



# THE PRACTICE OF TORTURE

A Threat to the Rule of Law and Democratisation

A report on Indonesia, Bangladesh,  
Burma, Sri Lanka, the Philippines, India,  
Pakistan, Nepal, and Thailand

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**Edited by**

**Jessica Fernando & Shiv Karan Singh**

**Published by**

**Asian Human Rights Commission  
DIGNITY - Danish Institute Against Torture**

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## Foreword

Torture and ill-treatment are endemic to almost all Asian countries. Based on the structural reasons for torture, one may state that torture and ill-treatment are common features of less developed countries. However, these very structural aspects of torture are missing from the discourse on torture prevention within the human rights community. Very often, the differences in the factors that cause torture in developed countries and less developed countries are glossed over in the discourse on human rights.

This publication addresses the practice of torture in Bangladesh, Burma, Indonesia, India, Nepal, Pakistan, the Philippines, Sri Lanka, and Thailand. In all of these countries, the criminal justice system remains at a nascent, underdeveloped stage. The institutions dealing with criminal justice, i.e. the police with their investigative functions, various agencies concerned with prosecutions, and judicial institutions, are sub-standard when compared to similar institutions in developed countries. There are various reasons for this. These include historical and political aspects, issues related to the allocation of budgetary resources, as well as the availability of human resources. Cultural factors, such as diverse philosophical positions relating to justice, are also contributory factors for the slower development of these institutions.

The structural condition of the criminal justice system is the most important reason for torture being the substantial problem that it is today, one that continues to be practiced and tolerated by the aforementioned institutions. Within the criminal justice structure in all these countries, the police overwhelmingly play the most important role. From the point of view of power, the policing institution has been given the primary place, and the prosecutorial branches and the judiciary hold only a secondary place. The direct result of this hierarchy is that neither the prosecutorial branches nor the judicial branches are capable of exercising significant control over the behaviour of the police. This means that the capacity of the prosecutorial branches and the judiciary to play a role in preventing torture by the police is negligible.

Instead, the prosecutorial branches and judiciary often tolerate the use of torture and ill-treatment by the police. This tolerance is reflected by the

willingness of prosecutors to rely on evidence collected by the police, despite the knowledge that, in the usual course of business, the police use torture and ill-treatment to obtain confessions. The same can be said of the judiciary.

Both the prosecutorial branches and the judiciary may exclude evidence obtained by torture, though only in cases where glaring forms of torture have been exposed. Such instances are few and far between for many reasons. In most instances, victims do not dare to register complaints or publicise their experiences of torture suffered at the hands of the police. Due to the absence of witness protection laws and programmes, a person who makes a complaint against the police runs the risk of being exposed to serious retaliatory actions by the police. The possibility of such adverse consequences is common knowledge and prevents people from taking action. In rare instances, either due to the courage of the victims or due to other factors like intervention by journalists or human rights activists, the prosecutorial branches and the judiciary are forced to confront the issue in particular cases. However, such rare interventions do not contribute much to a change in the attitude of the public or the alteration of habits formed and generated through ingrained fear and intimidation. There have also been severe retaliations, including assassinations, against victims that have pushed forward with their complaints. Prosecutorial branches and the judiciary, like other government agencies, depend heavily on the police to function. This may also be a reason for their unwillingness to deal with any wrongdoings by the police.

However, a more important reason for governments, including the prosecutorial branches and the judiciary, to tolerate the use of torture by the police is inherent in the approach to authority prevailing in these countries; the very framework of administration is heavily dependent on the police.

The idea of justice has not been integrated into the administration. The administration has left not only the function of investigation but also punishment and crime control as a whole on the shoulders of the police. Criminal investigations are not primarily geared towards collecting evidence to be presented at a fair trial for the accused. For the most part, the police themselves are supposed to deal with the whole issue of crime and resolve it by themselves. In doing so, the police resort to the methods best known to them and there is hardly any possibility of controlling this situation. Thus, the state is well aware that torture is practiced, and tolerates it.

And this remains the major obstacle to the prevention of torture. Despite governments becoming signatories to UN conventions, despite them making constitutional provisions and legislation to prevent torture, there is hardly any genuine attempt to stop the use of torture and ill-treatment by law enforcement agencies.

In pursuing the prevention of torture and ill-treatment as an objective, the international community, as well as the human rights community in general, must give weight to considerations relating to this actual situation. It is only when the actual compulsions which enable the continuous use of torture by the police are addressed that there will be an effective strategy for achieving the objectives of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this publication, case illustrations have been collated and we find it demonstrated that, as far as the practice of torture and ill-treatment is concerned, similarities abound in all these countries. Any differences relating to prevention measures are only a matter of degree and are insubstantial. Herein, cases of torture (including some cases of custodial deaths / extra-judicial killings) have been randomly selected from a large pool of similar cases from each country. References to other publications of the Asian Human Rights Commission, which contain more case details and analysis, have been provided herein for readers that may wish to inform themselves further.

This book is being published with the hope of generating a discussion on the gap between the nature of the realities surrounding torture practices in these countries and the prevailing discourse.

**Basil Fernando**

*Director of Policies & Programmes  
Asian Human Rights Commission*



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## Introduction

The implementation of the obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in Asian countries has not yet met with any significant success. The table given below expresses the situation relating to the ratification of the convention, as well as the problems relating to implementation.

**UN Convention against Torture: Ratification,  
Criminalization, and Witness Protection**

Country	Ratification	Optional Protocol	Criminalize Torture	Witness Protection Law
Bangladesh	√	×	×	×
Burma	×	×	×	×
Hong Kong	√	×	√	√
Cambodia	√	√	×	×
China (PRC)	√	×	×	×
India	×	×	×	×
Indonesia	√	×	×	√
Nepal	√	×	×	×
Pakistan	√	×	×	×
Philippines	√	√	√	√
South Korea	√	×	×	×
Sri Lanka	√	×	√	×
Thailand	√	×	×	√

In terms of implementation, the only place where there has been relative success is the Hong Kong SAR, Peoples' Republic of China. There was widespread practice of torture in this territory until 1974. The decisive change came with the creation of the Independent Commission against Corruption (ICAC). This new institution was created to be completely independent

of the territory's policing system. The result was that the police force itself came under the control of the ICAC from the point of view of the control of corruption. As a result, discipline within the police force was reinforced and, together with other improvements within the police, the endemic practice of torture disappeared. While there are exceptional cases, the performance of the Hong Kong police can be compared favourably with the performance of police in developed democracies. Success in the elimination of torture in Hong Kong has accompanied the establishment and the consolidation of the rule of law.

## Literature Review on Torture & Ill-Treatment

In recent years, there have been numerous attempts to document the practice of torture in many Asian countries. The agencies involved in such documentation include human rights organisations and some of the agencies of the United Nations, such as: the Rapporteur against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee against Torture, and those involved in preparing reports presented to the former Human Rights Commission and the present Human Rights Council. Besides these, there also exist a few academic foundations involved in documentation.

The Asian Human Rights Commission (AHRC) based in Hong Kong has placed high priority on the documentation of torture. Together with its sister organisation, the Asian Legal Resource Centre (ALRC), AHRC has produced numerous reports and publications in which problems relating to the implementation of the UNCAT have been documented at length. The AHRC Urgent Appeals system has concentrated on assisting victims of torture in many Asian countries. As a result, a large body of information has been gathered in the Urgent Appeals archives. These are reports of individual complaints, which give vivid details on the practice of torture, and document limitations on the possibility of victims obtaining redress.

### *AHRC / ALRC Documentation*

The following are some reports published by the AHRC / ALRC in the bi-monthly publication, *article 2*:

On **SRI LANKA**, Volume 1 No 4,<sup>i</sup> Volume 3 No 1<sup>ii</sup>, Volume 4 No 4<sup>iii</sup>, Volume 4 No 5<sup>iv</sup>, Volume 6 No 2<sup>v</sup>, Volume 8 No 4<sup>vi</sup> and Volume 10 No.4<sup>vii</sup>; **INDIA** Volume 1 No 3<sup>viii</sup>, Volume 2 No.1<sup>ix</sup>, Volume 2 No 4<sup>x</sup>, Volume 2 No 5<sup>xi</sup>, Volume 3 No 4<sup>xii</sup>, Volume 5 No 6<sup>xiii</sup>, Volume 7 No 2<sup>xiv</sup>, Volume 9 Nos 3 and 4<sup>xv</sup>, Volume 10 No 3<sup>xvi</sup>; **BURMA**, Volume 2 No 2<sup>xvii</sup>, Volume 2 No 6<sup>xviii</sup>, Volume 6 nos 5 and 6<sup>xix</sup>, Volume 7 No 3<sup>xx</sup>, Volume 11 No.1<sup>xxi</sup>; **THAILAND**, Volume 2 No 3<sup>xxii</sup>, Volume 4 No 2<sup>xxiii</sup>, Volume 4 No 3<sup>xxiv</sup>, Volume 5 No 3<sup>xxv</sup>, Volume 6 No 3<sup>xxvi</sup>; **THE PHILIPPINES** Volume 5 No 5<sup>xxvii</sup>, Volume 6 No 4<sup>xxviii</sup>; **CAMBODIA** Volume 1 No 1<sup>xxix</sup>, Volume 1 No 2<sup>xxx</sup>, Volume 5 No 1<sup>xxxi</sup>; **BANGLADESH** Volume 5 No 4<sup>xxxii</sup>, Volume 10 No 2<sup>xxxiii</sup>; **NEPAL** Volume 3 No 2<sup>xxxiv</sup>, Volume 3 No 6<sup>xxxv</sup>, Volume 4 No 1<sup>xxxvi</sup>, Volume 7 No 1<sup>xxxvii</sup>;

**INDONESIA** Volume 5 No 2<sup>xxxviii</sup>, Volume 9 No 1<sup>xxxix</sup>, **PAKISTAN** Volume 1 No 5<sup>xl</sup>, Volume 3 No 3<sup>xli</sup>, Volume 3 No 5<sup>xlii</sup>, Volume 8 no 2<sup>xliii</sup> and Volume 8 No 3<sup>xliv</sup>.

All of these volumes are available at [www.article2.org](http://www.article2.org).

Furthermore, in *The State of Human Rights In Ten Asian Countries*, published annually by AHRC since 2005, there are chapters devoted to each of these countries.

## Common Features in the Literature on Torture

There are some common features that emerge from the literature reviewed on the problems relating to the realisation of the UNCAT in many Asian countries.

The most critical obstacle to the realisation of the UNCAT in these countries is the nature of the prevailing policing systems. Many related observations were made during the recent meeting of Parliamentarians from several Asian countries, held in conjunction with a group of human rights activists in Hong Kong.<sup>1</sup> There was agreement on the failure to make the shift from old-style policing to modern policing in many countries, a shift that has happened in almost all Western countries, as well as some countries outside Europe and the United States. In the same meeting, the following was noted by Mr. John Joseph Clancey, Chairperson of the Asian Human Rights Commission:

*"Perhaps one of the concerns that may be preoccupying you as legislators is how a government can achieve this decisive transformation from the old style of policing to a modern one. A modern policing system has implications, even beyond the field of criminal justice; it has implications for the realization of full and genuine democratisation of our societies. None of the basic elements needed for a fully functional democracy could be achieved without a radical transformation of policing, as this important institution must be made to function within the framework of democracy itself. Where this does not happen, the policing system not only can but has often become a threat to democracy. Even the holding of free and fair elections is not possible without a policing system that functions strictly within the parameters of the rule of law. Thus, the topic that you will be discussing during this meeting is likely to have very significant implications for the very problems that occupy you most as legislators, namely how to ensure a system of public institutions that is capable of sustaining democracy. Where democracy is threatened, even the role of legislators is threatened. Thus, as legislators, you have a very good reason to be deeply interested in the issue of*

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1 Meeting of Parliamentarians on Torture and Ill-Treatment, held July 21-24, 2012, in Hong Kong.

*modernising police structures so that the policing system becomes capable of achieving the objectives of UNCAT."*<sup>2</sup>

In countries such as India, Bangladesh, Pakistan, Sri Lanka, Singapore, Malaysia, and Hong Kong, the policing systems originated during the British colonial period. While the Hong Kong police have undergone quite a radical change in terms of modernisation within a rule of law approach, and Singapore's policing has been modernized in some respects (though it remains within an authoritarian framework), the rest of the countries mentioned have not yet been modernised in terms of their policing systems. Within the colonial framework, the political rights of the citizens were not recognised. Though the British took some measures to discourage the use of torture - such as, for example, prohibiting the admission of any statements made to a person in authority in criminal trials through the Evidence Ordinance - it was not a sufficient barrier to the use of torture in criminal investigations. The basic method used to collect evidence was the recording of oral statements and such recordings generally took place inside the police stations. The police stations in the former British colonies were known to be places where torture and ill-treatment were among the methods used obtain confessions, evidence, and to subjugate entire communities. This tradition has not changed since and, in fact, as more complicated problems are faced by the police in terms of the modern socio-political circumstances, the use of torture has increased.

For the police to do their investigations through an alternative method, without the use of torture, they require considerable budgetary allocations for a different kind of training. It is required in order to get them to collect proof solely based on scientific standards, giving them the capacity to use humane methods of interrogation, to use scientific methodologies based on modern forensic developments, and for better facilities to archive and preserve information. There have not been any significant improvements in the budgetary allocations to achieve such objectives. To reiterate this aspect in the words of Mr. Clancey:

*"Achieving that aim implies that adequate budgetary allocations are made to enable a functional policing system and, in fact, a functional system of criminal justice as a whole. It is here that the legislators face their most serious challenge. The allocation of budgets is often the test of*

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2 TORTURE: Asian & Global Perspectives, August 2012, Vol 1, No. 3, pg. 35.

*political will to achieve any objective. Whatever rhetoric we may employ in talking of laudable objectives will have very little implication by way of implementation if the legislators cannot find a way to make the necessary financial allocations to ensure practical implementation.”*<sup>3</sup>

The failure to make the necessary budgetary allocations for policing without torture and ill-treatment can be mostly attributed to political reasons. The development of a modern criminal justice system is resisted often because such a change would drastically affect the status quo of political systems. Bribery and corruption still remain major problems in the countries mentioned above and in less developed countries in general. The modernisation of the policing system requires political will to eliminate bribery and corruption. One of the places where this has happened is the Hong Kong Special Administrative Region and it has dramatically helped in the transformation of the policing system and, in fact, the entire public service. Speaking on Hong Kong, Mr. Clancey also said,

*“As a resident of Hong Kong I can report to you the experience in this administrative region, where the decisive change from old style policing to modern policing took place around 1974 with the creation of the Independent Commission against Corruption (ICAC), which I know you will visit. This institution and its implementation with a decisive political will have made a fundamental difference to Hong Kong's way of life and its administration of criminal justice.”*<sup>4</sup>

The problem of budgetary allocations is linked to the issue of political will, the will to shift to a modern policing system with a firm commitment to rooting criminal justice on the basis of proof by way of evidence that can be justified scientifically. This implies the breaking of the nexus between politicians and the police on the one hand, and of de-linking policing from criminal elements on the other. Both these objectives have proved to be extremely difficult tasks.

Ruling regimes seem to prefer a police that can be manipulated for political purposes. The police are seen as a very useful instrument, particularly during elections.

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3 Ibid.

4 Ibid.

In Sri Lanka, complaints about the politicisation of the police have been frequently heard since the adoption of the 1978 constitution. Under this constitution, all the public services, including the police, were brought under the direct control of the executive president. The appointments, promotions, disciplinary control and dismissals of police officers are directly in the hands of the president. As a result, the system of command responsibility within the policing system, going down from inspector general of police to the lower ranks, has now been displaced. A politician from the ruling party could directly interfere with the functioning of the police. This goes down to the investigations into crimes. As a result, there is a politicisation of arrest, detentions, and filing of charges in courts. While persons enjoying political favor could be discharged from criminal proceedings despite there being evidence against them, other persons who may be innocent could be subjected to arrest, detention, and fabrication of charges in courts. The entire disciplinary process is disrupted due to such politicisation. Besides manipulation of the criminal justice system for political purposes, this also leaves room for a very high level of corruption.

When all of these factors are brought together they produce a favourable climate for the use of torture and ill-treatment for political purposes, as well as a means for corruption. Due to the disruption of the disciplinary process, the internal capacity of the higher-ranking officers to eliminate torture and ill-treatment has been lost.

A similar kind of politicisation also exists in Bangladesh, where the use of torture and ill-treatment for political reasons is frequent, and, what is worse, torture and ill-treatment are also used purely as a means of corruption. The threat of torture and ill-treatment is used to demand money and, if the demand is not met, the victims face dire consequences. In the well-documented case of F.M.A Razzak from Bangladesh, within the two weeks he was in detention inside a police station, his family had to bribe the police on twelve occasions in order to prevent him being tortured. The total sum paid was around \$ USD 2,000, which is a quite a large sum of money in that country. The use of torture for political reasons or corruption is also frequent in Pakistan, in several states in India, as well as in Burma and Cambodia.<sup>5</sup>

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5 Please see: [www.humanrights.asia/resources/journals-magazines/article2/0801](http://www.humanrights.asia/resources/journals-magazines/article2/0801)

## The Basic Argument for Ending Police Torture

What does police torture mean? If we were to ask this question, and then proceed to answer it, someone may ask in turn, “Wait, how do you know?” It would take us into realms of epistemology: “How do we know anything?”

Similar questions have been asked through the ages. One answer that has emerged in the last few centuries is that one knows by the collection and observation of data. Our age is symbolised by the images from the telescope and the microscope. Today, we answer questions about what something means through observation and analysis of data.

What about the data on torture? This data is present in the actual stories of victims of torture. The approach of studying torture through the stories of victims differs from the study of mere statistics. Through accurately recorded stories, we can know what torture is, why it happens, and answer all other associated questions. What does the known data on torture tell us? What it tells us is of the contradictions in our institutions. Observation and analysis of this data reveals to us the malfunctioning of institutions, which defeat the possibility of achieving the rule of law. The study of torture thereby becomes a study of the basic structure of key institutions in our societies, and their peculiar defects.

The data garnered from the stories of victims reveals to us the utter stupidity of the way our major institutions function. It follows that a study of torture is not simply a study of cruelty. It is more a study about the stupidity that has become a part of the way our institutions function.

Thus, asking a question like “what is the meaning of torture?” is like asking the meaning of pneumonia, malaria, or any other disease. Today, the methods of studying such diseases have been well-established. The same principles can be used to study the diseases that afflict our basic institutions.

Democracy is a meaningless expression if it is without functioning institutions, an empty balloon floating through space. Democracy, if it is to be meaningful, is about functioning public institutions. The measure of well-functioning institutions is the way such institutions are capable of

functioning under the rule of law. When a public institution is dysfunctional, from the point of view of the rule of law, it means that such an institution has ceased to be an institution of democracy, and has transformed into something else.

In societies where police torture is widespread, what we are experiencing are public institutions which have become “something else.” This “something else” may have gone as far as totalitarianism, or it may be along the path to such an “ism”, but what we can be sure of is that such institutions have not only become non-democratic, they have become an obstacle to democracy. In countries where there is widespread use of torture, there is also a belief, particularly among the leaders and operators of public institutions, that policing without torture is impossible. However, the opposite is a more direct reflection of reality. When torture is a widespread practice, policing, in its democratic sense, becomes impossible.

As for the Asian Human Rights Commission, such discussions began almost fifteen years back. We have answered questions by stubbornly continuing with the methodology of studying torture via accurately recording stories of victims, day in and day out. Our documentation is a testament to the pursuit of finding out the meaning of torture through such study of stories. The maxim for AHRC in its early days was, “go from micro to macro”, which meant, “to know, through individual stories of torture, problems in the basic structure of society.”

When we know about these stories, what we come to know about the basic structure of our societies is very different to what is normally believed or declared.

This is why the study of the widespread practice of torture and the exposure of it is a vital part of undoing what is wrong with the basic structure of such societies. It is from this point of view that dealing with the issue of police torture becomes an unavoidable task for anyone who is committed to the pursuit of democracy. Elimination of police torture is one of the most essential tasks in working towards the democratisation of societies. It is a practical way of going about undoing the institutional obstacles to democracy.

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The elimination of torture and the enabling of free speech are inseparably linked. When the possibility of torture is reduced, if not fully eliminated, one of the psychological conditions necessary for the exercise of free speech is fulfilled. A core element of a functioning democracy is free expression. It is through free speech that we are able to get the views of many, if not all, and thereby develop a collective consciousness with the participation of all. Thus, in the development of civic sense and people's participation in society, the elimination of torture is an essential component.

## Impunity

The major cause of the prevalence of torture and ill-treatment is the prevalence of impunity in almost all countries in Asia. Besides the issue of reform, another serious allegation is that there is widespread impunity regarding human rights violations in general, and violations relating to torture and ill-treatment in particular. Impunity cripples the discipline of any institution and has adverse effects on the whole country. The police and the military are vital institutions in every society. If it is not possible to maintain discipline in these public institutions, it is a sign that there is something seriously wrong with the functioning of public institutions in the country. The lifeblood of a democracy lies in properly functioning public institutions. Therefore, dealing with the issue of impunity and the problems that arise from that impunity should be taken very seriously because it threatens the legislative function in a society.

The struggle against impunity lies in the creation and maintenance of effective complaint, investigation and prosecution mechanisms, as well as a functioning and independent judiciary. As observed in the AHRC documentation, there is a common complaint in several countries that proper complaint mechanisms do not exist, or that even if these mechanisms do exist in the formal sense, they are not functioning effectively. People often complain that getting their complaints registered with the police or other institutions is difficult or even impossible when the complaints are about the police or the military. Therefore, it is essential to study the existing complaint systems and to provide ways to overcome their limitations. What seems to be most frustrating is the absence of investigation mechanisms. Without independent investigation mechanisms, it is not possible to carry out credible investigations. When there are no credible investigations, people lose confidence in the justice process. If people feel that a fair chance of obtaining justice does not exist, it implies a crisis in the democratic process itself. This too is an area that requires serious attention. There are also complaints about the politicisation of the prosecution process, or other serious defects of prosecutors. Without able and independent prosecutors, it is not possible to maintain an effective system of criminal justice. The last, but at the same time the most important, element is the independence of the judiciary.

## **Laws to Criminalize Torture & for Witness Protection**

To deal with impunity, bringing about legislation to enforce the prohibition of torture is essential. UNCAT envisaged that state parties would make legislative measures to criminalise torture and ill-treatment. A few countries in Asia have already done so, such as the Philippines and Sri Lanka. There are other legislators who are already in the process of proposing and pursuing legislation to this end.

Besides criminalisation, there is also a need for taking measures to ensure implementation. One of the vital aspects in this regard is witness protection. As one witness in the famous Jessica Lal case in India said, on the one hand there was a threat of being treated with a bullet if he persisted in giving truthful evidence, and on the other, quite a lot of money if he refused to give such evidence. That situation reflects a widespread phenomenon in many Asian countries relating to the situation of victims and witnesses. The legislators need to take steps to ensure proper legislation for witness protection.

Another matter of relevance is the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The purpose of this Optional Protocol is to provide a mechanism for monitoring the conditions of places of detention. Places of detention, such as prisons and police stations, often happen to be the places where the detainees are subjected to torture and ill-treatment. The Optional Protocol is meant to develop cooperation between states to provide an effective mechanism for visits to such places, with a view to taking preventative measures regarding torture and ill-treatment.

## Torture as a Problem of Defective Criminal Justice Systems

A survey into available data on torture in most Asian countries (and common to less-developed countries the world over) shows that torture is a consequence of serious inadequacies and defects in the criminal justice system. On the basis of the data available in the Asian Human Rights Commission's publications, common dysfunctional features can be identified in these countries.<sup>6</sup>

### **Features of an Abysmal / Dysfunctional Criminal Justice System:**

1. There is a shift from “the rule of law” to “law and order”. The term “law and order” is used to describe any arbitrary means that may be used to keep order as understood by a ruling regime. Under this approach, any illegality could be treated as legitimate if the government thinks that it needs to be done to maintain order. For example, the extra-judicial killing of those who are considered ‘bad’ criminals may be considered as a means to be used for achieving order. However, this is against the rule of law approach. In the words of Justice Tom Bingham, “the core of the existing principle is, I suggest, that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts;”<sup>7</sup>
2. The head of the state is placed above the law. This is sometimes done by constitutional provisions, as in Sri Lanka, or by treating the constitution itself as an unimportant parchment, with little or no practical value, as in Cambodia, Burma, China, and several other countries;
3. The power and the scope of judiciary are limited. This circumscription may be done by excluding the court’s jurisdiction over public law, and lifting, or altogether excluding, the court’s power to adjudicate on

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6 These features have been taken from a long series of reports on several Asian countries. *article 2*, a quarterly publication of the ALRC, has meticulously documented realities within these justice systems.

7 ‘Rule of Law’, Tom Bingham, Penguin Books 2011, page 8.

matters relating to the constitution;

4. For various reasons, such as non-cooperation by state agencies and extraordinary delays, writ jurisdiction, including the writ of habeas corpus, becomes ineffective.
5. A system of punishment without trial is created. This may occur by way of extra-judicial killings, followed by media statements that the person killed was a 'bad' criminal.
6. There is a failure to investigate crimes. Such failure may either be due to defects in the investigation capacity or due to political or other extraneous reasons.
7. There is manipulation of powers of arrest and detention for corrupt purposes.
8. There is an absence of an effective system of command responsibility within the police, and a politicization of the police.
9. There is a rise of organized crime and the 'underworld', which has a profound effect on the entire system of the administration of justice, and indeed on the entire society.
10. Criminal elements begin being used as substitutes to perform functions usually assigned to legal agencies, such as debt collection, ejection of tenants, and the provision of security to VIPs.
11. There is loss of independence in, and political control of, the prosecutor's office.
12. In some instances, the civilian policing function itself ceases to exist, either due to rule by the military or to due to prolonged militarisation, where even the memory of civilian policing is lost.
13. There is a fabrication of charges, usually done on the basis of confessions obtained through severe torture or ill-treatment.
14. There are attempts by judges to bring pressure on lawyers and litigants in criminal trials not to go to trial but to agree to guilty pleas, with promises of lesser sentences and / or threats of giving harsher bail terms or even refusal of bail if they refuse to agree.
15. Judges put pressure on lawyers and clients to agree to compromised solutions, irrespective of the possible merits or adverse consequences of such actions.

16. There are vast delays in litigation, with trials taking 5-10 years on average and, in some countries, even 20 years.
17. Some cases, on the other hand, are administratively sped up and due process is completely ignored. 'Judgements' arrived at in this manner only reflect the version given by the Executive.
18. Judges often ignore the requirements of procedural justice and often manipulate the process.
19. Judges often don't give reasons for orders and don't even provide reasons for some judgments.
20. Judges, at times, sit to hear appeals against their own judgments.
21. There is routine abuse of contempt of court laws in order to intimidate lawyers or litigants.
22. There is an absence of witness protection laws and programmes.
23. There is corruption in the police, prosecution, judiciary, and also other parts of government.
24. There is inadequate budgetary allocation for the administration of justice, i.e. for policing, prosecution, and prisons.
25. There is an absence or ineffectiveness of mechanisms that are supposed to investigate and prosecute violations of human rights.
26. There is an absence of a perception of justice in society, including among lawyers, judges, police, and others. This is often replaced by cynicism and negative comments about justice.
27. There are threats to the independence of lawyers, arising out of the factors mentioned above.
28. Divisions develop among lawyers influenced by the factors mentioned above.
29. There is low morale amongst lawyers - except for a brave few - due to the same factors.
30. There is a weakening of lawyers' associations, caused by deep divisions, as more lawyers begin to adjust to negative systemic changes.
31. There are failures in professional bodies supervising the professional conduct of lawyers.

32. There are heavy costs of litigation that deprive many of access to justice.
33. There is loss of an appreciation for the legal, judicial, policing, and other related professions due to the factors mentioned above.
34. Withdrawal of talented lawyers due to tensions arising from the aforementioned factors.

The features enumerated above describe the administration of justice in a dysfunctional system / an abysmally lawless situation in 'normal times.' When times are exceptional, such as when emergency regulations and anti-terrorism laws operate, the situation becomes even more brutal. Abductions take the place of arrests, there are prolonged detentions without court orders, forced disappearances and various other kinds of extra-judicial killings occur in large numbers, judicial inquiries into deaths are suspended, convictions happen solely on the basis of confessions - usually obtained through torture and ill treatment - and habeas corpus actions become ineffective.

Some of these factors are noted by international observers and human rights organisations due to the increasing number of complaints. However, what the international observers and human rights organizations often do not notice is that the sheer cruelty of the exceptional situation is made possible only due to routine cruelty that exists in the normal situation.

## A Representative Story from Sri Lanka

*The following article, which originally appeared in a popular Sinhala newspaper, reflects some of the frustrations of the general public in Sri Lanka, particularly regarding the sexual abuse that takes place at police stations. Though the article is about Sri Lanka, the situation in surrounding countries is similar.*

### Turning a pillowcase inside out

*August 3rd 2012*

A forty year old woman, Samantha Nandani, from Madirigiriya, climbed on top of a 60 foot high water tank to start a protest. Her son worked in the army. His name has been left out from the electoral registry. When she went to get that corrected, the village head (*grammasevaka*) made an improper suggestion to her. He tried to sexually abuse her. When that happened, she went to the Madirigiriya police and made a complaint. The police did not investigate the complaint. In fact, they will not investigate the complaint. She got on top of the water tank in order to protest against this.

This is a short summary of a long story, some of which can be told and some of which cannot be told. It is not only at the Madirigiriya police station; rather, it has been the situation in all police stations in this country for a long time now. We have often seen people, who had been going to a police station to make a complaint, made to visit teashops with police constables or sergeants. If the person who is making the complaint is a woman, she is likely to face harassment and abuse at the police station. Women facing domestic problems are even more vulnerable to abuse by the police officers. As a result, a woman who goes to a police station to make a complaint faces a high risk of being abused.

The spreading of this harassing behaviour to village officers is dangerous. It is all the more dangerous because they can go to the houses in the village several times a week to do their official duties. Handing over the electoral list, making reminders to fill those lists quickly, going to collect the list later, giving advice on how to prevent dengue mosquitoes, and on many other issues, they have the opportunity to visit houses. If the officer uses

these opportunities for good, then it is good. However, if he uses it for bad purposes, then things become really bad. The village officer linked to the Madirigiriya incident is one such wretched officer.

By not investigating into the complaint of this helpless woman, the officers of the Madirigiriya police have also acted in a wretched manner. Bureaucrats are using their positions of power and influence to force women to go to bed with them. This exploitative behaviour comes down from feudal times, continued through the reign of the British, and subsided after the Independence. However, this re-started after the government that came into power in 1970.

During that period, ministers and permanent secretaries were found to sexually harass women who had applied for posts in the civil service and force them to go to guest-houses with them to obtain a job. Now, in spite of talk of female liberation, women still get beaten up by men. Men often have illicit affairs but their wives are reluctant to leave them because of shame. This wretched state has been created by the social system. Do you think that society should be the creation of men?

No. It is not like that anymore. Today, society is created by a handful of rich people and a handful of powerful politicians. Due to this, in every police area and village, at least two water tanks would have to be built for protests. The protest of Samantha Nandini is a good beginning.

All women who have been subjected to injustice should support the cause Samantha Nandini has taken. They should show solidarity with her protest. In a country that has had over 30 years of war, the society is highly disorganized. Sorting out the large mountain of problems is not easy. To make a beginning, government services, and police and civil institutions should be reorganized. This re-organisation will be difficult in a country like ours. However difficult it may be, it has to be done. The society has been turned inside out like the way a pillowcase is turned inside out. When a pillowcase is turned inside out, the dirt that was outside goes in. However, this is not a problem, since very soon the pillowcase would be put in for washing.

*Editorial, courtesy Divaina, a Sinhala newspaper*

## Special Considerations for the EU & the UN

The following are some considerations for developed democracies and the United Nations human rights agencies, regarding the problem of the prevention of torture in less developed countries:

A review of the work by the European Union, and, in fact, all the developed democratic countries and the United Nations, reveals very clearly that previous work on torture prevention has not given adequate emphasis to police torture. For various reasons, military torture, particularly the torture prevalent in times of conflict, makes up the bulk of those situations on which the reports from the European Union and UN agencies have concentrated. Usually police torture is added to this same list. It could be said that even the CAT Committee reports and the reports of the UN Special Rapporteur on Torture and Ill-Treatment are similar in their approach.

However, there is a plausible reason to regard police torture as a separate category. The reason is that police torture is linked to the operational criminal justice system in the respective countries and therefore is a permanent factor. Police torture is very much embedded in the way the administration of justice is done in these countries. The end of a particular conflict situation does not mean the end of police torture. Even in situations which are considered 'normal', police torture prevails.

Besides this, the normal prescription against torture, which is to investigate complaints relating to torture, prosecute offenders and compensate and rehabilitate victims, is not an adequate or a realistic solution to police torture. When the criminal justice system relies on the use of torture and ill-treatment as an essential part of maintaining what is usually thought of as law and order, there is no possibility that acts of torture and ill-treatment can be credibly investigated or prosecuted. Any attempt to do so creates a serious contradiction within the very law enforcement system itself. Instances when some attempts were made to prosecute police torture perpetrators led to immediate resistance from the police force as a whole and therefore had to be abandoned.

One such example was Sri Lanka, which enacted a law to criminalise torture in terms of the UNCAT in 1994 and, due to pressure from several civil society organisations and international agencies, attempted to prosecute a few cases from around 2002 to 2007. There was a severe resistance from the police, who even threatened to abandon investigations into crimes. Therefore the investigations, which were done by a Special Investigation Unit of the Criminal Investigation Division, were abandoned. It can be argued that many other countries do not even attempt to investigate or prosecute any cases of police torture for this same reason.

The Philippines, for example, adopted a law in 2009 to criminalise torture and ill-treatment but not a single case has been successfully prosecuted to date. A similar law has existed in Hong Kong since 1993<sup>8</sup>, but no case has been prosecuted under this law (of course it could be argued that the 1974 the adoption of the Independent Commission against Corruption (ICAC) has reduced police torture. Still it cannot be maintained that the practice of torture and ill treatment has been eradicated).

This may well be the reason why many other countries are unwilling to bring about legislation to criminalise torture. Whenever the debates on this issue arise there is resistance from police officers, including high ranking officers, against the enactment of such laws. The argument is basically that there would be a paralysis in criminal investigations if such a law is to be seriously pursued.

If this impasse is to be broken, police torture needs to become a subject that is treated separately, and the unique problems associated with the use of police torture must be seriously scrutinised by all agencies that pursue policies for the prevention of police torture and the eradication of impunity. A much more comprehensive approach should be adopted as a means of eradication. Among the basic considerations should be ways to encourage respective countries to abandon modes of criminal investigation based on torture and ill-treatment and instead develop more modern systems. Naturally, the reluctance to adopt modern policing systems needs to be understood and counter-strategies should be developed to address the problems that prevent the adoption of such modern systems.

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8 The Crimes (Torture) Ordinance, Cap. 427

It could be observed, based on the data so far available on the issue of such reluctance to adopt a modern system of policing, that there are issues involved that are connected to deep-seated political problems. Police torture, in fact, is quite a useful political strategy arising out of the nature of political systems that exist in the respective countries. The unwillingness to modernise policing is associated with a broader political resistance to the development of rule of law systems and democratisation.

Such resistance cannot be counteracted merely by way of the simple formula of insisting on investigations and prosecution into complaints of police torture.

Within the overall human rights project, which has developed since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, so far there are some problems relating to less developed countries that do not appear to have received adequate attention.

The following is an observation of Gary Haugen, President and CEO of International Justice Mission, at his speech given at Chicago University<sup>9</sup>:

*The story behind this is perhaps worth examining. The first stage of the modern human rights movement began at the close of World War 2 with the goal of articulating and establishing international human rights standards. This effort was a remarkable success. Scholars, diplomats, jurors and statesmen produced the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural rights as well as international conventions discussing discrimination, torture, children's rights, women's rights and other rights relating to marginalized groups. The effort to define international standards continues today in the drafting, promulgation and amendment of international treaties, conventions and protocols. And what has emerged is a body of rights and norms to which all people in the world can now lay claim.*

*If this first stage of the modern human rights movement was largely intellectual, the second stage was marked by a political movement: to*

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9 For audio file "A New Mandate for Human Rights": <http://www.law.uchicago.edu/taxonomy/term/33>

*embed these international human rights standards into national law. The movement introduced legal reforms that would replace traditional or colonial standards with codifications of new international standards with basic human rights embedded into local and national law. For instance, in conformity with international norms, South Asian countries passed laws outlawing bonded slavery. African countries threw off centuries of traditional cultural practice and gave women the right to own and inherit land. South-East Asian countries created new laws that elevated the position of women and girls and protected them from sexual exploitation and trafficking. Latin American countries replaced authoritarian regimes and adopted international standards for arrest and detention procedures and codified land reform rights.*

*As a result of this global political movement, country by country, hundreds of millions of the most vulnerable and abused became entitled to global standards of justice and equity under local law. The tragic problem however, is that the enforcement of these rights under national law was handed over to utterly dysfunctional institutions of national law enforcement that do not enforce the law for poor people. For the modern human rights movement, and for all those who pursue international aid and development among the global poor, the implications of this are catastrophic. Without a credible public justice deterrent, poor people by the hundreds of millions are relentlessly subjected to assault, rape, imprisonment, extortion, enslavement, theft, dispossession and removal.*

*Looking back at the story, one can see that two generations of global human rights work have been predicated, consciously or unconsciously, upon assumptions of a functioning public justice system in the developing world which, if incorrect, effectively undercut the usefulness of those efforts for their intended beneficiaries. Now, absent an effective enforcement mechanism, the great work of the first two generations of the international human rights movement can deliver to the poor only empty parchment promises.*

## Torture, a Problem in the Structure of Society

Dealing with the elimination of police torture in less developed countries is linked to the issue of the development of institutions. The institutions are public systems of rules. As John Rawls writes:

*In saying that an institution, and therefore the basic structure of society, is a public system of rules, I mean that everyone engaged in it knows that he would know if these rules and his participation in the activity they define were the result of an agreement. A person taking part in an institution knows what the rules demand of him and of the others. He also knows that the others know this and that they know that he knows this, and so on<sup>10</sup>.*

Unfortunately, in less developed countries, the use of police torture is very much a part of the basic structure of society. Everyone knows ('everyone' meaning the judges, prosecutors, legislators and the citizens) that the police use torture and ill-treatment as a method of criminal investigation. Despite moral objections, and even legal obstacles, everyone takes it as given that the police will use torture in the process of criminal investigations.

The agreement has not yet reached the level of practical intelligence to reject the use of torture and ill-treatment in the course of criminal investigations. The moral, ethical and even legal objections, including the recognition of criticisms on the basis of international law, has not caused a level of agreement as to a practical strategy of evolving what is considered 'law and order' within these societies.

If the ideals in the UNCAT are to be realised within such societies, a transformation is needed in the very basic structure of the societies themselves. An agreement has to be reached among everyone, all state actors as well as civil society, that law and order can be achieved without the use of torture and ill-treatment. That requires a different conception of law and order, one that can be achieved within a rule of law framework.

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10 A Theory of Justice', John Rawls, Harvard University Press, revised edition 1971, Page 48

What this implies is that working towards the elimination of torture is a difficult task that can only be achieved through a very comprehensive strategy, combining the changing of political systems with considerable changes in resource allocation, aimed towards achieving a change in the basic structure of society in favour of the rule of law and democratisation.



## 88 CASE STUDIES

### *Torture 'Methods' in Different Countries*

As AHRC has proceeded to document rampant torture across countries in Asia, patterns of violence and threats used to commit torture in each country have become apparent. What follows is a compilation of 88 case studies of torture and ill-treatment, as well as unique information on the kind of torture 'techniques' and 'methods' often used by state agents to intimidate and terrorize vulnerable populations under their care. The case studies have been compiled from 9 countries, namely: Indonesia, Bangladesh, Burma, Sri Lanka, the Philippines, India, Pakistan, Nepal, & Thailand. The nature of the cases reflect both the varying nature of intervention and documentation undertaken in each of the nine countries, as well as the differing sites of social asymmetry across socio-political geographies where ill-treatment and torture recur.

## INDONESIA

### *Well Thought-Out Abuse*

In 2008, the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment published a report regarding his visit to Indonesia. In the report, the Rapporteur has expressed his concern on the widespread practice of torture within the country. He noted common torture methods used by the Indonesian authorities, including 'beatings with fists, *rattan* or wooden sticks, chains, cables, iron bars and hammers, kicking with heavy boots, electrocution and shots into the legs.' The list goes further and mentions placement of heavy implements such as chairs and desks on the victims' body for prolonged periods of time. The Rapporteur's finding is consistent with what the Asian Human Rights Commission has documented over the years. In addition to the Rapporteur's list, the AHRC has found that torture takes in the form of burning victims with cigarettes, forcing them to walk in a crouched position, and suffocating them using a plastic bag. In one of the cases included below, the military officers even tortured a man by pulling at his vital organ with pliers, before burning it.

#### INDONESIAN TORTURE TECHNIQUES

- Beating with fists and kicking;
- Beating with hard objects like wooden & iron sticks;
- Stepping on victims' toes and fingers;
- Victims forced to walk while crouching;
- Victims threatened with guns; threatened with death;
- Stabbing;
- Victims' vital organ being pulled with pliers & burnt;
- Burning victims with cigarettes;
- Smashing victims against stones;
- Plastic bag tied to victims' head till he/she suffocates;
- Use of a 'torture house'.<sup>11</sup>

11 An AHRC Urgent Appeal reveals the existence of such a 'torture house', at least in Medan, where suspects are taken to be tortured before they are brought to the police station / detention centre. See, *INDONESIA: Police tortured and denied a drug offender's access to legal counsel and medical examination*, online: [www.humanrights.asia/news/urgent-appeals/AHRC-UAC-085-2012](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-085-2012).

Although we can list some methods of torture practised by the Indonesian authorities towards individuals in its territory, it is an onerous and never-ending task. There are so many techniques in vogue; apparently law enforcement officials are willing to put much effort, thought, and creativity into practising torture.

In another one of the ten cases included herein, for instance, the police bothered taking an arrestee to a torture house only to beat him severely. Just when one thinks one has heard or seen it all, the state perpetrators of human rights abuses will come up with a 'better' idea on how to further brutalize an individual's life. In a meeting towards the end of 2012 in Padang, West Sumatra, a human rights activist informed the AHRC how the police have come up with several 'revolutionary' torture methods that will not leave any marks on the victims, such as beating a victim's head, covered by a pillow, with a hammer. Regardless of the torture method used, the result for victims is sadly common: physical injuries, trauma, and injustice. Perpetrators are hardly ever taken to a civilian court to be held criminally responsible. In the rare occasions in which a torture allegation is investigated, and the perpetrators tried, light punishment for their tormentors is the best a victim can hope for.

*INDONESIA: Case 1***Syafrudin: Shot in the head by Riau Police**

*“The police have offered no explanation as to why they used deadly force to stop the victim.”*

On 2 June 2011 at 9.30 p.m., Mr. Syafrudin, who is a citizen from the Rokan Hilir district, Riau province, was shot by members of the Persiapan Rantau Kopar sub-district police (POLSEC) in Riau. Mr. Syafrudin was meeting with his friends Mr. Reski, Mr. Ade, and Mr. Doon at a food stall near his house when Police Officer Zulpadli, also known as Ocu, and another Officer, Samsuar, arrived by motorcycle at the stall.

Officer Zulpadli then asked Mr. Syafrudin to go with him to another food stall, Uniang, near Mr. Syafrudin's house. When they arrived at the food stall, Officer Zulpadli ordered drinks for them and chatted with Mr. Syafrudin for around one hour. While they were talking, Mr. Zulpadli's colleague, Officer Renaldo, also a member of the Persiapan Rantau Kopar sub-district police, joined them and later took Mr. Syafrudin to his car. Officer Renaldo explained to Mr. Syafrudin that he would take him to the Persiapan Rantau Kopar sub-district police office because of his alleged involvement in a drugs case. Officer Zulpadli left his motorcycle at the Uniang food stall and joined the others in the police car.

At 11 p.m., Mr. Syafrudin's brother, Mr. Asnawi, came to the Persiapan Rantau Kopar sub-district police office to look for his brother but could not find him there.

At 10 a.m. on 3 June 2011, the sub-district police called Mr. Asnawi and asked him to come to their office to meet the head of the Persiapan Rantau Kopar sub-district police, Mr. Sahdin Damanik. At the police station, Head of Office Sahdin told Mr. Asnawi that his brother had died of gunshot wounds while attempting to escape. Mr. Syafrudin's family then went to the Duri regional general hospital (RSUD) to see his corpse, which, according to a hospital officer, was delivered by an unidentified person on 3 June 2011 at 7.50 a.m. in a green hard-top Toyota car. The family then took the corpse to their house in Kepenghuluan Rantau Kopar, Rokan Hilir district. While washing the corpse, the family found swellings on the body, bruises on the

face, including the forehead, and found that the chest was wounded and that there were two bullet wounds in the back of the head.

The police have offered no explanation as to why they used deadly force to stop the victim. Normal and recognised procedure is to aim for the legs of a fleeing victim. Also, the fact that there were two bullet wounds to the back of the head implies that deadly force was used intentionally.

*INDONESIA: Case 2***Munawit Alamsyah: Torture, Denial of Legal Redress, Medical Access**

Mr. Munawir Alamsyah was arrested by the police for his alleged involvement in a drugs case. Although the police arrested him at 9 a.m. in the morning, Mr. Alamsyah was only taken to the police station at 6 p.m. in the evening. According to his lawyers, before being taken to the police station Mr. Alamsyah was brought to a house in Ring Road, Medan, where the police interrogated and tortured him. He was beaten by the police, resulting in his lips, eyes, face and back being bruised. One of his ears was bleeding. Despite the injuries he suffered, the victim's request for a medical examination was dismissed by the police.



Munawir Alamsyah.  
(Courtesy Dhi'IraKh & Associates)

According to his lawyers, Mr. Munawir Alamsyah was arrested on 7 April 2012 near the Asrama Street in Medan, at around 9 a.m. He was allegedly involved in a drug transaction as prohibited by Law No. 35 Year 2009 on Narcotics. One of the crimes he is charged with falls under Article 114 paragraph (2) of the Law against Narcotics<sup>12</sup>, which carries the death sentence as maximum punishment. Police officers from the North Sumatra Provincial Police applied excessive force during arrest, as a result of which he suffered several injuries. It is reported that he was beaten by the police, resulting in injuries on his lips and eyes, leaving bruises on his face and back. One of his ears was bleeding and his friend was shot in his right arm.

Although the arrest happened at around 9 a.m. in the morning, Mr. Alamsyah was brought to the police station at 6 p.m. in the evening. The lawyers informed the Asian Human Rights Commission that Mr. Alamsyah was brought to a house in Ring Road, Medan, prior to being brought to the station and interrogated there while the police continued beating him. Mr. Alamsyah signed a power of attorney with the lawyers from Dhi'IraKh &

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12 See: <http://dl.dropbox.com/u/64663568/library/Indonesia%20Narcotics%20Law%202009%20Eng.pdf>

Associates at 10 a.m. on the next day. However, the lawyers were not allowed to provide legal assistance to him. When his lawyers came to the police station, the police did not allow them in and Mr. Alamsyah was questioned by the police without being accompanied by any legal counsel.

According to one of the police officers, Mr. Iptu Helmi Sembiring, 'There is no use asking for legal assistance from lawyers. It's just a waste of money. It will be better if you just leave this to the police and the prosecutors.'

On 9 April 2012, Mr. Alamsyah's lawyers sent a letter to the Chief of North Sumatra Provincial Police requesting that the police conduct another interview on Mr. Alamsyah in their presence. On the next day, the police responded by sending a letter claiming that Mr. Munawir Alamsyah had been questioned on 7 April 2012 at 6 p.m. and that he was accompanied by lawyers from the police's legal aid organization.

Mr. Alamsyah's lawyers asked the police to provide the details of lawyers who accompanied their client during the interrogation, but the police did not give any further information or clarification. The lawyers also requested a medical examination for their client and filed a complaint to the Profession and Security Division of the police (PROPAM) concerning the excessive use of force allegation. However, at the time of writing, the police have not taken any necessary measures to respond to the request and complaint.

Apart from the time when they met Mr. Alamsyah to sign the power of attorney, the lawyers have never again been allowed to meet and provide legal assistance to their client.

In 2009, the Chief of the Indonesian National Police issued Regulation No. 8 Year 2009 concerning the Implementation of Human Rights Principles and Standards in the Discharge of Duties of the Indonesian National Police.<sup>13</sup> Article 11 paragraph (1) of the Regulation establishes that 'every Indonesian National Police officer/personnel shall not commit... b) torture of detainees or person suspected of being involved in a crime... d) inhumane and degrading punishment and/or treatment.' Indonesia is a state party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading

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13 See: [http://indonesia.ahrchk.net/docs/PoliceRegulationNo.8-2009\\_PERKAP\\_HAM\\_english.pdf](http://indonesia.ahrchk.net/docs/PoliceRegulationNo.8-2009_PERKAP_HAM_english.pdf)

Treatment or Punishment (UNCAT) since 1998 but torture, as defined in the UNCAT, is yet to be criminalised in Indonesia.

In addition to the obligation to criminalise torture, state parties to the UNCAT are also obliged to establish safeguards to prevent torture. One of the safeguards is access to independent medical examination, as pointed out by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in, for instance, his report on Kyrgyzstan<sup>14</sup>. Article 58 of the Criminal Procedure Code also stipulates that 'a suspect or an accused who is subject to detention shall have the right to contact and to be visited by his personal doctor in the interest of his health, whether or not this has any connection with the process of the case.' Safeguards to prevent torture also include the prohibition on using secret detention centres; that is, those which are not officially registered as police stations, detention facilities or hospitals.

In addition to the right to have independent medical examination, safeguards to prevent torture also include the right of the suspect or accused to be accompanied by legal counsel. That right is also one of the elements in the right to fair trial. According to Article 14 paragraph (3) of the ICCPR, 'in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality ... (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.' This right is also guaranteed under Article 54 and 55 of the Criminal Procedure Code. In cases where capital punishment might be imposed, the Criminal Procedure Code establishes that the suspect or accused has to be accompanied by legal counsel.

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14 See: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-61-Add2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-61-Add2_en.pdf)

*INDONESIA: Case 3***Yusli: Suspicious Death in Custody after Illegal Arrest**

Mr. Yusli, a 23-year-old young man, died while in the custody of the Cisauk sub-district police station, in Tangerang, Indonesia, on 26 December 2011. Yusli's family later saw his dead body and found an injury on his head that looked like it had been bleeding. Claw marks were found on his chest, as well as a gunshot wound (over his heart). The family also found lacerations on his face and several bruises on his forehead, chin, hands, and body. The police claimed that Mr. Yusli was escaping, so they had to shoot him. The reasons for his arrest remain unclear as no arrest warrant was produced.



Yusli  
(courtesy Yusli's family)

According to the Jakarta Legal Aid Institute (LBH Jakarta), on 26 December 2011, at 3 a.m., three persons carrying long rifles came to Mr. Yusli's house in Bogor, West Java. For unknown reasons, they hit and handcuffed Mr. Yusli and dragged him to a car, in which a fourth person was waiting. Mr. Yusli's father-in-law, who was at the location of the arrest, chased them to the car, but failed to stop them from taking Mr. Yusli away. Mr. Yusli's family later visited several sub-district police stations, including those in Rumpin, Cisauk, Pademangan, Legok, Gunung Sindur, Serpong and Ciputat, in order to find their family member. All the police officers in all those police stations stated that they did not know anything about Mr. Yusli or his arrest. They also informed the family that Mr. Yusli's arrest was illegal, as no arrest warrant was given to Mr. Yusli and no copy given to the family. According to these police officers, the head of the local community should also have been informed about the arrest.

Around 5 p.m. on the same day, the community head of the Mekarsari sub-district, Mr. E. Jurjani, informed Yusli's family that Mr. Yusli had died and his body was at the Kramat Jati hospital. Mr. Jurjani gave them around \$ USD 222 'as a form of sympathy', a highly unusual act by a head of sub-district in response to a death. The amount of money given was also suspicious. While Mr. Jurjani gave no further information about Mr. Yusli's death, he asked the family to sign a blank letter, allegedly to be used as a statement confirming that the family will keep silent and not take any action on this matter. The Yusli family refused to sign the letter.

On the following day, the family came to the hospital. At the mortuary, a man whose name sounds like Sakbani introduced himself to the family as a police officer working in the Cisauk sub-district police station. He mentioned that his friends and the chief of the Cisauk sub-district police station, Kemidjo, arrested Mr. Yusli. According to him, Mr. Yusli was attempting to escape so the police had to shoot him.

Mr. Yusli's family later saw his dead body and found an injury on his head that looked like it had been bleeding. Claw marks were found on his chest, as well as a gunshot wound (over his heart). The family also found lacerations on his face and several bruises on his forehead, chin, hands and body.

As the family had doubts about the alleged cause of Mr. Yusli's death, they immediately reported this case to the Tangerang district police. A man later approached them at the funeral and gave them around \$ USD 333. He mentioned that the money was a form of sympathy from Mr. Kemidjo, the Chief of the Cisauk sub-district police. He also mentioned that Mr. Kemidjo had left money with Mr. Jurjani, and asked whether the family had received it.

On 2 January 2012, the family reported the case to the police's Division of Profession and Security (*Propam*). On 31 January 2012, Propam informed the family by phone that the case had been referred to Propam at the Jakarta Metropolitan police.

On January 3, the Tangerang district police sent a letter to the family informing them that they had chosen two police officers from the economy division, officers who usually deal with business crimes, as the investigators in the case. On January 16, the Tangerang district police sent a notification letter regarding the developments in the investigation (SP2HP), stating that they had questioned four members of the Cisauk sub-district police station as witnesses. These four police officers were Sutrisna, Aan Trihariano, Ricky Ananta Sembiring, and Hermanto. The Tangerang district police also informed the family that they were planning to question Mr. Kemidjo, but no further information regarding this examination has been given to date. The last update obtained by Yusli's family regarding the investigation was that Mr. Yusli died in a research centre for science and technology (*Puspiptek*) in Tangerang, to which access is very restricted. This was mentioned on January 25 by one of the investigators, Djarot Sudarsono.

The Tangerang district police officers did not show the family the medical certificate regarding Mr. Yusli's death (*visum et repertum*) despite the family's repeated requests for it. Mr. Yusli's father-in-law then reported that he was able to identify one of the perpetrators as one of the members of the Cisauk Sector Police. The Tangerang Police, however, took no further action upon this evidence. Mr. Yusli's family still does not know the reason for his alleged arrest, despite the fact that article 18 paragraph (3) of the Indonesian Criminal Procedure Code obliges the police to give a copy of the arrest warrant to the family. The police told the media that Mr. Yusli was arrested for motorcycle theft.

Well-established jurisprudence of the UN Human Rights Committee, the African Commission on Human and People's Rights, the European Court of Human Rights and the Inter-American human rights system has clearly stated that the physical integrity and welfare of persons held in police custody is the responsibility of the state, as such persons are of its exclusive custody. The failure of the state to protect the life of persons held in custody is therefore a violation of the right to life as guaranteed under Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Furthermore, the right to life as enshrined in the ICCPR obliges the state to conduct an independent, prompt and effective investigation into any death in custody cases. The burden of proof in these cases lies on the government. In this case for instance, it is up to the police to provide adequate proof that shooting Mr. Yusli was reasonable, proportionate, and necessary.

However, even if Mr. Yusli was really trying to escape, the police decision to shoot him was not in accordance with the law. According to the Head of Indonesian National Police Regulation No. 1 Year 2009 on the Use of Force, an attempt to escape from the police is classified as an 'active conduct' which should be responded by police without any arms or weapons.

*INDONESIA: Case Study 4***Tuanliwor Kiwo: Outrageous Verdict follows Torture in Tingginambut**

Mr. Tuanliwor Kiwo, an indigenous Papuan, was tortured by military officers in Papua for 3 days in June 2010. He was detained by personnel of the Kwangkok Nalime military post after allegedly being involved in a separatist movement.



Mr. Tuanliwor Kiwo, gave detailed evidence, but perpetrators not tried for torture (*courtesy, local activists*)

During his detention, the security officers pulled Mr. Kiwo's toes and penis with pliers, burned his chest, stomach and thighs with a hot iron rod, smashed him against stones, threatened to burn him alive and kill him with an axe, burned him with cigarettes and tied a plastic bag around his head until he nearly suffocated. The perpetrators were subsequently sentenced to between 9 and 12 months of imprisonment for disobeying orders, by a military court in Jayapura, Papua.

The Asian Human Rights Commission is shocked to see how this show trial avoided holding the perpetrators accountable for the key crime in this case, i.e. torture. The trial only came about after heavy national and international pressure and the result does not provide an adequate remedy for the gravity of the human rights violation committed by state forces. The AHRC regrets that the perpetrators have not been charged with their actual crime and rejects this trial. While violence against civilians by the military is commonplace in Papua, the case of Mr. Tuanliwor Kiwo received wide international attention after a video<sup>15</sup> of the torture taken by members of the military during the crime was published by the AHRC in October 2010. Mr. Kiwo also gave a detailed testimony<sup>16</sup> of the 3 days of torture during his detention.

15 Online: <http://blip.tv/asian-human-rights-commission/indonesia-indonesian-military-tortures-indigenous-papuans-4340037>

16 Online: <http://blip.tv/asian-human-rights-commission/indonesia-testimony-of-military-torture-of-mr-kiwo-in-papua-4465815>

During the military detention, members of the post pulled Mr. Kiwo's toes and penis with pliers, burned his chest, stomach and thighs with an hot iron rod, smashed him against stones, threatened to burn him alive and kill him with an axe, burned him with cigarettes and tied a plastic bag around his head until he nearly suffocated. During the torture, which included other forms of inflicting physical and mental suffering in order to obtain information about alleged separatist locations nearby and as a form of intimidation, Mr. Kiwo lost consciousness due to the severe pain and injuries. Mr. Kiwo eventually managed to escape the post at night.

Torture is one of the most severe human rights violations and is illegal under fundamental principles of international law. Indonesia ratified the Convention against Torture in 1998 but up to now has failed to take any tangible action to eradicate the systematic practice of torture as required by the convention. Countries that managed to largely eradicate torture have sentences of seven years up to life imprisonment (25 years) for perpetrators of torture. The AHRC demands that the Indonesian authorities take swift action to ensure full accountability of the perpetrators by bringing the military personnel who tortured Mr. Kiwo to a civilian court where they should be held accountable according to international laws, and that the victim receives adequate compensation, reparation, and medical treatment.

The AHRC also urges Indonesia to adopt a review of its Penal Code, making torture a crime according to the definition in the Convention against Torture ratified by Indonesia, and to review the laws regarding military courts immediately to ensure that all violence and other crimes committed by army personnel against civilians ceases. The AHRC is concerned that the lack of effective remedies provided by the Indonesian authorities to victims of violence in Papua will aggravate social tensions and will have an adverse effect on the integration of indigenous Papuans into Indonesian society. Resistance to the Indonesian authorities will grow as long as those authorities are unable to provide justice, human rights and remedies for all. All human rights violations in Papua have to be investigated according to the law. The systemic and widespread nature of the atrocities committed now and in the last decades must be acknowledged.

The AHRC urges the President of Indonesia and the Chief of the Indonesian military to ensure that the perpetrators in this case are not only held accountable for disobeying orders but that a trial in a civilian court results, to address the crime of torture they committed. Until then, the case remains unresolved.

*INDONESIA: Case 5***J.J. Rizal: Arrested on False Charges, Tortured in Police Custody**

Mr. J.J. Rizal was arrested by the police on the allegation that he had been involved in pickpocketing. The police officers beat Mr. Rizal on the head and pointed a gun at him while they were trying to arrest him. The violence resulted in Mr. Rizal suffering from the following injuries: a split upper-lip, bleeding from the nose, swollen eyes, and swollen cheeks. He was also struck about the ears, which resulted in damage to his hearing.

According to information from the Commission for the Disappeared & Victims of Violence (KontraS) in Jakarta, Mr. Rizal was arrested on Saturday night, 5 December 2009, during a music concert at the Margo City Shopping Centre in Depok city. Prior to his arrest there had been numerous reports of pickpocket thefts in this mass gathering and these were reported to the Beji sector police. Mr. Rizal had just arrived at the nearby train station (Pondok Cina KRL Station) from Jakarta moments earlier and was trying to find a motorcycle taxi to get to his home, when he was suddenly grabbed by a group of policemen. The police suspected Mr. Rizal to be one of the pickpockets and arrested him. While arresting the victim, the police officers beat him on the head and pointed a gun at him. Mr. Rizal shouted for help; however, the bystanders did not dare to interfere with the police action. The violence perpetrated on the victim resulted in a split upper lip, nose bleeding, swelling of the eyes and cheeks, and hearing difficulty. Some of the officers involved in the arrest did not wear uniforms. Others only identified themselves as police officers after the victim was detained.

After some inquiries at the police station about this serious incident, Police Commissioner Adjutant Mr. Sukardi, the head of the Beji sector police, acknowledged to the media the following morning, Sunday, 6 December 2009, that four of his subordinates arbitrarily arrested Mr. J.J. Rizal and falsely accused him of theft. Mr. Rizal then filed a complaint against the police at the Jakarta Metropolitan Police. The internal disciplinary unit of the Jakarta Metropolitan police investigated the complaint of the victim against the four police officers. The Head of the Beji sector police station thereupon requested his subordinates to go to the victim's house and apologize, which they did.

*INDONESIA: Case 6***Kiten Tabuni: No Investigation on Torture of Indigenous Papuan**

Mr. Kiten Tabuni was illegally arrested, detained and tortured after he was taken into custody by the airport security unit of the police in Wamena. He was informally accused of taking part in the murder of five Javanese persons earlier in the month. The officers allegedly beat Mr. Tabuni badly to force a confession, using their fists, regulation weapons, and helmets, and kicked him on his face, head, and legs. Mr. Tabuni was hospitalised for his injuries, but no investigation has been carried out and no compensation has been offered.

According to a local human rights organisation, on 23 July 2009, Mr. Kiten Tabuni (23 years) was driving a public bus along Yebe-wenas street in Wamena at around at 2 pm, heading to Bolakme, when police officers in a patrol car ordered him to stop. An officer told him that police from the Jayawijaya sector headquarters had been looking for him, but would not explain why.

Mr. Tabuni was taken to the KP3 airport security unit and illegally detained after being informally accused of taking part in the murder of five Javanese persons earlier in the month. The officers allegedly beat Mr. Tabuni hard in order to force a confession, using their fists, regulation weapons, and helmets, and kicked him around his face, head, and legs.

His relatives were not informed of his detention; they assumed that he had been working as normal and heard the news two days later from eye witnesses. On Monday, 24th July, his family went to the Jayawijaya police sector headquarters in Wamena, along with staff from a local human rights organisation, to check on his condition. They were told by the chief police officer that Mr. Tabuni had been arrested by the KP3 airport police, and he eventually contacted the KP3 security unit on behalf of the family and received a confirmation. A day later, the headquarters produced a formal letter of arrest. However, when the headquarters chief sent for the victim to check his identity and investigate the charges against him, it was quickly discovered that there were no credible details linking the man to the crime. The chief officer apologised to the victim's family and he was released. Mr. Tabuni needed eight days of treatment at the Public Hospital of Wamena (Rumah

Sakit Umum). His medical report noted that he suffered from headaches and aches relating to his beatings in custody. However, the family of the victim has not been able to get a copy of this report to pursue compensation, which, according to international law (Article 14 of the Convention against Torture, & Articles 2 (3) & 9 (5) of the International Covenant on Civil and Political Rights) they are fully entitled to.

On a national level, the right of equality before the law is protected by the 1945 constitution, particularly article 28D paragraph 1, article 28G paragraph 2 (regarding the right to freedom from torture); and also national law No. 39/1999, especially article 18 paragraph 1 (which deals with the presumption of innocence). In 2009, the Chief of the Indonesian National Police enacted the new Regulation of the Chief of Indonesian National Police Number 8 of 2009<sup>17</sup>, which deals with the implementation of human rights principles and standards in the discharge of the duties of the Indonesian National Police. In West Papua it appears to have largely gone unnoticed.

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*INDONESIA: Case 7***Fachurrozzi et al: Tortured Student Activists, Convicted & Imprisoned**

Several student activists in Medan conducted a protest against a hotel's fictitious facilities. A clash between the protesters and the police took place and three of the protesters were arrested and detained. The three student activists were visited by their lawyer, who later reported that torture marks and severe injuries were found on their bodies. The lawyer also reported that the activists appeared to be mentally disturbed and he could not discuss their case with them properly.

According to the Medan Legal Aid Institute, three student activists, namely Mr. Fachurrozzi, Mr. Maksum and Mr. Rino Hadinata, took part in a peaceful demonstration on 14 May 2009 in front of the Grand Atares Hotel in Jalan Sisingamangaraja Kota Medan. The police assaulted them, had them arbitrarily arrested and tortured while in police custody.



Student beaten up by police  
(courtesy, local activists)

The three men, all of whom are members of the Pancasila Students Group (Mapancas), a student organization, were protesting against the hotel's leaflets advertising their facilities to their guests and customers. The hotel claims they have a swimming pool for children and a fitness centre, but these are non-existent.

Three days prior to the demonstration, the group had complied with the requirements on matters regarding demonstrations. They had sent, as required by Indonesian law no. 9 of 1998, Article 10 paragraph 1 regarding expression of freedom of opinion in the public areas, information about their planned demonstration to the Chairman of North Sumatra Regional Police.

However, despite having complied with the requirements, Mr. Darwin Ginting, Chief of sector police in Medan Kota and Adjutant Commissioner of Police (AKP), threatened the demonstrators and allegedly gave verbal orders to his subordinates to assault and shoot protestors during their

demonstration. He is reported to have said: “If the demonstrators move one step forward, hit them or shoot if necessary and I will take responsibility”. After hearing the orders, the police, who were securing the area where the demonstration was taking place, commenced the attack and began violently dispersing the demonstrators.



Police use sticks to 'good' effect  
(courtesy, local activists)

Mr. Darwin Ginting and his men grabbed bamboo sticks and kicked, beat, and assaulted the demonstrators, particularly the three student activists, which resulted in them suffering severe injuries.<sup>18</sup>

They were taken to the Large City Police of Medan, and were detained until 24th June 2009. They are reported to have been continuously tortured while in police custody.

When one of their lawyers visited them in jail following their arrest, torture marks and severe injuries could still be seen on their bodies. The lawyer also noticed, through his conversations with them, that the victims appeared to be mentally disturbed and found that he could not discuss their treatment or their case with them properly. This strongly suggests that they might have been suffering from a post-traumatic stress disorder (PTSD) due to torture.

It is reported that the victims have been falsely charged with committing assault and violence under Article 170 and for maltreatment under Article 351 of the Indonesian Criminal Law (Case No. 2187/Pid.B/2009/PN.Mdn). After being held for over four months, the three men were taken to the Medan District Court, where their case was tried from early September to October 7th, 2009. The Public Prosecutor, Octario, had asked the court to impose a punishment of one year and six months imprisonment upon the three students. When the court concluded the trial, Judge Catur Prianto sentenced the three to nine months imprisonment. The victims' legal counsel immediately appealed for the court to reconsider its decision.

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<sup>18</sup> For video, photographs, see: [www.youtube.com/watch?feature=player\\_embedded&v=j9QaGCA5GU4](http://www.youtube.com/watch?feature=player_embedded&v=j9QaGCA5GU4)

*INDONESIA: Case 8***Oktavianus Bukuap: Detainment & Ill-treatment, No Investigation**

Mr. Oktavianus Bukuap was abducted by unidentified men in August 2009 for two weeks. During this period, Mr. Bukuap was only fed once a day and forced to urinate and defecate in the corner of the room where he was locked. No investigation was conducted by the police to follow up on the leads in this case.

According to the victim's family, and the KPKC Sinode Indonesian Christian Church (GKI) in Papua, Mr. Oktavianus Bukuap was abducted by unidentified men in civilian clothing on 1st August 2009. He had been on his way from Warombaim to Nimbokrang II when he was forced into a car, blindfolded, and anesthetized; then he blacked out.

He awoke in a dark room, which he believed was underground, and over the following two weeks was kept there, fed once a day and forced to urinate and defecate in the corner of the room. He was questioned about his alleged involvement in a fire that took place at Hanurata Coy, Inc. twenty three years ago. Since he wasn't aware of the case, there was no information he could provide.

Hanurata Coy, Inc. is a timber corporation owned by the family of former president Suharto, and some of the shares are believed to be held by army personnel. The corporation holds the rights to Forestry Management (HPH) of an 188,500 hectare forest in Keerom regency, Jayapura.

He was released on August 13 at 4 am, and dropped into Kodam Baru Polimak IV Street while still blindfolded, and with his hands and his legs tied.

## INDONESIA: Case 9

**Carmadi: Officers Torture Man to Death, Falsify Autopsy Report**

Mr. Carmadi was taken to Tegal police station without an arrest or detention warrant on the allegation that he had attacked another villager. When two of his friends visited him, they saw that Mr. Carmadi's head was bleeding and that he was injured across his upper body. According to Mr. Carmadi's testimony, the officers beat him and tore his tongue. The left side of his body hurt badly and he couldn't hear out of one ear. He was pressured to make a false statement and was denied any medical treatment.

According to information from KontraS, the Commission for the Disappeared and Victims of Violence, collected in interviews with relatives of the victim, on April 14, Mr. Carmadi was planting rice with his parents in Pakulaut village when they were approached by two plain-clothed police officers. One was later identified as Aiptu Sutrisno (*NRP or Nomor Registrasi Pegawai: 65120613*). The police brought Mr. Carmadi to the Tegal police station and put him in custody without a legally required summons letter. They told the man to give a statement regarding an attack that took place four days earlier in his village on someone belonging to the campaign team of the Partai Demokrasi Indonesia Perjuangan (PDI-P) legislative candidate.

The police then took Mr. Carmadi to Slawi Hospital to meet with the attack victim Mr. Imron, and Mr. Imron's brother. Mr. Imron reportedly told the officers that he knew Mr. Carmadi. Mr. Imron's brother allegedly said that Mr. Carmadi was not the attacker. On the same afternoon, when Mr. Carmadi's brother, Mr. Subur, and his cousin, Mr. Haryono, visited Mr. Carmadi, they saw that his head was bleeding, and that he was injured across his upper body. The injured Carmadi told his brothers that the officers had severely beaten him and that his tongue was torn, that the left side of his body hurt badly, and that he couldn't hear out of his left ear. He also told them that that he had confessed to having attacked Mr. Imron under duress, despite not having taken part in any such attack. Mr. Subur demanded that the police arrange medical treatment, but nothing was done, so the two men stayed at the police station for most of the following day. At 4 p.m. the police, with no other leads, presented Mr. Carmadi's parents with an official order for his detention. He was moved to the police station at Slawi.

On 16 April, during a family visit, the victim told them that he had been vomiting ever since the torture, and reportedly identified one of the police officers who had tortured him. At 10 p.m. on the same day, the local village head contacted Mr. Carmadi's father, Mr. Kusnadi, to let him know that he had been summoned to the station by the police, and that, on arrival, he had been told by a head detective named Rudi that Mr. Carmadi had fainted and fallen during an interrogation. He was then taken to Slawi hospital where he died. On April 17 an autopsy was performed at the hospital and his body was taken home for burial.

The family turned to the Division of Profession and Security, the internal disciplinary unit, which advised them to lodge a complaint with the head of the Criminal Investigation Division, and on May 4, Mr. Kusnadi and Mr. Haryono paid a visit to the Internal Affairs Department. At this point the detective was claiming that the autopsy showed death by suicide. However, after requesting the report, the family could see that the autopsy results and the police story did not match up with the wounds on Mr. Carmadi's body, or the earlier claim that he had fainted under interrogation. The family also registered a report at the National Police Commission, the National Commission for Human Rights and the District Police in Tegal Central Java, but so far no progress has been made.

*INDONESIA: Case 10***Susanto: Theft Suspect, Tortured to Death by Police in Aceh**

Mr. Susanto was arrested without an arrest warrant by Krueng Raya police in Aceh for allegedly stealing a tire. After trying to escape from the police, Mr. Susanto was finally brought to the police station. Three hours after his arrest, Mr. Susanto emerged from detention with extensive injuries and was taken to the nearest hospital. Later that evening he passed away. His family saw evidence of violent abuse, including deep wounds in his right leg, a stab wound on his left toe, a roughly stitched wound on the back of his head, and bruises around his eyes.

According to the Aceh Legal Aid Institute, Mr. Susanto was arrested on 9 July 2009 after the owner of an automotive workshop in Aceh filed a report against him for stealing a tire. Without waiting for the arrest warrant to be issued, officers from the Krueng Raya police station confronted him at a coffee shop in the Krueng Raya Market. Susanto reportedly ran and hid, causing the police to call for reinforcements: 15 officers and three police cars. According to eyewitnesses, three shots were fired in the incident and Susanto was successfully arrested in Lampoh Raya and taken, mostly unharmed, to the Krueng Raya police station.

He emerged from three hours of detention with extensive injuries and was taken straight to the nearest health clinic by police, where medical personnel declared his condition critical and ordered his immediate transfer to the Zainal Abidin Hospital. Police then contacted Mr. Susanto's family. At 7 p.m. a relative called Dasmi visited the hospital and was told that Susanto's condition was still critical; at 10 p.m. he was pronounced dead. When the victim's body was delivered to his family, they saw evidence of violent abuse: they report that his right leg bore deep wounds, there was a stab wound on his left toe, a roughly stitched wound on the back of his head and bruises around his eyes.

Before an arrest, according to Article 18 of Indonesian Criminal Procedure Law, a warrant must be presented and a copy of it given to the suspect's family; in this case it was illegally issued at 3 a.m. the following day, after his death. Arbitrary arrest also violates Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which Indonesia ratified in 2005.

The use of torture as a method of investigation is by no means confined to this one incident in Indonesia, as seen in many of our past appeals (See UAC-065-2009 and UAC-066-2009). The right to be free from torture is legally enshrined in Indonesia, and Article 4 of Legislation No. 39 of 1999 Concerning Human Rights states that ‘the right to life, the right to not to be tortured... are human rights that cannot be diminished under any circumstances whatsoever’. The same right is protected by Article 28G paragraph (2) and Article 28I paragraph (1) of the 1945 Constitution. Also, the chief of the Indonesian National Police has enacted the new Regulation No. 8<sup>19</sup> (PDF), which deals with the Implementation of Human Rights Principles and Standards in the Discharge of Duties of The Indonesian National Police. Article 10 of the Regulation states that: ‘In carrying out their duties of enforcing the law, every Indonesian National Police personnel must comply with the code of conduct as set out in Article 7 sub-article 7 as follows: ... refrain from instigating or tolerating any act of torture or other cruel, inhuman or degrading treatment or punishment.’

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## BANGLADESH

### *The Third Degree Method*

Once a person is in custody, the police have a range of ways to proceed. If the detainee can be accused of a serious offence, such as murder or storing illegal weapons, then the investigating officer will already be calculating how much money can be made and from whom it can be collected. On one side, he will be taking money from the complainant (for example, on the pretext of needing to purchase fuel for the police vehicle). On the other, he will be bargaining with the accused about how much it will cost to escape from the charges, or at least from the Third Degree Method, or death by “crossfire”.<sup>20</sup>

If threats and negotiations with an accused do not yield anything lucrative, police will turn to what is euphemistically known as the Third Degree Method: torture. The third degree starts out light, and is gradually increased in intensity as the interrogation continues. The scale of torture also depends upon the severity of the charges and amount of money involved, as well as other factors, such as the amount of interest in the case from politicians or other influential persons, and the identity of the accused. The method starts with beating with sticks and other objects on the joints, and the soles of the feet; then, walking over the body, forcing hot or cold water into the nose (depending on the season), applying chilli or itching powders, and Banshdola: rolling and pressing on the victim’s body with bamboo; then, hanging the victim upside-down from the ceiling or a tree and beating them, inserting sharp objects under fingernails and into other sensitive parts of their body, and hanging a heavy weight from the penis and forcing them to stand on a table or chair.

The Third Degree Method is an all-round winner for police who use it. It brings in money and helps curry favour with senior officers, members of parliament and other important people. It reinforces the status quo, as the only truly effective means that victims have at their disposal to deal with it is to pay the police and other influential people in order to escape. The

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20 See further: Nick Cheesman, “Fighting lawlessness with lawlessness [or] the rise & rise of the Rapid Action Battalion”, article 2, vol. 5, no. 4, August 2006.

relatives of people undergoing the Third Degree can be seen rushing in and out of police remand cells and other places of detention, doing their bit for one of the most corrupt economies in the world; making mobile phone calls, negotiating with middlemen, seeking help from political leaders or high-ranking civil or police officials, and spending huge amounts, which they are forced to borrow from rich persons, money lenders or micro-credit groups, or by selling valuables like gold and land cheaply.

*Odhikar Fact Finding Report/Badargonj, Rangpur/Abdur Rahim Sheikh/7-9 March 2012*

*BANGLADESH: Case 1***Abdur Rahim: Torture, Custodial Death**

On 29 February 2012, at approximately 8 p.m., policemen from Badargonj police station arrested Abdur Rahim Sheikh (60 years), son of Md. Moez Uddin Sheikh and late Kamrunnessa, of ward no. 8 Sahapur, Mistripara, Badargonj Municipality of Rangpur district. His family alleges that Mr. Sheikh was tortured in the custody of police. On 29 February 2012, the Mobile Court had sentenced him to one year of simple imprisonment. On 2 March 2012, Mr. Sheikh died at Rangpur Medical College Hospital under treatment at the ICU (Intensive Care Unit) at approximately 1.50 p.m. The circumstances of his arrest, torture and death, according to Monzila Khatun (45), wife of Abdur Rahim Sheikh, are as follows:

Her husband, Mr. Sheikh, was a fish trader. They have one son and four daughters. Sometimes her husband would return home drunk and be abusive. On 29 February 2012, she had complained about this to Prithwish Kumar, the Officer in Charge of Badargonj police station. On the basis of this oral complaint, at approximately 8 p.m. on 29 February 2012, Sub Inspector Mizanur Rahman and Constable Zahan Ali arrested and handcuffed Rahim Sheikh. When her husband wanted to know the reason for his arrest, the police gave no reply and dragged him out of his home. He tried to resist by holding onto a fence outside their home. S. I. Mizanur Rahman hit Rahim Sheikh in the chest with a torch and punched his face and back. Rahim Sheikh fell down on the ground when the policeman kicked his legs repeatedly.

Two policemen took Rahim Sheikh away on the motorbike. His wife was told by the villagers that the policemen continued to physically assault Rahim Sheikh while taking him to the police station. That night, villagers informed her that police took Rahim Sheikh to the upazila health complex to wash out his stomach as he was drunk. As a result, Rahim Sheikh's health deteriorated. On March 1, 2012, at approximately 8 a.m., she went to the police station and learnt that her husband was sent to Rangpur Central Jail early in the morning.

On March 2, 2012, at approximately 3 p.m., her nephew and Commissioner of ward 1 no. 8, Nur Mohammad Hossain Babu, informed her over

cellphone that Rahim had passed away, and that his body was at the Rangpur Medical College Morgue. At approximately 5 p.m., while Nur Mohammad Hossain was returning home with Rahim Sheikh's body, villagers brought out a procession demanding the trial of the policemen. After that, to calm the gathering, Officer in Charge Prithwish Kumar Sarkar promised to arrange the marriages of Rahim's three daughters and to donate land to the family on behalf of the district administration. On March 3, 2012, at approximately 10 a.m., Rahim Sheikh was buried at Sahapur College Para graveyard.

*Courtesy Odhikar Fact Finding Report / Badargonj, Rangpur / Abdur Rahim Sheikh / 7- 9 March 2012*

*BANGLADESH: Case 2***FMA Razzak: Bones Fractured, Attempt Made to Gouge out Eyes**

On 29 April 2011, at around 10.30 pm, a resident of the village of Godaipur in Paikgachha, Mr Razzak, and his brother Badiar Rahman, were attacked by a group of people at the bus station in Paikgachha. After having being severely beaten up, Mr. Razzak and his brother were brought to the home of Major Mostafijur Rahman Bokul of the Bangladeshi Army. There Mr. Razzak and his brother were repeatedly beaten up with rifles, pistols, and iron rods, stabbed with a butcher knife, and kicked in their faces, mouths, hands, legs, and chests. Mr. Razzak was further told that Major Bokul had ordered his attackers to kill him. His attackers attempted to gouge out his eyes and destroy them with a screwdriver. His bones were broken. Instructions as to further actions were sought from Major Bokul himself by phone.

Police arrived at Major Bokul's house several hours later, only after the involvement of the media, and escorted the victims to the Paikgachha Hospital, which referred them to the Khulna Medical College Hospital. The victims were further referred to the Dhaka Medical College Hospital, which also did not provide the necessary treatment to Mr Razzak, who was critically injured.

Later, the attendants had no option but to transfer him to a private hospital (Trauma Centre) where Mr Razzak was diagnosed with fractures of his right leg and right hand. An eye specialist diagnosed sub-conjunctival injuries in both his eyes. On 2 May 2011, Mr Razzak underwent a complex surgery. He was only discharged from the hospital on 23 May 2011.

On 6 May 2011, a formal complaint in connection with the above-mentioned events was lodged with the Paikgachha police by Mrs. Rahima Razzak, the wife of Mr Razzak. It was recorded by Md. Enamul Haque, an officer in charge of the Paikgachha police station, under first information report no. 08 and General Register no. 177. Thirty-eight persons were named in that complaint as those involved in the attack against Mr Razzak. Seven independent witnesses of Mr Razzak's abduction were also named.

On 9 May 2011, the case was brought to the attention of the National Human Rights Commission, which, in turn, as per their letter to AHRC dated 16 June 2011, referred the matter for investigation to the Paikgachha local administration and the Rapid Action Battalions' central headquarters. Following their letter of 16 June 2011, the National Human Rights Commission concluded that, on the basis of the investigation report sent back to it, Mr. Razzak had not been attacked or tortured by police or Rapid Action Battalions but that he had been "attacked by the local villagers and relatives regarding his involvement in personal problems with them". It was also reported that there had been no proof of Major Bokul's involvement in the matter.

No details were given to either Mr Razzak or to his counsel and / or next-of-kin as to which investigative measures had been taken by those looking into the matter, and what evidence, if any at all, has been obtained and, who exactly was in charge of the investigation.

*BANGLADESH: Case 3***Brothers of FMA Razzak: Brutal Attack**

The Asian Human Rights Commission (AHRC) has issued Urgent Appeals on several occasions regarding the physical attack on human rights defender Mr. F.M.A. Razzak and demanded fair investigation and fair trial into the case. Now, another physical attack has taken place on 13 April 2012, on two brothers of Mr. Razzak. An administrative inquiry is still in progress following an order of the High Court Division of the Supreme Court of Bangladesh into the first assault. Blatant impunity of military officers and extreme incapability of institutions in Bangladesh have led to this latest attack.



A three-member administrative inquiry team, headed by the Additional Deputy Commissioner (Revenue) of Khulna, Mr. Khan Md. Rezaul Karim, conducted an investigation on 10 April 2012. The team visited the scenes of crimes that were committed a year ago and reportedly received substantial information regarding the complaint of the previous attack in April 2011 on Mr. F.M.A Razzak and one of his brothers. The latest attack, just two days after the visit from the inquiry team, has been coordinated by the father and brother of Major Mustafizur Rahman Bokul of the Bangladesh Army. The two victims, namely Mr. Bodiuzzaman Bodiar and Mr. Fakir Mohammad Abdul, have been seriously injured with several fractures on their hands and ribs.

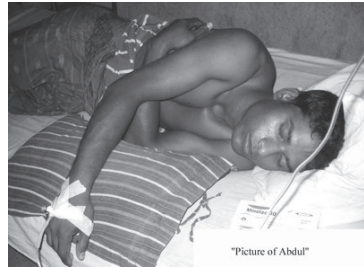
A Division Bench of the High Court Division of the Supreme Court of Bangladesh had ordered the authorities to investigate the case of the physical attack on Mr. F.M.A Razzak, which took place on 29 April 2011.<sup>21</sup> The High

21 For further information, please see our previous appeals:

AHRC-UAU-025-2011: [www.humanrights.asia/news/urgent-appeals/AHRC-UAU-025-2011/](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-025-2011/)

AHRC-UAU-023-2011: [www.humanrights.asia/news/urgent-appeals/AHRC-UAU-023-2011/](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-023-2011/)

Court Bench, which passed this order on 5 December 2011, also ordered the police authorities to reinstate the family of Razzak to their own house at Godaipur village under the jurisdiction of the Paikgachha police station in Khulna. The police helped Razzak's family go back to their house on 9 December 2011. On 10 April 2012,



"Picture of Abdul"

a three-member administrative inquiry team headed by the Additional Deputy Commissioner (Revenue) of Khulna, Mr. Khan Md. Rezaul Karim, conducted an investigation. Two other members of the team were the Upozilla Nirbahi Officer (UNO) of Paikgachha, Kazi Atiur Rahman, and the Social Service Officer of Paikgachha, Mr. Debashish Roy. The team visited the scenes of crimes that were committed a year ago. They invited the witnesses and villagers who testified before the team and reportedly received substantial information regarding the complaint of Mr. F.M.A Razzak. The committee asked questions about the inaction of the police regarding the incident and their connivance with the perpetrators.

Now, information has been received that on April 13, 2012, two brothers of Mr. F M A Razzak have been physically attacked by the family of Army Major Mustofizur Rahman Bokul. The army officer's the father, Mr. Abdur Rauf Sarder, and brother, Mr. Mokhlesur Rahman Kazal a.k.a. Kazal Sarder, accompanied by another man named Ismail, committed this latest attack on two of Razzak's brothers. The victims are Mr. Bodiuzzaman Bodiar, whose right hand was fractured in a similar attack by the same group in April 2011, and Fakir Mohammad Abdul.

The incident took place at around 11.30 a.m. today at Godaipur village under the jurisdiction of Paikgachha police station in Khulna district, in the presence of the team of police who have been guarding Razzak's house following an order passed by a High Court Bench on 5 December 2011. At around 11.30 a.m. in the morning, Abdur Rauf Sarder and his son Kazal Sarder went to Razzak's family's land and started cutting trees. Razzak's father Mr. Nur Ali Fakir, who witnessed and protested against the unlawful action of Abdur Rauf Sarder and his son, was chased away by the attackers. Bodiar and Abdul, who approached the scene to protect their father, were attacked with both sharp and blunt weapons and kept confined for about two hours at the scene. Following public pressure after the Friday midday prayer, the

perpetrators allowed the police to send the two victims to the Paikgachha hospital.

Two Police Constables, namely Mr. Emdad and Mr. Jamshed, and an Ansar (Village Defence Party) personnel were present at the time the attack took place. The two policemen apparently also sustained injuries. Police constable Emdad went to the Paikgachha hospital for treatment; however, he left after receiving “First Aid” from the hospital.

According to the latest information, Bodiar’s right forearm and left thumb have been fractured, and he has several cuts and bruises on his forehead, back, and other parts of the body. He has several severe injuries on his head. Abdul’s ribs have been fractured and he received injuries on his head and on many parts of his body as well. Both of them have swellings and marks all over their bodies. At the time of writing this appeal, the injured victims were admitted at the Paikgachha hospital after having undergone radiological examinations regarding the fractures in their respective bodies.

Mr. F.M.A Razzak has immediately informed the head of the administrative probe committee. The ADC Revenue, who headed the administrative probe committee two days ago, suggested that Razzak contact the UNO of Paikgachha for further action.

Razzak and his brothers request the authorities to take immediate action regarding the matter so that adequate protection is ensured to the victims and their families. Justice must be provided to them, following credible investigations.

*BANGLADESH: Case 4***Dipal: Abduction & Torture**

Dipal was returning from a friend's house at Sayeedabad in the city of Dhaka, between 11 a.m. and noon yesterday, when, on the road next to the Sayeedabad Bus Terminal, a man wearing black sunglasses called to him. The man asked him where the counter of Hanif Enterprises was located. Dipal pointed in the direction of the counter. Then, the person requested Dipal to go and show him the place. Dipal walked with him to show the place. They walked a very short distance and, as they were passing a black jeep, someone opened the door from within and pulled Dipal inside.

Both the persons whom he was accompanying and someone inside said, "Get in!" Then the door closed and the jeep started moving. Inside the vehicle there were four men, including the driver. One man sitting to the left of the driver was talking into a wireless radio. One man sat on the left and one on the right side of Dipal. The windows of the car were tinted so that people could not see inside and Dipal could not see outside. Immediately after taking Dipal inside the car the men snatched away his mobile phone and blindfolded him with black cloth. They also covered his head with a black hood and handcuffed him. The car drove for about an hour.

On the way, Dipal asked the men, "Sir, why do you take me like this? What crime have I committed?" They did not answer the questions. Instead, they verbally abused him using foul language.

At an unknown place, they took Dipal out of the car, and into what seemed like a room. There, they took off the handcuffs and told him to remove his clothes. He removed his shirt but not his pants. He told them that he did not want to be naked.

They told him, "You should decide on that, otherwise we know how to do it". Then he removed his pants. The men put him inside a cold room, naked, and the door was closed.

Dipal thinks that he was kept in the room for about seven hours. After some time, he became thirsty. He shouted to get water but no one responded. He also wanted to urinate and shouted for help. As there was again no response, he had to urinate inside the room.

After this time, men took Dipal to another room. He thinks that the time was midnight or early morning. There were, he thinks, seven to eight persons inside this room, judging by the voices he heard. The men in the room questioned Dipal: why had he visited Razzak in hospital many times? Why was Razzak shifted from the Dhaka Medical College Hospital to a private hospital? How much money was paid to Razzak by the AHRC? How long had he been engaged in the work of the AHRC? Who are the other persons working for the AHRC in Bangladesh? Where do these persons reside and where are they based? Are these persons currently living in Bangladesh or not? Who is the boss of the AHRC's Bangladesh work? When does that boss visit Bangladesh? When is the boss coming to Bangladesh for the next visit? Who came from Hong Kong to visit Razzak after his hospitalization? Whom did the AHRC team meet during their visit? Had not ten million Taka (about 1.4 million \$ USD) been sent to Dipal and his friends from abroad for human rights work and where is the money? Similar questions were repeatedly asked for an hour or so. Thereafter, the interrogators told Dipal that they were going to kill him. He got frightened and told them that he had aged parents and appealed to them not to kill him. He said that he was willing to do whatever they ask and asked them to spare his life.

Then the men told Dipal to sever all connections with all persons associated with the AHRC and not to visit any of them. The men mentioned the names of several other persons and told him not to have any contact with them either. Among them, they specifically accused him of having contact with the leader of the political opposition in the country, Khaleda Zia, and of having met her on several occasions as part of a conspiracy to bring her to power. They told him that they were going to give him a chance and that he should use it, that if he again had contact with those persons, he would not have another chance. During the interrogation, Dipal asked for some water and the men gave him a little. They gave him two slices of bread in the morning. Then they put him back in the cold room until the afternoon time, when they took him back to the same place from where they had picked him up on the previous day.

The story of this abduction and interrogation speaks for itself. It reveals that not only are the attacks on human rights defenders in Bangladesh organized, systematic and life threatening, but they are also in particular targeting persons connected to the AHRC, or persons suspected of contact with the AHRC, presumably because of the intense pressure being brought on the

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perpetrators of the brutal eye-gouging attack on FMA Razzak. These attacks on human rights defenders are the response of the agents of a system of deeply entrenched impunity to an attempt in one single case to challenge the impunity of one among their numbers.

*BANGLADESH: Case 5***Rapid Action Battalion Tortures Victims, Fabricates Charges***Victim 1: Nahidul Haque*

Mr. Nahidul Haque Sazib, aged 25, is a transport businessman, married with one child. His family lives in Chandkharpool, under the jurisdiction of the Lalbagh police station of the metropolitan city of Dhaka.<sup>22</sup> On the evening of 5 April, at around 9.30 p.m., Sazib, left his home to buy some groceries for the family. A team of the Rapid Action Battalion (RAB), who were in black uniforms at that time, stopped him near to his family's transport business office at Chandkharpul area. One of them asked Sazib's name and occupation, and, immediately after he replied to the questions, the members of the RAB accused him of being a 'snatcher'.

All of a sudden, the RAB personnel blindfolded and put a death-mask on Sazib's head. They put him on a silver coloured microbus bearing the registration number Dhaka Metro-Cha 11- 6732, which had 'RANGS Limited' on the back of the vehicle. The car was driven to the RAB-10 camp, adjacent to the Lalbagh Fort. Sazib was taken to the first floor of the camp. An officer asked his and his father's name. As Sazib replied to the questions the officer told that, 'I was looking for you!' The officer took a thick stick and started hitting Sazib's legs. As a result of torture, Sazib lost consciousness.

Then, a doctor, who is also an officer of the RAB, came to examine him. The doctor used a spray on his legs and gave him some medicine. Then Sazib was given a juice box to drink, for which the death mask was taken off, although the blindfold was still on his eyes. When the juice was drunk, the death mask was put on him again. Then his toes were clipped with hasco tags electric wires, which were plugged into a power outlet and were used to electrocute him on several occasions throughout the night. They served him food, namely rice, potato-mash and spinach.

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22 For video testimony, see: [http://www.youtube.com/watch?v=9iXptq1gHd0&feature=player\\_embedded](http://www.youtube.com/watch?v=9iXptq1gHd0&feature=player_embedded)

At around 2.30 p.m. on 6 April, Sazib was informed that a superior officer had come to the RAB-10 camp where he was detained. He was produced before that officer, who asked his colleagues why they arrested Sazib. In response, one of the officers of the arresting team said that the arrest was made on “suspicion” and “efforts are in progress to get the details”. Then the senior office told his junior colleagues, “OK, beat him more! Make your reports and then release (him)!”

Thereafter, Sazib was transferred to another room on the same floor. In the evening, the doctor came again to examine and give medicine to Sazib.

In the early morning of 7 April, at around 3 a.m., the RAB members took Sazib another room, about 25 steps away from the room where he was detained. They tortured him brutally for a long time using various tools and several methods. They pushed needles into Sazib’s fingers and scraped a sharp metal on his fingernails. They then used a spray to hide the wounds on the fingers. Torture took place every night in the Lalbagh camp of the RAB-10, including four to five RAB personnel sitting on Sazib’s leg and beating the soles of his feet with blunt weapons. Apart from beatings and electrocution, they pushed sticks through his ears, causing bleeding from the ears. They also pushed needle in his palms and underneath his fingernails. Later, they cut his nails and sprayed some chemical (colour) to try to make the wounds invisible.

Whenever Sazib asked what wrong he had done or what crime he had committed for which he had been tortured, the RAB members did not answer the questions but continued torturing him.

At around 2.30 a.m., early in the morning on 8 April, around 3 persons came into the room where Sazib was detained. The newcomers kicked him brutally and stepped on his calf muscles with their boots. They also electrocuted him on several occasions. The torture went on for few hours until Sazib lost consciousness.

On 8 April, at night, an RAB personnel came to the dark room where Sazib was detained and asked him to complete his “wudu” (ablution), suggesting that he recites Surah Yasin and Surah Ar-Rahman (of the Holy Qur’aan) from two small pamphlets. Sazib followed the perpetrators’ instructions accordingly and recited the verses of the Qur’aan repeatedly. At around

midnight, they came to the room again and started beating him with thick sticks. They also electrocuted him. At around 1.30 a.m., in the early morning on 9 April, they put Sazib and Razib together in a microbus and drove through Palashi to Eden College, towards New Market.

### ***Victim 2: Kawsar Hossain***

Mr. Kawsar Hossain Razib, aged 24, runs a petty business of plastic bottles in the old town of the city of Dhaka.<sup>23</sup> Razib's family lives under the jurisdiction of the Lalbagh police station of the metropolitan city of Dhaka. On 6 April 2011, at around 8 p.m., Razib came out of the local mosque, near to his house, after offering his evening prayer along with his father Mr. Awlad Hossain. On the street outside their home, a team of around eight plain-clothed members of the Rapid Action Battalion (RAB) stopped him. They asked Razib to accompany them for 'interrogation'. When Razib claimed that he was not involved in any type of criminal activities and asked why he should go with them, the members of the RAB shouted, 'Keep your mouth shut!' When Razib's father, Mr. Awlad Hossain, and elder brother, Ronny, came and asked the reason for picking up Razib, the RAB members took out their guns and threatened to kill them. They then blindfolded Razib with a black cloth, covered the head with a death-mask and then handcuffed him. They put Razib in a microbus bearing registration number Dhaka Metro-Cha 11- 6732, which seemed to be a private car, and left the place.

Razib was taken to the office of the RAB-10, adjacent to the Lalbagh Fort in the city of Dhaka. They kept Razib waiting for about an hour in his blindfolded condition. After that, he was taken to one of the senior officers of the RAB-10. In an office room in the same building, he was placed on a chair in a seated position, with his legs put on another chair, while his hands were tied behind his back and handcuffed. He was then tortured on the soles of his feet with hockey-sticks. The RAB electrocuted him by clipping two wires onto his toes, keeping him in the same position. After torturing him for about an hour, he was sent to another room. He was served some leftover food, which was not edible. Around half an hour later, Razib was again brought to a room. He was trembling due to severe injuries in his legs due to torture just an hour before.

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23 For video testimony, see: [http://www.youtube.com/watch?v=2h\\_aRwDNTTrM&feature=player\\_embedded](http://www.youtube.com/watch?v=2h_aRwDNTTrM&feature=player_embedded)

The RAB members asked him, “Why don’t you walk properly?” Razib replied that he had serious pain in his legs. They replied, “We will apply nix (ointment). Which leg do you feel more pain?” When Razib replied that he had pain in his right leg, the RAB started beating him with hockey-sticks again in his right leg. They then pushed needles into his fingers and toes. As a result of severe torture, due to which Razib was unable to stand on his own feet, the perpetrators ordered him to, “Stand up!” When Razib replied that he could not stand, the RAB personnel electrocuted him, which made him jump from the floor due to electric shock, and then they ridiculed him by saying, “You lied that you cannot stand. See! You can jump too!”

While torturing him on several occasions in such a brutal method, the officers of the RAB-10 insisted that he confess according to instructions before the superior officers. When Razib claimed that he was innocent, the RAB officers tortured him further and used abusive language aimed at his mother. Immediately, Razib protested and asked, ‘Why are you abusing my mother? What is mother’s offence here?’ They then increased the torture, which caused lacerations in his legs, back and hands. In order to escape torture, Razib agreed to deliver a confession to their superior officers in whatever manner they instructed him. Since the arrest and detention, the RAB tortured Razib in their custody in intervals and detained him a dark room adjacent to the armory of the RAB-10.

On 7 April, Razib was put in a vehicle and driven away. In the new place, he was placed before a superior office, who he could not see due to the blindfold and death-mask, which he had been wearing during the whole period of detention. Before taking Razib to the superior officer, the RAB members repeatedly insisted that Razib had to ‘confess’ his crimes to the superior officer as instructed. The RAB threatened to kill both cousins together in ‘crossfire’ when Razib claimed to be innocent. They also threatened to fabricate a weapons case and a murder case unless the instructed ‘confession’ was delivered to their senior officer. In order to escape further torture, he agreed to tell the instructed confession to the senior officer, who also tortured him in that office after he was introduced as a ‘snatcher’.

After midnight on 8 April, the RAB put Razib and Sazib, who happen to be cousins, in a vehicle and drove toward the Azimpur area - although the cousins did not know or see that they were in the same vehicle due to the blindfolds and death-masks. On board, the blindfolds and death-masks

were taken off and both cousins saw each other in a similar condition – handcuffed, tortured and seriously injured – under the custody of the RAB. When Razib and Sazib reached for each other and cried out, the RAB personnel tortured both of them again. During torture the RAB officers pushed a cloth into Razib's mouth so that he could not cry for help. The car was driven in various directions for a long time.

Then the RAB took Razib and Sazib out into the open air on the banks of the Buriganga river at the Swari Ghat area of the city of Dhaka in order to kill them in a 'crossfire', which is the officially publicized method of extrajudicial killing by the RAB, also followed by the police and other agencies in Bangladesh. The RAB officers asked Razib and Sazib to run away. Both cousins did not follow that instruction as they were aware of the 'crossfire' method, which is conducted when the detainees run following such instructions. Instead, both persons clung onto the legs of the officers of the RAB, who put them in the vehicle again following repeated appeals not to kill and drove back to the RAB Lalbagh camp where they were detained for the whole day. They tortured Razib and Sazib on several occasions and said that smaller cases will be fabricated against them for which they (Razib and Sazib) would have to stay in prison only for two or three months.

Two night guards of the Azimpur Staff Quarters were brought to the vehicle and instructed by the RAB members to sign on a piece of paper. The RAB also asked the night guards to see the faces of Razib and Sazib and know them as 'snatchers' so that they can testify before the Courts when required. The two night guards followed the instructions accordingly. It was almost dawn. Then, one of the RAB officers said, 'There was an order to kill you. You might have done good deeds in your life. That's why you are not being killed. You are going to be released through a normal case. Keep offering prayers; don't tell the story (of torture and detention) to anyone; live a good life!' In response, Sazib said that he used to live a good life and kept offering his prayers regularly and asked, 'Why did you torture me?' The RAB members abused him in filthy language and took him back to the RAB-10 Office, while Razib was taken to the Mitford Hospital (Sir Salimullah Medical College Hospital-SSMCH) for treatment.

At the RAB-10 Office, Sazib was taken to a senior officer, who shouted at Sazib very rudely while torturing him brutally. The officer asked, 'How dare you make high-ranking persons like ministers and parliamentarians to call us?

You show off your power! Let me show you my power now!’ Several members of the RAB, including the officer, tortured him until around 11.30 am in the morning. After torture, Sazib was transferred to a room on the first floor next to the armoury.

At around 2 pm, Razib was brought back from the hospital where his legs were treated with first aid. The RAB officers warned Sazib and Razib that they should remain careful in the future and that they should not tell of the incident to anyone else in their lives. The RAB then had a photo session, pasting the names on the chests of the two cousins and planting two knives that were kept on a table in their office. They introduced Razib and Sazib, wrongly writing his name as Mozib, as ‘snatchers’ on the name tags. Two knives were kept on a table in front of Razib and Sazib when the photos were taken by the RAB members.

At around 3 p.m., the RAB brought the two cousins to the Lalbagh police and handed them over. Deputy Assistant Director (DAD) of the RAB-10, Md. Abu Bakor Siddik accompanied Razib and Sazib to the police station and asked the on duty officer to register a First Information Report (FIR) under Section 4(1) of the Law and Order Breaching Crimes (Speedy Trial) (Amendment) Act-2010 with the Lalbagh police station. The Lalbagh police primarily argued with the RAB regarding inappropriateness of the provisions of the Law and Order Breaching Crimes (Speedy Trial) (Amendment) Act-2010. The RAB personnel pursued the Officer-in-Charge (OC) of the Lalbagh police and the Assistant Commissioner (AC) of the Lalbagh Zone for registering the complaint. They also insisted that the police show the two persons’ own cell phones and money as ‘snatched goods’, which the police refused to do. Finally, the police recorded the case as FIR no. 11 dated 9 April showing that it was recorded at 2.45 p.m..

In the complaint, DAD Siddik claims that a plain-clothed team of six members of the RAB-10, including him and five other named colleagues, came under attack from a group of snatchers at 1.10 a.m., in the early morning of 9 April 2011 near the Eden College area. Two persons were arrested while two others escaped from the scene. A 12-inch-long stainless steel knife and another locally-made-iron knife were seized from Razib and Sazib respectively with the help of the local night guards. Razib fell on the road while attempted to escape and received injuries.

The Lalbagh police did not torture Razib and Sazib in their custody while the two cousins were detained in the Lalbagh police station. They took Razib and Sazib to the Mitford Hospital (Sir Salimullah Medical College Hospital-SSMCH) for treatment. Both were admitted to the Ward No. 101, Casualty Ward of the Mitford Hospital.

On 10 April, the police produced Razib and Sazib before the Chief Metropolitan Magistrate Court under the snatching case after getting them discharged from the Mitford Hospital although the two cousins' injuries remained unhealed. The Court observed that they were tortured as there were no specific statement regarding the injuries of the two cousins supported by the medical record, which mentioned that the victims had 'Physical assault and generalized body assault'. The Magistrate granted bail to both persons on a bond of BDT 10,000.00 each with guarantee from the lawyers and local elites until the next hearing on 21 April.

Since the families of Razib and Sazib communicated with journalists and human rights defenders the RAB members have started intimidating the relatives on phone and in person. Plain clothed members of the RAB, who came to their houses and business offices, threatened to kill every one of the families if the case is discussed in public any further. The two families have been afraid of further similar or worse atrocities against the members of the families including the two victims while the government has not yet initiated any credible investigation into these heinous crimes.<sup>24</sup>

Meanwhile, Razib and Sazib did not receive adequate medical treatment for the serious injuries they sustained while they were tortured in the custody of the RAB's custody. After having been released on bail they have been forced to hide for their lives and are still unable to arrange necessary treatment.

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24 For interviews of the victims see: [www.humanrights.asia/news/urgent-appeals/AHRC-UAC-082-2011/?searchterm=](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-082-2011/?searchterm=)

*BANGLADESH: Case 6***Limon Hossen: RAB Shoots, Disables Innocent Student**

The Asian Human Rights Commission has received credible information that the Rapid Action Battalion (RAB) has shot a juvenile college student causing a permanent disability in Jhalkathi district. On 23 March 2011, a team of the RAB-8 stopped 16-year-old Limon Hossen, who was an examinee of the Higher Secondary Certificate, near to his house and shot him in his thigh on the suspicion that he was a terrorist.



As a result of this deliberate shooting Limon's left leg has been amputated by the doctors of the National Institute of Traumatology, Orthopedic and Rehabilitation (NITOR), as all the tissues were found completely damaged. The RAB, which is reputed to be the 'official death squad of the Bangladesh Government', has now blocked off the whole ward of the hospital, denying entry to all people who want to see the patients at the hospital. The plain-clothed members of the RAB are intimidating and threatening the relatives, neighbours, journalists, lawyers and human rights defenders who are supporting the victim financially to receive treatment and/or expressing sympathy to the family. People in the victim's neighbourhood are now hiding for their lives in fear of extrajudicial killing at the hands of the RAB.

Based on interviews with the victim, witnesses, and examination of relevant documents, it has been learned that Md. Limon Hossen is a 16-year-old student of the Kathalia P.G.S. Multilateral High School and College, and an examinee of the Higher Secondary Certificate (HSC) examination, under the Bangladesh Technical Education Board of Dhaka. Limon's family lives in Saturia village under the jurisdiction of the Rajapur police station, Jhalkathi district. His father Mr. Tofazzel Hossen is a day-labourer, his mother, Mrs. Henoara Begum, a housewife.

On 23 March 2011, at around 3.30 p.m., Limon was asked by his mother to bring the family's cattle from the bank of the Sondha River, where three cows had been left to graze. While returning home at around 4 p.m., Limon was stopped by a group of nine persons riding three motorbikes (three persons on each bike). Among them, one man was plain clothed, while the other eight were wearing the black uniform of the Rapid Action Battalion (RAB).<sup>25</sup>

The plain-clothed man, who was later identified as Md. Lutfor Rahman, Deputy Assistant Director (DAD) of the Crime Prevention Company No. 01 of the RAB-8 based in Barisal city, asked Limon's name and started beating Limon, accusing him of being a 'terrorist'. Limon, who used to earn some of his tuition fees by working as part-time labourer at local brick factory due to his family's poverty, stated that he was student and informed them of the name of his college. He requested that the RAB men to contact the principal of the Kathalia P.G.S. Multilateral School and College to verify his studentship. DAD Lutfor and his colleagues did not accept Limon's statement and threatened to kill him, pointing gun at him.

Limon cried in fear and begged the RAB personnel not to kill him. Suddenly, DAD Lutfor shot him in his left thigh. Limon fell to the ground and lost consciousness.

The news of Limon's shooting in broad daylight reached his relatives and neighbours immediately. Limon's mother, Mrs. Henoara Begum, along with his uncle, Moazzem Hossen, rushed to the scene and saw that Limon was bleeding from his left leg. Though Limon's mother and uncle cried out for help to save his life, the members of the RAB prevented them from approaching Limon. The RAB members started beating Moazzem. DAD Lutfor threw Moazzem on the ground and trod on his head and neck with his boots, while his colleagues held Moazzem's hands and legs in order to stop his movement.

The RAB personnel took off the lungi (a wrap worn by males in Bangladesh) from Limon's body, making his body naked. They put the lungi on the blood pouring out from Limon's body, stamped on the lungi with their boots to

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25 See: [www.youtube.com/watch?v=DdZ2SD2nw7Y&feature=player\\_embedded](http://www.youtube.com/watch?v=DdZ2SD2nw7Y&feature=player_embedded)

wipe the blood from the ground, and then threw the blood-soaked cloth into the river.<sup>26</sup>

The RAB personnel took off Limon's shirt to tie up the bullet wound. After about two hours, four persons carried Limon's body to a boat at a nearby boat pier and asked the boatman, Mr. Munsef, to drive the boat, which left for an unknown place.

The family was worried about Limon's fate as well as Moazzem's deteriorating health, as he was critically injured due to torture by the RAB. They took Moazzem to the Kawkhali hospital for treatment. They learned from eyewitnesses that a black pickup van of the RAB took away Limon's body from a pier near to Jamaddar Bari. Since then, Limon's whereabouts remained unknown to the family. Later in the evening, when Limon regained consciousness, he found himself at the Sher-E-Bangla Medical College Hospital in Barisal city.

Late that night, DAD Lutfor filed two criminal cases (No. 10 & 11) with the Rajapur police station, accusing Limon and seven others, claiming an encounter between a so-called group of terrorists and the RAB-8, which has been habituated to publicize fake stories of encounters since its inception. The first case (First Information Report No. 10 of the Rajapur police station, dated 23 March 2011) was registered under Sections 19 A and 19 F of the Arms Act (1878).

In this case, DAD Lutfor claimed that a group of terrorists from Shahid Jomaddar's gang opened fire, targeting the RAB team when the latter reached Shahid Jomaddar's house. The RAB responded to the gunshots with their own pistols and Sten-guns. The terrorists escaped, save one person named Limon, who had a bullet wound in his left thigh, and a USA-made pistol and magazines in his possession.

The second case (First Information Report No. 11 of the Rajapur police station, dated 23 March 2011) was registered under Sections 322, 353, 307, and 34 of the Penal Code-1860 for obstructing the law-enforcement agencies to discharge their duties, and for attempted murder.

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26 See: [www.youtube.com/watch?v=8XpAfGws-fg&feature=player\\_embedded](http://www.youtube.com/watch?v=8XpAfGws-fg&feature=player_embedded)

In both complaints, the RAB's DAD Lutfor claimed Limon's age to be 25 years despite the fact that according to the official records Limon's age is 16 years and 3 months only. They also insisted that the hospital staff record the same age (25) when Limon was brought to the Sher-E-Bangla Medical College Hospital in Barisal.

The family learned that Limon was admitted to the Sher-E-Bangla Medical College Hospital at 8 pm on 23 March, four hours after Limon was shot by the RAB. When the relatives went to the hospital, they saw four armed men from the RAB cordoning Limon at Bed No. 11 of the Surgical Ward No. 27. The RAB men refused to allow Mr. Tofazzel, Limon's father, to see his son. Limon's mother, in a form of extreme submissiveness, held on to the legs of the on-duty RAB personnel, begging them to allow her to see her son. Then they allowed Henoara to go to see her son. However, after a short while, they kicked her out of the hospital.

After midnight on 24 March, the doctors of the Sher-E-Bangla Medical College Hospital confirmed that they were unable to cure Limon, who had a perforation in his left thigh due to bullet wounds. On 25 March, the doctors referred Limon to the National Institute of Cardiovascular Disease (NICVD) for better treatment. The doctors of the Sher-E-Bangla Medical College Hospital implied that Limon's condition was critical and life-threatening, and a huge amount of money would be required to save his life. The family became worried about money.

The people of Limon's neighbourhood donated money for his treatment although it was not enough, and the helpless family was compelled to borrow money by mortgaging a piece of land. On 26 March evening, the Rajapur police, cordoned by Constables Aftab and Abdur Rashid, took Limon to the NICVD in the city of Dhaka by an ambulance, forcing Limon's family to pay BDT 5,500.00 for the fare of the ambulance. When Limon was taken to the NICVD early in the morning of 27 March the doctors further referred him to the National Institute of Traumatology, Orthopedic and Rehabilitation (NITOR) for required treatment.

On 27 March, the doctors of the NITOR operated on Limon's left leg and finally amputated it from the thigh, as all the tissue was found completely damaged due to the bullet wound. Limon has been under the treatment of the doctors of the NITOR, who imposed all the expenditure of Limon's

surgery upon the family. The members of the RAB surrounded the hospital after Limon had been taken to the NITOR and continued surveillance.

On 6 April, a leading national daily newspaper published a detailed report about the incident with a picture of Limon's amputated leg. Since the media report, the RAB and police forced the authorities of the NITOR to lock the hospital ward where Limon was admitted. All the doors of the ward were locked from inside, expelling the relatives of other patients and denying entry to visitors at that ward. The journalists, human rights defenders and lawyers were refused entry to the hospital by the uniformed and plain-clothed members of the RAB and the police. The Chairman of the National Human Rights Commission (NHRC) of Bangladesh Prof. Mizanur Rahman has only been allowed to visit Limon, who described the story to him. The NHRC Chairman suggested that Limon's parents file complaints to seek justice from the court of law.

Following the suggestion of the NHRC Chairman, Limon's relatives tried to consult with lawyers regarding filing a complaint with the local Magistrates' Court of Jhalkathi district, but the members of the RAB have started intimidating and threatening everyone in the area of Jhalkathi including the journalists, lawyers, relatives and neighbours for expressing their opinion regarding the barbarity of this paramilitary force, which has earned the reputation of being an 'official death squad of the Bangladesh Government'.

Moreover, the officials of the RAB have been calling many people on their cellphones asking them to go to the offices of the RAB-8, telling them to keep silent about Limon's case. A large number of plain-clothed members of the RAB have been staying in Satoria village and collecting the names and other particulars of the persons, who have already shared their views with the newspapers and donated money to Limon's family for his treatment. Some of Limon's well-wishers and neighbours have now been forced to go in hiding in fear of extrajudicial killing by the RAB.

Additionally, the plain-clothed members of the RAB have cordoned off the ward of the NITOR and denied entry to the visitors of the patients. The patients have been helpless to get food, medicine and assistance for using washrooms, as hospital does not provide adequate support and care of the patients.

Limon's father, Mr. Tofazzel Hossain, told the Asian Human Rights Commission (AHRC) that his family has seen an unimaginable disaster due to the atrocities of the RAB.<sup>27</sup> He pointed out that, firstly, his son, who had the passion to study and was maintaining it by part-time working in brick factory, has been a physically disabled for his whole life.

Secondly, as a day labourer, Tofazzel cannot afford the high expenditure of medical treatment for his son as the public hospital asked his family to buy all medicines and necessary tools for the surgery and the post-operation medical treatment. He has already spent BDT 150,000.00 for his son's treatment, which has also been kindly supported by the people from his native village and by selling a piece of his land. He is highly distressed about the fate of his son as the family's capacity to afford treatment is on the verge of its last limit.

Thirdly, Tofazzel's hope for getting justice has been diminishing due to continuous threats and intimidations by the RAB to his relatives, neighbours and other professionals who have expressed their sympathy to his family. When the AHRC interviewed him, Tofazzel asked, 'Can anyone imagine how we have been suffering from this disastrous situation? Is there any mechanism to stop the barbarity of the RAB in this country?'

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27 Tofazzel's audiovisual interviews are available at [www.humanrights.asia](http://www.humanrights.asia)

*BANGLADESH: Case 7***Duptoil Village: Police Torture Men, Women, & Children**

Interviews with the victims and witnesses, and examination of relevant documents, helps the re-telling of events that began at around 1 a.m. on 8 March 2011, when a group of plain-clothed persons knocked on the door of a certain Mr. Shahjahan.

Mr. Shahjahan lives in Duptoil village, which falls under the jurisdiction of Forokkabad union council and the Birol police station, in the Dinajpur district of Bangladesh. The strangers claimed to be from the police. Shahjahan's family, who were aware of an incident which occurred the previous night when a group of robbers claiming to be police robbed the house their neighbour, Mr. Suresh Mohuri, suspected that their house was about to be attacked by robbers in the same manner. The family decided not to open the door, mentioning the previous night's robbery. The strangers continued to knock on the door, demanding that Shahjahan accompany the 'police' to locate the house of Suresh Mohuri. Upon hearing a refusal, the strangers, who were actually from the police, shouted at the family in abusive language. The family, who were still uncertain about the true identity of the strangers, then called their neighbours on a cell phone, saying that they were afraid of a probable attack by robbers.

The villagers came out of their homes with sticks and bamboos, and, as they were approaching Shahjahan's house, they saw some people running toward a vehicle parked on the road. The chase ensued. The villagers chased the suspected robbers, who stopped and switched off the headlights of their vehicle after reaching an open place named Sotighata. The vehicle of the suspected robbers restarted and stopped again at Chhetra Bazar, which strengthened the villager's suspicions that they were following robbers. A few of the agitated villagers hit one of the fleeing persons with a stick, resulting in the person suffering an injury to the head. The villagers soon realized that the parked vehicle belonged to the police and that the group who had knocked on the door of Shahjahan's house were real policemen.<sup>28</sup>

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28 See: [www.youtube.com/watch?v=uI0JbV3P748&feature=player\\_embedded](http://www.youtube.com/watch?v=uI0JbV3P748&feature=player_embedded)

Soon after, the chairman of the local government unit, Forokkabad Union Council, Mr. Lutfor Rahman and Acting Chairman of Birol Upazilla, Mr. Md. Anwarul Islam, arrived at the scene. Lutfor immediately sent the injured police officer, who was identified as Mr. Md. Haider Ali, Sub Inspector of Birol police station, to Birol hospital in the vehicle of the Upazilla chairman.

The public representatives controlled the villagers and helped the rest of the police team, comprising of Constables Md. Muzibor Rahaman (*Constable ID No. 1048*), Mohammad Isreal Haque (*Constable ID No. 277*) and Driver cum Constable Mohammad Rashedul Huq (*Constable Number 268*), leave the village for the Birol police station. The police team, which had already lost their leader SI Haider Ali, threatened the villagers, saying that they would be taught a lesson for attacking the police. The police team thusly left the scene, cancelling their original plan of visiting Suresh Mohuri's house.

Later that same morning, at 9.15 a.m., SI Haider Ali filed a complaint (*Case No. 7, dated 8 March 2011*) with the Birol police against four named persons and around sixty unidentified villagers under Sections 148, 341, 332, 333, 353, 307 and 34 of the Penal Code (1860). The four persons, made accused in the case, are 1) Md. Anwarul Haque Uzzal, 2) Md. Shahjahan Ali, 3) Md. Jewel Islam of Dup toil village, and 4) Md. Mamtaz Ali of Mokhlespur village of the Birol police station.

Meanwhile, three police vehicles carrying two platoons of riot police led by the Assistant Superintendent of Police (ASP) of Sadar Circle Md. Mokbul Hossain, and the Officer-in-Charge (OC) of Birol police station Mr. A. K. M. Mohsin Uz Zaman Khan, arrived in the village. The Superintendent of Police, Dinajpur district, Mr. Siddiquee Tanzilur Rahman, joined the platoons shortly thereafter.

The police tortured the people, including passers-by, farmers, students of the school and college, children, women and the elderly on their way to the village and after their arrival in the village. They sexually molested young girls and women during the attack on the people. The police indiscriminately tortured visitors at a wedding ceremony of a Muslim family and visitors at a child feeding ceremony of a Hindu family. A large number of people of different ages, including women and children, have asserted that they were brutally tortured by the police. Local human rights defenders found marks of injuries caused by police violence on the bodies of the victims. The Asian

Human Rights Commission has also interviewed a number of the victims, who showed their injuries and described how the police spread carried out their atrocities around the neighborhood.

Mr. Azhar Ali, an elected member of the Forokkabad union council, stated that while returning home from his daughter's school he saw one police van and a truckload of police approaching Duptoil village. At a point in the road that was not suitable for a bigger vehicle the riot police were taken in a small police van and transported inside the village. The ASP of Sadar Circle, Mr. Mokbul Hossain, who Azhar met on the way, asked Azhar to wait in the local bazar for a discussion with the police regarding the incident of the previous night.

Meanwhile, Azhar received information from the villagers that the police started beating people randomly in the village. Immediately, he informed his colleagues in the union council, including the chairman Lutfor Rahman, and rushed to the scene. When he arrived at the village he saw people running around to and fro in fear of police torture. Three women suggested Azhar not to go inside the village where massive torture was going on. He also witnessed that the SP and ASP were themselves beating people with sticks. When he requested that the police stop torturing the people, the police turned their attention to Azhar and ill-treated him.

He witnessed that the male police were openly molesting young girls and women. Whenever a good-looking girl was found, the police molested the girl and said lewdly, 'This one is for me to marry!'

Later, the chairmen of the Birol upazilla and Forokkabad union council arrived at the scene and insisted that the police stop beating people. This was finally done after long, aggressive debates with the SP and other police officers.

Mr. Balikanto (28), a day labourer of the village, showed the injury on his left leg, which had bruises and swollen wounds. He stated that he was beaten by the police while he was returning home for food from a field after finishing an irrigation job in the morning.

Mrs. Mina Begum (24), a housewife, reported that her five-year-old daughter, Afia Farzana Tania, was confined in a police cordon and slapped by the

officers while she was returning home from school. Tania begged the police to release her, saying that she was hungry. In response, the police attempted to slap her again and forced her to stay in confinement. Tania's parents were worried about the child as she had not returned home. They approached the school and learned that the children left on time for their homes. Then they went to area controlled by the police and found their daughter crying. When her father requested that the police release his daughter, they attempted to arrest him. Following the intervention from public representatives, Tania was released after around four hours. Tania has been in a highly nervous state and has developed sleep disturbance and appetite loss since the incidence.

Mr. Shudhangsu Chandra Roy (30), an agricultural labour, was caught by the police from the field where he was working. The police beat him and confined him in their cordoned area for hours. When he claimed that he had not engaged in any kind of violence the police threatened to shoot him dead. Shudhangsu remained silent in the custody of the police until he was released in the afternoon, again due to the intervention by the public representatives. Mr. Niranjan Chandra Roy (16), an agricultural labourer, was also caught from the field by the police. He was beaten about his legs and confined for hours. He sustained bruising to his left knee and leg due to the torture by the police.

Mrs. Basonti Rani Roy (21), a housewife, said that her family arranged the ritual of feeding a child according to the Hindu religion on 8 March 2011. A number of relatives, neighbours and friends were visiting her house as invited guests. Her brother and nephew, who came to participate in the ritual in her house, were arrested by the police. Hearing about this news, her husband Hemonto Kumar Roy (28), a village doctor, went to the police, who released the two relatives but tortured and confined Hemonto himself.

Mr/ Hemonto Roy's father Mr. Sotin Chandra Roy went to the police to request them to release his son so that he could attend to the guests at his house. Hemonto's father was also brutally beaten and confined. Mrs. Basonti Roy and all of her relatives then went to the police and demanded the release of her husband and father-in-law and asked why the police tortured and confined them. The police saw Mrs. Roy's niece, a beautiful 17-year-old girl, and said, 'We will not let this girl to get married elsewhere. This one is for some of us to marry.' The male police officers improperly touched various parts of her body despite repeated protests by the girl and the relatives.

Mr. Hemonto Kumar Roy said that the police went to the Muslim neighborhood first, and then later went to the Hindu neighborhood. As soon as he told them that he was an inhabitant of the same village they started beating him and then arrested him. The police confined and publically molested a young girl, who was a daughter of his in-laws. The girl was only released when her relatives asked the police to talk to a senior police officer, who happened to be an uncle of the girl. Mr. Sotin Chandra Roy (55), the father of Hemonto, said that when he learned of the police having arrested his son, he went to request the police to ask for his release. Instead, the police tortured him, beating him with sticks all over his body. Mr. Roy showed his the bruises and swollen injuries to legs, thighs, back and right hand. He demanded justice for the way they humiliated him in front of his relatives.

Mr. Abdul Wahab (56), a farmer of Dup toil village, said that on the way to his irrigation farm the police stopped him and asked him to describe the incident from the previous night. Wahab said that he heard a hue and cry among the villagers shouting: 'Robber! Robber!' He went to sleep when the yelling stopped instead of participating in anything as he is an elderly man. He told the police that when he went to offer his early morning prayer he learned from his neighbours that police were beaten the previous night as suspected robbers. The police then took Mr. Wahab to another place and started beating him with sticks on his legs and hands. He appealed to the police not to beat him but they pushed him into a police van, which was driven a few kilometres away. Later in the afternoon, due to intervention by public representatives, he was released from the van and threatened not to disclose what happened to him. Showing signs of bruising and the swollen areas of his legs and hands, Mr. Wahab said that he has lost his memory after the torture, something unimaginable at his old age.

Mrs. Shahida Banu (35), wife of Mohammad Shahjahan whose door was knocked on by the police in the previous night, said that the police blamed her family for the attack. The police searched for her husband and son, who were not at home at that time. The police summoned Shahida from her shop, which is adjacent to her house, and tortured her by the order of the SP. The police also tortured Shahida's uncle-in-law, an elderly man, for saying the police were robbers the previous night. The police raided Shahida's house and took away a motorbike. She was confined for hours in the police van and was only released in the afternoon as a result of intervention from the local government representatives.

Mr. Srimonto Chandra Roy (23), a shopkeeper, was stopped by the police when he was driving his motorbike to go to his shop. They beat him with sticks on the legs and back indiscriminately. Due to intervention by the local leaders he was released, but the police warned him that there will be further consequences if the story of torture is shared with anyone else in future.

Mr. Selim Ahmed (17), a college student, stated that he was stopped by the police when he was going to his private tutor's home in the Dinajpur town. The police beat him on his legs and confined him in the police cordon. Later, another policeman allowed him to go because he was a student. Selim showed bruises and other marks of police torture when he was interviewed.

Mr. Sumon (27), a farmer of Dupail village, said that the police called all of the farmers and labourers who were at work in the fields. They asked Sumon and others about the incident on the previous night. Sumon replied that he did not know anything about the incident and the policemen brutally beat him, causing bruises and swollen injuries to his legs.

Mr. Lutfor Rahman, Chairman of the Forakkabad union council, described the background and the story of torture and sexual violence by the police against the inhabitants of the village in detail. He asserted that he witnessed the police beating people and molesting girls and women. He also said that the SP of Dinajpur district police and the ASP of the Sadar Circle of Dinajpur directly participated in torturing the people randomly, which was also testified to by the victims before the Deputy Inspector General of police, Rajshahi Range, on the following day.

*BANGLADESH: Case 8***Mantu Ghosh: Illegal arrest, Detention, Fabrication of Charge**

Based on interviews with the victim and lawyers, and examination of relevant documents it has been learned that at around 1.15 a.m. on the morning of 31 July 2010, twelve persons knocked on the door of the house of Mr. Mantu Ghosh, a lawyer by profession and also a member of the central committee of the Communist Party of Bangladesh (CPB), at House No. 306/1, Notun Pal Para of the Narayanganj district town, around 25 kilometers away from the city of Dhaka.

The members of the family, asleep at that time, became scared of the unwarranted knocking. However, following continuous knocking, Mr. Mantu opened the door and saw around twelve plain clothed persons who were heavily armed. One of the twelve persons introduced himself as Sub Inspector (SI) Mr. Khondokar Mustafizur Rahman of the Gulshan police station and claimed that the others were from the Detective Branch (DB) Police. SI Mustafizur asked Mantu to go with the police by saying, 'We need to take you to the higher authorities.' The police raided his house without any warrant to search, and seized his mobile phone.

The police took Mantu to the Office of the Deputy Commissioner of the DB of the DMP at 36 Minto Road of Ramna area in Dhaka at around 2 a.m. They put Mantu in a detention cell and told him to sleep. The police did not explain why Mantu was brought to the police cell and whether he was arrested in any specific charge or not.

At 8 a.m., several police officers took Mantu to different rooms to interrogate him. The police mainly asked him about his personal involvement in the readymade garment factory workers' movements for increasing wages, his travel records, and relationship with neighbouring countries – particularly with India – and his political party's influence and position on the workers' movement. At around 12 noon, the police took him to the Chief Metropolitan Judicial Magistrate's Court of Dhaka to file a case, which was registered with the Gulshan police station of the DMP as First Information Report No. 89 (7) 2010 under Sections 147, 148, 149, 380, 435, 448, 353, 332, 427, 109, and 114 of the Penal Code (1860) and Section 3 and 6 of the Explosive Substance Act (1908). SI Mustafizur submitted a petition seeking

10 days police remand for Mantu while Mantu's lawyer applied for bail. The Court granted 2 days remand under jail custody instead of police remand and rejected the petition for bail.

On the following day, another police station, Tejgaon Industrial Area police, submitted separate petitions seeking Mantu to be shown arrested under three different cases.

The three cases were as follows:

1. FIR No. 36 (7) 2010 under Sections 4 and 5 of the Speedy Trial Act (2000);
2. FIR No. 37 (7) 2010 under Sections 4 and 5 of the Speedy Trial Act (2000); and
3. FIR No. 38 (7) 2010 under Sections 147, 186, 353, 323, and 427 of the Penal Code (1860).

The Courts granted all the petitions of the Tejgaon Industrial Area police to keep Mantu under arrest in the above mentioned cases. In the first and second cases, Mantu was remanded for 1 day each while in the third case he was remanded for 3 days, although the police sought 7 days in each case. On 3 August, Mantu Ghosh was also arrested by the Adabor police station of the DMP in two cases: 1. FIR No. 30, dated 30 July 2010, under Sections 147, 149, 427, 186, 353, 332, 427, 186, and 333 of the Penal Code (1860); 2. FIR No. 31, dated 30 July 2010, under Sections 4 and 5 of the Speedy Trial Act (2000). The Adabor police took Mantu in remand for 3 days under FIR No. 30, and for 1 day under FIR No. 31. Several police officers who were not Investigating Officers of the cases from Adabor Police interrogated Mantu while he was under police remand. The police officers accused him of association with some external players who might have had interests in destabilizing the readymade garment sector in Bangladesh. Altogether, Mantu was under police remand for 9 days in five different cases. The police allegedly treated Mantu inhumanly and degraded him in the name of interrogation while in police remand.

Following the arbitrary attitude by the police on 5 August, Mantu lodged a Writ Petition (No. 6379/2010) with the High Court Division of the Supreme Court of Bangladesh, challenging the actions of the police and fearing torture in custody. A High Court Division Bench comprised of Justice A.H.M. Shamsuddin Chowdhury and Justice Sheikh Md. Zakir Hossain ordered the

police not to torture in custody and to provide all kinds of medical facilities during the period of police remand. On 8 August, the Ashulia police station of Dhaka had shown Mantu arrested under the following pending cases that were registered in the month of June: 1) FIR No. 48 (6) 2010, under Sections 143, 149, 448, 323, 380, 427, 506, 109 and 114 of the Penal Code (1860); 2) FIR No. 52 (6) 2010, under Sections 143, 332, 333, 353, 307, 379 and 427 of the Penal Code (1860); 3) FIR No. 54 (6) 2010, under Sections 143, 448, 323, 325, 307, 436, 379, 380 and 427 of the Penal Code (1860); and 4) FIR No. 55 (6) 2010, under Sections 143, 332, 333, 353 and 427 of the Penal Code (1860).

On 23 August, the Gulshan police were demanded to bring Mantu into police remand for the second time under FIR No. 89 (7) 2010 for 7 days. The Chief Metropolitan Judicial Magistrate's Court of Dhaka, on 9 September, granted 3 days remand at jail for interrogation by rejecting the bail petition of Mantu's lawyers for the second time. The same Court rejected Mantu's bail petitions on four more occasions – on 19, 20, 26 and 29 September regarding the same case.

While refusing to grant bail, the Magistrate did not explain the reasons for rejecting the petitions. Regarding the three cases fabricated against Mantu by the Tejgaon Industrial Area police, petitions seeking Mantu's bail were rejected by the Court on 7 August. On 24 August, the Magistrate granted bail in two of the three cases, particularly in FIR No. 36 (7) 2010 and FIR No. 37 (7) 2010. In the third case – 38 (7) 2010 – of the Tejgaon Industrial Area police, the Magistrate rejected Mantu's bail petitions on three occasions – on 12 and 25 August and on 3 September. On the fourth occasion, on 9 September, the Court granted bail to Mantu.

In connection to the two cases fabricated by the Adabor police, Mantu's bail petitions were granted on 18 August. And, with regard to the four cases fabricated by the Ashulia police, bail petitions were accepted on 22 August. Mantu had been sick in jail while he was detained in the case fabricated by the Gulshan police. On 11 October, his lawyers submitted a 'special bail petition' to the Metropolitan Sessions Court of Dhaka after having been rejected from the Chief Metropolitan Judicial Magistrate's Court on the same day as a result of Mantu's deteriorating health condition. The Metropolitan Sessions Judge granted bail on a bond of BDT 50,000.00 (\$ USD 715) and Mantu was freed in the evening.

*BANGLADESH: Case 9***Mokles Matbor: Police Torture Man to Death, Call it Suicide**

Mr. Mokles Matbor, (45) was a cleaner at the Bimkhill Bazar under the jurisdiction of the Gosairhat Police Station in Shariatpur district. On 29 August 2010, the Gosairhat police arrested him as a suspect in the rape and murder of a woman and the murder of her two young children. A case was registered on 10 August 2010 with the Gosairhat police station under Sections 448, 354, 323, 302, and 34 of the Penal Code (1860).

An eye witness, Mohammed Alamin, told AHRC that on 29 August, around 3.30 p.m., a group of four police officers, led by Sub Inspector (SI) Mohammed Abul Kalam, the Investigation Officer (IO) of the case, and Assistant Sub Inspector (ASI) Abul Bashar, Nayek Firoz and another constable, arrested Mokles. The police did not produce any warrant either to Mr. Mokles or his relatives at the time of arrest and, furthermore, did not explain the reason for the arrest.

The police took Mokles to the Gosairhat police station immediately after the arrest. When Mokles's relatives went to the police station and contacted the Officer-in-Charge (OC) at around 8 pm, the OC Mr. Md. Ekram Ali Molla told them that they (the police) were under great pressure from 'high officials' to solve the murder of children and rape case of the woman. The OC also told them, 'We will ask him questions relating to the case and then release him.'

Mrs. Morsheda Begum, Mokles' wife, claims that when she went to the Gosairhat police station to learn about her husband's condition SI Abul Kalam allegedly told her, 'Give me (BDT) 10,000.00 (USD 142) and pay (BDT) 50,000.00 (USD 708) to the OC. Your husband's life will be saved'. Morsheda told the police officer that they were an extremely poor family and that they were maintained by Mokles, who was the breadwinner having a job of cleaner. She told the SI that they could not afford the amount requested for paying the bribe.

At around 10 p.m. the same night, the police led by the OC and SI Abul Kalam allegedly stripped Mokles' clothes off and hung a brick from his penis. They said, 'We will test how much power you (Mokles) have in your penis'.

The police officers kept laughing at Mokles when he was forced to move around in that condition inside the Goshairhat police station. The police also tortured him by beating him with sticks and kicking him. Morsheda claims that she saw the scene of torture from nearby.

On 30 August, SI Kalam submitted papers of production of Mokles before the Chief Judicial Magistrate of the 'KHA' area of Shariatpur district along with an application for taking Mokles in police remand for seven days. However, Mokles was not physically produced before the Court as his condition had worsened due to the custodial torture he suffered the previous night. The Magistrate, Mr. Ashok Kumar Dutta, fixed the following day for the hearing of the remand petition. He also ordered Mokles to be detained in jail.

On 31 August, the same Court heard the remand petition and granted three days remand to the police custody. As soon as the Magistrate granted the remand petition, Mokles was brought to Goshairhat police station. He was brought in at around 5 p.m. That night, Mokles died in police custody. The police claim that at around 7 pm Mokles committed suicide by hanging himself by tying a blanket about his throat and hanging himself from the ventilator of the police cell.

The Goshairhat police registered a case of 'Unnatural Death' (UD Case No. 15/10, dated 31 August 2010) with the police station after the death of Mokles. Mr. A.F.M. Alauddin Khan, who is the Chief Executive officer of the sub-district and an Executive Magistrate, signed an Inquest Report of the dead body, which was prepared by a police officer on the same evening. The Inquest Report claimed that there was no sign of injury on the body of the deceased. The report attempted to establish that Mokles committed suicide in the police cell.

On the other hand, Mokles's relatives allege that the civil and police administration jointly suppressed the facts regarding the custodial torture. The Superintendent of Police (SP) of the Shariatpur district Mr. A.K.M Shahidur Rahman and other police officers allegedly asked the administrative officials to make a 'fake' Inquest Report to divert the case. The medical doctors of the Sadar Hospital of Shariatpur, namely Dr. Nirmal Chandra Das, Residential Medical Officer, and Dr. Rajesh Mazumder, a Medical officer of the hospital, collaborated with the police officers. Mr. Ashok Kumar

Dutta, a senior Magistrate, who granted police remand of Mokles despite the fear of torture in custody, was also involved with the process of manipulating the merit of the custodial death case by suppressing the truth.

In order to investigate the allegation of custodial death, local human rights defenders visited the place where the so called suicide occurred, as per the police claim. It was found that the particular window is around 5 feet 8 inches off the ground while Mokles was at least 5 feet 6 inches in height. Given the disparity in the environment it was quite impossible for the victim to hang himself; even if he had managed to tie the blanket securely, the stretch in the material would have meant that his feet remained on the ground.<sup>29</sup>

Ms. Shirin, Mokles' cousin, said that she went to the Goshairhat police station to learn why her cousin was killed and demanded justice for the custodial death due to alleged torture. The police officers on the one hand claimed that Mokles committed 'suicide' while, on the other, they repeatedly tempted Shirin and insisted that she settle the allegation monetarily. Shirin claims that the shopkeepers and pedestrians who saw what happened to Mokles asserted that the police tortured Mokles and that they hung a brick onto his penis with a string and forced him to walk around. The dead body had many marks of injury and the male organ was abnormally swollen.

On the morning of 3 September, Assistant Superintendent of Police (ASP) of Goshairhat Circle, Mr. Abul Hasnat, accompanied by the OC of Goshairhat police, Mr. Md. Ekram Ali Mollah, and a number of policemen, went to Mokles' house and the OC Mr. Mollah told Shirin, 'There have been some mistakes from our side. Pardon us!' The OC also offered BDT 1,000,000.00 (\$ USD 14,154) by saying that, 'We are ready to pay you, if you finish the matter [allegation of murder in custody]. It is important to save the 'rizik' (livelihood) of police. So, if you help us, we shall help you.'<sup>30</sup> Mr. Mokles' mother, Mrs. Sufia Khatun demanded justice for her son's death in police custody.<sup>31</sup>

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29 View the video of the police cell here: [www.youtube.com/watch?v=YD4ljwGcniI&feature=player\\_embedded](http://www.youtube.com/watch?v=YD4ljwGcniI&feature=player_embedded)

30 View the audiovisual interview of Shirin here: [www.youtube.com/watch?v=TQP\\_Zy7Syw&feature=player\\_embedded](http://www.youtube.com/watch?v=TQP_Zy7Syw&feature=player_embedded)

31 View the audiovisual interview here: [www.youtube.com/watch?v=sXAxGp1V0I4&feature=player\\_embedded](http://www.youtube.com/watch?v=sXAxGp1V0I4&feature=player_embedded)

It may be noted that neither defined as a crime, nor is it made punishable in the domestic laws of Bangladesh, though the nation has acceded to the Convention against Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment of the United Nations. The culture of impunity for perpetrators of torture is deep-rooted in the country; nothing happens to the state-agents after they kill persons by torture in detention centres.

Moreover, the perpetrators are rewarded with gallantry awards and lucrative promotions after they commit such heinous crimes. There have been many examples in which the authorities of Bangladesh have sent members of 'law-enforcing' agencies and security forces to participate in UN Peacekeeping Missions, considered the best reward for any state official in the country.

In this case, Mokles Matbor was tortured when he was under 'police remand', which, to everyone in Bangladesh, is synonymous with torture. The police officers submit applications requesting the Magistrates' Courts to hand over the arrested persons to the police again for interrogation for extracting information regarding a particular criminal case. A Magistrate is authorized to grant such requests under Section 167 of the Code of Criminal Procedure (1898) by noting the specific reasons, if the police officer reasonably fails to complete the investigation of the relevant case within 24 hours.

According to Rule 458(a) of the Police Regulations of Bengal (1943) the police shall submit an application by filling out Bangladesh Police (BP) Form No. 90 to the Court for "remand" of the detained person with pending result of police inquiry into the detained person and the application shall remain with record of the Court. As per Rule 458(b) of the Regulations, the Superintendent of Police shall be informed if the 'remand' is not granted by the Court due to insufficient reasons and shall report to the District Magistrate regarding the matter.

In Bangladesh, the police officers do not submit their applications by filling up the BP Form No. 90 whenever they seek remand for a detainee. Instead, the police send a manuscript petition on plain paper without the BP Form No. 90 and ignore the guidelines prescribed by the PRB, which are mandatory for the police. The Magistrates, who are not adequately aware of the law and the rules, entertain the plain paper petition – which should not legally be considered as an application for remand at all – and grant remand to the police though it is beyond the purview of the law of the land.

A verdict, pronounced by the High Court Division Bench of the Supreme Court of Bangladesh, as reported in the Dhaka Law Report (DLR) 55, page 376, has directed the subordinate courts on how to entertain the application for police remand. According the directive, 'the Investigating Officer shall state in details the ground of taking the accused in custody (remand) and shall produce the case diary for consideration of the Magistrate. If the Magistrate is satisfied that the accused be sent back to police custody for a period not exceeding three days, after recording reasons, he (Magistrate) may authorize detention in police custody for that period.'

It also directed that 'the accused, before being sent to the Investigating Officer, shall be examined by a doctor designated or medical board constituted for the purpose and the report shall be submitted to the Magistrate concerned.'

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

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

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

*BANGLADESH: Case 10***Babul Kazi: Torture, Death in Custody for Refusing to Bribe Police**

According to information received from witnesses, case documents, and family members of the victim, on the morning of 18 June, a man claiming to represent Sub Inspector (SI) Mr. Altaf Hossain of the Ramna police arrived at the home of Babul Kazi. He claimed that a paramilitary Rapid Action Batalion team (RAB-3) had seized an auto-rickshaw that Babul Kazi was in charge of and arrested two drivers, who drove it on shifts. He said it would cost BDT 200,000 (\$ USD 2,900) in bribes for their release from Ramna police custody.



Body of Mr. Babul Kazi

Babul paid BDT 13,000 to the police at around 2 p.m. but the men (Md. Karim and Md. Momin) and the auto-rickshaw (Dhaka Metro Number THA-13-0041) were not released. Over the next few days, bargaining commenced in person between SI Altaf and Babul. On 21 June, SI Altaf received BDT 20,000 from Babul, followed by BDT 30,000 on 24 June. We are told that the police continued to request more money.

On 28 June Babul had reportedly managed to collect another BDT 20,000 but argued with SI Altaf, demanding that the men and the rickshaw be released. Babul went home without handing over the cash, where he told the story to his wife, Mrs. Nasima Begum (cited in documents as Ms. Shuvo Akter). At around 5 p.m. Babul went to a garage with a fellow mechanic, Mr. Masud.

We are told that at around 10.30 p.m., SI Altaf, two police constables and an Ansar (a member of a kind of village defence force) member arrived at the workshop and demanded money; Babul did not pay it, and was seen being pushed into the police van, which drove off.

The witnesses, Mr. Masud and Mr. Badal, told Babul's wife at 11 p.m., after which she and her nephew Sohail Shikder went to the Ramna police station.

There they were told by the duty officer that Babul had been arrested, but had sustained head injuries when he tried to jump from the vehicle. They were told look for him at the Dhaka Medical College Hospital (DMCH).<sup>32</sup>

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

At the morgue, Soheli and Nasima saw several marks on the body, including a hole of around an inch in diameter on his forehead; there were marks on his back, both sides of his head were swollen and the left side of his face was bruised. They report that he was covered in sand.

There was an argument between Babul's relatives and SI Altaf, who insisted that they go with police to the Ramna police station. Arriving there at 3 am, they claim that they were forced to sign blank pieces of paper. Although they initially refused, they say that they were physically dragged into another room, surrounded by around 10 policemen and threatened with torture.

Nasima later asked for the BDT 20,000 and a cell phone that Babul had with him at the time of his death. SI Altaf allegedly admitted that both were in his custody but only returned the phone set. At 4 a.m., after an influential friend of the family intervened, they were able to leave the station.<sup>33</sup>

Early on the morning of 29 June, the Ramna police registered an Unnatural Death case (No. 20/10) for Babul Kazi, with SI Altaf as complainant of the case. According to assignment copy CC 1410/10 Ansar had been ordered to arrest Babul for a case involving a stolen auto-rickshaw (No. 36, dated 17 June 2010, filed by RAB-3 DAD Golam Mostofa), and apprehended him in Noya Tola, adjacent to the T&T Colony at 11.30 p.m. with two police constables. Babul injured himself while trying to escape from the police van, and was declared dead at the emergency unit of the DMCH by the duty doctor at 12.15 a.m.

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32 For more on the case see: [www.youtube.com/watch?v=r-x41RaTMcQ&feature=player\\_embedded](http://www.youtube.com/watch?v=r-x41RaTMcQ&feature=player_embedded)

33 For more on the ordeal view: [www.youtube.com/watch?feature=player\\_embedded&v=ESb3u1kOCjQ](http://www.youtube.com/watch?feature=player_embedded&v=ESb3u1kOCjQ)

Since then we are told that DMCH staff have refused to release information about Babul's death to his relatives. Staff members, requesting anonymity, have informed us that the hospital director - who is a Brigadier General in the Bangladesh Army - has directed them as such. We are also told that the time of death has not yet been recorded in the official records; the column is still blank. However the hospital record asserts that Babul was dead on arrival at the unit.

On 29 June, a certain Dr. Pradip Bishwas, a Lecturer of the Forensic Medicine Department of the Dhaka Medical College, conducted the post-mortem, and that the body was handed over to the relatives at around 6.30 p.m. Soheli returned to the police station during the day on 29 June to question the officers involved, and to try and file a murder case against them. He reports that police refused, and that a large group of officers tried to pull him towards a cell. He warned that he would inform the media, and was able to leave the station.

As can be read here<sup>34</sup>, the FIR contradicts the official story released by the police. It was claimed in a press release<sup>35</sup> issued on 3 July 2010 by the DMP, signed by an additional deputy commissioner of its media and community service department, that a Ramna patrol team led by SI Altaf Hoosain recovered the stolen auto-rickshaw (Registration Number Dhaka Metro THA-13-0041) from Noya Tola area, on 28 June, at 11.30 p.m. Yet, the FIR filed by the RAB-3 DAD Warrant Officer Mr. Golam Mostofa claims that the RAB team seized the auto-rickshaw on 17 June.

Since Babul's death we are told that ruling party politicians, including particular public representatives of the area, have regularly approached the relatives to persuade them not to take the case public. The most commonly used argument is that as a poor widow, Nasima is not being realistic in expecting to win a fight against the police, and that that such a fight will not bring back her husband.

On 5 July a Public Interest Litigation (PIL) was filed by two human rights organizations with the High Court Division of the Supreme Court regarding three custodial deaths, including Babul's, which took place in Dhaka

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34 Online (in Bengali): [www.urgentappeals.net/pdf/AHRC-UAC-101-2010-02.pdf](http://www.urgentappeals.net/pdf/AHRC-UAC-101-2010-02.pdf)

35 Online: [www.humanrights.asia/news/urgent-appeals/AHRC-UAC-031-2010](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-031-2010)

within one week. A Division Bench responded by directing the Ministry of Home Affairs to form probe committees that excluded police members, to investigate the incidents.

We are told that on the same day at around 10 p.m. a group of policemen went first to Nasima's house, locating her at the house of a neighbour, Ms. Dunia Begum, on Moghbazar Chairman Lane. The police, who we found out later were led by an SI Enamul Haque, insisted that she go to the office of the Deputy Commissioner (DC) in Motijheel. In his office, Nasima claims that DC Mr. Krishna Pada Roy threatened her with torture. She refused to sign a blank piece of paper, and was allegedly detained until midnight and repeatedly questioned about the organizations that she had spoken with, and the actions being taken. Nasima claims that SI Altaf told her that he had impunity, and warned her not to speak with any media.

The intimidation of Nasima by the DC is unfortunately a stock response among Bangladeshi law enforcers, rather than an exception; it is also typical of Mr. Roy's work ethic. We have information that on a number of occasions this particular DC has summoned victims of torture to his office on the pretext of an inquiry, before verbally insulting and threatening them. Few victims of torture or relatives of those executed have the means or the extraordinary courage needed to pursue such complaints.<sup>36</sup> In each case we were told that DC Mr. Krishna Pada Roy sent notices asking the victims and their witnesses to give statements, yet when the victims and witnesses arrived at the station, he and his colleagues, including the alleged perpetrators, seriously intimidated them.

On 3 July the DMP formed an inquiry committee, headed by the Additional Deputy Commissioner Mr. Seyed Nurul Islam and comprising Assistant Commissioner Ms. Monalisa Begum of the of Motijheel Zone of the DMP, to look into this case. However, the AHRC has no faith in the motives or the mandate of this team. Based on past experience, it is likely to be used to exhaust, intimidate, and quieten the victims in the face of any other more credible investigation, conducted by probe committees, human rights organizations, or media.

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36 Such patterns persist in many cases reported. See: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-081-2010>

## BURMA

### **Torture, common. What redress?**

Torture in Burma is commonly practiced in military facilities, police stations, and in special bureaus, like the Special Branch and the Bureau of Special Investigation. It is used to force people to confess to crime. It is found in all types of cases, but is very common in national security cases, and political cases. Most people tortured in police stations are accused of ordinary crimes. They usually will confess quite soon to get out of torture. People accused in political cases are tortured in special facilities or in prisons.

The methods of torture are many. They begin with ill-treatment. At the very least, the interrogators deny food and water for a number of days. They also prevent detainees from sleeping. They keep people in filthy conditions, deny them the chance to bathe, or, in the case of women, do not give them anything to cover their bodies with when bathing. Sometimes they lock people in totally dark rooms for weeks at a time.

The following example was given by a torture survivor. He was hit repeatedly on the head and body, burnt on the testicles, had a roller run on his legs, tortured with water, and made to stand in stressful positions for long times.

A common method of torture is where the torturers tie a persons hands behind the back and pull them up with a rope, then hit them. Another victim was not tortured himself but his friend was tortured in front of him. The interrogators said they would continue to torture his friend until he confessed to a bombing, so he confessed.

Some survivors of torture suffer very serious mental damage. One monk, who was a leader of the protests in 2007, was tortured very badly for a long time. He was released at the start of 2012, but his mental condition is now abnormal, and he could no longer stay a monk.

In the case of political prisoners especially, officials mentally torture not only the prisoner but also their family. Such prisoners are detained in remote jails. Relatives can visit them only once every two weeks. When they meet

detainees, officers present write down what they discuss. Authorities also harass families, threatening to have them removed from their jobs, or saying that they won't be allowed to visit the prisoner if they talk to the media.

After release from prison, many survivors of torture continue to suffer various problems associated with their torture. They cannot get work, some are homeless, and some have family breakdowns. They need counselling and assistance in a range of ways, but up till now in Burma, no programs exist to provide such assistance. We need to consider how we can assist these persons, and we need advice on these aspects of the problem from people with experience in other countries. Despite the political changes seen in Burma, torture and related problems are continuing to the present.

*\* The Writer is a practicing Burmese lawyer (name withheld)*

*BURMA: Case 1***U Than Oo et al: The Sissayan Land Case**

On 18 December 2010, Htoo Construction Company, owned by U Teza, reputedly the most powerful and army-connected businessman in Burma, brought earth-moving equipment onto the land, marked it with flags, and cleared it for the construction of a road to the site of a caustic soda and PVC factory. In the process, paddy dykes and embankments were demolished, even though the land was being used for agriculture at the time.

The farmers began to make complaints to the company officials and to government agencies. Then, on 27 January 2011, Major Maung Maung Aye (retired) and Major Win Myint, of the army-owned company that is a joint partner in the project, threatened the farmers that, whether or not they wanted to sell or were satisfied with the small compensation, they had to sign to give up the land. When the farmers refused to sign, Win Myint threatened them that, 'If a parent scolds children verbally and it doesn't work, then scolding with a stick is necessary.'

On February 4, four farmers, U Than Oo, Daw Toke Toke, Ko Htay and Ko Aye Choe, lodged a complaint that the Htoo Company had illegally trespassed on and destroyed their land. But, when the police investigated the complaint, they told the court that the factory is a government project and that the company is therefore entitled to take the land by forcible acquisition. The court summarily dismissed the complaint. In fact, the company showed no documentary evidence to the court or police that they have authorization to obtain the land by force. The police and court reached their decision on the issue simply because the project has army involvement. Also, under the law for state ownership of agricultural land, staff of the land registry department would have to come to court to testify and confirm that the land is now registered for state ownership, and none did. So, the farmers lodged an application for review in a higher court. Meanwhile, the company and army officers, angered by the farmers' persistence, followed through on their threats.

On March 21, as Than Oo and four fellow farmers were going home at night, they found the road near the factory construction site office blocked. Suddenly a group of around 20 persons started yelling "thief, thief" and then

grabbed and assaulted Than Oo and the other farmer on the bike with him, and took them to the construction site office. When villagers gathered at the site, the manager of the construction reportedly threatened to run them over if they came too close. The two assault victims were held there illegally until around 4 am when police took them away. Later in the morning, the police sent the two men for medical treatment. According to reports, the assault caused serious injuries to U Than Oo's skull, as well as a variety of injuries to U Aung Lin. During the time that the two were held in hospital for treatment, the police came and chained them. The police, allegedly on payment of bribes, opened a case against the two victims of assault, as well as the other three villagers who were on the two other motorcycles at the time but who got away. They have since lodged a series of fabricated charges against the five farmers, and the case has been opened and is being processed in court very quickly, reportedly on orders from higher-up that it be completed without delay, with the expectation that the court will give the farmers a harsh punishment as a way to remove the obstacles to the military-backed construction project.

*BURMA: Case 2***U Gambira (Monk): Illegally Detained, Charged**

The Asian Human Rights Commission has obtained details of the first of 16 cases that have been lodged against U Gambira, a monk who was at the forefront of last September's mass protests in Burma. In this case he has been charged with four other monks and six civilians with insulting religion and upsetting public tranquility.

According to the police officer who has brought the case (the same officer bringing most of the cases against people accused over last year's protests), U Gambira and the ten others were involved in a range of activities that constitute offences, since 2006 when they began working with groups in Thailand to generate opposition to the junta inside Burma. U Gambira and eight other monks formed a union and made a call for the release of political prisoners and for dialogue towards national reconciliation, or they would declare a religious boycott of the regime.

Then, in September 2007, the group established with U Gambira and a number of other groups of monks jointly called for an apology from the regime or a boycott after the army assault on monks at Pakokku that had reportedly left one monk dead. The news of the call was spread throughout all of the shortwave radio stations broadcasting into Burma. Thereafter, the boycott was started and obtained a lot of media attention.

The other ten accused are also variously charged with being involved in the protests and boycott and with having had contact with the overseas media and using the Internet to post information.

The charges against the 11 are groundless because the accusations against them do not correspond with the elements of the offences under which they have been charged. Furthermore, the police officer lodging the case has apparently not relied upon the advice of a law officer before lodging the charges in court, as he is required to do, but has just made the case himself; however, the judge has accepted the case, which includes confessions presented to the court illegally. The policeman also has lodged a total of 16 separate cases against U Gambira, even though they all relate to the same incidents and repeatedly consist of the same charges.

In addition to the above, all of the accused were illegally detained and held without charge until the case was brought into a court in August 2008. U Gambira had been detained starting from the previous November, and thus was in illegal detention for 10 months.<sup>37</sup>

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37 On further harassment after release see: [www.humanrights.asia/news/urgent-appeals/AHRC-UAC-044-2012](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-044-2012)

## **Shin Nyana: Sentenced Again & Again**

Shin Nyana began his practice as a monk, but because he did not agree with some aspects of orthodox Buddhist practice in Burma, left the monkhood in 1979. He continued to preach according to his own understanding of Buddhist teachings, as a lay religious figure, and in 1983 left the orthodox Buddhist tradition in Burma. He set up his own religious group, known colloquially as Moepyar. In subsequent years, the group remained small, with gatherings of adherents in the hundreds at most, and with a number of modest centres scattered around the country. They taught and practiced their faith and distributed materials (books, tapes, CDs & so on) only in the centres, and did nothing to disturb enjoyment of other people to their own faiths.

Nonetheless, in 2010 the religious affairs ministry initiated legal action against Shin Nyana, accusing him of setting up a sect that does not adhere to the official doctrine laid down by the peak Buddhist body, which is under the control of the government. After police investigated, it brought six charges in four cases against the 75-year-old religious leader, who in court denied wrongdoing on the grounds that his group was not part of the orthodox Buddhist order and was not beholden to its orders, and nor did it constitute any form of schism. Despite his arguments, the courts sentenced him to a total of 20 years in jail.

After appeals against the convictions failed, in 2011 some followers of Shin Nyana lodged a writ petition to the Supreme Court, but it also failed. Now, they have submitted a special request asking for the intervention of the president, on grounds that the imprisonment of Shin Nyana violate the right to religious freedom under the 2008 Constitution and also under the Universal Declaration of Human Rights. Furthermore, they note that the sentencing of Shin Nyana on multiple charges for the same alleged offence is illegal under the domestic law of Burma.

In 1984, a court already once sentenced Shin Nyana to three years in prison for allegedly impersonating a monk. However, in 1985 the apex court then overturned the ruling on the ground that as Shin Nyana wore light blue traditional shirts and trousers, he did not commit any offence of impersonation.

After the anti-government protests in 1988, a new military regime in Burma imposed martial law and established military tribunals to try people for a range of offences. At that time a tribunal also summarily sentenced Shin Nyana to 10 years in prison, from which he was released in 1998, having served over seven years of the sentence.

*BURMA: Case 4***U Zeya & Sithu Zeya: False Arrests, Torture**

In April 2010, a series of explosions at the annual water festival in Rangoon officially killed 10 and injured 168 people. The Asian Human Rights Commission has been closely documenting and working on the case of a young man falsely accused in connection with the bombings, Phyo Wai Aung.<sup>38</sup>



At the time of the incident, 20-year-old Sithu Zeya was present taking photographs and video of the festivities. He came to the scene of the blasts and began taking shots of the dead and wounded. Security forces on the scene stopped him and took him into custody where he was tortured over four days to confess that he had planned to send the photographs to an anti-government exile media group and that his father also was involved.

The methods of torture allegedly included beating on the soles of the feet, hanging upside down, forcing to squat and stand in stress positions for extended periods, and denial of food. The police and immigration officials later repeatedly threatened him that if he did not cooperate in court they would further torture him and take other actions.

The police arrested Sithu Zeya's father, U Zeya, the following day. They also detained his mother for a period. A legal advisor for the two men has alleged that the father was drugged during interrogation; however, when the allegations were made in court, they were not put down on the official record although the court is legally required to do this.<sup>39</sup>

The police held the two in illegal custody, and also did not lodge charges against them in court until a month after the time limit set by law. Aside from this, they did numerous other things in violation of criminal procedure, including failing to complete or incorrectly completing numerous documents needed to proceed with the case, which the lawyer for the defendants pointed

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38 For details, see: [www.humanrights.asia/countries/burma/phyowai-aung](http://www.humanrights.asia/countries/burma/phyowai-aung)

39 For details, see AHRC-STM-011-2011, [www.humanrights.asia/news/ahrc-news/AHRC-STM-011-2011](http://www.humanrights.asia/news/ahrc-news/AHRC-STM-011-2011)

out in court. They also had no firm evidence against either of the accused with which to make the cases of contact with unlawful groups and illegal travel abroad and electronic communications.

A court has convicted Sithu Zeya in two cases already and will almost certainly do the same in the remaining charges that are being decided upon now. According to the latest unconfirmed news reports, Sithu Zeya also has since January 5 been held in the notorious dog kennels at the central prison, where jailors take detainees for exceptional inhuman punishment, and is being brutalized daily by wardens. *Update: he was later released.*

*BURMA: Case 5***Than Myint Aung: Model Citizen, Brutally Tortured**

On 3 March 2009 a small explosion in a suburb of Rangoon caused minor damage to the surroundings and no harm to any person. The next morning special investigation officers arrested Than Myint Aung (31) while he was with his mother, and took them to the police headquarters.



In court we are told that Than Myint Aung described being brutally tortured for almost a month in custody. He was repeatedly punched, had his back stamped on, and was hit in various places with rubber truncheons. He reported that police prevented him from sleeping for around 15 days, forcing him to stand and kneel for long periods, and hitting him whenever he tried to rest. He also alleged that other torture techniques were used, such as the crushing of his fingers and the beating of the soles of his feet; he was force fed chilli and hot water was poured onto his genitals.

After the police transferred Than Myint Aung to a local station, the officers who were to take him to prison first had him treated at hospital, where the staff took x-rays and found that his skull had been fractured. Notwithstanding, he was moved to the jail rather than kept in the hospital. We are informed that the police submitted documents to the court that they had forced Than Myint Aung to sign while blank.

The police acknowledged that they had not found any evidence to connect him to the explosion; however they claimed to have found a connection to other crimes instead. He was accused of having met with outlawed dissidents in Malaysia during 2007 and of having used the Internet illegally. They reportedly presented no credible evidence to support this however; the crimes were committed by persons with other names and they made the ingenious claim that these were his many aliases. It is illegal for police to simply start investigating new types of crimes in this way without first getting approval from a judge, which they did not.

Despite Than Myint Aung's depositions about torture, and his injuries, the judge in the township court failed to involve any medical staff, or even

request the medical records that had been taken. He sentenced Than Myint Aung to five years in jail. The judge in the district court sentenced him to a further ten years.

Prior to his arrest, Than Myint Aung had a record as a model citizen. In 1998 he received a medal from the national Red Cross Society. The same year he attended a training programme of the government's mass organization, the Union Solidarity and Development Association (now converted to a political party), and another one on unarmed self-defence organized with the police in his home town, so as to assist local authorities settle communal unrest. At the time of his arrest with his mother, he had just been on a religious pilgrimage.<sup>40</sup>

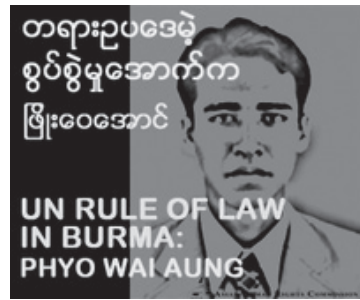
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40 For other recent appeals on cases of torture in police custody in Burma see: UAC-016-2010, [www.humanrights.asia/news/urgent-appeals/AHRC-UAC-016-2010](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-016-2010). UAC-011-2010, [www.humanrights.asia/news/urgent-appeals/AHRC-UAC-011-2010](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-011-2010) and, UAU-018-2009, [www.humanrights.asia/news/urgent-appeals/AHRC-UAU-018-2009](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-018-2009)

*BURMA: Case 6***Phyo Wai Aung: Redress Needed for released Torture Victim**

The release from prison on amnesty of Phyo Wai Aung, a young man falsely accused, tortured and imprisoned over the April 2010 bombing, and has called for him and other freed victims of gross abuse of human rights in Burma to receive rehabilitation and redress.

In a short statement posted on his Facebook page, Htet Wai Aung, the brother of Phyo Wai Aung, said that, “My brother, Phyo Wai Aung, [was] released by [the] Burmese Government today.” He thanked those organisations and individuals who supported his family’s struggle for justice over two years, adding that the family would still fight to have his brother’s conviction overturned, but that the amnesty would allow his brother “to get appropriate and effective treatment without any limitations”.



In May, the Asian Human Rights Commission (AHRC) issued an open letter to the President of Burma calling for the release of Phyo Wai Aung from custody in order that he could receive medical treatment for serious illnesses. The Hong Kong-based regional rights group has been campaigning on the case since after his arrest in 2010.

“The release of Phyo Wai Aung on an amnesty is very welcome news,” Wong Kai Shing, the AHRC’s Executive Director, said. “It is further evidence that the authorities in Burma are responsive to calls from the international community for action on specific cases, and we hope that in future this trend will continue,” Wong remarked.

The release of Phyo Wai Aung coincides with a visit to Burma by a United Nations human rights expert with a mandate related to the country.

“The UN Special Rapporteur on human rights in Myanmar has also followed this case closely and worked on it constantly, and it is a credit to him and his staff and a reflection of the importance of the special procedures system under

the office of the High Commissioner for Human Rights that this outcome has been achieved,” Wong said.

The AHRC Executive Director added that although Phyo Wai Aung’s release was an important achievement, his case spoke to a number of outstanding matters of concern for victims of human rights abuses freed from detention in Burma during recent times.

“Phyo Wai Aung, like other former wrongly detained and tortured persons, requires medical treatment, both physical and mental. At present, no arrangements exist for the rehabilitating of such persons, or the provision of other forms of redress for the wrongs they have suffered,” Wong said. “This aspect of the release process now needs to become a priority in discussions that members of the international community have with authorities in Burma,” he added.

“Also, Phyo Wai Aung like most other released persons has a criminal record. This record needs to be expunged. This matter is another that at the present time deserves more attention and discussion, in order that society in Burma can begin to move forward. Otherwise, political change at the elite level will not correspond with meaningful change for everyone else,” Wong noted. He added that the institutional arrangements, laws and personnel responsible for Phyo Wai Aung’s torture and imprisonment were continuing in their roles as before and that until significant efforts were made to effect lasting systemic changes, cases of the same sort would continue to occur in Burma.<sup>41</sup>

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41 The AHRC’s campaign webpage for Phyo Wai Aung, which contains details on the case and relevant documents in both English and Burmese, is available at: [www.humanrights.asia/countries/burma/phyo-wai-aung](http://www.humanrights.asia/countries/burma/phyo-wai-aung)

**MESSAGE ON FACEBOOK, by HTET WAI AUNG  
(3 August 2012)**

My brother, Phyo Wai Aung, is released by Burmese Government today. Without the continuous and tireless effort and support from the following persons and organization, this would not be happened.

- 1) U Kyaw Hoe, his lawyer
- 2) U Min Lwin Oo, AHRC
- 3) RFA, DVB, VOA, BBC Irrawaddy Media
- 4) Mr Thomas Oeja Quintana, SR, OHCHR
- 4) AAPP-Burma
- 6) Eleven, Venus Media, Independent and local media
- 7) Amesty International , Human Rights Watch
- 8) U Tun Kyi and Political Prisoners Support Group
- 9) All who support this fight for justice

We have to still fight for unfair decision but this amnesty help him to get appropriate and effective treatment without any limitations.

Thanks again for all who are with us for last more than two years.

*BURMA: Case 7***Nan Woh Phan: Custodial Death of Young Woman; Partner Arrested**

The Asian Human Rights Commission has followed closely reports since March of the death in custody of a young woman, Nan Woh Phan, in Rangoon, Burma, followed in May by the arrest and detention of her partner for alleged illegal business activity. The commission is concerned that by now the family of the victim should have expected some progress towards identifying and prosecuting those persons responsible for her death, and other actions taken to address the systemic causes of her death. Instead officials in Burma seem more concerned to pursue cases against her partner in a manner that raises many questions about their actual intentions and interests.

Of the many questions hanging over the case, the one that precedes all others is what happened to Nan Woh Phan? What is known is that on 24 March 2012, the Bureau of Special Investigation – an elite semi-autonomous agency under the home affairs ministry – had held her for questioning at its offices in Kyauktada,



Rangoon, concerning the alleged illegal land and real estate speculation of her partner, a Japanese national, who had conducted transactions with her name on title deeds. Around 5 pm on that day, while in BSI custody, the 19 year old fell from the fifth floor of the premises and died.

On March 28, Nan Woh Phan's partner, Namase Motohiko, and lawyer Daw Ei Ei Aung conducted a press conference in Rangoon in which they explained that the BSI had taken Nan Woh Phan away on March 21 and had her under continuous interrogation until the date of her death. According to Namase, the BSI had allowed the teenager only two hours sleep per day in custody and had exhausted and psychologically traumatized the young woman as part of their interrogation techniques. The lawyer said that her client had been terrified, had stopped eating and could not even drink water without vomiting. Ei Ei Aung was present when Nan Woh Phan died but said that she could not see whether she fell by accident or jumped deliberately from the building.

Who was responsible for her death? Whatever the specific circumstances of Nan Woh Phan's fall, BSI personnel had a duty of care, as her custodians, and they failed in this duty. But redress for this failure will require more than the taking of administrative action against those officers responsible, since from the reports of this case, strong grounds for criminal action against the responsible personnel also exist. As per Article 1 of the United Nations Convention against Torture, "torture" includes any act "by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession... or intimidating or coercing him or a third person... when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official". Under this definition, the BSI tortured Nan Woh Phan, and that torture led to her death.

Although Burma has not yet joined the Convention against Torture, the prohibition of torture is a *jus cogens* norm that does not apply only to parties to this law but is an established principle of international law everywhere. Burma also does not yet have in place any law to prohibit or punish the act of torture; however, the perpetrators of torture in this case can and should be charged with offences under the Penal Code commensurate with the crime of torturing a young woman, resulting in her death.

Unfortunately, since March, reports point to a number of worrying developments in handling of the case, suggesting that the concern of the authorities is less with holding those responsible for Nan Woh Phan's death to account and more with pursuing her partner, who has been outspoken in accusing the BSI of wrongdoing. Although a special investigatory tribunal had supposedly been established to investigate the case, news of its progress has not been forthcoming. On the other hand, the investigations against Namase have continued, and in May, the BSI also arrested and detained him on remand, under section 5(h) of the Emergency Provisions Act, 1950, over alleged tax evasion. On May 17, officer U Than Aye of the BSI opened a case against Namase (Hlaingthayar Police Station, No. La (Pa) 521/012).

The Emergency Provisions Act was passed at a time of intense difficulty in Burma as the country struggled to rebuild economically and become politically stable after the Second World War. The specific section used in this case reads that anyone guilty of causing the public to "lose trust in the State's economy... or partly in the country or to hamper operational or economic

success carried out by the government in order to implement the restoration of law and order successfully” can be imprisoned for up to seven years. Clearly, the section was framed for very different circumstances than those of Burma today, and those pertinent to this case.

The bringing of the charge against Namase, and the holding of him in custody since May, raises more serious questions about what has been going on since the death of Nan Woh Phan. One obvious question is, why charge him with this out-of-date and regressive law? Many other laws exist under which he could be charged if in fact he has committed crimes related specifically to business activities. The Emergency Provisions Act, on the other hand, is a law that typically authorities have used in politically motivated cases. It is a law that ought to be repealed by the legislature if the government of Burma is serious about shifting the country’s legal system from its authoritarian past to a different kind of future. That the officials in this case have decided to use its catch-all provisions against Namase suggest that they lack the evidence needed to charge him with relevant offences or are using the law for other ulterior purposes: specifically, as a short cut to intimidate and silence him over the death of Nan Woh Phan.

That the BSI has brought this case against Namase after the death of his partner also raises the question as to why it is still charged with authority for the investigation of his alleged crimes. The bureau is compromised as a result of what happened to Nan Woh Phan. It should not be the agency left with the authority to continue with this investigation, because its officials now have an interest in using their coercive powers to protect themselves against allegations of wrongdoing. Therefore, any further investigation of the Japanese national ought to be transferred to the police.

Lastly, the case raises serious questions about the rights of people in Burma to make complaints about the wrongdoing of officials, and to do so publicly in order to advocate for action against perpetrators in positions of authority. Although in recent times a variety of new avenues have opened up for complainants, and the government of Burma now as a matter of policy welcomes complaints against officials, this case demonstrates how the mentality across officialdom itself remains one that the right to complain, and to do so publicly, does not in fact exist, and that to complain is to be impertinent. In this case, not only do we find the partner of the deceased detained under circumstances that suggest his detention is at least in part

retribution for his issuance of public complaints. But, furthermore, when her family tried to meet with the Deputy President to lodge a complaint with him -- a Shan ethnic national, like members of the family -- security personnel also reportedly detained and questioned them.

The mentality that people do not have any inherent right to complain, and that those people who do complain deserve retribution, is a consequence of half a century of authoritarian rule. It is not a mentality that will be easily addressed, nor easily removed from Burma's legal system.

But it is a mentality that can be challenged and pushed back on a case-by-case basis and it is for this reason, as well as for a variety of other systemic reasons associated with those features of the death of Nan Woh Phan set out above, that this case is of special and widespread interest.

How Nan Woh Phan's death is handled will provide revealing answers to a remaining underlying question, behind all those questions particular to the case set out above, of whether or not policing, prosecutorial, and judicial agencies in Burma will prove responsive to the political changes in the country.

## **Lahtaw Brang Shawng: Torture of the Accused**

On the night of 17 June 2012 a group of around ten men led by a police station chief and a civilian official came to a relief camp for people affected by armed conflict in Kachin State and told Lahtaw Brang Shawng that they needed to question him over three explosions. They handcuffed him and took him away, promising to let him go in 24 hours if they were satisfied that he had no involvement in the crimes. However, instead they sent him to a military intelligence facility where he was held incommunicado and severely tortured. The methods of torture allegedly used included holding the flat side of a hot knife to his face, hitting his head with bamboo, stabbing his thighs, and running a bamboo roller along the back of the thighs. Brang Shawng also says that an intelligence officer threatened to kill him and ordered him to dig his own grave. On June 20, officers brought Brang Shawng back to the relief camp in order to force him to do a re-enactment to use against him in court. People who saw him at the camp said that he had visible injuries, including bruises and swelling, over his body. After one week Brang Shawng's case was for the first time brought to court, where a judge remanded him in custody. On June 28, he was brought to the court to give a confession to the same judge. When the judge saw that Brang Shawng had a black eye he asked how it had happened and Brang Shawng replied that he had fallen from a motorcycle. Because it did not look like a motorcycle accident injury the judge asked him to lift up his shirt and then he saw that a recording device had been taped to the defendant's body. He had photographs taken of it and then refused to record a confession. Despite this obvious effort to set up the confession and ensure that the defendant told what he had been tutored to tell the judge, the next day officials again brought Brang Shawng to court and this time another judge recorded the confession. Brang Shawng was then held in solitary confinement at the town prison. Members of a church group that visited him have called for his release. The armed group with which he is supposed to be involved, the Kachin Independence Army, has also denied any affiliation.

Brang Shawng had relocated from his village on the Waimaw-Laisa road about one year previously, due to fighting between the state armed forces and the Kachin Independence Army. He was assisting the relief camp officials by carrying out some responsibilities concerned with camp administration.

He cannot speak Burmese well and would not understand many points put to him in a police interrogation. The arrest of Brang Shawng has not only affected him and his family but has also made people in the relief camp afraid that others could be arrested and detained at any time.

Since the collapse of a ceasefire between the government and KIA, many incidents of gross human rights abuse have been reported from the region. The AHRC has previously issued an appeal on the abduction and forced disappearance by government troops of a woman villager in the region.<sup>42</sup> Although lawyers lodged a writ of habeas corpus application over her abduction in the Supreme Court this year, the court rejected the application on grounds that her abduction by the army could not be proved. This is even though the court failed to call two eye-witnesses to her abduction.

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42 AHRC-UAC-240-2011: [www.humanrights.asia/news/urgent-appeals/AHRC-UAC-240-2011](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-240-2011)

*BURMA: Case 9***Myo Myint Swe: Torture, Death, Detention, Injustice**

On 28 June 2012, 19-year-old flower seller, Ma Poe Poe Mon was murdered in Mayangone Township, Rangoon. A week later, police from the township station arrested Myo Myint Swe, a carpenter of the same age, at his residence and accused him of being involved. Subsequently, on 6 July 2012, his mother, Daw Sein Sein and his cousin Ko Soe Lin were also taken by the same police station without a court order.

According to the testimony from Daw Sein Sein, while being held in custody for three days she was fed only once daily. Ko Soe Lin was interrogated and tortured. Both of them were set free on 8 July 2012, around 5 pm. At around 10 pm on the same day, the district police commander informed Daw Sein Sein that in the meantime her son had died from illness during interrogation.

The family members of Myo Myint Swe did not know what to make of this information. However, they took photographs of his body after post mortem examination and before he was cremated, and the pictures show clearly that he had been severely tortured. One photograph of the victim's shins, in which the scars and bruising from the rolling of a rubber or bamboo stick or similar instrument, a common form of torture in Burma, can be seen clearly.

The other photographs show that the right cheek and forehead of the deceased are heavily bruised and swollen, as is the left jaw and lower cheek. The neck of the deceased is black with bruising, and scars and bruises are obvious on his shoulders and back. The doctor who conducted the post mortem on the body recorded on July 23 that the victim had died due to a heart attack.

Subsequently, the district police commander donated the equivalent of around \$ USD 600 to the family, for funeral expenses, and the victim's mother accepted the money because she didn't have the funds for the funeral. Later on police from Mayangone Township offered another amount, about double again; however, she refused to take the money, realizing that the police were trying to pay her off for her son's death. She has insisted that a criminal case be opened against the perpetrators.

The victim's family then tried to open a case against the commander of the Bayinnaung Police Station and the interrogators for murder, at the East Dagon Police Station on July 27, and at the Bayinnaung Police Station on July 28, but neither station would accept the complaint.



Thereafter, Daw Sein Sein in August sent complaint letters to the Director General of Myanmar Police Force, Ministry of Home Affairs and the Myanmar National Human Rights Commission, urging that the case be investigated properly and charges brought against the perpetrators in accordance with the law. So far the family has not to our knowledge received any replies to its complaints.

Furthermore, when the death inquest was held in court, it was registered as a simple death, not as a murder. When the death inquest hearing was being held, Daw Sein Sein also saw that the photographs of the deceased that the police submitted to court looked nothing like those that she had seen, and that they had evidently been modified with a computer program to conceal the scars and wounds on the dead body that can be clearly seen in the original photos. The court hearings into the death have since gone on without the family being informed of the dates on which the hearings are to be held.

According to an article that appeared in the media in late June, the deputy commander of the Rangoon Region Police had ordered that an internal investigation be conducted by two police majors; however, to date the family does not know what progress, if any, has been made by the investigation team, and whether they will whitewash the case or not, consistent with the actions of the other police so far.

*BURMA: Case 10***Ne Lynn Dwe: Air Force Officer Tortured, Jailed for Internet use**

On the night of 12 December 2011, officers from military intelligence came to Ne Lynn Dwe, 38, at his camp in Myeik, southern Burma, and told him to go with them by aircraft to Rangoon. Once there, Ne Lynn Dwe was detained and accused of having posted some 70 articles to the Internet since 2009 detailing military life and the hardships and difficulties faced by ordinary service personnel. In March 2012 a court martial convened to hear the case, and in April it convicted him and sentenced him to 20 years in jail for violating the Emergency Provisions Act by taking actions to undermine the military; and, the Electronic Transactions Law, for using the Internet illegally.

While in custody, Ne Lynn Dwe was allegedly tortured, and treated inhumanely. He was held without his family having access to him. Each time he was taken for interrogation, his face was covered and he heard only the voices of his interrogators. They injected him with some substance that made him lose his sense of self and answer questions uninhibitedly. While being held in custody he was kept handcuffed and for some time was allowed to wear only a singlet and shorts.



Later he was given one sarong and shirt, for the duration of his four months in custody while awaiting court martial, and during the court martial process.

As a result, he is today suffering psychological problems, specifically, he is not able to recall names or other basic information, and sometimes cannot speak clearly. Furthermore, when the case came to court martial he did not have a lawyer. Nor has his family since been able to obtain the records of the trial, and therefore what information is known about it has been drawn together by them from visits to the central prison since Ne Lynn Dwe's conviction. Throughout the duration of his custody, from the time of being taken to Yangon until after his court martial, Ne Lynn Dwe could not meet his family, or other persons.

Not only did Ne Lynn Dwe himself suffer but his family has also been directly and indirectly affected. After Ne Lynn Dwe's arrest, his possessions were not returned to the family, on the pretext of not having the means to send them, and the military did not pay his salary for his time in detention prior to conviction. The family has also lost his military pension and was in February 2012 forced to leave the military accommodation provided to them. Additionally, aside from Ne Lynn Dwe, two other officers were also imprisoned regarding related alleged offences. They are Acting Major Min Htun Thein, who received a seven year, and Captain Chit Ko, who received a ten year sentence.

The laws under which Ne Lynn Dwe was convicted are incompatible with human rights and with the democratic values that the government of Myanmar now claims to be espousing. The Emergency Provisions Act is completely outdated and inapplicable to the current times, in which no emergency situation exists of the sort for which that law was framed. Legislators have made submissions for the law to be revoked and I urge that these submissions be treated seriously. The Electronic Transactions Law is a malodorous piece of legislation whereby practically any form of Internet use could conceivably be cast as a criminal offence, for which a convicted person is liable to imprisonment of periods that are completely disproportionate to the alleged crimes of the sort that the accused in this case was supposed to have committed. Therefore, these laws ought also to be revoked.

The Asian Human Rights Commission is aware of other similar cases in recent years in which army personnel have been convicted of offences over the use of Internet or similar offences; however, most are reluctant to speak up against their imprisonment for fear of worse.

## SRI LANKA

*Common Torture Methods of the Sri Lanka Police include<sup>43</sup> :*

- Sitting on the spine or beating the spine, thereby dislocating disks in the spine, resulting in full or partial paralysis;
- Hitting on the head, or sometimes putting books on the head and hitting them with a pole, causing fractures and brain injuries;
- Tying the hands behind the back, tying the thumbs together, then pulling a cord through the thumbs and hanging the person from the ceiling, causing temporary or permanent loss of use of the arms;
- Tying the hands and legs and putting a pole through the legs in a way that a person can be rolled around, while beating on the head and soles of the feet;
- Beating while hanging, causing renal failure and other serious injuries;
- Hitting on the genitals;
- Inserting genitals into drawers and slamming them closed;
- Pumping high-pressure water through fire hose pipes onto the genitals;
- Inserting PVC pipes and other objects like glass bottles into the vagina;
- Beating on the ear, causing full or partial hearing loss;
- Dragging on the ground;
- Forcing a person to crawl in public places;
- Hitting the soles of the feet with a pole;
- Forcing the fingers into glass bottles, making it very difficult to remove them;
- Threatening to kill;
- Threatening to rape;
- Threatening to plant drugs and file cases in courts for possession of drugs, which carry high penalties;
- Hitting with cricket poles;
- At least in one case a patient with a chronic contagious disease (tuberculosis) was forced to spit into a mouth of a suspect under interrogation.
- Applying chilli paste on sensitive parts of the body.

43 From the AHRC report to UN Committee against Torture, September 2005, available at: [www.alrc.net/doc/mainfile.php/unar\\_cat\\_sl\\_2005/](http://www.alrc.net/doc/mainfile.php/unar_cat_sl_2005/)

**The following are extracts from the Asian Human Rights Commission's submission on Sri Lanka to the UN Committee against Torture at its 47th session (2011)<sup>44</sup> :**

*Defects in substantive aspects relating to the obligations of the Sri Lankan state:*

**The UN Convention against Torture (CAT) Act is merely a paper law:** Sri Lanka has criminalised torture by the CAT Act, Act No. 22 of 1994, which has created a criminal offense relating to torture and ill-treatment and prescribed a mandatory seven years of rigorous imprisonment and a fine of Rs. 10,000. However, this is now merely a paper law. As a matter of policy, the government has stopped investigations into complaints under this act and/or to prosecute under this law. Until about 2008, there were some investigations conducted due to international pressure. However, this practice has been officially abandoned since then. From 2009, there has not been a single case investigated or prosecuted under Act No. 22 of 1994 despite the complaints related to torture being received on an almost daily basis relating to almost every police station in the country. The decision not to conduct investigations or prosecute under this Act was the government's response to the resistance developed by some sections of the police against such investigation and prosecution. The failure to implement this law is also for policy reasons, in order to discourage complaints being received relating to torture and ill-treatment. In recent years, the government has developed public policy to the effect that making complaints relating to torture and other human rights abuses are against the public image of the government and the government is being internationally embarrassed by such complaints. The government carries out a heavy propaganda campaign against human rights organisations that support the victims of torture and ill-treatment and other human rights abuses, labelling them unpatriotic, and targets individuals (including human rights defenders) with defamatory publications and physical attacks. Heavy pressure is exercised against the complainants of human rights abuses as well as organisations and individuals who support such victims. When the government openly pursues a public policy of portraying victims of abuse and human rights organisations as unpatriotic, the whole purpose of Act No. 22 of 1994 is defeated.

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<sup>44</sup> The extracts are slightly modified. For the original complete submission, see: [www2.ohchr.org/english/bodies/cat/docs/ngos/AHRC\\_SriLanka47.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/AHRC_SriLanka47.pdf)

**Sri Lanka does not have a law relating to compensation for victims of torture and ill-treatment.** The state fails to respect the requirements of article 14 of UN CAT. There has never been any discussion at a legislative level of bringing a law to articulate the rights of the victims for compensation. The constant policy of discouraging victims from complaining also goes against the state obligation to create conducive atmosphere for bringing legislation in order to meet with the obligations of the state in this regard. Civil society organisations are discouraged by such a negative atmosphere against free speech and the promotion of human rights.

**The Sri Lankan government has failed to recognise its legal obligation regarding rehabilitation of victims.** The idea of the legal responsibility to restore to the victim that which he or she has lost by way of abuse remains alien to Sri Lankan legal culture. The obligation to provide trauma counselling or to provide medical assistance for acute stress disorder or Post Traumatic Stress Disorder and other psychological problems are not acknowledged in any manner by the state. No legislative provisions have been made for such ends. There are also no policy discussions and it is therefore most unlikely that any legislative measure will be created for this purpose in the near future. The atmosphere of discouragement of public speech and debate negatively affects development of law and practices regarding rehabilitation of victims.

*Procedural Requirements for Implementing State Obligations relating to CAT*

**There is an absence of a credible and functioning complaint mechanism regarding torture and ill-treatment.** The state has failed to develop such a complaint mechanism and the tendency in recent years is to discourage the development of any such mechanism. Even some avenues that exist under the country's criminal procedure law for making such complaints at police stations are not implemented due to negative practices which have been allowed to take place at police stations. Complainants are often sent away without having their complaints recorded and are also often abused and even threatened when they reveal that their complaint relates to police officers. The higher ranking officers are not trusted by the people as being willing or capable to conduct investigations relating to their subordinates. Many complainants have repeatedly complained about various harassments they have suffered due to making such complaints. **In the past there have been two assassinations of torture victims due to the complaints they**

**made against those who subjected them to torture.** The cases of Gerard Perera and Sugath Nishanta Fernando are well known. Gerald Perera was assassinated on a public bus before he could give evidence against the police in the Supreme Court for his prolonged torture. A murder case is still ongoing. Sugath Nishanta Fernando, who was assassinated while pursuing a complaint against the police, was also killed in public and there has been no credible investigation into his murder despite attempts by even international agencies to demand an inquiry. A case is pending before the United Nations Committee against Torture relating to the failure of the state regarding this murder. In the past there had also been some forms of complaint-making at the Human Rights Commission of Sri Lanka. However, this commission has lost its credibility due to arbitrary appointments and through the absence of any serious actions regarding violations.

**There is an absence of a credible and functioning investigation mechanism into torture and ill-treatment.** For a short period, from 2006 to 2008, the investigations into complaints of torture and ill-treatment were handled by a Special Inquiry Unit (SIU) of the Criminal Investigation Division. During this period, over 60 cases were found to have adequate information for filing indictments under the CAT Act, Act No. 22 of 1994. The practice of referring cases for investigation by the SIU was started as a result of interventions by Theo Van Boven, the (then) Special Rapporteur against Torture and Ill-Treatment. The methodology adopted was for the Attorney General's Department to refer cases to the SIU, who, after investigations, would submit their report to the Attorney General's Department for consideration relating to the filing of indictments. This practice was discontinued after 2009 when C.R. De Silva became the Attorney General and the present Attorney General, Mohan Peiris, continues the same policy. The result is that there is no credible investigator to investigate complaints under Act No. 22 of 1994. As pointed out earlier, the result is the absence of prosecution under the CAT Act and thus this law criminalising torture has just become a paper law. The non-prosecution of cases of torture is now a matter of Sri Lankan government (GOSL) policy.

**The change of policy relating to torture and ill treatment at the Attorney General's Department.** The policy change which took place in the Attorney General's Department from the time that De Silva became Attorney General has been pointed out in the earlier paragraph. Besides this, the overall approach of the Attorney General's Department regarding torture has also

changed drastically. Since the late 1990s, there had been a policy for the Attorney General not to represent any public servant accused of torture and ill treatment under the fundamental rights provisions of the Constitution. In 2010, this policy was changed by Mohan Peiris as the Attorney General. Now, when applications are filed under the Constitution on violations of fundamental rights relating to torture, notice is issued to the Attorney General. The Attorney General's Department thereafter appears in the Supreme Court to object continuing the fundamental rights actions. In fact, the Attorney General's Department contacts the police officers who are made respondents and assists them in filing objections and taking up objections against such applications. Thus, the original policy of non-appearance for public servants has been altered by the Attorney General's Department. The present position of appearing for respondents is contrary to principle, as the Attorney General is supposed to be the prosecutor if cases are to be filed against respondents under the CAT Act. To defend respondents against accusations of torture under fundamental rights actions and at the same time to be officially responsible for prosecutions in torture cases is to play a self-contradictory role. It is ironic that the Attorney General also usually accompanies the government delegation to the CAT Committee to present the government's position relating to the implementation of the CAT. The role that is usually played is to deny the violations of the CAT or to create a portrait of the obligations under the CAT being carried out faithfully by the government. In playing these many roles, the Attorney General's Department has to twist facts relating to allegations of torture. In any case, the Attorney General's Department by now has become a department that directly functions under the Executive President and carries out the instructions of the government. No impartial role regarding the protection of the victims of torture can be expected from this department now.

**Defects in judicial interventions for the protection of victims of torture. Under the CAT Act, Act No 22 of 1994:** The problems relating to complaints, investigations and prosecutions mentioned in the earlier paragraphs affects the judicial interventions as virtually no new cases are filed under the CAT Act. The court can act only if investigations are made and prosecutions are filed. However, even regarding the earlier cases where such cases have been filed, the defects in the judicial system seriously hamper the effective redress under the CAT Act. The trials at the High Courts take many years, as much as four to ten years, and as a result prosecutions have become ineffective. During the long periods when each case is taking place

before a particular court, many judges and prosecutors change. In many instances, as many as six or seven judges may sit before a trial is completed. The judge who finally writes the judgment may not have had the opportunity to see the demeanour of many of the witnesses. The judges have to rely on reading the written record of evidence alone in writing judgments. Some of the judgments create doubts as to whether the judges have, in fact, read the written report. For example in the case of Lalith Rajapakse, which was heard before the Negombo High Court, there was detailed medical evidence, including a written medical report, stating that the victim had suffered many injuries, including injuries to the foot. The victim himself also gave evidence to that effect. However, the trial judge strangely held that there was no evidence to support the allegation relating to the beatings on the foot. An appeal on this case is now pending. The delays also provide the opportunity for witnesses to be threatened, physically harmed or even killed. As mentioned before, two of the torture victims awaiting trials were assassinated. There are many instances where complainants either do not come for cases before courts to give evidence, or even change their earlier versions of the statements due to threats or sometimes other incentives to abandon their claims. Besides this, because of the long delays, some witnesses die and other witnesses leave the country for employment and other purposes, thus making it impossible for their testimonies to be recorded in courts. It can also be said that many of the Sri Lankan judges do not demonstrate adequate legal knowledge about torture and ill treatment, and some often tend to sympathize with the officers who are facing the charges. The victims of torture come from the poorer sections of society while often the officers are those who frequent courts for various official purposes. Besides the absence of adequate knowledge and a seeming lack of interest, there are also matters of policy in the time of civil conflict, which seem to mitigate any prosecutions against the torture. These prosecutions are often perceived as having a disturbing impact on police and military officers, who enjoy privileged positions due to the overall security policies pursued in the country.

*The Fundamental Rights Jurisdiction Suffers from many Defects*

**Declarations do not lead to any consequences:** The declarations made under the fundamental rights jurisdiction by the Supreme Court, stating that violations relating to torture have been done by the respondents, meaning police or military officers for the most part, does not have any direct practical consequence. It does not affect the further employment of these officers in

their departments, or their promotions. The respondents of many cases are still in the police and several of them have received promotions to higher positions.

**Amounts in financial awards are low:** Where compensation is awarded, the financial awards are of very low amounts and in no way reflect the obligations of the state under the CAT for compensation of torture victims in terms of covering their medical costs, legal costs, or sufficient compensation for the psychological damage caused by being tortured. The Supreme Court of Sri Lanka has not yet adopted legal principles relating to the assessment of damages for causing psychological damage to the victims. Many of the victims suffer serious abuse at the hands of the respondents. This can cause trauma, acute stress disorder, post traumatic stress disorder, and many other forms of psychological damage. A few years ago, the Supreme Court adopted better standards for the assessment of compensation, for example, in the case of Gerard Perera and also a few others. In Gerard Perera's case, the total compensation came to Rs. 1.6 Million which is around US \$ 16,000. That was not calculating the damages from the point of view of psychological injury. However, in recent cases where the torture is proven, damages may run to around Rs. 5,000 to 100,000 in very rare instances. That is between \$ USD 50 to 1,000. Perhaps the reason for reducing the amounts of damages may be to discourage more persons from pursuing cases. However, the clear policy reason for such a reduction has not been stated.

**The Attorney General plays a negative role:** A further defect of the fundamental rights jurisdiction is that, in very recent times, even before notice is issued to respondents, the Attorney General is given notice and he comes before the court to object to notice being given on these applications. As the objection taken by the Attorney General at this stage is not on the instructions of the respondents, there is no reason for the Attorney General to appear at this stage. The Constitution provides that the court can issue notice if they are satisfied that there are grounds for a *prima facie* case. This new practice of hearing the Attorney General before issuing notice for the respondents acts in favour of the respondents and is quite open to abuse.

**Evidence on affidavits alone is adverse to the victim:** An even further defect in the fundamental rights jurisdiction is that the entirety of the proceedings depends on affidavits, and no credible inquiry is made into torture and no report is submitted to the court by an investigating unit. When the Supreme

Court receives a complaint of torture by way of a fundamental rights application, it could refer the matter to a Special Investigation Unit (SIU) of the Criminal Investigation Division (CID) through the Inspector General of Police (IGP), who is always an official respondent. If a special unit makes such an inquiry under the instructions of the Supreme Court, they are likely to conduct a credible inquiry, and thereby an inquiry into torture by the state in terms of its obligations could be ensured. Mere reliance on affidavits is often to the disadvantage of the applicant, who is a lay person and, more often than not, a person from the poor classes of society. Thus, such torture victims cannot be expected to have all the resources and capacity to find out all the matters relating to the violations of their rights and place them before the courts. In cases where an SIU of the CID have conducted investigations into torture complaints, they have come out with a great deal of evidence that the ordinary layman is not able to have access to. For example, in such SIU inquiries, documents in the possession of the police at police stations have been looked into and often much evidence has been found to support the victim's allegations. All the considerations shown above require a re-examination of Article 126 of the Sri Lanka Constitution and ways to improve this section should be found. However, the present policy of the GOSL to discourage investigations into torture and other allegations of human rights abuses is likely to adversely affect the fundamental rights petition as a remedy.

**GOSL's constitutional impediments to implement their obligations under the CAT.** The 1978 Constitution of Sri Lanka places the executive president above the law and thus diminishes the power of the judiciary to protect the individual against the state. Sri Lanka's constitution is incompatible with the principles of the rule of law. The country has been suffering from a collapse of the rule of law since 1978. Sri Lanka is, in fact, incapable of implementing the obligations under the CAT due to the nature of the constitution in the country. Without a fundamental change to the constitution to bring the executive under the rule of law, it is not possible for GOSL to implement the obligations under the CAT within a legal framework. In fact, this is the most important factor in dealing with the human rights problems in Sri Lanka. The impunity relating to human rights abuses, including violations relating to torture and ill-treatment, are guaranteed by the constitution itself. Sri Lanka has a system of constitutionally entrenched impunity.

*SRI LANKA: Case 1***Lalith Rajapakse: 17 year old, Tortured**

Lalith Rajapakse was a 17-year-old boy when arrested on 18 April 2002 by several police officers from a friend's house. During his detention, he was subjected to torture, for the purpose of obtaining a confession. The torture process, which caused serious injuries, comprised the following:

He was forced to lie down on a bench and was beaten with a pole; his head was held underwater for prolonged periods; he was beaten on the soles of his feet with blunt instruments; books were placed on his head, which were then hit with blunt instruments. Due to the head injury, he fell unconscious, and in that state he was taken to a hospital, where he remained unconscious for over two weeks.

This incident was widely reported and human rights organisations took up the matter with Sri Lankan authorities as well as UN agencies. The then Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment wrote to the Sri Lankan government on this issue seeking a response. This led the government to refer the case to a Special Investigation Unit (SIU) of the Criminal Investigation Division. The SIU, after their investigation, found the complaint credible and submitted their report to the Attorney General's Department for prosecution under the CAT Act of Sri Lanka (Act No 22 of 1994), which prescribes seven years of rigorous imprisonment and a fine of Rs. 10,000 on conviction.

After a long delay, the Attorney General's Department filed indictments against two police officers. In 2004, Rajapakse filed a communication before the Human Rights Committee (HRC) complaining that due to undue delays in the adjudication of his case his rights under Articles 2 (paras 3 and 7), 7, and 9 of the International Covenant on Civil and Political Rights had been violated. On 26 July 2006, the HRC expressed its view on this communication and held that

*“the facts before it disclosed violations of article 2, paragraph 3, in connection with article 7; article 9, paragraph 1, 2 & 3, as they relate to the circumstances of his arrest, along and together with article 2,*

*paragraph 3; and article 9, paragraph 1, as it relates to his right to security of person, of the Covenant and recommended that:*

- a. the High Court and Supreme Court proceedings are expeditiously completed;*
- b. the author is protected from threats and/or intimidation with respect to the proceedings; and c. the author is granted effective reparation.*

*The State party is under an obligation to ensure that similar violations do not occur in the future.”*

The High Court completed the trial only on October 9, 2010. The High Court judge acquitted the accused on the basis that there was no evidence in the Judicial Medical Officer's ("JMO") report to show the alleged torture victim had been assaulted on his foot.

However, the medical report of the JMO filed in court as P6 clearly mentioned: "8). Contusion 2"x2" on the sole of the left foot, and 9). Contusion 2"x1" on the sole of the right foot." The High Court judge had either not read the medical report and other evidence or for some reason deliberately misrepresented or ignored the facts which had been recorded.

The torture victim filed an appeal before the Appeals Court and the court granted leave to appeal. However, the appeal is still pending. The Fundamental Rights Application filed before the Supreme Court has not yet been heard. Nor has any reparation been paid in terms of the recommendations made by the HRC.

*SRI LANKA: Case 2***Chandani: Disabled Rape Victim Forced to Settle**

According to information received by the Asian Human Rights Commission, Mrs. Yamange Hemalatha (50) of Akkara 33, Weligodella, Bombuwala, is married and a mother of two children. Her husband is a shoe-maker and self-employed.

One of Hemalatha's children is a 23-year-old woman who is physically and mentally disabled. Chandani (not her real name) was born with her disability. She is crippled and wheelchair bound. Furthermore, she is mentally handicapped and requires constant supervision as she is unable to tend to her bodily functions and needs, and drools more or less constantly. She is able to speak with difficulty but has little concentration.

On 31 January 2011, Hemalatha's husband and her other child left for work and Hemalatha went to assist with alms-giving in a neighbouring house, leaving Chandani at home.

When she returned home, Chandani was able to tell her that she had been raped by a neighbour. Having little or no physical strength, she had no defence against her attacker. She was able to identify her attacker as the son-in-law of one of their neighbours, Mr. Preme. There was another reason as to why Chandani was able to identify the rapist; he had come to the house a few days earlier to use the services of Hemalatha's husband for shoe-making.

Hemalatha observed that her child, the victim, was in severe pain. Immediately, she called her husband and with his help they took Chandani to the Dodangoda Police station. When they reached the police station the time was between 2 and 2.30 p.m. The officers on duty recorded the complaint and, immediately following that, traveled by a three-wheeler and arrested the suspected rapist and brought him to the police station. Then the officers requested the victim and her parents to leave the station.

The father-in-law of the suspected rapist, Mr. Preme, arrived at Hemalatha's house around 11.30 am on 2 February and conveyed the message that Hemalatha and her family members had to appear before the Officer-In-Charge (OIC) of the police station. Hemalatha was surprised how a family

member of the suspect could inform them of an official police notice. Part of their suspicion arose from the fact that the notice was handed over at 11.30 am, the same time that she had to appear before the OIC. Further to this, Hemalatha noticed that the official seal of the OIC of Dodangoda police station was also there in that small paper.

Hemalatha went to the police station immediately. At the police station, she noticed that the suspect was inside the police cell. The OIC ordered him to be brought out and he shouted at the suspect in front of the victims.

It was then that the OIC told Hemalatha that, as the virtual complainant was disabled mentally and physically, she could not proceed with a legal case. He ordered Hemalatha to receive the money from the suspect and settle the matter. Mr. Preme gave Hemalatha Rs. 10,000 in the presence of the OIC. Then Hemalatha understood that it represented a financial settlement that had been arranged by the OIC.

After the money had been handed over, the OIC told Hemalatha that she should not tell anyone that the money was given to her, not even her husband. Then the OIC forced her to sign an entry in a register that he had already prepared. The OIC did not explain the contents of the entry. The OIC pointed his finger at Hemalatha and roughly threatened that she should not tell anyone that she was given money at the police station. As she was in fear of the OIC, she followed his instructions, took the money and left.

When she returned home she informed her husband of what had happened at the police station. Chandani and her father were upset and livid with the illegal way in which the OIC had suppressed justice for an innocent victim. The father took the money from Hemalatha and went to the police station, where he handed it back to some police officers. The police officers accepted the money but offered no receipt for it. The husband demanded that the police proceed against the suspect, saying that he wanted justice for his child.

It is to be noted that at no time did the police officers direct Hemalatha or her husband to take the victim to a hospital. Further, the police officers had not taken any of the legal steps stipulated in the Criminal Procedure Code against the suspect.

Hemalatha and her family members brought Chandani to the Nagoda General Hospital for treatment. Even this was done with great difficulty as their house is located far away from the main road and they required the assistance of many people to carry her. The heavy rains that were battering the country at that time also added to the enormous difficulties. This was exacerbated by Hemalatha's own prolonged chronic illness. Chandani was admitted to ward number 10 and treated for many days. The doctors who examined her also confirmed that she had been raped.

Meanwhile, Hemalatha learned that the suspect rapist had been released. Hemalatha says that the OIC of the Dodangoda police station did not proceed legally with her complaint, and that the OIC of the station worked illegally by arranging for and forcing her to settle a case of criminal rape, which is a non-compoundable offence under the law.

In Sri Lankan law, police officers have the leeway to settle certain complaints with the agreement of the parties. This would include personal disputes and such; however, criminal cases such as attempted murder, murder, and rape do not come under this law.

Hemalatha also maintains that, as she belongs to a poor and marginalised group of society, the OIC wanted to enforce the law in a discriminatory manner. Furthermore, she believes that the OIC suppressed the law as he was paid bribes. The police officers are legally bound to issue a Medico-Legal Examination Form (MLEF) to the complainant of rape or to the victim who was subjected to 'crimes against the human body', notes Hemalatha. But the OIC and the police officers of the Dodangoda police station did not treat Chandani equally before the law and acted *ultra vires* in this regard.

According to the law, the OIC of any police station is legally bound to investigate the complaint of crimes and report them to the Magistrate's Court for determination by the magistrate on how to proceed with the case for the prosecution of the suspect at the High Court. The OIC is the determining and guiding officer in law for the investigation of these kinds of complaints and it is his responsibility to contact the Judicial Medical Officers (JMO) for the medical evidence of the victim, as well as the suspect. It is the responsibility of the OIC to collect the evidence produced relating to the crime and produce this with the necessary security to the Magistrate's Court and then to the Government Analyst when necessary.

Hemalatha states that the OIC and the other officers of Dodangoda police station intentionally suppressed and ignored the whole procedure of the criminal justice system in order to help the suspect and deny justice to her and her victimized child. Finally, in the opinion of Hemalatha, her child, being a disabled woman, should have been treated with special care and attention by the law enforcement officers.

Hemalatha made complaints to the Inspector General of Police (IGP), the Senior Superintendent of Police (SSP) Kaluthara, the OIC of the Women and Child Care Bureau and the Human Rights Commission of Sri Lanka (HRC) for the investigation of her complaint and asked if they could provide her with justice. However, to date, none of these officers or authorities has taken any steps to uphold justice.

Now Hemalatha and her family members are in fear for their lives, as they have complained to the higher authorities, ignoring the threat of the OIC not to reveal the crime. Hemalatha is therefore seeking protection for herself and all her family members as they may be considered witnesses to the crime.

*SRI LANKA: Case 3***Acharige Dinesh Priyankara: Brutally Tortured for Filing Complaint**

According to information received by the Asian Human Rights Commission, Mr. Alahendra Acharige Dinesh Priyankara of Panadura North Police Division was a three-wheeler driver. He was illegally arrested, detained and severely tortured by the Officer in Charge and officers of the Panadura North police station to force him to confess to a burglary at the newly constructed luxury house of a retired Deputy Inspector General of Police (DIG). Whats more, in revenge for complaining against violation of his fundamental rights by the police, he was tortured a second time.

On the 23 January 2011 at around 6.30 a.m., when he was sleeping, three police officers came to his home and knocked on his door. When he opened the door, he saw two officers in front of his house. He asked for the reason of their visit. Without any explanation, they told him to follow them to the Panadura North police station. He followed their instructions, knowing that they were police officers because he had seen them before, while he was working as a three-wheeler driver.

They took him into their jeep and brought him to the police station. At the station they took him directly to a table. An officer came to him with papers and a pen while the two officers who arrested him sat on the both sides. Then the officer who brought the paper and the pen asked him where the tiles belonging to the DIG were. Without warning, they started to assault him with punches and kicks, demanding that he tell the truth. He told them that he did not know anything about the DIG's tiles and explained that he was only a three-wheeler driver and he knew nothing about such a case. Furthermore, he explained he that he parked his three-wheeler at Gorakana Junction where he took on hires, and that he had not stolen any tiles. He did, however, recall that he had gone for a hire to transport tiles from Gorakana Junction to First Lane in the same area. He told the officers that he could easily show the person who hired his three-wheeler for transporting the tiles and the place where they were delivered.

The officers locked him up in the cell. After a while, they took him to the place where he said he unloaded the tiles and the officers took some of them

as evidence. Then they took him back to the police station along with the evidence and locked him up again in a cell.

After a while, the officers took him out from the cell and to the back of the police station, where he was again assaulted. Dinesh told the officers that he was usually called for hire by the officers and workers at the said DIG's site. Furthermore, Dinesh explained that a man called Danushka told him that he was transporting the tiles from one site to another as they belonged to him. That was the reason he agreed to that hire.

Dinesh was again brought to the office of the Officer-in-Charge (OIC), whom he later learned is Mr. Ramya De Silva. He noted that there were two persons there. These two people were in conversation with the OIC. Following the conversation, he understood that both of them were assistants of the DIG. They were from the same village as Dinesh.

When Dinesh was brought before these two persons, they told the OIC that he was from the same village and that he never engaged in crime. They further said that they knew Dinesh very well, but then the OIC started to beat Dinesh in front of them. Then the two assistants of the DIG checked the tiles that were brought in and told the OIC that they were not the tiles that were stolen.

Without considering their identification of the tiles, the OIC ordered them to take Dinesh into the jeep. Then the officers drove the jeep to Nugegoda along with Dinesh. Dinesh was brought to a site where he noted that a few officers were doing construction work. He was asked to check the identity of the workers and Dinesh immediately identified the person who called him to transport the tiles, Mr. Danushka. After Dinesh pointed to Danushka, officers asked him to go to the rear of the jeep. Then officers went and arrested Danushka as well. Then the officers drove back to the police station.

At the police station, Dinesh was again locked up in a cell, and Danushka was taken to the back of the police station, where Dinesh had been beaten. Afterwards, Danushka was moved to the OIC's office. Dinesh was also then brought there. There, the OIC and other officers started to beat him again.

Dinesh saw that his mother had also come to the police station. Furthermore, he noted that officers chased her away when she tried to come and rescue

Dinesh by explaining his innocence to the officers. Dinesh noted that his mother saw the way he was tortured, through a window.

Dinesh noticed one officer had some paper. He also saw that a few officers of the DIG's company were sitting with OIC. One officer of the company was seated on the chair of the OIC. The OIC, who wore two stars on his epaulettes, was seated next to him. Dinesh noted that the station officers were drunk and that the company men were treating them with alcohol.

Then the OIC asked Dinesh to tell the truth again. Dinesh told the OIC the same story and repeated that he had never engaged in stealing, and that he only engaged in being hired at the request of Mr. Danushka. He clearly indicated Danushka, who was in front of all of them. Then the OIC told Danushka to assault Dinesh if he was lying. But Danushka did not do so. The OIC told Danushka that if he did not assault Dinesh they would severely beat Danushka. Upon hearing this, Danushka lightly assaulted Dinesh's shoulder. When he saw this, the OIC again shouted and gave him a pole and ordered him to beat Dinesh about the head until he died.

However, Danushka refused to assault Dinesh.

The OIC verbally abused Dinesh using obscene language, saying that his mother had gone to the Human Rights Commission (HRC) to make a complaint against police officers. He further told Dinesh that his mother had gone to the officers of the HRC to allow them to have intercourse with her.

Dinesh realised that the OIC was extremely angry that his mother had gone to complain about them. Then one of the officers told Dinesh that Danushka had provided a paper stating that it was Dinesh who stole the tiles. Dinesh vehemently denied it. But he understood the officers wanted to take revenge on him for his mother's complaint to the HRC.

Then the OIC started to kick him again and, as a result, Dinesh fell to the ground. His nose began bleeding. Then the OIC trampled his arms, while two other officers trampled his legs. When the OIC noticed that Dinesh's nose was bleeding, he asked him to get up. The OIC again tried to force Dinesh to admit to the crime, which Dinesh again refused.

Then one officer asked him to sign a document prepared by the officers. It was not recorded from him or the contents explained to him. Out of fear and pain he signed the document. The officers forced Dinesh to put a fingerprint to the document. Dinesh was told that now the officers could file any number of fabricated charges.

The next day, he was brought back to the OIC's office. The OIC started to complain about the magistrates using obscene language, and shouted that if they produced Dinesh in the daytime then the magistrate would grant bail to him, and that therefore he intended to produce Dinesh after the sessions of the court were completed.

In the evening, he was brought to the Magistrate's Court of Panadura. Before he was produced before the magistrate, he was asked to sign another document in the same manner. Dinesh was then produced before the magistrate, who granted him bail. While releasing him on bail, the magistrate ordered the DMO to produce a Medical Report on his condition. After he was released, his mother immediately took Dinesh to the hospital and the doctor admitted him for further treatment.

Dinesh said that the police tortured him at the whim and fancy of the former Deputy Inspector General (DIG) of Police, who was building a massive house at the bank of Bolgoda River in the same area.

*SRI LANKA: Case 4***Waharagedara Ranjith Sumangala: Brutal Torture, Fabricated Charges**

Mr. Waharagedara Ranjith Sumangala was arrested by officers attached to the Mirihana police station and detained for a period of five days, during which time he was tortured. He was assaulted on his leg with a pole in front of his wife and young children until the 3.5 feet long, 2 inches wide, pole broke. Later, a plastic shopping bag was filled with chilli powder and placed over his head, covering his face. Furthermore, his hands were cuffed behind his back and he was suspended by his wrists for 30 minutes. Ranjith was forced to accept responsibility for 21 cases. The magistrate of Avissawella released him on bail, but he now fears further fabricated charges. His predicament is yet another illustration of the exceptional collapse of the rule of law in the country.

According to the information received by the Asian Human Rights Commission, Mr. Waharagedara Ranjith Sumangala (36) of No. 18, Kuriyawela Colony, Ukuwela is a married father of two and a tinsmith by profession. He served in the Sri Lanka Army, and in 1999 was honourably discharged.

On 15 December 2010, he was staying at No. 137/2, Beliaththavila, Kindelpitiya, Millewa with his family. On this particular day he went to his employer's home at Kahawala by a three-wheeler owned by one Mr. Chandana. While they were on their way, at Yatawathura road near the place known locally as Mr. Fiscal's home, four motor bikes surrounded them; the three-wheeler was forced to stop. Then, two of the motorbike passengers climbed into the rear of the three-wheeler on both sides of Ranjith. They threatened him with death and told him not to move. Ranjith and the driver were asked to hand over their mobile phones, which they did.

Ranjith identified one person out of the eight as Ajith Wanasundara, a retired army officer living in the same area. They directed Chandana to drive towards the cemetery of Dambara. Once there, they further instructed Chandana to take the three-wheeler deep into the cemetery where no one would see them. One of the officers removed Ranjith's T-shirt and blindfolded him. Then he started to beat and kick his legs around twenty times. The men did not ask any questions or explain what they were doing. Then Ranjith heard that

one person calling another and stating that they had arrested the man. Then another asked the officer to take the Ranjith to certain locations. By listening to the conversation between them, Ranjith understood that they were police officers. At that point Ranjith's wrists were cuffed behind his back.

A van came and stopped near them and the officers took Ranjith into its rear and asked him to sit on the floor of the vehicle. One of the officers asked Ranjith if he knew where he was and he answered that he was in the cemetery. Then the officer warned him that they would bury him there. Then he demanded the location of an automatic weapon that Ranjith was supposed to have taken from the army. Ranjith denied that he had ever taken any such weapon. A plastic shopping bag was brought out in which there was chilli powder. Ranjith's head and face was covered with it. Ranjith felt that he was in very real danger of suffocation. The officer removed the bag just before Ranjith passed out and repeated the torture five times. While the shopping bag was on his head the officer continuously punched Ranjith's face. During this ordeal, the other officers repeatedly asked about the weapon, and Ranjith, despite his pain and fear, continuously denied possession of any such weapon. Next, the officer asked where the jewellery he had stolen from Ajith Jayasundara's house was located. Ranjith answered that he did not know anything about this and that he had never engaged in such a crime. The officer again started to beat him with kicks and punches. Other officers removed their belts and began to beat him with the belts too.

He felt the van start to move. While the vehicle was moving, the officers near him continued to assault him. Eventually the vehicle stopped and he heard the officers discussing having tea at Hasthigiri hotel and Meepe.

Again the van started to move, stopping at an unknown location. The officers untied the T-shirt covering his eyes and brought Ranjith to a place where there were seven toilets and three showers. Then Ranjith was asked to have a bath. He was suffering severe pain due to the assault. He noticed that he had urinated and defecated in his sarong. Then he washed everything and had a shower as well. However, he had to wear the same clothes. He noticed five officers around him while he was taking a bath. After the bath, they blindfolded him again with his T-shirt and got him back into the van. After a considerable time, the vehicle was stopped and he was asked to get down and climb up some steps. He understood that he was asked to climb two sets of steps, which made him believe that he was in at least a two storey building.

Once there, once again, the shopping bag with the chilli powder was placed over his head. Ranjith was told to accept responsibility for 15 cases, which he initially refused to do as he knew nothing about them. He was asked repeatedly but continued to deny any connection with the crimes. Ranjith was forced to lie on the ground so two officers could trample his thighs, causing him unbearable pain. Ranjith was unable to bear any further ill-treatment and told the officers that he was ready to accept anything. In desperation, he also told them that all the jewellery had been buried under the banana tree at his house and a TV, a VCD, and cassettes were at home.

He said all this hoping that they would not assault him any more. For the remainder of the day he was not given food or water. However, he noticed that he had again soiled his sarong with urine and faeces.

On 16 December, the officers took him in a vehicle to his residence. Then his wife was questioned about their TV, VCD and cassettes. His wife was able to show the purchasing receipts for all of this equipment. Another officer started to dig the land near the banana tree but did not find any jewellery. The officers asked why Ranjith he said that he had the stolen property to which Ranjith replied that as he could not bear the pain any more he told them what they wanted to hear. When he was brought to the house, his wife and the two children were also present at home.

One officer took a 2 inch wide, 3.5 foot long pole, which Ranjith and his family used to lock the door, and started to beat him with it until it broke. This was done in front of his wife and children, who were screaming loudly in fear and begging the officers to stop. The same officer found another pole, this one 1.5 inch wide and 4 feet long, and started to beat Ranjith about his shoulders. As the wife and the two children were screaming continuously, the officers put them into a room and warned them not to come out. They also told the wife that they would not be sending him home again.

The officers put Ranjith back into the vehicle and removed his T-shirt. Ranjith, despite his pain, was able to note that there was one officer with two stars and eight other officers in the vehicle. It was only then that he realised that he was in the custody of the Mirihana police.

At the police station, he came to know that Chandana, the three wheeler driver, had been released on 16th December. Further, he understood that three other neighbours, Mr. Nimal, his younger brother Jayasena, and Mr.

Chaminda, who had pending criminal cases against them, had also been brought to the same police station. Ranjith noticed one officer at the station recording a statement from Jayasena, who was saying that Ranjith was responsible for the crimes that they had done. Then Ranjith was cuffed with Nimal, and Chiminda was cuffed with Jayasena.

On 17th December, all four were brought to an old building on the Mirihana police station premises. Ranjith identified the place as the ‘Torture Chamber’, because of a conversation that had he had overheard at the station. The police brought them to four separate room. There Ranjith was beaten with a rubber hose. After two hours, they were brought back to the station.

Again, on 18th December, officers brought Ranjith to the torture chamber, where he heard Nimal screaming. Then he saw that Nimal was hanging from a beam. When he was brought down, the officers cuffed Ranjith’s wrists behind his back and suspended him from the same beam. Ranjith was left in that torment for about 30 minutes before an officer returned. He told Ranjith to tell the truth. Ranjith replied that he had not committed any crimes. The officer went away.

Later, the same officers returned with a book. He told Ranjith that there were 21 unsolved cases and asked how many he was ready to accept responsibility for. When Ranjith answered that he was not involved with any of the cases, the policeman in charge ordered the officers to take Ranjith down, make him bathe and provide him with food and water.

Though the officers brought Ranjith to the wash-room, he was not able to have a bath by himself. The officers brought in Nimal and with his assistance they were able to help bathe Ranjith.

Later, he was brought to the cell inside the station where the other three were detained and all four were asked to do exercises. But Ranjith was not able to comply. Ranjith was brought to a room upstairs, where police made him sit on the ground with his wrists cuffed behind his back. At around 7.30 p.m., the officer who was wearing two stars assaulted Ranjith with a rubber belt around 30 times.

On the 19th, Ranjith was brought to the station’s ground floor. At 5 p.m. that evening he was produced before the Magistrate of Avissavella and brought back to the same police station. He understood the police had gotten

a detention order from the Magistrate to keep him inside the station. When the detention order was issued, it ordered Ranjith was to be produced on 21 December around 9 a.m. before the Magistrate. But he was not. On that day he was asked to paint the police station.

On 23rd December, at around 3.30 p.m., he was finally produced before the magistrate and released on bail. But, as there were no officers in court to take his signature, he had to go to the Kuruvita prison. At this prison, Ranjith revealed to the prison officers how he was assaulted. The prison officers examined him and gave him two panadol tablets.

On the 24th, Ranjith was brought back to the Magistrate's Court and released. He went to his parent's residence on the same day. From there he was brought to the Basic Hospital, Matale, on the 25th, where he was admitted to ward number 13 for treatment. There the Judicial Medical Officer (JMO) examined him. The doctors at the hospital informed him that there was damage to his nervous system and that he needed to be admitted to the Teaching Hospital of Kandy and Teaching Hospital of Peradeniya for further treatment.

As a result of the injuries, Ranjith cannot do his day to day work and is not in a position to engage in his profession any more. He further says that in the Magistrate's Court he learned that police have filed four fabricated cases against him.

While taking treatment, Ranjith received a summons from the Magistrate's Court of Horana to appear for a case on 28 January 2011. When he appeared for the case, the magistrate remanded him again. Ranjith states that he doesn't know about any of these cases. He is in fear that police will file more fabricated charges, list him as a notorious criminal, and finally kill him.

*SRI LANKA: Case 5***KA Somarathna: Police Enjoy Impunity despite Torture, Fabrication**

Mr. K.A. Somarathna (48), of Madurankuliya, Aamakuliya in the Puttalam District, was severely tortured by two police officers and was placed in jail for a crime he did not commit.



Mr. Somarathna is married and a businessman by profession. On 22 January 2012, a few policemen and civilians travelling by lorry took a water pump and several other goods that Somarathna had kept at his new business construction site in Sembatta, Mundalama. Since Mr. Somarathna was out of town when the theft took place, he was unable to file a complaint with the Senior Superintendent of Police (SSP) Puttalam against the police officers who had stolen his goods until 25 January.

On 27 January, a police officer named Priyantha of the Traffic Branch of Mundalama police station took Mr. Somarathna to Mundalama police Station, reportedly to record a statement based on the complaint he had made at the SSP's office. When Mr. Somarathna entered Mundalama police Station, Officer Priyantha took his wallet from him. Officer Priyantha took him to the back of the police station building, where the Officer-in-Charge (OIC) was waiting. Without asking Mr. Somarathna any questions, the OIC pulled his hair and kicked him in the stomach. He was beaten severely, and his head was bashed against the station wall. Even after Mr. Somarathna fell to the floor, the abuse continued.

Mr. Somarathna fell unconscious as a result of this beating. When he regained consciousness, he found himself inside a jail cell. Despite his cries for help, he was not given food, water or medical treatment for his extensive injuries. When his relatives tried to visit, police officers refused to allow them to meet with him. His family members reported that they could see Mr. Somarathna inside the jail cell; they said that he was lying down and appeared unable to stand.

According to information received, the OIC threatened Mr. Somarathna and his family; they said that if the complaint to the SSP was persisted with, Mr. Somarathna would be abducted in a white van and forcefully disappeared. At around 10 a.m. the next day, Mr. Somarathna was taken to Mundalama Government Hospital in a police jeep. He was unable to walk as the result of his extensive injuries. A doctor issued a medical report without examining Mr. Somarathna.

A few days later, the police produced Mr. Somarathna before the Additional Magistrate of Puttalam on the charge that he illegally acquired water for personal use from the public water supply. Mr. Somarathna vehemently denied this accusation. When he was standing before the magistrate, Mr. Somarathna explained that he had been subjected to physical abuse by the police. Despite this, the magistrate sent Mr. Somarathna to remand prison for 14 days. Mr. Somarathna told the prison guards at the remand prison that he had been beaten and was in great physical pain. His injuries were examined, and the prison guards admitted him to the prison hospital. While he received treatment at the prison hospital, Mr. Somarathna bled while urinating. After completing his 14-day sentence, Mr. Somarathna was held in remand for another 7 days, and finally released on bail.

On 16th February, Mr. Somarathna was admitted to Puttalam Base Hospital for further treatment. Despite his deteriorating condition and the fact that he had not given consent, he was discharged on 18th February. Mr. Somarathna believes that he was discharged by the hospital authorities under the instruction of the police officers. Since he was still experiencing pain, he checked himself in to Ragama Teaching Hospital and underwent treatment. He is still experiencing pain from his extensive injuries, and is unable to take care of himself without assistance. Mr. Somarathna's family maintain that since Mr. Somarathna was in good health before these incidents, his deplorable health is the direct result of the abuse he experienced at the hands of the police.

Mr. Somarathna filed a complaint with the Human Rights Commission of Sri Lanka (HRCSL). However, neither the SSP nor the HRC have initiated a credible investigation into the violation of his rights. Somarathna believes that his rights enshrined in the Constitution of Sri Lanka have been violated. He seeks an impartial investigation to bring the perpetrators to justice.

*SRI LANKA: Case 6***Thusitha Ratnayake: Brutally Assaulted by Police with Impunity**

Mr. Thusitha Ratnayake (37) of 4th Yaya, Rajanganaya, in the Anuradhapura District, was illegally arrested, detained and tortured for a crime that he did not commit.



Mr. Ratnayake is married and works as a mason. On 21 May 2012, at about 2 am, while Mr. Ratnayake was sleeping at home, his friends Priyantha, Wasantha and Baby visited his residence and woke him up to tell him that the house of their mutual friend, Chandrasiri, had been burgled, and that Chandrasiri's wife's necklace had been stolen.

The four friends went to Chandrasiri's house, where several neighbours were waiting outside for the police to arrive. At 2:30 a.m., police officers from the Thambuththegama police station arrived. Shortly after this, Mr. Ratnayake's brother, Rasika, telephoned Mr. Ratnayake to inform him that police officers had visited his home looking for him; they suspected Mr. Ratnayake to be the culprit. Rasika urged his brother to talk to Chandrasiri and visit the police station, fearing that he would be assaulted if he did not speak to the police.

The police telephoned Mr. Ratnayake several times and told him to hand over the necklace he had stolen. Mr. Ratnayake spoke with Chandrasiri on the phone, who told him to go to the police station and make a statement without fear of assault; Chandrasiri knew he was innocent. But Mr. Ratnayake was afraid; he had been told that the police had questioned several individuals regarding the robbery and, during questioning, some of those people had been assaulted. Mr. Ratnayake maintained his innocence to the police officers; he said that he would visit the police station on the condition that he would not be assaulted. Since the police officers did not agree to this condition, Mr. Ratnayake did not go to the police station.

On 28th May, at around 1.30 p.m., Sergeant Ranbanda and Officer Gunawardena arrested Mr. Ratnayake at 4th Yaya School Junction. They took him to the police station on their motorcycle. Sergeant Ranbanda and



Officer Gunawardena took Mr. Ratnayake to the yard behind the police station, removed his shirt and blindfolded him. They tied both his hands and legs together, and inserted a wooden pole between his legs. They then brutally assaulted Mr. Ratnayake for over one and a half hours. During the course of the assault, Sergeant Ranbanda spoke with someone on the telephone and told the person he was speaking to that Mr. Ratnayake had been arrested. He then called Officer Wilegoda and repeated the same information to him.

Sergeant Ranbanda and Officer Gunawardena made Mr. Ratnayake stand on a chair and attached a rope from the ceiling rafter to his body. They kicked the chair from beneath him so that Mr. Ratnayake was hanging from the ceiling. Keeping him in this position, they assaulted him, beating his spinal cord, legs and heels.

At about 4.30 p.m., they untied Mr. Ratnayake and took him into another room, where they handcuffed him to a bed. At about 7.30 p.m., they took Mr. Ratnayake inside the police station and told him that they had received information that he is a good person, and he was therefore going to be released on bail. At about 9.30 p.m., the police allowed Mr. Ratnayake to wear his clothes and eat a meal. Although Mr. Ratnayake asked for water on several occasions, his requests were refused.

On 29th May, Mr. Ratnayake's brother, sister and wife came to the police station to visit Mr. Ratnayake. The police officers instructed Mr. Ratnayake not to tell his family that he had been assaulted. They threatened him, saying that if he did tell the truth about the assault, they would not permit him to leave.

Later that day, at about 12.30 p.m., Mr. Ratnayake was released. His friend took him to Thambuththegama Government Hospital. He was examined by a doctor and kept in the hospital for treatment from 29th to 31st May.

Mr. Ratnayake is still experiencing pain. He is unable to work and cope with basic daily tasks. Mr. Ratnayake has filed a complaint with the Human

Rights Commission of Sri Lanka, the Inspector General of Police (IGP), Deputy Inspector General (DIG) North Central Province, and Headquarters Inspector of Police of Thambuththegama police station. None of these authorities have initiated a credible impartial investigation into the abuse Mr. Ratnayake suffered at the hands of state agents, and the blatant violation of his basic rights. Mr. Ratnayake seeks justice.

The Asian Human Rights Commission has reported innumerable cases of the torture of innocent people by the Sri Lankan police. These acts, which have taken place at different police stations across the country, are illegal under local and international law.

The state of Sri Lanka signed and ratified the Convention against Torture on 3rd January 1994. Following state obligations, the Parliament of Sri Lanka adopted Act No. 22 of 1994, which made torture a crime punishable for a minimum of seven years. The Attorney General of Sri Lanka is supposed to file indictments in cases where credible evidence is found of people being tortured by state officers.

## SRI LANKA: Case 7

**Sathasivam R: “No female in this universe could bear it”**

Four officers from Medirigiriya police station came for 23-year old Sathasivam Rathykala while she was on duty as a casual attendant at Polonaruwa General Hospital on 24th November 2001. They asked her to come and make a statement and took her to their jeep. Once in the jeep, they began slapping and kicking her and abusing her with filthy language. Once at the police station, they handed her over to CID personnel of Polonaruwa police station.

Sathasivam describes what happened next as follows:

*“Twelve CID personnel took me into a dark room where I was alone and there weren’t any females, either police or civilians. In the room they assaulted me, hit me with clubs and ropes, and trampled me all over my body with boots. They removed all my clothes except my panties and brassiere. I begged them to free me and give my clothes back, and I also told them that I was totally innocent. Then they removed my remaining clothes, and I was completely nude. They were all under the influence of liquor, and the whole room smelt of it. Then they started burning with cigarette butts all over my body and blew the smoke in my face.*

*After doing all this unbearable torture the 12 of them raped me one after another. When I started groaning in unbearable pain and I was able to feel that I was profusely bleeding and my body was swollen, one of them gave me a glass of milk tea. Feeling so thirsty, I took the glass of tea, but no sooner had I drank it than I was feeling giddy and the whole room was turning. Then I fell unconscious. When I came to, I found myself on a bed in a different room, all alone and completely nude. A few minutes later the same CID personnel came and mixed chilli powder with water and poured it into my eyes. When I started shouting in agony they forced rags into my mouth. Then they threatened to kill me. They wanted me to admit that I belonged to the LTTE (Liberation Tigers of Tamil Eelam) as a cadre, and that I was to be used by them to throw a bomb at Minister Maithripala. Then they recorded my statement in Sinhala.*

*As I couldn't bear the agony and unbearable pain from the severe torture, and also fearing further torture, I was compelled to admit to all they wanted of me according to their version, which consisted of things that I had never even dreamt. They wrote all what they wanted and never read the statement recorded by them to me, neither in Tamil or Sinhala, and then forced me to sign it. Out of fear and the threat of further torture I signed against my will.*

*At about 10 pm on this day, after taking down my statement, the 12 of them came and raped me over and over again. They were drunk and I was completely nude, sleeping all alone in that room. The next day, November 24, they blindfolded me, tied my hands, and took me in a jeep to my village. The 12 CID personnel who caused the most damage to me came in the same jeep to my village. Reaching my house they scolded me in unbearable filthy language, and wanted me to show to them where the LTTE cadres were living. When I begged and told them that I knew absolutely nothing about the LTTE they brought me back to the police station.*

*On November 25 they handed me over to the Kaduruwela police. The Kaduruwela police humiliated me more than I could bear by asking irrelevant questions while I was very badly hurt mentally and physically. No female in this universe could bear such questions and remarks as those that were made by them. They continued accusing me of being LTTE and of hiding the facts. I was kept in solitary confinement there for one month. I almost went mad and I even wanted to put an end to my life. But I thought that I must live to tell of all these atrocities to the authorities concerned so that other women in Sri Lanka would not have to bear similar acts. Although the Kaduruwela police knew I was innocent, they didn't want me to expose them so they sent me to the Magistrate's Court at Polonaruwa on 14 March 2002, and from there I was taken to the Anuradhapura Prison. Out of the 12 CID personnel who tortured and raped me, four accompanied me to the prison. On the way they told me not to divulge the incident, and threatened to kill me if I did."*

Sathasivam was later transferred to Welikada remand prison.

Meanwhile, the police fabricated and submitted three cases against her in the higher courts. She did not undergo a proper medical examination until after one was ordered by a High Court judge on 30 August 2002, at which time she told the JMO and other medical staff all the details of what had happened to her at the police station. Sathasivam was subsequently released on bail and on 20 November 2002 made a complaint to the HRC. Since then, she has experienced continual harassment by the police.

On 8 February 2003 she made another complaint to the HRC about an event that had happened the day before, when two men on a motorcycle, one of whom was among the 12 perpetrators, stopped next to her and her mother as they were walking along the road. The officer told Sathasivam to come to the CID office and forced her to accept 20 rupees for the fare. He told her that if she didn't come they would come and arrest her. The charges against Sathasivam were pending in the high court.

## SRI LANKA: Case 8

**Nandini Herat: Beaten & Raped in Custody**

Herat Pathirannehelage Nandini Sriyalatha Herat was a 39-year-old unmarried woman who was arrested by several police officers from Wariapola in civilian clothes on 8 March 2002. She was arrested at her home in the presence of her family and was kept for two days in the Wariapola police station, during which time she was severely tortured.

The forms of torture included stripping her naked and inserting a pipe-like object in her vagina, which made her bleed and caused immense pain. Once she was produced in court, she complained to the magistrate, who ordered an inquiry.

Her own hand-written statement is as follows (translated from Sinhala).

*"I was brought to the Wariapola police station on 8 March 2002 around 6:15 p.m. [The police] came to our home in a white vehicle. There were four people dressed in civilian clothes. Because I was bathing at the time, they asked my father if Nandini was at home. Hearing them, I peeped from the wall near the well. Because I saw someone known to me, I wrapped a towel above by bathing clothes and went there. One of them was examining my younger sister's identity card. His name is Warnakulasuriya. He said they needed to record a statement by me. When I asked what the statement was about, they did not tell me. Warnakulasuriya, the OIC Crimes and a person I did not know came inside our house. They did not allow me to put on my clothes. When I asked Rathnatileke, who was standing at the door, to move away as I wanted to dress, he did not do so.*

*My mother came to the vehicle to accompany me, but they did not allow her to get into the vehicle. When I was getting into the vehicle I saw a person with his head covered by a white sheet. I do not know who he was. They brought me [to the station] and made me sit on a bench. At that time there were no women present. 10-15 minutes later an elderly woman arrived. Between 7:15 and 7:30 p.m. Ananda arrived. He was dressed in gurupata trousers and a white t-shirt. He said that today had been good for getting a bite.*

*I asked to be taken home. I was not given any food or drink that evening. I asked several times why I was brought there but I was not told the reason. Around 8:30 p.m., Ananda, Rathnatileke and Warnakulasuriya arrived. I heard the reserve policeman calling out to some men and a woman. Those three men were very drunk. Warnakulasuriya first beat me with a pole. I felt my left arm becoming lifeless. I felt faint. Ananda removed my clothes. I asked him not to remove my clothes. I screamed. After my clothes were removed someone struck me a blow from behind. I could not recognise who it was. Ananda put something like a tube into my vagina. Warnakulasuriya held my mouth shut with his hand. Rathnatileke stood by the front door and watched. At that time the back door was closed. [He said] 'This is only a foretaste. It is tomorrow that the job will be done.'*

*Blood was pouring from my vagina and I felt a sharp pain in my underbelly. The blood was dripping onto the cement floor. Ananda called the woman and told her to cut a piece from my towel and bring it. The woman brought the towel. Ananda tore it in half and gave me one piece. I wore it. With the other piece he wiped the blood on the floor. After that he asked Rathnatileke something. I did not hear what he said. I heard Rathnatileke say, 'Put it in Cupboard 4 of the Crimes Division. Tomorrow let us throw it far away.'*

*A little while later, because I felt sick, I fell asleep right there. I vomited around 5.30 a.m. The OIC told the woman to wash the vomit. 'Can't say if the ASP might come,' he said. I asked the OIC for medicine and to send me to hospital. He paid no attention to that but gave me a blow. He scolded me with raw filth. After a short while, I went to the OIC's room and asked him again why I was brought there. Then Rathnatileke said, 'You have no house to go now; they have given it the works also.' I could not think about anything at that time.*

*Around 10:30 a.m. that morning, the OIC beat me again with a large pole. At that time I was terribly sick. The OIC Crimes asked him not to beat me. After that I was not beaten. By that time I was in a semi-conscious state. The following night, the woman who was locked up with me gave me tea and two snacks from what had been brought for her. There were some others also locked up. I cannot remember who they were. I heard them talking, but I have no memory*

*of what was said. The next morning Warnakulasuriya took me to the Crimes Section, opened a big book and told me, 'Sign your statement.'*

*At that time no statement had been recorded from me and therefore I hesitated to sign it. But because WPC No. 2212 kicked me hard from behind and because I could not endure any more pain and because I was terribly hungry, I thought that whatever might happen, it would not matter, and signed the statement.*

*Around 12:30 p.m. that day, I was forcibly taken again into a white coloured vehicle. I refused to get in and did not get in. I was forced into the vehicle. Inside the van was the driver of the vehicle and Warnakulasuriya, who was dressed in civilian clothes. Rathnatileke was dressed in uniform. There was another constable in civilian clothes. The vehicle went along Nikaveratiya Road. It stopped near a large Mara tree and Rathnatileke and Warnakulasuriya went there. There were officers in civilian clothes standing by the door of the vehicle. After that I was taken to the Wariapola courthouse. While I was in the van, Warnakulasuriya went inside the courthouse. He came back after 5 to 10 minutes. I remember that he had a paper in his hand.*

*After that I was taken to the Wariapola hospital. I told a doctor about my sick condition. Though he asked me to sit down, there was nothing there to sit on. Rathnatileke and Warnakulasuriya were there all the time. On the way to Kurunegala, the vehicle stopped near several shops. I was handed over to the Kurunegala Prison. Until I came to the prison I had had nothing to eat. They gave me food brought from Kurunegala.*

*On March 10 I was taken to hospital. [Then, after making a complaint to the warden of prison] on March 13, 14 and 15 I was taken to the hospital for check-ups. On March 17 around 3 p.m. I was examined in the orthopaedic section of the hospital. I am still being taken to hospital for treatment. On the day I was brought to court, I made a public statement to the lady magistrate."*

Nandini has been unable to go to private doctors or to pursue investigations into the case of her own accord as she is being kept in prison. Her father has

been severely threatened by the local police and higher officers not to pursue the complaint. Lawyers are reluctant to help the victim's family because of fear of repercussions. Nonetheless, Nandini made a similar statement to the magistrate of the Wariapola Magistrate's Court, who issued the following order:

*"While the police have the right to arrest an accused, to investigate and take a statement from him about the relevant happenings, the police have no power to inhumanely assault anyone. I order Deputy Inspector General Wayaba to investigate this matter and submit a complete report to this court. I order the registrar of this court to send a copy of this order to the Deputy Inspector General of Police."*

The Prosecution of Torture Perpetrators Unit of the Attorney General's department forwarded the information provided by the AHRC on this case to the CID and asked the CID to conduct a criminal investigation into the allegations. The letter from the Attorney General's department further stated that upon completion of the criminal investigation, the investigative material should be studied to consider the institution of criminal proceedings against the perpetrators. At the start of August, the five officers—including the OIC—of the Wariapola police station were charged before the Wariapola Magistrate's Court. The DIG in charge of the Wayaba area filed the charges.

However, the charges are merely causing simple and grievous hurt to Nandini. These are comparatively less serious offences than charges of rape or torture. What is more, the gravity of state officers inflicting torture on a civilian has been brought down to merely physical hurt caused by one civilian to another.

The officers pleaded not guilty to the charges. When a bail application was made on behalf of the police officers, Priyantha Gamage, the attorney who appeared for Nandini, objected to bail on the grounds that the officers were still holding their positions, and also that they would be likely to interfere with the witnesses and to harass them. Gamage also stated that the police officers should have been charged for torture under Act No. 22 of 1994, and the offences under that act are unbailable. The magistrate granted Rs. 10,000 bail for each of the accused. She also ordered that their passports be impounded and the immigration and airport authorities be informed of this order. The magistrate severely warned the accused not to harass the witnesses.

She also stated that it was embarrassing to have the same officers who prosecute others to appear in court as the accused. Therefore she requested that the Judicial Service Commission assign a different court to hear this case.

The accused police officers were reported in the press to be engaged in a campaign to oust the DIG who filed the charges against them, with the help of some powerful local politicians. The Minister of Women's Affairs, who lives very close to the police station where Nandini was tortured and sexually harassed, throughout tried to defend the police officers. When asked by the BBC Sinhala service whether she talked to the victim to find out her side of the story, she said only that she had promised to talk to the victim. However, the minister had not spoken to the victim. It was widely believed that she was trying to protect the police officers.

*SRI LANKA: Case 9***Sugath Nishantha Fernando: Bribery, Assault, Assassination**

Sugath and his wife, Sandamali Padmi Peiris, are petitioners of a fundamental rights case before Supreme Court, Negombo (*Case No. FR. 446/07*). They were allegedly tortured after illegal arrest and detention by 12 police officers attached to the Negombo police station.

Sugath had earlier made a complaint against Inspector of Police (IP) Mahagama Dramadasa for soliciting a bribe of Rs. 5,000 (\$ USD 46), about which the Bribery Commission has made inquiries and filed a case before the High Court of Colombo (*Case No. B/1658/2006*).

According to the information received, at 11 a.m. on 23 June 2008, the couple hired a three-wheeler bearing number 205/8025 driven by a driver called Ajith and were on the way to the Negombo Hospital to get treatment for Sugath's wife. While the three-wheeler was waiting for a traffic signal near the Dalupatha Bridge on Colombo-Chilaw main road, four persons, two of whom Sugath identified as Niroshan and Namal, stopped the three-wheeler. Niroshan and Namal asked the couple to withdraw the case which is currently pending at the Supreme Court, Negombo, before the evening of the next day [*June 24th*].

They said if Sugath did not withdraw the application, they would kill them all. They further said that they had permission to do so from the Negombo police. Due to fear, the couple returned home without going to the hospital. Just after the couple returned home, the four persons came to the gate of the house and started banging on it and shouting that they would kill the couple if the couple did not withdraw the case. Sugath did not open it but could identify the four persons through the gate as the same men he met near the bridge. Two unidentified persons were just standing with them without shouting or banging on the gate.

The couple went to the office of Deputy Inspector General (DIG) in Paliyagoda where they met DIG Sarath Jayassoriya, who instructed Assistant Superintendent of Police (ASP) Jagoda Arachchi and Officer-in-Charge (OIC) Samarajith to take immediate action. Then the couple made a complaint to

Paliyagoda Criminal Division regarding the death threats (No. SIIB 345/266) on June 23rd.

Those who made death threats to withdraw the case are known to the couple as persons from criminal backgrounds, usually hired for criminal activities after their release. The couple believes that these threats have been made at the instigation of police officers, who are respondents in the fundamental rights application. All members of the family are now living in fear of further harassment or death threats while in pursuit of justice.

The history of this case begins when S.K.A.S Nishanta Fernando made a complaint against an Inspector of Police (IP), who solicited a bribe of Rs. 5,000 (\$ USD 46) from him, and the Bribery Commission, having investigated the complaint, filed an action against this police officer at the High Court of Colombo. On 12 November 2007, a police squad arrived in jeeps, motorcycles and three-wheelers and surrounded the house of Mr. Fernando. Members of the squad assaulted him with fists, kicked him when he fell down on the floor and trampled him until he fell unconscious.

They also hit his wife with a pistol on her forehead and trampled her even after she fell to the floor. They slapped the couples' young daughter, Dilukshi, and hit her head. One police officer tried to remove her blouse, despite her struggle against this. She was dragged to the police jeep and one officer tried again to lift her blouse. When she screamed, she was beaten. She shouted from the window asking someone to go and inform her grandmother.

When she inquired where they were being taken, a police officer replied, 'We are taking you to the beach to kill you.' The young son, Anjana, was dragged to a wall and struck about the head, face and stomach. Due to this mistreatment he lost part of a tooth and his lip was split.

Fernando regained consciousness only when he was inside the Crime Division of the Negombo Police station and water had been thrown over him. One police officer was shouting that this fellow had to be killed and that the Senior Superintendent of Police (SSP) had said to do this.

He was dragged out of the room and overheard an officer speaking over the phone to someone. 'Sir, that is what I am writing now, about this fellow who is half dead now in front of me.' Later, after their release all members of the

family sought medical treatment and the medical reports confirmed their injuries. In an application made to the Colombo High Court in the bribery case, the High Court judge cancelled the bail granted to the police officer who was the accused in this case.

Sugath Nishantha Fernando was assassinated on 20th September 2008 while he was sitting with his son in his vehicle. A man on a motorcycle shot him in broad daylight. There has been no investigation into his murder.

*SRI LANKA: Case 10***Waragodamudalige Gerald Mervyn Perera: Assassinated for Complaint**

Waragodamudalige Gerald Mervyn Perera, a 39-year-old father of two children, was tortured by eight police officers at the Wattala Police station (Colombo), resulting in him being put on a life-support system. On 3 June 2002, after finishing his work at the Colombo Dockyard around 9 a.m., Gerald Perera went to his mother's place at Alwis Town. Having spent some time there, around 11 a.m. he went by bus to Ekala. At Ekala he bought some groceries to take home and then took the Gampaha bus to his home at Gonagaha.

Around 12.45 p.m. he got off at the Welikada junction and started walking towards his home. Suddenly, two persons dressed in civilian clothes grabbed him by the hands and took him to a jeep that was parked nearby, saying, "It's you we want. We were waiting till you came", and pushed him into the jeep. Seeing his wife and three-year-old son inside the jeep, Gerald asked, "Where is our daughter?" Sobbing she replied, "They did not allow me to fetch her from the preschool." Realising that the men in the jeep were police officers, Gerald Perera pleaded with them, "Please collect my daughter and drop the three of them at my sister's house in Alwis town." This request was not heeded. His wife and son were dropped on the roadside and he was taken away blindfolded.

He was not given any reason for his arrest, let alone a warrant issued by a court of law. Ten officers were present at the time of the arrest and none of them wore police uniform. He was taken into the Wattala police station and was brutally assaulted by the officers attached to this station, namely, OIC Sena Suraweera, SI Kosala Navaratne, OIC Crimes, SI Suresh Gunaratne and several other police officers. Gerald Perera's hands were tied behind his back, his eyes were blindfolded and he was hung from a beam and brutally tortured for about one hour. He was severely beaten with an iron bar on his back, legs, abdomen, and other body parts. Thereafter he was untied and brought upstairs. He was laid on the floor and his hands were burnt with matches. He was questioned about a murder case of which he knew nothing, and was kept at the station on the night of June 3rd.

Around 10 a.m. on June 4th, his brother Ranjit Perera visited the station along with the Chairman and Vice Chairman of the Pradhesiya Sabha (Provincial Council) and inquired about him from the OIC. They were told that Gerald Perera had been taken into custody due to false information relating to a triple homicide. The police had been looking for a man named "Gerald" and picked him. Gerald Perera was thus released from the police station on the morning of June 4th. Complaining of severe pains, he was taken to Yakkala Wickramarachchi Ayurvedic Hospital. The doctor who examined him advised that he should be taken to an emergency hospital as he was in a serious condition. He was suffering renal failure. He was then taken to Nawaloka Hospital in Colombo. While in the hospital, Gerald Perera made a statement to an officer from another police station about the torture. Gerald survived the injuries and treatment. He was later assassinated on a public bus, before he could give evidence against the police in the High Court.

## PHILIPPINES

### *Forms of Torture used in Philippines*

#### **Physical Torture**

- Systematic beating; hitting on the head, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;
- Food deprivation or forcible feeding with spoiled food, animal or human excreta & other substances not normally eaten;
- Electric shock;
- Cigarette burning;
- Submersion of the head in water ;
- Being tied or forced to assume fixed and stressful bodily positions;
- Electrical torture of the genitals;
- Harmful exposure to the elements such as sunlight and extreme cold;
- The use of plastic bags and other materials placed over the head to the point of asphyxiation;
- Rubbing red chilli on the genitals and other parts of the body.

#### **Mental / Psychological Torture**

- Blindfolding;
- Threatening a person(s) or his/her relative(s) with bodily harm, execution or other wrongful acts;
- Confinement in solitary cells or secret detention places;
- Prolonged interrogation;
- Denial of sleep/rest;
- Deliberately prohibiting the victim from communicating with any family member.

*PHILIPPINES: Case 1***Lenin Canda Salas et al: Torture Dismissed by Prosecutor**

On 3 August 2010 at 9.30 p.m., Lenin Salas, Jerry Simbulan, Daniel Joseph Navarro and Rodwin Tala were arrested by persons from the San Fernando City Police and the Provincial Public Safety Office under Superintendent Madzgani Mukaram in Villa Barcelona Subdivision, Barangay Sindalan, over their alleged involvement with the Marxist Leninist Party of the Philippines, an illegal armed group.

On August 5, one of the victims, Lenin Salas, was interviewed while in detention. He said that while he and companions were at the house of a friend, Donald, in the same subdivision, a security guard had approached them. They were asked who they were looking for. He told him the name of the persons. The security guard called out to Lenin's companions to come closer.

While Lenin was speaking to the security guard, he saw a policewoman talking on her mobile phone. She was exiting from one of the houses close to where they stood. After a few minutes, another three policemen, whom he knew later to be SPO4 Hernando Sarmiento, PO3 Arnold Barrion and PO1 Edward Bengbeng, arrived onboard a police car. All of them are attached to the Sindalan Police Station.

Three of Lenin's companions, who were inside their car, were asked to alight. The policemen arresting them had also called for police reinforcements from the Provincial Public Safety Office (formerly Regional Mobile Group) under the command of Superintendent Madzgani Mukaram. When the group of Superintendent Madzgani Mukaram arrived, Lenin and his four companions, Jerry Simbulan, Daniel Joseph Navarro, Rodwin Tala and Jose Llonas Gomez, were already lying face down on the ground. Superintendent Mukaram started assaulting and kicking Lenin when he came close to him. He also assaulted Lenin's companions.

Lenin and his companions were taken to separate vehicles. Inside a police car, he was continuously assaulted and beaten with a stick. All of them were taken to the Provincial Police Office. Inside the police headquarters, all of them were blindfolded and tortured. Lenin was assaulted and beaten with a gun,

burnt on his body and his neck with lit cigarettes, had his face wrapped with cellophane and was kicked in his genitals. While blindfolded, the policemen purposely squeezed and clicked a revolver beside his ear for him to hear. They were not given enough food for a day.

Lenin dared Superintendent Mukaram saying: "Fine, kill us all, you already got hold of our families, but what are you are still doing to us?" This was after Superintendent Mukaram threatened to harm Lenin's family if he refused to cooperate. Superintendent Mukaram carried on threatening them, saying that more of their companions would disappear and that he had already ordered his men to work on it.

When Lenin demanded Superintendent Mukaram to respect their rights, he was told: "There are no human rights for us. We will kill each of your contacts in the media and other groups and we will just bury them". Superintendent Mukaram told Lenin that he had had enough of his sister, Donna Salas Lopez, but he did not elaborate. Superintendent Mukaram said that to kill her would be easy; and Lenin could not visit even her wake because they would make sure that he could not get out of jail.

On August 4, at 2 p.m., they were taken to the Provincial Prosecutor's Office in San Fernando, Pampanga Province, where they were charged for illegal possession of firearms, ammunition and explosives.

On August 9, 2010, the complainants, Lenin Salas, Jose Gomez, Jerry Simbulan, Rodwin Tala and Daniel Navarro, filed charges for violation of the Anti-Torture Act of 2009 against Superintendent Madzgani Mukaram, commander of the Provincial Public Safety Office (formerly Regional Mobile Group) and other police officers whose names could not be immediately identified at the time. Salas and others filed complaints of torture in detention six days after their arrest.

After the overly delayed and lengthy process, of, for example, the submission of affidavits, appeals, and petitions (including demands by the accused to expunge from record the complaint of torture), the prosecutor Maria Gracella Dela Paz - Malapit of San Fernando, Pampanga, concluded in her resolution dated July 21, 2011 that "the instant complaint for violation of Rep. Act No. 9745 (Anti-torture Act of 2009) against P/Supt. Madzgani Mukaram be DISMISSED for insufficiency of evidence".

Prosecutor Dela Paz - Malapit dismissed the complaint of torture by the five torture victims against a police colonel and other policemen due to “insufficiency of evidence” because their identification of the accused was ‘dubious’ since they were ‘blindfolded’. The five complainants filed a petition for review at the Department of Justice (DoJ), asking them to reverse the prosecutor’s recommendation. This is still pending. Under the Philippines prosecution system, it is the Secretary of the DoJ who has the final decision on whether or not criminal charges are filed in court for trial.

However, while Prosecutor Malapit admitted that “there exists a probability that they (victims) were tortured”, she nevertheless dismissed the complaint, saying that the facial identification of the accused was dubious because they “did not have the opportunity to see him considering that they were blindfolded”. In justifying her argument she invoked the Supreme Court (SC) ruling on *People vs. Acostal*, by merely copying the jurisprudence that the “identification of the offender is crucial in every criminal prosecution”.<sup>45</sup>

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45 For further reading on the Philippines, please see ‘Article 2’: [www.article2.org/pdf/v11n0203.pdf](http://www.article2.org/pdf/v11n0203.pdf)

*PHILIPPINES: Case 2***Jedil Esmael Mestiri & Rahman Toto: Torture in Basilan**

In its appeal<sup>46</sup> the Asian Human Rights Commission mentioned that Asraf Jamiri Musa, a 17-year-old boy, was tortured by soldiers attached to the 32nd Infantry Battalion (IB), Philippines Army. The boy was temporarily released from detention when the court granted the petition to recognizance filed by his parents. However, we have also learned that three days after Asraf's torture, the same military unit was again involved in the illegal arrest, detention and torture of a 27-year-old man, Jedil Esmael Mestiri. With the help of input received from the Task Force Detainees of the Philippines - Mindanao (TFDP), the Mestiri's case is detailed below:

**"If you do not confess, I will kill you"**

Jedil Esmael Mestiri (27) belongs to the Yakan, 'the majority Muslim group in Basilan'.<sup>47</sup> On 26 June 2011 at 7 p.m., Mestiri was resting inside his home in Lamitan City when a certain Ben [alias], said to be a military intelligence officer, called him. Having previously served the military as an informant, Mestiri was not suspicious of going out with him on a motorcycle.

When they reach a checkpoint, the soldiers guarding it stopped them. Ben spoke to the soldiers, and one of them, Captain Guianan, performed a body search on Mestiri without giving any reasons. He was then instructed to go inside the soldier's detachment, where they tied his hands and feet with a nylon cord, and blindfolded him.

He was later taken to Camp 1 of the military battalion in Lamitan City, Basilan. Here they interrogated him about the bombing incident in Lamitan City in 2010. They also questioned him about the kidnapping of an engineer. As they interrogated him, they repeatedly punched his chest. He could sense that there were several persons punching him.

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46 AHRC-UAU-040-2011

47 See "Yakan" by Gwendalene Ting, [http://litera1no4.tripod.com/yakan\\_frame.html](http://litera1no4.tripod.com/yakan_frame.html) for further information

When Mestiri asked the military why they were treating him like this despite him helping them as an informant in the past, he was only told: “Pag hindi ka umamin papatayin kita” (If you do not admit it, I will kill you). But Mestiri did not admit anything, despite being subjected to repeated interrogation with similar questions, over a period of eight hours.

On the following day, June 27, he was not given food to eat for breakfast, only water to drink. At 10 a.m., they took him to a police station in Lamitan City. It was only at this time that the soldiers removed his blindfold and, when they reached the police station, his hands were untied. He was then brought to the court in Isabela City.

The soldiers did take him to the General hospital in Isabela City to see a doctor. Mestiri informed the doctor examining him that he had pains in his chest. He later saw the soldiers talking with the doctor. The doctor did not pay attention to his complaint of chest pains, and nor did he inform him about what he and the soldiers had discussed regarding his medical condition.

Mestiri is presently detained at the provincial jail in Isabela City, Basilan. He is being tried over questionable charges of arson and murder over an incident that happened in 2010.

### **“I do not know what a bomb looks like”**

Rahman Totoh (34) also belongs to the Yakan group. At noon on 28 July 2011, he was forcibly taken by armed men in camouflage uniforms from his home in Barangay San Rafael, Isabela City. The perpetrators are members of the Special Action Force (SAF) of the Basilan Police Provincial Office (BPPO) of the Philippine National Police (PNP).

Totoh was resting when suddenly the door of his house was kicked open. Several persons carrying M16 rifles entered and Totoh was told, “huwag kang galaw” (do not move). One of them kicked him down, while three others stepped on his nape and covered his head with a balaclava.

Inside the vehicle in which he was taken, both of his ears were repeatedly flicked. He was taken to an unknown place about 30 minutes away from his home. With his head covered, he could still sense that he was inside a room.

The torturers also wrapped the balaclava covering his head with adhesive tape and handcuffed his hands behind his back.

Here, he was interrogated about the incidents of killings in Isabela City and forced to admit involvement in the bombing incidents two months earlier. When he said, “I don’t even know what a bomb looks like”, they repeatedly punched him, hit his chest, face, head and other parts of his body. His watch, mobile phone, and necklace were also confiscated.

His torturers were forcing him to admit to the crime as they stepped on his nape and his feet. His handcuffs, which was attached to a bench, was kicked several times. They also set his moustache on fire once. For about three hours, they repeatedly subjected him to interrogation before he was taken to the Hall of Justice. At about 4 pm, he was remanded to the Bureau of Jail Management and Penology (BJMP) in Isabela City.

Later, Totoh learned that his arrest was due to a pending arrest warrant for murder issued by the Regional Trial Court (RTC) of Isabela City, Basilan; however, he had not been shown the arrest orders nor had the reason of arrest explained to him during either his arrest or interrogation.

In the medical examination report issued by Dr. Jesus Daniel Naon M.D., the physician who examined him at the General Hospital of Basilan, indicated that Totoh had: 2 linear abrasions of 1 cm; 1 cm apart (L) anterior chest anterior axillary line 5th ICS and 2 cm reddish discolouration of skin 7th ICS (L) anterior axillary line. The doctor’s medical report, however, fell short of fulfilling what the Anti-Torture Act of 2009 requires in examining the condition of persons alleging torture. At the time of the last interview on August 18, 2011, Totoh was still suffering from pains in his chest and his right thumb was numb.

*PHILIPPINES: Case 3***Mestiti & Toto: Doctors Ignore Injuries, Case Dismissed**

In its previous appeal<sup>48</sup> the Asian Human Rights Commission mentioned that torture victims Jedil Esmael Mestiri and Rahman Toto, detained in the provincial jail in Isabela City, Basilan, and the Bureau of Jail Management and Penology (BJMP), respectively, have complained of being tortured by the military and police.

Mestiri claimed soldiers attached to the 32nd Infantry Battalion (IB), Philippine Army (PA) tortured him inside their camp where he was taken for questioning. Rahman claimed the policemen attached to the Special Action Force (SAF) of the Basilan Police Provincial Office (BPPO) who took custody of him tortured him after his arrest and set his moustache on fire.

In Mestiri's case, before the soldiers remanded him in prison the soldiers did take him to the General hospital in Isabela City, where he was examined by a doctor; however, the doctor did not pay attention to his complaints of chest pains and injuries. The victim also saw the doctor speaking to the soldiers before he examined him. The doctor did not bother informing him what it was they were discussing.

In Rahman's case, Dr. Jesus Daniel Naon M.D. of the General Hospital of Basilan, the physician who examined him, did indicate the injuries that he had; however, other than mentioning the dimension of his injuries and their location, the medical explanations and appropriate questions, required by the Anti-torture Act of 2009 to help explain the cause injury, were either inadequate or missing.

In our letter to the Philippine National Police (PNP), we did mention how the doctors had performed their examination on two torture victims. But in his letter to AHRC dated 6 January 2012, Police Director Nicanor Bartolome, chief of the PNP, rejected both Mestiri and Rahman's allegations of torture against the perpetrators.

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48 AHRC-UAC-174-2011

In Mestiri's case P/Director Bartolome claimed that: "before Mestiri was brought to the Provincial Jail of Isabela, he was subjected to medical check-up at the Basilan General Hospital where no signs of physical abuse or maltreatment was found". He further defended his men, saying: "(the) Basilan PPO maintained that Mestiri was treated fairly at the time of his confinement and that he was not subjected to any kind of torture".

In justifying the injuries that Rahman had, he said: "Totoh attempted to escape, that forced the arresting officers to chase and subdue him. After which, Totoh was committed at the Isabela City Jail where he complained of chest pain". He further trivialised his medical certificate and in defending his men made a conjecture, saying that: "his injuries were mostly found on the chest which could have been inflicted when the arresting officers placed him in prone position to handcuff him when he resisted arrest."

P/Director Bartolome further argued that: "Police procedure that requires a suspect to lie on the ground facing down is a standard technique applied in performing arrest. Hence, it was concluded that the arresting officers performed their duties with regularity".

The AHRC completely rejects P/Director Bartolome's explanation as to the result of their investigation regarding the victims' allegations of torture. To require torture victims to produce medical proof where, in fact, the doctors who examined them ignored their complaints and deliberately failed in recording a medical report as required by the Anti-Torture Law, is completely unacceptable.

Here, it is obvious, the doctors failed in their duties and legal obligations to conduct proper examination of the victims. It should be the doctors involved and not the victims who should provide an explanation why there was inadequate medical proof. The doctors' neglect and incompetence in examining the victims and in conducting forensic examination are breaches of medical practice and criminal offenses.

*PHILIPPINES: Case 4***Daud Ali Manampan Rahim: Torture & Detention of Innocent Man**

Based on documentation by the Task Force Detainees of the Philippines (TFDP-Mindanao), the Asian Human Rights Commission has learned that on 22 September 2011, at 4 pm, Daud Ali Manampan Rahim, a tricycle driver, was at the highway in Barangay (village)



Batulawan, in Pikit, North Cotabato, waiting for passengers, when soldiers attached to the 7th Infantry Battalion of Philippines Army, under the 602nd Brigade, took him into custody. A man alighted from a vehicle in camouflage uniform and armed with an Armalite rifle. He was followed by another two persons who were armed with handguns and wearing plain clothes.

They told Rahim that if he did not want to get hurt, he should come with them, as he had some explaining to do at their military battalion in Carmen, North Cotabato. He was blindfolded and his hands were tied with a plastic wire. While travelling, they interrogated him, forcing him to admit that he was Sarip Milo, a rebel commander and one of the accused to be arrested for an October 2006 bomb blast.

When Rahim told them that he was not Sarip Milo and identified himself, the soldiers forced him to admit that he was indeed Sarip Milo. As they travelled, Rahim sensed that he had been transferred to another vehicle. He estimated the journey took about an hour before they reached their destination. Here, he was into a room, where he was again interrogated; forcing him to admit that he was Sarip Milo. He sensed that there were five persons involved in interrogating him.

Rahim was later transferred to another room. Here, Rahim was electrocuted on his stomach, feet, hands, and genitals several times. They also wrapped his head in a plastic bag. When he lost consciousness twice, the soldiers poured hot water on him to wake him up.

In torturing him, his interrogators would alternately electrocute him and then suffocate him with the plastic bag. Apart from forcing him to admit

that he was Sarip Milo, they also forced him to admit his membership to the Moro Islamic Liberation Front (MILF). They made him stand for almost an hour after pulling his short pants down to his thighs, tying both his feet with his own belt and with his hands raised upwards.

On one occasion, they removed his blindfold but instructed him to keep his eyes closed as they took photographs of him. They threatened him that “if he (Rahim) will open his eyes his life would end”. He recalled having been transferred three times to other rooms. It was only in the early morning of 23 September 2011 that they stopped torturing him. All night he was not given food to eat and water to drink. His torturers only made him smell a cup of coffee.

On that morning, when the soldiers took him to a hospital in Pikit, North Cotabato, they did give him a glass of water to drink but no food. His blindfold was also removed before they reached the hospital. At the hospital, a certain Dr. Crusado checked his condition. When the doctor asked if he had been punched, Rahim said no. His response was typical of torture victims who are in custody of their torturers for fear of reprisal. The doctor did not conduct any check-up on him, not even his blood pressure. He was later turned over to the custody of the Municipal Police Station of Pikit, North Cotabato.

At 11 am that day, the police took records of him before taking him to the Regional Trial Court (RTC) in Kidapawan City. At 4 p.m., he was remanded to North Cotabato District jail in Amas, Kidapawan City, where he is presently detained. Rahim said that when the soldiers took custody of him, none of them showed him a warrant of arrest with his real name written on it, informed him of the charges against him or explained the reason for his arrest.

Rahim, however, will have to be prosecuted for criminal charges in the place of the real accused, Sarip Milo. The real Milo, who remains at large, is being charged with multiple murders with multiple frustrated murders in connection with the bomb blast in October 2006 at the Regional Trial Court (RTC) Branch 17 of Kidapawan City.

When Rahim was interviewed in jail, he complained of numbness to his left hand, pains in his heart every night and blurred eyesight.

*PHILIPPINES: Case 5***Abdul-Khan Balinting Ajid: Tortured by Soldiers & Set on Fire**

Soldiers tortured a member of an indigenous minority, who they falsely accused of being a member of an illegal armed group, and set him on fire after pouring gasoline on him. The victim was tortured to force him to admit he was part of a group involved in kidnap-for-ransom.



Based on the documentation of Task Force Detainees of the Philippines (TFDP), and the Mindanao People's Caucus (MPC), the Asian Human Rights Commission has learned that on July 23 2011, at 5:30 a.m., Abdul-Khan Balinting Ajid, a native of a Yakan tribe, was forcibly taken by soldiers from his home in Barangay (village) Libug, Sumisip, Basilan, in front of his children. The soldiers were attached to the Special Operation Task Force Basilan (SOTF-B) of the 39th Scout Rangers under the command of Colonel Alexander Macario.

Around midnight of July 22nd, Ajid's wife, Noraisa Imban Induh, noticed that there were some persons observing them from outside their house. While Ajid was preparing dough for his bread at around 4:30 a.m. that day, somebody kicked open their door after throwing rocks at their house. A group of soldiers in camouflage fatigues entered their house.

The soldiers ordered Ajid to lie face down. Then they stamped on his back and tied his hands behind his back using a plastic straw. A newspaper later reported the names of some of the soldiers as Captain Sherwin Guidangen, Staff Sergeant Elmer Magdaraog, Sergeant Edgardo Santos and Sergeant George Awing.

Two of Ajid's children, who were present during the incident,



fainted due to fear when they saw the soldiers carrying firearms. The soldiers destroyed their belongings when they illegally searched their house. They asked Noraisa, Ajid's wife, if they had a gun in their possession, to which she replied that they did not. After searching the house the soldiers then grabbed Ajid, who they had left laying face down on the floor, and dragged him out of the house, where he was made to walk towards an approaching six-by-six truck. They then took the victim for investigation.

Ajid narrated that he was first brought to Magdal place, where they stayed for 15 minutes, then to Tipo-tipo, Basilan, and finally to the military brigade. He was blindfolded throughout their travel but he managed to see a little bit so he was able to recognize places. Ajid said that when they reached the military camp he was brought to the waiting shed area. He said he was not given any food. A person arrived and interrogated him. He was asked if he was a member of Abu Sayyaf group, which he denied. He was asked if he knew any Abu Sayyaf members and every time he denied it he was paddled using a piece of wood on his back, stomach, and shoulders. He was also kicked on the head.

In the evening of 24th July, the soldiers started interrogating Ajid, asking him why he is in possession of two guns, which he denied. They started beating him again. They repeatedly punched and kicked him, hitting different parts of his body but particularly his chest. They inserted the neck of a bottle into his anus four times, each time after a beating.

On 26 July 2011, Ajid was taken to the Office of the Prosecutor of the Department of Justice (DoJ) in Zamboanga City. The prosecutor asked Ajid incriminating questions even though there was no criminal complaint filed on his name. The soldiers who took him to the prosecutor's office did not subject him to inquest proceedings.

When they left the prosecutor's office, Ajid was kicked in the stomach by his custodians and fell to the ground. His custodians said that Juhaydi and Ajid's son are the same person. At 3 p.m., the victim was taken somewhere in Zamboanga town, where his custodians had a drink before going back to Basilan on a speed boat. His blindfold was removed throughout their travel. When they arrived in Basilan port, Ajid was again blindfolded, his head was covered, and his wrists were also handcuffed.

At 8 p.m. that day, Ajid was again interrogated at the military brigade. Here, one of those taking him in custody told him: "You are lying. You are a member of Abu Sayyaf." They submerged Ajid into a drum filled with water upside down and once again pushed a bottle in his anus.

Ajid, who was wearing only jeans at that time, was set on fire on three occasions after his torturers poured gasoline on his head down to his lower abdomen. He could not remember how the flame went out. After setting him on fire, he was told: "Hanggang dito nalang buhay mo", i.e. "your life ends here". They also burnt his right foot with a lit cigarette.

On 27th July they changed Ajid's clothes. They give him pants, a shirt and fed him. The whole morning he slept and was very weak.

After his wife, Noraisa, filed a petition for a writ of habeas corpus, at 2 pm a court sheriff served an order, issued by Judge Leo T. Principe of the Regional Trial Court (RTC), Branch I in Basilan, requiring the military brigade in Tabiawan, Isabela City, Basilan to produce the victim in court.

At 3 pm, Ajid was produced before the RTC of Basilan, Branch 1, Isabela City. Ajid's family saw that he was visibly injured and that his skin was burnt. However, on the same day, Judge Principe illegally issued a remand order for Ajid to be transferred to the provincial jail in Isabela City, Basilan, for detention. There were no criminal charges filed against Ajid and no arrest order in his name. But the judge nevertheless ordered remand for Ajid, pending determination by the court on the legality of his arrest, said to be pursuant to the alias warrant issued by the Branch II of the RTC of Basilan.

That evening, Ajid was taken to Basilan Community Hospital, Inc., for treatment. On 30th July 2011, Dr. Jheimar B. Francisco, M.D., the physician who examined Ajid, issued his initial medical diagnosis. In his diagnosis he found that the victim had suffered burns to his face, neck, lower abdomen, thighs, and right shoulder.

On July 31, 2011, lawyer Raissa Jajurie, the victim's legal counsel, filed a motion for the transfer of the victim's confinement from Basilan to the Zamboanga Medical Center in Zamboanga City for further medication. The court granted the petition.

For Judge Leo T. Principe of RTC Branch 1 of Isabela city, Basilan, to issue a remand order on the victim is questionable, as there was no case filed against him in his court. Judge Principe, who was apparently aware of the physical condition of the victim, should have ordered immediate confinement of the victim to the hospital. He did not do so.

The actions taken by the prosecutor in Zamboanga City, who asked incriminating questions the victim incriminating questions, was also questionable, because the victim's presence there was not part of an inquest proceeding. There was no criminal case filed against Ajid. In the event of warrant-less arrest, Ajid should have been taken to the prosecutor's office for inquest to determine whether or not there was a probable cause in pursuing criminal action; however, in this case, when the victim was presented, no complaint was filed.

*PHILIPPINES: Case 6***Asraf Jamiri Musa: 17-year-old Boy Falsely Accused, Tortured**

Asraf Jamiri Musa, a student, was illegally arrested, tortured, and detained by the military and police, who accused him of being a member of Abu Sayyaf, an illegal armed group involved in kidnap-for-ransom. They planted evidence of explosives on Asraf and forced him to admit his membership to the group.

Asraf Jamiri Musa, 17 years old and a 1st year Bachelor of Science in Education (BSED) student, was arrested along with his cousin Pawad Esmael Alpad by members of 32nd IB, 1st IDPA, and members of Philippine National Police, led by 1LT. Gian Carlo A. Galanza, PA and P/Chief Inspector Nestor Placio, PNP in Sitio Patikul, Barangay Matatag, Lamitan City, Basilan Province, on 23 June 2011 at about 1:45 p.m.

According to Asraf, at 11 a.m. on the morning of 23 June 2011, he was sleeping at the house of his aunt, where he has lived since elementary school, along with his cousin Pawad. He was awoken by his aunt because of the presence of the military.

Asraf said the military and police searched the house but they did not find anything. They were looking for two Abu Sayyaf members, Nurhasan Jamiri and Musanna J. Musa (a kidnap-for-ransom group), who were allegedly staying at the house of Hadji Samiri Alpad, where Asraf was also staying.

They took Asraf and Pawad and brought them to the brigade detachment in Lamitan. Asraf's aunt accompanied them. After about 30 minutes, they were brought to the military brigade in Tabiawan, Isabela City, Basilan.

Asraf said that he was brought inside the brigade and was made to sit in a waiting shed. He was interrogated and asked if he was an Abu Sayyaf member. He replied that he was a student but they did not believe him. His cousin Pawad was released but he was left behind.

He was brought inside in the evening, at about 10 p.m. Asraf was forced to admit membership to the Abu Sayyaf group. He was blindfolded with a handkerchief and handcuffed with his hands behind his back. Both his feet were tied with a rope and he was punched on his stomach three

times. He was also punched on the left side of his body once. When Asraf denied membership, he was brought to a drum filled with water and was submerged three times. He was threatened several times and told to admit his membership with ASG or he would be killed. Asraf said his head was wrapped with cellophane twice and he was threatened with being buried.

Asraf was again forced to admit his membership with the group and attempts to drown him in the drum were repeated. Asraf recounted that his ordeal lasted about two hours. Then, he was brought into a waiting shed, where he was tied.

On the following morning, June 24th, he was made to take a bath. Afterwards, he was again blindfolded and was brought to an unknown place. He was made to hold a hard object that he did not recognize and he sensed that they were taken pictures of him. Then he was brought to the police station and then to Fiscal's office in Isabela City and that was the time he learned that it was a hand grenade which the military had told him to hold. Afterwards, he was again brought to the police station.

On June 25th, in the afternoon, at about 5 p.m., he was remanded to the provincial jail in Isabela City, Basilan. A case of illegal possession of explosives was brought against him.

According to Asraf, one of his alleged torturers introduced himself as Lt. Galanza. He is also able to recognize his companions because his blindfold was loosened.

On 28 June 2011, at 10 a.m. in the morning, a medical certificate was issued by Dr. Alfonso L. Bravo, Jr. MD, the chief of hospital at Ediborah P. Yap Memorial hospital, Lamitan District.

According to his findings, Asraf suffered:

- (+) contusion right forehead 2x3 cm
- (+) abrasion, left forehead cm
- (+) contusion hematoma 7 x 1 cm bridge of nose
- Erythema left chest 2 x 3 cm



Asraf Jamiri Musa, at the Provincial Jail, Isabela City (August 2nd, 2011), courtesy John Vincent Mesa, M.A.G.

The injuries needed a duration of treatment of 7 days.

Asraf's only dream is to finish his education in order to help his parents. He said during the interview that if ever he is released he will continue his schooling. This case is a clear violation of his rights as a child and a curtailment of his right to education.

*PHILIPPINES: Case 7***‘Talisay 3’: Torture. Complaint. 1 ½ years Lapse. No Investigation**

As in other cases raised with the Ombudsman, the office has ceased its intervention in the complaint of torture by the three victims, collectively known as the ‘Talisay 3’, invoking the excuse that it is the mandate of the Commission on Human Rights (CHR) to investigate complaints of torture. While the Ombudsman argued that it is the primary responsibility of the CHR to investigate, the latter did not conduct an investigation since the complaint was filed one and a half years ago.

**Details of Terminated Cases:**

On 1 February 2010, the Asian Human Rights Commission issued an appeal<sup>49</sup> about the illegal arrest, torture and filing of questionable charges on three community organizers, namely Charity Diño, 29; Billy Batrina, 29; and Sonny Rogelio, 26; in the municipality of Talisay, Batangas on 23 November 2009.

In our letter to Ms. Leila de Lima, [former] chairperson of the Commission on Human Rights (CHR), we urged her “to ensure that the victim’s allegations of torture and the filing of questionable charges against them are thoroughly investigated” and that “their allegations of torture against the military must be investigated”.

When the AHRC wrote a separate letter to Emilio Gonzalez, Deputy Ombudsman for the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Office (MOLEO), it was expected the Ombudsman would comply with their legal obligation under section 13 of the Ombudsman Act of 1989. This requires them to investigate the aspect of “civil and criminal liability (of state agents) in every case where the evidence warrants in order to promote efficient service by the Government to the people” after a complaint.

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49 AHRC-UAC-005-2010

Thus, the AHRC's appeal letter to the Ombudsman should not have been taken so narrowly, as a request to solely investigate the complaints of torture. The Ombudsman should have performed their mandate and legal obligation in determining whether the perpetrators have incurred "criminal and administrative liability" in the performance of their duties.

The AHRC is aware that under section 9 (a) of the Anti-Torture Act of 2009 (R.A. 9745), torture victims should have the right to "have a prompt and impartial investigation by the CHR and by agencies of government"; however, no investigation on the complaint of torture has been conducted. The complaint was submitted by way of an appeal letter to the CHR in February 2010.

In addition, the AHRC wrote a letter on 29 June 2011 to Ms. Loretta Ann Rosales, [current] chairperson of the CHR, "to inquire about the status of your investigation, if there was any, to the complaint of torture that we have submitted". This was sent after the Ombudsman elected to "close and terminate" its investigation into their case.

However, the AHRC has not received any response or comments from the CHR as of yet.

### **Justifying the Closure**

In his Final Report dated 31 August 2010, Danilo Rimonte, Graft Prevention & Control Officer of MOLEO, decided to "close and terminate", arguing that:

"... since RA 9745 otherwise known as the Anti-Torture Act of 2009 was invoked by the AHRC, the instant RAS must necessarily be referred to the Commission on Human Rights (CHR) where Section 9 of the said law mandates the latter and other executive agencies, to conduct a prompt and impartial investigation on cases of torture."

Rimonte, therefore, recommended that:

"...the instant Request for Assistance (RAS cases) be considered CLOSED and TERMINATED in so far as this office is concerned and that the same be referred to the CHR for appropriate action."

**‘No investigation, no remedy’**

Rimonte, however, did not provide information nor any proof that the CHR had indeed conducted an investigation into the complaint of torture by the three victims before he decided to terminate the case. The failure of the CHR to investigate promptly, as required by the Anti-Torture Act of 2009, is itself an administrative offence.

The Ombudsman should also investigate the CHR’s failure to investigate promptly.

The Ombudsman, in proceeding with the “closure and termination” of its investigation, has effectively restrained itself from making the security forces accountable, who were the subject of the complaint; and the CHR have neglected and failed to conduct a “prompt and impartial investigation” as required by law.

The failure of the CHR to investigate has also effectively deprived the victims of any form of remedy.

*PHILIPPINES: Case 8***Trial of two men tortured and falsely charged seven years ago drags on****Case 8 (a): “Disappeared torture victim found taken to court”**

Based on interviews conducted with families of torture victims and the Moro Women’s Center (MWC), the Asian Human Rights Commission has learned that on 18 June 2005, at 4 p.m., Hamsa Pedro, a 42-year-old market labourer, was abducted by armed men wearing balaclavas and civilian clothes. He was taken in a white van with no licence plate. He disappeared for 15 days. While in the custody of his abductors, who turned out to be police officers, he was hit on different parts of his body. He was forced down into a drum filled with water and beaten with a gun. Because Hamsa’s family had no idea about his whereabouts, his wife, Fatima, looked for him in different police stations in General Santos City. She found him only after a man told her that he saw her husband being taken to a court. Fatima then made inquiries at the court and spoke to one of the judges. Here, she learned that her husband was being prosecuted for the bombing of the public market on 12 December 2004 in General Santos City. Fatima said she neither had any idea of the reason for the arrest of her husband, nor the nature of charges against him. Since his arrest and detention, Fatima had to support and earn a living for their eight children on her own.



ID card of Hamsa Pedro

**Case 8 (b): “Police chief denied victim was in their custody”**

After Hamsa’s abduction on 20 June 2005 at 5 p.m., another man was abducted. His name is Alex Salipada, an Imam working as a labourer at the General Santos City Fish Port. He was taken by force from his home in Barangay (village) Fatima, General Santos City, from in front of his three frightened daughters. Several men wearing plain clothes took him to a number-plate-less white pick-up truck. His abductors did not



Alex Salipada

show any warrant of arrest. They blindfolded Alex, tied his hands, gagged his mouth with a wet towel, and pushed him into the corner of the pick-up.

Alex was brought to a place where he was tortured. He vomited blood after his abductors repeatedly hit his stomach and different parts of his body. They gagged his mouth with a wet towel and forcibly immersed him upside down into a drum filled with water. They dipped his head even deeper into the water whenever he struggled. He lost consciousness for an hour, after they repeatedly subjected him to this torture. He was tortured in the same manner for consecutive days to force a confession from him vis-à-vis the bomb blast. He feared for his life. He gave in.

Alex's wife, Hadji Noria Salipada, remembered seeing her children crying when she arrived home, shortly after her husband was abducted. One of her neighbours, who witnessed the abduction, told her he saw a white pick-up truck, with no licence plate, used in abducting her husband. She immediately went to a police station to ask for their help and to inquire as to whether they knew of a white van, but the police said they did not know anything. For nine days, Noria looked for her husband at different detention centres.

Later, a policeman told Noria that she should speak to Senior Superintendent (Sr./Supt.) Alfredo Toroctocon, former director of the General Santos City Police Office, and visit him at the headquarters of the General Santos City Police Office (GSCPO). Here, she asked Sr./Supt. Toroctocon the whereabouts of her husband. At first, Sr./Supt. Toroctocon told her to report the incident to the police, even though he knew full well that her husband was already in their custody at the time. After Noria kept returning to the police headquarters and pleading with Toroctocon to allow her to see her husband, she was allowed to see him.

When they first saw each other, Alex could not tell his wife what happened to him. He hesitated about telling her because he was threatened that if he told his wife anything they would kill her. When Noria visited Alex at the police station, she could see blood clotting on Alex's feet and hands, bruises on his cheek and different parts of his body, and that his chest was swollen.

Both Hamsa Pedro and Alex Salipada are presently detained at the General Santos City Jail for murder charges in connection with the bomb blast in a public market in the city on December 12 2004.

*PHILIPPINES: Case 9***Gilbert Paborada: Assassinated for Opposing US Palm Oil Company**

Based on reports and documentation by the Rural Missionaries of the Philippines, Northern Mindanao Region (RMP-NMR), Workers Assistance Center (WAC) and Alliance for the Advancement of Peoples Rights (KARAPATAN), the Asian Human Rights Commission has learned that on 3 October 2012, at 3 p.m., Gilbert Paborada (47), indigenous leader, of the Higaonon tribe, was shot dead by two unknown men as he was alighting from a 'motorela' (local three-wheel tricycle) in front of his house in Puntod, Cagayan de Oro City.



Gilbert Paborada,  
courtesy EILER

He died on the spot. The attackers were riding a white motorcycle. According to witnesses, one of the gunmen approached Gilbert and shot him in the head. He sustained a total of five gunshot wounds, two of which hit him in the chest; while the others hit his body, abdomen, and hand.

Before Gilbert was killed, like other human rights and political activists murdered in the Philippines, he had experienced a series of threats. In his case, the threats were allegedly directly from the staff and security guards of the A. Brown Company, a US-based company operating a palm oil business in Opol, Misamis Oriental. On one occasion, on 10 February 2011, security guards from A. Brown Company threatened to shoot Gilbert and other indigenous villagers because of their refusal to leave the land they live on to give way for the company's operation.

The group has since been opposing the threat of land grabbing and incursions by A. Brown Company. The nature of the company's business threatens to replace tropical fruit crops in the community, which are relied on for subsistence. The group has already raised serious concerns about this. Gilbert was the chairperson of Pangalasag (indigenous term for 'shield'), a community-based Lumad or indigenous group opposing this expansion.

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One of the Lumad leaders had said that Raffy Magbanua, representative of A. Brown Company, had asked Gilbert to stop his campaigns and threatened him that “he might regret what [would] happen to his life.” However, despite the threats that Gilbert and his group had been experiencing, which they reported to the authorities, neither he nor the group were offered any protection and neither were the threats investigated in any shape or form.

*PHILIPPINES: Case 10***John Khali Lagrimas: 14-year-old, Killed during Eviction**

Based on documentation by the Alliance for the Advancement of Peoples Rights (KARAPATAN), the Asian Human Rights Commission has learned that on 2 October 2012 at 9:30 am, John Khali Lagrimas, a 14-year-old boy, was standing on top of the roof of a furniture shop when a demolition team fired at protesting villagers of San Roque Village, Tarlac City.

John was hit by one of the bullets fired.

He was taken to the Ramos General Hospital but declared dead on arrival. According to witnesses, the bullet that killed John was allegedly fired by Eduardo Reyes, the leader of the demolition team. The team, composed of about 100 policemen, eight of whom were members of the PNP Special Weapon and Tactics (SWAT) in Tarlac City, were armed with M16 Armalite rifles, Baby Armalites, handguns and shields, when they arrived at the village. They were wearing battle gear and bullet-proof vests.

Two fire trucks dosed the protesting residents with water cannons. About 70 residents blocked the demolition team, attempting to prevent them from entering and to protect their homes from being demolished by the City Government of Tarlac. The villagers resisted because their claims over the land, which the residents are occupying, have not been resolved and are still pending in court. Thus, legally, Sheriff Julius Guiang of Regional Trial Court (RTC), Branch 63, should not have pushed through with the demolition. Nevertheless, legal obligation was ignored and the demolition was allowed to proceed without a court order.

# INDIA

## *Forms of Torture in India*<sup>50</sup>

1. Beating with sticks, slapping, caning: Commonly used in public spaces, at the time of arresting or questioning a person on the street, or used widely as part of what is considered law-enforcement. It is a common sight in streets in all parts of India. It is used as a common method for crowd control. It is so common that most in India would be surprised if one were to complain of any of these treatments.
2. Food Deprivation: Commonly used while in custody at the police station as well as in other detention centres, including prisons. In police stations, however, the deprivation of food is mostly due to lack of resources at the stations.
3. 'Uruttal' (rolling): Vernacular in Malayalam for forcing a person to lie down, face up, and rolling down a wooden stick off the person's shinbones. It is an extremely painful and common form of torture practised throughout India, which gained notoriety during emergency at Indira Gandhi's time and has remained a mainstay of torture since then.
4. Rape/sodomy and other forms of sexual abuse or threats, including applying hot or cold substances on genitals.
5. 'Garudan thookam': Vernacular for hanging a person by wrists, with hands tied from behind. The name is derived from a Hindu God 'garuda (large eagle), the vehicle of Lord Vishnu, that the person hung in this form represents the descent of garuda. As you know, this form of torture paralyses the person's arms, sometimes permanently.
6. Forcing to eat human excreta, or drink urine, a form of torture having strong caste based origins.
7. Detaining kin (often children, sister, wife) in undisclosed places and threaten that they would be raped, hurt in other forms. Most often used in cases involving theft.

50 As quoted in *Torture: Asian and Global Perspectives*, Volume 01 Number 01 April 2012, PP 10 – 11. While the techniques listed here have been garnered from the state of Kerala, they are observed across the entire country.

## **Dealing with the tremendous problem of torture in India**

*A group of human rights defenders from across India gathered in Thrissur, Kerala, on 15th August 2003 to discuss torture in India. Deliberations centred on the need to launch a campaign in India for ratification of the Convention against Torture. The concluding statement of the gathering is as follows:*

### ***Consultation on the Convention against Torture, Kerala, India***

1. Torture is widespread and has routinely been practised at police stations in India. Unchallenged and unopposed, it has become a 'normal' & 'legitimate' practice all over.
2. Torture often leads to custodial deaths, disappearances and deaths in 'encounters'. The numbers of reported custodial deaths are quite high and keep increasing.
3. Besides this, there are fatal injuries, permanent disabilities, mental derailment, loss of faculties and psychological trauma.
4. With the emergence of new sanctions for torture - like the Prevention of Terrorism Act, Terrorism and Destructive Activities Act (Prevention), and Essential Services Maintenance Act - that justify or legalize any amount of torture, the police enjoy enormous freedom to have recourse to any such crimes.
5. The use of extremely crude and filthy language is very common at police stations. It amounts to cruel, inhuman or degrading treatment, grossly derogatory to the dignity of the human person. We were disgusted after being told of the existence of a directory of vulgar words, widely used by police personnel, published by a police officer in one of the southern states.
6. Torture has also been practised on women and girls, in the form of custodial rape, molestation and other forms of sexual harassment.
7. Torture has been inflicted not upon the accused only, but also on bona-fide petitioners, complainants or informants. The police deliberately delay the submission of First Information Reports and unnecessarily harass and torture such persons for no reason.
8. There is no impartial mechanism for receiving complaints against torture. The complaints must be made to police authorities themselves. This only allows the police to bring pressure and harassment onto the victims, who are de facto complainants. The Convention against Torture requires impartial investigations. Unfortunately, in India the

police force is not independent. The National and State Human Rights Commissions, as well as other national institutions of India, have neither the power nor the provisions to deal with torture effectively. The National Commission for Police Reforms recommended many years ago that police in India should be made independent. The National Human Rights Commission itself has gone to the Supreme Court with a plea that the recommendations of the National Police Commission be implemented. However, courtesy absence of political will these attempts have failed.

9. Torture and fabrication of cases are closely linked. In attempting to save offenders, for obvious reasons, the police implicate innocent people and impose any amount of cruelty and torture on them until a 'confession' is extracted.
10. Torture is not treated in India the way required by the Convention against Torture. Only one section in the Penal Code (section 330) deals with punishment for use of force in obtaining confessions. However, if torture is to be dealt with effectively, it is essential that it be made an offence as set out in the terms of the Convention. This also involves provisions for adequate punishment for the crime torture. Thus, the law against torture in India is extremely defective in terms of international understanding and social jurisprudence. To mention two examples, in Hong Kong the offence of torture carries a life sentence, while in Sri Lanka it carries a sentence of 7 years.
11. The prosecution system as it exists now in India only militates against the rights of victims of human rights violations. The prosecutors act in many ways to protect the perpetrators. Prosecutors should be independent, competent, and appointed through a judicious process to scrupulously uphold the cherished values enshrined in statutes.
12. In the present criminal justice system in India, the victims or complainants have no decisive role in seeking redress. Everything depends on the mercy of the investigating officer and the state prosecutor, who are often subject to manipulations and malpractice. Therefore, the de facto complainants or victims, if they are resourceful and confident, should be allowed to appoint their own lawyers to conduct the prosecution on their behalf.
13. As it has not ratified the Convention against Torture, India's citizens do not have the opportunity to find recourse in remedies that are available under international law. Indian practices with respect to torture do not come under international scrutiny. Access to the UN Committee

against Torture, and other mechanisms, is effectively denied people living in the largest democracy in the world. Since the country has also not signed the Optional Protocol to the International Covenant on Civil and Political Rights, its citizens also do not have the right to make individual complaints to the UN Human Rights Committee. The victims are trapped with the local system, which in every aspect militates against their rights. Many victims conclude that a justice system accessible to the poor of the land does not exist at all.

14. Despite its many human rights groups, an effective and powerful campaign for the elimination of torture has yet to be developed in India. If we fail to protect ourselves from torture, which is the basis for all other fundamental rights, we will not be able to vindicate any other rights.
15. "Human Rights Court" is a misnomer. What exists is an additional duty appended to the already overworked judges. Thus, adjudication on human rights matters is trapped within the same cycle of delay and neglect that affects other cases. The general principle that 'justice delayed is justice mocked' equally applies to these courts. The concept of Human Rights Courts needs to be revamped and re-envisaged so that an effective mechanism can be introduced. Judges who sit in such courts need to have a thorough knowledge of human rights law and should be endowed with a deep sense of the sublime supremacy of human life over all else.
16. The Malimath Committee recommendations will not only undo the practice of fair trial, but also will enhance the power of police to an absolute level. They have to be checked and carefully resisted if human rights are to have any meaning in India.
17. The early ratification of the Convention against Torture is imperative if we wish to defend the human rights of torture victims. It is mandatory for any attempt at reforms in the police system as an effective mechanism for law enforcement and the administration of justice.
18. Most countries in the world have ratified this Convention and India, being a signatory, has no excuse for not ratifying it. In fact, the unwillingness of the Indian government to ratify the Convention brings only discredit to its people and places the country in a very shameful situation.
19. The citizens have a civic responsibility to campaign for ratification of the Convention. In fact, the National Human Rights Commission has already recommended and urged it to do so. Many high-profile

- organizations and eminent citizens of international repute also have pressed the government on this issue.
20. Meanwhile, it is highly necessary to document torture cases in a meticulous way. The lack of proper documentation only permits the unfettered continuance of barbaric methods of torture and acquittal of the culprits. Had there been proper documentation, it would not have been possible to hide the colossal and devastating atrocities of the police, whose constitutional mandate is to protect the people. NGOs should undertake scientific and systematic documentation of torture and follow up on it.
  21. Modern communication systems offer tremendous opportunities for victims of torture to expose it to the rest of the world. Urgent Appeals have been quite successful at coordinating and combining domestic and international efforts to resist this atrocious encroachment on human rights. Hence human rights defenders and activists should be equipped and conversant with what information technology offers for the promotion of human rights activity anywhere in the world, less expensively and with greater efficiency.
  22. The communal and caste divide in India is closely linked with torture. Police and law enforcement agencies have been instrumental in much of the recent communally charged violence in the country. Torture remains unaccounted for and not prosecuted. It leads to total anarchy and the rule of vandalism and lawlessness. When police become a party to such violence, it becomes a state-sponsored crime against the people. Therefore, the fight against communalism and caste should start with the fight against torture.

**Signatories:** Bharathi G Parekh, Karnataka; Dr Francis Xavier, Kerala; Subramannian G, Tamil Nadu; Tomy Mathew, Kerala; Geo Jose, Kerala; Dr K Umadevi, Andhra Pradesh; Adv. Bijo Francis, Kerala; Adv. Johnson Ainikal, Kerala; Kirity Roy, West Bengal; Vinaya, Kerala; Adv. Stephan Mathew, Kerala; Mallela Seshagiri Rao, Andhra Pradesh; George Pulikuthiyil, Kerala; K G Sankara Pillai, Kerala; A Amaraiah, Andhra Pradesh; Adv. Shaji George, Kerala; Adv. E V Joshy, Kerala; G Kurinji Shanmugasundaram, Tamil Nadu; A B Prasad, Kerala; Dr George Mathen, Kerala; Adv. Leonard Fernando, Tamil Nadu; K Balasundaram, Kerala; Adv. P P Vineeth, Kerala; Paul Joseph Kattookkaren, Kerala; T K Naveena Chandran, Kerala; Adv. Faritha Ansari, Kerala; Adv. Jasmine Joseph, Kerala.

## INDIA: Case 1

**Mithu Dey: Police Abuse Drives Woman to Suicide**

*“Detaining the relatives of a suspect or an absconder is a common but illegal practice, followed by the law enforcement agencies in India. The police had no reason whatsoever to detain the victim and her child at the police station for a day.”*

According to information received from the Banglar Manabadhikar Suraksha Mancha (MASUM), a human rights group in West Bengal, Ms. Mithu Dey was abused and assaulted in the presence of several villagers by personnel of the Kandi Police Station. The police raided her house on 3 August 2011 in search of her husband, who was wanted in a criminal case. Without any arrest warrant, Mithu Dey and her minor son were taken to Kandi Police Station, where they were further subjected to torture, before being released the following evening.

Soon after returning home, Mithu hung herself to death in her room, reportedly being unable to overcome the mental and physical trauma she had suffered at the hands of the police.

The victim’s husband, Mr. Rajkumar Dey, is accused in connection with a criminal case (*no. 318/2011 dated 3 August, 2011, under sections 302/201 of the Indian Penal Code*). The case was registered for the murder of Sukumar Dey, a relative of the victim. Since the lodging of the case, Mr. Rajkumar Dey has been in hiding due to fear of police harassment.

At the time of Sukumar’s murder, he was at the residence of Ms. Binapani Dey, Rajkumar’s mother. She used to live alone as there was an allegedly uncomfortable relationship between herself and her son. Every night, one of her relatives or someone from the village used to stay at her residence with her. On the night of Sukumar’s murder, he was the one staying with her. The villagers suspect Rajkumar of the murder as he was not seen in the village.

The Kandi police visited Rajkumar’s house but could not find him. On August 3, at about 11 am, police personnel Sub-Inspector Mr. Premashish Chattaraj, Sub-Inspector Mr. Haralal Biswas and female constable Kakali Mukherjee again raided his house, but again could not find him.

They became furious and ransacked the house. They also allegedly assaulted Rajkumar's wife and son. According to Mithu's neighbours (Ms. Sunita Dey, wife of Mr Soumendranath Dey and Ms. Parvati Dey, wife of Mr Jagabandhu Dey), police constable Kakali Mukherjee was instructed by the two Sub-Inspectors to grab Mithu's hair and slap her face while asking for the whereabouts of her husband. The police then forcibly took Mithu and her son Sourav to the police station, where they were illegally detained.

There, under the pretence of interrogation, they were tortured.

Mithu and Sourav were released on August 4. Unable to bear the trauma of the humiliation and torture she suffered, Mithu committed suicide that night, as reported by her family members and the local villagers. An unnatural death case was registered at the police station (*no. 175/2011 dated 5 August 2011*). The post-mortem examination was held on the same day at Kandi Sub-Divisional Hospital. The doctor who conducted the examination, Dr. Hansaraj Chattopadhyaya, refused to disclose the cause of death to MASUM.

When MASUM visited the Kandi Police Station on August 7 to inquire about the police atrocities committed against Mithu, Inspector-in-Charge Jotish Chandra Roy only said he was not present at the station on that day, and would not disclose any further information regarding the incident.

The AHRC has learnt that Rajkumar surrendered himself to the court and is presently in custody. The whereabouts of Rajkumar's mother and his son are presently unknown.

Detaining a person with the intention to force the surrender of a relative is an offence under Section 348 of the Indian Penal Code, 1860. Similarly, voluntarily causing hurt to a person to extract a confession is also an offence punishable under Section 330 of the Penal Code. If found guilty, the former offence calls for a mandatory imprisonment that may extend to three years, and the latter for imprisonment up to seven years.

Detaining the relatives of a suspect or an absconder is a common but illegal practice followed by the law enforcement agencies in India. The police had no reason whatsoever to detain the victim and her child at the police station for a day. In addition, they also tortured the victim at the time they searched the victim's house and, as alleged, at the police station. It is

unfortunate that the victim killed herself after release from custody. The fact that the victim committed suicide immediately after her release from custody is an aggravating factor that has to be taken into account while the case is investigated. If the investigation proves that the reason for the victim committing suicide was the torture and the resultant shock the victim suffered from being illegally detained with her child at the police station, the police officers responsible for the crime are also punishable for yet another crime, under Section 306 of the Penal Code, for abetting suicide. The offence carries a punishment of imprisonment that may extend to a period of 10 years, with fines. Above all this, the police have no legal authority to detain a minor at the police station, as has been reported in this case.

It is reported that the police have not kept any details of the detention of the victim and her child at the police station. This is also a usual practice the police follows in India in order to illegally detain persons. Despite repeated directions from the Supreme Court of India, the latest in the D.K. Basu case, which even led to a comprehensive amendment of the Criminal Procedure Code, 1973, the police have failed to comply with every statutory provision required to be observed while arresting and detaining a person. This case is one more unfortunate example of the illegal and inhuman practices conducted in routine by the police.

*INDIA: Case 2***Abdul Karim Molla: Tortured by BSF along Indo-Bangladesh Border**

The first incident in this sequence of physical torture and intimidation took place on 11 February 2012, just before the date a human rights sensitisation was scheduled to be organised by the National Human Rights Commission in West Bengal.

According to Banglar Manabadhikar Suraksha Mancha's (MASUM) fact-finding report, on 11 February at about 7.10 a.m., the victim in the case, Mr. Abdul Karim Molla, son of Mr. Yunus Molla, was planning to cross the Indo-Bangladesh border near Bithari border outpost, to smuggle out two pieces of leather. Karim had made a deal with one Mr. Brijesh, a staff driver of 'G' branch of 'E' Company of 152 Battalion of the BSF (Border Security Force) for this, after bribing Brijesh. While Karim was all prepared to go across the border with the leather, Mr. Akbar Khan, the then Company Commander of the 'E' Company, arrived at the spot.

The officer's visit was unscheduled and unannounced. Fearing action from the officer and in order to save himself, Brijesh started assaulting Karim with a bamboo pole. The inhumane assault happened in the presence of officer Akbar Khan. Brijesh verbally abused Karim while assaulting him, using the filthiest of words that could not be reproduced. Karim sustained cuts and bruises all over his body and could not move due to severe pain from the torture.

On the next day at about 11.30 p.m., a group of BSF officers from the 'E' Company forced themselves into Karim's house, allegedly to search him. Karim's parents were at home at the time. The officers threatened the family with dire consequences while demanding information about Karim. Though Karim was at home, he escaped detection and arrest. On the next day, Karim's father Mr. Yunus Molla filed a written complaint about both incidents at the Swarupnagar Police Station and informed the same to MASUM.

The police registered the complaint as General Diary Entry number 647/12 dated 14 February 2012. This apparently infuriated the BSF officers. They continuously tried to threaten the family into withdrawing the complaint, for which the officials from the local panchayat helped the BSF.

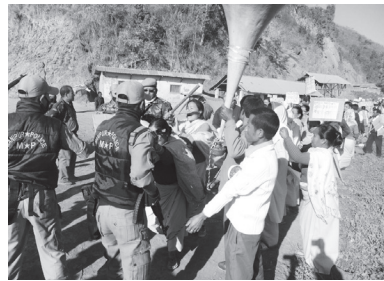
On 22 February at about 8.10 p.m., when Yunus Molla was returning home from his shop, 15-20 BSF officers stopped him. The incumbent Company Commander of the 'E' Company led the officers. The officer held Yunus by his neck and started pushing him around. He threatened Yunus, telling him that he should withdraw the complaint by 9 a.m. on 23 February 2012 or else they would make his life hell. Yunus was so terrified and shocked that he left his home and is now in hiding. The incident happened in front of the residence of one Majid Master, who stays in the village where Karim lives.

## 10 Meitei Women: Police Assault at Loktak Lake Protest

As per information provided by the Citizens' Concern for Dams and Development, at least 10 women from the Meitei community in Manipur (in India's North East) campaigning against the controversial Manipur Loktak Lake Protection Act, 2006, were seriously injured in the brutality unleashed by the Manipur state police at Thanga Chingjin, Manipur, on 19 December 2011.

All the injured women were taking part in a protest rally, organised by the All Loktak Lake Fishermen's Union and the All Manipur Thanga People's Welfare Association, demanding the repeal of the Manipur Loktak Lake Protection Act 2006, under which the Loktak Development Authority and the Manipur police have unleashed widespread arson and destruction of floating huts over phumdis, a floating vegetation mass, in Manipur since 15 November 2011 despite stiff opposition by affected families.

The protest rally commenced from Thanga Chingyang Hill until the Manipur police stopped it at Thanga Chingjin in Bishenpur district. The Officer-in-Charge of Moirang Police Station, Mr. Dhananjoy, was leading the police. The police, in an attempt to disperse the protesters, resorted to baton charge, physical assault, and even the firing of approximately 200 live rounds. The incident has caused shock and panic among the community members, who are already in shock from the burning of their houses. No women police officers were involved in the crackdown on the protest, which was mostly comprised of women and elderly people. This is a clear violation of the Criminal Procedure Code 1974. The police physically assaulted women during the incident.



The injured women were taken to the Community Health Centre, Moirang. One of them, Ms. Oinam Akasini, wife of Oinam Tomba, was in a serious condition and has been referred to the Regional Institute of Medical Sciences. The conditions of Ms. Khwairakpam Thambalmala and Ms. Heisnam

Ashangbi were also serious and they were advised to undergo further medical check-ups.

During the protest rally at Thanga, the protesters demanded the repeal of the Loktak Lake Protection Act 2006 and demanded that the prohibition of fishing and building huts in Loktak Lake be withdrawn by the state government. They were also protesting against the absence of free, prior, and informed consent of the indigenous communities living in the Loktak wetlands in the management and protection measures taken concerning the lake, and against the restrictions imposed upon the communities over the use and dependence on the lake. A vital aspect of this division is the ban on building huts or houses on phumdis inside the lake, planting athaphum, or engaging in athaphum-fishing in the core area.

The prohibition will adversely affect over 10,000 people living in phumdi huts, as well as others dependent on Loktak Lake. Sections 19 and 20 of the Act divide the Lake into two zones - a core zone comprising 70.30 sq km, which is declared a 'no development zone', or 'totally protected zone', and a buffer zone of other areas of the lake excluding the core zone.

The police action targeting the indigenous women defending their right to life and survival necessities is a direct violation of their rights as human rights defenders. The incident also violates the Convention on the Elimination of all forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The failure to seek the consent of the affected communities before the enactment or the eviction drive is a form of discrimination targeting marginalised communities. It also violates the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on the Elimination of all Forms of Racial Discrimination. The arson and destruction of floating huts and livelihood of the indigenous people living in Loktak Lake constitute a serious violation of the "right to life" and "right to adequate housing" as guaranteed by the Constitution of India and as provided in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The burning of huts of the indigenous people depending on the Loktak Wetlands for survival violates the Ramsar Convention, in particular resolutions VII. 8 of Ramsar Convention's Conference of contracting parties

held in May 1999 at Costa Rica and Resolution VIII. 19 held in Spain in November 2002. The two documents provide guidelines for establishing and strengthening local communities and indigenous people's participation and considerations relating to the cultural values of wetlands in the management of wetlands. India is a contracting party to the convention since 1 February 1982.

The Loktak Development Authority and the Manipur police have already burnt 1147 floating huts since 15 November 2011. These floating huts were used by the indigenous Meitei people for fishing and also as a refuge for landless people who were earlier displaced by the Ithai Barrage of the Loktak Multipurpose Hydroelectric Project, which has inundated nearly 80,000 Hectares of prime agricultural land since its commissioning in 1984. The fishing gears and nets of the communities, the only means to catch fish from the Loktak wetlands, i.e. sources of survival, were also burned, which has left the community in further misery.

For generations, people have been living in floating huts in localities like Khuman Yangbi, Nambul Machin and Karang Sabal within Loktak Lake. The affected family members, including women, children and the elderly, had been seeking refuge at Thanga Chingyang Community Hall in Bishenpur district, Manipur.

Each household was offered Rs. 40,000 as compensation by the government before their huts were burned. However, most of the villagers rejected this payment, as the amount is not adequate to compensate their livelihood and survival means. In addition, there is no process to rehabilitate the affected villagers, and their right to free, prior and informed consent has not been sought so far. Worst of all, in many cases the police forced the displaced families to set their own huts on fire by threatening them at gunpoint.

The government of Manipur, through its Loktak Development Authority, has been blaming the indigenous peoples dwelling in Loktak Lake for the pollution and contamination of the lake.

However, the Ithai Barrage of the Loktak Multipurpose Hydroelectric Project, commissioned in 1984, has led to large-scale devastation of Loktak wetlands, its ecosystem, loss of indigenous plant and fauna species, disturbance of the wetlands natural balance and cleansing system, leading to pollution and an alarming increase in siltation from the rivers.

Despite all this, the national and Manipur governments in their official publications and calendars highlight the phumdi and the people living on floating huts as a tourist attraction. During the current Sangai Tourism Festival (21-30 November 2011), the Loktak Lake and traditional floating fishing community has been also showcased. Experts attending the one day discussion on “Contradictions of Ramsar Conventions Standards and Guidelines with Loktak Wetlands Management in Manipur” organised by the All Loktak Lake Areas Fishermen’s Union and All Manipur Thanga People’s Welfare Association at the Conference Hall of Manipur State Central Library, Imphal on 17 December, recommended the repeal of the Manipur Loktak Lake Protection Act 2006.

*INDIA: Case 4***Golam Kibria: Senseless Police Brutality**

An inquiry undertaken by Banglar Manabadhikar Suraksha Mancha (MASUM) has revealed the following facts. Mr Golam Kibria, 30 years old, from Murshidabad district, West Bengal state, was the victim of illegal arrest, detention and torture. He endured physical assault and injury from police officers of Jalangi Police Station, led by Mr Manas Maity, the Officer-in-Charge of Jalangi Police Station and the Sub-Divisional Police Officer, Domkal, Murshidabad.



A graphic picture of injuries at the back side of the body

The police encircled the house of Mr Samsul Huda (Golam Kibria's father and a retired school teacher) at 1.30 a.m. on 4 May 2012 and began to strike the front door repeatedly, demanding entry. The police then forcibly entered the house and violently laid hands on Mr Golam Kibria, whose hands were then tied with a rope and held above his head while the police brutally beat him. The victim was then taken to Jalangi Police Station.

There are reports that the police completely removed his clothes and assaulted him again in his naked condition while in their custody. The severely injured victim was released from Jalangi Police Station on 5 May 2012 without any explanation as to his arrest the previous day or for the barbarism that was visited upon him during his unlawful detention.

Medical reports demonstrate the gravity of the assault upon Mr Golam Kibria, who is still being treated. The victim is still in shock and greatly traumatised by the unwarranted violence against his person. The victim's family members and some other locals witnessed the incident, but they are unable to seek justice because the police they have to report the case to would be the very same group of men who tortured the victim. Although these heinous criminal acts against Mr Golam Kibria are in themselves despicable, the criminality of the entire law enforcement agency is equally undeniable and even more troubling. The law has failed to provide back-up avenues through which the individual who was not in the first instance protected could seek justice and compensation, and through which the perpetrators could be punished.

Something is terribly wrong with the justice system in India. Individuals and entire communities live in fear for their own safety because of the arbitrariness and senselessness of the violence; agencies that were designed specifically to protect and uphold rule of law are themselves perpetrators of these acts; police personnel, logically the moral exemplars for the societies they administer, are able to behave with complete impunity and are not subjected to intense scrutiny from the centre. It is a broken, dysfunctional system, a failure of humanism, a mockery of ideals.

Without intervention by the central government, the people of Murshidabad and all over India face, for the foreseeable future, continued abuse of their freedoms and physical person and no likelihood of justice being served to the perpetrators; rather, the perpetrators continue to be given complete impunity.

*INDIA: Case 5***Khardrapani: Vicious Force of the State Against Villagers & Media**

The Asian Human Rights Commission (AHRC) has received information from the Narmada Bachao Andolan (NBA) that the Madhya Pradesh state administration has illegally arrested and detained activists associated with the NBA and villagers who were protesting against the increase of water levels in the controversial Indira Sagar Dam in Khardrapani village of Harda district in Madhya Pradesh. As much cause for concern has been the protest by villagers around the Omkareshwar Dam, another large dam on the Narmada river in central India.

Villagers have been standing neck-deep in water for the past 15 days (as of 12 September 2012), demanding that the state decrease the water-level in the Indira Sagar Dam, and that the state should first compensate them for the land and livelihood they have already lost, before raising water levels in the dam to the envisaged capacity limit of 261 meters.

It is reported that, gaining spirit from the partial success of the struggle concerning the Omkareshwar Dam, villagers from Ghogalgaon in Khandwa district tried joining their compatriots at Khardrapani village. However, by then, the Harda district administration, under instructions from the Madhya Pradesh state administration, had deployed a huge contingent of police in and around Khardrapani village. The police closed all roads leading to the protest site and prevented the media from reporting news. The police then moved in with force and took custody of the villagers. Before the action, the police had disconnected communication links of the media so that the news of the events could not be broadcast.

The state action, on one hand, refusing to pay compensation and adequately rehabilitate the villagers, and on the other, preventing them from peacefully protesting against the state's wilful neglect, coupled with the state's use of brute force against even the media, is a matter of extreme concern.

One of the state cabinet ministers, Mr. Kailash Vijayvargiya, said that the people must know that the state is all powerful and that a bunch of villagers cannot be expected to bring the state to the negotiation table. The statement

is mean and disrespectful to the very notion of democracy, a concept by which Mr. Vijayvargiya, and the government he is part of, was voted to power. The statement also illuminates the dictatorial mindset of persons running the state; in this case, a cabinet minister who entertains complete disrespect for his own people, for whom he is in office, and at whose expense. Allegations that Mr. Vijayvargiya is in fact one of the masterminds selling natural resources of the state to private interests at the expense of the nation gains weight under these circumstances. Additionally, the state's legal and moral responsibility to compensate those who have lost their land and livelihood must be held paramount, legally beyond negation by a rogue minister who wishes to make private gains by selling national resources to private entities.<sup>51</sup>

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51 A blog page created by the AHRC on the NBA's protest against the Omkareshwar and Indira Sagar Dams is available at <http://jalsatyagrah.blogspot.hk/>

*INDIA: Case 6***Krishna Mondal: Threatened for Reporting Torture to Police**

In the Urgent Appeal Case<sup>52</sup>, it was reported that four Border Security Force (BSF) officers from the Harudanga BSF camp went to Krishna Mondal as he was working his farmland and tied his hands behind his back before beating him so brutally that months later he was still unable to resume work.<sup>53</sup>

Despite death threats from the BSF, Krishna filed a petition with the Additional Chief Judicial Magistrate (ACJM) in Lalbagh and his wife lodged a written complaint with the Superintendent of Police in Murshibabad, requesting an investigation into his case. The new information provided by Banglar Manabadhikar Suraksha Mancha (MASUM) shows that subsequent to Krishan filing the petition, not only has his family not heard of any formal action being taken on his case, but the BSF has, in fact, been joined by local police in repeatedly threatening Krishna and his family with reprisal.

On 30 June 2012, the Raninagar Police Station sent a home guard (a member of the voluntary police, serving as an auxiliary to the West Bengal State Police) to Krishna's home to notify him and two witnesses to his torture - his neighbour Mr. Bijoy Mondal and Mr. Sirajul Islam, the doctor who treated his injuries - that they were to report to the Raninagar Police Station the following morning. They were served no official notice and, suspicious of the intentions of the police, Krishna and his neighbour determined they would not go. Islam, the doctor, did report to the police station the next morning, whereupon the police reportedly used extreme intimidation to pressure him into giving a false statement about Krishna's case.

On 2 July 2012, the same home guard from Raninagar Police Station visited Krishna and threatened him for failing to show up at the station the previous day. A few hours later, another person from the Intelligence Bureau (DIB) of the Harudanga BSF Camp visited Krishna and attempted to intimidate him

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52 AHRC-UAC-096-2012: [www.humanrights.asia/news/urgent-appeals/AHRC-UAC-096-2012](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-096-2012)

53 For Krishna Mondal's earlier audiovisual interview with local human rights defenders please see: [www.youtube.com/watch?v=9lvGfS\\_OZc&feature=player\\_embedded](http://www.youtube.com/watch?v=9lvGfS_OZc&feature=player_embedded)

into withdrawing the case he had filed with the magistracy. They gave him three days to withdraw the complaint, threatening reprisals against Krishna and the witnesses to the case if he did not withdraw the complaint. The following day, 3 July 2012, the Sub Inspector of Raninagar Police Station called Krishna via Sirajul Islam's (Krishna's doctor) mobile phone, warning that he would "...fabricate false charges against you and you will be brought to the police station by the police," if Krishna did not report to the police station himself. Suspicious of the motives of the police, Krishna did not go.

The threats from the police and the BSF culminated most recently in the forced detention and interrogation of Krishna, as well as his family members and witnesses to Krishna's torture. Five BSF personnel drove to Krishna's home on 7 July 2012 and ordered Krishna and five of his family members, two of them women, who had borne witness to his torture injuries, to accompany them to the Harudanga BSF camp. When the family refused, they were forced into the BSF vehicle and transported to the camp, where they were detained in a cell and, one by one, produced before a BSF official who interrogated them about their motives for filing their complaint. The BSF also made photocopies of the complaint and other related materials, such as the prescription written by the doctor after examining Krishna. Also present at the BSF camp were Mr. Swarup Biswas, the Sub Inspector of Raninagar Police Station, who is reported to be the Investigating Officer assigned to the case Krishna filed with the magistracy, as well as three other constables of the Raninagar Police Station.

At the conclusion of the interrogation, the BSF personnel ordered Krishna and the others to sign a document written in Hindi. The BSF agreed to give Krishna and the others copies of this document, but the documents the BSF later gave them were different from the ones they signed. When Krishna and his family members were finally released from their ordeal at Harudanga BSF camp, they were made to return home on foot.

In the following days, BSF personnel repeatedly sought out Mr. Tojammel Haq of the nearby village of Dankrakati, a doctor who had provided Krishna with some medical care. On 10 July 2012, two BSF officers from the Roshanbagh District Headquarters came to Haq's residence to take a statement from him. According to MASUM, the BSF and police officers are attempting to discredit the injury report associated with Krishna's torture case by contending that the medical practitioners who treated Krishna were

unlicensed. Given that there are no licensed doctors posted in any of the ten health centres serving this rural area of close to 20,000 people, however, Krishna sought the only treatment available to him – indeed, anyone – in the area.

Despite appeals from MASUM and the AHRC to the National Human Rights Commission (NHRC), the Chief Minister of West Bengal, Chief Secretary of West Bengal, the Director General of the BSF, the Director General and Inspector of Police of West Bengal, the Superintendent of Police in Murshidabad, and various international human rights bodies, no action has been taken by the district, state and central authorities to investigate Krishna's case. It is unconscionable that individuals are being forced to live amidst such fear and insecurity, and that the perpetrators of brutality continue to harm their victims with impunity.

We therefore call for the relevant authorities to take punitive action against the BSF personnel who have tortured Krishna, violating the constitution and his human rights. The complicity of the local police in covering up these violent acts and intimidation should be thoroughly investigated as well, as the police have a moral and legal obligation to protect their constituents and certainly should not participate, either actively or passively, in threats against these individuals.

*INDIA: Case 7***Prashant: Human rights defender tortured in Kerala**

According to the case report, in yet another instance of police brutality by officers stationed at Mathilakam Police Station of Thrissur district, Kerala, the Sub Inspector of Police verbally abused and later brutally tortured Mr. Prashant, a human rights defender and reporter for a local news portal, at the police station. Prashant had gone to the police station to enquire about his cousin, who was taken into custody by the police since they could not find the actual suspect. People living within the jurisdiction of the police station allege that the Sub Inspector has made it a habit to search houses in the dead of the night and abuse women on the pretext of searching for suspects and investigating crimes. Prashant had to be admitted to hospital to treat his injuries.



An inquiry undertaken by Nervazhi reveals the following facts:

Mr. Prashant P. S. is a human rights defender and journalist. The Sub Inspector of Police Mr. Midhun, stationed at Mathilakam Police Station, came to Prashant's aunt's house at about 12 p.m. on 7 October 2012 looking for Mr. Vipin. Vipin is Prashant's younger cousin. Since the police could not find Vipin at home, they took Vipin's elder brother Mr. Deepak Raj into custody. At the time, Raj's mother (younger sister of Prashant's mother) asked the officer why they were taking Raj into custody. The officer shouted filth at Raj's mother and ordered her to produce her son, Vipin, at the police station, threatening that they would hold Raj in custody until then.

Prashant came to know about the incident on the same day, in the afternoon, when he was preparing to attend a human rights meeting at Kodungalloor Rest House in the neighbouring town. Prashant immediately went to the police station to enquire as to why the police were searching for Vipin and why the police had taken Raj into custody. Prashant reached the police station at about 4:30 in the afternoon.

At the police station, Prashant met his aunt. Prashant asked his aunt what had happened. Then Prashant went out of the station compound, recharged

his mobile connection and returned to the police station. There, he found Sub Inspector Midhun in a police vehicle. Raj and his mother were standing beside the police vehicle.

As Prashant approached the police vehicle, the officer asked Prashant why he had come to the station. Prashant answered that he had come to enquire why his cousin was taken into custody and why the police were searching for Vipin. Hearing this, the officer shouted filth at Prashant and ordered him to get out of the police station compound. Prashant, however, said that he would not go, since it is his right to know why Raj was taken into custody and why the police were searching for his younger cousin.

Hearing this, the officer screamed at Prashant and jumped out of the driving seat of the police vehicle. As he got out of the vehicle, the officer kicked Prashant on his chest. Prashant fell down on the ground. When Prashant tried to get up, the officer slapped Prashant on both sides of his head. Then the officer tried to hit Prashant again, which Prashant tried to prevent by holding onto the officer's hand. The officer again shouted at Prashant, asking him how he dare prevent the officer from assaulting him.

The officer forced Prashant to bend face down and started kicking Prashant on his back. At this time two police constables came out of the police station building and, along with the officer assaulting him, dragged Prashant into the police station.

Inside the police station, the officer along with the constables threw Prashant on to a table. They forced Prashant to lie down on the table and then the officer kicked Prashant in his groin. Then the officer forced Prashant to lie face down on the table and punched him on the back of his chest and behind his knee. The officer ordered the constables to throw Prashant into a lock-up room.

The police constables forced Prashant to remove his shirt. Prashant refused to comply and asked the police officers why they were assaulting and detaining him. The constables hurled abuses at Prashant and ordered him to enter the lock-up room. Fearing further violence, Prashant complied. The Sub Inspector then came near the lock-up door and asked Prashant whether he was under the influence of alcohol. Prashant replied that he was not.

At about 5 pm, another police officer came near the lockup room and was introduced as an officer from the State Police Special Branch. There was another police officer accompanying him. They asked for Prashant's address and contact number, which Prashant provided. After a while, another police constable came near the lock-up room and took away the two mobile telephones that Prashant had. After a while another police constable came and checked whether Prashant had a tattoo mark on his hands and verified that he had none.

The police detained Prashant at the police station till about 8 p.m. By that time, many people had arrived at the police station, including some journalists demanding to know why Prashant was detained at the station and why the police had assaulted him. Soon a police constable came near the lock-up room and informed Prashant that they were letting him go.

The constable asked Prashant to put on his shirt and took him to the Sub Inspector's room. One of Prashant's relatives, Mr. Shaju, and Prashant's brother, Mr. Prabeesh, were present at the officer's room. Then the officer mocked Prashant, asking whether he wanted to end up in prison. The officer also informed them that Prashant would be taken for a medical check up at the local health centre for examination and would be released.

Two police constables then took Prashant to Kuttalakadavu Government Hospital. At the hospital, Prashant informed the duty doctor of what had happened to him in police custody. Prashant does not know whether the doctor had recorded his injuries in the medical report or not. After the medical examination the constable returned Prashant to the police station. The police returned the two mobile telephones that they had taken from Prashant and released him from custody on the same day.

Once at home, Prashant found it difficult to urinate. Then he started feeling severe pain on his chest and lost sensation in his legs. At about midnight Prashant's family rushed Prashant to Kodungaloor Thaluk Hospital where Prashant obtained medical treatment and was later discharged.

The Indian Penal Code 1860, prescribes punishment to wrongful confinement. Under Section 340 of the Code, illegal arrest and detention amounts to wrongful confinement. Section 341 prescribes simple imprisonment for a term that may extend to one month, or a fine not

more than Rs. 500 for illegal arrest and detention. The courts in India have decided that illegal arrest and detention should not be encouraged and must be investigated and punished. It is a common practice in India for investigating agencies to illegally detain persons, often close relatives, to force the surrender of suspects. In the present case the Sub Inspector of Police not only illegally detained the immediate brother of the person they were searching for, but also the cousin who came looking for him. Section 357 prescribes punishment for assault committed while attempting to wrongfully confine a person. The punishment prescribed is simple imprisonment for a period of one month and a fine of two hundred Rupees. Section 509 of the Code prescribes punishment for insulting the modesty of a woman. The punishment prescribed for the offence is simple imprisonment for a term of not more than one year and a fine.

India is yet to ratify the UN Convention against Torture. There is yet no domestic legislation that criminalises torture. For the limited purpose to which the Penal Code could be used, it prescribes a disproportionate and low punishment for as heinous a crime as torture in custody.

## Pankaj Sumra et al: 3 Dalit Youth Killed by Gujarat Police

Navsarjan Trust has obtained information about the extra-judicial killing of three Dalit youth by the Gujarat police, for their protesting. The first incident took place on 21 September when police opened fire on a crowd after failing to control a clash between Dalits and Bharwads, fatally wounding a 17-year-old Dalit youth named Mr. Pankajbhai



Amarshibhai Sumra, who succumbed to bullet injuries in a hospital in Rajkot.

The police firing incensed the Dalits, who took to the streets demanding stern action against the officers responsible for the killing of the youth. Instead of taking any action against the officers, the police again opened fire again on protesting Dalits, on 23 September 2012, killing two more Dalit youths named Mr. Prakashbhai Babubhai Parmar, aged 26 years, and Mr. Mehulbhai Valjibhai Rathod, aged 17 years, and seriously injuring another youth named Mr. Chhanabhai Mavjibhai Vaniya.

Unfortunately, in cases of communal clashes between Dalits and any other group, the targeting of Dalits has emerged as a pattern. The police are often found to be acting as a conduit of locally dominant caste groups instead of discharging its duties in a fair and impartial manner. The officers responsible for such attacks are rarely punished and thus embolden the structures of violence against Dalits and other marginalised groups.

On 21 September 2012, Bharwads and Dalits first came face to face after a petty fight at a local fair organised by the Thangadh municipality. The fight snowballed into a major clash, with both sides using sticks and sharp weapons against each other. The police officials claim that they lobbed tear gas shells to disperse the rampaging crowds and opened fire only when this did not work. The firing resulted in the fatal wounding of 17-year-old Mr. Pankaj Sumra. Even after injuring him, police did not rush him to the hospital and left the job to the relatives of the wounded youth. The relatives took Sumra

to Thangadh Civil Hospital, from where he was referred to Civil Hospital, Rajkot, where he was ultimately declared dead.

News of Sumra's death sparked outrage among Dalits, who took to the streets demanding that a complaint be filed against police officials responsible for the death. Instead of taking action against the guilty officers to assuage the feelings of Dalits and ensure justice, the administration called in reinforcements. The protests continued and resulted in a clash of Dalit youth with the police officers on the afternoon of 23 September, 2012. Instead of controlling the youth with minimum force, the police opened fire, causing bullet injuries to three persons. They were rushed to Rajkot Civil Hospital where Mr. Prakashbhai Babubhai Parmar, aged 26 years and Mr. Mehulbhai Valjibhai Rathod, aged 17 years succumbed to their injuries, while another youth named Mr. Chhanabhai Mavjibhai Vaniya is still battling for his life.

In the first instance of firing, the guilty police officers had acted without any permission from Mr. Raghvendra Vatsa, Senior Superintendent of the Police (SSP). Vatsa visited Thangadh after the firing but did not initiate any action against the guilty officer or to restore peace in the locality.

In the second incident, however, Mr. Hari Krishan Patel, SSP, Jamnagar district, was in charge of Thangadh Police Station area as Vatsa was out of the town making arrangements for the Swami Vivekanad Yatra of the Chief Minister Narendra Modi.

Patel was present at the venue and it is reported that his commandos, armed with AK-47 weapons, also participated in the firing, along with other policemen.

The police then refused to lodge First Information Reports (FIRs) against the guilty officers and it was only after great difficulty and struggle that three FIRs were lodged against four police officers, namely, Sub Inspector Mr. K. P. Jadeja; Sub-Inspector Mr. Bharatsinh Solanki; Head Constable Mr. Yogeshdan Gadhavi; Head Constable, Mr. Nathubha Andubha Rana; and an unknown police officer who is yet to be identified. All the accused officers are posted at the Thangadh Police Station. The FIRs were lodged under Crime Register number I-71/12, I-72/12 and I-73-/12 under the Indian Penal Code, 1860, Sections 302, 147, 148, 149, 114, 120-B and under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Section 3 (2) v.

Section 3 (2) v reads “whoever being not a member of the scheduled caste or the scheduled tribe commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a scheduled caste or a scheduled tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.”

The police have also filed FIRs against seven Dalit youths.

Indeed, this is a case of social rift between two communities. However, a responsible government has the duty not just to prevent such an incident from happening, but also containing it immediately, using authority that is acceptable within a democratic environment.

As evident from this case, when communal tension was simmering in its jurisdiction, an unfortunate event in which one person had already died, the SSP's priority was to do an escort job for a Chief Minister, who does not have a good reputation in maintaining communal harmony. The 2002 Hindu-Muslim riot, in which mostly Muslims lost their lives and property, was orchestrated under Mr. Modi's tenure as the Chief Minister of the state. During that event, fascist Hindu forces wantonly used the state police and the administration to locate, identify, rape, and murder Muslims and destroy their property. It was an incident in which Dalits and the tribal community were allegedly used against the Muslims.

What is evident in this instance, however, is the overwhelming cornering of underprivileged communities in the state by the dominant communities, for political and material reasons. This incident is also one in which the state administration has miserably failed to restore peace in the state. The Bharwads are not an influential community, since many are shepherds and most of them work as agricultural labourers. However, according to the caste system in India, they are considered superior in caste hierarchy to the Dalits.

*INDIA: Case 9***Despicable Policing**

Once again, the country's judiciary has underlined the fact that there is something fundamentally wrong with the police in India. On 7 November, the Chief Justice of Karnataka High Court, Justice Vikramajit Sen - while hearing a case - said, "I never understand why the police always take the side of villains. Whether it is Haryana or Karnataka, it is the same."



Justice Sen, chairing the Division Bench of the court was hearing a criminal case. Expressing concern about the conduct of police with regard to women, Justice Sen said, "... the police have no sympathy over the plight of the [rape] victim."

"...Until it happens to their families, they cannot understand", the court concluded.

The courts in India, including the Supreme Court, have on several occasions lashed out at the police and other law enforcement agencies in the country, each time expressing concern over the fact that these agencies are professionally unfit to undertake their mandate. For instance, the Kerala High Court, while hearing a case relating to crimes committed by the state's police officers, expressed serious concern over the high number of police officers, ranking from constable to the Inspector General of Police, who have criminal cases against them and yet are still in active service.

The report, submitted by the Director General of Police in Kerala to the High Court on 8 August 2011, reveals the names of 533 police officers that fall into this category. The state government, however, has tried to dismiss the seriousness of the issue and no action whatsoever has been taken against these officers so far.

One of the most notorious cases on the list is that of an officer of the rank of Inspector General of Police, accused of charges including corruption, smuggling, and threatening and intimidating witnesses. The fact that these officers are not only responsible for formulating policies for the department, but are also directly involved in criminal investigation, challenges the capacity of the Indian police to undertake criminal investigation, one of the foundation stones of criminal justice in the country.

In fact, the Government of India does not have a real picture of the state of affairs concerning the alarming internal wilt that has occurred in the police. The record available with the National Crime Records Bureau (NCRB) is an example of this. The NCRB report claims that out of the 61786 complaints made against the police in 2011 in the whole of the country, only 916 were charge-sheeted (charges filed).

Human rights organisations like the Asian Human Rights Commission (AHRC) and other civil society organisations have been calling upon the Government of India to take immediate action to deal with this serious absence of professionalism and morale within the police and other law enforcement agencies in the country. Cases documented from India, including those of corruption, the widespread practice of torture and other forms of custodial violence, substantiate this concern.

Just as it is in the case of any other disciplined force suffering from lack of morale and professionalism, the despicable conduct of the police is not limited to cases involving private complaints. The lack of an enforceable disciplinary and accountability framework has resulted in the police treating crimes committed against their own rank and file with the same temperament as in the case of private complaints. Criminal investigations in the country resemble a marketplace, where negotiations are made in the open and deals sealed under the table.

The internal investigation report filed by the Director of Police Intelligence, Mr. T. P. Senkumar, to the Director General of Police, Mr. K. S. Balasubramaniam, concerning the case of assault and death of a Sub Inspector of Police (SI) Mr. Thankaraj in Kerala, speaks about the alarming fact that police officers even compromise with criminals about crimes committed against fellow police officers by local thugs, after demanding and accepting bribes from those criminal elements.

The intelligence report prepared by Senkumar alleges that the Superintendent of Police Mr. K. B. Balachandran and other police officers have accepted bribes from a local thug, Mr. Sebastian, so that Sebastian's name is dropped from the list of suspects accused of assaulting the SI, an assault that resulted in his death. That such demeaning and corrupt practices are so highly prevalent among the rank and file of the state police department not only negates every legitimate purpose of criminal investigation, but also encourage all officers to be corrupt.

In this case too, the Government of Kerala is reportedly refusing to take action against the errant police officers, unfortunately due to illegal and political considerations. These incidents are not rare in India, but rather the standard conduct of police officers. The entire force does not enjoy an iota of trust among the population, and unfortunately the country's judiciary subscribes to this general perception.

The AHRC is of the opinion that the single largest impediment to police reforms in India is the police force itself. The police force in India, which has by now been reduced into a mere uniformed criminal gang that brokers with authority, enjoy absolute impunity in return for the role of middlemen they play in power brokering.

Officers agree to do the clean-up jobs for the powerful and the rich with the least amount of persuasion and they are willing to illegally manipulate investigations. While high-ranking police officers often sell their uniforms for the country's corrupt political and financial elite, the lower-ranking officers extort money from the ordinary people by engaging in crimes like extortion, fabrication of charges or even undertaking smuggling activities.

The police and all law enforcement agencies extort bribes from detainees and suspects using the threat of torture. Some police officers engage in supporting anti-national and terror syndicates after accepting money and other favours from these gangs. In that, the single largest threat to national security in India is its own police force. Unfortunately, this is an issue that the country's administration is yet to admit to and to remedy.

The continuance of such a state of affairs in police and other law enforcement agencies not only impedes the overall framework of the rule of law in India but also absolutely negates the country's capacity to fulfil the constitutionally mandated domestic human rights standards.

Such faulty institutions, which are incapable of discharging everything expected to be undertaken within the framework of the rule of law, are exploited further by the government to implement draconian legislations like The National Security Act 1980, The Unlawful Activities (Prevention) Act 1967 and their state variants like The Maharashtra Control of Organised Crime Act, 1999; The Karnataka Control of Organised Crimes Act, 2000; The Uttar Pradesh Control of Goondas Act, 1970; The Assam Preventive Detention Act, 1980; The Armed Forces (Assam and Manipur) Special Powers Act, 1958; and The Madhya Pradesh Rajya Suraksha Adhiniyam, 1990. There are at least 44 such pieces of legislation in India, which allow the police to arbitrarily take action against innocent members of the public.

The ability of the police to sidestep the rule of law is enhanced by these laws, but also guarantees misuse of all the above legislation, without exception. Other procedural restrictions built into the Criminal Procedure Code, 1974, to prevent misuse of authority are today meaningless. Today, the police can illegally detain, keep in prolonged custody and even murder people with absolute impunity. This negates the fundamental premise of fair trial.

All these pieces of legislation, however, are implemented in the guise of empowering law enforcement agencies to control and prevent crime. Yet the most simple and elementary step, to discipline the police, is yet to be implemented in India.

The basic flaw in the mindset of the government is that the law enforcement agencies are conceived as organs to maintain order, which awards arbitrary authority to state agencies to subject laws to wanton misuse since the agencies implementing the legislation themselves act with the same mindset of organised criminal syndicates. Today, if anyone refers to the law enforcement agencies in India as organised criminals in uniform, it cannot be held untrue.

It is not that exceptions to this general perception do not exist in the rank and file of the law enforcement agencies. It is only that the number of such officers is far too low, and they alone cannot improve the image or performance of the rest of the force. It is a sad truth that both the government and the law enforcement officers know, that for the conditions to improve, the change has to come from within; yet both choose to do nothing about it.

## PAKISTAN

### *Torture Methods 'popular' in Pakistan*

- Beating or kicking the prisoner with bare hands or with wooden sticks called “danda”;
- Beating the prisoner using a piece of reinforced leather called “chittar”;
- Causing burn injuries with cigarette butts;
- Verbally abusing the victim using filthy language;
- Forcing the victim to lie down on ice blocks and then standing on top of them;
- Forcing detainees to remove all their clothing and making them dance naked before the officers for several hours;
- Making them do push-ups the whole night;
- Hanging them from the roof ;
- Putting their head under water for extremely long durations;
- Putting rats in detainees pants or pyjamas (trousers);
- Forcing detainees to listen to audio and video recordings of the screaming of torture victims on full volume;
- Beating detainees with iron rods;
- Keeping detainees blindfolded for several days;
- Stitching the lips of detainees;
- Not allowing detainees to go to the toilet;
- Taping the male organs;
- Rape of women;
- Cutting of the penis;
- Sodomy;
- Use of chilli powder on the sensitive parts of the body;
- Using detained women as sex slaves;
- Keeping women nude before the detainees

*PAKISTAN: Case 1***Torture of Fazal Abbas**

Since the Asian Human Rights Commission (AHRC) first reported the torture of Mr. Fazal Abbas and his family by police earlier this month, details of escalating brutality have continued to become public, particularly in the case of Abbas' brother-in-law, Mr. Shafiq Dogar. The events are horrifying enough on their own, but when one imagines the number of police officers and court workers across the province that either carried out the torture or allowed it to go ahead, Pakistani law enforcement is cast in a particularly bare and ugly light.

Fazal, his young sisters, his mother, and his brother in law were all tortured in April at the Airport Police Station Rawalpindi, and their ordeal was allegedly arranged and aided by family members of Fazal's new wife Khulsoom, which includes Member of Punjab Assembly (MPA) Iftekhhar Baloch, in revenge for a marriage that didn't meet their approval.<sup>54</sup>

One victim, a sixteen-year-old girl, is yet to be found; she was seen being beaten and driven away in a car with lawmaker Iftekhhar Baloch, who remains at large.

Mr. Shafiq Dogar was subjected to torture, which included torment of various imaginative kinds, including his rape, after which red chilli powder was put into his anus. Dogar's wife Riffat Rani and her younger sisters, 12 and 19, were also beaten by policemen and by Iftekhhar Baloch and arrested on trumped-up charges, and since their release, have been threatened by Iftekhhar Baloch.

However, it is in the details of relentless abuse that we are able to provide here that patterns emerge of complete impunity and corruption within Pakistani 'law enforcement'. In the chronology that follows, a disturbing relationship comes to light. The cozy tie-up between Kulsoom's family, having wealthy mill-owners and a provincial assembly member, on one side, and the police and lower judiciary on the other, with the latter two wings of government found working under the direction of the former, somewhat like hired thugs.

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54 Please see: [www.ahrchk.net/ua/mainfile.php/2009/3159/](http://www.ahrchk.net/ua/mainfile.php/2009/3159/)

That, Shafiq Dogar, was even pushed by police officers into a court room in a wheel-chair, being unable to walk as a result of torture by the police, shows the abjectness of lower court judges, who didn't bat an eye.

### **The Torture of Shafiq Dogar (as related by the victim himself)**

**April 25, 2009:** A First Information Report (FIR), i.e. a document of complaint, is filed against Fazal Abbas, the groom, at the Airport Police Station in Rawalpindi (Punjab province) by Mehmood Ur Rehman (Kulsoom's brother) and others. It charges Abbas with the girl's abduction and rape and the theft of her jewelry and cash.

**April 26:** In the early morning, Baloch (the MPA), Mehmood Ur Rehman, and Kulsoom's brother-in-law Mr. Nasir Khan Baloch, along with Basheer (an assistant sub inspector) and other police officers, raid the house where Kulsoom is staying. She is beaten severely by each member of the raiding party. They ask for her husband's office address. Neighbours intervene and Kulsoom manages to escape.

At noon, the same group of men visits the house of her in-laws in Iqbal colony, Sargodha, Punjab province. They forcefully enter the home and severely beat up the women and girls there, demanding to know the whereabouts of Fazal Abbas. They then force Abbas and his sisters, Riffat Rani (wife of Shafiq Dogar); Miss Nadia, 19, who is a national badminton champion; Miss Shazia Riaz, 16; and Miss Nazia, 12, into three private cars. Shazia Riaz is dumped into a separate car with Iftekhhar Baloch, and she has not been seen or heard of since.

**April 28:** Shafiq Dogar works as cable operator for electronic channels in Sargodha district, and is the vice president of a cable operators' organization in Punjab province and president of the Electronic Media Club, Sargodha. Dogar is the brother in law of the controversial groom, Fazal Abbas. At around 1 p.m., five private cars arrive at office at Company Bagh, Sargodha. The men drag him outside his office, beating him with fists and legs. His captors don't tell him why he is being arrested. In the five cars is one sub-inspector, Mr. Sharif, two constables, and the brothers of the bride (Kulsoom), namely, Aamir Khan, son of Hyder Baloch, and Nasir Khan, son of Lal Khan. Two of the cars are black, one is silver, bearing the registration number ICG 4747, one is a red coloured Alto, bearing number FDA 1721, and one is green coloured, A 4144.

Shafiq Dogar is blindfolded and taken to Barana police station, Chiniote town, 20 kilometres away from his office by the highway. Highway police stop the cars and, when they find that one person is blindfolded, they ask police and other occupants of the car to wait. After a heated exchange of words, there is a telephone call from Choudhry Akram, the deputy police superintendent of police (DSP). He arrives at the scene and tells the highway police that the blindfolded person is a dangerous terrorist and the police should be allowed to take him onwards. The car in which Dogar is taken is given a clean chit by the highway police and the occupants celebrate their victory by shouting slogans. They then start beating Dogar in the car.

Dogar is brought to Barana police station, Chiniot. Allegedly, on instructions from Iftekhar Baloch, a member of the Punjab Assembly, Dogar is pushed into in a private room at the Barana police station, where he is flogged with chitter, a locally made flat leather whip. He is asked to divulge the whereabouts of his wife, Riffat Rani, who police claim is shielding Kulsoom. Then, his hands are chained, a roller is passed behind his neck and he is hung from a height. After some hours, Dogar falls unconscious and is then moved back inside the lock up. When he regains consciousness, he is denied water. In the late hours, he is again beaten and asked to reveal the whereabouts of his wife and Kulsoom.

**April 29:** Dogar is implicated in a case of theft and an FIR is lodged. In the evening, he is taken to the room of the Station House Officer (SHO), where Iftekhar Baloch (the aforementioned MPA) is seen seated with DSP Choudhry Akram. Baloch asks him to provide the address of his wife and Kulsoom. When Dogar pleads ignorance of their whereabouts, he is again taken to the same private room and one Mehmood Ur Rehman, Kulsoom's brother, reportedly instructs Sub Inspector Sharif to torture him until he reveals their hideout. In the room, he is first whipped with a 'chitter' and at 11 p.m. his hands are chained to his right leg, while his left leg is stretched in the opposite direction, making it difficult for him to stand. This method of torture continues, according to Dogar, until after morning prayers, i.e. 5 a.m.

**April 30:** Dogar is produced before Mr. Tayyab Ishaq Mayo, a civil judge in Chiniot, Punjab province, for police remand, and he is warned by Sub inspector Sharif not to tell the magistrate about the torture, or else he would be tortured more severely. However, when he is produced before the civil judge, he tells the court that he has been severely tortured. Dogar also

shows the torture marks on his body. But the civil judge pays no heed to the evidence of torture. Dogar tells the judge that he deserves to know on what charges he has been arrested. The judge passes the buck and tells him to find that out from the police. Dogar is given three days physical remand in police custody under sections 380 and 406 of the Penal Code.

After 11 p.m., DSP Akram comes to the police station and orders the police to bring Dogar from the lock-up like a dog. Dogar is tied with chains and compelled to walk naked like a dog, while the other end of the chain is held by Sub Inspector Sharif. The DSP office is about 200 meters away from the police lock up, where Iftekhhar Baloch, the MPA, is also seated. Baloch verbally abuses Dogar. He tells Dogar that he only needs Kulsoom because she has brought the Baloch family into disrepute. When Dogar pleads ignorance of the whereabouts of Kulsoom and his wife, he is taken to the private room again, where he is hung upside down with chains while two policemen pull him down, stretching his body. They stop torturing him after an hour when they see blood coming from his mouth and he faints.

**May 1:** Dogar is subjected to verbal abuse at regular intervals throughout the day. He is taken out for one hour from the lock-up. Unexpectedly, the SHO of Barana police station returns to duty after a holiday, which gives Dogar a respite from the torture. The SHO gets the whole story from Dogar, while Sub Inspector Sharif allegedly tells him that Baloch, the MPA, is pressurising the police. The next three days are torture-free for Dogar owing to the presence of SHO Mr. Sajjad Cheema.

**May 2:** Dogar's media friends come to meet him and give him an assurance that they will intervene with the concerned authorities to prevent further torture.

**May 4:** Dogar is produced before Mr. Babar Hussain, a newly transferred civil judge. Civil judge Babar Hussain refuses Dogar's lawyer's request to allow his client a medical check-up. After a phone call from Mr. Baloch, the civil judge leaves his seat and the court for almost three hours. Later, he gives Dogar a further three days of remand in police custody.

After 9 p.m., DSP Choudhry Akram interrogates Dogar again, asking the same questions. The DSP asks Sub Inspector Sharif to take off Dogar's clothes and to try to extract information again. While the policemen pin Dogar

down, one officer sodomises him. After some time, the DSP asks the cook of the police station to bring him some red chilli powder and a spoon. At around 3 a.m. on May 6, Dogar is hung upside down again and a wooden spoon dipped in chilli powder paste is pushed inside his anus, twice. He faints again till around 11 a.m. when he is roused and allowed to wash. However he is unable to walk until later that evening. That night, DSP Choudhry comes again to interrogate Dogar, warning him that, should he tell anyone about the torture, he would bring Dogar's children in to be subjected to the same thing. Officers call his wife a prostitute. Eventually Dogar's friends are able to intervene and the torture ends.

**May 7:** Top police officials of the district write a report in favour of Dogar and exonerate him from the false theft charges, but he is kept in custody under another charge; a breach of settlement in a business transaction.

**May 9:** Dogar is produced before Mr. Babar, a civil judge, who remands him to judicial custody and sends him to Chiniot district prison. Yet, he is loaded into the car of Nasir Baloch, the brother of Iftekhar Baloch, MPA, and taken to Jhang prison instead. When he arrives, Mr. Baloch, the MPA, is also there. Here, Sub Inspector Choudhry allegedly pays Rs 500 to a jailer called Shah to put Dogar with the prisoners who are generally sent outside the jail to work every Sunday. This is allegedly part of a conspiracy to kidnap him and declare that he had escaped prison. However, the inmates of the Jhang prison get to know about the past torture and club together to resist this unofficial transfer to an unknown destination.

**May 10:** The deputy superintendent of Jhang prison calls Dogar inside the office and orders a group of around nine policemen to slap his face five times each, with full force. His face is swollen and bruised for days.

**May 11:** Mr. Basheer Malik, the assistant sub inspector of the Airport police station, Rawalpindi, 400 kilometres away from Jhang, comes to Jhang prison and meets with Shafiq Dogar, and asks the whereabouts of his wife and Kulsoom. He tells him to be prepared for further interrogation at his police station.

**May 13:** A petition for Dogar's medical check-up is filed in the Sessions court. No action has yet been taken.

**May 14:** Dogar is presented before Babar Hussain, the civil judge, who gives him one-day travelling remand and hands him over to the custody of the Airport police in Rawalpindi. He is taken in the same red car, bearing number 1721. Mahmood Ur Rehman, Kulsoom's brother, drives the car and two more people are also seen to be with him. Dogar is taken into a private bungalow in Rawalpindi, close to Airport police station. Here, two constables, Imran and Sultan, take custody of Dogar. ASI Basheer starts interrogation and asks about phone calls received and made by him. At 9 p.m., Constables Imran and Sultan come with a head Muharrar (record keeper), also named Dogar, and take the victim to the rooftop of a private house, where he is handcuffed, his legs are tied with a rope and they start whipping him with chitter, asking him where his wife is. After some time, the police constables start beating him with wooden rollers. Then he is compelled to adopt a humiliating posture, holding his ears with his hands. This is usually done to truant children in school. He is continuously tortured. At 1:30 a.m., early hours of May 15th, ASI Basheer Malik comes in drunk and starts beating him while speaking abusively about his wife. Dogar is then locked-up inside the police lockup at the Airport police station.

**May 15:** Dogar is produced before Azmatullah Awan, a civil judge in Rawalpindi, who remands him to police custody for three days. Dogar complains about his physical torture but is ignored. Baloch, the MPA, and Mahmood Ur Rehman, Kulsoom's brother, are present in the court.

**May 16:** Dogar is taken from the police lock-up and confined to a large room with two cupboards and a table with dim lights. Again, he is handcuffed and interrogated with fists and slaps. All the time policemen ask him about his wife and Kulsoom. After a few hours he is again thrown inside the police lockup in a semi-unconscious condition.

**May 17:** He is taken into a private room again where he is forced to take off all his clothes. He is then hung upside down and beaten with rollers and chitters. He is kept hanging till 5 a.m. the next day. The SHO, Mr. Safdar, also joins in the torture and sexually abuses Dogar.

**May 19:** The police remand is over and Mahmood Ur Rehman arrives in his private car, number 1721, and takes him to the civil judge court of Mr. Azmatullah with three police officials, including ASI Basheer Malik. Mahmood abuses him with filthy language and makes abusive remarks about

his wife for most of the journey. The judge extends Dogar's physical remand for three more days. At this point, Dogar can barely walk. He is wheeled into court in a wheelchair.

Later in the day, Mahmood and ASI Basheer again take him to a private room and strip him. Mahmood brings an empty mineral water bottle with him, fills it with his urine and instructs Dogar to drink it, forcing him to beg not to. Later on, Mr. Chaudhry Safdar, the Station House Officer of the Airport police station, joins the torture session. Mehmood, a non-policeman, rubs chilli powder into Dogar's anus. The session lasts all night.

**May 20:** Dogar is thrown into the police lock up where he partially gains consciousness in the morning. There are about seven prisoners inside the lock up who care for him and wash away the red chili. In the evening, the Deputy Superintendent of Police (DSP) Mr. Taifoor, comes and starts beating him, trying to provoke him with abusive language. That night ASI Basheer tortures Dogar, compelling him to take the posture of a chair while Mehmood sits on him. ASI Basheer then hangs him from the ceiling.

**May 21:** Dogar is again thrown inside the police lock up after a whole night of torture, yet he remembers that the police officers suddenly become very mild in their behaviour towards him. It should be noted that on May 20 an urgent appeal<sup>55</sup> was issued which was received by authorities through their email addresses. Many television channels start to break the news of Dogar's torture as a result.

In the afternoon, DSP Taifoor comes and asks him to disclose the whereabouts of the two ladies and tells him that he would be sent back to Qadirpur police station, Jhang, where a new police officer, Mr. Saqlain, has taken charge. Dogar is told that this man is notorious for inflicting 'third degree' torture.

**May 22:** He is again produced before civil judge Azmatullah for physical remand. The judge grants two days physical remand in police custody on the pressure of Mr. Baloch, the MPA, who allegedly remains in contact with the civil judge by mobile phone throughout the session. Most newspapers and television channels have come out with the news of the torture inflicted on

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55 [www.ahrchk.net/ua/mainfile.php/2009/3159/](http://www.ahrchk.net/ua/mainfile.php/2009/3159/)

Dogar and his family. The entire day passes without torture, but Dogar is continuously threatened by SHO and DSP.

**May 23:** The Chief Justice of Lahore High Court, Punjab province, takes *suo motu* action on the news of torture of the whole family. Shafiq Dogar is asked by the high court to be brought before the court.

Shafiq Dogar has been released on a personal surety of Rs. 5.

The Chief Justice has also asked the police to investigate their own conduct.

*PAKISTAN: Case 2***Muhammad Ali Butt: Killed in fake police encounter**

A lawyer, Mr. Muhammad Yousuf Butt, was punished by the police and land grabbers. They had his son killed in a fake police encounter. Mr. Butt was an activist during the lawyer's movement for the restoration of the Chief Justice, Iftekhhar Choudhry, when the Chief Justice was suspended by the then military ruler, General Musharraf. Butt was also injured during the movement when a homemade bomb exploded in the procession that was proceeding to receive the Chief Justice at Karachi Airport on 12 May 2007, when the CJ was refused permission to visit the Karachi. He was very vocal against land grabbing of government plots by the police, amongst others. On many occasions, he and his sons were implicated in cases that were later on proved to be false.

On the chilly night of 28 December 2010, at 10.05 p.m., Mr. Butt, his son, Mr. Muhammad Ali Butt, a constable in the reserve police (not regular police force), and some other persons, were having a gathering around a fire outside the Butt residence, in Manzoor colony, Jamshed quarters town, Karachi, Sindh province. Two police vehicles from Firozabad police station and Baloch colony police station, along with two Toyota cars, arrived at the scene. Eleven persons - six policemen and five dressed in plain clothes - came out of the vehicles and took Muhammad Ali, the lawyer's son, towards the police vehicles. The Assistant Sub Inspector (ASI) Faisal Jaffery, who was leading the police party, told the people that he was required at the police station and they also took away his motorbike. ASI Jaffery told his father to come to Firozabad police station. The police party consisted of constables Shafiq Anjum, Namoos Khan, Mazhar Hussain, Aijaz Ahmed, and Abdul Lateef. When his father and friends went to Firozabad police station, they were not allowed to enter the police station and were told that ASI Jaffery was busy interrogating the victim and that they should return tomorrow.

The next day, when Butt went to see his son he was told that he had been killed the previous night in a police encounter and that the body could be collected from the mortuary of Edhi center, a NGO. When Mr. Butt saw the body he counted six bullet wounds on the torso and many torture marks. He also contacted the Baloch colony police station, in whose jurisdiction police encounter occurred, but the police refused to register the FIR. He also tried

to lodge an FIR at Firozabad police station against the police officials who abducted his son but here he was told that the police could also kill him in a fake police encounter. The Deputy Superintendent of Police (DSP) of Bin Qasim town received his application for an FIR but did not act on it.

After finding no support from high police officials, Mr. Butt filed an application to the court of the additional and session judge in south Karachi on January 12, to lodge an FIR and start an investigation into the killing of his son. On the next day, the court ordered the police to file the FIR against the accused persons. During the court proceedings, the police claimed that Mr. Butt's son died in a police encounter at Ambala Bakery, PECHs Block 6. But the post-mortem report proved the police report to be false. On January 14, when he went to the Baloch colony police station, Mr. Butt found that an FIR was already filed by the police based on his previous application, and that it did not mention the 14 torture marks on his body as mentioned in the post-mortem report.

The court also ordered that, as the case is very serious, an inquiry must be conducted by an officer of no less rank than Senior Superintendent of Police (SSP). Prior to the court order, on December 31st the provincial Minister of Interior Affairs, Dr. Zulfikar Mirza, also ordered an enquiry into the case by high ranking officials. However, since then, no accused person has been arrested and, instead, there have been threats to the victim's family to retract the case, telling them that otherwise they would face the same fate. This case reveals how the police view the official and legal orders of the court with the utmost contempt.

The post mortem report conducted by the doctors from Jinnah Post Graduate Medical Centre, a federal government hospital, revealed that the deceased had six bullet wounds fired from close range; around three feet. Five of the wounds were blackened, indicating flash burns (rounds fired at point blank range). Another wound was found on the right side of one of his thighs. He also had 14 torture marks on his body, which the police have not mentioned in the FIR filed.

The Firozabad police have still not returned the victim's belongings to his family, which include a 125 CC Honda motorbike, its registration book, his cell phone, two gold rings and one gold chain.

It is alleged that Deputy Superintendent of Police (DSP) of Jamshed town, Muhammad Akhtar, is protecting the accused persons, particularly ASI Jaffery. It is also alleged that case B is classified, meaning that the FIR is fictitious. The DSP has also threatened the father of the victim not to pursue the case.

It is alleged that there is a group of land grabbers that has good connections with the police. The group consists of six brothers namely; Akhtar Rahola, Muhammad Muzaffar Bhutto, Mr. Mazhar, Muhammad Mudasir, Muhammad Musharraf and Muhammad Mudabir, sons of Muhammad Azher. The victim's family alleges that these brothers have affiliations with different political parties that are part of the ruling alliance. They have allegedly grabbed the land of Radio Pakistan at Quidabad, Karachi, and Mr. Butt was filing cases in favour of the actual allottees of the land, which infuriated the perpetrators to the point where they took revenge on him.

ASI Faisal Jaffery is considered an expert in extra-judicial killings and his services are used in many cases. In another case, he killed a Christian student, Pervez Masih, after his arrest from the same Baloch Colony and claimed that he was killed in a police encounter. In yet another case, he killed another student, Adil Malik, son of Sabir Malik, from the same area on 30th October 2010 at 10.30 p.m. when he was going to pay his tuition fees. Allegedly, Jaffery snatched the fee and shot him dead.

Fake police encounters are a common method of police enforcement in the country and usually the victim's family members do not pursue the case because of threats from the police to take revenge in the same way. During the year 2010, many cases of fake encounters were reported but not a single person was punished because of the weak criminal justice system and absence of witness protection. The reforms in the policing system were demanded many decades ago but this has never been pursued by legislators and the government. In 2001, the police order was introduced, but the military government of Musharraf quickly withdrew it and the police got more powers than before without any accountability.

*PAKISTAN: Case 3***Murad Khan Marri: Disappeared twice, Severely Tortured**

Mr. Murad Khan Marri, 45, held incommunicado - for a period of nine months, after he was arrested by the Frontier Corp (FC), for the murder of Chinese engineers, for holding Indian currency and for keeping explosive material - had again been 'disappeared' while in the custody of FC. After being disappeared twice, Murad has now been produced in an Anti-Terrorist Court (ATC) in Quetta, the capital of Balochistan province.



The eye witnesses, mainly other prisoners booked in cases of terrorism, say that he appeared seriously weakened and could not walk properly. The officials of the Frontier Corp (FC) had to carry him into the hearing. He was produced before Mr. Gias Khilji, a judge of the ATC, and after getting a date for the next hearing was quickly shifted to the Anti-Terrorist Force (ATF) jail, Quetta, where persons suspected of terrorism are held.

The prisoners in the ATF jail are constantly under supervision of the Anti-Terrorist Force (ATF) during the trial so that they cannot change the confessional statements taken during torture and intimidation. The ATF jail is allegedly notorious for torture, particularly of Baloch nationalists. Authorities at the jail do not allow the prisoners to meet their family members without the permission from the ATF.

The paramilitary forces and state intelligence agencies in the province of Balochistan, where there is strong movement for greater autonomy over natural resources and undiluted political power, are behaving like supra-constitutional forces with respect to law and the people. It is evident; even the chief minister and members of his cabinet openly criticize the behaviour of the law enforcement agencies, particularly the paramilitary forces, for illegal arrests and disappearances.

The government and the higher judiciary have also failed to deal with the issue of arbitrary arrest and enforced disappearances by state intelligence agencies. In a way, the higher courts, which claim themselves to be an

independent judiciary, show apathy before the supra-constitutional activities of paramilitary forces and state intelligence agencies.

Pakistan is a country where there is no longer a military government; civilian rule was re-established two and a half years ago; and the judiciary is allowed without any hindrance to perform its constitutional duties. However, the state intelligence agencies are so independent in their performance that they crush the law under their boots.

The Asian Human Rights Commission urges the federal and provincial governments and the higher judiciary to deal seriously with the issue of disappearances and persons being kept incommunicado in the military torture cells. The government must realise the nefarious design, done in the name of national security and the defence of Pakistan, to push the Baloch people into anti-Pakistan activities. In their present dealings with the disappearances issue, the government and judiciary are attempting to misguide the international community and UN human rights bodies, by implying that they are working on the issue.

The AHRC further urges the government to initiate an enquiry into the disappearance of Mr. Murad Khan Marri after his recovery from his first disappearance and his alleged involvement in the false cases of murdering Chinese engineers and carrying Indian currency.

*PAKISTAN: Case 4***Sumera Masih et al: Girl Loses Legs in Air Force Run Torture Cell**

The Asian Human Rights Commission (AHRC) has received a report of the torture of six persons from a Christian family by officials of the Pakistan Air Force. The arrest and torture continued for a period of 18 days and was due to the suspicion that they had stolen gold ornaments from the house of a Wing Commander in the Pakistan Air Force (PAF). A 14 year-old girl and her 16 year-old brother were tortured by the Wing Commander himself. As a result, the girl is now disabled and neither she nor her brother is able to walk properly. A Session Court has helped obtain the victims' release but has not initiated any judicial process against the officials of the PAF even after finding evidence that the family was tortured and detained illegally in the PAF torture cell.



Sumera, carried in the arms of her father, is produced in the court

According to information received from several sources, including Miss Jamila Aslam, the lawyer of the victims, the Ephlal Ministry (a Christian NGO), and the family members of the victims, 14 year-old Miss Sumera Masih was serving as a maid in the house of Mr. Faheem Cheema, a Wing Commander in the Pakistan Air Force (PAF) in Islamabad. Her job duties ranged from babysitting to cleaning, and she worked from 8 a.m. until 9 p.m. at night. At around 8:30 p.m. on the night of 30th March 2010, she was asked by the wife of the Wing Commander to take early leave as their family would go out for dinner; however, after 9 p.m. Sumera was called to her employer's house because some gold ornaments and other valuable items were missing. She was beaten and threatened by the wife of the Wing Commander, who stated that if she did not return the stolen items, Sumera and her family would be handed over to the police. After 10 p.m. Sumera was allowed to return to the servant quarters inside the PAF colony. In the meantime, the Wing Commander reported the theft of the gold ornaments and the other valuable items to the Margala police station in Islamabad by telephone without naming any suspects.

Later, the Wing Commander allegedly directed the PAF police to detain Sumera and her family without informing the local police station. At 1 a.m. a van from the PAF police arrived; three persons exited the van and went into the servant quarters. They took Sumera and her father, Mr. Pervez Masih, to the PAF police station at the PAF Air Headquarters, sector E-9, Islamabad Chaklala, Shaheen Chowk. Two hours after the arrest, at 3 a.m., the PAF police returned to the house and took Perveen Bibi, Miss Sana (Sumera's mother) and her 20 year-old sister, into custody and drove away. Forty minutes after this, the same PAF police officials came and took her 16 year-old brother, Mr. Imran Masih, with them. On 7th April her paternal uncle, Kala Masih, was also arrested by the PAF police while he was searching for the family.

The mother and her elder sisters were released after two days of being severely tortured in illegal detention with the warning, by Wing Commander himself, that if they informed anybody of these arrests they would not be released again and would be punished heavily. According to her lawyer, the Wing Commander regularly visited the victims' house to beat and torture the mother and sister to make them confess that they had stolen the ornaments.

In the meantime, Parveen Bibi filed an application before the Islamabad Superintendent of Police (SP) with the help of her brother, who was living in another city. The SP had tried to investigate the case and directed the Federal Investigation Unit (FIU) to probe the matter of the theft of the gold ornaments. The girl and her family members were interrogated by the FIU but, according to their lawyer, they were not tortured by the FIU.

The SP also sent the case for legal process to a judicial magistrate in Islamabad, but he refused to take the case as PAF and armed forces were involved.

The lawyers, Miss Jamila Aslam and Miss Shamona Javed, have filed a case based upon the illegal suspension of the writ of habeas corpus on 13th April before the District and Session court judge, Mr. Mazhar Hussain Barlas. He immediately fixed the date for regular hearing and called the public prosecutor the next day for comments. The day after this, the court ordered all the arrested persons be produced before the court. Sumera's father, Pervez Masih, and his cousin, Kala Masih, were produced before the court, but Sumera and her brother Imran Masih were not produced. The judge ordered

that her father and uncle be released immediately but also asked the PAF police to produce Sumera and her younger brother on 17th April.

On 17th April though, Sumera was not produced before the court. Station House Officer Mumtaz Sheikh told to the court that Sumera's health prohibited her to come to the court. She was admitted to the PAF Hospital purportedly suffering from a viral infection. But the lawyer informed the court that Sumera had been severely tortured and could not walk, and furthermore that the PAF police were purposely avoiding producing her before the court. The court then ordered that she must be produced within two hours or a FIR would be lodged against the PAF police and the Wing Commander. In the afternoon, Sumera was produced before the court; she was not able to walk and her father had to carry her in his arms. She was not even able to sit. She had been pressured and threatened by the PAF officials to say that she had a throat infection but the judge then asked why she was unable to walk if that was the case.

After assurance from the judge and lawyers, the 14 year-old maid told the court that she was tortured every day by the Wing Commander and PAF police officials in a torture cell. Whenever PAF officials were conducting torture, they would blindfold her and beat her about the back and spinal cord. When Wing Commander Cheema entered the room, he saw that she was not blindfolded and threw a glass plate at her head, after which she fainted. She said she did not know how many hours she was unconscious but woke up to find herself at the PAF hospital. The judge ordered proper medical treatment for her at the PAF's expense, but they have yet to make any such payment or provide treatment.

Furthermore, the PAF officials did not produce her younger brother Imran to the court but, because of strong expression of consternation from the Session judge, PAF police released him the next day on April 18; however, they released him in such a way as to make it seem he was not in PAF custody. Imran Masih recorded in his testimony before the session court that the PAF police had hired him a taxi to bring him to Iqbal town in Islamabad; they had also planted a railway return ticket from Faisalabad, about 600 kilometres away, to make it seem as if he was coming from Faisalabad. When the taxi driver dropped him at Iqbal Town in Islamabad, the police were waiting for him; they arrested and produced him before the court.

When the court asked of his whereabouts during past 18 days, he told the court that he was coming by railway. But the court was not satisfied by his answer as he was carried in by two police officers and could not walk properly. The court told him to tell the truth and assured him that he was well protected. He then told the court that he was kept in a house at PAF Air Headquarters where officials of the PAF police and the Wing Commander Cheema tortured him to confess that his family, particularly his sister, had stolen the gold ornaments from the house of the Wing Commander. He said that he was hung from a tree in the heat under the sun and was beaten severely on his back and legs. It was because of this that he was not able to walk.

He said that on the morning of 18th April he was put in a taxi by PAF police officials with a return railway ticket from Faisalabad and was told that he should tell the court that he was in Faisalabad. He was told that if he said that he was at PAF Headquarters, his sister and other family members would not be released. The court then ordered for his release and asked the Margalla police to provide protection to the family.

Then the court asked the lawyers and the victim's family whether they would take legal action against the PAF police and the other officials for illegally detaining and torturing the family. The victims, after consulting with their lawyers, told the court that they were very poor and were Christians so they could not fight with such a powerful group as the armed forces. The court set aside the cases of habeas corpus as all the members of the family were recovered and did not take any action against the perpetrators.

During the court proceedings, Dr. Nusrat Saleem of the PAF hospital said in her statement, given when the judge asked why Sumera was not brought on the court orders that it was because of injuries sustained during torture. She went on to say that Sumera is barely able to walk and might not be able to walk for the rest of her life.

The victims are now hiding in another city because of continuous threats from Wing Commander Faheem Cheema and other officials of the Pakistan Air Force for revealing the torture cell at the PAF Air Headquarters.

The running of torture cells at PAF Air Headquarters shows that armed forces are running their own parallel extra-judicial investigation systems.

This case of torture by the members of the Pakistan armed forces is ample proof that courts are still under the influence of the armed forces and are unable to implement the law equally.

Christian organisations assert that the worst kind of torture is reserved for them because of their religion and the fact that they are very poor. The session court judge Mr. Barlas saved the lives of the family by taking prompt action to protect them from the PAF torture, but he should have taken action against the PAF and the Wing Commander, as it is his legal obligation, despite the fact that the victims did not want to pursue their own legal remedy.

It is a matter of deep concern in relation to the legal procedures adopted by the judiciary that when it was proved beyond any doubt that the Wing Commander Faheem Cheema and the PAF police officials conducted torture causing the two children to suffer severe injuries the judge avoided taking any legal action against them. It is observed that in cases involving the armed forces, the judiciary, including the Supreme Court, avoids taking legal action against the forces. It is because of this that the armed forces have rendered themselves above the law. In the cases of disappearances, family members of the victims have provided a lot of evidence of the involvement of state intelligence agencies, including to the Supreme Court, but the courts have never asked the officials of the armed forces to testify before the court.

The Judicial Magistrate of Islamabad has refused to take cases involving the armed forces even when the SP of Islamabad has forwarded him the application from the mother of Sumera for legal process. The rule of law then cannot be guaranteed when the judiciary itself refuses to take up cases against the armed forces, providing the forces with blanket impunity to torture and illegally detain people like Sumera and her family.

The torture case of Sumera, her brother, and their parents in the PAF Air Headquarters shows the total collapse of the rule of the law, with many military and paramilitary organisations running illegal detention centres and conducting torture. The judiciary also claims that it is independent, but the armed forces are kept out of their domain, as if the judiciary does not involve itself in the supra-constitutional affairs of the armed forces. The same situation is seen in the media. They do not cover the atrocities of the armed forces because media houses know their power. In the case of Sumera, the media, particularly the electronic media, blacked out the court proceedings.

## **Uzma Ayub: Girl (16) Gang-raped for 1 year by Officials**

According to information received from SPARK, UN Women-KP/FATA, CRSD and Provincial Commission on the Status of Women Khyber Pakhtunkhwa province and Daily TheNews, a 16 year old girl, Miss Uzma Ayub, the daughter of Mohammad Ayub, a daily wage earner, resident of Marwataan Banda, Tehsil Tkht-e-Nasrati of Karak district, Khyber Pakhtoon Kha province, was abducted from her house in early October 2010. Police, along with a man from the army, raided her house in the search of her brother, who was wanted in a theft case.

After her escape from the captivity 19 on September 19 2011, nearly an entire year later, Uzma stated before the media that she was dragged by the hair into a waiting car and handed over to her family's enemies, who took her away to an unknown place and locked her in a room.

Several men came into the room that night, including a certain Dr. Iqbal, who gave her an injection. She fell unconscious. She thinks she was shifted two times and every time, before she was moved, Dr. Iqbal would give her an injection to make her unconscious. She was sexually assaulted by several men, including Naseeb Ullah, an army officer; Sardar Ali, Shakeel; Guley; Karim; Qamar Ali; Hakim Khan, a police officer; and Alam Ustad, during her incarceration.

"These people kept me at their house, where Mst Guleena [sic] and Shakeel came and spent some time with me. Then Dr Iqbal came into the room. He administered me an injection and I fell unconscious. When I regained my senses, I noticed that I had been shifted to another location. I did not know anybody there. After some time, Qamar Ali (alias 'Guley') and Karim visited me." In the statement she alleged: "In that house Naseebullah, a brother of Guley, visited me and forced me to marry him. That same night, Naseebullah's son visited me and raped me. Qamar Ali Khan, Karim and Alam also raped me. Two police officials, one named Hakim, used to frequently visit me to satisfy their lust. I don't know the name of the other cop but I can recognise him if he is produced before me."

The girl also said: "All the people mentioned are involved in my abduction and molestation. I charge these persons with ruining my life and making me pregnant. In the house, when I was drugged and raped again, the people over there told me that I had been sold to them and they were taking me to Dera Ismail Khan and, when they stopped at Bannu, I escaped from their captivity." This proved Uzma's salvation as she got out and ran into a nearby shop. She managed to get to a Public Call Office and telephoned her eldest brother, Alamzeb, who advised her to reach the Bannu bypass. Uzma had Rs.300 tied in her 'Narha', a common practice in the rural areas, and she was thus able to telephone her brother and take a taxi to reach him. Alamzeb was able to find her.

He took her straight to the Tehsil Court, Takte Nasrati. Their enemies tried to obstruct their entry to the court by appearing in a number of vehicles but they managed to make their statement. The Judge telephoned the Crimes Investigation Branch and Uzma and her family went to Peshawar to have her statement recorded. In her statement she accused police personnel SHO Mohsin Ali, ASI Hakeem Khan, Amir Ali and Naseeb Ullah, the army officer, of sexually abusing her. In all, she named 13 persons as those involved in her abduction and rape.

The victim told the provincial high court that she was pregnant. A female doctor, Zakia, conducted the medical examination of the girl and declared that she was six months pregnant.

It must also be acknowledged that in the cases of rape and abduction of women, the attitude of the courts is not sympathetic. Before her escape on 19 September 2011, the case of her abduction was under process based on the complaint of her mother, but the courts were unable to recover her. In April 2011, the Chief Justice of Peshawar High Court took the case and converted it into a writ petition but it has never been used to provide justice to the victim in her recovery. The victim's family has to face the dates of the hearing and observe the court's impotency before the police and administration. The proceedings of the court ended without a satisfactory conclusion. The alleged perpetrators were arrested but immediately released by the court on grounds that the girl was not recovered. On 5 April 2011, a two-member bench, comprised of Justices Dost Muhammad Khan and Yahya Afridi, directed the district police officer to trace the kidnapped girl when the girl's mother had alleged that her daughter, then a student of 9th grade, had been kidnapped

by police officials, including SHO Pir Mohsin Shah, Sub-Inspector Hakeem Khan, and Amir Muhammad during an illegal raid. She had sent an application to the Chief Justice of the PHC Ejaz Afzal Khan, who later converted it into a writ petition.

The Karak DPO, Sajid Khan Mohmand, appeared before the court and contended that, on the complaint of the female, the police had registered an FIR at the Takht-e-Nasrati Police Station in Karak. Police had raided several places but could not recover the girl. He added that four persons earlier charged by the complainant had been granted bail by a local court. One of the brothers of the kidnapped girl, Alamzeb Khan, had told the court that the family had learnt that his sister had been taken to Quetta by an army man, Naseeb Ullah Khan. He stated that although the family had named him, the local police did not arrest him. He stated that the local police had also implicated him in different cases. The DPO had stated that the complainant had not charged the said person in the initial statement. The PHC chief justice on April 06, directed the Karak DPO to contact the station commander of the Pakistan Army in Quetta to search for the teenage girl who, according to her family members, was being illegally held by a serving soldier after her alleged abduction by the local policemen. Alamzeb Khan, the brother of the kidnapped girl, informed the court that his family had received information from reliable sources that his sister was in illegal detention of the main accused Naseeb Ullah, who was an army man and currently serving in Quetta. The bench had directed the Karak DPO to record a supplementary statement of the girl's brother against Naseeb Ullah in the case. The bench also directed him to send a senior police officer to Quetta to discuss the girl's abduction with the station commander, seek her recovery and pursue abduction charges against the soldier. He later fixed 21st April for the next hearing into the case. 21st April was the date fixed, but no further proceedings in regard to her recovery or the arrest of army and police officers resulted.

The Provincial Commission on the Status of Women, Khyber Pakhtun Kha, issued a fact-finding report compiled by a team of different rights organizations, including the Child Welfare and Protection Commission, Shirkat Gah, Blue Veins, Khwendo Kor, CRSD and SPARC. The report states that the story has many threads to it, including a fictional story about family quarrels, exploitation of the poor and weak by better-off relatives, male lust, and the collusion of the forces of law and order with the stronger elements

of the society. The forces of law and order have not only turned a blind eye to the tragedy of a family and the ruination of an innocent life but have been openly and actively complicit in it. The girl was a victim of the most heinous form of abuse and violence, and her family went through untold pain and suffering.

The government of Khyber Pakhtunkhwa has formed a high-level committee under the provincial home secretary after the revelation of the victim's statement and the media's vast coverage, in order to probe into the case. The committee recommended the arrest of the police officials and DNA testing of the victim and the accused persons.

More background information into the case shows that Uzma Ayub is the only daughter of Ayub Khan of Takhte Nasrati, a one-time sepoy in the Pakistan Army. She has six brothers. Both parents are alive, to witness to the tragedy that has befallen their young and only daughter. According to Uzma's brother, she was born in 1994 and at the time of her abduction she was a student in the 9th Class. The family has a modest background and meagre means of livelihood. They have relatives with stronger socio-economic backgrounds, including a doctor and a teacher.

In the case of her abduction and repeated rape during the period of one year, there were three key persons who used the influence and power of the army and police. One is Dr. Iqbal whose son was once abducted and killed. The second is an army man Naseeb Ullah, who wanted to marry the victim when she was 13 years old. And, the third is a police officer, ASI Hakeem Khan of Kark, who is notorious in his area, i.e. when powerful people want to take revenge, they take help from Hakeem.

In 2005, Dr. Iqbal was kidnapped and the family accused Uzma's brother, Alamzeb, of the crime. As a result, Alamzeb spent 18 months in jail and was ultimately acquitted by a session judge. Dr. Iqbal's boy was killed by his kidnappers and his body was found in a field. In another thread to the story, the mother of perpetrator Naseeb Ullah (a married man but issueless and serving in the Pakistan Army) asked for Uzma's hand in marriage to her son. Uzma's mother, due to their weak position in the village, did not reject the proposal but responded that her daughter was young and studying and she wanted to wait before getting her married. She also stipulated that Naseeb Ullah should take his wife's consent to the second marriage. The wife

refused to consent to his second marriage and conveyed this personally to the girl's mother. Sometime later, Naseeb Ullah came to Alamzeb's house and, in a show of camaraderie and showing that no grudges were held, invited Alamzeb to a local musical concert. Alamzeb refused but Naseeb Ullah made up another story and got him to come to his "baithak" where there were two other guests, one from the village of Hakeem Khan, ASI, named by Uzma as one of the rapists. Subsequently, he was accused of the theft of one of the guest's mobile phones, which was stated to cost Rs. 50,000. The person who was supposed to have had his mobile stolen insisted on getting the same mobile back. Alamzeb kept denying the theft. Alamzeb even responded that he would pay the money if the persons accusing him swore on the Holy Quran over their head that the mobile was stolen. Another incident framing Alamzeb was at a football game in the village. A group of people loyal to the family of Dr. Iqbal, and apparently with his connivance, disrupted the game and started shooting. The men set upon Alamzeb and beat him severely. He also received a bullet in his thigh. Alamzeb was accused of shooting and a case was registered against him. **Alamzeb was assassinated on 9th December 2012 fighting for justice for his sister. He was murdered in the High Court.**<sup>56</sup>

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56 See "PAKISTAN: Brother of a teenage pregnant rape victim was murdered in the court premises-a complete failure of rule of law [www.humanrights.asia/news/ahrc-news/AHRC-STM-199-2011/](http://www.humanrights.asia/news/ahrc-news/AHRC-STM-199-2011/)

*PAKISTAN: Case 6***Mohammad Iqbal Awan: ISI Torture Soldier for 5 years on False Charges**

The Asian Human Rights Commission has received a report of the atrocious torture of a soldier by the Pakistani Inter Services Intelligence (ISI) on the false charge of working for the Research and Analysis Wing (RAW) of the Indian intelligence agencies in Pakistani held Kashmir. He was arrested by the ISI and then disappeared for five years, during which time he was tortured.

As a result, he lost his teeth, his spine was fractured, his legs were burnt and he had a large injury on his head. He cannot walk without the help of at least two persons.

The victim was exonerated of all charges by a court martial at the Kharian cantonment, Punjab province. To date, he has spent more than Rs. 3 million on his medical treatment, but the military and government have refused to pay his medical bills.

According to the details available, Mr. Mohammad Iqbal Awan, 39, son of Mohammad Yaqoob Awan, a resident of Salakan village, Tehseel Athmuqam, Neelam district, (post office Baiyan, Azad Kashmir of Pakistan), was recruited in the army as a Naik, the lowest rank, on 2nd February 1990 in the 650 Mujahadeen Battalion. His military serial number was 433683.

At some point in time, the ISI tried to co-opt him to work for a Jihad (holy war) inside Indian Kashmir, but being a professional army man he ignored their offer. On November 27 2003, he was arrested by Major Shoukat of the ISI, stationed at Neelam district, and was accused of working for an Indian Intelligence agency, the RAW. He was released in December 2008 after he was exonerated from all charges by a court martial in Kharain district, Punjab province.

When he was arrested, he was blindfolded and taken away by uniformed persons from the subdistrict of Leepa, Muzaffarabad district, the capital of Azad Kashmir (Pakistani held Kashmir). He remained in the custody of the ISI for almost five years and was severely tortured to confess that he was working for India. During his captivity, he was kept blindfolded all the time

and transferred to many different torture cells. During the six months of his court martial he was not allowed to meet anybody.

According to him, during the torture, his spine was fractured and because of this injury he cannot sit or walk; even using the toilet in the usual position is extremely painful for him. He now has a surgical steel rod, 18 inches in length, attached to his spinal column, which he had to pay for at his own expense. He lost his front teeth and four other teeth during the torture. His legs were burnt by boiling water and he has a deep scar on his head. During his incarceration he was usually held in darkened cells and many times he was kept on stinking toilets.

After his release, he was admitted to the central military hospital, Rawalpindi. He was treated for more than six months and had to pay the charges himself. He was forced to take early retirement from the service as he was no longer fit for army duty. Subsequently, he was given his pension, but no compensation for his five years in captivity in the ISI's torture cells.

During his disappearance, his wife, Ms. Khatoon bibi, contacted many high officials of the Pakistan army and the ISI stationed in Kashmir to learn of his whereabouts, but officials of the army denied that he was in army or ISI custody. She also went to the Rawalpindi headquarters of the Pakistan Army, in Punjab province, and met with Brigadier Farooq in 2006 to ask about his whereabouts. The Brigadier told her that if her husband confessed that he worked for India he would be tried in court; otherwise it would be difficult for her to meet him. She has been continuously writing appeals to the president of Pakistan, the Prime minister, the Chief of Army Staff, the Brigade commander of the 5AK unit of the Pakistan Army stationed at Muzaffarabad, Kashmir, the commander of 12 depot of the Army, the Corp Commander of Rawalpindi, the Prime Minister of Pakistani-held Kashmir and other high officials of Kashmir during his disappearance and after his release. To date, she has yet to receive a reply from any of these officers.

Mr. Mohammad Iqbal Awan is now handicapped and has no control over his legs due to the damage caused to his spine by the severe torture. He is currently receiving treatment for his spinal cord and legs at the FRI hospital that treats disabled persons. He has to spend Rs. 15, 000 for each conveyance from his home to the hospital.

The case of Iqbal Awan exposes the torture committed by the intelligence agencies, particularly by the ISI, which, according to law and the constitution, is illegal. However, it is widely known and reported that the intelligence agencies arrest persons and torture them in their secret detention centres. It is also generally accepted that the ISI is very active in Pakistan held Kashmir and virtually acts as the only law enforcing authority in the area. The AHRC has documented many cases of abduction, torture and murder committed by the ISI to spread terror in the valley.<sup>57</sup>

The intelligence agencies, particularly the Inter Services Intelligence (ISI), is accused of training and sending people inside Indian held Kashmir for Jihad, or to find information about militants working inside other parts of Kashmir. The family members of disappeared people state that when people who worked for intelligence agencies leave the Jihad and return to their normal lives, they are nabbed by the ISI and shifted to unknown places as punishment for not working in the interests of national security. There are also reports that some missing persons, sent to collect information from Indian Kashmir, were also hired for smuggling liquor and other Indian items when they come back to Pakistani Kashmir after completing their assignments.

There are hundreds of complaints, even before the higher courts, where it is alleged that people are abducted by the state intelligence agencies, particularly by the ISI and military intelligence. These people were kept in different torture cells for many months on charges of working against Pakistan or involvement with Indian agencies. It is an established fact that the intelligence agencies are running their own parallel governments, where the real government and its agencies are not allowed to interfere. Even the jurisdiction of the courts has little value when it comes to inquiring about the involvement of any intelligence agencies in the legal affairs of the country.

The government's, and higher judiciary's, inability to control the state intelligence agencies, particularly the ISI, has given them impunity to run illegal detention centres and torture cells. In the cases of disappearances, the families of disappeared persons generally accuse the state intelligence agencies. This is confirmed by the disappeared persons themselves if and when they resurface. Many have testified in court that they were tortured in

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57 Please see the following cases; AHRC-UAC-172-2009, AHRC-STM-011-2010

various torture cells run by the state intelligence agencies. But the courts have consistently shown their inability to summon the officials of the intelligence agencies. In a country where imposition of the rule by law is limited to ordinary citizens - particularly to poor people - the law enforcement agencies enjoy impunity. Therefore there is no question of freedom, liberty, freedom of expression, respect of humanity, or even the right to life.

## **Gohar et al: Torture of 8 Detainees, Falsely Charged by Police**

On July 15, Hosat (15) ran away from her parents' house because she was repeatedly physically abused by them. She had been beaten and tortured on several occasions because she went out to play with her friends. Her father, Syed Mohammad Ali Shah, is a prominent landlord. He had links with other influential persons and was a close aid of Pir Pagara, a prominent religious figure in Pakistan and friend of President General Musharraf.

Hosat was wearing men's clothes when she left her parent's home in Nara village, Khaipure Mirs District, Sindh. She wore men's clothes to avoid being identified, fearing that she would be sent back to her parents. When she reached a highway, she met Ali Gohar, a farmer and a tractor driver. Hosat then asked Gohar to take her to the district court. When Hosat told him that she was a girl, Gohar instead took her to the Gaindaho police post Kot Deji, and turned her over to the police.

Gohar turned Hosat over to Abdul Qadir, deputy superintendent of police (DSP) of the said police station. Asghar Sanjwani, Station Head Officer (SHO) of Gaindaho Police Station, and Mohammad Khan Siyal, SHO Swarah of Police Station, Khaipure Mirs District, were also there. Hosat shouted loudly and cried, fearing that she would be sent back to her parents and would be killed. After the police officers took custody of her, they allowed Gohar to go home.

On July 22, police arrested Gohar and seven other persons, for charges of theft of a motorcycle. The complaint was filed by Shah. Those arrested together with Gohar were: Ghulam Murtaza Bhanbhro, Ahmed Ali, Manzoor Hussain, Peerano Rajar, Sobho Bhanbhro, Ali Khan Bhanbhro and Meer Hassan. One of them, Bhanbhro, is a government engineer working on an oil and gas field. He was arrested at his workplace. The Swarah police allegedly forced them to confess. The police also said they were among the 13 suspects in the complaint.

While the men were in police custody, it is reported that Shah lodged another complaint for the murder of his daughter, Hosat, against the eight persons.

But according to the relatives of the girl and reports from various local newspapers, her own parents could have murdered Hosat or she could have committed suicide. Her body was buried one or two days before the arrest. The police, however, allegedly tortured the eight persons to confess to the murder.

On July 25, the eight persons were transferred to the Kot Deji police station. While in police custody, they were forced to strip naked in the detention centre, and were severely tortured. The police officers, DSP Chachar, SHO of Kot Deji and Akbar Channa, allegedly forced them to act like dogs and bears. The police tied ropes and chains around their necks. They also ordered them to bark loudly and bite each other like wild bears. The police hit them with iron rods, boots and leather whips, and pounded their heads into the walls when they refused.

It is reported that Shah filed another complaint on August 4 with the Kot Deji police for the alleged rape of his daughter against the eight, despite having already filed a complaint of murder against them, and his daughter was buried. On August 6, Shah produced a girl in court who he claimed to be his daughter and a victim of rape. But Ali Gohar told the court she was not the same girl he handed over to the police. Also, several women in the area attested that the girl Shah produced in court was not his daughter.

Apparently this is yet another offence by which the police authorities force the victims to confess by torture. The AHRC has been informed that villagers in the area have protested against the police's actions. They held a march demanding unconditional release of detainees.

In Pakistan, police officers, particularly those in remote areas, are often under the influence of powerful persons. It is likely that when persons are illegally arrested, falsely charged, and brutally tortured, the complainants against them have connections with the police. This compromising role of police authorities has undermined protection of rights of the people.

Also, on several occasions, the AHRC has raised serious concerns regarding violence against women in Pakistan, particularly honour killings. When a girl or woman has committed "disgraceful acts" or "displeased" her family, she might be killed to restore the family's honour. This has become a deep-rooted

practice, although it is a crime. Also, when a woman is killed on the pretext of honour killing, it is difficult to hold the killers, who are often the family members, responsible.<sup>58</sup> In September 2003, AHRC published a report on the same topic entitled *Human Rights Solidarity*<sup>59</sup>.

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58 For recent cases of honour killings in Pakistan, please refer to: UA-033-2007; UA-175-2005.

59 Online: [www.hrsolidarity.net/mainfile.php/2003vol13no04-05/2288/](http://www.hrsolidarity.net/mainfile.php/2003vol13no04-05/2288/)

## **Zahid Masih: Torture, Confession, Capital Punishment**

Mr. Zahid Masih, son of Salamat Masih, was recruited in the Pakistan Army as a sanitary worker and sweeper on August 2001 at the cantonment of Multan city, Punjab province. After some months, he was transferred to another cantonment at Tarbella, Punjab province, 600 kilometres from Multan, his hometown. He served in Tarbella cantonment for almost two years and in 2003 was again transferred to another place, the Chirat, a cantonment at Peshawar in province of North Western Frontier Province (NWFP) as a sweeper because of his good work and loyalty to officers.

He joined Regiment/Unit 4 Commando Battalion (Special Service Group) Chirat. When he reached and joined service at Chirat cantonment, he heard that a nine-year-old boy was sexually molested and murdered by unknown persons among the staff of the cantonment and that there was a military investigation going on. One week after joining the service, he was given two months leave to go home for recreation - it is a common occurrence that whenever there is a transfer, the staff is allowed to take leave. Zahid Masih went to Multan to see his parents and other family members and, after two months, he returned to Chirat to resume his duties. The investigation into the murder was continuing. Suddenly, one month after his return, Zahid Masih was disappeared from the workplace and his whereabouts were not known to the family for about two years.

Zahid's family later found him in the central jail at Peshawar, charged with murder under Section 302 of Pakistan Penal Code (PPC). He was accused of committing sodomy and killing the nine-year-old boy Muhammad Adnan on 1st March 2005. The Military Court found Zahid guilty and sentenced him death on 10th March 2006.

While in the military custody for 2 years, he was extensively interrogated for 28 days consecutively and was severely tortured to confess to the murder of the boy. Due to the severity of the torture, he had no choice but to confess, even though he said that he was innocent. Some officer orderlies came and persuaded him that if he confessed the officers would provide him with relief. Mr. Mohammad Khusheed, son of Mohammad Nawaz, the orderly of an army officer, conveyed this message to him by saying that his confession

would save the image of the Pakistan Army. Zahid Masih informed his brother of these facts in a letter. However, Zahid was not allowed to meet with his family during his trial, conducted in the cantonment by a military court.

When Zahid Masih was allowed to meet his family in early 2008, he told his family that he was made a scapegoat as he was Christian and a sweeper. He further said that the messengers from officers of Chirat cantonments convinced him that he would be free from the charges if he confessed the crime. He alleged that military persons at the cantonment killed the boy and they wanted to shift the offence to the weakest person.

On 20 January 2008, Zahid's mother wrote a mercy appeal to the President and human rights groups, and the Church leadership wrote letters to the authorities, including the President. Due to this intervention, the execution date was delayed for 20 days. However, it was again scheduled to be on 12 March 2008.

As of December 2012, Masih is still in custody and still appealing.

Pakistan is among the top in the list of countries with the highest number of executions (along with China, Iran, Iraq, Sudan and the USA). It has approximately 7,400 convicts awaiting execution. According to an Amnesty International (2007) report, 82 persons were executed in Pakistan in 2006. A local source claimed that 109 people have been given the death sentence in the first 9 months of 2007 and about 10,000 have been executed in Pakistan in the past 11 years.

According to the PPC 302, which Zahid Masih is charged under: whoever commits pre-meditated murder shall be punished with (a) death as "retaliation"; (b) death or imprisonment for life as corporal punishment to be administered at the discretion of the judge; or (c) imprisonment of up to 25 years, provided it is not committed in the name or the pretext of honour.

According to the PPC section 304, the proof of murder could be in form of a voluntary and true confession before a competent court that the accused committed the offence; and by evidence as provided in Article 17 of the Qanun-e-Shahadat, 1984 (*P.O. No. 10 of 1984*), based on the competence of a person to testify and the number of witnesses required accordingly.

Local sources claim that the penal system in Pakistan is full of loopholes and defects. It may be better sometimes not to hang the alleged killers due to maladministration of justice, police service dereliction, and cultural prejudices affecting women and religious minorities.

It has also been commented that the laws have become tools for personal vendettas against vulnerable segments of society, including the poor and minorities and are often manipulated, especially in blasphemy cases, where both the judicial system and police department investigate with bias, without checking veracity of the facts.

*PAKISTAN: Case 9***Abid Raza Zaidi: Torture Victim Abducted after Testifying**

Mr. Abid Raza Zaidi, a PhD student at the University of Karachi, has been missing since he was arrested by an elite force, the special force against terrorism, on 4 October 2006 from Lahore, the capital city of Punjab province, Pakistan. To date, he has not been produced before any court of law. This is his second arrest by the special force.

Before his arrest and subsequent disappearance, Mr. Zaidi attended a two day conference on “disappearances and torture”, jointly organised by Amnesty International and a local organization called the Human Rights Commission of Pakistan, held from 30 September to 1 October 2006 in Islamabad. During the conference, he narrated the whole story of his first arrest, illegal detention, and torture in relation to a bomb blast case of 11 April 2006 in Nishter Park, Karachi, Sindh province. He was arrested on 26 April 2006 and was disappeared along with 12 persons of the Shia sect of Islam. He was released on 18 August 2006 after being illegally detained for 110 days in different military torture camps. During this period, he was never produced before any court of law.<sup>60</sup>

Mr. Zaidi testified at the conference that he was removed from his home on 26 April 2006 at night by plain-clothed persons, blindfolded, and taken to a military camp in Karachi. He was then tortured by army officers to confess to a bomb blast at a religious gathering on 11 April 2006 at Nishter Park, where 55 people were killed. He also testified that army officers accused him of masterminding the blast. Mr. Zaidi also reported that he was taken blindfolded to different cities in Pakistan by an army aeroplane several times and produced before several army and police officers for interrogation, and that each time he was tortured. He remembered that on one occasion some law enforcement agency officials were saying amongst themselves that they were in Multan, Punjab province. Mr. Zaidi was very brave to tell the people at the conference the whole story of his illegal arrest, prolonged detention, and brutal torture, and show them marks of torture on his body.

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60 To see details of the victim's first arrest, please refer to our previous appeal: UA-171-2006.

After the conference, Mr. Zaidi went to see his sister Mrs. Fatima, who lives at Islam Pura Ansari road, Lahore, Punjab province on 3 October 2006. On the following night, some persons in plain clothes raided his sister's house and took Mr. Zaidi and his maternal uncle Mr. Javed Zaidi to an unknown place. His uncle was then released at 11 p.m. that night, while Mr. Zaidi was taken to another unknown place. His uncle reported that during his custody, the person from the elite force shouted at Mr. Zaidi saying, "How dare you tell the conference about your torture and disappearance. Now you will face the good torture". Mr. Zaidi was detained by the same forces. Mr. Zaidi has since been released and he is researching and working at the University of Karachi. He is still under constant threat.

Enforced disappearance of persons following illegal arrest is a common phenomenon in Pakistan since the military government took power in 1999. For example, in Balochistan province alone, where the Pakistan army conducts ongoing military operations, the Federal Minister of the Interior reported that 4,000 people have been arrested since 2001. The actual number of the arrested will be much higher when the disappearance cases are included. Out of 4,000 persons, less than 200 people have been produced before the courts. In Sindh province, several journalists and political and human rights activists have been disappeared after their arrests.<sup>61</sup>

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61 To see relevant cases of forced disappearance, please visit our previous appeals: UG-003-2006, UA- 227-2006, UG-013-2006, UA-145-2006, UP-127-2006, UA-171-2006, UA-169-2006 and UA -132-2006.

## Shahid Masih: False Blasphemy Charge, Torture

On 31 August 2006, Dr. Arshad Mehmood Khan hired Mr. Shahid Masih's brother, Mr. Farooq Masih, to whitewash his clinic, located at Chak no. 208, Abid Shaheed road, Madina town, Faisalabad, Punjab province, Pakistan. The doctor later complained to Farooq that his younger brother Shahid stole some medicines from his clinic. However, the doctor could not provide sufficient evidence to prove this.

Dr. Arshad went to the Saddar police station in Faisalabad on 1st September and attempted to register a theft case against Shahid and a Muslim watchman, Mr. Mohammad Ghaffar, which police refused to accept due to lack of evidence. After several attempts, Dr. Arshad, on the advice of Saddar police, finally lodged a false case against the two men under sections 295 (B) and 308 of Pakistan Penal Code (PPC), known as the blasphemy law. In Pakistan, this is the easiest way to book any person from a religious minority. Farooq is a Christian.

On 10th September, Dr. Arshad lodged a written complaint based on a fabricated story to the Saddar police. In the complaint, he stated that when he came to his clinic on 10th September, he found a volume of a book called Tafseer Ibn-a- Qasser, which interpreted different verses of holy book Quran, was missing and only found its burnt cover. He also stated that he caught Mr. Mohammad Ghaffar, who confessed that he and Shahid burnt the pages. The Saddar police registered this false case under sections 295-B/ 308 of PPC (*reference number: FIR No. 1537/06*).

After that, Mr. Rana Umer Daraz the then Station Head Officer (SHO) of the Saddar police, Mr. Zafar Iqbal, Assistant Sub Inspector (ASI), Police Constable No. 2980 Mr. Abdul Raoof, PC No. 4133 Mr. Mohammad Hayat, and PC No. 2903 Mr. Munir Ahmed arrested Shahid and Mohammad Ghaffar on the same day and severely tortured them.

Meanwhile, after learning of the story fabricated by Dr. Arshad and the Saddar police, furious people in the area from different mosques attacked the houses of Shahid and Mohammad Ghaffar and the families of the accused had to flee their homes.

This case is in complete violation of the laws of Pakistan. According to Section 196 of the Criminal Procedure Code of Pakistan, a blasphemy case can be registered only after a competent authority or a judicial magistrate reviews the case. In addition, there are no eyewitnesses to the case, which is required under sections 38, 39, 40, and 43 of the Law of Evidence.

The families have been receiving constant death threats from local clerics.

Despite an outcry for the abolishment of blasphemy laws, which seriously violate the fundamental rights of people, from inside and outside of the country, the Pakistan government has yet to take any genuine steps to do so. Meanwhile, many citizens are being arrested, prosecuted and even killed under this draconian law. The following are examples of some of the recent cases, illustrating how people suffer from the blasphemy laws<sup>62</sup>.

1. On 30 September 2006, a 40-year-old Christian, Mr. Bashir Masih, was killed in Bhawal Pur District Jail in a suspicious manner. He was sentenced to death by the district session court Punjab province under blasphemy laws only because he kept the Quran in his house.
2. On 25 September 2006, Mr. Shahbaz alias Kaka was sentenced to life imprisonment by a session court of Faisalabad, Punjab province under blasphemy laws. His appeal case is pending in the high court. He is currently detained in Faisalabad Jail, where he has been severely beaten several times by his fellow inmates. His family is scared that he will be killed in prison.
3. A Muslim mob set ablaze a Hindu temple and destroyed the houses of Hindu residents following a baseless allegation of the desecration of the Holy Quran by Yousaf Masih (60) in June 2005 at Nowshera district, North West Frontier province.
4. On 19 February 2006, a mob attacked St. Mary's Church, St. Xavier's Church and St. Mary's School at Sukkar, Sindh province. The attacks resulted from an abuse of blasphemy laws as Mr. Irfan, a Muslim convert, allegedly tried to implicate his Christian father-in-law, Mr. Saleem, in burning a copy of Holy Quran. After the investigation, Mr. Irfan later confessed that he fabricated the story against his father-in-law.

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62 For more blasphemy cases see: UA-196-2006: PAKISTAN: Under-trial prisoner killed following fabricated blasphemy charges; UA-214-2005: PAKISTAN: Desecration and destruction of churches and Christian property; UA-148-2005: PAKISTAN: Tensions continue to simmer in alleged blasphemy case; UA-56-2004: PAKISTAN: A suspect in a blasphemy case attacked by a policeman, dead.

## NEPAL

### Methods of Torture reported in Nepal<sup>63</sup> :

#### *Torture Experienced by Women in Detention in Nepal (2008-11)* <sup>64</sup>

- Beating on hips, back, thighs, shoulders and hands with plastic pipes or bamboo rods;
- Punching, including blows to the back, neck, and face;
- Randomly beating on palms, arms, back, bottom, thighs, legs, soles of the feet and other parts of the body with long wooden sticks;
- Sitting on the woman's legs while beating the soles of her feet;
- Slapping, including slaps to the cheeks;
- Kicking the woman's back, chest, head and thighs;
- Stamping on/stepping on the woman's body while she is forced to lie down;
- Body searches conducted by male policemen;
- Death threats;
- Abusive language;
- Rape;
- Forced undressing;
- Threats to put sisnu (nettle) leaves in the woman's vagina;
- Beating the woman's sensitive parts with sticks;
- Pouring water over the woman's hooded head ("Water-boarding");
- Using a betel nut inserted under the palm of a woman's hand and apply pressure from above;
- Pulling hair.

63 Torture Briefing, July to December 2011, Advocacy Forum  
[www.advocacyforum.org/downloads/pdf/publications/torture/torture-briefing-july-to-dec-2011.pdf](http://www.advocacyforum.org/downloads/pdf/publications/torture/torture-briefing-july-to-dec-2011.pdf)

64 Torture of Women, Nepal's Duplicity Continues, Advocacy Forum – Nepal, 26 June 2012  
[www.advocacyforum.org/downloads/torture-of-women-report-june-26-2012-english.pdf](http://www.advocacyforum.org/downloads/torture-of-women-report-june-26-2012-english.pdf)

### ***General Torture Methods***

- Beating with plastic pipes or wooden sticks on body, such as soles, back, and hips;
- Kicking with boots, punching with fists, beating with bamboo sticks;
- Sitting on a thigh, and beating on the sole of the foot with sticks;
- Making the victim lie on the ground and beating soles with stick, plastic pipe, etc.;
- Blindfolding.

### ***Torture During Interrogation Reported by Juveniles (July – December 2011)***<sup>65</sup>

- Loud scolding;
- Threatening to kill if detainee do not speak the truth;
- Beating with a PVC pipe on back, chest, and stomach;
- Punching with fists on stomach for 2-3 minutes;
- Verbal abuse;
- Pouring water into the nose and mouth of victim;
- Beating with hosepipe on hips, back, arms and sensitive parts of the body of (male and female detainees);
- Rolling sticks on the thighs of the victim;
- Making detainee stand on their head against a wall, then beating with a stick on the soles of the feet;
- Kicking randomly with boots;
- Beating randomly with fists on various parts of body;
- Tying victim's hands and legs with rope and hanging from a stick between two tables while beating with hosepipe on legs and other body parts;

### ***Other Torture Methods Recorded in AHRC Urgent Appeals***

- Applying electric shocks;
- Water-boarding;
- Putting chilli powder in the victim's nose and mouth;
- Hanging victims upside down.

<sup>65</sup> Torture Briefing, July to December 2011, Advocacy Forum [www.advocacyforum.org/downloads/pdf/publications/briefing-jan-to-june-2011.pdf](http://www.advocacyforum.org/downloads/pdf/publications/briefing-jan-to-june-2011.pdf)

## **Torture Victim Receives Death Threat for Filing a Complaint**

According to the information received by the Asian Human Rights Commission, the police visited Ms. Mukhiya's house twice, on 7 and 8 March 2012, to search for her brother-in-law who had a land dispute with one Ramprit. At 2 pm on 8 March, Ramprit, Assistant Police Inspector (ASI) Dev Kumar Raut, alias Deep Kumar, and two police officers in uniform with weapons came back to the house to look for the brother-in-law. Ms. Mukhiya asked them the reason behind the frequent visits to her house, which led to an argument between her and the police.

As a result the policemen arrested her without a warrant. She was taken to the Area Police Office, Chorakoila. After arriving at the police station, the ASI punched her once on the left side of her forehead and slapped her many times on her left cheek, following which she fell to the floor, semi-conscious. Her husband and neighbours who had followed to the police station arrived at that point and rescued her. She was taken to Janakpur Zonal hospital for treatment. She was so terrified that she could not speak for forty hours after the incident. She left the hospital on 11 March 2012, against the doctor's advice, to attend her daughter's wedding. Nevertheless, her health condition remained a matter of concern, her cheeks were swollen and she suffered from migraines, as a result of which she received physical and mental treatment in TU teaching hospital, Kathmandu.

On 22 March 2012, she filed a case against the ASI under the Torture Compensation Act in the District Court, Dhanusha. Ramprit, the person who had the initial dispute with her brother-in-law, reportedly tried to give her NRs. 60,000 (Approximately \$ USD 759) to settle the case outside court, although the case was not filed against him. The victim and her husband, Dev Lal Mukhiya, are now facing death threats to force them to withdraw their case.

On 16 June, at 12.30 p.m., Mr Mukhiya had received a call from an unknown person asking him to meet the caller near Kalanki temple, in Kathmandu. Mr Mukhiya is a marble paver and the caller said that he wanted to hire him for his house. He reached the temple at 1.30 p.m. Three persons were waiting for him in a taxi and pretended that they would bring him to

the house to be marbled. He was brought to a village, near a river below Thankot in Kathmandu district. Two more persons were following them on a motorbike.

He was taken out of the car and the five persons asked him why he had filed a torture compensation case against their friend. They beat him randomly, kicking and punching him. They ordered him to withdraw the case within a week, and threatened that they would kill all his family members, including his children if he did not comply. They also asked him who helped them to file the case. They beat him until he fell unconscious and sprinkled water on his face to bring him around. The beatings and threats lasted for half an hour. The five persons involved in the abduction and the beatings were all wearing civilian clothing and appeared to be thugs.

Due to the beatings, Mr Mukhiya's body was covered with bruises. As the perpetrators were linked to the police he has not filed a complaint about that incident. He also feels that he cannot ask them for protection.

On 2 July, Ms. Mukhiya received four anonymous calls from the cell number 977-9817728411. The caller insulted her and threatened to kill all her family members if she did not withdraw the case. The victims are now living in constant fear for their lives and that of their relatives. They feel that they might be attacked at any time. Ms. Mukhiya is residing in the same village where the perpetrator is on duty.

Witness and victim protection mechanisms are pre-requisites to ensuring that victims of human rights violations can access justice without fear of reprisals. It is particularly crucial in cases of torture, where victims filing a case go against one of the most powerful institutions of the state and face tremendous risks. Nevertheless, there is no such mechanism in Nepal, leaving victims exposed to threats and attacks by the perpetrators when they try to access justice.

Article 13 of the Convention against Torture mandates that "[s]teps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given." The Committee against Torture in its concluding observations recommended Nepal to "[c]onsider adopting legislative and

administrative measures for witness protection, ensuring that all persons who report acts of torture or ill-treatment are adequately protected.”

Most crucially, the officials against whom allegations of torture are being brought up – unless manifestly ill-founded – should be suspended from their duties pending the outcome of the investigation and subsequent legal proceedings. This suspension is imperative to remove the alleged perpetrators from any position of control or power over complainants, witnesses and investigators, and to prevent them from interfering with the due process of investigations.

The Committee against Torture specifically demanded this from Nepal, saying, “In connection with *prima facie* cases of torture, the accused should be subject to suspension or reassignment during the investigation.” Similarly, following his country visit in 2005, the Special Rapporteur recommended Nepal to ensure that “[a]ny public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted”.

Threats, harassment, intimidation, or attacks against victims or witnesses for their cooperation with investigations and legal processes should be made serious criminal offences of their own and should be promptly, independently and professionally investigated, and any person found involved in such acts should face prosecution.

Developing a comprehensive, strong, independent and credible victim protection mechanism is a pre-requisite to ensuring that victims of torture have access to justice. So far in Nepal, extreme delays in rendering justice, fear of reprisals and no effective protection of witnesses and victims have led to a general failure of justice and a lack of fair trial. Building a strong protection mechanism will be a tremendously important step towards rebuilding the trust of the public in their institutions and towards strengthening the right to a legal remedy of the victims, leading to greater protection of human rights in Nepal.

**Chandra Prasad Bhattarai: Tortured, threatened with false charges**

According to information received by the AHRC from PPR Nepal, a forty-three year old man, Chandra Prasad Bhattarai, working as a paralegal in Kathmandu, was arrested on 25 June 2012 at 4 p.m. from his home at Babarmahal, Kathmandu, by 4 to 5 police personnel in civilian clothes. The police officers did not introduce themselves as police personnel, did not present Mr. Bhattarai with an arrest warrant, and did not explain the charges brought against him. As the policemen had not identified themselves, Mr. Bhattarai and his family feared that he was being abducted by a non-state group.

The way the police conducted the arrest goes against national law, under which the police are mandated to identify themselves and inform the arrestee of the grounds for his arrest at the time of the arrest. Similar requirements are also entrenched in international human rights norms and standards, including the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which reads, “Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.”

The police brought Mr. Bhattarai to the road and pushed him into a police van. As soon as he entered the van, the police reportedly beat him. He was then brought to the Central Investigation Bureau (CIB), Maharajganj, Kathmandu. He was brought to a small room with a few tables, which, according to the victim, looked like an office, at the east end of the CIB building.

There he was subjected to torture again by about six police officers in civilian clothing. Police interrogated him in relation to a case of document forgery. They put a gun in his mouth and on his temple, and slapped him on the face an uncountable number of times. The slaps were so violent that he fell unconscious several times and, at the time of writing, he is still suffering from its results as his left ear does not work properly and he cannot hear through it. The soles of his feet were beaten with a plastic pipe numerous times, and he fell unconscious again. The torture lasted for an hour and a half according to the victim.

As the police officers who tortured him were all wearing civilian clothes, he was unable to identify his torturers; he was just able to understand that one of the perpetrators was an Inspector.

Mr Bhattarai was then shifted to Kamal Pokhari Metropolitan Police Circle and kept there for the night without any food. The next morning, 26 June, at about 10.30 a.m., a police officer from CIB came and threatened him that he would be killed if he did not confess. At 2.30 p.m. the same day, he was again transferred to the District Police Office Hanuman Dhoka. He was provided an arrest warrant dated from the day before.

Although the police had not given any information to his family at the time of the arrest, the family came to suspect he had been arrested and visited several detention centres in Kathmandu valley, hoping to find him, but to no avail. On 26 June, they got in touch with PPR Nepal's lawyer. The same day, the lawyer filed a petition at the National Human Rights Commission on behalf of the family (*Case number no 2976*)

They were preparing to file a habeas corpus petition at the court when they learnt through a relative that the police had brought Mr. Bhattarai to the court for a remand order. He was brought to Kathmandu District Court on 26 June 2012 at around 4 p.m. At the time of the remand hearing, the lawyer helping the family met him at the court and petitioned the court for an order for a forensic check-up of the victim.

The court remanded him for 5 days and also ordered a medical examination of the victim in the forensic department of the Teaching Hospital. Nevertheless, that examination was not conducted. On 27 June, he had been taken to Bir Hospital but was asked for Npr 500 by the police to cover the expenses of the medical examination. As the victim did not have money on him, he was brought back to the police station without having been examined. This also goes against internationally accepted norms and standards. Safeguarding the health of persons placed in detention is the responsibility of the State and the medical examination should therefore be provided free of charge. Also, under the Torture Compensation Act, 1996, if a detainee or his legal representative requests for a medical examination, then such an examination should be provided free of charge. Furthermore, a sub-inspector of Hanuman Dhoka police station has reportedly been continuously threatening the victim, stating that if he did not withdraw his application for medical examination, he would be charged with drug-related offences. Suspects charged under the

Narcotic Drugs (Control) Act 1976 can be detained without trial for a period up to 3 months with the permission of the court.

Delays in conducting the medical check-up can damage the collection of forensic evidence and hamper the victim's claim that he has been tortured if the examination is conducted after his wounds have healed. The police refusal to allow the victim to have a medical check-up, in clear violation of the court order, can be deemed contempt of court.

There is still no legislation criminalising torture in Nepal and no mechanism to establish oversight and accountability for human rights violations and abuses of power committed by the police. In the absence of in-depth institutional reforms of the policing system of Nepal after the end of the decade-long conflict, when human rights violations were widespread, the same methods and personnel remain in place and individuals are exposed to abuse and human rights violations during investigations.

The AHRC is particularly concerned by an increase of reports of human rights violations allegedly committed by police officers belonging to the Central Investigation Bureau. In a pattern strikingly similar to what can be observed in this case, on 27 April, a Bhutanese refugee, who was arrested under charges of fraud, was kept in illegal detention in the Central Investigation Bureau for two days, tortured and threatened with false charges of drug smuggling if he did not confess. The police also obstructed the medical examination of the victim ordered by the court by insisting on being present during the examination.<sup>66</sup>

A young man has disappeared after he was arrested by police officers dispatched from the CIB on May 6 and the absence of information about his whereabouts since then, while the police deny even arresting him, is also of serious concern.<sup>67</sup>

Those cases point to a worrying pattern of increased abuses by police officers posted in the Central Investigation Bureau. The lack of accountability of the police and the impunity which typically accompanies serious human rights violations committed by the police allows torture to continue unabated.

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66 For more details please see AHRC's urgent appeal AHRC-UAC-074-2012

67 For more information about the case please see AHRC-UAC-106-2012

*NEPAL: Case 3***Jit Bahadur Subba: Bhutanese Refugee, Tortured & Threatened**

According to the information we have received, 29-year-old Jit Bahadur Subba lives in the Bhutanese refugee camp, Beldangi II. He belongs to one of the thousands of Nepali-speaking families who, after having lived for several generations in Bhutan, were expelled from that country 20 years ago, and today live in refugee camps in Nepal. Mr. Subba had applied for resettlement to the USA and stayed in the transit office of the International Organization for Migration (IOM) in Baluwatar, Kathmandu, for verification of his identification documents from 12th to 27th April 2012. On 27th April 2012, at around 2.30 p.m., he was arrested from the IOM office by 4 to 5 police officers in civilian clothes. He was not given any reason for his arrest, nor was any arrest warrant produced by the police. He was then brought to the Central Investigation Bureau (CIB), Maharajganj, Kathmandu. He was kept there for two days, without being provided a detention letter or an arrest warrant. He was brought before a judicial authority on 29th April 2012, exceeding the 24-hour delay set up by the constitution for every person who is arrested to be produced before a judicial authority. This amounts to illegal detention. He was kept in the CIB for two days, reportedly without being provided any food or water. His family was not informed of his arrest. There he was interrogated regarding his alleged involvement in the forging of a fake passport and of having purchased Nepali citizenship. The first day he was tortured under interrogation by two policemen, who were wearing civilian clothes. The policemen beat him all over his body, including slapping his face over a dozen times and beating the soles of his feet. Due to the pain he almost lost consciousness. The policemen then interrogated him on other the involvement of other persons in the same charges and, as he could not provide information, the policemen put a packet of drugs in his pocket and threatened to charge him with drug smuggling. As the policemen were wearing civilian clothes, he could not identify them or their ranks.

On 29th April, he was sent to the Metropolitan Police Range, Hanumandhoka, Kathmandu, and was provided with warrant papers. He was produced before the Kathmandu District Court on the same day. The court remanded him into custody for five days the first time, and for six days on the second time. According to the police, he is under investigation for charges of forging of citizenship documents and passports.

At no point during his detention was Mr. Subba informed of his legal rights. His lawyer visited him twice: once on 3rd May in the office of the District Attorney, Kathmandu, and the second time on 8th May at the MPR Hanumandhoka. On both occasions, the police refused to allow the lawyer to meet with his client without police present. This is despite the Interim Constitution of Nepal guaranteeing the right of every person who is arrested to consult a legal practitioner and to have a confidential consultation.

The police were also present during the medical check-up of the victim when they sent him to Bir hospital on 7th May. Due to the presence of the police, the victim did not dare mention the torture to the doctor and the doctor did not ask about it. Therefore, the presence of the police during the medical examination prevented the victim from getting proper treatment and he was provided with only some anti-allergenic medicines.

The victim's health has deteriorated due to lack of proper treatment and the poor conditions in Hanumandhoka detention centre. His body is covered with scars from worms and insects and he suffers from sleeplessness. Jit Bahadur is very afraid that he may receive further torture and measures must be taken for his protection immediately.

*NEPAL: Case 4***Nijamuddin Sekh: Spine Broken in Police Torture**

According to the information we have received, a 21-year-old carpenter, Mr. Nijamuddin Sekh, a.k.a Bablu, was arrested by police at around 8.45 a.m. on 21 July 2011 in Nepalgunj, while he was carrying wood for construction work. In the police van, which was bringing him to the District Police Office (DPO), Banke, he tried to call his father to tell him about his arrest but the policemen took his phone away from him. The policemen switched his phone off and his father could not get in touch with him any more.

Bablu was taken to a room on the top floor of the DPO, Banke. The policemen who had arrested him told him that if he acknowledged his involvement in an abduction case he would be released immediately.



Bablu refused to accept the charges and, as he was trying to leave the room, a policeman named Ashok Yadav (rank unknown) reportedly kicked him in the face. The policemen handcuffed him on his back and blindfolded him with a piece of cloth and left the room, leaving him there alone. He stayed there for the whole day without being provided with food or water.

After night fell, four to five policemen entered the room and asked him to admit that he had been involved in an abduction case. They tried to convince him that he would be released if he agreed to confess. As Bablu refused again, the policemen took him to another location and made him lie down. They then reportedly started to beat him with their sticks, and punched him and kicked him with their police boots. The victim was tortured for one hour while being interrogated about the abduction.

He was then left alone. When the policemen came back after a while, he asked to go to the toilet but the policemen insulted him instead. According to the victim, he was then brought to some location he could not see as he was blindfolded, and reportedly pushed from the back from what seemed to be a high location. He lost consciousness.

When he woke up, he found himself in a hospital bed. His whole body was aching, and he was unable to move it. Policemen were present in the hospital and he asked them to call his relatives but they ignored his request. The hospital took X-rays and video X-rays of his back.

Afterwards, the victim was made to sleep on a seat in a police van, taken to a large house and ordered to wait in the van. A policeman brought some papers and forced him to put his thumbprints on them although the victim did not want to.

The victim fainted again and woke up to find himself back in the hospital. He has not been given any arrest warrant or detention letter, as required by the law, and has still not been informed about the abduction case in relation to which he was arrested. It came to be known that the victim was registered under a fake name in the hospital, therefore preventing his identification.

According to the doctor, one of the victim's lumber vertebrae was broken. He needs assistance to get up and sit and he calls for support with a bell. There is a blue and red mark on his left sole and his lower lip is swollen. There are scratches on his chest. According to the doctor, due to the seriousness of his injuries, the victim will need a long time to recover fully. As the victim is a carpenter, this means that it will take a long time before he can go back to his job, seriously jeopardising his and his family's economic situation. The victim fears that he may be tortured again if he is taken back to the police station.

The victim's father was left uninformed of his son's arrest and whereabouts for several days. As the police had switched off the victim's phone and repeatedly denied his requests to contact his family to inform them about his situation, his father could not contact him. The day following the victim's arrest, his brother visited the DPO and the Ward Police Office, Nepalgunj, to check whether his brother was detained there, but to no avail, as the police did not give any information about Bablu's whereabouts although he had been arrested and detained in the DPO the day and night before. It was four days after the victim's arrest that his father came to hear people talking in a tea shop about a young Muslim boy who has been brought by the police to the hospital with a broken backbone. He went to Kohalpur Medical College and found his son. The policeman staying at his son's bed side prevented them from talking to each other, so it was only later that day that he learned about the situation. He then filed a complaint at the regional office of the National Human Rights Commission, Nepalgunj.

The victim was remanded twice: once on 22 July 2011, when he was remanded for the first time for five days with effect from the previous day, and then on 26 July, when he was remanded for ten days. On 28 July, his father filed an application for a physical and mental check-up of the victim under the provisions 5-3 of the Torture Compensation Act. On the same day, the Banke District Court Registrar, Dilli Ratna Shrestha, wrote a letter to the DPO, Banke, mandating them to provide a medical checkup to the victim within 3 days and to include the medical report in the case documentation.

Superintendent of Police, Dinesh Amatya, from the DPO, Banke, denied that torture had been inflicted on the victim and instead alleged that the victim's spine was broken after he tried to escape from the police. He is quoted as having said, "He is a chain smoker and drunkard. That is the main cause of his health problem. He will recover soon. In my 21 years of service in the police I have not found any detainee who has accepted that s/he is a criminal. There is a difference between being injured and being beaten up."

This is the second allegation of police torture resulting in serious injuries that we received from District Police Office, Banke, within ten days. In an urgent appeal<sup>68</sup>, we reported the case of a 49-year-old woman whose hand was broken after she was beaten up by two policewomen from DPO, Banke, following an order from a higher-ranking officer.

These cases illustrate that the systematic use of torture as a tool of investigation to extract confessions in the police stations of Nepal is still condoned by the police hierarchy. Widespread impunity protects the perpetrators of torture and means that the victims have limited avenues for justice. They are therefore at the mercy of further abuses if they denounce the torture they have been inflicted. In light of the previous cases the AHRC has documented, it is likely that the victim in this case will be at risk of further ill-treatment in retaliation for having spoken to human rights organisations should he be brought back to the DPO after he is discharged from the hospital.

The AHRC is concerned that the lack of investigation and prosecution of those who bear command responsibility in previous cases nurtures a feeling of immunity among the perpetrators, which emboldens them to continue

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to consider torture as a way to conduct an investigation and encourage their subordinates to do so. The AHRC is therefore of the opinion that unless there are thorough investigations into allegations of torture - leading to prosecutions of the perpetrators, in particular against those with the command responsibility for the torture - the government of Nepal's pledge to end torture will remain mere lip-service.

*NEPAL: Case 5***Lakpa Tamang: Justice for Torturers of 11-year-old?**

According to the information received by the Asian Human Rights Commission from the Center for Victims of Torture Nepal (CVICT), on 15 November 2010 police officers from Pachuwarghat police station summoned Mr. Maila Tamang to bring his eleven-year-old son, Lakpa Tamang, to the police station to interrogate him in relation to an alleged case of a lost/stolen gold ring. In the morning of 16 November, Mr. Maila Tamang reported to the police station along with his daughter and his son, Lakpa.

There, Lakpa was reportedly separated from the rest of his family and Sub Inspector Purushottam Shrestha took him into custody and interrogated him about the lost ring. According to the information we have received, the Sub Inspector asked the child three times whether he had stolen the ring and all three times Lakpa replied that he had not.

The child was then taken to the interrogation room and was reportedly tortured for one hour. According to the information we have received, Sub Inspector Purushottam Shrestha asked him to crouch down and used a plastic pipe to beat his back five to six times. Then, his soles were reportedly subjected to “falanga”, an extremely painful form of torture consisting of beating the soles of the feet, 20 to 25 times. It is further alleged that Police Constable Bhishma Kumar Thapa then applied electric shocks behind the victim’s right ear.

As the officers threatened that they would kill him if he did not admit having stolen the gold ring, the boy was forced to confess that he had done so and to sign a letter of confession. The police officers further threatened the boy with death should he say anything about the torture.

After having received the boy’s forced confession, the Sub Inspector went to the victim’s father, Maila, who was waiting outside the station. He reportedly asked him what he would do if his son had stolen the gold, to which the father replied that he would pay money. The Sub Inspector subsequently asked Lakpa to confess in front of his father that he had stolen the gold and wrote on a piece of paper that Maila Tamang would pay Rs. 19,000.00 to the complainant. After Maila signed the paper, Lakpa was released.

After coming back home in the evening, Maila noticed that his son's back had numerous bruises and that walking was painful for Lakpa. He realized that his son had been tortured to force him to confess. He then took him to a local photographic studio to take pictures of his injuries.

On 18 November, the child was brought to the CVICT center in Kathmandu, where he stayed for five days to undergo medical examination and treatment. On 19 November, he was brought to the Tribhuvan University Teaching Hospital for a forensic examination.

The forensic report notes that the subject's left leg was injured, that the subject shows difficulties when sitting and standing up, and that the subject's left cheek was slightly swollen. The report further notes multiple brownish-red tram line contused abrasions on the upper back of the victim's trunk showing a minimum of six impacts, an 8 cm x 1 cm faint tram line contusion on the lower back of the victim's trunk, and dark brown coloured tender areas on both soles which are consistent with deep contusion.

The report states that the injuries present are consistent with the history provided, that the age of the injuries is consistent with the alleged time of infliction. It further states that it is unlikely that the injuries occurred due to any kind of accident and that it is impossible that they were self-inflicted. The report also concludes that there is evidence that "falanga", one of the most common methods of torture in detention, was inflicted on the victim. It states that there are no visible signs of electrocution on his ears but it does not exclude it as this method usually does not leave any trace on the victim. Eventually, the report indicates that the photographs provided by the patient's father completely match with the findings of the medical examination.

A month after those events, the victim started to have sleepless nights and pain behind his right ear, for which he was treated and cured at the centre for victims of torture. On 6 January 2010, a case was filed against the two alleged perpetrators in Dhulikhel District Court under the Child Rights Act 1992. After the case was filed, Dhulikhel District Police Office (DPO) issued a notice that departmental action had been taken against the two perpetrators as per the article 85 of the police civil service rules 2009. Nevertheless, since the filing of the case, it is reported that both of the alleged perpetrators have fled the district and their whereabouts remain unknown.

Furthermore, we are informed that unidentified police officers belonging to Pachuwarghat police station, the same police station as the alleged perpetrators, threatened the family and the boy to drop the case or to face the consequences. When contacted by the AHRC to ask for the protection of the victim against threats and intimidations, the Deputy Superintendent of Police of Dhulikhel DPO denied those threats and insisted that now that the case was pending in court, it was not the duty of the police to protect the victim anymore.

A report by Advocacy Forum published in June 2010 revealed that 22.3% of the juveniles in detention that they interviewed between April 2009 and March 2010 reported that they had undergone torture or other forms of ill-treatment at the time of arrest or detention.

Nevertheless, to date, not a single police officer has been prosecuted for this offence. Section 7 of the Children Rights Act 1992 states that “no Child shall be subjected to torture or cruel treatment” and contains provisions that whoever is found guilty of having inflicted torture on a child shall be liable to a punishment with a fine up to five thousand rupees or with imprisonment for a term that may extend to one year or with both, and may be liable to pay a reasonable amount of compensation to the child. Nevertheless, so far, not a single perpetrator of torture has been brought to justice under this act, as was pointed Human Rights Watch in 2008 and reiterated by Advocacy Forum in June 2010.

The lack of appropriate victim and witness protection mechanisms is one of the obstacles which prevent victims of torture from seeking legal redress under this act. Although Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment mandates that “each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given”, stories of retaliations and threats against witnesses and victims of torture seeking justice are still numerous in Nepal and often act as a deterrent, preventing victims from pushing for redress.

In 2005, the Committee against Torture expressed its concern about “alleged reprisals against and intimidation of persons reporting acts of torture, in the forms of re-arrests and threats, and the lack of witness protection legislation and mechanisms”. Similarly, the Committee on the Rights of the Child in 2005 recommended that Nepal should consider “establishing effective mechanisms for receiving, monitoring and investigating complaints in a child-sensitive manner and ensuring proper prosecution of perpetrators of child abuse and neglect, as well as instituting appropriate witness and victim protection systems”. Since then, limited progress, to say the least, has been made in that regard. In a number of cases of torture, the victims do not dare to bring charges against the perpetrators, or they stop attending (and giving evidence to) the court hearings after receiving threats from police officers, which allows the perpetrators to go free.

It is therefore necessary, and the state’s responsibility, that immediate measures are taken to ensure the protection of the child and his family during the length of the legal process, to make sure that their vulnerability to threats and abuse from the side of the perpetrators will not hinder their right to legal redress; they should not allow those who inflicted torture on an eleven-year-old boy to remain unpunished.

## Ensure Fair Trial & Protection to Child Torture Victims

### *A Joint Statement by the AHRC & the Centre for Victims of Torture-Nepal*

As Lapka Tamang's torture case will be heard on October 24, 2011, in Dulikhel District Court, Kavre, the Center for Victims of Torture-Nepal (CVICT) and the Asian Human Rights Commission (AHRC) expect that the hearing will take place according to the norms of a free and fair trial, and that the victim will be provided protection against any coercion attempts to change his testimony. Eleven-year-old Lapka Tamang was tortured in the custody of the Pachuwarghat police station on November 16, 2010, while being questioned about a lost ring. In our urgent appeal on his case<sup>69</sup>, we reported that Lapka was tortured for one hour.

Assistant Sub Inspector (ASI) Purushottam Shrestha, alias Mashushan Shrestha, reportedly asked him to crouch down and used a plastic pipe to beat his back five to six times. His soles were beaten 20 to 25 times. Lapka also reported that Police Constable Bhishma Kumar Thapa applied electric shocks behind his right ear. The police threatened the 11-year-old with death if he refused to confess to the theft of the ring, or talked to anyone about the torture, leading to Lapka eventually signing a letter of confession. Only upon returning home that evening did Lapka's father come to know his son had been tortured. The police then coerced his father to pay Rs 19,000 to the owner of the lost ring.

A medical examination conducted on November 19 concluded that Lapka's injuries were consistent with the history provided, and that the age of the injuries was consistent with the alleged time of infliction. The report also concluded that there was evidence that "falanga", one of the most common methods of torture in detention, was inflicted on the victim.

The father filed a case against the two alleged perpetrators in Dhulikhel District Court under the Children Act, 1992. Article 7 of the Children Act makes torture of children under 16 years a criminal offence, punishable with

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69 AHRC-UAC-010-2011: [www.humanrights.asia/news/urgent-appeals/AHRC-UAC-010-2011](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-010-2011)

up to one year imprisonment and/or a fine up to Rs 5,000, a punishment in no way commensurable to the seriousness of the offence, which is nothing short of a violation of a child's basic human rights.

During the last hearing, the victim was threatened by one of the alleged perpetrators, Bhishma Kumar Thapa, who told Lapka's lawyer that ASI Shresta was the only one to have inflicted torture on the victim and that he himself had just put electric wires behind the victim's ear without the current on. He further threatened that he would make Lapka say he had not tortured him, by whatever means. This is not the first time the victim was threatened: immediately after the case was filed, the victim received threats from the police to drop the case. When informed of these threats, the District Police Office refused to intervene, saying that it was not the duty of the police to protect the victim anymore. Threats to victims and the absence of any witness protection mechanisms have barred thousands of individuals from accessing justice, and have stoked the impunity prevalent for perpetrators. Without granting protection to victims and witnesses of human rights abuse, a fair judicial process remains nothing more than wishful thinking.

This lack of protection and the correlating impunity is one of the reasons that torture of children remains alarmingly high in Nepal. A recent report by Advocacy Forum found that 32.8% of the juvenile detainees interviewed reported torture or ill-treatment from January to June 2011. Nepal continues to torture its children while the judicial system remains incapable of holding the perpetrators accountable.

Although torture against children was outlawed in Nepal nearly two decades ago, not a single perpetrator has been convicted under article 7 of the Children Act so far. While the country's judiciary has generally supported progress in the field of human rights protection, it has been slow in initiating momentum in the fight against torture and has, at best, lukewarmly implemented legal provisions introducing a minimal degree of accountability for torture perpetrators. To illustrate, the Torture Compensation Act 1996 provides for departmental sanctions in cases where torture is found to have been applied. While the court has found on numerous occasions that torture has been used, and granted compensation to the victims, occasions in which it has ordered action against the perpetrators have been scant. It is now time for the judiciary to initiate a reversal of that trend and uphold the principles entrenched in the International Covenant on Civil and Political Rights. It

should send a long-awaited signal that uniforms do not protect their wearers from the reach of the law, and that justice will no longer turn a blind eye to torture. For this to take place, victims of torture must be guaranteed an effective right to a fair trial. We are therefore calling for particular measures to ensure the physical protection of Lapka and his family in the days preceding the judgement, to create the conditions of a fair trial with no party having undue influence or the capacity to interrupt the due course of justice.

The AHRC and CVICT take this opportunity to urge the government to expedite the process of the criminalisation of torture by adopting sanctions proportionate to the gravity of the offence, in line with internationally accepted human rights standards.<sup>70</sup>

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70 Torture Briefing-Prevention of Torture in Nepal', Advocacy Forum Nepal. January to June 2010, available online at: [www.advocacyforum.org/downloads/pdf/publications/briefing-jan-to-june-2011.pdf](http://www.advocacyforum.org/downloads/pdf/publications/briefing-jan-to-june-2011.pdf)

*NEPAL: Case 7***Harkali Pun: Torture, Fracture, Police Refuse Treatment**

According to the information received by the Asian Human Rights Commission, Ms. Harkali Pun, 49, was travelling to India in the company of two women, who were allegedly going to New Delhi, when she was arrested by two staff members of an anti-trafficking NGO on 12 July 2011 in Jamunaha, near the Indian border. She was then handed over to the Jamunaha Police Office, Banke district, under allegations of human trafficking.

Four to five hours after her arrest, she was transferred to the District Police Office (DPO), Banke, and detained there in a cell. At around midnight, a policewoman took her to a room on the 1st floor where there were three policemen and one policewoman. An unidentified officer, presumably of a higher rank, ordered the two policewomen to beat Ms. Pun. All policemen left the room.



The two female constables, named Bhagwati and Rajheni (their surnames are unknown), reportedly then started to beat the victim turn by turn with a three-inch thick and one-meter long wooden stick. The victim was beaten on her palms, arms, back, bottom, thighs, legs, soles of her feet and other parts of her body. They ordered her to stretch her legs and one policewoman sat on them while the other one beat the soles of her feet. The two policewomen interrogated her about the alleged trafficking and asked her to provide her son's and daughter's telephone numbers, saying that they would also be charged in the case. The victim was tortured for about two hours.

Afterwards, the police took her to her house in a police van and talked to her daughter for a while. She was then brought back to the DPO. When her children came with a lawyer to visit her, the police did not let her see her children or the lawyer.

She was not provided an arrest warrant and detention letter on the day of her arrest, but only on 14 July 2011, with effect from the previous day. On 14

July 2011, she was remanded for the first time for 5 days, with effect from the previous day, and she was remanded for the second time for 10 days on 18 July 2011.

On 23 July 2011, the victim was taken to Bheri Zonal Hospital for a medical check-up. A doctor diagnosed that her right hand was broken and recommended that it should be plastered. Her broken hand was swollen, and her left hand bore blue marks of torture and had three fingers badly twisted. The victim's feet were also swollen and she complained of pain all over her body.

The police then asked her if she had money. As she had only Nrs. 500, her money was used to pay for an x-ray of her broken hand and to buy some pain killers but was insufficient to cover the plastering costs. The alleged perpetrators reportedly ordered her to say that her hand was broken by slipping on a staircase.

On 24 July 2011, her daughter, on behalf of the victim, filed a physical and mental check-up application before the District Court, Banke, under the Torture and Compensation Act - 2053, Section 5-3 which reads, "In case any adult member of the family of a detainee, or his attorney, feels that the detainee has been tortured, he may file a petition to the appropriate district court. In case such a petition is received, the court may issue an order for the examination of the physical or mental condition of the detainee within three days. If, in the course of such examination, it is found that treatment is necessary, such treatment shall be made available by the government." The same day the court ordered the DPO, Banke, to provide a medical checkup to the applicant within 3 days and to submit the documents related to the case, including the medical report. The police took her to a hospital again on 25 July 2011 for the medical checkup but no medical treatment was provided to the victim.

On 28 July, activists working with the victim met Superintendent of Police Dinesh Amatya to inquire about the torture and the medical treatment of the victim's fractured hand. But the police officer denied the reports of police torture and the fracture of the victim's hand. Instead, he alleged that her hand might have been injured at the time of her arrest. Nevertheless, when the activists spoke with other police personnel from the DPO, they acknowledged that the victim's hand was fractured but said that there was

no money in the DPO to cover her expenses. After further discussions, the policemen agreed to send an official letter to the human rights NGO working with the victim requesting medical support if there was no money for her treatment in the Accounts Section of the DPO.

On 28 July, Ms. Pun was again brought to the District Court to extend her remand but the Registrar refused the extension until the police provided the medical report of the victim as per the July 24 court order, reportedly terming the police failure to provide the report within the three-day time limit a “contempt of court”. We are informed that the police eventually provided an unclearly written form to the court. The victim stated that the police first gave her a medical report but later exchanged it for another one, saying that the first report could get the police into trouble.

Both representatives of the Office of the High Commissioner for Human Rights and the National Human Rights Commission have recommended that the police should provide medical treatment to the victim.

At the time of writing, more than two weeks after the torture, the victim is still waiting for medical treatment and is kept in the custody of those who have previously tortured her and is therefore at risk of further ill-treatment.

This case illustrates the state of decay of the policing system in Nepal, which has turned away from its duty of protection under the law to disregarding fundamental rights enshrined in the country’s constitution.<sup>71</sup>

Detainees are under the protection of the state, which has the duty to guarantee that the conditions are met to ensure their right to health, guaranteed in the Constitution of Nepal.

The Police Act 1955 lists “tak[ing] necessary action immediately in case any arrested or detained person sustains injuries or falls ill” among the duties of the police employees.

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71 For more information regarding the challenges of eradicating torture in Nepal please see our June 26 statement ‘Criminalizing torture and bringing it to an end: a test for Nepal’s democracy.’

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Such an obligation is also incorporated in international human rights customary law. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, for instance, states, “A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary”. Repeatedly denying medical treatment to a person in detention involves suffering for the victim exceeding the inevitable level of suffering inherent in detention and may constitute an additional instance of ill-treatment and another breach of Nepal’s international and internal obligations.

**Fahad Usmani: Torture of a Juvenile, Hung Upside-Down**

According to information the Asian Human Rights Commission has received from a reliable source, itself based on a direct interview with the victim Fahad Khan Usmani, 10, and the victim's father Farrukh Ahemad Musalman, a neighbour's son regularly extorted money from the victim in school.

As a result, Usmani used to steal money from his house to give it to the neighbour's son 'M'. On 2 April 2011, Fahad's father, Farrukh Ahemad Musalman came to know that his son stole Rs. 8,000 from his home and had allegedly given it to M. Farrukh then visited M.'s home and asked M's father to return the money. But, the two instead entered into an argument.

Then Farrukh went to Area Police Office at Maghgawa and filed a complaint of theft, asking for the police's assistance to get his money back. Later the same day, police called both parties to the police station. During the discussion, at around 1.45 p.m., Sub Inspector Bikram Sahani and Constable Mahendra Yadav took Farrukh's son Fahad to a room inside the police station for inquiry. SI Sahani then reportedly slapped him to force him to confess that he had spent all the stolen money and had not given it to M. Fahad denied the allegation, which angered the policemen. Constable Yadav allegedly tied Fahad's legs with a rope, hung him upside down from a ceiling hook, and beat him 15 to 20 times on the soles of his feet with a bamboo stick. The torture only stopped following intervention from another unidentified policeman.

As Fahad was brought outside the police station, crying, he informed his father about the torture. The victim's father then requested an explanation from the policemen regarding the reason they had tortured his son, but the policemen denied the allegation and hurried to release the victim after having his father sign a statement that Fahad had spent the money himself.

The victim was treated with homemade medicine. Though there were no external marks of torture, he complained of pain on the soles of his feet and cheeks. His right shin (below the knee) was swollen.

After the incident, Farrukh filed an application with the District Administration Office, Rupandehi, which forwarded the application to the District Police Office, Rupandehi. On 10 April 2011, Sub Inspector Dhamala (name not known) from the DPO called Fahad and his father and took their statements. As Farrukh had not taken his spectacles with him that day, he requested that SI Dhamala read out the statement for him, but the policeman said that he had written exactly what Farrukh had said. On 11 April 2011, Farrukh visited to DPO, Rupandehi, and requested the same police officer to give him the statement so he could read it. The police officer refused to show the statement paper and informed him that the statement that Farrukh had signed the day before stipulated that he had compromised with M.'s father and that the case was therefore closed. It is unknown whether the paper also mentions the torture incident that Farrukh reported.

The AHRC is also informed that the father filed applications to the District Child Welfare Committee, District Police Office, but that no action has been taken in this case so far.

Taking a child for interrogation inside the police station without the presence of his parents is in contradiction of rule four of the Juveniles Justice Regulations 1996. The lack of implementation of these regulations is a source of strong concern as it creates situations in which the child is vulnerable to ill-treatment and abuse during the process of interrogation. Although in article 7 the Children Act 1992 states that acts of torture on a child are criminal acts, which can be punished with a maximum of one year imprisonment, the AHRC is concerned that the general climate of impunity which prevails for torture perpetrators also applies in cases where children are victims, as not a single perpetrator has been convicted under the provision so far.

This impunity promotes torture. Presently, juveniles are even more at risk of being tortured than adults, as was demonstrated by a June 2010 study by Advocacy Forum, which showed that 22.3% of juveniles in detention interviewed between April 2009 and March 2010 reported having undergone torture or other forms of ill-treatment at the time of arrest or detention.<sup>72</sup>

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72 For more details, Please see: [www.advocacyforum.org/](http://www.advocacyforum.org/)

*NEPAL: Case 9***Ang Dorje Sherpa & Jangbu Sherpa: Victims face Eviction, Harassment**

According to updated information received from the Center for Victims of Torture (CVICT), Ang Dorje Sherpa and Jangbu Sherpa are being forced out of their house following pressure from the police who tortured them. On 28 February, the two men went back to the Metropolitan Police Circle (MPC) Maharajgunj, to ask for Rs. 25,070 which had been looted from their home by the team of policemen belonging to that police station. There, an Assistant Sub Inspector of Police, whose name is unknown, rejected their request and reportedly threatened that, as they were trying to damage the reputation of police officers, the police would harass them until they drop the case. He further allegedly threatened that the police would force them out of their house in retaliation.

We are informed that the owner of the couple's house told the victims to move out of their house and shop. There are strong suspicions that the police pressured the house owner to evict the couple. The house owner also filed a petition for expulsion at the MPC Maharajgunj. Following the house owner's petition, the police reportedly called the victims to the police station and ordered them to leave their house or they would be forced out and their belongings would be thrown out on the road.

The police called them again on 16 March, pressurizing them to relocate without delay. When the victims told the police that the law contains provisions according to which the landlord should give his tenants 35 days notice to ask them to leave his premises, the police reportedly replied that they could only give him a 20-day delay and had them sign a document in which they committed to leave his landlord's premises within that period.

In AHRC's previous update on the case, it was announced that both the police officers from MPC Maharajgunj and from the Metropolitan Police Range (MPR), Hanuman Dhoka, refused to file a First Information Report (FIR) brought by the victims. A petition was sent to the Police Headquarters, who forwarded it to the office of the commissioner of the Metropolitan Police Office. Staff from the latter visited the victims on 4 March but were reportedly negligent in compiling the victims' statements. So far, more than

one month after the incident of torture, no FIR has been filed in relation to the allegations of extortion, torture, illegal arrest, and theft.

According to the information we have received, the victims are now extremely worried about their security. Ang Dorje Sherpa had suffered from an anxiety disorder and needed medical assistance for years following another torture incident of which he was victim in 2007. The doctors are now concerned that his being tortured again and the continuous harassment by the police could make him relapse.

In an earlier urgent appeal, “Police ask for bribes and beat a couple in Kathmandu,” the AHRC first reported the torture of these two shop-owners in Kathmandu Valley on 9 February 2011, after they had refused to pay a bribe to policemen from MPC Maharajgunj, Kathmandu. The policemen were under the command of Inspector Om Prakash Khanal and were trying to extort money from the shopowners. After their torture, they were illegally arrested and brought to the police station without being informed about the grounds for such arrest, and kept there until night. The police also reportedly looted Rs. 25,070 from the couple’s house.

We further reported that the perpetrator, Inspector Om Prakash Khanal, had openly admitted to Deputy Superintendent of Police (DSP) Thapa, his Deputy Superintendent of police in the police station, that the couple was tortured upon his orders. At that time, instead of condemning this abuse by a lower-ranking officer, the DSP mocked the couple saying, “You filed a case against the police for a torture incident in 2007, but you could not do anything and no police lost their jobs”. This was in reference to a previous case of torture, where Ang Dorje Sherpa was victim.

In our update “Police refuse to file a case of torture, protect the perpetrators”, we expressed our concern that in spite of our previous urgent appeal, both the MPC Maharajgunj and the MPR Hanuman Dhoka, Kathmandu, refused the FIR presented by the victims. The DSP Deepak Thapa of MPC Maharajgunj openly admitted that he was refusing to file the FIR to protect his subordinates, while Superintendent of Police Pushkar Karki of MPR Hanuman Dhoka blamed the victims, saying that they have fabricated the incident to discredit the police, and offered the excuse that he had to speak with the lawyer who had written the FIR before registering the case.

This case is another illustration of the complicit attitude of the police towards its own personnel involved in acts of torture. Refusing to file FIRs in cases involving other police officers remains a common practice in Nepal and results in an effective denial of justice. Even in cases where the FIR is actually registered, the victim has no guarantee whatsoever that it will be thoroughly investigated. Indeed, there is still no independent body in charge of investigating cases of torture, and allegations of torture are in most cases investigated by policemen, sometimes even belonging to the same police station as the perpetrators, creating a direct conflict of interest in the outcomes of the inquiry.

Because of the absence of any mechanisms to protect the witnesses and victims of torture, seeking legal redress takes a hard toll, not only psychologically but also economically. This case highlights how the perpetrators of torture can impose additional economic burden on the victims by chasing them from their house and shop, and thereby depriving them of their income source. The case of the torture victim Hom Bahadur Bagale, a former policemen, who lost his job and right to pension following his complaint of torture, is another illustration of how economic measures can become a tool of pressure in the hands of the police to prevent the victims from complaining about torture. In 2005, the Committee against Torture had already recommended that Nepal “consider adopting legislative and administrative measures for witness protection, ensuring that all persons who report acts of torture or ill-treatment are adequately protected”. Nepal has so far failed to adopt such measures, thereby paving the way for further victimization of victims of torture reporting violations.

*NEPAL: Case 10***Sahaj Ram Tharu: Young Man, Torture, Water-Boarding**

According to the information we have received from a reliable source, Mr. Sahaj Ram Tharu was brought to the District Police Office (DPO), Banke in Nepalgunj on 20 February 2011 by an acquaintance, Yuv Raj Pokhrel, who accused him of trying to extort money from him on behalf of an underground group. That night, Sahaj Ram Tharu was detained in the DPO, but was not given any detention letter or arrest warrant.

The next day, 21 February, at noon, several unidentified policemen took him to the upper-floor of the DPO, Banke, reportedly blindfolded Tharu and started to interrogate him. The policemen asked him which underground party he was affiliated with, the number of persons he had extorted donations from, and so on. During the interrogation, the policemen reportedly forced Tharu to lie down on the floor and kicked his chest with their police boots two to three times. As Tharu was denying the allegations, saying that he was not affiliated with any underground party and had not extorted money from anyone, the policemen continued to inflict pain and beat the soles of Tharu's feet with sticks, a form of torture which causes extreme pain.

The victim fell unconscious because of the severe torture and was awoken by policemen sprinkling water on his face. They then asked him to jump for a while, in order to attenuate the marks of torture. He was then held in a detention cell.

In the evening, at around 10 p.m., several unidentified policemen took him to the same room, reportedly blindfolded him and forced him to lie on the floor on his back. It is then alleged that, to restrict his movements, two policemen caught his hands, two policemen caught his legs, two policemen caught his head. Then other policemen poured water into his nose and mouth while interrogating him. Each time, water was poured in his nose and mouth for two to three minutes until he became exhausted. As he kept on rejecting the allegation, the torture continued. Later, he was brought back to the detention cell and detained there without his having confessed.

The next day, 22 February, at around 5 p.m., unidentified policemen took him to the same room on the upper floor of DPO, Banke, and again allegedly

blindfolded him and forced him to lie on the floor on his back. He was then tortured by water-boarding again, following the same pattern as the day before, to force him to confess his affiliation to an underground group and his involvement in extortion for this group. Two policemen reportedly caught his hands, two caught his legs, two caught his head and others poured water into his nose and mouth twice, asking the same question as the previous day. He continued to reject the allegation.

The same day he was given an arrest warrant and a detention letter; this was two days after his arrest. On 23 February, he was remanded by a judge for the first time, for seven days, with effect from 22 February, under abduction and extortion charges. According to the Police Act 1955 and the 2007 Interim Constitution, any arrested person should be brought to the court within 24 hours, but Mr. Sahaj Ram Tharu was kept in detention for three days before being remanded, and was detained for two days without having received any detention letter or arrest warrant, therefore being kept in illegal detention.

The AHRC has been further informed that since 22 February, the victim has not been tortured. But as of 25 February 2011, he still remained detained in DPO, Banke, in the custody of the same police team who tortured him. Since the incidents of torture, the victim has been complaining of pain in his chest. And his right hand has swollen-up due to the initial beatings.

The victim is in the custody of the policemen who have tortured him. As he has still not confessed to what the alleged perpetrators wanted him to confess, it is to be feared that he may suffer more torture in the coming days to force him to confess involvement with an underground group.

Torture is commonly used for interrogation by the Nepalese police, and victims are forced to confess crimes, which they often have not committed, under extreme forms of police brutality.

In November 2010, police tortured an eleven-year-old boy and compelled him to confess a theft in Kavre District. In another recent case, two men and a woman were repeatedly tortured at the hands of a team of policemen from Hanumandhoka MPDC, to force them to confess to a theft. Following the initial torture, they were kept in the custody of the same police team and faced continuous threats and ill-treatment from the alleged perpetrators while being denied medical treatment. One of the victims has complained that

during his detention, after he had confessed the allegations of theft for which he had initially been arrested following intensive torture, he was again beaten, to force him to sign statements and confessions related to other crimes.<sup>73</sup>

This example clearly exposes how torture victims that remain in the custody of their alleged torturers are extremely vulnerable to further victimization, and highlights the urgent need to have Mr. Sahaj Ram Tharu transferred to another place of detention pending the court hearing in his case, to protect him from further abuses.

Furthermore, international law prohibits confessions extracted under torture to be used in a legal process. The Evidence Act 1974 requires that a statement from the accused can be accepted as evidence against the accused only if “the accused had not been forced to make such statements, or that such statements had been extorted by torturing or threatening to place him in a situation in which he was compelled to do so against his will”. Any statement extracted as a result of water-boarding should therefore not be considered in court. Nevertheless, torture is still used to extract confessions, which remain the central to investigations in Nepal.

The increased public insecurity and instability in the southern Terai plains, due to the development of the activities of underground armed groups, has been matched with a steep increase in police brutality in the region in an attempt to curb criminal activities. “Torture and Extrajudicial Executions amid widespread violence in the Terai”, a 2010 report by Advocacy Forum<sup>74</sup>, states that from May 2009 onwards incidents of torture have increased in most of the 11 Terai Districts where the organization conducts its work.

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73 Please see AHRC-UAC-174-2010 and AHRC-UAU-046-2010 for further information

74 Online: [www.advocacyforum.org/news/2010/12/report-on-hr-violations-in-terai-released.php](http://www.advocacyforum.org/news/2010/12/report-on-hr-violations-in-terai-released.php)

## THAILAND

*The following is an extract from a Special Report on Thailand published in 'article 2' in 2005.<sup>75</sup>*

### PREAMBLE

1. The Asian Legal Resource Centre (ALRC) is a regional non-governmental organisation holding General Consultative Status with the Economic and Social Council, having its registered office at Floor 19, Go-Up Commercial Building, 998 Canton Road, Mongkok, Kowloon, Hong Kong Special Administrative Region, People's Republic of China. It submits this document to the Human Rights Committee (the Committee) to coincide with the consideration of the initial report of the State party Thailand to the Committee in accordance with article 40 of the International Covenant on Civil and Political Rights (the Covenant). The initial report (CCPR/C/THA/2004/1: 24 June 2004) was issued in accordance with the wish expressed by the Human Rights Committee at its 66th session in July 1999, after Thailand acceded to the Covenant in 1997.
2. Staff members of the Asian Legal Resource Centre have prepared this document in collaboration with colleagues in Thailand based upon their accumulated experience regarding the situation of human rights there. The ALRC has for many years been familiar with human rights concerns in Thailand. It has submitted numerous statements on a number of key human rights issues in the country to the annual sessions of the Commission on Human Rights (the Commission). More recently it has directed a considerable amount of work towards what it sees as a worsening human rights situation there. In June 2003, it released a special report, 'Extrajudicial killings of alleged drug traffickers in Thailand' (*article 2*, vol. 2, no. 3). It has also sought to become increasingly involved in specific cases of violations of civil and political rights, with a view to proposing legal and institutional changes in order to prevent further abuses, and ensure punishment for the perpetrators and redress

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for the victims. The ALRC and its sister organisation the Asian Human Rights Commission (AHRC) have both increasingly communicated their observations and concerns to the relevant domestic and international agencies. These include the Minister of Justice, National Human Rights Commission of Thailand, Special Rapporteurs and Working Groups, and on one occasion each, His Majesty the King of Thailand and the High Commissioner for Human Rights. Many of these documents are cited and appear as appendices in this submission.

3. More broadly, the Asian Legal Resource Centre has 20 years of experience in human rights and rule of law issues throughout Asia upon which to make its observations. It has actively engaged with international human rights mechanisms throughout this time. Since obtaining General Consultative Status in 1998 it has annually made written statements to the annual sessions of the Commission on a huge range of issues from throughout Asia, and of relevance to the global human rights movement. It has submitted 40 written statements to the 61st session of the Commission. It has submitted a number of alternative reports to committees. These include comments on the report of Cambodia concerning the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (April, 2003) and comments on the 16th periodic report of Nepal to the Committee on the Elimination of Racial Discrimination (December, 2003). Together with the World Organisation against Torture (OMCT) it submitted an alternative report on state-sponsored violence in Sri Lanka last September (September, 2004) to the Human Rights Committee, and attended the hearings of the committee on the same. In 2004 it also submitted a proposal for a new agenda item under rule 5(4)(a)(ii) of the Guidelines for the Application by the Sub-Commission on the Promotion and Protection of Human Rights, with reference to the exceptional collapse of the rule of law in Sri Lanka (E/CN.4/Sub.2/2004/3, 7 June, 2004). It has also initiated the bringing of a number of individual complaints to the Committee.
4. The Asian Legal Resource Centre has been unique among human rights organisations globally in bringing article 2 of the Covenant to the forefront of all its work. It is unique in having a bimonthly periodical, article 2, named after this integral section of the Covenant, which is dedicated to raising issues on effective implementation of human rights standards.

5. The Asian Legal Resource Centre is therefore well placed to comment on the situation of human rights in Thailand with a view to strengthening the Concluding Observations of the Committee in order to improve the application of the Covenant by the State party through constructive discussion with the delegation.

## SCOPE

6. While the Covenant incorporates concern for the full range of civil and political rights, from its work, the Asian Legal Resource Centre wishes to draw particular attention to the following problems facing persons seeking to protect human rights in Thailand:
  - i) **Torture is routinely practiced and publicly accepted in Thailand.** It is used by all security agencies, most commonly, the Royal Thai Police. In the minds of the ordinary people, the police are associated with routine physical abuse and humiliation of persons in their custody. Unusually cruel forms of torture are also inflicted both on persons taken into custody over alleged 'terrorist' activities as well as ordinary criminal cases. The perpetrators rarely face criminal prosecution of any kind. No domestic law exists to effectively address the use of torture, and Thailand has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Nor does any specialised independent agency exist to investigate complaints of torture or other grave human rights violations by the police or other state agents. No official attempts are made to counter public assertions, even when coming from senior officials, that torture is acceptable. Limited arrangements exist to compensate victims and protect witnesses. However, in most cases of torture it is extremely difficult to take steps to protect the victims and prosecute the perpetrators as the former are usually held in the custody of the latter for extended periods. Under these circumstances, it is not possible to secure evidence of torture and keep the victims free from coercion and threats by the perpetrators.
  - ii) **Torture & other custodial abuses are freely committed by state agencies, in part because of the extensive powers that they enjoy.** Despite the establishment of new agencies under the 1997 Constitution intended to correct this imbalance, as well as some other minor reforms, the Royal Thai Police are free to operate with relatively

little external scrutiny and few avenues for effective complaints by the public. In most criminal cases the police have complete control over the enquiries. During their investigations, the police are able to detain criminal suspects for a period of up to 84 days without laying charges. Many persons are detained for longer periods than are legally permitted, or are rearrested on new charges immediately after being released at the end of the statutory period. While holding a detainee, the police have at their disposal numerous tried-and-tested means to extract confessions and then conceal the evidence of abuse. In practice, the provisions allowing access to lawyers and doctors during this period, to which the state party has adverted in its report (para. 191), do little to prevent these practices. Even in cases where a high level of publicity has been raised around alleged torture, and unequivocal evidence of it exists, there is a heavy reluctance on the part of the authorities – despite rhetorical commitments to the contrary – to do anything to combat it. While these conditions apply under normal circumstances, in parts of the country subject to martial law provisions the security forces are granted considerably wider powers to detain and limit the rights of suspects without outside scrutiny.

- iii) **The widespread use of torture is intimately connected to other serious violations of human rights in Thailand, notably extrajudicial and targeted killings.** The number of extra-judicial and targeted killings in the country has risen alarmingly in recent years. These include the widespread killings of alleged drug traffickers, targeted killings and forced disappearances of human rights defenders and environmental activists, and mass killings and deaths in custody in the troubled south of the country. The perpetrators of these acts are rarely subjected to criminal prosecution. State agents enjoy considerable impunity when responsible for the deaths of others. Although the State party asserts that state agents are subjected to the same laws and procedures when responsible for the death of another person (para. 147), this is not the case in practice.
- iv) **Institutions that exist to protect the rights of citizens are not having this effect.** Within the courts, public defenders are not doing their jobs. Ordinary people in Thailand anticipate that if they are assigned a public defender then they will be found guilty. The services provided by the Law Society of Thailand are in many instances little better. Its lawyers may decline to assist in a case where a public

defender has already been appointed for reasons of etiquette, even when the public defender is doing nothing. As a result, victims and their families have lost confidence in these agencies. Outside the courts, pending legal proceedings are used as an excuse for inaction. The Department of Special Investigation under the Ministry of Justice, Crime Suppression Division of the Royal Thai Police, and the Ombudsmen have, for instance, all declined to investigate cases on the ground that the matter is pending in the courts. This is even the case when the complaint lodged does not relate directly to the hearings in court. The government of Thailand has not ratified the first Optional Protocol to the Covenant, thereby denying the possibility for a dissatisfied complainant to bring a case before the Committee.

- v) **Many of the provisions and institutions established under the democratic 1997 Constitution of Thailand are under serious threat.** The State party has in its report rightly spoken of the importance of this Constitution (para. 22); however, in reality a significant danger is now being posed to the democratic structure of Thailand and its new independent agencies. Both the Forensic Science Institute and National Human Rights Commission have been the targets of uncompromising attacks by senior persons in government and the police, seeking to limit their efficacy. The links between the government and big business have undermined strong public attempts to establish genuinely independent regulators of broadcast media frequencies. The continued use of onerous and outdated criminal defamation laws prevents open debate on issues that are in the public interest, in contravention of the Constitution.
- vi) **The dramatically worsening conditions in the south of Thailand are a matter of particularly grave concern and deserve special attention.** The resumption of counter-insurgency measures, including the recent proposal to zone the three southern provinces and deny 'red zones' government funds, is an extremely disturbing development. Apart from the daily reports of violence in the south, the scale of human rights abuses by all parties there is unknown. Anecdotal reports suggest that disappearances, torture and extra-judicial killings are widespread; however, the lack of any effective independent oversight makes the extent of these incidents difficult to establish. Notwithstanding, the fact that the perpetrators of the widely reported deaths in custody of at least 78 persons in October 2004 have not faced criminal sanction for

their actions speaks to the absolute impunity with which state security forces are being permitted to operate in the south.

7. Overall, these features point to a serious weakening in the rule of law in Thailand that poses a growing threat to the protection of human rights there. The strong hope of the 1990s for a new era of human rights protection in Thailand, from the ending of military dictatorship in 1992 to the promulgation of the new constitution in 1997, is now being replaced by apprehension about the future. The current government has exhibited many characteristics typical of the new style of authoritarian rule in Asia. Among these, it has created confusion about the role of the judiciary and denied it the right to play a role in responding to critical events, such as mass killings. It has created confusion about the law itself, such as by permitting persons who kill alleged drug dealers to escape any consequences. And it has deliberately weakened controls over law-enforcement agencies, such as by rewarding rather than prosecuting officers known to have been responsible for killings, and by publicly attacking those agencies established under the Constitution to subject the police and other agencies to external scrutiny. Self-defence is at its lowest ebb in Thailand for many years. Citizens are quickly losing their basic defences to the rights of life and liberty.

#### **Article 7: Freedom from Torture**

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

67. As the State party has noted in its report, article 31 of the 1997 Constitution prohibits torture, in accordance with article 7 of the Covenant (para. 184). However, there is no domestic law to prohibit torture in Thailand. Nor are there provisions in the Penal Code that would affect the same. Nor has the State party as yet ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Nor does any specialised agency exist to address the widespread practice of torture in Thailand in any way, shape or form. Nor does any domestic campaign exist to give effect to the same; in fact, where human rights defenders or other citizens attempt to bring cases of torture to the public attention they may be subjected to

very serious threats. Nor do the provisions outlined by the State party in its report that purportedly prevent the practice of torture have any real effect.

68. **Torture is routinely practiced by the police in Thailand.** Reports also exist of the practice occurring to a lesser extent among the armed forces. However, the Asian Legal Resource Centre has obtained the largest amount of information on the practice of torture in Thailand with reference to the police.
69. **Among the police, torture is practiced both in cases of alleged security threats, and in ordinary criminal cases.** *Some examples follow:*
  70. On 26 July 2004, the ALRC communicated the details of a grave torture case to the Special Rapporteur on the question of torture. The five victims, Makata Harong (49), Sukri Maming (37), Manase Mama (25), Sudirueman Malae (23), and Abdullah Abukaree (20) were arrested and allegedly tortured in connection with a raid on an army camp by officers of Tanyong subdistrict provincial police station, Narathiwat province. After arresting the men on February 23rd, the police approached the court to continue keeping them in custody. On March 4th, the lawyer for the men, Somchai Neelaphaijit, sought a court order that they be taken for physical examination, alleging that they had been tortured. His submission included the following remarks:

*The 4th suspect was blindfolded by police officer(s) and physically assaulted; strangled and choked, hand-tied behind his back and beaten with pieces of wood on the back and head, suffering some head wounds. In addition, he was also hanged from the toilet door with a piece of rope and was then electrocuted with a piece of fork charged with electrical currents, on the back of his torso and right shoulder.*
  71. Frustrated by his inability to get a judicial response to his applications, Somchai went to government authorities in Bangkok on March 11th. The following day he himself was forcibly disappeared.
  72. On May 18th the Criminal Court released the five men after the 84 day statutory limit on detention expired without charges being laid. However, the police immediately rearrested four of them on new charges. To date, none of the alleged perpetrators have been held to account for their actions. Attempts by a senate subcommittee investigating the case to

identify officers through photographs reportedly were blocked by police refusing to assist. A member of the National Human Rights Commission also is reported to have stated that the men were “severely tortured by the police but the court did not ask for any detailed information on that torture nor sent them to receive any medical treatment”.

73. On 12 November 2004, the Asian Human Rights Commission wrote to the Minister of Justice concerning two very grave cases of torture and cruel and inhuman treatment committed by the police. Both incidents related to allegations over ordinary criminal cases:

- i) Mr Chol Narapinit (28), and his wife Ms Siri-on Changluadlai (17), alleged that the police assaulted them and stole a gold necklace from their possession after accusing them of theft; Ms Siri-on was pregnant at the time. They were then kept in detention at Lumpini police station in Bangkok for 102 days without charge, before finally being released by a court. This period exceeded the statutory limit by 18 days. During this time Ms Siri-on gave birth to a child, but obtained no assistance from the police officers in the station. Her relatives came and took the child from her after five days. It is also alleged that the officer in charge of the case, Police Major Kriangsak, recorded her age as 19 to avoid having to treat her as a juvenile detainee under the Child Protection Act 2546 (2003), established to comply with the Convention on the Rights of the Child. Disciplinary action was taken against some officers, however no criminal charges are known to have been laid, despite early reported remarks by the Minister of Justice that these would follow. Meanwhile, the police acted quickly to issue new charges against the couple and have them rearrested.
- ii) Mr Ekkawat Srimanta (21) was brutally tortured by officers attached to two police stations in Ayutthaya province on accusation of robbery during the first week of November 2004. Officers at Phra Nakhon Si Ayutthaya station are alleged to have covered his head with a hood and beaten him all over his body. Then they transferred him to Uthai police station, where officers electrocuted him, causing severe burns all over his testicles, penis, groin, and toes. He also suffered severe injuries from beating, including on his back, thighs, cheeks, face, throat and eyes. Again, internal disciplinary action was taken against the accused officers, but there have been no reports of criminal proceedings. This is despite initial statements by senior officials that judicial action

would follow, and enquiries having been taken up by the Department of Special Investigation under the Ministry of Justice.

74. Subsequent to these two cases, the ALRC heard reports of further complaints of torture at the Phra Nakhon Si Ayutthaya station. It then uncovered two further credible cases of alleged torture by police there involving six victims:

- i) Mr Metta Saiphan (24) and Mr Anucha Siriporn na Ratchasima (28), who were both arrested on 31 March 2004, allege that they were also tortured by officers of the Phra Nakhon Si Ayutthaya police station. The types of torture allegedly used included suffocation with layers of plastic bags, beating on the body, using pepper spray, and standing on the chest. The men were told that if they did not confess to charges of theft, they would have another nine charges added against them. After this time, they confessed. It is also alleged that the police did not place them in a line-up for identification by the complainant. The two men subsequently retracted their confessions; however, they were sentenced to imprisonment in December 2004. Although in the latter stages of trial a lawyer for the men argued that they had been tortured, the court rejected the argument due to lack of evidence.
- ii) Mr Anek Yingnuek (24) was arrested on 9 September 2004 on a charge of robbery and also allegedly tortured at the Phra Nakhon Si Ayutthaya police station. The types of torture included being beaten with PVC pipe, suffocation with plastic bags, and electrocution, including on his penis and testicles through a bag of ice. Anek states that due to the unbearable torture, he gave the names of three friends, Mr Sukit Rachamontri (23), Mr Kampon Kongwiset (19), and Mr Pirom Kruesorn (21) as accomplices. After the three were arrested on the afternoon of September 10 they were also allegedly tortured. Mr Sukit's girlfriend states that the police threw a bottle at Sukit's face before beating, kicking and slapping the men. She also heard loud screams coming from the room where the men were held, before being brought out showing signs of torture. It is alleged that they were constantly tortured until 1am on September 11. The four have now been charged with gang robbery, and are being held in remand awaiting trial.

75. **Extremely brutal types of torture are practiced, but suppressed.** Of particular concern in these cases is that the types of torture went far beyond the day-to-day beatings and conventional roughing-up tactics that persons in Thailand usually associate with the police. The practices of inflicting wounds and electric shocks on sensitive parts of the body suggest the work of seasoned professional torturers. This fact speaks to a concern that the Asian Legal Resource Centre has repeatedly expressed, that torture is widespread among state security agencies in Thailand: however, up until recently it was not publicly discussed. There is no domestic organisation campaigning against torture in the country. Lawyers, journalists, and other concerned professionals there have for many years known about torture, but have shied away out of fear. The addendum to the 2004 report of the Special Rapporteur to the Commission speaks to this point, remarkably listing a mere three cases of torture in Thailand, all involving non-Thai nationals [*E/CN.4/2004/56/Add.1, paras 1678-81*]. This situation is now slowly changing; however, many more opportunities need to be made to open discussion on the practice in Thailand.
76. **Torture is deeply institutionalised.** Although the Asian Legal Resource Centre and its sister organisation have repeatedly raised these cases with the Minister of Justice, other relevant national authorities and international mechanisms, it is unaware of any subsequent enquiries or action. This is despite particular efforts to point out to the Minister of Justice that one of the accused police officers is suspected of being a mentally unstable serial torturer, responsible in part for the institutionalised torture at the Phra Nakhon Si Ayutthaya police station. And the institutional element can be identified in each of the above-mentioned cases. That a young woman could be left to give birth in a police cell, for instance, speaks to a deep institutional tolerance of gross human rights abuse that goes from the arresting officers and those alleged to have assaulted the victims to their commanders, and their superiors.
77. **Torture is approved by senior officers.** It has been the experience of the Asian Legal Resource Centre in its extensive work on the practice of torture in Asia that it always occurs with either tacit or overt approval, and perhaps coordination, of persons high in the chain of command. In Thailand it is a widely shared opinion that torture is necessary to deal with 'bad' people. This sentiment is not only felt among the top ranks, but also openly expressed. After some of the above-mentioned cases

came to light in 2004, Police Lieutenant-General Amarin Niamsakul, Commissioner of the Immigration Bureau, said in a prime-time national television interview that as police all around the world commit torture, it is reasonable that police in Thailand do so too. He added that torture was necessary to extract confessions, and that 'bad people need bad treatment'. Although the Minister of Justice spoke publicly against his remarks, no disciplinary action was taken against Pol. Lt-General Amarin. This is despite the fact that his comments, stated while held a senior government office, contradict and affront both the 1997 Constitution and the Covenant. The ALRC has since on a number of occasions called upon the government of Thailand to remove Pol. Lt-General Amarin from office. The consequence of the government's inaction, as in other cases of gross rights abuse in Thailand, is to offer an implicit endorsement of the remarks, and encouragement for other officials to continue to speak and think likewise. As a consequence, it can be expected that the use of torture as an acceptable method for interrogation will persist and expand.<sup>76</sup>

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76 For references, please see: [www.humanrights.asia/resources/journals-magazines/article2/0402](http://www.humanrights.asia/resources/journals-magazines/article2/0402)

*THAILAND: Case 1***Somchai Neelaphaijit: Government Good... only at issuing denials**

On 17 March 2009, five years to the week of the disappearance of human rights lawyer Somchai Neelaphaijit at the hands of police officers, the ambassador of Thailand to the United Nations Human Rights Council insisted that his government is doing all that it can to conclude the case. Responding to the Asian Legal Resource Centre, Sihasak Phuanketkeow said that the government “attaches the highest priority” to solving the disappearance.

If this is true then it is an indictment on the entire criminal justice system of Thailand that after five years and innumerable squandered leads and opportunities, as well as a huge amount of publicity at home and abroad, no one has been held to account. There are some reports that even the one police officer found guilty of a relatively minor crime in connection with the disappearance, Pol. Maj. Ngern Tongasuk – who was released pending appeal – may have faked his own death in order to escape justice, which is something that he could only have done with the assistance of other police and authorities.

But it is more likely that the statement is untrue, that there is no high priority and no progress will be forthcoming, just like every other occasion that a statement of this sort has been made by a delegate of Thailand in an international forum in order to save face. The ambassador insists that, “We expect to have progress on this case in due course, and the fact that no announcements have been made on the case does not mean that concerted action is not being undertaken.” But the absence of both announcements and evidence of concerted action that leave persons close to the case believing that there will be no news any time soon. Indeed, if there is some kind of concerted action about which nobody is aware – not the family, concerned lawyers or human rights defenders – then the government should make this known. Otherwise everyone will rightly believe that this statement is just another red herring.

In either event, the wife of the victim has shown no interest in waiting any longer with the vain expectation of some sort of justice ever emerging

from the system: something that is anyway by now impossible given the length of delay and the multitude of opportunities for the perpetrators and masterminds of the abduction to cover their tracks. On the very same day that the ambassador was making his empty pronouncements in Geneva, Angkhana Neelaphaijit lodged an application to the Civil Court in Bangkok for her husband to be declared formally missing. She made the application under section 61 of the Civil Code, under which if a person's whereabouts are unknown for five years, it is possible to get this officially pronounced. Under section 62, the effect is then that the person can be declared legally dead.

Five years have passed since 12 March 2004 and no one is any the wiser about the fate of Somchai Neelaphaijit. While Somchai is soon to be declared legally dead, his legal case died long ago, in the hands of successive governments, senior police officers and justice ministry personnel who have all worked in their own ways to thwart justice and pervert the system of law enforcement to ends other than the catching of criminals. No amount of promises in Geneva or anywhere else will bring the case back to life, any more than they will bring back Somchai himself.

Unfortunately, the lesson from all of this is that the government of Thailand insinuates that it is doing things that it is not, and that it cares for things that it does not care for. And, while the case of Somchai has had enough force to at least oblige the government to issue rebuttals, there are thousands of others cases in Thailand every year about which little, if anything, is ever said, and about which the government is not even pressed to issue a denial. The only denial that the families of victims in these cases ever know is the routine denial of rights, the denial with which the government of Thailand is most expert.

*THAILAND: Case 2***Mr. Suderueman Maleh: Police Torture, Electrocution, Urination**

On 4 January 2004, a gun robbery took place in the Narathiwat Rajanagarind (Pileng) Army Camp in Narathiwat. Mr. Suderueman Maleh was one of five alleged offenders in this gun robbery. Mr. Suderueman and the other alleged offenders filed a complaint with Department for Special Investigation (DSI), accusing Police General Bhanupong Singhara, Police Lieutenant General Chakthip Chaijinda, and other officials of torturing them so that they would confess to the gun robbery charges. Altogether 19 officials were accused of torturing the five alleged offenders. The DSI referred the complaint to the National Anti-Corruption Commission (NACC) as the complaint was related to a criminal offence committed by state officials.

Mr. Suderueman and the other four men were the clients of Somchai Neelaphaijit, who was abducted and presumably disappeared by the police on 12 March 2004. They testified under oath in court on 28 March 2005 that they had been tortured. The manner of torture included electrocution, urination on the head and face, smacking on the base of the ears, and assault on the body. The victims' testimonies were consistent not only with one another but also with the accounts of other victims of torture in the south of Thailand. On the other hand, the testimonies of the police in the same trial consistently showed an aptitude for deceit and fabrication: an aptitude that at higher ranks was exceeded only by the display of arrogance of men who have committed crimes so many times for which they have escaped responsibility that they are supremely confident, and with good reason, that they will do the same again.

On 25 June 2012, at 9 a.m., the second of two pre-trial hearings in the case of Mr. Suderueman Maleh took place at the Criminal Court on Ratchadaphisek Road in Bangkok. Mr. Suderueman was one of five alleged perpetrators in a gun robbery case in 2004 whose complaint of being tortured while in custody was brought by Mr. Somchai Neelaphaijit shortly before he was disappeared. After significant delays and during a process which suggests a need for institutional reform, the National Anti-Corruption Commission (NACC) cleared the police officers named in the complaint of being involved in torture. Despite being found not guilty of wrongdoing, some of the

police officers named in the complaint have taken retaliatory action against Mr. Suderueman. During the last two years, a series of cases of allegedly providing false information to state officers have been brought against Mr. Suderueman by police officers named in the torture complaint. The first of these cases, brought by Police General Bhanupong Singhara, was thrown out by the Court of First Instance (*Black Case no. 02618/2552*), on the basis that filing the complaint was the exercise of a citizen's basic rights. In late 2011, the Appeal Court (*Red Case No. 03303/2552*) reversed the decision of the Court of First Instance and ordered a retrial. This hearing, along with the hearing held on 18 June 2012, is a pre-trial hearing to determine whether or not Police General Bhanupong has sufficient grounds to bring a criminal case. The basic right of victims of torture to bring complaints against their torturers is at stake in this case. Mr. Suderueman's alleged crime is to have sought to hold those responsible for his torture to account. The Asian Human Rights Commission has urged all those concerned with accountability for torture and protecting the rights of victims to attend the hearing as observers.

*THAILAND: Case 3***Kietisak Thitboonkrong:**

On 30 July 2012, in Black Case No. 3252/2552, 3466/2552, the Criminal Court found five out of the six police officers accused of murdering Kietisak Thitboonkrong, age 17, in 2004, guilty. This murder was the first of 28 individual murders by the police of the same station to be prosecuted during and following the so-called “war on drugs”.<sup>77</sup>

At this time, all five police officers are out on bail pending appeal. This is despite the fact that three police officers were convicted of premeditated murder and hiding a corpse and were sentenced to death, one police officer was convicted of premeditated murder and sentenced to life in prison, and the fifth police officer was convicted of abusing his authority to help protect his subordinates from criminal prosecution and sentenced to seven years’ imprisonment.

In large part, the verdict in this case was secured due to the courageous actions of Kietisak’s relatives and witnesses to the crime. Kietisak’s aunt, Pikul Phromchan is a human rights defender and one of the leaders of the Kalasin Relatives of Deceased and Disappeared Persons due to the Actions of State Officers in the War on Drugs. She has campaigned nationally and internationally for justice in her nephew’s case as well as in those of others. In September 2011, she made an oral statement at the 18th session of the United Nations Human Rights Council calling for accountability in Kietisak’s case and those of others in Kalasin province.<sup>78</sup> Sa Thitboonkrong, Kietisak’s grandmother, and another witness, Aranya (last name withheld) witnessed the actions of the officers in this case and provided necessary evidence during trial.

All three witnesses were under witness protection during the seven years of this trial. However, at the time of the reading of the conviction on 30 July 2012, all three women were informed that as the case had come to a close, their witness protection was being discontinued –this despite both the significance of this case as a challenge to impunity and the gravity of the convictions and sentences handed to the five police officers found guilty. In this case, the trial’s conclusion makes the need for protection of witnesses involved more, not less, urgent.

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<sup>77</sup> The AHRC has already issued a statement on this case, i.e. AHRC-STM-157-2012.

<sup>78</sup> Pikul’s statement can be read here: ALRC-PRL-003-2011

*THAILAND: Case 4***Kalasin Police Killings**

The Asian Human Rights Commission is continuing its series of appeals on the alleged torture, abductions and killing committed or organised by police officers in Kalasin, northeastern Thailand, over the last three to four years. In this update the AHRC reports on the killing and abduction of four more persons in which the police have been implicated, but never prosecuted, despite some external investigations, as a continuation to our reportings on 24 other victims.<sup>79</sup>

There are still many other alleged cases.

Do note that this update relates to five victims: the first case was noted but not reported in any detail in the previous appeal<sup>80</sup>. The other four victims are from two newly-documented incidents.

**Story 4 a: Namphon Dolrasamee**

On 11 February 2004, Namphon Dolrasamee, a 22-year-old, was shot dead by an unknown man in front of a butcher shop in Kalasin town. At 1:30 p.m., she was riding a motorcycle with her sister, Narumon. When they passed the Prompan Grill meat shop, an unknown man on a motorcycle followed them, and shot Namphon from the side. Namphon's motorcycle fell down; the man walked directly to her and shot her head twice. She died immediately.

The police kept Namphon's body for two days without allowing her family to view it. An official from the Central Institute of Forensic Science under the justice ministry conducted an autopsy on her body, but the family was apparently not informed of the findings.

Namphon had earlier been arrested for drug trafficking but was acquitted. People in the area suspect that the police could have been behind her death, as it happened during the second phase of the "war on drugs" launched by the government, when many teenagers were arrested for drug related crimes,

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79 UA-136-2007; UP-065-2007; UP-073-2007

80 UP-073-2007

and some disappeared or were killed afterwards.<sup>81</sup> At that time the police are widely alleged to have used hired gunmen, including former officers, to carry out killings, and in some instances have done the killings themselves; the patterns in the killings have been in most instances very similar. As noted previously, Kalasin was also declared the first province to obtain a “victory” in the “war” by the former government of Pol. Lt. Col. Thaksin Shinawatra, who personally ordered the operation.

#### **Story 4 b: Wan and Sommai Yuboonchu**

Wan Yuboonchu, a merchant in Ponngam district, went missing with his wife Sommai Yuboonchu after going to the dentist in Kalasin District on 4 May 2005. Money was withdrawn from the couple’s account. The video record of the bank showed that two unknown men with caps used the couple’s ATM card to withdraw the money. The family filed a complaint to the Kalasin District Police Station and Kamalasai District Police Station but there was no progress in the case.

After the couple’s disappearance, a relative, Atthrot Yubonchot, claimed that he knew their whereabouts. He said that they had been abducted to Cambodia and asked for ransom from their immediate family. Some money was paid but the couple did not return. Atthrot and Somboon, a policeman from Ponngam Police Station, Kamalasai District, allegedly made up the ransom story to deceive the family.

The family filed a complaint to the national-level Crime Suppression Division (CSD) in Bangkok. The case was brought to the Criminal Court, and Atthrot was found guilty of blackmail and sentenced to eight years in jail. He is now on bail pending appeal. Somboon was acquitted for lack of evidence.

The CSD had also searched the house of a policeman belonging to the Kalasin District Police who was allegedly involved in the plot to abduct the couple. They found a cap similar to the one worn by one of the men who withdrew money from the couple’s account. However, they have reportedly not been able to obtain any strong evidence with which to prosecute.

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81 For more details on the “war on drugs,” please refer to see “Extrajudicial killings of alleged drug dealers in Thailand”, *article 2*, June 2003, vol. 2, no. 3; [www.article2.org](http://www.article2.org).

**Story 4 c: Suphan and Lamyong Donchompoo**

Suphan Donchompoo, a 49-year-old local politician, disappeared with his 46-year-old wife Lamyong Donchompoo on 7 April 2006. At 1 p.m. on that day, Suphan and his wife helped to put up posters for Chaimai Waramitra, who was running for senator. While they were working between Baan Nongtae and Baan Nongbua, Huangue Subdistrict, Yangtalad District, Kalasin Province, a sedan and a pick up approached them. The couple was taken to the sedan and somebody else drove their own pick up away. The couple went missing after that.

Suphan was a municipal councilor of Nongpan subdistrict. He was indebted and had conflicts with the Kalasin District Police. His family believes that the couple's disappearance is related to the police, either because Suphan had grudges with them, or because their youngest daughter was allegedly involved in drug trafficking and normally used the pick up with her husband. The family lodged a complaint at the Yangtalad District Police Station on April 9, but no progress has ever been made in the case.

*THAILAND: Case 5***Darunee: Mistreatment in Prison**

Darunee was convicted and sentenced to 18 years in prison on 28 August 2009 on three counts of lese majesty. She was denied bail and held for the duration of the trial. She is also planning to appeal her sentence. However, since she has been held in prison she has suffered a number of forms of maltreatment, one of which is systemic, the others of which we believe are a consequence of the charge for which she was convicted.

First, she is suffering health problems but has not received treatment. Her jaw is locking and she is unable to open her mouth properly to eat or brush her teeth. As far back as January, while awaiting trial, a doctor examined her and recommended that she receive treatment outside the facility, but to date she has received none. Her attempt to get bail so that she could seek medical treatment at her own expense also failed. There are many other prisoners in need of outside medical help that are not getting any, and in this respect her case is typical rather than exceptional.

Second, since her detention she has been kept isolated from other detainees throughout the day. She is kept outside a guardpost and made to sit under the roof there alone. At nighttime she is brought back to sleep with other detainees; however, other detainees have reportedly been warned not to speak to her and to inform the guards if she tries to communicate.

Third, since her conviction she has been issued a prison uniform that is brown with red on the sleeves. According to the advice that the AHRC has received, this uniform should only be assigned to convicts in very serious criminal cases, such as drug dealers, where the amount of amphetamines recovered exceeds 100,000 tablets.

Fourth, since her conviction, the wording on the card that she must carry with her in prison to identify her offence was changed to a much more serious expression from that on the original card. Whereas the previous card identified her offence as having defamed the monarchy, the new card uses the Thai word “*arkhatmadrai*”, which is often translated as “threaten”. The connotation of this word is grave; it does not indicate a passing threat but suggests deep malice that a person may carry throughout her life.

Evidently, the second, third, and fourth aspects of Darunee's mistreatment in prison are intended as forms of additional unofficial punishment because of the nature of her conviction. The third and fourth in particular appear intended to provoke needless hostility towards her among staff and other detainees.

*THAILAND: Case 6***Sukrinai Loamar**

On 18 March 2008, Sukrinai Loamar and his father-in-law Sakri Loama came under fire in BaNgoeMuwa village in their home district at 6 am, while they were harvesting rubber from trees near the local mosque.

The WGJP, Peace Witnessing Project at the Research Centre for Peace Building, Mahidol University, and the Muslim Association Centre have all reported on the case. According to these reports, around 60 members of the 39th Special Military Task Force surrounded the village before some members opened fire from behind Sukrinai and Sakri without warning. Due to the gun fire, Sakri was shot dead. Sukrinai lay on the ground and was arrested. The military claim that Sukrinai was involved in the beheading of three Buddhists last year in the Samakki sub-district, and other violent incidents in Ruesor. However, to date the police have failed to investigate the death of Sakri.

After his arrest, Sukrinai was held in a truck with small barred windows, used for detaining a person, stationed inside the military camp on the same day. He was not allowed to pray. Sukrinai's mother was able to visit on March 19 and was shocked to note bruises and red marks on his face. While his relatives waited outside the camp, they were warned that their presence would result in Sukrinai being assaulted further and they left. When they came again on March 20, they were told the same thing and that if they returned again Sukrinai would not be transferred to police custody but would stay where he was and be treated worse than before.

On the following morning, March 21 Sukrinai and other detainees were taken to Ingkayuthboriharn camp in Pattani Province. Sukrinai was then taken to Ruesor district police station at about 4 p.m., where he was able to see relatives and report that he had been tortured the night before. The torture included having his fingernails and toenails pierced with a syringe, his arms and legs scratched with syringe needles, and his back and head beaten. He was hung upside down from a tree for an extended period of time, made to grovel at the feet of the military personnel and forced to drink alcohol. His relatives said that they saw dried blood on his clothes.

Then, Sukrinai was transferred to Tan Yong Police Station, Central District, Narathiwat Province on March 22 and his mother reported this incident to the police at Ruesor district Police Station on next day.

The police record that Pol. Capt. Denchai Moonpom has made, which requires that an injured person undergo a medical check-up, also acknowledges that Sukrinai suffered injuries, though it fails to give details.

*THAILAND: Case 7***Imam Yapa & Rayu Korkor:**

Since the reported custodial death of Yapa Koseng on 20 March 2008 who was held by the 39th Special Military Task Force<sup>82</sup>, the AHRC has been informed that Rayu Korkor, who was arbitrarily arrested, and had witnessed Yapa's death, was reportedly tortured in the 39th military camp. According to further information received from the WGJP, Peace Witnessing Project at the Research Center for Peace Building, Mahidol University, and the Muslim Attorney Center, Rayu's relatives visited Ingkayuthboriharn camp where Rayu claimed he was tortured about 4 times from 4 p.m. on March 19 to 5 a.m. on March 20 in the 39th military camp.

Rayu narrated that his fingernails and toenails were pierced with a syringe, his arms and legs were scratched with syringe needles and his back was beaten. He was hung upside down from a tree for an extended period of time. He was forced to drink alcohol, which is against the tenets of his religion. Rayu further reported blurry vision, chest pains, difficult breathing, and numbness in his feet.

Meanwhile, when Yapa's relatives took possession of his dead body from the 39th military camp, they noticed that his corpse was covered with bruises and burn marks, and his ribs were fractured. His funeral was held. Col. Akara Thiprot, Internal Security Operations Command, Region 4th in the South, now claims that Yapa died as a result of being hit by a hard substance. However, the military have failed to explain all circumstances leading to his death.

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82 See AHRC-UAC-055-2008, AHRC-UAC-064-2008.

*THAILAND: Case 8***Supinya Klangnarong**

On the night of 21 June 2004, Charoen Wat-aksorn (37), a prominent environmentalist in Prachuap Khiri Khan provincial town, was shot dead by two gunmen on a motorcycle near his home after stepping off a bus returning from Bangkok. The gunmen remain at large. The autopsy found he was shot by 7 bullets, 3 of which penetrated through his head and face.

Charoen led a high-profile protest against the Bo Nok coal-fired power plant project in Prachuap Khiri Khan for a decade. On the day he was killed, Charoen had been to Bangkok to ask the House Committee on Corruption Investigation to investigate the allegation that the local officials illegally issued land title deeds on a public land plot in Prachuap Khiri Khan. Charoen's family and human rights groups believe influential figures are behind his murder.

A 900-rai plot of public land in Moo Jed Village of Tambon Bo Nok in the town of Prachuap Khiri Khan is under management of the local tambon administrative organisation (TAO). Initially, Gulf Electric planned to build a coal-fired power plant on the plot and leased the plot from the Bo Nok TAO. Once villagers came to know this fact, they came out to oppose it and ran for posts in the TAO in elections and won. The new TAO refused to renew the leasing contract with the firm, effectively preventing it from building the plant. However, according to the villagers, during the past few months, some wealthy people had bribed local officials to issue land deeds covering 53 rai of land on the plot. Charoen was taking action against this and filed complaints with the interior minister, the National Counter Corruption Commission and various House and Senate committees.

Charoen's wife and human rights groups demanded Charoen's case be handled by the Justice Ministry's Special Investigation Department (SID), not by local police. "We want the department to lead the investigation because we want transparency in the probe. Local police could be influenced by local influential people." Suwit Wadnu, a Campaign for Popular Democracy adviser, said.

On 22nd June, about 300 Bo Nok villagers rallied from the province to Bangkok together with the coffin of Charoen to protest against his murder and to call for justice. Korn-uma said the body would be kept for 100 days, which is time for the government to arrest those whom killed her husband. She added that if it failed to arrest the murderers, she would carry her husband's body for cremation in front of the government House. "His death would not be wasteful. The only thing I want is justice for my husband who was shot dead dreadfully," she said.

However, on 23rd June Thai Prime Minister Thaksin Shinawatra refused the request of Charoen's wife and human rights groups to have SID take over a probe into his murder, which is currently being conducted by local police. Instead, he merely instructed the Bangkok police to assist the local police in the investigation, adding that he would also personally monitor police probes into the killing. "I don't think there's a need to send in Special Investigation Department officials. The task now is to investigate and make an arrest," he said.

According to the information received, today [24th June] 17 human rights and development NGOs will submit a letter to Prime Minister Thaksin, urging the Prime Minister as the chairman of the executive committee of the Special Investigation Department (SID) to handle the case. The NGOs said they will also urge the Thai government to arrest the gunmen and masterminds of Charoen's murder and to establish an independent mechanism to protect human rights defenders.

During the last three years under the Thaksin administration, 16 environmentalists and human-rights defenders have been killed or been rendered missing. Prior to Charoen was the disappearance of human-rights lawyer Somchai Neelapaijit, who was last seen on March 12 with his whereabouts still unknown.<sup>83</sup> In addition, 3,000 people have been killed during the Thai government's 'war on drugs' in 2003, and about 200 people have been killed in the deep South earlier this year.

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83 Refer to our previous appeals: FA-06-2004, UP-14-2004 and UA-26-2004

*THAILAND: Case 9***Problems of Tak Bai are Problems of Thailand**

In March 2005, the then-army commander in Thailand, General Pravit Wongsuwan, was asked what disciplinary action would be taken against three generals found liable for the death of 84 innocent civilians on 25 October 2004, six outside the Tak Bai District Police Station, and 78 in army trucks that transported over one thousand demonstrators and bystanders from Narathiwat to a camp in neighbouring Pattani.

He replied: "There is no disciplinary penalty for those holding the rank of general."

How true: whether killing protesters or overthrowing governments, Thailand's generals remain a law unto themselves. Those responsible for the mass killings two years ago, as well as their subordinates, have never been punished. In fact, they have been promoted. Perversely, they have also appeared as prosecution witnesses – when they have felt inclined— against 58 men who have been maliciously pursued by the public prosecutor in court on allegations of having incited the military and police violence that led to the deaths and injuries that day. Meanwhile, a politically-appointed inquiry has been used to foil public demands for criminal charges against the perpetrators of the killings.

The director of the Department of Rights and Liberties under the Ministry of Justice recently said that the government is paying-out millions in compensation for cases that have been brought into court without evidence. He has called for investigators to do their jobs better and ensure that they have something to base a charge upon before a case is presented to a judge. His comments speak to the grave institutional problems in policing, the prosecution, and laws on evidence in Thailand.

No better example for this exists than in the case of the 58 accused over Tak Bai. Justice has been played a fool in the Narathiwat courtroom where the public prosecutor has consistently failed to ensure that witnesses appear, and where the chief investigating officer – the former Tak Bai police chief – could not identify even one of the defendants (two of whom have died), or tell what evidence had been brought against them. It is as if the prosecutor

and police are between them doing their best to botch the case. And why not botch it? As the men were charged in order to distract attention from the real guilty parties of 25 October 2004 and somehow justify the excessive violence of that day, it doesn't really matter to the state whether they are found guilty or not. The case has already served its purpose: to ensure the generals face no penalty.

It doesn't have to be like this. Contrary to complaints by public prosecutors and police that they lack money, time and other precious resources with which to perform their jobs more admirably, the main obstacle to the effective handling of criminal cases – against persons of any stature – is the political and administrative will to do it. This was most clearly illustrated by the recent conviction of former police chief Pol. Lt. Gen. Chalor Kerdthes to 20 years in jail for the infamous “Saudi gems” theft case. One of the significant characteristics of this case, which is ongoing, has been the assigning of a public prosecutor to handle the prosecution full-time for over 13 years. Just one competent and determined prosecutor full-time on the job has yielded results that stand in stark contrast to countless other cases in the courts of Thailand. Notable among those was the trial of five police in connection with the abduction of human rights lawyer Somchai Neelapaijit, where the constant rotation of prosecution attorneys would have been comical, but for the predictably disastrous consequences that it had on the case.

In Thailand, as in other countries in Asia, whether or not someone is investigated and prosecuted is a political decision; whether they are investigated and prosecuted well or badly also is a political decision. It is a political decision not in the narrow sense of the word, but in its widest sense: the police and public prosecutor are subject to the whims, demands and influences of one another, soldiers, administrators, businesspeople and mafia figures, in addition to politicians.

It is not surprising, then, that the new interim Prime Minister, General Surayud Chulanont, has publicly stated that he thinks the charges against the 58 should be dropped. Although welcome, his suggestion neatly avoids the real issues: why were the men charged in the first place, and how has the case against them been dragged on by police and the public prosecutor for two years without any evidence? This is a question not only for the court in Narathiwat in the south: it is a question for the entire justice system in Thailand. It is a question that lies implicitly in the comments of the

Department of Rights and Liberties Protection director, who is left to foot the bill for the thousands of groundless cases brought before the courts annually.

The Asian Human Rights Commission lauds the proposal that the 58 accused in the Tak Bai case be freed from the charges against them. However, this step will not in itself bring justice; it will merely bring to an end a systemic injustice. What more must be done? The government of Thailand must establish an independent judicial inquiry into the killings of 25 October 2004, as it should have done in the first instance, with a view to lodging criminal charges against the persons responsible for the mass casualties of that day: starting with the generals. It should also establish an internal inquiry into the handling of the case against the 58 by the police and prosecution. And it must at last grant the UN Special Rapporteur on extrajudicial killings permission to visit the country and make his assessment: not only in relation to this incident but all alleged extrajudicial killings that have occurred there in recent years.

The problems of Tak Bai are deep institutional problems spanning decades, if not centuries. They are problems that relate to the most basic components of policing and prosecution. They are not problems that will be solved by a wave of someone's hand and the dismissal of a single case. But a concerted effort to find out what really went wrong at Tak Bai and why the victims were put in the dock instead of the perpetrators may go some way not only for giving a different sense of justice to people in the south but also to people in all parts of a country where wrongful charges and prosecution is the norm.

## End Notes:

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  - xliv. Vol. 08 - No. 03 Sept 2009: SELECTED ARTICLES on politics, human rights & the rule of law in South Asia The meeting of parliamentarians on torture and ill-treatment held from July 21-24, 2012 in Hong Kong.

“The struggle against impunity lies in the creation and maintenance of effective complaint, investigation, and prosecution mechanisms, as well as a functioning and independent judiciary. As observed in the AHRC documentation, there is a common complaint in several countries that proper complaint mechanisms do not exist, or that even if these mechanisms do exist in the formal sense, they are not functioning effectively. People often complain that getting their complaints registered with the police or other institutions is difficult or even impossible when the complaints are about the police or the military.

Therefore, it is essential to study the existing complaint systems and to provide ways to overcome their limitations. What seems to be most frustrating is the absence of investigation mechanisms. Without independent investigation mechanisms, it is not possible to carry out credible investigations. When there are no credible investigations, people lose confidence in the justice process. If people feel that a fair chance of obtaining justice does not exist, then this implies a crisis in the democratic process itself. This too is an area that requires serious attention. There are also complaints about the politicisation of the prosecution process, or other serious defects of prosecutors. Without able and independent prosecutors, it is not possible to maintain an effective system of criminal justice. The last, but at the same time the most important, element is the independence of the judiciary.”



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