compromise was reached, and the commission said that it wouldn't go into issues before a certain number of years back. But they said, "From now on this is the law and you work within it and enforce it." Since then the ICAC's main target has been private business. And the ICAC is the most sophisticated piece of law enforcement machinery in Hong Kong. People know there is a possibility that they will be prosecuted by the ICAC if they breach the law. Unless you have that sort of sanction, people won't go and complain.

F: Turning to the next point for discussion, "What do you understand by the statement that torture falls within ***Jus Cogens?***"

F: Under international law there are three types of obligation that arise on the basis of their source.

One is contract law. *That is by agreement. Whether you have an obligation or not depends on an agreement.*

The second is customary law. *In this case there is no direct agreement, but by common practice over a long period something can be considered an offence.*



Third, *Jus Cogens* belongs to a very small category of crimes considered so serious that whether there has been custom or no custom these crimes are among the highest and most offensive. There is no limit to jurisdiction under *Jus Cogens*. In the Pinochet case it was argued that there was no customary law that allowed his trial internationally, but the court held that it would proceed under *Jus Cogens*. It is not the state that identifies this crime. **Its jurisdiction is derived from international law, as a crime against humanity.** Compensation is not an adequate redress for this kind of crime. So in this case we are dealing with a very rare and serious kind of crime.

The next point for discussion is "What are the basic principles of the Pinochet case?"

F: The argument by his lawyers was that the English courts had no jurisdiction over crimes committed by Pinochet during the period he was head of state in Chile. The higher court held that acts such as torture were not actions that could be considered acts of state by the head, therefore he could be prosecuted. So the first principle they established was that torture cannot constitute an act of state. Nobody can claim the right to torture, not even the head of state. They brought in the principle of *Jus Cogens* and crimes against humanity and said that the government could not use any argument against them. **Regarding jurisdiction, they also held that this type of crime can be tried anywhere.** Local jurisdictions do not apply. They made only one exception, for the sake of statecraft: an existing head of government cannot be tried under this law. Once out of government, however, the person can be challenged legally for acts committed while in government.

F: If a state cannot claim torture or genocide as a rightful act of state, what action can the international community take against the state as a whole if this occurs on a large and widespread scale?

The International Criminal Court is now becoming a reality. The statutes have been passed and they need a certain number of signatories to bring it to be. It will incorporate crimes against humanity at the state level. Also for us we can use internet campaigns to apply pressure internationally and have people lobby on them everywhere. A few years ago Sri Lankan courts took a very light view of all these issues, but now due to outside pressure they are looking at them more seriously.

F: The next issue to address is, "What do you understand by rape as torture?"

For years women's groups have campaigned on rape, but legally it has been addressed just as a regular crime. By treating rape as torture you are putting it under the same standards as the most serious crimes. It means then that victims of rape may be able to bring their cases before international criminal proceedings. The issue of rape remains very difficult because of the narrow and prejudiced views of judges. Particularly in cases involving prostitutes, it is presumed that the victim consented.

P: Many victims of rape in **Bangladesh** can be tortured and raped again after the event, because they must remain in police custody for one or two days for medical check ups and other procedures. There they are exposed to police threats, particularly prostitutes, who may not be released from custody at all.

P: *In every way women in our societies are victimised. After a crime they are victimised by their families and others around them. There is no escape for them. That is the worst form of torture, that someone so vulnerable can be marginalised economically and socially. This is because sexuality is used as a tool by the state. In **India**, from caste issues to communal issues to developmental issues, rape has always been used as a tool. In a case in Rajasthan where a woman activist protested against a child marriage that was taking place the upper caste Hindus raped and beat her. And now she has been*

*totally isolated. In another example, after the 1992 communal riots in Bombay so many Muslim girls were raped simply out of communal vengeance. Family planning policies are a further example. They are being carried out by the state without consultation with the women involved. There was a huge experiment carried out in Barodha, where women were injected with drugs that caused many of them to lose their fertility or suffer menstrual problems, without their permission or understanding.*

Economic and political power are enjoyed by one gender, which uses that power to define and construct a notion of sexuality that keeps it in control. The result in law enforcement is that the police always give the excuse in cases of rape that "she consented to it", even when cases involve children too young to have the sexual maturity to consent. The police also argue that they can only deal with keeping law and order and have too little time to investigate crimes. It can take two to three years for charges to even reach the courts. And then although the proceedings are in camera they are frightening for the woman or child victim, because of the attitude of the judges and lawyers. Woman lawyers themselves are ridiculed and asked how they can talk about sex in the courtroom. Finally, the accused is the one who can come back to society and live a normal life.

*F: This is an area we should look into. In several countries now proceedings are not only in camera, but there are completely new proceedings for cross-examination of children, by remote video. What is happening in our courts is brutal. It is not cross-examination. It is crucifixion. This is not only a question of justice. It is a question of an enlightenment process that society has to go through. The law is only part of the solution. **The law of an unenlightened society is an unenlightened law.***

Our campaigns must find ways to strengthen the bottom to speak for themselves. **Our role is to create the undercurrent for human rights.** The Dalit movement has got things from the top by being strong at the bottom. In the event of a rape case, how do we support the victim? How do we help? NGOs and civil society organisations must come to a new way of intervention. How do we start a campaign and keep it going? What is proper campaigning? It is one thing to say we use posters and media, but how are these things used to get what we want? Corporate agencies spend a lot of time on their advertising to reach their objectives. We also should spend a lot of time on how to get these things across. This is also our work. And we must stand by principles while doing that. For example, we argue that caste must be abolished. That doesn't mean that it's going to happen tomorrow. But if we settle for half way, then we are going to get even less than that. On certain things there should be no compromise.

### **O' Brave girl Arise!**

Music & lyrics: F. Arogyamary Tamil Nadu  
India.



O' Brave Girl Arise

Walk bravely

With the thirst of liberation

Fight relentlessly

1. Freedom is there for the Country not in our  
house

Give a call for truth, fight for your right

2. The people who are against the

Girl babies are like dead bodies

Ladies come forward to

Annihilate these dead bodies

3. O' domesticated girls  
Come to the path of liberation  
Without minding for the time or situation  
Get into the battlefield and fight
  
4. The fellow who rapes is a donkey  
He has no scruples  
There are no two opinions about him  
But kill him should be your duty as a women
  
5. The judgment without justice  
Should be buried in the soil  
The society without morals  
Destroy it in public

### **Articles 2(3) & (4) of the ICCPR**

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*F: Now we will discuss Article 2(3) & (4) of the ICCPR.*  
Article 2 of the International Convention on Civil and Political Rights.

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.

According to the above, if there is a violation of a right then there must be an effective remedy. Thus

- 1) there must be a remedy
- 2) it must be an effective remedy.

*There is a lot of jurisprudence going around this article at present. The first part is that in the event of a violation there must be not merely a remedy, but it must be an effective remedy. And the next part explains the remedies: legal, judicial and administrative. Let us examine the available remedies for torture in each of our countries, and secondly, how effective these are.*

*P: Nepal has ratified the ICCPR and under Section 9(2) of the treaty of 1990 it allows that any section of an international act is as equally applicable as the municipal law. Article 14 of the Constitution of Nepal also guarantees that each and every*



*Sudeep Gautam*

*person should not be tortured. The 1996 Torture Compensation Act provides that anybody tortured in detention should be compensated. But there is little effectiveness in its application, because ordinary courts do not have jurisdiction to punish the perpetrators. They can only recommend to the concerned department to take action. Also the Human Rights Commission Act has opened one route to compensation*

*for torture or illegal detention, but again the Human Rights Commission cannot directly compensate the victim and can only recommend to the concerned department or ministry to take action against the alleged perpetrators. Since the promulgation of this Act we have had very few torture cases where compensation has been awarded. Some cases have been lying before the courts for two or three years. In some cases the courts have found that a medical examination of the victim was not done in time and so*

*no case has been made. This is a difficulty, because how can victims under the custody of the police make a medical examination that will incriminate the perpetrators who are holding them in custody? Also, compensation awarded has been very low.*

F: In 1991 the **Sri Lankan** government signed the ICCPR, and the CAT in 1994. In December 1994 Act No. 22 was introduced to implement the CAT domestically. Under this Act the fines are only from 10,000 to 50,000 rupees. The jail terms are a minimum of seven years and a maximum of ten years. This Act can only be applied through the High Court, and the only authority to file a case lies exclusively with the Attorney General's Department. Yet this Department has so many things to do, and they don't have time to file cases under this Act. The Human Rights Commission Act was introduced in 1996. At first nobody trusted the Human Rights Commission, because it was appointed by the government and only dealt with things as the government wanted. Now it has changed and is extending some sort of influence.

P: There are six fundamental rights guaranteed under Part III of the Constitution of **India**, from Article 12 to Article 35. The second, the right to freedom, is mentioned from Article 19 to Article 22. In Article 20(3), though there is no direct mention of torture, inference can be drawn from this subsection: "No person accused of any offence shall be compelled to be a witness against himself." Torture is ruled out because the authorities cannot compel someone to be a witness against themselves. The sixth



*Bijo Francis*

fundamental right is the right to constitutional remedies. That means if anyone of the prior five rights are violated then the aggrieved party has the right to approach any one of the High Courts or the Supreme Court. That is Article 32 to Article 35. Article 32(1) says that if any one of these fundamental rights is violated the right to go to court for a remedy is itself a fundamental right. So remedies are clearly mentioned. In 1993 an act was passed by parliament to establish the National Human Rights Commission. The Commission has frequently intervened and ordered the government to compensate aggrieved parties. If a state government or the national government is ordered to carry out a remedy by the Commission it cannot be refused. If it has a genuine problem with compliance it has to submit a report to that effect, explaining why it is not able to implement the instructions. As far as implementation is concerned, sometimes NGOs working on issues try to prepare reports and send them to the Commission. Sometimes Amnesty International and other international organisations take the issues up, which facilitates the means to a remedy.

P: Due to corruption among police and administrative sectors, people in **Bangladesh** are not getting justice. The instance of torture is high, especially by the police. The



government of the country is not taking any initiatives to amend the situation. Under Section 54 of the Penal Code, police may make arrests without warrants. This section is frequently used as a money-making device by police, who arrest people without charge and release them after getting payment. To deal with these practices and also to remove the

corruption of authorities it is necessary to build a human rights commission.



**The laws in Bangladesh open up the way for torture.** There is the Special Powers Act, much like Section 54. And there is the Public Security Act, under which the ruling party can take anyone for interrogation. It was designed as a legal weapon to harass the opposition. No one from the ruling party has been detained under this Act. Bangladesh has signed the ICCPR and there is a guarantee in the Constitution of Bangladesh that protects citizens against torture, under Article 25(5). The remedy is compensation from the government. But sometimes the legal procedures are so lengthy that it is impossible for the ordinary person.

F: So going through the different countries we can see that there are some limited remedies, but they are not effective. Let us try to analyse the remedies and why they are not effective. If we recall that **torture is considered among the highest of crimes, what are the remedies?**

F: In **Nepal** there is no remedy under criminal law, only via the Human Rights Commission. In Bangladesh they don't have even that. So while there have been a lot of speeches about torture, there have been hardly any legal developments in the field. If we think of human rights in terms of the search for solutions then we should campaign that the CAT be made law in our countries, thereby making torture a crime. Secondly we can try to examine where it is already a crime, how is it being enforced? The complaint of many human rights organisations in **Sri Lanka** is that although the law is in the books, nobody has been prosecuted.

F: The next problem is who is investigating and prosecuting.

**The problem for Article 2 of the ICCPR is that people committing these crimes are also usually working as agents of the state.** In developed democracies methods are created for police to be prosecuted by a special section in the state apparatus. So we need to consider that once a law is enacted, who can work to make it effective? **There must be people with investigating powers separate from the normal**

**police.** Then, who has the duty to prosecute? In Sri Lanka, criminal investigation files are prepared by the police and presented to the attorney general, who decides whether a case can be made from the file. If a file does not arrive before the attorney general he will not accept the blame for failure to prosecute. Now what you will find is that this system no longer exists in the countries that introduced it. Britain does not follow this system any more, nor in other common law countries like Australia, Canada or the United States.

At the earliest stage the police must report a crime to the prosecutor, who advises them how to proceed in the investigation. **The responsibility for prosecution lies with the prosecutor, not with the investigator. And responsibility for police actions rests with the prosecutor.** By comparison, our human rights law is developing in a very warped way. Everything depends upon the police. So we must reform the relationship between prosecutors and investigators, or we will not develop effective remedies and will only be talking about rights as concepts, not as legally enforceable laws.



*Buddhadeb Chaudhuri*

*F:* People leave everything to the police. We don't get good results. At the level of civil society and human rights movements we must have second-level investigations.

Without people participating in these processes, justice will not occur. That is our part of the job. On the other hand, if there is a defective system then a lot of work that we do will just go to waste. **So we have to also engage ourselves to reform the system.** When the system lacks instruments to fight, civil society itself is paralysed. That is why we need to talk about bringing checks and balances on the police and others, not at the end of the system, but at the beginning. The lack of such instruments is why we have problems.

In Sri Lanka, when they wanted to make disappearances, they just made a law for it. *The law said that a policeman at the rank of assistant superintendent or higher could dispose of bodies. Usually to dispose of bodies you have to go to court, get an autopsy and go through other safeguards. But they allowed ordinary police officers above a certain rank to authorise it. Within no time 30,000 people disappeared without records.*

In developed countries NGOs don't have to do this kind of work. They can rely on the system that is already there and go beyond it a little to safeguard human rights. We don't have that luxury. We have to study, critique and create avenues for development. Effective remedies need a system. The more a system exists, the more people will talk.

P: While we are talking about legal remedies we also need to recognise the conditions for prosecutors and police. Prosecutors in India are poorly paid and under a lot of pressure from their work. They usually look for the easiest and fastest way to get something done, which causes damage to the accused and the system. Policemen are living in slums. These things need to be reformed.

F: This is not just about salaries but a kind of culture that is promoted. In Bangladesh people in rural areas know only that if one of their family is arrested they have to collect money and send it to the police station to prevent the accused from being beaten. People know only to give money.

P: It is true that conditions for police in India are bad. Most of them are on 24 hour-a-day duty, with little time for their families and poor wages. Most have very low education and appalling social conditions. Up to the level of inspector this is the case. The lower ranks they need to be humanised and given orientation programmes.

F: *Our police force is what our political leaders want it to be: an agency to do their bidding, to cover up their malpractices.* Here in Kerala a community police system was shot down in parliament because it didn't fit with what the politicians want from a police force.

F: We have a lot of facts about conditions for police, their education levels and so on. The question is, how does a human rights movement approach all this?

Collection of facts is important. But the responsibility for a remedy is with the state. So how much of a critique is being made on the role of the state? What has been said here is nothing new. But to what extent have civil society organisations documented these things? How much have

these issues been brought into discussions?

What recommendations have been made for reform? What are your opinions of how all this can be corrected? We have a duty to have informed opinions on solutions, otherwise we become apologists for the system.

It is no excuse to say that police are living in slums. We didn't put them in slums. We didn't abuse them. When people need police they have a right to efficient services. It is the state we should critique for this. The

problem is that this area is not considered important enough for the state to devote resources to it. **On an issue like terrorism, enormous resources are devoted. Why is that which is happening to the citizens so unimportant?** We have to come together, study and keep on agitating, otherwise we will get poor service, because poor service is consciously



P. O. George

given. We must take it from the point of view that this is a state failure. If we don't do that, all these other matters will remain a dream.

P: Improved housing and living conditions for police are only one factor. Number two is improved training and resources. Number three is a vigilant civil society. Number four is effective legal investigative mechanisms in the event of human rights violations.

F: Living conditions are one aspect, but do you think if living conditions are improved the same people would be police?

None of them would be there. Others would take the jobs. They need uneducated people who will work for that type of wage. They want people who will work under inhuman conditions because they want them to behave in an inhuman way. At the moment the state doesn't want an enlightened system.

P: Another aspect of the problem is that senior police lack respect for their subordinates. Junior police have no redress and in turn take out their frustrations on ordinary people. That is a very widespread phenomenon in South Asian countries. Another aspect is that sometimes local leaders and

groups pressurise the police to catch a culprit and extract a confession quickly. Also, **our society is sympathetic to the use of torture. We are insensitive to the problems of others. This indifference has given the police much room to inflict torture.**



*Sr. Neelmino Thomas*

P: Police training is less important at the bottom than at the middle and the top. The men at the bottom do what they are told by their bosses. So we must critique training programmes that just focus on the lowest ranks and numbers of people trained. We should not get trapped into this type of training. We have to focus on procedures.

#### SUMMARY:

**Normally the state prosecutes private persons who have committed a crime against the state. But here it is the state that is committing the crime.** So the question is, who can prosecute the state officer in violation of the Convention? In some countries officers are prosecuted by a special department of criminal investigation. So there may be a need for a separate department for prosecution of police committing torture.

There is a need for police reform in criminal investigation. Two types of reforms are needed:

One is in the investigation section, where there must be people who have the power to investigate and are independent.

The second is regarding who has the right to prosecute. In Sri Lanka, for instance, it is the Attorney General who decides. If a case file does not come or is incomplete he may not investigate. The police report the crime to the Prosecutor General, who then instructs them regarding the investigation. So right from the start the files are both with the Police and the Prosecutor General, who will direct the investigation. By the time the investigation is over both will complete files. The burden of the prosecution is with the Prosecutor General and not with the Police.

#### WE NEED

- defective systems to be reformed;
- civil society to be committed to promotion and defense of human rights;

- to study the systems to identify defects;
- to work to change the defects;
- training of police forces.

How conversant are the police with national laws, international conventions or human rights principles? Today the police are what political parties want them to be. A community police system was tried in certain areas of India. It worked sometimes but was discontinued due to perceived failure. However, a clear examination reveals that the state worked against its success. The agents of the state felt they had lost control of the police so they worked against the programme. It is by state policy that police behave inhumanely and it is by state policy that they are ill paid. The argument that the police tend to be corrupt due to the treatment meted out to them by their superiors is not acceptable. They are corrupt due to a series of other reasons for which the state is responsible.

The questions for us now are:

- What have we done as members of civil society?
- How many cases of (police) violations have been recorded or documented by us?
- Do we consider the investigation of crime by police to be a priority?
- Why is crime apparently so unimportant?
- Do we also look into the plight of police personnel?
- Don't the people deserve a better system of investigation?

#### **Avenues for police reform include**

- 1) improving police pay and living conditions;
- 2) offering effective training and educational programs;
- 3) building a vigilant civil society;
- 4) creating an effective legal mechanism for investigation.

## Poem 2 by Ms. Arogyamary

Start briskly for the sake of dalith country  
 Work for change the change of the history  
 Of your country  
 This is the land of the dalith  
 The history is going to change

We shall give a call for unity  
 Let us work for harvesting human rights  
 Let us work for the growth of women rights  
 Let us struggle for the equality of the women in the society  
 Fight for the Panhami movement  
 And saw the seeds for Tribal Growth  
 You are in a dalith millenium  
 This is what we have said during Dr. Ambedkar's ...  
 Awake along with the dalith morning star

### F: *Is compensation the sole remedy for torture?*

Can compensation reduce the gravity of the crime? Even when compensation is given, cases of torture have to be investigated and those responsible punished. The need is to agitate for criminal investigation and convictions. At least half of the compensation must come from the torturer who violated the law.

We can discuss further the role of **national human rights commissions**. Often all they do is ask for compensation to settle the matter. To get compensation is considered a victory, but this is to diminish the gravity of the offense, that under pressure the government may just pay some money and then get away. It does not deal with the issue. When challenged, the national human rights commissions respond that they



don't have powers of prosecution. This is true, but one thing they can do is make recommendations for policy changes, and that is something they don't do at all.

At the UN meeting that led to **the Paris Principles**, the standards upon which national human rights commissions should be built were agreed to. Included in the Paris Principles is the mandate to make recommendations to the state or government agencies for policy changes. But to make policy changes you need to study and undertake extensive consultations. In this sense the national human rights commissions have not done much, and civil society groups don't know about what they can and cannot do. In fact, our groups can write policy papers and submit them to the national human rights commissions in our countries. Point out where under their mandate they are obliged to deal with policy issues and request them to make policy recommendations to the government on the basis of our proposals. Then give publicity, follow-up on the submissions and engage them continuously. It is wrong to think of the human rights commissions only as complaint mechanisms.



Z Shahid

**On the question of whether compensation can be the sole remedy for torture, the answer is no, but on the other hand compensation is a symbolic recognition of what has taken place.** But in this regard the amount is relevant. In another respect, compensation is a fine on the government for what has occurred. If the government is compelled to pay increasingly large amounts of compensation they will have to react. In India the National Human Rights Commission has given orders for compensation to be paid where non-payment

has been justified on the pretext that the offending government or agency has no money. There is no use in announcing compensation that is not received by the aggrieved party.

P: The commissions themselves may be under a lot of pressure. Here in Kerala the state human rights commission investigated a particular incident that earned the wrath of the ruling party. That day a member of the human rights commission at the rank of High Court judge found his house attacked and a large amount of human excreta was thrown into it. He telephoned the police for two days but none came. That is the plight of the state human rights commissioner. So what of the ordinary person going to the commission?

F: That is the kind of issue that can be taken to the international level and an enormous amount of pressure can be applied. **The extent of change will depend on the willingness of society to expose these abuses.** Such events as this should be reported to the UN. Everyone needs to learn about the mechanisms available in the UN system and how to use them.

We cannot take a soft approach to any of this. So long as we see remedies merely in terms of payments, there will be no progress. We need to focus on getting convictions. This will lead to a breakthrough.

One problem is that, in Sri Lanka at least, there is no single organisation to follow-up on incidents of abuse. One incident comes up and the whole focus is on that event, then later there is another incident and the earlier one is forgotten.

F: The next issue is, **"Should a person found guilty of committing torture be allowed to continue to be employed by the state?"** Consider what is the current situation. How do you view that and what should in fact happen?

*Beginning with Sri Lanka, under Article 126 of the Constitution there is a provision that allows for a complainant to go to the Supreme Court and petition in the event of torture. It is a rare kind of action, not a criminal or civil action, it is done by affidavit. You explain the circumstances of torture, and any*

*evidence to corroborate it. If the Supreme Court finds there is a prima facie case then it issues a notice to the other party, who must answer within a short time. Then the Court calls lawyers from both sides to make arguments. There is no direct hearing of evidence unless the Court wants this. There are two remedies. The first is a declaration of the violation, the second is the right to give an "equitable remedy". What that is is not detailed. Usually it is compensation. At first it was very small, now it is up to 100,000 rupees.*

**F: But what happens to the guilty person?**

At the very beginning of the legal action sometimes the government promotes him and purposely publicises his promotion. This is of course some form of encouragement. The fact is that despite the finding of guilt by the Supreme Court—and often recommendations by the Court for disciplinary action—no punishment is given to the guilty party. The National Human Rights Commission also has the right to investigate, in a tribunal format. Nowadays the police, in order to avoid action in the Supreme Court, sometimes admit an offence to the Commission. They pay compensation and the matter is finished; they continue as if nothing has happened. Under the CAT Implementation Act of 1994 a person can be punished from seven to ten years, but there have as yet been no convictions. One would have thought that when the Supreme Court finds someone guilty of torture then the Attorney General would proceed to try him under criminal charges, but it doesn't happen.

P: By contrast, in another case in Sri Lanka three officers were accused of a fairly minor theft of provisions from police stores. Although their case is still pending and they have not yet been found guilty, they have been dismissed without pay and have had to vacate their houses. So this shows how different offences are being treated by the police force.

P: **Nepal** has not made any legislative provision regarding punishment of torturers, in spite of having two acts, the Torture Compensation Act and the Human Rights Act. Both allow only for compensation through the courts or Human Rights Commission. If a case for compensation is filed in a District Court, it can only recommend action to the concerned ministry or department. The Human Rights Commission was founded last year but its legislation has not yet been passed, so it has not yet started working officially.

P: *Article 35 in the Constitution of India very clearly mentions and empowers the High Courts and Supreme Court to issue orders against a criminal perpetrator. Article 35(2) states that the courts may prescribe punishments under relevant legislation. The implications are first that parliament may introduce legislation to prescribe punishment for persons found guilty of committing torture, and second that the courts are empowered to act on that. The National Human Rights Commission Act of 1993 states that the Commission may initiate proceedings to prosecute those whom it deems to have committed violations.*

P: If we consider the real situation, quite often the High Courts or Supreme Court pass judgements that do not give specific instructions for suspension or dismissal of persons from government service, but they state that "appropriate action should be taken". So then the responsibility lies on the head of the department. The result is usually that the person is transferred, and often promoted to a new post elsewhere. In reality then there is no punishment. If there is a lot of media attention, however, the person may be suspended for a short time. Also the National Human Rights Commission may instruct the relevant government to take some kind of action, which the act obliges them to respond to, and often the Commission's orders may allow for deadlines. So as far as the provisions are concerned it is clear. Whether or not matters are followed up on is another matter.

In **Bangladesh** two cases in which women were raped and killed led to a lot of pressure on politicians from the women's movement. As a result, in the first case the officer was dismissed and in the second the officer was suspended.

F: From these reflections on what is happening, how do we build an argument that if a person is found to be guilty of torture it is wrong to keep him in state employment? Campaign building is not just saying it is wrong. We must build arguments to explain what the ill-effects of his continued employment will be. To get people involved in imposing remedies you must convince them that damage is still being done. We must be able to explain this to society, not only to the state.

Two possible avenues are, first, to make an inventory of those cases where perpetrators have either been punished or are still in service, and then we will find where we stand. It will probably show a very poor state of affairs. Second, we go to a campaign to show people how this situation doesn't serve the purpose of justice.

**The question is one of proportionate remedy. The punishment must be proportionate to the offence. If we remain only at the point of saying "these things happen" then we won't progress. If we want to change this situation, what type of argument do we have to place before society?** We have to convince society that what is happening now is a mockery of the law. We have to make people angry that these things are happening. We have to feel angry with ourselves that this is all we have achieved.

*When we are talking about education here we are not talking about education to make people "good". **We are talking about education to change certain legal structures, through the implementation of which you can change behaviour. We need to make practical demands to see that people who commit torture are punished criminally.***

**First** we need to build ample evidence against a person and publicly identify them as a criminal.

**Second**, we have to argue that to have such a person continue in service is to encourage other people to commit such crimes in the future.

**Third** we have to argue that, in India's case, if a judgement is given by a High Court or the Supreme Court then in the event of non-compliance the continued employment of the person is unconstitutional.

**Fourth**, it would also amount to contempt of court if the court instructed that appropriate action be taken against the person and nothing was done. Then those responsible for the failure in compliance may be jailed for contempt. People's pressure is important to get all these things implemented.

P: Brahmins make up only five per cent of the Indian population but they control everything. They have the government authority, the judicial system, the military and police. So in our country we must start by addressing this imbalance.

F: We have to take steps both to prevent abuses from happening in the future and also to deal with them appropriately if they do. The first step is awareness among the masses about these issues. Then **mobilising people, networking, documenting of offenses and collective efforts towards building a culture of human rights.**

Once violations occur:

- we must resort to fact-finding,
- then file cases in the courts
- build linkages with other groups in relation to the issue.

After that identify other avenues to proceed on, including through the human rights commissions and also UN agencies if possible. We need to reach out to both international and regional agencies. If there appear to be loopholes that allow perpetrators to go free we must identify them and initiate steps to plug them.

**To the question of which agencies can probe the police, human rights commissions are not capable of doing so beyond a certain point.**

They don't have the power, which is the key issue for the investigating agency. The agency must have power to pursue the guilty persons until its findings are implemented. In this respect we must look at other countries' systems where this is working and ask ourselves how they did it. Before beginning to campaign we have to ask if there are problems with the law. And if so, how may the law be improved? If the law is there but not being enforced, we can act on it. But if there is not yet any law, we have to start with the introduction of an appropriate law. Agitation depends on the stage of legal development. So this kind of analysis is essential. It is micro-analysis. Often NGO analysis is macro-analysis: "This is what globalisation has done", "This is what the BJP has done"... This is all true, but it doesn't contain a solution. Those who want to agitate for a solution must engage in micro-analysis.

**For instance, on the issue of atrocities against Dalits, there is a law, but it is not enforced. We have to analyse why not.** We have to find a way to attack the problems at the micro level. In other cases there are no laws and we have to start by getting the issue recognised; for that human rights commissions can be used. The idea that we just campaign and the campaign will introduce something is dangerous. If it is not possible to achieve the campaign goals then over time participants get tired and frustrated and nothing changes. Campaigns must be developed in a sharper way to be successful.

For example, with the campaign for a better health system in Cambodia we have used a message from the Buddha that a good Buddhist will care for the sick, with a message that affordable health care is a human right. Because it is a Buddhist society this creates a powerful moral basis to the argument and deligitimises counter claims. Also, we have come to certain conclusions about the remedy. We don't just

shout that patients have rights, but we add that the remedy is to make costs affordable. And we make the case as a human rights issue, not as a charity. The whole approach is to demonstrate that we have thought about the issue in depth and can point to the direction that a solution must come from.

In many parts of the Catholic Church in India, especially in the south, there are abuses against members. For example, although Dalits are in many places among the majority of its members, they are treated badly by upper caste members in its hierarchy. Both Dalit lay people and priests are maltreated. So is there anything we can do to expose this kind of abuse?

**AHRC's Religious Groups for Human Rights campaign has as one of its aims exposure of human rights abuses by churches. And also here there is the caste issue involved, which falls into campaigns under that category. We have asked people from religious groups to examine not only the ideas in their religions that oppose torture but also those ideas in their religions that support torture. Historically torture has been very much a part of religious psychology.**



**In the streets of Trichur**

*By Basil Fernando*

In the streets of Trichur  
heavy vehicles move  
crude oil, vegetable  
people.  
Sun , sweat  
people reflecting  
conflicting identities  
tribals, abused children  
outcastes  
Dishonored Brahmins  
conspiring to reconstruct  
lost privileges  
At the temple celebrations  
there are elephants  
but, where are gods  
History tells of Buddhist places  
now transformed into residents of gods  
Rituals and legends  
city strangulates  
the infants  
Whatever might the Syrian Christians say  
all gods here  
are cruel  
Loud noise of fireworks  
where is the flowering of the humans?  
An ancient neglect continues  
where is justice  
An aged judge living near by  
says, till judges can weep  
society will not awake  
Bitterly complaining people  
all the humanity left  
only ray of hope...

April 2001

\*Trichur is a city of the Kerala state, India.



## REFLECTIONS BY THE PARTICIPANTS

### Dalits

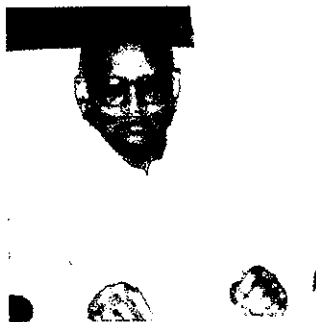
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*A Comment by Dr. Nandi Joseph*

Dalits are the Untouchable Caste of India, where according to the 1991 census the Dalits of Hindu origin alone are over 25% of the population (i.e. 250 million). These people have been fighting against a degenerating sense of nobodiness in this society for thousands of years. Even today, in many villages and towns these people are considered as the last, the least and the lost of society.

According to Hindu mythology, the Brahmins came from the head, Kshathriyas (warriors) from arms, the Vsyas (business class) from the thighs and Shudras (labourers) from the feet of Brahma, the Creator. The Untouchables have no place in the above "Chturavarna System" as they are non-people. Hence, subhuman and inhuman treatment is meted out to them by the other four castes of the hierarchical system.

**During the freedom struggle, the colonial government, at the insistence of Dr. Ambedkar, wanted to know which were the castes considered outcastes and untouchables. Hence a schedule was prepared and those castes that were incorporated are called Scheduled Castes. At the Round**



**Table Conference, Mahatma Gandhi tried to show concern and care for them and gave them the title 'Harijan', taking the cue from a Gujarath Saint, Narsi Melitha, who had written a poem as DIVADASI CHILDREN sounding that harijan means an illegal child. [UNCLEAR MEANING].** It was Dr. Ambedkar who gave these people the name 'Dalit', meaning Broken People (in Hindi 'dal' means 'broken').

Thanks to the struggle of Dr. Ambedkar, and people like Jydhī Baphule and Periar F. V. Ramasamy, Dalits—once considered non-people—are now given the same considerations through constitutional guarantees and reservations in education and employment. Yet, today only six to eight per cent of Dalits are better off than before. Most are caught up in poor social conditions as bonded labourers, or are forced to do the meanest of mean jobs, sweeping roads, cleaning toilets, carrying human excreta and living in appalling conditions. Murders of Dalit men and rapes of Dalit women are a common thing in India. A lot has to be done to give these people a proper place in society

## Tribals

*A Comment by Fr. Mani*



Through a process of conditioning and enslaving education, the mainstream and government media are trying to co-opt and assimilate the Dalit and indigenous elite and let the rest of the Dalits and indigenous people (about 300 million) perish through cultural erosion, demoralisation and physical genocide. Their cultural identities are not considered or recognized as worthwhile to be promoted. This is a blatant violation of human rights, in spite of the Indian

constitutional provisions and the UN Convention on Torture, to which India is a signatory. For our part, we will try to mobilise—in partnership with tribal organisations and concerned citizens' forums—national and international opinion against this demoralisation, cultural erosion and physical genocide of one third of the Indian population and half the tribal population the world over. Our group, Vizwamaithri, has also already started a tribal 'Gurubulam' (school) for alternative education—to promote tribal culture, language, art, agriculture, craft and nature-friendly spirituality, assuring them cultural identity and self esteem. The school is named "Vizwamaithri Tribal Gurubulam"

N.B.- Tribals in India total 80 million; denotified tribes, 60 million; Dalits, 160 million; Kerala tribals, 320 thousand; Attopody tribals, 30 thousand.

## Reflection on the UN Convention Against Torture

*By Father Lawrence Noresh Das, CSC*

Torture, whether physical or mental, is an evil. This evil has its root in our families and societies. Ignorance, discriminatory mindsets in regard to colour, creed and caste, and discriminatory religious values are the causes for torture. Domestic violence and police torture are worst in South Asian countries. We all feel bad about it. We are brothers and sisters created by the same God. Moreover, we are a global family with its richness of diverse culture, creed and colour. All of us want peaceful and harmonious living. This conference made us more aware of the need to work in solidarity to defend human dignity and the human rights of our brothers and sisters in a united and



concerted way, with the weapons of the UN Convention Against Torture and respective country laws regarding torture. I am looking forward to seeing a better world of hope, joy and happiness.

### **Personal Reflection**

*by Ms. Pooja Shresthra*

The UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment have been an important forum to voice our opinion and in return, take the feedback from the participants.



In Nepal, the existing scenario on torture can be profoundly noticed in the Maoist affected areas, those in the Police custody, those who have been trafficked, those still under the pretext of the superstitious beliefs and those facing domestic violence.

While working in the respective area, the encounters of the victims have been plenty. I still remember those faces, the faces so still, full of hope and anguish to get somewhere, to reach out for the helpful hands, the hands to shed away their tears and remove the fears from the heart and soul. I wish at times that those days had never existed, those faces would never turn up.

So, to end Torture and Other Cruel, Inhuman and Degrading Treatment, let us first start with our family, our neighbor, our society that is basically from Micro to Macro level.

## Rape & Womanliness

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*By Mucha Shim Q Arquiza - AMAN*

Violence against women, especially through sexual aggression, is being perpetuated in this permissive and insensitive society where the social systems and moral institutions have unwittingly become the very instruments (or a part) of violence.

As framers of community values, social and religious institutions have crafted the yoke and chain for woman that have eternally condemned her while declaring her a saint and claiming to place her on a pedestal. The 'moral' society sees woman as symbol of community pride and honor and imposes expectations upon her: to be meek, modest and passive. Chauvinism is legitimized in pegging womanly virtues on her chastity; branding her sexuality as carnal, sinful and dirty, and therefore shameful and something she should be guilty of. And yet no such thing is expected of the men. Indeed so high a price must the woman pay that is placed on her virginity. All these have made her gender and sexuality synonymous with her weakness and folly.

It is in this context that sexually violating a woman has become a very effective way to bend her and break her down. Rape then becomes the gravest and utmost form of humiliation to woman and her community. Thus, only by redefining and re-orienting values on sexuality will womanhood be genuinely liberated and empowered



## Child Sexual Abuse: The Invisible Scourge

*By Ms. Seema Bhaskaran*

Sexual abuse, including rape, is one of the most heinous, brutal and de-humanizing forms of torture. Sex—the most beautiful and sacred element of life and creative source of energy—is debased into a tool, a weapon to defeat, humiliate

and destroy to nothingness the peaceful half of life: our women and children. This form of torture is spread through all echelons of society, beginning from the family and marital institution to the school, college, workplace, religious institutions, police, military and the state, and all these institutions re-victimize the victims.



In India, upper caste men use sexual abuse as a coercive mechanism to put the lower castes, especially Dalits, back in their place.

During communal riots it is used as a method of vengeance against a community, and by the police when 'development' programs are implemented to snub out poorest tribals or native people fighting against forcible evictions.

In particular, sexual abuse of children is rampant but pushed away in shrouds of secrecy and shame. Power-play makes child sexual abuse an acceptable and condoned crime where the accused goes scot-free and the child leads a life of stigma and scorn. Power-play implies the imbalance of power between the two genders and how power derived from the powerful economic, social and political position yielded by men is employed by them in defining and constructing what sexuality means.



Sexual assault is an attack against children on a physical, emotional, psychological, moral and social level. The concept of virginity and sanctity of the vagina valued and upheld by our society transfers all the blame for sexual abuse onto girl victims. Here are a few case histories of children with whom I worked closely:

1. A thirty year-old man orally penetrated a six year-old, the only child of a couple who was conceived after several years of marriage due to biological complications. She was playing in the garden when she was pulled away by the accused. This was the fourth or fifth time he had committed a crime of child sex abuse, but parents of other child victims feared social stigma and remained silent. The case is presently being heard in the Kadungaloor Court. It was postponed four times due to the Public Prosecutor's absence. The child has become withdrawn and is constantly losing weight.

2. Another case is presently being heard in the Wadakanchery First Class Magistrate's Court. The twelve year-old victim was abused during 15-25 March 1998 by five persons. The case was reported on 2 April 1998 but charges were submitted to the court only on 28 February 1999. The child has developed fits and loses consciousness for long times at a stretch having been subjected to the abuse. His good academic performance dropped and he failed the 10<sup>th</sup> standard. Despite his frail health, the boy was cross-examined by one of the defence lawyers for a long time in front of the whole court. In response to our plea, the Chief Justice of the High Court immediately issued an order to carry out in camera proceedings. Despite this, the child has not been able to withstand the cross-examination of the five defence lawyers, who are crossing all limits of decency and asking obscene questions. The parents are almost on the verge of committing suicide, unable to bear the strain of their child being treated so excruciatingly.

3. A girl was molested by her uncle for several years. She was staying with the uncle and aunt as they were childless and her mother was concerned about this. She could not disclose the abuse, as her parents' marital discord had left her confused and insecure from childhood onwards. She was guilty, depressed and always on the verge of suicide. Only when she grew up needing psychiatric assistance and could not bear the suppressed anger and sadness anymore she broke down in deep trauma. The after-effects continue in her married life where she perpetually feels guilty and good for nothing. Her self-image is very poor and distorted.

It is very difficult to trace any reason for child sexual abuse in India. Families maintain a veil of secrecy around sexual issues. Inquisitiveness and the urge to know is suppressed and children are made to feel that their being violated is a sin. The naked body is portrayed as a dirty object right from childhood. This ideological imposition stupefies and paralyses the child who is subjected to sexual abuse. The educational system and teachers also do nothing to enlighten children on sex. There is no sex education, which relieves teachers of possible embarrassment.

There are very few sections under the Indian Penal Code that deal with child sexual abuse. The laws for women are extended to include children. The major weakness of these laws is that only penile penetration is considered a grave sexual offence. The crime is considered lesser when it is oral, or through penetration with an object. Although section 377, dealing with unnatural offences, prescribes seven to ten years of imprisonment, such cases can be tried in a magistrates court, which can impose maximum punishment of three years. And if the abuse is repeated several times it affects children more severely, however as yet there is no law for repeated offenses against the one child.

How do we apply section 354, on outraging the modesty of women, with respect to children? How do we define modesty? The gravity of the offence under section 509, dealing with obscene gestures, is less. Yet even in such cases, the child's psyche may be affected as severely as in a rape.

In a Supreme Court ruling of 1983, the judges opined that a child victim's testimony is most important. Corroborative evidence is not essential. Yet police can wait for forensic lab reports for three years. Another issue is that it takes ten to fifteen years for a case to reach the Supreme Court.

It is also important to note that a child specialist or social worker's presence is essential when the police take down statements. Video questioning should be introduced to avoid obscene questions and direct meetings with the accused, and to ascertain that a cordial atmosphere has been established for the trial. Special sittings for children should also be held, to avoid unnecessary delay.

Finally, the most important task is to initiate dialogue on sexuality and ask ourselves the question: why do we abuse children?

### **Reflections** by Fr. Camillus Jans

Human life is a beautiful and wonderful creation of God.

Therefore every Human being has to right to live in this world with Justice and Peace. But when I reflect about my own Country, it is very sad. In past as well as in present lots of tortures are going on. Can we say that in future there will be no tortures in Sri Lanka. "No" I can not say. When a person taken in to custody, they torture his because they wont to get information. They think that this is the only way that they can get information from him. They did not think that this person also has right to explain these things in past way.



Therefore it is time to stand against torture not only Sri Lanka but also in the world.

**A Comment** by *Fr. Nandana Mantunga*

The Physical and Mental Torture continues at different levels in all parts of Sri Lanka. The law enforcing agencies continue to torture people on the Pretext of the war situation.



The civil society has to call on the State to respect the UN Convention against Torture and inhuman Punishments. The Religious leaders need to play an active role in promoting the UN Convention against torture and other inhuman Cruel Punishment by consciencising civil society. To counteract Torture the Religious leaders will have to communicate the religious doctrine powerfully and forcefully without diluting or compromising.

**A Comment** by *Chandana Tennekoon*

Every country has legislations to regulate the taking of persons into custody and detention of suspects.

**Therefore, taking into custody and detention of persons should be carried out within the legal system. Majority of countries today are bound to observe the enactments of the U.N. Conventions on Human Rights – for the benefit of the citizens. In the taking of persons into custody it should be done according laws pertaining to this matter, without violating the fundamental human rights of persons. At the same time taking into custody should be done within the framework**



**of the law. A person arrested on suspicion should be given just reasons for the arrest. The suspect should be presented before a court of law – within a certain time limit – so that justice is meted out to the suspect.**

Presently, these Laws remain at the level of Legal Theory – often a very insignificant minimum is carried out practically – and enforcement of these laws is neglected. Unlawful taking into custody, detention and subjection of suspects to inhuman torture have become common experiences of our times.

**We are aware of the enormous sufferings the victims of arrests undergo. Apart from torture the victims are subjected to, they are made to witness the infliction of terrible torture on other victims. We see and we hear of mass graves of victims of torture. The media highlights news of widespread inhuman torture and degrading punishments meted out by law enforcing persons on victims of arrests. The failure of criminal investigations into such matters compel us to question is there no legal system in our country to respect the Human Rights of our citizens.**

**A Comment by Chandani Watawala**

There are two types of torture: one physical and the other mental. I feel the mental torture affects more than the physical. While there is cure for physical torture, mental torture to a person is incurable. Sometimes it is for a lifetime.

In Sri Lanka, for the past 20 years we have faced and on going war and ruled under Emergency Regulations. Not only in the North and East but all over the country all the people face severe mental torture since more than 30% of the national income is spent on war. As a result more than 70% of the population are denied their basic needs.



On the other hand concerning law and order very low standards are maintained. Compared with several South Asian countries we have passed several laws against torture and against inhuman treatment. But the reality is different. Now people are more exposed to torture and inhuman treatment.

I feel as a social worker, we have to work to eradicate this situation.

## ACTION PROGRAMS

### Indian Participants

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#### DALITS

1. Proper documentation.
2. Protest programs
3. Recording facts and building up international pressure
4. Sensitizing children through changes in school syllabi
5. Seeing problems holistically, by addressing Dalit issues in relation to every area of work
6. Encouraging inter-caste marriages as government policy

#### PLAN/RESPONSE TO DALIT PROBLEMS

1. Write down stories of atrocities against Dalits and send them to the Asian Human Rights Commission
2. Campaign against atrocities against Dalits through posters, pamphlets, banners and street plays
3. Build public opinion regarding the treatment meted out to Dalits, and particularly Dalit women, in broader sections of society
4. Sensitize the hierarchy and the people at large regarding Dalit Christians and send stories to AHRC about the suffering of Dalits inside the Church

**RE: INDIGENOUS PEOPLE**

Focusing on alternative styles for education

**RE: SUICIDES**

1. Detailed documentation of cases and publicity in international forums
2. Getting access to cases of burnt women by networking with organisations in the country

**RE: CHILD SEXUAL ABUSE**

1. Work at the individual level
2. Networking with groups in Kerala and India
3. Conducting sensitizing programs with police, teachers and doctors
4. Preparing a write-up on child sexual abuse cases and movements in other countries under international law; setting a campaign up with one judiciary to bring about a change in the law

**RE: CLAY MINING IN THE PADDY FIELDS**

1. Building up international opinion
2. Organising farmers and preparing a draft declaring clay as our common resource and farmers as guardians of the soil, to build up international pressure

**CAMPAIGN AGAINST POLICE BRUTALITIES VERSUS  
STREET CHILDREN, WOMEN AND MINORITIES**

By M.Z. Shahid, DRTC/JPC, Bombay, India

**Processes involved/ to be initiated**

1. Research and fact finding
2. Documentation / building detailed stories on torture
3. Mobilisation/ campaigning through meetings, seminars and conferences



4. Filing public interest litigation in the High Court/  
resorting to other legal mechanisms
5. Urgent appeals to AHRC
6. Networking through AHRC/ Solidarity
7. Publications
8. Training for capacity building

Training on Human Rights for Sensitization of the following groups

1. Police - higher officials
2. Students - schools and colleges

## **NEPALESE PARTICIPANTS**

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### **SHORT TERM PLAN**

Awareness of human rights:

1. The concept of human rights
2. Building a coalition against torture

### **3. SENSITIZING POLICE OFFICIALS (AT ALL LEVELS)**

4. Sensitizing various institutions on human rights issues
5. Bridging the gap between the international human rights network and the local victim
6. Readiness to take up cases worldwide through lobbying by networking (communications through e-mail)
7. Keeping records of the victims
8. Helping victims of torture to seek justice
9. Organizing non-violent protests, like signature campaigns and hunger strikes

Long term Plans

- Conduct training programs with:

1. Police in Maoist affected areas
2. Police in border areas where trafficking is prominent
3. Prison officials
4. Teachers
  - Include a human rights syllabus in the education system
  - Pressurize I/NGOs to initiate training programs for members of the judiciary and medical personnel
  - Provide social workers and religious representatives with means to voice concerns over torture cases
  - Pressurize I/NGOs and the government to run programs for torture victims, like:
    - Rehabilitation homes
    - Health camps
    - Housing facilities
    - Legal aid
    - Financial support
    - Social skills training programs
    - Counselling centres
    - Hotline facilities
  - Inspection of police stations without prior notice
  - People concerned about HR issue should be in good relations with NGO and village leaders to get the good information.

Ms. Pooja will build a unit with AHRC to send articles and stories related to torture, and in addition to keep records, conduct training programs for children.

#### **FOLLOW-UP FROM AMAN**

To Make AMAN WATCH effective in building a campaign against torture:

- 1) Research on Islamic inspirations and provisions to prevent and eliminate torture and other human rights violations. (With minorities, women, children – reaching out through Mosques, Madrashes and religious institutions)

A simple publication containing:

- selected stories
- important parts of UN Conventions
- Islamic provisions and inspirations

2) Training workshop for AMAN WATCH – National contacts/correspondence (in cooperation with AHRC, if agreeable)

- to develop skills on fact finding, story writing, reporting, networking and advocacy
- to provide information and become familiarised with UN conventions and national and international laws, acts, etc.

We will circulate the statement from this workshop and keep participants on our mailing list

## **SRI LANKAN PARTICIPANTS**

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### **SHORT TERM**

- Urgent appeals to continue
- Poster on torture in Sinhala and Tamil
- Vesak Postcard to be printed in Sinhala
- Workshop on human rights for religious groups in May
- E-newsletter to be translated to Sinhala and Tamil

### **LONG TERM**

- A program for the national human rights task force with AHRC staff as resource persons
  - Special focus on suicide cases and displaced, traumatized children.
  - Document information on disappearances and displaced children

- Broaden the AHRC group in Sri Lanka and hold a meeting in August
- Print postcards on the "right to water" as a part of the campaign

## **BANGLADESHI PARTICIPANTS**

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1. To hold a meeting with other NGOs to introduce AHRC; AHRC will also be introduced through the meeting of the Commission for Justice and Peace in Bangladesh
2. Keeping regular contact by sending our stories to AHRC and utilizing this network
3. Sending torture cases for AHRC publications
4. Writing something about the "Public Safety Act" and section 54 of the Penal Code of Bangladesh, which are instruments of torture for the police and government
5. Continue arranging seminars and workshops to sensitize people about torture
6. Enhancing preventive and curative measures for women and children who suffer in our country due to discriminatory laws
7. Filing a writ petition in the High Court for the proper rehabilitation of sex workers in different areas of our country who are evicted from brothels

## APPENDICES

### List of Participants - Appendix 1

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**Fact Sheet No.17, The Committee against Torture**

- Appendix 2

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**INTRODUCTION**

The eradication of the practice of torture in the world was one of the major challenges taken up by the United Nations only a few years after its establishment. In order to ensure adequate protection for all persons against torture and other cruel, inhuman or degrading treatment or punishment, over the years the United Nations has adopted universally applicable standards. These standards were ultimately embodied in international declarations and conventions. The adoption on 10 December 1984 by the General Assembly of the United Nations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment rounded off the codification process to combat the practice of torture.

In developing this valuable instrument, the United Nations did not merely put in writing in a series of articles a body of principles and pious hopes, the implementation and observance of which would not be guaranteed by anything or anyone. It set up also a monitoring body, the Committee against Torture, whose main function is to ensure that the Convention is observed and implemented. The Committee met for the first time in April 1988 in Geneva and has since carried out intensive activities which, although often discreet, should make it known to the public at large.

#### A MONITORING BODY

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted on 10 December 1984 by the General Assembly of the United Nations. Consisting of 33 articles, this instrument, which 58 States had ratified or acceded to as of 1 January 1992, entered into force on 26 June 1987.

The Committee against Torture was established pursuant to article 17 of the Convention and began to function on 1 January 1988.

The Committee consists of 10 experts of high moral standing and recognized competence in the field of human rights. The experts, who must be nationals of States Parties, are elected by those States by secret ballot. They are elected for a term of four years and are eligible for re-election. The present composition of the Committee and the list of States Parties are indicated in the annexes.

The Committee constitutes a new United Nations body, entrusted with the specific supervision of a multilateral instrument for protection against torture and other inhuman treatment. The Convention sets out a number of obligations designed to strengthen the sphere of protection of human rights and fundamental freedoms, while conferring upon the Committee against Torture broad powers of examination and investigation calculated to ensure their effectiveness in practice.

At their initial meeting held at Geneva in April 1988, the members of the Committee against Torture adopted rules of procedure and defined the Committee's working methods, in conformity with the provisions of the Convention.

### THE COMMITTEE AT WORK

The Committee normally holds two regular sessions each year. Special sessions, however, may be convened by decision of the Committee itself at the request of a majority of its members or of a State Party to the Convention.

The Committee elects from among its members a Chairman, three Vice-Chairmen and a Rapporteur. These officers are elected for a term of two years and are eligible for re-election.

The Committee may invite specialized agencies, United Nations bodies concerned, regional intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council to submit to it information, documentation and written statements, as appropriate, relevant to the Committee's activities under the Convention. It submits an annual report on its activities to the States Parties and to the General Assembly of the United Nations.

### REPORTS BY THE STATES PARTIES

#### *Submission of reports by States Parties*

Pursuant to article 19 of the Convention, each State Party shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures taken to give effect to its undertakings under the Convention. The first report must be submitted within one year after the entry into force of the Convention for the State concerned; thereafter supplementary reports shall be submitted every four years on any subsequent developments. Further reports and additional information may also be requested by the Committee.

At each session, the Secretary-General of the United Nations notifies the Committee of all cases of non-submission of the said reports. In such cases, the Committee may transmit to the State Party concerned a reminder about the submission of such report or reports.

As to the actual formulation of the report, the Committee has prepared general guidelines containing precise instructions on their form and content in order to inform fully the Committee on the situation in each State Party.

#### ***Examination of the reports by the Committee***

For the examination of the reports, the Committee invites representatives of the States Parties to attend the meetings when their reports are considered. It may also inform a State Party from which it decides to seek further information that it may authorize its representative to be present at a specified meeting. Such a representative should be able to answer questions which may be put to him by the Committee and clarify, if need be, certain aspects of the reports already submitted by his State.

After its consideration of each report, the Committee, in accordance with article 19, paragraph 3, of the Convention, may make such general comments on the report as it may consider appropriate. It may, in particular, indicate whether it appears to it that some of the obligations of the State concerned under the Convention have not been discharged. The Committee's observations are transmitted to the State Party, which may reply to them.

Some 40 reports had been examined by the Committee by the end of its seventeenth session in November 1991.

#### ***Powers of investigation of the Committee***

By virtue of article 20 of the Convention, the Committee is empowered to receive information and to institute inquiries concerning allegations of systematic practice of torture in the States Parties.

The procedure set out in article 20 of the Convention is marked by two features: its confidential character and the pursuit of cooperation with the States Parties concerned.

The competence conferred upon the Committee by this article is optional, which means that, at the time of ratifying or acceding to the Convention, a State may declare that it does not recognize it. In that case, and so long as that reservation has not been withdrawn, the Committee may not exercise the powers conferred upon it under article 20 in respect of that State Party.

### ***Gathering of information***

In respect of all the States which have accepted the procedure set out in article 20, the Committee is empowered to receive information concerning the existence of the practice of torture. If it appears to the Committee that the information received is reliable and contains well founded indications that torture is being systematically practised in the territory of a State Party to the Convention, the Committee invites that State to cooperate in its examination of the information and, to this end, to submit observations with regard to that information. It may also decide to request additional information either from the representatives of the State concerned or from governmental and non-governmental organizations as well as individuals, for the purpose of obtaining further elements on which to form an opinion.

### ***Inquiry procedure***

If it considers that the information gathered warrants it, the Committee may designate one or more of its members to make a confidential inquiry. In that case, it invites the State Party concerned to cooperate with it in the conduct of the inquiry. Accordingly, the Committee may request the State Party to designate a representative to meet with the members designated to conduct the inquiry in order to provide them with any information they consider necessary. The inquiry

may also include, with the agreement of the State Party, a visit to its territory by the designated members, who may then conduct hearings of witnesses.

The designated members submit their findings to the Committee, which transmits them, together with its own comments or suggestions, to the State Party. It invites that State to inform the Committee of the action it takes with regard to the Committee's findings.

After all the proceedings regarding an inquiry have been completed, the Committee may decide to include a summary account of the results of the proceedings in its annual report. Only in that case is the work of the Committee made public; otherwise, all the work and documents relating to its functions under article 20 are confidential.

#### ***Inter-State complaints***

The conduct, with respect to the States Parties, of proceedings relating to the inter-State complaints mentioned in article 21 of the Convention is subordinated to the recognition by those States of the competence of the Committee. With respect to those States which have deposited the declaration specified in article 21, the Committee may receive and consider communications in which a State Party alleges that another State Party is not discharging its obligations under the Convention.

#### ***Recourse to the Committee***

The procedure comprises two stages. If a State Party to the Convention considers that another State Party has violated one of its provisions it may in the first place, by written communication, bring the matter to the attention of that State Party. The State which receives the communication is required



to furnish in writing and within three months any explanations necessary to clarify the matter. In the event that the two States Parties concerned are unable to settle the matter between themselves, it may be referred by either State to the Committee, whose meetings are always closed.

All domestic remedies available in the State accused of a violation of the Convention must have been exhausted before the Committee can deal with a matter, except where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the victim of the violation.

### ***Friendly solution of the matter***

If these conditions are met, the Committee endeavours to arrive at a friendly solution of the matter on the basis of respect for the obligations provided for in the Convention, by making available its good offices to the States Parties concerned and by setting up, when appropriate, an ad hoc conciliation commission. During this phase, any relevant information may be requested by the Committee from the States concerned, which may also make submissions orally or in writing and be represented when the Committee considers the matter.

The Committee shall, within 12 months, submit a report containing a brief statement of the facts and of the solution reached, if a friendly solution is found; otherwise, it submits only the facts with the submissions of the States concerned. The report shall then be communicated, through the Secretary-General of the United Nations, to the States Parties concerned.

### ***Individual complaints***

Like other international instruments relating to human rights, the Convention on Torture gives private individuals, in certain circumstances, the right to lodge with the Committee complaints regarding the violation of one or more of its provisions by a State Party. For the Committee to be able to

admit and examine individual communications against a State Party, its competence in that regard must however have been expressly recognized by the State concerned.

Individual complaints are always examined by the Committee in closed meeting.

### ***Submission of communications***

A communication may be submitted by any private individual who claims to be the victim of a violation of the Convention by a State Party which has accepted the competence of the Committee under article 22 and which is subject to its jurisdiction. If the alleged victim is not in a position to submit the communication himself, his relatives or representatives may act on his behalf.

### ***Consideration of admissibility***

In its consideration of the communication, the Committee's first concern is to ascertain its admissibility and, if the conditions for admissibility are met, the Committee then proceeds to examine the merits. The Committee may be assisted, in the exercise of its functions, by a working group comprising not more than five of its members and expressly set up for the purpose.

The conditions for admissibility of communications are specified in the Convention and in the Committee's rules of procedure. For a communication to be declared admissible, it must not:

- Be anonymous or incompatible with the provisions of the Convention;
- Constitute an abuse of the right to submit a communication under article 22;
- Have been examined (or be under examination) under another procedure of international investigation or settlement.

Furthermore, all available domestic remedies must have been exhausted first (under the conditions specified for inter-State complaints).

The Committee may request the State Party concerned or the author of the communication to submit additional information, clarifications or observations relevant to the question of admissibility.

If a communication is declared to be inadmissible, the Committee informs those concerned; the same issue may, however, be reviewed at a later date in the event of the Committee receiving information to the effect that the reasons for inadmissibility no longer apply.

#### ***Consideration of the merits***

If the Committee decides that a communication is admissible, after informing the author of the communication and transmitting its decision to the State Party concerned, it then considers the merits. Within six months, the State which has allegedly violated the Convention shall submit to the Committee explanations or statements clarifying the case and indicating any measures that may have been taken to remedy the situation. The author of the communication may also submit his observations or additional information to the Committee. In addition, the author of the communication or his representative may be present at the closed meetings of the Committee, if the latter deems it appropriate, in order to provide clarifications on the merits of the case. The representatives of the State concerned may also be invited to attend in the same way.

#### ***Provisional measures***

In the course of the consideration of either the question of inadmissibility or the merits of the communication, and prior to any decision being taken, the Committee may request the State Party concerned to take steps to avoid a possible irreparable damage to the alleged victim of the violation. This provision offers persons who claim a violation of the

Convention protection even before the Committee takes a decision on the admissibility or the merits of the case and at the same time does not prejudge the Committee's final decision.

### ***Conclusion of the proceedings***

In the light of all information made available to it by the individual and by the State concerned, the Committee considers the communication and formulates its views thereon. Any member of the Committee may express an individual opinion. The consideration proceedings conclude with the transmission of the final views to the author of the communication and the State concerned, which is also invited by the Committee to inform it of the action it takes in conformity with the Committee's views.

The Committee includes in its annual report a summary of the communications examined, of the explanations and statements of the States Parties concerned, and of its own views.

By the end of its seventh session, the Committee had adopted seven final views on individual communications submitted to it.

### **COOPERATION WITH OTHER BODIES**

There are other methods of combating torture at either the regional level or the international level. That raises the question of their relationships and the establishment of forms of cooperation to avoid any overlapping of tasks and activities and to strengthen, by means of joint action, the effectiveness of the international campaign against torture.

### ***The Special Rapporteur on Torture***

The Committee has considered on a number of occasions the question of cooperation with the Commission on Human Rights Special Rapporteur responsible for issues relating to

the practice of torture in the world, as well as the possibility of sharing the tasks as between the Special Rapporteur and the Committee, in order to avoid duplication in the exercise of their respective mandates.

The Committee considers the mandate conferred upon it by the Convention and the mandate conferred on the Special Rapporteur by the Commission on Human Rights to be different but complementary. The Rapporteur is required to report to the Commission on the phenomenon of torture in general. To that end, he asks Governments for information on the legislative and administrative measures taken to prevent torture and to remedy its consequences whenever it occurs. He also visits certain regions of the world to hold consultations with government representatives who express the wish to meet him. His task extends to all States Members of the United Nations and to all States with observer status: from that point of view it is broader than that of the Committee (the functions of the Special Rapporteur on Torture are explained in Fact Sheet No. 4: *Methods of combating torture*).

In view of the complementary nature of their tasks, close contacts have been established between the Committee and the Special Rapporteur for the purpose of exchanging information, reports and documents of common interest.

#### ***The European Committee for the Prevention of Torture and the United Nations Voluntary Fund for Victims of Torture***

In the course of its work, the Committee has also laid the foundations for establishing working relations with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as cooperation with the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture set up pursuant to General Assembly resolution 36/151 of 16 December 1981.

The cooperation between the Committee against Torture and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment regarding visits to States which are Parties both to the United Nations Convention and to the European Convention appears, however, limited because of the confidential character of the procedures respectively applicable to those visits.

#### PREVENTION OR CURE

The machinery provided for by the Convention on Torture for the consideration of communications-whether inter-State or individual-can be set in motion when human rights violations have already occurred. In some sense, it seeks to "remedy" such a violation by recording publicly (in the Committee's annual report) that a State has violated one or more provisions of the Convention, in order to induce the State concerned to remedy the violation. This is also the object of other international instruments on human rights questions established in the United Nations context.

**Nevertheless, the establishment of international standards and of monitoring and inquiry procedures, relating to torture and other subjects, is not in itself sufficient to guarantee observance of human rights by the States Members of the United Nations which have undertaken to comply with them.**

United Nations activities in this regard can be supplemented in a timely way by its technical assistance and advisory services programme, which operates at two levels.

In the first place, even when a State has accepted international obligations and is willing to respect them, it is not always in a position to do so because of the lack, at the domestic level, of the competent persons and infrastructures necessary for the application of the standards contained in the relevant international instruments. The United Nations

can then provide its assistance and its advisory services to help the State concerned to ensure the realization of the rights that have been recognized.

In the second place, through its technical assistance programme, the United Nations also wages a campaign to prevent human rights violations. The setting up of national infrastructures for the protection and promotion of human rights, the organization of courses of study and in-service training for officials responsible for the realization of human rights at the national level (public officials, police forces, personnel of the judiciary) lay down the foundations for creating a human rights culture, which constitutes the best guarantee against the violation of those rights.

### Annex III

Declarations made under articles 21 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as at 1 January 1992:

Algeria, Argentina, Austria, Canada, Denmark, Ecuador, Finland, France, Greece, Netherlands, Hungary, Italy, Liechtenstein, Luxembourg and Northern Ireland (art. 21 only), Malta, Monaco, New Zealand, Norway, Portugal, Russian Federation, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, United Kingdom of Great Britain, Uruguay, Yugoslavia

### Annex V

#### **Model communication**

Date: .....

*Communication to:*

The Committee against Torture

c/o Centre for Human Rights

United Nations Office

8-14 avenue de la Paix  
1211 Geneva 10  
Switzerland

*submitted for consideration under the Convention against  
Torture and Other Cruel, Inhuman or Degrading Treatment or  
Punishment*

*I. Information concerning the author of the  
communication*

Name .....  
First name(s) .....  
Nationality .....  
Profession .....  
Date and place of birth .....  
Present address:  
.....

Address for exchange of confidential correspondence (if  
other than present address): .....  
.....

Submitting the communication as:

- (a) Victim of the violation or violations set forth below  
..... [ ]
- (b) Appointed representative/legal counsel of the alleged  
victim(s) ..... [ ]
- (c) Other ..... [ ]

If box (c) is marked, the author should explain:

(i) In what capacity he is acting on behalf of the victim(s) (e.g.  
family relationship or other personal links with the alleged  
victim(s)): .....

(ii) Why the victim(s) is (are) unable to submit the  
communication himself (themselves): .....



*An unrelated third party having no link to the victim(s) cannot submit a communication on his (their) behalf.*

II. Information concerning the alleged victim(s)  
(if other than author)

Name: .....

First name(s): .....

Nationality: .....

Profession: .....

Date and place of birth: .....

Present address or whereabouts: .....

.....

III. State concerned/articles violated/domestic remedies

Name of the State party (country) to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment against which the communication is directed: .....

Articles of the Convention against Torture allegedly violated: .....

**Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies-recourse to the courts or other public authorities, when and with what results (if possible, enclose copies of all relevant judicial or administrative decisions):** .....

If domestic remedies have not been exhausted, explain why: .....

#### IV. Other international procedures

Has the same matter been submitted for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Commission on Human Rights)? If so, when and with what results?

.....

#### V. Facts of the claim

Detailed description of the facts of the alleged violation or violations (including relevant dates)\*

.....

Author's signature: .....

\* Add as many pages as needed for this description.

## **United Nations International Day In Support of Victims of Torture: AHRC Message-2001- *Appendix 3***

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### **INVEST MONEY TO ERADICATE TORTURE; MERE TALK IS JUST HYPOCRISY**

Perhaps, the only day that really reflects the reality of Asia is this day which remembers the victims of Torture. This is a continent that is so sick with torture. What is worse is that, the most educated and the sophisticated classes of this society tolerate torture and have no hard feelings against it.

Asia's victims of torture find very little support from their communities. Those who hold moral and ethical leadership are almost mute about torture and quite many of these persons directly or indirectly tolerates the use of torture. The political leaders, while signing UN Convention Against Torture and Other Inhuman, Degrading Treatment or Punishment and thus acquiring respectability in the international community, cynically laugh at efforts to stop torture and do every thing to protect the torturers and not the victims. Even the judiciary for most part, is determined not to stop this practice. Above all the National Human Rights Commissions who are supposed to be using their mandate to promote human rights play humbug when it comes to the stopping of torture.

It must also be said, that in Asia, the contribution of the United Nations to stop torture is so insignificant that hardly anything has been achieved in this area. Even the countries where there are habitual practices of barbaric forms of torture like India, Sri Lanka, Pakistan, Nepal, Bangladesh, Indonesia and others, had received hardly any intervention from the United Nations agencies that are worth mentioning.

One of the worst mockeries of justice is to leave the investigation of torture to the very institutions that perpetrate torture. Without law enforcement agencies with genuine power to investigate the police and other agents who engage in torture, lot of talk that goes on about torture will only generate further cynicism and demoralization. This in real terms means investment of money and other resources to prevent torture. There is no way to escape this: financial commitment to prevent torture is a moral responsibility.

The Meditations and reflections on this day must be on the failures of protection. If anything really different is to happen in the coming years the extent of the colossal failures to prevent torture or to protect the victims must be genuinely reflected upon.

Real and strong movements against torture are long overdue in Asia. It is time to face the challenge. Those who can lead, are the people's organizations themselves. It is their duty to awaken their communities against the prevalent barbarities. It is also their duty to critique those who hold positions of moral leadership in their countries, including the religious leaders. In the political field this issue must be brought to surface, so that the actions and positions of the political leaders on this matter are brought to the public scrutiny.

The only way to alter the present situation is to treat Torture as a heinous crime and genuinely enforce the law against perpetrators. This can be done by getting the agencies to investigate and prosecute the perpetrators, genuinely. For the proper functioning of these agencies there should be sufficient financial allocations.

On this day, we must say good bye to mere paying of lip service to the prevention of torture. Instead, the following actions must be undertaken urgently;

- Activities to make this a public issue of highest priority
- All governments must be questioned on the extent of the financial commitments to prevent torture.

- The leaders of moral and ethical opinions including religious leaders, who refuse to raise the issue of real safeguards against Torture, must be exposed and shunned.
- The issue of torture must be kept very visible all the time through such methods as erection of monuments to symbolize struggle against torture, constant publication of advertisements, constant critiques on this issue, putting up of web-sites on torture victims and torture practices, keeping vigils, constant use of urgent appeals and other relevant activities-.
- A sense of urgency must be kept up throughout the year.



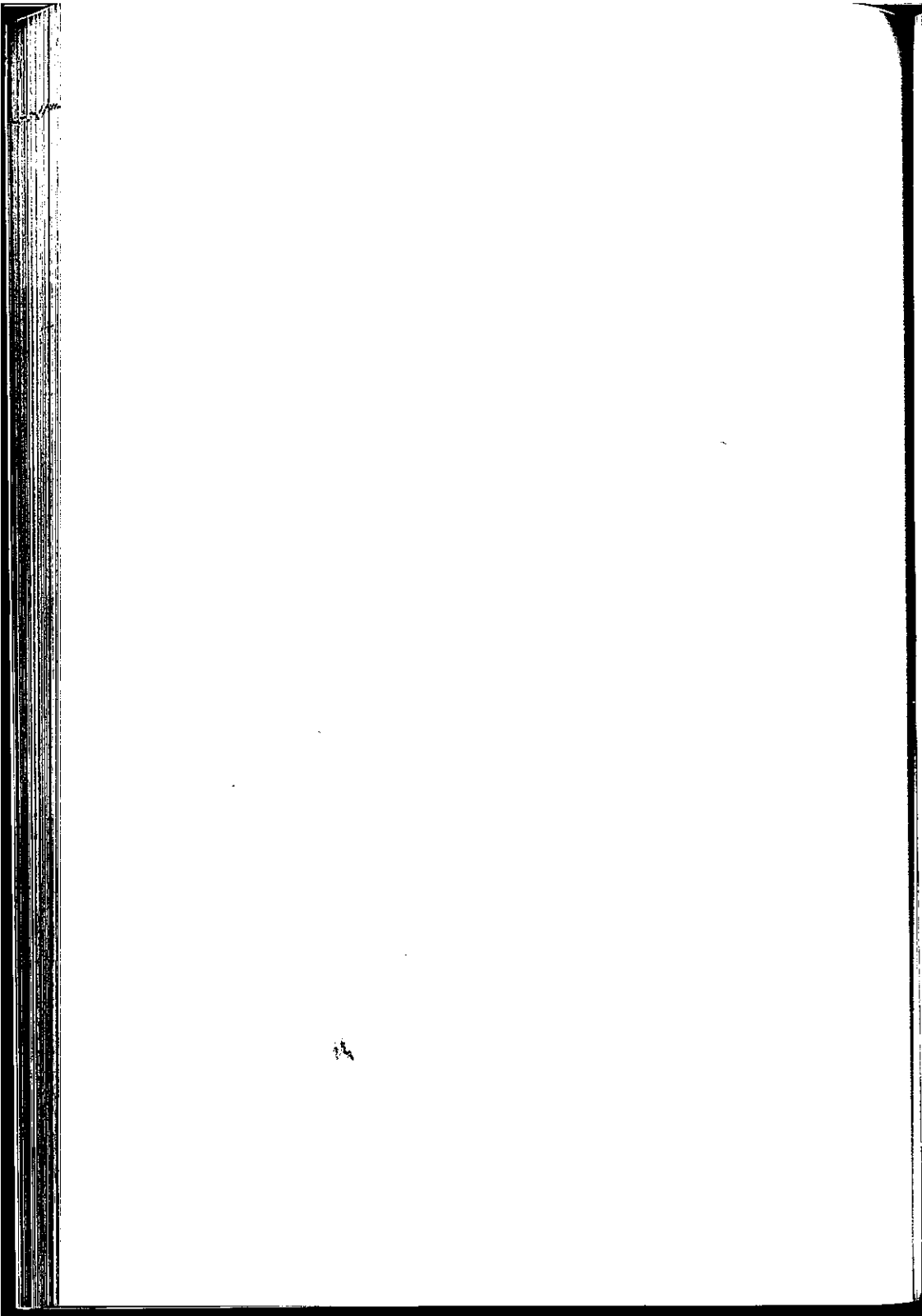
### **UN Fund for Torture Victims - Appendix 4**

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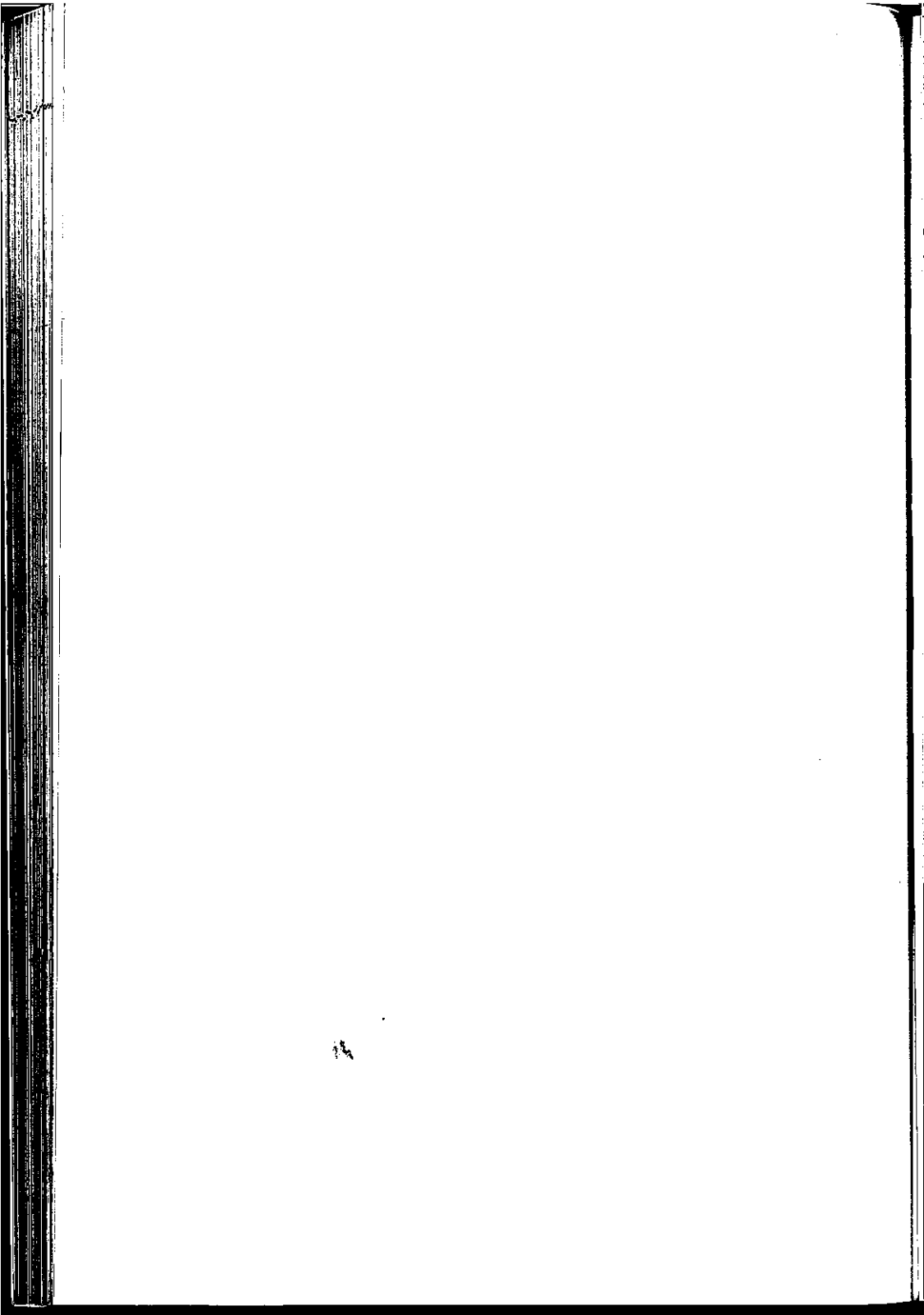
The Board estimates that applications for new grants for the year 2001 will amount to at least \$11 million. New applications for 2001 should be submitted to the secretariat of the Fund by 31 December 2000. New voluntary contributions should be received before 1 March 2001, as recommended by the Commission on Human Rights.

Detailed information will be available in the Secretary-General's annual report on the Fund to the General Assembly at its fifty-fifth session (last Report A/54/177).

For more information, please contact the Fund's secretariat at the Office of the United Nations High Commissioner for Human Rights, Trust Funds Unit, telephone (41.22) 917.93.15, fax (41.22) 917.90.17, e-mail: [dpremont.hchr@unog.ch](mailto:dpremont.hchr@unog.ch), website: <http://www.unhchr.ch/html/menu2/9/vftortur.htm>.







## ON WAYS TO PREVENT TORTURE AND DISAPPEARANCES

- Many acts of torture could be prevented if the opportunity to torture were kept to a minimum by informing the National Human Rights Commission of all arrests within 24 hours
- All personnel who arrest and interrogate must bear clear identification tags with their names and rank.
- An arrest memo should be kept for each detainee with the time and the date of arrest signed by a witness and the detainee her/himself and the place of detention. A relative or friend should be informed of the arrest.
- A diary should be maintained at each and every detention center.
- All detainees should be produced for a medical examination at the time of the arrest and every 48 hours while in custody.
- Copies of all documents must be sent to the magistrate concerned.
- All detainees should be allowed to have an attorney present at all interrogations.
- All persons found to be tortured must be paid compensation, in addition to disciplinary action being taken against perpetrators.
- A culture of respect for human rights, especially fundamental rights, should be built into society through education and other methods, from a young age.
- Free legal aid and advice made available to detainees.



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