STATES OF BRUTALITY

State of Human Rights in 10 Asian Nations

Bangladesh • Burma • India

Indonesia • Nepal • Pakistan • Philippines

South Korea • Sri Lanka • Thailand

ASIAN HUMAN RIGHTS COMMISSION

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A Report by the

ASIAN HUMAN RIGHTS COMMISSION

on

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Indonesia • Nepal • Pakistan

Philippines • South Korea

Sri Lanka • Thailand

ASIAN HUMAN RIGHTS COMMISSION (AHRC)

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Pakistan police officer reacts to tear gas, fired by colleagues against protestors.

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FOREWORD

The Asian Human Right Commission's Annual Report for 2012 casts an unflinching eye at the state of human rights in 10 Asian countries. The report does not purport to cover all human rights issues in Bangladesh, Burma, India, Indonesia, Nepal, Pakistan, Philippines, South Korea, Sri Lanka, and Thailand. However, with differing depths of involvement and range of coverage, and with constant documentation of events and cases throughout the year, in reflecting the nature of its work and engagement, the Asian Human Rights Commission Annual Report provides a unique mirror to the realities of life and governance in these 10 Asian countries.

Individual chapters that comprise the report were published online on International Human Rights Day, December 10, 2012. The content has since been updated, and collated herein. The result may provide an unflattering picture of the institutions of governance that rule over a large section of humanity, but it is one that needs to be confronted squarely if a life of dignity is ever to be created for the common men, women, and children who live in the shadow of institutions, inhuman and unjust. Given the nature of the institutions, and their direct unamended link to colonial / top-down rule in most nations in question, it is unsurprising they continue to fail to provide rights and remedies, no matter fine words in constitutions and law.

The reports on Sri Lanka, Pakistan, and India are expansive in their scope. The Pakistan chapter covers a wide range of subjects afflicting society, such as violence against women, targeted killings of journalists, enforced disappearances and extrajudicial killings. The subjugation of the government and the judiciary to the extra-constitutional power of members of intelligence agencies, the military, and religious fundamentalist groups, clearly emerges as a major problem behind numerous continued human rights violations, chaos, and impunity in Pakistan. The Sri Lanka chapter, on the other hand, displays most notably AHRC's comprehensive documentation over the year of a judiciary that has succumbed to the executive, one with a militarized and dictatorial mindset under the parasitic kinship rule of the Rajapaksas. The India chapter covers a range of human rights issues and institutional failures afflicting

1/6th of humanity in the past year, including how atrocities by paramilitary organizations in border and tribal areas continue, how laws such as AFSPA thrive while an anti-torture law refuses to be borne, how the National Human Rights Commission is akin to a post-office, and how cycles of corruption, malnutrition, agricultural indebtedness, and farmer suicides are connected.

The Bangladesh report documents how the citizens of that nation are being held to ransom by the political parties, which present no real alternative or opposition to society, especially one that will make state institutions deliver rights and justice, and it also exposes how the judiciary is compromised in a variety of ways. Also finding space in the report is documentation of the attacks on religious minorities in 2012. And, of special note is the corruption, violence, and impunity of Bangladesh security forces, the dreaded RAB in particular. Nepal, on the other hand, as reflected in the human rights report herein, continues to suffer due to the political and constitutional limbo, which has meant that the institution and capacity building for human rights protection has remained in abeyance.

The reports on Burma, South Korea, Indonesia, Thailand, and Philippines are shorter, but no less informative with regard to the human rights realities on the ground. Both Burma and Philippines chapters have to do with elements of change in 2012. While the Burma report exposes the superficiality of change, 'mouthed change', with institutional corruption continuing as before and land-grabbing picking up speed as Burma opens itself up to the appetites of the world economy, the report on Philippines wrestles with the possibilities of real substantive change towards reparations and justice amidst fresh hope that blew across the islands in 2012.

Conflict over natural resources, new legislations, and human rights violations in Papua find documentation in the Indonesia report, while we learn of corruption and the compromised institutions that hamper human rights in South Korea. And, finally, the Thailand chapter documents where the present government stands in the spectrum of accountability vs. impunity in violations committed by state agents, and the most recent developments vis-à-vis lese-majesty laws and curtailed freedom of expression.

On the whole, the Annual Report exposes fragments of the same story of institutions failing to deliver to citizens, and governments utilizing legal and

illegal methods, torture, extrajudicial killings, and illegal detention to deny citizens a better, less corrupt, more humane quality of life, with justice at the center.

CHAPTER I

ASIAN HUMAN RIGHTS COMMISSION

BANGLADESH

BANGLADESH

Government by Deception

Introduction

The human rights situation in Bangladesh has not improved a single degree, as its government has not changed its coercive attitude. The same may be said various agencies of the Bangladesh state, which have been busy depriving citizens of their fundamental rights throughout 2012. Constant and systematic denial of justice has made citizens highly vulnerable. Civil and political rights of the people in general, and of the political opposition to the ruling regime in particular, have been zealously denied by the government, which has used the state's law-enforcement and intelligence agencies to routinely crack down on whoever has had the gall to attempt to enjoy freedom of assembly, freedom of association, and freedom of expression, against the government's immediate interest. Fair and uncensored access to complaint mechanisms for even common crimes, such as acts of violence against women, has remained impossible without intervention by influential persons, while registration of complaints regarding state-sponsored crimes has been completely obstructed by the police, unless suitably distorted and emasculated by the 'law-enforcers.'

Torture, followed by custodial killings, committed by law-enforcement agencies, security forces, and intelligence agencies have been taking place unabated. Deprivation of right to life through extrajudicial executions in the pretext of 'crossfire', 'gun-fight' and several other innovative terms and methods have are a continuing trend without remedy. Enforced and involuntary disappearances are on the rise. And, the country's judicial institutions remain constant in their utter failure to hold the perpetrators accountable. State attorneys contribute to the process of maintaining impunity for the perpetrators of gross human rights violations due to the politicized 'disposable' recruitment process of the attorneys.

The media in Bangladesh faces imminent threat from the authorities; physical attacks on journalists by state agents and state-sponsored actors, for any attempts of meaningfully exercising the freedom of expression and opinion is routine. Journalists not only face torture, following constant intimidation

and threats, some outspoken journalists have even been assassinated, and several have lost their jobs due to alleged interventions by influential political forces. The ruling regime, including Prime Minister Sheikh Hasina herself, has often resorted to verbally attacking journalists publicly, for their exposure of corruption and for their criticism of government actions that have failed to benefit ordinary people.

Human rights groups and civil society involved in helping victims without compromising with the ruling regime, in a politically polarized country, have experienced threat and intimidation in 2012 as well. On several occasions rights defenders have been harassed, with threats that the respective organizations criticizing the actions of the rulers and their agents will be shut down.

The basic rule of law institutions survive merely in form— in buildings and uniforms – rather than in any effective administration of justice for the people. Ordinary justice-seekers of Bangladesh have been cornered into a life-in-death-condition by criminal justice institutions made dysfunctional by power-parasites that appear to know only how to suck-up the tax-money of the people. One may find correlation between the pledges of the government to the people for protecting their constitutional rights and reality, if one is determined to fool oneself and some. The government is systematically deceiving its citizens non-stop[1].

Fear & Speculation in Dhaka

Bangladesh's political situation remains explosive due to a culture of hatred and intolerance among power-hungry political groups. Democracy is merely a format in which they participate in – and if possible win – elections, by manipulating the weak electoral institution, garnering administrative and military support, depending on possibilities of establishing influence over the trigger points and strategic players.

There is only one thing common among the power-hunting political groups. None of them is interested in strengthening the Election Commission – which legally remains under the office of the Prime Minister – by making it an independent and effective institution. The reason behind this unity is that each of the parties wants to take advantage of the Commission's weakness, so that the strength of any group having ability to influence the system can win the election. Winning election means the particular political group has been 'democratically mandated' to do or undo whatever the regime wishes to. What

1 www.humanrights.asia/news/alrc-news/ALRC-PRL-005-2012

remains missing in the electoral process is 'credibility' of the election, which allows the losing party to blame the winners for untrue representation of the people. As a result, the moment the election result is declared, the losing party refuses to accept the result and announce their vow to 'throw away' the 'illegal regime' for the so-called sake of establishing the people's right to vote. The political parties apparently believe that their political success mostly depends on their ability to orchestrate violence in the street. The people's sufferings never end in Bangladesh due to the blind addiction for power among the political parties.

Political violence persists inseparably in the everyday life of the people of Bangladesh despite the fact that the whole population of all ages, and all walks, sincerely hates it, everyone except the so-called political leaders and their active thugs. The endless political violence takes numerous lives of ordinary people, which creates new occasions, and statistics, for the rival groups to claim the deceased or injured persons as their own party supporter and blame the opponent for shedding blood. The bloody game for grabbing power intensifies at the cost of destruction of countless lives, assets, trusts, and dreams of the people. Both the ruling and opposition parties enjoy this condition, hoping it may pave the way for them to either remain in, or return to, power, if they succeed in applying their propaganda machineries.

Whenever a general election approaches in Bangladesh, the political environment takes an extreme turn toward intensified violence. The opposition invests its resources and engages muscle-power in the face of crackdowns by the state's law-enforcement agencies, security forces, and intelligence wings that by default work as the ruling regime's hired gunmen to attempt virtual elimination of the opposition from the scene. Reasonable argumentative intellectual discourse among the political groups is replaced by violence between, and among, the state and non-state actors. It is so, because, the relationship between the top leaders of the two major political groups is based on hatred, envy and distrust that not only spreads to the supporters of both parties, but also contaminates the larger population in general, resulting in a visible polarization on the basis of political attachments.

In fact, political communication between the two major political groups is only visible either in their use of abusive language and character assassinations, or in physical attacks on each other's supporters. The existing pattern of political exercise does not require politicians with merit and wisdom. Rather, it requires more number of musclemen having physical strength and vast armories. The political parties often declare crusade for democracy and 'public interest'; however, these are but rote ritual chants which have lost any meaning. Instead, the leading political parties are 'owned' by persons from certain families,

where others have roles to amuse the 'owner of the party' and amass wealth undeservingly once his or her party succeeds in acquiring power. Given such conditions, democracy has hardly found a piece of land with sunlight and water to sprout, let alone find nourishment to grow up in the country of Bangladesh. Democracy is on life-support in Bangladesh, having somehow not yet succumbed to unnatural death.

Since the 1990s, Bangladesh has experienced severe and bloody political violence before every general election in the post-military dictatorship era. In 2014, the nation will be ravaged by another general election to form its 10th parliament in four and a quarter decades since the inception of the country. The political scenario is already taking its warlike shape now in the closing days of 2012.

The country's Election Commission (EC), which has the most important role to play for a fair, transparent, and credible general election, is creating confusion among the public regarding its ability to hold an election that could be acceptable to the people in general. Moreover, the EC has repeatedly been accused of having bias to the ruling regime, which has again recruited the top officials on the basis of the candidates' loyalty to the rulers as per usual practice. For example, a large number of field level staff of the EC has been recruited recently, while the newly recruited officers are allegedly selected for their background of having attachment with the ruling political party's student wing. In response to such allegations, the EC, headed by a group of five retired civil and military bureaucrats, has failed to provide a trustworthy answer to the citizens. The silence of the EC regarding the allegation of partisan recruitment transmits the message to the people that, as an institution, it either owes nothing to the public and its concerns, or simply accepts the allegation as a truth and thus maintains silence for the purpose of implementing the agenda of the ruling regime, as its master, has expected it to do.

When such is the condition, certain words are often repeated in political speeches, i.e. those alluding to 'people', and 'people's safety', when the fact is that the parties are competing against each other to put the 'people' in a more vulnerable and dreadful condition by their actions. For example, in October 2006, the ruling regime and the opposition, who sit in switched roles today, commenced fighting each other on the streets. It caused more than a dozen deaths. Continued violence, and exchange of bullets and hand-bombs in public places, confined residents in many cities, including the capital, Dhaka. The military, in turn, utilized this opportunity to grab power, insisting, in January 2007, that the then President Iazuddin Ahmed impose a state of emergency and curfew in the country. Bangladesh suffered the military again, for two years, damaging any advances in real democracy.

Observing the ongoing political deadlock and eruptive situation, many Bangladeshis fear that the ruling regime and the opposition may lead the country to an October 2006 crisis again. Bangladeshis can thus only face-up to the coming violence-ridden election slug-fest, a veneer of formal democracy, with trepidation.

Supreme Court's Time in the Political Sun

The Supreme Court has found itself trapped by politically polarized and influential legal professionals, and the executive. This has only deepened political dispute and led the nation hurtling into another crisis. The matter relates to the holding of general elections, as per the 13th Amendment to the Constitution, under a non-party care-taker government.

The sixth and shortest surviving elected parliament of Bangladesh, which lasted only 15 days in Feb-March 1996, succeeded in passing the Constitution 13th Amendment. The opposition at the time, led by the Bangladesh Awami League (BAL)– presently dominant in the incumbent ruling regime – put the country through an endless series of nation-wide general strikes in order to establish a system of non-party care-taker government, to help in elections and power transfer.

The Bangladesh Nationalist Party (BNP), which ruled the nation between March 1991 and March 2006, stood against the opposition's demand for a care-taker governmental system. According to the BAL, the care taker governmental system was the only solution for holding free and fair general elections in Bangladesh, as the elections until then, under any regime, had failed to meet parameters of credibility. The ruling BNP government, when it completed its tenure in 1996, failed to convince the opposition to participate in the general election, boycotted to express a lack of credibility in the prevailing electoral process.

The government then held a controversial election, without the participation of any major opposition political parties, enjoying a one-sided massive victory.

However, the victorious government, comprised of the BNP, which had opposed the idea of a non-party caretaker government thus far, did an-about-turn and used its majority to amend the Constitution, inserting the provision of a 'Non-party Care Taker Government' to be headed by the latest retired Chief Justice or the senior-most judge of the Supreme Court, with ten technocrats to serve as council of advisors.

This care-taker government's main responsibility, according to chapter II A of the 13th Amendment, was to hold a general election. Since this amendment, two general elections – one in June 1996 and the other in October 2001 – have been held in Bangladesh; both elections have found opposition ousting incumbents.

The Constitution 13th Amendment has made a huge impact on Supreme Court judges of Bangladesh. The incumbent regimes have begun to feel that a 'loyal' judge must be given the position of Chief Justice. Calculations have ensued, so that the most loyal judge isretires prior to the upcoming general election.

The BNP regime allegedly attempted to appoint the judge of their choice as Chief Justice by extending the age of retirement of the highest judiciary in the Constitution 14th Amendment.

Following violent political action, the particular judge withdrew himself from the position of head of the caretaker government in late 2006. Later, some of the judges had started to dream of, and compete for, acquiring a position as head of the government, even if for few months.

In 2011, the Appellate Division of the Supreme Court of Bangladesh passed a judgment declaring the Constitution 13th Amendment "void and ultra vires the Constitution" in the introduction to the Judgment.

The Court also declared, "The election of the Tenth and the Eleventh Parliament may be held under the provisions of the above mentioned Thirteenth Amendment on the age old principles, namely, quod alias non est licitum, necessitas licitum facit (That which otherwise is not lawful, necessity makes lawful), salus populi suprema lex (safety of the people is the supreme law) and salus republicae est suprema lex (safety of the State is the Supreme law)."

The judgment observed that "the parliament, however, in the meantime, is at liberty to bring necessary amendments excluding the provisions of making the former Chief Justices of Bangladesh or the Judges of the Appellate Division as the head of the Non-Party Care-taker Government." It further asserted that "the Judgment in detail would follow".

The judgment summary was pronounced in the Court on May 10, 2011, by the full bench of seven judges of the Appellate Division, headed by Chief Justice A B M Khairul Haque, Supreme Court of Bangladesh. This judgment was passed on a majority note, four in favour and two against; one judge had

a different view. Chief Justice Haque, retired from service one week after this summary / short judgment was passed.

The complete judgment was itself signed and only made available on September 6, 2012, i.e. more than 16 months after the introduction was made public.

Several jurists of the country criticized the process followed by the former Chief Justice, arguing that once any judge retires from judicial service, he or she becomes an ordinary civilian, does not remain under oath of office, and loses his or her judicial authority to adjudicate or sign on a judgment.

Meanwhile, in the interim, the ruling regime led by the BAL took advantage of the summary judgment, and without waiting for the complete judgment, passed the Constitution 15th Amendment on June 30, 2011, abolishing the non-party care-taker government system.

This latest amendment, which received presidential assent on July 3, 2011, was published in the official gazette on July 4, 2011. It will enable the ruling party to remain in power in the lead-up to the upcoming general election.

Divided Ruling Multiplies Plight

The separation of Bangladesh's judiciary from the executive branch remains but a theory, with little practical reality. For one, the appointment of judges to the higher judiciary continue to be highly politicised. The judiciary does not enjoy independence as far as the administration of justice is concerned in terms of logistics, manpower, integrity, and the adjudication of cases. Besides, there is a serious lack of judicial competence and commitment to upholding the rule of law among many judicial officers. The Supreme Court acts systematically in favour of the ruling party. Furthermore, the present BAL-led alliance government deployed mobile courts under the Mobile Court Act, 2009, in the name of preventing 'anarchy' during general strikes. The mobile courts arrested and sentenced people after summary trials, without scope of defence, violating fundamental rights of citizens. The mobile courts, which operate under the executive, have given the government unlimited power to misuse and fulfill political agenda. It illustrates the government's failure to implement the recommendation to ensure independence of the judiciary.[2]

2 www.alrc.net/PDF/ALRC-UPR-16-001-2013-Bangladesh.pdf

Frequently, judges of the Division Bench of the High Court Division appear to have divided opinion in deciding writ petitions of the litigants. In many cases, the judges hardly make a valid legal point while disagreeing with his or her colleague on the Division Bench.

The Asian Human Rights Commission can share one such recent example. A *habeas corpus* petition on the disappearance of Mr. Immam Hassan (Badal) was heard on November 13, 2012, by a Division Bench comprising Justice Seyed Refaat Ahmed and Justice Sheikh Hassan Arif. Imam had 'been disappeared' since March 16, 2012, when his parents last met him at the office of the Rapid Action Battalion (RAB)-2 headquarters at Sher-E-Bangla Nagar in Dhaka. Imam's father, Mr. Md. Ruhul Amin, and Bangladesh's human rights organization Odhikar's Director, A.S.M. Nasiruddin Elan, filed the *habeas corpus* petition with the High Court Division.

The petitioners' attorney, Mr. Adilur Rahman Khan, Secretary of Odhikar, submitted to the Court that "the state has obligation of protecting the rights of its citizens while the state had been found to be indifferent in the matter of disappearance. A man was disappeared for failing to paying bribes to the members of the Rapid Action Battalion."

In response, one of the two judges asked the lawyer, "If RAB denies its involvement in the incident of disappearance, then what would happen?" The petitioners' attorney said that "they [*RAB*] had been doing [*denying*] so. That's why the statistics of disappeared persons rose to 71, according to our documentation on the basis of facts."

Then, the same judge said, "Generally, disappearance happens to the political leaders," and asked, "Why should he [*Imam Hassan*] be disappeared?" The petitioners' attorney requested the Court to order the respondents to produce the disappeared person within 24 or 48 hours before the same Court, however, the junior judge disagreed with his senior colleague, who expressed his view in the open Court for passing an order according to the submission made by the petitioners' attorney. Instead, the Court issued a Rule directing the respondents as to why they should not be asked to produce Mr. Imam Hassan before the Court within one week.

A citizen's fundamental right to life and liberty had been denied by the state's paramilitary force – RAB, which enjoys blatant impunity – and required maximum attention from the highest judiciary of the country when a habeas corpus petition was being heard. The judiciary's constitutional and universal obligation is that of locating the disappeared person alive and ensuring his right to life and liberty, leading to prosecution of the perpetrators.

Ironically, the junior judge was more concerned about RAB's denial – which RAB systematically maintains when questioned about its involvement in disappearances – in order to appease the paramilitary force rather than holding the perpetrators accountable. The judge's remarks also appear to sugest that he was okay with the incidents of disappearance of a politician but struggled to accept it when an apolitical person is victim to disappearance.

Many litigants of the country have been facing similar challenges from the highest judiciary, let alone the difficulties expecting any redress from the lower branches. Thanks to the ongoing culture of recruiting judges in the higher judiciary in recent years, on the basis of loyalty and political affiliation with the ruling regime, one of the most important institutions of the state has been burdened with judges that have the poorest moral standards. The nation urgently needs to act to reverse this trend. Any delay or failure to transform the subjugated mindsets to ones based on normative standards will result in the people paying a high price.

Pre-Planned Assault on Ethnic Minorities

The ethnic minority communities of Bangladesh have experienced a shocking and tragic blow in 2012. The governmental machinery of Bangladesh, with its retinue of law-enforcement units, intelligence agencies, and security forces, has totally and abysmally failed to protect minority communities in the south eastern region of the country. A large number of monasteries, temples, houses and establishments of the Buddhist communities, and even those belonging to some of the Hindu communities, have been subject to open arson and looting.

Starting 29 September 2012, the rampage proceeded for three straight days in Cox's Bazar and Chittagong districts. The devastating attacks began at Ramu sub-district town on the evening of 29 September and spread in the next two days, without even token measures by authorities to protect the assets and trust of affected communities. Local leaders of the ruling party, in collusion with few leaders of other political parties and locally known and unknown individuals, were found to have provoked the hate-mongering and violence.

Victims and witnesses noted how local police acted as silent spectators to the firestorms lit-up and fanned by the attackers. Bangladesh's policing system has been conditioned to turn a blind eye to any violence orchestrated by anyone having any connection to the ruling political parties. The police's role, as silent spectator, further points a finger to the comprehensive culture of impunity for offenders having links to power, especially links to the ruling party.

Cox's Bazar, like every district town, has a Police Line, accommodating reserve police forces stationed there to tackle such violence. The RAB, officially termed an 'elite force', has a unit in every district headquarter to control 'law and order.' At least two battalions of the Border Guards Bangladesh (BGB) are stationed within half-an-hour driving distance from Cox's Bazar and at Naikkhongchhari sub-district of Bandarban Hill district, which is adjacent to Ramu. Moreover, there is a military barrack within ten kilometers from Ramu town and an engineering core in Cox's Bazar town. The authorities did not engage any of these agencies or their forces to stop or mitigate the attacks.

Evidently, the country's intelligence agencies failed to, or didn't want to, predict the possibility of the attacks, even though high-profile government officials, including the Prime Minister and Home Minister of Bangladesh, termed the pillaging as 'pre-planned attacks.' One of the glaring incidents in the series of attacks was the attack that took place at Paschim Marichchya Dipankar Buddha Bihar at Ukhia sub-district, 24 hours after the attacks occurred at Ramu. The authorities did not take any effective measure to ensure security of the affected community in Ukhia area, although the events in Ramu had become known to the whole world through media by that time.

People affected by the attacks are terrified, fearing they may recur. The witnesses and victims declined to expose their personal identity, due to the fear of further attack or harassment. Such apprehension reiterates the extreme necessity of an effective witness protection mechanism, something missing in Bangladesh. Hundreds of families are still homeless and living under imminent threat. An unknown number of victims have received various forms of injuries as a result of the multiple types of attacks. None has been able to ascertain whether the victims have been given access to adequate medical treatment facilities or not.

The police arrested people en-mass, without substantial evidence against the suspects. According to the police, at least 17 criminal cases have been registered with three police stations of Cox's Bazaar and one police station of Chittagong district.

More than hundred people were arrested and detained by the police of Ramu in eight related criminal cases filed with the police station. Two of the eight cases have been transferred to the Detective Branch (DB) of police, which has further arrested 30 more suspects in Cox's Bazaar. The police officers have denied disclosing the individual identities of the detained suspects, although they claim that the suspects belong to all major political parties including Awami League, BNP, Jatiya Party, and Jamaat-E-Islami. They have confirmed that none of the detainees are from the Rohingya community.

Four cases have been registered with the Ukhia police, which had arrested 49 suspects. The police claimed that few of the detained suspects are members of BNP and Jamaat-E-Islami. However, the officers refuse to reveal the details of the suspects or how the police have determined their involvement in the crimes. The Officer-in-Charge (OC) of Ukhia Police Station, Mr. Oppela Raju Naha said, "We are scrutinizing the suspects. No comments can be made while the matters are under investigation."

Two cases have been registered with the Teknaf police, who have arrested at least 36 people as suspects. According to the Officer-in-Charge (OC) Md. Farhad Hossain, two of the detainees belong to the Jamaat-E-Islami, while none has yet been identified as Rohingya. He said, "More people might be arrested in the coming days in these cases."

It has been learned from the Patiya police of Chittagong district that three cases have been registered with the police regarding the attacks in monasteries and temples within its jurisdiction. At least 35 people have been arrested and detained up to October 16th.

The political parties of Bangladesh have once again exposed their failure to face the truth. The ruling and opposition parties have been publicly playing traditional blame-games against each other instead of addressing this unprecedented disaster to the country's communal harmony. Both ruling and opposition politicians have failed to stand beside the victims, who deserve assurance from the larger powerful communities that recurrence of attacks would be prevented at any costs.

It was learned from the witnesses in Cox's Bazaar that the incident started at around 7 pm on September 29, 2012 following a post in a personal facebook account of a Buddhist young man named Mr. Uttam Kumar Barua, who is a resident of Baruapara at Ramu upazila of Cox's Bazaar district. Another user had posted as a photo that allegedly insulted the Holy Quran, which was shown to be underneath a girl's foot. And, this was tagged to Uttam's personal facebook account.

The meetings and processions that took place before the attack on the homes and places of worship of the minority Buddhist and Hindu communities were led by local leaders and activists of the Awami League. However, the local people said that during the attack, a few strangers were also seen along with those who were known. Many people claimed that kerosene and gunpowder were used during the attacks to start fires.

All of the local people were in shock, given that so many places of worship were being attacked at the same time. They had never witnessed such events before, and they could they imagine that such incidents could ever occur. Accurate information was not found regarding exactly how the inflammable substances were used, collected, and who collected them. The gunpowder was of import. However, the alarming fact is that although two months have passed, the local authorities and intelligence agencies have yet to take any action. As a result, the feelings of insecurity among those affected by this attack have escalated.

The views of the victims and eyewitnesses have made it clear that religious sentiment was used to mobilise a large number of people. It is believed that even though people from all faiths have lived harmoniously in the past, the communal tension is now akin to a tinderbox.

Whether the torture of the Rohingyas in Myanmar had any influence on these attacks was not the subject of this particular fact-finding mission. However, a social fact-finding mission and adequate explanation is required to understand the perspective mentioned above. It was clear that the people who gave information to the fact-finding team did not say anything about the Rohingyas being involved. Imaginary news about the Rohingyas being involved was released by some of the media.

Information received from the priests of the temples, local people, and the members of law enforcement agencies has revealed there was no evidence regarding the involvement of the Rohingyas. Nonetheless, some media outlets have published news about a few Rohingyas being arrested and accused long before the incident took place. Attempts are being made to wrongly frame the Rohingyas. This is in order to hide the alleged involvement of the local Awami League leaders and activists, together with the massive, unpardonable, failure of the administration to act. In the context of the recent killings that have taken place in Myanmar, such misleading facts and unfair allegations may create dangerous impact for the Rohingyas in Myanmar and Bangladesh. Attempts might be made to arrest them in order to show that the Rohingyas were the instigators.

Instead of assuring a fair and proper investigation, the government was seen to be spending too much time in blaming their political opponents. Similarly, the opposition parties are busy criticizing the government instead of taking steps to gain the trust of the Buddhist and Hindu communities. The one and only political duty at this time should be in establishing good inter-community relations to ensure the security of the lives, belongings and places of worship of all the citizens of Bangladesh. The failure of the political parties in realizing the social and political consequences involved is a matter of grave concern. The

government's attempt to blame others instead of admitting their own faults makes the situation even more complicated.

There was tremendous doubt in the minds of the people of Bangladesh on whether the investigation will be fair and independent of political influence. It appears that the people given responsibility for investigating the crimes are the very officials who had command responsibilities when these crimes were committed.

A procession against the Buddhist community at about 8:30 p.m. on 29 September in Ramu (courtesy, local media).

The demand for an independent and impartial investigation committee was made by the rights groups concerned in order to uncover the real reasons behind the attacks, to identify the culprits, and bring them to justice. However, the investigation into the attack upon minorities, its process and outcome, and subsequent handling of the event by the Bangladesh government, was, and remains, highly questionable.

The incident in question was the arson of properties of the minority communities, particularly of the Buddhists and Hindus in Cox's Bazar and Chittagong districts that occurred on 29th September.

The Probe Committee, headed by the Additional Divisional Commissioner of Chittagong, and comprising a civilian officer and two police officers, has claimed to have completed its investigation on 13th October. The government has, however, suppressed the report. The public is being kept in the dark regarding the Committee's findings.

The investigation has generated more controversy than contributions to the pursuit of justice for the victims. The victims have challenged the Committee's report, though what is publicly available so far is only snippets of opinion made by Committee members. The victims have also demanded an independent judicial investigation, as they do not trust a government-sponsored Committee and their intensions.

A number of Buddhist clergy have already objected to the police action that seeks to implicate certain political opponents of the ruling regime for the arson. For example, the President and the Secretary of the Pashchim Ratnashashon Teertha Sudarshan Bihar Management Committee have prepared notarised

affidavits on 18th October suggesting that they are not pleased with the government's actions. The affidavits allege that the Buddhist community received support from Mr. Mahmudul Haque Chowdhury and one Mr. Darbesh Ali, two prominent public figures from the locality, to prevent the attacks upon the local Buddhist monastery. Both Mahmudul and Darbesh are however accused by the police for attacking and looting the monastery.

The media have quoted the Committee, when it reported that Mr. Tofail Ahmed, a leader of Jamaat-E-Islam and the Chairman of Naikkhongchhari Upazila Parishad of Bandarban district, were the mastermind behind the entire incident. The local leaders of the ethnic communities that were under attack challenged this version of the Committee. In a press conference held on 21st October at Cox's Bazar, the local leaders have challenged the Committee's report.

Irrespective of the truth behind the statements made by Buddhist and other community leaders, the government is responsible for providing answers to the public. It is, however, a sad reality that what is now available in public about the Committee's findings is mere rumour.

By suppressing the investigation report, the government has denied the people a right to know the truth. It is not for the government to decide what and who led the arson attacks. It is for an independent investigation to unearth and for a court to decide, since arson is a crime. Instead, by hiding the probe report, the government has contributed to the generation of public speculation, creating rifts between communities when relationships are already strained.

Apart from this, the local police have detained some persons as suspects. These persons have already withdrawn their statements from the courts, alleging that state officers tortured them and forced them to confess to crimes they have not committed. The allegation of torture must also be a subject for investigation, since torture is prohibited in Bangladesh. It is also reported that the persons currently in custody accused of the crime have been threatened by the state officers that they would be extra judicially executed in cross-fire, if they refuse to give statements as directed by the state officers.

The government kept all its forces as silent spectators when the devastating arson attacks occured. It has done no better by suppressing the probe report filed by a committee that the government had itself instituted to investigate the crime.

Tools for Lucrative Business: Arbitrary Arrest, Detention, Torture

The people of Bangladesh often find themselves living in fear of arbitrary arrest and detention. In particular, whenever the opposition announces any protest rally in the country, matters get worse for the ordinary people, as happened prior to a mass rally in Dhaka on 12 March 2012, called by the opposition parties, and led by the Bangladesh Nationalist Party (BNP), against the ruling regime.

Opposition parties had organised a march towards Dhaka on 12th March, to show political strength by gathering as many supporters as possible and bringing them to the capital. The opposition parties claim they had wished to host the rally peacefully, in accord with their right to freedom of assembly. They have now accused the government of arresting hundreds of their activists and supporters prior to the rally.

The government, which held a rally on 7th March in participation with public employees, and was planning to hold another one in two days time, had deployed all of its agents, including the police, RAB, and other intelligence agencies, to prevent the opposition public rally. The ruling regime attempted to deny its opponents the right to hold political meetings and rallies in public. It has been blaming the opposition for conspiring to cause a breakdown of law and order in the country.

Law-enforcment agents of Bangladesh have indeed arrested hundreds of ordinary people and activists of the opposition parties, en-masse. And these arrests have continued. The authorities detained the arrestees arbitrarily under Section 54 of the Code of Criminal Procedure (1989) and several other draconian laws including the Dhaka Metropolitan Police Ordinance (1976) and Anti-Terrorism Act (2009). According to available information, several thousand people have already been illegally arrested and arbitrarily detained only in last three days.

Amongst the detainees, poor people have been victim to the on-going random arrests by law-enforcement agents. Most of the detainees hae been identified as day-labourers, transport-workers, street-hawkers, students, and pedestrians. Many of the detainees have been named in fabricated cases, having failed to bribe the police. The country's magistracy, which deals with such arrested persons, appears to be of no use at all in ensuring the fundamental right to liberty, even when almost everyone is being arbitrarily sent to prison.

The Dhaka Central Jail authorities admitted that in three days they had received around four-times more detainees than normal. Similar reports of arbitrary detention were being recorded in other cities and towns, although the exact statistics remain under wraps.

Apart from arrest and detention, the government had ordered the public transportation companies to stop, or reduce, operation to and from the capital city in order to prevent the presence of the pro-opposition supporters in Dhaka. Residential hotels had reportedly been ordered to keep closed from 9th March on, with threats of further harassment if the hotels would accommodate anyone. The police and the RAB had been raiding the houses of the citizens, of leaders of opposition parties, and other places, including private dormitories, where students having no alternative shelter for studies reside, and all this without any credible search warrant, as per their whim.

In the given situation, the ordinary people have been scared of making even necessary movements for their livelihoods. Passengers in limited number of private and public transport that still dare to operate in the streets are facing endless harassment in the name of security checks all around the city of Dhaka. Bangladesh appears to have become a police state. Most of the families of the detained victims have been helpless with regard to the release of their loved ones from prison – not only failing to afford the costs needed to be incurred, but also having to brave the ruthless attitude of the government, and the chain of corruption of the policing system of the country.

Showing political strength in public through violent forms and propaganda against each other has been an integral part of the political culture in the recent past of Bangladesh. But what is always ignored by every regime is the safety and livelihoods of ordinary people, who never wish to be victims of political power games. Nobody cares for the ordinary people who suffer the pain, torture and involvement in fabricated cases in such circumstances.

No matter which party is in power, the government of Bangladesh, denies that in a democracy everyone has freedom of peaceful assembly as one of the fundamental rights that no authority can deny by any excuse. The government has obligation to ensure the right to liberty of the people by all means. It has no authority to deny any citizen's personal liberty by abusing the law arbitrarily.

Several rights groups have demanded immediate end to the mass arrest and detention of the people in Bangladesh followed by credible investigations by competent officials other than the police, who are known to be institutionally corrupted. There have been strong demands for immediate release of all the victims of arbitrary detention, who were illegally arrested prior to the

opposition rally. The government has been asked to provide legal aid to the detainees, if the poor victims have been unable to afford the expenditure – an extra burden on their hardships. Some victims have also demanded compensation from the authorities for the suffering they had been subjected to. However, the government has not cared about any of these requests made by the victims or the rights groups.

Anti-Terrorism Amendment Bill Widens Net

The government adopted the Anti-Terrorism Bill on 19 February 2009, without any public consultation. And, on 16 February 2012, the Parliament of Bangladesh adopted the Anti-Terrorism (Amendment) Bill, which widens the scope of sanctions provided in the Anti-Terrorism Act of 2009 (ATA) by approving the death penalty as the maximum penalty for financing terrorist activities.

The vague definition of 'terrorists activities' provided under the ATA is open to abuse, and is incompatible with the principle of legality requiring that criminal liability and punishment be limited to clear and precise provisions. This principle is enshrined in Article 15 of the ICCPR, which Bangladesh ratified in 2000. By retaining a vague and broadly applicable definition of 'terrorist activities' and making terrorism-related offences punishable by death, the Amendment Bill makes the Anti-Terrorism Act even more vulnerable to the worst kind of abuses. Documentation shows how it is being used to repress political opponents, journalists and other dissenting voices.[3]

Environmental Rights Depend on the Blessings of Thugs

In 2012, illegal sand mining in the Meghna River adjacent to the Mayadip and Nunertek islands, and elsewhere in Bangladesh, continued, despite intervention from the UN mandate holder. The Asian Human Rights Commission had issued an Urgent Appeal[4] regarding illegal sand-mining and death threats to local rights activists and inhabitants on 24 February 2012.

The UN Special Rapporteur on Adequate Housing intervened in the matter, urging the government of Bangladesh to initiate investigation on 22 March. On 29 March, the Permanent Mission of Bangladesh in Geneva informed[5] the Ministry of Foreign Affairs in Dhaka about the intervention of the UN mandate holder.

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3 www.alrc.net/PDF/ALRC-UPR-16-001-2013-Bangladesh.pdf

4 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-033-2012

5 www.humanrights.asia/news/urgent-appeals/images/2012/AHRC-UAU-033-2012-02.jpg/

On 22 April, the Foreign Ministry forwarded the request[6] to the Cabinet Division[7] of the Government of Bangladesh, which asked the district administration of Narayanganj district on 25 April to conduct an investigation regarding the matter. Accordingly, the district administration of Narayanganj conducted an enquiry within one week of receiving the instruction from the Cabinet Division. However, the authorities did not make the investigation report public and no information has been provided regarding the outcome of the report.

Despite conducting the investigation, authorities of Bangladesh have failed to stop the illegal sand mining. On the contrary, influential politicians and parliamentarians of the ruling regime have allegedly been protecting the sand mining companies. And, these companies constantly harassed the activists at Sonargaon in Narayanganj district for resisting the illegal mining of sand from the Meghna Rivera by filing fabricated criminal cases with the help of compromised police. And, three persons, including one of the prominent activists protesting against the illegal mining, were recently detained in prison in relation to the fabricated cases.

Around 8 acres of cultivated land has already eroded and been lost to River Meghna as a result of the illegal sand mining. The subsistence of the whole locality, i.e. the livelihood and shelter of around 9,000 people, is under serious threat. The intervention of the High Court Division of the Supreme Court of Bangladesh, and the investigations conducted by the governmental authorities, sound hollow at the end of the day when no action has resulted to protect the environment and the livelihood of the people victimized by illegal mining in the country.

Human Rights Defenders at Risk

Human rights defenders have faced severe challenges in Bangladesh throughout the year. Documenting cases of gross human rights abuses and supporting the victims and their families have brought repeated threats and harassment to the rights defenders themselves. In most cases, state agents have orchestrated harassment of human rights defenders.

In June 2012, the Government of Bangladesh planned to arrest members of human rights organisations and activists whom the authorities suspected of

6 www.humanrights.asia/news/urgent-appeals/images/2012/AHRC-UAU-033-2012-03.jpg/
7 www.humanrights.asia/news/urgent-appeals/images/2012/AHRC-UAU-033-2012-04.jpg/

providing information for a report[8] published by Human Rights Watch, titled *Bangladesh: Torture, Deaths of Jailed Mutiny Suspects*, immediately after the publication of the report.

There were discussions in some quarters of the Bangladesh government for the arrest of human rights activists and members of human rights organizations, and to charge them with treason, sedition, and other criminal charges. Earlier, the Ministry of Home Affairs accused Human Rights Watch of conspiring against Bangladesh in publishing this report.

The government's attempt continued even though reporting on human rights matters is the mandate of human rights organisations, as recognized by the United Nations, and all the authoritative organs of the United Nations have repeatedly affirmed this role. Human rights organizations carry out the duties of observers of the human rights covenants to which states are party. Under article 2 of the International Covenant on Civil and Political Rights (ICCPR), states are required to take legislative, judicial and administrative measures to ensure that people enjoy the rights guaranteed by these conventions.

Rights groups have urged the government of Bangladesh not to take any action against anyone, any human rights organization, or human rights activists, for whatever contribution they may have made in pursuit of the above conventions. The United Nations, all human rights organizations, international bodies, and all governments were also urged to intervene on behalf of human rights defenders for their protection, and to take all measures to prevent arrest, detention, torture and fabrication of charges against human rights defenders. A number of diplomatic missions in Bangladesh and from around the world intervened, expressing concern regarding the plan of the government of Bangladesh to arrest human rights defenders, which forced the government to change its hard-line position.

Due to human rights activism, individual activists like Mrs. Shampa Goswami, a female human rights defender cum school teacher working for Odhikar from Satkhira, who stood up for a victim of gang-rape, has faced suspension from her job as teacher. The alleged perpetrators, well connected to influential political leaders, have been directly attacking her person, by circulating doctored and morphed sexually explicit images of Mrs. Goswami. The Kaliganj police of Satkhira district in Bangladesh have decidedly sided with the alleged perpetrators, and prevented other independent investigation. The human rights defender fears further sexual harassment and insecurity to her life and work as

8 www.hrw.org/news/2012/07/04/bangladesh-torture-deaths-jailed-mutiny-suspects

a result of the absence of legal and administrative remedies to such injustice in Bangladesh.

The National Security Intelligence (NSI) has harassed several human rights defenders and civil society persons in the country. Many of them have not dared to speak out in fear of worse consequences in the future. Two journalists / human rights defenders from northern Bangladesh faced arbitrary arrests and detention in Kurigram district.

Mr. Ahsan Habib Neelu, general secretary of Kurigram Press Club and district correspondent of the Daily Jugantor, documented facts regarding the extortion conducted by NSI Assistant Director Mr. Idris Ali, who used to force innocent people to pay bribes by threatening arrest and detention. Ahsan's colleague Mr. Shafiqul Islam Bebu, journalist for Bangla Vision, a private TV channel, also joined Ahsan in documenting harassment by the intelligence agent. A detailed report was published in the Daily Jugantor on 27 September 2012 regarding the matter. Since then, the intelligence agency officer has constantly threatened Ahsan and Shafiqul that he would 'see' them. On 22 November, at 1 am early in the morning, NSI Assistant Director Idris Ali led almost a one platoon police force to raid the houses of the two journalists.

The police handcuffed the two journalists and forced them to run half a mile in the handcuffed condition. When the members of the two journalists' families wanted to know from the police officers the reason behind the illegal arrest, the police officers ill-treated the family members. A team of police headed by the Superintendent of Police (SP) of Kurigram district, Mr. Mahbubur Rahman, interrogated the detained journalists the following afternoon at the district police office. NSI officer Idris and Assistant Superintendent of Police (ASP) Akram Hossain were part of the interrogation team as well. The police and intelligence officers falsely accused the two journalists for posting defaming caricatures in facebook accounts. They forced the journalists to disclose their username and passwords before the police team, who logged into their accounts and yet failed to get any incriminating substance regarding their own allegations. During the interrogation, the journalists were ill-treated, intimidated, and verbally abused by them. After 10 pm on the same night, they were released, following interventions from a number of local and national civil society organizations. No authorities have taken any action against the officers involved in extortion and such illegal use of state machinery.

Endemic Torture with Endorsement & Impunity

Torture in the hands of the law-enforcement agents is unavoidable according to the current law-enforcement system. It is not 'unwanted' in the country, as

every ruling regime uses torture against their political opponents. The police, RAB, security forces, and intelligence agencies use torture against everyone as part of 'official' practice. Wherever there is presence of any member of such agencies, the possibility of someone being, or about to be, tortured is likely.

State Minister for Home Affairs Mr. Shamsul Haque Tuku has advised the journalists to keep a 'safe distance' from the country's police while both journalists and police are on duty. The minister is cited in the media including The Daily Star's online edition on 30 May 2012 as having said, "I will tell my journalist friends that they can avoid such unwanted incidents if they collect news or take photos through keeping a safe distance [*from police*]. I hope you [*journalists*] will consider it." The remarks were made in a meeting held at the Dhaka Reporters' Unity on 29 May.

It is understood that the minister was referring to the incidents of police brutality against three journalists of Daily Prothom Alo, who had been gifted fractured limbs as a result of police torture at Agargaon in Dhaka on 26 May. The remarks of the State Minister for Home Affairs are ominous; he has in essence asked journalists to keep a safe distance from the police, instead of taking action to change the police habit of using torture against the people of Bangladesh.

Did the minister not think about what he was telling the audience? Or was it a deliberate threat? The minister's comment exposes the unrealistic mindsets of cabinet members. Citizens of Bangladesh may wish to ask a counter question: how many millions people can maintain the so-called safe distance from the torture-happy police in a country where torture is endemic?

Notably, the minister, legally authorized to control the law-enforcement agents of the country, made this advice to the journalists in a meeting in the morning. Later, in the course of the same day, another three journalists, two lawyers, and a family with two women, were publicly tortured by police at the premises of the Chief Metropolitan Magistrates' Court of Dhaka.

Why did the police torture the journalists and lawyers at the Court premises?

The answer, according to the media reports, is that the journalists were listening to a teen-aged girl, who was molested by the police at the Police Club, while her parents were tortured by the police at the CMM Court area, and the three persons of the same family were arbitrarily detained. The police did not want the journalists to get the girl to share the story of her being molested while her parents were being tortured.

So, they beat the journalists up!

Two lawyers, who argued with the police officers for illegally arresting the same girl and her parents, were also tortured in public and in the Kotowali police station. The police also allegedly threatened to fabricate charges against the lawyers for their imaginary involvement in an Islamic militant group. However, they were released following interventions by a human rights group and a number of lawyers of the Dhaka Bar Association.

The volume and trend of using torture establishes the fact that no place is safe for protecting someone from torture. In other words, no distance is a 'safe distance' unless a person is outside the boundary of the national territory of Bangladesh.

The State Minister for Home Affairs and his colleagues in the cabinet should develop effective and practical mechanism to prevent the law-enforcement agencies from using torture, if the minister was not joking with the journalists at the meeting on 29 May 2012.

The government, if it has sincere commitment to stop the torturous culture in the country, should immediately legislate the Torture and Custodial Death (Prohibition) Bill (2011), which has been unanimously recommended by the Parliamentary Committee on Private Members' Bill and Resolution[9] to enact as a law, in the ongoing Budget Session of the Jatiya Sangsad[10], as one of the priorities. The government must implement 'zero tolerance against torture' by establishing right to fair trial for every victim of torture, whenever torture takes place, regardless of political or social or religious identities of the survivors of torture, without any form of impunity to the perpetrators torture of any agency.

In order to ensure justice to the parties, the government should also initiate comprehensive reforms of the country's criminal justice institutions, including the criminal investigation system, prosecutorial system, and the system of administering justice, by enabling them to function credibly and independently with judicial mindsets. There is also an immediate need of an effective 'witness protection mechanism' in Bangladesh for the sake of establishing justice.

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9 An unofficial version is available here: www.humanrights.asia/countries/bangladesh/laws/legislation/CommitteeReportOnBillCriminalizingTorture10Mar2011-English.pdf

10 The original Bangla version of the Report of the Parliamentary Committee is available here: www.humanrights.asia/countries/bangladesh/laws/legislation/Committee%20Report%20on%20Bill%20Criminalizing%20Torture%2010Mar2011.pdf

The Rule of Law Undermined

The authorities habitually undermine the rule of law. And, the country's criminal justice system is itself apparently flawed. When celebrating its 42nd year of independence, the nation was found to be debating the truth of its history related to the war of independence. The country has long witnessed the manipulation of public institutions, including the judiciary, by successive governments, to distort historical facts in favour of the ruling regimes.

The High Court, on 6 March 2012, asked Bangladesh Open University authorities to sue, in 24 hours, 17 teachers, three of them of Dhaka University, for mentioning in two BOU textbooks that Ziaur Rahman proclaimed independence of the country. The court asked BOU authorities to sue the teachers on the charge of distorting the history of the liberation war in its textbooks.[11]

The court reportedly said while hearing the writ petition, "Those who distorted history should be hanged to death as they committed treason." The court asked two parliamentarians of the party in power to arrange a ship and send the professors to Pakistan. The court said, "We will deal with the issue with an iron hand" and continued by stating, "Those, who were against the creation of Bangladesh, want to show Ziaur Rahman [*former president of Bangladesh and husband of the leader of the opposition, Begum Khaleda Zia*] in positive light in the history of liberation as he was not an actual freedom fighter". The Court also said, "If they [*the professors*] are allowed to stay in Bangladesh they would continue to work to make it Pakistan." During a hearing on 12 March 2012, according to national dailies, the same High Court Bench reiterated its earlier statement that these professors should be hanged to death.

It was absolutely within the jurisdiction of the High Court of Bangladesh to decide, as per the Constitution and relevant laws of the land, whether it will hear a given complaint brought before it by an aggrieved party. Yet, the judiciary has a fundamental obligation to follow the universally accepted norm of presumption of innocence of the defendants for ensuring fair trial, recognised in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). No court is entitled to derogate from the principle of equality before law, guaranteed as fundamental right in Article 27 of the Bangladesh Constitution. The court, in declaring during the hearings of the writ petition itself, and before the completion of its verdict, that the defendants should be hanged to death, has gone against the basic principles of justice.

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11 www.humanrights.asia/news/ahrc-news/AHRC-STM-072-2012/

Rights groups including the AHRC have expressed serious concern over such derogation on the part of the High Court. The Court cannot use abusive words against any person facing trial because every person inherently has the fundamental right to dignity, recognized in Article 10 of the ICCPR. The court's remarks, suggesting the defendants be sent to another country and hung to death, amounts to intimidation, and derogation from all the internationally recognized standards, and the Bangladesh constitution too.

In another case, the state machinery has continued making repeated scandalous attempts to brand a college student named Limon Hossain as a criminal, after he was shot point-blank and maimed in his left leg by officers of the RAB. Following the brutal attack, due to which Limon Hossain's left leg had to be amputated, two criminal cases have been fabricated against Limon Hossain to brand him a criminal[12]. It was documented that an 'informer' of RAB physically attacked Limon and his mother 'unwarrantedly'. This informer then later went on to fabricate a murder case, when the deceased reportedly died of 'heart failure'. This case was taken under the cognizance of a judicial magistrate in violation of the criminal procedure law of the country.

By dropping all charges against the officers of the RAB, police investigators have closed the window for Limon Hossain to get justice from the country's maimed criminal justice system, something clear from the actions of the judiciary in last 21 months.

An example is the latest order passed by Senior Judicial Magistrate Ms. Nusrat Jahan, which is oblivious to provisions of the criminal procedural law of Bangladesh.[13] According to section 205D of the Code of Criminal Procedure-1898[14], the Magistrate shall stay the proceedings while an investigation by the police in relation to the same offence is in process.

The provision reads:

"Procedure to be followed when there is a complaint case and police investigation in respect of the same offence:

> *205D. (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an*

12 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-075-2011

13 www.humanrights.asia/news/urgent-appeals/AHRC-UAU-028-2012/

14 www.bdlaws.minlaw.gov.bd/pdf_part.php?act_name=&vol=IV&id=75

investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police-officer conducting the investigation.

(2) If a report is made by the investigating police-officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

The order was passed by Magistrate Ms. Nusrat Jahan, on August 23, 2012, regarding Ibrahim's complaint against Limon Hossain and his relatives, while another police investigation was already in progress regarding the death of Forkan Hawladar. An aggrieved person may also suspect that the RAB insisted that the Magistrate pass such an order to multiply the ongoing harassments on Limon Hossain, who has been nationally recognized as an innocent college student on the basis of factual information, while the rabid law-enforcement agency has invested everything to brand him a criminal.

The RAB officer included Ibrahim Hawladar in the list of prosecution witnesses, something justified by the police in their investigation, and this despite the fact that every eye-witness refused the version of the law-enforcement agents regarding the original attack on Limon. Now, when public criticism has reached its height, the RAB has begun claiming that Ibrahim Hawladar is not their 'source' or 'informer.' In fact, at the time when Ibrahim himself attacked Limon Hossain and his family, Ibrahim himself openly claimed to be RAB's man! The entire neighborhood knows Ibrahim to be RAB's informant.

A question was asked by rights groups and the victims that if the RAB had 'disowned' Ibrahim, why were they not taking any action against Ibrahim for claiming to be an RAB source? This is, however, but one of the litany of unanswered questions surrounding this case. Neither has the government, specifically the Ministry of Home Affairs, nor has the RAB, or the police, cared to answer people's questions for the past 21 months, i.e. since Limon Hossain was first shot at.

Endorsing the statements of the RAB and the police, the Parliamentary Standing Committee on the Ministry of Home Affairs had reiterated impunity for lawless actions of the RAB as part of the country's entrenched political and administrative culture.

The shamelessness of the state was exposed further when Mr. Ashok Kumar Bishwas, Deputy Commissioner (DC) of Jhalokathi District, offered a proposal to the family of Limon Hossain and his mother, Mrs. Henowara Begum, to withdraw Henowara's 'no confidence petition' against the police investigation report. The investigation report had claimed that her case against the officers of the RAB, for shooting Limon's leg and causing permanent disability, was "not proved during investigation."[15]

Mrs. Henowara was expected to withdraw the whole case, which she filed against the perpetrators of the RAB. In exchange, the DC, the top administrative officer in districts of Bangladesh, someone having ex-officio authority of a District Magistrate, would make an application to the Ministry of Home Affairs with suggestions that the government should withdraw the two fabricated cases registered by the RAB officers against her son Limon. This proposal was offered to Limon and his mother on 24 October 2012.

Mrs. Henowara Begum stated that "the official vehicle of the UNO [*Upazila Nirbahi Officer, a top administrative officer at the sub-district level*] of Kawkhali upazila suddenly came to our rented house at 11 am on Wednesday [*24 October*]. The driver told us that the UNO wanted to talk to us. Then, we were taken to the official residence of the UNO, who talked to us for sometime."

She further said, "We had no idea that the DC will be there! He [DC] came there and wanted to hear the account from Limon. After hearing everything he told us, 'I can recommend the Ministry of Home Affairs to withdraw the two cases filed by the RAB against Limon, if you apply [*to my office*]. Provided that you [*Henowara*] have to withdraw your 'no confidence petition' that you submitted to the Court against the police investigation report'." Mrs. Henowara lamented by saying, "Limon was shot by the RAB more than one and half years ago [*23 March 2011*]. Not a single public official of any level had come to see our plight during this whole period. I don't properly understand why the DC was caring about us after so long time?"

Later, on 31st October, Limon Hossain received another call from an unidentified officer of the RAB asking him withdraw his case against the

15 www.humanrights.asia/news/ahrc-news/AHRC-STM-218-2012

members of the paramilitary force. A man, without disclosing his name and rank, made the phone call at 8 pm on that day from the number +8801713 374473. The caller talked to Limon and his mother, Mrs. Henowara Begum, wanting to know from both persons about their decision with regard to the proposal offered by the DC of Jhalokathi a week ago.

When checked, the AHRC found that the cell phone number, which was used to make phone call to Limon Hossain on 31st October, was one of the official cell phones used by Lt. Col. Ziaul Ahsan, Director of RAB's Intelligence Wing at its headquarters.

The proposal of withdrawing the case against state-sponsored perpetrators who have committed gross human rights violations, in exchange for getting the fabricated cases lodged by state agents withdrawn in Bangladesh, is not a surprise at all. This is but one of the methods applied routinely by state agents of Bangladesh to ensure impunity to "licensed criminals" of the state. The proposal of the DC, and the enquiry by the RAB intelligence officer regarding the same, establishes the fact that this proposal was an officially organised attempt to show the audience at home and abroad that "the matter is settled between the contesting parties."

After many months of struggle for justice, the victim and his family, who went through countless forms of harassment, were literally being dragged to a tiny corner of a battle field, where all odds are stacked against them, without any room for them to fight for justice.

For the entire period, the state's own gunmen continuously invested their muscle power and money to brand Limon a criminal in public. A number of human rights organisations, media and civil society groups stood beside Limon, who had nationally been proven as an innocent college student, and this has countered state sponsored efforts more desperate to brand him a criminal.

Bangladesh's Constitution, in Article 31, enshrines the right to protection of law to all citizens:

> *"To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."*

Moreover, as a party to the International Covenant on Civil and Political Rights of the United Nations, Bangladesh has obligation to ensure justice to the victims of human rights abuses through competent judicial, administrative, or legislative authorities.

According to Article 2 of the ICCPR,

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

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

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

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

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

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

The authorities of Bangladesh did not hesitate to expose their character in their naked attempt to shut the doors of justice in the disguise of this quid pro quo proposal, which is nothing but a threat to the victim and his family, given the prevailing conditions in the country. The state machinery has reduced the provisions of fundamental constitutional rights, and universally recognised rights enshrined in the international laws, to a tasteless joke, in order to protect the powerful minority vested interests and to deprive millions of ordinary citizens. The organised attempt by the authorities in Limon's case has once again exposed the kind of insanity-ridden mindset the state machinery possesses.

The state has clarified its position: only insanity can be offered to citizens, not justice.

The authorities must end impunity to its law-enforcment agents, who act like 'criminal-makers' in the country, running vicious businesses.

Games of Presidential Clemency

The President of the People's Republic of Bangladesh Md. Zillur Rahman exercised his power of clemency repeatedly more than ever in the country's history. In a question and answer session in parliament, it has been revealed that the incumbent President has fully pardoned or commuted sentences to at least 21 convicts in less than four years, while all other Presidents since the inception of the country exercised the same power to pardon a total of 4 persons.

Clemency was offered by the incumbent President to those convicts who had direct affiliation with the ruling regime. Many of the presidential clemency cases have been seriously criticized by civil society, media, and rights groups. It has been learned that the President's office had commuted the sentence of a convict formerly given a life sentence to that of a ten years' imprisonment. It is not surprising that the same person has received two commutations in a row. He belongs to the ruling political regime and is alleged to be a thug who controls "political business" for the Bangladesh Awami League, with his exploits including murder.

The authorities have not yet revealed what is the normative principle or assessment based on justice that is followed by the Office of the President in granting clemency in Bangladesh. Is there a standard in compliance with the purpose of justice that compels the Office of the President to exercise this extraordinary power?

Awarding clemency in Bangladesh has no standard other than political considerations, and the incumbent President is no exception. Often, it is done to suit the writ of a ruling political regime rather than serving any purpose of justice or humanity, as it appears to be in this case. Granting clemency in Bangladesh is an exercise that, in essence, overrules the writ of the judiciary in the country, which the judiciary obtains from the same constitution invoked by the President where clemency is granted.

Random and slipshod approach in invoking extraordinary powers of the President's office, in particular, concerning the remitting of sentences in criminal cases, and also for the withdrawal of prosecution, encroaches into the authority of the court, negates the premises of impartiality, and trivialises

and subjugates the very notion of the justice process. In a practical sense, it demoralises not only the judiciary but also the other professionals associated with the criminal justice system, including the investigation organs of the state, like the police and lawyers, including prosecutors. Such arbitrary, unwarranted, and politically motivated presidential clemencies indirectly justify extrajudicial execution and torture.

According to information received by AHRC, A.H.M Biplob was convicted in the case of murdering a lawyer, whose body was cut into pieces and thrown into a river. The Sessions Court awarded him death penalty for the murder in absentia. He was further convicted for the murder of two other persons on separate occasions. He committed the crimes in 2000 and 2001 when the Bangladesh Awami League was in power. The High Court held the judgement of the Sessions Court in the case of murdering the lawyer, but remitted the death penalties of two cases to life imprisonment. Following applications from Biplob's mother, the President pardoned Biplob in the murder case of the lawyer in July 2011 and, has now, remitted the two other life imprisonments to ten year imprisonments.

As in this case, Presidential clemency trashes the very right to know the truth of the victims who are either murdered, disappeared without a trace, or subject to other physical or mental injuries when all of sudden the government withdraws prosecution of criminal cases on the excuse that such prosecution was initiated on pure political motives. One may also argue that if such a large number of prosecutions are initiated by political parties according to whims and fancies as they hold fort in Dhaka, it throws light to the alarming fact that the criminal justice apparatus in the country is roundly misused by political parties. It follows that the country's justice apparatus is being used to call black as white and white as black, after every five years when incumbent regimes are ousted. This also implies that a huge amount of public money is spent on sheer waste and for fabricating cases, rather than serving any purpose of justice.

Article 49 of the Constitution of Bangladesh empowers the country's President to exercise prerogative authority to "grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority".

There is no disagreement to the fact that the President can exercise this constitutional power. But, as a matter of fact, Mr. Zillur Rahman as President, is just playing the same cards as his predecessors had and his successors would, with no sense of justice or humanity, only in order to help the associates of his political party. The President is exercising his official prerogative to fit the requirements of the ruling political regime. What has made Pakistan today,

what it is from which Bangladesh rightfully wrestled its independence, is also similar misuse of presidential authority. In Pakistan it has happened more at the whims of the military than any political party. There is no guarantee that the military in Bangladesh would not learn such bad lessons from its distant neighbour.

According to Article 48 (3) of the Constitution of Bangladesh, the President shall act in accordance with the advice of the Prime Minister. This constitutional provision indicates that the President has materialised the decision made by the other organs of the State controlled by the Prime Minister. That the President is misusing constitutional powers is a scandal. A Prime Minister is equally responsible for the consequences. Unfortunately, the direct casualty of this despicable situation in Bangladesh is the very notion of justice, the foundation upon which the concept of democracy is built. The question is how far can the country and its people ignore the alarming reality that these scandals are eroding the foundation of the nation itself?

Pillage is the Policing System

Bangladesh's law-enforcement agents have a reputation for abusing their authority through coercive means. They are, and have been, hired thugs for all the ruling regimes. Policing in the country is an industry that produces victims of torture and fabricates criminal charges against civilians and political opponents. Corruption has replaced the chain of command within the police. And, the constant failure of the police to investigate crimes is the single largest impediment within the criminal justice system in the country.

Police seen receiving money from a detainee's relatives for allowing through a soft drink bottle at the Dhaka Court.

To keep the police subservient to the ruling elite, the government has kept the salary of the police force very low. This opens the floodgates and serves as greater incentive for the police officers to demand and accept bribes. Impunity provided to the force, against prosecution for corruption and all other crimes these officers commit, is repaid by the force when it undertakes cleanup work for the ruling elite, most often by 'dealing' with political opponents. The disparity between the wealth of some police officers and their actual income is proof to this illegal nexus of corruption and protection between the police and politicians in Bangladesh.

Ordinary people, for whom the police is the most visible and powerful presence of the state in both the rural and urban setting, pay the police bribes on a daily basis. Citizens pay bribes to the police for registering a General Dairy entry and complaints; to prevent officers from torturing or ill-treating them; for inclusion or exclusion of a person's name from the lists of accused or witnesses in a complaint, and so on. They pay the police for arresting a suspect, while the same suspect pays the police to obtain release from custody. Complainants pay the police for bringing a charge against the respondent in the police investigation report, while the respondent pays for dropping the charge. People pay bribes for the police to collect and preserve evidence in criminal investigations – known as alamot in Bangladesh - until the evidence is handed over to the courts. In cases of unnatural death, if the body is to be recovered and sent to a public hospital for autopsy, the relatives or those interested in the case have to bribe the police for transporting the body. Without bribing, nobody can expect the police to undertake a proper inquest. Equal amounts, or sometimes more, has to be paid at the hospital as well. This is the case in rape charges too.

Any hawker, from those who sell peanuts or candy squatting on a footpath or while moving around in streets or public parks, must bribe the police routinely, failing which the police will fabricate false charges against the hawker. Likewise, the illegal drug-peddlers or arms dealers bribe the police to sustain their business. Officers, who are responsible for maintaining road-traffic, demand and accept bribes from drivers and transport company owners. If a case of traffic accident were to be registered, the complainant should bribe the officer; however, if the accused pays a higher amount to the police, the police could shift burdens of the accused and the complaint as the officer chooses. Most officers own assets disproportionate to their legitimate source of income. Many officers, to avoid problems, maintain these assets in the names of their relatives. As for public opinion and experience about the policing system of Bangladesh, on one hand, most do not have adequate access to the information about the dealings of the police due to the ferocious attitudes of the force. At the same time, the AHRC has had opportunities to interview a large number of survivors of torture and families of extrajudicial killings in the country. According to the victims who have suffered detention or are still struggling to get release from fabricated criminal charges brought by the police against them, every survivor of torture has been forced to pay a minimum amount of BDT 10,000 for several reasons.

The reasons include:

1) escaping torture while in custody;
2) stopping or reducing the ongoing torture to a detainee;

3) escaping fabricated charges of serious crimes such as murder, robbery and firearms case that may lead to languishing in prison for many years (as police officers often find no option but that creating one or more fabricated charges for the sake of saving their jobs, to show their superior officers their success at nabbing 'culprits' for crimes taking place within their respective jurisdictions, and also for acquiring credentials from the State every year);
4) affording food during prolonged detention in the name of police remand;
5) escaping 'police remand', synonymous to torture;
6) escaping torture while in 'police remand' etc.

Bangladesh Police has more than 600 police stations. Apart from that there are several hundred 'police outposts' locally known as 'police fari'. Police officers stationed in a police station or a police outpost make arrests on a daily basis. Then, almost each of the arrested persons or detainees or his/her relatives are forced to pay bribes to the police for the above, and other n number of, reasons. The understanding of the minimum amount of daily bribery of the police, only against their arrest business, is approximately BDT 10,000 x 600 = BDT 6,000,000 (Six Million Bangladeshi Taka), if one police station arrests one person in a day. One needs to understand if the number of detainees is increased and it is multiplied by 365 days of the year –given that police have been behaving in the same manner for decades - what will be the actual figure of money only counring the arresting, detaining, torturing, and fabricating business of the police? The amount come to around BDT 219 crore!

The police officers, posted at the Magistrate Courts, also extort money for producing accused before the Courts. The Court Police, as they are known, extort money for keeping silent or objecting to a bail hearing in the courts.

The AHRC has also interviewed about 50 hawkers located at the Dhaka New Market and adjacent areas (at Gausia Mrket, Noor Mansion, Elephant Road, Dhanmondi Hawkers Market, and Mirpur Road - in front of Dhaka College). These hawkers sell various types of products such as sandals, undergarments, towels, toys, fruits, juice, refreshments, clothes, imitation ornaments, sun glasses, purses, wallets, house-hold utensils, and various other stuff. Some were also mechanics that repair watches, spectacles, and travel bags.

According to these hawkers, there are at least 4,500 enlisted hawkers in that area of less than one square kilometer. All these hawkers pay bribes to the police on a daily basis. A watch repairman pays BDT 20 per day for occupying one meter space for keeping his toolbox on the footpath. The hawkers, who occupy larger space and sell costly products, pay more. For example, a hawker who sells sandals and shoes pays BDT 300 per day. Persons, having been assigned

smaller jurisdictions of the whole neighbourhood, locally known to be 'cashiers' of the police, collect the money from the hawkers. The hawkers claim that they pay on an average BDT 50 to the police, apart from what they have to pay to the ruling political party's thugs, who control the possession of the footpaths, maintaining close nexus with the police. The hawkers calculate that when each of the 4,500 hawkers of the New Market and adjacent areas pay BDT 50 per day, the total amount extorted in a day only from this one corner of the capital city is approximately BDT 225,000. Imagine what this little corner of the city is worth to the corrupt police in one year? There are several other hubs in the city of Dhaka itself, like Gulistan, Baitul Mukarram, Paltan, Motijheel, Farmgate, Mohakhali, Sayeedabad, Jatrabari. There are thousands of hawkers doing their business and policing is not different in those jurisdictions. The police habitually extort money in the same way from all other cities and towns of the country. One can imagine how much money is extorted in a day from the street-hawkers?

There are shopkeepers, who occupy public places like footpaths in front of their shops, who also have to pay bribes to the police on a regular basis without any option of complaining about their plight. The police extort from 'businessmen' in kind too. For example, when one police officer is transferred to a new place, he instructs his subordinate officers to decorate his office and house (either officially provided residence or publicly rented or owned flat). The police officers want the local businessmen to decorate the office with furniture, curtains, computers and all necessary and unnecessary goods, according to the wish of the officers.

The police also extort money from shrines of any renowned saints – regardless of what religious belief it possesses – regularly, as one of their sources of income. There are uncountable numbers of such shrines situated across the country from where the police get their own share on a monthly basis.

The bribery and extortion-based economy of the police go uncounted and neglected by the economists and researchers of Bangladesh. If any credible, and in depth, research is conducted, it would reveal a horrible picture about the reality of the Bangladesh Police. It should also be remembered that there are other agencies like the RAB, which also extort money in larger sums from industrialists and big businessmen, in comparison to the petty games the police play.

Unfortunately the government is least bothered about this plight of the people. Often the officers' family do not care that most of their conveniences in life has a story of sorrow, misery, and blood of the common citizens. Often the acquisition of a police officer is the 'blood', 'sweat', 'sigh', 'tears', and 'curse' of the ordinary citizens!

The country must end this entrenched institutional wilt and treat it as the matter of highest priority. Unless Bangladesh reforms its policing system, makes it a professional body, equipped and trained to serve the people as required in any modern democracy, there will be no hope for the people, failing which justice, equality, and fair trial would be impossible in the country.

Enforced Disappearance the Latest Fad

The people of Bangladesh are scared. Incidents of abduction by plain-clothed people, who often claim to be law-enforcement agents of the country, are ongoing, without any indication of being on the wane. The people of Bangladesh are scared because their brothers and sons are disappearing.

The stories of disappearances are being exposed by the media and human rights groups amidst constant denials by law-enforcement agencies and their political masters. The people, particularly dissidents, find themselves trapped like mice. Their love for the people and the land is only met by the insecurity and hunger of those in power. Many families of the victims of disappearance are forced to maintain silence due to tremendous threat orchestrated by the agencies like the RAB, police, and intelligence agencies.

It is surprising to see that not a single case of disappearance has been met with credible investigation by any agency of the state, while tax-payers' money is being drained for maintaining a so called 'elite force' – the Rapid Action Battalion - and its self-styled 'efficiency in investigating crimes.' The police refuse to register complaints whenever allegations arise against law-enforcement agencies. In addition, further harassment, intimidation, and death-threats become part of the lives of the families that wish to complain about any incident of rights violation by such state agencies.

A significant development in the way in which the authorities carry out grave human rights violations can be seen in the fact that while extrajudicial killings are declining in number, the number of enforced disappearances have increased in the period in question. The media now reports that dead bodies are being dropped into the river Meghna in the middle of night, suggesting that these are victims of enforced disappearance by the authorities. International attention concerning extrajudicial killings in Bangladesh is thought to have led not to the greater protection of the right to life, but rather to the greater dissimulation by the authorities of their violations of this right.[16]

16 www.alrc.net/PDF/ALRC-UPR-16-001-2013-Bangladesh.pdf

The Rapid Action Battalion (RAB) caused a man to disappear; after the abduction of Mr. Imam Hassan (Badal), the RAB ex-filtrated him from among a group of criminals. The reason for this was the failure of the family to pay bribes. Officers of the RAB-2 demanded BDT 100,000 in cash on the condition of releasing Mr. Mohammad Imam Hassan to his father, Mr. Ruhul Amin. The family paid BDT 40,000 to RAB's Sub-Inspector Raju, who insisted the rest of the amount be paid for returning Imam home. The victim's father was threatened that failure would result in the death of his son. The family had been denied access to the country's mechanism for registering a complaint. Now, seven and half months later, Imam has still not materialized. No official institution in Bangladesh has helped the victim's family to locate and bring back their family member. Of the RAB officers involved, not one has been held accountable by the judicial or the administrative authorities in this serious matter.[17]

The AHRC filed a petition to the UN Working Group on Enforced or Involuntary Disappearances (WGEID) on behalf of Badal's father, Mr. Ruhul Amin, on 13 November, seeking the WGEID's intervention in the case of disappearance of Mr. Mohammad Imam Hassan (Badal). Badal remains disappeared since the past eight months. His parents had last met him at the headquarters of the Rapid Action Battalion (RAB)-2 on March 16, 2012.

The WGEID is mandated to assist the relatives of disappeared persons, to ascertain the fate and whereabouts of the disappeared person. For this purpose the WGEID receives and examines reports of disappearances submitted by the relatives of disappeared persons or human rights organisations acting on their behalf. Prior to filing the petition with the WFEID, the AHRC communicated the case to the authorities in Bangladesh, including the Prime Minister, seeking an intervention in the case.

In an interview with the AHRC, Amin said that the country's 'elite force' has deliberately caused the disappearance of his son for mere material and corrupt concerns. He said,

> *"[b]oth the kidnappers and the RAB demanded ransom for releasing my son! With my earning from selling bananas on the street, I cannot pay the ransom these people demand. Yet, I managed to pay Taka Forty-Thousand to the RAB, which is way beyond what I could afford. My family is suffering from unimaginable trouble and pain."*

17 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-190-2012

"[w]hat is the difference between the RAB and the terrorists?"

He also said that Sub Inspector Mr. Raju of RAB-2 threatened him that if Amim were to disclose the disappearance of his son, and the bribes the RAB demanded, to anyone, his family would face "dire consequences", including the disappearance of Imam forever.

The Government of Bangladesh, and all those concerned about the people of Bangladesh and their fate, should reflect upon Amin's comparison of the RAB with the terrorists, which, under the present circumstances in Bangladesh, is true. Both these groups commit crimes with impunity. The dysfunctional justice institutions in the country, including the National Human Rights Commission of Bangladesh have done nothing to improve this despicable state of affairs.

There is another worrying scenario. The country's Attorney General's Office argues in favour of the law-enforcers, carrying the statements of denial during the hearings of the highest judiciary, thus undermining the constitutional responsibility of state attorneys to assist the judiciary in administering justice. The Attorney General has done so on several occasions, particularly during the hearing of the disappearance case of Mohammad Salim Mian, a fruit-seller who was abducted by officers of RAB in February 2010,[18] a case the AHRC has followed since the crime was committed.

The courts of Bangladesh, constitutionally obligated to safeguard the rights of the people, have been mostly discharging their duties by archiving the state-agents' statements that contain denial of any involvement in abducting and disappearing people, rather than holding the perpetrators accountable, or compelling executive authorities to act immediately in identifying offenders, so that the judiciary can ensure real justice.

The diplomats and ministers of Bangladesh have habitually made rhetorical speeches in the Human Rights Council of the United Nations for over six years, when the nation has not yet even intended to accede to the International Convention for the Protection of All Persons from Enforced Disappearance[19], which would allow it to comply with international human rights instruments and the fundamental rights enshrined in the Constitution of the country.

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18 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-043-2010 & http://www.human-rights.asia/news/urgent-appeals/AHRC-UAU-020-2010

19 www2.ohchr.org/english/law/disappearance-convention.htm

The nation hardly allows the key UN mandate holders on civil and political rights to visit Bangladesh, which is an obligation for any state-party to the international human rights instruments. Unavoidable questions arise: what reflects Bangladesh's commitment to the UN human rights mechanism, and what is the meaning of occupying a seat in the Human Rights Council for so many years?

Bangladesh's state authorities are shameless hypocrites!

Likewise, key professionals that are integrally attached to the criminal justice institutions have not come up with any trustworthy commitment to address the entrenched problems of the criminal justice and law-enforcement systems. The institutions of the state survive in a mood that holds that nothing has happened to their countrymen and they have nothing to do. It is not understood whether these professionals or institutions have ever realised how their reluctance, their tacit and active endorsement, and their non-professional and non-juridical attitudes are contributing to deepen the roots of public distrust in these basic institutions of the country.

The country is run by a government having a brute majority in the parliament, which means that the people rely on political party representatives to deal with their benefits and woes as citizens of a democratic nation. In reality, the response made by the government led by the Awami League-Jatiya Party dominated alliance is far from the aspiration of the people, at least in the cases of gross violation of fundamental human rights of the people.

Whenever allegations of abductions and disappearances of persons are publicized, ministers and parliamentarians of the ruling regime sing the same song of denial, in chorus with the police and the RAB, as if the government's stand is permanently against any victims. No credible investigations take place, which indicates that the state-agents are, either directly responsible for committing the crimes, or sincere in their efforts to protect the offenders. By endorsing the lawlessness of the police and Rapid Action Battalion, which is in fact dominated by the armed forces of Bangladesh, the ruling politicians have ultimately established a truth: that they do not belong to the people. This truth, which runs through the veins of the structure of government, a hidden rot, allows the state spaces to disappear its own citizens. It is this truth that allows the most fundamental contradiction behind the quality of life and the kinds of death being faced by the people of Bangladesh; it allows the people's right to life, liberty, and safety to be infringed upon by those constitutionally obliged to protect the same.

Opposition Leader 'Disappeared'

One of the most widely discussed case of disappearance took place in April 2012. Mr. M. Ilias Ali, a former Member of Parliament and Organising Secretary of the main opposition political party, the Bangladesh Nationalist Party (BNP), and the driver of his car Mr. Ansar, have been missing since both of them left the former's residence by private car at around 9:30 p.m. on April 17, 2012. The Gulshan police of Dhaka city reportedly claimed that the police found Illias' car in a park with his mobile phone in it with all the doors of the car opened in an abandoned condition. Since then the whereabouts of Ilias has not been known.

The chairperson of the BNP and the Leader of the Opposition in the Parliament Mrs. Khaleda Zia has directly blamed the government by saying "a government agency and Rapid Action Battalion have picked up Ilias from his car". Mrs. Khaleda Zia, former Prime Minister of Bangladesh, publicly said that "some people witnessed law enforcement agency personnel picking up Ilias while they left no information of whereabouts for Ilias' family members". The opposition leader had announced several political programmes including nationwide general strike on Sunday in protest of this latest disappearance and other issues.

Ms. Sahara Khatun, Minister for Home Affairs in Bangladesh during those days, accompanied by high-ranking police officers, visited the house of Illias on 18 April to tell the family that the law-enforcement agents have not abducted Ilias. It should be noted that the Home Minister and her colleagues have been repeatedly denying the involvement of the State agents even though the incidences of enforced disappearance have been happening endlessly. Almost in all cases, the eyewitnesses of the abductions followed by disappearances, have pointed their fingers against the State agencies, especially the RAB, and the Detective Branch (DB) of Police.

A High Court Division Bench of the Supreme Court of Bangladesh has ordered the Gulshan police to find Ilias and keep updating the Bench every 48 hours. This order was passed after the disappeared political leader's wife Mrs. Tahsina Rushdi Luna had filed a writ with the Court. It should be recalled that, at least, two families – that of Mr. Salim Mian, a fruit seller in Gazipur district, and that of Mr. Chowdhury Alam, a Dhaka City Corporation Commissioner – filed similar complaints with the High Court after both persons were disappeared, about two years ago in separate incidents. Both families and eyewitnesses alleged that the RAB kidnapped the victims and since then their whereabouts remains untraced even after the intervention by the High Court Division.

There is no reason to believe that the latest incident of disappearance of Ilias Ali and Ansar is an isolated one. Enforced disappearances have taken place during all the successive regimes since the inception of the country despite the variation in frequency. Most of the allegations of abductions and disappearances have been brought against the agencies of the state, while, the nation had most of its current law-enforcement agencies throughout these periods – except the RAB, which was created in 2004 and since its creation has often been referred to as a "death squad" – maintained by the state itself. The undeniable truth is that none of the cases of enforced disappearances or state-sponsored extrajudicial killings have ever been credibly investigated, let alone led to any prosecution and trial of perpetrators. Given this reality, it is evident that impunity is deeply entrenched within the system and the judicial institutions have been incapable of administering justice. Since the inception of the country people's right to life and right to liberty have only been denied. Bangladeshi people suffer an epidemic of tortures and disappearances.

Law-enforcement agencies and security forces enjoy blatant impunity for creating extreme forms of fear in society through their coercive actions. State agencies torture detainees instructed by the government, bribed by the enemies of the victims, or inspired by colonial habits rooted in the institutions. The judicial institutions are poorly structured in terms of their intellectual and moral capacities. These are manifested in the recruitment process of the judges and the judgments they deliver and their attitudes toward the justice-seekers. The nexus between the government and the bureaucracy has made a vicious power structure in their favour. While party in power woos the bureaucracy by delegating endless powers, the bureaucracy stands in the way of institutional reforms necessary for transparency and proper democracy having a functional rule of law system.

The most precarious point is that both the government and the opposition emerge with an outcry only when the victim has a political identity or certain social status. Countless cases of tortures and custodial deaths inflicted on the poor remain unnoticed, although these are the people that provide government the power, money and legitimacy.

The institutional system, particularly the policing, judiciary, politics and bureaucracy, deliberately keep themselves alienated from the original aspiration of the people, who have been struggling for democracy in its true institutionalized functional form having a justice-based fair system. None of the political parties have ever come to the people with any convincing manifesto that could be capable of establishing fundamental human rights and justice to the people, let alone acting for the implementation of such a reformative plan. It is undeniable that the current impunity-based institutional system has no

capacity to serve the people, who suffer endlessly, in Bangladesh. The question remains before the people of Bangladesh: can they stop enforced disappearance, or help maintain the culture of impunity with the agencies that are fed by their tax-money?

Secret Killings, a Routine

The incident of abductions of persons followed by secret killings in Bangladesh has been a matter of serious concern for everyone. People with different backgrounds, including lawyers, university students, small businessmen and pro-opposition political activists, are being abducted by plain-clothed armed men from the streets, market places, and even from their respective offices or homes. In almost all cases the abductors claim to be the agents of the country's law-enforcement and security forces although their identification is always impossible to ascertain in the given context. After a period of time, ranging from a few days to weeks dead bodies are found at different locations posing further burdens on the relatives to identify whether any of the bodies belong to their missing loved ones. Several others still remain 'disappeared' in the midst of denial or silence and inaction of the relevant authorities.

Reports published by Bangladesh media, quoting eye-witnesses, proffer that dead bodies are being thrown-off bridges into the rivers in the country. Fishermen, who catch fish on boats overnight in rivers, have witnessed many incidents of dead bodies being tossed. However, the authorities have usually neglected and failed to identify the perpetrators; while, there is no question of prosecuting anyone for such crimes.

In reality, the authorities of Bangladesh, including the top ranking officials of the law-enforcement agencies and security forces, and the persons having powerful political portfolios, constantly blame either 'criminal gangs' or the 'opposition political parties' for ongoing abductions and secret killings in the country. The authorities appear to believe that simply by denying, and, or, remaining silent about the abduction and killing, they are fulfilling their duties. This is a frustratingly wrong position and, indeed, highly regrettable.

As a matter of fact, no one can deny that the members of the law-enforcing agencies regularly arrest people, without asserting reasonable grounds for the arrest, or producing a warrant of arrest before making the arrest. They do not show any valid legal document at the time of arrest and thus, in many cases, their actions represent abduction. As long as the State agents continue to arrest people without a proper warrant of arrest, and without giving a proper explanation to the arrestees or their relatives at the time of arrest, followed by immediate access to the lawyers of their choice, it opens the way for 'criminal gangs' or non-state actors to use the same technique.

The government has a fundamental obligation to address the problem instead of blaming others or maintaining silence that ultimately indicates the impaired capacity of the government itself. The government of Bangladesh, if it is not a mere worthless political entity, must respond to the questions of the people regarding the ongoing incidents of abduction, followed by secret killings, immediately, and nobody wants repetitions of rhetorical statements as an answer.

As an urgent priority, the government should take strongest possible measures for stopping the law-enforcing agencies arresting persons without a warrant of arrest to an extent that the people in general fully believe that the Police or the Rapid Action Battalion never arrest or abduct in plain clothes without reasonable grounds. Once such belief is established in the minds of the public, by pushing the police and other State agencies to abide by the law of the land strictly, none will dare to copy similar methods in future. With equal importance to the above, all the incidents of abduction and secret killing deserve immediate investigation, preferably by competent judicial officials, as the police and RAB have already lost credibility for their constant actions beyond the purview of the law, which will help the nation to learn the truth regarding the crimes. The investigation reports should not be shelved, as usually happens in Bangladesh, for the very sake of transparency and accountability of the authorities to their taxpayers. And, of course, the perpetrators must be prosecuted through a fair trial system. The civil society of Bangladesh have undeniable responsibility to increase pressures on the government authorities for addressing the problems related to the incidents of abduction and secret killings as an urgent priority. All that is needed in Bangladesh is to compel the authorities to act within the framework of the basic notion of establishing justice for the people.

Freedom from Expression

The right to exercise the freedom of expression and opinion is a big challenge in Bangladesh. Dissident media have suffered harassment, intimidation, and threats from the authorities. Several incidents became the talk of the country in 2012.

For example, five persons including four senior journalists of the daily *Amar Desh*, a national newspaper, found themselves under imminent threat of detention and subsequent torture by state agents. On 2 June 2010, The country's police fabricated a criminal case (No. 2) against four senior journalists, namely Assistant Editor Mr. Sanjib Chowdhury, Crime Reporter Mr. Alauddin Arif, Chief Editor Mr. Seyed Abdal Ahmed, City Editor Zahid Chowdhury and a staff of the daily named Mr. Saiful Islam. These persons protested against the

authorities when the Acting Editor of *Amar Desh*, Mr. Mahmudur Rahman, was arbitrarily detained and tortured by the state personnel two and half years ago. *Amar Desh* is among the minority media of Bangladesh that exposes the failures, and criticizes the misdeeds, of the incumbent regime.

Government intention is revealed in a petition made by police inspector Mr. Apurbo Hasan, the Officer-in-Charge (OC) of the Tejgaon police station of the Dhaka Metropolitan Police (DMP). The Tejgaon OC submitted the petition to the Chief Metropolitan Magistrate's Court of Dhaka on October 11, 2012. He requested the Court to cancel the bail of these five persons. In the same petition the OC claimed that, at the time of surrendering before the Court, these five persons mentioned only their official address. Now, the police need to know the full and correct name and address, to ascertain which, the alleged accused persons should be taken in police remand for the sake of proper investigation of the case. The case was heard by the Court on October 22, 2012, and a new date was fixed for further hearing when interventions were made by several national and international rights groups and civil society organizations.

It was clear to everyone concerned that these journalists, well-known for their professional background and work, had appeared before the Courts in person on subsequent dates of hearing, ever since the case was fabricated against them. After almost two and half years, the police are not legally authorised to submit any petition for taking any suspect in remand at all.

It should be noted that according to Regulation 324 of Police Regulation of Bengal (PRB)-1943, "An under trial prisoner cannot remain in police custody after 15 days have elapsed from the date of his first production before the Magistrate".

The provision asserts that as 15 days had already passed since these five persons first appeared before the Court, the police are not eligible to seek remand anymore!

Freedom of expression is guaranteed in the Bangladesh Constitution and in the international human rights instruments adopted by the United Nations. All the authoritative organs of the United Nations have repeatedly affirmed the role of the press. Newspapers are merely carrying out the duties of observers of the human rights covenants to which states have become party. The protection of the rights of all persons requires respect of the rights guaranteed under these conventions. Under article 2 of the International Covenant on Civil and Political Rights (ICCPR), states are required to take legislative, judicial, and administrative measures to ensure that people enjoy the rights guaranteed by the UN conventions.

In another reflection of the constant assault on freedom of expression, certain journalists faced physically attacks on many occasions throughout the year in Bangladesh. On May 28, 2012, at the office of *BD News24.Com*, an online bilingual national news portal of the country, a group of people attacked journalists and staff of the media. This time the journalists and their associate staff were stabbed by a gang. The three victims, including Sub-editor Newaz Mohammed Rifaat, Correspondent Salahuddin Wahed Pritom, and office staff Ruhul Amin were wounded on their thighs and heads.[20]

On May 26th, three journalists including two photojournalists of Prothom Alo, one of the largest circulated vernacular daily newspapers of Bangladesh, were tortured by the police on a Dhaka street, in custody of officers of the Sher-E-Bangla Nagar police station. The victims, Zahidul Karim, Sajid Hossain and Khaled Sarker, were left with fractured legs and hands along with numerous injuries sustained all over their bodies.[21] The authorities suspended nine police personnel including an Assistant Commissioner of the Dhaka Metropolitan Police, a Sub Inspector, two Assistant Sub Inspectors and six Constables. Needless to say, 'suspending' temporarily is not considered a punishment in the Bangladesh Police, institutionally known to the people as 'an industry of torture'; suspension was rather was an attempt to divert the concentration of the public from the main focus at a particular period of time.

Physical attacks on journalists, either by the state-agents or non-state-agents, are not isolated incidents in Bangladesh. Almost regularly there are allegations of attacks on journalists across the country. For example, Panna Bala, a correspondent of *Prothom Alo*, was beaten and abused by the ruling party's leaders at Faridpur on May 4th for publishing certain reports on political affairs; A.B.M. Fazlur Rahman, a correspondent of *Daily Shamokal* and *NTV*, was stabbed at Pabna on May 19th; Mizanur Rahman and Jitendra Nath, correspondents of Prothom Alo and Daily Shamokal were attacked by ruling party activists at Baufall in Patuakhali on May 16th for exposing malpractices in a by-election of a local municipality. These are just a few examples out of many such incidents in just one month.

These consecutive attacks on journalists reflect the situation of an extreme vulnerability for journalism as a profession in Bangladesh. These attacks are not isolated. Such attacks are orchestrated as a result of ensured impunity to the perpetrators. There are hardly instances of a proper investigation let alone a credible prosecution against the perpetrators for attacking or murdering

20 www.bdnews24.com/photo.php?cid=2&cna=Photo%20Gallery

21 www.prothom-alo.com/media-detail/type/photo/album/1619

journalists in the country, in recent years or decades. At the same time, the top-ranking officials of the government, unfortunately, make irresponsible speeches in public that may inspire the potential perpetrators in the country.

Bangladesh Prime Minister Sheikh Hasina came down heavily on the country's journalists for protesting against the murder of a journalist-couple and exposing the uselessness of her government by saying that "the government cannot guard anyone's bedroom". She was cited in the media on February 23 while referring to the murder of Ms. Meherun Runi and her husband Mr. Sagar Sarwar, who were chief reporter and news editor, respectively, in two private television channels based in Dhaka. They were murdered in their bedroom, in a rented flat in the capital city on February 11, 2012. It is evident that the government is unable to protect anyone anywhere – regardless of whether it is a bedroom or a public place – in Bangladesh. The situation requires discourse and alarm among the citizens.

The continuous physical attacks on journalists amounts to a serious blow against the freedom of expression in Bangladesh. The journalists' federations have been protesting against the incidents of attack on their colleagues and demanding punishment for the perpetrators.

The government of Bangladesh on March 12, 2012, blanked out three satellite television channels – *Ekushey Television, Bangla Vision and Islamic TV* – almost an hour before the leader of the opposition Begum Khaleda Zia started her speech at a four-party grand rally on March 12, 2012. Viewers could not watch these TV channels from around 3 p.m. (Bangladesh Time). It was learned that the officials of the channels confirmed that government agencies asked Cable Operators' Association of Bangladesh (COAB) to suspend the telecast, as the channels were planning to go live with the mass rally. Although several COAB members acknowledged receiving instruction from the government, a government-appointed administrator for the COAB denied any government role in blanking out the three channels.

The officials of the Bangladesh Telecommunications Regulatory Commission (BTRC), the government's monitoring and licensing authority on telecast, called the high-ranking officials of the TV channels and asked not to broadcast the opposition rally live. At around 8:25 p.m. HK Time, ETV claimed in its special bulletin, which was on air through an international live stream website that "viewers could not watch the TV channel from 2:30 pm on 12 March 2012. At 3:30 pm the transmission of the channel was suspended from its own satellite base."

Mr. Shaikh Siraj, director and head of news of *Channel I*, told the media that his channel received calls from the BTRC to know whether the TV channel had any intension to broadcast the opposition rally live. He was quoted as saying "They [BTRC] give us licence. So, when they ask in such a way, it can be assumed as warning".

Women's Rights, at the Stake

Discussions on women's rights in Bangladesh contain speeches by high ranking officials of the government with rhetorical pledges and statistics of success of the government or the incumbent regimes along with criticisms against their political counterparts.

On the ground, the women, half of the national population, face unimaginable discrimination at home, and in different other stages across the society throughout their entire life. Discrimination against the female child, which begins within a family, spreads thoughout socio-economic and political life. Often such discriminatory mind-sets leads to endless violence against women in various heinous forms like molestation, rape, acid-throwing, and even murder. Dowry, deemed to be an integral part of women's life before and after marriage, now appears to be a social cancer in Bangladesh, although there has been a special law legislated to prevent dowry for the past three decades. Majority of violence against women could have been avoided if the society had changed its mind-set in terms of compelling the bride's family to pay dowry.

Misinterpretation of Islamic norms, which has already been declared unconstitutional and unlawful by the highest court of the country, continue unabated, while it is needless to mention that the women become the prioritised victims of inhuman treatment including lashing, caning, stoning, and isolation in the given community.

Extreme degeneration of human values in the Bangladeshi society has been contributing to violent forms of attacks like stalking and acid-throwing against girls and women in the country. Almost regularly, girls and women become victims of stalking and sexual violence that end in either the suicide or homicide of the victims. Apart from that, the surviving women have to face social stigma for the violence they suffer. A woman hardly feels safe to walk on the street without a male company in most of the parts of the country, which signals the pitiable condition of women in Bangladesh in general.

In a democracy it is the state's undeniable responsibility to protect any segment of the population from discrimination and violence by all means. Enjoying

rights with equal dignity as human beings is a fundamental right of women, for which the state has constitutional obligations. The nation can never deny that thousands of women had sacrificed their lives and prestige during the war of independence, which not only liberated the people from Pakistani discriminatory rule but also gave birth to the nation itself. The historical contribution of women once again reminds us that they deserve rights with equal dignity.

But, ironically, the criminal justice system, including the complaint mechanisms, mostly controlled by the police, is not capable of creating an atmosphere for women who could feel that there is any reliable mechanism to protect their rights, let alone ensuring justice to victims. Instead, it appears the government authorities, particularly police, mostly deny access to the complaint mechanism whenever women are victimized. There have been numerous allegations against police investigators that the police insist that female victims marry their attackers or rapists. It further explains why and how women are deliberately cornered. Moreover, the law-enforcment agents constantly fail to prevent the extrajudicial trials of women that occur regularly in the form of arbitration in the country.

Violence against women recurrently takes place despite the fact that there are laws like the Dowry Prohibition Act-1980, Acid Crime Prevention Act-2002, and Prevention of Women and Child Repression Act-2000 along with other relevant jurisprudence being developed in the country. None of the laws or jurisprudence or rhetorical speeches protect the dignity and rights of the women. The nation should ask itself why the system fails to accomplish its fundamental obligations.

If the women constantly face discrimination at home and away and justice is denied to the victims, the whole nation will not only suffer from the same pain as that of the women but will also face the shame for its failure to ensure the basic dignity and rights of the women. Democracy can never be established in a country by discriminating against its women citizens. Likewise, proper development of a nation will remain an unachievable goal unless the existing mind-set towards women is not changed.

Regionally and nationally, women do not get redress for violence against them. In a case documented by the AHRC, two young women were raped and one girl narrowly avoided an being rape due to her neighbours' assistance, in three separate jurisdictions of the Chittagong Hill Tracts in Bangladesh. The police have allegedly displayed bias against the non-ethnic settlers, instead of working professionally to uphold the law and investigate the cases credibly. In one of

the rape cases, the police did not register a formal complaint, as the alleged perpetrator is an influential political leader of the area. The victim's right to have a credible medical examination has also been denied by the police.

The human rights groups that actively work and document the cases of crimes of sexual violence in Chittagong Hill Tracts, in particular, observe that most of the rape cases do not lead to prosecution of the alleged perpetrators as a result of the biased role of the police against the non-local settler community. Ultimately, the police ensure impunity to the alleged perpetrators through corruption, and deny justice to the victims of the local ethnic communities.

In another case, an 11-year-old girl was raped by a policeman in the Chittagong Hill Tracts. The minor girl suffered serious physical, psychological, and social trauma due to the sexual assault, for which the local police initially refused to register a complaint. Instead of registering the complaint, the Atal Tila Police Camp In-charge offered BDT 1,000 (USD $ 12) to the girl's mother for settling the matter. Due to tremendous public pressure, a complaint was recorded with the Dighinala police station. The police authorities have not taken any action against the alleged perpetrator, other than withdrawing the cop from his place of duty, which is an 'eye-wash', to protect the policeman, rather than ensure justice.

Conclusion

The people of Bangladesh have, effectively, no place to go to seek redress when their fundamental rights are violated by state agents, routinely. The executive branch of the state maintains its position, endorsing the lawless actions of the state agents against the citizens of the country. The judiciary remains incapable of, and does not wish to act proactively in, discharging its constitutional obligation of administering justice to the people. The media and civil society, divided in several factions for their individual interests and limitations, add their disjointed effort to raise voice on behalf of the victims of gross human rights abuses, which is yet inadequate. The nation lives in despair and fear of an uncertain future without minimum safety or guarantee of surviving with even minimum liberty, dignity and the dream of prosperity. The government, the ruling parties, and opposition parties, and all the institutions of the state, continue deceiving the citizens shamelessly.

CHAPTER II

ASIAN HUMAN RIGHTS COMMISSION

BURMA

B U R M A

Mouthed Change, Institutionalised Stasis

Introduction

Although many political changes taking place in Burma have been greeted with great enthusiasm abroad and with seeming enthusiasm at home, widespread skepticism persists about the prospects for genuine change. People on the streets remark that, so far, most of what they have seen is just talk of change: "change of the mouth".

After half a century of dictatorship and decline, it is not surprising that the changes to date have left most people largely unimpressed. Indeed, few changes have so far extended to most people's daily lives. In most parts of the country, local administration is continuing as it has in the past, largely uninterrupted by what has so far taken place at higher levels. Consequently, most of the routine forms of human rights abuse associated with the extant institutions are continuing as they have in the past.

Counterbalancing the widespread skepticism about the prospects for lasting change are, as in other moments of this sort elsewhere in the world, unreasonably high expectations placed on the shoulders of one or two persons. For Daw Aung San Suu Kyi these expectations are a part of what she has represented to so many people in Burma for so long, and are integral to her political legitimacy; however, they are also fraught with danger, since realistically, they far exceed her capacity to effect change.

Alongside the entry of Aung San Suu Kyi to parliament, the emergence of the National League for Democracy (NLD) as a parliamentary force is enormously significant; and accompanying it is a growing political consciousness and interest in people from many walks of life. How long this interest can be sustained remains to be seen. The NLD faces huge challenges to build itself as a professional party, to move beyond the star power of its leader to which its own fortunes remain wedded, to establish effective policies, and to demonstrate a capacity to govern.

Meanwhile, the parliament has rushed ahead with the passing and consideration of new pieces of legislation. Although widespread agreement exists about the need to revise and update the country's antiquated statutes, some of which the Special Rapporteur on human rights in Myanmar has commented upon in previous reports to the Human Rights Council and the General Assembly, the Asian Human Rights Commission is concerned that, to date, practically all legislation has been rushed through without public debate, let alone much parliamentary debate. Stories abound of laws that have been literally cut-and-pasted from those of other countries' statute books, and of some local think-tanks basically writing laws themselves. After new types of badly written laws are introduced, it may take a much longer time to go back and re-examine them and make changes necessary to ensure even a minimum protection for human rights.

For example, in 2012, a new law was passed to replace the 1907 Town and Village Acts. Although the law is in certain respects an improvement on its colonial-era predecessor, it still envisages a system of compulsory visitor registration for people residing at other people's houses. The petty arbitrary day-to-day abuses of power that characterized earlier systems of government in Burma rested precisely on these sorts of provisions, which local authorities can use as a pretext to come to someone's house without warning or explanation and demand information on threat of punitive action. That such provisions continue to feature in laws that are supposed to be replacing colonial instruments so as to bring Burma up to date with the rest of the world is an obvious cause for concern, and one consistent with other evidence that old authoritarian practices are being built into modified institutions for administration and government. And it is with the institutionalizing of existing practices inimical to the protection and promotion of human rights that this annual report is concerned.

Judicial System Stasis, Corruption

Burma's judicial system remains fundamentally unchanged from the time of direct military rule. Although the number of politically motivated cases has dropped off, the system continues to function under executive authority, as in the past. According to one lawyer, in April, the chief minister of Magway called all judges for a meeting and told them in no uncertain terms that although the administration was no longer in the habit of sending written instructions to judges for the handling of specific cases, they should understand that he is the most powerful person in the region and that if they were instructed to adopt a particular position in deciding a case then they should do so or risk the consequences. Other legal professionals agree that the judiciary remains compliant and beholden to administrative demands. The lack of openness or

sense of change in the system is reflected by the fact that legal professionals do not even know the names or backgrounds of the members of the Supreme Court. Meanwhile, the Constitutional Tribunal has captured the interest of some foreign experts in constitutional law and theory, but has so far made almost no impression on legal practitioners in the country.

Corruption within the judicial system continues to be endemic. In a meeting of the national legislative assembly on 24 April 2012, legislators debated the numbers of complaints brought against judges over alleged corruption. The legislators discussed how, in the past year, the government had received 77 such complaints, of which some 80 per cent had been found to be truthful complaints. The legislators urged that action be taken against judges found to have broken the law and passed a motion to set up a special committee to investigate alleged judicial wrongdoing.

A new law to combat corruption is, at time of writing, due before parliament. The AHRC has not yet studied the law carefully, and therefore will not comment on it directly; however, it is concerned about the trend in debate and legislating on corruption in two respects. First, the debate has so far concentrated upon corrupt judges. Although people often lodge complaints against judges as the decision-makers in cases before the courts, all participants in the legal process take bribes and other favours to determine case outcomes, including police officers, court clerks, bailiffs and prosecutors. Many act as brokers for judges, as do many lawyers. For instance, one lawyer working in a small town said that out of ten practicing lawyers there, three are brokers for judges. When asked how many of the ten lawyers pay bribes, he said without hesitation that all of them pay, adding the Burmese proverb that, "Water flows, fish follow". None of this is new to the system, and nor is it news to anyone having contact with any part of the system. That the emphasis in policy debate is predominantly on the corruption of judges misrepresents the extent and character of the problem and is liable to lead to interventions that fail to deal with corruption systemically.

This first point leads to a second, which is that the concentration on judges may have specific strategic purposes linked to objectives for maintenance of administrative control over judicial authority under different political structures than those of direct military rule. Specifically, the increased use of criminal law to penalize judges for alleged corruption may serve as a very effective tool to inhibit judicial independence. Presently judges are not differentiated from other civil servants for the purpose of criminal liability, discipline and punishment. Unless a judicial service commission or some equivalent is established and more institutional measures are incorporated to enable a structurally independent judiciary, in the long term anti-corruption laws

could be highly counterproductive, enabling people in other parts of the state apparatus or those with influence outside of it to threaten judges with dismissal or imprisonment if they do not comply with their demands for case outcomes.

So as to explain the phenomenon with which we are concerned more clearly, and rather than talk about the extent and nature of systemic corruption in Burma in abstract terms, let us take a look at just one complaint that a citizen made in 2012 to the country's president. It is only one of thousands of such complaints, and is unexceptional, which is precisely why it is a good example of how corruption pervades all aspects of the work of the justice system, not only those aspects of the system concerned with judges.

1. The complaint was made in 2012 by the wife of one U Lay Myint, who, in March 2011, the police in Shan State, in the country's northeast, arrested with two passengers for allegedly having in the vehicle, in which they were travelling, five pills that were found to be narcotic drugs, and the equivalent of around USD $ 2,500 in cash that the police claim was for the buying and selling of drugs. The complainant alleges that on March 28, following the arrest of her husband and the other men, Sub Inspector Hla Min Htun of the Panlong Police Station called her by phone and said that they had arrested a man who had confessed to planting the drugs out of revenge for a dispute over money; however, it would cost the equivalent of around USD $ 3,500 to get her husband and the other two accused released. The amount is high because the 1993 Narcotic Drugs and Psychotropic Substances Law sets high prison terms, including minimum prison terms, for convictions, and therefore the police and other officials can confidently extort a lot of money from people charged under the law to enable their release. In this case, it may also have been high because the police found a large amount of money in the vehicle, which they would take as an indicator of the defendant's capacity to pay. The complainant says that when she asked the policeman to proceed with the case forthrightly he replied that "if you don't pay then it comes down to your luck" and hung up.

2. After around three days, the policeman called again and told Lay Myint's wife that the police had arrested a fifth man who had sold the fourth accused the narcotics, and that everything could be sorted out if the police received the money. Thereafter, she claims that she spent some USD $ 15,000 in payments to various people in the course of the case, including a government official working as a broker; the police; the prosecutor; the chemical examiner of

the narcotics, and court clerks—as well as the judge. Much of the money was swallowed up by routine payments for officials to do their day-to-day work. For instance, on 16 June, 2011, at a hearing at the Taunggyi District Court, she paid the court clerk USD $ 20 to put the case on the docket—although a case is scheduled, without payment it may not be heard—and USD $ 50 to the prosecutor to examine the case favourably. It also cost around USD $ 8 to meet the three defendants in the lock up and give them food and other essentials. On July 14, she paid USD $ 100 to the court clerks and to a police witness and USD $ 60 to the prosecutor, as well as USD $ 4 to give four bags of cooked rice to the defendant in the lockup. On July 22, she paid USD $ 110 to the court clerks, another USD $ 50 to the prosecutor and USD $ 5 for two meetings in the lockup. On September 2, the case was not heard because the judge did not attend court; however, she gave around USD $ 20 each to court staff and police. And so it went on.

3. Payments to District Court Judge Wa Wa Lun alone in total allegedly topped USD $ 4000 in the course of the trial, while for the court to acquit the accused, Lay Myint's wife alleges that USD $ 2,500 was paid each to the judge and to the prosecutor. Despite these payments, for some reason, Lay Myint and his friends each received nine years in jail—possibly because the case was proving to be lucrative and the officials wanted to share it with their higher ups. The broker reassured her that the judge and prosecutor had decided that it was not possible to acquit but that they had already arranged it so that the men would go free on appeal and therefore that she should keep persevering with the case. U Lay Myint's lawyer submitted an appeal to the Shan State High Court in March 2012, but meanwhile his wife lodged her own complaints about this trade in justice.

We can see from this case the systemic character of corruption in Burma's justice system. It is clear that to treat corruption as essentially a problem of the judiciary is to miss the point, since although the outcome of the case hinges on the judge's cooperation and complicity in the process, many other parties are involved and are earning money for the provision of a variety of services, which interlock and relate to one another in sophisticated ways. Consequently, an unsophisticated response to the problem—one of blaming judges and imposing further sanctions upon them, for instance—may force systemic behaviour to change, but it will not end the corrupt practices prevailing in Burma's courts, since they are too deeply entrenched and far too comprehensive.

One good development in 2012 was the return of licences to a number of lawyers who had lost them previously, for political activities or for defending persons accused in political cases. This step deserves congratulations from the SR, but the AHRC wishes to stress that all lawyers who lost licences for political reasons ought to be able to have them reissued without preconditions. One lawyer, with whom the AHRC spoke recently, said that he had been told that if he applied in a contrite manner, and respectfully requested his licence back, he could obtain it: he objected that, as he had never done anything wrong in the first place, he would not seek to get it back in a manner that did not acknowledge that the licence is rightfully his and that it had been unlawfully removed from him. The AHRC concurs with his position and argues that the reapplication for a licence by him, and other lawyers in his circumstances, should be a formality, and not an opportunity to obligate a lawyer to beg to rejoin the profession, nor to scrutinize the lawyer's record again in search of imaginary infractions of the professional code of conduct with which to deny renewal of licence.

The AHRC also notes that a lawyer, U Tin Aung Htun (HGP Licence No. 21483), who took an appeal in a recent land case in Kanma – on which the AHRC wrote in its 2011 report and that resulted in the reduction of the farmers' sentences and secured their release – subsequently had his licence revoked. Apparently, the authorities were dissatisfied with his statements about the case in the media afterwards. The letter revoking his license does in fact state that the reason for revocation was "that U Tin Aung Htun was notorious for the writing of complaints" and that it was not the business of a lawyer to be making news out of the cases that he followed (Supreme Court Order No. 39/2011, 9 August 2011, AHRC translation). The letter implies that a lawyer has no right to speak publicly on behalf of his clients, or give his opinions on a case that he has handled, in response to the inquiries from journalists.

Another cause for concern was the arrest and imprisonment in March 2012 of a lawyer who returned to Burma from exile believing that the situation had changed sufficiently that he would not be prosecuted over his defence of political detainees following the 2007 monk-led protests. Regrettably, the lawyer, Saw Kyaw Kyaw Min, was wrong, and Judge U Aung Than Myint brought a case against him in March 2012 (Criminal Case No. 43/2012, Yangon Northern District Court, Judge Aung Thein presiding). According to information currently available, at the end of August, the court sentenced Saw Kyaw Kyaw Min to six months in prison. Saw Kyaw Kyaw Min is, at time of writing, appealing against the verdict.

The conviction of Saw Kyaw Kyaw Min sends a very bad signal, in two respects. First, it signals to Burmese citizens living abroad, who are interested

to come back like Saw Kyaw Kyaw Min and remake the country, that they have no guarantees that if they do return, no pending criminal cases will be brought against them, or new ones initiated. Second, it signals to everyone in the country, as well as abroad, that the courts, police and many other key institutions in Burma continue to operate to the present day in much the same way they had done prior to the beginning of the political changes initiated in recent times. The stasis in the judiciary and much of the bureaucracy has been the subject of repeated comments in the country, and among people abroad concerned with conditions in Burma; however, it is made all the more apparent through case outcomes of this sort, where someone who fled the country because of a politically motivated case is still being subjected to persecution after returning with the belief that the political circumstances had changed.

As against the stasis of the system, one important development was the establishment, in June 2012, of a non-party political Lawyers Network, to work on human rights and social justice cases and issues. The network had 150 attendees at its first meeting. It highlighted three issues to begin its work with, one being the return of licences, the other two being the renewal of the Bar Council as an independent body, and the question of the recent one-hundred and two-hundred fold increases in stamp duty on the filing of case documents, which makes the submission of documents unaffordable for large numbers of indigent people. In October, the network staged the first public demonstration by lawyers in Burma in over 20 years, against the selling off of historic court premises in Rangoon for commercial projects.

The Continued Crimes of Investigators

Nan Woh Phan (courtesy, YPI)

The AHRC, since March 2012, followed closely reports of the death in custody of a young woman, Nan Woh Phan, in Rangoon, which was followed in May by the arrest and detention of her partner for alleged illegal business activity. Whereas 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. Since the case is indicative of problems faced in the making of complaints about custodial abuses in Burma, the case of Nan Woh Phan deserves some discussion and explanation here.

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, with regard to 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 p.m. 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.

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 the 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.

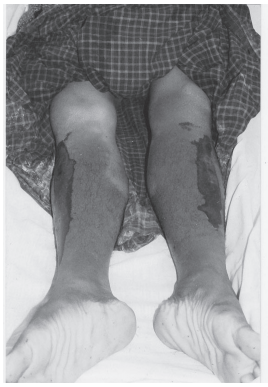
The bringing of the charge against Namase, and the holding of him in custody since May, raises more serious questions about what has been going on since the death of Nan Woh Phan. One obvious question is, why charge him with this out-of-date and regressive law? Many other laws exist under which he could 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 authorities have typically 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.

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 in which 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 them – security personnel also reportedly detained and questioned them.

The mentality that people do not have any inherent right to complain, and that the 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 the 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, of whether or not policing, prosecutorial and judicial agencies in Burma will prove responsive to the political changes in the country.

By way of another example of the crimes and impunity of investigators, the AHRC in September 2012 issued an appeal on the torture and death in custody of Myo Myint Swe, a teenage carpenter, for the 28 June 2012 murder of 19-year-old flower seller, Ma Poe Poe Mon. Subsequently, the accused man's mother and cousin were also taken by the same police station without a court order. At around 10 p.m. on 8 July 2012, Police Lt-Col. Myo Aung informed Daw Sein Sein that in the meantime her son had died of illness during interrogation at about 3.30 p.m. that day.



Myo Myint Swe's body, showing signs of torture

The family members of Myo Myint Swe 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. The photographs show that the right cheek and forehead of the deceased are heavily bruised and swollen, as is the left jaw and lower cheek. The neck of the deceased is black with bruising, and scars and bruises are obvious on his shoulders and back. In another photograph of the victim's shins, scars and bruising from the rolling of a rubber or bamboo stick or similar instrument, can be seen clearly.

Doctor Ye Win, who conducted the post mortem, recorded that the deceased had died due to a heart attack. However, the family and other persons involved in the case are incredulous and believe that the doctor is conspiring with the police to prevent a criminal case being opened against the killers. Before his death, Myo Myint Swe was a young and healthy man who was involved in heavy manual labour and had not had any history of serious illness.

Subsequently, the district police commander donated 500,000 kyat (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 million kyat; 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 Interrogation Centre, U Ngwe Soe 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 (photo on left) in August sent complaint letters to the police chief, 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.

Daw Sein Sein

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 in the Voice news journal of 23 July 2012, the deputy commander of the Rangoon Region Police said that the victim had fallen unconscious during interrogation at around 3 pm on July 8, and died on his way to hospital. He said that he had ordered that an internal investigation be conducted, with an investigation team comprising Police Major Than Htun (chairman) and Police Major Ne Win; however, to date the family does not know what progress, if any, has been made.

At this time that political conditions in Burma are changing, it is of utmost importance that institutional changes also be made to hold government officers accountable for crimes of this sort. If police in Burma are able to continue to get away with murder, as they have in past years of military dictatorship, it will spell ill for the efforts to effect change at other levels of society and government. Therefore, cases of this sort serve as important tests in the current period, to assess credibility and quality of changes taking place.

Yet, the problem is not only one of police and other investigators getting away with their own crimes. It extends, through practices of corruption described above, to numerable cases where investigators and other officials enable criminals to get away with acts of murder, assault, and other serious abuses, through payments of money and other forms of collusion.

By way of an example of one such case, in July, the AHRC issued an appeal on the daylight killing of a child domestic worker. To date, the perpetrators have escaped responsibility for their crime due to the collusion of the police force. In this case, the victim, Ma Thin Thin Myat, began working in the apartment of U Hashin and Daw Baby in 2009 on payment to her father of 10,000 Kyat (around USD $ 10), when she was just seven years old. The couple confined her in the apartment. Due to constant abuse that she suffered at their hands, she had fled from the household four times previously, but on each occasion Daw Baby brought her back. The forms of abuse had included pulling of hair, beatings, and kicking.

At 8.15 a.m. on 18 November 2010, Thin Thin Myat fell from the balcony of the sixth-floor apartment. She did not immediately die from her injuries, but lay crying out on the sidewalk at the front of an adjacent teashop, where there were witnesses to her fall. Her employers then came downstairs and instead of sending her immediately to hospital, incredibly, carried her back upstairs and into the apartment. Not until after 4 p.m. on the same day did police, together with the employers, convey Thin Thin Myat to the Yangon General Hospital, where she was admitted to the cranial and spinal unit.

When hospital staff conducted a medical investigation of Thin Thin Myat they found that not only had she suffered injuries from her fall, but that she also had other injuries corresponding to the allegations of her abuse at the house, including bruising to her genitalia, suggesting that the girl had been sexually abused.

When the aunt of the victim went to the Kyauktada Police Station, to open a case against the employers, Police Sgt. Tin Yu recorded her complaint, but the police said that it was not a police cognizable case under the Criminal

Procedure Code, meaning that the complainant had to open it at the township court directly. The aunt then opened a case at court for the causing of hurt and unlawful confinement prior to Thin Thin Myat's fall from the apartment. At this time, she had not yet died but was in a critical condition in hospital.

According to the lower court record, the employers had told Thin Thin Myat's mother only around the middle of November 19 that the girl had fallen by accident and that they would have her treated so long as she did not tell anyone. Her mother said that the following day in the presence of her and other relatives the girl regained consciousness and that when she asked, "Daughter, what happened, did you jump?" Thin Thin Myat replied that, "I didn't jump, U Hashin pushed me."

Furthermore, Thin Thin Myat's grandfather testified that on November 24 the girl again temporarily regained consciousness when he was present and he asked her if she remembered who he was and what her father's name was. When she answered correctly and consciously, he asked her if she jumped from the sixth floor and she replied that she had been pushed from a chair. She died on 2 January, 2011.

Instead of arresting the employers of Thin Thin Myat for her murder, police officers from Kyauktada Police Station started to arrive repeatedly to the residence of another domestic worker, a 13-year-old girl who had been in the house with Thin Thin Myat, to interrogate her and tutor her on how to testify so as to protect the perpetrators.

The 13 year old first testified that on the day of the incident, when she heard Thin Thin Myat's cries, she looked towards the front of the apartment and saw U Hashin coming back inside from the balcony, and going into his bedroom. She went to the balcony and saw Thin Thin Myat crying out from the street below. She then ran to the bedroom door and hammered on it to have the employer come out.

She said that later in the day the employers took her to Hashin's mother's house and that after going to the hospital he came and claimed that he had brought her there so that "the police will not arrest you" and that he had paid the police 30,000 Kyat to protect her, but that if she did not say as he told her then he would arrange for the police to arrest her instead. She also confirmed that both she and Thin Thin Myat had been beaten and sworn at by their employers, "sometimes a little, sometimes a lot".

However, under threats from the employers and police, she later reversed her testimony and said that Thin Thin Myat had fallen of her own accord and that

she had given her previous testimony because the family of the victim had told her to testify like that. This assertion is preposterous, because the victim's family members are poor townsfolk with no knowledge of law, authority, or money with which to influence her testimony, whereas all of these resources are on the side of the defendants and the police who are protecting them.

After Thin Thin Myat died, her aunt lodged a case in the district court for revision of the charges against the accused, to hold them responsible for her death; however, after cursory examination of the lower court records, the district court judge refused the application to revise the charges. Since rejecting the application, the case files have not yet been sent back to the township court, and so not only have the relatives of the young victim been frustrated in their efforts to get appropriate charges brought against her, but the trial on the non-commensurate charges has also been delayed. These features of the case cause genuine concerns that, not only the police but also, members of the judiciary are colluding, perhaps on payment of money, to ensure that the perpetrators of this crime escape responsibility for their actions.

Again, this case is by no means isolated. All across Myanmar, children of tender ages like Ma Thin Thin Myat are daily forced into what are correctly described as "modern forms of slavery": jobs for which they are paid insignificant amounts of money and are constantly subjected to heinous forms of abuse. The persons responsible for these modern forms of slavery are invariably influential people with money and means to manipulate local authorities' behaviour and prevent any effective investigations of their crimes. Later in the year, the AHRC issued another appeal on a similar type of case, in which the victim survived to tell the tale only to be treated with contempt by the officials responsible for investigating the case.

In this instance, on 5 July 2012 Daw Khin Nilar Win physically assaulted the complainant, an underage girl, who had recently started working at her house in Mandalay, for failure to perform a menial task. During the assault, Khin Nilar Win allegedly hit the girl with a chair and with high heels. The employer then allegedly said that she would show the girl how to iron smoothly, and applied a hot iron to her leg. She also scrubbed her arm with an iron brush, telling her "this is how to scrub". As a result of the assault the complainant suffered abrasions to her head and face, her left arm was fractured, and she had burns and bruising.

After the assault, the complainant fled from the house and sought help from people she knew in the neighbourhood. This assault was not the first that the girl had suffered, and as she was known to have already suffered abuse, people in the vicinity immediately offered her support. According to a letter submitted

by a monk to the Mandalay High Court, dated 16 August 2012, he himself observed fresh and older scars and bruises all over her body.

She went with local people to the police and lodged a report the same day. The police opened a case for causing grievous hurt, which was lodged in court. However, the prosecutor, Daw Thin Thazin, changed the charge from grievous hurt, which has a punishment of up to seven years, to simple hurt, which has a maximum of one year. And, instead of hearing the case fairly, the judge, together with the prosecutor and defence attorney, instead undermined the judicial process and pressured the complainant to make a financial settlement with her abuser.

On August 13, when the complainant's case was opened in court, to the surprise of local people, the judge refused permission to the complainant to have a private attorney represent her in court alongside the prosecutor. Instead, the judge allowed the defence lawyer to dominate proceedings, and for two hours ridicule the defendant and ask her demeaning and irrelevant questions, such as, "Can you read? Can you recite ABC?", "Are you going to ask for tens of millions to settle?" and, "Who put you up to this?" The lawyer also cut her off when she tried to tell what had happened to her, saying that her allegations were irrelevant, and neither the prosecutor nor judge did anything in response.

In addition to these events in the courtroom, the defendant and her husband have, through deception, obtained the record of the initial medical examination of the complainant, and the girl's supporters fear they will destroy or manipulate evidence of the alleged crime.

It is pretty obvious that in this case, due to bribery or influence of the defendant, the professionals in the courtroom process are colluding to force the case out of court through a settlement, or to reach a verdict, if it is necessary to reach one, that will favour the defendant. Indeed, persons attending court have claimed that Khin Nilar Win has boasted of her contacts up to the level of the regional police chief, and that the regional public prosecutor, U Ye Aung Myint, personally hired the defence lawyer for her. The AHRC is, for its part, continuing to follow and work on the case closely, and is continuing to demand that justice be done, rather than be perverted through the payment of money and use of influence.

The War against Land Grabbing gets Hotter

Among new statutes, over which the AHRC has expressed repeated concern, is the 2011 Farmland Law, about which calls were already being made in 2012 for amendments. The law effectively removes any role for the judiciary from

questions of farmland ownership and occupancy, as well as disputes, in the event that land is taken for the purpose of "state projects".

The Farmland Law, while supposedly being forward-looking, in fact, resembles the authoritarian socialist-era laws of old. The basic rationale of the law is found in article 37(a) of the 2008 Constitution of Myanmar, that the state is the ultimate owner of all land and all natural resources above and below the ground: today, as it was in the past.

Accordingly, the law, in its section 29, enables the state to take over any land on the pretext of embarking upon a project in "the national interest". Under the law, authorization for the takeover of land, and resolution of any disputes over land usage, lies not with the judiciary but with a new central council, comprising of the agriculture and irrigation minister and deputy minister, the director general of the land revenue and registration department, and unspecified officials from other "relevant government departments" (section 15). Similar councils of unspecified composition will operate at all other levels of government (section 16). Although the law gives no details of who will sit on these bodies, presumably no independent experts, no representatives of farmers' interests or other outside voices will be invited to participate. The law envisages a system of decision-making that from top to bottom is monopolized by government officials.

Furthermore, under the law's section 4, once the new councils are operational all persons with usage rights to farmland will be obligated to apply for authorization to continue to work it. In other words, even people with tenure over land today may lose it tomorrow through a process of review and scrutiny of existing holdings that will enable the state not only to identify those areas of land over which it has uncontested possession, but also those areas of land over which farmers' claims are tenuous, or might be contested through the fabrication of alternative documentary claims and the use of various illegal coercive methods.

In short, far from reducing the prospects of land grabbing, the Farmland Law opens the door to confiscation of agricultural land on any pretext associated with a state project or the "national interest". Far from guaranteeing the rights of farmland users to cultivate and sell their products for fair prices, it guarantees only that whatever state agencies want, they can get. It also precludes any role for the already weak and ineffectual judiciary, ensuring that administrators and government ministers have final say on all matters of importance concerning the occupation and usage of agricultural land: as indeed they did in the 1970s and 1980s under a one-party regime.

The law came into effect without any evidence of public consultation or debate, much as laws have come into effect in Burma over the last few decades. That people lacked opportunities to debate the law is not for want of people who wished to debate it. The Asian Legal Resource CenRC is aware that, for instance, over 3,300 farmers in Magway Region had, by December 2011, signed a petition opposing the law in its draft form and calling instead for a draft that would protect their rights to cultivate agricultural land and gardens; their rights to cultivate crops as they saw fit; and to stop unlawful land grabbing. It is also aware that lawyers and experts who have worked closely with farmers on land-related issues made or sought to make submissions, but that the legislature apparently ignored these.

Although the law is, at the time of writing, largely untested, the question of land grabbing for the purpose of commercial activities on the pretext of "state projects" is coming to the fore of public debate. Almost daily demonstrations in rural and urban areas, and articles in local media point to the rising incidence of land grabbing and to public concerns over the nexus between military personnel, retired personnel and crony companies—the word "crony" now having become part of the local media vocabulary (not translated but transliterated from English). A number of local non-governmental groups have also formed a network on land rights and food rights and are conducting research on land tenure. And as with other hot issues, the president has a bevy of advisors on the topic, but it is not clear as to the extent to which advice on this, or any other topic, is given and received, or the extent to which it has any actual effect in the making of policy or formulating of interventions into specific cases.

According to an article in a local news periodical published in April 2012, the majority of over 1,700 complaints that the newly established national human rights commission—which is not a national human rights institution established in accordance with the Paris Principles—received in the first six months of its operations concerned land grabbing cases. These probably constitute only a fraction of the total number of cases. Land grabs are occurring all over the country. Almost daily, news media carry reports of people being forced out of their houses or losing agricultural land to state-backed projects, sometimes being offered paltry compensation, sometimes nothing.

Some cases on which the AHRC has recently collected information include the handing of agricultural land cultivated by people in New Dagon, near the commercial capital of Yangon, to government officials; the forcing out of 212 households from an area in Chaungthar, a tourist town on the western coastline of the delta, for planned township redevelopment; and, the theft of the small-

holdings of an entire village in Bago Region, already decimated by construction of a dam nearby in 1999, so that a company can plant teak.

Since mid-2012, the AHRC also began following closely a farmers' uprising against the takeover of a large area of agricultural land in upper Burma. The land grab, in the Letpadaung Mountain region of Sarlingyi Township, Sagaing is of some 7800 acres of fertile land, to make way for copper mining. Farmers of around 26 villages cultivate the land. The residents of four villages—Siti, Wehmay, Zidaw and Kandaw—had by mid-year already been forced out of their homes. The grabber is the usual suspect—Myanma Economic Holdings Ltd., a conglomerate of army interests, staffed by retired army officers, along with a joint partner company, Myanmar Wan Bao. In this case, the director of the project is one Lt. Col. (Ret.) U Aung Myint.

Farmers in the area began protests and interventions against the confiscation on 2 June 2012, and tensions and conflicts with local authorities have been growing since. According to reports coming daily from the region, the area of confiscated land has been placed under an administrative order declaring it off-limits, and local authorities have threatened to prosecute anyone gathering to protest at the land confiscation. Their threats have so far failed to deter

Protesting farmers, Letpadaung Mountain

demonstrators: since August 24, thousands have been gathering outside company offices in the township to demand that the land be returned and to object to the copper mine project. They have also raised their voices against the uncompensated destruction of crops through the movement of vehicles, dumping of rubbish and other actions by the companies that have adversely affected their lives and livelihoods.

Farmers erect signs prohibiting trespassing on farmlands, Letpadaung Mountain

The authorities have responded in typical fashion. On September 10, when a group of women protestors converged to pray symbolically at a monastery in Monywa Town, police closed off a riverine access route and arrested a dozen of them; they released nine, but, according to the latest reports at time of writing, were still holding three, namely, Ma Thwei Thwei Win, Ma Phyu Phyu Win and Ma Aye Net. Hundreds of farmers had also since converged on Monywa Police Station No. 1, where the women were being held, to call for their release. Meanwhile, around 20 police and other officials on August 31 detained Ko Wai Lu, a lawyer working with the farmers, as he was on his way to take a group of the people affected by the land confiscation to meet United Nations officials and others in Rangoon.

People who refuse to move when forced out by land grabbers risk prosecution and jail. In one case, the Naypyidaw municipal council prosecuted 21 householders for refusing to vacate their village when ordered in 2011: in March 2012 a court sentenced six of the group to three months in jail each, and in April it sentenced another three to jail terms; the others demolished their houses and left after the court gave its first sentences, out of legitimate fear that they also would also go to jail. Only about one third of the approximately 150 households evicted were given land on which to resettle. According to a lawyer working on the cases, some of those who left under threat of imprisonment deposited their property at a local Buddhist temple and have been struggling to eke out a living in nearby hills and forests. He has added that the municipality did not bother to produce evidence that it had obtained the requisite approval to seize the land.

Two fundamental reasons exist for the increase in land grabbing in Burma. First, as political, economic and social conditions change rapidly, the country is touted as the last emerging "land of opportunity" for global business with interests in Southeast Asia.

Paramilitary police, Letpadaung Mountain

Serving and former military officers, who are still in government, are, together with their business partners, lining up to do deals that will make them rich. Military-owned or connected companies and businessmen—which dominate the country's economy—are hurrying to force ordinary citizens off real estate that they can use to attract foreign investors. In some cases, such as a recent grab of 815 acres for construction of an industrial zone in Mingalardon, on the outskirts of Yangon, members of parliament for the military-established Union Solidarity and Development Party themselves, wholly or partly, own the companies involved. In many, such as the encroachment of the Letpadaung Mountain region, it is the military's Union of Myanmar Economic Holding Limited—which is staffed by former army officers—or its subsidiaries that are responsible for the theft of land. And, in practically all cases, administrative officials have continued to behave as they have for decades, treating villagers with contempt, using tried and tested tactics of threats and intimidation, to force people out against their will.

Second, as land grabbing accelerates, the legal framework has not only failed to keep pace, but has in fact gone backwards. Burma's justice system has for decades been integrated into authoritarian structures and mindsets. The system is in massive disrepair: decrepit, incompetent, and virtually powerless against vested interests in other parts of the state or in private enterprise. Its institutions are neither inclined to intervene, nor are they capable of intervening to protect the rights of farmers, householders, and others facing the encroachment of military-owned companies and their partners.

The Mouths of Change

One of the manifest changes in the last year has been the easing of censorship on the private print media. A much greater range of topics are covered now than in the past: not only have photographs and stories of farmers protesting at Naypyidaw appeared in journals in recent times, but even photographs of Kachin Independence Army troops fighting against government forces have appeared on the covers of local journals.

Lawyers demonstrate in Rangoon

However, the communal conflict in Rakhine State that flared up repeatedly since the middle of 2012 has given many people cause to reconsider some of the implications of the greater space in which to communicate. The reportage of the conflict in the local media can, at best, be described as having been partisan, and oftentimes vitriolic. Local outlets who up until recently sought to have as much attention on Burma from abroad as possible also began attacking the international media for "misunderstanding" the situation, in some cases citing specific articles (such as one in the *New York Times*) and slating specific foreign correspondents for their ignorance. Criminal cases brought against the editors of two journals, one for coverage of the rape and murder that purportedly sparked the violence, were ongoing at time of writing. Some journalists in local print media are concerned that the use of criminal law suits will become a feature of strategies to keep the media compliant, and require forms of self-policing and self-censorship.

The state media outlets continue to function as mouthpieces for official propaganda. Although the coverage of debates in parliament on television and in print and publication of draft laws in the newspapers is somewhat useful for the purpose of public information and discussion, the broadcast and print media of state agencies is fundamentally unchanged in contents and character from earlier periods. Those with access to cable television can, in some places now, watch Democratic Voice of Burma via satellite, and obtain a wide range of news and views not available yet through local channels. But, as a percentage of the population, the number of persons with this access is very small indeed.

Many protests in 2012 were conducted in violation of the terms of the new 2011 law on public assemblies and marching, but police and other officials treated them cautiously, and attempts were made to negotiate and compromise, rather than respond with force or prosecutions—although some persons were prosecuted and fined. These demonstrations included the middle-class candlelight vigils for improved electricity supply, which ended when supply was improved partly through rerouting of available power and partly because of an adequate amount of water coming into hydropower stations with the onset of the rains; and, ongoing labour strikes at factories on Yangon's periphery, most of which are addressed on a case-by-case basis through intervention of officials

from relevant government departments. These demonstrations occurred in the period after the law was passed, but before the rules for implementation of the law were introduced, in the absence of which, police said that they could not issue permits for demonstrations in accordance with the law, as they lacked detailed instructions on how to do so. Now that the rules have been issued, the police have begun also issuing permits for the holding of marches and rallies, including to the group of lawyers who demonstrated. But, in other cases, where they have refused to issue permits, as in the Letpadaung Mountain protests, they have detained and threatened to prosecute organizers of events.

Captain Ne Lynn Dwe

The system of surveillance, particularly that of the military intelligence and police special bureau, has of course not vanished into thin air with the political changes taking place, as some people would like to believe. Special Branch police continue to monitor and attend programmes organized on human rights or democracy, although they do not usually intervene and reportedly treat organizers in a cordial manner when asking them questions. Day-to-day surveillance has gone off many activist groups and individuals, but various forms of harassment, such as arrest and questioning for a few hours, have continued. Intelligence and police had arrested and charged persons in connection with the sending of reports and photographs from areas affected by the conflict in the west of Burma, including local employees of the United Nations. Some of these people were held incommunicado at interrogation centres, which are commonly used for the purposes of extracting confessions through torture. Although UN staff and some other persons were released from custody subsequently, the numbers arrested, charges and circumstances of their cases, remain clouded by the haze caused by violence and emergency regulations in the country's west.

According to other reports, soldiers have also received lengthy prison terms under the Electronic Transactions Law for allegedly unlawful Internet use. In one case documented by the AHRC, on the night of 12 December 2011, officers from military intelligence, Military Affairs Security, came to Captain Ne Lynn Dwe at his air force camp in Myeik and told him to go with them by aircraft to Yangon. Once in Yangon, Ne Lynn Dwe was detained at the Light Infantry Battalion 435 base in South Okkalapa Township, 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.

During the time that Ne Lynn Dwe was in custody, he was held without his family having access to him and he was allegedly tortured. 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 of the inhuman treatment, he suffers from psychological problems today. Specifically, he is unable to recall names and other basic information, and sometimes cannot speak clearly. Furthermore, when the case came to court martial he did not have a lawyer to represent him. Nor has Ne Lynn Dwe's family since been able to obtain 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 his conviction.

The laws under which Ne Lynn Dwe was convicted are incompatible with human rights and with the democratic values that the government of Burma 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 the law was framed. Legislators have made submissions for the law to be revoked and the AHRC has urged that these submissions be treated seriously. The Electronic Transactions Law is a malodorous piece of legislation whereby practically any form of Internet use could 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.

Those Still Inside, Those Who Survived

The numbers of political detainees still in Burma's jails is a subject of dispute. The AHRC has not attempted to quantify those still in detention. Notwithstanding, AHRC has worked extensively on the following cases, all of which have been submitted to the United Nations, and all of whom remain in custody at the time of writing:

1. U Myint Aye, founder of Human Rights Defenders and Promoters, serving a life sentence plus eight years
2. Yan Shwe, a member of NLD (Kale Township), serving a life sentence plus 13 years

3. Zaw Zaw Aung, member of HRDP, serving a life sentence plus eight years
4. Win Naing Kyaw and three others, sentenced to death for alleged bombing

Although the release of hundreds of political detainees—among other persons—has been greeted as a sign of political change and a cause for optimism, since their release, most of these persons have been forgotten. While a few prominent political detainees have taken on high-profile roles in civic associations and activist groups, most have gone back to their families and daily lives without any fanfare or acknowledgement. Many are suffering from long-term physical and psychological effects of torture and ill-treatment. None, of which the AHRC is aware, have received adequate medical assistance for their rehabilitation. Although some have availed some medical help by way of provision of drugs and some other interventions, some have suffered permanent physical injuries. Most have psychological difficulties. The case of U Gambira, a monk who led the 2007 anti-government protests, is indicative. According to persons who know Gambira, he has suffered psychological damage due to torture and imprisonment, and is in their words "abnormal". He has been forced to disrobe, because no monastery will have him. Like other survivors of severe abuses, some of whom the AHRC has met, he has received no counseling or other forms of treatment for his psychological condition.

Accompanying these persons' need for rehabilitation are other material needs for redress, not just in terms of compensation for long periods of incarceration and abuses suffered at the hands of state officials, but also in terms of ongoing basic needs for the survivors and their families. Many cannot find any employment, even if they have skills, whether due to their psychological and physical ailments, or because they have a criminal record or a past that makes employers unwilling to offer them jobs, or for whatever other reasons. Some have reportedly become homeless, some have had family breakdowns; others are seeking further educational opportunities, but lack the income to pay for new training. None of these difficulties are unique to survivors of torture and other forms of gross abuses in Burma, but to date the AHRC is not aware of any initiatives from either the government or civil society to address these needs.

Conclusion

The features of the current human rights situation in Burma described in this report are not a cause for pessimism or negativity, but they do serve to caution and remind us of the common sense understanding of real conditions that people living in Burma have, and the need for individuals and agencies

coming from outside—particularly for us as human rights defenders—to refer constantly back to that commonsense understanding.

The Asian Human Rights Commission has, for almost a decade now, been working on these issues intensively, and has consistently and realistically drawn attention to the fact that a major obstacle to the protection of human rights in Burma is the institutionalisation of abusive practices developed and refined over decades of dictatorship. As political, economic, and social conditions have begun to change under the new semi-elected legislature, what has become increasingly obvious is that the institutions showing the greatest resistance to change are those of the judiciary and law enforcement.

Within the last year, a growing number of organisations and concerned individuals working in a range of fields have chorused calls to make judicial and legal reform a top priority. Although these calls are very welcome, and although the growing interest of people and agencies from a variety of backgrounds in the work of the legal system is a prerequisite for the major reform that the system requires, much of the current discussion lacks reflection. What is little acknowledged in all of this, but what is self evident from cases passing through the courts like those described in this report, is that not only are these institutions resistant to change, but also that they are not really being encouraged to change as some government officials and spokesmen would have us believe.

The legacy of judicial corruption is today in the foreground of media and public debate, but the anti-corruption rhetoric that we hear is essentially a continuation of the same type of rhetoric that successive military and military-backed regimes iterated for decades. Nor are the proposals that have been made in the last year to deal with corruption anything new. Most blame and attention is being placed on judges who take bribes, rather than on the systemic features of corruption. While judges are scandalized, the participation of all parties in the legal process in the negotiations and trade in justice, including arresting police, investigating officers, station clerks, court clerks, court brokers, prosecutors, bailiffs, bureaucrats and many others in addition to the judges, and how these people network and negotiate through the offices of the system attracts inadequate attention. The specialised trade in which they engage has evolved since the colonial period, and has become extremely refined in recent decades, to the extent that it has become a parallel system for the trade of justice, fully integrated into the formal system on which it depends for its existence. Simply focusing on judges and proposing to introduce more sanctions to deal with their misdeeds will do nothing to resolve this problem, and will only make matters worse by further undermining the country's already emasculated judiciary.

People are right to be concerned that, above all, it is the legal system that is going to impede the possibilities for political and social progress in Burma. But, we ought not fool ourselves into thinking that the problems of the legal system are to be solved merely by electoral politics or by tinkering with those bits and pieces of the system that seem most at odds with popular aspirations. The problems of Burma's legal system are products of wider institutional arrangements of which the system is a part. More creative and wide-ranging thinking and debate is required about what can be done to address the systemic obstacles to the rule of law and human rights posed by this system. In fact, the discussion of what needs to be done about this system has not yet begun in earnest.

CHAPTER III

ASIAN HUMAN RIGHTS COMMISSION

INDIA

I N D I A

UNDERPERFORMANCE, NEGLECT, DENIAL[22]

Introduction

This year, there has been no remarkable improvement in the human rights scenario in India. On the contrary, the year witnessed widespread human rights abuses and scandals of corruption of ruinous proportions. This included scandals in justice and regulatory institutions, and the involvement of political parties of all shades and forms.[23] India failed to bring about any commendable administrative or legislative change that could deter the corrupt.

Governments, state and central, failed to address the urgently necessary and important reforms required within the law-enforcement mainframe of the country, the absence of which have rendered these agencies to be one of the most corrupt, inept, and feared organs of the state. It underlines the fact that the concept of the rule of law is replaced by a rule by fear in most parts of India. The Asian Human Rights Commission (AHRC) has documented more than 48 cases of custodial violence from India this year. In most of these cases, the state police have been found to be responsible for violating fundamental human rights of the people, and for shameful brutality practiced upon citizens in the form of custodial torture and extrajudicial executions.[24]

Despite numerous debates and discussions about a law against torture since 2009, and the passing of a law in the Lok Sabha, the country is yet to finalise the legislation, or to review the proposed law, as recommended by the Parliamentary Select Committee that has reviewed the law.[25] Missing also is keen and sincere effort to give effect to the important directives of the Supreme

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22 Dr. Nidhi Mitra, Mr. Sachin Jain, and Mr. Avinash Pandey have liberally contributed to the content of this report.

23 Officials evaded stamp duty in sugar mills auction: Comptroller and Auditor General, Times of India, 30 April 2012.

24 For further information kindly see www.humanrights.asia/ua

25 Report of the Parliamentary Select Committee on the Prevention of Torture Bill, 2010; as presented to the Rajya Sabha on 6 December 2010.

Court in the Prakash Singh case, concerning administrative reforms that need to be brought into policing in India.[26]

When the cord that connects the administration, its policies and legislations ruptures, it fails the justice architecture rendering institutions that are expected to ensure justice as impediments in fulfilling fundamental human rights guarantees and freedom. In practical terms, this diminishes the possibility to obtain redress for human rights violations a perilous uphill task, thereby deeply damaging the notion of justice.

The failure of justice in India is manifest in various other forms, including but not limited to, the denial of the fundamental right to food and in the continuation of entrenched practices of discrimination, most importantly based on caste practices. Though there is an attempt to redraft the law[27] against caste-based discrimination, even if a new law is passed, its implementation would depend entirely upon the state police[28], which, as mentioned above, undertake its mandate with the least professionalism and expertise, and with appalling resources[29]. Hence, any new law is destined to fail in fulfilling the constitutional premise of non-discrimination.

The absence of the rule of law framework also has a direct adverse effect upon gender equality in India. The high number of violent instances reported from India against women stands proof to this fact[30]. Discrimination in all forms is a manifestation of violence. In a country where the justice apparatus has fallen, notions of equality and fair trial have no place.

Concerning the question of right to food, an equally appalling condition persists in India. Various reasons, inter alia corruption within the Public Food Distribution System (PDS); caste and other forms of discrimination; national as well as state policies that systematically deprive livelihood options to the rural communities - most importantly to the scheduled tribes - and the overall

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26 Prakash Singh and Others (Petitioner) against Union of India and others (Respondents), Supreme Court of India, Writ Petition 310/1996 decided on 22 September 2006.

27 The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 was enacted by the Parliament of India (Act 33 of 1989), to prevent atrocities against scheduled castes and scheduled tribes. The Act is popularly known as POA, the SC/ST Act, the Prevention of Atrocities Act, or simply the Atrocities Act.

28 INDIA: Caste-based discrimination against 'untouchable' Ahirwar in Madhya Pradesh; AHRC-UAC-091-2012.

29 Fact Sheet, 20 years of SC & ST (POA) Acts, 1989, and Rules, 1995 in Madhya Pradesh, available at http://openspace.org.in/files/MP%20Fact%20Sheet.pdf; accessed on 30 March 2013.

30 How they fool us, the outraged; Subramaniam Vincent; India Together, 21 December 2012.

national policy of blind development - ignoring rural livelihood capacities, options, and alternatives - renders India one of the most impoverished nations of the world in terms of the millions of children and adults suffering from acute malnutrition.[31]

Malnutrition is more common in India than in Sub-Saharan Africa[32]. One in every three malnourished child in the world lives in India; and nearly every second Indian child under the age of five suffers from chronic malnutrition[33].

Such malnutrition contrasts starkly with the fact that India is not a poor and impoverished country that lacks financial and intellectual resources to address these issues[34]. Yet, while millions of Indians face massive extent of human rights abuses, the country is exploding with the expansion of the upper and affluent middle-class population[35]. This is because within the country's policy intellect there is an intentionally maintained air of criminal neglect and lack of care and concern for the plight of millions of people. Sixty percent of the country's population, as of 2012, is left to fend for themselves by their government[36]. But almost one third of the country's population of more than 1.1 billion continues to live below the poverty line, and a large proportion of poor people live in rural areas. Poverty remains a chronic condition for around 30 percent of India's rural population.

Yet, those who critique the government and its policies face immediate adverse reactions from the government[37]. Despite being a proclaimed democracy, India ranks very low in democracy indices, most importantly in those concerning media freedom. Reporters Without Borders ranks India 131st in the world in terms in their Press Freedom Index, falling from 80 where it was 11 years ago.[38] Over the past five years, stifling the whistleblower has become a norm in India.[39]

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31 UNICEF India report, 2012.

32 Malnutrition is more common in India than in Sub-Saharan Africa; UNICEF, www.unicef.org/india/children_2356.htm.

33 Malnutrition stunting growth in Indian children, India Today, 8 October 2012.

34 India is the third most powerful country in terms of Purchase Power Parity with US $ 4,710.807 billion, next only to the US and China.

35 India's middle class population to touch 267 million in five years; Economic Times, 6 February 2011.

36 Rural poverty in India; Rural Poverty Portal, IFAD; www.ruralpovertyportal.org/country/home/tags/india

37 For more information, see the case of the Members of Samaj Chetna Adhikar Manch; AHRC, 8 March 2013

38 Press Freedom Index 2011/2012, Reporters Without Borders, 26 March 2012.

39 INDIA: Stifle not the whistleblower, AHRC-STM-211-2010

It is in this larger picture that this year's annual report by the AHRC places its topics of focus.

Custodial Torture & Institutional Bliss

This year also, the International Day in Support of Victims of Torture was celebrated on June 26. Ironically, it was also on the same day the government of Kerala reinstated nine police officers to office, withdrawing their earlier suspension from service for suspected involvement in an infamous case of custodial torture and murder. The case is still under investigation by the Central Bureau of Investigation (CBI). The Sampath murder case[40] is infamous for the death of an investigating CBI officer, Mr P. G. Haridath, who allegedly committed suicide on 15 March 2012. His suicide note, accused the state police and a judicial magistrate of illegally attempting to influence the investigation. These allegations are yet to be properly investigated.

Sampath died in police custody. An autopsy revealed 64 ante-mortem injuries. The state government suspended police officers accused of torturing Sampath in custody and killing him. The reinstatement of these same officers, which permits those implicated in and not fully exonerated of, the murder back into active service, is highly distressing. Yet, this is the maximum punishment a police officer could expect to receive, if the officer is accused of custodial violence, including murder. Impartial investigation, trial and conviction of officers engaged in crimes like torture or of causing custodial death are exceptionally rare in India.

Deaths in police custody due to torture are not new or rare occurrences in India. The Supreme Court of India, on several occasions, has denounced this physical and psychological abuse, ordering the government to take concrete action to prevent such barbarous and criminal acts in its own law enforcement agencies. In the landmark judgement, Raghubir Singh (petitioner) against the State of Haryana (respondent), the Court held that

> *"We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scar in the minds of common citizens, that their lives and liberty are under a new peril when the guardians of the law gore human rights to death. The vulnerability of human rights assumes a traumatic, torturesome poignancy when violent violation is perpetrated by the police…*

40 Sampath murder case: Court returns CBI charge sheet again, Indian Express, 20 October 2012.

whose function is to protect the citizen and not to commit gruesome offences against them as has happened in this case. Police lock-up, if reports in newspapers have a streak of credence, are becoming more and more awesome cells. This development is disastrous to our human rights awareness and humanist constitutional order…

The State, at the highest administrative and political levels, we hope, will organise special strategies to prevent and punish brutality by police. Otherwise, the credibility of the rule of law in our Republic vis-a-vis the people of the country will deteriorate…"[41]

In a similar case, Kishore Singh (petitioner) against State of Rajasthan (respondent), the Court said "[n]othing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts deeper wound on our constitutional culture than a state official running berserk regardless of human rights".[42]

Three decades since, the conditions in custody have not improved, and the practice of torture continues. The Prevention of Torture Bill, 2010 is grossly inadequate. The Parliamentary Select Committee that reviewed the proposed law has suggested comprehensive revisions to the Bill; these recommendations are yet to be considered by the government. In the meanwhile, the practice of torture continues unabated.

The AHRC has documented more than 400 cases from India in the past eight years that collectively show consistent and widespread use of torture to intimidate persons in custody and to extract information or confession. All police stations in the country practice this crude and unscientific method of interrogation and punishment. Most police officers believe that torturing suspects is a legal and morally acceptable means to investigate crime. The police training provided to new recruits does not categorically instruct cadets to abstain from use of violence as a means to investigation; rather, the training endorses and promotes the practice of torture. The Government of India does not have data concerning the number of officers who routinely resort to torture and under what circumstances such abuse occurs. Because torture is not recognised as a crime, measures toward eliminating such horrifying practices have not been discussed or prioritised.

41 All India Reporter, 1980, Supreme Court 1087.

42 All India Reporter, 1981, Supreme Court 625.

The yawning chasm between the vast numbers of cases registered against perpetrators and the extremely low actual number of investigations, prosecutions, and convictions indicate how politicians and other power holders in India have managed to trivialise and sideline the entire issue. According to the information made available to the AHRC, in only 18 cases nationwide were police officers guilty of cruel, inhuman, and degrading treatment acted against. Even in these cases, action was limited mostly to temporary suspension from service. Subsequent reinstatement negated whatever punitive effect the sentence or disciplinary action was supposed to serve - this pattern has repeated itself in the Sampath murder case.

It is against this desperately hopeless backdrop that this year on 26 June India observed the International Day in Support of Victims of Torture. Mr Salman Khurshid, the Union Minister for Law and Justice, who attended a conference in New Delhi on 26 June 2012 to mark the day, stated that he had no information concerning the status of the proposed law against torture.[43] This year's theme spoke of the right of survivors to rehabilitation, yet nowhere in India, where torture is endemic, has there been an improvement in the services or facilities dedicated to the recovery and rehabilitation of torture victims, most of whom suffer psychologically, emotionally, physically and financially from the traumatic experience.

But for the reporting of a few select activities by some human rights and social activist organisations, India's media neglected the international event altogether. This apathy or self-censorship on part of the media bodes ill for the future of human rights work and for the countless communities and individuals who have fallen prey to mindless, arbitrary, and crippling violence. India has yet a long way to go towards acknowledging torture as a crime that cannot and must not be condoned, tolerated, or justified by any civilised society.

India must recognise that torture is tyranny. India must realise that torture occurs in the dark places sans constitution, culture, civilisation, law, and every moral principle. India must realise torture is a practice sans humanity.

With the practice of torture rampant within the overall culture of impunity in India, justice against torture has become a near impossibility. This is reflected in the conduct of law enforcement agencies in their shocking disregard to law of how brutal and inhumane the institution has become in India. The case of Sanjit Mondal is an example.[44]

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43 India is committed against criminalising torture, Indian Express, 26 June 2012.

44 INDIA: INDIA: BSF bludgeoned a boy, then shot him, AHRC-UAC-089-2012.

On 15 April 2011, Sanjit had been watering the field for kharif cultivation in preparation for sowing jute. Six uniformed Border Security Force (BSF) jawans from the Harudanga Mini Camp suddenly set upon him and began beating him with the butts of their rifles. All six had been carrying firearms at the time of the incident. Sanjit fell to the ground due to the force of the sudden attack and bashing. The BSF personnel turned to kicking his chest with boot-clad feet. When Sanjit's family heard about the savage beating Sanjit was enduring at the hands of the BSF personnel, his uncle, Mr Bisnupada Mondal, Mr Bikash Mondal (son of Mr Binay Mondal), Mr Madhu Mondal and other residents of Char Durgapur Village, Harudanga Post Office, rushed to the spot and found Sanjit writhing in pain as the BSF jawans continued their vicious attack. The witnesses protested the abuse and requested that the BSF personnel stop the beating, upon which the personnel hurled humiliating verbal abuse at them. The BSF personnel then made as if to leave the victim and moved a few yards off, but then turned and fired upon Sanjit. Family members and eyewitnesses believe this was intended to kill Sanjit.

This case, however, did not result in any further investigation or prosecution of the accused officers. This is not only due to the lack of any further action by the local police against the BSF, but also due to the law on BSF that prevents any such civilian action.

The BSF Act and its Rules[45] regulate the conduct of the BSF. Section 41 (f) of the Act mandates that a BSF officer who commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving, to be punished with seven years of imprisonment. The Indian Penal Code of 1860 provides punishment for voluntarily causing hurt or injuries to a person. Section 326 of the Code prescribes punishment by way of imprisonment for a term of ten years to a person who voluntarily causes hurt by dangerous weapons or means. In addition, Article 21 of the Constitution guarantees protection of life and personal liberty of every citizen. There is, however, an obvious lack of discipline and commitment to duty, as well as a culture of violence and impunity, within the BSF. This case once again illustrates how the BSF operates, and is permitted to operate, with impunity and in utter defiance of these three legal documents.

The AHRC has documented substantial number of BSF atrocities in India over the years. AHRC has reported in detail over 800 cases of custodial violence committed by the BSF over the past eight years and have called for action on the part of the Indian authorities. The AHRC has noted the absolute impunity

45 Border Security Act, 1968 and its Rules 1969.

with which the BSF acts, a fact evident by the lack of disciplinary action taken against their criminal offences by the relevant BSF superiors and police personnel.

Critically, many of these cases reveal a troubling unresponsiveness, and sometimes complicity, in parts of the legal system to patent injustices committed against individuals by the BSF. Not only is the legitimacy and integrity of the Indian justice system threatened, but so is its border and national security.

Sanjit has, as a human being, a right to life, liberty, and personal security (Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights, Article 6 (1), 7, 9 and 10)[46]. He had additional rights as a vulnerable minor to extra protection by the state[47]. Sanjit further had a right to move freely within the borders of his own country[48]. The BSF jawans who had so cruelly beaten Sanjit and his siblings obviously did not perceive the boys as born free and equal to them in dignity and rights[49]. The BSF jawans were also obviously lacking in reason and conscience and had not acted towards the minors as the law warranted them.

In states like Manipur, other paramilitary units like the Assam Rifles violates law with their blithely committed atrocities and cower like criminals behind the patently unjust and draconian Armed Forces (Special Powers) Act, 1958, passed 11 September 1958, by both houses of parliament in India, which accords Armed Forces in "disturbed areas" the ability to act with complete unaccountability. The forces are permitted to use force "as [*the officer*] may consider necessary", to destroy any fortified position or shelter likely to be used for training armed volunteers / gangs and to arrest and search without warrant. These terms violate the letter and spirit of international law, which demands the unconditional protection of every human being's fundamental rights.

Even then, the Act attempts, if weakly, to institute some safeguards – the armed forces are compelled to work in cooperation with the district administration and not as an independent body, for instance. The Forces are required give "due warning" before firing (which they rarely, if ever, give). Arrested persons are to be handed over to the Officer-in-Charge of the nearest police station

46 These international norms are binding to India, being a member of the UN and as a country having ratified the ICCPR.

47 India ratified the Convention on the Rights of the Child in 1992.

48 UDHR Article 13(1).

49 UDHR Article 1.

immediately. Yet problems arise when the intent was never to arrest but to assault and kill, when BSF personnel act irresponsibly and refuse to coordinate with provincial authorities and behave, in essence, as an "independent body" and law unto itself.

The BSF promise border security, self-restraint in the use of lethal weapons, fewer unnecessary deaths - which are empty promises. The organisation brings instead the gradual corruption of already weak policing systems, increased lawlessness, and an environment of palpable fear that reeks of oppression, past feudalism, and neo-colonial structures in contemporary Indian society. The BSF beast is injustice manifest that has firmly embedded itself in institutions originally construed as bulwarks against such. It is a beast that ought to be quickly rehabilitated – or permanently put down.

The Kotteguda shooting incident of Bijapur district in Chhattisgarh state is another example to the brute force used by the Indian police while engaged in active duty.[50] Ninety-six hours after the Central Reserve Police Force (CRPF) firing in Kotteguda panchayat of Bijapur district in Chhattisgarh state, the union government, and the state government of Chhattisgarh defending the incident, found excuses to justify the police action that killed twenty villagers, of which at least five are children.

The firing occurred on 30 June, when the CRPF, allegedly acting upon intelligence inputs from the state police, fired upon a gathering of villagers in Kotteguda. It is reported that unknown gunmen first fired upon the CRPF, which perhaps explains injuries sustained by six police officers who participated in the action. It is also alleged that the injuries the police officers suffered are from friendly fires. It is reported that the police officers camped in the village after the incident, molested women and children, and pillaged the village.

An inquiry was ordered into the incident. However, there is no guarantee that it would be independent. Given the numerous experiences from the past, it could hardly be an independent inquiry, and more likely the government is whitewashing of the event. To start with, the CRPF, the Union Home Minister and the Chief Minister of the state claimed that of the 20 persons dead, at least four are Maoists and that the Maoists have been holding villagers as human shields for their gathering.

The incident raises several questions. Assuming the claim that out of the 20 persons killed, it is true that four are Maoists, how would it justify the murder

50 Villagers bury their dead as Maoists & forces trade charges, The Hindu, 1 July 2012.

of 16 innocent persons, including children? What law allows the extrajudicial execution of suspected criminals, some of whom were minors, without trial? The banality with which the incident is explained-off by the CRPF and the government is such that one feels sick at the blatant negation of basic norms of justice during police actions, let alone police appropriating the roles of the complainant, investigator, prosecutor, and adjudicator. What proof exists that the persons murdered, as alleged, are Maoists? If the criminal charges against those alleged to be the Maoists is what is considered as proof warranting punishment, wouldn't that negate constitutional guarantees as to presumption of innocence, silence, and the right to fair trial?

If the allegations by the CRPF and the government were true, that the Maoists are using villagers as human shields, wouldn't that call for the state's armed forces to take extraordinary precautions during operations that they would not hurt civilians while combating armed militants. The statement reportedly made by a CRPF officer who failed to identify his name but has spoken to the media immediately after the incident, that "the CRPF could have razed the village down with grenades and mortars" and that they did not do so to prevent casualties of innocent villagers in fact suggests the lack of appreciation of responsibilities during combat by the armed units of the state - that such an event could be considered as crimes against humanity - and further, the shocking sense of triviality among officers to loss of human lives during field operations. It shows the absence of direction and commitment to protect people and property, and, in essence, the loss of legitimate purpose in field operations.

Similar absence of responsibility, most importantly concerning accountability for the lives lost is visible from the statements made by the Union Home Minister and the chief of the CRPF, Mr. K. Vijay Kumar. Both the Minister and Kumar have stated that of the persons killed, four were definitely Maoists. Without any verification, how could they so conclude? What proof do they have to make such a statement? Was there a DNA or other medical examination conducted to verify the identities of these persons? Even basic legal requirements like undertaking an autopsy examination of the deceased has not been reportedly complied with.

Is there any proof to show that those killed were in fact shot dead in an armed combat or was it the execution of a dreadful policy to shoot to kill, involving the highest offices of the country? Would the minister and Kumar assume command responsibility if the entire incident was the result of mistaken information followed by arbitrary and insensitive action undertaken with the cover of impunity?

The only explanation Kumar has offered so far is that "he was so informed by his officers" that at least four persons killed out of the 20 are Maoists. Kumar iterated that his men were following 'standard operating procedures' and have observed all operational safeguards.

Considering the incongruence between the casualty and the alleged target achieved, should there be one, perhaps it is time to undertake a thorough review of these 'standard' procedures. Or does the incident underscore the fact that many officers deputed for anti-Maoist operations in fact are petrified about the fatalities in ambushes that the force has suffered repeatedly and are willing to shoot to kill any stranger they come across?

Equally despicable is the role, played by most of the electronic media in India that have justified the incident. Most television stations have repeatedly aired misinformation, asserting that the incident is in fact a combat operation wherein those killed are Maoists, that they were armed and are using villagers as human shields. These stations are broadcasting stock shots of militant training camps and pictures of armed guerrillas, without any verificiation that the pictures are indeed what they are represented to be. There is a clear difference between what has been reported in the print and electronic media. While many print media published reasonably balanced reports about the incident with pictures of villagers having suffered blunt trauma injuries, clearly indicating assault and torture, electronic media has largely been on an overdrive to justify the incident.

This media have fallen to the bottom of the pit of irresponsibility and lack of independence, and are biased. Their nepotism was exposed when they called civil society groups "Maoist sympathisers", referring to those speaking against the brute and arbitrary force of the state agencies. They have evidently disconnected themselves from the larger civil society in the country, exposing their lack of morale and understanding of what amounts to civil society.
The distinguishable and despicable tone of reporting the event appears to connote that 'the villagers must be punished' for harbouring Maoists. The concept of collective, arbitrary, and disproportionate punishment rhymes well with deep-rooted practices of caste-based discrimination, an elemental character of many dominant caste individuals in India, of which many dominate the country's media. The pattern and timing during which false reports are repeatedly broadcast, proves that an alarming section of the country's media have reduced themselves to be spokespersons of the government. These entities cannot be referred to as 'the media'. A more fitting description would be to refer to them as government spokespersons.

The inquiry ordered into the incident is inadequate and definitely lacks transparency. The assumption that if a magistrate undertakes the inquiry, it would be independent is plain wrong. Or is it a fact that the government is aware, but would not want to bother, since all that it wants is a 'clean-up operation'? Additionally, the inquiring officer does not have any acceptable experience in working with communities in extreme trauma. In fact, such expertise should not be expected from an inquiring officer, but from professional psychologists, who are not included in the inquiry team.

The villagers who are traumatised by the event would not be in a state of mind to speak about the incident at the moment. It requires a thorough psychological approach, guarantying confidentiality and assurances that they are safe to depose before an inquiring agency. At the moment there is nothing to suggest that any of them would depose about the incident, given that they are caught between state and anti-state forces, fighting at each other, and in the process punishing the villagers in all conceivable means. In such an environment, the inquiry ordered without considering any of the above issues is nothing more than a sham.

No doubt, the Indian state is engaged in an internal armed conflict. Yet the government is in no mood to first accept that the conflict, to a considerable extent, is of its own making and that anti-state actors like the Maoists are merely exploiting each one of the state's numerous failures.

Murdering civilians, pillaging villages at random, and sexually abusing women and children are definitely not the manner in which the state could ensure security to the life and property of its people. Unfortunately, the Indian state is in a mode of continued denial that the apathy it has shown thus far to human concerns of Indians living in the remotest corners of the country has distanced a substantial proportion of the country's population from their government.

The Indian state has lost the trust of its people, most importantly of the original inhabitants of the land, who are neglected, exploited and punished before and after 1947. Murder, molestation of women, and pillage, as it is reported to have happened at Kotteguda is no way to gain it. At the very minimum, those who have lost their dear ones in the firing deserve an unconditional apology from the government. However, such things only matter to a government that cares for its people, a concept alien to Indian administration, where responsibility has always been the casualty of administration.

The then Union Home Minister, Mr. P. Chidambaram, said that he is "deeply sorry" for the death of any innocent person during the Central Reserve Police Force (CRPF) firing at Kotteguda panchayat of Bijapur district in Chhattisgarh

state. Chidambaram qualified his apology however by saying that "… if any girl, or boy or man or woman not involved with the Maoists at all has been killed, I can only be deeply sorry". The qualifier exposes the shallowness of the minister's apology, and worse is the clarity the minister demonstrably lacks as to his responsibility to the nation, its people and in upholding the rule of law.

The statement is the depiction of an alarming scenario, of the enlargement in the scope of arbitrary punishment, a self-assumed state right that could now prevail even in the absence of proof of guilt. The "sorry if" position justifies the shocking mutation in the principle of the state's unqualified responsibility to conclusively prove guilt, into that of the right to punish based on assumptions, proposed in India a decade ago by the infamous Malimath Committee.[51] This conjectural metamorphosis in state responsibility vitally negates crucial concepts of justice and fair trial and pitches justice institutions to undergo a change in their original engagement architecture through practices and not by the written writ of a legitimate parliament.

Six days after the Kotteguda incident, if the minister was still left to guess the details of the persons killed, perhaps he should have demitted office or at the very least got someone to serve at his office who could brief the minister with facts and figures of incidents concerning national security, particularly when the incident upon which the minister is called upon to assume immediate responsibility is bad enough to be quoted as yet another national shame. If the minister is still uncertain about the background of the persons who lost lives in the incident, does it not contradict the alleged certainty of the assumption upon which the CRPF acted?

The CRPF firing of June 29th is not an incident that could be written off with an apology. Lives the state is bound to protect at all costs have been lost. Had it happened in any state civilised enough to consider human lives as most precious it would have brought down the government and persons responsible for the incident would have been investigated and punished. Or was the minister suggesting that there are dispensable souls in India, in this case, the tribal community?

The Kotteguda incident was not the home ministry's family fun fair, where unintended feelings of hurt could be excused-off with friendly apologies. If the same principle is applied in the Mumbai attack case, the accused, Mr. Mohammed Ajmal Amir Kasab, could be set free should he issue a statement of apology. Legal principles apply equally to suspects, irrespective of the person's

51 Recommendations of the Malimath Committee on reforms of Criminal Justice System.

background. Being a state agent or a minister only increases the gravity of responsibility, a legal and moral principle apparently lacking appreciation at the home ministry, though the concept has been around before Prof. Michael Walzer's classic, *Just and Unjust Wars*.

The Kotteguda firing is far more serious than seeking, and if possible obtaining, explanations. What is required is proper investigation about what has happened and what led to the killing of villagers, including children. It is not an option that the government 'may' consider, but a constitutional mandate it must comply. That will require an independent agency investigating the incident. Instead, an irresponsible statement, such as the conditional apology offered, is in fact an insult upon the people and the families that are grieving their dead. Worse still is the blanket defence the minister offered to the CRPF when he said "…CRPF chief has said he has nothing to hide, nothing to fear… I do not think any central force has been so transparent …"

Indeed, with an assurance like this the CRPF would not have anything to be afraid of. The officers need to be concerned only when there is the possibility of an independent investigation about the incident. It is a mandatory legal requirement that every case of death in encounter must be investigated. It is not a concession. Had there been even just a 10 percent possibility for independent criminal investigations in India, a substantial number of state officers in the country would have been in prison by now.

Additionally, if the CRPF is the most transparent force in the country, does it imply that others are not? Can the country afford such a proposition, given the number of other armed units of the Indian state engaged in active field duty, like the Border Security Force and the Assam Rifles deployed in the northeast and in Jammu and Kashmir, where these forces are already infamous for crimes they commit with impunity? Now that the minister has admitted guilt, would there be any action to fasten accountability upon these forces? Such actions could bring down drastically the number of extrajudicial executions reported from India, and will certainly add value to the call to people living in these regions to join the so-called national mainstream.

The country's agencies are ill-equipped, morally and technically, to undertake quality criminal investigation. Had it been otherwise, there would not have been wide-spread atrocities committed against the tribal and rural communities in India, one of the reasons why militant groups have become rooted in remote regions, to the peril of the people and the country.

In fact, improving the capacity and quality of criminal investigation has never been a priority for any government, state or central since independence. Sixty-

five years of independent existence has only seen the deterioration of the entire justice apparatus in India, from where the British left, of what they constituted as procedures to administer a colony, an act that fundamentally lacked moral and legal legitimacy.

The honesty of the minister's apology would be tested in the actions that follow in the coming days. If the minister is serious when he said that the ministry is considering a thorough review of the standard operating procedures of agencies like the CRPF, it must be also based upon scientific and legal findings that would follow from independent investigations into incidents like Kotteguda.

To effect this the government has done nothing so far. The scene of crime was contaminated even before an inquiry was ordered. The government was not even able to identify the kind of weapons used, or whether there been a firing against the CRPF other than unsubstantiated statements by police officers, who said they were fired upon by muzzleloaders and 303 rifles. No ballistic expert has visited the scene to ascertain if there were shots fired against the police officers, from where such shots were fired, and what weapons were used.

Assumption is not scientific criminal investigation. Unfortunately, in the absence of will and the lack of expertise of state agencies, the conclusions in the inquiry ordered into the incident were mostly assumptions based on sheer guesswork. There are reports that the injuries sustained by the police officers in the incident are from friendly fire and from officers falling into pits due to their lack of proper knowledge of the terrain in which they were deployed.

The apology Chidambaram offered is no reflection of residual guilt. If it is not to be considered a hollow attempt to explain away the blatant negation of absolute non-combatant immunity, credible and transparent actions must follow. The minister and the CRPF that he commands should fear such actions. It is a legal constraint that the minister, his CRPF chief and other officers, down to the constable on the ground, must be subjected to. That responsibility cannot be washed-off by an apology, since none who lost their dear ones would give it more value than a spent cartridge.

The extent to which the country's justice apparatus has failed is most visible in the infamous Gujarat Riot cases. The statement by Gujarat's Director General of Police (Acting), Mr. Chittaranjan Singh, immediately after the conviction in the Ode riot case[52], 'that the conviction is a lesson for the critics of the state police as well as the state's judiciary', is disgusting, to say the least. A statement

52 Nine convicted in 2002 Ode riot case, The Hindu, 4 May 2012

will not absolve the police and the state's administration of their responsibility from preventing the riot, and further contributing to it. The 2002 riot will remain a deep scar on the psyche of the nation; just as other orchestrated communal violence that Indians have been forced to live with.

Chittaranjan certainly will not require someone to remind him that one of the alleged triggers for the Ode riot that burned 24 people alive in two separate incidents is the death of minor Nishith in the police firing on March 1, 2002. In fact, Chittaranjan's statement is part of an elaborate and pretentious state act of whitewashing the past, which ironically right now reads well with the officer's current designation, Acting DGP!

Referring to those who have criticised the judiciary, the state police, and the administration for their despicable role in the state-sponsored riot and handling of the post riot scenario, as 'impediments in the process of justice', is again an insult to the victims. The statement intentionally portrays those who critique the state and its functionaries, as being wrong always.

It also reads in an additional misinformation, targeted at civil society organisations, with an intention to differentiate human rights organisations from the victims of human rights violations. In fact, Chittaranjan is just an addition to a growing number of individuals in the country who hold an antagonistic view against civil society groups, accusing them as responsible for maligning the country. Such statements ignore the fact that no more damage could be brought to the country and its people beyond orchestrated violence. The convoluted logic is that speaking openly against injustice is more harmful than injustice itself. The Prime Minister of India is also a member of this chauvinistic club that celebrate hypocrisies of silence.

In all the cases relating to Gujarat riots, the witnesses are threatened, and in some, wrong persons cited as the accused to save the actual miscreants. Is it not enough proof to the conniving role the state police played in the entire incident? That none from the state administration, or its political elite, are charged for the crimes they have committed during the 2002 Gujarat riots are proof to the fact that the term justice is a misnomer in India.

But for the intervention of civil society organisations even this much investigation and court proceedings would not have happened. At the very least, it required a special investigation team constituted at the behest of the Supreme Court, to complete the investigation, however unsatisfactory. The state police which Chittaranjan heads and spoke about had done enough damage to the investigation by then.

That Gujarat is an example where the police undertake targeted assassinations for claiming rewards or obliging their political masters does not speak well for the state police. It reiterates the fact that the police in Gujarat, like in most of India, are nothing but uniformed criminals paid by the exchequer. This caricature of the Indian police cannot be whitewashed with the conviction in the Ode riot case. The damage that the police have done to themselves, to their morale, which is the basis of the public perception that the country's police are not more than uniformed street thugs, is deeper and requires more than a few belated convictions to change.

The fact that the trial took more than seven years to commence and the first trial judge resigned after the trial started speaks volumes about the judiciary. The delay in the process was not because of the civil society filing applications, but due to the inability of the state police to file a proper charge sheet in court. A true investigation would and should have booked those who instigated the statewide carnage. The state police cannot and will not venture into this task, since many of the instigators are top political brass of the country.

What justice is then Chittaranjan claiming to talk about?

Violence committed upon individuals leave deep wounds. When it is committed upon a community, the magnitude of it is higher and incalculable. What have the state police done to address this? Or does the establishment have even an understanding about what post violence trauma means? The state administration and the police deny admitting that the 2002 state-sponsored violence has not only adversely affected the Muslims who were the target, but has equally hurt the rest of the population who witnessed the violence and are today forced to live as part of the same wounded society without the possibility of healing.

Much has been exposed and written about the Gujarat riots of 2002. Once again mentioning that it is entirely a state creation is repetition. Of the mess that Gujarat is today, officers like Chittaranjan are merely parroting what the government would want a person in such positions to say. Had there been a true police officer in his uniform, the sentence and conviction in the case should have gone down as an affirmation by the judiciary of what his force failed to prevent. The conviction would have been understood as the shameful failure of the state and of its various apparatuses. Instead, just as it is fitting for an Indian bureaucrat, failure is considered an occasion to celebrate shameful ineptitude.

This apathy of understanding deep internal fault lines of failed accountability architecture in India is reflected internationally. The Universal Periodic Review

(UPR) in its second cycle conducted on India is the most alarming example to this.

The second cycle of India's UPR at the United Nations was held on May 24, 2012. The three countries (troika) involved in the review are Kuwait, Mauritius and Mexico. That these countries have worse records of human rights in comparison to the country they would collectively review suggests how firmly, and perhaps blindly, such processes are operating at the UN. Yet, the UPR may still be considered beneficial because it at least presents recurring opportunity at the UN for human rights organisations to flag their concerns about the country under review.

The national report places overwhelming emphasis upon the jurisprudence developed by the Supreme Court on human rights. In page 3 of the report, the government claims that the Court has initiated a "revolutionary interpretative evolution" of fundamental rights in India. It is true. What is false, however, is the affirmation that the Court's initiative is "fully supported by the [g] overnment". The evolution of the Court's interpretation of Article 21 of the Constitution encompasses the right to housing, against forced eviction, right to education, clean environment, and against forced labour proves that on each occasion someone had to approach the Court seeking its assistance and writ jurisdiction to 'direct' the government concerned toward what that government had to do. Each one of these cases highlights the failure of the state to fulfil its duties. The Court has also reiterated its authority to review both legislative and executive actions. Within the Constitutional architecture, the government is legally compelled to obey the Court's directives. Essentially, the government's 'concessionary' claim that it has 'fully supported' the Court's directives possess no inherent merit.

The absence of honesty in the government's claim regarding its compliance of the Court's directives is visible from facts on the ground. The first case cited by the government is the Naga People's Movement for Human Rights (petitioners) against Union of India and others (respondents) reported in All India Reporter Supreme Court 431.

The Court was called upon to decide the constitutional vires of the Armed Forces (Special Powers) Act, 1958, on this occasion. While maintaining that the central government had adequate powers to enact the law now held to have had the worst impact on the protection of human rights, the Court drew comparison with the Reserve Forces Act, 1980 of the United Kingdom where the government is empowered to "call upon" its reserve forces when there is a threat to the security of the nation. The Court failed to recognise, however, that the conditions in the United Kingdom (UK) and India are vastly

different. The UK could afford to have legislation such as the Reserve Forces Act because its justice institutions are far superior to those of India (in terms of transparency, accountability, resources dedicated to training, solid theoretical and philosophical foundation and an infinitely less corrupt bureaucracy), both then and now. The Court however could not be blamed in totality for this serious omission and disparity since it had not been requested to consider the misuse of the law in the infringement of human rights as it happened then and continues now.

Despite this, jurisprudential wisdom at the time warranted the Court to impose some 'dos and don'ts', none of which has been followed since. Given knowledge of the cases of human rights violations available today, one could argue that the Court failed to critically appreciate the nature of the threat the AFSPA was supposed to help diminish, the population upon which the law is thrust upon, and the possibility of enforcing discipline upon the armed units which would be protected by the impunity provided them by the law. Today, AFSPA has not merely failed to reduce or contain this violence, but has instead inflamed it. Populations in places throughout India where this law is enforced have been further alienated from the national mainstream; this is also due to the discrimination practiced against them by the rest of the country. The number of human rights abuses committed by armed units under the protection of this Act, as documented by numerous NGOs and civil society organisations, is alarmingly high. This has substantially contributed to the considerable lack of discipline within the country's armed units.

Incidents left inadequately investigated due to the absence of an independent investigating agency in the country, and the unwillingness of the government to create one, has resulted in gross human rights abuses wherever this draconian law is in use. The unmarked mass graves in the state of Jammu and Kashmir, the countless cases of rape, torture, enforced disappearances, and extrajudicial executions reported from states like Manipur stares balefully in the face of the Supreme Court's jurisprudential piety in issuing some ineffective dos and don'ts in deciding the Naga People's case.

They are of such nature that they are worth reproducing here:

Do's

1. Action …

(b) Power to open fire using force or arrest is to be exercised under this Act only by an officer/JCO/WO and NCO.

(c) Before launching any raid/search, definite information about the activity to be obtained from the local civil authorities.

(d) As far as possible co-opt representative of local civil administration during the raid.

2. Action during Operation

(a) In case of necessity of opening fire and using any force against the suspect or any person acting in contravention to law and order, ascertain first that it is essential for maintenance of public order. Open fire only after due warning.

(b) Arrest only those who have committed cognizable offence or who are about to commit cognizable offence or against whom a reasonable ground exists to prove that they have committed or are about to commit cognizable offence or against whom a reasonable ground exists to prove that they have committed or are about to commit cognizable offence.

(c) Ensure that troop under command do not harass innocent people, destroy property of the public or unnecessarily enter into the house/dwelling of people not connected with any unlawful activities.

(d) Ensure that women are not searched / arrested without the presence of female police. In fact women should be searched by female police only.

3. Action after operation

(a) After arrest prepare a list of the persons so arrested.

(b) Handover the arrested persons to the nearest Police Station with least possible delay.

(c) While handing over to the police a report should accompany with detailed circumstances occasioning the arrest.

(d) Every delay in handing over the suspects to the police must be justified and should be reasonable depending upon the place, time of arrest and the terrain in which such person has been arrested. The least possible delay may be 2-3 hours extendable to 24 hours or so depending upon particular case.

(e) After raid make out a list of all arms, ammunition or any other incriminating material/document taken into possession.

(f) All such arms, ammunition, stores, etc. should be handed over to the police State along with the seizure memo.

(g) *Obtain receipt of persons arms/ammunition, stores etc. so handed over to the police.*

(h) *Make record of the area where operation is launched having the date and time and the persons participating in such raid.*

(i) *Make a record of the commander and other officers/JCOs/NCOs forming part of such force.*

(k) *Ensure medical relief to any person injured during the encounter, if any person dies in the encounter his dead body be handed over immediately to the police along with the details leading to such death.*

4. *Dealing with Civil Court*

(a) *Directions of the High Court/Supreme Court should be promptly attended to.*

(b) *Whenever summoned by the courts, decorum of the court must be maintained and proper respect paid.*

(c) *Answer questions of the court politely ad with dignity.*

(d) *Maintain detailed record of the entire operation correctly and explicitly.*

Don'ts

1. *Do not keep a person under custody for any period longer than the bare necessity for handing over to the nearest Police Station.*
2. *Do not use any force after having arrested a person except when he is trying to escape.*
3. *Do not use third degree methods to extract information or to extract confession or other involvement in unlawful activities.*
4. *After arrest of a person by the member of the Armed forces, he shall not be interrogated by the member of the armed force.*
5. *Do not release the person directly after apprehending on your own. If any person is to be released, he must be released through civil authorities.*
6. *Do not tamper with official records.*
7. *The Armed Forces shall not take back person after he is handed over to civil police.*

That the judicial logic behind these directions has failed, and miserably so, is proved by D. K. Basu (petitioner) against State of West Bengal and others (respondents), reported in All India Reporter Supreme Court, 610. Ironically,

the government has cited this case as well in its report to showcase the prowess of the safeguards provided by the judiciary to protect fundamental rights in India. The Court's intervention in this case was due to the repeated instances of blatant violations of prescribed procedures and fundamental rights, in particular custodial killings, by the state police. The argument that the legal guarantees even civilian police fail to provide in peaceful environments and times would be provided by armed units operating in hostile environments is naivety and nothing short of laughable. The present quality of life in places where the AFSPA is enforced is proof of this. That the Supreme Court of India has declared AFSPA constitutional in 1988 should not be an excuse for the government to review, and, if necessary, repeal it.

The government has claimed that it is considering a domestic law against torture. It is true that the law was passed in the Lok Sabha in 2010. The importance the members of the Lok Sabha attributed to this law and informed nature of the debate is apparent from the long discussion on the law in the Lok Sabha. Most members complained in jest that holding them back in the parliament at 9.30 p.m. is torture and requested that the law be quickly passed. The Rajya Sabha has placed in deep freeze the Parliamentary Select Committee's review of the 625-word-long Bill that failed to even properly define the term 'torture' for the past two years.

Even members of the parliament do not know the fate of the Bill. No government worthy of its mandate would go to an international body like the UN and state that even though the government is still not serious about this law, "the Supreme Court of India, through its judgments, has … laid down exacting standards on this issue". This statement about the Court laying down exacting standards is false. There is simply no such judgment.

The Court has dealt with this issue on several occasions, most importantly in Kishore Singh (petitioner) against the State of Rajasthan (respondent) when the court said "[n]othing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts deeper wound on our constitutional culture than a state official running berserk regardless of human rights."[53] Yet torture has not been defined, as it is understood in international law. Neither does the offense carry significance particular to crimes against humanity that warrants serious investigation and prosecution. That the D. K. Basu case came 16 years after the Kishore Singh case proves this. Torture is endemic in India and there are painfully few means to change this reality at the moment.

53 1981 All India Reporter, Supreme Court 625.

The accolades showered upon the National Human Rights Commission by the government in its report need to be viewed with exceptional caution. Mr. K. G. Balakrishnan, who bears a tainted image concerning his integrity as a judge, heads the NHRC. This was reflected in the NHRC's own consultative process for the UPR. Many consultations were held where members of the army, human rights defenders, and victims were invited to the same room. Then the human rights defenders and victims of rights abuses were asked to depose against the army, which they did not due to fear of reprisal. The very same insensitivity of the NHRC, when adjudicating claims, has attracted criticism so much so that during the accreditation review process the NHRC underwent in 2011, a considerable number of Indian human rights organisations appealed to the International Coordination Committee for NHRIs to degrade the NHRC from its 'A' status.

The lobby did not succeed, yet it was one of the most embarrassing moments for the NHRC in its entire history. That the NHRC received near 100,000 complaints is no surprise owing to the poor human rights standards in India. Admittedly, expecting the NHRC to deal with so many complaints with the present limited infrastructure itself is injustice. That the NHRC disposed-off 87,568 cases in two years itself shows the quality of adjudication. This means that, excluding holidays, the NHRC has the unique capacity to adjudicate about 300 cases in each working day. This poses troubling questions about the quality of the adjudication being meted out.

It is true that State Human Rights Commissions are constituted in 20 states. However, fewer than five among these twenty states possess adequate infrastructure for day-today functioning, including independent Commissioners. Many Commissions have ceased to function as appointments to office-bearing positions critical to the commissions' operations have not made. That the NHRC has resorted to monetary compensation instead of proper resolution of the cases / grievances suggests that a meagre USD $ 6,020 has been used to "buy off" 583 victims. This fails to bring the investigations to the heart of the matter, where institutional failures have occurred, and where systemic abuses of human rights have become the norm.

Similar claims made by the government concerning child rights, the right to food, and the right to equality are equally questionable. That 42 percent of the children below the age of five in India are severely malnourished, places India lower in living standards than all countries in sub-Saharan Africa. It is not a record that speaks well of any government that 42 percent of its future population might not even live their life to the fullest, having suffered substantial and permanent physiological damage that will prevent them from developing their intellectual and physical capacities. For a country to plan an

estimated USD $ 40.44 billion outlay not to have means to rescue its children from acute poverty lacks logic. The Supreme Court of India cannot supplement the provision of nutrition with its empty judgments.

Worse still are the accusations laid upon country's civil society by its government in a report concerning the Maoist issue. The government has placed the responsibility upon the civil society organisations to urge the Maoists to join the national mainstream. The question that needs to be asked is which side of the national mainstream – whether that of the increasing number of rich upper middle-class or that of the starving 42 percent. Indeed, the country's civil society bears some responsibility to urge violent political forces to resort to democratic ways of participation.

However this is not possible without the government undertaking effort to address the root cause of the rebellion. Legislations like the Chhattisgarh Special Public Security Act, 2005, or private militias like the Salwa Judum – which the Supreme Court of India has also held illegal, but which the government continues to promote – provide no answer to the Maoist concern. If Maoism was the answer to Stalin's snubbing of China, what it fuels today in India is criminal neglect by the government of its people. The answer to this concern lies partially with the government, and it is the honesty, sincerity, and humility of that admission which is lacking in the government's report.

The UPR did not address any of these concerns. It remained a reduced space for the country's civil society to articulate and debate concerns about the people of India and their interests. What is required is action by the government on the ground. That would not come about through the government's voluntary pledge to the Human Rights Council or from the government's treaty obligations to international conventions and covenants. Nor can the administrative writ of a government, even supplemented by court judgements, result in improvement of the human rights conditions. In India, well-intentioned, but hollow and ultimately ineffective, judgements remain a desperately inadequate substitute for the good governance that will systematically and sustainably improve the mechanisms protecting human rights and standards of living.

NHRC: Paramour of State Agencies

The National Human Rights Commission (NHRC) is a specialised statutory body mandated to protect, promote, and fulfil human rights. Set up by virtue of the Protection of Human Rights Act, 1993, the NHRC is the result of India's pre-emptive commitment to United Nations General Assembly resolution 48/134 of December 20th, 1993, also known as Principles relating to the Status

of National Institutions (The Paris Principles). The affirmative vote India cast recently in support of the protection and promotion of human rights in Sri Lanka, concerning the UN resolution for reconciliation and accountability in that country, is an example to the country's commitment to human rights. India is the only country in Asia that supported the UN resolution.

Over the years, however, the NHRC and its subordinate constituents have only occasionally shown tendencies to fulfil their legal mandates. More often, the experience is the sad reality that the institution behaves as if it is just a component of an elaborate window-dressing project, which the government rolls out from time to time. The latest decision of the NHRC concerning the case of brutal execution of a person at the Indo-Bangladesh border confirms this.

The incident happened at about 5 a.m. on July 24, 2011. Mr. Mohammed Rafikul Islam, aged around 35 years, from Ufarmara village under the jurisdiction of Patgram Police Station, Lalmonirhat district in Bangladesh, was first stoned then later assaulted by the Border Security Force and killed. The BSF attacked Rafikul when he was illegally crossing the Shaniajan River near Bamdol village from India to Bangladesh. Odhikar and MASUM, two reputed organisations in Bangladesh and India investigated the incident and confirmed these facts. Dr. Motachib, Dr. Mehedi, and Dr. Biswas, who conducted an autopsy on Rafikul's body at Sadar hospital, Lalmonirhat on 25 July 2011, confirmed that Rafikul died from multiple head injuries caused by the head being hit with hard objects like stones and sticks. A case was registered at Patgram Police Station on 4 July 2011 concerning the incident and is under investigation.

The AHRC issued a related statement on 6 October 2011.[54] The NHRC considered the statement a petition and registered a case, numbered 1133/25/6/2011-PF. The NHRC then directed the petition to be inquired by the Director General of the BSF. The DG BSF filed a report, dated 4 January 2012, to the NHRC. The report mentions a squabble between the BSF and the Border Guards Bangladesh (BGB) on 4 July 2011 concerning Rafikul's death. The NHRC's order also mentions a protest note sent by the BGB to the BSF concerning Rafikul's death, and a reply sent by the BSF to the BGB. The NHRC received a copy of both these letters, accepted the refusal of the incident by the BSF, and dismissed the complaint.

54 INDIA: BSF stones a man to death, AHRC-STM-138-2011.

Neither does the order indicate the lack of an independent inquiry, nor has the NHRC itself undertaken an independent investigation concerning the incident. This, however, is not the first instance where the NHRC has concluded cases without independent inquiries. The AHRC and MASUM are on receipt of many such decisions from the NHRC, concerning cases that they have brought to the Commission's attention. In addition, Section 19 of the Protection of Human Rights Act, 1993, does not permit the NHRC to issue an order 'acquitting' the BSF in a complaint. Upon receipt of a complaint concerning the armed forces, the NHRC must call for a report from the 'government' concerning the incident, and decide what actions it should follow. The NHRC could then either decide to recommend to the government actions that should follow or drop the case. 'Acquitting' the respondent is no option and the BSF is not 'the government'.

Over the past ten years, MASUM and AHRC have transmitted to the NHRC about 300 cases of custodial violence from West Bengal. At least 88 of them concern extrajudicial executions reported just from the West Bengal state. Most of these cases have been treated by the NHRC in similar fashion, which only confirms the understanding that the NHRC does not have adequate investigative apparatus or initiative to constitute the same and entertains complete indifference to protection of human rights.

In several cases, the NHRC palms-off the case to the state human rights commissions, which in states like West Bengal only has an 'acting chairperson' since the past four years, or which in some states is non-functional due to long pending appointments. A well-known allegation is that the West Bengal SHRC is a farcical institution that has sought and appointed members to fit political interests rather than their human rights commitments.

The Protection of Human Rights Act, 1993, provides enough authority to the NHRC and its state components to undertake investigations concerning complaints of human rights abuses. Just like a civil or criminal court, the Commissions could seek and obtain reports, undertake independent investigations and summon and examine witnesses. In addition, the Commissions could also study treaties and legislations and advise the government, measures to be adopted to fulfil human rights mandate, as per the constitution as well as the country's treaty obligations under international human rights law.

Over the past years, the NHRC has consistently proved that it is ineffective in protecting, promoting, and fulfilling human rights. It has repeatedly failed to protect human rights defenders at risk – an alarming concern reflected by the UN Special Rapporteur on the situation of human rights defenders, in her

report to the 19th Session of the UN Human Rights Council. A consortium of human rights organisations in India and abroad, including the AHRC, has raised this issue when the accreditation of the NHRC came up for hearing in 2011. This is reflected in the Chairperson's stand promoting capital punishment, which was condemned by human rights organisations.

Section 18 of the Act empowers the Commissions to make recommendations to the government, or to any other appropriate body, as to the measures to be taken to address a human rights issue. The Commissions could initiate prosecutions should they find it appropriate. Contrary to common belief, Section 19 of the Act empowers the Commission to initiate inquiries concerning allegations of human rights abuses by the armed forces.

Yet, all of these powers are of no use, should the Commissions, as it is in the case of the NHRC, according to the experience of the AHRC and MASUM, decide to be inactive, insensitive, and biased, favouring the state and its agencies. The travesty and inattention with which the NHRC initiates complaints is evident from its consideration of everything that it receives from an organisation as a petition.

The AHRC on December 9, 2011, issued a statement concerning the conviction of Mr Filipp Kostenko, a human rights activist in Russia by the Kuybyshev district court in Saint Petersburg.[55] The NHRC along with thousands of others in the AHRC's mailing list received the statement. The NHRC however considered the statement a petition, numbered it 181542, proceeded to hear it suo mottu, and not surprisingly dismissed it on January 17, 2012, 'in limine'. Waste of time and resources due to lack of professionalism and commitment to work are its defining operational features.

The NHRC's order in Rafikul's case however has a different dimension as well. The NHRC could have dismissed the case due to lack of evidence at most, though it did not bother as usual to attempt to collect and appreciate any evidence. Instead, the NHRC has 'found' that the BSF is not responsible for Rafikul's murder, indirectly meaning that the petition is concocted. The intriguing question however is – based on what did the NHRC come to such a finding? There is no reasoning attributed in the NHRC's order.

If one is to assume that the NHRC's reasoning is based on the report filed by DG BSF, then there are a few questions one could ask. What is the rationale of the NHRC to conclude that a statement provided by the respondent in a

55 RUSSIA: Kostenko trial, a ghost from the communist past, AHRC-STM-209-2011.

case is always true? If that is the case, then why should there be an NHRC in the first place? Whenever the victims approach the BSF with a complaint, it is a similar report that the BSF provides to the victims, accusing them of fabricating complaints. So how is the NHRC different from the BSF or other state agencies?

Does the NHRC have a different understanding about the term 'independence'? Most people who approach the NHRC are the poorest of the poor. That is precisely why the procedures for filing a complaint before the NHRC are kept simple. Additionally, a substantial number of cases filed at the NHRC are against the government. The NHRC has a legal as well as moral duty to ensure that a thorough inquiry is undertaken in every complaint that it receives, and adjudication undertaken with absolute independence, legal norms the institution is expected to uphold. Should the NHRC lack resources to undertake this, it is the duty of the NHRC to demand it from the government. It equally has a legal responsibility to monitor and correct if required the functioning of the state human rights commissions. Instead, what is visible so far is nothing more than quackery in the name of justice.

Stifling the Whistleblower, by Law & in Action

On 10 May 2012, the District Magistrate Barwani in Madhya Pradesh state issued a "show cause" notice to human rights defender Ms. Madhuri Krishnaswami asking her why actions should not be initiated against her under the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 (Madhya Pradesh State Security Act), to expel her from Barwani and six neighbouring districts. The notice was served to Madhuri and the organisation - a people's movement with thousands of families as members - at the same time that the Indian delegation, led by the Attorney-General of India, Mr. G. E. Vahanvati, addressed the United Nations' Human Rights Council on India's human rights commitments.[56]

The Madhya Pradesh Rajya Suraksha Adhiniyam, often referred to as a black (draconian) law, has questionable premises concerning its enactment, a fact proved from the pattern of its enforcement. This law allows the executive magistrate unbridled powers to curtail the civil rights of a person. The executive magistrate, after a summary proceeding, may

(i) restrict the movements of a person;
(ii) restrict the person from entering any place within his jurisdiction and

56 Report of the Working Group on the Universal Periodic Review, A/HRC/21/10, 9 July 2012.

places 'contiguous' to the magistrate's jurisdiction, which usually implies the entirety of the state;
(iii) impose conditions upon a person as to contain the person's freedom of association and communication;
(iv) dispossess the person of the person's property; or
(v) require a person to sign a security bond.

Worse still is the statutory prohibition in the law (vide section 9) that restricts the options available to an aggrieved person, by order of an executive magistrate, to appeal only to the state government. This limits the jurisdiction of the courts to intervene only where errors are apparent in the procedure followed by the executive magistrate as specified in section 10 of this law.

This law contravenes constitutional guarantees. The state, in the absence of any proclamation of emergency, could exercise its powers through a state agent (in this case, the executive magistrate who is not a judicial officer) to restrict the civil liberties of a citizen. The law crucially assumes that a person served a "show cause" notice has committed an offence; this leaves only one option for the person so blindly charged.

This is a summary procedure, where the law does not require the adjudicating executive officer to write a reasoned-out order. Here again the law breaches yet another elementary proposition of justice, where the prosecutor and the adjudicator are the same. Put simply, this particular law breaches two fundamental principles in criminal law: (i) presumption of innocence and (ii) impartial adjudication. This law is, as such, prone to misuse – the notice served against Madhuri and JADS is but one example. The AHRC believes that this law is not yet adequately questioned and would certainly fail the test of constitutionality.

It is reported that the executive magistrate who has served the Madhuri and JADS the show cause notice is acting merely on the dictates of the state's government, which has decided to use the Madhya Pradesh Rajya Suraksha Adhiniyam against the work of peoples' movements such as JADS. The government states that the 'compelling causes' that lead them to exercise this law against the JADS and Madhuri are certain criminal cases registered against the organisation over the past several years. However, to date, the courts have dismissed all these cases.

It is also alleged in the notice that the organisation has been "obstructing" government-sponsored development work in the state. These accusations are baseless. The organisation has instead been insisting that the state administration ensure its welfare schemes are properly implemented and weed-

out corruption in the implementation of these schemes. The movement has been working to ensure that the benefits of these government schemes reach the tribal communities who are the rightful beneficiaries. The JADS is engaged in educating its members and the extended tribal communities in support of their rights.

The fact that informed citizens question government servants has irked not just the district administration, but the state government as well. The JADS strives to ensure dignity of the indigenous people, women and children in particular. The organisation has spearheaded protest gatherings when the corrupt district administrators have siphoned money from the poor who did manual labour under the national rural employment guarantee scheme. It has organised protests against the neglect of the district administration of tribal communities. It works with the victims of human rights abuses who have complained against forest officers who molest women, steal from tribal hamlets, and demand bribes from the tribal communities in exchange for allowing them to live peacefully. These are searing issues of oppression that a corruption-ridden and inept administration would not appreciate. Unfortunately, legislations like the Madhya Pradesh Rajya Suraksha Adhiniyam compose the manner in which the administration responds to such calls for accountability. Under this law, any and all calls for greater accountability and transparency could be termed "anti-state" or "a threat to national security"; this results in a reduced space for dissent and expressions of a desire for true democracy in India.

The process adopted by the state concerning JADS has now become an ingrained pattern of state oppression of people's movements in Madhya Pradesh. On at least five occasions, the state government has followed this pattern of registering a series of false cases against social and political activists and later serving them "show cause" notices under the Madhya Pradesh Rajya Suraksha Adhiniyam so their activities could be legally and "legitimately", albeit unconstitutionally, stopped. Some of these cases have been withdrawn by the state administration, whereas others are fought out in courts. The law is claimed by the government to be necessary in the prevention of organised crime, yet it serves, instead, to generate organised civil resistance, the suppression of which could end in widespread civil unrest. Thus, ingloriously dissected, such an Act is an act indeed, a performance or miming of law which permits puppets in the administration to move, wave and bow according to the insecurities of the government not robust enough to engage in public debate.

If the magistrate under instructions from Bhopal is to proceed with the notice served upon JADS, the officer will have to forcefully evict at least a few thousand families from their homes for them to remain outside Barwani and six neighbouring districts. The impossibility of the process will force the magistrate

to target a few individuals representing and or leading the JADS, exposing the actual absence of justice in issuing the notice and initiating proceedings against JADS in the first place.

The case against JADS is not an isolated incident. It is yet another example in a long chain of state-sponsored assaults upon democracy, rule of law, and the collective wisdom of the people. The JADS is an organisation working for the rights of the indigenous communities and against corruption, deforestation, malnutrition, and forced eviction, and it is the collective voice of protest by the people against systematic injustice meted out against them by governments for the past 14 years. To term legitimate protests and organisations as organised crime is itself a criminal act, one that denies the inherent dignity of the Indian peoples and their voice.

Police Reforms: Waiting for Godot

If a police officer decides to make money illegally, what would the officer do? There are many well-trammelled ways the officer could go about this, including, but not limited to, seeking bribes, illegally registering and compromising cases, or collecting protection money from people and businesses. In all of this, irrespective of the mode, the officer is selling the officer's uniform, figuratively. However an incident reported from Kerala suggests that a police officer did sell his uniform, literally.

Mr. Hassan Kutty, Assistant Sub Inspector, attached to the Karimannur police station of Idukki district in Kerala sold his uniform to Mr. Beeran for 50,000 rupees. Beeran, wearing the uniform and posing as a police officer from Kerala, robbed Mr. Moideen, a businessman near Ukkadam bus stand at Coimbatore in neighbouring Tamil Nadu state on September 25th. When the 'act' was exposed, Hassan Kutty was suspended from service.The incident however is not handled with the seriousness it deserves. In all likelihood, Hassan Kutty will soon be reinstated, since a proper investigation in this case is not expected.

In that, police in Kerala is no exception to the rest in the country. Police officers with serious criminal charges like murder, rape and abduction against them are in service throughout the country. Cases of police torture and other forms of brutal custodial violence reported from India also suggests that a considerable number of officers in fact suffer from serious psychological conditions and that these officers use brute and perverted forms of violence against the people and are unfit to serve in any law enforcement units.

The entire establishment is in fact misused and the officers let it be so, by those who wield financial, political, and religious influences. The country's political

elite believes that the police must implement the writ of the state by force and creating fear. This requires allowing and cultivating a culture of impunity for the establishment. It is for this reason there is no attempt in India to create a legislative framework that is able to deal with criminality and professional misconduct among law enforcement officers.

Crime control in India is thus reduced to maintaining order, without a just legal framework. The limited scope offered by the Criminal Procedure Code, 1974, is negated in all possible means. Due to this redundant approach to policing, police service has remained one of the least reformed state institutions in India.

It is reflected right at the inception into the force itself. Candidates offer, and selecting agencies accept, huge sums of money as bribe to obtain a job in the police. From then on, for everything else, officers must bribe politicians and senior officers. This includes transfer and promotion, or to obtain officers' quarters, or to get a 'good service' entry in the service book.

The fate of most disciplinary proceedings against officers is decided according to the bribes demanded and paid to senior officers and often to politicians. Even if an officer is suspended from service, the proceedings could be easily revoked, if bribes are paid at the right places.

It is reported that at the moment, the bribe paid to obtain postings within Delhi city limits as an Assistant Commissioner of Police is 40-50 lakh rupees. It is natural that these officers who pay right from their entry into service to everything else maintain no morale at all. It is quite nigh impossible in India to be a police officer with morale, as there is no environment in the forces that can mould and maintain officers with professionalism and integrity. Officers across the country use the filthiest of language, even in their wireless communications. Anyone who has overheard messages passed over a police constable's wireless devise can vouch for this.

The absence of professionalism in service is not, however, limited to use of foul language. It is common for senior officers to abuse their subordinates in some of the most inhuman manners. Officers lack respect for each other and, in particular, the subordinate officers treat their seniors as spineless criminals and with utter disrespect. Worse is the treatment meted to civilians inside police stations. Most police stations in India resemble frightening dungeons from the medieval period.

Officers lack basic skills and equipments to undertake criminal investigations. Most criminal investigations begin and end with a confession from the suspect,

extracted using torture. The practice of torture is so rampant in the country that a police station where torture is not used would be an exception.

In fact, most police officers do not know that torture is a crime against humanity. Irrespective of rank, officers believe that they have a legal right to torture suspects and in fact many do not know how to undertake a criminal investigation without torturing suspects. Many Magistrates also believe that a police officer torturing a subject is an acceptable form of investigation.

It is due to these reasons that conviction rate in India is a dismal four to six percent. The attempt, however, is not to modernise the police, but to shortcut jurisprudential fundamentals on the pretext that at the moment the criminal law is unevenly pitted against the prosecution, and is favouring the accused.

It is this rotten institution that is expected to police the largest democracy of the world. Unfortunately, the present state of policing in India is incompatible with the concept of fair trial and hence with democracy.

Despite all this, the country's judiciary once in a while underlines the fact that there is something fundamentally wrong with the police in India. On November 7th, 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 … [u]ntil it happens to their families, they cannot understand".

The courts in India, including the Supreme Court, on several occasions have lashed out at the police and other law enforcement agencies in the country, each time expressing concern for 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 Inspector General of Police, who have criminal cases against them, and are still in active service.

The report submitted by the Director General of Police in Kerala to the High Court on August 8, 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 in the list is that of an officer of the rank of the 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 delivery 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 61,786 complaints made against the police in 2011 in the whole of the country, only 916 policemen were charge-sheeted.

Human rights organisations like the 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 that of corruption, the widespread practice of torture, and other forms of custodial violence, substantiate this concern. The AHRC has been calling upon the Indian authorities to address with immediate effect the resultant moral wilt within the police as well as other law enforcement agencies, which has led to the breakdown of the day-to-day administration of criminal justice in India.

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 it does 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. Balasubramaniyam, 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, crimes committed against fellow police officers by local thugs, after demanding and accepting bribes from these 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 that died as a result of the assault. That such demeaning and corrupt practices are highly prevalent among the rank and file of the state police department, not only negates every legitimate purpose of criminal investigation, but also encourages all officers to be corrupt within the force.

In this case too, unfortunately, the Government of Kerala is reportedly refusing to take action against the errant police officers due to illegal and political considerations. These incidents are not rare in India, but rather the standard conduct of police officers, that 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. Police force in India, which by now has been reduced to 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 job for the powerful and rich with the least amount of persuasion and they are willing to illegally manipulate investigations into corruption and other crimes. While high-ranking police officers often sell their uniforms to the country's corrupt political and financial elite, the lower-ranking officers extort money from ordinary people, by engaging in crimes like extortion and fabrication of charges, or even by undertaking smuggling.

The police and all law enforcement agencies, to extort bribes from detainees and suspects, use 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 the country's administration is yet to admit to, forget about 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, incapable of discharging everything that is 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 legislations in India, which allow the police to arbitrarily take action against innocent members of the public.

The police, to sidestep the rule of law guarantees, use all the above legislations, without exception, and in so doing, the other procedural restrictions, built in into the Criminal Procedure Code, 1974, to prevent misuse of authority, is today meaningless. Today, the police could illegally detain, keep in prolonged custody, and even murder people with absolute impunity. This negates the fundamental premise of fair trial.

All these legislations, 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 this mindset of the government is that the law enforcement agencies are conceived as organs to maintain order at the expense of awarding arbitrary authorities to the state agencies, who subject these laws to wanton misuse since the agencies implementing these legislations 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 would not be untruth.

It is not that exceptions to this general perception do not exist in the rank and file in the law enforcement agencies. It is only that the number of such officers is far too low, that 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.

Caste & Gender Discrimination Thrives

India, the largest democracy in the world, today is slowly becoming the worst democracy in the world. The notion of democracy in the country today has shrunk to just voting once in five years, and that is if one still does so. Otherwise the state today is nothing less than dictatorship, a dictatorship of the select few politicians or political families who believe that they can do

anything and get away with it, who believe that the common man has no right to question them or their actions.[57]

This only becomes more apparent when it comes to the state of women and girls in the country. A lot of lip service, big promises that sounds like ranting but at the back of it nothing concrete, no change; it just continues to become worse. Almost every woman in the country today feels unsafe, unprotected, barring the few who have the whole security system running around her, twenty-four hours of the day.

There is not much respect for women that one sees either in the behaviour or the thinking of the politicians or ministers today. Recently, many of the ministers or ex-ministers have been making statements about women, which are just not sexist but utterly derogatory and humiliating towards women.

Minister for Coal, Mr. Sriprakash Jaiswal, in a poetry meet in a women's college in Kanpur, comparing a victory in cricket with a marriage said, *'jaise jaise samay beet-taa jata hai patni purani hoti chali jati hai, woh maza nahin rehta hai* (with the passage of time, wife does not remain much of a fun)'. One doesn't need to think what a man like him perceives women as. For him marriage and a game of cricket are one and the same. To make mockery of women and their status in not just your personal life but in the society, only reflects the thinking and belief systems of these men and their political parties today. The political leaders make such comments because of the belief that it is ok and they can get away with it. The political parties also do not do anything about it till the media highlights it and there is uproar. After there was such an uproar over his sexist remark, he was asked to apologize by his party command. He then apologized but in the most unapologetic way. What is important here is that he had to be asked to apologize and then he did it defending his remark by saying it was taken out of context by the media. In the whole apology one could not see any form of shame or guilt or any change in the attitude towards women leave alone feeling sorry about saying something derogatory.

Few days before the above incident, an MP representing the Bahujan Samaj Party, Mr. Rajpal Singh Saini said, 'women and girls should not be given mobile phones because it distracts them and only invites trouble'. Then he went on to add, 'my mother, wife, sister and daughter have never had a mobile phone and they are fine. When they have something 'important' to talk about they ask for the phone and I give it'.

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57 Contributed by Dr. Nidhi Mitra, and published by the AHRC as an article titled INDIA: *Politicians and the status of women in India*, for details kindly see AHRC-ART-117-2012.

One can clearly see who decides what is 'important' here. Obviously the women have to first explain what is 'important' that they need to talk about and to whom and then if only he deems it important enough can they use the phone. So in the process the basic right of a woman to have free communication and the right to decision-making is curbed and controlled by the men in the family. These politicians then carry over these attitudes and beliefs to the public where they advise the public on what the status of women should be in homes and in the society.

Recently, in the wake of seventeen cases of rape reported in one month in Haryana, out of which a large number of victims are dalit girls, the Congress spokesperson in Haryana, Dharam Veer Goyat said, 'in ninety percent of rape cases the girls accompany the accused of their own free will'. This then makes ninety percent of rapes, not rapes but consensual sex? If a girl accompanies a boy does it mean that she is giving him the right to rape her? Of course, accompanying someone and getting raped are two entirely different things.

By making such a statement, Goyat is trying to put the onus on the girls for getting raped. This is victim blaming and is used by perpetrators to gain control over their victims and not feel responsible for the act of crime that they commit. Such statements by political leaders made in public clearly show their and their party's beliefs and perceptions about women and how women are responsible for the crimes committed against them – which further leads to victim blaming by the society and the law itself as then these girls have to prove harder that they were not responsible for the rape committed on them by the perpetrators. Many of the victims give up fighting their cases in courts because they find it extremely painful and humiliating to go on proving their innocence when in reality it should be the perpetrator trying to prove his innocence.

The former Chief Minister of Haryana, Om Prakash Chautala, went over the wall in giving a solution to the most heinous crime known to mankind. He said, 'in Mughal times to save their daughters from the Mughal emperors and their atrocities, people used to marry off their daughters at a very young age. Therefore, he agrees with the khap panchayats of today that the girls should be married off at an early age and therefore the legal marriageable age of girls should be brought down'. Does he mean that married women do not get raped? Or that marrying off minor girls, does not effectively amount to child rape? Will it really stop the crime or does it mean that to curb a crime it is ok to commit another crime? Again, after an uproar over his stance on the khap panchayats, he retracted the statement saying it is the khap panchayats' suggestion and not his point of view. Why would one make such statements in the first place if they were not ones points of view?

Obviously, for political gains. And if that means one needs to derogate or humiliate women, it is considered okay. The belief that women are to be blamed and curbed for all wrongs committed against them comes out very strongly and clearly in such politicians and their political parties as well. If the parties and their leaderships had strong and clear commitments towards respecting women and women having equal status in the constitution and the society, such deplorable incidents would not take place. If the politicians know they cannot get away from their misdeeds by simple apologies and retractions, and that they would have to face strong action for making a mockery of women and their status, then they would more careful.

One is not surprised to hear such comments from Haryana, a highly partriarchal society. However, it is very painful for victims and their families to have to endure the blame for getting raped, as if the victims asked for it. But it is not just in Haryana, but virtually all over India that whenever a man rapes a girl, or violates any woman, she is blamed for it. It is the mind-set of the society at large that believes in blaming victims for crimes committed against them, as it then reduces the sense of responsibility and guilt on the part of the perpetrators and society at large. Such attitudes bring in more apathy and inaction towards victims, in society, and in the law itself, as the people forming and maintaining the law also come from the same society and carry such beliefs.

Congress party president, Sonia Gandhi made a visit to the family of a victim, a dalit girl who committed suicide by immolating herself after she was gang-raped, and commented that 'this is a barbaric act and strict action should be taken'. When asked about the inaction of the Haryana Government on the incident, she said that 'rapes are reported from across the country and not Haryana alone'. Comments like this only add further to the apathy and the inaction towards curbing crime. Is it enough to visit victims, because there is uproar, and say it is wrong and should not happen and strict action should be taken? What about actually taking stringent actions and making sure the perpetrators are punished and not able to get away easily. Why is law not enforced to its full capacity to protect the girls and every citizen of the country? It only shows that as long as there is apathy and lack of respect for law and only blame and counter-blame and no responsibility, nothing much is going to change in the system and women will continue to get degraded and humiliated.[58]

After the sexual assault upon a woman in Guwahati, Assam, in July, a shocking event the national media in India competed in telecasting, and the despicable

58 Id. from the beginning of this section till this page.

'culture' discussion that followed, the country scored again, internationally, for similar criminal conduct by Indian men.

Impelled by sexual lust and contempt to women, the members of a youth delegation that travelled to China misbehaved with Chinese women during their cultural and diplomatic mission. The members of the delegation that returned to India on July 21st were questioned for their misconduct. Understandably, no punitive action followed, since those accused of committing this despicable crime are some of the most privileged in the country, and worse, are protégées of the country's various political parties - left, right, and centre included.

According to some members of the delegation and Indian diplomats, Ms. Nita Chowdhury, Secretary from the Ministry of Youth Affairs and Sports, had to warn the delegates during their 10-day trip to China that they would be sent back mid-way through the visit if they did not improve their conduct. The Secretary must have been aware of her 'jurisdictional' limitations, since had she, for instance, reported the incident to the Chinese authorities formally as required by law, the Secretary would have had to face worse adverse consequences at home. Perhaps what would be more discussed in India then would be how the Secretary hurt national pride, rather than how members of the delegation harassed women in China.

The delegation, all of them reportedly under 35 years, included students from the Nehru Yuva Kendra Sangathan (NYKS), members of youth wings of political parties, and representatives of Panchayat Raj Institutions. It is reported that many members of the delegation used sexually abrasive language against Chinese women and attempted to physically molest them. The women were assisting the delegation with translation and logistics in China. So much for the alleged future leadership of India and the national culture they represented in a neighbouring country.

Both these incidents, in Guwahati and in China, are tell-tale and vivid examples of how women are treated in India. It is no exaggeration if one were to argue that the country treats its women as chattel, mere objects of labour and sex, and as personal cooks at home. It will take more than sari-clad politicians and presidents to change this.

The statement "women's fashion, lifestyle and conduct should be in accordance with Indian culture ... women should not wear clothes which provoke others (to misbehave with them)" by Mr. Kailash Vijayvargiya, a minister from the Bharatiya Janata Party (BJP) concerning the Guwahati incident is mere ratification of what the Chairperson of the National Commission for Women

(NCW), Ms. Mamata Sharma said earlier this year. The NCW is the national body in India mandated to safeguard and promote women's interest. Both statements represent the dominant opinion in India about women.

Whether these persons have legitimate mandate to represent the country, much less its women and culture is a genuine question. Those who represented India in China and made use of the opportunity to approach women with their home grown detestable personality abrasions were acting out what they learn and practice at home. In that many Indian men in the delegation must be in fact wondering what is there in their conduct for the women to complain about in the first place?

Ill-treating women, parading a victim of sexual violence in the media included, is in fact a crime. Unfortunately, among many other abrasions, impunity writs large in Indian culture, as in caste-based discrimination, for instance. Impunity is inbuilt into social values in India promoted by deep caste prejudices that have transcended religious boundaries. Caste-based discrimination is practiced within all religions and political parties in the country. All of them without exception treat women with least respect. What was witnessed in Guwahati and China are thus expressions of true Indian culture.

Discrimination is, however, not limited to gender. It continues to get strikingly reflected in the practice of caste-based discrimination in India. For instance, the AHRC has documented caste-based discrimination in the implementation of the Mid-Day-Meal scheme in Maregaon Village of Tehsil Gadarwara, Narshingpur, Madhya Pradesh.

The monstrous failure of provincial authorities to distribute such welfare to those most in need is believed to be a reaction to a specific decision by the Ahirwar community to abandon the oppressive practice of carrying the carcasses of dead beasts imposed on them by the varna (upper) castes. Instead of actively resisting pervasive stereotypes of caste, the local government itself perpetuates parochial prejudices long rendered unconstitutional and commits acts of discrimination punishable by law.

The deprivation of adequate food, water and employment necessary to a person's health and well-being, to a person's right to life and to his or her inherent dignity is a crime against humanity. The provision of such is a responsibility that falls to the state.

An investigation by the AHRC on May 2, 2012, in Maregaon Village of Gadarwara Tehsil of Narsinghpur district, uncovered the following details. Maregoan Village has a population of approximately 2000 individuals. Out

of these, 100 families are of the Ahirwar community. Dalits make up most of the agricultural labourers in this area, where Ahirwars (Chamars) compose a majority of the Dalits. The Ahirwar are classified as a Scheduled Caste in India. Ahirwar are spread across Gadarwara and in nearly all adjoining villages, playing an important role in the socioeconomic activities of the region. The Lodhi community in Maregaon village belong to what is termed in India as the 'Other Backward Class' (OBC). They own farmland and generally hire Ahirwar to cultivate their fields.

Division of labour in the community has resulted in the imposition of certain menial and lowly occupations upon the Ahirwar. For centuries, the Ahirwar have been tasked to do "dirty" jobs such as carrying the carcasses of animals. Despite the necessity of such workers, and for forcing them to take up such jobs, the Ahirwar are seen as being polluted by death and greatly despised. The Ahirwar are made to live in a hamlet separated from the main village.

In 2009, the Ahirwar Samaj Mahaparishad built a consensus among the Ahirwar community to abandon the practice of carrying the carcasses of animals and shake-off the label of "untouchable" imposed by the dominant castes. This decision was first acted upon by three or four individuals and was soon claimed by other Ahirwar. In response, individuals from dominant castes began a social and economic boycott against the Ahirwar. The Ahirwar were not permitted to pass through the village and were forced to take a longer route in order to travel to other villages. The Ahirwar were prohibited from taking rations from the local shopkeeper; even the local milk vendor was intimidated by the Lodhi into not selling milk to the Ahirwar. The Ahirwar were even more cruelly persecuted through the denial of water from the hand pump located near the village temple. Prior to their decision to abandon the practice of carrying animal carcasses, the Ahirwar were still permitted to use this hand pump because there had been two at the time and the villagers were not facing a shortage of water. Today, the Lodhi have fenced in and put wire around the temple and areas surrounding it – this includes the hand pump the Ahirwar depended on for their water. In addition to such mistreatment and deprivation, the Ahirwar were further prohibited from using water from a communal water tank. This tank was also fenced in with wire by the Lodhi. The Ahirwar's cattle were also not permitted to partake of water from the tank. The Ahirwar face a severe shortage of water at this present time.

Children of the oppressed castes are forced to clean the school while children from dominant castes are not. The school also discriminates through seating arrangements in class. To exacerbate the situation, the cook engaged in preparing the Mid-Day-Meal in Maregaon Village is a Lodhi. Despite efforts by authorities to relieve malnutrition in the area by implementing a Mid-

Day-Meal scheme, the Ahirwar children who most require the sustenance are discriminated against. They are served only leftovers, if there are any, and the food is given to them from a distance. The Ahirwar children are also forced to bring their own plates while other students from the dominant castes are served from plates provided by the school. The children from the Ahirwar community are also fed insufficient amounts of food and punished for asking for more. Instead of the social, economic and intellectual progress that might be expected in the world's largest democracy, Madhya Pradesh looks increasingly like Dickensian London: "please, sir, I want some more." Will the authorities intervene, or participate in the silencing of such cries for help by refusing to intervene?

Finally, the investigation exposes shockingly poor implementation of the apex court's orders concerning the government food, employment, and welfare schemes to prevent hunger and malnutrition among the people of Maregaon Village. Central to this failure has been the wrong identification of Below Poverty Line (BPL) families. Of the more than 100 Ahirwar families who conduct manual labour for a living, only 20-25 families have been issues the BPL card. Many live in terrible conditions and should be included on the BPL list. Most Ahirwar are thus deprived of the benefits of the government scheme that targets BPL families. The Ahirwar have job cards, but only two to three individuals have found employment under the MNREGA[59] scheme, while the rest languish, unemployed and "unemployable" due to their caste affiliation. So far local officials have not acted to discipline such blatant acts of discrimination and assure the Ahirwar of protection against future abuses.

Equality is one of the fundamental quotients to guarantee gender rights. It is one of the foundation stones of all rights. Unfortunately in India, equality, whether legal or cultural, is not a norm. In a country where the justice apparatus is in a dysfunctional state, where manipulation is possible at all levels, rights, gender included, do not make any sense. A right that cannot be sought and realized, translated into quantifiable and achievable guarantees in life, is no right at all.

Engendering equality is impossible without the architecture of justice. Today, the country's justice machinery, particularly the police, prosecution, and the judiciary are a far cry from what such institutions ought to be in a democratic framework. So much so, getting posted at what is called a 'women's cell' in the police is considered punishment since the possibilities of demanding and accepting bribes is the least in such positions. This is not to say that the

59 Mahatma Gandhi National Rural Employment Guarantee Act.

parties who approach the women's cell would not pay a bribe. For a woman to approach police in India can be a life-threatening affair in India. It's just that there is less money to be made here.

Police stations, the very institution maintained by the public exchequer to assist a citizen to seek and obtain her right is one of the most unsafe places in the country. Veteran women's rights activists in the country would agree with this conclusion. Yet, there is hardly any concern in India. The gender rights movement that has lobbied and worked to bring about commendable legislative changes in the country with a view to ensure gender parity has avoided debating the despicable nature of the justice institutions. They have, however, on occasions, taken law into their own hands.

The so-called mainstream anti-discrimination movement in the country has ignored the singular and unique protest of Ms. Irom Chanu Sharmila of Manipur. For the past 11 years, Sharmila's fight to ensure equality has found hardly any assuring resonance from the equal rights activists of the country. One cannot find fault with those who allege that for the majority of the equal rights activists in the country, equality is interpreted as an analogous continuum of racial and regional discrimination practiced for the past 65 years against the people of the northeast. Those who speak about Elizabeth Smith Miller and Lucy Stone in India would not even know who Sharmila is and what she is protesting against.

In countries where equality is protected and cherished as a norm, gender-based discrimination is today considered an exception. In a country like India where inequality is the norm - caste based discrimination being but one example - gender rights speak is mere empty rhetoric. Rhetoric, however, assures no rights.

The Question of Right to Food

Yet another shocking revelation of 2012 was that of private companies found to be engaged in stealing food earmarked for welfare schemes aimed at arresting malnutrition, which is the biggest 'national shame' according to the Prime Minister Manmohan Singh and a 'humiliation like none other' according to President Pranab Mukherjee.

The only thing that is more shocking than the revelation is the enormity of the loot from one of the flagship projects of the incumbent United Progressive Alliance government. The companies have stolen more than INR 1,000 Crore, or USD $ 185 Million in the state of Maharashtra alone. A report estimates the total amount all over India to be close to INR 8,000 Crore and finds that all

this is done in direct contravention to various orders of the Supreme Court in the Civil Writ Petition 196/ 2001 (PUCL vs. UOI).

The findings are from the report of Biraj Patnaik, Principal Adviser, Commissioners to the Supreme Court, submitted to the court with reference to SLP (Civil) No. 10654 of 2012, in the matter of Vyankateshwar Mahila Auyodhigik Sahakari Sanstha v. Purnima Upadhyay and Others, listed along with Civil Writ Petition 196 of 2001 (PUCL v. UOI). The report explores the iron grip maintained by the private profiteers in collusion with the vested interests entrenched in both political and administrative hierarchy and traces the modus operandi they use to siphon-off rations earmarked for the millions of starving Indians.

The report shows how private companies had usurped the supply chains of the Integrated Child Development Scheme (ICDS) by floating fake 'mahila mandals' (women collectives) which are in fact nothing more than fronts of their private for-profit operations. The usurpation clearly contravenes the clear-cut and binding order of the Supreme Court delivered on December 13, 2006, that directed Chief Secretaries of all states and union territories 'to submit affidavits giving details of the steps that have been taken' with regard to an earlier order of the Court directing that 'contractors shall not be used for supply in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups, and Mahila Mandals for buying of grains and preparation of meals.

But, it does not stop at merely contravening the Court's order. It also shows that the Indian Executive has not merely become absolutely inefficient and incompetent to discharge their mandate but has also capitulated to the vested interests to the extent of enforcing the Supreme Court's order. The report, further, shows that this is not merely public money but also children's lives that these profiteers are playing with. The report clearly shows the collusion of the suppliers and the corruption in the solitary lab they use for quality check, given every single random sample of the take home ration (THR) taken to the government lab has failed miserably on the nutrition standard. The report notes a similar finding in a private lab, by an independent quality check of THR, courtesy the efforts of the investigation bureau of English newspaper *Daily News and Analysis*. The lives of the children consuming these rations have been endangered by an executive propped-up only by greed.

Most unfortunately, the findings might be limited to the implementation of the ICDS but this is the state of affairs prevailing in the implementation of almost all other schemes. The very recommendation of the Commissioners to the Court is a telling comment on the executive and its nexus with the corrupt

corporate and political players. The commissioners want an independent inquiry, under the supervision of the apex court, to be conducted for investigating the possible nexus "between politicians, bureaucrats, and private contractors in the provisioning of rations to ICDS, leading to large scale corruption and leakages".

The AHRC strongly endorses the recommendation and demands for not only an impartial and time bound investigation into the issue but also stern punishment for those responsible for multiple crimes of stealing public money and putting the lives of Indian children at risk. India will have no moral right to claim itself as even a democracy; leave alone the largest democracy of the world, if it fails to stop this culture of impunity and establishes rule of law in the true sense of the word.

The case report from Sheopur district in Madhya Pradesh about the death of 28 children belonging mostly to the Sahariya community; a scheduled tribe ravaged by malnutrition and diseases underlines the point that many things are fundamentally wrong in India that results in deaths from malnutrition. Most unfortunately, the deaths reported from the Sahariya community have occurred despite the administration being well aware of the situation.

Hunger and malnutrition plaguing the district, claimed the lives of 23 children less than a month ago creating an uproar across the nation. In this regard the AHRC had issued a hunger alert, and also lodged a complaint with the National Human Rights Commission of India (via complaint number 1934/12/43/2012/UC). The National Commission intervened and issued a notice to the Chief Secretary, Government of Madhya Pradesh, for submitting an action-taken-report within six weeks of the notice.

Soon after the death of 23 children caused by malnutrition and disease, the district had witnessed the deaths of 28 more children, despite the administrative overdrive to contain the malnutrition. The fact that malnutrition is behind these deaths is hard to deny despite all the pretences being offered by the administration. As a fact check, the Block Medical Officer of Karahal conceded that 395 children out of a total of 950 deliveries in the block were underweight at the time of their birth. And, more than 90% of the tribal women are suffering from anemia.

The horrible state of affairs was confirmed by a personal visit by Vandana Prasad, a member of the National Commissioner for Protection of Children's Rights (NCPCR). She found gross administrative lapses in monitoring children in the areas where most of the earlier deaths had occurred. She lambasted the

functioning of anganwadis (government run day-care centres for children under six) and found them completely unequipped to maintain nutritional records of the children. She added, however, that the gross poverty and deprivation of the families these children belonged to and the nutrition status of their surviving siblings left no iota of doubt that the deceased children might have been malnourished.

The administration, however, has been trying its best to blame the deaths on diseases. What it fails to explain, though, is how easily curable gastrointestinal diseases like diarrhoea could kill so many children if not for their compromised immune systems due to being malnourished for a long time. The fact is that it is the administrative apathy and inaction in rescuing the tribal families living in the region which have been impoverished over a long period. This is why the district has been identified as a 'vulnerable' region and yet there seems to be no significant change in the deaths due to malnutrition. The primary reason for this lies in the lack of intervention by the state authorities. Growth monitoring in this district has been neglected by the authorities for a long period. Further, the health facilities are abysmal with no proper records of immunizations. The prolonged period of malnutrition has led to a high incidence of anaemia and other conditions among the women.

The recent spate of malnutrition deaths in these two districts speaks volumes about the apathy and inaction of the administration. The fact that these deaths followed the death of other children and the consequent outcry as well interventions from the NHRC and NCPRI exposes not only the inefficiency but also the criminal negligence on the part of the administration. It should, therefore, be held responsible for the loss of so many lives and the officers responsible for criminal dereliction of duty should be brought to justice.

Having to repeat oneself, year after year and keeping hope alive against all odds, what can be more melancholic than this? Only the fact that one does it counting the bodies of those who perished because of failure in keeping the promises made to them. Observing World Food Day (WFD) annually provides us one such occasion of gloom. The statistics says it all. Though the number of the hungry of this world has breached the one billion mark long ago, more than a 100 million were added to the list last year according to the UN Food and Agriculture Organisation (FAO). It is not difficult to identify those responsible for so many more people falling prey to absolute poverty imperilling their food security. The increase has come in the face of governments across the world, pegged on by the neoliberal economic regimes, cutting down heavily on investments in agriculture and official developmental assistance as noted by Dr. José Graziano da Silva, Director-General of the FAO.

The consequences of these cut downs had been catastrophic to say the least. Just to give an example, year 2011 witnessed 14,004 farmers committing suicide in India alone as per the data of the country's National Crime Records Bureau. The situation there has been so grim that Mr. Pranab Kumar Mukherjee, the President of India, had to acknowledge in his acceptance speech that there is "no humiliation more abusive than hunger." Not only this, he was right about the reasons causing hunger in his country which touts itself as the 'largest democracy of the world' and hopes to become a superpower by 2020. President Mukharjee knows that "trickle-down theories," as espoused by the current economic regime dominating the world, "do not address the legitimate aspirations of the poor."

Considering the fact that 14,004 farmers committed suicide in 2011 as per the data of the National Crime Records Bureau, once again, means more than 10.3 percent of the total number of suicides in India through the year was committed by farmers. Factoring issues like huge underreporting of cases and the practice of never counting women as 'farmers', the actual number of incidents are much more. Is this not enough to shame any country let alone one that claims to be the 'largest democracy' of the world?

Not really, for the state did not seem to do even as much as taking note of a situation that should have set-off alarm bells. More so, for it was not the first time that the government has found these many of farmers, citizens otherwise, committing suicide. The corresponding figures for the year before were pegged at an even higher 15,933. Unfortunately, there was not much to rejoice in the 'decline' as the *Times of India*, leading English daily, pointed out. It has asserted that the 'dip' could as well be explained by the curious assertion of the Government of Chhattisgarh claiming that no farmers in the province committed suicide in 2011 as against 1,412 of them who had taken the extreme step in 2010!

The very fact that the figures are this high after almost half a decade of implementation of welfare schemes like MNREGA speaks volumes about the enormity of distress. All that MNREGA and other schemes seem to have arrested is less than 20 percent of average number of suicides annually. Unmistakably, it is not merely the worst of the times that Indian peasantry has undergone but it in fact is, as P Sainath puts it, 'the worst-ever recorded wave of suicides of this kind in human history.' The numbers substantiate the claim. With more than 15,000 Indian farmers committing suicide annually, the total number has marked a quarter million two years ago. It warrants a response at war-footing. The government, on its part, has chosen to not even acknowledge the situation and pay lip service to it.

Here it differs significantly with its own track record of acknowledging problems even while making no attempts to address them. One can remember, for instance, even the ever so silent Prime Minister of India conceding the deteriorating status of child malnutrition in India as being nothing less than a 'national shame'.

Governmental response to the issue invokes a strange sense of déjà vu. Strange, unlike the case of child malnutrition which the Prime Minister has acknowledged as a matter of 'national shame' not long ago. That the study which brought out the fact was commissioned by an NGO lobbying for substituting wholesome meals with fortified food – something Right to Food Campaign of India criticizes as another ploy of bringing in commercial interests – is besides the point. The message that this government responds only when corporate interests are involved was clear then, it is clearer now. It has not acted being moved by the plight of more than 42 percent of country's children being severely malnourished. Had it been really concerned it would not have been sitting doing nothing with the Prime Minister's National Council on Nutrition way back in 2008, set up for fighting malnutrition! Incidentally, the council has only met once since its inception. Adding insult to injury, the decisions taken in that meeting, like strengthening of the ICDS, close cooperation and coordination among ministries dealing with different aspects of the issue and so on, were never implemented.

Unfortunately, one can safely assume that the death of farmers, in how many ever millions of numbers, is not going to move the corporations, forget about making them act. For instance, the apex bodies of Indian capital like the Federation of Indian Chambers of Commerce and Industry (FICCI) have consistently opposed the MNREGA arguing that it would put heavy pressures on the Indian economy that was on a surge those days. FICCI had the cheek to say this at the peak of annual suicides, which speaks volumes about its sensitivity. The same body later opposed the government plan of linking MNREGA wages to inflation, asserting that this would 'distort the labour market', leaving no residual doubts about its sympathies vis-a-vis dying farmers.

Then again, FICCI is not the state. Despite all its claims, it has never been civil enough to be treated as a part of 'civil society'. One can, therefore, understand its silence over the issue. How though, does, one explain the deafening silence of a broad cross-section of Indian population over the issue? More than 15,000 farmers committing suicide a year, or more than 41 a day should have caused nothing less than the disgust one feels at a genocide. It should have generated popular anger to the extent of waking the government out of its slumber and making it work. Nothing like this happened though. But for a tiny minority of

social activists and civil society organizations, everyone seems to have chosen to shut eyes and let the farmers die.

These suicides, murders in fact, are almost never sudden. They follow a pattern that began, and remain entwined, with the cropping cycle that dominates in their area. Farmers have to take loans for buying seeds. As they do not have anything to 'guarantee' the payback, banks treat them as 'unreliable' and refuse to give them loans. That brings them to the local, and illegal, moneylenders who charge exorbitant rates beginning with 10 percent per month to 60 percent per month! Sowing seeds, however, does not guarantee anything, farmers are dependent on the monsoons. And if the monsoons fail even by a few weeks, it signals the end of the road for the farmer. Unable to repay even the interest, the moneylenders, who more often than not are the strongmen of the area, inhumanely insult and hound the farmer. The shame, the crippling sense of losing honour sets in slowly and ends in suicide.

Unfortunately, the pattern remains the same even if the harvest is anything more than the average. It is just that modalities of the exploitation change. Then, faced with the excessive supply against lesser demand, many peasants find their crops unsold. The state governments are mandated to buy the harvest on a predefined 'Minimum Support Price' in case farmers bring it to state procurement centres. Government officials, always in tandem with what is termed as the food grain mafia, then, usually keep farmers waiting, citing factors such as lack of storage and paucity of jute bags.

Further, even if the state does buy the grain, the payments would reach the farmer only in instalments spread over months. This is a situation the farmer can ill-afford, courtesy the pressing requirements of repaying loans, buying basic necessities for the household, and so on. The farmer would, finally, be compelled to sell his produce to the hoarders at prices much lower than that stipulated by the government. It might often also be at a loss. The cycle of taking loans to repay the interest on the loans already taken will repeat to the extent of pushing the farmers to the wall and finally making many commit suicide.

The pattern, well established by meticulous research, is known to all stakeholders. What then stops the government from taking corrective steps and arresting the deaths at least if not the distress altogether? That is a question that the Indian authorities will have to answer at the earliest even if all they want is to keep pretending to be a democracy, largest or otherwise.

Where Health is not a Priority

Come June every year, Indian media has a welcome break from the dearth of positive news. They do not need to repeat telecast the same scams, nor are they forced to fill their 'news programs' with this soap opera or that comedy show running on countless entertainment channels. They get their OB vans chasing monsoons right from Kerala all the way to the foothills of Himalaya with their young and chirpy reporters getting drenched in the pours.

In a country where most of the agriculture is rain-fed, the obsession with the onset of monsoon is completely understandable. Here, monsoon cannot be anything other than most welcome. Unfortunately, that is not the case everywhere. In some parts of the country, any news of its onset makes people tremble with fear. That is despite the fact that even their agriculture is dependent upon monsoons. Monsoon, for them, is harbinger of death and destruction. In these parts of the country, it does never come alone. It brings in Acute Encephalitis Syndrome (AES) and the Japanese Encephalitis and takes their children away.

Encephalitis killed more than a thousand children last year, and 884 of them by 15th November, 2012, as admitted by the Minister of State for health and family welfare, Mr. Sudeep Bandhopadhyay, in the Rajya Sabha. Exactly 501 of them were from Uttar Pradesh alone. The government, on its part, made all the same noises it had made the year before, and the year before that. It promised to develop an 'indigenous' vaccine that would reach areas where the disease is endemic, by February this year – just that the vaccines did not reach all the needy children and death count was pegged at 492 by June 30th, i.e. well before the monsoon reached eastern Uttar Pradesh.

That a curable disease could kill more than thousand children every year should be enough to shame the governments, both at the provincial and central level? The fact that it is one that has a vaccine makes government inaction nothing less than criminal. Seen in this light, the children are not dying, they are getting killed. And the government of India is complicit in the crime on account of its failure to provide the affected areas with vaccination and quality medical service to save the lives it is duty bound to protect.

Worse, the same story has been played out unabashedly for 34 years now and even the most conservative estimates put the number of total deaths at nothing less than 34,000. And these estimates are conservative; they do not factor in the massive under-reporting of cases. Many of the victims do not reach hospitals. And, the statistics do not take inaccessibility of many villages during rainy season into account. This is why social activists and local media put the

estimates at a staggeringly high 50,000 casualties, adding a note of caution. For them, even this figure is a conservative estimate though not the most conservative one.

All this occurs when the government has all that takes to control this annual dance of death. It has 54 Sentinel and 12 Apex Referral Laboratories dedicated for maintaining surveillance and to prevent such deaths scattered across the country. That the set-up has failed terribly is evidenced by the sheer volume of deaths this year, 492 to repeat, that too by 30th June, or before the onset of proper rains. Getting to the why of this failure, opens up a pandora box of apathy, inaction, and ignorance of those in power. All their initiatives do not fail after all. There had been instances of outbreaks of diseases where the powers of the Indian state had much to do, not only control the outbreaks, but also almost eradicate the diseases.

The recurrent outbreaks of dengue in Delhi in the last decade are proof to this. The government went on an overdrive to control the menace and brought down instances of dengue to a considerable extent in a short span. It has kept itself prepared for dengue in Delhi ever since. There are regular cleanliness drives with a team of dedicated officers to deal with the disease. There are mobile squads to check sources where mosquitoes may breed. These mobile squads even go inside private houses to check the electric coolers, flowerpots, and all possible catchments that could contain stagnant water, and are authorised to fine the household if they find mosquitoes being allowed to breed thus.

Why then do the authorities not show the same enthusiasm for controlling the disease in places like Gorakhpur, Deoria, or Kushinagar? Are these places any less part of the Union of India than Delhi? Are the people living in such poor and impoverished places any 'less citizen' than those who live in flashy metropolitan cities? What then explain the authorities' overzealous reaction to the woes of one of them and an almost criminal negligence of the other? The point begets another question about the media's silence over the issue.

Yes, the media does report encephalitis. In fact, all the related data noted here has been collated through media reports. But then, there is a definite pattern in the way media reports the issue. A stray editorial may appear in print. Some of the myriad channels may run a few stories. And then the matter will be buried so it may be run roughly the same time next year. All that would change would be names of the victims, with even theatres of this tragedy remaining the same. Compare this with the same media reporting cases that are close to its heart. Those familiar with media and social justice issues in India, may remember all the 'Justice for Jessica' campaigns that the same media ran. The outrage carried

in reports while Delhi was slowly becoming the rape capital of India may be recalled too. Or, how about the anger that resonated through television sets when a top cop, found guilty of sexually molesting a young girl to the extent of driving her to commit suicide, was let-off with almost no punishment.

The media did not get silent, or merely run an isolated editorial, over these cases.

Everyone deserves justice in a country where the rule of law prevails. All just causes should be taken up with the same intensity and the media is well within its rights to shape a national conscience against such injustice, such ghastly violations of fundamental rights.

However, why does the same media get so eerily silent over these deaths, killings to be precise? Why does it not shame the authorities into action? Why does it not organize panel discussions with experts debating the issue and the middle classes watching it with all the horror on their faces that the enormity of the issue generates? Are these children any less than the individuals the media rants about? Perhaps yes, for these people are not ones that become 'us' to the media. They are not their people. They are neither from their class nor their caste.

There are fundamental flaws that define the deficient democracy that is India. It lays in those structures of inequality that have produced a political culture where some people are more equal than the others. It lies in that phantom limb of caste that has gotten engrained into the façade of all those democratic mechanisms, which form the base of India's claims of being the largest democracy of the world.

It lies in the idea of hierarchy that dehumanizes certain sections of our society to the extent that they become easily expendable. This dehumanized section remains invisible for all practical purposes. Their lives come cheap. The only thing that matters about them is their labour that this future super power needs. The problem is that even this labour comes in abundant supply. The death of a few thousand every year does not matter much; there is always plenty replacement. That is why a state like Uttar Pradesh can afford to spends 685 crores on beautifying a park and 18 crores on Japanese Encephalitis.

For the authorities, the majority are not human beings. They are population. Have they not been taught, then, all their lives that population is a problem, in fact the biggest problem of India? And if they are the population, then they are the biggest problem and dispensable therefore. It explains the silence and the absence of all the anger that should be generated by such criminal loss of

human lives. The explanations, though, do not absolve anyone. The media, the civil society and the government, all remain complicit in these murders most foul.

Despite all this,[60] the government continues to have a minimalist vision for the National Food Security Bill (NFSB). The Right to Food Campaign in India has been demanding a comprehensive food security legislation that takes in account the production, procurement, storage, and distributional aspects of food security along with making special provisions for vulnerable groups such as children, migrants, the aged, and the disabled. The campaign has repeatedly stated that the current draft of the Bill is minimalist and unacceptable as it seeks to legalise inequity by imposing a Targeted Public Distribution System instead of creating universal entitlements.

In this context, the proposal to do away with the multiple categories (such priority and general categories) and move towards a uniform entitlement for everyone, except for the rich who will be excluded, is a step forward. However, if as reported in the press, the category to be excluded is as large as 33 percent of the population across the country, then this would remain a form of targeting, with many of the needy actually being left out. This still falls far short from the principle of universalisation. Exclusion should rather be based on a few, easily identifiable criteria such as permanent government employees, income tax payers and so on.

Further, there is no logic in common entitlement being as low as 25 kgs per month per household under this new proposal. The government cannot continue to argue that there is not enough grain when the FCI godowns are overflowing, with the current food grain stocks being around 80 million tonnes. The last three years have seen food inflation spiralling to highest levels in three decades. The food ministry has been at the centre of the most scandalous mismanagement of food grains, with huge food stocks rotting in the godowns and set to be exported for consumption by cattle in industrialised countries.

India's poor track record on food and nutrition, and indeed all the social sector indicators along with its patently over-stated ambitions of being a global leader, has made the government a laughing stock internationally. It cannot be accepted that the Government of India can afford to contribute USD $ 10 billion to the International Monetary Fund to bail out irresponsible European bankers, while it hides behind the excuse of fiscal constraints to explain its inability to guarantee food security to its citizens. In a situation

60 Adopted from the recommendations made by the Right to Food campaign group in India.

where nearly every second child in the country's children carries the scourge of malnourishment, such an attitude of the government is indeed shameful.

There has been a consistent demand from civil society groups to strengthen the NFSB by expanding its scope. The PDS entitlements must be universal and quantities must be linked to the Indian Council of Medical Research (ICMR) recommended daily allowances (14 kgs per adult). In addition, the PDS must also provide pulses and cooking oil. Introducing such an expanded PDS would be the most appropriate way of dealing with the current contradiction of excess stocks and widespread hunger. In this context what is in fact required are:

i) a Universal PDS, which includes cereals, millets, pulses and oil so that all especially the food insecure, the vulnerable, and the deprived get included. The quantity should be decided on the basis of ICMR norms per adult consumption;

ii) appropriate MSPs and decentralised procurement of rice, wheat and millets;

iii) universalisation with quality of ICDS including the provision of nutritious locally prepared food for all children;

iv) and entitlements including social security pensions for vulnerable persons – the aged, single women, and persons with disabilities, school mid-day meals, maternity entitlements, and community kitchens in urban areas must be ensured.

'Reforming' a Criminal Injustice System

The government is again planning to change the criminal justice mainframe of the country. Again, the ruse is that of justice to the people and national security. The proposal is open; its true purpose clandestine. If the 2007 report of the Committee on National Policy on Criminal Justice, chaired by Dr. N.R. Madhava Menon, is what has lead to this reform proposal, heed the sign that reads: caution.

On August 9, Mr. Mullapally Ramachandran, union state minister at the Ministry of Home Affairs, stated in Lok Sabha that his ministry is planning to effect a comprehensive change to the criminal justice landscape of the nation. The minister said the overhaul would include amendments to the Indian Penal Code (1860), the Code of Criminal Procedure (1973), and the Indian Evidence Act (1872), collectively known as the criminal major acts.

The 'reform' plans to closely consider proposals made by the Committee chaired by Justice V. S. Malimath on reforms of the Criminal Justice System

(2003), and the Draft National Policy on Criminal Justice, submitted to the government by Dr. Menon (2007). The Draft National Policy document is itself, in fact, nothing but a summary of the earlier Malimath Committee report.

Mr. Ramachandran informed the House that his ministry has sent its suggestions to the National Law Commission, with a request that the Commission detail the legislative changes needed to bring about the reforms the ministry have in mind. However, neither did the minister care to elaborate, nor did any member of parliament think of demanding, the details concerning the proposed reforms. And, no such information is available in the public domain, even at the Home Ministry's website.

The minister also failed to inform the house whether there would be any public consultation. Given the precedence, there could be some token consultation. Given the history though, not many civil society groups will participate meaningfully, even if they have knowledge of such consultation. This is because the criminal justice system remains a blind-spot amongst Indian civil society groups. Thus, either way, public at large will not be consulted, even though the 'reforms' propose to substantially take away their fundamental freedoms.

If the draft national policy is the guideline for the proposed reforms, soon Indians will find their civil rights substantially curtailed. It is a literal death trap for fundamental freedoms. Telephone conversations and other communications will be intercepted by state agencies, acting with statutory impunity, redefining thus the very notion of privacy and privilege in communications.

The draft policy proposes a rights trade-off in the excuse of national security, including the negation of the fundamental right to silence and the presumption of innocence. The principle of 'preponderance of probabilities' will find itself introduced into criminal trials to convict a person, rather than the requirement of 'conclusiveness in proof', the current norm. Statements made by persons to the police during investigation would become admissible as evidence without adequate verification. Expert opinions would be treated as substantive evidence and not as estimations. The trials of offenses punishable with a maximum sentence below 3 years would be reduced into summary proceedings. The draft policy would allow the state to restrict at whim the very scope of the concepts of freedom of opinion and expression. The freedom of the media to report cases, and expose crimes, including those of corruption at high places, would be relegated to the dustbin of history.

If the national policy as proposed by Dr. Menon's committee were to be implemented by requisite legislative and constitutional amendments, the

relationship between the state and subjects will be re-defined. The amendments will take away the scope of fair trial, since what the police say would soon become proof for conviction. It will, of course, reduce delays in adjudication. This is because it would hardly leave any need for adjudication. Since the policy does not speak about reforming the police by imposing accountability upon the force, the rich and the powerful will still manage to escape investigation, trials and convictions. The national policy only speaks of awarding more powers to the investigating agencies, which, as it is, today, are selectively used and would remain the same. The government has already spoken its mind in failing to implement the Supreme Court's directives in the Prakash Singh case, watershed directives towards independence and accountability in the criminal justice system. Continued and shameless ignorance of the Court's directives on one hand, and the institution of these 'reforms' on the other, the country will have to continue contending with the same criminals in uniform, policing the people, the only difference being enormous enhancement in police powers, and consequent reduction of individual freedom. With these changes, India will become a police state.

To justify the draconian proposals, Dr. Menon's committee has liberally used presumptions and surmises, laced together with weaselly generalisations. The draft policy, as far as addressing issues that have rendered the criminal justice system in India a complete failure goes, is a non sequitur. The committee is of the opinion that the Indian state is 'soft', which has rendered crime control impossible in the country, and hence has recommended the changes cited above.

It has, in no uncertain terms, discriminated regions in the country, as 'terrorist', where it prescribes the role played by the state with an iron fist as just and right, never-mind the fact that such thinking has only helped worsen the living conditions in such regions, with innumerable instances of human rights abuse committed by state and non-state actors.

The committee has, in unambiguous terms, used exceptions such as terrorist attacks as excuse for the dilution of civil liberties, and has encouraged the state to constitute a national framework that could curtail fundamental freedoms to ensure security. The committee has cited restrictions made in other countries as an excuse to justify similar changes in India, suggesting a subjugation of the intellectual sovereignty that Indians must maintain when legislating. The committee's opinion of blindly following the 'global trend' to restrict freedoms suggests three elementary flaws made by the committee: 1) it shows that the committee's process was not consultative enough, 2) it shows how, with a single presumptuous sweep, the committee negates the civil liberty movements in the rest of the world that are fighting against such draconian state controls, and 3)

how, with equal contempt, the committee treats the collective intellect of the common Indian. The committee is sure it knows what liberties India should and should not have.

The Menon Committee's draft national policy emphatically suggests standardising exceptions into norms. On one occasion, it quotes an anonymous lawyer, who, according to the committee, demands drastic changes in legal procedures to mandate that the accused, by law, 'assist' the court in testifying against himself / herself. To justify formulation of draconian state control in the name of security, the committee repeatedly uses the term 'public expectation' in reference to the duty of the state to provide security even at the cost of fundamental freedoms. However, in reality, the committee never approached the public to seek its views.

The policy document and those who drafted it lack the basic honesty expected of such proposals and bodies. They failed to point out the elephant in the room: that the problems affecting the criminal justice system in the country are deep-rooted corruption within the police and within all tiers of the judiciary; ineptitude; an assortment of crimes, including that of torture, committed by law-enforcement officers with impunity; lack of professionalism and any form of training and opportunities for enforcement officers to cultivate the same; and a close to non-existent prosecutorial framework.

There has been, so far, no attempt by the government to study these evils that have held the country's justice apparatus at ransom. Without this, propounding that the public gift away their fundamental freedoms to guarantee security is nothing less than fraud upon the country. The only result will be ensuring the security of tenure for criminals in seats of power in the country.

Unwillingness to end the aforementioned is what adversely affects justice administration in India. It is not a passive oversight, but an active pursuit, easily apparent if one only considers the minimal resources allocated to justice institutions; today, the judiciary is literally smothered out due to lack of adequate funds.

What is the security a citizen can expect when law-enforcement officers only attract deep contempt from the public and display shameless ineptitude in discharging their duties? What is the meaning of protection when police officers rob money and life out of the people and are more feared for rape and murder than street thugs? Where is the value of civilian law-enforcement when the officers mandated to enforce the law breach all laws possible? What is the meaning of 'reform', when the officers of the state who are to be reformed are forced to continue in the public perception as criminals in uniform?

Committees constituted to play background scores to a treachery, not advocating reforms where they are needed, and proposing to filch away even those few, but crucial, freedoms that protect common people today – with or without the protection of their state and its agencies – are the real security threat to the nation. Such committees would suggest anything required by those that constitute them. These committees have nothing in common with the larger mass of the country. They have no understanding of how ordinary Indians struggle daily to survive, protecting themselves from criminals in uniform.

Six or seven clandestine paper presentations held at universities, where the public has no access, cannot be the basis for the formulation of a national policy that could diminish fundamental freedoms in India. But the fact is, such a policy is now in place to be implemented and the term 'public demand' is used liberally in the policy document, as an excuse to justify parochial, restrictive, and draconian changes to be brought into the national legal mainframe.

Security of life and property of the citizen is directly proportional to what is implied as 'national security.' Unlike exceptions of violence sponsored by anti-state entities, every day in the length and breadth of the country, fundamental rights of the people are brutally violated by law enforcement agencies, especially the local police. Not a single attempt has been made in the country to criminalise violence committed by law enforcement agencies, often in the name of social control, and crime investigation.

Every police station in India routinely practices torture. It is performed publicly, without any form of legislative or practical control. Police officers and policy-makers equally believe that torture is an acceptable means of crime investigation. Just as it is done in the Menon Committee, the country has failed to treat this single fatal cancer, something that has rendered the entire police service in India as nothing more than a group of uniformed thugs lacking moral and operation discipline.

Conditions are far worse when it comes to paramilitary units stationed along the borders and in areas where they are deployed to assist state administrations, like in Manipur, Jammu, and Kashmir, and West Bengal. There is no data available in the public domain as to what actions are initiated upon complaints of human rights abuses committed by these forces. As per the information collated by the AHRC, there is little doubt that the BSF stationed along the Indo-Bangladesh border is a threat to national security. They engage in crimes like rape, torture, and extrajudicial execution in routine. The BSF is a demoralised and corrupt force that engages in all forms of corruption, including anchoring trans-border smuggling.

If national security is of any importance, law enforcement agencies must be held accountable, as must members of submissive and myopic committees that advance dangerous proposals, set to further harm lives of their country-men.

Information provided at the National Bureau of Crime Records for the past several years only advances this argument further. According to the Bureau, in 2011 there were only 72 reported cases of human rights abuses alleged against the police in the entire country. Out of this only 7 were cases of alleged torture. There were only 6 cases of illegal arrest and detention, and only 1 and 3 cases of alleged extortion were reported from Punjab and Delhi, respectively. In states like Assam, Bihar, Goa, Jharkhand, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, and Tripura there were no cases of human rights abuses registered for the year! To say that the statistics mock reality would be an understatement. India does need reform. It should begin with ending the practice of shameless lying.

One of the sad truths that Indians have to live with today is that the people's struggles for human rights are highly fragmented in India. Equally disheartening is the fact that whenever or wherever human rights comes up for discussion, it is addressed in piecemeal, by ignoring and leaving a comprehensive approach to rights based on the notion of justice far behind. The focus is usually on the concept of rights, understood within the limited periphery of 'people's welfare' in which quotient of 'justice' is forgotten.

In India there are 713 legislations that deal with people's rights, their entitlements and protection. Another 19 on food, nutrition, and health are on the anvil. In fact, what Indians have is a law-making regime for last 65 years, with a concept of justice entirely missing.

Do rights make any sense without justice? Can one expect that human rights will be guaranteed without justice? Can Indians afford to seek justice only through the courts, exempting the executive? The rule of law is not the state generating fear about its might and ruling by it. What Indians have are rules and laws that could exploit the marginalised.

When public pressure concerning an issue disturbs the state, the state comes out with a policy and passes a law. But laws are meaningless if there is no system or a totally dysfunctional system to implement the same. And, where there is no accountability within the system legislating becomes a farcical exercise. The basic objective of the people's struggles in the country is to ensure proper implementation of laws. What is required is to think where and how deep is the passive or sometimes active negations of rights permissible within the system. Otherwise the enormous efforts of the people's struggle to claim these rights would go in vain.

There are more than 3,000 prominent public struggles for justice going on in the country's 640 thousand villages, where over 3,500 thousand voluntary and non-governmental organisations work. This is ironic, because India has some of the most progressive laws in the world and claims to be the world's largest functioning democracy. Yet it is a country in which 9,000 custodial deaths and over 1,500,000 children die of malnutrition take place every year, while policy-making continues unmindfully!

In such a situation, how can one ignore the question of why the system refuses to change? Why the lives of people count for nothing and why their standard of living shows little sign of improvement?

Consider the fact that there are 15,777 under trial prisoners in Madhya Pradesh, and 15,784 in Maharashtra. They are not considered eligible for bail, and are forced to wait for a final verdict till an uncertain time. They are not allowed to vote. Many among them have already spent more time in the prison than what the sentences for the crimes alleged against them might warrant. The path of justice veers decidedly towards injustice because the state, which has the responsibility to dispense justice, is not accountable to the people. Is this part of a well thought out strategy to retain state's supremacy over society?

It's a thought worth considering.

The first question that Indians should to ask themselves is: what are the tribulations in society and what kind of change necessitates deciphering them? We live in a period of policy changes and laws. The government formulates policies and passes laws, allegedly to solve these problems. But the laws remain on paper. They are of use to the society only if an institutional framework for implementing them is created, an adequate budget sanctioned, officers appointed, and other necessary infrastructure put in place.

For instance, the government claims that the people have a right to health. But if there are no doctors, no hospitals, no money to buy medicines, what does this right mean? When will people enjoy its benefits? The government has also passed a law giving people the right to free and compulsory education. But to ensure quality and equal education to all needs enough teachers, the introduction of new teaching methodologies, and the provision of classrooms and toilets in schools. But the financial resources available are not even half of what is in fact required. So what kind of right to quality education could the country's children hope for or lay claim to?

Justice must be evident and should appear to be done. Rights cannot be seen as disconnected from justice. If the state is unjust, if it abdicates its responsibility

to dispense justice, people can neither claim nor protect their rights. In India, the state is only putting on an act with its 'people-oriented' policies and laws to hoodwink the people. The reality is the continuing violation of all basic rights. Nowhere in the laws is there a provision that says the government will have zero tolerance for compromise and will take steps to ensure that people get not just their rights but justice as well.

Take the example of the law guaranteeing the Right to Information (RTI Act 2005). It says if people are denied this right the responsible official will be penalised to ensure that such violations do not occur in future. The right is for seeking and obtaining information, but justice is for taking actions to punish those officials who violate the right. As long as this aspect is ignored, talking about rights is mere deception.

Justice and rights are not limited to the judiciary or to the state that is supposed to safeguard them for society. They go beyond these institutions. Justice is a universal trait, a basic human character, like courage, equality, and respect for nature. It is not something that one obtains only through a court of law. The notion of justice starts with the faith that justice will not be denied. Justice is also the belief that when the authorities and the system where you go to claim your rights will respect these rights and treat you in a way that raises your morale and reinforces your belief in the system.

The search for justice could begin for instance with the police inspector or a constable in a police station. If they are unjust, one cannot get justice from the court that in a criminal case will have to depend upon the police for investigation of a criminal charge. The decision of the court is based on the case report the police present. That is why justice is not something that only a court of law ensures.

There is also the country's media that presents a case before the public. If the media is unjust, they cannot feel the soreness that a victim experiences when rights are violated. Investigations about rights violations without a perspective of justice serve only the purpose of whitewashing of some and slinging mud at others.

If more and more cases of rights violation keep occurring, and if they continue to be viewed in a perspective devoid of justice, the policies that are eventually formulated will also be devoid of justice. If justice is not ingrained into the system, it will become a purveyor of injustice. There are no half measures, no middle paths. One can either have justice or injustice, corruption or transparency. It is a shame to say that 40 percent justice is dispensed or 60 percent of the system is corrupt. A system can be either completely just or

absolutely unjust. It is a dangerous reasoning for the future of democracy, society and the constitution to claim that the District Collector is an honest person but the subordinate officers are corrupt, or the chief minister is honest but his ministers are corrupt, or the prime minister is a good person but his cabinet colleagues are bad.

The British ruled India for more than 200 years. They came for business and later continued to influence the country's institutions - political, economic and social. They also make laws and created institutions. Definitely those were not for the welfare of the people and to ensure justice. They made it; to control any action, which might challenge their exploitation in any form. They forced people not to speak, they created police in 1861, and they made forest a state property by creating the forest department in 1861 - 62, with a clear message that community has no ownership over natural resources; and suddenly with the creation of laws and such a system, common people converted from owners to encroachers overnight.

Colonisation reduced space for the people to the point where they found themselves unable to breathe. The colonial rulers followed a specific meaning of the rule of law; which was closer to an establishment of the rule of the state over native society, to suppress the strength of people, so that there is no opposition to colonial interests. One people rule the other for purposes of looting, not for welfare. So, in such circumstances, one cannot expect the coloniser will take any pains for raising standards of living, welfare, or norms for human rights. In such a situation the ruler is the key culprit in human rights violations. And justice here means protection for a section of people who provide the rulers support for ruling the subjugated land and its society.

The British hanged Indians who demanded justice, dignity, rights, and freedom. They did follow a system of judiciary, which was created to hang such people, who challenged the state, without considering the norms of justice or that of rights. At that time, justice translated as the protection of those who were fighting for the country's freedom. Tax and revenue systems were made for looting resources; the education system was contaminated to create a bonded society.

That there should be no revolt even after extreme injustices like massive food shortages was the key objective of the colonisers and that is why the concept of law and order become important for them. Today, Indians, in their 'independent' state, continue to follow the same practices. If an average person attends an agitation, they will be booked and may even be disappeared forever. Why is there no scope and space in the country for those who want to share their anger, frustration, and agony? Why are such citizens treated as criminals? Such space did not exist prior to 1947 and does not exist even 65 years since.

Making laws is a collective process of the legislature. The government drafts a bill and presents it to the parliament. The bill is normally sent to the parliamentary standing committee, which invites comments and suggestions from institutions/organisations and from the public. The bill is accordingly modified and sent back to the parliament. But the government is not bound to accept all the recommendations of the committee. So it is free to ignore any provisions that may be mistakenly viewed as diluting the legislature's power or compromise its positions. The passage of the bill depends on the strength of the ruling coalition. If it enjoys a majority in the house it faces no compulsion to keep the people at the centre of its legislation.

A law is an all-encompassing document of the right in question. But, often it does not outline the steps required for its implementation or for creating the required institutional structure. These are dealt with in the rules and procedures and this is where the next deception of the people occurs. Unlike the bill, neither is there scope for the standing committee to offer its views and suggestions about the rules and procedures nor do people have the right to have their say. There are enough loopholes and pitfalls for the people to stumble and get trapped. There are no systems to ensure that rights are clothed in the cloak of justice.

The key to the implementation of a law is with the state. The 73rd Amendment of the Constitution had paved the way for the decentralisation of state power through the Panchayati Raj, with authority given to the panchayats (local body elected from residents in a cluster of villages) and gram sabhas (village councils). But no panchayat can stop the salary of a corrupt official or one who does not perform his/her duty. It can only make recommendations to the executive that action is should be taken against the erring officer. In the past, the village institutions controlled resources, but today these resources are retained in the central treasury by the state, and the panchayats and gram sabhas have to extend their palms to plead for central 'alms'.

India is still ruled by the caste system, a well-known truth. It is plagued with discrimination, gender inequality, untouchability, and feudalism, which is the reason why there is little hope for society or for its social institutions to make any real effort in creating a system based on equality and social justice. Our society remains silent when confronted by deaths from starvation and malnutrition. It fails to raise its collective voice against the rapes that it witnesses. And, instead of resisting the naked exploitation of resources it spends its energies looking for escape routes such as internal or external migration. It is in such situations that the role of the state comes into focus.

The expectation is that the state will create a system to counter and abolish inequality, discrimination, exploitation, and social boycotts. Such a system cannot be limited to policy formulation and law making. Laws create the system and the system should, in principle, function within its ambit. Social contradictions can only be resolved by governance guided by value and justice-based laws. In today's context, it means justice and values should remain not just the responsibility of the state, but also that of its banks, media, markets, production systems, and in the private sector. Otherwise these agencies inevitably become the new players in the processes of exploitation and subjugation.

Rights cannot be claimed or given unless and until an accountable and institutionalised structure is created to implement them. The laws enacted should be such that they carry the message of rights with justice. They should explicitly state that an institutionalised structure will be set up for implementation, with an effective, transparent, and decentralised mechanism to monitor the implementation and register and resolve complaints within a specified time. They should also contain provisions to punish the guilty and compensate the victims of rights violations. Equally important is sanctioning of the required budget, because without such allocations, nothing is possible.

Madhya Pradesh is a state where six million children are battling malnutrition. Their chances of winning this battle are slim because the state government does not provide them the kind of support they need. Eradicating malnutrition is a battle that the state should be fighting because it is the constitutional guardian of our children. The Integrated Child Development Scheme (ICDS) was formulated in 1975 to address and resolve the problem. Its primary target is children aged below six years who are most susceptible to malnutrition. But, 37 years after its launch, malnutrition remains a scourge that continues to play with the life of the children. The question one needs to ask is: why did such an ambitious scheme fail to bring any significant change?

The ICDS provides for setting up anganwadis (child development centre at the level of every local habitation) to care for all children and the Supreme Court has decreed that such care centres must be established in every village and habitation and no child should be denied its services. The *anganwadis* have the infrastructure to provide six crucial services to children, at least on paper. These include monitoring their growth and development, providing nutritious food, imparting health and nutrition education to pregnant/lactating mothers as well as adolescent girls, vaccinating children, imparting pre-school education and admitting the seriously ill in hospitals.

An *anganwadi* has to cater to the needs of around 40 children aged below six years, under the supervision of an *anganwadi* worker and a helper, who are recruited from the village. The worker has to maintain six registers with vital data about the children and the services rendered. Can two workers cope with this large burden of responsibility? The Supreme Court has instructed that the *anganwadi* services should be universalised and their quality should be improved. The government continues to enrol children in the care centres but it has done very little to increase human resources, their capacities, infrastructure facilities, and remuneration.

In 1991, the government made an allocation of one rupee per child for providing nutritious food. But the actual disbursal was 47 paisa ($ USD 0.023) per child. If seen from another angle, the budgetary provisions would be adequate for only 47 percent of the child population in this age group. Moreover, when the village community complained that nutritious food is not provided for six months in a year, the bureaucracy did not point out that the allocation itself has been drastically cut and that is why children remain hungry. Instead, it blames the anganwadi workers and takes action against them to maintain the power of the state. Where can the anganwadi workers go to fight for their rights and justice? There is no mechanism to give them justice.

Another distressing fact is that the budgetary provision remained unchanged for 15 years until 2005, when it was raised to Rupees two per child. Today, in 2012, the amount is Rupees four per child, which is still only half of the actual need. This is the irony. The government calls malnutrition a 'national shame' yet allocates a measly amount - which cannot even buy a cup of tea in today's market price - to resolve the crisis. A country with one of the fastest growing economies of the world has the largest population of malnourished children among all nations and yet it has no willingness to give more than one percent of its budget for children aged below six years, who constitute 14 percent of its population!

The ICDS has been riddled with corruption since the time it was launched. There is no mechanism in the system to register complaints against this corruption, carry out an impartial investigation, take immediate action, award punishment, or protect the rights of the children and women. If a complaint is registered, the state government asks the District Collector and the programme head in the district to conduct an inquiry. These officials themselves are an integral part of the implementing agencies. So in a way they are responsible for the corruption and negligence. Should the accused be given the responsibility of investigating the misdemeanour and felony?

Madhya Pradesh has constituted a State Commission for Protection of Child's Rights. To begin with, it is a moribund organisation. Even if any of its members take the initiative to fulfil its responsibilities, there is little likelihood of anything coming out of the exercise because the commission only has the power to make recommendations but not the power to ensure compliance by the implementing agency, which has unlimited and unrestrained power. Perhaps the government wants it this way. That is why it never acknowledges the lack of accountability.

The state does not appear committed to protect human rights or dispense justice. In such a situation, children will continue to starve and be malnourished. Their hunger is not so much the outcome of inadequate food but the lack of accountability, corruption, carelessness, and despicable apathy of the state.

It is a question of intent. On the one hand, there is no system or mechanism to ensure justice, while on the other, our judicial system is caught up in protecting its own interests. In 2011, a total of 26.3 million cases were pending in Indian courts. It would require 24 years for the courts to clear the backlog, provided no new cases are registered in the interim. If cases continue to be registered at the current rate, the courts will have backlog of 240 million pending cases by then.

This only shows that the state is becoming progressively ill-equipped to deal with its responsibilities even as its officials show an increasing tendency to abuse their authority. Even then the government makes no commitment to overhaul the system to ensure that the people do not have to wait endlessly for justice. People living in Manipur, Arunachal Pradesh, Nagaland, and Tripura have to travel all the way to the high court in Guwahati in the state of Assam because there are no other high courts in these northeastern states.

Consider also the following example. In 2006, the Indian government passed a law recognising the forest rights of scheduled tribes and other traditional forest dwellers. The law declares in its opening statement that the indigenous communities have been subjected to historical injustice for centuries and the state seeks to give them justice through this legislation. But, consider its provisions. In order to establish community rights to forests, the villagers have to produce adequate documentation to show that they have been using forests for their livelihood, grazing, and access or for cultural and religious purposes or for foraging forest produce for their daily needs. This task is beyond most of the forest dwellers.

In India, systematic records have been maintained at the district level (in district record rooms) from even before 1950, of every village, its resources and their use. Many people are not even aware of this storehouse of data and information. These documents are called nistar patrak (record of use of land, forest and other natural resources) and wajib-ul-arz. It is almost impossible for villagers to access these documents in the maze of modern bureaucracy and red tape. The result is that only around five percent of the claims to community forest rights have been legally established and recognised.

If the intent of the government is to confer community rights to the rightful claimants, why did it not add a provision to the law stating that it will make available all the documents in its possession to the gram sabha and the village level forest rights committees to enable them to process claims and establish the rights of the community? It is the responsibility of the government to provide the required documentation, not of the people who have been subjected to this historic injustice. Until and unless the state internalises the concept of justice every utterance of its officials will be futile and meaningless. But the state is reluctant to part with the power it has over the people.

It is not as if the government has never built a strong institutional framework for implementing its laws. Wherever it needs to protect its powers, it ensures that such a system is established. For example, when electricity production was privatised, private companies were permitted to decide electricity tariffs, a job which the government did earlier. It set up an Electricity Regulatory Commission to approve the tariff increases and give them the official stamp. The commission gives priority to the arguments of the private companies, not the government or the people, in arriving at its decisions. As a result, electricity tariffs have been raised by 20-30 percent every year.

Water is also in the process of being privatised and the appropriate institutional changes will be affected. Poor people living in slums will now have no access to free water. Prices will be raised periodically and those who cannot pay will be deprived of their right to water and electricity. The government gives statutory powers to these commissions, which make them more powerful than even the parliamentarians. This clearly shows that the implementation of a law depends on the kind of enabling institutional structures that are created.

The problem is not that 42 percent of Indian children are victims of malnutrition or that the Indian prime minister calls this a national shame. The problem is that the state has made no concrete effort to resolve the problem, nor created accountable and resource-rich institutions to deal with the same. The system does not have responsible people and policy makers or a planned mechanism to implement solutions. The problem is that the bureaucracy is

neither accountable nor capable of dealing with situations. Even if there are capable bureaucrats who do good work, they end up being punished instead of rewarded because corruption is the norm. The problem is that the state has been given too much power and sees itself as supreme. It understands strength and turns a blind eye to those pages in the constitution that elaborate its duties and responsibilities. Its limited perspective tells it to silence and neutralise anyone who dares to criticise its functioning. This is the reason why the state is very often seen to be despotic in its work. It adopts every means to protect its powers, whether through the use of the law and its policies or otherwise. One needs to analyze these methods and counter such despotism with democratic values.

One also needs to understand the link between people's struggles, agitation, and advocacy. People's struggles emerge in certain circumstance and the initiatives they take aim to change the mindset of society. They see the problem from a social and political perspective, but find themselves caught up in many dilemmas. They cannot decide how to change the system if the very root of the crisis lies in its unjust nature. The system can only be changed by democratic means, but there is a reluctance to enter into electoral politics to affect such political change. The people find themselves caught up in answering questions posed by the government when in reality it is they who should be demanding answers from the government. The people's struggles have been weakened and divided by the state through its power to distribute favours and services.

Prior to 1997, everyone could get ration through the public distribution system. In 1997 the government decided to draw a poverty line and declared that only those below this line could receive subsidised rations. The poverty line was a ruse to deny rations to 64 percent of the population. And now when a people's struggle is being fought to bring about institutional change in the rationing system, the middle-class and the class of people excluded from the ambit of rations by the poverty line turn their faces away from this struggle, saying they have nothing to do with it. And those who are eligible for rations are so socially and economically debilitated and deprived that they find it difficult to fight for their rights lest they lose even their precarious perch.

The state weakens the people's struggle for social, political, and economic rights in this way. In the past 20 years we have seen farmers and agricultural labour meld into a powerful force, but the has state created divisions between them through its policies. For example, it has reduced the concessions and subsidies extended to agriculture, raising the cost of production. At the same time, it has raised the wages of unskilled labour, who also work as farm labour, through the National Rural Employment Guarantee Act. The government has not given proper support prices for agricultural produce while it has given a fillip to the

import of cheaper agriculture products from other countries, where farmers are given large subsidies. With cheap imports flooding the markets local farmers have no market for their produce. The outcome is that they are in a pitiable state today. Most (77 percent) are small and medium-scale farmers owning less than two hectares of cultivable land. They find committing suicide an easier alternative to farming.

The growing urbanisation of the country is also responsible for alienating society from the concerns of our villages. The pitiable state of health and education services in rural areas and the crisis caused by development project linked displacement of people does not strike a chord in the cities. The possibility of launching a people's campaign is low in such a scenario.

There is a thin line between people's struggles and advocacy. People's struggles raise issues and slap the government to take notice of these issues. Advocacy involves building up a fact-based and analytical understanding of issues to strengthen the people's struggles. The two do not themselves look for solutions to problems but try to force society and the state to take up the task of looking for solutions.

Advocacy is a process that takes up one or several linked issues with the objective of bringing about a change. When one works on any issue, case, or incident there are three objectives that should be in mind: 1) the affected individual, people, or community should receive their rights with justice; 2) those responsible for perpetrating injustice should be punished and their accountability should be fixed so that no abrogation of rights can occur in future; 3) the weaknesses of the system should be removed, in keeping with these objectives, so that it is no longer unjust in character.

And finally, Indians must clearly understand that human rights cannot be defined without justice. And justice cannot be limited to the courts but must permeate and become an integral part of society, the state, and the system. Change cannot happen only by formulating policies or making laws. It requires provisions being made for an administrative, economic, and infrastructural system (buildings, equipment, roads, water supply, sanitation, etc.), creating an accountable grievance redressal mechanism that works in a time-bound manner. One would have to decide the values and standards that govern this system and the government should pledge to adopt these values and standards.

The concept of independence and an independent state is more deep and vast than its apparent legal or political connotations. Independence includes the possibility of a nation and its people to dream, based on their belief in self,

and the possibilities to pursue dreams without fear and want of opportunity. Independence is the celebration of all freedoms and the iteration of the state's responsibility to guarantee the same to all subjects. It is the victory of fairness and equality over subjugation, discrimination, and servitude. For a nation, the day marking its founding or independence must be a celebrated occasion, where every citizen could call upon the government and demand each bit of that dream the founding fathers of the nation promised.

For a great country like India, with its unique diversity of all forms, fulfilling independence, in completeness, is a challenge of enormous proportions. The country and its people have come a long way from the impoverished nation and colonial ravishing ground that it once was. With its resources limited, and coffers empty, the country has struggled to be what it is today in no uncertain terms.

However, a question remains, and must be faced. Is this the India that was dreamed about three score and five years ago? Collectively, as a nation, has India done enough in pursuit of the dreams that it promised to achieve on the eve of August 15, 1947? It is crucial to answer whether the unity of this great nation and its people have withered away in the past six decades? If so, have there been adequate efforts to prevent this? Has India strengthened itself morally to withstand threats that are gaining strength to destroy it from within and without?

Histories of great nations speak of internal wilt exploited by external forces. The greatness of a nation is not reflected in the volume and capacity of its uniformed forces. It is measured by the belief every citizen has in their state, of seeking adequate counsel from the people and protecting them from all evils.

It is a reality that India is more weak and polarised than it was 65 years ago. India's weakness is reflected, not only in the state and anti-state conflicts that are continuing to cause deep social and personal wounds along the length and breadth of the country. It is evident from the acute and expanding polarisation of Indians who consider themselves privileged or discriminated. It is annoyingly audible in the hate speeches that self-proclaimed leaders of Hindu, Muslim, Christian, and other ethnic denominations make, as they carve into the thinning wall of cultural and religious tolerance of this great nation in all possible forms. It is blindingly lit in the dishonesty of the politicians and policy makers that the people refer to as their representatives. It is soaked in the tears and heart-wrenching stories of families that are forced to live as refugees within the four boundaries of their country, in the empty stomachs of women, children, and men who have no guarantee of a meal even once a week.

It resonates in the cries of parents who lose their young ones to malnutrition and starvation. It is proven in the crimes committed by those who are by law mandated to prevent crime and who enjoy impunity from prosecution. It emanates from the dust that rises with the destruction of those lands and communities that have started perishing after being ravaged by corporate greed. It is printed in the words of injustice, termed as judgements, delivered by institutions of injustice. It is experienced in the hereditary claims made and won by political princes and princesses who have helped erode democracy into a marketplace.

Every Indian should ask: is this what they deserve? If not, then what is the meaning of independence and of sovereign existence?

While it is clearly the duty of the state to provide answers, such answers will only be forthcoming if there are questions. This will require an awakening of the country and of its spirit. It will demand more courage and passion than that was displayed to drive the colonisers away, since what has colonised New Delhi for the past 65 years are modern day prophets of exploitation that wear cheap robes of nationalism and patriotism.

CHAPTER IV

ASIAN HUMAN RIGHTS COMMISSION

INDONESIA

INDONESIA

VIOLATION IS THE RULE

Introduction

For Indonesia, 2012 has been the year of the ratification of international human rights instruments. Two Optional Protocols to the Convention on the Rights of the Child and the Convention on the Rights of Migrant Workers were ratified by the government, which invited compliments from the international community. In addition to the ratifications, the government and Parliament managed to pass a new law on the juvenile court system that is more in accordance with the international standards on the protection of children's rights. Progress on the enhancement of human rights can also be seen in the judiciary, with Supreme Court judges declaring that the death penalty is a violation to the right to life.

It is a terribly difficult task to point out the positive progress

HUMAN RIGHTS TREATIES	RATIFICATION
International Covenant on Civil & Political Rights	2005
International Covenant on Economic, Social & Cultural Rights	2005
International Convention on Elimination of All Forms of Racial Discrimination	1999
Convention on Elimination of Discrimination against Women	1984
Convention on Rights of Child	1990
Optional Protocol to the CRC on the Involvement of Children in Armed Conflict	2012
Optional Protocol to the CRC on the Sale of Children, Child Prostitution & Child Pornography	2012
Convention against Torture	1998
Convention on the Rights of Persons with Disabilities	2011
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	2012

in human rights that the Indonesian government has achieved in 2012, other than the three developments mentioned. The reason is simple; it is human rights violations – and not protection or progress – that has been trending throughout the year. In this report, the AHRC has noted with concern three significant issues dominating the human rights discourse in the country from the end of 2011 till the end of 2012.

Violence perpetrated by security officials, triggered by conflicts over natural resources between villagers and companies, is one. Another relates to the protection of religious minorities and their rights, and the third centres on the state of human rights in Papuan provinces.

As in previous years, impunity remains a big issue in human rights discourse within the country. In all the mentioned issues, the perpetrators are rarely brought to trial and punished proportionately. The nuance of impunity is particularly strong in the issues of past human rights violations. In 2012, the National Human Rights Commission (Komnas HAM) made public the reports concerning the Mysterious Shootings that took place in the 1980s and the human rights abuses against 'the communists' in 1965-66. Despite the investigations conducted by Komnas HAM for years, the Attorney General's Office (AGO) has refused to take up the human rights body's reports, claiming insufficient evidence to prosecute.

Key Events & Rights Violation Trends

Conflict over Natural Resources Resulting in Violence

A clash between the police and civilians took place in Mesuji, Lampung, towards the end of 2011[61] . The police arrested a villager who harvested palm in a disputed land. Later, other villagers attempted to free him from custody. Responding to this attempt, the police unnecessarily shot a villager. This triggered anger amongst the villagers, who later burnt parts of the plantation area of PT Barat Selatan Makmur Investindo (PT BSMI) and PT Lampung Interpertiwi (PT LIP). Police responded to the villagers' actions with more indiscriminate shootings in which a villager was shot in the hand, while another died due to a gunshot to his head. Eight villagers were injured, in total, and one person rendered dead.

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61 See 'Land dispute led to indiscriminate shooting against villagers in Mesuji', an urgent appeal published by the AHRC, available at www.humanrights.asia/news/urgent-appeals/AHRC-UAC-053-2012

What happened in Mesuji was not an isolated case. A month after the shooting in Mesuji, police officers in Bima, West Nusa Tenggara, shot local farmers who were demonstrating against the gold exploration plan in the area[62]. The local farmers were conducting a peaceful protest against the Regent's decision to grant a concession to PT Sumber Mineral Nusantara (PT SMN) for gold exploration on 24,980 hectares of land, when approximately 500 police officers approached them on 24 December, 2011. A negotiation between the leader of the protesters and the police was ongoing when the police suddenly started shooting the protesters. The shooting resulted in the death of two persons and injuries to 77 others. Five people were also injured due to indiscriminate beatings by the police and 37 persons were arrested. Excessive use of force by the police against peaceful demonstrators, protesting against companies and the unfair exploration of natural resources, also took place on 2 February, 2012, in Rokan Hulu, Riau. Five farmers were injured and five others were arrested simply due to their involvement in a peaceful protest against the activities of a palm plantation company, PT Mazuma Agro Indonesia (PT MAI), on disputed land[63].

A local NGO, the Institute for Policy Research and Advocacy (ELSAM), noted that there were at least 30 cases of land conflicts throughout Indonesia, between January and April 2012 itself[64]. Most of the cases took place in Sumatra, Kalimantan, and Sulawesi. North Sumatera and Riau are two provinces that have the most land conflict cases, both having six cases each during the first quarter of 2012.

The failure of the government and the companies to consult with, and ask for, the consent of the community has triggered the resentment of the latter towards the former. The villagers of Lambu sub-district, for instance, were not aware of the gold exploration plan of PT SMN until 2010, i.e. two years after the company had obtained a permit from the government. Similarly, the local farmers in Rokan Hulu objected to PT MAI's activities as the grant of right to acquiescence 5508 ha of land in Batang Kumu village by the company was done without them being consulted. Those local farmers and villagers have legitimate reasons to demand prior consultation and consent as their lives are

62 Find the details of the case in 'Police killed two villagers and injured 82 others in anti-gold mining protest, available at www.humanrights.asia/news/urgent-appeals/AHRC-UAC-021-2012

63 See www.humanrights.asia/news/urgent-appeals/AHRC-UAC-051-2012

64 'Continue to Perpetrate: 2012 First quarter report of the human rights situation in Indonesia', p. 15-16, ELSAM, 2012 (hereinafter 'ELSAM First Quarter of 2012 report')

Police Shoot & Injure 5 Farmers in Riau During Land Rights Protests

Farmers in Rokan Hulu regent have been in conflict with PT MAI since 1998. They believe the acquiescence to, and possession of, 5508 ha of land in Batang Kumu village by the company were illegal, not only because the affected communities were not consulted but also due to the fact that the company's activities started prior to the grant of concession by the local authorities. Farmers had been forcibly evicted, their crop destroyed, and their houses burnt during the course of the conflict. In 1999 and 2010, two years alone, approximately 80 houses were set on fire, allegedly under the order of PT MAI and the Head of Sungai Korang village at that time, Marahalim Hasibuan. In 2009, 14 villagers were arrested, and six of them sentenced to six years imprisonment.

Despite the disputed status of the land, PT MAI started its on-site activities on 2 February, 2012. The villagers who had started gathering since morning were trying to block two excavators and two bulldozers from conducting any activity on the land. The excavators and bulldozers, however, were protected by Mobile Brigadier (Brimob) officers, who responded to the villagers' attempt with indiscriminately gunfire without warning. As a result, three persons were shot in the leg, one person was shot on his thigh, and another suffered a wound to his buttocks. Complete information on this case is available at www.humanrights.asia/news/urgent-appeals/AHRC-UAC-051-2012.

affected by the companies' presence and activities. In some cases, the farmers and villagers have been forcibly evicted from land they legitimately own. Even in cases where lands have not been arbitrarily grabbed, company activities can bring damage to the environment, making the neighbourhood less liveable for residents. The gold mine operation in Bima, for instance, is likely to dry up the water resources, which will disrupt the farmers' agricultural activities and livelihood.

The UN Special Rapporteur on the Right to Food, Olivier De Schutter, has established a set of core principles on large-scale land acquisitions and leases, one of which calls for free, prior, and informed consent of the local communities affected by any shifts in land use[65]. The set core of principles

65 Report of the Special Rapporteur on the Right to Food, Olivier de Schutter, principle 1 on p. 16, UN Doc. A/HRC/13/33/Add.2, 28 December 2009

also calls for the participation of such communities in the decision-making process. The Indonesian government, however, is yet to establish any procedure under national laws to ensure these two essential principles. The current law no. 18 Year 2004 on Plantation, for instance, does not impose any obligation on the government and companies to consult affected communities. It only requires the companies wishing to acquire land belonging to an indigenous group to hold a public consultation in order to obtain the group's consent[66]. Yet, even in such case, the law sets a very high standard in determining which groups are indigenous, by requiring the issuance of a regional / provincial regulation declaring that a group falls within such category[67] – a provision that is incompliant with the 'self-identification' principle[68].

Instead of setting up mechanisms to guarantee the right of affected communities to participate in decision-making, the Indonesian government has been allowing the use of state apparatus for the protection of companies' business and interests. In many instances, police officers have acted more as security guards of the companies than as protectors and servants of society.

Min. Human Rights Principles Applicable to large-scale land acquisitions / leases

Principle 1 – Negotiations on investment agreements should be transparent. Local communities potentially affected should be participated.

Principle 2 – Any shifts in land use can only take place with the free, prior and informed consent of the affected communities.

Principle 3 – States should adopt legislation protecting the rights of communities and specifying the conditions according to which shifts in land use or evictions may take place, as well as the procedures to be followed.

Principle 4 – Local population should benefit from the revenues generated by the investment agreement.

Principle 10 – States shall consult and cooperate in good faith with the indigenous peoples concerned in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.

66 Law No. 18 Year 2004 on Plantation, Art. 9 (2), LN 2004 No. 84, 11 August 2004

67 Id., Comment on Art. 9 (2)

68 See ILO Convention No. 169 concerning Indigenous and Tribal Peoples, Art. 1 (2), 27 June 1989

Persecution & Discrimination against Religious Minorities

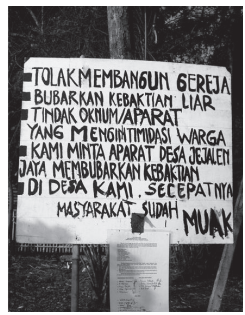
Violence and discrimination against religious minority groups in Indonesia in 2012 has attracted the attention of the international community. As in the previous year, the Christian community and the Ahmadiyah have been subjected to discrimination, which took the form of the closing down of places of worships and intimidation. Yet, as pointed out by ELSAM, unlike 2011, the persecution of religious minorities this year has not been only concentrated in Java. It has also spread to other locations[69]. For example, attacks and violence towards the Ahmadiyah in 2012 took place not only in Singaparna, Tasikmalaya and Cisalada, all of which are located in Java Island, but also in Batam[70]. In April 2012, the fundamentalist group Islamic Defenders Front (*Front Pembela Islam*, FPI) intimidated, beat, and threatened the leader of Ahmadiyah Batam, making him signed a statement saying that his congregation will no longer hold their regular religious activities at Ruko Nagoya.

The Case of HKBP Filadelfia

HKBP Filadelfia bought a piece of land located in Jejalen Jaya village in 2007. The understanding was that the site would be where their house of worship would be located. HKBP Filadelfia went through all the procedures required by law for the establishment of places of worship, including those under the 2006 Joint Regulation of the Ministry Religious Affair and the Ministry of Interior. On Christmas Day in 2011, however, the Muslim residents of Jejalen Jaya village held a massive protest, refusing the presence of a church in the area. This was followed by the issuance of a letter by the Regent of Bekasi ordering HKBP Filadelfia to stop construction of the church and to stop conducting their service of worship in the village. Since then, any attempt by the congregation to hold a service in the land they bought has been stopped by the residents. The dispute was later taken to relevant courts, all of which ruled that HKBP Filadelfia has the right to establish a church at the disputed location.

69 ELSAM First Quarter of 2012 report, supra note 4, p. 10

70 The AHRC documented several cases of attacks against the Ahmadiyah community in Indonesia. See, for instance, 'Ahmadiyah members in Batam are threatened, ill-treated and illegally arrested with the acquiescence of the police', available at www.humanrights.asia/news/urgent-appeals/AHRC-UAC-086-2012; and 'Police failed to protect Ahmadiyah mosque from attacks by Islamic fundamentalist group in Singaparna', available at www.humanrights.asia/news/urgent-appeals/AHRC-UAC-071-2012



The congregation of the Yasmin Indonesian Christian Church (GKI Yasmin) still have their rights denied by the local government of Bogor, who refused them permission to build a church on land they legally own, despite the Supreme Court's judgement in favour of the congregation. A similar problem is experienced by the Batak Protestant Church (HKBP) Filadelfia, in Bekasi, whose Reverend was subjected to death threats by villagers. In the middle of 2012, it was also reported that at least 17 churches were closed down by the local government of Aceh Singkil, as the establishment of such churches was considered to be illegal.

The judgments of the courts have been ignored by the local authorities of Bekasi. This has given the message to the residents that they have the right to prevent HKBP Filadelfia's congregation from establishing the church or conducting a service of worship, and intimidation and attack against the congregation has continued. Reverend Palti Panjaitan has received death threats from the villagers. Stones, plastic bottles, faeces, and urine have been thrown at the congregation when they have attempted to reach their church. Seeing the increased intimidation and attacks directed against them, the congregation of HKBP Filadelfia is no longer trying to hold services on the disputed location, but instead conducts the same in front of the Presidential Palace in Jakarta. The government continues to fail to respond to their demands.[71]

Discrimination and persecution are also experienced by the Shia community in Sampang, East Java. The leader of the community, Tajul Muluk, was tried and punished under the blasphemy provisions stipulated in the Penal Code. His assertion that the current version of disseminated Quran is not the original one and his dissenting belief concerning the five pillars of Islam and six pillars of Islamic faith have resulted in him being sentenced to a two year term of imprisonment by the Sampang District Court[72]. Later, in August 2012, approximately 500 people claiming to be Sunni Muslims attacked the

71 More information can be found at www.humanrights.asia/news/urgent-appeals/AHRC-UAC-087-2012. And, an AHRC interview with Reverend Palti Panjaitan from HKBP Filadelfia, is available at www.humanrights.asia/countries/indonesia/opinions/interviews/AHRC-ETC-015-2012.

72 In its written statement submitted to the 20th Session of the UN Human Rights Council, the Asian Legal Resource Centre, AHRC's sister organisation, expressed its concern on the trial of Tajul Muluk. See 'INDONESIA: Blasphemy law should be repealed to show Indonesia's commitment to the protection of freedom of expression', available at www.alrc.net/doc/mainfile.php/hrc20/718/

Shia community in the same area, which resulted in the death of one member, injury to seven others and the destruction of 40 houses[73]. The police had been previously informed about the imminent attack by the so-called Sunni Muslims group, yet it failed to take adequate measures and sent only five officers to prevent the attack. A more appropriate number of security officers were deployed only after the attack was over.

There has been no evidence of the involvement of state officials in the persecution and discrimination against religious minorities, yet their lack of response and failure to keep being neutral have aggravated the problem. There were only three officers sent towards Ahmadiyah village in Cisalada to prevent the attack; the intimidation directed to the Ahmadiyah leader in Batam was performed with the acquiescence of a top official in Barelang District Police; and police officers were present on-site when the Ahmadiyah mosque in Singaparna was attacked by a fundamentalist group. In early 2012, President Susilo Bambang Yudhoyono delivered a statement through his spokesperson saying it is not possible for him to intervene in GKI Yasmin's case as the Law on Local Government stipulates that such an issue falls within the authority of the local, and not the central, government[74].

In some other instances, the security officers and state officials openly take the side of the majority groups by asking the persecuted communities to stop insisting, give up their rights, and conduct their religious activities somewhere else. The Indonesian Interior Ministry suggested the relocation of GKI Yasmin to a land provided by the government and called such a proposal 'a solution which benefits everyone'[75]. The Regent of Sampang was also considering the option of relocating the Shia community[76]. In a separate occasion, the Religious Minister stated that conversion of Ahmadiyah to mainstream Islam will solve the tension between the two groups. Coupled with the absence of prosecution and trial against those responsible for the attacks, such statements and

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73 'Police's failure to protect the Shia minority in Sampang resulted in the death of a person, many others injured and houses were burnt', states an AHRC Urgent Appeal, available at www.humanrights.asia/news/urgent-appeals/AHRC-UAC-164-2012

74 Such a statement was delivered by the President's spokesperson, Julian Aldrian Pasha, to the press. As reported by Suara Pembaruan, 'UU Pemda Halangi Presiden Tangani GKI Yasmin' ('Local Government Law prevents the President to deal with GKI Yasmin'), accessed on September 2012 at www.suarapembaruan.com/home/uu-pemda-halangi-presiden-tangani-gki-yasmin/16876

75 'INDONESIA: Religious minorities' relocation is not a solution' – a statement issued by the AHRC, on 11 September 2012, available at www.humanrights.asia/news/ahrc-news/AHRC-STM-182-2012

76 'Shia group offered relocation', The Jakarta Post, 8 September, 2012

suggestions proposed by such government officials have sent the wrong message to the public – that it is minorities and their difference that is to be blamed for violence taking place.

As of today, there is inadequate legal protection for religious minorities in Indonesia. Criminal investigation of violence directed against minorities hardly ever takes place. Even when it does, the perpetrators are let off lightly, as happened in Cikeusik case, where those responsible for the death of three Ahmadiyah members were sentenced to only 3-6 months in prison. In the Cikeusik case, the prosecutors and judges applied the 'general' criminal provisions on incitement, assault, and destruction under the Penal Code. The using of articles under the current Penal Code in cases of violence against religious minorities is problematic as the Code does not include discriminatory motive as an aggravating factor. The Anti-Discrimination law, enacted in 2008, establishes discriminatory motive as an aggravating factor yet is only applicable in cases concerning ethnic and racial discrimination, but not religious one.

Human Rights in Papua

The year 2012 in Indonesia has been marked by the escalation of violence and tension in the Papuan provinces, particularly after the UN UPR session took place in May, where Indonesia was heavily criticised for human rights abuses in such provinces (*see the sub-chapter on UN Universal Periodic Review below*). A German tourist was shot only a week after the UPR session and this incident was followed by more shooting of civilians. At the time of writing this report, the identities of the perpetrators still remain unknown. However, the Indonesian authorities point their fingers to *Komite Nasional Papua Barat* (West Papua National Committee, KNPB), a political organisation aiming at the independence of West Papua.

In early June, the leader of KNPB, Buchtar Tabuni, along with two other members of the organisation, was arrested by the police. The police claimed that KNPB was engaged in a series of violent acts and, as a leader, Buchtar had to be held responsible. A week after the arrest of Buchtar, on 14 June, 2012, the Secretary General of KNPB, Mako Tabuni, was shot to death by police officers[77]. The police did not deny their involvement in the shooting, but

77 In relation to the escalated violence in Papua provinces post-UPR session on Indonesia, the AHRC, through its sister organisation, Asian Legal Resource Centre, delivered an oral statement to the 20th Session of the UN Human Rights Council in June 2012. Text of the oral statement is available at www.alrc.net/doc/mainfile.php/hrc20/727/

insisted that it was necessary, as Mako was trying to grab the guns carried by the officers. The police made a statement claiming bullets were found on Mako's body, yet such a statement runs contrary to the information obtained by the AHRC. Witnesses testified that Mako was unarmed at the time of the shooting. An investigation report produced by the Australian Broadcasting Corporation (ABC) reveals that Detachment 88 (Densus 88), the counterterrorism squad of the Indonesian National Police, was involved in the killing of Mako Tabuni. The Indonesian Defence Minister rejected the accusation and told the press that Mako's killing was not a violation of human rights.

The persecution towards activists of KNPB continued after the arrest of Buchtar Tabuni and the killing of Mako Tabuni. The police blamed KNPB not only for violence and shootings of civilians but also bombings that took place in Wamena, including the one that happened in an empty police station in September. Following the bombings, the police raided the headquarters of KNPB in Wamena, where they claimed to find two active bombs. Five Papuan activists were arbitrarily arrested a month later for allegedly importing or distributing explosive materials, but later released by the police due to lack of evidence. There is a strong allegation that their arrest was based on their activism rather than their involvement in crime. This was indicated by the fact that the police seized and copied the activists' documents on their political movements, which had no relationship to the charge imposed[78].

The bombing of the police station and the finding of bombs at the KNPB headquarters took place around the time of the inauguration of Irjen Tito Karnavian as the new Chief of the Papuan Regional Police. His inauguration had raised concerns that Densus 88 will be deployed more actively in Papua provinces, given his background as former head of the counterterrorism squad. The deployment of Densus 88 is worrying; the squad has a record of shooting terrorist suspects to death with impunity.

Security officers opened fire on Papuans not only in political-related cases but also in other instances. In 2012, the AHRC documented several cases where police and military officers shot civilians for insignificant fighting, petty crime, or simply out of revenge. In May, three police officers shot five Papuans in Degeuwo after the latter refused to obey the order of the former to leave the billiard parlour at which they were having a game. The shootings resulted

78 'Police arbitrarily arrested five Papuan activists and copy documents related to their political activities', an Urgent Appeal issued by the AHRC, available at www.humanrights.asia/news/urgent-appeals/AHRC-UAC-185-2012

in the death of one of the Papuans, Melianus Kegepe, while the rest were injured[79]. A month later, in Wamena, military officers of Battalion 756 Wimane Sili attacked civilians in Kampung Honai Lama, resulting in the death of a civilian, injury to 13 others, and destruction of 87 civilian houses[80]. The attack was conducted by the military officers as revenge – having learned that two of their colleagues were stabbed by residents of Kampung Lama. The residents committed the stabbing because the two officers had hit a 10 year old boy with a motorcycle and were unlikely to be brought to justice. Crimes committed by security officers in Papua provinces are rarely punished.

The shooting of civilians by security officers also happened in Nabire in September. Kristian Belau and his friends were blocking the road connecting Nabire and Pedalaman. Whereas his two other friends managed to escape, Kristian Belau who was drunk but unarmed was shot by the police in his

The Military Attacks Civilians & their Property in Wamena

On the morning of 6 June, 2012, two members of Battalion 756 Wimane Sili, named Pratu Sahlan and Prada Parloi Pardede, were riding a motorcycle at high speed in Kampung Honai Lama when they hit Kevin Wanimbo, a local 10-year old boy. This triggered the anger of Kampung Honai Lama residents who later stabbed the two military officers. Pratu Sahlan died due to the attack while Prada Parloi Pardede was injured. On the same afternoon, other military officers from Battalion 756 Wimane Sili opened fire on the residents of Kampung Honai Lama after they learned that their colleagues had been attacked. Local villagers were beaten up with wood blocks by the military officers, and the houses were burned and destroyed. Vehicles parked in front of the houses were burned and some public facilities were destroyed, including an electricity pole in Potikelek Market.

Photograph (left): ***Burnt Houses in Wamena***

79 'Police shot civilians in a petty fight in Papua resulted in one person died and four others injured', is an Urgent Appeal by the AHRC, www.humanrights.asia/news/urgent-appeals/AHRC-UAC-110-2012

80 'Military members shot civilians and burned their properties in Wamena, West Papua', an Urgent Appeal by the AHRC, www.humanrights.asia/news/urgent-appeals/AHRC-UAC-103-2012

right thigh. The police later spread false news saying that Kristian was shot in crossfire between the police and an armed civilian group[81].

In June 2012, the AHRC issued an urgent appeal documenting the torture of 42 prisoners and detainees by prison guards at Abepura Correctional Facility (LP Abepura)[82]. The torture was triggered by a verbal argument between a political prisoner, Selfius Bobii, and the Head of the Correctional Facility, Liberti Sitinjak, who was not happy with the criticism of Selfius. He ordered the guards to put Selfius in solitary confinement. Other detainees and prisoners, who were witnessing Selfius being taken to the isolated cell, yelled and protested against such measure. The guards were offended so they took the other prisoners out of their cells and beat, kicked, and hit them with fists, wood blocks, as well as iron rods.

The prisoners were also dragged into the yard and forced to walk whilst crouching for about 200 metres. Beatings and kicking continued while they were made to walk thus. The prison guards stepped on prisoners' and detainees' fingers and toes, and made remarks such as 'you are all stupid, that is why you ended up here'. The torture and ill-treatment continued for about two and a half hours. Torture is widely practised throughout Indonesia, but Papua is one of the areas where prevalence of such practice is high.

UN Universal Periodic Review 2012:

On 23 May 2012, Indonesia had its human rights situation reviewed at the UN Universal Periodic Review (UPR). Prior to the session, the Asian Legal Resource Centre (ALRC), the sister organisation of the AHRC, submitted a stakeholder's report along with a local NGO, KontraS[83]. In the submission, the two organisations pointed out a number of human rights issues which the government has not dealt with, such as torture, impunity, violence, and the persecution of activists in Papua as well as discrimination and intimidation against religious minority groups. The AHRC also submitted a joint report,

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81 'Police shoot an unarmed civilian and spread a false report on the incident in Nabire, Papua', an Urgent Appeal by the AHRC, www.humanrights.asia/news/urgent-appeals/AHRC-UAC-103-2012

82 'Prison guards tortured 42 prisoners and detainees at Abepura correctional facility in Papua', an Urgent Appeal by the AHRC available at www.humanrights.asia/news/urgent-appeals/AHRC-UAC-099-2012

83 Stakeholders' submission concerning the Universal Periodic Review on Indonesia, submitted by the Asian Legal Resource Centre and KontraS, available at www.alrc.net/PDF/ALRC-UPR-13-001-2011-Indonesia.pdf

specifically dedicated to discuss the human rights issues in Papua, along with Franciscans International and the Faith Based Network on West Papua[84].

In the May session, 74 delegations made statements, some of which highlighted various important human rights issues and provided several recommendations[85]. Human rights issues being taken up in the session included the ratification of international human rights instruments; the absence of the criminalisation of torture and human rights education for government officials. Concerns on the human rights situation in Papua were expressed by many states such as Japan who requested the Indonesian government to 'halt immediately reported human rights violations by military and police officers and a general climate of impunity in Papua'[86]. Canada and the USA voiced their concern on the use of articles on treason under the Penal Code against activists in Papua[87], whereas France called on the government to grant access to foreign journalists to visit Papua[88].

Responding to issues of discrimination against religious minorities raised by the delegations during the session, the Foreign Minister Marty Natalegawa claimed that Indonesia 'attached the highest priority to the issue of freedom of religion' and that such right is guaranteed both in the Constitution and the laws[89]. As for the abuses in Papua, the Minister argued that security officers who 'committed excesses in carrying out their responsibilities to maintain law and order have been held accountable and brought before the relevant courts'[90].

In all, there were 179 recommendations given by delegations attending the session, and 149 of them enjoyed the support of the Indonesian government[91]. Indonesia made the commitment to ratify more international human rights

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84 Joint stakeholders' submission on the human rights situation in Papua, submitted by Franciscans International, Faith Based Network on West Papua, and the AHRC, downloadable at www.humanrights.asia/resources/special-reports/AHRC-SPR-002-2011/view

85 Report of the Working Group on the Universal Periodic Review on Indonesia, UN Doc. A/HRC/21/7, 5 July 2012, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/150/17/PDF/G1215017.pdf?OpenElement (hereinafter 'Report of Working Group on the UPR on Indonesia')

86 Id., para. 84

87 Id., para. 109.32 and 109.33

88 Id., para. 108.114

89 Id., para. 76

90 Id., para. 102

91 See Report of Working Group on the UPR on Indonesia, supra note 24, as well as the addendum document, UN Doc. A/HRC/21/7/Add.1, 5 September, 2012

instruments, including the two protocols to the UN Convention on the Rights of the Children (CRC), the Rome Statute, OPCAT, OP CEDAW and ILO Convention No. 189 on Decent Work for Domestic Workers. It also promised to grant access to the International Committee of the Red Cross (ICRC) to any part of the country including Papua and West Papua; to combat impunity; to guarantee freedom of religion and full respect of minorities' rights; and to ensure that provisions of the Indonesian Criminal Code, such as articles 106 and 110 are not misused to restrict the freedom of speech.

Although it accepted more recommendations than it rejected, the government mainly accepted those of a general nature and rejected those particularly essential for the improvement of human rights situation in the country. For instance, it refused to amend the 1965 Blasphemy Law, as suggested by Denmark; to revise the law on military courts, as called for by Switzerland; and to grant access to foreign journalists to Papua, as recommended by France. Indonesia also refused to support the recommendation calling for abolition of the death penalty. In refusing some of these recommendations, such as matters related to the Blasphemy Law and death penalty, the Indonesian government argued that the Constitutional Court has dealt with the issues and declared them to be in accordance with the 1945 Constitution. In some other instances, the government simply denied the human rights violations pointed out during the session by delegations of other states. It denied the existence of indigenous people in the country, as well as discriminatory local regulations against homosexuals in Aceh, and the ongoing human rights violations by military and police officers in Papua. Responding to the two latest issues in Aceh and Papua, the government claimed 'the recommendations do not reflect the actual situation in the Provinces they refer to'[92].

HUMAN RIGHTS - THEMATIC ISSUES

Past Human Rights Violations

In August 2011, the ad *hoc* team established by the National Human Rights Commission (Komnas HAM) to investigate the case of the Mysterious Shootings which took place in 1982-1985 concluded its work which was

92 Addendum to the Report of Working Group on the UPR on Indonesia, para 6.5

started three years before. It was not until June 2012, however, that Komnas HAM decided to make public the final report concerning the case[93].

During the period of 1982-1985, many individuals known as criminals during their life time were shot to death and had their bodies left at public places such as roads, markets, and rivers. The shootings took place in various parts of Indonesia but they were particularly prevalent in the Javanese provinces. It was reported that the total number of victims reached 9,000.

Investigation conducted by Komnas HAM reveals that there were official policies set by the Indonesian government at that time to reduce crime rates by arbitrarily killing and arresting those who were involved in criminal activities. In Central Java, for instance, Komnas HAM found that *Operasi Cerah* (Bright Operation) and other similar operations were launched by the military to decrease the level of crime in the area. Activities conducted under these operations, Komnas HAM reports, included killings, torture, enforced disappearances, and arbitrary deprivation of liberty. In Yogyakarta, the arbitrary arrests were sometimes conducted by military officers in uniform, or by unidentified groups of men, or by people wearing masks.

At the end of its report, Komnas HAM highlighted that there is sufficient evidence to conclude that human rights violations took place during the Mysterious Shootings period between 1982 and 1985 amount to crimes against humanity as prohibited under Law No. 26, Year 2000 on Human Rights Court. It has recommended that the Attorney General Office (AGO) follow up its finding, in accordance with the procedure established by the Human Rights Court Law[94]. In August, the AGO established a team, consisting of 12 prosecutors led by D. Andhi Nirwanto, to study the Komnas HAM's findings concerning the Mysterious Shootings case. Yet, later, in early November, the Attorney General announced that what Komnas HAM found was insufficient for the AGO to conduct further investigation, and returned the case documents to Komnas HAM[95].

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93 Ringkasan eksekutif hasil penyelidikan tim ad hoc penyelidikan pelanggaran hak asasi manusia yang berat – peristiwa penembakan misterius periode 1982-1985 (Executive summary of report by the ad hoc team on the investigation regarding gross human rights violations – Mysterious Shootings within the period of 1982-1985), Komisi Nasional Hak Asasi Manusia, 31 June, 2012

94 Id., p. 48

95 'Jaksa Agung belum bisa sebut jenderal pelanggar HAM berat' ('Attorney General still cannot name generals committing gross human rights violations'), 9 September 2012, http://news.liputan6.com/read/451817/jaksa-agung-belum-bisa-sebut-jenderal-pelanggar-ham-berat

The Komnas HAM report on Mysterious Shootings was not the only finding published in 2012 that was dismissed by the AGO. A month after the release of the Mysterious Shootings report, Komnas HAM published its conclusion to the investigation concerning human rights abuses during 1965-1966 experienced by persons allegedly involved in a communist movement[96]. It took approximately four years for Komnas HAM to conclude the investigation, which was begun in June 2008. Komnas HAM gathered the information from 349 witnesses and victims, and focused its enquiry on several areas: the Maumere, Pekambingan Correctional Facility in Denpasar, South Sumatra, Moncongloe Camp in South Sulawesi, Buru Island in Maluku, and a detention centre on Gandhi Street in Medan, North Sumatra. As in the case of Mysterious Shootings, Komnas HAM pointed out in the conclusion of its report that the abuses which took place constitute crimes against humanity, which falls under the jurisdiction of the *ad hoc* Human Rights Court. The report noted nine forms of abuse that took place, including arbitrary killings, slavery, torture, rape and other sexual assaults, as well as enforced disappearances[97].

Following the publication of Komnas HAM's finding on the human rights abuses in 1965-1966, the Coordinator Political, Legal and Security Affairs Minister Djoko Suyanto insisted that the mass abuses were justified 'in order to protect the country from communism'[98]. The Minister did not deny the findings of Komnas HAM, but claimed that Indonesia would not be as it is today had the government not taken such measures against those involved in communism. The Minister's statement was heavily criticised by human rights groups. But, one of the biggest religious groups in Indonesia, Nahdlatul Ulama, shared the Minister's view. A leader of the group claimed that Nahdlatul Ulama is in favour of reconciliation, but does not consider the state's recognition of the abuses to be necessary. In early November, Attorney General Basrief Arief mentioned that Komnas HAM's finding on the 1965-1966 abuses has been sent back to Komnas HAM for further completion, along with the report on the Mysterious Shootings case.

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96 Pernyataan Komisi Nasional Hak Asasi Manusia (Komnas HAM) tentang Hasil Penyelidikan Pelanggaran HAM yang Berat Peristiwa 1965-1966 (Statement by the National Human Rights Commission on the Investigation Report concerning Gross Human Rights Violations 1965-1966), Komisi Nasional Hak Asasi Manusia, 23 July 2012

97 Id., p. 22-24

98 '1965 mass killings justified: Minister', The Jakarta Post, 1 October 2012. Responding to the Minister's claim, the AHRC issued a statement, 'No mass killings can ever be justified', 3 October, 2012, available at www.humanrights.asia/news/ahrc-news/AHRC-STM-190-2012

It is not the first time Komnas HAM has had its reports dismissed by the AGO. In fact, the AGO's reluctance to respond to Komnas HAM's findings with the gravity they deserve has been the major obstacle preventing legal proceedings on past human rights violations. Komnas HAM's report on the Talangsari case, where military and police officers attacked civilians resulting in the death of at least 130 persons and the persecution of over 200 people, for instance, was submitted to the AGO in 2008. But, no measure has yet been taken by the AGO to respond to this report. Similarly, the case of shootings against student activists, which occurred in 1998 and 1999, was also investigated by Komnas HAM. The findings were disregarded by the AGO despite the fact that, according to the Law No. 26 Year 2000 on Human Rights Court[99], and the Constitutional Court's judgement in 2007[100], it is obliged to investigate a human rights violation case, upon completion of Komnas HAM's enquiry.

Torture

The practice of torture has remained widespread in Indonesia in 2012. Two torture cases that attracted public attention this year were that of the two brothers in Sijunjung and the torture of Erik Alamsyah. Both cases took place in West Sumatra. The two brothers, aged 17 and 14, were found hanging in the bathroom of Sijunjung sub-district police station. The police initially declared that Faisal and Budri died due to suicide, but the autopsy result reveals bruises on the dead bodies. Komnas HAM held an investigation in the case and came to the conclusion that the two brothers did not commit suicide but, instead, were victims of premeditated murder. The police later revised its statement and admitted it is possible that Faisal and Budri were subjected to torture, but refused to recognise that the death of the two boys were due to such abuse[101]. Nine police officers were tried by the internal oversight mechanism, Propam, which sent them for disciplinary action for negligence. At the time of writing, a criminal proceeding against three police officers is still ongoing. The three officers are Head of Sijunjung Sub-district Police, AKP Syamsul Bahri; Head of the Criminal Unit, Iptu Al Indra; and, Head of the Intel Unit, Aipda Irzal.

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99 Law No. 26 Year 2000 on Human Rights Court, Art. 21 (1), LN 2000 No. 208

100 Constitutional Review on Law No. 26 Year 2000 on Human Rights Court, p. 94, No. 18/PUU-V/2007, Constitutional Court of Indonesia, 21 February 2008

101 Information is based on AHRC's interview with Era Purnama Sari, an advocate at Padang Legal Aid Institute (LBH Padang) on 20 November 2012. LBH Padang is representing the family of Faisal and Budri

Not long after the case of the Sijunjung brothers became a matter of public discussion, another torture case from West Sumatra emerged. According to a report published by ELSAM and Padang Legal Aid Institute (LBH Padang)[102], Erik Alamsyah was arrested with his two friends, Marjoni and Nasution Setiawan, for alleged involvement in theft of a motorcycle. The police arrested Erik and Nasution on 30 March 2012, after having arrested Marjoni about a week earlier. Erik and Nasution attempted to escape from six police officers, who were going to arrest them. They fell off their motorcycle in their escape attempt, but were taken to Bukittinggi Sub-District Police Station in good condition at around 1 p.m. in the afternoon.

In the police station, both Erik and Nasution were physically abused by the officers. They were beaten with blocks of wood, a broom, belts, and a bamboo stick. Nasution Setiawan was also hit in his knee with a hammer by the police officers. They were tortured in the same room for about 10 minutes before being separated. Nasution Setiawan testified to Komnas HAM that he saw Erik being tortured by the police and that he heard Erik screaming in pain from the other room. At around 4 p.m., Nasution Setiawan and Marjoni were allowed to see Erik, who was wounded and lying on the floor. He complained of pain in his stomach and the police brought him to the hospital. However, Erik died shortly after he arrived at the hospital. The police initially claimed that Erik died due to an accident. However, an autopsy conducted upon the order of West Sumatra Regional Police reveals that many wounds were found on his body.

In 2012, the AHRC documented three torture cases that took place in Medan, North Sumatra. The three cases share a common pattern in which the victims were taken to a place, such as a hotel or a cleared land, to be tortured before they were taken to the police station. Munawir Alamsyah, who was arrested for a drugs offense, was taken to a house located in Ring Road, Medan, to be tortured for approximately seven hours by police officers of the Narcotics Unit of the North Sumatra Regional Police[103]. In the Sun An and Ang Ho case, the

102 Ketiadaan perlindungan saksi, potensi gagalkan penghukuman – resume laporan #1, pemantauan persidangan penyiksaan Erik Alamsyah (The absence of witness protection, potential failure to punish – resume of the report on court monitoring on Erik Alamsyah's torture case), ELSAM and LBH Padang, 2012 (hereinafter 'ELSAM and LBH Padang's report on court monitoring regarding Erik Alamsyah's torture case')

103 'Police tortured and denied a drug offender's access to legal counsel and medical examination', an Urgent Appeal by the AHRC, available at www.humanrights.asia/news/urgent-appeals/AHRC-UAC-085-2012

sexual assault and torture that they endured were conducted in a hotel room[104]. As in Munawir Alamsyah's case, the officers of Medan Timur sub-district Police drove Ang Ho around the city before taking him to the police station. The AHRC also documented that Rokki Hutapea, a person allegedly involved in an aggravated theft, was brought to an unidentified place where he was beaten by police officers with a wood block until his head was severely injured[105].

The problem of torture in Indonesia does not only stop at the fact that it is widely practiced by law enforcement officials in the country. The issue is aggravated by the difficulty to hold the perpetrators accountable and punish them proportionately. In the case of Rokki Hutapea and Munawir Alamsyah, for instance, neither criminal nor disciplinary proceedings are taking place despite complaints having long been submitted by relatives. In instances where the criminal complaints are being taken up, the legal process usually slow and protracted – as in the case of torture of the two brothers in Sijunjung. The complaints were submitted by the victims' relatives at the beginning of 2012, but the court is still examining the admissibility of the case.

Rokki Hutapea: Police in Medan Protect Torturers

Rokki Hutapea was arrested in Medan, North Sumatra, on 30 January, 2012, for his alleged involvement in an aggravated theft case. At the time of arrest, the police blindfolded Rokki, tied him on his back and forced him to get into a car. Rokki was taken to an unidentified place where he was beaten by the police using a wood block on his arms, back, and head to the stage that his head began to bleed. The police later took the blindfold off and poured brake fluid on Rokki's head, as they said it would stop the bleeding. Rokki was severely injured, but the police took him directly to Medan District Police Station without giving him any medical treatment.

Photograph (Right): ***Rokki Hutapea****. Source, LBH Medan*

104 'Torture victims sentenced to life imprisonment on fabricated charges while allegations on their abuse are not investigated', an Urgent Appeal by the AHRC, available on www.humanrights.asia/news/urgent-appeals/AHRC-UAC-193-2012

105 'Police in Medan protect torturers by failing to respond adequately to a torture complaint', an Urgent Appeal by the AHRC, available on www.humanrights.asia/news/urgent-appeals/AHRC-UAC-197-2012

At the police station, Rokki begged the police to take him to the hospital as he was in a severe pain. The police took him to the hospital but asked Rokki not to tell the truth to the doctor. Rokki was ordered by the police to tell the doctor that injuries he got were a result of him getting into a fight or because he fell over. Rokki received 12 stitches on the outside of, and 4 stitches inside, his head.

After learning what had happened to her son, Rokki's mother lodged a complaint with the criminal division of North Sumatra Regional Police on 8 February, 2012. She also submitted a complaint to the Police's Professionalism and Security Affair Division about a week later. Although both complaints were brought at the beginning of 2012, the police still have not provided Rokki's mother with any updates on investigation of the case. Her lawyer from LBH Medan has been sending letters to the police yet the police have failed to reply. Details can be found at www.humanrights.asia/news/urgent-appeals/AHRC-UAC-197-2012.

Although Indonesia has been a state party to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) since 1998, it has failed to criminalise torture. The absence of any criminal provision prohibiting torture leads to disproportionate punishment being handed down by the court, as charges imposed on perpetrators fail to reflect the gravity of the offence committed. In Erik Alamsyah's case, the police officers that tortured Erik Alamsyah to death were sentenced by Bukittinggi District Court to only 10-12 months of imprisonment, for committing ordinary assault under Article 351 (1) of the Penal Code. The court failed to take into account that Erik died because he was tortured by the officers – a fact which would make articles on murder, or at least assault that resulted in death, more relevant than that of ordinary assault.

Lack of protection for victims and witnesses is another area that impedes the prevention of torture in Indonesia. ELSAM and LBH Padang noted several irregularities during the legal proceeding of Erik Alamsyah's case, including withdrawal of testimony by a key witness, Nasution Setiawan[106]. Unlike what he previously said to LBH Padang, Nasution stated before the court that Erik was injured as he fell over the motorcycle when they attempted to escape from the police. ELSAM and LBH Padang noted that Nasution was detained at the same detention facilities as that which held the six officers responsible

106 ELSAM & LBH Padang's report on court monitoring of Erik Alamsyah's torture case, supra note 40, p. 7

for torturing Erik, and was brought to court in a car along with the same perpetrators.

Indonesia has established a Witnesses and Victims Protection Agency under the Law No. 13 Year 2006, yet the protection given by the agency has been criticised for being inadequate.

The Death Penalty

After hardly being discussed in the previous year, the debate on the death penalty was back on the table in 2012. Although no executions were carried out during the year, the courts handed down the death penalty in several cases. Clemency was granted to several convicts so that the number of people on death row is currently 111 (by August 2012), five less than in 2011.

In late September, the Banten High Court converted the imprisonment imposed by a lower court to a British citizen, Gareth Dene Cashmore, to death. The High Court insisted the earlier sentence did not represent a strong enough deterrent. At around the same period, a Muslim mass organisation Nahdlatul Ulama (NU) proposed the death penalty for persons convicted of corruption and for civil disobedience against paying taxes. Local NGO KontraS recorded that Prabumulih District Court in South Sumatera also handed down death penalty to Efran Feri Ferdiansyah and Milna, a couple who were involved in a murder case[107].

A month prior to the judgment by the Banten High Court in the Gareth Cashmore's case, the Indonesian Constitutional Court reaffirmed its support for the death penalty. In a review of an article in the Penal Code on theft/murder (an act of theft that results in the death of the victim) punishable with death penalty, the Court claimed the death penalty is not a violation to the right to life as guaranteed in the 1945 Constitution[108]. It reaffirmed its 2009 judgment stating the right to life is not absolute and the death penalty should be understood as a justified restriction on such right[109]. The Court also set out that theft/murder can be categorised as one of 'the most serious crimes' and the death penalty is necessary to provide a deterrent effect to the community[110].

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107 Data obtained from KontraS's report

108 Constitutional review on Article 365 (4) of the Penal Code, No. 15/PUU-X/2012, Constitutional Court of the Republic of Indonesia, 18 July, 2012

109 Id., p. 20

110 Id., p. 19-20

The Supreme Court, however, does not subscribe to the view held by the Constitutional Court. In a case concerning an ecstasy producer, the Supreme Court established that the death penalty imposed upon him is a human rights violation[111]. The judges examining the case upheld that the right to life has a non-derogable characteristic, meaning it cannot and shall not be restricted in any circumstances[112]. The judges also underlined that the death penalty is not in accordance with the aims of punishment which are supposed to be 'educative, preventive and corrective'[113].

Freedom of Expression & Activist Protection

In her report on Indonesia, the UN Special Rapporteur on the situation of human rights defenders, Hina Jilani, expressed her concern regarding human rights violations suffered by human rights defenders in Indonesia. The report was released in 2007, but it is still relevant in today's situation in the country, as human rights defenders and journalists are still subject to intimidation, threats, and abuses. While conducting a visit at Jejalen Jaya Village to report the situation concerning the HKBP Filadelfia case (see 'Persecution and discrimination towards religious minorities' sub-section), on 6 May, 2012, human rights activist and journalist Tantowi Anwari was beaten by villagers, allegedly provoked by a member of Islamic Defender Front (Front Pembela Islam, FPI). The police did not take any legal measures against those who committed the beatings but, instead, took Tantowi to a police station 'for the sake of his safety'[114].

On 16 October 2012, a Riau-based journalist named Didik Herwanto was taking photographs of the accident of the Indonesian Air Force's Hawk 200[115]. There was displeasure that Didik was taking pictures of the accident. Lieutenant Colonel Robert Simanjuntak approached and kicked him. Didik was pushed until he was lying on the ground and the military officer strangled him. Didik was also beaten on his head and kicked in his pelvis. Another

111 Hanky Gunawan's Final Appeal, Case No. 39 PK/Pid.Sus/2011, Supreme Court of the Republic of Indonesia, 16/08/2011

112 Id., p. 53

113 Id. Responding to the progressive judgement by the Supreme Court, the AHRC sent an open letter to the Chief Justice. See 'Supreme Court should encourage judges not to impose death penalty', available at www.humanrights.asia/news/ahrc-news/AHRC-OLT-016-2012

114 Staff of the AHRC was present at the location during the beating on 6 May, 2012. After trying to take pictures of Tantowi, who was being taken to the police station, the AHRC personnel was herself subject to identity check by the police

115 Information obtained from local NGO, KontraS

person in an orange uniform then came and took away Didik's camera, while five more officers came and started stamping on him. Didik was trying to explain that he is a journalist working for Riau Pos. But, the military officers ignored him and said 'we do not care if you're a journalist of Riau Pos or what'. Didik was subject to continuous beatings until another military officer came and rescued him. As a result of the beatings, Didik suffered a serious injury to his left ear, bruises on his back, and a severe pain in his right hip that made it difficult for him to walk.

Environmental Activist Beaten by two Strangers

I Wayan Suardana, also known as Gendo, is an environmental activist working for local NGO WALHI, and a law firm called Wihartono and Partners. On 5 November, 2012, at 11:30 am, two strangers came to the law office where he was working looking for him. Gendo talked to them. They asked him to wait, as they need to call for their friends first. About an hour later, the two strangers left, but two other people arrived. Similar to the previous two unidentified men, they were looking for Gendo. As soon as they found Gendo, the second batch of strangers started beating him repeatedly. Before they left, one of them punched Gendo on his chin and warned him to be careful if he 'keeps messing up things.' As result of the beatings, Gendo's lips began bleeding and he almost lost some of his teeth. Gendo filed a complaint to the Bali Regional Police on the same day, as confirmed by case receipt No. TBL/179/XI/2012/SKPT/Polda. Gendo has been involved in advocacy and campaign against so-called development activities destructive to the environment. For instance, he has been actively conducting advocacy against the violation related to the environmental impact analysis documents in a toll establishment project in Nusa Dua.

Suppression on the right to freedom of expression and opinion in Indonesia does not only take place in the form of physical assault, but also in the criminalisation of those who appear to be offensive to the mainstream public. On 18 January, 2012, an atheist living in Padang, Alexander Aan, was arrested for posting materials considered to be blasphemous on Facebook[116]. Aan posted a status questioning the existence of god, a note entitled 'The Prophet Muhammad was attracted to his own daughter-in-law', and a comic entitled 'The Prophet Muhammad had been sleeping with his wife's maid'. Aan was

116 For details on the case, refer to 'An atheist on trial for religious defamation in Padang, West Sumatra', an AHRC Urgent Appeal, available at www.humanrights.asia/news/urgent-appeals/AHRC-UAC-063-2012

charged with three alternative articles: disseminating information aimed at inflicting religious hatred, committing religious blasphemy, and calling for others to embrace atheism. In June 2012, Muaro Sijunjung District Court found him guilty for the first charge and sentenced him to two and a half years imprisonment[117]. Aan later appealed to the High Court, which reaffirmed the judgment of the District Court. The case is currently under appeal examination at the Supreme Court.

The District Court judgment reflects a lack of understanding of judges with regard to human rights, particularly those related to freedom of expression and the concept of limitation on rights. The AHRC submitted a third-party intervention (amicus curiae brief) on this matter to the Court[118], emphasising that freedom of expression may be limited only when it is strictly necessary and that non-theistic belief should be protected under the notion of freedom of religion. The Court, however, insisted that the punishment of Aan is not against human rights principles as such an act is necessary to protect the right and reputation of others[119].

Human Rights Related Laws & Bills

Law No. 2 Year 2012 on Land Acquisition for Public Interest:

Towards the end of 2011, the Parliament enacted a law concerning land acquisition for public interest that sparked criticism from civil society organisations. Despite its fine title, it is believed that the law will perpetuate the practice of arbitrary and forced evictions for the sake of so-called 'public interest' and 'development'. The law is currently being challenged in the Constitutional Court by various civil society organisations concerned with issues of human rights, environment and social justice. One of the provisions contested by such organisations is Article 10, which establishes the list of construction activities considered to be in the interest of the public[120]. The

117 'Atheist in Padang sentenced to two and a half years imprisonment', an AHRC Urgent Appeal update available at www.humanrights.asia/news/urgent-appeals/AHRC-UAU-021-2012

118 Amicus brief submitted by the AHRC is available in English and Bahasa Indonesia at www.humanrights.asia/countries/indonesia/cases/alexander-aan-2012/

119 The case of Alexander Aan, Case No. 45/PID/B/2012/PN.MR, p. 43-44, Muaro District Court, 14 June, 2012.

120 Constitutional review on the Law No. 2 Year 2012 on Land Acquisition for Public Interest, Case No. 50/PUU-X/2012, Minutes of hearing, Constitutional Court of Republic of Indonesia, 11 June, 2012

organisations are concerned such construction activities will benefit business and companies more than the public.

The absence of recognition and guarantees on lands belonging to indigenous people is another issue. The law establishes a set of procedures for the government to legally acquire land from its rightful owner, including providing them with compensation. There is also a public consultation and complaint mechanism established under the law. These procedures and mechanisms, however, are available only to individuals or entities that hold land tenures recognised under the Agrarian Law, Law No. 5 Year 1960, and not to indigenous peoples, who have distinctive right and relationship with their land.

Law No. 7 Year 2012 on Social Conflict Management

In May 2012, the Parliament enacted the Law on Social Conflict Management. The law grants the power to determine whether a clash amounts to 'social conflict' to the head of local government (regents, mayors and governors) as well as to the President, dependant on their scope of authority)[121]. The President, for instance, has the authority to declare a clash as social conflict if it occurs or has impact at the national level. A 'state of conflict' shall not last for more than 90 days but upon consultation with the Parliament may be extended for up to 30 days[122].

In a 'state of conflict', the local authorities and President are allowed to impose curfew, block the conflict area, and relocate as well as prohibit individuals and group of individuals from entering such area[123]. The declaration of a clash as a conflict also grants the authorities the ability to deploy military to the conflict area[124], which is legally problematic in, at least, two ways. Firstly, the 1945 Constitution clearly sets out that the function to maintain security and order falls within the authority of the police and not the military. Secondly, the military deployment mechanism under the Social Conflict Management Law is not in accordance with the standard set by the Law on Indonesian Military No. 34 Year 2004. According to the Military Law, the President can deploy military power only with the *consent* of the Parliament[125]. Yet, the Social

121 Law No. 7 Year 2012 on Social Conflict Management, Articles 16, 18 and 20, LN 2012 No. 116 (hereinafter 'Social Conflict Management Law')

122 Id., Articles 22 and 29

123 Id., Articles 26-28

124 Id., Article 33

125 Law No. 34 Year 2004 on Indonesian Military, Art. 17 (2)

Conflict Management Law sets a lower standard on this matter. It establishes that, for conflict at the national level, the President can deploy military power after consultation, not necessarily consent, of the *leaders* of the Parliament[126]. In cases where conflicts take place at the city, regent or provincial level, the local authorities have to ask the central government for military deployment, if they wish any. It is unclear whether the central government has to in turn seek consent, or consult with, or merely inform the Parliament after the request for military deployment from local authorities is submitted.

Given the characteristics of force used by the military, its deployment should be made highly restrictive. The military is, by definition, armed. Under international human rights standards, the use of lethal weapons can be only justified when it is strictly necessary and proportionate. For this reason, the authority to deploy military should be limited and subject to consent of Parliament, it being the representatives of citizens.

The problem with the Social Conflict Management Law also lies in its provisions regarding reconciliation and conflict settlement that prioritise the use of an 'indigenous approach'[127]. Without undermining the right of indigenous people to uphold their values and customs, the AHRC is of the opinion that legal proceedings have to take place where crimes are committed during the conflict. Indigenous approaches used for reconciliation and conflict settlement, such as public apologies, or the granting of restitution can be used to complement, not substitute, criminal legal proceedings.

Law No. 11 Year 2012 on Juvenile Criminal Court System

A new law on the Juvenile Criminal Court has been enacted by the Parliament to replace the previous one created in 1997. Unlike most laws the Parliament enacted this year, the law has provoked praise from various stakeholders for its compliance with international standards on children's rights. The new law has revised the age limit of children that can be taken to criminal legal proceedings from 8-18 years old to 12-18 years old[128]. The law also contains a specific provision regarding the rights of a juvenile in criminal proceedings that was absent in the previous Juvenile Court Law, Law No. 3 Year 1997.

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126 Social Conflict Management Law, supra note 59, Art. 33 (3)

127 Id., Articles 37 (2), 40 and 41

128 Law No. 11 Year 2012 on Juvenile Criminal Court System, LN 2012 No. 153. Article 1 (3) of the law defines 'Children in conflict with law' as children aged between 12-18 who are allegedly involved in crimes

Restorative justice is the theme dominating the law which was enacted in July. There is not only an explicit article emphasising the obligation of law enforcement officials to prioritise such justice. Stricter restrictions on detention and punishment of juveniles have also been established by the new law. One of its provisions, for instance, implies that bail should be the rule and detention should only be an exception, whilst another article sets out that only those children no younger than 14 years having allegedly committed crimes subject to a minimum 7 years of imprisonment may be detained. The period of detention established by the new law is also much shorter than what is stipulated under the 1997 Law[129].

STAGES OF PROCEEDINGS	LAW No. 3 (1997)	LAW No. 11 (2012)
Investigation	20 + 10 days	7 + 8 days
Prosecution	10 + 15 days	5 + 5 days
First instance trial (District Court)	15 + 30 days	10 + 15 days
Second instance trial (High Court)	15 + 30 days	10+ 15 days
Third instance trial (Supreme Court)	25 + 30 days	15 + 20 days
Possible total period of Detention	200 days	110 days

The punishment that may be handed down by the judges to convicted juveniles is also more varied in the 2012 law. It includes warnings, community service, work experience, and fulfilment of traditional / cultural obligations as punishment[130], and it prohibits the court from sending juveniles younger than 14 years to imprisonment[131]. Another feature which distinguishes the new law from the one it substituted is that it contains several articles guaranteeing the rights of children who are victims or witnesses to a crime.

Laws Challenged at the Constitutional Court

In 2011, the Parliament enacted the Law No. 17 Year 2011 on Intelligence which was heavily criticised by human rights watchdogs for its extensive vague provisions that may result in arbitrary interpretation and disproportionate deprivation of basic rights. A group of local NGOs challenged the law in 2012 in the Constitutional Court, which concluded its judgment in October the same year.

129 Id., Articles 33-38
130 Id., Art. 71 (1)
131 Id., Art. 69 (2)

The NGOs challenged 17 provisions under the law, including those defining specific terms such as 'threats' and 'enemies'; articles granting the power of surveillance to the National Intelligent Agency (Badan Intelijen Nasional, BIN); and broad provisions criminalising the leaking of intelligence secrets. The NGO coalition also challenged the provision granting BIN the authority to recommend the rejection / acceptance of clearance of non-Indonesian individuals and organisations. Having listened to the arguments presented by the NGOs as claimant, and the government as respondent, the Constitutional Court dismissed all the arguments submitted by the NGOs and decided Law No. 17 Year 2011 is in accordance with the Indonesian Constitution. In its reasoning, the Constitutional Court put heavy emphasis on the possibility to limit human rights as well as the need of BIN to be granted extensive authorities given 'the multidimensional character of threats today due to globalisation and technology development'.[132]

Discussed Bills

The Social Organisation Bill has been included in the list of prioritised legislation established by Parliament since 2005. The debate on the bill, however, has increased in 2012 as the draft has started to take shape. Civil society organisations have expressed their concerns on the bill, as it contains provisions that are not in compliance with the right to freedom of opinion, expression, and association, all of which are guaranteed both in the Constitution as well as in various international human rights instruments.

According to the Bill, to be able to operate in the country, every organisation should be registered with the Indonesian government; those failing to do so will be considered illegal organisations and not be allowed to conduct any activities. The requirements imposed by the Bill to organisations seeking registered status from the government, however, are too burdensome and vague, and such vagueness curtails the freedom of expression and association in the country. The Bill, for instance, obliges all social organisations to preserve the integrity of the state; to adhere to and respect religious as well as cultural values, morality, ethics and decency norms[133]. The organisations shall also maintain national security and public order. Without any clear definition, these terms are subject to arbitrary interpretation. An organisation which dissents with the central

132 More information on the judgment of the Constitutional Court on Intelligent Law can be found at www.humanrights.asia/opinions/interviews/AHRC-ETC-032-2012

133 Draft on the Law concerning Social Organisation, 30 May 2012 version

government or promotes religious values upheld by minorities can be easily declared as a banned organisation under the Bill.

Organisations not in compliance with the obligation to respect and preserve such vague values may be temporarily banned by the executive, initially without any intervention from the judiciary. Legal proceedings to challenge the executive's decision to ban an organisation will take place only if the organisations object to such decision.

The Bill also establishes that persons who have resigned or are removed from the administration of an organisation are prohibited from creating a new organisation that has similar characteristics or goals to the one they used to work for. Any new organisation with similar characteristics or goals will automatically not be recognised by the government. With the absence of an explanatory note on the Bill, it is difficult to assess what motivates Parliament and government in proposing such provisions.

The overcautious approach over anything foreign is also adopted in the Bill. Indonesian organisations which are or will be funded by foreign donors shall report to, and seek consent from, the government. Foreign organisations can possibly be established and conduct activities in Indonesia on the condition that they have obtained permission from the Ministry of Foreign affairs and are willing to submit a financial as well as an activities report to the government. As with the Indonesian ones, a foreign organisation's activities will also be constrained by several vague provisions under the Bill. Foreign organisations are not permitted to conduct activities that are not in accordance with Pancasila and the Constitution; that disrupt the stability and integrity of the country; that conduct intelligence gathering activities; that conduct activities jeopardising the relationship between Indonesia and other countries; and that breach the decency norms, religious, social, and cultural values, and morality and ethics accepted and recognised in Indonesia.

A bill on gender equality was also being discussed by the Indonesian Parliament during the course of 2012. The bill was aimed to push for a state of equality between men and women in the country by obliging all state institutions to, inter alia, impose temporary affirmative action as well as to harmonise current laws and public policies. Protests and refusals against the bill are being voiced from Islamic groups, who are of the view that it contains the teaching of liberalism and is against Islam. The bill, according to such groups, is diminishing the role of women as housewives and children educators at home.

Women & Children's Rights

A challenge to several provisions under the Law No. 1 Year 1974 on Marriage with the 1945 Constitution was brought to the Constitutional Court. One of articles contested by the complainants was Article 43 (1), which establishes that children born outside marriage only have civil relationship with the mother and her family. The article often led to women having children outside marriage to carry the burden of raising children without support from men.

The Constitutional Court agrees that provision in the Marriage Law, which rules on children born outside marriage, is incompatible with the Constitution. Without referring to any particular articles under the 1945 Constitution, the Court upheld that such children should also be declared to have a civil relationship with their biological father in order to address the issue of stigmatisation and discrimination faced by them within the society.

There have been efforts from different state institutions to improve gender equality in the country. Such efforts, unfortunately, are merely able to address the issue of formal gender inequality and not the substantial equality. In 2012, various high rank state officials delivered sexist comments as they spoke on the issue of pornography and rape. Following the establishment of the Anti-porn Task Force, whose main task is to support and monitor the implementation of the controversial Pornography Law, the Indonesian Minister of Religious Affair Suryadharma Ali stated that 'there must be a set of universal criteria to define something as pornographic, one of which will be when someone wears a skirt above the knee'[134]. Responding to the rampant rape cases that have taken place in Jakarta, the Mayor of Jakarta Fauzi Bowo suggested women not to wear short skirts while travelling on public transportation[135]. According to him, by doing so, women are protecting themselves from rape. A similar comment was stated by the Chairman of the House of Representatives, who was promoting the issuance of a Parliament's internal regulation prohibiting women from wearing skirts above their knees[136].

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134 See 'Gugus Anti-Pornografi Mengatur Rok Mini' ('Anti-Pornography Task Force to regulate mini skirts'), available at http://us.nasional.news.viva.co.id/news/read/299999-gugus-anti-pornografi-mengatur-rok-mini

135 'Foke: 'Jangan Pakai Rok Mini di Angkot' ('Foke: 'Don't wear mini skirts in public transportation'), available at http://metrotvnews.com/read/news/2011/09/16/64986/Foke-Jangan-Pakai-Rok-Mini-di-Angkot-

136 'Marzuki Ali: Pelecehan Seksual Dipicu Pakaian Tak Pantas' ('Marzuki Ali: Sexual molestation caused by inappropriate clothing'), available at http://nasional.kompas.com/read/2012/03/06/14273563/Marzuki.Ali.Pelecehan.Seksual.Dipicu.Pakaian.Tak.Pantas.

Recommendations

As impunity is still a big theme in 2012, the AHRC calls for the government of Indonesia to ensure effective criminal investigation on human rights abuses and bring those responsible for the abuses to justice. In addition, the AHRC urges the Indonesian government to take the following measures:

- To ensure the principle of free, prior and informed consent is respected by local government and companies whose activities potentially affect the life of surrounding communities. The government has to provide legal guarantee and recognition on communal right to land;
- Definition of 'indigenous people' provided by Plantation Law has to be amended in accordance with international human rights standards. Principle of self-identification has to be guaranteed and the government should not have the authority to decide which groups are indigenous and which are not;
- To withdraw laws and regulations discriminatory towards religious minority groups. These laws include the 1965 Blasphemy Law, the Ministerial Regulations on building houses of worship, and the Ministerial Decree banning the Ahmadiyyah;
- To include religious discriminatory motive as an aggravating factor in punishing those committing religious-based violence and intimidation;
- To ensure the neutrality of law enforcement officials in dealing with conflicts between villagers and companies, as well as in the issues of religious-based violence;
- To ensure the AGO accepts and follows up the reports and recommendations on Mysterious Shootings and 1965-1966 human rights abuses;
- To criminalise the practice of torture, in accordance with the mandate of the UN CAT. The AHRC calls the Indonesian Parliament and government to expedite the revision process of the Penal Code and the Criminal Procedure Code. The Indonesian government needs also to establish a set of safeguards against torture, as recommended by the UN Special Rapporteur against Torture;
- The Supreme Court has to encourage the judges to no longer hand down the death penalty to the accused in cases they examine;

- To impose a moratorium on the death penalty. Those sentenced to death penalty must have their rights, including the right to meaningful clemency, respected;
- To revise laws unreasonably limiting right to freedom of expression – such as the Law on Electronic Information and Transaction – in accordance with international human rights standards;
- To understand the provisions concerning settlement using indigenous approach under the Law on Social Conflict Management, as a complement, and not substitutes, to criminal proceedings against those involved in, and responsible for, violence;
- To impose strict restriction on the deployment of military. Provisions under Social Conflict Management Law setting low requirements for military deployment needs to be revised in accordance with human rights principles;
- To ensure the regulation on social organisations under the Social Organisation Bill will not infringe the right to freedom of expression, opinion and association;
- And, to ensure the participation of civil society in the enactment process of the Gender Equality Bill and to ensure the provisions set out in such Bill are in accordance with international standards on the protection of women's rights.

CHAPTER V

ASIAN HUMAN RIGHTS COMMISSION

NEPAL

N E P A L

THE SLOW EROSION OF INSTITUTIONS

Introduction

Nepal's Constituent Assembly / Legislative Parliament dissolved at midnight on May 28, 2012, plunging the country's constitutional creation, and thereby human rights framework, into extended limbo. The Assembly was dissolved after it failed to usher in a new constitution for Nepal, and though its mandate had been extended four times from two to four years. With the legislative authority of Nepal dissolved, pieces of legislation essential to the protection of human rights have been put on hold, and so has fundamental debate on the structuring and strengthening of democratic institutions in the country. Thus, democratic institutions have faced slow erosion through the year, bringing the development of a human rights protection framework to a standstill.

In November 2011, a special five member bench, headed by the Chief Justice, had authorized the Constituent Assembly's tenure to be extended one last time for a period of six months. In spite of this, and amidst continuing disagreement about the federalist structure of the state, the government registered a bill seeking to amend the Interim Constitution, to extend the Constituent Assembly's deadline by another three months. On May 24, the Supreme Court issued an interim order against the move to extend the Constituent Assembly's mandate, and on 28 May the Prime Minister announced the dissolution of the Assembly, and the holding of fresh elections on November 22. But, elections have proven impossible to organize within such a short period of time, and at the time of writing, among calls for resignation of the government, and never-ending attempts to forge a consensus among political parties, the political developments of Nepal seems to have hit yet another impasse. A partial budget had to be released through ordinances and the Prime Minister announced fresh elections for May but no long-term solutions to the impasse seem to have been found.

The increased proliferation of *bandhs* (shut-downs) in the lead up to May 28, suggests the national political parties may be losing their leverage over

protest groups they had earlier helped organize. Nepal's far-western region was subjected to crippling bandhs for some 30 days in May, which, concomitant to disrupting daily life, hampered access to essential services including food and medicine, affecting the most vulnerable and the sick. Concerns raised about possible eruption of violence following the dissolution of the Constituent Assembly – which, thankfully, did not materialize – have lead the public to favour the current extended state of limbo over tense and destabilizing political developments.

Promises of a federal state, which had become a symbol of a larger agenda of inclusion to compensate centuries of hill Brahmin and Chhetri monopoly of state structure, have proven to be the very stumbling block that led to the dissolution of the Constituent Assembly once it became apparent that the political parties were not eager to deliver on their promises.

The failure of an overhaul of the state structure, to ensure equal participation of all citizens, should not only to be analyzed in terms of power stakes, but also in terms of institutional deficiencies to develop an inclusive, democratic, transparent, and rational decision-making process, which can effectively take into account and protect the different interests and rights of all the components of Nepali society.

What the last few months of the Constituent Assembly have shown is that the interest groups who managed to show enough force, or who were more privileged, were able to sign agreements, with the government yielding to their demands. This reflects the piecemeal approach that has characterized Nepali politics since the end of the conflict: the demands of the most organised and vocal are heeded, the isolated and vulnerable communities ignored.

The Nepali people's trust in their political institutions and in major political parties has considerably eroded, as these have visibly placed their own political interests and objectives ahead of the aspirations of the people they have claimed to represent.

The role played by the judiciary in dissolving the Constituent Assembly has also brought it under fire from political actors, for allegedly exceeding jurisdiction. This has led to a reduction in the role played by the judiciary since May 28. The risk of backlash against the judiciary, which may strengthen calls to reduce its independence and strength, remains a concern.

Judiciary Undermined, Accountability Forestalled

In AHRC's 2011 annual report, the trend of increasing government intervention in the due course of justice, to ensure that human rights violations cases do not get prosecuted, was denounced. Attempts to withdraw numerous human rights cases filed against government supporters, to grant pardon or amnesty, and to undermine the future transitional justice mechanisms' ability to promote justice and accountability had intensified in 2011. This continued unabated in 2012. That the government has felt it could freely trample on its commitments to justice and accountability has been apparent. Following the closing of the OHCHR field office in Nepal on 8 December 2011, the absence of international monitoring contributed to this feeling.

A special taskforce[137] formed by government to ascertain the loss of life and property found that, during the conflict era, at least 17,265 people were killed. Likewise, more than 50,000 people were internally displaced. The number of conflict era rape and torture victims is yet to be established. In 2003 and 2004, Nepal topped the list of countries with the highest number of disappearances being reported to the Working Group on Enforced or Involuntary Disappearances (WGEID), with the whereabouts of more than 1400 persons remaining unknown to date, according to the International Committee of the Red Cross[138].

In October, the OHCHR released a comprehensive report mapping the violations of international human rights and humanitarian law which had taken place in Nepal between February 1996 and November 21, 2006. It is accompanied by an online Transitional Justice Reference Archive, a database of 30000 documents and cases relevant to human rights violations that occurred during the armed conflict. This bulk of evidence, compiled and made public for the first time, was meant to facilitate the work of the transitional justice institutions, but due to unending delays in the establishment of such mechanisms, it served as a warning against inaction to impunity.

137 www.nepalmonitor.com/2011/07/recording_nepal_conf.html

138 www.icrc.org/eng/resources/documents/news-release/2012/nepal-news-2012-08-30.htm

Findings of the OHCHR's Nepal Conflict Report (Extracts)[139]

"In each of the categories of violations documented in this report (unlawful killings, disappearances, torture, arbitrary arrests and sexual violence), OHCHR has found that there exists a credible allegation amounting to a reasonable basis for suspicion of a violation of international law. These cases therefore merit prompt, impartial, independent and effective investigation, followed by the consideration of a full judicial process. The establishment of transitional justice mechanisms in full compliance with international standards are an important part of this process, but should complement criminal processes and not be an alternative to them."

More specifically, available data in the Transitional Justice Reference Archive show that:

- "The TJRA catalogues over 2,000 incidents that raise a reasonable basis for suspecting that one or more killings occurred in circumstances amounting to a serious violation of international law"
- "Taken collectively, allegations of unlawful killings and discernible patterns relating to such killings by both the Security Forces and the Maoists raise the question of whether certain patterns of unlawful killings were a part of policies (express or condoned) during the conflict. Of particular note are the numerous reports of deliberate killings of civilians by both sides, in particular those who were perceived as having supported or provided information to the enemy. In these circumstances, the leaders of the parties to the conflict at the time could attract criminal responsibility for these acts."
- Enforced disappearances were among the most serious human rights violations committed during the armed conflict in Nepal. Conflict-related disappearances were reported as early as 1997 and escalated significantly following the declaration of a state of emergency and mobilization of the Royal Nepalese Army in November 2001.
- "Torture, mutilation, and other sorts of cruel and inhumane and degrading treatment appear to have been perpetrated extensively during the conflict, according to available data, by both the security forces and the Maoists. Altogether, the TJRA recorded well over 2,500 cases of such alleged ill-treatment over the decade-long insurgency."
- "Arbitrary arrest was a significant feature of the conflict in Nepal. Thousands of people from both sides of the conflict were detained in a manner that amounted to arbitrary detention under international law. While suffering the injustice of arbitrary arrest, persons held beyond the reach of the law were easy targets for additional forms of ill-treatment, including torture."
- Over a hundred cases of sexual violence were also documented, a number considered as "underreported" and "the data available indicates that children, i.e. girls under 18 years old, were particularly vulnerable during the conflict period."

139 http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/NepalConflictReport.aspx

Such an extensive compilation of data offers, for the first time, an opportunity to understand the root causes of the conflict, and the institutional failures, which opened the door to such abuses and prevented attempts to hold perpetrators accountable.

A comprehensive peace agreement was signed in 2006, in which the former belligerents committed to investigate and prosecute human rights violations, to not foster impunity (Article 7.1.3), to publish the names of the persons killed or disappeared within 60 days (5.2.3), and to form a high-level Truth and Reconciliation Commission (TRC) that would investigate conflict-era crimes against humanity and gross human rights violations (5.2.5).

The 2007 interim constitution stipulated the state's duty to establish a high-level TRC and to provide relief to victims of disappearances, and in June 2007 the Supreme Court ordered the government to establish a commission of inquiry into allegations of enforced disappearances.

However, not only are the transitional justice mechanisms yet to be established, 2012 has seen considerable suggestions from higher ranking political circles that, should these mechanisms be created, they will be used to foster "reconciliation" – a euphemism for amnesty, over "justice". Since 2007, different versions of two bills have been drafted without the political parties reaching an agreement over their content.

Worryingly, in early March, media reported that the three major political parties of Nepal were considering amending the proposed draft bill on Truth and Reconciliation (TRC), and to either introduce blanket amnesty for human rights violations committed during the conflict or to make certain offences punishable at the exclusion of certain serious human rights violations that include torture. By the end of the month, political party leaders agreed to remove Section 25 (2) of the draft TRC Bill, which incorporated a list of crimes for which amnesty was not permitted, and instead proposed that the Commissions would grant amnesty when both victims and perpetrators would agree to reconcile. In the absence of reliable victim and witness protection mechanisms, this clearly would have put the victims at great risk.

On the eve of the dissolution of the Constituent Assembly on 28 May, the draft bills were withdrawn. Although Nepal has since been without an elected legislative authority, the government announced that it was prepared to recommend to the President a promulgation of the transitional justice bill through ordinance. And, an Ordinance for the establishment of a Commission

on Disappeared Persons, Truth and Reconciliation, was adopted by the Council of Ministers on 27 August 2012, and submitted to the President for promulgation on 28 August 2012.

The new draft merges the two bills and proposes a single Commission, whose members would be appointed by political consensus, and thus endangering the independence of the commission. In addition, the ordinance would provide for the victims and the perpetrators to "reconcile", providing the perpetrator with amnesty, if the perpetrator files an application for reconciliation, accepts the crime and shows regret. The perpetrator would also have to pay compensation to the victim. In the absence of a victim and witness protection mechanism, this emphasis on reconciliation may put the victims at high risk of being pressurized and threatened. The adoption of the Commission through ordinance, without parliamentary oversight or consultation with victims groups, prevents any possibility to contest or amend the content of the bills.

The International Commission of Jurists which has published an analysis of the ordinance, terms it "a political bargain between the political parties […] designed to avoid accountability for those responsible for gross human rights violations and crimes under international law committed over the course of Nepal's decade-long conflict".

It criticizes the following points[140]:

- The scope of the mandate of the commission would be restricted to those human rights violations committed in a "systematic manner", hence to crimes against humanity
- The mandate of the commission is restricted to facilitating and promoting reconciliation, to investigating serious human rights violations and to recommending amnesty and reparations
- The commission can promote reconciliation between the victim and the perpetrator even if none of them has requested it
- The commission has the power to grant amnesty, including in cases of torture and enforced disappearance
- The commissioners will be appointed on the basis of consensus among the political parties, and the financing of the commission will depend on the government, making its independence virtually impossible

140 www.humansecuritygateway.com/documents/ICJ_Nepal_ICJUrgesaccountabilityforviolationsdetailedinOHCHRreport.pdf

- The commission cannot recommend for prosecutions
- Prosecutions will become "a virtual improbability", because of the Attorney General's powers to initiate prosecutions dependent upon instructions from the Ministry of Peace and Reconstruction, the lack of provisions for the preservation of evidences, and because several of the crimes against humanity, which the commission has the mandate to deal with such as torture or enforced disappearances, are not even criminalized in the Nepali domestic system.

That transitional justice mechanisms would be corrupted to ensure they act as umbrellas sheltering perpetrators from prosecution is worrying in itself. But it is even more distressing as since the end of the conflict victims and their families wishing to file complaints concerning violations committed during the conflict by the security forces, or the Maoists at police stations, have routinely been sent home. This has been done under the pretext that such cases fall outside the scope of the regular criminal justice system, and will be dealt with by the TRC instead. This argument has been a permanent feature in the rhetoric of those with personal, institutional, or political connections with persons accused of such crimes.

However, the Supreme Court repeatedly found that transitional justice mechanisms do not supersede the regular criminal justice system. It has repeatedly directed the police to register such cases and conduct investigations within an assigned timeframe.

Using established transitional justice mechanisms, established through an executive decision, to supersede the regular criminal justice system and protect influential individuals from accountability, will have long-lasting consequences on the institutional set up of Nepal. It has the potential to definitely destabilize judicial power and undermine its authority. The fundamental concept of justice and its centrality to the development of the Nepalese state and justice institutions are at stake in the decision to enable or disable the prosecution of human rights violations. Denying victims their fundamental right to a legal remedy would be symptomatic of a state which flouts fundamental principles of justice and equality for all before the law.

While the political stalemate and legal and constitutional vacuum prevailing in Nepal may lead to a delay in the establishment of transitional justice mechanisms, nothing prevents the State from proceeding with criminal investigations and prosecutions in cases that have been pending for a long time. Court orders have already been made, calling for the government to

investigate and prosecute specific cases, but they have been routinely ignored. It is imperative that delays to the establishment of such mechanisms are not used to justify the undermining of the rule of law and the process of justice delivery. Furthering the trend of government's voluntary neglect of court decisions, several individuals against whom serious human rights violations allegations have been pending, cases in which the Supreme Court had ordered investigation, have been promoted to higher ranks of the security forces. In October, the promotion of Colonel Raju Basnet to the rank of Brigadier General of the Nepal Army, in spite of the seriousness of the allegations of human rights violations brought against him is one such example. Raju Basnet, then Lieutenant Colonel, was in charge of the Bhairabnath Battalion, stationed in Maharajganj in Kathmandu, whose leading role in the arbitrary arrest, secret detention and torture of hundreds of suspected Maoist combatants and forced disappearance of at least 49 of them in 2003, has been abundantly documented, including by the Office of the High Commissioner for Human Rights and the National Human Rights Commission of Nepal. The Supreme Court of Nepal had ordered the government to investigate the case independently and initiate prosecutions against those responsible in 2007. His promotion had been stayed by the Supreme Court.

Basnet's promotion follows that of Kuber Singh Rana to the post of Inspector General of Police, the highest ranking position in the Nepal Police. This was in spite of a 2009 Supreme Court order to investigate allegations that he played a leading role in the enforced disappearance of five students in Danusha District in 2003.

On September 3rd, the government withdrew 33 cases which were under consideration by the judiciary, including cases of murder further showing despise for the country's rule of law[141].

Independence of NHRC Further Compromised

In addition to these constant challenges to the authority of the judicial system, the authority of another institutional human rights watchdog, the National Human Rights Commission was also undermined by the adoption of a new National Human Rights Commission Act in January, which curtailed its powers and its independence.

141 http://advocacyforum.org/news/2012/10/rights-organizations-condemn-recent-withdrawals-of-cases.php

The new act has removed the reference to the independence and autonomy of the commission in the preamble, has made the approval of the finance ministry necessary before entering an agreement with a national or international body or before establishing a new office, and has prevented the commission from appointing its own employees, which it was empowered to do under the previous act. It has also made it necessary for the government to approve the commission's infrastructure and has made human rights programmes conducted in Nepal by an international organization, contingent upon the NHRC's approval.

It has instituted a six month limitation in lodging a complaint of human rights violations, in clear contradiction to internationally accepted human rights standards, as entrenched in the updated set of principles to combat impunity. It may make the simple gesture of reporting a case of human rights violations impossible for victims who remain exposed to retaliations by the perpetrators, do not have access to such information in time, or are still suffering from the trauma of the violation and cannot file a case immediately. The power of the commission to grant compensation is now also subject to certain conditions that did not exist before. We have to keep in mind that this new act emerged after the departure of the OHCHR field office from Nepal, when the NHRC was called upon to ensure the bulk of the monitoring of the human rights situation in Nepal, and to play a role complementary to the role of the judiciary to ensure that the government of Nepal abided by its human rights obligations. In the joint context of departure of the OHCHR and increasing executive intervention within the due course of justice, that the government has tightened its grip on the NHRC is extremely worrying for the future of independent human rights monitoring in Nepal[142].

Police Reform

Policing is one of the pillars of a functioning democratic institutional set-up. An accountable and transparent police force should form the mainstay of an effective rule of law system, preventing the corruption of institutions into tools of oppression and abuses of power. In-depth reforms are necessary in Nepal to ensure that the police would be able to play the role of protector of democratic institutions and of the rights of all the citizens equally against abuses of power.

142 See www.advocacyforum.org/downloads/pdf/nhrc-act-review.pdf and www.asiafoundation.org/in-asia/2012/03/14/new-act-a-blow-to-human-rights-in-nepal/

The police remain largely unaccountable, be it to redress human rights violations committed by its members or to independently investigate cases of human rights violations against the most vulnerable segments of society. No sanctions are taken against police officers who refuse to file First Information Reports concerning abuses of rights, especially when the perpetrator possesses a lot of leverage, or who fail to implement court orders. Until in depth police reforms take effect, bringing the police under the rule of law framework, the criminal justice system will remain a giant with feet of clay, unable to guarantee the protection of the rights of all Nepali citizens.

Torture, in particular, remains widespread and continues to form the core of an investigation process oriented mainly toward confessions. In November, the Committee against Torture rendered public a report on Nepal, adopted under article 20 of the Convention against Torture (CAT), which allows for a special inquiry by the committee on countries for which it has received information that torture was systematically practiced. The Committee not only found "well-founded indications that torture is being systematically practised, and has been for some time, often as a method for criminal investigation and for the purpose of obtaining confessions, in a considerable part of the territory of Nepal" but also that "actions and omissions of Nepal therefore amount to more than a casual failure to act. It demonstrates that the authorities not only fail to refute well-founded allegations but appear to acquiesce in the policy that shields and further encourages these actions, in contravention to the requirements of the Convention."[143]

Indeed, police torture remains rampant in Nepal, and debate over critical reforms necessary to bring the police under a framework of accountability has been sacrificed to political brinkmanship, postponing necessary action.
The following cases, brought to the attention of AHRC by its partners, brings to light clear patterns of abuse perpetuated by the police, which ensure the continuing denial of rights of those from the least advantaged background or with the least influential connections.

Bhutanese Refugee Tortured, Threatened with Fake Charges

In April 2012, a 29 year old Bhutanese refugee, who was applying for resettlement to the USA, got arrested under suspicion of having provided

143 www2.ohchr.org/english/bodies/cat/docs/Art20/NepalAnnexXIII.pdf

fake identification documents and was tortured by police personnel from the Central Investigation Bureau, Maharajganj, Kathmandu. In this case, documented by Center for Victims of Torture (CVICT) Nepal, the victim belongs to one of the thousands Nepali-speaking families which were, after having lived for several generations in Bhutan, expelled from the country to refugee camps in Nepal twenty years ago. The refugee had applied for resettlement to the USA and was kept, for 15 days, in the transit office of the International Organization for Migrant (IOM) in Baluwatar, Kathmandu, for investigation of his identification documents.

On April 27, 2012, at around 2.30 p.m., he was arrested from the IOM office by 4 to 5 police officers in civilian clothes. Neither was he 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, and was kept there for two days, without being provided with a detention letter or an arrest warrant. He was brought before a judicial authority on April 29, 2012, exceeding the 24-hour permissible delay set up by the constitution within which every person arrested needs to be produced before a judicial authority, which amounts to illegal detention.

He was kept in the CIB for two days, reportedly without being provided with food or water. His family was not informed of his arrest. The first day he was tortured under interrogation by two policemen wearing civilian clothes. He was slapped across the face a dozen times, the soles of his feet were beaten and the policemen beat him all over his body. Due to the pain, he almost lost consciousness. The policemen then interrogated him on the involvement of other persons related to 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.

At no point during his detention was the victim informed of his legal rights. His lawyer visited him twice: once on May 3rd in the office of the District Attorney, Kathmandu, and the second time on May 8th at the MPR Hanumandhoka. In both cases, the police refused to allow the lawyer to meet with his client without the police presence. This denial is in spite of the Interim Constitution of Nepal guaranteeing the right of every person who was arrested to consult a legal practitioner and that the consultation should remain confidential.

The police was also present during the victim's medical check-up, when he was sent to Bir hospital on May 7th. According to the Torture Compensation Act,

1996, persons being taken into custody should be provided with medical check-up as soon as possible. This was not the case here. Further, 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 either. The presence of the police during the medical examination prevented the victim from getting proper treatment and he was just provided with anti-allergy medicines. The victim's health condition deteriorated due to lack of proper treatment and the poor conditions in Hanumandhoka detention center. His body was covered with scars from worms and insects and he suffered from sleeplessness.

Torture by the Central Investigation Bureau

Another case, showing a strikingly similar pattern of torture and threats of fake charges and also involving the Central Investigation Bureau was reported in June, and documented by Protection of People's Rights (PPR), Nepal.

A 43 year old man, working as a paralegal in Kathmandu, was arrested on June 25, 2012, at 4 pm, from his home by 4 to 5 police personnel in civilian clothes. The police officers did not introduce themselves as police personnel, did not present the victim with an arrest warrant, and did not explain the charges brought against him. As the policemen did not identify themselves, the victim and his family feared that he was being abducted by a non-state group.

The way the police conducted the arrest went against national laws, by which the police are mandated to identify themselves and inform the arrestee of the ground for his arrest at the time of arrest. Similar requirements are intrinsic to international human rights 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 hushed him into a police van. As soon as he entered the van, the police reportedly beat him randomly. He was then brought to a room in the Central Investigation Bureau (CIB), Maharajganj, Kathmandu, where he was subjected to torture again by about six police officers in civilian clothing.

They 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. The soles of his feet were beaten with a plastic pipe, and he fell unconscious again. The torture lasted for one and a half hours, according to the victim.

The victim was transferred to another police station and kept there for the night without any food. The next morning a police officer 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 Metropolitan Police Circle, Hanuman Dhoka. He was provided an arrest warrant dated from the day before.

His family, who had not been given any information by the police at the time of his arrest, got in touch with a lawyer from PPR Nepal and filed a petition at the National Human Rights Commission. They came to know that the victim had been brought to the court for remand on June 26th and the lawyer could petition the court for an order for forensic checkup of the victim. The court ordered for a medical examination of the victim in the forensic department of Teaching Hospital. That examination was, however, not conducted. On June 27th, the police took the victim to Bir Hospital and asked him to pay NRs 500 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.

Safeguarding the health of persons placed in detention is the responsibility of the State and the medical examination should therefore be provided free of costs. 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.

In the meanwhile, one of the inspectors continuously threatened the victim to withdraw his application for medical examination or 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.

Minor Tortured & Illegally Detained with Adults

Another case documented by PPR Nepal is that of Ramesh (name changed), a fifteen year old domestic worker employed in the house of an army officer in Kathmandu, who was accused of having stolen gold from his employers for whom he worked. He was arrested by the police on 16 August 2012. He was charged with committing a Public Offence. The Public Offence Act mandates Chief District Officers, non-independent government officials, to judge offences falling under its scope. They can order a two year jail sentence in proceedings which do not meet international standards of fair trial. In addition, in this case, the accused is a juvenile and should as such be brought before a juvenile branch, as per section 55 of the Children's Act, 1992.

The child was brought before the CDO and sent to the custody of Hanumandhoka Metropolitan Police Range. One week later, the police arrested two of his relatives who were also detained in the same police station. They witnessed and reported that Ramesh was kept in the same cell as adults, in violation of the provisions of the Children' Act.

The Supreme Court of Nepal has repeatedly interpreted the provisions of the Children's Act in the sense that it is illegal to keep children deprived of liberty together with adults in prison. Further, Article 37 c of the Convention on the Rights of the Child also mandates the state party to keep children detainees separated from adults.

The eye-witnesses further shared that Ramesh was being tortured, submitted to random beating and falanga (beating of the soles of his feet). A lawyer from PPR Nepal visited Hanumandhoka Metropolitan Police Range on several occasions and each time, under various excuses, the police refused to allow him to meet with the detainee. The first time the police said that the victim was not present as he had been taken to his village to look for the gold. Two days later, the police told him that lawyers were not allowed to see detainees during office hours. Such a regulation does not exist and actually contravenes the provisions of Nepali law, such as the 2007 Interim Constitution, which, in its article 24-2 guarantees the right to consult and to be defended by a legal practitioner. The next day the lawyer asked the highest ranking police officer in that police station for permission to meet with the detainee. Again, he was prohibited to meet with the detainee "during office hours". The lawyer therefore waited until 6 pm, one hour after the end of office hours, but was still not allowed to meet with Ramesh and was told that the detainee had been taken to the District Attorney's Office. As of September 18, more than a month after the child was arrested, the lawyer had still not been granted access to the detainee.

Torture Victim Threatened

Babu (name changed) was caught by local people, who had reportedly seen him snatching the gold chain of a woman in a teashop in Pokhara, Kaski District, on September 9, 2012. The locals who had caught him beat him and handed him over to the police.

At around 8.15 p.m. on the same day, he was taken to the Litigation Section of District Police Office, Kaski, where several policemen tortured him by beating him with plastic pipes on his thighs, his back, and on the soles of his feet for about 5 minutes. Although he confessed to having snatched the gold chain, the police continued torturing him by forcing him to lie on a table, and rolled a 3 meter diameter iron rod on his thighs with one policeman putting pressure on it and two policemen rolling from two ends. Then, the police questioned him about his involvement in other theft cases and beat him for about 2 hours. The same day he was taken for medical checkup, but the doctor did not ask him whether he had been tortured.

On the next day, four unidentified policemen took him to an under construction building behind the building of the DPO. They handcuffed him and forced his knees between his wrists, inserted a stick through his bent knees and hung him in the air. After that the police beat him with plastic pipes on his soles, punched him with fists and kicked him with police boots for about 2 hours.

On the same day, he was taken to the court for remand. The judge asked the victim whether he had been tortured by the police. He verbally complained of torture before the judge but as his hands were handcuffed he could not show and explain where and how he was tortured and the judge was reluctant to verify his complaints. As he was not aware that he could file an application for his physical and mental checkup, he did not request one and the judge did not order one.

On September 13, 2012 a lawyer from a human rights organization working with Khimlal visited him, and the organization wrote a letter to the National Human Rights Commission (NHRC) on that day to ask for their intervention in the case. On September 16, 2012, staff from the NHRC visited the detainee and documented his case. Following the intervention of human rights defenders, however, the victim began receiving threats from policemen at the DPO. On September 19, the victim's lawyer was refused access to the detainee as the officer in charge of the police station was absent. The lawyer was also told

that, as the police had come to know that the victim had complained about the torture to human rights defenders, he would be "made to pay for this". The victim remained in the same detention center for more than ten days, at risk of reprisal.

Another Torture Victim Receives Death Threat

In Danusha district, a couple faced death threats after filing a case under the Torture Compensation Act against a police officer. The police visited Muni's (name changed) house twice, on March 7 and March 8, 2012, to search for her brother-in-law, who was involved in a land dispute with a certain Ramprit. At 2 p.m., on March 8, Ramprit and three police officers in uniform with weapons came back to the house to look for her brother-in-law. When she asked them the reason behind the frequent visits to her house, an argument ensued 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, only semi-conscious.

Her husband and neighbours, who had followed them 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.

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 and a local leader reportedly tried to give Muni NPR 60, 000 (approximately US $ 750) to settle the case outside court, although the case was not filed against Ramprit.

On June 16, at 12.30 p.m., Muni's husband received a call from an unknown person asking him to meet the caller near Kalanki temple, in Kathmandu. Muni's husband is a marble paver and the caller said that he wanted to hire his services for house construction. Muni's husband reached there 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, kicked and punched him. They ordered him to withdraw the case within a week, or else they threatened that they would kill all his family members, including his children. They also asked him about who helped them to file their case. They beat him until he fell unconscious, upon which they 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. On July 2, Muni received four anonymous calls and the caller insulted her and threatened to kill all her family members if she did not withdraw the case.

The above cases reflect trends, and expose continuity of old patterns of exploitation of loopholes in the Nepali legal system to ensure that victims keep silent while the few safeguards which exist to protect the rights of the detainees are blatantly trampled on.

A report by Advocacy Forum based on the interview of 1,900 detainees in 58 detention centers from January to June 2012 maps such abuses of legal safeguards[144]:

- Only 10.6% of detainees were informed of the reason for their arrest at the moment of the arrest, 74.2% were only informed once they were brought in detention and 15.3% of them were not informed at all
- 8.9% of them did not receive a detention letter
- 45.4% were not brought before a judge within 24 hours, as required in the constitution
- 94.8% of the detainees had a medical checkup before being brought into detention
- In 84% of the cases, when the detainee was brought before a judicial authority for remand, the judge did not ask whether he or she had been tortured.

The status of legal safeguards shows that the judiciary is playing far too little a role in helping curb torture and holding the police accountable for abuses of law. The fact that in 84% of the cases the judge does not ask the detainees whether they have been interrogated under duress, or a story such as Babu's –

144 www.advocacyforum.org/downloads/pdf/publications/torture/torture-briefing-january-to-june-2012.pdf

who complained about having been tortured to the judge and the judge did not order any measure to ensure the protection of the victim from further abuses – speaks of the inadequate role played by the judiciary in holding police liable for rights abuses.

A lack of authority that can act as a check against police's abuses of power fuels the feeling of impunity in police officers, and further entrenches the idea that they are above the reach of law. It accounts for the fact that the police openly refuses to abide by the law, insisting to be present during medical examinations and preventing detainees from accessing their lawyers.

Such practices have led the Committee against Torture to note that[145]:

- "Actions and omissions of Nepal therefore amount to more than a casual failure to act. It demonstrates that the authorities not only fail to refute well-founded allegations but appear to acquiesce in the policy that shields and further encourages these actions, in contravention to the requirements of the Convention."
- "Nepal failed to ensure the effective prosecution of those responsible in cases in which copious evidence of guilt was gathered […] and particularly in cases in which national courts established the responsibility of those involved. It failed to put an end to practices such as falsification of police and prison registers, police holding individuals incommunicado for multiple days or for periods longer than 24 hours before presentation to a judge, police refusals to register FIRs. It failed to put an end to the implementation of provisions of the Arms and Ammunition Act that violate basic due process guarantees. It failed to ensure that detainees receive medical examinations conducted by independent physicians, that judges exclude confessions obtained through torture from legal proceedings, and that promotions of as well as refusals to suspend officials accused of torture or extrajudicial killings are banned. The State party also failed to implement court orders and recommendations of the National Human Rights Commission. All these practices and acts of negligence contribute to the continuing habitual, widespread and deliberate practice of torture in Nepal."

145 www2.ohchr.org/english/bodies/cat/docs/Art20/NepalAnnexXIII.pdf

In particular, the ongoing impunity that benefits perpetrators of torture remains the main element of perpetuation of torture. The CAT has gone on to state that:

- "While noting the State party's claims that it does not approve of torture acts and that it is committed to end impunity, in the Committee's determination, the State party has not provided the Committee with clear and practical evidence corroborating this. […] Allegations of torture continue to be made with great frequency despite the end of the armed conflict in 2006, and the State party has failed to adequately investigate all but a handful of these allegations. In rare cases where investigations into allegations of torture have been successfully carried out, those found responsible have not been subjected to criminal penalties, and particularly not to terms of imprisonment commensurate with the gravity of the offence."

Nepal is yet to pass a law to criminalize torture.

In May 2012 a proposed "Torture or Cruel, inhuman or degrading treatment (offence and punishment Act, 2012" was tabled in the Parliament Secretariat. Nevertheless, the dissolution of the Constituent Assembly on May 28th brought those efforts to a halt.

Although the draft of the bill criminalizing torture contains substantial improvements in comparison to the current legislative apparatus, it still falls short of international standards and does not provide for an effective and comprehensive framework to bring torture to an end in the country. A serious approach, to the eradication of torture legislation, should couple the criminalization of torture with the development of an independent and strong complaint and investigation system, currently missing in Nepal.

Such an investigation system should include:

- Opening independent venues for the victims to file their complaints, ensuring that the complaints are promptly and professionally investigated by an autonomous and credible agency leading when enough evidence is gathered to the prosecution in civilian courts of the alleged perpetrators, in legal proceedings respecting the rules and procedures of fair trial.
- If proven guilty, the perpetrators should be handed an appropriate

sentence, commensurate with the gravity of the crime committed.
- The sentence ordered by the court should be executed immediately.
- Through all the length of the investigation and legal proceedings, and after the sentence is handed the victims and witnesses should be protected from reprisals and intimidation.
- The victims should also have a prompt access to a procedure through which they can obtain redress and rehabilitation.

The following are extracts from a review of the proposed torture bill conducted by the AHRC and the Rehabilitation and Research Center for Torture Victims, Denmark.

Review of the Torture Bill

A Loose Definition of Torture

The definition of torture used in the proposed bill is largely inspired from the definition contained in the Convention against Torture, but introduces some nuances which have the effect of restricting the scope of the definition and may leave acts which do amount to torture according to international standards outside the scope of the law. We therefore recommend changing the definition to follow the definition established by the CAT.

In particular, although the CAT considers that "*a person*", without restriction, can be subjected to torture, the definition contained in the current bill restricts it to only "*a person who is detained*". The bill does not acknowledge that torture happens in many different situations and can take place even when the victim has not been formally detained. This would prevent victims who have been tortured in the streets, at their house, during demonstrations or while held incommunicado in detention from claiming that they have been tortured.

The proposed bill suggests that the act must be committed by a "*public official*" and currently defines the term as "*an official who is responsible to take somebody under control, arrest, investigate, prosecute an offence or execute a case or implement punishment and the term also denotes other person acting in such capacity at the instigation of or with the consent or acquiescence of such official*". This definition is too restrictive and omits

persons exercising State power or authority who may not directly have the responsibilities depicted above, such as officials from a local government body or a health officer.

Further, the bill does not strictly follow the letter and spirit of the CAT in distinguishing four levels of involvement of public officials which render them implicit in the act of torture: infliction, involvement, consent, acquiescence. The proposed bill does not properly cover the cases of consent or acquiescence. The bill also contains several sections which create loopholes which could be exploited to absolve perpetrators of criminal liability. Section 12, specifying which acts do not fall under the definition of torture, leaves room for an interpretation authorizing excessive or disproportional use of force during arrests or demonstration for instance.

> *"Notwithstanding anything contained elsewhere in this Act, the pain or suffering resulting naturally to a person during his/her arrest, while taking him/her under control or keeping in detention, custody or preventive detention or during investigation or for trial, implementing punishment or keeping in prison by a public official under current law shall not be, for the purpose of this Act, deemed torture".*

This goes far beyond the scope of the CAT which merely specifies that torture "*does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions*".

Although the act contains provisions that no order from a higher authority and that no exceptional circumstances may be invoked as a justification of torture, it should be strengthened by explicitly prohibiting immunities, the provision of general or individual amnesty and the granting of pardon.

At the moment, section 37 provides that "*a person who has been convicted and punished by the court for the offence under this Act shall not be pardoned or excused without the consent of the victim*". We are concerned by that provision which may expose victims of torture to pressure and intimidation to "*pardon*" their torturers, especially in the absence of a strong victim protection mechanism as will be discussed below. We recommend taking away the part "*without the consent of the victim*" to

ensure that perpetrators of a non-derogable human rights violations cannot legally escape punishment in Nepal.

Further, section 35 providing "*protection for acting in good faith*" should also be scrapped. It reads at the moment – "*Notwithstanding anything contained elsewhere in this Act, no public official shall be charged or otherwise punished for fulfilling his/her official duty in good faith under current laws*." No Nepal law condones the commission of a crime and a human rights violation while "*fulfilling his or her official duty in good faith*". Neither is torture an act that could be committed while fulfilling official duty, since it is expressly barred by the Interim Constitution of the country. That provision is incompatible with Nepal's international obligations and should be scrapped altogether.

Section 13 which places a statutory limitation of 35 day to file a case of torture runs therefore contrary to human rights standards and should be removed. The 35-day limitation to file a case of torture was already present in the Torture Compensation Act, 1996, and has regularly been denounced as an insurmountable impediment to the victims' access to justice by national and international human rights groups. For instance, while reviewing Nepal's report in 2005, the Committee against Torture recommended that Nepal "*should amend its current and planned legislation so that there is no statute of limitation for registering complaints against acts of torture*"[146]. Additionally, it is simply unrealistic to expect that victims of torture would be ready to file a case within 35 days, given the psychological and physical impact of torture on victims. Further, victims of torture often belong to the poorest and most marginalized communities of Nepal, with limited resources making it difficult to access the institutions within such a period of time. A 35-day statutory limitation would defeat the primary purpose of that law and should be removed.

On Inconsistent Punishment

The draft act provides, in its section 22, for different "degrees" of punishment depending on the different levels of involvement in the act of torture or cruel, inhuman or degrading treatment. It also lists

146 Committee against Torture, Concluding Observations on Nepal (2005) available online at: www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.NPL.CO.2.En?Opendocument

aggravating circumstances under which the punishment for torture can be supplemented (for instance if the victim is a minor). We welcome such breakdown as an attempt to clarify the different degrees of liability. However, it is done in a confusing and inconsistent fashion, which may pave the way to contradictory interpretation by the court.

Further, the proposed list of penalties falls short of being proportional to the gravity of the crime of torture, with the maximum punishment being a 5 years jail term or a 50,000 NPr fine or both. It is clear that the possibility that a perpetrator of torture would be able to get away with a simple fine is inappropriate and that the act should provide for a mandatory prison sentence for all those convicted of torture. The Committee against Torture[147] has repeatedly expressed concern that a maximum prison sentence of 5 year would be inadequate to the gravity of the offence and to play the role of a deterrent. According to the CAT jurisprudence[148], a significant prison sentence – for instance a minimum sentence of 6 year imprisonment and a maximum sentence of 20 years – is considered an appropriate punishment for acts of torture. We recommend the section be amended in line with Nepal's obligations under the UNCAT and take into account the gravity of the crime of torture.

On Procedural Inadequacy

We are of the opinion that the current bill is inadequate in that it does not set the outline of a procedural framework that will be able to adequately address the question of torture. At the moment, in Nepal, there is no independent and credible mechanism where victims of torture can file a complaint without fear of reprisal. There is no such mechanism that can conduct impartial, professional, and prompt investigations into allegations of torture, leading – when sufficient evidence is gathered – to prosecutions which, following the international standards of fair trial, would sentence perpetrators of torture to a penalty proportionate to the gravity of the offence. During the whole length of the process, the victims and witnesses must be protected from reprisals and repercussions. The inadequacy of the complaint or investigation system is such that

147 See Urra Guridi v Spain, CAT Communication No 212/2002, 17 May 2005, § 6.7

148 Chris Ingelse, The UN Committee against Torture: An Assessment, Kluwer Law International, 2001, p. 342

often investigations of torture are investigated by police officers from the same police station as the accused, leading to obvious conflict of interest and exposing victims to reprisals.

Further, the Act does not provide for an international obligation of the State to investigate and prosecute allegations of acts of torture even in cases where no formal complaint was filed by the victim. The Act should be amended to acknowledge that obligation and provide for the Attorney General office, including district government attorneys, to act *ex officio* on allegations of torture.

Neither does the Act provide for the establishment of an independent complaint mechanism on the conduct of security forces. During the Universal Periodic Review of Nepal in January, Australia, for instance, recommended for the adoption of such an independent complaint mechanism on the conduct of security forces[149]. Nevertheless, the government did not accept that recommendation and merely indicated that the existing complaint mechanism is already independent. It also responded to recommendations to ensure prompt and impartial investigations and prosecutions of allegations of torture by stating that it considered they were already implemented or on the way to being implemented. This is a complete denial of the reality of the obstacle course that torture victims have to go through to seek legal redress.
To strengthen the right to a remedy of the victims and their access to justice, Nepal should also consider opening avenues other than the court, for victims to file a complaint without fear of intimidation, such as the National Human Rights Commission.

On Compromised Investigations

The bill does not outline an independent and professional mechanism to conduct investigation into allegations of torture. Without such a mechanism being established, the criminalization of torture would be yet another opportunity squandered. In light of the cases documented in Nepal by the AHRC and its partners in recent years, it is apparent that the absence of an investigation body mandated to investigate

149 Report of the Working Group on Universal Periodic Review – Nepal, 2011, A/HRC/17/5 available online at: http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/5&Lang=E

complaints of torture is a serious loophole that contributes to the lack of any impartial and efficient investigations into such complaints. Under current legislation, the head of police retains control of the investigation process, even when it concerns his or her staff. As long as no independent body is created to probe cases which, if investigated by the police, would result in an open conflict of interest, the effective prosecution of cases of torture will remain impossible.

The body in charge of conducting investigations into allegations of torture should be governed by the following principles:

- practical independence with no institutional or hierarchical relations with the body or public official alleged to have committed torture,
- promptness,
- adequacy with the investigation being conducted professionally with the assistance of all modern investigation techniques to collect evidence,
- transparency allowing public scrutiny,
- accountability,
- And involvement and protection of the victims in all stages of the investigation.

These six elements are necessary to strengthen the public's trust in their countries' rule of law institutions and to develop a framework efficiently designed to expose and prosecute torture in Nepal, protecting the rights of all.

Although the draft bill roughly outlines provisions that contain some of these principles, it falls short of producing the effective mechanism able to uphold them all.

Section 15 of the Act provides for the court to "order the concerned District Police Office to investigate the offence provided the complaint is filed pursuant to Section 13 or report submitted by the government physician pursuant to Sub-Section (3) of Section (14) provides prima facie evidence that a person has been subjected to torture". It specifies, "provided that, in a condition where complaint has been filed against the in-charge of the concerned District Police Office, the court shall order an official higher than his/her rank to carry out the related investigation".

That an officer from the District Police Office would be entrusted with the task to investigate allegations of torture from its jurisdiction is utterly inadequate and falls short of fulfilling the independence criteria. A case of torture does not only concern one or several individuals but a government agency as a whole, often the police. This falls short of the principles depicted by the Istanbul Protocol which state that "*Investigations should be carried out by competent, qualified and impartial experts, who are independent of the suspected perpetrators and the agency that they serve*."[150]

The concerned agency and its members should be excluded altogether from the investigation team to guarantee its independence and impartiality. What's more, AHRC's partners in Nepal have collected a significant amount of anecdotal evidence in which the District Police Office was involved in covering up allegations of torture committed in a lower ranking police office and in obstructing the victims' access to justice.

Entrusting the District Police Office, or for that matter any other police authority, with the task of investigating their own colleagues or subordinates creates a direct conflict of interest which sacrifices the rights of the victims. Failure to create an independent body would defeat the whole purpose of the law by making an independent investigation virtually impossible.

On Victim and Witness Protection

We welcome the introduction of section 28 which provides for orders to be issued to provide witnesses who fear for their safety with security protection. Nevertheless so far the proposed section is too vague and does not strictly define a framework of protection to guarantee the victims and the witnesses' safety. It does not specify a time-frame within which the court should give an order for protection, which should be made as short as possible, nor does it outline a process by which the court will decide whether protection is necessary. Nor does it provide

150 PROFESSIONAL TRAINING SERIES No. 8/Rev.1, UNITED NATIONS, New York and Geneva, 2004, Istanbul Protocol, Manual on the Effective Investigation andDocumentation of Torture and Other Cruel,Inhuman or Degrading Treatment or Punishment www.ohchr.org/Documents/Publications/training8Rev1en.pdf

the victim or witness with a right to appeal the decision of the court not to provide him or her with protection. The section should also give the possibility to the court to act ex officio to order the protection of victims or witnesses at high risk of attack. It should further specify criteria upon which the court will decide to terminate the protection programme.

More importantly, the proposed section is extremely vague regarding the nature of the "concerned authorities" who would be ordered to "manage security" for witnesses and victims. It is a pre-requisite that the authority in charge of providing security and protection to witnesses and victims of human rights abuses should be independent. In cases of torture, where the complaint is, most of the time, directed against security forces, the police cannot and should not be entrusted with the task of guaranteeing the protection of witnesses and victims. Being in charge of ensuring the protection of witnesses and victims, in order to allow them to pursue a case against their own agency, creates an obvious conflict of interest in which the safety of those placed in the protection programme is at risk. The bill should clearly define which body is responsible for the protection programme and guarantee its independence.

Witness and victim protection does not stop at the provision of physical security. The bill fails to define what protection mechanisms are available and to provide for other measures crucial for a functioning system of protection of victims and witnesses. The law should also allow for the anonymity of witnesses and victims, allowing testimony by video conferencing, the provision of safe houses, etc.

Most crucially, the officials against which 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.

In addition, the law should also include a provision covering the cases in which the victim, complainant or witnesses are still in custody and may be directly exposed to reprisals or further torture. The law should ensure that they are transferred to another detention facility immediately.

We also recommend Nepal to consider developing a separate piece of legislation dealing exclusively with the issue of witness and victim protection and including all the points listed above. Developing a comprehensive, strong, independent and credible victim protection mechanism is a pre-requisite to make the law work. The success of the bill will depend upon the ability of victims and witnesses to come forward and collaborate with the investigation and legal process without fear of retaliation. 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 trials. Building a strong protection mechanism will be a tremendously important step toward rebuilding the trust of the public in their institutions and toward strengthening the right to a legal remedy of the victims, leading to greater protection of human rights in Nepal.

On Making Medical Examination Mandatory

Section 14 mandates the court to issue an order for medical examination within three days after a complaint of torture is filed, provided the complainant is still in detention. An order for medical examination should not depend on whether the person is still in detention. Those who were tortured, but did not have any charge brought against them afterwards, which is the vast majority of torture cases in Nepal, should also be provided medical examination.

The court should also have the power to order a medical examination in the absence of a formal complaint from the alleged victim if it has enough reason to suspect that the person had been tortured.

The proposed bill suggests that the examination should be conducted by a government physician. Nevertheless, international norms and standards, as entrenched in the Istanbul Protocol, have recommended that the medical examination should be conducted by an independent authority, to avoid the risk of collusion between the police and doctors, or of pressure upon doctors, who have often left evidence undocumented in many cases.

Further, we welcome the introduction in section 25 of a mandatory medical check-up when the person has been kept in or released from detention, prison or preventive detention. Nevertheless, the section

seems to provide for an "*official concerned*" which could mean the person in charge of the jail or the detention facility to administer the check-up if "*such physicians are not available*". The clause should be clarified to prohibit police officers or non-medical personnel in general from conducting the examination and guarantee the independence of the medical examination.

In addition, the medical check-up should be made mandatory, and not be provided "*as far as possible*", both upon taking the person into custody and upon release, in line with the CAT recommendation "*to ensure that all detainees have access to a proper medical examination at the time of arrest and upon release*".[151]

On Reparations

The bill contains a section dedicated to compensation, which sets the maximum amount of compensation the victims are liable to at 500,000 NPR. Setting a maximum amount of compensation may prevent the provided compensation from fulfilling its primary purpose of covering all economically assessable damages resulting from torture.

Further, we urge that the level of proof required for establishing civil liability and criminal liability should be clearly distinguished. The availability of a civil procedure aimed at obtaining reparation should not be dependent on the outcome of a criminal procedure.

The procedure related to the payment of compensation as established in section 24 also requires in-depth revision. In criminal jurisprudence, the execution should be carried out immediately, unless the sentence is suspended by a court of appeal. In other words, once the conviction has been pronounced it must be the state's responsibility to execute the sentence, and it should not be made the victim's responsibility to take further steps to obtain the effective payment of compensation.

Miscellany

Section 34, which provides for a fine up to 10,000 Npr for filing a

151 Committee against Torture, Concluding Observations on Nepal (2005) available online at: www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.NPL.CO.2.En?Opendocument

fake complaint of torture is incompatible with Nepal's international obligations under the CAT and should be scrapped.

We welcome the inclusion of section 40 and 41, which make provisions respectively for formulating and implementing a code of conduct for law implementing public officials, and for the incorporation of "*subject relating to torture or cruel, inhuman, or degrading treatment in school and university curriculum*" and the development of "*training for public officials in order to prevent torture or cruel, inhuman or degrading treatment*." These steps are essential for an effective prevention of torture or cruel, inhuman or degrading treatment.

We regret that the draft bill does not contain provisions to set up a mechanism of regular visits by independent bodies to places of detention in order to monitor the respect of human rights on their premises. Although the National Human Rights Commission is mandated to carry out visits, it has failed to do so to an acceptable level. The extensive work of NGOs in Nepal have demonstrated that in places of detention in which visits were regularly conducted, the incidence of torture tended to decline, thus illustrating the necessity to have such a mechanism implemented nation-wide. We strongly recommend Nepal to consider developing such an independent monitoring mechanism.

The cases included in this report illustrate that the fight against torture not only entails a reform of the policing system, but a much deeper overhaul of the criminal justice system. For instance, the exploitation of the legal construct which gives power to Chief District Officers (CDO) to judge cases falling under the Some Public (Offences and Penalties) Act, 1970, and the Arms and Ammunition Act, 1962, with the latter granting the CDO the power to sentence people to up to seven years' imprisonment after hearings. With the CDO, being a government official, without a legal background, these provisions go against the principles of separation of powers, and have been abundantly exploited by the police, colluding with the CDO to sentence torture victims to long prison sentences without a proper trial. In September 2011, the Supreme Court issued a directive order to the government to form a research committee to amend the existing laws providing the CDO with quasi-judicial powers and to submit a report within six months. This report is still to be published, and cases in which the CDO collude with the police continue to be reported and put victims' rights at risk.

The Case of Forced Evictions in Kathmandu

One of the rather emblematic illustrations of the consequences of weak democratic governance and check and balances in 2012 has been the eviction in broad daylight of slum dwellers staying by the banks of the Bagmati River, in violation of all international norms of due process. Over 248 houses, including a school, were destroyed in the eviction process of the squatter settlements in Thapathali, Kathmandu on May 8, 2012. Estimations put the number of persons affected by the eviction to 994, including 401 children below 15.

The evictions followed an April 2011 Supreme Court decision in which it directed the government to stop the encroachment of slum dwellers on public land. In November 2011, the slum dwellers were told to leave their settlement within two weeks, but were not offered any alternative housing option. After three ultimatums to the slum dwellers to evict the place, without providing them with alternative housing arrangements, a meeting on December 4, 2011, decided to resort to force to conduct the eviction.

Five slum dwellers' organisations filed a writ petition to the Patan Appellate Court to suspend this decision, and, in December, the court issued a stay order to suspend the eviction process until January 17, 2012. The court further ordered the Office of the Prime Minister and Council of Ministers to conduct an identification process of the "genuine" slum dwellers and to develop appropriate housing alternatives for them if they are to be evicted. On January 27, the Supreme Court upheld the government decision to evict the slum dwellers, but further ordered appropriate alternatives for them.

However, the government's plan to develop the banks of the Bagmati River did not include any provision to provide alternative housing options to the community, and the community was not consulted in the process leading to the decision to evict them. In public, the different government agencies had been rejecting the responsibility for finding accommodation for the slum dwellers on each other. The government had offered to provide the "genuine" landless with a three-month renting allowance, but did not make any plan for relocation.

No proper research was done by the government to evaluate the situation in the slums, including to determine the number of children and elderly who would be affected by the relocation or to evaluate the poverty level of the community. On May 8th, more than 2000 police personnel from the Nepal police and the Armed Police Forces, and three bulldozers, were deployed in the area to conduct the eviction. Sources report that many families were not informed

in advance that the eviction would take place on that day and that they were awoken at 5 a.m. by the police asking them to gather their belongings and leave. The destruction of the houses lasted until 1 p.m.

Police used rubber bullets and tear gas to control the community. Several civilians including the elderly, pregnant women, and children were beaten, ill-treated, or suffered injuries from the tear gas and rubber bullets. NGOs estimate that 25 to 30 people were injured in the beatings, including four who suffered serious head injuries. The police prevented those injured from getting treatment until 4 p.m., when they were allowed to receive treatment at the Bir hospital. According to the police, 31 people were taken into custody, which, according to NGOs, included several children.

The government announced that it was ready to provide 15,000 NPR as a housing allowance to those identified as genuinely landless, and that it was getting ready to relocate them to Ichangunarayan area. Nevertheless, the first round of evictions was conducted before steps to provide such allowance, or to organize for the relocation, were taken. As a result, many found themselves without shelter and deprived of food and water. The community has lost valuable property as they were not given enough time to gather their belongings including cooking utensils, tools, clothes, citizenship papers etc. Some saw their income sources, a small shop, a vegetable cart and other essential items destroyed in the eviction. A school run by an NGO in which 150 children were enrolled was among the first buildings to be destroyed.

Following the evictions, the government announced that it would review the first process and draw conclusions to be applied on the further rounds of evictions. This is considering that the lives of the thousand people who were evicted were not worth much more than those of guinea pigs, subject to laboratory experiments. The lack of professionalism of government agencies is not only to blame in that case. Also at fault is the absence of state structures able to provide a defined framework of decision-making and governance ensuring that human rights principles of due process are abided by. That the evictions were carried out in broad daylight in the center of Kathmandu should act as a wake-up call, triggering awareness of the consequences of the decay of democratically accountable institutions on everyday life.

Burden of Caste, Alive & Unaddressed

One of the issues sacrificed to short-term political gains is the issue of caste. The failure to adopt a new constitution has meant that addressing the issues

of the Dalit community has been put on the backburner once more. A law criminalizing caste-based discrimination for the first time in Nepal's history had been adopted last year: the Caste based discrimination and Untouchability Crime Elimination and Punishment Act, 2011. Nevertheless, the government's commitment to its effective implementation and to the provision of redress to the victims of caste-based discrimination remains under question. It has been mentioned, earlier in the report, how the inability of the state to deal with demand for greater representation and inclusion led to the dissolution of the Constituent Assembly. By failing to take steps to allow for a greater access to the state structure to most excluded communities of Nepal, an opportunity to ensure such communities have a greater say in the protection of their rights has been squandered.

This failure became obvious in the political bargains that led to the first draft of an inclusion bill, wherein concerns for equal representation and socio-economic and cultural disadvantages were sacrificed to political consideration. The bill is yet to be adopted.

Being denied of participation to state structures has been accompanied by a continued denial of access to justice, leaving members of the dalit community, in particular, exposed to abuse of their rights, fueled by discrimination and intolerance. Investigations into cases of caste-based violence are typically slow, biased, and liable to interference by the perpetrators of caste-based crimes. Indeed, victims of caste-based violence are often exposed to threats and intimidation from the perpetrators.

A report released by the Office for the High Commissioner for Human Rights in Nepal on 'Access to Justice for Dalits in Nepal'[152] identified major challenges which hampered the access to justice for the dalit community and restricted the prosecution of cases of caste-based violence, allowing discrimination against the dalit community to go unabated. This includes considering caste-based discrimination and untouchability as a social issue rather than as a crime. As such, these instances of discrimination fall beyond the police's scope of duties, and cases often disappear in legal loopholes. The report also denounced the routine refusal of the police to file FIRs, which encourages the victims to find a mediated compromise and the routine failure of the police to ensure the protection of victims and witnesses.

152 www.nepal.ohchr.org/en/resources/Documents/English/reports/HCR/2011_12_07_Opening_the_Door_to_Equality_E.pdf

Victims of caste-based discrimination have often found themselves in an unequal relationship in relation to their perpetrators, as they belong to a more economically and socially vulnerable community with less power to influence the course of the investigation. By contrast, instances in which the perpetrators collude with the police are numerous, as illustrated, in a case that follows, by the police's refusal to file an FIR, its refusal to investigate the case, and by the pressure the police place on the victim's family to fingerprint a report without being shown or read its content. The law itself provides a 35 day deadline to register instances of caste-based discrimination which makes it extremely difficult for victims suffering from trauma to file an FIR.

Documented by the Jagaran Media Center, is a case that involves the killing of a young dalit man, following his marriage with a Brahmin girl. Shiva Shankar Das, 21, had a love affair with a 20-year-old woman belonging to a so-called 'upper-caste' community. Both Mr. Das and the woman resided in Siraha District. The relationship was known to the whole village. The girl's family sternly opposed the relationship, which challenged the strict social barriers of caste.

On January 29, the girl's brothers threatened Shiva, demanding that he bring the relationship to an end or to "prepare everything for his funeral". According to Shiva's family, on January 30, Shiva was beaten up by seven of the girl's relatives and sustained numerous scars and bruises from the attack. Later that day, Shiva went to meet with the girl to get his phone, which had been taken by the girl's relatives. He was healthy at the time. He came back home around 8.30 p.m. crawling on his hands and knees, and told his family that he had been poisoned by her family. He vomited twice while narrating the event. He was taken to the Nursing Home at Lahan for treatment. The Nursing Home referred him to BP Koirala Institute of Health Science, Dharan, where doctors announced his death the next day.

The local police officers' initial reaction to the case has been highly problematic and suggests that they have been attempting to cover up the case, protecting the perpetrators. Collusion between the police and the perpetrators typically happens in cases of caste-motivated violence and prevents the victims from benefiting from the protection of the law.

A death certificate specifying the victim's cause of death was provided to the police, rather than to the victim's family. The AHRC has been informed that the police did not give the death certificate to the victim's family at any time. In addition, the doctors prepared a post-mortem report, but the victim's family

did not see its content. Requests by human rights organizations to see the postmortem report have yielded no result.

Immediately after Shiva's death, his parents contacted the police about the case, but the police failed to return their call until almost 8 hours later. Inspector Pradhumn Adhikari from the area police office, Kalyanpur VDC, Saptari District refused to file the family's complaint, and without conducting a thorough investigation into the case, alleged that the victim had committed suicide instead. As per the State Cases Act, the police have an obligation to register and investigate every First Information Report brought before them.

The police then allegedly prepared a report, but did not allow the family to see its content. Instead, the police forced Das' father to mark his fingerprints on the police report without being able to see its content and without it being read to him. They threatened to thrown him into jail if he did not comply with their demands. After the initial rejection of the case, the victim's family sent their First Information Report to the Chief District Officer and the District Police Office, Saptari.

Dalit civil society led a campaign protesting the police's rejection of the case, and eventually the case was registered on February 26, 2012 in the Kalyanpur area police office in the name of the seven Chaudhari family members. Despite this step being taken, however, no investigation has been launched.

Five members of the Women, Children and Social Welfare Committee, a subcommittee to study and find solutions to the caste based discrimination and untouchability experienced by dalit communities within the Legislative Parliament, conducted a fact-finding mission in the VDC, under the leadership of the subcommittee chairman Binod Pahadi. The team met with the victim's family, the Chief District Officer (CDO), the District Police Chief, District Attorney, and the SSP of Armed Police Forced, and the team leader shared that the preliminary report has concluded that the victim had, in fact, been murdered. In spite of these efforts, the police investigation has been slow and the victim's father has been struggling to get justice.

A successful a civil society campaign to ensure that a victim's family is able to access redress is can be found in the case of 50 year old Sete Damai, resident of Dailekh district. Sete Damai was stabbed to death on August 30, 2011, by a group of non-dalit members when his son married a non-dalit girl. A group of masked men visited Sete's home and stabbed him with a curved knife and thrashed other family members. Sete succumbed to his injuries the following

morning because he could not be taken to the hospital on time, as there was fear of further attacks on the way.

Following the intense campaigning of dalit civil society which ensured that the incident was known nationally and internationally, the police caught 9 alleged perpetrators. In June 2012, Dailekh District Court finally gave its verdict after 10 months, sentencing three individuals directly involved in the murder to 20 years in prison, while the others that participated in the beatings received between five to ten year jail terms.

The government promised to declare Sete Damai a martyr of caste-based discrimination and to provide compensation to the victim's family. However, at the time of writing this report, the relief has still not been provided to the family. The government has also not provided the rewards of NPR 100,000 (USD $ 1,282), which, according to a government policy to promote inter-caste marriage, should have been delivered within 30 days of marriage registration.

This incident shows the extent to which non-dalits will go in order to protect their so-called social prestige. It also shows that the coordinated effort of the dalit civil society is necessary to balance the relationship between the victims and the perpetrators and ensure that victims have access to legal redress.

These two cases are, of course, not isolated ones. They show that the dalit community is disproportionately affected by the absence of a functioning rule of law framework, and a police force that is unaccountable, as member of this community lack connection or financial resources to mobilize the country's police system in cases where their rights are violated.

Presently, without the support of civil society and campaigns which aim to mount pressure on the authorities, encouraging the state to take steps to ensure justice, dalit victims of human rights violations would have little chance of having their cases investigated, let alone prosecuted successfully. Moreover, they would remain exposed to threats and retaliations from the perpetrators.

Conclusion: Rule of Law Reforms, Heart of the Rights Movement

In January 2011, Nepal was reviewed under the Universal Periodic Review for the first time, and received a large number of recommendations, notably those concerning ongoing reports of torture and violence by law

enforcement agencies, persistence of gender-based violence, continuous caste-based discrimination, insecurity of human rights defenders in a context of overreaching impunity for past and present human rights abuses, and with regard to failing police and justice systems in the country. The government accepted a majority of these recommendations and therefore committed to take necessary measures to turn them into concrete advancements in the human rights situation. Nevertheless, as shown in this report, few concrete achievements have been made to implement commitments in reality.

This failure to improve Nepal's human rights record not only underlines government negligence toward the protection of human rights of the people it is supposed to serve, but, even more importantly, points at larger institutional failures.

Improved human rights protection requires institutional changes to foster the development of a strong and independent State capable of reaching out to all the citizens, throughout the country. The fight against impunity relates to the substance of the functioning of State institutions and implies in-depth reforms to put concerns for human rights of the people at the heart of their functioning. The justice and policing systems still lack the strength, accountability, and independence demanded from institutions supposed to safeguard human rights in a vibrant democracy.

This report has tried to show the far reaching consequences of institutions, which are unable to deliver justice to all equally, on the lives of ordinary people. When one's right to an effective remedy does not depend on the law but on one's ability to mobilize resources, be it in terms of personal or political connections or financial resources, the protection of human rights will be subjugated to arbitrariness and corruption.

In Nepal, the slow erosion of the basic structures of justice is of serious concern and it is the responsibility of the human rights movement to focus on the twin tasks of strengthening the authority and the independence of the judiciary, and developing the accountability and effectiveness of the policing system. The dissolution of the Constituent Assembly should not put the debate about the kind of institutions on hold. On the contrary, the people of Nepal should seize this opportunity to reclaim the terms of the debate and make sure the institutions that will be developed will crystalize the collective sense of fairness of Nepali people.

CHAPTER VI

ASIAN HUMAN RIGHTS COMMISSION

PAKISTAN

PAKISTAN

INSTITUTIONAL FAILURE PROVIDES IMPUNITY

A. Summary of the Annual Report 2012

The PPP-led government under President Asif Ali Zardari and Prime Ministers Yousaf Raza Gillani and Raja Pervez Ashraf has made some effort to improve the protection of human rights. The lifting of the State of Emergency, the end of the judicial crisis, and the attempts to improve the country's normative and legal framework has been welcome.

However, continuing political instability, frailty and failure of the country's institutions related to the rule of law, ongoing impunity enjoyed by perpetrators of violations – notably the police, military, and intelligence services – and persistent grave human rights violations, along with the humanitarian problems associated with the most devastating floods in the history of Pakistan in, mean that the human rights and security situation has worsened in 2012.

Widespread corruption, religious extremism, armed conflict, terrorism and counter-terrorism, allied with weak institutions, and impunity for perpetrators, engender grave abuses, such as torture, forced disappearances, extra-judicial killings, and discrimination and violence against religious minorities and women.

At the start of the year, the government was confronted by the judiciary. In this case, the Supreme Court ordered the government to write a letter to the Swiss authorities in order to pursue the corruption allegations against President Asif Ali Zardari. But, the government failed to comply. The Supreme Court even ousted one Prime Minister during the proceedings. Throughout the year, the judiciary and the government remained logger-heads. By the end of 2012, the judiciary even started poking its nose into the affairs of the Pakistan army, which initiated a fight between the judiciary and the army. The judiciary wants to be an institution with power to run the government and amend the laws. Because of the new attitude of the judiciary, courts have become involved in politics and their normal functioning has ceased.

Despite having accepted recommendations to ratify the International Convention on the Protection of All Persons from Enforced Disappearance (CPED), the government of Pakistan has refused to follow through. Numerous disappearances continue to be reported. Fundamental rights enshrined in these instruments, including the protection from torture, from forced disappearance, and from extra-judicial killing, continue to be violated widely with impunity.

Violations remain widespread due to the failings of, and lack of reforms to, the country's institutional framework, in particular, key institutions of the rule of law – the police, the prosecution, and the judiciary. This is compounded by persisting impunity enjoyed by Pakistan's military and intelligence agencies. The Government of Pakistan has thus failed to implement the recommendations made to ensure fair trials, punish cases of abuse by the security forces, and ensure that victims have access to protection and redress.

Widespread, entrenched, corruption has a direct impact on these institutions' protection of rights, engendering both abuse and impunity. It leads to violations such as torture being committed by the police in regular criminal investigations, and critically undermines the country's justice delivery mechanisms. The involvement of the military in land-grabbing and illegal exploitation of natural resources is also a source of grave violations and internal conflict, as seen in Balochistan.

Pakistan accepted recommendations to establish a National Human Rights Commission (NHRC), in line with the Paris Principles. Pakistan's Senate on March 9, 2012 established an NHRC under the Pakistan Human Rights Commission law. This law prohibits the intelligence agencies from detaining any citizen illegally, states that the armed forces and intelligence agencies will be answerable to the commission and parliament, and empowers the commission to monitor any jail or secret prisons to check for illegal detentions and received complaints.

But, the NHRC still has not initiated its work. While its formation is welcome, it remains to be seen whether the NHRC or the parliament will be able to bring the military and intelligence under the ambit of the law, something civilian government and the courts have failed to do. It must be noted that the law also restricts foreign funding for NGOs without approval, something that has the potential to be abused to obstruct NGOs working in favour of human rights.

Additionally, Pakistan's dual judicial system, which comprises a secular system of national laws and courts, as well as parallel traditional jirgas and Shariah

court systems, results in conflicting and often contradictory efforts to provide justice, something that has undermined the protection of rights. For instance, the Shariah court stopped land reforms through a stay order in 1980 during the military dictator General Ziaul Haq's rule. The Shariah court termed land reforms as un-Islamic. Land reforms were introduced in 1975 by the Bhutto regime, but since 1980 the higher courts are even not hearing the cases which were filed against the stay order.

Two Girls have Changed Society

The two girls, 14 year old Malala Yousufzai and 11 year old Ramsha Masih, have changed the mindset of the society which was under the pressure of repression and terrorism of the Muslim fundamentalist forces. Solidarity shown by the people of Pakistan for these two girls was supported by the world.

Malala Yousufzai has become the silence breaker in the Pakistani society whose sacrifice has given a voice to the people who were scared of terrorists and Muslim fundamentalists because of the state policy of appeasement towards the Muslim groups.

Malala the silence breaker, not the silence broker

October 9, 2012, is the day that witnessed the unanimous indignation of the world because of the infamous attack suffered by Malala Yousafzai, who was shot in her head and neck in an assassination attempt by Taliban militants, while she was going back home from school on a bus full of other young students. Malala is a 14 year old school student and known activist for girl's rights in the Swat Valley, the region in the north of Pakistan where Taliban extremists have been trying to take control and rule. Among the plans of these extremists, there is also the attempt to banish girls from attending school, as well as the prohibition of music, television and other forms of amusement considered against morality. Malala's father, Mr. Ziauddin Yousafzai, is a poet, school owner and an educational activist himself, and has always encouraged his daughter to study and pursue education.

Ramsha Masih

The case of Ramsha, an 11 year old Christian girl affected by mental retardation, can indubitably offer a clear example of extreme

bigotry in the name of dogmatism. This year in August, she was arrested on the charge of blasphemy because falsely accused by a Muslim neighbor of burning pages of the Holy Quran.

The whole society stood behind her and government was forced to provide protection to her. The courts of the country which are generally not providing relief to the women victims however in this case under the pressure from civil society Islamabad high court has released her from the blasphemy charges.

A.1 Order of the day: Killings

Sectarian and ethnic killings have become order of the day because of the appeasement policies of the government towards such groups. In 2012, 1800 people were killed in Karachi in target killings and sectarian violence. More than 200 Shias, particularly the Hazara Shias, were killed in sectarian killings in different parts of the country, by the majority Sunni and by terrorists and banned organizations. More than 500 persons were killed in the terrorists and suicide bomb attacks.

Daily life in Pakistan is marred by terrorist attacks that range from bombings to shootings and execution-style killings. All these are taking place in an environment where law enforcement agencies are too helpless to intervene. Little in the way of investigation takes place and, even when the identities of the perpetrators are known, no arrests are made.

The most productive industry in the country is the manufacturing of explosives used by suicide bombers and this industry is financed by donations from vested interests abroad, sections of the military and high ranking officials of the government. Apart from the physical bombs themselves, the suicide bombers are being 'manufactured' at a similar rate by religious extremists that spread messages of hate from the very mosques supposed to be spreading a type of religious peace. In Pakistan the meaning of the word 'justice' translates as "How do we save our own skin. How do we pretend to do our jobs without appearing to be humble servants of the terrorists and extremists?" This is borne out by the fact that thousands of terrorists have been arrested, but few spend more than a few days in custody as they are either released or bailed out, never to be seen again. The death sentence is handed down to criminals for heinous crimes and there are 8,000 people on death row, but not one of them is affiliated with the Taliban. The standard excuse by the courts is that the prosecution has not made its case. Alternatively, in cases where the government has a vested interest, evidence is even collected from newspaper reports. Where then, is the rule of law?

A.2 Forced Disappearances

Pakistan has amongst the highest number of forced disappearances in the world, considered to number in the thousands over the last decade itself, with numerous disappearances continuing to take place. Forced disappearances are part of a pattern that includes arbitrary or illegal arrests, detention in secret locations, and torture, which frequently results in extra-judicial killings. Exact numbers are difficult to ascertain, as many disappearances take place in remote areas affected by armed conflict – such as the Balochistan Province (in connection with conflict between governmental armed forces and Balochi nationalist armed forces); the Khaiber Pakhtoon Kha province (related mostly to counter-terrorism, often in connivance with foreign forces); and in Pakistani-held Kashmir (typically for refusal to participate in the "Jihad" inside Indian-held Kashmir or to provide information to intelligence agencies).

A.3 Torture

Torture remains endemic, widespread, and is typically accompanied by impunity in Pakistan. Extreme forms of torture continue to be documented in the country, including, inter alia: beatings with fists, sticks, and guns on different parts of the body, including the soles of the feet, face, and sexual organs; death threats and mock executions; strangulation and asphyxiation; prolonged shackling in painful positions; use of chilli-water in the eyes, throat and nose; exposure to extreme hot and cold temperatures; mutilation, including of sexual organs; and sexual violence, including rape. Torture is used by the military and intelligence agencies in the contexts of counter-terrorism and armed conflict, but is also widespread in routine investigations by the police.

Security forces and intelligence services are known to be operating 'torture centers' in many of major cantonments across the country, which are often in or around major cities. The AHRC has evidence of around 50 such centers currently in operation. The government has taken no action to close these centers. There is a clear requirement for independent civilian monitoring of all places of detention in Pakistan, which speaks to the pressing need for the Government of Pakistan to ratify and implement the Optional Protocol to CAT (OPCAT), without delay, as well as to invite the United Nations Special Rapporteur on torture as a priority.

The climate of impunity is illustrated by the increasing use of torture by state agents in public places. Video evidence shows how Pakistani officials are using

torture in public as a repressive tool to create fear and exert control. This is being met in no way by any credible action by authorities, i.e. investigating such cases and bringing state agents found responsible to justice. Significantly, no effective action has been taken against the May 1999 police torture of the current sitting President of Pakistan, Mr. Asif Zardari. The alleged perpetrator, former Inspector General of Police Sindh province, Mr. Rana Maqbool, has in fact been appointed Prosecutor General of the Punjab Province.

A.4 Extrajudicial Killings

The Asian Legal Resource Center (ALRC) continues to document hundreds of cases of extrajudicial killings in Pakistan, which are accompanied by impunity, due to a lack of investigation and prosecution. Many such killings are linked to forced disappearance and torture, following which victims surface dead. For example, in Balochistan province alone, between July 2010 and October 2011, the ALRC has documented 215 extra-judicial killings following abduction by paramilitary forces or disappearance by Pakistan's law enforcement and security agencies. Journalists, teachers, political activists, students and human rights defenders have been targeted, in particular. The pretext of 'encounter killings' is typically used by the authorities to falsely justify extra-judicial killings as being legitimate.

A.5 Human Rights Defenders

Human rights defenders (HRDs) remain subject to: threats and reprisals against them and their families; harassment; legal and physical attacks; arbitrary arrests and detention; forced disappearance; and torture and extra-judicial killing by state and non-state actors. The government has failed to establish an effective national policy of protection for HRDs or to combat impunity by effectively investigating and prosecuting those responsible for such attacks. The lack of effort to combat impunity mirrors the lack of effort to address the whole range of human rights violations witnessed in Pakistan. And, this, in turn, stems from institutional failings within the police and justice delivery mechanisms, and lack of political will on the part of the government to institute effective institutional reforms. The fact that HRDs expose these failings, places them at particular risk.

Persons who work in favour of human rights, but contrary to the interests of radical Islamist groups, face considerable threat, as may be noted in the killings in 2011 of the Governor of Punjab, Salman Taseer, and the Federal Minister of Minority Affairs, Shabaz Bhatti, who were targeted for their efforts to protect minorities, and their opposition to Pakistan's draconian blasphemy laws.

Another accepted recommendation calls for the government to address the repressive effect of civil society monitoring procedures and anti-terrorism legislation on the operation of human rights defenders. The sentencing of six leaders of a power-loom workers union to a total of 490 years in jail, based on fabricated charges under anti-terrorism legislation in November 2011, illustrates the government's failure in this regard.

The killings of HRD's in Balochistan, while they were documenting cases of forced disappearances as part of the Supreme Court's efforts to compile a list of cases, illustrates the risks to defenders who work on the gravest rights abuses.

Where judges take positions in favour of human rights they face serious threats or attacks, as can be seen in the case of Anti-Terrorist Court judge Pervez Ali Shah. On October 1, 2011, Justice Shah awarded a death sentence to the killer of the former governor of Punjab province. However, he was forced to leave the country, due to the lack of protection provided by the government even after he received threats. His court and home were subsequently attacked by religious fundamentalists as well as militant Islamist lawyers.

There remains serious concern about the process of selection of judges, and the roles of the Judicial Commission and the Parliamentary Committee on the appointment of judges, with nepotism and corruption plaguing the process. Ethnicity is proving a barrier for selection and reforms are required in order to ensure that judges are appointed on merit rather than political affiliation. Also of concern is the nexus between the judiciary and the police and security forces, which seriously obstructs attempts to seek justice concerning human rights violations committed by state agents in particular. For example, Mr. Abdul Saboor, was reportedly killed in a military detention centre while a petition was being filed concerning his case at the Supreme Court. The Registrar of the Supreme Court reportedly obstructed the filing of the petition on technical grounds for one week, having seen that it was against the military establishment. During the period of delay, Abdul Saboor's dead body was dumped on a roadside in Peshawar city, Khyber Pakhtoon Kha province.

The Government of Pakistan has failed to invite the Special Rapporteur on human rights defenders to visit the country despite accepting a recommendation to do so.

A.6 Freedom of Expression & the Media

Pakistan remains one of the most dangerous countries in the world for

journalists, with both state and non-state actors targeting them with threats and attacks.

The higher courts have tried to restrict the freedom of expression by imposing ban on court reporting and comments on decisions, particularly about the biased attitudes of the judges in favour of son of chief justice, who was accused of taking huge bribe for settling cases against a particularly tycoon.

Despite the Supreme Court having ruled that all Musharraf-era amendments are now null and void, the National Assembly has retained two amendments in the pending 2010 Pakistan Electronic Media Regulatory Authority (PEMRA) amendment Bill, one of which bans broadcasting institutions from publicizing views or actions that are "detrimental to ideology of Pakistan, sovereignty, national security and integrity." Any content perceived as being derogatory to state institutions are banned. The government has gone further and added a clause to the Bill, banning the broadcasting of any programme or discussion aimed at influencing or giving opinions about sub-judice matters. Those responsible for or assisting the violation of the ordinance can be fined up to Rs. 10 million (around USD $110,000), with cable operators broadcasting such content facing three years imprisonment, a fine, or both.

Additionally, in Punjab Province, a ban has been imposed on all government officials from interacting with the media under the new Protection and Communication of Official Information Rule, which is being seen as unconstitutional, as well as a serious threat to media freedom and the right to information.

The Government of Pakistan has accepted a recommendation to review laws and measures to ensure that restrictions imposed on freedom of expression are in conformity with the ICCPR.

A.7 Religious Discrimination

Despite having accepted several recommendations to guarantee freedom of religion in law and practice, religious discrimination and attacks on minorities continue unabated in Pakistan. Government is bending to sustained pressure from fundamentalist Islamic groups. The AHRC has documented many cases of religious persecution against Christians, Hindus, members of the Ahmadiyya community, as well as members of the Shia sect of Islam, often with the acquiescence of the authorities.

Banned religious groups continue to operate freely. Banned religious groups under the supervision of Punjab provincial government launched a public hate campaign calling for citizens to kill members of the Ahmadiyya community and attack their businesses. The authorities took no action against the group. In Balochistan, gunmen belonging to banned religious organization Lashkar-e-Jhangvi (LeJ) shot dead 26 Pakistani Shia Muslim pilgrims travelling to Iran. This brings the total number of Shia's killed to over 800 over the last three years, without credible action being taken by the governments.

The AHRC estimates that on average some 700 Christian and 300 Hindu girls are forcibly converted to Islam each year in Pakistan, notably in Punjab, Khyber Pakhtun Kha and Sindh provinces. Typically, girls are abducted, raped, and kept in Madrassas, where they are forced to sign marriage certificates and state that they have converted to Islam. Despite the 2011 Prevention of Anti-women Practices Act, which abolishes the practice of forced marriages and the exchange of girls in settling disputes, as well as the marriage of minor girls, the police refuse to intervene in such cases and courts are even complicit in this, by nullifying women's previous non-Islamic marriages and recognizing their forced marriages instead.

The Ahmadis are one group denied their right to vote; they cannot register as a voter in Pakistan. It is a most shameful and horrifying fact that all Muslims in Pakistan, in order to get I.D cards essential for registering as a voter, have to make a declaration pronouncing the Founder of the Ahmadiyya Community as an imposter and a liar. No civil society in the modern times can tolerate such arrogance of a country towards its own nationals.

Being a minority community, the Ahmadis are denied the basic rights of the vote to elect their representatives and that under the present civil government they have been swiftly and effectively expelled from the whole electoral process. Pakistan has now introduced a form for the registration of all voters but every applicant who ticks himself as a Muslim is made to sign a certificate printed on the back of the form declaring that he or she is not associated with the 'Qadian' or 'Lahori' group, or calls himself or herself an Ahmadi. The Government of Pakistan has not only confiscated their freedom to faith, belief and practice, but is also victimising them socially, economically and educationally.

A.8 Violations of Women's Rights

Women face discrimination in all facets of life in Pakistan and brutal treatment such as domestic abuse, sexual violence and rape (by state and non-state actors),

torture, honour killings, and murder. Verdicts by jirgas (illegal tribal judicial courts) ensure the persistence of violence against women. Those responsible typically go unpunished due to discriminatory laws and gender bias. It is believed that 70% of people who commit honour killings in Pakistan escape punishment. This remains the case despite the government having accepted a recommendation to "ensure punishment for perpetrators of all violence against women and also thoroughly investigate and punish members and leaders of illegal jirgas for their calls to violence against women".

The government remains unwilling to challenge fundamentalist Islamic groups and traditional practices. The government rejected key recommendations in the first cycle of the Universal Periodic Review (UPR), concerning the need to repeal the Hadood and Zina Ordinances, to decriminalise adultery, and to prohibit the use of Qisas and Daiyat law in cases of honour killings. The grave problem of honour killings persists in Pakistan.

Local and national media have reported 215 cases of Karo Kari, the honour killing, from January 1st, 2012 to November 20th, 2012.After analyzing data, a research team, of the NGO Foundation for Research & Community Empowerment (FRCE), has come to conclusion that more than 80 percent of karo-kari killings have taken place only in northern areas of Sindh. Kari is a type of premeditated honor killing, which originated in rural and tribal areas of Sindh. The homicidal acts are primarily committed against women, who are thought to have brought dishonor to their family by engaging in illicit pre-marital or extra-marital relations. In order to restore this honor, a male family member must kill the female in question.

B. Disappearances, an Enduring Epidemic

It is disappointing that no effort has been made to bring an end to enforced disappearances in Pakistan, carried out by the armed forces, intelligences agencies, and other law enforcement agencies. Despite the formation of several judicial and official commissions on enforced disappearances, the practice continues all over Pakistan, and in Balochistan, in particular. Despite appeals by international agencies and families of the victims, neither is the practice curtailed, nor are victims being recovered. In view of the apparent lack of action on behalf of the judicial and government authorities, family members have lost all confidence in the institutions of justice. They have only their hope that one day, soon, the missing persons will be returned to them alive. However, when they learn or discover that the bodies of their loved ones have been dumped on the street, it has a chilling effect on the families of other victims.

These recent incidents of enforced disappearances and extra judicial killings by the armed forces and police expose the complete breakdown in the rule of law in the face of an independent judiciary and parliament. The army firmly believes that it is above the law of the land and never misses an opportunity to thumb their nose at the government. The basic concept of rule of law is totally eroded from governance which is why, time after time, such incidents take place. The army also exerts pressure on the media, never allowing it to work freely. This is evident by the fact that the aforementioned incidents were down played by the media because of threats and intimidation to media houses and journalists. Many journalists have been tortured and killed by the army and its intelligence agencies, a forceful reminder for self-censorship.

Many of the disappearances occur in remote areas affected by armed conflict, such as Balochistan Province (in connection with conflict between governmental armed forces and Balochi nationalist armed forces); Khaiber Pakhtoon Kha province (notably under counter-terrorism, often in connivance with foreign forces); and Pakistani-held Kashmir (typically for refusal to participate in the "Jihad" inside Indian-held Kashmir or to provide information to the intelligence agencies).

Disappearances are accepted by the authorities as a normal practice. The major political parties in sizeable numbers in parliament are also silent on the issue of enforced disappearances and torture in military detention cells.

A new trend has been reported in enforced disappearances; it is the extra-judicial killings of the victims following their interrogation under torture. Through this method it is easy for the abductors to wash away all evidence of the disappeared – no question of First Information Reports (FIR), legal process, or finger-pointing. Since July 2010, more than 430 bodies of disappeared persons have been found on the road sides in Balochistan province alone. The family members of many disappeared persons have filed FIRs but the authorities avoid pursuing cases as witnesses point to persons from the Frontier Corp and intelligence agencies. Not a single person from these agencies has ever been arrested despite their identification.

Much of Balochistan is under military lock-down and quarantine. Journalists and human rights defenders are usually denied access to the area by the Pakistani authorities. Islamabad doesn't want the world near the evidence to its continuing crimes against humanity, including the indiscriminate bombing and strafing of villages using US-supplied F-16 fighter aircraft and Cobra attack helicopters.

The courts, particularly the higher judiciary, have disappointed family members of disappeared persons. The Supreme Court has taken up the cases of disappearances, particularly from Balochistan province, and many times shouted at the military for not cooperating in solving the issue of disappearances. But, the Supreme Court has failed to solve anything, as the powerful institute of the military has ignored its orders and this despite the Supreme Court having many times mentioned that military and para-military units were involved in the abduction, disappearances, and extra judicial killings. Such disappearance and assassination in Balochistan has become so epidemic, courtesy the influence of the military and its spy agencies, that the government is hesitant to take any action to stop it. The only hope for the people of Balochistan lay with the judiciary, but that course has also been denied as none can challenge the military's illegal and supra constitutional actions. The judiciary has proved that it would not go against its past masters, who still rule today. That is why the military and its spy agencies have supra constitutional authority to deal with the Baloch people, who are struggling for their constitutional right of self rule in the province. The judiciary has totally failed them, not only in bringing the disappeared persons to the surface, but also has turned a blind eye to the abductions and killings in the province.

The nationalist forces of Sindh province claim that about 100 persons have been disappeared in the recent past. Some of their bodies have been found on the road side showing signs of severe physical abuse while their cases were being heard in the higher courts.

In the province of Pakhtunkha around 2,000 persons have been disappeared since the war on terror began. In one case, even after it was established before the Supreme Court that four persons had died in a military camp, a year later the Supreme Court closed the case without identifying any military officer. It is this lack of action by the higher courts that encourages the military to continue their crimes against the people of Pakistan.

Disappearances in Balochistan have become routine work for Frontier Corps (FC) and intelligence agencies. Since last year, the law enforcement agencies have introduced a new trend in which they extra-judicially kill the disappeared persons so as to ensure that there is no evidence linking the abductions to them. In many cases of disappearances people have been abducted in front of their family members, friends, and relatives. They have been kept in torture cells and killed extra-judicially. Victim's families have recorded their peaceful protests for the safe recovery of their loved ones. But instead of their recovery, family members of the victims have been handed back bullet-riddled bodies. This was

exposed during the case of Abdul Saboor (29), taken in custody illegally by military authorities, after he was picked up from prison two years ago. He died in military custody this year. According to his mother and his lawyer, his death followed torture and poisoning.

Since Pakistan became a key ally in the US-led "war on terror" in late 2001, hundreds, if not thousands of people, both Pakistani and foreign nationals have been subjected to enforced disappearances in Pakistan. As a result of this practice, people are kidnapped, held in secret locations outside any judicial or legal system, and are often subjected to torture or other ill-treatment. The clandestine nature of the arrests and detentions of suspects makes it impossible to know exactly how many people have been subjected to enforced disappearance in the last ten years. The practice has spread to domestic opponents of the Pakistani government, in particular Baloch and Sindhi nationalists. Held in secret detention out of sight and without charge, without access to their families or lawyers, their fate and whereabouts remain unknown.

Infamous Case of the Missing 11[153]

Eleven prisoners went missing in 2010 from Adiala Jail, Punjab province. They were suspected terrorists who were arrested on allegations of involvement in an attack on former president Pervez Musharraf, attacks on Kamra and Hamza Camps, GHQ, and possession of suicide jackets, but were later acquitted by an Anti-Terrorist Court. In spite of their acquittal, they were not released. The Lahore High Court (LHC) again ordered their release, following which they were allegedly picked up yet again by the intelligence agencies. There was speculation that they were 'handed over' to the intelligence agencies by the Adiala Jail authorities. This was in 2010. In 2011, a senior law officer of the GHQ admitted that the prisoners were in their custody. The Advocate General explained that they were formally arrested in April 2011 and a case had been registered against them under the Pakistan Army Act, 1952. Apparently, four of the eleven abducted prisoners have died in custody. A missing person petition has been filed in this regard. The SC issued notices to the defence secretary, ISI and MI Director Generals (DGs), and Judge Advocate General (JAG) of the GHQ. In the same case, three more suspects of attacks on military installations were killed and their cases are also in the courts.

153 See www.humanrights.asia/news/ahrc-news/AHRC-ART-003-2012/

B.1 Supreme Court is Culpable

The Pakistan army and its intelligence agencies enjoy immunity, not only from the government, but also from the higher courts, who still claim to be part of an independent judiciary. The Supreme Court's attitude in cases related to human rights abuses by the military is manifestly different from its attitude when cases involve civilian authorities.

This became apparent once again during the hearing of a constitutional petition filed by Ms. Rohaifa, the mother of three men who were arrested by the military and charged with an attack on military installations. One of the three detained sons was killed while in custody at a military detention center. This was after the Chief Justice requested the counsel for the military and its spy agencies to allow the family members of the prisoners that had been admitted to the hospital, to meet their missing ones. The Chief Justice was very humble in his request, saying: "If it was possible to arrange the meeting of the relatives with four missing prisoners admitted to Lady Reading Hospital, Peshawar". The request from the CJ implies that it was not a right for family members to meet with the prisoners, who have been missing for two years after having been acquitted by the Anti-Terrorist court.

The Supreme Court (SC) bears responsibility in the killing of four persons in military custody. Indeed, the Court had been previously informed of the situation in January 2011, as a petition was filed stating that eleven suspected prisoners had been taken by the spy agencies of military from the Adiala Jail of Rawalpindi city, Punjab province. This arrest was in spite of having been acquitted by a lower court in 2010 from the charges of attack on military installations, including the General Head Quarter of Pakistan Army.

Nevertheless, the Supreme Court unconditionally allowed the military to try the prisoners under the Army Act, 1952. Since last year, the Court has never inquired about the developments in the trial of the eleven suspects but was aware that four persons were tortured to death in military custody. When the mother of Abdul Saboor filed the petition in the Supreme Court showing apprehension that her sons would be killed, as three other co-chained persons had been killed previously, the registrar raised objection on the petition, which gave the captors sufficient time to eliminate Abdul Saboor.

In the last proceeding, the court tried to appeal to the media, and when counsel from the military asked for time for submitting his argument, the Chief Justice and other judges loudly said that they would not grant an extension. Then, contrary to the statement of judges gave an additional ten days to produce the remaining prisoners in court.

The government too has proven itself subservient to the military. It is fully aware of the existence of illegal detention centers all over the country and of the way in which the military's intelligence agencies operate, abducting and keeping persons incommunicado. The government is also aware how the detainees are tortured because most of the leadership has itself survived the barbarous methods of the military and ISI. It is nothing short of criminal negligence on the part of the government, not prepared to either investigate or halt extra judicial killings, disappearances, and ongoing torture.

The president of Pakistan has also been a victim of military conspiracies and was detained for eight years, during which time he was tortured. But, the domination of the military in the political affairs of the country is so deep and strong that the government cannot act to save the lives of innocent people in its custody. The army, armed forces, and their intelligence agencies are now like an Italian-style mafia that can pick-up anybody, even from the prison, even if they have been released by the courts, and can then torture and kill then and dump their bodies on road sides.

What the counsel of the military and its intelligence agencies did, during the last hearing of the case of Abdul Saboor, was nothing less giving an order as a master, mandating the Supreme Court to consider his plea to delay the case favorably. The military has never paid any heed to the courts. The courts have followed suit and never passed any order against the military. The most revolting aspect of this proceeding was that the court had to decide whether the killing of a missing person in custody constitutes an abuse of his fundamental rights under article 184 (3) of the Constitution. It failed to concede that filing a petition on the killing of one son and asking to know the whereabouts of the other two sons are the fundamental rights of the mother.

Article 184 (3) of the constitution does not have jurisdiction over the Army Act and courts have always considered the army and its laws above the constitution. This is why the courts never conceded to review the jurisdiction of Article 184 (3) in order to extend it to cover the Army Act.

The Supreme Court has been very obliging to the Army and its chief, extending all its cooperation to its past masters.

The following question could be raised: how do the courts intend to stop extrajudicial killings and torture when they are quite happy to kowtow to the military and the intelligence services? There is no independent judiciary in Pakistan at the present time and shame for this must fall squarely on the shoulders of the Chief Justice, who is in his present post today because of the sacrifice of the people of Pakistan. The same may be said for the government, which has totally failed to control the mayhem. The people who are being tortured and killed are the same people who voted them into power.

The situation in Balochistan is the best example of the chaos that has replaced any vestige of the rule of law. It is a land where law enforcement is left to assassins, thugs, and smugglers. No one knows how many more will be killed in the coming days? All that is known is that the people of Balochistan have to bury the mutilated bodies of their loved ones almost every day of the week.

Under the present laws, in the presence of a judiciary which was appointed and restored by the orders of the chief of army staff and of a subservient government, it is not possible that the issue of innumerable disappearances and illegal detention centers run by the military can be solved. In coming days, this issue of disappearances may become more critical and serious. It demands strong action from the international community to raise its voice collectively and call for the government of Pakistan to reign in the military and reassert itself in charge. However, this too will be possible only when Pakistan will have an independent judiciary that will assert itself to extend its jurisdiction over the military and its laws.

Kill my other two sons so I can at least bury them [154]

When Abdus Saboor's ailing mother Rohifa filed a petition in the Supreme Court on January 6, 2012, she pleaded before the SC that if the courts could not provide her relief, the intelligence agencies may be asked to immediately kill her remaining two sons, both in custody, so she could at least bury them before she dies herself. Her emotional statement has shaken people. Apart from the inevitable emotional content of this case, it also throws up complex legal and constitutional issues that need to be debated and adjudicated upon in light of multiple internal security threats faced by Pakistan.

In the case of the eleven missing persons, among them four have died in

154 See www.humanrights.asia/news/forwarded-news/AHRC-FAT-005-2012/

military custody due to systematic torture. The Supreme Court had ordered the military and its intelligence agencies, the ISI and military intelligence agency (MI) on February 2 to produce the remaining seven detainees before the court on February 10. However, this order by the country's highest judicial institution was totally ignored. On February 11, the military again flagrantly ignored the order thereby intentionally humiliating the three member bench of the court, headed by Chief Justice Iftikhar Mohammad Chaudhry. This was a clear message to the judiciary once again that the military and any of its agencies do not fall under the jurisdiction of the Constitution of Pakistan and the law of the land.

430 Bullet-riddled bodies in Balochistan

In the last 18 months itself, 430 bullet-riddled bodies of disappeared persons have been found in Balochistan. The disappearances and extrajudicial killings of Baloch activists continue despite claims from the government and security forces that extrajudicial killings have been stopped. The writ of the state is at its minimum here and all the responsibilities of maintaining law and order have been left to security forces and banned militant groups. A new civilian organization with the name of Tehreek-e-Nefaz-e-Aman Balochistan (TNAB) was allegedly established by state intelligence agencies, which claim the killings of political workers and students in the name of maintaining peace. During the last six months TNAB has allegedly killed more than six activists from Balochistan and is determined to continue its killings in the future.

Disappearances in Sindh

The Sindh television channel, reported that the bodies of two young Sindhi men, Khadim Lolahi and Qurban Jatoi were found in Goth Sohna Gahej near the Achhi Maseet bus stop in Madeji town of Larkana district, Sindh province, on the morning of 12 February, 2012. They were activists of the Jeay Sindh Mutehda Movement (JSSM), working for the separation of Sindh

from Pakistan[155]. They had been missing for the last six months, kidnapped by plain clothes officials while they were on their way to Karachi, the capital of the province, 350 kilometers from their district. When the villagers found the dead bodies lying on the roadside they were shocked at the signs of torture and mosques loud speakers calling for the identification of the bodies. A woman, Mahtab Khatoon Lolai, identified one of them as her brother Khadim Lolai and his friend Qurban Jatoi. The Madeji police, without conducting an investigation, then announced that both the killed men were notorious criminals. The residents of Sohna Gahej village refuted the claim of the police and told the media that these two persons, along with others, were picked by a double cabin vehicle in the night, six months before the incident, when they were going to Karachi. On the morning of February 12, 2012 the people of the village saw two bloody bodies lying on the road-side spot when they were going to the mosque to offer their morning prayers. The relatives said that both Qurban Jatoi of Ratodero and Khadim Lolai of village Shah Ali of Dakhan town were picked up by security men.

Killings of a Sindhi Nationalist

A Sindhi nationalist and popular political figure of the Sindh province, Mr. Bashir Khan Qureshi was poisoned to death on April 6, 2012. His sudden death has provoked the Sindhi nationalists against the federation of Pakistan. His party loyalists are claiming that he was the symbol of nationalist movement but his death has made a big division in the province on ethnic lines. No credible investigation has yet come out but other investigations particularly independent investigation from UK has proved that cause of the death was poison. The impunity is prevailing on his mysterious death.

Bakhsh Baloch, not spared by even the High Court

A 75-year-old farmer was abducted by the Pakistani security forces, and the High Court of Balochistan has turned a blind eye to his recovery. Mr. Mohammad Bakhsh Baloch, son of the late Kahuda Gangozar, a 75-year-old farmer, resident of Kallag Sami, Tehsil Turbat, district Kech, Balochistan province, was travelling on June 20, 2012 with about a dozen other local persons on a transport vehicle coming from Turbat and going back to his home town in Kallag Sami (35 km east of Turbat). At 3:25 in the afternoon, the vehicle was stopped by personnel of the Frontier Corps (FC) at the FC check-

155 See www.humanrights.asia/news/urgent-appeals/AHRC-UAC-024-2012/

post of Jusak, 4 km north of Turbat town. On approaching the vehicle, the FC personnel in uniform asked the passengers which one of them was Munshi Mohammad Bakhsh. He replied that he was the person they were asking for. He was then asked to follow them and was pushed into their armored vehicle. The passenger vehicle was stopped for an hour at the check-post, and at 4:25 pm was allowed to proceed on its journey. Soon after leaving the FC check-post, some passengers from the vehicle had called the family members of Mr. Bakhsh Baloch informing them about his abduction by the FC paramilitary forces. His son, Mr. Gangozar Baloch, who is an administrator at the University of Balochistan's Turbat Campus, rushed to the local Police Station and filed a First Information Report (FIR) about the abduction. Since then Bakhsh Baloch's whereabouts remain unknown.

Journalist Saleem Shazad's Killers at large

Shahzad, a reporter for the Hong Kong-based Asia Times Online and for Italian News Agency Adnkronos International, disappeared from central Islamabad on the evening of May 29, 2011. His body, bearing visible signs of torture, was discovered on May 31, near Mandi Bahauddin, 130 kilometers southeast of the capital. The circumstances of the abduction raised concerns that the military's feared Inter-Services Intelligence (ISI) agency was responsible. In June 2011, the Supreme Court, at the request of the government, instituted a commission of inquiry into the killing. No one has been yet arrested after the findings of the commission on his mysterious disappearance and killing.

''The commission's failure to get to the bottom of the Shahzad killing illustrates the ability of the ISI to remain beyond the reach of Pakistan's criminal justice system," said Brad Adams, Asia director at Human Rights Watch, commenting on the case. According to Mr. Adams, "The government still has the responsibility to identify those responsible for Shahzad's death and hold them accountable, no matter where the evidence leads."

The ISI has a long and well-documented history of abductions, torture, and extrajudicial killings of critics of the military and others. Those abducted are routinely beaten and threatened, their relatives told not to worry or complain as release would be imminent, and if they are lucky to be released are done so with the threat of further abuse if the ordeal is made public. Pakistani

and international human rights organizations, including Human Rights Watch, have extensively documented the ISI's intimidation, torture, enforced disappearances, and killings, including of many journalists.

Fisher-folk activist Abducted [156]

Mr. Aijaz Ahmed, son of Haji Siddique, is a fisherfolk activist who has been working actively in the campaign against land grabbing and illegal degradation of mangroves in Kakkapir Village, Karachi, Sindh. In response to this struggle, on April 11, 2011, the High Court gave a stay order on mangrove cutting. The land mafia then allegedly murdered two fisher folk activists, friends of Mr. Ahmed, and ignored the High Court order. In this situation, when the Pakistan Fisher-folk Forum had already lost two brave members, Mr. Aijaz Ahmed, on behalf of the deceased activists, had pursued the lawsuit (petition no. D 326/2011) on the cutting of the mangroves against Haji Younis, the Sindh Province administration, Deputy Inspector General of Police, Operation of West Zone Karachi, Town Police Officer of West Zone Karachi, SHO Maripur Police Station, and the Board of Revenue of Sindh Province. He had not only been attending the hearings and following up the petition regularly, but was also fighting at the forefront to lead the campaign against mangrove cutting under the flag of Pakistan Fisherfolk Forum against the land mafia.In the continuation of this campaign, several meetings with the stake holders were made as a result of which a vigilance committee was formed by the session judge in order to monitor the cutting of mangroves and to suggest the best possible action in this regard. On June 9, 2012, the committee visited the Kakkapir Village to assess the position of mangroves and to record the encroachments.

Former Jihadi 'disappeared' for refusing to future jihad activities in India[157]

Mr. Khushal Hussain Qazi, aged 36, a former Jihadi, was taken into custody, on the evening of October 6, by persons belonging to the intelligence agency of the Pakistan army when he was passing the military camp in Lipa, Azad Kashmir (the Pakistani part of Kashmir) on his motor bike, after attending a condolence gathering of one of his relatives. On October 8, a family friend

156 See www.humanrights.asia/news/urgent-appeals/AHRC-UAC-135-2012/?searchterm=pakistan%20disappearances

157 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-188-2012/

told his wife that her husband was lying in the Combined Military Hospital (CMH), Muzaffarabad, in a serious condition. When his wife, Shahnaz, a school teacher, went to see him, she was told that he had suffered a heart attack and had torture marks on his body. Shahnaz caused a scene by shouting and was able to meet her husband. She found him in chains, and in the custody of two plain clothed persons and two army men. Qazi had marks of torture on his body. She tried to talk to her husband but she was refused and at one point an army man covered her mouth with his hand and pushed her away from her husband. Another soldier in military uniform threatened to slap her. Mr. Khushal Hussain Qazi's whereabouts are unknown and it is feared that he is being subjected to torture to confess that he was an Indian agent as he refused to go for jihad inside that country where the Pakistan army have much at stake.

Missing student found dumped on the roadside with severe torture marks[158]

This is the story of a student who was abducted from the examination center and kept many months blind-folded in the military detention and was tortured. Mr. Mohammad Zakir Bozdar (27), a student and resident of Ghotki, Sindh province, was disappeared by persons in commando uniform on May 9, from the examination hall, where he was due to take his 'Islamic Culture paper', and remained missing until October 9, which was the date that the Sindh High Court demanded that the law enforcement authorities, particularly the military, produce him. This was after several hearings regarding his disappearance. On that day, he was dumped on the roadside at Tando Masti Khan, district Khairpur in serious condition. He had fainted and the villagers informed the police. Mr. Zakir had signs of severe torture all over his body and was bleeding. He was shifted to hospital and the doctors declared that he will not survive without proper treatment.

On May 9th, he had gone to the examination center at the Government Degree College, Ghotki. As he parked his motorcycle and walked towards the examination room one person in plain clothes with a scarf concealing his identity, and five persons in commando uniforms with guns, halted him and started beating him in the presence of Senior Superintendent of Police (SSP),

158 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-189-2012

Mr. Ali Nawaz Shaikh, who was there with the principal. He was kicked and beaten by the five commandos and thrown in the black-coloured double cabin vehicle with tinted glass and no registration plate. These types of vehicles are commonly used by military intelligence officials for abductions and enforced disappearances throughout Pakistan. At this moment, some other students bravely tried to stop the abduction, but the SSP ordered some police officers, who were also present, to forcefully prevent them from interfering.

B.2 Military / Intelligence: Still above Courts, Constitution

There are hundreds of complaints concerning missing persons before the higher courts, including the Supreme Court of Pakistan, notably concerning persons allegedly abducted by state intelligence agencies. Many survivors have testified in court that they were disappeared and tortured in cells run by the intelligence agencies. But the courts have consistently shown their inability to hold those responsible accountable, as military and intelligence agencies refuse court jurisdiction and fail to cooperate with court orders.

The government formed a 3-month judicial commission to probe cases of disappearances, comprising Supreme Court Justice Kamal Mansoor Alam and two retired high court judges, which began working in June 2010. It only considered a limited number of cases of disappearances, as it required a First Information Report (FIR) before it considered cases, and the police typically refuse to file FIRs into disappearances, despite a Supreme Court to do so. The commission was unable to get explanations from the intelligence agencies, and its recommendations have been ignored. Another judicial commission has since been formed under retired Supreme Court Justice Iqbal Javed. It has been working for over a year, but has not been able to summon members of the intelligence agencies to appear before it. Given this, it is hard to see how the newly-established National Human Rights Commission (NHRC) will fare any better when attempting to hold members of military and intelligence services accountable.

B.3 Recommendations to End Disappearances

- Ratify without delay the CPED, and recognize the competence of the Committee to receive communications under article 31;
- Criminalise forced disappearance under domestic law, in line with international law and standards;
- Ensure full cooperation of the military and intelligence services with the judiciary and the judicial commission into disappearances, and

ensure full implementation of the commissions' recommendations;

- Ensure immediate closure of all illegal secret detention centres operated by security forces & intelligence services;
- Ensure civilian oversight of military and intelligence services, and full compliance with independent monitoring, including by the Pakistan Human Rights Commission and non-governmental organisations, to ensure the absence of any illegal detention facilities;
- Immediately locate whereabouts of all missing persons, release all persons being detained illegally, and ensure missing persons families' rights to truth and reparation, in line with international standards;
- Ensure full, effective and independent investigations into all allegations of forced disappearances, bringing those responsible to justice;
- Invite the Working Group on Enforced or Involuntary Disappearances to conduct a country visit without delay, as a priority.

C. Torture: Afflicted Citizenry, Addicted Military / Police

Two and half years after the ratification of the UN Convention against Torture (UNCAT), the government has still failed to enact a proper law against torture. Pakistan ratified the UN Convention in June 2010, but immediately after it's signing the government showed its reservations on almost all important articles. Since then, the Asian Human Rights Commission, with the collaboration of more than 30 rights-based organizations, including bar associations, doctors, teachers, women organizations and trade unions, has drafted a proposed bill against torture and custodial deaths and submitted the same before the government and the parliamentarians, but yet no progress has been made.

Torture in custody is the norm. It is the most common means by which confessional statements are obtained and bribes extracted. On many occasions, the police and members of the armed forces have demonstrated torture in open places to create fear in the general public. The absence of proper complaint centers, and no particular law to criminalise torture, makes the menace of torture wide-spread. The torture cases have to be reported to the police, and the police, being the main perpetrators of torture, refuse to register the cases. This is the main reason official data about the cases of torture is not available.

As yet, there has been no serious effort by the government to make torture a crime in the country. Rather, the state provides impunity to the perpetrators who are mostly either policemen or members of the armed forces. Furthermore,

there is no means for the protection of witnesses. This discourages victims from making complaints. While international jurisprudence on the issue has evolved into very high standards, the situation in Pakistan resembles a medieval era. Domestic jurisprudence concerning the use of torture is underdeveloped in Pakistan. The appreciation to exercise the right, as envisaged under Article 14 (2) of the Constitution, has thus far been minimal. To make matters worse, in claims against torture, victims bear the burden of proof, and there are no independent investigating agencies empowered to inquire into a complaint against torture.

In spite of the prohibition of torture in the Constitution, the Pakistani Army is running detention and torture cells in almost every city in the country. A report[159] by the AHRC has identified 52 such detention centers run by the military, where people arrested and disappeared are kept incommunicado and tortured for several months to extract confessions. The Asian Human Rights Commission has documented evidence that even the Pakistan Air Force and the Pakistan Navy are running detention and torture cells in private houses inside their headquarter compounds.

As of now, there are no independent investigation procedures in Pakistan to investigate cases of torture. In addition, there is an alarming level of insensitivity among legal professionals, including the judiciary, regarding torture in Pakistan. The current government has taken no action to close these centers, There is a clear requirement for independent civilian monitoring of all places of detention in Pakistan, which speaks to the pressing need for the government to ratify and implement to Optional Protocol to CAT (OPCAT) without delay, as well as to invite the Special Rapporteur on torture as a priority.

C.1 Physical Remand in Police Custody: Legal way to Torture

The Pakistani judiciary and government have adopted a legal way of torture in custody through the method of physical remand in police custody. According to law, the judicial magistrate can grant up to 15 days in police custody for further investigation of a case. This method is commonly practiced by magistrates. It provides a way for the police to complete its investigation; and the easiest way to 'complete' the investigation is to torture the person.

The law generally known as police remand was introduced at the end of 19th

159 www.humanrights.asia/news/ahrc-news/AHRC-STM-158-2008

century by colonial powers to get more confessional statements through torture and conduct brutal investigations. This continuing law gives a legal way to police and law enforcement authorities to get confessional statements through physical torture. Police torture is a colonial legacy, and red chili spray was one of the favorite tools used by the police then to extract confessions. In fact, it is a ready technique, and still very popular.

The main source of torture in South Asia, and particularly in Pakistan, is physical remand in custody. According to law, the magistrate is supposed to ask the accused person whether he / she went through torture in custody but this practice is generally not followed. The poor training of the police force is one reason for the perpetuation of the use of torture in custody. Because of the lack of awareness and training, investigation officers do not use the basic tools that can help point the investigation in the correct direction. They resort to outdated techniques, which leads to inefficient, slow or even unlawful proceedings. The claim that there is no need to change century-old 'traditions' helps the perpetuation of mistakes and abuses, such as torture. There is, therefore, a great need for better training, awareness-raising, and equipping of Pakistani police forces in order to put an end to such human rights abuses. A large and thorough reform of the policing system must be implemented.

C.2 Compensation for Torture Victims:

According to the existing legal framework in Pakistan, a claim for compensation for an act of torture could be settled under the Shariah law[160], an opportunity often subject to absolute misuse in the country. Under the existing circumstances, this procedure often benefits the perpetrator. Often, the terms of the compensation are decided by the perpetrator, given that in Pakistan the law-enforcement officers enjoy a higher degree of authority in society. By far, the courts in the country have been avoiding dealing with the question of torture. This undermines the possibility of using the civilian court proceedings to obtain compensation, as often the compensation proceedings also require a police report to substantiate a claim against torture.

160 http://en.wikipedia.org/wiki/Sharia

C.3 Magnitude of the Torture Problem:

It is in the day-to-day work of the lower judiciary that this underdevelopment is mostly visible. One example is the practice of the lower court judges allowing remand custody of the detainees with ease while it is clear that anyone detained will be subjected to torture in Pakistan. The courts even fail to make use of the little space available in the Criminal Procedure Code of Pakistan, where a judge could ask for a reason from the investigating agency for demanding the custody of an accused rather than transferring the accused into judicial custody.

The judiciary is also desensitized to the menace of torture and its impact on the very people the government and the judiciary are meant to protect. According to the laws of Pakistan, the courts should inquire into the prisoners brought before them as to whether they have been tortured or not, but this practice is generally ignored by the courts and particularly the lower judiciary. This is especially so in cases where the prisoner has been held incommunicado for months or even longer. When the prisoners testify that they have been tortured while in custody the courts ignore the testimony and no action is taken. This provides legal impunity to the perpetrators of torture.

In the cases of habeas corpus it is generally found that the courts do not go beyond the production of the prisoners or the denial of the authorities that they have illegally held the prisoner. The courts use the excuse that the purpose of the hearing was to produce the prisoner, not to go into detail about the mistreatment they have suffered.

Extreme forms of torture continue to be documented in the country, including, inter alia: beatings with fists, sticks and guns, on different parts of the body including the soles of the feet, face and sexual organs; death threats and mock executions; strangulation and asphyxiation; prolonged shackling in painful positions; use of chilli water in the eyes, throat and nose; exposure to extreme hot and cold temperatures; mutilation, including of sexual organs; and sexual violence including rape. Torture is used by military and intelligence agencies in the contexts of counter-terrorism and armed conflict, such as that in Balochistan province, but is also widespread in routine investigations by the police.

Significantly, no effective action has been taken against the perpetrator of torture by the police in May 1999 of the current sitting President of Pakistan, Mr. Asif Zardari. The alleged perpetrator, former Inspector General of Police (IGP) Sindh province Mr. Rana Maqbool, has, in fact, been appointed as the Prosecutor General of Punjab Province.

C.4 Torture Cases

ISI Continues Torturing with Total Impunity

It is widely known and reported that the intelligence agencies arrest persons and torture them in 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[161].

A report of the atrocious torture of a soldier by the Pakistani Inter Services Intelligence (ISI) on the false charges of working for the Research and Analysis Wing (RAW), of the Indian intelligence agencies in Pakistani held Kashmir was received by the AHRC, and the Commission released a statement on the matter[162]. The victim was arrested by the ISI and then disappeared for five years during which period he was tortured. He lost his teeth, his spine was fractured, his legs were burnt, and he had a large injury mark on the head. Today, he cannot walk without the help of at least two persons.

The intelligence agencies, particularly the Inter Services Intelligence (ISI), is accused of training and sending people inside Indian held Kashmir for jihad or for providing information of militants working inside other parts of Kashmir. The family members of the disappeared people have also been stating that when people, who have worked for intelligence agencies, leave the jihad and return to their normal lives, they are nabbed by the ISI and shifted to unknown places as punishment for not working in the interests of 'national security'. There are also reports that some missing persons, who were sent to collect information from Indian Kashmir, were also hired for smuggling liquor and other Indian items on their return to Pakistani Kashmir after having completing their assignments. There are hundreds of complaints, even, before the higher courts, where it is

161 See www.humanrights.asia/news/urgent-appeals/AHRC-UAC-172-2009 & www.humanrights.asia/news/ahrc-news/AHRC-STM-011-2010

162 www.humanrights.asia/news/ahrc-news/AHRC-STM-137-2010/

alleged that people were abducted by the intelligence agencies, particularly by the ISI and military intelligence, and 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 have little value when it comes to inquiring about the involvement of any intelligence agencies in the legal affairs of the country.

The government and the higher judiciary's inability to control the state intelligence agencies, particularly the ISI, restricting their functions to their own professional duties, have given the agencies impunity to run illegal detention centres and torture cells. In the cases of disappearances, the families of the disappeared persons generally accuse the state intelligence agencies. This is confirmed by the disappeared persons themselves when they have re-surfaced. Many have testified in court that they were tortured in various torture cells run by state intelligence agencies. But, the courts have consistently shown their inability to call and haul-up the officials of the intelligence agencies, forget about making them stop illegal and unconstitutional activities.

Rights Defenders Tortured in Jail in Gilgit-Baltistan[163]

Prominent human rights defenders, Mr. Baba Jan, a socio-political activist, and chief of the Progressive Youth Movement, Mr. Ifthikar Hussain, and Mr. Ameer Khan, along with two more activists of the Pakistan Labour Party, were brutally tortured by the police and military intelligence, the ISI, while in custody.

Baba Jan and his colleagues were arrested during the agitation against the killings of a father and his son by police officials, including the direct shooting by a high official, the deputy superintendent of Police, Mr. Babar, during a protest on August 11, 2011 on the issue of settlement of the victims of the Attabad lake when the chief minister of Gilgit and Baltistan was visiting the place[164].

Recently, the jail authorities had taken the initiative to shift Baba Jan and his four comrades to Giglit sub jail which is located at the top of a mountain

163 AHRC Urgent Appeal www.humanrights.asia/news/urgent-appeals/AHRC-UAC-070-2012

164 See the urgent appeal on the incident. www.humanrights.asia/news/urgent-appeals/AHRC-UAC-149-2011

where the temperature is usually always below freezing. The reason behind shifting Baba Jan and his comrades was that some of the other accused persons in the jail who were involved in the sectarian killings of Shiites and others were lodged in the Gilgit district jail and they were intentionally mixed with the normal prisoners. They were spreading sectarian hatred within the jail with the patronage of the jail authorities. Baba Jan and his comrades were resisting the sectarian division within the prison and on many occasions succeeded in preventing the killings of persons from other sects. This put them out of favour with the jail authorities and local administration of Gilgit. Also the government was not happy with the actions of the activists of the Labour Party and its youth organization for agitating against the increasing interests of USA in the Gilgit area, which is on the border with the Peoples Republic of China.

In Hate Campaign against Ahmadis, Police Torture & Kill School Teacher[165]

Mr. Abdul Qudoos Ahmad (43), a well respected school teacher, belonging to the Ahmadiyya sect was tortured to death while in police custody in Chenab Nagar (the Ahmadi community refers to it by its old name of Rabwah), Punjab province. He was taken into custody by the police on February 10, 2012, and was kept in a private torture cell of the police until 26 March when his condition deteriorated due to the severe torture he endured. He remained in police custody for 35 days without any charges being made against him, and was not officially arrested. He was forced to confess to the murder of one, Muhammad Yousuf, a stamp-paper seller from the Nusrat Abad area, who was murdered a few months earlier. During the illegal detention, Mr. Qudoos was deprived access to any the legal aid.

According to information received from the Muslim Times, Express Tribune, and Ahmadiyya Jamaat, during custody, the victim was hung upside down by his ankles for long periods. On other occasions, he was forced to lay flat on his back while a heavy wooden roller, similar to those used to flatten cricket pitches, was rolled over his body. His captors stood on either side making sure he could not escape the torment. Such inhumane and merciless treatment led to multiple organ failure and other physical injuries. The aforementioned methods of torture are but a few examples of the torment inflicted on him in a demonstration of hatred against the Ahmadis by law-enforcers.

165 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-057-2012

Police Torture Young Man in Custody to Extract Confession[166]

A young boy, Master Muhammad Waqas Chaddhar (14), was murdered in a madressa named Darul ul uloom, Usmania of mosque Maryanwali, Old Bhalwal City on January 17, 2012. It was his daily routine to go to the mosque after school. On this unfortunate day he did not return home from the madressa. The leader of the mosque and madressa, Maulvi Saeed, was not available in the mosque, which was locked. At the evening prayers, the body of the deceased was found inside the mosque. His body was without trousers and there was a muffler around his neck. The announcements were made through loud speakers of the mosque and the parents of the deceased identified him as Waqas Chaddhar. An autopsy was conducted and it was found he had been sodomized before being strangled with the muffler, which caused his death. It is suspected that a number of people were involved in the crime.

The City Bhalwal police station, picked-up a young man, Qasim Ijaz, on the information of some persons including Molvi Saeed, the head of the Seminary. After three days of his illegal confinement at the private torture cell of the police, Fazal Hussain Gujjar Sub Inspector of City Bhalwal police station announced in a public gathering with jubilation that the accused Qasim Ijaz had confessed to the murder. The SHO, of the police station took personal credit for solving the murder within just three days.

Loom Workers Tortured, Tried in Anti-Terrorism Court for Trade Unionism[167]

The AHRC received information that six trade union activists were arbitrarily arrested by the Pakistan Rangers, a paramilitary organization, on the behest of the owners of a power loom factory and accused of creating a trade union for the workers. The six trade union activists were tortured for 30 hours, while in the custody of the Pakistani Rangers. The activists were subsequently handed over to the police, where they were also severely tortured in order to extract confessional statements of being involved in extortion. The labourers resisted and refused to confess and, in revenge, the police filed a case of terrorism against them. They were produced before the Anti-Terrorism Court, where the judge ordered that the victims should be provided with medical treatment. But, the judge failed to order an investigation of the torture committed by the police

166 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-052-2012
167 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-050-2012

officials, and did not request for a copy of the medical certificate from the hospital in order to confirm that torture had taken place. The trade unionists accuse the chief of the Citizen-Police Liaison Committee (CPLC) for using his office to arrest and torture. The CPLC is a government organization that facilitates contact between citizens and police.

Bodies of two more missing persons from Sindh found[168]

The AHRC has learned that the bodies of two young Sindhi men, Khadim Lolahi and Qurban Jatoi were found in Goth Sohna Gahej near the Achhi Maseet bus stop in Madeji town of Larkana district, Sindh province, on the morning of February 12th. They were activists of the Jeay Sindh Mutehda Movement (JSSM) that is working for the separation of Sindh from Pakistan. They had been missing for the last six months, having been kidnapped by plain clothes officials while on their way to Karachi, the capital of the province, 350 kilometers from their district. When the villagers found the dead bodies lying on the roadside, they were shocked at the signs of torture and bullet wounds. They immediately informed the Madeji police who later made announcements over the mosque loud speakers, calling for the identification of the bodies. A woman, Mahtab Khatoon Lolai, identified one of them as her brother Khadim Lolai and his friend Qurban Jatoi. The Madeji police, without conducting an investigation, then announced that both the killed men were notorious criminals.

C.5 Recommendations to Combat Torture:

- Criminalise torture under domestic law, in line with international law and standards;
- Ratify and implement the OPCAT;
- Ensure effective, independent investigations into all allegations of torture;
- Invite the Special Rapporteur on torture to conduct a country visit as a priority.

D. Fair Trial

The 'Fair Trial Bill', which, according to the news report the government plans to place before parliament, will, if passed, virtually make fair trial impossible in

168 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-024-2012

Pakistan. The provisions of the bill are designed for the conviction of persons without fair trial.

The direct impact of the proposed law will be to tie the hands of the courts, including the Supreme Court and deny them the possibility to protect the individual rights of citizens. Through such legislation the judiciary can be overridden and the most basic functions of the courts can be undermined as the guardians of human rights.

The bill makes provision for the tapping of people's telephones and intercepting all private communications. The justification is that this will help to catch terrorists. In fact, the impact of this bill will be that there will be no way to know whether an alleged suspect is, in fact, a terrorist or not. This proposed law will allow the punishment of persons purely on the basis of allegations.

Judging by what is available in the reports, the bill cleverly manipulates terminology. It says that modern techniques and devices will be used for criminal investigations. However, modern methods, does not mean the reform of the archaic criminal justice system in Pakistan. If it were meant to completely undo the dysfunctional criminal investigation system, which presently relies almost solely on the use of torture and the most crude methods by the least educated group of 'officers' it would have been a boon to the country. There is not even the slightest suggestion of that kind of rational reform to modernize the system and to bring it to par with more developed systems that are available now in many parts of the world.

What is envisaged is torture, plus wire tapping, and other forms of interference into private communications by disregarding even the limited safeguards now available within the system. Even what is available is hardly adequate and as a result of the proposed bill there will be no safeguards at all.

Enforced disappearances are already rampant and there are complaints of many innocent people going missing. There is heavy criticism about such violations. Instead of dealing with such criticism and taking positive measures to improve a decadent system, the new measures proposed will allow greater space for barbarism.

If the absence of a modern criminal investigation system is one of the reasons favouring terrorists, the sensible thing to do is to develop the system in terms of more sophisticated capacities by way of dismissing most of the incapable officers from the top down-wards and replacing them with better trained officers and providing them with the most essential things for the running of an investigation system such as proper office equipment, facilities that are now made available to investigators in all developed jurisdictions, bringing them under strict discipline by the enforcement of command responsibility and also bring them to act with complete cooperation with the judicial authorities.

Pakistan does have the resources, financial and otherwise, for bringing its criminal investigation authorities to a quality that is required to enable the discharge of their duties. What is lacking is the political will to modernise the system.

Modernising the system also has another obstacle which is the corruption that spreads from top to bottom. When powers such as wire tapping and interference with private communications are granted to officers who are already severely corrupt it is inevitable that there will be a further increase of corruption. Many persons, including those of the business community may soon be accused of being 'terrorists' purely for the purpose of taking advantage their wealth.

Another strange provision of this proposed law is that it will not apply to members of parliament or the provincial assemblies until permitted by the speaker of the legislature or chairman of the senate. If the proposed law is legitimate why are these people exempted from its purview. The obvious reason may be to get their consent for the passing of this law. What guarantee is there that anyone of them may also be in direct or indirect contact with terrorists?

Obviously this proposed law is contrary to all international norms and standards. Besides it cannot achieve the purported aim of controlling terrorism. It will only endanger more people and particularly dissidents, independent intellectuals, journalists, and every person with an independent view will be placed in great danger.

It will spread distrust and paranoia.

This kind of law makes it possible to have a police state without having martial law. People have distrust of militarism and martial law and it is not possible to recreate them without popular opposition. Under the circumstances, more

sophisticated ways could be found to enable the same abuse of authority by externally less threatening legislation, which, in fact, could create the same draconian control.

The AHRC has consistently campaigned for radical reform of the criminal justice system and raising capacity of criminal investigations in Pakistan to the quality of that in more developed jurisdictions. The AHRC repeats this call again. And, calls upon all discerning people to grasp the danger of the proposed 'fair trial bill'.

D.1 Judicial Commission must probe allegations against CJ & his son

Parliamentarians and leaders of the lawyer's movement, which restored the judiciary, have come out with strong criticism against the Supreme Court and particularly against Chief Justice Iftikhar Chaudhry. They are concerned that he has overstepped the Constitution and is acting too independently. Besides this, members of the ruling parties are also accusing the Supreme Court, particularly the Chief Justice, for undermining the supremacy of parliament and ridiculing the mandate-holders of the public.

A most disturbing debate in print and electronic media is about the corruption charges against Arsalan Iftekhar (32), Chaudry's son. Mr. A. Iftekhar allegedly took bribes in the shape of luxury flats in London, and hotel accommodation in Park Lane, to enjoy gambling in Monte Carlo from a property developer, in lieu of providing relaxation in cases through the influence of his father. During open discussion in the media it has also been alleged that the Chief Justice has been using his influence to stop any inquiry against his son. Due to his position as Chief Justice, the judiciary is trying to appease him and protect Mr. A. Iftekhar, asserting that the demand for an inquiry against him is an attack on the judiciary.

In the effort to resist the attack on the judiciary via Mr. Arsalan's corruption charges, the Supreme Court's divisional bench has stopped the inquiry against him through a stay order just to show solidarity with the Chief Justice who is not happy with the media's freedom. In a recent petition against the obscenity-based programs in the media he tried to impose a kind of censorship for "guided

freedom" to keep the Islamic identity of the country. For this purpose the CJ has squeezed the Pakistan Electronic Media Regulatory Authority (PEMRA) to follow strict rules on the media.

During the media discussions, members from the ruling party have also come out with documentary evidence that the son of the CJ is using the official residence of the Chief Justice as the business address for the bank accounts of his company and has transacted millions of rupees through these accounts. The parliamentarians are claiming that the CJ is fully aware of the business being transacted through his official residence and is therefore, equally responsible for the corruption of his son.

Mr. Riaz Malik, the property dealer, has submitted a statement before the court that he has showered gifts and cash in excess of 2 million pounds sterling on Arsalan Iftikhar Chaudhry. He submitted that everything spent during three all-expenses-paid trips to London by Arsalan Iftikhar and other unnamed members of the family of the Chief Justice, could be shown in the form of receipts, airline tickets, and tenancy agreements.

On the first trip, in the summer of 2010, a three-bedroom flat was rented in Portman Square for a month for £40,000, and a luxury Range Rover was hired for transport around town. The party made a four-day side-trip to Monte Carlo where Iftikhar gambled in the casino of the Hotel de Paris, losing his wealthy benefactor €10,000 (£8,800) (Rs. 1.2 million) in cash.

Trips the following year included stays at a luxury hotel and at a flat off Park Lane costing £4,000 a week. Malik Riaz included copies of Arsalan's passport, cheques, wire transfers, bank statements and tenancy agreements with his statement to back up his claims. He (Malik Riaz) said his son-in-law had paid all expenses for three trips made to London by Mr. Arsalan during 2010-11 and one visit to Monte Carlo in 2010. Arsalan was accompanied by an unidentified woman and a man during his trip to Monte Carlo, and the equivalent of Rs. 1.2 million was paid in cash for losses incurred by Mr. Arsalan while gambling, the statement said.

In a news conference Malik Riaz raised various questions on the transparency of the case and made claims that he met with Chief Justice Iftikhar Chaudhry in the presence of his son, Arsalan Iftikhar. "He said that the Chief Justice knew about the business dealings and should have taken suo moto action before the media broke this news".

In addition to the accusation of corruption and open support to his son, there is also serious debate on the biased performance of the Superior Court and the judges for exceeding their constitutional powers and allowing themselves to become involved in political decisions.

The former President of the Supreme Court Bar Association, Asma Jahangir, has said if the judiciary continues to nourish political thinking it will lead to irrecoverable loss. Talking to the media outside parliament, Asma Jahangir said when the courts do not give ruling in accordance with the Constitution and show political bias, the common man loses confidence in the courts. She said the Supreme Court should see Arsalan Iftikhar and Prime Minister Raja Pervez Ashraf with the same eye of justice. She said justice should be practised but the court should also follow some code of conduct. She alleged the quickness in the National Reconciliation Ordinance (NRO) case is part of a plan, which will cause serious damage to the country and democracy. She said she does not support the new contempt of court law, as many of its sections are against the spirit of the Constitution, but restrictions cannot be imposed on the parliament taking away its right of legislation. She vowed she would never surrender, if the judiciary forbids her from giving statements.

Senator and renowned legal expert Aitzaz Ahsan has said that the judiciary was stepping beyong the Constitution in some matters and was getting too independent. While being interviewed by BBC Urdu, the former President of the Supreme Court Bar Association (SCBA) said that the activism of the apex court was one-sided and not equal for all aspects. He observed, "The stance taken by the Chief Justice in a speech that the judiciary can stop the Parliament from a Constitutional amendment clashes with the Supreme Court's own decisions".

He said that the Supreme Court could only review the amendments made through simple majority for any discrepancy within existing articles of the constitution. "However, amendments passed with a two-third majority cannot be challenged in the court", he asserted. Commenting on the controversial Arsalan Iftikhar case, Aitzaz Ahsan was of the opinion that the proceedings against the CJ's son had raised questions about the impartiality of the court. "The present judiciary is diverting from the prevailing principles of investigation into Arsalan's alleged dealings with Malik Riaz Hussain", he added.

Under these circumstances of the accusation and the campaign of maligning the judiciary, the Judicial Commission must take the accusations that highlight unconstitutional methods being used by the highest judicial offices seriously.

Any failure to do so could well undermine the peoples' confidence in the judiciary which was restored by the very people that look to it for fairness and transparency. Demoralisation is a short step away if it is seen that the judiciary has one rule for its own and another for the people. This situation will be used by supra-constitutional forces if it is thought that the judiciary is corrupt and steeped in nepotism. It will be the excuse needed for another military takeover in the name of protecting the people.

The Asian Human Rights Commission urges the Judicial Commission to act decisively and quickly to stop the blame game between different institutions of the state. Full confidence must be restored in the judiciary and the matter concerning the son of the Chief Justice must be dealt with in a transparent and unbiased manner. This must be done to stop the growing impression that the judiciary is exceeding its mandate and stepping into the domain of the other pillars of the state. The country is undergoing a period of great stress and demoralisation. The Judicial Commission must act to bring back equilibrium to the judiciary and the country as a whole.

E. Index of Poverty

According to the Food & Agriculture Organisation (FAO Report, 2012), 925 million people are hungry and malnourished around the world. About 578 million people in Asia are most vulnerable to food crisis despite all positive economic indicators. Women and children in Asia are the most vulnerable. Asia's peculiar food problems are potentially more pernicious and complex than most. China and India alone comprise one-third of the global population.

Besides the burden Asia carries to feed more than half of the world's population, other challenges loom large. Issues across agriculture, health and nutrition, and in the region's economies and trading structures, threaten a perfect storm. Among its diverse countries, Asia is grappling with labour, dietary, and health shifts, volatile food and commodity prices, growing urban-rural income disparities, and shortages in agricultural investment and technology. Moreover, the region faces intractable climate change, land and water constraints. As the region's economies continue to grow, feeding Asia nutritiously, safely and sustainably in the years ahead will prove challenging. What course of action should Asia's businesses, political leaders and policymakers take? How will countries across the region cope? Is Asia ready for such a huge task? Will food reach every person now, and beyond 2050, when population will cross 9 billion mark? Asia's prospect of plenty could be brighter rather than bleaker. Innovative solutions for feeding Asia increasingly involve public and private partnerships.

In current ranking of food security index 2012, Pakistan has been placed at 75th position amongst the 105 countries. The index evaluates a country's ability to feed its people on the basis of the key indicators, i.e affordability, availability, and quality. In the 1960s and 70s, it was proclaimed that the "Green Revolution" would solve all our food problems. However, the new mode of cultivation, due to use of chemical fertilizers, herbicides, pesticides have destroyed bio-diversity, killed fish in rivers, created salty soils, and polluted rivers and source of drinking water. The water-logging and salinity problem has been also the outcome of greater uses of herbicides and pesticides. Pakistan has no proper water storage system. Our agriculture system is centuries old. The total geographical area of Pakistan is 80 million hectares or 197 million acres with a very good canal irrigated system of about 62,400 km long and mainly confined to Indus plain covering an area of 19.43 hectares (48 million acres) of land. Salt affected land is 6.30 million hectares out of which 1.89 is saline. It is estimated that out of 1.89 million hectares saline patches, 0.45 million hectares present in Punjab, 0.94 million hectares present in Sindh and 0.5 million hectares in NWFP. Out of 19.3 million hectares area (MHA) available for farming, irrigated agriculture is practiced at about 14 MHA.

The survey of Nat Nut, an organization working on economic development, reveals that at the national level about 42% of households are food secure while the remaining 58% are food insecure. The food insecurity data was further disaggregated and it was found that out of 58% that were food insecure, 28.4% were food insecure without hunger, 19.8% were food insecure with moderate hunger, and 9.8% were food insecure with severe hunger.

There is a division between the urban and rural areas, in urban areas about 48% are food secure while 52% are food insecure compared with rural areas where 39.4% of households are food secure and 60.6% are food insecure. In urban areas of those households that are food insecure 26.5% of them are food insecure without hunger, 17.7% are food insecure with moderate hunger and 8.2% are food insecure with severe hunger. Pakistan's rapidly increasing population is a big threat not only to food security of Pakistan; it will affect other asian countries as well. Pakistan is a big market of agriculture products in Asia, which is currently feeding markets in Afghanistan and other Arab countries. Food security of Pakistan is must to feed Pakistanis and other markets in the future.

In Pakistan, politicians (at the policy level) and scientists will play a crucial role in figuring out how to increase productivity, affordability, as well as the nutritional value of crops. Pakistan is currently facing physical water shortages because it has "no proper storage facilities". At this stage, government has also given priority to agriculture to reform a centuries old irrigation system, implementing agriculture reforms in the country, improving existing water reservoirs, starting work on small carryover dams, and tapping new underground water resources for the future. Only 2.5% of total ADP on agriculture is not sufficient for a country, mostly dependent on agriculture. Government must take appropriate measures otherwise the world food crisis will damage our society.

E.1 National development Debate in the Background

Mr. Arif Hassan, prominent town planner, has stated that despite the fact that development budgets lapse every year, we have spent billions of rupees on 'capacity-building' in the last two decades alone, and that we have some of the finest community development projects in the world. So where do we fail? One of the reasons which has not received much attention is an inbuilt anti-poor bias in planning and policy.

Let's take housing, which after employment is the most important requirement of the people, especially in the urban areas. First, we have failed to provide housing or land at an affordable cost to the poor in spite of the fact that physical and financial solutions are staring us in the face.

Then, when people have acquired housing themselves we have bulldozed them to the periphery of our cities. In Karachi alone in the last decade, we have displaced over 30,000 families from within the city to the periphery.

As a result, they have become much poorer, socially stressed and their access to employment (especially for women), health facilities, education and recreation and entertainment has been drastically curtailed.

When proposals for resettling them on government land within the city have been made, those who have made these have been told that this land is too expensive for the poor and even if they can pay market rates for it they cannot have this land, for settling them here would lower the cost of land in the adjacent areas.

However, a lot of similar land within the city has been sold at well below market rates for middle-income housing.

The same bias exists in the planning and delivery of infrastructure projects. Per capita investment in them is much lower in poorer than in rich areas. Again, in poor areas, projects are seldom completed. Even if they are completed, they are not maintained. If they are road projects, they are washed out in the first rains. If they are sewage projects, they stop functioning within a year. The contractors who build them, unlike in the rich areas, are inexperienced and their workmen have poor skills.

In the design and construction of roads, the needs of pedestrians are not taken into consideration. This is one of the major causes for fatal accidents as shown by research on the subject.

Many of the victims are pedestrians who were trying desperately to cross the fast signal-free roads that our planners and politicians think are the only elements required to solve our traffic problems.

Similarly, public facilities such as bus stands (except for the bus stands put up by the city government in Karachi) and terminals are of poor quality and are not maintained in spite of the fact that there are budgets allocated for them every year. After a few years, they resemble archaeological sites.

In their designs no attempt is made to segregate pedestrian and vehicular movement creating insecurity for the pedestrians. There are no proper toilets and the shade provided for the waiting passengers does not provide shade because of bad design and lack of knowledge or interest in understanding how the sun behaves.

For the drivers and cleaners there are no designed rest rooms and eating places. It is well-established that people behave 'properly' in well-planned and pleasant environments and are quarrelsome in unpleasant ones. So let's not blame our people for behaving 'badly'.

This bias comes across very strongly in the case of school classrooms and their furnishings. Badly lit, badly insulated, and semi-finished classrooms with shabby or no toilets have become acceptable for many NGO, donor and government programmes. This is not to belittle the attempts that these organisations are making towards education but to point out that the physical environment of the school has a major impact on the students.

Standards of design and construction of government schools also deteriorates depending on the location of the site. It is comparatively better in richer

environments. Corruption levels also increase considerably in poorer locations. Another issue where bias asserts itself strongly is related to the issue of hawkers. All attempts at arguing for accommodating hawkers and informal entertainers in public spaces, such as parks and transport terminals and in urban renewal designs have failed.

This is in spite of the fact that it is well-established that hawkers, commuters and the poor are intrinsically linked together both in social and economic terms. This is in addition to the fact that the hawkers are a major economic asset to the cities in which they are located.
The list of where all this bias exists and at what levels is endless. It shapes public space, transport, ecology and also research subjects and their methodology. It exists not only in practice but also in much of academic theory which, both in concepts and vocabulary, belittles poor communities. But the question is, why is there this anti-poor bias?

The most important reason is culture and tradition. The poor do not matter. They have no rights and relief is to be provided to them through charity (for which they should be grateful) and not through equitable development.

The other reason is that the micro-level problems of poor households and communities do not form part of the grand development visions and theories on the basis of which planning and administration is taught and done. Exceptions apart, professionals and bureaucrats practice what they have learnt in their courses and teachers teach as they have been taught. So the system replicates itself.

I have come to firmly believe that by simply overcoming this anti-poor bias, through identifying and seeking to eliminate its causes, we will have better designed and constructed physical infrastructure and a far healthier social environment. But, how do you overcome it?

F. The Plight of Human Rights Defenders

The security of human rights defenders is very precarious in the country. They are prey to powerful people, security agencies, police, and Islamic fundamentalist groups, particularly the Taliban. There is no law or proper mechanism for the protection and promotion of the cause of human rights. Human Rights Defenders (HRD) always remain as persona non grata for the authorities, whether they work at the community level as social workers or whether working for human rights at the provincial or country level.

The same situation is also faced with regard to non state actors, especially Muslim fundamentalist groups.

A unique example is of the chairman of parliamentary commission on human rights, who was subjected to illegal detention and abuse by the authorities. Powerful people of his constituency, used the police force against him. The member of the national assembly always wins the elections from there but the provincial government wanted that he should be defeated.

The case of Mr. Riaz Fatyana, the chairman of the Parliamentary Committee on Human Rights (PCHR), highlights the mockery of the rule of law and the extent to which the police work at the whims of political opponents. Despite his position in parliament, and long history of serving the people of the country, he has been victimised and punished by the very institutions which are supposed to be protecting him.

Mr. Fatyana has been illegally detained and implicated in the attack on his own house in which it was razed to the ground. He was exonerated from all charges, but has been displaced from his own native place by the police acting on the instructions of a family member of a retired senior judge of the Supreme Court and the ruling party in the Provincial Government, Mr.Fatyana., and his family have been forced to move to Islamabad, the capital.

This is a further example of political victimisation dominating over the rule of law, human rights, and justice. Mr. Riaz Fatyana is a senior politician and has served on various important portfolios during his 35 years long political career. Currently, he is Member of National assembly of Pakistan and is Chairman of the National Assembly's first ever Standing Committee on Human Rights, and he has done a lot for promotion and protection of Human rights in the country.

This was Mr. Fatyana's fifth time in the assembly. He served three times as Minister for Education, Finance and Information in the government of Punjab. His wife Ashifa Riaz Fatyana has also been a member of the Provincial Assembly, Punjab, on a general seat from PP 88 in the last term (2002-2007) and served as Minister for Women's Development and Human Rights, Punjab. Both husband and wife were elected in National and Provincial Assemblies as independent candidates after defeating all major political and religious parties[169].

169 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-138-2012

Human rights defenders remain subject to: threats and reprisals against them and their families; harassment; legal and physical attacks; arbitrary arrests and detention; forced disappearance; and torture and extra-judicial killing by state and non-state actors. The government has failed to establish an effective national policy of protection for HRDs or to combat impunity by effectively investigating and prosecuting those responsible for such attacks. The lack of effort to combat impunity mirrors the lack of effort to address the whole range of human rights violations witnessed in Pakistan. And, this, in turn, stems from institutional failings within the police and justice delivery mechanisms, and lack of political will on the part of the government to institute effective institutional reforms. In sum, this is what prevents progress concerning protection of human rights. That HRDs expose these failings, places them at particular risk.

Persons who work in favour of human rights, but contrary to the interests of radical Islamist groups, face considerable threat, as may be noted in the killings in 2011 of the Governor of Punjab, Salman Taseer, and the Federal Minister of Minority Affairs, Shabaz Bhatti, who were targeted for their efforts to protect minorities, and their opposition to Pakistan's draconian blasphemy laws.

Another accepted recommendation calls for the government to address the repressive effect of civil society monitoring procedures and anti-terrorism legislation on the operation of human rights defenders. The sentencing of six leaders of a power-loom workers union to a total of 490 years in jail based on fabricated charges under anti-terrorism legislation in November 2011 illustrates the government's failure in this regard.

The killings in Balochistan of human rights defenders, documenting cases of forced disappearances as part of the Supreme Court's efforts to compile a list of cases, is illustrative of the risks to defenders who work on the gravest rights abuses.

Where judges take positions in favour of human rights they face serious threats or attacks, as can be seen in the case of Anti-Terrorist Court judge Pervez Ali Shah. On October 1, 2011, Justice Shah awarded a death sentence to the killer of the former governor of Punjab province. However, he was forced to leave the country, due to the lack of protection provided by the government, even after he received threats. His court and home were attacked by religious fundamentalists as well as militant Islamist lawyers.

There remains serious concern about the process of selection of judges, and the roles of the Judicial Commission and the Parliamentary Committee on the

appointment of judges, with nepotism and corruption plaguing the process. Ethnicity is proving a barrier for selection and reforms are required in order to ensure that judges are appointed on merit rather than political affiliation.

Of particular concern is the nexus between the judiciary and the police and security forces, which seriously obstructs attempts to seek justice concerning human rights violations committed by state agents in particular. For example, Mr. Abdul Saboor, was reportedly killed in a military detention centre while a petition was being filed concerning his case at the Supreme Court. The Registrar of the Supreme Court reportedly obstructed the filing of the petition on technical grounds for one week, having seen that it was against the military establishment. During the period of delay, Abdul Saboor's dead body was dumped on a roadside in Peshawar city, Khyber Pakhtoon Kha province.

The Government of Pakistan has also failed to invite the Special Rapporteur on human rights defenders to visit the country despite accepting a recommendation to do so.

Exemplary Punishment for Assisting in Bin Laden Capture

Dr. Shakil Afridi was arrested a few days after the arrest and killing of Osama Bin Laden (OBL) by the American forces from Abbotabad city, Khyber Pakhtoonkha province, close to a military training center. Dr. Afridi was abducted by persons from the military intelligence for providing information to the American CIA about the hiding place of OBL through the cover-up mission of providing polio vaccinations. Dr. Afridi was accused of helping the CIA use a vaccination campaign to try to collect DNA samples from people who lived in OBL's compound. He was held incommunicado for one year and tortured by persons from the Pakistan military to extract a confessional statement that he was spying for CIA. They also tried to force him to implicate some government personnel who attempted to defame and embarrass the Pakistan army and its intelligence agencies.

After his arrest on May 24, 2011, for five days he was handed over to a joint interrogation team, which mostly consisted of persons from the Army and its intelligence agencies. On May 29, 2011, the accused was then transferred to Military intelligence without a proper official handover. However, exactly

one year after this transfer, a tribal court decided that the transfer was done properly.

On May 23, 2012, the tribal court of the Assistant Political Agent, Mr. Nasir Khan, announced a hurriedly made decision for his punishment of 33 years and a fine of Rs 320,000/= for working against the state, conspiracy, or attempt to wage war against Pakistan and working against the country's sovereignty, according to the AFP news agency. Dr. Afridi was tried in absentia and was not given a chance to defend himself. Under the tribal system he would not have access to a lawyer.

The tribal court's decision was announced on the occasion when the civilian and elected president of the country was on an official visit to Chicago to attend a conference of NATO countries. The attempt was to sabotage the visit in a campaign against the USA as the Pakistan Army was not happy with the incident at the Salala check post where, through the bombardment of USA forces, more than 25 Pakistani soldiers and officers were killed. The Pakistan army wanted an apology from the USA and pressured the government and parliament to pass a resolution for such apology.

However, he was sentenced to 33 years in prison and fined under various clauses of the British-era Frontier Crimes Regulation. Dr. Afridi has been shifted to Peshawar prison in a very critical condition. He still bears torture marks on his body and suffers from the effects of the mental torture he faced during the one year of his illegal detention in unknown places. He has been kept in prison where more than 3,000 prisoners are detained and among them are 250 terrorists belonged to banned Muslim groups. The provincial government of Khyber Pakhtoonkha (KP) has appealed to federal government to shift Dr. Afridi from the Peshawar prison as it is feared that he would be killed there.

Plight of Fisher-folk & the Jungle Law in Chashma Barrage, Punjab

On August 18, 2012, around 10 a.m., a family, including four fishermen and one woman, were traveling towards the city for some of their domestic work when the son of the contractor, Nadir Khan Niazi and his driver Muhamad Khan along with six other armed men stopped them. The perpetrators started searching their belongings and when they could not find anything, they claimed that they had been stealing fish. They abducted the fishermen and kept them in detention at the contractor's private jail in Mianwali for two days. During this period the contractor brutally assaulted the fisherfolk, namely

Mushtaq son of Ghulam Muhammad, Nazeer son of Khuda Bux, Qurban son of Owais, Ramzan son of Punhon, and the woman Rehmat Mallah. He shaved their eyebrows and heads so as to further humiliate them. The fishermen were released on the condition that they leave their lands and return to Sindh province. In this situation when the fishermen reached their village they understood that they were in great peril.

On August 30, 2012, an old man, Khuda Bux, became victim when he was subjected to the cruelest possible ordeal. He was made to run before a pack of dogs that bit at his legs until he was exhausted. The old man was seriously injured but not allowed to see a doctor or go out of the area to seek medical assistance, as the perpetrators have imposed a curfew in the vicinity where no fishermen can go out of the village for any reason[170].

Risk of Attack, After being Charged with Blasphemy

Insan Dost Association (IDA) is a human rights organization working for the promotion and protection of the rights of bonded labourers and their families. Kiln factory owners with a nexus to the local administration have implicated IDA and workers from kilns in different criminal cases. When they could not come up with suitable charges they accused the officers from IDA in the blasphemy charging them with converting Christian workers to Islam and using abusive language against the last prophet of Islam (peace be upon him). Those who have been accused of blasphemy are; Mr. Anjum Raza Mattu, Executive Director IDA, Imran Anjum, (a Christian by faith) Program Officer, Miss Shazia Parveen, Secretary IDA and Miss Najma Khalil, assistant program officer. Before the accusation of blasphemy these people with other staff and kiln workers were implicated in the case of attempted murder after they were beaten by the owners of the kiln and their lawyers including their henchmen in the court premises in the presence of police. During this incident one lady worker, Khadija, suffered fracture to two fingers.

The kiln owners and their association of two districts namely, Pakpattan and Sahiwal, are refusing to implement the wage increase of brick makers which were increased in 2011 by the Punjab Wage board with the rate of Rupees 517 for manufacturing 1000 bricks. The local administrations of both the districts, instead of forcing kiln owners to implement the wage board award, are using tactics of intimidation and coercions. The administrations have filed many

170 Urgent Appeal Update: AHRC-UAU-029-2012

cases against the staff of IDA and kiln workers. After seeing that again there has been an increment in the wages, which was announced by the Punjab board in June 2012, from Rupees 517 to Rs 665 per 1000 bricks, the administrations are using heavy-handed methods against the kiln workers and the IDA[171].

Human Rights Defenders Tortured

Prominent human rights defenders, Mr. Baba Jan, a socio -political activist, chief of the Progressive Youth Movement, Mr. Ifthikar Hussain, and Mr. Ameer Khan along with two more activists of the Pakistan Labour Party, were brutally tortured by the police and military intelligence, the ISI, while in custody. Baba Jan and his colleagues were arrested during the agitation against the killings of a father and his son by the police officials, including the direct shooting by a high official, the deputy superintendent of Police, Mr. Babar during a protest on August 11, 2011, on the issue of settlement of the victims of the Attabad lake when the chief minister of Gilgit and Baltistan was visiting the place[172].

Recently, the jail authorities had taken the initiative to shift Baba Jan and his four comrades to Giglit sub jail which is located at the top of a moutain where the temperature is almost constantly below freezing. The reason behind shifting Baba Jan and his comrades was that some of the other accused persons in the jail who were involved in the sectarian killings of Shiites and others were lodged in the Gilgit district jail and they were intentionally mixed with the normal prisoners. They were spreading sectarian hatred within the jail with the patronage of the jail authorities. Baba Jan and his comrades were resisting the sectarian division within the prison and on many occasions succeeded in preventing the killings of persons from other sects. This put out of favour with the jail authorities and local administration of Gilgit. Also the government was not happy with the actions of the activists of the Labour Party and its youth organization for agitating against the increasing interests of the USA in the area which is near the border with the Peoples Republic of China.

Rangers Abduct Subordinate to Settle Wife's Harassment Case[173]

The officers of the Pakistan Rangers (Sindh) have been continuously harassing the wife of a subordinate officer with ill intention for three years. In the latest

171 See details of case at Urgent Appeal Case: AHRC-UAC-139-2012. &: AHRC-UAC-070-2012

172 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-149-2011

173 Urgent Appeal Case: AHRC-UAC-060-2012

development, high officials of the Pakistan Rangers abducted her husband and his whereabouts are presently unknown. The Pakistan Rangers wanted to have an out of court settlement on the constitutional petition filed by his wife for the harassment she endured. He was abducted twice during the last 24 hours and managed to escape the first attempt. He was illegally detained last night for 12 hours in three different police stations without any charge and in the early hours of this morning (13 April), 12 intelligence personnel from the intelligence wing under the leadership of the Wing Commander of 50 Sachal Sarmast Wing, abducted him from the police station. He was also tortured in three different police stations to urge his wife to withdraw the cases against the high officials of the Rangers.

The victim's wife was prevented by Rangers officials from entering her residence where her children are trapped. She filed different petitions in the Sindh High Court against the high officials of Pakistan rangers stationed at Karachi in which she alleged that the officers were trying to harass her with ill-intentions and that her husband has been victimized because she refused to have intimate relations with one of the high officials.

Mrs. Nasreen Iqbal, the wife of Sub-Inspector Muhammad Iqbal (SI) of the Pakistan Rangers, was a teacher and running a school with the name Excellence Grammar in Sector No. 6, Surjani Town Karachi, Sindh Province. Her husband has been in the Pakistan Rangers (Sindh) for almost nine years. In 2008 he was posted to Karachi and applied for family accommodation which was allotted in November 2008.

Wing Commander, Lieutenant Colonel Mehmood Shah was the former Commander of Wing-60 at Baldia Town, Karachi, where the harassment was initiated. The Commander started to sexually harass Mrs. Nasreen Iqbal by calling her on her phone at different times and frequently in the late evening. SI Iqbal, on many occasions requested him to cease this unacceptable behaviour but the Wing Commander further victimized Mrs. Iqbal by transferring her husband from one area to another and throwing the family out of the official residence. After finding no option she filed cases in the High Court for remedy. During the court proceedings it was observed that the court would deliver decisions in her favour and provided her relief from the harassment.

G. Freedom of the Press

Freedom of expression in Pakistan is defined in several ways and tunes in Pakistan. Every stakeholder has a different lens and interest box to define this

term. For example, for a professional journalist, freedom of expression means peoples access to right information, news and story or video clip or photo.

Owners have defined their own designed freedom of expression boxes. They have already assumed that if they write on judiciary, military, and so called national security issues including ideology of Pakistan and nuclear capabilities etc, blasphemy, against religious groups and terrorist outfits, they will be in trouble in one way or another.

They give the excuse that they have to follow press rules defined by PEMRA. Those reporters who write on these issues are either tortured and sometimes killed by these factors or expelled from their media houses on the pretext that media houses can't sustain the pressure of the governments and parties. So the situation is rather dim and vulnerable, despite the fact that Pakistani media exposed so many evils. Still, media can't touch the holy cows and so called national interest discourses. Dummy culture is another offensive used. Agencies and government try to manipulate dummy newspapers to promote their agenda and marginalize mainstream media coverage. Un-checked advertisements go to this pro-status-quo media club.

Eighty-eight journalists have been killed in Pakistan during last decade out of which 36 were shot dead in targeted killings. In 2012, ten journalists, including one TV channel driver, were killed in three provinces (Balochistan, Sindh, and Khyber Pakhtunkhwa), as impunity against Pakistani media has risen to unacceptable levels. According to the figures compiled by the Rural Media Network Pakistan (RMNP), twenty six journalists have been killed in Balochistan province in the last five years, and Khuzdar district had been declared as one of the most dangerous places for working journalist by the Reporters without Borders (RSF). Up to November 18 2012, four journalists have been shot dead in Balochistan province.

The biggest challenge, apart from direct threat to the life of journalists in Pakistan, is a culture of impunity. The killers of not a single of the 88 journalists killed in Pakistan, excluding US journalist Daniel Pearl, have been arrested, tried and convicted. This has promoted impunity and allowed anyone to threaten and target journalists, because the perpetrators know they can get away with murder. Journalists often complain about receiving threats, including from the country's intelligence agencies, which can lead to violent attacks against them. Investigations, when commissioned, tend to lack credibility. A recent case, of GEO TV channel reporter Wali Khan Baber, who was shot dead in Karachi in January, 2011, witnessed the murder of all six witnesses who were willing to testify against the five defendants.

The areas bordering Afghanistan-FATA Khyber Pakhtunkhwa and Balochistan are the most dangerous areas for journalists. Journalists hailing from Balochistan province face violence and threats from ethnic, sectarian, and separatist groups, as well as from security forces and intelligence agencies. Tribal leaders, militants, district administrations, political agents, and security agencies ask journalists in FATA, Balochistan, and Khyber Pakhtunkhwa to get clearance from them before filing their news to both print and electronic media.

The situation in the country' biggest province, Punjab, is not much better. A young female journalist Seemab Bibi committed suicide by jumping from the fourth storey of a hotel in the provincial capital Lahore on August 15 this year over non-payment of her several months salary, while many anchorpersons and senior journalists were threatened by law enforcement and intelligence agencies. Similarly, in small towns, a large number of journalists have been detained, injured, threatened, and implicated in false cases due to their reporting.

Journalists Killed in 2012 in Pakistan

1.	18 November 2012	Rehmatllah Abid
2.	3 October 2012	Musthaq Khand
3.	29 September 2012	Abdul Haq Baloch
4.	21 September 2012	Aamir Liaquat (TV Channel Driver)
5.	28 May 2012	Abdul Qadir Hijazi
6.	19 May 2012	Abdul Razzak Gul
7.	10 May 2012	Aurangzeb Tunio
8.	8 May 2012	Tariq Kamal
9.	19 April 2012	Murtaza Razvi
10.	17 January 2012	Mukarram Khan Atif

Pakistan, once a relatively conducive land for press coverage and journalism has now been turning into a violent and dangerous place to write, cover, or broadcast. Killing of journalists in war or conflict zones is a universal phenomenon, and brave and bold journalists don't hesitate to take challenging assignments and lose their lives. But for the last couple of years a new trend of kidnapping, disappearance, and targeted killing has surfaced in Pakistan. Government secret agencies, urban tourist groups, Taliban, and separatists have been targetting journalists to influence public opinion.

Targeted Killing of GEO journalist Wali Babar in Karachi, Rehmatullah Abid of Dunya News TV in Panjgur, Syed Saleem Shahzad in Islamabad, and Mukarram Khan Atif of Voice of America broadcasting suggest that Pakistan is

no more just a perilous place for journalists. We have been labeled the most dangerous country in the world for a few years running now. All indications suggest that the coming year too will be a bad year for Pakistani journalists.

Many journalists are killed in the midst of a difficult situation during coverage, riots, and militant attacks; most journalists are brutally murdered by the perpetrators of the crime they are covering. There have been overwhelming speculations against the state organs involvement in the killings of many significant names, which has worsened the condition on impunity in Pakistan. According to the Committee to Protect Journalists (CPJ) and International Federation of Journalists (IFJ), Pakistan has turned into an epicenter of attacks on journalists, the most dangerous place for journalists in the world, for two consecutive years. This year the UNESCO published a report saying Pakistan is the second most dangerous place.

Entrenched violence, targeted attacks and threats against journalists in Pakistan have contributed to a ranking of 151 out of 179 countries worldwide on the 2011-2012 Press Freedom Index issued by Reporters without Borders. Journalists in Pakistan are victims of targeted killings and are under constant threat from the Taliban and other terrorist groups contributing to its fast growing reputation as one of the "world's deadliest country for journalists.

Pakistan (151) was the world's deadliest country for journalists for the second year running. Such is the security situation in Pakistan, that it is sandwiched between Afghanistan (150) and Iraq (152). Somalia, a country that has been at war for 20 years, was ranked at 164, proving to be an incredibly dangerous location for members of the press. Iran, well-known for its persecution of the media, was ranked at 175 on the index. India was ranked 131 on the index. Pakistan ranks 10th on CPJ's global Impunity Index[174], which identifies countries where journalists are murdered regularly and governments fail to solve the crimes.

World is no more a safe place for the journalists, as so far in the current year record, 119 journalists have already been killed in different parts of the world, including 36 in Syria and 16 in Somalia. Mexico, Pakistan and Philippines are other major countries where many journalists are killed.

During a seminar on the International Day to End Impunity for Violence against Journalists, organised by the Pakistan Press Foundation (PPF) in November, 2012 at Karachi Press Club (KPC) a report 'Murder of Pakistani Journalists from January 2002 to November 2012' was released which says that during last 10 years 48 journalists;14 from KPK, 12 from Balochistan, 9 from Sindh, 8 from FATA, 3 from Punjab and 2 from Islamabad, have been killed in the line of duty, 35 of them murdered in targeted actions.

In 2011, at least 17 journalists and media workers were killed in Pakistan. This toll is rising to an alarming level to 29 in 2012. And in running year (2012) record 14 killings have been reported, mostly from Balochistan, but sadly the killers and patrons still seem enjoying full impunity. And the lack of strong deterrents causing rise in violence against journalists in Pakistan.

Such violence will continue till the perpetuators are properly tried and convicted. It is the matter of great concern that no serious action has yet been taken against the tormentors of media professionals. And more so if a government functionary or police official is found involved in violence against journalists, no proper action leading to conviction it is taken against him and after a temporary suspension, these officials were again restored on their duties.

It is exceedingly unfortunate that despite repeated assurances by the government to protect journalists, several journalists are being killed and the

174 http://cpj.org/reports/2012/04/impunity-index-2012.php

community as a whole feels insecure, vulnerable and unprotected.

To end the impunity, all stakeholders, including government, media organizations, and civil society, have to ensure that such cases are properly tried and convictions in these crimes made certain. In Pakistan, the situation regarding the safety of journalists is not satisfactory. Several journalists have been injured while discharging their professional responsibilities; however, there is lack of action to prove these important cases and convict the culprits.

The media organisations should give a long-term coverage to the cases of violence against media persons. There should be proper safety training and ethical training of media to ensure safety of working journalists. Due to silence of journalists themselves the killers of media personnel enjoy impunity.

The journalist community and civil society still expects that authorities should show more resolve in protecting journalists and tracking down their killers. The government must realise that if it has tried anything to ensure protection for journalists, it clearly has not worked. It is not unreasonable for journalists to question the government's commitment to protect them in view of its failure to bring to justice culprits of even one of the many journalists killed during its tenure.

Every year, a day is celebrated in the name of fundamental principles of press freedom – to evaluate press freedom around the world, to defend the media from attacks on their independence, and to pay tribute to journalists who have lost their lives in the exercise of their profession. This is an occasion to inform citizens of violations of press freedom – a reminder that in dozens of countries around the world, publications are censored, fined, suspended and closed down, while journalists, editors and publishers are harassed, attacked, detained and even murdered.

It also serves as a reminder to governments of the need to respect their commitment to press freedom and is also a day of reflection among media professionals about issues of press freedom and professional ethics. Just as importantly, World Press Freedom Day is a day of support for media which are targets for the restraint, or abolition, of press freedom. It is also a day of remembrance for those journalists who lost their lives in the exercise of their profession.

But these celebrations shall be ceremonial if there is no resolve to fulfill commitments. Free press means citizen's basic right to correct, and free flow of information for a better society. Freedom of the press and freedom of expression are fundamental human rights.

In the case of Pakistan, as the general elections approach fast, all stakeholders should join hands to devise proper mechanisms for a safe coverage of polls, and proper SOPs should be made in this regard.

Case Study: Sindh (Rural)

Qambar Sindhi TV Channel Kawaish Television Network (KTN) reporter Aurangzeb Tunio, his brother Rustam Tunio, and a friend Deedar Khaskheli, were shot dead on May 11, 2012, in the village of of Lalu Ranwa of Qambar district in Sindh province.

All above mentioned slain were present in the journalist's office when a group of armed persons entered and fired indiscriminately.

Aurengzeb's colleagues alleged that the attacks were retaliation for his reporting, which had angered certain local tribal groups.

It is pertinent to mention that the bodies of Tariq Kamal, a 35-year-old reporter with a local Sindhi-language newspaper, and his friend Fawad Shaikh, 31, were found by police in the provincial capital, Karachi. The following day, Aurangzeb Tunio, a reporter with the Sindhi-language television station Kawaish Television Network, was killed in the Qambar Shahdadkot district, together with his brother and a friend. According to monitoring of the Rural Media Network Pakistan, four journalists have been killed during the current year in Pakistan.

Case Study: Sindh (Karachi, Urban)

In Karachi, a trail of death and impunity in Babar case[175]

Murders of journalists such as Wali Khan Babar give Pakistani journalists plenty of reason to fear.

Haider Ali, an eyewitness to the 2011 murder of Geo TV reporter Wali Khan Babar, was gunned down[176] on Sunday, two days before he was set to testify in the trial of five suspects. The murder sent shockwaves across Pakistan – one of the deadliest countries in the world for journalists and one of the worst in bringing the killers to justice. According to the prosecutor in the case, Ali had identified several suspects as being involved in Babar's murder in a recent statement before a judicial magistrate. His killing was the latest in a series of murders that have targeted people linked to the Babar investigation. Five others – including eyewitnesses, police officers, an informant, and a family member of an investigator – have also been murdered[177].

In response, the Sindh High Court ordered that security be provided to lawyers and witnesses in the case. That security has not actually been deployed, however, according to local media reports[178]. "The point is that the government

175 Article by Sumit Galhotra, reproduced in full, which appeared on the Committee to Protect Journalists blog, & can be accessed here: http://cpj.org/blog/2012/11/karachi-trail-death-impunity-in-babar.php#more

176 http://tribune.com.pk/story/150237/wali-khan-babar-murder-one-by-one-4-men-linked-to-investigations-bumped-off/

177 http://tribune.com.pk/story/150237/wali-khan-babar-murder-one-by-one-4-men-linked-to-investigations-bumped-off/

178 http://tribune.com.pk/story/460383/wali-babar-murder-case-no-security-for-prosecution-despite-court-orders/

doesn't provide protection to witnesses, even in such important cases," said Azhar Abbas, managing director of Geo TV. "Ali was moved to a different location within Karachi – a dangerous city as is. That simply is not enough. He was provided no security personnel."

Last month, the Sindh High Court called for the trial to be concluded in 45 days. "The confessional statements [*made by the accused*] are quite strong and there will be pressure on the court for a conviction," according a Karachi-based journalist who spoke to CPJ on condition of anonymity. But this most recent murder casts further doubt on whether justice will be served. Other witnesses have already backed down from testifying, the journalists said.

Convictions would send a message that Pakistani authorities are serious about prosecuting the killers of journalists. But there is much reason to believe that authorities will never get to the bottom of this case, never identify or prosecute the architects of Babar's murder. The murders of witnesses and investigators "proves that there is an organized group or party involved in the murder of Wali Khan Babar. It seems that the government and law enforcement agencies are too scared to come forward and say who is behind these killings," Abbas told CPJ.

Others argue that even if nominal justice is delivered, it comes too late for any real change. "A conviction will not change anything. Fear has already set in--particularly among young journalists," the Karachi-based journalist told CPJ. Babar, 29, an ethnic Pashtun, reported on the clashes between various political parties, extortion, drug dealing and land grabbing in the crime-ridden city of Karachi. In January 2011, at least two assailants intercepted the journalist's car in Karachi's Liaquatabad area, shooting him four times in the head and once in the neck.

The suspects in custody have been charged with murder with common intent and under Section 7 of Pakistan's Anti-Terrorism Act. That means the hearing is taking place in one of Pakistan's anti-terrorism courts, as it did in the case of murdered *Wall Street Journal* reporter Daniel Pearl. By law[179] such proceedings should be wrapped up within seven working days. But such technicalities are usually overlooked in a country where courts are overburdened[180] and judicial proceedings move at a seemingly glacial pace.

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179 www.fia.gov.pk/ata.htm

180 http://tribune.com.pk/story/432686/the-trials-and-tribulations-of-karachis-anti-terrorism-courts/

The high-profile killing of reporter Daniel Pearl in Pakistan is the only known journalist murder case in which some justice was carried out. A recent report by the Center for Public Integrity, however, reveals that there was only partial justice in the case. Only four of the 27 men allegedly involved in the kidnapping and murder were charged and convicted.

There has not been a single conviction in any of the subsequent killings of Pakistani journalists. Babar's case presents Pakistani authorities with an opportunity to improve their terrible record of impunity. But do they have any real desire to do so? Their past promises only go so far.

Journalist Saleem Shazad's Killers at Large

Shahzad, a reporter for the Hong Kong-based Asia Times Online and for Italian News Agency Adnkronos International, disappeared from central Islamabad on the evening of May 29, 2011. His body, bearing visible signs of torture, was discovered on May 31, near Mandi Bahauddin, 130 kilometers southeast of the capital. The circumstances of the abduction raised concerns that the military's feared Inter-Services Intelligence (ISI) agency was responsible. In June 2011, the Supreme Court, at the request of the government, instituted a commission of inquiry into the killing. No one has been yet arrested after the findings of the commission on his mysterious disappearance and killing.

''The commission's failure to get to the bottom of the Shahzad killing illustrates the ability of the ISI to remain beyond the reach of Pakistan's criminal justice system," said Brad Adams, Asia director at Human Rights Watch, commenting on the case. According to Mr. Adams, "The government still has the responsibility to identify those responsible for Shahzad's death and hold them accountable, no matter where the evidence leads."

The ISI has a long and well-documented history of abductions, torture, and extrajudicial killings of critics of the military and others. Those abducted are routinely beaten and threatened, their relatives told not to worry or complain as release would be imminent, and if they are lucky to be released are done so with the threat of further abuse if the ordeal is made public. Pakistani and international human rights organizations, including Human Rights Watch, have extensively documented the ISI's intimidation, torture, enforced disappearances, and killings, including of many journalists.

Case Study – Balochistan

Unidentified gunmen shot dead General Secretary of Khuzdar Press Club on September 29, 2012, Saturday night. Abdul Haq Zehri, General Secretary of Khuzdar Press Club, was on his way home after discharging his professional duties when unidentified masked armed men opened indiscriminate fire on him, said Abdul Hafeez, a police official.

Haq received multiple bullet wounds and died immediately. The assailants fled from the scene soon after committing the crime. Police rushed to the site after the incident and moved the body to nearby state-run hospital for medico-legal formalities. "The attackers had already taken positions and the preliminary reports suggested it was targeted killing," police said.

Abdul Haq Baloch, affiliated with a private news channel, was one of the renowned journalists of Khuzdar district. Dozens of media persons and relatives of deceased rushed to the hospital as they heard the murder news of Haq. It merits mentioning here that journalists of Khuzdar were threatened of dire consequences some time back.

Five journalists, including two presidents of Khuzdar Press Club have been killed in targeted killing incidents during the past two years while 24 journalists have been killed across Balochistan so far in different targeted killing and bomb blast incidents.

Meanwhile, Balochistan Union of Journalists (BUJ) has strongly condemned the killing of Abdul Haq Baloch and demanded formation of a high level investigation team and arrest of killers.

BUJ in its statement said despite killing of so many journalists the culprits were still at large.

Case Study: PKP[181]

Gunmen on 16 January 2012, Tuesday, shot dead a Pakistani journalist working with the Voice of America's Pashto language radio service as he prayed at a mosque in the northwest of the country, police said. Mukarram Khan Aatif, a 43-year-old correspondent with Deewa radio, was attacked at a mosque near his home in Shabqadar town, Khyber Pakhtunkhaw province, 30 kilometers north of Peshawar.

"The two attackers came on a motorbike, fired bullets at Aatif in the mosque and escaped. He suffered bullet wounds to the head," local police officer Zahir Shah told AFP. Another police official confirmed the incident. "Aatif was hit in the head and rushed to a hospital in Peshawar. The prayer leader was also injured," said district police chief Nisar Khan Marwat. Rahim Jan, a senior doctor at the Lady Reading Hospital in Peshawar said Aatif had succumbed to his injuries.

According to press watchdog Reporters Without Borders, Pakistan was the deadliest country for the media in 2011 with at least eight journalists killed in connection with their work.

Case Study: Punjab[182]

Murder of Faisal Qureshi

Police have found the body of a journalist working for a London-based online news site in Lahore, police said Saturday. Faisal Qureshi, 28, who worked for Internet publication The London Post, was murdered early Friday, senior police officer Razzaq Cheema told AFP.

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181 Courtesy AFP & Dawn Newspaper, January 17, 2012, http://dawn.com/2012/01/17/pakistani-journalist-working-for-us-media-shot-dead/

182 Article originally appeared on website of Dawn Newspaper: http://dawn.com/2012/10/08/web-journalist-faisal-qureshi-murdered-in-lahore/

"His throat was slit and there were stab wounds on his body," Cheema said, adding that Qureshi, a bachelor, lived alone in his family home where he was found, and no arrests had yet been made.

"The motive is not clear."

His laptop and mobile phone were missing, another police officer said, adding that Qureshi had also been working for an IT firm in Lahore. One of his brothers, Zahid Ahmed, told police Qureshi had been "receiving threats" from unidentified people over some news reports in his paper.

"He was victim of targeted killing. My brother had been murdered because of stories he sent to his paper," he said, but did not name any group or party thought to be responsible. The online publication is edited by his London-based older brother, Shahid Qureshi.

Another Pakistani journalist, Saleem Shahzad, was found dead on May 31 outside the capital in a killing blamed on his coverage of links between rogue navy officials and Al-Qaeda.

At the time, Reporters Without Borders said 16 journalists had been killed since the start of 2010 in Pakistan, which it ranks 151st out of 178 countries in its press freedom index.

H. Still Flooded With Misery

2011 Floods in Pakistan, tragedy continues in 2012

Pakistan has witnessed its worst floods for two continuous years in 2010 and 2011. The disaster of the floods and rain stayed for 'short time' but left 'long term' negative impact on the lives, livelihoods, and basic rights of the affected communities, especially women and children.

Human causalities, injuries, damage to livelihood sources, natural resources, livestock, forced migration from flood-hit areas, closure of schools, lack of transportation, health, hygiene and sanitation facilities were order of the day for many months. Above all access to safe drinking water caused deaths of minor children and women and Pakistan's disaster management's poor performance and zero understanding of child care and women need added more to the pains of displaced communities living in temporary shelters and camps.

courtesy, Daily Dawn

A large displacement took place and at the time of writing of these lines in December 2012, the government has no conducive and inclusive plan for the rehabilitation, alternate livelihood plan for thousands of affected people. A food secure country turned in to a food-scarce country due to bad governance to deal with the disaster because mostly the agriculture areas of Pakistan were affected, from where the food productivity comes to the rest of the country.

It did not happen over-night. Due to bad governance, corruption in distribution of relief items, poor disaster management policies and above all the lack of political will on the part of the government, thousands of people are still unsettled and living miserable lives in temporary shelters and camps provided by international donors, relief agencies and local NGO networks. It highlighted, among other things, the collaborative efforts of the NGOs, local community, military and international organisations.

Unlike the floods of 2010, this time the government worked at the initial stage only, and the NGOs and certain international donors had helped bear the burden of the disaster.

Man-Made Disaster

The wrong rain forecasts, faulty design of the Left Bank Outfall Drain (LBOD), the failure of the provincial disaster management authority and the Sindh government to invest in preventive measures, have proven to be disastrous for the people, land, and agriculture of the six main agro-based districts of the

lower Sindh. The outcome was obvious. All water streams were overflowed by torrential rains, causing floods. The consistent heavy rains also made the coastal and downstream districts of Badin, Thatta and Tharparkar vulnerable. Badin was declared a calamity-hit area. A large number of villages were cut off from the rest of the country and thousands of people were marooned.

According to official reports and survey of the Sindh Chamber of Agriculture and Sindh Abadgar Board, the continuous heavy downpour led to breaches in the LBOD and canals affecting the Kharif crops of cotton and paddy and washed away standing crops of cotton, rice, chilly, onion, tomato, vegetables and fodder on thousands of acres in lower region of the province. The losses were enormous estimated at around $10 billion. Over two million people were affected and at least 120,000 forced to vacate their homes. About 30 people lost their lives in the rains while 140 sustained injuries during floods. Some 15 people died in camps due to outbreak of waterborne diseases.

Hundreds of mud houses in villages were washed away and the displaced persons were facing severe shortage of safe drinking water, sufficient food and other livelihood items. Large migration was still taking place. Civil society organisations have expressed serious concern over the lackluster government response to the plight of the rain and flood affected people. Our visit and survey suggested that the recent floods were a manmade disaster that took place due to the failure of the government to repair and reconstruct the faulty drainage projects, which had created havoc in the coastal areas in the previous monsoon rains and floods.

The World Bank-funded LBOD has been criticised repeatedly for its faulty design that has caused massive destruction in the past as well, particularly in case of cyclones and floods. This year, breaches developed in the LBOD, the biggest saline Nala of Asia, at several places causing water flow to inundate more than 100 villages.

According to media reports, due to overflowing and reverse flows in the LBOD there is fear of more breaches and flooding in the area. This is not for the first time that the LBOD has affected and displaced the population of Badin. The 1999 cyclone, 2003 and 2006 monsoon rains had also caused overflows and breaches that displaced the population of Badin and adjacent areas causing loss of lives.

Critics have repeatedly pointed out technical faults in the designing of the tidal-link embankments and the Choleri Weir that makes the local communities

vulnerable when heavy rainfall and high tides and sea storm coincide in the area.

The faulty drainage network has also badly affected the environment of the Indus Delta, restricting fresh water availability necessary for maintaining the ecological value of the delta, which in turn supports coastal forests and marine life.

The maintenance and management of Sim Nala also remained neglected due to corruption and capacity deficits of the Public Works and the Irrigation Departments of the province. The Sim Nalas demand extra care and maintenance since they serve the purpose of draining out effluents that weakens the drainage structures. There have been no serious efforts on the part of the government and the concerned departments to maintain the Nalas over the years.

Media reports indicate that prompt response by the government agencies, during and after the floods, was minimal. District officer (DO) Revenue Badin has admitted to the press that the district government had failed to provide even basic facilities to the DPs. The NDMA claims having distributed ration packets among 2,000 families in Badin, 1,000 in Tando Muhammad Khan, 1,000 in Hyderabad, 500 in Tando Allah Yar and 2,000 in Mirpurkhas. The support is not commensurate to the difficulties faced by the people.

People's suffering for the second consecutive year reflects state's failure to learn lessons from the last year's devastating floods that submerged a large part of the country. No prior warnings or evacuation efforts preceded the water overflow nor was there any preparedness in terms of relief for communities displaced by floods. The begging bowl approach continues with the government planning the issuance of relief assistance through Watan Cards that remained inadequately supplied during the last floods.

It is the responsibility of the government to immediately adopt measures to restore normal life in flood-affected districts unlike last year when the state did not make adequate efforts to drain out water from the inundated areas in Sindh and it remained submerged for several months after the floods. The government should take quick measures to drain out water and resettle the affected farmers with assistance for shelter and livelihood. Apart from immediate relief measures including supply of clean drinking water, food and healthcare, the state must work on long-term measures for the rehabilitation of the affected people.

Extending social security, asset distribution, right to shelter and livelihood and planned urban and rural development is critical to prevent future manmade disasters such as the recent floods and also to minimise loss of lives and property in case of natural disasters.

Marginalization of Flood-hit Minority Communities

Pakistan is a signatory to several international protocols and obligations which support people's access to their fundamental human needs without any discrimination. Regarding the devastating monsoon rains in Sindh, the spirit of all principles of the international charter and of our own Constitution has been severely violated.

Aid distribution, rescue and relief services of the government were discriminative. This observation is based on the author's frequent visits to each and every tehsil of flood-affected districts of lower Sindh from Tando Muhammad Khan to Tharparkar.

Many people have died due to the ravages of monsoon rains and breaches in the Left Bank Outfall Drain (LBOD) in the districts of Benazirabad, Sanghar, Mirpurkhas and Badin. Besides, it has resulted in the destruction of the means of livelihood for millions of people with the death of cattle and poultry and the inundation of crops.

The majority of the Hindu community living in the districts of Sindh, including Umerkot and Tharparkar, have remained lacking in food and water and shelter during the relief and rescue operation. Minority communities were the most badly hit. They have no alternative but to live under the open sky, facing the vagaries of weather. They were denied accommodation in relief camps where only Muslims were living. Humanitarian assistance was compromised by taboos, exhibiting maximum religious discrimination.

Although there were enough resources, the government distribution system was extremely defective as it was ignorant of the specific needs of women, children and minorities. They lacked the capacity and efficiency to deal with any sort of disaster. The provincial government's tall claims that 'we have enough to deliver' and the federal government's ban on NGO donors further added to the tragedy.

For a while, Sindh was deprived of those international organisations which are experts in dealing with disasters. This gap has provided great space to an

abundance of intervention by religious organisations and relief networks. As the government's relief operations were initiated much later, the religious organisations got space to further divide the spirit of humanitarian assistance on the basis of religion.

All Hindu legislators, including seven Hindu ministers and advisers in the Sindh cabinet, also reportedly ignited the divide, supporting their specific community during the relief and rescue work. The spirit of the charter of human rights was badly violated. However, the role of our print, electronic and social media is praiseworthy. It highlighted this discrimination through their coverage and gave space to progressive people to play their respective role in removing this menace.

Although the state has the responsibility to protect the rights of all citizens without any discrimination, we also have a role to expose human rights' abuses through our efforts. We must discourage all kinds of discrimination through our practices.

On the eve of the International Human Rights Day 2011, UN Secretary-General Ban Ki-moon praised the role of the social media in highlighting the importance of human rights and its role in sensitising and mobilising people to demand their rights enshrined in the Universal Declaration of Human Rights, including justice, dignity, equality and participation.

What is to be done?

- People affected by the floods are still suffering great hardship; they need a full-fledged body to respond to rescue and rehabilitation needs. Strong infrastructure along the Indus river embankment and monitoring of channels and drains is much needed to avoid breach and floods. Though the rains of 2011 were unprecedented, that offered no excuse to the relevant quarters to justify their incompetence.

- The provincial disaster management expertise needed to be reorganised and equipped in terms of logistics, medicines, and food. There is a need to understand the concept of custom-built villages at safer places.

- Rehabilitation is a long-term goal which could not be achieved in four or five years and relief and rehabilitation measures would be successful only if they were decentralised to have the process expedited with greater participation of people and aid agencies.

- The sufferings of people due to the floods had been terrible, but little had been learnt from that. The 2011 type floods did not come overnight Media had highlighted the flood phenomena in Sindh and Pakistan about two years back, but no one paid heed to the forecast.

- It is high time that attention should be paid to the predicted change of the Indus river course and that villages should be built in clusters instead of scattered.

- Planners and managers were ignorant of floods and disaster management response and a capable disaster management mechanism should be established on a priority basis.

- The deputy high commissioner of the United Kingdom at Karachi, Frances Campbell, said the book comprising write-ups and reports from over 60 contributors highlighted, among other things, the collaborative efforts of the NGOs, local community, military and international organisations.

I. Status of Religious Minorities in Pakistan

Intolerance, Misuse of Blasphemy Laws, Persecution of Minorities

Like many other previous years, this time again the year 2012 proved a nightmare for the religious minorities in Pakistan. People from Hindu, Dalit, Christian, and Ahmadiyya communities were persecuted by several state and non-state stakeholders. For a whole year men, women, and children of religious minorities were targeted with a designed agenda to force people to quit the country.

More than twelve men from Ahmadiyya community were killed under blasphemy charge in the province of Punjab. Nineteen girls of Hindu minority and especially of Dalit community were kidnapped and forcefully converted to Islam. Several Christians were also targeted and were tortured and killed by arranged mobs and local police.

The law enforcing agencies, the local court system and above all the government institutions are failed to protect the lives and properties of religious minorities all around the country. Thus, this state of affairs clearly shows the vulnerability and marginalisation of religious minorities and mindset of the state to deal with their citizens. The Pakistan State came into being with the promise that protection of fundamental rights of all the citizens of Pakistan

will be protected, irrespective their caste, creed, sectarian, ethnic, and religious affiliations.

Islamic Extremists Emerge as New Power Center

Pakistan is a diverse society having different ethnic, sectarian, and communal groups living under one umbrella – Muslim, Christian, Sikh, Hindu, Bahai, and other groups. There was a time when we used to witness religious, communal, and sectarian harmony among the people of different religion groups.

For the last many years the growth of intolerance in our society has injured that culture and we are every day becoming more hostile, aggressive and antagonistic towards the religions of others. In the post-9/11 world, the debate on clash of civilisations and war against terror has further destroyed the progressive and secular spirit of the majority people of the state as our security establishment has superseded the democratic and elected governments and has taken over the major decisions of the state.

Before this dent, prolonged military interventions, authoritarian democratic rule, and the use of jihad as a tool of extension of their illegal and unconstitutional martial laws, the dictators have freely used religious sentiments and interpreted law and the Constitution as per their own `demand or necessity`.

The Constitution of Pakistan was altered to persecute religious groups in the country and later on the term `minority` was deliberately introduced to disenfranchise Christian, Sikh, Hindu, Bahai, and other groups from the mainstream, though they were equally law-abiding and tax-paying citizens of the Islamic Republic of Pakistan.

The extremists and the right-wing media, particularly some TV channels of the country, have been portraying other religions as exotic and obscurantist. On the other hand, the same right-wing media of the West have been calling Islam a backward and extremist form of faith. There is a need to promote inter-faith dialogue to reduce the rapidly growing hatred and abhorrence.

Pakistan is known in the international community and declared in the country's Constitution as an Islamic nation where Islam is glorified as the superb religion and its followers are pious Muslims. There is no doubt that Islam teaches tolerance, love, respect for other religions, and that life and death are in the hands of Allah. The killing of any human being is forbidden and in the Quran it is the highest form of sin.

But how Islam is defined in practice is yet a big question in Pakistani society. In the absence of any clear definition about the implementation of Islam, a strong perception has been spread that it can be implemented only through violence and exemplary punishment to those who do not properly follow its precepts. Saudi Arabia, being the role model of Shariah and a real Islamic country, demonstrates its commitment every Friday by handing down death sentences that are then carried out by beheading. At the same time thieves have their hands removed.

The Muslim fundamentalists, their militant organisations, the military governments, and right wing political parties of Pakistan have been trying to replicate the Islamic model of Saudi Arabia which has generated an atmosphere of intolerance and violence by punishing ordinary people in the name of Islam. The gross misuse of blasphemy laws is one of the reasons society is turning into a killing field. Virtual anarchy rules in the country and total chaos is not far behind.

The absence of the rule of law and a weak criminal justice system allows the increasing religious intolerance where the religious groups, with the help of the mushrooming growth of seminaries and mosques are enforcing their own tailored Islamic laws by killing, attacking, forcibly converting non-Muslims to Islam and implicating any person who stands in their way in blasphemy cases.
The Ahmadis belong to a sect that believes in Islam and claims to be an ardent follower of it. But, they have been declared as non-Muslim under Pakistani legislation. Evidently, the Government of Pakistan has not only confiscated their freedom to faith, belief and practice, but also proactively victimised them socially, economically, and educationally.

The declaration goes against the very fundamental tenets of democracy which accords all the citizens of the country their fundamental rights and freedom, of which freedom to faith is an integral part. It is to this effect that the United Nations has provided a declaration on human rights and there are international civil rights which provide the basic traits of a democracy. Pakistan had proclaimed to be a democracy four years ago and it was in this context that

everyone hoped that its government will soon fulfill all criteria essential for being recognized as a democratic State.

However, even today, there is a substantive portion of the citizenry of Pakistan who have been deprived of their voting rights and there are many others who can only vote as members of minority groups and use their vote strictly within their own minority.

Ahmadis are one such group which is denied their right to vote; they cannot register as voters in Pakistan. It is a shameful and horrifying fact that all Muslims in Pakistan in order to get their I.D cards, which are essential for registering as a voter, have to make a mandatory declaration pronouncing the founder of the Ahmadiyya community as an imposter and a liar. No civil society in the modern times can tolerate such arrogance of a country towards its own nationals.

Journalist Beaten-up by Fanatics for Watching Television

Mr. Zainul Abedin, son of Khalid Bin Abdul Qadir, resident of A-305, block 2, Gulsha-e-Iqbal, Karachi, the op-ed editor of *The News*, was attacked and beaten on August 27, at around 11 p.m., by four persons when he was in his own house relaxing with his younger sister. He heard noises outside his house and noticed four men kicking at the gate and hurling abuse. As he opened the gate to talk to them he was surrounded and grabbed, with one of the men saying: "You are very fond of watching television and Qawalis, [*mystic and religious songs*], but you will not be so after today". When he enquired who they were and why they should have a problem with how he lives in his own house unless it affected them in any way, one of them said they do have a problem with these things particularly about the mystic songs and then they threatened that they will teach him a lesson for not following their instructions.[183]

Barbarity in the name of Religion is at its Height

On November 8, a group of Islamic extremists arrived at a Hindu temple on the outskirts of one of the country's largest cities, Karachi, shouting, "Kill the Hindus, kill the children of the Hindus." The group, which was armed with pistols, destroyed the temple fittings and ripped off the golden bangles worn by the women. The men and women were beaten indiscriminately and the

183 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-166-2012/

attackers were so sure of their impunity from any action from the authorities they did not even bother to conceal their identities or cover their faces. This was not an isolated case; indeed, it was the second time this particular temple has been attacked, and there have been many such incidents reported. Even Muslims who speak out in public in defence and support of Hindus leave themselves open to attack.

Marvi Sirmed is an outspoken defender of democracy and human rights. She has particularly spoken out on the rights of minorities such as the Hindus, Christians, and Shias. Marvi had been receiving threats from rightwing and extremist groups for several months now and for her own security has had to change her place of residence. On November 3, unidentified gunmen opened fire on the car in which Marvi Sirmed was traveling but fortunately she and her driver escaped unharmed. The attack took place in the Pakistani capital, Islamabad. The police announced that they have started an investigation into the attack but, perhaps not surprisingly, no results have been forthcoming. More recently, Marvi Sirmed was instrumental in the recent campaign to free Rimsha Masih, a Christian girl who was wrongly accused of blasphemy after a Muslim cleric planted evidence against her.

Another area of concern which involves members of the Hindu and Christian minorities is that of forced marriage and conversion. Typically a Hindu girl goes missing and when she next contacts her family they find that she has been married to a Muslim boy. There have been numerous court hearings in several cases to determine whether the conversion was voluntary and in each case students from nearby madrassas attend court to intimidate the judges by chanting demands that the conversion be confirmed. An NGO worker said that in the 100 cases that he had personally worked on only one girl had been safely returned to her family. The government's policy of appeasement also finds its way into the courts.

Pakistan is known in the international community and declared in the country's Constitution as an Islamic nation where Islam is glorified as the superb religion and its followers are pious Muslims. There is no doubt that Islam teaches tolerance, love, respect for other religions, and that life and death are in the hands of Allah. The killing of any human being is forbidden and in the Quran it is the highest form of sin.

The absence of the rule of law and a weak criminal justice system allows the increasing religious intolerance where the religious groups, with the help of the mushrooming growth of seminaries (Madressas) and mosques are enforcing

their own tailored Islamic laws by killing, attacking, forcibly converting non-Muslims to Islam and implicating any person who stands in their way in blasphemy cases.

The barbaric incidents of the Muslim fundamentalists can be seen in the following cases in which the state remains a silent spectator. The Asian Human Rights Commission has collected cases of killings, sectarian violence, lynching and false implication of blasphemy charges during the eight months of this year. Most of the cases were taken from the Urgent Appeals of the Asian Human Rights Commission and research compilations by Mr. Nafees Mohammad based on news clippings from the *Daily Express Tribune, Daily Dawn, Daily Time* and *Daily The News*.

On August 27, 2012, three more persons from the Hazara Shia community were shot dead and two were injured[184]. The deceased were identified as Zamin Ali, Mustafa and Muhammad Ali. The injured were Ghulam Raza and Zahir Shah. Police said that a pick-up, which had been on its way to Marriabad from Hazara Town, Quetta, the capital of Balochistan province, came under attack on the Spini Road.

Also during August more than 35 Shiites were killed by assailants in military uniform. During this period around 150 Shiites were killed in different attacks. The attackers claim to be followers of the Wahabi sect, a Saudi Arabian sect, which itself is a minority in Pakistan and number even fewer in comparison to Shia sect. On August 16, in the early morning, four buses, carrying passengers from Gilgit to Rawalpindi, a city of Punjab, were halted by around 50 men in military uniforms at Babusar Top in Kaghan valley, Mansehra district. All the passengers were asked to alight from the busses and show their national identity cards. After identifying 25 persons as Shia Muslims, hands were tied, and more than a dozen assailants opened fire at them, killing all 25. After the shooting the killers marched away in military style shouting Allah-ho-Akbar.

The Shias from Hazara tribe of Balochistan were killed in those areas which were under the strict control of the Pakistan army and its unit, the Frontier

184 www.humanrights.asia/news/ahrc-news/AHRC-STM-165-2012

Corp. the places of killings were barely three to 500 meters from the military check posts[185].

On August 18, eleven persons, from the Sunni sect, were killed in sectarian violence in District Central, Karachi. Ten people lost their lives in overnight killings that took place in a span of two hours, while another man was killed at noon. Police suspect the wave of violence was in retaliation to attacks on the Shia community. The first attack occurred in Gulberg locality, where motorcyclists fired on Qari Asif and Qari Shakirullah while they were sitting in their office. At around 1:20 a.m., the second target were three friends: Maulana Muhammad Yahya, 32, Faizan Ilyas, 27, and Mujahid Aleem, 26. Twenty minutes later, a similar incident occurred near Masjid-o-Madrassa Quba, just two kilometres from Masjid-o-Madrassa Yasinul Quran. Assailants sprayed people sitting at Café Green with bullets, killing five people and injuring another. One of the men killed, Hafiz Sharjeel Ali, was associated with the Tableeghi Jamaat. Witnesses and acquaintances claimed the five men were targeted because they were Deobandi, a sect belonging to the Sunni. The fourth such incident occurred at a two-kilometre distance from where the funeral prayers for the Gulberg victims were being offered – another Deobandi, Qari Ahsan, 30, was gunned down when he was returning home from Friday prayers.

On August 17, a day after a horrific massacre of 19 Shias in Mansehra, a bus carrying young Shia men was targeted by a bomb in Karachi. Two of them were killed and 13 others were injured. The bomb was planted at a footpath near the main gate of Safari Park, close to an electric substation. The bus was carrying activists of the Imamia Student Organisation (ISO) who boarded the bus at Karachi University.

On August 16, a minor Christian girl, Miss Ramsha, 11, with Down syndrome, was arrested on the charges of blasphemy when she burned some copies of newspapers collected from the garbage. The Muslim population of the slum area attacked her house and beat her mother and sister and also burned some houses of Christians. The police arrested the mother and her two daughters and immediately sent Ramsha to Adiala prison illegally, as according to law, minors

185 www.humanrights.asia/news/ahrc-news/AHRC-STM-038-2012
www.humanrights.asia/news/ahrc-news/AHRC-STM-124-2011
www.humanrights.asia/news/ahrc-news/AHRC-STM-136-2012
www.humanrights.asia/news/forwarded-news/AHRC-FOL-015-2011
www.humanrights.asia/news/forwarded-news/AHRC-FAT-008-2012

below the age of 15 years cannot be sent to prison or detained in police lock-up. After her arrest, police took the custody of her mother and sister and their whereabouts are unknown. Police say that both mother and daughter are in the protective custody because of the apprehension of their killing by the Muslim activists. However, the Christian community suspect that they were handed over the Muslim activists and that their lives may be in serious danger[186].

In August, more than 200 Hindu families migrated to India because of continuous abduction for ransom, forced conversion to Islam after kidnapping, attack on their places of worship and houses, displacement, accusation of blasphemy, and general persecution by the Muslim seminaries. Hindus, sizeable populations of whom live in all the districts of Sindh, have been facing continued incidence of violence compelling them to live under insecurity. The trend has continued for many years now.

On July 4, in Bahawalpur, Southern Punjab, there was a harrowing incident of mob justice, when hundreds of people accused a 'deranged' man of sacrilege, mercilessly beat him, and burnt him alive. The incident took place in Chanighot area of Bahawalpur. Residents saw a man allegedly throwing pages from the Holy Quran onto the street. Local police took him into custody and put him in the lockup. Soon a frenzied mob gathered outside the Chanighot police station baying for blood. Police couldn't stand up to the furious and violent crowd who got hold of the alleged blasphemer, described by one police official as deranged, and brutally tortured him. Nine police officers, including SHO Gujjar and DSP were injured while trying – though unsuccessfully – to rescue the man. The mob burnt down several police vehicles, including DSP Mumtaz's four-wheeler, before getting hold of the man, who has not been identified.

On July 19, Karachi, a devout senior Ahmadi Muslim, Mr Naeem Ahmad Gondal, was shot in the head by two motorcyclists and died on the spot. He was an elite Ahmadi Muslim and also holding the high position of Assistant Director in the State Bank of Pakistan. He was an active member of the Ahmadiyya Muslim community and had been the President of the Ahmadiyya Muslim community in Korangi town, Karachi, for the past 11 years. Mr Naeem was the seventh Ahmadi Muslim killed in Karachi for his faith and belief since the beginning of the year, and the world is aware of the hundreds of other

186 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-146-2012

Ahmadiya Muslims who have been killed in Pakistan so far just for being Ahmadi and being devoted to their faith and belief[187].

On July 1st, in Faisalabad mob rule trumped the law when an infuriated crowd severely beat a man accused of blasphemy, within the jurisdiction of the Ghulam Muhammad Abad police station. According to the police, Faryad allegedly committed some blasphemous acts over which the residents of Marzi Pura caught him and severely thrashed and tortured him. After this, the police registered an FIR on the complaint of Abdus Sattar, a resident of Marzipura, and started an investigation.

On July 6th, Khanpur, a barber, was sent to jail after he was arrested on charge of defiling pages of the Holy Quran. Rafiq Ahmed, a resident of Basti Ghazipur, was accused by Abdur Rasheed, the prayer leader of Ayesha Siddiqa Masjid, of using pages of the Holy Quran to clean some mirrors at his shop. Ahmed later said that he was illiterate and had no idea whether the papers he had used had verses of the Holy Quran written on them.

On June 28th, at least 13 pilgrims were martyred and several others injured in a bomb blast on Zaireen's bus in Hazar Ganji, Quetta, the capital of Balochistan, where the city remains under the tight control of the Frontier Corp (FC), a unit of the Pakistan Army. In the city it is not possible for anyone to move without being body searched by the FC and other law enforcement agencies yet the militants pass freely. The reports say that a police officer was also killed in the attack. In June alone, 31 Shiites were killed in the Quetta and Mand areas of Balochistan.

On June 24th, Rekha alias Pubi (14) was working at a factory for the manufacturing of bottles for beverages at Gadap Karachi. She was abducted by gangsters and forcibly converted to Islam. When a police case was filed against the abductors, the girl was produced before a Magistrate's Court by the gangsters to record a statement that she has embraced Islam as her religion. The irony of the judicial process is that the judicial magistrate has accepted her subsequent marriage as legal in spite of the Pakistan law which does not allow the marriage of girls below the age of 16 years. The irony of the case is that the Chief Justice has with his own technique of law allowed the forced marriage and conversion to Islam as an Islamic victory. The next Friday, after the prayers, the Chief Justice met with Naveed Shah and congratulated him on success on converting a Hindu girl to Islam.

187 www.humanrights.asia/news/ahrc-news/AHRC-STM-154-2012

On June 16th, a mob attacked a police station in Quetta on Saturday, demanding a man, detained for allegedly desecrating the Quran, be handed over. The attack left at least two children dead, and 19 inividials with gunshot wounds. Violence erupted after police arrested a "mentally retarded" man said to have burnt pages of the holy book in Kuchlak, about 16 kilometres (10 miles) north of Quetta, senior administration official Qambar Dashti told AFP. The clash left two children dead and 19 people wounded including eight policemen, he said. "All the wounded people have bullet injuries," he added. "The man appeared to be mentally retarded, we have taken him into custody and ordered an investigation," Wajid said, adding that control had been restored.

On June 7, in Quetta, in targeted killings, two brothers belonging to the Hazara Shia community were gunned down outside the regional passport office near Joint Road. The victims had come to the post office to get their passports made and were attacked outside the main gate of the office.

In May 2012, an 82 year old man was shot dead by the complainant in Sheikhupura after his release from prison after acquittal by a court on being proved innocent in a blasphemy case. Iqbal Butt was on his way home on a rickshaw when he was shot dead in the city's Farooqabad locality. Two men, including his accuser Maulvi Waqas and an unidentified accomplice, chased him on a motorcycle and opened fire, resulting in his death. Javed Butt, a stepson of Iqbal Butt, said that Maulvi Waqas accused his father of blasphemy just to settle a score with him after they exchanged harsh words during an argument earlier on.

On May 30th, in Quetta, a Hazara was shot dead. The victim has been identified as Ali Muhammad, and was traveling on his bicycle after having lunch in a restaurant on Joint Road, when unknown armed men opened fire. Later, Lashkar-e-Jhangvi in a phone call to Quetta Press Club claimed responsibility.

On May 6th, in Quetta, a Hazara Shiite was killed by unknown gunmen. He was working at his tyre shop in Dasht area of Mastung, when unknown armed men riding on a bike opened fire and killed him at the spot. The victim is identified as Muhammad Ali.

On May 4th, policemen scratched out Quranic verses written on the walls of an Ahmadi place of worship and ordered them to cover up short minarets at the entrance as they made the place look like a mosque. After receiving a complaint

about the place of worship in Sultanpura, Kachhupura, a large contingent of Misri Shah police visited it and told the Ahmadis they had a day to make the place look less like a mosque, failing which a case would be registered against them under the 'Anti-lslamic Activities of Qadiani Group, Lahori Group, and Ahmadis (Prohibition and Punishment) Ordinance' of 1984.

On May 4th, clerics in Sultanpura, Lahore, who complained that an Ahmadi place of worship looked too much like a mosque were unsatisfied with changes made to the building's facade and demanded that the building's dome be demolished, reported *The Express Tribune*. The administration of Baitul Hamd, the worship place, covered the chhatri (flattened dome) at the entrance by installing a hoarding in front of it on May 4. A day earlier, Misri Shah Police had removed some tiles with the Kalma and Quranic verses from the building entrance.

In the month of May a Hindu lawyer, Mr. Mohan Lal Meghwar, son of Karo Mal, resident of village Bhadisindhu, Chachro, district Tharparkar, Sindh province, was released by his abductors after paying millions of rupees. On December 30, 2011 he was abducted again when he was on way to Sindh high court, Hyderabad bench, 56 kilometers away from his residence to attend the court proceedings[188].

On April 18, the decision in the cases of Ms. Haleema alias Asha Kumari, Ms. Hafza alias Dr. Lata, and Ms. Faryal alias Rinkle Kumari, who were forced to convert to Islam after abduction, has proved that that the highest court is a biased Muslim court rather than an institution of justice. The judgment concerning this issue has worried the religious minorities who already face an existential threat, demographically but also due to rising religious intolerance in the society.

On April 15th, in Quetta, at least eight members of the Shia Hazara community and a policeman were killed in three attacks. After the attacks and subsequent violence, the administration called out Frontier Corps in the city. The paramilitaries started taking up positions at important places in the evening. Seven people were killed in firing on two vehicles on Brewery Road and Subzal Road. Saturday's killings took the number of Hazara Shias killed in Quetta and its vicinity during the past fortnight to 26.

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On April 3, Mr. Abdul Qudoos Ahmad (43), a well respected school teacher, belonging to the Ahmadiyya sect was tortured to death while in police custody in Chenab Nagar (the Ahmadi community refers to it by its old name of Rabwah), Punjab province. He was taken into custody by the police on 10 February 2012 and was kept in a private torture cell of the police until 26 March when his condition deteriorated due to the severe torture he endured. He remained in police custody for 35 days with any charges being laid against him and was not officially arrested. He was forced to confess to the murder of one, Muhammad Yousuf, a stamp-paper seller from the Nusrat Abad area who was murdered a few months earlier. During the illegal detention Mr. Qudoos was deprived access to any legal assistance[189].

On March 15, the Khushab district police officer had sought assistance from the Muttahida Ulema Board Punjab in a blasphemy case against two Shia clerics. The particulars of the FIR, a compact disc with recordings of allegedly blasphemous lectures by a Shia zakir, and the legal opinion of the district public prosecutor have been sent to the board, Ghulam Murtaza, personal staff officer to the DPO, told *The Express Tribune*. Murtaza said the matter was referred to the board to ensure that the prosecution was in accordance with the law. The DPO's reader said that in his written opinion the district public prosecutor had supported the insertion of Section 295 C (use of derogatory remarks, etc., in respect of the Holy Prophet) of the Pakistan Penal Code in the FIR registered on March 15 against Gorot resident Shuja Abbas and Multan resident Nasir Multani.

On February 23, Ms. Rinkle Kumari, (17), a Hindu girl living in Mirpur Mathelo; a small city of Sindh province and the daughter of a school teacher, was abducted on the night of 23 February by notorious gangsters of the area with the help of a member of the National Assembly from the ruling party and local Muslim fundamentalist groups. Following her abduction she was forced to embrace Islam. According to the information received, Naveed Shah, a member of a famous criminal group of Hassam Kalwarh, along with more than dozen persons abducted Kumari from her house on 23 February. They kidnapped her at gunpoint and took her to the resident of Mian Abdul Haq, alias Mian Mithhu, the member of the National Assembly from the ruling party, the Pakistan Peoples' Party. She was then taken to a famous Madressa at Dargah Aalia Qadria Bharchoondi Sharif where she had forced to sign the marriage certificate (Nikkah Nama) and married with Naveed Shah, a street gangster.

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The Madressa is famous for converting Hindu girls in the province which claims that it has the target to convert 2000 Hindus every year to Islam[190].

On January 29, a big gathering of more than 5,000 persons, mainly from Madressas (Islamic seminaries) was held outside the place where members of Ahmadiyya community have their Mosque and other places like a hospital and library. The place of the protest gathering was not far away from the General Head Quarters of Pakistan and was addressed by none other than the leaders of the banned religious organizations who were declared as terrorist organizations. The leaders from Jamaat-ud-Dawa, Lashkar-e-Taiba, and Sipahe Sahaba, addressed the rally. The rally was held to protest alleged land 'encroachment'; the speakers used the occasion to demand that Ahmadis must stop religious activities such as proselytizing and worshipping. Participants carried flags of different religious parties, including some banned ones, and portraits of the self-confessed assassin, Mumtaz Qadri, who killed former Punjab governor Salmaan Taseer[191].

On January 26, five men were arrested for allegedly using offensive language against the companions of the Holy Prophet (PBUH) in Kotri. According to the on-duty officer, the men wrote derogatory remarks on the walls of six bogies of Sukkur Express when it was at Kotri. Abid Hussain, Mohammad Hussain, Tasawar Hussain, Asghar Abbas, and Mirza Hussain were brought to Karachi and arrested. According to the police, a score of members of the Ahle Sunnat wal Jamaat gathered at Cantt Station and staged a sit-in.

There have been stories aplenty about extremist elements publicly punishing men who groom their facial hair in the far-flung tribal badlands of Pakistan. However, the practice has now been reported a little closer to home: at a school in Peshawar, on January 27th, where the institution's administration suspended a student for trimming his beard too fine – or, to be more precise, for getting an "English cut".

On January 7, in a mockery of the Blasphemy Law: a man wrote that his name was 'Jew Jurian' on his national identity card form. The data entry clerk then assumed he was a Jew. Thus, for the first time in the history of Computerised National Identity Cards (CNIC), a Pakistani was officially declared a Jew. The problem was that he was a Christian. The bigger problem for Jurian, as he

190 www.humanrights.asia/news/ahrc-news/AHRC-STM-165-2012

191 www.humanrights.asia/news/ahrc-news/AHRC-STM-025-2012/

narrated to *The Express Tribune*, was that he was accused of being a Jew – and subsequently, through the twisted logic of twisted souls, of blasphemy. After thorough investigation, Jurian was released by the police, along with three others, in May 2003. Almost nine years later, he and his family still face death threats. His two other friends have been shot dead by fundamentalists and he is in hiding.

On January 3, the car owned by Mahesh Kumar, the former President of Press Club Hyderabad was attacked by three motor-cyclists while Mahesh was inside the club building. This is second time that Mahesh's vehicle has been attacked by unknown people. From the pattern of the attacks, it seems this is the second warning issued to the journalist, and this time the level of threat is higher than before. Mahesh' colleagues believe that this might be the last warning for Mahesh Kumar before he will be personally harmed. Eight bullets holes were found at different places on the body of the car[192].

These cases, are all well reflected in Pakistani society, particularly after the promulgation of section 295 (B) and 295 (C) of the blasphemy law, in the 1980's during the military dictator, General Zia-ul-Haq's regime.

Case of Forced Conversion of Hindu Girls

For 2012, the theme for International Women's Day was 'Connecting girls, inspiring futures' and the entire world was promising to follow the theme. But on the other hand, unfortunately, girls and women of religious minorities in Pakistan, especially Hindu girls in Sindh, feel disconnected from the mainstream, humiliated with no hope. In the last couple of days in Sindh, four Hindu girls (Lata Kumari from Karachi, Rinkal Kumari from Mirpur Mathelo, Aamna Kohli from Tando Bago – the constituency of the woman speaker of National Assembly of Pakistan, Dr Fehmida Mirza – and Aasha Kumari from Jacobabad – a fiefdom of tribal chiefs in Sindh) were kidnapped and converted to Islam allegedly at gunpoint.

Such crime has stopped the Hindu community from even celebrating their scared festivals. In the last couple of weeks, more than a dozen minor children, traders, shopkeepers and businessmen of the Hindu community were reportedly kidnapped for ransom and several families have migrated due to insecure and unsafe future of their families and businesses.

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Registration of fake cases and pressure of local influential are a routine threat to them. Extortion is another crime happening and the Hindus are bound to pay this amount in different parts of the province. More than 700 families have reportedly migrated to India and Southeast Asian countries in a few months.

The Hindu community has done a lot to develop the socio-economic landscape of Sindh and Pakistan, and all their hopes are attached with the land. Today, hundreds of thousands from this patriotic community feel alienated and like strangers in their homeland. No religion has allowed its followers to convert others by force; even Islam does not allow it. Then how can its followers indulge in such wrong conduct?

The Case of Rinkal Kumari

A Hindu girl was kidnapped by a Muslim boy and forcefully converted to Islam against her wishes. Later, the case went to the Supreme Court and the Chief Justice of the said court congratulated the bridegroom for converting an infidel into the folds of Islam. Scared and crying, the girl was taken into protection by a local legislator of the ruling PPP government, who is known for forcefully converting Hindu, Christian, and dalit girls to Islam, and who openly states that he is given funding by Deobandi school of thought (i.e. from Kuwait and Saudi Arabia) to get more people converted into Islam's fold.

Exploitation of Blasphemy Law – the Case of Karachi:

Karachi, the economic hub and financial capital of Pakistan used to be known as a city that was progressive and liberal. However, people here are now also under severe pressure under control of religious extremists and fundamentalists. Some recent cases of blasphemy have exposed the so-called culture of religious tolerance and liberal values of the city. The source of exploitation of blasphemy law was the use of social media in this corporate capital of the country. Now this trend is traveling from rural pockets to mainstream cities and business hubs of the country. On September 21st, 2012 an incident took place in Hyderabad, where some people had lodged a blasphemy case against a trader who had not closed his shop on the day of protest in favour of blasphemy law. This man

was a Muslim and religious background but refused to shut-down his store and called the strike as anti-people and anti-business activity.

Earlier on August, 2012, a 14-year-old Christian girl, Rimsha Masih, had been accused of blasphemy by a cleric in a suburban neighbourhood of Islamabad. She was finally released by a court and had to be airlifted to an undisclosed location for security reasons.

Blasphemy Case in Karachi

With the case of Rimsha Masih still grabbing the headlines, another case of blasphemy was reported to police on Wednesday, October 10, 2012. The setting this time was not in a slum but in a middle-class neighbourhood of Gulshan-i-Iqbal, after the house of the accused boy belonging to a religious minority community was ransacked and furniture was set on fire in a violent protest. The teenage Christian boy has been accused of sending text messages containing 'blasphemous' content to his area residents without reading it. The incident took place in the staff colony of the Sui Southern Gas Company (SSGC) located at the junction of University Road and Abul Hasan Ispahani Road. Daily DAWN reports that police were of the view that the boy was accused by the residents for sending text messages containing blasphemous content to the staffers and officers of the SSGC present at the residential-cum-office compound. As the SMS reportedly circulated among the residents of the colony comprising workers and officers, they eventually attacked the residential quarter of Ryan Stanten, 16, and his mother, Rubina Bryan, on Wednesday, police said. Ms Bryan worked as a superintendent at the SSGC, they added.

The SMS had been sent on Tuesday night. However, apparently after realising the gravity of the situation the family had abandoned the house, said a senior police officer of the area. "Had they not left the house, the situation could have been really bad," the officer observed. On Wednesday, the enraged people ransacked the house and set fire to the household articles, including the bed, washing machine and fridge, after bringing them out on to the main University Road. The protesters also raised slogans against the family. The SMS was passed on by the accused teenager by his own cellphone on Tuesday. After receiving it, some people had gone to the boy asking him about it, he told them that he had forwarded the SMS after receiving it, said DIG (east) Shahid Hayat while speaking to the local press.

"Ryan told complainant Khursheed Alam and Pesh Imam Qari Ghulam Qadir of the SSGC Jamia Mosque that someone sent him this SMS and he forwarded

it to all Muslim friends without reading it," said the DIG. The official in charge of the SSGC security, an ex-serviceman, kept handling the situation, the police officer added. After the mayhem, police reached the scene and tried to appease the protesters assuring them that police would register the case. "We reached the scene and talked sense to some clerics who were leading the protest," said a police officer of the area. The violent protest caused a severe traffic jam on Abul Hasan Ispahani Road and University Road.

A case (FIR No 432/2012) under Section 295-C (use of derogatory remarks, etc, in respect of the Holy Prophet) of the Pakistan Penal Code, Section 7 of the Anti-Terrorism Act and Section 25 of the Telegraph Act was later registered at the Mobina Town police station. A duty officer of the police station said the FIR was registered against Ryan Stanten, son of Ms Bryan, a resident of SSGC staff colony on a complaint of SSGC chief manager Khursheed Alam.

Human rights defenders condemned the trend as very dangerous, in which the Christians were also being targeted. HRCP and AHRC Pakistan volunteer said that people had become very scared. As per HRCP report at least 22 blasphemy cases have been reported in the country in 2012 alone, in which Muslim accused are more in number compared to the Christians.

Around 600 extremists attack the St. Francis Church

School Set on Fire in Lahore:

An angry mob set a school on fire in Lahore, alleging that the school gave a test that insulted Prophet Muhammad (PBUH). A Pakistani teacher at the centre of a blasphemy row was in hiding as her school management denied all responsibility for the "dirty act" and called for her to be punished.

A large number of students, their parents and other people on Wednesday protested against a school administration for distributing a blasphemous essay sheet among students. The protesters later set Farooqi Girls High School in Ravi Road area on fire. People in the area have been demanding police action against the teacher accused of blasphemy for the last couple of days.

On Wednesday, a student organisation and residents of the area demonstrated

against the school administration. They later broke the school gate and set its building and principal's car on fire. Police reached the site and resorted to aerial firing to disperse the mob. A citizen was injured during the protest and was admitted to hospital.

Police arrested school Principal Asim Farooqi & registered a case against teacher Irfa Iftikhar under section 295/C on the complaint of Qari Abdullah Saqib. The Principal said he has dismissed Iftikhar & that he regrets the "mistake".

An angry mob set a school on fire in Lahore, alleging that the school gave a test that insulted Prophet Muhammad (PBUH). A Pakistani teacher at the centre of a blasphemy row was in hiding as her school management denied all responsibility for the "dirty act" and called for her to be punished.

Nobel Laureate Dr Abdu Salam disowned for being an Ahmadi

The government of Pakistan, the media, and other organizations of the state have virtually disowned one of the geniuses of the land, Dr. Salam. The issue of Ahmadi's in Pakistan appears to be more important than honouring the life of the country's only Nobel Laureate.

Dr. Abdus Salam passed away on November 21, 1996 in England at the age of 70. He was the country's only Nobel Laureate and won the prize in 1979 for his work in theoretical physics and for his discovery of the 'God' particle. Dr. Salam was the first Pakistani and the first and only Muslim to receive a Nobel Prize in Physics. He contributed heavily to the rise of Pakistan to the physics community of the world. Sadly, instead of honouring a son of the country the government is ignoring the call for tributes to appease the religious extremists because Dr. Salam was an Ahmadi.

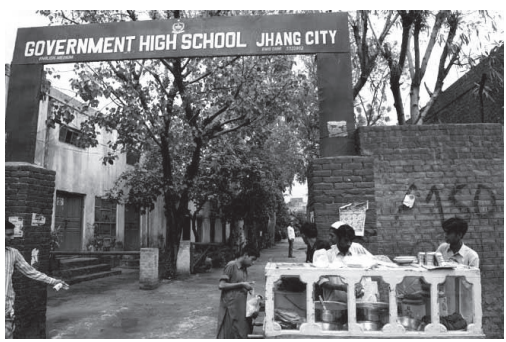
His headstone was vandalized. It originally read: The first Muslim Nobel Laureate Dr. Abdus Salam. After the vandals were finished, it now reads only: Dr. Abdus Salam. The pity of this is that the government has shown no reaction whatsoever to the actions of the extremists. There has been no investigation into the vandalism, and, to be honest, none is expected. This speaks to the apathy of civil society and the institutes of higher learning in that no one has

taken notice of this. Does this mean that the country looks upon Dr. Salam as an award winning scientist or as an Ahmadi? Should they not, in fact, be looking upon him as a great man of science who worked for the betterment of his society?

Residence of Dr Salam, declared national heritage, though later the title was surrendered due to pressure of religious extremists. Several attempts were made to set the house on fire.

It is a shameful situation in that Pakistan has shown no willingness to respect the scientific achievements of one of its own citizens. Indeed, Dr. Salam's community has contributed more to the creation of Pakistan than any other religious sect or group. If the only heroes of the country are the soldiers that are supposed to be guardians of its sovereignty, the jihadist that operate with the full knowledge of the government to protect the 'purity' of Islam, there is no time for the scientists who work to enlighten society and who wish to run the country on scientific knowledge. They are treated as nothing and when their usefulness is over they are thrown out as rubbish.

Dr. Salam has been treated as persona non grata. With regard to the silence of the Pakistan government in the matter of Dr. Salam, it is the organs of the state that are allowing this to happen. If the government would cease its policy of appeasement towards the religious extremists and the armed forces there would be more respect shown by all to the true heroes of the country. These heroes are not the Jihadists and hate mongers, they are the people who have worked and continue to work for the betterment of the people and humanity in general.



A vendor sells snacks outside a state-run school where Professor Abdus Salam received his early education in the town of Jhang. The photo of Dr Salam was removed from the assembly hall due to pressure of religious parties not wanting their children to have the 'influence' of an Ahmadi.

Today the coalition government in Islamabad, and its Constitutional Reforms Committee, has a historic opportunity to amend all the discriminatory laws that were made to maltreat Christian, Sikh, Hindu, Bahai, Ahmadis, and others, and which are against the spirit of democratic and progressive values of a state.

Six-year-old Hindu girl Raped

A six year old minor girl from the dalit community, and a student of class 1, Wijenti Meghwar, was raped in Umerkot district of Sindh province, a city at the Indian border where a sizeable population from the Hindu religion lives. The rapist belongs to a political party which has close connection with the military. She was found close to the house of former town council chairman of Pithoro. Her father, Manohar Meghwar says that his daughter was playing outside the house when she was abducted. At the time of recovery she was found in a pool of blood and could not move. She was brought to the district hospital where there was no doctor to attend to her. She was then taken to the civil hospital Mirpurkhas district, 60 kilometers away from her home where she remains in critical condition. Despite the fact that the police know the identity of the rapist, they have failed to arrest him.

Pakistan Military Demolishes Hindu temple

The Military Estate Office, which assisted a private builder in the demolition of a Hindu temple and houses in Karachi's Soldier Bazaar, on December 2, insists that the Hindu community has encroached on the precious land for commercial building. Despite debris lying over the compound, the president's notice and the angry protests by the Hindu community, the Director of Military Lands and Cantonment Zeenat Ahmed was adamant to acknowledge that the Shri Rama Pir Mandir had not been damaged. She says that she has been told that the deities were all in sound condition. In her attempt to humiliate the Hindu community, she said that "the people who had deities in their homes had deliberately put them in front of the debris of the damaged houses. This was done to present a wrong picture that the temple was destroyed." She was referring to the photo graphs printed in the newspapers and the video clips of different electronic channels. She also confessed that

military did the operation when a builder approached them and that the temple was already in bad condition.

Ahmadi Graveyards Desecrated

Fifteen gunmen attacked the Ahmadiyya Graveyard in Model Town, Lahore on December 3, desecrating more than 120 graves of the Ahmadi community. They also tortured the watchman and caretakers in a bid to start a new phase of intimidation against Ahmadis, a minority sect which was declared by the constitution as the non-Muslims.

The Ahmadiyya community in Pakistan has been under attack for last several years, and in this latest incident, 15 masked and armed men attacked the graveyard and shattered the tombstones and headstones of more than 120 graves.

According to police, eyewitnesses, watchmen and locals of the area, at around 1:30 a.m. the attackers entered the graveyard over a seven foot high wall and tied up the watchman. The watchman was able to call his seniors and when he did this the attackers snatched his phone and tortured him. The attackers told him that they were from the banned Muslim religious organizations, the Lashkare Tayba and the Taliban.

J. No Place to be a Woman

Although the Pakistani Parliament has passed many laws for the defense of women's rights, no significant changes are visible for the betterment of women in society. Women are still being raped in custody; cases of honour killings are still worryingly high; abuses are taking place in the open; exchange of minor girls to settle tribal disputes is still prevalent; holding of jirga against women is still occurring, and, in general, women are not treated as equal citizens.

A law against domestic violence is still pending in the Parliament since 2009, and the main reason for this is due to the fact that most of the parliamentarians are from feudal and tribal backgrounds, who do not believe in criminalizing domestic violence. The mindset of the Courts is also still biased when cases concerning women occur. Judges mainly decide on the basis of the 1400 year old Shariah (Islamic laws), which does not guarantee equal treatment to women.

Under this point of view, it can be stated that women in Pakistan are still living in medieval times, if we consider their limited access to employment, social security, respect, and recognition. The situation becomes worse in case of women from religious minority groups who are poorly treated, like slaves. The question of education does not garner importance, because of the domination of fundamentalist religious groups, who represent one of the power centers in the country. They dictate society on their terms, and in their opinion women are not entitled to equal rights. Fundamentalist groups dictate and push for a society where women should not be participating in social life at all. Furthermore, they are accustomed to beating and flogging women, and to killing them in open places with the intent of scaring other women at large.

However, the year 2012 has noted a couple of extremely important events, which represent two important steps forward in the attempt to change the traditional mind-set and give courage to civil society to stop violence against women. Although these were episodes not intentionally conducted, they have definitely given a chance to protest and show the government that the civil society is concerned and is interested in changing the situation.

The patriarchal and often conservative mind-set of the Pakistani society, together with a persistent religious fundamentalism, has lead to gender-based discriminations which affect the female population since the day each of them arrives in this world. In other words, the violation of fundamental human rights enormously affects the respect and the protection of little girls too, whose physical, mental, social, and cultural development is seriously compromised. The strict interpretation of the Islamic law can be definitely included

among those facts which heavily compromise the analysis of circumstances and the objective approach to situations.

Ramsha, Mentally Retarded Minor Arrested on Charge of Blasphemy

The case of Ramsha, an 11 year old Christian girl affected by mental retardation, can indubitably offer a clear example of extreme bigotry in the name of dogmatism. This year in August, she was arrested on the charge of blasphemy because she was falsely accused by a Muslim neighbor of burning pages of the Holy Quran. The truth is that she was collecting used papers from the garbage, since the Christian community in Islamabad lives in quite poor conditions and they actually rely on burning for cooking and heating.

Nevertheless, a crowd of Muslims, attracted by loud accusations of the woman, gathered outside the girl's house, and started to attack Ramsha, her mother, her sister, and other members of the Christian community, who tried to intervene and stop the cruelty.

The police filed the case, not in favour of young Ramsha, instead confirming her blasphemy charge. She was then taken to a security prison and separated from her mother and sister, while the Muslim community had already started to attack other Christian houses, disapproving that Christians could live together with Muslims. As a result, many Christian families living in the slums of the capital city started planning to leave in fear of being attacked. However, it must also be reported that a strong social mobilization arose in the name of freedom of religion, respect of minorities, and especially against the rigorousness of the blasphemy law in Pakistan.

Not only the national Christian community, but also the international civil society, became deeply concerned that Ramsha could face the death sentence. The Asian Evangelic Alliance in particular, supported by other international church organizations, appealed directly to the President of the Islamic Republic of Pakistan, Mr. Asif Ali Zardari, and to the government of Pakistan to save the girl and release her from jail. In addition, they also advocated a revision of those national laws that discriminate and punish people on the basis of religion and gender[193].

193 The original AHRC appeal: www.humanrights.asia/news/forwarded-news/AHRC-FOL-011-2012

Still, at the end of August, Ramsha continued to be kept in jail, in a tiny cell, and with no allowance to see her parents. Such circumstances aggravated the state of her shock and her vulnerability. The judge refused to recognize the medical report provided by the lawyer about the mental problems of the girl and her low level of literacy, proving therefore, that no intention of insulting Islam could have been meant.

The concern of the civil society about the severity of the blasphemy law increased, especially because the lack of awareness and the defenseless girl were not being taken into account. In the meantime, more petitions and appeals were sent to the attention of the Pakistani President and his government, strongly inviting them to take charge and end Ramsha's unfair imprisonment.

She was finally freed on bail after she spent a few weeks in a high security prison, and the blasphemy charge against her was dropped. The robust and energetic mobilization of civil society has definitely proved that the Pakistani society is trying very hard to make its voice heard and to fight for the overcoming of conservative and intransigent religious laws, which claim to guarantee justice but, on the contrary, severely undermine people's fundamental rights. Civil society has stood behind another victim of Islamic fundamentalism and has fought for stalling and stopping her execution, as in the case of Aasia Masih, a Christian lady who was unfortunately sentenced to death on the charge of blasphemy.

Another case which confirms the increasing involvement of the Pakistani community in the violation of human rights is provided by the story of Malala, which also received considerable attention from the international community, exposing extremist groups to the condemnation and the blame of the entire world.

Malala: Silence Breaker, not Broker

October 9, 2012, is the day that has witnessed the unanimous indignation of the world because of the infamous attack suffered by Malala Yousafzai, who was shot in her head and neck in an assassination attempt by Taliban militants while she was going back home from school on a bus full of other young students. Malala is a 14 year old school student and known activist for girl's rights in the Swat Valley, the region in the north of Pakistan where Taliban extremists have been trying to take control and rule.

Among the plans of these extremists, there is also the attempt to banish girls from attending school, as well as the prohibition of music, television, and other forms of amusement considered against morality. Malala's father, Mr. Ziauddin Yousafzai, is a poet, school owner and an educational activist himself, and has always encouraged his daughter to study and pursue education. She started to become known to the local authorities in 2009, when she joint the District Child Assembly Swat as chairperson, while also starting a blog and began giving interviews on local television. Her international celebrity was accredited in 2011, when she received the nomination for the International Children's Prize and when she was awarded Pakistan's first National Youth Peace Prize[194]. Even the CNN wanted to interview her[195].

After trying to discourage her activism with several forms of threat throughout the preceding months, last October, the Taliban leaders decided it was the time to stop what they considered an obscenity and they planned to physically eliminate her. The confusion and the astonishment of that moment are reported by one of Malala's friends, who was partly injured on that day and who was also interviewed by the CNN[196].

After being treated in emergency at the military hospital in Peshawar, she was flown to the United Kingdom, where the Queen Elisabeth Hospital of Birmingham offered to treat her. At the present day, she is still in the U.K. and she is slowly recovering. Her assassination attempt received prompt international media coverage and has led to a sincere feeling of empathy shared worldwide by many sectors of society, even by some very famous actors and pop stars.

Protests against the shooting took place in several Pakistani cities the day after the attack and within a few days the entire international community compelled the Pakistani Government to take immediate action in support of Malala and her activism for the right of girls to access education. Malala has become the symbol of courage, demand of justice and pursuit of improvement and development, not only for girls and young women in Pakistan, but for the global female population experiencing the same deprivations and negations all around the world.

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194 Malala Yousafzai Wikpedia Page. Online: www.en.wikipedia.org/wiki/Malala_Yousafzai

195 www.edition.cnn.com/video/#/video/world/2012/10/10/sayah-2011-interview-malala-yousufzai.cnn?iref=allsearch

196 www.edition.cnn.com/2012/10/17/world/asia/pakistan-teen-attack/index.html?iid=article_sidebar

A few days after she was shot, the world celebrated the first International Day of the Girl Child. It was October 15, and in the light of the fresh happenings, Malala received a strong and global encouragement and celebration by the entire international community, reminding everyone how much still needs to be done for the protection and the empowerment of the girls of today, who will be the women of tomorrow. Education is a fundamental human right, essential for the personal development and social advancement of young generations. It is also included in the Millennium Development Goals set by the United Nations in 2000. Yet, many girls in many countries around the world still experience the denial of this elementary right. Poverty can be surely considered a fact that highly compromises the possibility of families to provide education to their children, alongside with other elements such as the significant distance between where schools are located and where families are based. The fear of kidnapping and harassment on the way there or back, discourages parents to send their children to school especially their young daughters. However, poverty is not to be blamed alone. The common feeling among many societies around the world is that daughters have a "transitory" status in their original family, since they are supposed and expected to get married at a young age, becoming the concern of their husband. Parents therefore do not see the necessity, the importance or the urge to guarantee proper education to their girls. On the contrary they consider the education of their sons an important issue for the future. Girls are basically perceived as an inferior type of children and as a burden for the family, which has to "give them away" as soon as possible. The nexus between the high rate of dropout from school among teenage girls and early marriages becomes then obvious.

The celebration of first International Day of the Girl Child, together with the episode of Malala, have contributed to advocate for the elimination of all those economic, political, religious, social, and cultural barriers that prevent the proper fulfillment of women and girls' rights. On November 10, Mr. Gordon Brown, UN Special Envoy for Global Education, met the Pakistani President Asif Ali Zandari and launched the global day of action in support of Malala and the right for girls to access education, while also presenting him more than a million signatures supporting the petition aiming at guaranteeing the opportunity for girls to attend school[197].

197 www.humanrights.asia/news/ahrc-news/AHRC-ART-113-2012/

J.1 Women in the International Human Rights Framework

The Universal Declaration of Human Rights, adopted in 1948, represents the universal foundation for the recognition of dignity and equality of every human being. Human rights are considered inherent to the human kind and inalienable, which means that they cannot be denied. Furthermore, human rights are seen as universal, "*without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*."[198]

Women rights are human rights. However, due to the patriarchal kind of society still featuring several countries, alongside with conservative mind-sets, religious fundamentalism, rooted false beliefs based on gender which often lead to harmful traditional practices, many women around the world are not in the position to enjoy their inalienable human rights yet, in terms of freedom of expression and movement, right to vote and stand for election, access to education, food and health assistance, equal treatment in the family, at the work place and before the law.

Aware of the still existing disparities between men and women, in 1979 the United Nations also adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[199], as a further tool to specifically ensure the enforcement of women human rights. As stated on the official website of the UN Division for the Advancement of Women,

"*By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:*

to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;

to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

198 Article 2, The Universal Declaration of Human Rights. Online source: www.un.org/en/documents/udhr/index.shtml

199 Online: www.un.org/womenwatch/daw/cedaw/text/econvention.htm

A part from a small Reservation (paragraph 1 of Article 29), the Islamic Republic of Pakistan conformed the Convention in 1996.[200] Nevertheless, there is still a lot to be done in order to guarantee adequate fulfillment of the commitment engaged with the international community.

J.2 Legal Framework for Women's Rights in Pakistan

Some important legal instruments for the defense of women's rights have been ratified by the Pakistani Government in the past few years. These responses have aimed at a better fulfillment of women' s rights starting with the Criminal Law Amendment Act (2004) facilitating the prosecution and punishment of honor killings, and the Protection of Women Act (2006) which criminalizes violations of women's and girls' human rights. Furthermore, there have been encouraging improvements in the national Penal Code given by a better definition of sexual abuse and the enactment of specific laws regarding a higher severity of the sentences for the offenders as well as the punishment of sexual harassment at the work place.[201]

This year, in particular, a "historic gain" has occurred, as reported by the United Nations Entity for Gender Equality and the Empowerment of Women.

"*On 2 February 2012, the Pakistan Senate unanimously approved the "National Commission on the Status of Women Bill 2012" to protect women's rights against every kind of discrimination. The new bill replaces the National Commission on the Status of Women Ordinance from 2000 and strengthens the Commission by giving it financial and administrative autonomy through an independent Secretariat.*"[202]

The revision of the old ordinance followed by the placement of the Secretariat of the new Commission in the Ministry of Women's Development, represents a big achievement. National activists are confident that the effectiveness of the investigations on women's rights violations can be better performed thanks to the financial and administrative autonomy of the Commission. Moreover, as further documented on the UN Women website, between 2010 and 2011 additional "pro-women legislation" has successfully been ratified. In particular,

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200 Reservations status as on 15-11-2012, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec

201 The State of Human Rights in Ten Asian Nations- 2011-Asian Human Rights Commission, page 343.

202 See www.unwomen.org/2012/02/historic-gain-for-women-in-pakistan-as-womens-commission-gains-autonomous-status/

The Acid Control and Acid Crime Prevention (Amendment) Bill, passed in December 2011, the Protection Against Sexual Harassment of Women at Workplace Act and the Domestic Violence (Prevention and Protection) Act, passed in 2010 and 2011 respectively.[203]

There is no doubt that these legal measures represent an encouraging commitment proven by the Pakistani Government in order to ensure that women's empowerment can be guaranteed at every level. Unfortunately, despite of all the above described steps forward, for 2012 it is not possible to report significant improvements in the status of women in Pakistan.

J.3 Women's Rights in Pakistan

The enforcement of the above listed legislation still appears quite inadequate; the implementation of further domestic polices and internal guidelines are still very limited. The universal principle of non-discrimination is not taken into consideration, which is a fact that deeply compromises the justice system. The police do not systematically intervene in all circumstances and do not operate in the same way for everyone, as would be expected in the name of equality.

Serious problems of uncontrolled violence persist through the reiteration of so-called harmful traditional practices. These include: honour killings, acid attacks and other forms of burning, rape and sexual harassment, domestic violence, early marriages, bullying, abusive language offences, abductions followed by forced religious conversion or induction into prostitution or human trafficking. The cruelty of such customs to the detriment of girls and women causes consequences such as depression, a sense of loneliness and isolation, extreme insecurity and lacks in self-esteem, low attachment to brothers, fathers, husbands and other male family members. The ultimate feeling is a sense of neglect, both by family members and institutions, which carry out instead several forms of physical and emotional abuse in the forms mentioned above.

Negative societal attitudes towards women and girls often lead to the blame and the stigmatization of the victim rather than to their understanding and support. Victims are often judged as being the "false accuser". As a result, lodging

203 See www.unwomen.org/2012/03/pro-women-laws-take-hold-in-pakistan/

complaints is discouraged and impunity is wide spread. Many cases of violence are not reported and when they are, police do not act effectively with the consequence that perpetrators hardly receive indulgent or token punishments.

Pakistan still ranks among the most difficult countries in the world to be respected as a woman. Dangers that the female population has to face since a very early age range from sexual violence to neglect, from health threats to blasphemy charges. Beside the strict patriarchal mindset, which influences several spheres of society preventing women from respect and development, the fundamentalist interpretation of the Islamic law also provides justification for the perpetuation of violence and discriminations against women. Cruelty, coercion and unfairness seem to be the norm and at the moment several institutions are hostile and highly corrupted.

J.4 Flaws in Criminal Justice System, to the Detriment of Women

Pakistani citizens have to confront themselves with an untrustworthy justice system. Women in particular, have to deal with corrupted police staff members and other foul justice officers, who do not fulfill their duties in an ethical manner. Investigations on rape and other forms of violence against women are often faulty and intentionally carried out with feebleness. Police are also reluctant to files cases, as often those responsible of the reported crimes are influent people. Therefore, victims are "invited" to withdrawn their complaint under the suggestion of settlement offers. Furthermore, many times it is also the case of police officers who accept bribes from the accused parties in order to highly discourage victims to report violence. In doing so, they become themselves big culprits of the offense.

Uzma Ayub, Rape Victim, gives Birth to Baby Girl

At the beginning of 2012, Uzma gave birth to a child conceived as a result of physical abuses carried out unrelentingly over a period of one year by several men, including some police officers. When she managed to escape from the place where she was held captive, she was six months pregnant. The involvement of police officials in the kidnapping and in the perpetuation of the abuses made the report of the case a serious issue. The circumstances became even more serious when Uzma's brother, who had been strongly seeking justice for his sister, was shot dead a few weeks before she gave birth.[204]

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204 AHRC, Contributors: Farzana Ali Khan. Online: www.humanrights.asia/news/ahrc-news/AHRC-ART-001-2012/

The High Court decisions and the civil society organizations have been in support of Uzma so far, but some concerns remain about the real chances that institutions can be able to provide her justice. In fact, stories are often given a new or some negative turn, through intentional destruction of evidence and consequent burying of the case.

It is fundamental to strengthen the national legislative framework while also ensuring that laws are properly implemented and respected at all legislative levels. It is unacceptable that victims of violence cannot rely on just, honest, and independent police forces which are on their citizens' side. A coordination mechanism between all territorial authorities involved in the fulfillment of women's rights should also include a higher involvement of representatives of civil society, such as local and international NGOs, in particular those focusing on gender-based issues. As a matter of priority, investigation and documentation of violence, abuses and other harmful practices should become more systematic and officially reported. Furthermore, perpetrators have to be unfailingly brought to justice, whereas victims should be provided with adequate help to guarantee their physical and psychological recovery. Professional figures such as doctors, psychologists, and counselors are not available or are not included into any sort of assistance program for the victims' relief.

Young Woman Abused, Raped, & Sold

The case of Ms. Parveen Bibi[205], 19 years old, is a story of poverty, trafficking, induction to prostitution, police corruption, and impunity. After moving from her rural area to the city of Karachi in order to support her family with a better paid job, she was engaged into sex labor under the deceptively promise of more money. When she tried to escape the brothel where she was kept, she was stopped by the armed watchman. Every time she tried to resist, she was forced to drink alcohol or ingest sleeping pills. She was then sold to a pimp, who regularly sold her off to several men. In the meantime, Parveen's family had reported her disappearance but the police, after showing reluctance to file the case, did not put much effort into the investigation. The family eventually received a phone call from Parveen, who was forced to assure them that she was fine, married on her own will, and that therefore there was no more need to keep questioning possible suspects. The police also invited the family to withdraw the complaint on her disappearance, suggesting them to "let it go".

205 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-029-2012/

Later on, the family found out that the people involved into Parveen's abduction and sexual exploitation belong to a very powerful network, who rely on the tacit complicity of police and on strong contacts with other influential people.

In Pakistani society, women are unfortunately seen as a commodity, which can be treated, used and then sold as a product. This way of treating women is widespread in rural areas, but it stretches also in urban areas, where a great number of women in search of better opportunities, have to face exploitation, violence and abuse. Women are perceived as "second class" citizens and therefore not eligible for respect, protection, or judicial defense. Cases of forced abduction with purpose of abuse and trafficking are becoming more systematic and frequent. Apparently, the market for selling off women, or minor women, to other Asian countries is growing.

Abused & Kept in Captivity by Step-father

Sonia Rani (18) reported, at the local police district (Punjab Province), abuse carried out by her step-father, over a period of five years. The victim also reported the disappearance of her mother, who had been missing for a period of ten months and on the top of everything that her step-father had been repeatedly threatening to kill both mother and daughter in case of complaint. Despite the gravity of the abuses reported, the police pressed the victim to reach a settlement with the man and to withdraw the complaint against him. Furthermore, the same officers took advantage of the situation and assaulted the victim in turn[206].

Complainant on 14-year-old girl's Gang-rape Murdered

The gang-rape against Zulekha occurred in 2010 and after two years the police have arrested only one person. This is because the perpetrators enjoy the protection of the police and of some influential members of the National Assembly affiliated to the ruling party, the Pakistan People's Party. The victim's uncle had been pressured many times to withdraw the case and a few days before finally being killed, he had also been injured as a way to strongly intimidate him. The case of Zulekha's uncle had been a further occasion in which close relatives of gang rape victims seeking justice, have been gunned

206 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-059-2012/

down by the same perpetrators in order to stop for good their pursuit of legality[207].

J.5 Forced Conversion of Women Belonging to Minority Groups

The frequency of forced conversion to Islam still remains an alarming issue, especially in terms of internal harmony which gets heavily threatened by these acts of repression. The religious communities which count the highest number of victims are Christians and Hindu, who are mainly concentrated in the south-eastern part of the country, i.e. Sindh province. People belonging to these minorities are not treated equally and even their access to the job market is limited. As a matter of fact, religious minorities are among the poorest groups of the country and live mainly in slums, which expose them to higher risks of abuse and injustice. Perpetrators of abduction and consequent forced conversion of young girls are members of the Muslim fundamentalist groups or parties, who target religious minorities in order to diminish their number within the country and make Pakistan a homogeneous Islamic nation. Their repressive actions are also meant to force these groups to leave the country for good. Many Hindu and Christian families live in the extreme fear that their daughters could be the next victims. It is actually estimated that around 20 to 25 forced conversions take place every month in Sindh province alone.

Hindu Girl Kidnapped, Forced to embrace Islam.

Ms. Rinkle Kumari, (17) from the Sindh province was abducted by notorious gangsters of the area with the support of members of the National Assembly and the Pakistan Peoples' Party. After her abduction, she was taken to a local Madressa where she was forced to sign a marriage certificate which legally married her to a member of the gang. The Madressa where this coercion took place seems to be a famous location where Hindu girls of the province are taken and forcibly converted to Islam. The police agreed to register a FIR (First Information Report) about the case only because of the insistent pressure from the Hindu Community. When young Rinkle was presented before the Civil Court, she spoke the truth confirming that she had been forced to convert and then to get married. While reporting so, she also desperately asked the Court to be joined back to her family. However, not only she was slapped in front of everyone by a member of the National Assembly because of her wish to be back to her parents, but the Judge also declared that the home of a freshly married

207 www.humanrights.asia/news/urgent-appeals/AHRC-UAU-013-2012/

woman is her husband's home. By favoring the perpetrators, justice surrendered one more time to crime and impunity. Furthermore, the family of the girl was threatened and forced to accept the decision of the Court without additional complaints[208].

The Hindu community throughout the country laments resentfulness, bitterness, and exasperation because all cases of abduction and forced conversion to Islam of Hindu girls are carried out by or with the support of powerful and untouchable fundamentalist Islamic groups. Providing adequate protection to girls who want to resist forced conversions and marriages or want to report their abuse is a matter of extreme importance. Perpetrators must be prosecuted and severely punished, without preference of social status or political affiliation. Courts also must become sensitive to gender based abuse and violations of minorities' rights. Judges and other officers are expected to change negative traditional attitudes towards women, regardless of their religious faith, in order to discourage gender-based discrimination and promote universal justice.

J.6 Violence against Women & Vindictive Actions against Family

Girls and young women carry the burden of the honour of the entire family. Abusing the daughter of a political opponent, or the wife of a subordinated officer, is a way to humiliate all members of that family, whose honour is then considered irremediably outraged by the rest of the community. Due to the deeply patriarchal mindset heavily influenced by strict religious dictates, investigation, support, and justice are easily replaced by one-way blame.

For a woman who has been raped, it is mainly the case of proving her innocence, rather than being listened to and being in the position to discuss the state's evidence. Laws are made by men, police officers are men, and Courts are mainly made up by men. Many judges tend to adopt sexist behaviors during trials, for instance by requiring the victims to provide the Court intimate details about the way in which the sexual harassment was conducted. Such lack of delicacy and empathy, regarding the violation of women's rights, leads to double humiliation and disgrace for victims. Judges, police staff members and other public officials definitely need to be sensitized on gender issues, through gender-sensitive training, better education and awareness programs.

208 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-042-2012/

Plight of a Family for the Rape of their 14 Year Old

Miss Nadia Rasool (18), was abducted in a van against her will by a group of five, including two policemen, a government employee, and a member of the Pakistan Rangers. She was taken to a remote area, gang-raped, and left on the road later on that evening. When her family experienced the happening, the reaction was blame and disappointment in her. The case was taken to Court, but the family of the girl was heavily pressured by the police and other influential people in order to withdraw the case and accept compensation. Furthermore, since the rape, all members of the Rasool family have been facing social hostility and financial issues.

Nadia's father and brother lost their job and her cousin was brutally beaten to compel the family to accept the compensation settlement. In addition, her sister was forced to leave school as her school teachers had been forced by the perpetrators to consider her a filthy woman, due to the rape that occurred in the family. Constant threats from the accused parties, the ineptitude of the legal system, and social pressure from relatives and neighbors are making life very difficult, both for the relief of the victim and the prosperity of her family[209].

Wife of a Subordinate officer Abused by Superior Rangers (Sindh)

Mrs. Nasreen Iqbal, the wife of a Sub-Inspector (SI) of the Pakistan Rangers, was progressively harassed by the Wing Commander of the Karachi Rangers. Because of her strong resistance against the assaults suffered, her husband was intentionally relocated to a different area, and the whole family was thrown out of the official residence previously allotted. After she appealed to the High Court, the Rangers abducted and tortured her husband, as a way to teach her a lesson. She was also instructed to stop contacting the media or human rights organizations. The application for a new family accommodation was also denied, while Ms. Iqbal continued being harassed. When she tried to file a police complaint, the Rangers used their power to desist the police department from investigating the case. She then lodged a Constitution Petition at the High Court against the officers of Pakistan Rangers, but despite the Court Orders to the Rangers for the defense of the petitioner and her family, threats against Mr. Iqbal and assaults to the detriment of his wife, continued. Mrs. Iqbal then lodged a further application complaining about the violations of the

209 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-133-2012

Court Orders and the persistence of conspiracy against her husband's professional development, as well as the insistency of episodes of assaults against her[210].

J.7 Dowry Violence

Like all others, Pakistani society is governed by cultural institutions, beliefs, norms and practices. The contemporary culture, inspite of undergoing transition, mirrors images of centuries old civilizations and indigenous cultures. One such cultural heritage which has been adopted as a cultural institution is Dowry or Jahez. This practice makes a girl-child less welcome than a male child. Even today, a girl is perceived to be a burden and a boy to be a blessing. No wonder there are 79 million missing women only in South Asia and Pakistan, is one of those very few countries where male to female ratio is reverse.

Dowry: Crime or Custom?

What is dowry? It is a form of culturally sanctioned and socially acceptable violence not only against women but men too. Despite relatively uninformed and unprepared acceptance of globalization as a way of life, it appears rather strange that the institution of marriage is still intact in Pakistan. Marriage is an important event in the life of a Pakistani woman. Getting married early is being lucky.

Obligatory Jahez takes a heavy toll on the family of dulhan - the bride. Dowry is a multi-faceted deep-rooted gender issue with social, economic, and health consequences. In spite of a consensus on disliking the practice, only a few have the courage to disown it. According to renowned Indian writer Shri Sharma the "evolution" of dowry is originally from a gift, creating expectation, leading to demands and greed. A large dowry can be an important attribute of status to both men and women. Dowry, which is popularly considered as a Hindu custom, has visibly migrated, escalated and been embraced in all the areas of the present day Pakistan. It has become an active tradition, norm, and religious practice for those who believe that there is an absence of such custom and tradition in their faith. The implication of this convenient forgetfulness is inattentiveness to dowry-related violence.

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210 www.humanrights.asia/news/urgent-appeals/AHRC-UAC-060-2012

There are certain other factors that ensure the continuity of the practice of Dowry such as:

- It is considered an incentive to lure a more suitable match
- It is submission to the demand of a perceived suitable match
- It is used as an excuse for denial of inheritance to women (the expenses on dowry and wedding are unilaterally decided by the men folk of the family as transfer of inheritance by other means)
- It is considered a good support mechanism to help the new couple so that they have a convenient start in practical life
- It has become a socially forced fait accompli that is followed and executed 'with a smile' notwithstanding, how painful it could be to the family.

Estimates of the percentage of women, who experience domestic violence in Pakistan range from 70 - 90%. According to the Human Rights Commission of Pakistan (HRCP), the extreme form it took included driving a woman to suicide or engineering an accident through infamous "stove burning" usually when the husband, often in collaboration with his side of the family, felt (or was made to believe) that the dowry or other gifts he had expected from his in-laws were not forthcoming or/and he wanted to marry again or he expected an inheritance from the death of his wife. In 1997, the Lahore press reported an average of more than four local cases of women being burnt weekly, three of the four fatally. Police follow-up to these cases was negligible, with only six suspects were taken into custody out of 215 cases reported in Lahore newspapers during the year. In 1997, there was not a single conviction in a "stove-death" case in Pakistan.

HRCP reported only one case of dowry-related violence in 2001. In that case, the victim was burnt to death by her in-laws for not bringing sufficient dowry. A research study conducted by SACHET (a CSO) on gender-based violence, as reported in the print media, also confirmed this statistic. Does this mean that in reality too, only one woman fell victim to dowry death? A back-to-office report of one research officer sent out to find some clues reads as follows:

"I met Ms.Naheeda Mahboob Illahi, advocate Supreme Court on 9th Jan`2002. According to her, everyday a large number of cases of dowry-related violence are received but are mostly registered as Domestic Disputes. The details of only three cases of dowry-related violence were provided – 2 cases in the year 2000 and one in 1997. In all these cases, the victims were tortured mentally and physically by their husbands and in-laws, for not bringing sufficient dowry with them."

It remains a mystery for the social science researchers why stoves burst only in susrals only and why the victim is always a bahu? Ironically, in spite of very high frequency of domestic violence and frequent cases of stove deaths, dowry-related violence is neither perceived nor recognized as an accepted form of violence nor documented in social science literature. Therefore, unfortunately, it is not a popular theme or priority agenda item for organizations working on women's issues. There could be three possible reasons for this convenient forgetfulness. One is the spiral of silence and sharam, which implies that women-related issues must not be taken out of the premises of home for the sake of honor. Second is the ironical fact that attention to the role of dowry in our marriage system has not gained deserved attention of international donors. Therefore, the hype stirred by comparable social problems like child labor or environment overshadowed a traditional areas such as dowry and related issues. Thirdly, the Ministry of Women development in Pakistan has yet to acknowledge dowry-violence as a gender issue.

J.8 Interventions

Pakistan is a signatory to the International Conference on Population and Development (ICPD) Beijing plan of Action and Convention on the Elimination of all forms of discrimination against Women (CEDAW). In terms of implementation, the ideals of all such treaties are yet to be realized to cast an impact. Empowerment, access to equal rights, and emancipation are yet only distant dreams for a vast majority of women.

However, there are a number of efforts underway in Pakistan to promote the empowerment of women, such as attempts to refine the National Plan of Action, develop micro-credit plans and enhance Khushhali (prosperity) bank, implement UN-Conventions and develop positive and productive partnerships with civil society, the CSOs, and the private sector.

Personally, there is growing attention being given by the government to gender issues including violence, and there is some movement in this direction. But there is no focused and concentrated effort geared to the understanding of a complex and common issue like dowry. This is valid for all service delivery, advocacy, research, and communication interventions.

Interventions in Pakistan

Efforts made by a mushrooming CSO sector in connection with dowry can be summed up as disappointing. There had been localized and limited efforts by

small-scale welfare societies in the 1960s and 1970s aimed at raising awareness, and motivation campaigns to convince people at the mohalla level to resist the mindless following of dowry demands. However, with the advent of international donors in the 1980s, the CSOs in Pakistan have either undertaken campaigns against other more visibly anti-women oppressive mechanisms like hudood ordinance or political marginalization under the Zia regime. Later too, the CSOs have taken up issues of expressed violence thus being symptomatic and not delving into the deep-rooted causes of violence against women, dowry being one primary cause.

Taking notice of the visible exclusion of dowry as a gender issue from the agenda and aims of development CSOs and self-acclaimed gender experts, a fight against dowry through the platform of SACHET, was founded five years back. The fight against dowry has been shaped into a project in Jan 2002.The main objective of this project, rather a movement, is to eradicate (institution and practice of) dowry in Pakistan. The key strategies to achieve this aim are research and communication. The activity spectrum ranges from surveys, signature campaigns, e-petitions, youth-parent consultations, legal advice, and amendments in the existing law, lobbying, TV programs to anything possible under the sun.

The government of Mr. Nawaz Sharif in mid-1990s had introduced an ordinance banning grand wedding receptions (an implicit upshot of dowry). However, it was enforced for short time only, but is now losing its spirit. Right now, commission of Law and Justice, has drafted a new law in connection with wedding expenses and dowry. The consultation on the draft version is in progress.

J.9 Challenges, No Conclusions

Rather than suggestions, as a conclusion, the following are some of the challenges connected with the gruesome practice, of dowry and the accompanying violence:

- How may dowry be made a high priority agenda to create a critical mass to combat this institutional violence?
- Are we ready to adopt this extremely critical gender issue as a passion?
- Is our mass media mature enough to advocate and sensitize all stakeholders?
- Do we have any political commitment in this regard and how far our governments are ready to go in this respect?

CHAPTER VII

ASIAN HUMAN RIGHTS COMMISSION

PHILIPPINES

PHILIPPINES

THE STATE OF HUMAN RIGHTS IN 2012

Strong Rights, No Remedy

The discourse on protection of rights this year in the Philippines has been unique. Rights that were not previously recognized are now recognized; public officials and security officers, who could not be prosecuted even in one's imagination, were prosecuted; and victims and their families, who often chose to keep silent due to fear and oppression, now seek remedies demanding their rights.

This phenomenon is taking many forms, offering enormous prospects for the protection of rights. To cite a few examples: the conviction of Renato Corona, former chief justice, following a widely publicized impeachment trial, has given rise to the discourse on judicial accountability. The prosecution of former President Gloria Macapagal-Arroyo and her former General Jovito Palparan, who is now a fugitive, for corruption and abduction of student activists respectively, has given rise to the prospect that public and security officials who breached public trust and committed human violations in the past, can now be prosecuted.

Also, that a group of people—particularly the Muslims in the south—who had been subject to systematic and widespread subjugation for many decades, would now agree on creating a political entity under the same sovereignty which it fought against, is further evidence of confidence in the government. The Bangsamoro Framework Agreement (BFA), signed between the rebel group and the government on October 15, 2012, is a historic development, which offers the prospect, not only of peace emerging from decades of conflict in Mindanao, but also of the building of democratic institutions.

Still, it is difficult to understand why confidence is being renewed, given the ongoing mass murders, systematic killings, torture and enforced disappearances, indicating the lack of any institutional protection of rights or remedies.

There is evidence that the codification of rights in domestic law, in line with the country's obligation to international human rights instruments, such as the enactment of a domestic law against disappearances, is in the works; however, whether the enactment will be followed by an effective and adequate implementation of rights, is yet to be established.

In fact, if indeed protection and implementation of rights is adequate and effective, why is there still discontent and dissent, expressed notably by victims and their families? Why do people speak of the absence, if not the lack, of any sort of remedies? While people speak of their 'strong rights' in accordance with legal norms, these have to be implemented using the country's institutions of justice. The question is: are these institutions functioning effectively enough to comply with domestic and international obligations?

This report not only narrates the human rights situation in the Philippines in 2012, but also attempts to articulate why and how the victims and their families continue to demand protection, and whether the State's justice institutions—the police, prosecution and judiciary—operate as they ought to.

Convicted Chief Justice & the Court Judges

When Renato Corona, former chief justice, was convicted for his "failure to disclose to the public his statement of assets, liabilities, and net worth"[211] following a much publicized impeachment trial in May 2012, there were mixed reactions. Some expressed concern that the judiciary had been undermined by the legislative and the executive; others displayed optimism that it was a watershed in the fight against judicial corruption; however, there was pessimism too that it would not result in practical changes in the daily functioning of the judiciary where people are engaged daily, and that the conviction only served a political purpose: 'business would be as usual'.

Corona's conviction has dangled the hope of increased judicial accountability, but the real test is whether lower court judges will also be held accountable for committing wrongdoing in the performance of their daily duties in reality. To assume that when a chief justice is held to account for corrupt practices, court judges subordinate to him would also be punished is to be detached from reality. Rather, the development shows that corruption within the judiciary is so entrenched that a chief justice had to be impeached. The conviction merely

211 *Philippine Daily Inquirer*, "Senate votes 20-3 to convict Corona," 29 May 2012, can be accessed at: http://newsinfo.inquirer.net/202929/senate-convicts-corona

reaffirms that the judiciary and its officers ought to be credible and with integrity. But, while Corona was afforded due process and fair trial to defend himself before his conviction was arrived at by majority vote, these fundamental rights are rarely afforded by lower court judges when they investigate and hear cases under their jurisdiction.

The denial of these fundamental rights is clear in the case of Temogen 'Cocoy' Tulawie, an indigenous human rights activist from Sulu, southern Philippines. Temogen was detained after his arrest in Davao City on January 13, 2012. The prosecutor had resolved to indict him, on which the court judge agreed, for charges of murder using the confessional evidence taken by force from the witnesses by the police. The witnesses subsequently recanted their testimonies; however, the court judge deliberately ignored this to proceed with the trial. In fact, even though the Supreme Court had already granted Temogen's petition to transfer the hearing of his case from Sulu to Davao City on the grounds that he could not get a fair trial in Sulu court, the judge ignored this by giving orders to another judge in Davao City;

> "*We wish to most respectfully inform your end…to deliver/transfer the custody of the accuse, one Temogen "Cocoy" Tulawie, to the jurisdiction of the Regional Trial Court (RTC) of Jolo, Sulu," Betlee-Ian J. Barraquias, executive and presiding judge, Regional Trial Court (RTC), Branch 3*" [212]

The Supreme Court stood by its order to transfer the case from Sulu to Davao City, but did not take action against Judge Barraquias who openly defied its order. It was alleged that the judges and the prosecutors in Sulu are allegedly under heavy influence by the complainant, Governor Tan; this makes it extremely difficult for Temogen to get a fair trial even if he would decide to submit himself to trial in Sulu court. The influence of Governor Tan cannot also be taken lightly. For the second time, although the SC is fully aware of the threat on Temogen's life, the trial of the case was transferred from Davao City to Manila by granting the petition of the complainant's legal counsel.

Temogen's case is no different to many other cases where lower court judges, in connivance with prosecutors, are not held to account for deliberately breaching the fundamental rights to due process and fair trial of the accused. Here, it is obvious that while rights to due process and fair trial of a chief justice, who was tried in an impeachment for committing corrupt practices are protected,

212 Read full text of his letter here: www.humanrights.asia/countries/philippines/cases/temogen-tulawie/Sulu-RTC-order-for-transfer

for other accused who are not known and have no influence, even rudimentary forms of protection are disregarded. The judges and prosecutors routinely get away with it. These accused are tortured, illegally detained, and forced to endure trials in criminal cases not even under their names.

The judge who allowed the prosecution of Abdul-Khan Ajid[213], a baker who was tortured and set on fire by the police and the military in Sumisip, Basilan on July 23, 2011, was never held to account even a year after his illegal acts were exposed. Judge Leo Principe, presiding judge of Regional Trial Court (RTC), Branch I, allowed the prosecution of Ajid and ignored the compelling evidence that he had been tortured. The soldiers insisted that Ajid's real identity was Kanneh Malikil, relying heavily on the testimony of a witness whose identity they had deliberately refused to disclose on the pretext of security concerns. The right of the accused to confront his accuser to make his own defense, and that evidence taken by way of torture cannot be used as evidence in criminal prosecution, are both Constitutional and Statutory rights; however, both the prosecutor and the judge completely disregarded this.

Ajid's case is not surprising. There are many other cases which are either not reported or are reported only many years after their arrest. The latter is what happened to Hamsa Pedro and Alex Salipada[214], whom police in General Santos City arrested on June 18 and June 20, 2005, respectively. Hamsa, a labourer at the public market, and Alex, a religious Muslim leader, both of whom were illegally arrested, detained, and tortured in police custody, are now prosecuted for murder charges in connection with the December 2004 bomb-blast at the public market under others' names. Similar to Ajid's case, both the prosecutor and court judge in General Santos City prosecuted them disregarding the evidence of torture. After over seven years of trial, there is no substantial progress in their case.

It is very common practice for the accused to be prosecuted under somebody else's name and for the prosecution to have witnesses unknown to them. In order to justify the prosecution of the accused under someone else's name, prosecutors routinely seek the judge's approval to insist that it should appear on record that the name of the person written in the criminal charge and the

213 AHRC Urgent Appeals, "Soldiers torture a man and set him on fire," 8 September 2011, can be accessed at: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-157-2011/

214 AHRC Urgent Appeals, "Trial of two men tortured and falsely charged seven years ago drags on," 8 October 2012, can be accessed at: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-178-2012

person whom the police arrested are the same. It does not matter whether they are real or not, or that the accused has compelling evidence proving he is not that person. The prosecution of the accused would continue, deliberately disregarding evidence the accused had presented that he is not the person subject to prosecution.

This is what happened to Ramon Dadulo,[215] a faith healer in his village, now prosecuted after he was arrested on November 10, 2010 in place of the real accused, Nasser Malaguia. Nasser is listed as one of the accused in the November 23, 2009 Maguindanao massacre. To legally justify the prosecution of Ramon, the police threatened his common-law wife, Lilibeth Lombone, and forced her to "admit that the man in the picture, Nasser Malaguia, and my live-in partner Ramon Dadulo are one and the same person". They coerced Lilibeth after they summoned her to their police station to sign a sworn statement already prepared for her. Two years after Ramon's arrest and his repeated appeals, the prosecutor and the judge did not take action to exclude his name from the list of accused. He remains in detention in Camp Bagong Diwa, Taguig City.

It is not surprising that the prosecutors have not taken action to exonerate Ramon; in fact, the prosecution had systematically been involved in prosecuting persons, notably human rights and political activists, on fabricated charges. Prosecution no longer regards merit in evidence, or on whether the person subject to prosecution is the same person alleged to have committed the crime. Rather, the prosecution presently exists more for the purpose of expediency – to make it appear that someone is being held to account.

Take the case of Edwin Egar, a pastor of the United Church of Christ in the Philippines (UCCP), who was falsely charged, but later exonerated by the court. Edwin is one of the 72 human rights and political activists charged with murder. The prosecutor investigating the case of murder against Edwin and others, for the death of two policemen and their civilian driver in an ambush on March 3, 2006 in Puerto Galera, Mindoro, allowed a hooded witness to testify in the criminal investigation[216]. To allow hooded witnesses to testify for the prosecution and for the latter to deliberately conceal the identity of

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215 AHRC Urgent Appeals, "A man is detained for Maguindanao massacre in place of the real accuse," 7 October 2011 can be accessed at: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-195-2011/

216 *AHRC Press Release, ""Hooded witness testifies on false murder charges, " 17 July 2012, can be accessed at: www.humanrights.asia/news/press-releases/AHRC-PRL-025-2012/*

the witnesses on the pretext of security is a breach of the fundamental right to due process. It denies the accused the opportunity to make his own defense by knowing and confronting his accuser.

In another case, labour activist Ronald Ian Evidente[217], a trade union organizer and spokesperson of Kilusang Mayo Uno (KMU), was charged in the criminal case of "Robbery in Band". He was charged on July 16, 2011 at the Office of the City Prosecutor in Sagay City, Negros together with 30 others. In August, Ronald submitted himself to a murder trial to clear his name. In indicting Ronald and others, the prosecution used the testimony of witness Freddie Sanchez. Freddie claimed to be a former rebel but is now under the influence of the military. Freddie Sanchez's testimony was used as evidence by the prosecutors, even though they knew full well that he was not even physically present when the incident occurred.

Given the examples above, it is obvious that the conviction of former chief justice Renato Corona was not a result of, and did not lead to, fundamental changes to hold judges accountable for committing rights violations. The manner in which lower courts and judges operate is still systematically flawed; convicting the chief of the judiciary is thus insufficient. It is good that the credibility and integrity of the judiciary was seen to be restored and that his conviction offered a watershed in exposing corrupt practices within the judiciary; however, this was only possible due to the high profile status of the case, and the enormous publicity surrounding the impeachment.

It is in fact more challenging when lower court judges not only commit corrupt practices, but also breach fundamental freedoms. Not being high profile persons and not widely exposed in public, they are not held accountable for their actions. The possibility of prosecuting them, putting them on trial, and punishing them, is remote.

Old & New Cases: No Arrest, Remedy

Knowing full well the flaws, if not the breakdown of how the institution of justice is operating, the victims, their families, and groups helping them, still resolve to file complaints in their pursuit of remedies and redress for wrongs committed. They complain to expose the depth of the problem, with no

217 *AHRC Urgent Appeals, "Falsely charged labour leader submits himself to trial to clear his name and those of others" 29 August 2012, can be accessed at: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-152-2012*

illusion that remedy or redress would ever emerge. The act of filing a complaint has its own importance where adequate remedy and protection for those seeking it cease to exist in reality.

The indictment of former president "Gloria Macapagal-Arroyo, General Victor Ibrado, General Delfin Bangit, Lt. General Jorge Segovia, Colonel Aurelio Baladad, Colonel Cristobal Zaragosa and 10 other officials of the AFP"[218] in May 2012 in connection with the arbitrary arrest, detention and torture of 43 health workers[219], collectively known as "Morong 43", in February 2010 is one of the many examples of how victims and their families seek remedies. The accused here are being prosecuted under the Anti-Torture Act of 2009, Republic Act 7438 (Rights of Persons Arrested, Detained or under Custodial Investigation), and robbery. This explains how the victims are now making use of laws protecting fundamental rights, notably the Anti-Torture Act, to fulfill rights that had no domestic legal protection in the past.

While there might be laws protecting rights under which victims can file complaints to seek remedies, given the flaws in investigation, prosecution, and how the court system operates, as explained above, the prospects of any remedy are negligible.

To illustrate, the special report, published in the periodical *article* 2 in March 2011, titled "Torture in the Philippines & the unfulfilled promise of the 1987 Constitution", concluded that there was no remedy to the torture cases mentioned. None of the police personnel, the military personnel, or their accomplices, who committed torture, had been punished. And, nor were the complaints of the victims adequately addressed.

To have former President Arroyo and her military generals indicted for past human rights violation is a breakthrough. However, whether they will indeed be held to account and punished by the law is yet to be seen. The "confirmation of the promotion of three officials of the Armed Forces of the Philippines (AFP) who are direct parties to the illegal arrest, torture and detention of the 43 health workers" and that "the said officials are Lt. Gen. Jorge Segovia, Brig.

218 Karapatan Media Release, "Torture, criminal raps vs GMA, PNP, AFP officials filed", 3 May 2012

219 Article 2, "Special Report: Torture in the Philippines & the unfulfilled promise of the 1987 Constitution", Story 8: Arrest and torture of the Morong 43, Vol. 10 - No. 01 March 2011, can be accessed at: www.article2.org/pdf/v10n01.pdf

Gen. Aurelio B. Baladad and Col. Jaime Abawag"[220] clearly demonstrates that while these generals were indicted for past violations, they have also been simultaneously rewarded. Their promotion disregards the entire concept of vetting public officials.

The prosecution for torture and arbitrary arrest of former president Arroyo, under the principle of command responsibility, and of her military generals, is one of the numerous cases involving influential and powerful figures in the government making no progress in court.

The dismissal of murder charges[221] against fugitive Joel Reyes, Palawan province governor; and his brother, Coron Mayor Mario Reyes, for their alleged involvement in the January 24, 2011, murder of journalist and environmentalist Gerry Ortega[222] in Puerto Princesa City, illustrates that to have influential and powerful persons indicted for their crime does not mean they will also be held accountable and punished. It must be said though that the government did take Gerry's case seriously, as it has been one of the controversial extrajudicial killings of high profile journalists in the country.

Also, the government did take decisive action by increasing the reward in August for the arrest of Governor Joel and her brother, Mayor Mario Reyes, from 1.5 million pesos each to 2 million[223].

But, with the court's order to dismiss the murder charges against the Reyes' due to a procedural violation, the President's order to increase the reward becomes meaningless, as they would no longer be subject to arrest. The dismissal of the murder complaint was the result of the Department of Justice's breach of their own rudimentary rules for preliminary investigation. It is clear that the Department of Justice (DoJ) was responsible for the lack of progress, if not non-prosecution, of the murder case.

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220 See Note 8

221 Manila Standard Today, "Court clears Reyeses in Ortega case," 28 November 2012, can be accessed at: http://manilastandardtoday.com/2012/11/28/court-clears-reyeses-in-ortega-case/

222 AHRC Statement, "Murder of Gerry Ortega, an anti-mining activist, cannot be passed off as a robbery," 25 January 2011, can be accessed at: www.humanrights.asia/news/ahrc-news/AHRC-STM-012-2011/

223 Philippine Daily Inquirer, "Aquino ups reward for Palparan, Reyes et al.," 17 August 2012, can be accessed at: http://newsinfo.inquirer.net/251212/palparan-bounty-raised-to-p2-million

Thus, President Aquino's order, acting on the recommendation of DoJ secretary Leila De Lima, on November 22, of creating yet another Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty, and Security of Persons[224] with a mandate to "investigate old and new cases of extrajudicial killings, enforced disappearances, torture and other grave human rights violations" offers little prospect that it would result in adequate remedy and redress to old and new cases. It merely repeats the ritual of task forces, and special investigation bodies, with this "super body"— as De Lima described it — every time the executive branch and its justice institution is under pressure. In fact, the idea of creating the so-called "super body" is akin to the creation of Task Force 211 in November 2007 by former President Arroyo, who is now herself the object of prosecution for past human rights violation.

Even when the lower court resolved to arrest those involved in torture and enforced disappearance of human rights and political activists, most notably former general Jovito Palparan Jr.[225] and his men on the case of disappeared University of the Philippines (UP) students Sherlyn Cadapan and Karen Empeno, the government could not 'find' the prime accused in order to arrest and prosecute them. With the government's sophisticated intelligence network, embedded down to the village level, it is difficult to imagine it unable to locate this well-known former military officer in the country. In this case, even though the complainant succeeded in securing arrest orders of military officers responsible for enforced disappearance and torture, the police's inability to arrest him means there will be no substantial progress in the trial of the case.

So President Aquino's order to increase the reward for Palparan's arrest, from 1 million to 2 million pesos[226], works for political gain by making it appear that the government is strong in its resolve to hold perpetrators accountable. Its inability to arrest Palparan, however, is not surprising at all. It is routine practice among powerful politicians, police, and military officials, to go into hiding — inside or outside the country — once it is likely that the court will issue arrest orders for criminal charges laid on them. Also, before the court issues orders for their arrest, it is very common that these influential and

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224 Philippine Daily Inquirer, "Super body formed to probe extrajudicial killings," 27 November 2012, can be accessed at: http://newsinfo.inquirer.net/313685/super-body-formed-to-probe-extrajudicial-killings

225 AHRC Statement, "The importance of arresting retired general Jovito Palparan Jr.," 30 March 2012, can be accessed at: www.humanrights.asia/news/ahrc-news/AHRC-STM-075-2012/

226 See Note 13

powerful figures are leaked information about their impending arrest; they are often aware before the police serve the court's order for their arrest. It is during this time that the powerful accused are able to prepare, by either leaving the country or going into hiding, if they are prevented from leaving due to the hold departure order issued against them.

Palparan for instance, attempted to leave the country, but did not succeed because he was listed in the hold departure order. Other politicians, like the Reyes', who are being prosecuted over the murder of Gerry Ortega, succeeded in escaping out of the country by reportedly using the identity of another person. While the hunt for Palparan is on within the country, the hunt for the Reyes' has had to be conducted outside the country. However, since the court had ruled that the murder charges on the latter had to be dropped due to procedural flaws, it is likely that the Reyes' will come out in public once the charges against them are dropped. This is what happened in the case of Philippine Senator Panfilo Lacson. He too went into hiding when issued with an arrest order for allegedly masterminding the double murder of Salvador "Bubby" Dacer, publicist of former president Joseph Estrada, and driver Emmanuel Corbito. He surfaced and resumed his senatorial role[227] after the court dropped the charges.

While other accused powerful politicians, and police and military officers, go in hiding, the Dutertes and local officials in Davao City continue to rule with an established stronghold in their community. And, they do so despite being found out, by the Commission on Human Rights (CHR), to have been responsible for "systematic failure… to conduct any meaningful investigation,"[228] in connection with the systematic extrajudicial killings of persons from 2005 to 2009. Most of the victims have been accused, or suspected, of being involved in the use and trade of illegal drugs; this includes minors and those who have nothing to do with drugs at all. The CHR conclusion only affirmed the AHRC's and a local group's finding in 2009[229] that the killings are a result of deliberate government inaction.

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227 Philippine Daily Inquirer, "Sen. Lacson surfaces, back in Manila," 26 March 2011, can be accessed at: http://newsinfo.inquirer.net/breakingnews/nation/view/20110326-327742/Sen-Lacson-surfaces

228 CHR Chairperson Statement on the 'Davao Death Squad (DDS)', "14 August 2012, can be accessed at: www.chr.gov.ph/MAIN%20PAGES/speeches/lapr_spch14Aug2012_DDS.htm

229 AHRC, "The State of Human Rights in the Philippines in 2009," 10 December 2009, can be accessed at: www.humanrights.asia/resources/hrreport/2009/AHRC-SPR-007-2009-Philippines-HRReport2009.pdf

Nevertheless, the CHR conducting a *motu proprio* investigation in Davao City in March, April, May, and September 2009, after the AHRC, and a local group repeatedly intervened, demanding the government to take action, has been helpful in drawing attention to the government's failure to address the systematic and widespread killings. It notably took the CHR over three years to conclude their investigation, which has found that "there was a systematic failure on the part of the local officials to conduct any meaningful investigation into said killings, thereby violating the State's obligation to protect the rights of its citizens."[230] In the conclusion of their report, the CHR has recommended that:

> *1) "the Office of the Ombudsman investigate the possible administrative and criminal liability of Mayor Duterte for his inaction in the face of evidence of numerous killings committed in Davao City and his toleration of the commission of those offenses";*
>
> *2) "a serious, impartial, and effective investigation into the facts and circumstances surrounding the deaths attributed or attributable to a so-called Davao Death Squad be conducted by the NBI or other independent task force and that the Office of the Ombudsman or Department of Justice duly prosecute the persons responsible"; and*
>
> *4) "appropriate measures be taken by the local police to prevent any further killings fitting the pattern herein described, particularly with respect the use of motorcycles and loose firearms".*

It is good that the CHR has completed its investigation; however, the conclusion of their investigation only begins a chapter of another lengthy and tedious legal process in the prosecution of the Dutertes, local officials, and the security forces. The CHR's heavy reliance on the Ombudsman, to investigate administrative and criminal liability of the Dutertes and the local officials, offers dim prospects that prompt action will be taken.

The Ombudsman is itself known for its failure and inability to promptly investigate and prosecute cases involving violations committed by the police and the military. This is clear in the case of the June 1993 torture of five individuals, collectively known as the Abadilla Five; and the murder of Bacar Japalali and his pregnant wife, Carmen, in September 2004.

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230 See Note 18

In Abadilla Five's case, the Ombudsman resolved to act on CHR's recommendation to prosecute the policemen involved in the torture of the victims in January 2011[231]. And, in the case of the murder of Japapali couple, the Ombudsman only commenced its prosecution[232] of the military officers involved in August 2007. In these two cases, however, enormous campaign and advocacy work had to be done to pressure the government to take action.

Cycle of Rights Violations: Massacre, Killings, Torture & Disappearance

Keeping in mind how the investigation, prosecution, and court system operates, it is clear that the chances of obtaining remedies to violations that occurred this year—extrajudicial killings, torture and forced disappearances—are slim to nothing. If so many old cases remain unaddressed, it will be unrealistic to think that cases from this year on will have better chances for obtaining remedies. Although the possibility of remedy or redress is small, it is important that the victims, their families, and those who supported them draw attention to this in order to cultivate public discourse.

To speak out in this manner, is what Myrna Reblando, widow of Alejandro "Bong" Reblando —one of the journalists murdered in the Maguindanao massacre on November 23, 2009 — has since been doing, even after she left the country. Myrna was forced to leave in May 2011 because of the continuing threats to her life and inadequate protection for speaking against the irregularities in the prosecution and trial of the accused who masterminded the massacre, notably the Ampatuans. In July, Myrna came out in public, after over a year in hiding, to talk about the difficulties[233] she had to endure to seek refuge and protect her life while pursuing her aspiration of redress for her murdered husband and others.

It will also be likely that there will be no redress for new cases of massacre, like the massacre of Capion family on October 18 in Tampakan, South Cotabato. This massacre involved the killing of Juvy Capion (27), a member of Kalgad, an organization of the Blaan tribe, opposed to the entry of Xstrata-Sagittarius Mines, Inc. (SMI) in their community; and her sons, John (8); and Pop (13).

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231 Article 2, "Special Report: The Philippines' hollow human rights system," Vol. 11, No. 2-3, June - September 2012, can be accessed at: www.article2.org/pdf/v11n0203.pdf

232 AHRC Urgent Appeals, "Trial begins for soldiers charged with homicide after a three-year delay," 9 August 2007, can be accessed at: www.humanrights.asia/news/urgent-appeals/UP-110-2007/

233 AHRC Press Release, "My life was empty when I was in hiding," 3 July 2012, can be accessed at: www.humanrights.asia/news/press-releases/AHRC-PRL-023-2012/

Soldiers attached to the 27th Infantry Battalion of the Philippine Army opened fire at the house of the Capions. Juvy's husband Daguil and other Blaans declared a *pangayaw*[234] (tribal war) against the SMI-Xstrata for intruding into their ancestral land, because their mine operation threatens to displace about 30,000 Blaans in their community. It is clear that the victims were targeted for opposing the intrusion of the mining firm. The soldiers justified their action by claiming that the victims' deaths were a result of 'legitimate encounter' in order to escape criminal liability.

To justify civilian deaths in massacres as 'legitimate encounter' is common practice by soldiers. They are able to escape scrutiny because of practical difficulty for the police to effectively and impartially investigate these cases in their remote sites of occurrence. Before the Ombudsman resolved to indict soldiers for the death of Bacar Japalali and his pregnant wife Carmen in September 2004,[235] the deaths were also justified as a 'legitimate encounter'. The Ombudsman, however, rejected the soldiers' claim, because the bodies of the couple were still inside the mosquito net when found. The soldiers also portrayed the couple as members of a Muslim rebel group in an attempt to discredit them and to escape criminal liability. However, investigation by the prosecutors and the police revealed the couple had nothing to do with armed rebellion.

While the prosecution in the Japalalis' case has progressed somewhat in court, the killing of eight people, including a four year old girl and a pregnant woman[236], also on the pretext of "legitimate encounter" by soldiers in a coastal village in Maimbong, Sulu on February 4, 2008, has not. In this case too, the families of the victims have filed charges against the soldiers; and the CHR has also recommended the prosecution of the soldiers. But the AHRC is not aware whether the prosecution of this case has progressed in court.

Similarly, the killing on pretext of 'legitimate encounter' of farmers—Emily

234 KARAPATAN Public Information, "On the Capion massacre: Fact-finding mission confirms massacre, points to accountability of the AFP, LGU and Mining Co.—Karapatan," 19 November 2012

235 See Note 22

236 AHRC Urgent Appeals, "Soldiers kill eight persons in Sulu on pretext of "legitimate encounter", 13 February 2008: can be accessed at: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-027-2008/

Ratilla (23) and Danilo Guinanas[237] (37) on 22 February 2009 in Quezon, Bukidnon; farmers—Vicente Flores, Richard Oliva and Melecio Monacillo and his son, Jonathan in Mobo[238], Masbate on 7 September 2010; brothers—Eric Miraflores (27), Raymond (23) and Rosmil[239] (16) in Masinloc town, Zambales in June 2, 2010, and many other cases remain undocumented.

Like Myrna Reblando and other families of victims, those who supported the Capion family also openly criticized and spoke against the atrocities of soldiers in the countryside. They held protests, solidarity, fact-finding missions, and public forums on the prevailing impunity in the country. Thus, the importance of this is beyond the ideal of holding the soldiers to account, which is not likely to happen. The exposure drew public attention to the lack of remedy and redress within the country's criminal justice system. It is the pressure of the public that often facilitates possibilities of remedies.

No Remedy, Redress: Filipinos or not

To seek intervention from foreigners and their governments to pressure the Philippine government is based on the idea that once they intervene, the government would take action, resulting in some sort of remedy. The Filipinos who now live abroad, and those who support their cause, have since played an important role in drawing attention to the human rights problems in the country.

But, we now see a pattern wherein foreigners, just like human rights defenders who have been living and working in the country for decades, have been targeted for supporting the relief work and grassroots advocacy for protecting the rights of indigenous people, the poor, and the vulnerable. Take the case of Fr. Fausto "Pops" Tentorio, 59-year old Italian missionary, who was murdered on October 17, 2011 inside the compound of Mother of Perpetual Help Parish, Arakan Valley, North Cotabato Province[240]. The charges against those involved

237 AHRC Urgent Appeals, "Two farming villagers killed on pretext of a "legitimate encounter" 13 March 2009, can be accessed at: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-023-2009

238 AHRC Urgent Appeals, "Soldiers kill four farmers in another 'legitimate encounter' pretext," 8 October 2010, can be accessed at: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-161-2010/?searchterm=legitimate%20encounter

239 AHRC Urgent Appeals, "Three brothers killed in another 'legitimate encounter,' 8 September 2010: can be accessed at: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-130-2010

240 Justice for Fr. Fausto 'Pops' Tentorio Movement, "End the Impunity in Arakan Valley: An International Appeal for Justice for Father Fausto 'Pops' Tentorio," October 2011

in his murder were filed only in April this year, after "a new witness to the killing of Fr. Tentorio came out"[241]. At the time of his death, Fr. Pops had spent 33 years working on literacy and health programmes for indigenous people and peasants. Those charged for his murder, Jan Corbala and four others, are all attached to the Bagani paramilitary group, also known as Alamara. Corbala is known in Arakan, North Cotabato as Commander Iring (cat). The Bagani paramilitary group is the military's version of the CAFGU (Civilian Armed Force Geographical Unity) among the indigenous peoples in Mindanao[242].

Another foreign national, Wilhelm Geertman, a Dutch executive director of the Alay Bayan, Inc. (ABI), a relief and disaster NGO based in Angeles City, was murdered on July 3, 2012. He was shot in the back at close range by two armed men as he entered his office[243]. Wilhelm had been in the country for more than four decades. He was known for his advocacy in defense of farmers, especially in the case of Hacienda Luisita (in Pampanga) and his compassion for disaster victims[244]. There is no substantial progress in the investigation to identify and prosecute those responsible for his death.

In Mindanao, the increasing activity of foreign corporations, notably large scale mining operations and plantations, has also resulted in targeted attacks, threats, harassment, and fabrication of charges against indigenous people and the human rights defenders who support them in opposing intrusion into their communities. Before the massacre of the Capion family,[245] there have been documented cases of extrajudicial killings, threats, and fabrication of charges against other human rights and political activists opposing mining operations.

Take the case of Jimmy Liguyon,[246] 37 years old and belonging to the Matigsalog tribe. He was murdered on 5 March 2012 at 6:30 pm in Purok 2, Dao, San Fernando, Bukidnon after receiving threats to his life from members of a paramilitary group due to his anti-mining advocacy. Murder of Jordan

241 KARAPATAN Press Statement, "After a year since Fr. Pops Tentorio's killing: Still no justice as the Aquino gov't refuses to go after its own people--Karapatan," 17 October 2012

242 See Note 31

243 HKCAHRPP (Hong Kong Campaign for the Advancement of Human Rights and Peace in the Philippines), "Justice for Geertman: HK-based human rights advocates call for immediate investigation of Dutch missionary's killing in the Philippines," 5 July 2012

244 National Council of Churches in the Philippines, "Statement on the killing of Willem Geertman," July 4, 2012

245 See Note 24

246 AHRC Urgent Appeals, "Indigenous leader opposing mining murdered," 3 May 2012, can be accessed at: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-066-2012

Manda[247], 11 years old and belonging to Subanen tribe, on 4 September, 2012, at 7:20 a.m., in Zamboanga del Sur. Jordan and his father, Lucenio, were on their way to school aboard a motorbike when they were stopped and shot by unknown persons. Jordan died on the spot due to gunshot wound to his back. His father was wounded, but survived from the shooting.

Then there was the murder of Gilbert Paborada,[248] 47 years old and belonging to the Higaonon tribe. Gilbert was shot dead as he was alighting from a motorela (local three-wheel tricycle) on 3 October 2012 in Puntod, Cagayan de Oro City. Gilbert and his group were opposing the expansion of a big US-based company operating a palm oil plantation.

Margarito Cabal[249], an employee of the Kibawe, Bukidnon, on the other hand, was murdered on 9 May 2012 at 6:30 p.m. for opposing the proposed construction of a Hydro-Electric Mega Dam.

Threats and harassment against those claiming their rights is also common. An example is the continuing threats against couple Loreto Cambo, Jr. and Mylen, since April 28, 2012, after they started claiming their ancestral land in Malalag, Davao del Sur. On April 29, 2012, the Cambo couple reported to the Malalag Municipal Police Station (MMPS) to complain against Angelito "Lito" Libay, a member of Barangay (Village) Intelligence Network (BIN); and his companion, Nemesio Legaspi. The couple said Libay and Legapi were carrying firearms when they went into their house. They accused the couple of being members of a rebel group, the New People's Army (NPA). In remote areas, it is very common to accuse villagers of having links to a rebel group to justify the actions, such as murder, of soldiers and their paramilitary forces.

In Visayas, activist Francisco 'Mano Ansing' Canayong[250], 64 years old, was stabbed to death in Naparaan, Salcedo, Eastern Samar on May 1, 2012 at

247 AHRC Urgent Appeals, " The son of a tribal leader opposing mining and another transport leader killed in separate incidents," 6 September 2012, can be accessed at: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-165-2012

248 AHRC Urgent Appeals, "Another indigenous leader killed for opposing the incursion of a US-based palm oil company," 9 October 2012, can be accessed at: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-179-2012

249 AHRC Urgent Appeals, "Gunmen killed a government worker opposing construction of a dam that threatens to submerged villages," 18 May 2012, can be accessed at: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-081-2012

250 AHRC Urgent Appeals, "Murdered mining activist knew he and two others would be killed," 4 July 2012, can be accessed at: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-120-2012

2:40 pm. Prior to his death, Francisco knew there was a plan to kill him and two other activists, Antonio Norte and Carolyn Borja. The three victims had themselves "heard with our own ears" about this plot to murder them. After Francisco's death, the threat against Carolyn and another activist, Nenita Lacasa, both of Eastern Samar, Visayas, has heightened. Shots have been fired at the houses of Lacasa and Borja on May 6 and May 23, 2012, respectively[251]. One of those who fired at Lacasa's house was a certain Mr. Terso Lopido, Field Operation Trustee of the Terrestrial Mining Corporation. But, even before the shooting on Lacasa and Borja's house, Francisco had made a testimony prior to his death, stating, "They are talking about mining and even mentioning our names and the associations. Terso Lopido in his loud voice says that if the mining operation will be stop we must leave our home and never show up because he will kill us all."[252] Yet, no action has been taken to protect Francisco's colleagues, who have had to endure ongoing threats and risk to their lives.

It is clear that regardless of whether the victims are Filipinos or foreign nationals, the possibility of getting remedy and redress for violations ranging from threat to murder, due to their support of the indigenous people, the poor, and vulnerable sections of society, is very rather tiny, if not nonexistent. There is a breakdown of even the most rudimentary forms of protection, forcing victims, and their families to leave the country and seek protection in other States.

Prospects in the Emerging Justice System: Bangsamoro Political Entity

In October 2012, the Philippine government and the Moro Islamic Liberation Front (MILF), which is the largest rebel group fighting for self determination in Mindanao, agreed to sign the "Framework Agreement on the Bangsamoro"[253], ending over 40 years of struggle that had been demanding secession to create a Bangsamoro political entity. This agreement offers a political solution to the Mindanao question and heralds the creation of Bangsamoro justice institutions with the proposed promulgation of Bangsamoro Basic Law.

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251 AHRC Urgent Appeals, "Two anti-mining activists face threats after the murder of their colleague," 4 July 2012, can be accessed at: www.humanrights.asia/news/forwarded-news/AHRC-FUA-006-2012

252 Full text of the testimony of Francisco Canayong, Antonio Norte and Carolyn Borja executed on 19 March 2012, full text can be accessed at: www.humanrights.asia/countries/philippines/cases/joint-statement

253 Text of the Framework Agreement on the Bangsamoro, can be accessed here: www.gov.ph/the-2012-framework-agreement-on-the-bangsamoro/

The challenge in building these institutions is, apart from the creation of the political entity, also to ensure that they satisfy the aspiration of the Bangsamoro people. For many years, the conflict in Mindanao was due to the absence of any remedies for rights abuses, particularly those committed against the Muslim minorities. Laws and procedures are routinely disregarded and violated. There is no fair trial, especially when it comes to Muslims accused of committing terrorist activities. There are hopes that the creation of the proposed Bangsamoro political entity and its justice institutions would embody the aspirations of the Muslim minorities, and thus strengthen the institutional protection of fundamental rights of minorities.

For many years, Muslims are the usual suspects for the police and the military, particularly in cases where they need make arrests to satisfy public pressure of nabbing suspects responsible for bombing incidents. This includes the cases of torture victims Jejhon Macalinsal, Abubakar Amilhasan, and Arsul Ginta, whom the police arrested on 24 April,2002, in connection with the bombing of a shopping mall in General Santos City. They were exonerated from the charges after eight years of trial[254]. This also happened to torture victims Tohamie Ulong, Ting Idar, Jimmy Balulao, Esmael Mamalangkas and Tho Akmad, collectively known as the Sasa Five, whom the police and soldiers arrested on 8 April, 2002, in Poblacion Dos, Cotabato City, in connection with the bombing in Sasa wharf, Davao City[255]. None of the torture victims in these two cases, even though they have been cleared by the courts, obtained any sort of redress for the torture and detention they endured for the many years it took to prove their innocence[256].

While some Muslims have been cleared after years of trial, others haven't been so fortunate. Hamsa Pedro, a 42 years old market labourer; and Alex Salipada, an Imam working as labourer at the General Santos City Fish Port, for instance, whom policemen in General Santos City arrested in connection with the

254 AHRC Press Release, "Torture victims acquitted after eight year trial," 2 November 2010, can be accessed at: www.humanrights.asia/news/press-releases/AHRC-PRL-026-2010

255 AHRC Urgent Appeals, "Court orders trial of five torture victims detained over two years without trial, " 26 April 2005, can be accessed at: www.humanrights.asia/news/urgent-appeals/UA-69-2005

256 Danilo Reyes, AHRC Programme Officer, "Torture and wrongful prosecution of alleged bombers and assassins," March 2011, can be accessed at: www.article2.org/mainfile.php/1001/389/

December 2004 bombing, have been in jail for over seven years[257] now with no substantial progress in their case. Furthermore, their allegations of torture against the policemen who arrested them were not investigated, until their plight was exposed in October this year.

Rights in the Philippines: On Paper, Not in Practice

In our submission[258] to the second cycle of the Universal Periodic Review (UPR) on the Philippines, a state-led peer review mechanism under which all UN member-states' domestic human rights records are reviewed and recommendations made, we already indicated the numerous domestic and international laws, notably the Anti-Torture Act of 2009, that the government had enacted and ratified respectively in line with its compliance to strengthen the normative and legal framework on protection of rights. The Philippines is a country with advanced legislation on human rights laws; however, remedies from these laws is very negligible and do not result in the adequate protection of rights.

In reality, the Philippine government, as the first country in Southeast Asia to have promulgated a law on torture and a law against forced disappearance, achieved 'diplomatic victory' inside and outside the country, rather than any genuine and realistic protection of rights. There is a breakdown in the most rudimentary form of protection of rights; however, because of the assumptions, whether real or imagined, that the government has had 'political will' and 'strong commitment to the protection of rights,' it has become even more difficult to draw support from foreign governments and the international community to demand accountability from the government and its justice institutions.

The landscape of human rights advocacy in the Philippines is also changing. In the past, dictatorial rule during Marcos' regime in the '70s and '80s indicated that the violation of rights and the oppression was a byproduct of a strong 'one-man-rule'. It was clear that it was necessary to change the government and dismantle the dictatorship. At present, it has been challenging to get support from the public – locally and internationally – and for the public to come to

257 AHRC Urgent Appeals, "Trial of two men tortured and falsely charged seven years ago drags on," 8 October 2012, can be accessed at: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-178-2012

258 Asian Legal Resource Centre, "Stakeholders Submission concerning the Universal Periodic Review of the Republic of the Philippines," 28 November 2011, can be accessed at: www.alrc.net/PDF/ALRC-UPR-13-002-2011-Philippines.pdf

terms with the depth of the human rights problems, since we now have a new government and legislation that, on paper and in rhetoric, protects rights.

More than enacting laws and changing leadership, the real challenge for the protection of fundamental rights in the country is the implementation of rights. To examine how institutions of justice operate while denying rights, and to cultivate discourse to prevent this and to pressure the government to enforce and implement fundamental rights, continues to remain the main challenge. After years of oppression and denial of fundamental rights, the people's trust and confidence in the country's protection and justice mechanisms has weakened. This is obvious when victims and their families seek protection, not from the Philippine government, but from other States and territories, like Myrna Reblando who has sought protection in Hong Kong.

Conclusion

It is a welcome development that the Philippine government has, for the last few years, strengthened its normative and legal framework on protection of rights; and the government officials, particularly President Benigno Aquino III, who repeatedly speaks of the government's policy on protection of fundamental rights, reaffirms this in numerous public statements; however, it is one thing to affirm protection of fundamental rights, and another to make it real in practice. There is disconnect in terms of what is said and what is being implemented.

The government has also had positive achievements, notably the prospects of a political solution to the Mindanao question after over 40 years of protracted war between government security forces and the Muslim rebels. Without changes as to how the institutions of justice – police, prosecution and the judiciary – operate to ensure adequate protection of rights, these achievements run the risk of being derailed. If the very fabric of the system of protection of rights is flawed, no rights, whether they are for the protection of minorities or the building of democratic institutions, would have the possibility of obtaining any remedies.

CHAPTER VIII

ASIAN HUMAN RIGHTS COMMISSION

SOUTH KOREA

SOUTH KOREA

THE STATE OF HUMAN RIGHTS IN 2012

Overview: Stooges Abound with Executive Supremacy

In the last year of Mr. Lee Myung Bak's Presidency, the core problems of justice delivery institutions, with regards to human rights, have been clearly exposed. The Asian Human Rights Commission has found that in the last five years of his reign there has been a clear tendency towards the interpretation of law so as not to intervene in government policy. Laws continue to be used to curb those who defend the rights of others. In addition, misuse and misapplication of law such as the National Security Act has increased with the purpose of restricting the freedom of opinion and expression.

The National Human Rights Institution has become the government's stooge. On one hand, it continues its day-to-day work as prescribed in the related Act, but on the other, after it intentionally avoided pursuing cases sensitive to Mr. Lee's administration, public perception of the institution has changed. Other government organisations do not care much, and in fact now ignore recommendations made by it, because the institution is now considered as just another compromised government organ. It has lost the trust of the people, having taken no action in a case that virtually all thought it should have pursued.

Problems in justice delivery institutions concerning human rights have been exposed, i.e. dependence of the judiciary, lenient disciplinary action – against even judges involved in corruption – biased and partial indictment followed by partial investigation by prosecutors' office, absence of credible, independent, monitoring mechanism, and discriminatory or unequal exercise of providing security services to the people by law enforcement agents. Many cases of corruption have been reported, but the prosecutor's office has absolute power of investigation as well as prosecution. In addition, there is no discourse on how jurisprudence by international human rights institutions is not met by a domestic mechanism for implementation.

The following report is limited to cases and issues that the Asian Human Rights Commission has taken up so far in 2012. It does not imply that issues and cases, such as conscientious objection to the military service or freedom of opinion and expression in every sector of society, that are not reported here are not important or have ceased to remain burning issues. Our previous annual reports have reflected such continuing issues.

Government Policy Rules Over Law

According to information reported by local media, the need for a naval base had been raised by the government for many years. The argument centred on providing safety for ships, since the majority of ships crossing the southern sea were importing and exporting goods. A group of people in local government registered their willingness to host the naval base. The government designated one place for the base, but it failed to materialize due to strong protest from villagers and rights activists. In 2007, 87 out of 1,900 villagers in Gangjeong, Jeju Island, submitted an application to host the naval base, which was accepted by the central government. Gangjeong was designated for the base, despite the fact that the process to get consent from 87 villagers was undemocratic and lacked representative legitimacy. In fact, 95 percent of the Island was against the planned naval construction.

After the designation, Gangjeong villagers and rights activists began protesting against the construction, which resulted in their repeated arrest and their facing legal action.[259] Through this case, the central government demonstrated that the result was what mattered, not the process; the end justifies the means.

Those against the government's policy were thus booked for legal action based on any reason. It didn't matter whether they were found guilty in the end or not; what mattered to the government was to silence opposing voices through arrest, detention, or criminal charges.[260] As construction progressed, more and more of those protesting were arrested by both the police and the military.[261] In such a situation, the role of the police and the military is not to enforce the law, but to follow government policy. Breaching the law in this process of enforcing policy is not a problem for those that run the country, and those breaching it are not held accountable for their actions.

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259 See urgent appeal: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-019-2012

260 See statement: www.humanrights.asia/news/ahrc-news/AHRC-STM-012-2012

261 See statement: www.humanrights.asia/news/ahrc-news/AHRC-STM-061-2012

Against this unilateral pushing of the central government's policy, the villagers brought a case relating to the naval construction to the administrative court, with the help of rights activists and lawyers. From a legal point of view, there are two separate but related issues involved. One involves seeking an annulment of the approval of naval base construction. The other centres on the status of the construction site, originally an absolute preservation zone, which was changed by the government.

It is a prerequisite to make an Environmental Impact Assessment (EIA) before such a construction plan is approved by the Minister of National Defence. In terms of the first legal issue, the chief point was whether or not there was a satisfactory EIA carried out. And, with respect to the second legal issue, whether or not there was any illegality in changing the status of the area was the main concern, as no construction is possible if the construction site falls in an absolute preservation zone.

On July 6, 2012, the Supreme Court ruled that the EIA was conducted inappropriately, but that the degree of inappropriateness did not reach an extent that would make the approval fit for repeal. Regarding the Mayor of Jeju Island releasing around 12.7 percent of the designated base area from the absolute preservation zone, the Supreme Court ruled it to be a 'minor' matter not requiring a public hearing process. The court added that Gangjeong villagers are not entitled to claim an annulment, since they do not have legal standing to bring such matter to the court, and therefore the case was dismissed.

This judgment is a repetition of its precedent. It maintains the position that in any case if formality is satisfied the rest is out of question, i.e. formality is more important than substance.

Even if a law requires a public hearing in order to implement government policy, the government organizes a hearing in such a way that only a few attend, and this is recognised by the court as fulfilling the requirement. Due to this interpretation, during the 1980s, many residents in redevelopment areas were forcibly evacuated under court orders without any compensation.

As for the question of whether or not the villagers are entitled to sue, it appears that the system allows for those who are affected by the government's action to lodge a complaint, but, just as the naval base case demonstrates, the affected do not have any such right in practice. The question of where the affected can go to seek a remedy remains unanswered.

It is natural and even necessary for tension – whether minor or serious – to exist amongst the administration, legislature, and the judiciary, under the separation of power principle. The South Korean judiciary, however, has the tendency to avoid creating any tension with the administration through its judgments if the matter concerns government policy. Such cases are usually given verdicts favouring the government, regardless of the government action impinging on people's rights. This suggests that in South Korea, government policy or action is shielded from being judged under the law; rather, an environment exists to ensure the law is interpreted in a way to support government policy or action.

Law Used to Attack Rights Activists

Just as in previous years[262], the law continues to be used by the government to restrict and attack human rights defenders. One ongoing case from 2009 shows this trend clearly.

Mr. Kwon Young-gook, a lawyer, was on his way to attend a press conference organised by labour activists on June 26, 2009. When he saw that some labour activists were illegally arrested by the police, he intervened to provide legal assistance for them. However, he was criminally charged for obstruction of performance of official duties.[263] The Suwon District Court found that he was not guilty on October 24, 2011, but this was appealed by the prosecutor's office on November 17, 2011.[264]

According to the judicial precedent (Supreme Court decision case no. 99DO4341.2000), if the arrest or detention of demonstrators is unlawful, obstruction of performance of official duties cannot be established. It is understood that the real purpose of the appeal by the prosecutor's office is not to hold Mr. Kwon criminally responsible, but to harass him by putting him through a long legal process.

This sort of legal action by the government has often been used against rights activists. The case of Mr. Song Kyung-Dong, poet, and Mr. Jeong Jin-Woo, a member of the Progressive Party, who suggested peaceful assembly in support of Ms. Kim Jin-sook, is another example. In protest, Ms. Kim had occupied the

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262 Refer to previous report published in 2011: www.humanrights.asia/resources/hrreport/2011/AHRC-SPR-010-2011/view/

263 Refer to urgent appeal issued in 2010: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-083-2010

264 Refer to urgent appeal issued in 2012: www.humanrights.asia/news/urgent-appeals/AHRC-UAU-005-2012

top of a crane in her workplace, urging for the withdrawal of illegal layoffs by her company.

Despite the fact that the two have never encouraged or provoked peaceful demonstrators to do illegal activities, they have been accused of being responsible for violations of the Criminal Act, Act on Assembly and Demonstration and Punishment of Violences, etc. Act. They are criminally charged for their solidarity action.[265]

In fact, this is not the only case in which various criminal charges have been imposed on rights defenders. The case of Mr. Park Lae-Gun and Mr. Lee Jong-Hoi in 2010[266] is another instance where rights defenders have been criminally charged and have had to face lengthy legal procedures.[267]

Rising Attack under National Security Act

The vagueness of the National Security Act (NSA) has been misused by government authorities to restrict the freedom of opinion and expression of the people. When questioned by the international community, the government said that it would strictly apply the law. In practice, however, the government has showed its colours. Soon after Mr. Park Jeonggeun tweeted a sarcastic message, 'long live Kim Jong-Il' (former leader of North Korea) in his Twitter account, he was arrested and detained, and later charged for violating the NSA.[268] Due to the vagueness of article 7 of the NSA, countless citizens have been imprisoned for up to seven years. Article 7 states that "any person who praises, incites or propagates the activities of an antigovernment organisation, a member thereof or of the person who has received an order from it, or who acts in concert with it, or propagates or instigates a rebellion against the State, with the knowledge of the fact that it may endanger the existence and security of the State or democratic fundamental order, shall be punished by imprisonment for not more than seven years." On November 21, the decision of the Suwon District Court was delivered, and Mr. Park received 10 months of imprisonment and a 2 year suspended sentence.

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265 Refer to urgent appeal in 2012: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-055-2012

266 Refer to statement issued in 2010: www.humanrights.asia/news/ahrc-news/AHRC-STM-016-2010/

267 Refer to annual report in 2011: www.humanrights.asia/resources/hrreport/2011/AHRC-SPR-010-2011/view/

268 Refer to forwarded press release in 2012: www.humanrights.asia/news/forwarded-news/AHRC-FPR-006-2012

Another example shows how the government authorities have misused the NSA in order to target organisations involved in campaigns against the construction of a naval base in Gangjeong village on Jeju Island. The search and seizure of seven places by the National Intelligence Service (NIA) under the National Security Act was made on February 9, 2012. The organisation called 'Solidarity for Peace and Reunification of Korea' was particularly targeted. This is because, since its establishment in 1994, the organization has been pursuing goals to effect the end of military drills, the signing of a peace treaty, and the closure of US army bases in the Korean Peninsula.

In 2008, during a nation-wide candlelight protest, in a clear misunderstanding of the reasons of the protest, the President ordered an investigation to identify the protest leaders. The law enforcement agencies then proceeded to target rights groups, as well as individuals who seemed to have led a group of protesters, with legal action. Despite heavy criticism against this legal action taken against peaceful demonstrators, the legal proceedings went on. Although the court later acquitted and freed the accused, the legal action had the effect of bringing the demonstrations to an end. The very motive behind taking legal action against those organisations was to create a division between the rights groups and the public, and to increase fear of government backlash.

The government has clearly been interested in taming the public so that citizens refrain from voicing the diverse opinions that exist in society. When a Korean submarine exploded in the West Sea in 2010, an official investigation report into the cause was made public. But, several experts raised doubts about its findings. One non-governmental organisation submitted a report questioning the findings of the investigation to the UN Security Council. The government officials then repeatedly criticised this NGO through broadcasting. This instigated and provoked a group of people to protest in front of the NGO, which resulted in the NGO staff being physically attacked.

Interestingly, similar cases in the past show that the majority of charges brought against rights defenders have been brought under the Act on Assembly and Demonstration and the Criminal Act. Now, in addition, the NSA is increasingly being used to target human rights defenders. The cases above are indicative.[269]

269 Refer to statement in 2012: www.humanrights.asia/news/ahrc-news/AHRC-STM-027-2012

National Human Rights Institution becomes Government Stooge

In 2009, when Mr. Hyun Byung-cheol was appointed as head of the National Human Rights Commission of Korea (NHRCK), criticism arose as to the procedure by which he was appointed, one incompatible with the Paris Principles.[270] Since then, through amendment of the law, it has become statutory procedure for a candidate hoping to be chairperson of the NHRCK to attend a hearing at the National Assembly. However, there remains concern that the old procedure will continue in practice due to the prevailing political power structure.

In July 2012, the Presidential Office announced that the incumbent president of the NHRCK would be reappointed for another three-year term. The main reason given for his reappointment was that Mr. Hyun has a neutral and balanced perspective. Although the Presidential Office did not explain what is meant by a 'neutral and balanced perspective', this phrase generally refers to the practice of not taking sides in a controversy. In fact, opinions or recommendations that the NHRCK made before 2009 were occasionally incompatible with the policy of other government institutions and the President. For this reason, when the previous NHRCK took sides, it created tension for the executive. When it came to the issue of national security, in particular, the recommendations of the NHRCK were criticised without being reasonably discussed, and this despite the fact that these recommendations were simply a repetition of those made by UN human rights bodies for years.

Apparently, the current government was not satisfied with the activities of the NHRCK, and its opinions and recommendations were deemed to be a challenge to the government's policy. In 2009 when Mr. Hyun was appointed as chairperson, it was widely reported that serious human rights issues considered sensitive to the government were not being taken up. This does not mean that the issues were not discussed, but that the chairperson had obstructed them from being discussed at the plenary committee meetings. Even when an issue was discussed at committee meetings in the voting process, the chairperson allegedly played a major role in dismissing the cases.

The cases that have been dismissed or not taken up by the NHRCK are criminal defamation cases. They include cases such as that involving producers

270 Refer to open letter issued in 2009: www.humanrights.asia/news/ahrc-news/AHRC-OLT-020-2009

of the 'PD Notebook', a programme of MBC (Munwha Broadcasting Corporation) which raised concerns regarding government policy on the importation of beef from the US, and the one involving a civilian who claimed that the National Intelligence Service (NIS) told companies not to donate to the organisation that the civilian had been running. The dismissal of a case where a civilian was under illegal surveillance and was then forced to resign from his company by officials of the Prime Minister's Office was another indicator. The withdrawal of a recommendation that the previous NHRCK had made is yet another example of the Chairperson siding with the government, as was not raising a voice against the excessive use of force by the police against peaceful protesters.

From the Presidential Office's point of view, in the last three years, the NHRCK had been 'neutral' and 'balanced' because it had not raised a voice against other government institutions, and it had not taken a side in controversies where a recommendation or opinion might have been incompatible with government policy. In this regard, not taking a side in a controversy was understood by the Presidential office as the NHRCK's attempt to take a stand for government policy, rather than giving an opinion or recommendation based on a human rights perspective.[271]

Systematic Problems in Government Institutions

Judiciary: Judges are not Independent from their Seniors

Observations in the last couple of years indicate that action taken by state institutions is hampering the independence of the judiciary. However, a more common problem is senior judicial officials limiting the independence of junior judges by taking disciplinary action against the juniors while they themselves go scot free or benefit from leniency, even in cases of corruption in which they are found to be involved.

For instance, one judge failed to be reappointed in February 2012 after he uploaded a parody mocking the President on the Social Network Service (SNS). The superficial reason given for this by the Supreme Court Disciplinary Board was that his merit rate was low. It was, in fact, above average. In the same month, another judge who also uploaded a similar parody on the SNS was suspended for six months by the Board after his action was considered along with his general conduct.

271 Refer to statement in 2012: www.humanrights.asia/news/ahrc-news/AHRC-STM-142-2012

Interestingly, it appears to be a standard that the expression of a judge's political views in the SNS is entitled to receive heavier disciplinary action than corrupt misconduct of senior judges. For example, during the nationwide candle light vigil in 2009, many peaceful demonstrators were arrested and prosecuted for violations of various existing laws. In court proceedings, some senior judges interfered with junior judges dealing with related cases.[272] One senior judge was later promoted and has since become a Justice to the Supreme Court, despite heavy criticism.

Meanwhile, in October 2011, a senior judge involved in numerous corruption cases received five months suspension. And again, in January 2012, one senior judge, who was offered dinner a number of times and expensive bottles of wine, was suspended for only two months by the Board. Another case that has recently come to light is that of a judge having allegedly interfered, in October 2011, with a prosecutor's handling of a case, where a 'netizen' was charged with criminal defamation of a judge's wife, who was running for mayor of Seoul. The citizen was finally convicted with fines that were comparatively high.

On one hand, the aforementioned cases demonstrate that the judiciary attempts not to generate any tension with the executive. On the other hand, the standard of disciplinary action is flexible and ambiguous in favour of senior judges. Since senior judges have the power to give merit ratings to junior judges, it is of the utmost importance to secure their independence. This power also causes a breakdown in the delivery of justice. If the position is misused, either for political reason or personal benefit, the level of miscarriage or distortion of justice is apparently higher than it would be in an ordinary situation.[273]

Public Prosecutor's Service: Government's 'Private' Prosecutor

In June 2010, it was first known to the public that the unlawful surveillance of civilians, as well as, at least, three legislators and their family members, were carried out for some years by officials in the Prime Minister's office. This surveillance was carried out under the instructions of the Presidential Secretary's office. When this allegation was raised in the National Assembly, due to political pressure, the Prime Minister's office requested the Prosecutor's Service

272 Refer to statement in 2009: www.humanrights.asia/news/ahrc-news/AHRC-STM-041-2009/

273 Refer to statement in 2012: www.humanrights.asia/news/ahrc-news/AHRC-STM-058-2012

to investigate. Materials at the office were seized and confiscated, and three officials were prosecuted for abuse of position on August 11, 2010. Allegations were made that other Presidential Secretaries, such as that of civil affairs and employment and labour, were also involved in this unlawful surveillance, but these were not verified in court. According to the Prosecutor General's explanation in the National Assembly, the failure of verification was due to insufficient evidence, as well as statements made by the accused.

One accused charged with destruction of evidence, in the court proceedings in March 2012, disclosed to the media that the Presidential Secretary of civil affairs was involved, and that the official had ensured him that the prosecutor would prosecute him only to the extent that he would still be able to continue his work as a public servant. He also revealed that he was offered money as compensation and forced not to acknowledge the involvement of the presidential secretaries during trial. He claimed that he followed the instructions given to him, because he regarded them as normal security measures. To support his allegations, the whistleblower provided personal recordings of conversations with officials from the Presidential Office.

It is firmly believed that the prosecution was biased in this case, leading to partial and inadequate investigation. In fact, for 20 days after the allegations of unlawful surveillance were reported, the prosecution took no action, and the seizure and confiscation of materials from the Prime Minister's Office was done four days after the request for investigation was made. During this time, the whistleblower was given instructions to destroy a hard disk with relevant information before the prosecutor's raids took place.

As reported, although the evidence seized and confiscated was but little, the prosecutor put it into several boxes filled with newspapers to show the media that a considerable amount of evidence was taken. Although the prosecutor found that an official of the Presidential Office used a mobile phone registered under another person's name to avoid having phone records traced, this was not further investigated and was excluded from evidence submitted before the court. Subsequently, this official was transferred to the Korean Embassy in the United States. A Member of Parliament later informed the public that while the prosecution was able to recover material from the destroyed hard disk, they didn't investigate the material.

In such cases of unlawful action, where the Presidential Office or high profile political figures are involved, partial prosecution is the norm, as decided by the Ministry of Justice through instructions received from the Presidential Office. Together with the Ministry of Justice, the Prosecutor's Service decides on selective or no prosecution.

After the disclosure of the accused, the Prosecutor's Service decided to reinvestigate this case on March 16, 2012. There remained grave concerns, however, that once again proper investigation and prosecution would not be done; rather, the investigation would be conducted to the extent that a few Secretaries were found responsible for abuse of power, or to the extent that the result of the investigation would not be damaging to the current government. One key issue is that the period of unlawful surveillance between 2009 and 2010 overlaps with the period when the incumbent Minister of Justice was the Presidential Chief Secretary for civil affairs at the Presidential Office. Unless an independent commission of experts, completely outside the prosecutor's service and beyond political interference, conducts a thorough investigation, it is highly unlikely for justice to be delivered.

A similar case is that of Mr. Kim Jong-Ik, a former CEO of private business. After illegal surveillance was conducted of Mr. Kim by the Prime Minister's Office, the information obtained was used to remove Mr. Kim from his position. The information also pertained to various private relationships. It was reported that there were also other cases critical to the government where the Presidential Office was involved in directing the Prosecution Service.[274]

According to the media, the Prosecution Service was fully aware of all these illegally obtained materials, but submitted limited evidence before the court which was only necessary for indictment of those involved. No investigation was carried out into the illegal surveillance critical to the current government. The question remains as to what kind of negotiations or instructions were made among state institutions like the Presidential Office, Prime Minister's Office, Ministry of Justice and Prosecution Service.

The Prosecutor Service's lack of independence and politicisation is a serious problem. Under President Park Chung-Hee, in 1967, senior or chief prosecutors did 'detached service' at the office of the Presidential Secretary for civil affairs. During this service, their role was to deliver the message and will of the President to the prosecution department. In other words, that was how the Presidential Office controlled the prosecution. Since then, the prosecution in South Korea has been subordinated to the Presidential Office and carried out its role as a government tool to suppress opposition and dissidents through the legal actions of investigation and prosecution. After much criticism, the provision that "a public prosecutor shall neither be dispatched to the Office of President nor concurrently take any office thereof" was incorporated into the

274 Refer to statement in 2012: www.humanrights.asia/news/ahrc-news/AHRC-STM-076-2012

Public Prosecutor's Office Act in December 1996. However, the old practice continues today in an alternate form: now, a prosecutor resigns from the Prosecutor's Service before joining the Presidential Office, and is reemployed as a prosecutor by the Ministry of Justice once he quits from the Presidential Office.

Unless this system is thoroughly reformed, there can be little change in South Korea's prosecution system. Biased and partial investigation as well as unfair prosecution will continue, with junior prosecutors instructed by their politically motivated or influenced seniors. The government has always promoted persons to senior or chief prosecutor positions as reward for their allegiance to those in power. For this reason, it is crucial to establish an independent committee comprising of outside experts to monitor and review all investigation and prosecution.[275]

Duty of Police: Safeguard Officials & Businessmen, not the People

According to information received from Dasan Human Rights Center, union members of at the Ansan car parts plant of a private company, SJM, voted for a strike. Union leaders began a partial strike for four hours a day, starting from July 12, 2012. On July 25, SJM made a contract with a private security company, and, at 11 p.m., the security company informed the Ansan Danwon police station that it would deploy its security guards to the workplace at 6 a.m. on July 27. At 5 p.m. on July 26, SJM informed the labour office that it would impose a lock-out of the Ansan workplace starting from 7 a.m. on July 27.

On July 27, at 4:25 a.m., three people from the company's management and about 300 security guards arrived. They started their operation at around 5 a.m. at both the main and back gates of the workplace. With heavily equipped security guards, they entered into the plant and used extreme violence against the striking workers by throwing machine parts and spraying them with the help of fire extinguishers. It took two hours for the security guards to evacuate striking workers from the workplace, during which time 42 of the workers were injured.

Despite the fact that the police received emergency calls three times (4:55 a.m., 5:01 a.m. and 5:05 a.m.), they failed to take appropriate action, intervene, and

275 Refer to statement in 2012: www.humanrights.asia/news/ahrc-news/AHRC-STM-066-2012

prevent the violence. In addition, the police station received three more calls (5:23 a.m., 5:27 a.m. and 5:27 a.m.) informing that the police stationed at the gate of the company did not take any action while the security guards had used extreme violence against the striking workers.

In addition, at 5:30 a.m., the head of the Ansan Danwon police station, together with three companies of auxiliary police, went to the scene. However, they took no action despite witnessing several workers running out of the company in obviously poor and injured conditions. When questioned, the officer in charge said, "We can intervene on request of the company. We only maintain our force." They then left the scene.[276]

In fact, non-intervention in cases if of such violence by police authorities is an ongoing concern. In 2008, a case regarding the union members' freedom and labour rights at Kiryung Electronic Co. Ltd also showed that the police did not intervene when violent acts against the union members were committed by private security contractors.[277] In 2009, the death of a tenant during a land redevelopment dispute shows how violent acts against residents, who were reluctant to move out, led to a tragic suicide.[278] In the case of SSangyong motor company in 2009, the police operated together with the private security contractors in order to forcibly disperse the workers on strike.[279]

In law, the duty of the police is very clear. According to article 3 of the Police Act, police authorities have a duty to safeguard the physical integrity of nationals, as well as to maintain public peace and order. Article 4 of the Act also states that law enforcement officers have to be impartial and fair while performing their duties. However, authorities have shown a tendency to withdraw when there is a collision between private security workers and civilians, even where adequate protections are essential for the safety of people involved. Worse, in some cases, as shown above, the police authorities intervene to violently cooperate with private security contractors.

Police authorities are hardly held accountable for such acts however.

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276 Refer to urgent appeal in 2012: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-160-2012

277 Refer to urgent appeal in 2008: www.humanrights.asia/news/urgent-appeals/AHRC-UAC-237-2008

278 Refer to statement in 2009: www.humanrights.asia/news/ahrc-news/AHRC-STM-253-2009

279 Refer to statement in 2009: www.humanrights.asia/news/ahrc-news/AHRC-STM-158-2009

Rampant Corruption [280]

Due to increasing international concerns over corruption, well established systems in developed countries often become a model for other countries to adopt. Meanwhile, much research has been made to look into the failure of eradication of corruption by nongovernmental organisations such as Transparency International. In March 2012, the Political and Economic Risk Consultancy, based in Hong Kong, released its annual report, which compared the perception of corruption amongst expatriates doing business in various Asian countries. South Korea has been ranked 11th out of the 16 Asian countries surveyed. It is necessary to question why South Korea has so far failed to eradicate corruption, despite its rapid economic growth and the development of its democracy.

Before the General Election of April 2012, many cases relating to illegal funds to political parties and corruption were reported. When such allegations are reported, it is the duty either of the Election Commission or Anti-Corruption and Civil Rights Commission to refer the allegations to law enforcement agencies for investigation. If a case involves high ranking public officials, it is also dealt with by the prosecution service, who then directs the police investigation.

Does the Prosecution Service investigate any suspect of corruption regardless of their status? The current system is that if a prosecutor is a suspect, then the investigation still remains largely in the hands of the Prosecution Service. In normal practice, a special investigation team consisting of higher ranking prosecutors leads such investigations, in order to garner public confidence in the investigation result. The past cases mentioned below, however, indicate how the prosecution service handles corruption allegations involving higher judicial officials.

In 1997, it was reported that 15 judges received money from 14 lawyers, but the prosecutor made suspension of indictment due to the reason that it was irrelevant to the duty.

In 1999, it was reported that prosecutors received money from lawyers for introduction of clients. The investigation team set up by the Prosecutor General found that 25 prosecutors indeed received money and as a result, six

280 Please refer to statement in 2012: www.humanrights.asia/news/ahrc-news/AHRC-STM-073-2012

prosecutors resigned and seven prosecutors received disciplinary action, but there was no criminal responsibility.

In 2005, the media broadcasted some phone conversations wiretapped by the Korean intelligence agency and the agency's report. After the media broadcasting, one parliamentarian revealed the contents of the voice files which were about the conversation between the deputy of Samsung group and CEO of Joongang daily newspaper. The conversation was the negotiation of the amount of money for high-ranking prosecutors before the 1997 Presidential election. The voice file detailed a specific amount, names of high ranking prosecutors, a former Minister of Justice, and various parliamentarians. It also revealed that it was a continued practice. However, no investigation was conducted. What is more, the parliamentarian revealing this information was indicted by the prosecution service.

In 2006, it was reported that a businessman allegedly provided money or benefits to high ranking police officers, judges, high ranking prosecutors, lawyers, members of parliament and other businessmen. He was charged with violation of the Attorney-at-Law Act and other economic laws and convicted to eight years imprisonment. However, the details relating to corruption were not known and investigation against those various high ranking public officials was not conducted despite criticism.

In 2007, a whistle blower from Samsung who was once a prosecutor, made a statement of conscience that Samsung regularly provided money and various benefits to high ranking prosecutors, including one who later became a Minister of Justice. When criticism arose, a special investigation team was formed. Action on seizure and confiscation of evidence by the prosecution service was delayed and during this time, it was alleged that the evidence was destroyed. But no action by the prosecution service was taken. Securing evidence failed, and, as a result, the case was closed.

In 2009, a Prosecutor General nominee voluntarily gave up his position, in the process of the parliamentary hearing to his appointment, when a scandal involving the borrowing of a large sum of money with unreasonably low interest rate from his acquaintance was exposed, along with other allegations. No investigation was conducted.

In 2010, it was reported by 'PD Notebook' of Munhwa Broadcasting Corporation (MBC) that over 100 prosecutors including a number of senior prosecutors had received good treatment such as food, drinks, gifts, money, and

sex. An investigation team was set up to look into the scandal and later reported its result. According to the report, most prosecutors, including incumbent and former prosecutors indeed received good treatment, but it was not in return for favours. The team only recommended disciplinary actions against 10, replacement of seven and warning against 28 prosecutors. Later on, people mocked the prosecution service as 'sponsored prosecutor.'

Each case invites people's doubts and distrust on the judiciary as a whole. It is believed that this is only the tip of the iceberg and such malpractice is still at large and not yet exposed. Specifically, as long as the investigation power still remains at the prosecution service, only lenient disciplinary action has been applied and no punishment meted. Whereas, the whistle blowers or informers receive threats or intimidation of withdrawal or deterrence of exposure and at the end they are convicted for criminal offences. Following many years of exposure of such malpractice, people in the country now have a general conception that a law applies differently based on the status of a person.

The reason why corruption remains rampant in the country is the narrow definition of corruption. According to article 2 (4) of the Act on the Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Citizens' Rights Commission, which posits corruptions as, "an act of any public official's abusing his/her position or authority or violating Acts and subordinate statutes in connection with his/her duties to seek gains for himself or any third party". One serious problem in this definition is that if the corrupt acts are not in connection with duties, those acts of public officials are not punishable by statute. Thereby, in most of the cases as narrated above, public officials were able to go scot free from criminal liability, leading to impunity. Unless the legal definition is amended, it appears clear that such corruption will continue.

Obligation under International Human Rights Mechanisms

The UN Human Rights Committee (HRC) has issued its jurisprudence in the individual communications. The government has been found to have violated the International Covenant on Civil and Political Rights (ICCPR). These cases are: Sohn v. Republic of Korea[281], Kim v. Republic of Korea[282],

281 CCPR/C/54/D/518/1992
282 CCPR/C/64/D/574/1994

Park V. Republic of Korea[283], Kang v. Republic of Korea[284], Shin v. Republic of Korea[285], Lee v. Republic of Korea[286], Yoon & Choi v. Republic of Korea[287], Jung et al v. Republic of Korea[288] and Jeong et al v. Republic of Korea[289]. There is no domestic mechanism to implement the jurisprudences issued by HRC. The government has, so far, failed to provide effective remedies to the victims, as suggested in the UN HRC's communiqués.

Universal Periodic Review

The second cycle of the Universal Periodic Review (UPR) concerning the human rights situation of the Republic of Korea was held on October 25, 2012.

After the review, the Korean NGO coalition made a joint commentary[290] criticising the failure of the government to improve the human rights situation. It was pointed out that "Korean civil society organisations deeply deplore by the response of the Government during the UPR Session, as it did not show its full commitments to improve human rights situation on the ground. The Government did not share implementation status of laws and policies, and presented statistics selectively that gives only partial information about reality of human rights situation in the country."

As seen and shown by Korean civil society organizations, the government's reply to the recommendations raised by the international community has remained the same as before, implying that the government has no willingness to improve the situation by making the excuse that it requires public consensus, as to the issue of conscientious objectors, or revision or abolition of the National Security Act, in particular. According to the draft report of the working group, one of the replies is as follows:

283 CCPR/C/64/D/628/1995
284 CCPR/C/78/D/878/1999
285 CCPR/C/80/D/926/2000
286 CCPR/C/84/D/1119/2002
287 CCPR/C/88/D/1321-1322/2004
288 CCPR/C/98/D/1593-1603/2007
289 CCPR/C/101/D/1642-1741/2007
290 Refer to the forwarded statement: www.humanrights.asia/news/forwarded-news/AHRC-FST-048-2012

> "54. Given the military confrontation in the Korean Peninsula, the importance of national security has been emphasized. The revision or abolition of the National Security Act would require public consensus. The Government was strictly interpreting and applying the law to prevent the National Security Act from being abused or arbitrarily interpreted. Article 7 of the Act did not apply to those who simply praised or supported the claims of an anti-government organization. Therefore, the law cannot be seen to be violating the fundamentals of academic freedom or freedom of expression. The average number of persons detained for violating the National Security Act each year in the last five years steadily remained at around 20." (*Emphasis added*)

It appears that, when being questioned, representatives of the Korean government might have had to lie to the international community as such. In fact, the case of Mr. Park Jeong-gun, as narrated above, shows complete hypocrisy, when juxtaposed with what the government has explained at the international forum.

In Mr. Park's court proceedings, the prosecution service demanded two years of imprisonment from the Suwon District Court on October 11, 2012. It provided the legal reasoning for weighing of offence by saying, "Mr. Park's behaviour of re-tweeting messages of praising and propagating North Korea should not be seen as a fun and the tweeter has significant level of spreading capacity so that it is highly dangerous to the society if any enemy-benefiting materials are uploaded." It also added, "even though it might have done as a fun, it violates national security act as the messages Mr. Park re-tweeted may be seen as enemy-benefiting materials when people see them for the first time."

Accordingly, on November 21, the Suwon District Court judged that Mr. Park was guilty and received 10 months imprisonment and two years of suspension of execution. According to the media, the court said that "the nature of a crime of the accused is heavy under the current situation where the North Korea's provocation toward the South Korea has continued". The acts of his re-tweeting were interpreted to have been done for enemy-benefiting purpose, which is found in article 7 of the NSA. It turned out that the government presentation to the international community is nothing but a lie, the simple banality of a lie.[291]

291 Refer to statement: www.humanrights.asia/news/ahrc-news/AHRC-STM-225-2012

Recommendations

State institutions can survive only on the basis of people's trust. It means not only the law on paper, but also actual enforcement of the law should occur based on the principle of human rights, democracy, and rule of law. The more this is not done, the more abnormal practice will evolve affecting all at the end. It is time to critically analyse the malpractice of such institutions and open a forum to strengthen the checks and balance among institutions.

From the findings we have had, the Asian Human Rights Commission recommends the government of South Korea to:

- Allow those who are affected by government projects to be entitled to sue, and guarantee the rights of those affected through domestic procedure;

- Stop legal action against those who defend the rights of others as a reprisal;

- Initiate the process of revision or abolition of the National Security Act, particularly that which relates to its restrictions on the freedom of opinion and expression;

- Initiate public discourse toward institutional reforms in the police, prosecution, and judiciary with full participation of those who have been victimised by these institutions;

- Take appropriate action to fight against corruption through reforms, including the amendment of the definition of corruption, making it compatible with international standards, and;

- Initiate public discourse on how to make domestic procedure to implement the jurisprudence of the UN Human Rights Committee and other recommendations.

CHAPTER IX

ASIAN HUMAN RIGHTS COMMISSION

SRI LANKA

SRI LANKA

RAPID FALL INTO DICTATORSHIP

Preamble

In previous annual reports, the Asian Human Rights Commission has documented Sri Lanka's rapid fall into a dictatorship under the executive presidential system. This process has now been completed. There are violations written into the basic structure of its constitution, which was initially based on Sri Lanka being a republic and a democracy, recognizing the separation of powers between the executive, a legislature and judiciary, with the rule of law as its foundation and made on the basis of sovereignty of the people; now the legislature and the judiciary have been subjugated to the executive, through the 1972 and 1978 Constitutions. The executive president has now taken control of the legislature and the judiciary, and thereby reduced these two formerly independent branches of government into branches of the executive. This transformation is so complete that the principles of separation of powers and the rule of law can no longer be operated in any rational manner. The executive president is the sole and the direct controller of every aspect of governance, and all institutions are now expected to operate under his direction and according to his wishes.

The direct result of this transformation is that now no justice is possible in Sri Lanka. Under the structure of governance, functioning under the direction of the executive president, there is no protection for the dignity and liberty of individuals. Individual freedoms are completely suppressed and there is no institutional structure for the protection of such liberties.

Citizenship in Sri Lanka now only refers to one without any of the human rights. Individuals are being made into digits of a system in which the controller is the executive president. No one is outside the arbitrary control of the executive president, including the Chief Justice of Sri Lanka herself. All judges in the time to come will be under the total control of the executive president. The only permissible decisions that the judges of Sri Lanka will be able to make will be those that the executive president allows them to make. Anyone who

even slightly deviates from this path is likely to be removed from his or her position immediately, the same way that chief justice is being dealt with now. Under these circumstances, fundamental human rights, though enshrined in the constitution, are without any effective protection. The protections that arise from Sri Lanka being signatory to international conventions in human rights have now lost significance.

The people of Sri Lanka have been watching these transformations helplessly. The international community is totally oblivious to these transformations. For many decades, the UN Agencies, the powerful countries, and the international community at large, thought the sole problem in Sri Lanka was the ethnic conflict, or the minority issue, and failed to recognize the terrible constitutional crisis that the political system as a whole was facing since 1978. There were those who pointed out this situation in a fuller picture, and this included the Asian Human Rights Commission. However, such warnings were not taken seriously. Now, when the collapse is becoming obvious, there are some expressions of concern, but these have come too late, and even now the recognition of the total transformation of Sri Lanka into a dictatorship is not being grasped at all. The consequence is that the people of Sri Lanka now have to face this situation alone and even someone in as high a position as the Chief Justice of Sri Lanka has no choice but to face the consequences of the total absence of respect for rules. It will be said in the future that at the point when Sri Lankan democracy sank like the Titanic no one came to her rescue.

The most frightening spectacle is the rise of the Ministry of Defense as the total controller of the lives of Sri Lankan citizens. The para-military forces, such as the Special Task Force (STF), the intelligence services, and the military are now intervening into the lives of people in the North and East as well as the people of the South. Not even the prisoners are outside their control and direct intervention. All these forces work outside the law and enjoy total impunity.

The possibility of any credible investigation into violations of rights has come to an end. In the absence of such investigations, the possibility of prosecutions does not exist and, in any case, the prosecutor - that is, the Attorney General's Department - is under the control of the new administration of the executive president. The judiciary has ceased to be a separate branch of governance and is now under the control of the executive president. When even the Chief Justice is without legal protection, there is hardly any need to speculate on the fate of ordinary folk.

Forced disappearances, extrajudicial killings, rampant torture, denial of protection from illegal arrest and illegal detention, the denial of fair trial, the

suppression of freedom of expression, publication, and association, are all entrenched, and electing a government by a free and fair election is no longer a possibility. In short, all the rights enshrined under the UN International Covenant of Civil and Political Rights (ICCPR) are being violated and there is no effective remedy, as required under Article 2 of that Covenant, for any of the rights.

The final culminating issue is the government initiative to impeach the chief justice. This was a direct retaliation to judgments relating to the Divinaguma Bill, which the three judges of a bench presided over by the Chief Justice had held to be in contravention of the constitution. After threats of impeachment, 117 members filed an impeachment motion containing 14 charges, all of which the Chief Justice denied. Later, 11 members, of whom 7 are from the government, have been appointed to be the Parliamentary Select Committee (PSC).

The impeachment procedure is contained in article 107 and select committee resolutions are found in article 78. Many authorities have pointed out that this procedure does not provide for impartial investigation of a tribunal, and therefore violates the basic principles relating to an impeachment of a judge.

Despite such challenges, the impeachment proceedings are continuing. The government approach appears to be that legality or illegality of the impeachment is irrelevant. The executive can request the parliament to commit an act which may be illegal, and on that request, parliament must oblige. The core argument is that whatever the executive orders has effect of law. This is the same position that Otto Adolf Eichmann took about the orders of Hitler.

Throughout the year, the Asian Human Rights Commission has documented all these aspect of the tragedy of Sri Lanka and the loss of human rights protection therein. We set out below some of the statements produced for the illustration of the basic positions stated above.

1. 1. Democracy

1.1. (a) Like the Titanic did Sri Lankan Democracy Sink[292]

A comparison with the Titanic is most appropriate. The Titanic, at the time, was thought of as a wonder ship that could never sink. It was not expected ever

292 An article by Basil Fernando, AHRC-ART-111-2012; November 8, 2012,

to perish. Sri Lanka also was considered a wonder. It was expected to be an example to other countries. It was expected to prove that democratization of a "less developed country" is possible and achievable. In granting adult franchise in 1931, long before many other countries, Lord Donoughmore said, the world will watch the outcome of this. However, what everyone conveniently forgot was that they must be vigilant because of the possibility of hidden icebergs.

One such iceberg emerged in 1978. This was by way of a new constitution. It had been quickly created through the tyranny of a two-third majority that government had in parliament. It was a man-made iceberg that created a constitutional monster called the executive president. However, the country's affluent sections and the intellectuals were happily drinking and singing the praises of open economy and became oblivious to the danger that was looming. Each group was pursuing their petty interests and lost sight of the whole. While the legislature and the judiciary were also having their parties with the executive, the iceberg got ever closer.

And, it finally struck. The final blow was on the judiciary, which was itself enjoying the party. *When and how will the sunken democracy rise again? Those are the only real questions now*. In Indonesia it took over 35 years to undo General Suharto's attack on democracy. Burma, is still struggling to rise again after General Newin's attack on that country's democracy, and there are many other examples which show how difficult it is to rise again.

It is, of course, possible, to sleep walk – by thinking nothing has happened. Many may find ways to get something out of this tragic situation. There are times when vultures too have their festivals.

The truth now is that the ship has sunk.

1.1 (b) Government rejects the Universality of Human Rights[293]

Speaking at the 20th session of the Human Rights Council, under the agenda item on the Special Rapporteur on Health and the Special Rapporteur on the Right to Education, Sri Lanka attacked the United Nations' role in developing international norms and standards relating to human rights. Speaking on the issue of education, the government noted in an official statement:

293 AHRC-STM-127-2012; June 21, 2012

"We would however caution on attaching excessive focus and arbitrary conditionalities on developing norms and standards related to quality education, as many developing countries are as yet grappling with the provision of basic education to their populations. Setting goals which require enormous finances which developing countries are often unable to meet, and placing the onus of responsibility solely on the state will not practically advance the quality of education. Instead, it is suggested that realistic goals be set, which are developed taking in to consideration the particular needs of countries and their respective domestic situations, if we are to successfully improve the quality of education worldwide."

Given that in Sri Lanka, the government has been working to downgrade the school and university education systems; this announcement does not come as a surprise. The implication of this statement is that Sri Lankans are not entitled to the highest standards of education, as the citizens of other countries are. Under the pretext of economic difficulties, the Sri Lankan government wants a different set of educational standards for poorer countries. By this, they mean that the poor deserve a poor quality of education.

The setting of international norms and standards for the protection of human rights is the most important function of the United Nations' human rights agencies. Since the adoption of the Universal Declaration of Human Rights in 1948, this has been the United Nations' human rights agencies most significant project. The covenants and conventions have been developed to ensure a similar entitlement of rights for people in all countries, so that basic rights can be enjoyed by every person.

As such, to attack the making of international norms and standards is to strike at the very heart of the United Nations' human rights project. Sri Lanka's present government has been consistently engaged in this attack since its formation.

In relation to the resolution passed by the United Nations' human rights council on the issue of accountability and reconciliation in Sri Lanka, the thrust of the attack by the Sri Lankan government relates to civil and political rights. The Sri Lankan government is vigorously pursuing a project in which international humanitarian and human rights legal codes will be reformed so as to allow serious violations, thus denying the universality of human rights.

During the mid-twentieth century, Sri Lanka was one of the countries heralded as a model for other developing nations, in light of its progress in establishing

quality social infrastructure, such as that in education. There was good reason to hold Sri Lanka in such high esteem at this time. Indeed, from the early 20th century when Sri Lanka was under colonial rule to the early part of the independence period, achieving a higher quality of life for the people of Sri Lanka was one of the government's central goals.

Today, this pursuit of a higher quality of life is suffering due to the incredible level of neglect. Indeed, Sri Lanka has been reduced to a lawless place. The accusation of lawlessness comes from the highest levels of society. Cynical remarks are frequently made regarding the fact that Sri Lanka has a parliament, but does not have parliamentary democracy, that Sri Lanka has courts but lacks an independent judiciary to preside over these courts, and that Sri Lanka has a rule of law system but is nonetheless becoming a lawless nation.

It is quite clear that this deplorable state of affairs has not come about by accident, but is the product of design; the statement made by the Sri Lankan government at the United Nations is testament to this ideological position. Such government officials believe that it is acceptable to deny the basic standards of life to the people of Sri Lanka, in terms of civil and political rights as well as economic, social and cultural rights. Moreover, they believe that such a viewpoint is justified on the basis of the idea that people in poorer countries cannot have a high standard of life that others in wealthier countries are able to enjoy.

Sri Lanka is a member of the United Nations. When the Sri Lankan government challenges the efforts of UN human rights bodies and officials to define international norms and monitor the upholding of these standards, it is attacking the core of the United Nations' project on human rights. As such, what justification can Sri Lanka have to remain within this assembly of nations, which is primarily devoted to defining universal standards and monitoring their progress?

The universality of human rights is at the heart of the basic philosophy of human rights. In attacking the notion of the universality of human rights, Sri Lanka is attacking the fundamental tenets upon which human rights norms stand. The statement made by the Sri Lankan government at the 20th session is clear evidence of the new direction that the Sri Lankan government is taking to renege from the enterprise that the world became engaged in when the Universal Declaration of Human Rights was enshrined as a basic, global agreement.

1.1 (c) Ministry of Defence

Role of the Defence Secretary in paralysing the criminal investigation system[294]

On 19th June 2012, Sri Lanka's United National Party (UNP) published a statement demanding the resignation of the Secretary of Defence. The UNP claimed that the resignation was warranted in light of the recent deaths of two people at the JVP meeting at Katuwana, Hambantota.

However, a larger issue that should be considered in this case is the paralysis of Sri Lanka's criminal investigation system due to the control exercised by the Secretary of Defence over this system. In light of this control, the UNP, Sri Lanka's leading opposition party, should have demanded this resignation many years ago. Even at this late stage, however, it is a welcome action. We hope that Sri Lanka's paralysed criminal justice system will be revived, at least in part, by this action.

The notion that the Secretary of Defence, and the larger Ministry of Defence have been an obstruction to the criminal justice system is not an exaggeration. In fact, this assertion is an understatement of the actual situation. To illustrate this issue, below is a list of crimes that have not been credibly investigated by state officials. All of these crimes are well-known to the local population.

- The murder of Lasantha Wickaramatunga, which took place in broad daylight, sent reverberations throughout the nation and around the world. Despite the pressure placed on state officials by local citizens and international agencies, a credible investigation has yet to be instigated. Mr. Wickaramatunga was a public rival of the Secretary of Defence, and this is clearly one reason why his rights enshrined in the Sri Lankan Constitution have not been respected. The blatant attempt to silence any enquiries into this murder speaks to the degree to which the Sri Lankan criminal investigation system works at the behest of local politicians.

- The disappearance of Stephen Sunthararaj is another well-known case. Mr. Sunthararaj was well-known for his work with the Centre for Human Rights and Development (CHRD) in documenting cases of child abuse in Jaffna. Mr. Sunthararaj was arrested in 2009 and detained

294 AHRC-STM-125-2012; June 20, 2012

without charge. Two months later, on the order of the Supreme Court, he was released on the grounds that there was no evidence to form his conviction. Later that day, as he was traveling with his wife, his vehicle was stopped on a crowded street by two motorcyclists and a white van. Five men emerged from the van and kidnapped Mr. Suntharaj. Numerous local and international organizations have campaigned for state officials to initiate a credible investigation into this forced disappearance. However, no investigation has been instigated. In December 2009, the Permanent Secretary to the Ministry of Foreign Affairs, Mr. Palitha Kohana, stated in conversation with US Embassy and European Union officials, that Mr. Suntharaj was not forcibly disappeared, but had been arrested by intelligence services. Despite repeated petitions made by his wife as well as by local and international organizations, no information on Mr. Suntharaj's whereabouts have been released.

- The disappearance of Prageeth Eknaligoda is another well-known crime. UN agencies have repeatedly questioned the Sri Lankan government regarding this disappearance. In response, the former Attorney General who represented the Sri Lankan delegation at the 47th session of the UN CAT Committee in November 2011, told committee members that he had credible information that Mr. Eknaligoda had become a refugee in another country. Later, at a Magistrate Court's inquiry, the Attorney General denied having any information on the whereabouts of Mr. Eknaligoda. For two years, numerous mistruths have been published in the local media regarding this case, and a credible investigation has yet to be initiated.

- There have been a number of high-profile abductions which have not been appropriately investigated. In the case of Pramakumar Gunaratnam and Dimuthu Artigala, the quick intervention of the Australian government led to their release. This occurred in spite of the Defence Secretary's claim that no such person had been taken into custody. Despite this embarrassing public scandal, no action was taken against any public officers, nor was a credible investigation initiated into the case. There have been numerous abductions, some which led to the deaths or permanent disappearances of the abducted, which remain un-investigated.

- The case of the murder of Baratha Lakshman Premachandra is one of the most shocking examples in which the criminal justice system has been

> clearly manipulated for political reasons. Duminda De Silva, a known drug dealer who had been involved in numerous financial scandals, received state protection after the murder, whereas the members of Mr. Premachandra's family has been publicly harassed.

This list is not exhaustive. Indeed, the attacks on journalists, press establishments, workers, trade unionists and civil society activists, which have not been investigated, are numerous. The fact that Sri Lanka's criminal investigation units operate under political control is a publicly known fact, and has been criticized by numerous local organizations and international agencies. It is naive to blame the police for the failures of the criminal justice system. The police are in the grip of a political machine that does not give them the freedom required to fulfil their professional duties.

A nation cannot operate effectively if its criminal investigation system is hampered by political agendas. When a criminal investigation system is paralysed in this manner, every citizen of the nation is in danger. Moreover, local businesses are also at risk. As such, there is a high level of insecurity in homes, businesses and establishments across the nation. When people are aware that they do not have the protection of the rights which have been enshrined in Sri Lanka's Constitution, they live in fear that they will become the next victim of an arbitrary political agenda.

Given the circumstances, the UNP's call for the resignation of the Defence Secretary is certainly justified. Ironically, however, the resignation of a high-ranking government official is a fundamental requirement for national security. When the rule of law is under threat, there is no greater threat to national security than the paralysis of the criminal investigation system.

What follows is UNP's statement, in full, regarding the resignation:

The UNP statement

> "Police spokesperson SP Ajith Rohana accepted that two persons including a woman died due to an unarmed gang shooting at a Janatha Vimukthi Peramuna (JVP) local meeting held in Katuwana in the Hambantota district on 15 June (2012). He said, a group of unidentified men on motorcycles had opened fire at the meeting killing and injuring people. Police sources said, around 100 JVP supporters had attended the meeting and the gunmen had arrived on 03 motorcycles.

We stress here, any political party, whether in the government or in the opposition has the same equal right to participate in democratic political activities without restrictions, intimidations and threats of any sorts. Therefore, it is the undisputed and unchallenged responsibility of this government to allow such democratic political activity, in any part of the country. The responsibility of this armed thuggery in breaking up a democratic political meeting at the cost of 02 lives and injuries to many others, therefore has to be totally borne by the Rajapaksa regime, more so, because it is their family bastion of political power, the shooting had taken place.

It is also no secret in Hambantota that an armed gang in this area is operating in the open with T-56 riffles in hand and the people in the area claim, the police are ineffective as this armed gang is being sponsored by the Rajapaksas. It was in this area that a bus carrying UNP supporters was shot at during the 2010 January presidential elections and a woman was killed. We are yet to hear of the outcome of the investigations into that killing, 02 years and 06 months after the shooting.

As with all other extra judicial killings, abductions, involuntary disappearances and killing of protesters, we don't have any reason to believe, there will be independent investigations and a proper judicial process initiated, in this double murder. Such is the efficiency of this Secretary to the Defence Ministry, who brags that crime in Sri Lanka has not increased as opposition politicians' claim.

Yet as the opposition we firmly believe, a Secretary who takes pride in being the almighty of defence and enforcement of law and order, having the police department too under his administration, is totally responsible for all custodial killings in this country, serious increase in sexual abuse of children and for 1,847 cases of rape and incest, 103 cases of extortions and 877 cases of abductions in the year 2010 as reported by the Police and for 471 cases of rape and incest, 18 cases of extortions and 235 cases of abductions during the first 03 months of the year 2011 that comes within a total of 12,281 crimes of every sort during those 03 months.

Let's also not forget that it is under this same Secretary to the Ministry of Defence that for the first time we heard, a group of police personnel taking into contract killing and also an army officer getting into the business of killing for money. It is also under this Secretary to the Ministry of Defence that 02 police stations were completely mobbed by

villagers for custodial killing of youth.

This country, cannot afford to allow such an inefficient, non-administrative service person to handle a serious and important ministry as its Secretary, and allow the country to go chaotic and into anarchy. People of this country, whatever their political affiliations cannot live with such unsolved crime, dictated by politically backed armed thugs under a Secretary, who is not even willing to accept he is a total failure as a State officer.

We therefore don't believe even this shooting and killing at Katuwana will be independently investigated and solved under his administration. We therefore demand that the Secretary to the Ministry of Defence be immediately removed and the position be vested with a career administrator, as the first step in restoring sanity in law enforcement.

Mangala Samaraweera MP
Matara District
Convenor, Media Committee, UNP"

1.1 (d) Rise of Security Apparatus & Decline of the Criminal Justice System [295]

A few decades ago, Sri Lanka's criminal justice system was organised on the basis of the Penal Code, the Criminal Procedure Code and the departmental orders of the police. The Penal Code defines crime and lays down penalties for each particular crime. New crimes were identified or defined either through amendment to the Penal Code or through separate statues. The Criminal Procedure Code describes basic protocol, which mechanisms in the justice and law enforcement institutions should comply with, and provides proper processes along which those in authority must operate. This includes how complaints are to be taken down, how to, and who should, conduct the investigations into crime, how the findings of the investigations are to be submitted to the Attorney-General, how arrests should be made, how indictments are to be made by the Attorney-General, how the indictments are to be filed in courts, how the trial process is to be carried out and how bail and appeals are to be made.

295 An article by Basil Fernando, August 2, 2012; COLOMBO TELEGRAPH

The Criminal Procedure Code also lays down the manner in which people are to be summoned to courts, and how to deal with persons who evade the summons, as well as many other matters incidental to the investigation, prosecution, trial, appeal, sentencing and punishment of an accused in accordance with accepted legal principles within the country. This system that had been gradually developed over centuries was supported, implemented and enforced by the police departmental orders, and guaranteed – to large extent – fairness through equality before the law and equality of protection by the law.

The departmental orders of the police lay down the manner in which police, who are to play the key role in the investigations into crime, are to carry out their obligations. These orders circumscribe the legal mandate of police officers and prescribe acceptable ways of recording complaints, making arrests, detaining a person, interrogating suspects and witnesses, maintaining records and proper documentation of all proceedings, the systematic archival of evidence and case files to the Attorney-General and pursuing crimes their order permits them to prosecute. The obligations of police officers are described in minute detail in these departmental orders. Officers-in-charge of police stations have been tasked with the critical role of personally demonstrating, supervising, and enforcing the proper conduct of police officers, and of investigations, as well as with the maintenance of discipline within the police station. Assistant Superintendents of Police have been, in turn, mandated to monitor the conduct of all police stations under their charge. In this manner, a strict hierarchy and chain of command was built and strengthened through dense networks, which demanded accountability and a certain amount of transparency. This system provided feedback mechanisms with which rogue actors and misconduct could be quickly checked by superiors and peers. This possibility in turn encouraged self-regulation by those in authority and inspired trust and confidence among the general populace.

The Penal Code, Criminal Procedure Code, and the Departmental Orders together enshrine scientific methodologies for investigation into crime. Centuries of vigorous debates in the European context gave rise to the rules set out in these various legal documents. The norms of equality of all before the law, justice and protection for all by the law, led to the gradual abandonment of the systems that prevailed in Europe before the 17th century. This period came to be known as the period of Enlightenment. The primary concern during this period was the development of a system of governance based on models of rationality, empiricism and science, and on the ideal of utilitarianism. This system attempted to balance the interests of many, often competing, parties, and to design rules to uphold, protect and enforce principles of justice.

The criminal justice system was based on the acceptance of presumption of innocence before being proven guilty, and the placement of the burden of proof on state agencies, particularly investigators and prosecutors. These agencies were charged with bringing before the court adequate information and evidence which would conclusively link the suspect with the crime committed. Guilt was to be imputed through concrete evidence alone, the logical interpretation of which should prove beyond shadow of a doubt that the accused was responsible before any verdict or sentence is dealt.

A Thing of the Past

The system described above is today, on the whole, a thing of the past. Since 1978, the adoption of the new Constitution of Sri Lanka has replaced this old conception of criminal justice. Increasingly, state and public security laws have replaced the old system of criminal justice and its belief in due process and the principles of equity, equality, and justice. These national security laws and acts suspend scientific rules and processes that would normally apply in the event a crime is committed. This is equivalent to a suspension of justice, equality and equity in law enforcement and the judicial system. For over 40 years since the counterinsurgency of 1971, the rules and recommendations composing the Penal Code have been systematically neglected or violated, rendering irrelevant considerations underlying the rule of law, i.e. presumption of innocence and burden of (adequate and scientifically obtained / interpreted) proof on the prosecuting agencies. Newly defined transgressions are often accorded disproportionately severe punishments and new legal statutes permit the suspension of due process for arrests and detentions. This undermines every principle upon which the old system of criminal justice was built.

In the earlier system of criminal justice, two departmental heads played critical roles. The Inspector General of Police directed and supervised the policing and law enforcement institutions, while the Attorney-General ran the Attorney-General's Office, which exercised the prosecutors function. Both department heads were expected to ensure that the entire system of investigations and the prosecutions are conducted within that normative framework delineated by the rules comprising the Penal Code and the Criminal Procedure Code. These department heads enjoyed the privileges, power, and respect attendant to high office.

Enter, the Ministry of Defence

Yet, national security laws have hollowed out the portfolios of the Inspector

General of Police and the Attorney-General, by placing greater power in the hands of the Ministry of Defence. The Secretary of Defence has acquired unprecedented powers through national security laws such as the 1979 Prevention of Terrorism Act (PTA) and various Emergency Regulations (ERs) since the 1971 Janatha Vimukthi Perumuna (JVP) insurgency. ERs can suspend, amend or override any legislation. Such powers threaten the long cherished principles of criminal justice. Some of the ERs cleared the way for causing forced disappearances on a large scale.

There has also been a proliferation of power amongst other agencies closely connected with the Sri Lankan Ministry of Defence. The intelligence service, whose earlier mandate had been strictly and clearly limited, has an expanded purview that includes most sectors of society, where they play supervisory roles. There are few, if any, restrictions to their power akin to the boundaries set to the ambit of the police according to their departmental orders. Intelligence service operations follow unwritten guidelines very vaguely and generally understood within the Ministry of Defence and amongst affiliates. These groups remain unaccountable to the courts and the public. They often abuse even the chain of command and communication established by the government. Yet their actions are often overlooked, condoned, or justified by the ruling parties as essential to "national security".

Paramilitary groups such as the Special Task Force, and others of an even more clandestine nature, are also intentionally kept outside public scrutiny and the control of an elected parliament. The nature of these agencies and their work is often secret. In the earlier criminal justice system, it was compulsory for police officers to identify themselves in public through donning a uniform, carrying badges, and presenting various identification numbers upon request. They worked openly in society and had to clearly explain their activities in accordance with well-established rules and procedures. Law enforcement agents today have no such organisational obligation; the public are often unaware of the presence of police, who may dress in plain clothes on duty, do not present badges, or identification numbers upon request, and do not conduct arrests by due process (informing the suspect of the charges being brought against him / her or carrying a memo authorising the arrest, for instance).

Agencies charged with national security have adopted methodologies which would have been considered completely unacceptable within the earlier criminal justice system. Under the excuse of protecting "national security", the officers may themselves engage in criminal, barbaric, and morally reprehensible activities such as abducting, torturing, falsely charging, or extrajudicial killing

of persons. Victims are often dehumanised through rhetoric that terms them animals, traitors, or enemies of the state. Instead of open arrest, persons may be suddenly accosted, brought into detention in "unusual" places or forcibly "disappeared" or killed in extrajudicial operations. These new practices not only substitute old processes but replace the fundamental principles upon which the old processes were constructed. Such executive impunity has never before been allowed to be exercised, even by police in the earlier criminal justice system. And these new practices have been put to use on a large scale. These are not hiccups in the earlier criminal justice system – they are manifestations of a radical departure from the criminal justice approach to a rabid national security approach.

Radical Departure from Criminal Justice

The corpus of complaints about the complete disregard for all provisions of law dealing with crime is so vast; it is no exaggeration to say that today the Penal Code, the Criminal Procedure Code, and the Departmental Orders of the police are regarded as matters no longer vital to the functioning of criminal justice in Sri Lanka. The process by which this entire system has been displaced is described in popular parlance. Much has also been written and spoken about the politicisation and militarisation of judicial processes. What in essence this means is the displacement and replacement of the command responsibility, which comes down from the Inspector General of Police to the lowest ranking police officer, with a new structure wherein there is direct contact between politicians and police officers of all ranks without reference to their superiors. Hierarchy, accountability, checks and balances have lost much of their meaning and the superior officers themselves seem to have accepted this erosion of their authority and the corrosion of due process as *fait accompli*. The policing system was never intended to be run by power-holders outside the system. When such intrusions and impositions occur, the integrity, independence, impartiality, and credibility of the entire process is compromised.

This is not an exhaustive exposition of the security apparatus of Sri Lanka. There are many texts that provide analyses of the contemporary political and judicial administration of Sri Lanka. Instead, this merely stresses the transformation of a society where even the phantom of criminal justice no longer haunts the structures now filled by actors who aspire only to the semblance of order and justice while themselves holding the reins of power and acting with impunity. The public has a right to know the extent to which Sri

Lanka has changed and the impact this has had and continues to have on their lives. The successful erasure of the importance of justice in public awareness and the secrecy with which political responsibilities of a regime are held in Sri Lanka signify the pressing need for understanding and local debate to be generated.

1.1 (e) Why Lanka Abandons Court-centered, Law-based system of Justice[296]

On the 16th Kahawatte Murder, Violence in Galle, & Impeachment Petition

The 16th murder of a woman took place at Kahawatte recently. The woman is said to be 65 years old and was staying alone in the house until her son returned, when she was brutally murdered. Her body was found in the parlour of the house when the son returned. People of Kahawatte have been under the threat of these kinds of mysterious murders. The police from time to time claimed that they have solved the problem and now the situation is under control. However, the credibility of such statements is then tested by new events, such as this murder. It was only three months before this fatal attack that a mother and a daughter were brutally murdered in their own house.

There are also the incidents in Galle, which are gruesome and bewildering. One man was attacked, one of his arms and a foot was cut off, and then he was stabbed in the back and left on the road. A video published on the internet showed this gruesome and sad sight. It is said that he lay there for quite some time before an ambulance arrived to take him to the hospital. The video footage shows that while there were many people nearby, no one dared to come near him, or to offer any kind of assistance. It was reported later that this man died due to his injuries. According to reports, some persons came from behind him, in a van, while he was travelling on his motorcycle and knocked him down. And then, after he fell, he was cut and stabbed. Two policemen watched the brutal attack and his prolonged struggles as he bled out, but they did not intervene.

It was not long after that the next report came, about four persons whose hands were tied behind their backs, blindfolded, and shot in the head and left by the wayside at Poddala in Galle. The initial police report was that these were the

296 An article by Basil Fernando, AHRC-ART-109-2012, November 6, 2012

culprits who had caused the death of the man mentioned above and that they belong to rival gangs. The story was that another gang, who were supporters of the dead man, had killed these four in revenge. However, the stories by the relatives of the four dead persons revealed that the four persons were taken in a police vehicle and it was that they were later found dead. One of the persons killed is said to be a navy officer, who was on holiday. The four murders suggest a police killing rather than a gang murder.

These two incidents at Kahawatte and Galle point to a situation where, in the law enforcement, capacity of the police has reached almost a zero point throughout the country, an observation that almost everyone has been making for quite some time now. Often, what follows a serious crime is some gesture by the police about taking action and then a report that the matter has been resolved. However, instances where there are serious investigations are by now rather rare occurrences. The internal contradictions within the policing system are so many that the type of capacity which existed within the police in an earlier period is now almost lost. In fact, there is not even an expectation that the police will do a proper investigation or, to be more exact, that the police will be allowed to do a proper investigation.

When things are as bad as that, there is hardly any initiative to encourage the police capacity for law enforcement within the framework of rule of law. The initiatives that have come forward, as shown by the newly proposed Criminal Procedure Amendment Bill, are to make the police more distanced from judicial control and to adopt the tactic of more brutal methods of dealing with some criminals (while leaving many others to go their way, free). In this situation, the killings of the four persons are no surprise. There is a mentality that is promoted to adopt such methods in dealing with crimes.

It was quite some time back that there were police working within the framework of rule of law, guided by the Penal Code, Criminal Procedure Code and their own police departmental orders, and led by disciplined officers of higher ranks who engaged in crime control. These officers knew that they were directly responsible to the courts and that everything they did had to be reported to the courts. The system they followed was a law-based system, which had at its center the courts' control exercised by judicial officers. They understood their role as part of a judicial system of criminal justice.

All this changed, particularly after 1971. Under the guise of emergency, the police were given extra-legal powers and were used to do extrajudicial activities. The most manifest activity of the time was abductions, which were followed by

disappearances. It was a license to kill and to dispose of bodies, a power given to the police and the armed forces, which changed the character of the policing system in Sri Lanka. It changed from a law-based, judicially-controlled criminal justice system into a system controlled by the Ministry of Defense, and guided by emergency laws, anti-terrorism laws, or directives that have no legal basis at all. Police officers became less and less accountable to the judicial system. The powers of judges were limited by emergency and other regulations. A tacit understanding developed that the things that judges could control were quite limited and that officers could follow orders from somewhere else.

This system has lasted from 1971 up to now. The times of tensions, sometimes called 'a time of war', distance the judicial control of the police and other law enforcement agencies, and they became a law unto themselves. The statement of the then Deputy Minister of Defense, Ranjan Wijeratna, in parliament, that "these things cannot be done according to the law," became the unwritten law. All the governing parties led this to develop into a system outside the normal law and, more and more, the Ministry of Defense became the controller of "justice", and the courts had less and less to do in controlling the process. In fact, the words "the due process of law" began to be forgotten and today hardly any police officer uses or even understands these terms.

Gradually, a mentality developed among the politicians that a system of justice based on law and control by the judiciary is rather an absolute affair and that they could handle these matters on their own rather than through the judges. There were some developments in the constitutional setup itself which undermined the judiciary. Both the 1972 Constitution and the 1978 Constitution displaced the idea of supremacy of law in favour of the supremacy of politicians.

It is this distancing of the system of crime control from the legal system and from judicial oversight that has brought about this situation and the failure to control crimes. However, the politicians do not understand the problem in that way. The politicians think that they should take over the matter themselves and keep the judiciary out even more to make things efficient. The Ministry of Defense is considered the center of efficiency, while the judiciary and the law are considered obstacles to the workings of the Ministry of Defense.

Even the Lessons Learnt and Reconciliation Commission (LLRC) was able to see these problems and one of their recommendations was to separate the control of police from the Ministry of Defense. However, like everything else, such recommendations were useful only to create a deception at the

international forums and these things have no relevance to real life issues. The real life issues are dealt with by the same philosophy, "these things cannot be done according to the law".

The present attack on the judiciary, which has manifested through series of events culminating in the impeachment petition, emerges from this very mentality of considering the law and the judiciary as irrelevant or even as obstacles to the way the politicians want to do things. The writers, on behalf of the government, directly argue (as in Divaina 5th November) and seriously advise the opposition not to oppose the impeachment petition, but, in fact, to support it because subjugating judges would also benefit them when, in some future date, they come to power. The judiciary is seen as an obstacle to the efficiency of the executive. When the BBC questioned some government MPs who had gone to the speaker's house to submit the impeachment petition as to why they are doing that, their reply was the judiciary is doing an injustice to the executive and to the legislature by obstructing what they are trying to do. They saw the judicial interpretation of law as an obstacle on their way. They even turn it into an injustice done by the judiciary. Their question was that if the judiciary is obstructing us (meaning the legislature and executive) do we not have a remedy? Their own answer was yes, they had a remedy, and that was the impeachment.

Thus, impeachment was seen as a way to stop a judicial role in interpreting law. In fact, the writer who wrote the government point of view to the Divaina states that he has already demonstrated in his article that leaders in India and the United States do not allow judges to behave in this way (categorically stating the falsehood that judicial review isn't tolerated in these countries). This is the thinking behind the petition for impeachment.

Sri Lanka has arrived at a point where the law and the judiciary are regarded as obstacles to progress. Executive action alone is seen as the real government. The judiciary is no longer seen as a branch of the government – definitely not an independent branch. If the judiciary wants to survive within this scheme, it is forced become a branch of the executive instead. That is how far Sri Lanka has derailed from the path of law and the path of administration of law under judicial control.

The result is what we saw at Kahawatte and Galle. These are not exceptional places. Everywhere there is lawlessness and the resulting chaos. And no one can find a solution to the situation. This is no surprise. When the path of law within an administration of justice, authoritatively interpreted by judiciary,

is lost, then justice is lost all together. Justice is fairness. When justice is lost, fairness disappears. When fairness disappears, there are brutal forms of competition. When the competition degenerates by the actions of rulers, then violence and chaos is the result.

This is what Sri Lankans are experiencing at Kahawatte, Galle and Hultsdorf.

1.2 Independent of Judiciary in Peril

1.2 (a) Independence without Justice [297]

Statement for the Commemoration of the Independence of Sri Lanka

The 64th commemoration of Sri Lanka's independence has taken place at the time when the country's justice system is in a hopeless crisis. The abuse of the judicial process for political reasons has created doubts about the independence of the judiciary itself. The government shows no will to respect the rule of law. The police and the Attorney General's Department are immersed in problems that seem to defy any kind of genuine improvement. Where is justice to be found? This is the question that everyone is asking, but no one is able to provide a credible answer.

Almost every day cases come before the courts which reinforces the perception of manipulation in the process of justice. Shocking fabrication of charges, quite obviously to achieve petty political revenge, comes to the notice of the people all the time. On the other hand the manipulation of criminal investigations as well as the filing of charges with the view to exonerate those who are in politically favourable positions is also quite common. Whether we look into the cases filed against Sarath Fonseka, who perhaps is treated as the most prominent opponent of the present government, or cases like those relating to the murder of Baratha Lahksman Premachandra, the obvious forms of blatant manipulation of justice is quite manifest. Does anyone believe that there are genuine reasons for the failure to find the murders of Lasantha Wickrematunge and those responsible for the disappearance of Prageeth Ekenaligoda, Lalith Kumar Weeraraj, and Kugan Muruganathan, and those behind the white van abductions?

297 AHRC-STM-023-2012; February 03, 2012.

The government cynically ignores all criticism relating to the undermining of justice in prominent cases, as well as in much less prominent cases faced by the ordinary citizens throughout the country at every police station and in every court. Despite consistent criticism in this regard, the government neither offers any apology nor makes any promises of improvement.

When justice is in such peril does independence make any sense? Freedom and justice are inseparable. Where justice is undermined, freedom is also undermined. A political system that puts its justice system in peril, necessarily, creates a messy situation, not only for the people, but also for itself. Good governance without justice is impossible.

The disarray that exists within the policing system, the Attorney General's Department, and the judicial system itself arises from structural reasons. The reasons are to be found within the country's constitution. This constitution, having placed the executive above the law, has destroyed the functioning of the country's legal system and the administration of justice. The ruling political parties have, while in opposition, promised to abolish this constitutional system, to create one based on the rule of law and democracy. This has been everyone's promise, and the betrayal of this promise has resulted in the betrayal of the very notions of independence.

Today the government is not in a position to even ensure security on the roads. Discipline on the roads is an indicator of the discipline within a country. The absence of discipline in the country though decried by every politician defies any solution. When the system of law and justice is in crisis there is hardly a possibility for creating discipline in any of the country's institutions.

Besides this, delays in justice remain a killer disease. The manner in which delays affect justice is simply maddening. A single trial may take five or six years and to add to the chaos many state counsels are transferred during the trial. Any cunning defence lawyer may win even a foolproof case by relying on delays for an acquittal. There are many factors that contribute to these delays. The factor that hangs on justice like a noose is the Government's Analyst Department. All attempts to cause even limited changes to this accursed department have failed. The present government does not even care to raise a finger against this department.

The government also resists the passing of a witness protection law. Perhaps, there may be those who think that it is unsafe to protect witnesses. The killing and intimidation of witnesses is a game that is allowed and even encouraged.

The open sabotage of justice, as it is happening now, poses a great threat to the morale of the people. A political system that demoralizes the people is inviting peril to itself and the nation.

The government remains oblivious of this lawless and messy situation. Equally, the opposition political parties are also oblivious to this crisis. Politics has become disconnected from the real problems that the people and the system of administration face.

What sense does celebrating independence make in such circumstances. The only sensible decision that any responsible citizen can make is to stay away from any such celebrations. Making a firm commitment to fight for a change in this situation is the need of the hour. It is the citizens who would have to begin the process of making that change. Demands for drastic reforms in the systems of the administration of justice is the only way to respond to the prevailing impasse

1.2 (b) Attacks on the Court

Time for judges and lawyers to fight back [298]

According to reports received, a group of criminals allegedly sponsored by a government minister stoned the High Court and the Magistrate Court of Manner in a coordinated attack last week. A very tense situation has developed. According to information received, a mobile fishing hut was attacked by a group of criminals. The Magistrate directed the police to apprehend the culprits. Soon after, a government minister contacted the Magistrate hoping to discourage him from placing legal sanctions on the perpetrators of the crime. Despite his attempts, the Magistrate insisted that the legally proscribed court order be carried out. It is believed that the attack occurred in response to this decision made by the Magistrate.

The incident comes as no surprise. Political attacks on courts, both physical and verbal, have been occurring for many years now. When the supporters of ruling parties are suspects to crimes, politicians resist the attempts of courts to investigate cases and maintain the rule of law. As such, courts are forced to subordinate their legal duties to the personal and professional priorities of politicians. Past parliaments have made limited attempts to counteract this

298 Originally published as AHRC-STM-144-2012; July 19, 2012

Clash between fishermen of Uppukulam & Vedithaltivu in Mannar left several injured, July 18. [AHRC Photo]

politicization, such as with the passing of the 17th Amendment. However, this law was later negated by the 18th Amendment to the Constitution.

The recent incidents involving Julampitiye Amare expose the depth to which political interference has become embedded in Sri Lanka's legal system. Indeed, a man allegedly accused of 24 murders and 15 arson attacks as well as several other crimes, is moving freely, despite the fact that courts have issued numerous warrants for his arrest. This case is one of thousands in which legal process has been flouted due to political influence.

It is time for judges and lawyers to collaborate and protect the law, the judicial process and each other. If they do not fight back, the downward spiral that the legal system is currently in will continue and ultimately, Sri Lanka's rule of law system will perish.

The Gang Rape of a Girl by 20 men

The news of the gang rape of a 13-year old girl by 20 men in Tangalle has been reported by several news channels, sending shock waves across the region. An investigation is currently underway, and several of the suspects have been arrested. Recently however, the victim's mother has filed a complaint with the local police station regarding death threats that her family has received from the perpetrators of this heinous crime. The family has been told that once the main suspect is released, he will come to the victims' house with his family and neighbours and kill the whole family. The main suspect is an alliance member of the Tangalle Municipal Council.

Despite the rise in complaints of sexual violence, government officials have repeatedly denied that sexual violence is an issue that must be paid attention to. One government minister publicly stated that he did not believe the crimes had increased, just the number of complaints filed. This, he believes, is sufficient reason not to devote more resources to countering sexual violence. There is little public faith in the credibility of the country's policing system and its capacity to investigate crime. Such repeated denials of criminal epidemics and institutional failures are major contributing factors to the spread of lawlessness in Sri Lanka. Moreover, the governments' inaction is unsurprising since the communications portal through which the government expresses opinions is the Ministry of Defence. The Ministry of Defence is militaristic in its philosophies. Since the Ministry of Defence is a highly politicized agency, it cannot be expected to play an effective role in deterring crime. At this point, there are serious threats to Sri Lanka's legal processes. The only people who can remedy this situation are lawyers and judges. If there is no pushback from the Bar Association of Sri Lanka and the Judges Association of Sri Lanka, nothing will be able to stop the downward spiral that Sri Lanka's rule of law system is in.

1.2 (c) Boycott of the Courts by Judges and Lawyers [299]

The attack on the Magistrate's Court and the High Court in Mannar, allegedly instigated by a powerful government minister, has led to a resolve by law court judges and lawyers to boycott all courts today. The Asian Human Rights Commission welcomes this decision as a very important step in the fight back against the serious undermining of the courts, the judicial independence, the role of lawyers and the very relevance of the law itself in Sri Lanka by the government for a considerable period of time. The only way forward is to fight back vigorously otherwise legal institutions face the threat of extinction and the legal profession cornering itself into a position of irrelevance.

The Judicial Officers Association has resolved that:

(a) They will issue a press release on this
(b) Not to work on one day
(c) Move for contempt of court against the Minister

The Executive Committee of the Bar Association is meeting at 6.30 pm today and is likely to adopt the same decisions as the Judicial Officers Association. The government is moving fast to prevent any actions by judges and lawyers on

299 AHRC-STM-145-2012; July 20, 2012

this and particularly to prevent any contempt of court case against the Minister. The judges have also met the Chief Justice for her advice, but information is not yet available.

The incident leading to this decision is as follows: a group of criminals allegedly sponsored by a government minister stoned the High Court and the Magistrate's Court of Mannar in a coordinated attack yesterday. A very tense situation is reported to be taking place.

According to the information we have received, a mobile fishing hut was attacked by a group of criminals and the Magistrate directed the police to apprehend the culprits. Soon after, a government minister contacted the Magistrate hoping to discourage him from placing legal sanctions on the perpetrators of the crime. Despite his attempts, the Magistrate insisted that the legally proscribed court order be carried out. It is believed that the attack occurred in response to this decision made by the Magistrate.

The crisis judges, lawyers and the very legal system itself are facing now is the result of a prolonged crisis beginning, particularly with the 1978 Constitution of Sri Lanka. The very purpose of this Constitution was to undermine the parliament and the judiciary and to place the executive president above the law. As a result of this Constitution all the public institutions such as the civil service, the police, the office of the Election Commissioner, the Attorney General's Department and other commissions such as the Human Rights Commission and the National Police Commission have lost their independence.

Today the situation has come to a point where the functioning of the judiciary has become almost impossible. The judges complain of warrants not being executed by the police. The police in turn complain of being brought under the thumbs of politicians and therefore being unable to enforce the law. The people, in turn, complain that there is complicity between the police and the criminals and the criminals and the politicians.

As a consequence of the judiciary being undermined the legal profession has lost much of its fighting capacity and relevance. Many lawyers openly complain of how their role is being increasingly ignored in the legal process.

Under these circumstances a fight by the judges and lawyers is long overdue. In fact, there were instances when the lower court judges came close to striking and due to unfortunate miscalculations this decision was avoided.

Once such occasion was in the 1980's, when stones were thrown at some of the houses of Supreme Court judges. On that occasion it was reported that the lower court judges met and came to a unanimous decision to strike in protest. Unfortunately, one well meaning senior judge discouraged this action stating that it may not be appropriate for judges to go on strike and that the Supreme Court would look after its own problem. Though well meaning, this senior judge failed to understand the political importance of protest when faced with direct assaults on the judiciary by the executive. Had this strike taken place the history of Sri Lanka in general and particularly the situation of the independence of the judiciary and the legal profession would have been different to what it is now. The failure to act, when the action was imperative, has led to the present day crisis of the law in Sri Lanka.

The Asian Human Rights Commission has drawn attention to the crisis in the law in Sri Lanka for several years now. For further information please refer to the publications: Gyges' Ring - The 1978 Constitution of Sri Lanka and Sri Lanka-Impunity, Criminal Justice & Human Rights[300]. The AHRC hopes that even at this late stage the judges and lawyers will fight back to save the legal system, and that civil society and the media will support them.

1.2 (d) Will Bar Association Defend the Profession & Judicial Independence[301]

The Sunday Times reported that the Bar Association of Sri Lanka (BASL) has decided to intervene in the contempt of court case filed by seven senior lawyers against Minister Rishad Bathuideen over the threats he is alleged to have made to the Mannar Magistrate. Earlier, these seven lawyers, Geoffrey Alagaratnam PC, Sunil Cooray, Lal Wijeyanayake, Chanrapala Kumarage, E.C. Feldano, Nalini Kamalika Manatunga and A.S.M. Perera, initiated contempt of court proceedings against the minister in the Court of Appeal. The Court of Appeal Judge, W.L. Ranjith Silva on Thursday issued a rule on Minister Bathuideen to appear in court on September 5 to show cause as to why he should not be punished for contempt of court for allegedly threatening the Mannar magistrate.

The AHRC welcomes the intervention of the BASL and at the same time repeats the call it has made on several occasions in previous years for the BASL

300 www.humanrights.asia/resources/books/AHRC-PUB-001-2010

301 AHRC-STM-156-2012; August 2, 2012

to lead the fight against the virtual collapse of the rule of law in Sri Lanka and the threat this poses to the judiciary as well as to the very survival of the legal profession.

There have been no arrests following the attack on the Mannar courts. Nor has the government taken any action to deal with the minister who is alleged to have been behind the threat to the Magistrate and the attack on the courts.

The lawyers and judges, who boycotted all the courts in protest against these attacks, have demonstrated the utter frustration felt by all of them as well as the people of Sri Lanka over the serious crisis of law which affects every aspect of their lives as well as their properties. The basic rights that the Magna Carta assured for the people, the right to protection of personal liberties and property has been under threat in Sri Lanka for several years now. This is perhaps the first occasion on which the judges and the lawyers have spontaneously reacted by way of a boycott of courts.

In fact, this should have happened quite a long time ago. It is reported that when, under the UNP regime stones were thrown at the Supreme Court judges, judges of the lower courts discussed the issue of boycotting courts in protest. Unfortunately that was prevented due to ill advice. However, had the judges and lawyers acted strongly at that stage the present impasse would not have happened.

For years there have been many occasions when much more decisive intervention by the judges and lawyers to defend their own independence required a serious understanding of the situation and a well thought out strategy to retaliate against this threat to their very existence. Perhaps the former Chief Justice, Neville Samarakoon, who did realise how his former friend, President J.R. Jayewardene was undermining him and the whole judiciary may have done better by resigning or taking some dramatic stance rather than merely confining his protest to some strong words.

In the period that followed much more leadership ability to defend the very system of the judiciary should have come from the country's senior judges. In India the Supreme Court clearly comprehended the authoritarian ambitions of Indira Gandhi and played a decisive role in defeating her schemes, thus protecting the country's rule of law and democratic system. The Supreme Court of India also defeated the attempt by the right wing BJP government in their attempt to reform the basic structure of the Indian Constitution. The court bravely held that no government has the authority to undermine the basic structure of democracy as enshrined in the Indian Constitution.

In Sri Lanka, President Jayewardene did undermine the basic structure of the country's democracy through the 1978 Constitution. What became of Sri Lanka thereafter has its ultimate root in this altering of the country's basic constitutional structure and replacing it with a basic structure that is undemocratic and which undermines the rule of law.

There were times when even the Chief Justices collaborated with the executive presidents to further undermine the very basis of the existence of the law in Sri Lanka. The dark period under the former Chief Justice, Sarath Silva, who acted to fulfill the ambitions of the then executive president, Chandrika Kumaratunga has left insurmountable obstacles for the recovery of the system of the rule of law and democracy. His fallout with incumbent executive president did not contribute in any way to undo the enormous damage that was done to the basic structure of the Sri Lankan democratic system.

The deformation of the country's basic structure was brought to even higher levels with the adoption of the 18th Amendment to the Constitution by the government of Mahinda Rajapakse. So many actions have thereafter been taken to complete the course of erasing whatever might remain of the democratic tradition. The virtual subordination of the country to a public security system with no respect for personal liberties or property rights of the citizens has advanced in recent years.

Throughout all these crises the attempt by the judiciary as well as the legal profession under the leadership of the BASL has no proud moment to record. Perhaps the only light at the end of the tunnel was this boycott which came as a reaction to the attacks on the Mannar Courts.

Perhaps the prevalence of an overall situation of the conflict between the Sri Lankan government and the LTTE has provided a useful background for the governments in power to allow curtailment of the serious resistance of democratic forces against the authoritarian course they are taking.

Some may say that things have gone too far and now it is too late for any attempts at reversal. No doubt there is considerable truth in such perceptions. However, the very survival of the judiciary and the legal profession are at stake. Particularly the younger generations entering these professions can see quite clearly as to how they are trapped and how their future is threatened.

There is the example of the lawyers in Pakistan who fought a successful fight against the subjugation of the judiciary and the legal profession under several

military regimes. There is much to be learned from their brave and courageous struggle.

The lawyers and judges in Sri Lanka must face their own destinies with seriousness; will they be doomed to an existence of subjugation under an authoritarian system or will they fight back to regain the basic structure of democracy and the rule of law that has been severely undermined.

1.2 (e) President Attempts to Trample JSC & Independence of the Judiciary[302]

The Asian Human Rights Commission (AHRC) is not surprised by the government's confrontation with the Judicial Service Commission (JSC) and the courts, as it is part of a consistent pattern that has been going on ever since the executive presidential system was established in 1978. The constitution was established in order to undermine the independence of the judiciary. The recent call by President Mahinda Rajapaksa on the JSC to meet him to discuss its functions, which the JSC refused, only indicates an attempt by the president to establish his patronage over the judiciary. Through the 1978 Constitution the basic structure of the 1948 Constitution was fundamentally altered, by replacing a democratic system with a patronage system, where the very idea of the independence of the judiciary was treated as an alien concept.

The AHRC calls on the Sri Lankan people to come to an understanding, even belatedly, that the independence of the judiciary and the very basic structure of democracy cannot coexist with the executive presidential system. The recent gathering of mobs to protest against the judiciary and otherwise intimidate it is only a reminder of similar attacks in the past.

While appreciating the JSC's determination not to meet with the president to discuss the functions of the JSC and their determination to defend the rights of the JSC, the AHRC reiterates once again that the very existence of the judiciary in Sri Lanka as an independent institution is under severe threat and it is the duty of the Supreme Court itself, above all others, to defend the institution against the patronage system which will continue to attempt to bring the judiciary under its thumb.

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302 AHRC-STM-188-2012; September 24, 2012

The JSC issued a press statement detailing many attempts by the government of President Mahinda Rajapaksa to trample on its independence. The attack on the JSC came directly after the Supreme Court expressed its determination on the Divineguma Bill, which the Supreme Court held to be unconstitutional until the provincial councils are consulted on the matters involved in the bill. The Supreme Court determination was immediately followed by a protest, which the newspapers reported to be by a crowd sponsored by the government. The 3,000 people that assembled near the parliament included Minister Basil Rajapaksa (one of the president's brothers) and several other ministers.

The Bar Counsel of Sri Lanka (BaSL) condemned this mob protest as an attack on the independence of the judiciary and stated that it will initiate legal action for contempt of court against the organisers of this demonstration. The BaSL also condemned the use of the state media to attack the judiciary and announced that it will take legal action against the state media concerned.

President Rajapaksa called on the JSC to meet him in order to discuss the functions of the JSC but the JSC, in an official meeting, decided not to meet the president or anyone else regarding its official functions, as such discussions are unconstitutional.

The JSC in its press release stated that it is paying serious attention to the baseless attacks made by both electronic and print media on it recently. It stated that the aim of those who are engaged in such attacks attempting to belittle the functions of the JSC is to destroy the independence of the judiciary and the rule of law in Sri Lanka.

The JSC press release further stated that attacks and pressures have been exercised by people of various positions regarding some of its basic activities. There had been attempts to influence the JSC regarding some of the decisions it has taken. On one occasion, the JSC took disciplinary action against a particular judge, and there have been several attempts to influence it regarding this decision. The JSC reference here is to the disciplinary action against the District Judge Aravindra Perera, who was interdicted following many complaints of corruption. The newspapers mentioned Aravindra Perera as a close friend of Namal Rajapaksa, the president' son.

The government is also angered by the action taken against Minister Rishard Bathurdeen, who is accused of an attempt to pressurise the magistrate of Mannar, and the action against the attack on the Magistrate's Court and the High Court of Mannar. These attacks led to a boycott of the courts by judges and lawyers throughout the island. The minister is now facing criminal charges

at the Magistrate's Court and an inquiry into contempt of court at the Court of Appeals. The government has not taken any action against this minister and is engaged in a showdown with the courts regarding this case.

While appreciating BaSL's initiatives to defend the independence of the judiciary with regard to the attacks on the JSC and regarding the attacks on the courts in Mannar, AHRC is compelled to point out that, given the magnitude of danger to the very existence of the independence of judiciary and the independence of the legal profession itself, the actions taken by BaSL are, so far, inadequate. Things have reached a point at which it is dangerous for the Supreme Court to declare a bad law as bad or to interdict a bad judge or to take legal action against intimidation of a magistrate and attacks on courts. The system of patronage that has been established through the 1978 Constitution demands absolute submission to the president's authority. Therefore, the attacks on the courts and the lawyers, as independent professionals, will continue. It is time for the BaSL, representing the interests of the lawyers in Sri Lanka – whose existence depends on the existence of an independent judiciary – to develop a consistent strategy for a continuous struggle to save the judiciary and itself from attacks from the patronage system, which is entrenched through the 1978 Constitution[303].

1.2 (f) Judicial Independence Shrouded in a Coffin[304]

The Asian Human Rights Commission condemns the attack upon the Secretary of the Judicial Services Commission (JSC) of Sri Lanka, Mr. Manjula Thilakarathne. It is reported that Thilakarathne, a senior High Court judge who was openly critical about the executive's unwarranted control over the country's judiciary. Unidentified persons have reportedly attacked Thilakarathne, stabbing him three times and seriously injuring the judge. A section of the country's judiciary, under the banner of the Judicial Services Association of Sri Lanka, has called for a strike by the judges of the country marking protest against the attack upon the judge. The Association will also convene a special general meeting tomorrow to decide its future course of action. Lawyers in the country have joined the protest.

303 On the conflict of the executive presidency with judiciary see: Gyges' Ring - The 1978 Constitution of Sri Lanka

304 AHRC-STM-194-2012; October 8, 2012

The AHRC is not surprised by the attack upon Thilakarathne, which is this time a physical one, causing serious injuries to the judge. The executive of Sri Lanka has been, for the past several years, assaulting judicial independence. The President's Office is suspected to be behind such interference. On more than one occasion the President's Office has reportedly intervened in judicial acts for which the President of Sri Lanka, Mr. Mahinda Rajapaksa has faced criticism both within and outside the country. Thilakarathne, in his capacity as Secretary of the JSC was openly critical of this interference, against which the President's Office had once ordered him to meet the President at his office which Thilakarathne refused forthwith.

Yesterday's physical attack upon the Secretary of the JSC is emblematic of the threats faced by judges in Sri Lanka ever since the 1978 Constitution came into operation. The attack showcases the impunity enjoyed by the assailants upon the country's judiciary and its independence. All governments that have held forth in Colombo since 1978 have prevented every attempt to make the country's judiciary independent. The judges in Sri Lanka since then have been trying to undertake their constitutional mandate facing threats from the executive and today this threat has taken a dirty turn.

While it is yet to be investigated as to who assaulted Thilakarathne, from past experiences none will be surprised should it reveal that the ruling political party in Sri Lanka is directly involved in the attack. Past crimes committed with impunity by none other than cabinet ministers of the present regime strongly suggests such a possibility.

It is however to be seen whether an independent investigation could be undertaken in this case. If experience from the past is of any value, such an investigation will not happen.

One of the pivotal institutions required to run a constitutional architecture that protects and promotes the rule of law in a country, the judiciary, has been publicly assaulted. In a country like Sri Lanka where the public's perception of their justice institutions is at an all time low, an incident like the physical attack upon the representative of the country's independent body like the JSC will go down as one of the lowest moments in the country's judicial, constitutional, and political history.

This incident is of such magnitude that it challenges the very notion of professionalism and independence, not only that of the judiciary, but also of other institutions related to the judiciary, like that of the profession of lawyers

and the police in Sri Lanka. Sandwiched, in between, is the Attorney General's Department, an office that function as a bridge between the government, its policies, the judiciary and the police. The AG, having absolute prosecutorial powers, as it is in Sri Lanka, must be facing the moral dilemma to function any more in the given context as legal advisor for a government that is unable to protect the body and person of an equally important constitutional office such as that of the Secretary of the JSC.

It is in this overall context of threat, intimidation, and fear that the judges and lawyers of Sri Lanka have chosen to protest today. This protest directly confronts the inability of the government to protect its constitutional institutions. Needless to say such a government would be unable to protect and safeguard the legitimate rights and property of the people of Sri Lanka. Such a government has no legitimate right of morale to continue in office.

It is widely rumoured and perhaps it is true that the life of the Chief Justice of Sri Lanka is also at risk. It is reported that Thilakarathne was attacked because he had said in public that his CJ is under threat. Now that Thilakarathne himself is in hospital the message is clear that anyone who criticises the government, regardless of his or her standing puts their lives at risk. If this is the security that an officer of the court can expect in Sri Lanka, the safety of the person and property of ordinary Sri Lankans, having far less standing, is imaginable. If this situation continues in Sri Lanka, it is just a matter of time before Sri Lanka falls down the abysmal pit of no return, of absolute judicial servitude to the executive, as it is today in countries like Cambodia and Burma. The AHRC supports the call for the strike by the lawyers and judicial officers in protest against the attack upon the judiciary and its officers in Sri Lanka. It is the responsibility not only of all Sri Lankans who wish for the return of the rule of law in the country but also that of the international community that believes in the independence of the judiciary as a sine qua non for the establishment of the rule of law and democracy in Sri Lanka.

1.2 (g) Decisive Moment in the Defence of an Independent Judiciary [305]

On October 7, 2012, four persons attacked the Secretary to the Judicial Services Commission of Sri Lanka (JSC), Mr. Manjula Thilakaratne. Thilakaratne is a senior high court judge. The Secretary, accompanied by his wife, had taken their son to drop him at the St. Thomas' College gymnasium. After dropping

305 AHRC-STM-197-2012; October 10, 2012

his wife and son at the college, he parked his car. Since he had to wait for some time, the Secretary waited in his car reading a newspaper.

Suddenly Thilakaratne saw four persons stopping near his car. One of them had a stick that was about three-feet long and the other was armed with a pistol. The one with the stick walked towards the passenger-side door of the car and the other three took position by the driver-side. The three men ordered the Secretary to open the car's door. But Thilakaratne refused.

Then they threatened to fire at him. The JAC Secretary opened the door. One of them asked Thilakaratne whether he was the boss (Lokka) at the JSC. Then without warning they started beating Thilakaratne on his face and tried to drag him out of the car.

Thilakaratne resisted them.

Having realised that it would be difficult to pull Thilakaratne out of the car the men tried to push Thilakaratne into the passenger's seat. At that moment, Thilakaratne realised that the men were trying to abduct him.

At this stage he shouted loudly.

On hearing his cry for help, some residents in the locality came out. Some three-wheeler drivers and others persons in the vicinity were also attracted to the noise.

At this stage, the four assailants ran towards the road behind the car and Thilakaratne lost sight of them. Later Thilakaratne was admitted to the hospital, and is receiving treatment for his injuries.

A sequence of events prior to this attack clearly suggests the reasons behind the attack and to those who might have instructed the four assailants. On September 18th, Thilakaratne, in the capacity as the Secretary to the JSC, issued a statement on behalf of the JSC to the effect that there were attempts to interfere with the judiciary and particularly with the JSC. The statement also pointed out that there was unfair and malicious propaganda against the judiciary and suggested that a high official had attempted to influence the JSC in relation to the disciplinary action that the JSC had taken against a particular judge.

Following this statement there were several public statements that were given great publicity by the state media against the Secretary to the JSC, against the

JSC itself and the judiciary in general. The attack on the Secretary to the JSC happened in this background.

The attack clearly shows that Thilakaratne's movements were watched and that he was under surveillance. On the fateful day when Thilakaratne took his wife and son to the gymnasium, those who directed the attack were aware of this usual routine and on that basis directed the assailants to the location. It is obvious that the assailants would have been directed through telephone communications.

The attack was directed with a very high level of coordination. If the assailants had succeeded, Thilakaratne would have been abducted and what might have happened after that is anybody's guess. Abductions are a frequent occurrence in Sri Lanka and the public knows many instances of such abductions and what happens to the victims. Many abductions end in enforced disappearances, but some victims have survived after facing the ordeal. One of the best-known cases of such an abduction that continues to receive international and local publicity is that of the disappearance of Mr. Prageeth Eknaligoda.

Given the background of the event, the high-level government involvement in this attack is obvious. Further, although several days have passed after the event and despite the highly publicised calls for investigations, nothing of any significance has happened so far concerning the case. This, again, is a very clear indication of the high-level of government involvement in the attack.

The significance of this event is that the real confrontation is between the JSC headed by the Chief Justice and composed of three other judges including two senior Supreme Court judges and the government. The authority of the JSC to run its own affairs on the basis of the position it holds is the crux of the issue. The government wants a JSC that is subservient to it.

The direct issue of confrontation is the interdiction of a judge accused of many acts of corruption that the government wants to protect from legitimate inquiries. If this were to succeed, then virtually there would be no avenue at all to ensure the integrity and independence of the judges in the performance of their duties.

The attempt to suppress the JSC is part of the wider objective of suppressing the Supreme Court itself and the independence of the judiciary. The tensions between the governments in power that have been uneasy about the independence of the judiciary in Sri Lanka go back several decades.

The first major attack on the power of the Supreme Court arose in 1972 by the then coalition government that put forward the doctrine of the supremacy of the parliament as against the supremacy of the law. The claim that the parliament can legislate any law on the basis of the absolute majority it might have has been the claim under which the power of the courts to review legislations by way of judicial review was drastically suppressed. Since that move, by way of the 1978 Constitution, the executive president was placed outside the jurisdiction of any court. Added to this; the ouster clauses in many legislations, particularly in relation to the emergency powers and the anti-terrorism laws, have reduced the power of the Supreme Court that it once had to intervene, to protect the rights of the citizens.

This may be compared to the position of the Supreme Court in the 1930s, when the absolute power of the Supreme Court to intervene in matters relating to the protection of individual rights, as asserted in the well-known Bracegirdle case. In that case, the Court said that the British Colonial Governor, Sir Reginald Stubbs, (today's Sri Lankan equivalent is the Executive President) has no power to deport Bracegirdle from Sri Lanka. Today, however, the Supreme Court and the High Courts are in a much weaker position.

The move by the government now is to reduce this weak power further and to trample upon the independence of the judiciary. If this attempt succeeds, even the limited protection that the citizens of Sri Lanka have against the executive will be reduced and may even be lost altogether.

There are 'judiciaries' in some countries that have no power to protect the rights of citizens. The courts in Burma and Cambodia are examples of such courts that have only administrative powers but no real juridical authority or role. Such courts are expected to rubberstamp whatever the executive does.

Sri Lankan courts have been pushed in that direction and gone a long way down the precipice. Now the government is bent on pushing the authority and independence of the country's courts further down.

The primary task to safeguard the independence of the judiciary is with the Supreme Court itself. If the Supreme Court does not jealously safeguard their independence, their integrity and the inviolability of the judges from executive interference, there is nothing that can save the judiciary.

The record of the higher courts in the past few decades in safeguarding their own independence is not impressive. The Supreme Court should have resisted

the coalition government of 1972 when the power of judicial review was taken away from the Supreme Court. The failure to resist on that occasion has led to the crisis that the independence of the judiciary faces in Sri Lanka now and also to the loss of many lives and the liberties of people during the last few decades. Had the Supreme Court resisted the move by the coalition government then, on the basis of its own inherent powers and following the basic structure doctrine, innumerable lives would have been saved. Had the Supreme Court resisted the attempts by the governments in the last few decades to push the power of the courts, the people of the country would have supported it wholeheartedly, then and today. The ultimate losers when the independence of the judiciary is attacked are the people themselves. Sri Lanka's history in the last few decades amply proves this historical truth. The course of Sri Lanka's history could have been different and many of the tragedies faced during the last 20 or 30 years may have been avoided if the Supreme Court courageously defended its own independence and its rightful place as the ultimate protector of individual rights.

At this moment the JSC is challenged even when it tries to interdict a judge who must face disciplinary inquiries on serious charges. What this implies is that the executive would tolerate corrupt or otherwise delinquent judges if they were loyal to the government. If this were so, the judges would not be tested on the basis of their judicial competence or integrity, but on their loyalty to incumbent executive.

The Asian Human Rights Commission (AHRC) condemns the attempts by the government to interfere with the independence of the JSC and the judiciary in general. The AHRC joins hands with everyone in their condemnation of the attack upon the Secretary to the JSC, the independence of the judiciary and the JSC in general. We call upon everyone including the international community to grasp the significance of this moment and not to allow the judiciary in Sri Lanka to be pushed into the abyss.

1.2 (h) The JSC Secretary could have ended up like Prageeth Eknaligoda[306]

There was an attempted abduction of the Secretary to the Judicial Service Commission on October 7, near the St. Thomas College gymnasium. Had the attempted abduction of Manjula Tilakaratne succeeded, what might have

306 AHRC-STM-199-2012; October 12, 2012

happened is hard to guess. However, judging from previous abductions it is quite possible that he may have ended up in one of the following ways:

It could have been like that of Kumar Gunaratna and Dimuthu Artigala, who were rescued after their abductions due to the intervention of the Australian High Commissioner after a massive publicity campaign immediately undertaken after their abductions; or it could have been like the case of Richard Soysa, whose body was found after his abduction and assassination; or he could have met the fate of Prageeth Eknaligoda, whose whereabouts remain unknown after his abduction, which happened immediately prior to the last presidential election.

The JSC Secretary's attempted abduction happened in a lonely spot. Had the four abductors succeeded, it would have been unknown for hours. No one would have known what had happened and the abductors would have had sufficient time to hand him over to their masters.

Given the high profile position held by Manjula Tilakaratne as secretary of the JSC, it would have been most unlikely that he would have been released alive if the abduction attempt had succeeded. The implications on the abductors and those who were politically responsible for the attempt would have been too much for that. If he would have been in a position to reveal what had happened it would have caused too much damage. In such circumstances the victims usually never reappear.

Sri Lanka is a nation with experience of abductions and enforced disappearances, which are numbered in the tens of thousands. The abductors and those who are engaged in disappearances in Sri Lanka have enormous experience. It is seldom that they fail in their attempts as they did in this case. However, whenever they succeed they know how to keep secrets.

All Sri Lankan governments during the last few decades have done whatever they can to keep the secrets about enforced disappearances intact. Despite many high level international interventions, there has hardly been even an iota of success in breaking down the secret codes of those who are engaged in such enforced disappearances.

By now, such enforced disappearances, which started with the abductions of rural youth, have reached the point of an attempted abduction of a former High Court judge who is the Secretary of the Judicial Service Commission itself. Today, hardly anyone considers him or herself as exempt from the threat of such abductions.

Prior to the abduction attempt, the secretary of the JSC warned that the life of the Chief Justice herself is under threat. No one treats such statements lightly. Everyone knows that anything is possible in Sri Lanka as far as abductions, enforced disappearances and extrajudicial killings are concerned.

There is an apparatus at work that does not leave any sense of security for anyone in the country. This internal security apparatus, supported by the intelligence services and maintained with the blessings of the highest political circles, is well entrenched itself in Sri Lanka. It has taken over 40 years since the first experiment in large scale extrajudicial killings in 1971 for this apparatus to become mature and wrap itself around the political life of the country like a python.

Ever since the failed abduction several highly placed government spokesmen have made public statements attempting to make light of the allegations from the Secretary of the JSC. One minister said that the JSC secretary should not have been reading a newspaper inside his car but should have been with his son in the playground. Another said that the Secretary had planned the attempted abduction himself. Yet another minister said that this might be the work of a third party to bring the government into disrepute. A government spokesman at a press conference said that the JSC Secretary should not have made the press release that he made some weeks ago.

None of the actions or statements of the government showed any seriousness or genuine attempt to initiate any inquiries. Justice seems to be the remotest thing available to a Sri Lankan faced with a serious threat to his life and security.

Now the threatened ones are members of the judiciary itself. It is rather sad that during all these past 40 years or so the judiciary itself did very little to deal with the threat of abductions and enforced disappearances of easily over 100,000 persons in their country.

Belated as it is, it is time for the Supreme Court of Sri Lanka and all the judges to wake up to the threat posed to the rights of individual citizens in terms of their lives and security. It is the judiciary alone that can play the role of initiating the fight against a well entrenched evil scheme of abductions and enforced disappearances in their country. Now that one of their own had become the victim it is perhaps the final chance for the judiciary to take up the role it should have been playing to protect the civil liberties of all citizens.

All Sri Lankans and the international community should take this attack on the JSC secretary seriously, not only as an attack on an individual but as an attack

on the institution of the judiciary itself, for the judiciary is the final resort for the protection of democracy[307].

1.2 (i) Exec. Exposes Lankans to Danger by Ruthlessly Attacking Judiciary[308]

Mahinda Rajapaksa's government is now engaged in a ruthless attack on the Chief Justice, the Judicial Service Commission (JSC), and the independence of the judiciary in general. The immediate reason for the attacks is the Supreme Court decision against the Divineguma Bill and the JSC decision to take disciplinary action against a judicial officer alleged to have been engaged in corruption, who is supposed to be close to the government.

At the moment the attack is being led by Minister G.L. Peiris, whose unscrupulous commitment to defend the executive for his own personal reasons has been demonstrated time and time again. The law and the independence of the judiciary seem to be far removed from the comprehension of this one-time professor of law.

While the police are filing reports of their inability to investigate the alleged attempted abduction and attack on the Secretary of the JSC, G.L. Peiris was engaged in a garrulous attack on the secretary himself and questioning his seniority. The obvious purpose of this attack is to create division among the judicial officers. However, what is scandalous is that G.L. Peiris does not care about the actual attack on this officer, who holds one of the highest posts in the country. Instead of calling for investigations into a serious crime against a senior government officer he is attempting to divert the attention and to attack the victim himself. That is not just insensibility but sheer brutality.

The anger against the secretary of the JSC is because of the press statement he released on behalf of the JSC stating that there is interference by the executive in the JSC and with the independence of the judiciary. He specifically mentioned the case of the disciplinary action against a judge by the JSC, which seems to have angered the executive. It is an extremely dangerous situation if

307 For further information please see: WORLD: Who will respond to the distress call of the Judicial Service Commission of Sri Lanka?, SRI LANKA: Not free from fault, but too vain to mend, & SRI LANKA: Judicial independence in a coffin.

308 AHRC-STM-214-2012; October 26, 2012

the JSC cannot take a disciplinary action against a judicial officer against whom there are serious allegations of corruption. The result would be that there would be no investigations into such actions and the judicial office itself could be used for the personal profit of the individuals concerned and his political friends.

However, what is more frightening was demonstrated by the incident which took place yesterday (October 25) at Galle, when in broad daylight a well-known businessman was attacked by a criminal gang, who cut his hand and foot, as a result of which he subsequently died. This kind of brazen behaviour on the part of criminals can happen only when they have begun to perceive that the law enforcement mechanism and the judiciary are in crisis and are unable to enforce the law.

When the executive makes irresponsible attacks on the judiciary the message they communicate is about a serious crisis in the relationship between the executive and the judiciary. The criminals take advantage of this public perception for their own benefit and it is the ordinary people who suffer.

Such irresponsible actions on the part of the executive endanger the security of the society at large. When the executive, for their petty ends, engage in public attacks on the judiciary it is the government itself that is weakened. When people perceive that the judges themselves are helpless when the spokesman for the executive is attacking the judiciary it is the criminals that have the last laugh.

It is time for the public to get their message across to the executive clearly that they do not wish their judiciary to be attacked and weakened. If the people watch passively when the executive, for their own petty ends, attack the judiciary the cost of their silence will have to be paid by the people themselves and the future generations. It is time for the people to talk loudly and tell the executive to stop such nonsense[309].

1.2 (j) Ugliest attack in Lankan history on the SC & CJ [310]

The Mahinda Rajapaksa regime has resorted to the ugliest attack in Sri Lankan judicial history on the Supreme Court and the Chief Justice this week by using

309 For further information please see: WORLD: Who will respond to the distress call of the Judicial Service Commission of Sri Lanka? and SRI LANKA: Not free from fault, but too vain to mend

310 AHRC-STM-215-2012; October 27, 2012

the state media as a slander machine and by employing the state media to introduce deliberately manufactured slanderous letters to the parliament with the sole purpose of abusing parliamentary privilege for biased reasons. The government has, within its ranks, schemers of the lowest quality who have little scruple in manufacturing any lie to suit their purpose, and thereafter using others to introduce and propagate such lies in the highest legislative assembly of the country, namely Sri Lanka's parliament. It is evident that people in the state media will defy every rule of journalistic ethics to do whatever the government demands. However, the responsibility for such vile attacks lies entirely on President Rajapaksa himself for allowing such schemes to be carried out.

Sri Lanka's judges and lawyers demonstrate next to a coffin which they said symbolized the death of independent judiciary, as they protest outside a court complex in Colombo, Sri Lanka, Monday, Oct. 8, 2012. (AHRC File Photo)

Manufacturing a slander sheet is an easy affair. Whoever allowed such a slander sheet to be put before the country's most august forum clearly showed a high degree of unscrupulousness and carelessness regarding every form of decorum and public etiquette that is generally required in the use of materials in the county's Parliament. This is one of the worst acts of irresponsibility that has defamed the Parliament itself and the very tradition of parliamentary debate anywhere in the world. Only fools and criminals would permit the abuse of parliamentary process in this manner.

The issue in question was an attempted abduction and an attack by four unidentified persons on the Secretary of the Judicial Service Commission on October 7, 2012. So far the police have filed reports in the courts stating that they are unable to identify the culprits responsible for this attack. And then the government introduces an unscrupulous letter in Parliament stating that it was the Chief Justice's husband who had organized the attack because he had suspected an illicit relationship between the Chief Justice and the Secretary of the Judicial Service Commission. Yet the country's criminal justice investigators have declared to the court that they do not know who the attackers are. Irrespective of this, the government introduces this despicable letter manufactured by one of its hatchet men to the Parliament. The question then becomes as to what precisely is the role and importance accorded to criminal investigations in Sri Lanka? Has this role been usurped by hatchet men who write unscrupulous leaflets?

The Supreme Court of Sri Lanka was established in 1802. Up to this date there had never been such dastardly attacks on the Supreme Court or the Chief Justice. This marks perhaps the lowest point of Sri Lanka's political culture when a government in power could abuse parliamentary privilege in this fashion. And it is worse when the Government's slander machine is utilized to attack the Supreme Court and the Chief Justice.

The strategy behind the government action is very clear. The Secretary of the Judicial Service Commission in a press statement had complained that the public media is carrying on a campaign against the Judicial Service Commission and the independence of the judiciary. Then the government retaliates with a far worse abuse of public media in attacking the Supreme Court and the Chief Justice herself.

In doing this government resorts to the lowest forms of abuse by taking advantage of the vulnerability of the Chief Justice being a woman. This is one of the worst sexist attacks that we have seen in recent times and women movements in Sri Lanka, together with every woman in Sri Lanka and anywhere else in the world, should protest against this ugly abuse against a woman holding a public office. Does this mean that every time that the government is unhappy with a woman holding public office it will resort to this kind of dastardly tactic in order to humiliate and defame such a person?

This is shameful Mr. Mahinda Rajapaksa. Very shameful.

In a functional democracy, people would have demanded that the President himself and every one who has participated in this shameful abuse of power, the abuse of parliamentary privilege, and abuse of women, should resign because they simply do not deserve to hold public office.

This episode only demonstrates the lowest depth that Sri Lanka has reached at this point of time. No nation can avoid dire consequences to its societal moral, when the government at the highest level resorts to such low level of mean and dastardly conduct.

If the people of Sri Lanka tolerate this level of immorality on the part of the government then they should blame themselves for all the societal ills that will arise from a situation such as the current crisis that the country is facing.

The greatest societal ill that will rise from this kind of abyss is the very high level of criminality in every aspect of social life. There will be loss of respect for anything moral or ethical in a society like this. The children of such a nation will inherit a culture that is ugly and stinking.

The Asian Human Rights Commission is aware that there are many others against whom such gimmicks are being schemed. One such scheme is to attack the lawyers who appear for just causes and oppose the government's abuse of powers in court through the use of manufactured reports accusing them of all kinds of things, for example saying that they are being paid by drug lords. We are aware that there was an attempt to publish such a report in the government's mouth piece Daily News last week against Mr. J.C. Weliamuna and another lawyer against whom the government does not agree with. It was because a particular news editor was a man who respects journalistic ethics that the report was not published. However, others who are willing to engage in any kind of abuse may be put in the editorial chair and will possibly publish such reports against those whom the government selects to slander.

The Asian Human Right Commission is saddened by the attack on the Supreme Court and the Chief Justice. Its concern is not due to any personal attachment, but due to respect for principles which, when undermined, harms the very fabric of society. The Supreme Court deserves respect. The Chief Justice, whoever it is, deserves respect and the Parliament deserves not to be abused. History tells us that societies that do not respect these principles ultimately pay a high price for that disrespect.

1.2 (k) Impeachment against the Chief Justice

Impeachment of the Chief Justice is a prelude to greater militarisation[311]

After a series of attacks on the judiciary, the Mahinda Rajapaksa government is now reported to be engaged in preparing papers for the impeachment of the Chief Justice (CJ). While the accusation against the CJ is not known the determination of the government to impeach her has been highly publicised. The state media have been mobilised to make a concerted attack on the judiciary.

Meanwhile, there is also a bill being discussed which attempts to introduce several provisions which will limit the powers of the magistrates relating to arrest and detention and will increase the powers of the police.

The reasons for the hurried attempts to suppress the judiciary are not accidental. The project for the replacement of the democratic form of governance with a national security state where the military and the intelligence services will have enormous powers has been going on for some time. Impunity for almost all actions by the executive and the security forces against the freedoms of the individual has been assured now for many years. The allegations of serious abuses of human rights by way of enforced disappearances, other forms of extrajudicial killings, torture and kidnappings are never credibly investigated.

Now, according to reports, there are moves to bring the military more directly into the policing system. It was reported that even the IGP may be replaced by a military officer as a police commissioner. Also the OICs and Divisional Police Chiefs will be replaced by Special Task Force officers. This will amount to a complete shift from the civilian policing which is an essential component of a democracy to military policing.

Such radical changes would naturally be resisted by an independent judiciary. Therefore there is an urgent need to put in place judges who will be willing to carry out whatever projects the government may propose. The impeachment of the CJ has therefore several purposes. One is to remove the present CJ and replace her with a friend of the executive and the second is to have a chilling

311 AHRC-STM-217-2012; November 1, 2012

effect on all other judges of the Supreme Court and the Court of Appeal. The message is simple: anyone who will abide by the mandate to protect the dignity and the freedom of the individual as against the dictates of the executive is clearly not wanted among the highest judiciary.

The government, beset with serious economic problems will continue to impose harsher conditions on the population. The government knows that such measures will necessarily bring about retaliation from the trade unions and other organisations representing the ordinary folk. Such protests on the part of the people will be ruthlessly crushed and recourse to justice will be denied.

The government wants to pass a strong message to the effect that justice is no longer welcome. The courts will be required to approve whatever the government wants and the protection of the individual freedoms will be regarded as a hostile action towards the government.

Disappearances of Persons & the Disappearance of the System of Justice

Over a long period Sri Lanka has been engaged in the large scale practice of enforced disappearances of persons. In the process, justice has always been denied to the victims and their families. The practice of enforced disappearances amounts to the denial of all rights. This practice which has gone on for several decades has had a seriously paralysing influence on the entire system of justice.

Now the stage has been set for the destruction of the independence of judicial institutions altogether. These institutions have a history going back to 1802 when the Sri Lanka's first Supreme Court was instituted. It is this legacy that is now being seriously challenged.

In a recent published book by a senior lawyer, S.L. Gunasekara entitled Lore of the Law and other Memories, the author quotes a prediction by another well known lawyer, D.S. Wijesinghe, President's Council, "*We now have a new Parliament and with it democracy vanished. We are now about to get a new Superior Courts Complex and with that justice will vanish*". With this attempt to file an impeachment on the incumbent Chief Justice this prophecy may come to a complete realisation.

While there are usual noises from some quarters protesting the impeachment move, there still does not seem to be a full grasp of the threat that the independence of the judiciary in Sri Lanka is faced with by the Bar Association of Sri Lanka or the legal profession. The end of the independence of the judiciary also means the end of the legal profession as an independent

profession. The lawyers lose significant when the possibility of the protection of the dignity and the freedom of the individual is no longer possible.

It is perhaps the last chance available for everyone including the judiciary itself and the legal profession to fight back from the ultimate threat to the independence of the judiciary and the possibility of the protection of the dignity and the freedom of the individual in Sri Lanka. Many years of cumulative neglect has led to the possibility of the executive being able to come to a position to make a final assault against any challenge by way of demand for justice. Unless the gravity of this threat is fully grasped Sri Lanka will soon become like some countries which no longer have independent institutions to protect individual liberties.

The people of the north and east are already under military grip. It may not take a long time before the people of the south are also brought under the same grip[312].

1.2 (l) Attack on Judiciary is Logical Extension of 18th Amendment[313]

The 18th Amendment to the Constitution, which ended all the debates and discussions on the 17th Amendment, itself brought an end to all independent public institutions in Sri Lanka. From that point on, only one institution remained outside the complete control of the executive president. And this was the judiciary.

True, this institution itself had been seriously undermined ever since the 1972 and 1978 Constitutions were created. The 1978 Constitution conceptually displaced the idea of the independence of the judiciary. However, a 200-year-old tradition of an independent judiciary could not be wiped out merely by a constitutional change. At ground level, the institution and the people who had been trained under the 'old' framework were still there. More than that, a belief had been created over those 200 years that in court it was possible to obtain justice. And this was difficult to erase.

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312 For further reading please see: SRI LANKA: The ugliest attack in Sri Lanka's history on the Supreme Court and the Chief Justice, SRI LANKA: The executive is exposing Sri Lankans to a dangerous situation by ruthlessly attacking the judiciary, SRI LANKA: The proposed bill will limit the powers of the magistrates and increase the powers of the police, & SRI LANKA: Judicial independence in a coffin

313 An article by Basil Fernando, AHRC-ART-106-2012; November 2, 2012

This gave rise to a contest between the executive president and Neville Samarakoon QC, the first Chief Justice under the new constitution. One of the issues that no one has yet explained is how a person with such legal erudition and integrity as Neville Samarakoon could have not seen the pernicious effect of the 1978 Constitution on democracy as a whole and on the independence of the judiciary in particular. Surely, as one of the leading civil lawyers of the time, he would have had some understanding of the basic principles of constitutionalism. That the ruler cannot be above the law is so basic a premise that it is difficult to fathom how Neville Samarakoon failed to understand it when he agreed to be the Chief Justice under the new constitution, in which the basic premise was that the executive president was above the law.

The debate throughout the period of the coalition government (1970-1977), particularly within the legal community, was about the attack made through the 1972 Constitution on the independence of the judiciary. It replaced the notion of the supremacy of the law with the supremacy of the parliament. This meant that parliament could make any law, because of the removal of the powers of judicial review that the judiciary had enjoyed until then. In fact, judicial review was what gave the power and the punch to the judiciary. In at least one instance, even in the colonial days, an order by the governor representing the British Crown was declared null and void and quashed by the then Chief Justice. This was in the well known case of Bracegirdle. Neville Samarakoon QC could not have failed to realise that if a similar situation arose under the 1978 Constitution an order of the executive president could not be so quashed by the Supreme Court of Sri Lanka, as Article 35 (1) of this constitution ensured that no law suits could be brought against the executive president in any court of law.

Mr. Neville Samarakoon QC and many others like him could have done better if they had initially rejected the 1978 Constitution rather than when they rebelled against the executive president when he began to bring into effect what he designed the 1978 Constitution for, which was to have absolute power. It is said by many who knew Neville Samarakoon QC that he regretted his mistake bitterly until the time of his death.

It was when J.R. Jayewardene found that the Chief Justice was not under his control that he brought the first impeachment move under the 1978 Constitution. Since then, whenever the impeachment provisions are used, it is done under the same circumstances and for the same purpose.

The Chief Justices, who came after Neville Samarakoon, understood the new equation and did all they could to avoid any kind of confrontation. In that way

they weakened the judiciary and also the peoples' faith in their independent function.

When Sarath N. Silva became the Chief Justice he understood the equation very well and made it his business to support President Chandrika Bandaranaike until the very end, up to the point when he realised that the future did not lie with her. Then he shifted his alliance to Mahinda Rajapaksa and kept up the supportive link to the executive until finally, for reasons best known to him, their relationship faltered.

Sarath N. Silva makes many speeches now and, at times, expresses partial regret for his allegiance to the executive. However, by then irreparable damage had been done to the power, as well as the image, of the judiciary.

Over the years this situation led to the creation of disillusionment among the people as well as the lawyers. The following quote from S.L. Gunasekara's recent book *Lore of the Law and other Memories* reflects the demoralisation caused by the weakening of judicial independence.

In answer to a question from a junior lawyer:

"Sir, is Hulftsdorp much different today to what it was when you joined the Bar?"

He replied,

"When I joined the Bar we had no air conditioners, no computers, no lifts, no ponds inside the Supreme Court premises, no photocopying machines or free trips abroad sponsored by the Government or nongovernmental organisations; but we had justice...

I did not, by this, mean to say that there is no justice whatever done in the courts today, (in that some measure of justice is done) but that the difference between then and now lay chiefly in the fact that while there were doubtless many shortcomings in the administration of justice even in those days which we nostalgically recall as having been the gold old days, that was a time when we almost always won good cases and lost bad cases whereas today, there are so many occasions when we lose good cases and win bad cases that it has now become virtually impossible to properly advise a client about his prospects in a case whether already filed or in contemplation..."

The New Impeachment Motion

The advantage that President Rajapaksa may be trying to cash in on now as he brings the new impeachment motion against the incumbent Chief Justice is perhaps this disillusionment and demoralization, prevalent among the people as well as among the lawyers themselves about what they see as the deterioration of the judiciary. Perhaps the executive may be seeing this as a suitable moment for striking a final blow against the judiciary and thus completing the process started by J.R. Jayewardene when he filed his impeachment against Neville Samarakoon.

The 18th Amendment to the Constitution was a determined attempt for the full realisation of the aim of the 1978 Constitution, which was to give absolute power to the executive president. In 1978, this was still a difficult task as there were habits formed over a long period – to trust the local institutions – and still a belief in the possibility of justice and fairness was quite alive. Perhaps the executive thinks that the opportune moment has arrived to realise the full potential of the 18th Amendment.

Already there are public rumours about who the executive is aiming to plant in place of the incumbent Chief Justice, once the impeachment process is speeded up by the utilisation of the toothless majority that the government has in parliament. If those rumours are correct then the last days of even the limited independence of the judiciary are close at hand.

However, it may not all go that way. The people may use this occasion not only to critique the absolute power of the executive but also as a critique of the weaknesses of the judiciary itself. They may use this occasion to demand a stronger judiciary. That, of course, implies that the people will have to deal with the displacement of the absolute power notion which was created through the tyranny of a four-fifth majority in parliament that J.R. Jayewardene had in 1978.

Whichever way, for better or for worse, the present impeachment motion will prove decisive.

1.3 Abduction and Disappearances

1.3 (a) Government's Abduction Industry Exposed[314]

In one of the most shameful episodes, the Sri Lankan government's involvement in the 'abduction industry' was exposed last night (April 9, 2012) when the government took action to deport Premakumar Gunarathnam alias Ratnayake Mudiyanselage Dayalal, who was abducted on April 6, 2012.

This abduction brought immediate reactions from the Frontline Socialist Party (FSP), human rights organisations and the Australian government. The Secretary of the Ministry of Defense, Gotabaya Rajapakse initially declared that he was unaware of any such abduction. The Director General of the Media Centre for National Security (MCNS), Lakshman Hulugalle, previous stated to the BBC that there was no reason for the government to arrest Mr. Gunarathnam and Ms. Dimuthu Attigala. Then, shortly before the deportation Gotabaya Rajapakse even told the media that Mr. Gunarathnam would be charged in many cases.

The Police Spokesman, SP Ajith Rohana, now claims that Mr. Gunarathnam was abducted by some unknown persons and brought to Dematagoda, and later to the Colombo Crime Division.

This episode clearly exposes the government's involvement in abductions. Earlier, two officers of the rank of captain from the Sri Lankan military and two other officers were arrested after an attempt to abduct the Mayor of Kolonowara. The photographs of these officers were taken by their captors and published, leading to their identification. The government later claimed that they were mistakenly arrested while they were on their way to arrest some army deserters.

The latest incident relating to Mr. Gunarathnam and Ms. Attigala has vividly exposed the government's abduction industry. The number of abductions in recent months has risen to around 60.

As long as Gotabaya Rajapakse remains the Secretary to the Ministry of Defense there is no likelihood of any credible inquiry into the allegations of the government's involvement in these abductions.

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314 AHRC-STM-083-2012; April 10, 2012

The Asian Human Rights Commission calls upon the government to appoint a high level inquiry into the abduction of Mr. Gunarathnam and Ms. Attigala and also all other recent abductions. Unfortunately, we are compelled to state such an inquiry is most unlikely due to the high-level position held by Gotabaya Rajapakse, who is also President Mahinda Rajapakse's brother.

The Sri Lankan opposition has an obligation to the people to demand such a high level inquiry into this particular incident and all other abductions. The newly formed Frontline Socialist Party and all other political parties need to make it a high priority to take all possible action to stop abductions taking place in Sri Lanka. It is also the duty of all civil society organisations to intervene effectively to ensure that the government takes effective action to remove all those in high positions who are suspected of having links to such abductions.

We also call upon the High Commissioner for Human Rights, Navanethem Pillay, to request the Sri Lankan government to initiate a high level inquiry into this particular abduction as well as all reported abduction in recent months.

1.3 (b) Use of State Violence to Suppress Peaceful cConversation on Political matters: The Abduction of Mr. Premakumar Gunaratnam and Ms. Attigalla[315]

An abduction drama ended yesterday, exposing so vividly the government's involvement, not only in this particular incident but also in many of the abductions that have been taking place in Sri Lanka during the last six months. The number of these abductions has reached around 60 in this period. The government has failed to investigate any of these incidents adequately and to make any arrests.

Ms. Attigalla, within hours of her release, gave a detailed account of her abduction, interrogation and subsequent release. This courageous statement giving details of how the abductions took place on April 6 until yesterday (April 10) when she was released deserves careful study. The ease with which the abductors behaved throughout and the manner in which their actions were

315 AHRC-STM-086-2012; April 11, 2012

coordinated with those who were directing the operation leaves no room to doubt the direct involvement of a government agency in this abduction.

Mr. Premakumar Gunaratnam gave an interview on his return to Sydney (today, April 11), in which he categorically stated that, "*I have no doubt that if I didn't have the Australian government's support I would have been killed just like my brother and hundreds of other political activists and journalists have been killed," He went on to say, "I can confirm I was abducted by the Sri Lankan government forces, blindfolded and tortured. This includes, I am embarrassed to say, sexual torture.*"

Characteristically, the spokesman for the police, SP Ajith Rohana, tried to deny the government's involvement. This is the common manner in which the Sri Lankan police deal with the complaints relating to the abductions taking place in the country. The police are not only prevented from conducting any credible investigations into complaints of abductions, but are also compelled to engage in propaganda to whitewash such allegations. What SP Rohana's statement reveals is the pathetically comical situation to which the Sri Lankan police have been reduced.

When government agencies engage in abductions, and the police is used only for the purpose of denying the credibility of these allegations, the citizens are left with no possibility at all of getting any kind of redress. The purpose of abductions is to intimidate, not only the victims but also society as a whole. Preventing a conversation amongst the citizens on matters that are of importance to them is the aim of the government agencies who are employed in the carrying out of abductions, some of which end in the death of the victims.

Sri Lanka has a history of carrying out arrests by way of abductions and torturing the victims and imposing other forms of punishment including extrajudicial killings. The commissions appointed by the government itself have revealed great details of how this has happened to large numbers of persons in the past. In recent time no such commissions have been appointed to investigate the allegations.

The details revealed by Mr. Premakumar Gunaratnam and Ms. Attigalla, whose lives have been saved by the urgent intervention of the Australian government, have for the first time revealed what many other victims did not live to make public. Ordinary citizens who have had no links to the outside governments have suffered their fate in silence. It is an irony that in a country that is quick to accuse external conspirators for anything and everything, the citizens are

left with no other recourse except to a foreign government when they face the possibility of imminent death after abduction.

In the past, the journalists have attempted to expose the attacks on freedom of expression. The danger that exists in Sri Lanka is much greater than such attacks on journalists. What prevails in Sri Lanka is a comprehensive programme of suppressing political participation all together. Keeping the monopoly of political power in the hands of a small group of persons at the expense of everyone else including some sections of government supporters themselves is the scheme that is being so meticulously implemented within the country.

A chance saving of two lives due to decisive intervention on the part of the Australian government should be an eye opener to everyone both inside and outside the country about what Sri Lanka has become; a place where democratic conversation is outlawed[316].

1.3.(c) Absence of political will to stop abductions[317]

Abductions Seen by many as the most important problem that requires to be solved

The recent abductions of Mr. Gunaratnam and Ms. Attigala, merely highlighted the long standing problem. The concern about the absence of political will on the part of the government has been there for a long period of time. While Mr Gotabaya Rajapakse grudgingly handed over Mr. Premakumar to the Australian authorities, he gave no firm commitment to take all appropriate action to stop abductions from taking place as might be expected of the chief operative of the defense establishment of Sri Lanka.

For a long time now the use of abductions has been part of an approved counter insurgency strategy in Sri Lanka. The late Mr. Ranjan Wijeratne, who was a former Deputy Minister of Defense, told parliament that these things, meaning counter insurgency, cannot be done according to the law. Former

316 Please also see: SRI LANKA: The government's abduction industry exposed
317 AHRC-STM-088-2012; April 12, 1012

President Chandrika Bandaranaike refused to sign the UN Convention against Forced Disappearances on the grounds that a military offensive was taking place against the LTTE.

However, even after the official announcement of the end of that conflict, there has been no end to abductions. A tacit policy that the use of abductions may be extended, not only to counter insurgency but also to the suppression of any opposition to the government, has been followed by all recent governments.

In the discussion on recent abductions, the position of government spokespersons has been to deny government involvement in abductions while, at the same time, refusing to make any formal commitment to stopping them, irrespective of who carries them out, as is the duty of any government.

The government may tell those who accuse it of abductions to "prove our involvement". However, it is unable to answer those who accuse it of failing to take decisive action to stop abductions, and of the lack of political will to deal with the issue.

The most obvious argument against the government on the basis of its involvement in abductions is this absence of political will to bring culprits to the book and demonstrate its determination to stop such things from taking place.

The only way the government can answer this accusation is by demonstrating what credible action it has taken to stop such widespread abductions. The simple deduction to be arrived at from government's absence of political will to deal with the issue is that there is a justifiable imputation of guilt.

1.3 (d) Another Abduction & Murder[318]

On the January 2nd, 2012, a man named Mohammad Nistar was abducted by a group who arrived in a white van from San Gartikulam at Puttalam. According to reports at the time of the abduction, Mr. Nistar was traveling in a three-wheeler. Sometime later his body was found with bullets wounds to the head. According to reports, Mr. Nistar was engaged in the rehabilitation of drug addicts at a centre in the area.

318 AHRC-STM-002-2012; January 4, 2012

No one has been arrested for this abduction and murder.

The abductions, often ending in disappearances or murder have been a common occurrence in Sri Lanka for several years now. In early December of last year, two young men, Lalith Kumar Weeraju and Kugan Murugan, were abducted and have since disappeared. According to human rights groups these two young men were activists campaigning for the International Day for Human Rights on December 10. Despite many calls from local as well as international groups, no action has been taken to investigate and recover them[319].

On October 27, 2011, a well known astrologer named Mohamed Sali Mohamed Niyas was abducted by a group of armed men and after several days his body was found on the shore at Akkarai Paththu[320].

The white van has become the symbol of abductions, which are often alleged to have been perpetrated by agencies associated with the government. For many years now the Sri Lanka government has been urged by UN agencies, international human rights organisations as well as several governments to take effective steps to stop abductions and forced disappearances in the country. The government has refused to comply with any of these recommendations. The latest of such recommendations came from the UN Committee against Torture in its 47th Session held in November, 2011. The CAT Committee recommended that:

> *The State party should:*
>
> (a) Take all the necessary measures to ensure that enforced disappearance is established as an offence in its domestic law;
>
> (b) Ensure that the cases of enforced disappearances are thoroughly and effectively investigated, that suspects are prosecuted and those found guilty punished with sanctions proportionate to the gravity of their crimes;
>
> (c) Ensure that the any individual who has suffered harm as the direct result of an enforced disappearance has access to information

319 Please see the AHRC statement.

320 Kindly see for details the AHRC statement on the appeal by his wife.

about the fate of the disappeared person, as well as to fair and adequate compensation;

(d) Adopt measures to clarify the outstanding cases of enforced disappearances and comply with the request to visit by the Working Group on Enforced or Involuntary Disappearances (A/HRC/16/48, para. 450).

(e) The Committee furthermore calls upon the State party to consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearances.

The Asian Human Rights Commission urges the government of Sri Lanka to investigate the abduction and murder of Mohammad Nistar and all other abductions and disappearances.

1.3 (e) A Further Report on Abductions followed by Murder[321]

Dinesh Buddhika Charitanda (25), was abducted on the January 3rd at night and on the morning of the 4th his body was found near the Keleni River, close to Grand Pass and his mother identified the body. He had injuries to his head. This is one more amongst the numerous abductions followed by murder that have been happening throughout the country.

A week earlier, the body of a fish vendor, who had been abducted by an unknown group, was found dead in the same manner at Mutuwal Colombo. Yesterday we reported the abduction and murder of Mohammad Nistar. In recent weeks we have reported several other abductions and the discovery of bodies indicated murder.

Despite the reports on such ongoing abductions and murders, the government has taken no action at all to ensure the ending such crimes. There is a commonly held belief that these abductions and murders are taking place with the direct or indirect knowledge of the police and often also with the tacit approval of political authorities.

The Asian Human Rights Commission once again urges the government, as well as the United Nations Human Rights agencies, to take an active interest to

321 AHRC-STM-003-2012; January 5, 2012

investigate these abductions and murders and the media and the people should call for a greater protection of the people by effective law enforcement by the government[322].

1.3 (f) Enforced Disappearances & Deprivation of Enforceable Entitlements have turned Sri Lankans into a Broken-hearted People[323]

Yesterday, we discussed several protests that took place in Asia. They are the student protest in Hong Kong; the protests of the people fighting against eviction from their lands by the Omkareshwar Dam project in Madhya Pradesh, India; the fight against the abuse of blasphemy law in Pakistan in the case of Rimsha, the 14-year-old mentally handicapped girl; and the student protest in Sri Lanka.

We noted that while in all the other three instances there was massive support for the protestors from the local media after the incidents had been revealed, the Sri Lankan media was almost completely silent about the attacks on the students by the government.

We also noted that in the other instances the governments showed tolerance towards the protestors and there was no use of violence against them. In contrast, in Sri Lanka the police, who arrived in large numbers, used brutal violence. Tear gas and baton charges were used against the peaceful demonstrators and some were arrested and charged. Added to this, a heavy propaganda campaign was carried out by the government spokesman, and this was given wide publicity through the state media, which said that the violence was provoked by the students and that investigations are being carried out against them.

In all the other three instances, the governments concerned at least partially granted the relief demanded by the protestors. The Hong Kong authorities promised not to enforce the proposed new curriculum on moral and national education that the students were objecting to; in India the Madhya Pradesh

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322 For further information please see the following statements by the AHRC: SRI LANKA: The murder of the British national and the rape of the Russian lady at Tangalla allegedly by a local politician close to the government, SRI LANKA: The abduction and the brutal murder of Mohamed Sali Mohamed Niyas -- the family writes to the human rights organisations, & SRI LANKA: The disappearances of Lalith Kumar Weeraju and Kugan Murugan

323 AHRC-STM-181-2012; September 11, 2012

government promised to grant all the demands of the protestors, who stood neck-deep in water for seventeen days, and appointed a five-member committee to deal with the matter completely within 90 days by giving land for land and stopping the rise of the dam's water levels. In Pakistan, where protesting against the blasphemy law has remained difficult for a long time, the court released the young girl on bail and the government provided her with protection to move out of the location. Also, the police have arrested the cleric that made the false charges against the girl and charged him in turn with blasphemy.

What all this shows is that there is at least a certain degree of willingness to negotiate with the protestors, and to treat protest as a legitimate means by which citizens may express grievances and demand urgent action when they are frustrated with the negligence of the authorities. Such negotiations are possible when the idea of rule by consent is treated as the foundation of the legitimacy of a government. What the Sri Lankan government showed in this instance was that they derive their power purely by physical force and the idea of government by consent no longer has a practical relevance.

How did Sri Lankans come to accept rule by brutal force? Why have the citizens cowed down to this way of being ruled? How have the mass movements, which were at one time so vibrant in Sri Lanka, become so subdued? Why is the media so self-censored in the face of brutal violations of all the basic norms of democracy and rule of law? Why is everybody so unwilling to lend support for those who come forward to protest for legitimate reasons?

The answer to all this is not difficult to find. It lies in the way enforced disappearances have been used as an effective tool to suppress public protest. The fear of abduction followed by torture and many other forms of harassment, probably ending in an enforced disappearance, is now an impression so deeply embedded in the psyche of the Sri Lankan people.

While all that happens, the legal machinery of investigations into complaints, prosecution of offenders and even the judicial independence has been so badly undermined. That investigations into complaints against the state's abuse of its powers and of the use of naked violence will not take place is now known to everyone. The examples are available of such refusals to investigate, not in the hundreds, but in their thousands.

The Sri Lankan people have being reduced to persons with no enforceable legal entitlements. The Constitution does have a bill of rights and many fundamental rights are mentioned. There are many statutes that have criminalised violence

of various forms against the people. However, the enforcement mechanism has been suppressed and by now it can be said that, virtually, no enforcement mechanism against violations of rights exists any longer.

A long period of the abuse by way of enforced disappearances, illegal arrest and detention, torture, denial of fair trial, suppression of freedom of opinion and expression, publication and association have virtually made the Sri Lankan people into a broken-hearted people, who have lost faith in their legal rights. When there is no possibility of the enforcement of entitlements, the idea of citizenship becomes a hollow one.

1.3 (g) Enforced Disappearances & an Unjust Republic [324]

Forced disappearances have left quite an impression on the psyche of the Sri Lankan people living in all parts of the country. Since 1971, there has been continuous use of enforced disappearances as a tool by the state, for what is referred to as the maintenance of "law and order". The result is a negative mindset, arising from what the people have seen and heard over several decades, due to so many incidents and stories about enforced disappearances. The shocking news has obviously been borne deep into the psyche of the people of all the people, living in all parts of the country.

Such deep impressions alter the views of people on many issues. One of the great changes in the minds of people, due to the impressions that are left in their minds of enforced disappearances, is to change their ideas about all those in authority; about the police, the military, the intelligence services and also the political leaders. The people now in their inner minds have different ideas as to what these things meant in the past before these large scale enforced disappearances happened.

Today, the police and the military are often seen by the people as abductors who may come in any guise, at any time. What the people expect from the police, the military or anyone else who represents a lawful authority and exercises such things as arrests has undergone a fundamentally deep change. The expectation of what might happen in the event of abduction or arrest is now very different. People have lost the legitimate expectation that they might have in the event of dealing with their law enforcement agencies; the expectation that whatever happens will be within the limits of the law and rationality no longer exists.

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324 An article by Basil Fernando, September 3, 2012; COLOMBO TELEGRAPH

Now the expectation is that the law will be flouted, that anything might happen, and that if anyone were to come out of the situation safe and sound it would be his or her great luck.

The other agencies about which the people's views and expectations have changed are the intelligence agencies. The idea that the intelligence agencies may be involved in activities concerning the security of the state, within the limits that are expected in such operations, has altered a great deal. The expectation that any kind of foul play is possible, and that there may be many schemes to put unsuspecting citizens into all kinds of trouble, has become quite normal. That there may be all kinds of games, including arrest and detention for illicit money-making by way of demands for bribes, and the fear that if these things are not complied with one may come to a different kind of experience that cannot even be imagined, is today among the normal, or let us say, abnormal expectation of the people – not only of the poorer classes, but also of other social groups.

All such alterations of opinions and expectations are not from wild imaginations but on the basis of detailed incidents that they know have happened to many people in their societies. Some of those people may have been family members or friends or known to them in other ways, but on many occasions these stories are part of a general knowledge about the practice of enforced disappearances, by the repeated telling of the stories of these incidents, mostly about persons with whom they may not have been personally acquainted.

The general knowledge of security in the country has undergone fundamental changes. And the subsequent psychological habits, which have now become part of the ordinary persons psyche, can be easily manipulated by any unscrupulous person. That unscrupulous person might be someone holding authority in the government who wishes to manipulate this psychological condition for political purposes, such as through attempts to intimidate people who have different political allegiances or hold different opinions. It could also be manipulated by rivals in businesses.

Anyone in competition with another for one reason or another, as is usual in normal society, might now fear that a rival will use foul methods in association with those who have the power of arrest and detention in order to take undue advantage and promote their interest over another by illegitimate means.

More than anyone else, this psychological condition can be exploited by the criminal elements, who are often better readers of the minds of people in their

society than others. They can manipulate this condition to achieve various criminal enterprises for their own benefit or for others. It is within that context that the behaviour of the government on the issue of enforced disappearances should be reviewed.

The government adamantly refuses to conduct any kind of proper legal inquiries into allegations of abductions and enforced disappearances. Many of the glaring examples are part of the peoples' experiences. The case of Prageeth Eknaligoda naturally comes to mind. The manner in which that disappearance took place, the various methodologies that were employed by the government to deny any kind of inquiry into the matter, and also other methods they employed to deny their responsibilities, is now firmly registered in the psyche of the Sri Lankan people. That even a former Attorney General speaking at a United Nations body in his official capacity could blatantly lie about the Prageeth Eknaligoda incident became a well-known tale about how someone in authority can be so blatantly abusive. Even journalists working for well-known newspapers were used in order to create all kinds of stories, such as the story that Prageeth Eknaligoda had taken up refugee status in some other country. They were used so cynically in order to manipulate a society that was aware of this incident and interested to know what was happening. Such levels of manipulation, including all kinds of statements made by the government spokesmen, are also part of the knowledge that the people acquired about how things happen in their society.

Perhaps the worst part of the impression is about the futility of any attempt to seek justice for enforced disappearances. Tale after tale, going into tens of thousands of cases, tell the same story, of the complete incapacity of the legal system in Sri Lanka, which has been crippled to such an extent that it is incapable of providing any kind of assistance to those in search of their loved ones who have been victims of enforced disappearances. In this, Sri Lanka repeats the experience of other countries, when the state itself is the agency that plays a prominent role in enforced disappearances. The following poem tells of the tragedy of so many mothers and others who are faced with the disappearances of their sons or other loved ones, and whose demands to the systems of justice are so blatantly frustrated.

She goes looking for you

We go
Looking for you.
To be accurate,

She goes
Looking for you.
To be accurate,
She goes looking
For your bones
Or for something that is yours:
A hair or a piece of cloth.

We are just the sub-committee
Helping her
To find you.
We go to an abandoned house,
In an abandoned field,
And the area opposite
We have forensics
Helping the sub-committee.
Everyone is looking
For a piece of you.

Forensics find near
The rubbish burning spot
Two piles of bones.
We think
We found you.
Forensics say
Its human bones.
We think
We found you.

The journey is yet long,
Spread through fields
Through many more bones,
Through laboratories,
Through jurists,
Through judges,
Who must finally believe
That it is you.
She will go on that journey
We wish to be with her also
Till she finds you.

1.4 Illegal Arrest and Detention

1.4 (a) Burial at a place of choice by family members is a matter of justice[325]

A prisoner, Ganeshan Nimalarubin, died in prison custody. Allegedly he was a former LTTE, who had been prison custody for a long time undergoing rehabilitation. His death in the prison has given rise to an important controversy.

The BBC Sinhala Service reported yesterday (July 5th) that the prisoner's parents, who are old and quite destitute were informed of their son's death and they were asked to go to Colombo to sign for and take the body before the burial was conducted there. The parents refused on the basis that their son had been taken away and that they were not aware of his whereabouts for years and that they were unaware of what had happened to him and therefore they were not willing to come forward and sign anything before burial. They also stated that they were destitute and that they had no money to go that distance to Colombo and requested the prison authorities to bring the body to Vavuniya so that he could be buried in the locality where they live.

The prison authorities and the police argued against this position stating that the burial was a matter of national security. The authorities argued against the body being taken to Vavuniya for burial. A group of lawyers went on behalf of the family and pleaded on their behalf. However, the authorities refused. Finally, the matter was brought before a magistrate. Both parties gave reasons for their stated positions; the lawyers arguing on behalf of the family's right to bury the man in the locality he had come from and the police and prison authorities that as a matter of national security it could not be allowed.

The magistrate, after listening to both sides, stated that as the authorities were arguing on the basis of national security he would hold in their favour and that the burial would take place at a burial ground at Kadawatte. Between Kadawatte and Vavuniya is a great distance, about 200 kilometers. In Vavuniya there is a large concentration of Tamils and the prisoner was Tamil who had come from among them. Kadawatte is an area where the concentration of the population is mostly Sinhalese.

325 AHRC-STM-140-2012; July 6, 2012

As a result of the objection on the basis of national security, the parents and the relatives of the deceased prisoner lost their right to bury the person at a place of their choice.

The conflict with the LTTE ended in May, 2009 and therefore what national security issue is there to object to a burial at a place of choice by family members? Obviously, there is no rational foundation for this argument on the basis of national security and the issue of burial affects one of the most humane aspects of any society and the choice of burial as a matter of the rights of the family is an issue of justice.

In recent years there have been many instances where government authorities have intervened to prevent burials or to lay down conditions for burials on the basis of national security. The case of the assassination of Roshan Janatha, the young worker at the Free Trade Zone, is one such example. The authorities interfered with the burial in many ways and even took the body from the house on the morning of the burial when, in fact, the burial was to take place in the late afternoon. Besides, criminal gangs were allowed to operate on the roads with poles in their hands to prevent anyone from participating in the funeral. There are several other instances of similar sort including the burials of the two persons who were killed due to the attack on a JVP meeting recently.

The government owes the public an obligation to make a statement clarifying what public policy is involved in interfering with the rights of families for the place of burial of their choice and the manner of burial according to the customs of their choice. While the authorities who intervened claim that they are acting on the basis of national security, the government has made no such public declaration. Anyway, there would be no justification on the basis of law and ethical considerations for the government to make such a statement.

The matters of public police have now become the prerogative of the Ministry of Defense. Therefore, it would not be wrong to assume that in each of these instances the authorities, who have acted to obstruct the peoples' rights to burial, have done so on the instructions of this Ministry. If this is not the case the Ministry should openly disclaim any responsibility for the actions of these officers.

There is something fundamentally wrong in the manner the term national security is being used in Sri Lanka. It violates law, moral and ethical principles. The present practice of interfering with funerals clearly violates basic ethical norms and principles of fairness which are, in fact, the principles of justice.

It is blatantly unfair to interfere with the rights of family members to perform the family rites for their loved ones in places of their choice and in the manner of their choice. It is also a violation of the rights of neighbours, relatives, and others who usually participate in such funerals as a matter of religious and cultural sensitivities to pay their respects to a deceased person.

It is the duty of the parliament to raise this matter as one of justice and as a matter of decency. No political considerations will justify actions that interfere with funerals.

1.4 (b) Sorry State of Affairs -- Illegal Arrests & Detention[326]

The criminal justice system of Sri Lanka is in decline. Across the country numerous reports document that illegal arrests and detention continues to happen indiscriminately. The Asian Human Rights Commission (AHRC) has issued several hundred urgent appeal cases over the past decade regarding illegal arrests and arbitrary detention in locations across the country. Most, if not all of the cases, demonstrate that state authorities have acted illegally when arresting and detaining civilians. Indeed, in most of the cases, the state agency did not supply the victim with a reason for the arrest. This is a serious violation of Sri Lanka's legal code and departs from both domestic and international standards regarding arrest and detention. Although the right to a fair trial is guaranteed as a fundamental human right within Sri Lanka's Constitution, state authorities, particularly the police, have shown little respect for these constitutional provisions.

Torture during Arrest

In almost all of the cases reported to the AHRC, the arrestees were tortured at the time of the arrest. Obscene language and threats were often used. Many of the arrestees were subjected to degrading treatment in public, despite the fact that the arrestee had not shown any objection to the arrest, or made any attempt to harm the officers involved. These actions are in direct opposition to the procedures established by domestic and international law. Indeed, these legal codes expressly state that arrest can only be made in accordance with appropriate legal procedures.

326 AHRC-STM-078-2012; April 03, 2012

Use of Firearms

The AHRC has reported a series of cases over the past few years where police officers shot the arrestees before or during the arrest. Inevitably, this resulted in a number of extrajudicial killings. It was clearly reported that the arrestees who were shot at did not object to their arrests or move to intimidate the police officers. This amounts to a clear disrespect of civilian liberties and the basic human rights of the Sri Lankan people. According to the Criminal Procedure Code, police officers are not permitted to use their weapons while they are in the process of arresting a person, unless there is credible evidence that the arrestee has committed a crime that can be punished with the death penalty. However, the incidents mentioned demonstrate that police officers have shot innocent people even though the arrestee was not obstructing the arrest procedure in any way.

Custodial Deaths

There have been numerous cases in the past few years where arrestees have been killed while in custody of the police. In many cases, the police took the arrestee to an isolated location and killed the person in question. These victims did not have access to a fair trial. Often the police will excuse such actions by issuing a communiqué stating that the arrestee attempted to attack the officers and was shot in self-defense. It is difficult to understand how a handcuffed person poses any threat to a police officer, yet the police maintain this explanation.

Arrests of Substitute Perpetrators

The AHRC has observed that the Sri Lankan police demonstrate disrespect for procedural law and regularly violate the liberty of innocent people. The police have adopted a practice where they respond to a complaint by searching for a suitable 'substitute perpetrator' to prove that they have taken care of the complaint. In abandoning their fundamental responsibility to investigate, they do injustice to both the complainant and the substitute perpetrator who is unwittingly accused of the crime. The substitute perpetrator is often tortured by officers coercing these civilians to admit to crimes that they have not committed. This process is an ad-hoc, illegal, procedure which has been adopted into mainstream police use.

The Denial of Legal Representation

The AHRC has reported numerous cases in which detainees have not been

allowed access to legal representation. In one case, when a lawyer visited the police station to meet with his client, he was subjected to torture by the police officers at the station. The issue was raised in the Supreme Court in 2011 and a circular was issued by the Inspector General of Police (IGP) detailing the guidelines that officers must abide by with respect to legal counsel. These guidelines have not been respected.

Emergency Regulations & Illegal Detentions

In the past few years, the AHRC has reported a number of serious cases involving arbitrary, prolonged detentions. According to state officials, the majority of these detainees are being held under suspicion of involvement with terrorist organizations. However, it has often been reported to the AHRC that these detainees were arrested in mass while protesting publicly against the government. Suspects are often arrested under the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (PTA) and Emergency Regulations (ER). The emergency regulations allow state authorities to arrest innocent people who have not committed any crime, on the vague suspicion that they might be involved in a crime in the future.

The government of Sri Lanka has used emergency regulations to arrest and detain thousands of innocent civilians. During the civil war, state authorities arrested more than twenty thousand innocent civilians. At no point were the exact numbers of the arrested and detained revealed, nor were family members allowed access to the detention centers where their relatives were being held.

Civil rights and international human rights organizations have repeatedly called on the Sri Lankan government to release lists of the arrested with details of the length of detention and reason for detention, but the state has continuously failed to do so. The detention centers where people are held are unknown, and although people are occasionally released, the state has refused to reveal the exact number of people detained within the detention centers.

The arbitrary arrests and detentions of thousands of people in unknown locations have resulted in chaos ruling the country. Moreover, those who seek justice for the abductions, disappearances and extrajudicial killings of their loved ones are unable to gain closure.

Detainees Prosecuted with Illegally Recorded Confessions

The AHRC has reported several cases in the past year where detainees have

been tortured by officers. After the suspect is tortured for several months, or years even, they are forced to sign blank or forged documents. The blank or forged documents are then used as a confession and presented as evidence that can be used to prosecute detainees in the High Court. In some cases, the suspects were threatened with death if they did not sign, or promised release if they did sign the papers.

No Prison Visits Allowed

The state has repeatedly requested permission for detainees to communicate with their relatives and loved ones. Even when members of Parliament have requested permission to visit the detention centers, they have been refused. The only prison that allows visits is Welikada Remand Prison, where visitors are allowed once a month.

Denial of Medical Treatment

The AHRC has issued several Urgent Appeals regarding cases in which detainees were tortured and suffered physical injuries as a result of the torture. Even though these injuries necessitated medical attention, the police refused to provide medical treatment to detainees. In one case from 2011, a detainee who was in a critical medical condition was brought to a nearby hospital. Despite the detainees' request for medical treatment and advice of the doctor to admit the detainee for treatment, he was brought back to the prison.

Police officers are reluctant to take detainees to a hospital for medical treatment since they fear that the physical evidence of their torture will be recorded. Many detainees have died in custody after their gunshot or other wounds went untreated.

Maintaining Proper Arrest Records

The AHRC has recorded numerous statements of detainees who were arrested and only produced before a court several days later. The fact that these detainees were not told the reason for their arrest and the subsequent detention is a clear violation of their fundamental rights enshrined within the Sri Lankan Constitution. Indeed, the Constitution states that detention of a person for more than 24 hours without appropriate indication as to the crimes committed is a violation of the arrested person's rights. Yet, police officers often keep detainees at the police station or detention center, but purposely do not record the particulars of the crime or information regarding the detainee in

any official records. Usually, the information is recorded a few hours before the detainee is produced before the Magistrate. This practice violates the rights of the detainees.

President's Directives of 2005

The behavior of state officers, as documented by the AHRC, violates the basic rights of civilians at the time of arrest and detention. Furthermore, the actions of state officers are in direct violation with orders from the President issued in 2005 where he spoke about safeguarding the basic rights of civilians at the time of arrest and detention.

A number of actions should be taken in order to ensure that civilians' basic liberties are not violated at the time of arrest. A notice should be issued to the arrestees' next of kin. The identity of each arresting officer, including their name, rank and police station should be included on this notice. A special investigation unit should be established with the mandate to investigate the cases of detainees who have been arrested and detained under the PTA. Adopt a policy of quickly holding and finishing criminal trials for those detainees who have been detained for prolonged periods of time. Impose and follow through on the provisions of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994 (CAT Act). Enact an act on codifying the rights of the arrestees at the time of arrest and after the arrests. Enact a law pertaining to procedures regarding the handling of firearms by law enforcement officers, including officers involved in criminal investigations. Repeal the PTA and strengthen the administration of Sri Lanka's criminal justice system.

1.4 (c) Code of Criminal Procedure will further Endanger Citizen's Rights[327]

The proposed Code of Criminal Procedure (Special Provisions Act) will lead to an increase in the abuse of power, extortion, torture and custodial deaths. A bill placed before parliament as the Code of Criminal Procedure (Special Provisions Act) of 2012 is dangerous in the present context and is very much likely to complicate the already overwhelming problems besetting the administration of criminal justice in Sri Lanka.

327 AHRC-STM-205-2012; October 18, 2012

The objections to this bill are as follows:

- This bill takes place within the context of the 1978 Constitution which has already displaced all the public institutions in Sri Lanka. The adverse impact of the 1978 Constitution on the public institutions is well known to the public in the country. That the policing system in Sri Lanka has been severely politicised and is used for political purposes by the president as well as the politicians of the regime is one of the most common criticisms that has been repeatedly made. It is also a common position that the Attorney General's Department is directly under political control and is being used for political purposes. It is these two institutions, that is the police and AG's Department that are being given greater powers under the proposed bill. Giving greater powers to already highly politicised institutions will naturally lead to greater abuse. Thus, the proposed bill, instead of contributing to better performance of the criminal justice institutions will instead contribute to a reduction of their performance. Bringing about a new law to make things worse makes no sense.

- Under the proposed bill a 24 hour limit for holding persons under police custody will be increased to 48 hours with regard to some offenses. Already the 24 hour rule is itself severely abused by way of the arrest of persons without legitimate reason and by way of torture and ill-treatment. That the only known method of investigating a crime is the use of torture and ill-treatment is well known. The Supreme Court itself has dealt with literally hundreds of cases relating to the use of torture and ill-treatment. The Asian Human Rights Commission daily reports cases of the use of torture at police stations throughout the country. If the period of police custody is doubled it would only mean giving a greater amount of time to torture and to ill-treat suspects.

- The use of arrest and detention for extortion is well known. The police find the arrest of a person as a means of extracting money for their release. In recent times this habit has increased a great deal and the amount of money demanded is often staggering. It was only recently that two culprits who organised the illegal smuggling of a group of person to Australia were released after arrest on payment of Rs. 26 Lakhs (Rs. 2,600,000). After releasing the actual culprits, an innocent person was accused of the crime so as to create the

impression that charges had been filed in the case. In another instance, a Cambridge graduate, who went to obtain a clearance letter, was illegally searched. Upon finding that he had Rs. 70,000/- of his own money and several travelers' cheques, they were taken by the police and the man was charged with stealing money from the police station. These are two instances. Literally thousands of others can be cited. The proposed law will provide unscrupulous police officers unimaginable opportunities to make themselves rich. As for citizens, it will create new circumstances under which they will be harassed.

- One of the strong objections to this new law is that it gives vast powers to the Officers-in-Charge of the stations (OIC). Experience has clearly shown that it is rarely an OIC has enough integrity to be trusted with such power. It is not likely that in the near future the quality of OICs or Crime OICs and other such officers is going to improve. Giving more power to such officers will only increase their propensity to abuse their positions for their own benefit. It is well known that OICs soon after they get their positions begin to build new houses. Under the new law these officers will have many more opportunities for doing such things.

- A further objection for giving greater powers to the police stations for detaining persons for longer periods is that the system of command responsibility by which officers of the higher ranks, beginning with the IGP down to DIGs, SSPs, SPs and ASPs, used to control the conduct at police stations no longer wields such power. It is a common criticism that officers at the stations are led by politicians and others and not by their superiors. And, higher ranking police officers themselves are now being suspected more and more of corruption and connivance with the lower ranking officers in the doing of wrongs than ever before. Under these circumstances, higher ranking police officers are unlikely to have much control over the day to day affairs at the police stations. Under such circumstances giving these people greater powers will only lead to greater problems.

- It is also known that the disciplinary processes envisaged by the Police Departmental Orders are no longer followed with any sense of credibility. Higher officers try to hush up complaints against their subordinates instead of attempting to keep the discipline at any cost. When the police stations, without disciplinary control, are

given extraordinary new powers and twice as much time to keep the arrested persons it is not difficult to imagine the extent to which the discipline within police stations would further degenerate.

- Besides the problem of the police officers there is also the complete loss of confidence in the Attorney General's Department. The newly proposed bill provides that cases may be taken out of the hands of the magistrate and directly dealt with by the Attorney General. Let us take an example to demonstrate what might happen. Take the case of Bharatha Lakhsman Premachandra. Obstacles created by the government for the prosecution in this case are well known. Enormous delays have been caused by police officers claiming to be seeking advice from the Attorney General and the Attorney General never giving such instructions. Of course, the AG's Department must be under severe political pressure not to take any action that would jeopardise the freedom enjoyed by Duminda Silva. Now under the new bill things will become much easier. All that the AG's department will have to do is to make a claim at the Magistrate's Court that on the basis of the new provisions the case will be taken over by the Attorney General. The magistrate thereafter will have no jurisdiction to deal with the case. Another case, the case of David Amerasinghe at the Pugoda Magistrate's Court demonstrates this same point. In this case two police officers were accused of killing David Amerasinghe after arrest. They were refused bail by the magistrate. The two officers sought the assistance of the Attorney General by use of their personal links. Then the Attorney General issued a letter releasing the two officers from the non-summary proceedings for murder. The Magistrate, shocked by this unprecedented order asked the Attorney General to reconsider the matter and did not immediately comply with the order of the Attorney General. The Attorney General then went to the Court of Appeal and got a stay order on the proceedings at the Magistrate's Court and released to two suspects. The matter is now before the Court of Appeal. In the future, under the new bill there would be no ambiguity about the power of the Attorney General and the magistrates will cease jurisdiction the moment the Attorney General makes an application to deal with the matter himself. In all matters in which the government has an interest the suspects could be assured of freedom under the operation of this bill.

In short, the objections to this bill are on the basis of the political abuse of criminal proceedings that are already happening and the new bill will aggravate

this situation. The situation of Sri Lanka cannot be compared with countries where rule of law systems strictly operate. In Sri Lanka, due to the operation of the 1978 Constitution, this system has already collapsed. Under these circumstances giving greater powers of detention to the police and also given more power to the Attorney General to cases out of the hands of the magistrate is dangerous.

The proposed law will not enhance the cause of freedom and will not add to the security of the people. In fact, the insecurity of the people will further increase due to this bill.The Asian Human Rights Commission supports the call that has already been made for people to oppose the proposed legislation for the reasons stated above.

1.4 (d) Prison Killings

The Killing of 27 prisoners at the Welikade Prison in Colombo[328]

The Asian Human Rights Commission has written to the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the incident at the Welikada Prison in Sri Lanka on November 9, 2012. The full text of the letter follows herein:

> Mr. Christof Heyns
> Special Rapporteur on extrajudicial, summary or arbitrary executions
> C/o OHCHR
> Palais des Nations
> CH-1211 Geneva 10
> SWITZERLAND
>
> Dear Professor Heyns,
>
> **Re: The killing of 27 prisoners at the Welikade Prison in Colombo, Sri Lanka**
>
> The Asian Human Rights Commission (AHRC) wishes to bring to your notice the killing of 27 prisoners in two separate sections of the Welikada Prison; 'L' Section and the 'Chapel Building' that took place on the

328 AHRC-OLT-017-2012, November 12, 2012

evening of 9 November. Further according to reports three persons are missing.

It is difficult to obtain a clear picture of how the killing took place as the public is only receiving information which gives the government's version of the events published through the state media. No independent investigation about the incident is possible in Sri Lanka under the present circumstances.

According to the information provided by the spokesperson for the government, about 500 Special Task Force (STF) personnel entered the prison for an inspection or a raid to investigate the illegal possessions of the prisoners such as mobile telephones, drugs and the like. The STF is a paramilitary group. Under normal circumstances such groups are not deployed for inspections or raids inside prisons and this is usually done by prison officers themselves and at times in the past they have sought the help of the civilian police of the area. In this particular raid the assistance of the police was not sought and the raid was carried out entirely by the STF officers and later when the conflict developed military commandos were called in.

It is reported that the STF initially handcuffed the prisoners in 'L' Section and conducted the raid. This appears to have been completed without incidents. Thereafter, the officers went to the Chapel Building and attempted to do the same there. Here the prisoners protested against the use of the handcuffs and a commotion ensued.

While this was happening another group of prisoners, reported to be about 3,000 in number were being taken for daily labour. On hearing of the commotion by the prisoners in the Chapel Building, who were reportedly protesting the use of handcuffs, the prisoners who were being taken for their labour turned to help the other prisoners and this it appears to have led to the confrontation between the STF and the prisoners.

At this state teargas was used against the prisoners but it also affected the officers themselves and even those staying in the quarters of the prison officers which is close by. At this point the STF moved out and in the commotion some of the prisoners broke into the armoury and reportedly came into possession of some weapons.

Thereafter, the situation reportedly went further out of control and there appears to have been a gun battle between the prisoners and the officers that resulted in several deaths. However, even after several hours things were still out of control and army commandos were called in. They entered the area occupied by the prisoners under the cover of gunfire and after some time the situation was brought under control.

Family members of the prisoners claim that they received telephone calls from their relatives inside the prison at around 4 AM on 10 November. The prisoners informed their family members that they were being taken for questioning. Later these same prisoners were found dead of gunshot injuries. According to reports about 11 persons were killed in this manner after being taken for questioning.

The total death toll until now is 27 and there are many others who are in critical condition in hospital.

Quite recently there were two other raids of similar nature; one at the Magazine Prison and another at Vavuniya Prison. In both instances STF were used and there were conflicts in which several persons were killed. There has not been any credible inquiry into either of these incidents.

Following the Welikada incident on 9 November, the minister for the Department ofPrisons, Mr. Chandrasiri Gajadheera, made a statement in the parliament in which he said that a three-member committee would be appointed to inquire into the incident. However, he failed to name who the three persons might be.

Such large-scale killings in prisons require a high level of inquiry headed by superior court judges. However, the appointment of such an inquiry is most unlikely.

In an inquiry the witnesses under the circumstances are going to be mostly the officers involved in the raid and the prisoners who witnessed the incident. However, it is most unlikely that the prisoners will come forward to state any evidence which is adverse to that of the officers. They have good reason to fear that they may be harmed if they were to honestly depose in an inquiry. Under such circumstances it is most unlikely that the actual event and the manner in which it happened will ever be revealed.

The state media is carrying on a heavy campaign to create the impression that the killings are a good thing as the persons who were killed are those convicted of serious crimes such as murder. This campaign is directed to counteract a possible reaction from the public against these killings and any demands for a proper inquiry.

The key question involved in any inquiry should be as to how the prison authorities lost control of the prisons. As mentioned above, this is the third instance within a few months when paramilitary forces have been called on to conduct raids inside prisons. Quite clearly there is a breakdown of the normal process of the control of prisons which should be carried out under the direction of the Commissioner of Prisons.

This breakdown of the control of the prisons reflects a similar problem that exists in all public authorities in Sri Lanka. The cause of the breakdown of all the public authorities is usually referred to locally as 'politicisation' of state establishments. A political process that favours the appointments of those who are nominated by the government, decides all appointments, promotions, disciplinary control and dismissals. Such politicisation has been severely criticised. However, under the executive presidential system in Sri Lanka all aspects of the state apparatus are brought under a handful of persons who are close to the executive president. This is causing a breakdown in administration in every aspect of governance.

This STF and also the commandos work directly under the Ministry of Defence. In recent years this ministry has acquired a reputation for engaging in all forms of killings such as by way of causing enforced disappearances and by uncontrolled use of force. Usually those who work under the ministry enjoy absolute impunity.

This is a serious situation and I hope you will take appropriate actions to demand from the Government of Sri Lanka a proper reporting about the incident and thereby to ensure accountability for these killings.

Sincerely,
Bijo Francis
Acting Executive Director
Asian Human Rights Commission

1.4 (e) Special Task Force kills 27 prisoners and injures many others[329]

Yesterday (October 9th), at least 27 prisoners were gunned down and around 35 were injured by the STF. The shooting was carried out when the STF entered the Welikada prison for some inspections.

According to an eye witness, interviewed by the BBC Sinhala service, when some prisoners who were on death row were taken out and handcuffed, the prisoners resisted and then the prisoners were attacked by the officers who had come for inspection. The dead bodies of 10 persons had been brought to the hospital by that evening and the shooting was still continuing at the time of the interview. According to the eye witness, all the prisoners were taking shelter and hiding to try to avoid becoming victims of the shooting.

The government spokesman, who was questioned by the BBC Sinhala service, denied that any of the prisoners have been killed and tried to attribute the reasons for the incident to the prisoners. He said that around fifteen officers had been injured. It appears that the officers had entered the prisons for some inspection and the confrontation with the prisoners had taken place at that time.

The Asian Human Rights Commission condemns this shooting and calls on the government to institute a judicial inquiry into the incident. President Rajapaksha himself and the Defense Secretary Gotabaya Rajapaksha should take the responsibility for this shooting. The use of STF officers, who are in fact a paramilitary group, for this type of inspections needs to be scrutinized.

The use of paramilitary forces in policing work is being witnessed quite often in recent times. The STF started as a paramilitary force during the conflict with the government and the LTTE, and they were used for special tasks in the military zone. They were given commando training. On earlier occasions, when the STF was deployed for crowd control during demonstrations, there were shootings and these were condemned by civil society organisations. Last week,

329 AHRC-STM-224-2012, November 10, 2012

there was also a shooting of four prisoners in Galle after they were arrested by the police.

The killing of prisoners is a heinous crime. Where such incidents occur, it requires the most serious kind of investigations. However, in recent years, Sri Lanka has abandoned the practice of conducting serious inquiries into incidents where police and military officers are said to be involved. It is most likely that, instead of conducting a credible inquiry into the conduct of these officers during this incident, the government propaganda machine will be employed to create a version of events that puts the blame for the incident on the prisoners. The LLRC recommended that the police should be de-linked from the Ministry of Defence. However, this recommendation is quite unlikely to be implemented. More and more, military approaches have been adopted in investigations which should in fact have been done on the basis of normal criminal investigation methods by the civilian police.

The Asian Human Rights Commission calls on the government, civil society organizations and international community to demand a thorough and credible inquiry into all aspects of these killings and related incidents.

1.5 Torture and Ill-Treatment

1.5 (a) What Happened to Protect and to Serve? [330]

On an almost daily basis the Asian Human Rights Commission receives complaints related to the practice of torture and ill-treatment by the police in Sri Lanka. From January to November 2011 the AHRC issued a total of 106 Urgent Appeals on torture and ill-treatment in Sri Lanka, based on information gathered by local grass-root organizations. In the majority of cases, the perpetrators were members of the police force.

In most of the urgent appeal cases, victims appear to be randomly selected, arrested, and detained by the police on unsubstantiated charges and are subsequently subjected to torture or ill-treatment to obtain a confession for those charges. Often, the police target innocent people from a poorer socio-economic background. In the absence of a state-sponsored legal aid scheme the members of the weakest social groups rarely have the resources at hand to hold the police accountable for the abuse.

330 AHRC-STM-071-2012; March 27, 2012

The numerous urgent appeals illustrate that torture in Sri Lanka is a widespread and systematic practice. It is important to keep in mind that the urgent appeals issued in 2011 are only the tip of the iceberg. The vast majority of incidents remain unreported. Fear, intimidation, the lack of credible complaint mechanisms, the absence of witness protection and a host of other factors all contribute to a culture of silence on police torture in Sri Lanka.

The AHRC's extensive documentation of thousands of cases of torture by the police sits uncomfortably with the "zero tolerance" policy on torture advocated by the Government. The state of Sri Lanka has signed and ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), but the legal framework in place is not working in the manner intended. Investigations into acts of torture carried out by state authorities have come to an absolute halt. In present day Sri Lanka, the CAT convention is not worth the paper it is written on.

The Sri Lankan judicial system has failed at holding the police accountable for their transgressions. The legal aftermath of the urgent appeal cases illustrates that an investigation into acts of torture is the exception rather than the rule. In almost all the urgent appeal cases on torture committed by the police complaints were lodged by the victims or by human rights organisations on their behalf. Complaints were also made to the Inspector General of the Police, the Human Rights Commission of Sri Lanka, the Attorney General's Department and sometimes the National Police Commission. To our knowledge, there have been no serious investigations into any of the allegations, which could lead to prosecution under the Convention against Torture Act No. 22 of 1994. Nor has the Special Inquiry Unit (SIU) of the Sri Lanka Police Department carried out any investigations into the allegations of torture. As long as there are no credible investigations into acts of torture committed by state officials the government's "zero tolerance policy" is of little value.

The Sri Lankan government has failed in providing torture victims with means of redress and the introduction of a National Action Plan does not change this sorry state of affairs. The National Action Plan for the Protection and Promotion of Human Rights drafted by the Sri Lankan authorities in 2009 includes the issue of torture, but the government has not disclosed how the National Action Plan will be implemented. Also, the National Action Plan does not present a solution to the fact that acts of torture are committed with impunity and is therefore found lacking.

As for the National Human Rights Commission its mandate is limited and its activities cannot replace a thorough criminal investigation. Furthermore,

at the moment it does not function at full capacity and its independence has frequently been questioned.

Perpetrators of torture enjoy absolute impunity. The lack of internal discipline within the police force is partly to blame for this state of affairs. The hierarchical order embodied in the command responsibility doctrine is not operating effectively in Sri Lanka. A police officer guilty of torture will not be held accountable for his transgressions by his superiors. The police authorities continue to neglect enforcing discipline among its cadres and this is one of main reasons behind the continued use of torture that is still in practice in Sri Lankan society.

Torture by the police is only one symptom among many which indicates that Sri Lanka is a country where people no longer respect the rule of law. This calls for a fundamental change in the criminal justice system. Important in this regard is a change in the Constitution of 1978 that placed the executive above the judiciary. In order to counter this alarming trend the judiciary needs to be re-empowered, so it once again can play the role required in order for Sri Lanka to be a functioning democracy.

In 2008, the Government of Sri Lanka promised that a Witness and Victim Protection Bill would be introduced in Parliament shortly and measures would be taken to implement the legislation including the establishment of the necessary institutions. The Witness Protection Bill is yet to be implemented. Ensuring that witnesses enjoy a modicum of protection is crucial in the fight against torture. Only when victims and witnesses feel safe will they come forward and testify against state officials. At present the legal process is paralyzed by the absence of a witness protection scheme. The government should make good on its promise and actively lobby for the passing of this law.

1.5 (b) Basic Argument for the Elimination of Police Torture [331]

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?"

331 An article by Basil Fernando; AHRC-STM-148-2012; July 22, 2012

Such a question been asked through the ages. And, one answer that has emerged in the last few centuries is that one *knows* by the collection and observation of data. Our age is symbolized by the images of the telescope and the microscope. And 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 stories accurately recorded, 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 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 torture is not simply a study of cruelty. Rather, 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, without functioning institutions, is a meaningless expression, 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 rule of law, it means that such an institution has ceased to be an institution of democracy, and has transformed into something else.

In our 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.

The above reflections are on the very basics of the discussions we have had yesterday.

As for AHRC, such discussions started 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 testimony to the pursuit of finding-out the meaning of torture through such study of stories. Our maxim in our early days was "go from micro to macro", which meant "to know through individual stories of torture the problems of the basic structure of society."

When we know about these stories, the knowledge we have about the basic structure of our societies is explained in a very different way to what it is normally believed or declared to be.

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 our 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 in our societies.

Elimination of police torture is one of the most essential tasks in working towards democratization of our societies. It is a practical way of getting about undoing the institutional obstacles to democracy.

It is this approach that the Asian Human Rights Commission is presenting to the participants in this meeting. And, in particular, AHRC is asking the legislators to take this approach seriously in the strategies that they develop to fight for the establishment of democracy.

The elimination of torture and the enabling of the freedom of speech are inseparably linked. When the possibility of the practice of torture is reduced, if not fully eliminated, the psychological conditions for the freedom of speech are

thereby created. And the core element of democracy is the freedom of speech. It is through the freedom of 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 in the development of people's participation, the elimination of torture is an essential component.

1.5 (c) Torture Cases

Narahenpita Gamage Sisil Weerasinghe [332]

According to the information received by the Asian Human Rights Commission Mr. Narahenpita Gamage Sisil Weerasinghe (48) is married, the father of two daughters and a retired soldier. Sisil, who resides at No: 212/1, Woodland Estate, Colombo Road, Chilaw is disabled as the result of injuries to the right leg and hand in a battle in July 1992. Following his partial recovery Sisil was removed from operational duties and given light duties. He retired from the service in 2007 and later worked as a private security guard attached to the Peoples Bank.

On December 30, 2011, he was working at the People's Bank branch, located at the Headquarters of Island Revenue Department, in Fort, Colombo. On this particular day, after completing his work, he was on his way home by bus. Then as he felt a stomachache he informed the conductor and asked him to stop the bus. He alighted from the bus and went nearby to the toilet after which he waited for another bus to continue to his home.

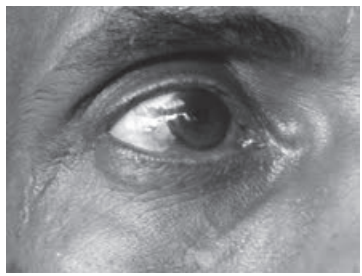
While he was waiting, a red colour three-wheeler came and stopped in front of him. Then the persons who were in police uniforms asked him what he was waiting at the roadside for at that time (by this time it was close to 10 pm). Then Sisil explained what had happened to him and told the officers that he is waiting for a bus. The police officers accused him of planning to commit a house breaking. Sisil explained to them that he was a former soldier of the Sri Lanka Army, that he was disabled and presently working at the Peoples Bank Security Section at the Island Revenue Department Branch. However, the officers did not accept his explanation, accused him of arguing with them and started to beat him with fists and boots. The officers then dragged him into the three-wheeler and brought him to the Wattala Police Station.

332 AHRC-UAC-003-2012; 19 January 2012

At the police station, again, three police officers, including a police officer who was later identified as Mr. Mahinda started to beat him with a cricket bat. Another officer beat him with a plastic pipe that had been filled with sand. Sisil was assaulted all over his body and pleaded with the officers not to beat him. He repeatedly explained that he was a disabled soldier but the officers did not listen. Even after Sisil fell to the ground the officers continued to beat Sisil mercilessly. Later they locked him in a cell.

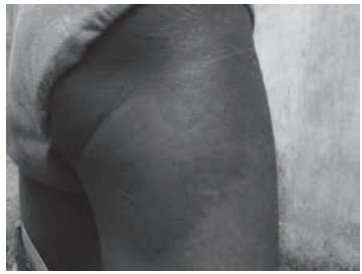
As Sisil was suffering immense pain he pleaded with the officers to provide medicine. They then took him out from the cell and brought him before a doctor. Before he was brought to the doctor two officers held his arms while another officer forcefully poured liquor into his mouth. Sisil tried to resist but the officers forced him. Then he was brought before the doctor. Then Sisil explained to the doctor in the presence of the perpetrators how he was tortured in police custody. He further told the doctor that due to the assault one of his hands was fractured and that he was experiencing enormous pain. However, to his amazement the doctor ignored him and did not provide any treatment or medicine.

Later Sisil was returned to the police station and put back in the cell. When he started to scream with pain one of the officers gave him two tablets but he did not know what it was.



Later in the morning on 31 Sisil was asked to sign a document but he refused. He further explained that he cannot read without his spectacles. The officers told him that if he signed and pleaded guilty at court he could go home and get treatment. He then signed the document and was brought to the Wattala Magistrate's Court. The police officers who tortured him were present in the court and they stood close to Sisil while he was produced before the Magistrate. Sisil did as he was instructed and pleaded guilty. He later learned that he had been charged with indecent behaviour due to being inebriated. He was then fined Rs. 1,500. Sisil vehemently denies the accusation and states that as he was in severe pain and in fear of further torture by the perpetrators who never once left his side. He therefore states that he had no option but to plead guilty to the charge.

Sisil went home and received treatment from a doctor. Though the doctor provided medicine, by 2 January, 2012, Sisil's condition worsened. He was



admitted to the Chilaw Base Hospital for treatment by his family members. While he was treated at the hospital the doctors revealed to him that there is a fracture in his hand. The Judicial Medical Officer (JMO) examined him and recorded his situation. The officers attached to the Police Post of the Hospital also recorded his statement. On January 4 he was discharged but he was asked to return to the clinic for further treatment.

Sisil states that he was illegally arrested, detained, severely tortured and maliciously prosecuted. He states that his fundamental rights were violated by the police officers attached to the Wattala Police Station.

After he was discharge from the hospital Sisil complained to the Human Rights Commission, Inspector General of Police, Attorney General, the Director of Special Investigation Unit (SIU) of the Criminal Investigation Department (CID) of Police, Senior Superintendent of Police of the Western Province (North) and the Officer-in-Charge (OIC) of the Wattala Police Station. To-date none of these authorities have responded to him nor investigated his complaint.

J.P. Samson Kulatunga[333]

Mr. JP Samson Kulatunga (62) of No: 23, Ihala Haththiniya, Marawila in the Puttalam District, is a widower, the father of two sons and a retired fish trader by profession.

Mr. Kulatunga's wife died two years ago and his sons also left the home for their work; one went abroad and the other to another part of the country. As Mr. Kulatunga then lived alone he decided to sell his land and the house which he then advertised.

In front of Mr. Kulatunga's house there was an establishment that sold toddy and the owner

333 AHRC-UAC-038-2012; 1 March 2012

expressed an interest in buying the land. Mr. Kulatunga offered the house and lot at the sum of Rs. 10 million and refused to consider anything less.

Then, on 9 February, 2012, two persons in plain clothes forcefully entered during the day and started to search the premises. Mr. Kulatunga was lying on his bed at the time and demanded the identities of the persons. They replied that they were police officers from the Marawila Police Station. When he asked them where they were not in uniform and for their identity cards they started to beat him. They then accused Mr. Kulatunga of child molestation and keeping the stolen goods which he vehemently denied.

The men ordered Mr. Kulatunga to sell his house and lot to the owner of the toddy establishment as soon as possible. They then stole Rs. 15,000 which was on the top of the cupboard, sent to Mr. Kulatunga by his elder son for his medications and living expenses for the month. As the men were leaving, Mr. Kulatunga pleaded with them to return the money as it was all he had. However the two men ignored him and told him that they would return in a police jeep. Mr. Kulatunga noted that they were inebriated.

Just after the two men left the place Mr. Kulatunga informed the situation to his son, Sujith Sanjeewa Kumara, who came and made a complaint to the Assistant Superintendent of Police (ASP) Marawila. The ASP ordered him to bring Mr. Kulatunga to his office the next morning.

Accordingly Mr. Kulatunga and his son went to the ASP's office where they were kept waiting until 2 pm despite the fact that Mr. Kulatunga was in severe pain. Finally, the ASP listened to the complaint and called 10 police officers into the office. He asked Mr. Kulatunga to identify the two officers that tortured him and stole the money. Mr. Kulatunga positively identified the two officers and stated clearly all that they had done to him in front of all the other officers.

The ASP questioned Mr. Kulatunga and his son as to their intention and when told that they wanted justice he told them to settle the matter with the officers which he refused. The ASP told him that they would have to have another identification parade and on this occasion Mr. Kulatunga was able to produced two eye witnesses, Ms. Pradeepa Dilrukshi and Ms. Somawathi, to the ASP who has clearly able to testify that the police officers entered into the house.

Shortly after Mr. Kulatunga felt unwell and his son took him to the Marawila Base Hospital where he was admitted. The doctors and the police officers at

Hospital Police Post recorded his statement and he was discharged on the 12th. The doctors instructed him to come back every week. Still Mr. Kulatunga suffers from the injuries that he suffered due to the torture inflicted on him.

Later again the ASP called Mr. Kulatunga's son and requested him to bring his father to settle the matter in his office. However, due to his medical condition he was not able to attend. Mr. Kulatunga states that the ASP is illegally suppressing his legal rights and trying to protect the perpetrators in this case. He further states that the officers acted on behalf of the toddy seller, no doubt for some sort of advantage[334].

K. A. Somarathna [335]

According to information that the Asian Human Rights Commission (AHRC) has received, 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 that he did not commit.

Mr. Somarathna is married, and a businessman by profession. On January 22, 2012, a few policemen and civilians traveling by lorry took a water pump and several other goods that Mr. 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 January 25.

On January 27, a police officer named Priyantha of the Traffic Branch of Mundalama Police Station took Mr. Somarathna to Muddalama 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. He took him to the back of the police station building, where the Officer-in-Charge (OIC) was waiting. Without asking him any questions, the OIC pulled his hair and kicked him in the stomach. He was beaten severely, and his head was dashed against the station

334 The victim narrates the torture herein: www.youtube.com/watch?v=--hpDu5PzgQ&feature=youtu.be

335 AHRC-UAC-108-2012; 22 June 2012

wall. Even after Mr. Somarathna fell to the floor, the abuse continued.

Mr. Somarathna fell unconscious as the 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 that AHRC has received, the OIC threatened Mr. Somarathna and his family; they said that if they persisted with their complaint to the SSP, Mr. Somarathna would be abducted in a white van and forcefully disappeared. At around 10am 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. Since he was unable to go inside the hospital, 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 February 16th, 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 February 18th. 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 maintains 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. Mr. Somarathna believes that his rights enshrined in the Constitution of Sri Lanka have been violated and he seeks an impartial investigation to bring the perpetrators of this crime to justice.

Thusitha Ratnayake[336]

According to information that the Asian Human Rights Commission has received, 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 May 21, 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 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 am, 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 that he was the culprit of the robbery. Rasika urged his brother to talk to Chandrasiri and visit the police station, fearing that 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.

336 AHRC-UAC-112-2012; 28 June 2012

On May 28, 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 blind-folded him. They tied both his hands and legs together, and inserted a wooden pole between his legs. They continued to brutally assault Mr. Ratnayake for over one and a half hours. During the course of his 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 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. From 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 hand-cuffed 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 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 May 29th, 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 of 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 May 29th to May 31st.

Mr. Ratnayake is still experiencing pain. He is unable to work and cope with basic, daily tasks.

He 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 Thabuthegama Police Station. None of these authorities have inititated a credible, impartial investigation into the abuse he suffered at the hands of state agents, and the blatant violation of his basic rights. Mr. Ratnayake seeks justice.

J.A. Susantha Kumara Jayasinghe [337]

According to information the Asian Human Rights Commission has received, Mr. JA Susantha Kumara Jayasinghe of No: 33, Pambadeniya, Panvilathenna, Gampola in Kandy District, an agricultural labourer, was assaulted by police officers from the Gampola Police Station without any established reason.

On May 28, 2012, at around 10:30 a.m., three police officers from the Gampola Police Station dressed in civilian clothes came to Mr. Jayasinghe's residence. Without showing Mr. Jayasinghe a legal warrant or otherwise explaining why they were there, the police officers began to assault Mr. Jayasinghe. His right leg was broken during the assault.

Mr. Jayasinghe's sister witnessed part of the assault, and pleaded with the officers to tell her why they were assaulting her brother, and to release him. The police officers refused her requests. The police officers did not bring Mr. Jayasinghe to the local police station to file a case against him, and Mr. Jayasinghe and his family remains unaware of the reason for his assault. Mr. Jayasinghe's mother and sister brought Mr. Jayasinghe to Gampola Government Hospital, where he was admitted for treatment. He was later transferred to Kandy Teaching Hospital for surgery on his right leg.

Mr. Jayasinghe's family has filed a complaint to the Sri Lanka Human Rights Commission (HRCSL), National Police Commission (NPC) and the Deputy Inspector General's office in Kandy (DIG, Central Province). However, these authorities have yet to launch a credible and impartial investigation into the cause of his assault, and they have failed to offer Mr. Jayasinghe rehabilitation for his extensive injuries. Mr. Jayasinghe and his family are seeking justice; they demand that Mr. Jayasinghe's rights enshrined in the Constitution of Sri Lanka be immediately upheld.

337 AHRC-UAC-114-2012; 29 June 2012

W.A. Pramal Meheran [338]

According to information that the Asian Human Rights Commission has received, Mr. WA Pramal Meheran (29) of No:141/2 ,4th Yaya, Rajanganaya was arbitrarily arrested, detained and tortured for a crime that he did not commit. Mr. Meheran is married, and is the father of two children.

On 28 May 2012, at about 4am while Mr. Meheran was asleep, Officer Willegoda and Officer Dissanayake of the Thambuththegama Police Station came into Mr. Meheran's residence, woke him up and ordered him to come with them in their police jeep to the house of Chandrasiri, a neighbour who had recently been burgled. When they arrived at the house, Officer Willegoda put a pistol into Mr. Meheran's mouth and demanded that he tell him where he had hidden the stolen necklace. Mr. Meheran told him that he did not know anything about the stolen necklace. Officer Willegoda pointed to Mrs. Chandrasiri and said "that woman says you stole her necklace."

Inspector Laxman of the Thambuththegama Police Station made Mr. Meheran bend over and slapped him on his back and demanded to know who had the necklace. He asked "is it with you or Thusitha?" When Mr. Meheran insisted that he was innocent, Officer Willegoda said "this will not do. We should give him some more work and see what he says."

After the police officers searched Mr. Chandrasiri's house, at about 11:30 a.m., they brought Mr. Meheran to the Thambuththegama Police Station and locked him in a jail cell. After ten minutes in the cell, Mr. Meheren was taken out of the cell and hand-cuffed. Officer Willegoda and Officer Dissanayake brought Mr. Meheran to a back room. They shouted "tell us the truth, or we will not let you go home or see your children." Despite Mr. Meheran's insistence of his innocence, the police officers tied his hands and legs and together and inserted a wooden pole between his legs. They hung Mr. Meheran from a ceiling beam and beat him severely on his heels, thighs and backside with a cricket bat, shouting "where is the necklace?" After this, the officers placed a book on Mr. Meheran's head and beat the book. Shortly after this started, Mr. Meheran fainted. When he came to, he was on the floor with his hands and legs tied. He asked for some water, and the officers poured a few drops of water into his mouth and then hung him from the ceiling again and continued to beat him with a rubber hose.

338 AHRC-UAC-117-2012; 03 July 2012

Mr. Meheran was eventually untied and returned to the jail cell. Despite numerous visitation requests from his family, he was not permitted to meet with his wife, children or other relatives. The next morning, at around 9 a.m., the officers recorded a statement from Mr. Meheran. At about 11:30 a.m., he was taken to Thambuththegama Government Hospital in the police jeep. During the journey, the officers told Mr. Meheran that if he spoke to anyone about the torture he suffered, the police would prevent him from being released on bail. They said they would accuse him of possessing drugs or a bomb. As such, Mr. Meheran did not reveal what had happened to the doctor who examined him.

Mr. Meheran was produced before Nochchiyagama Magistrate's Courts on the accusation of stealing a necklace. The police refused to grant bail, and Mr. Meheran was in remand prison until June 1st. On June 1st, Mr. Meheran was produced before the Magistrate and granted bail. Later that day, he was admitted to the Thambuththegama Government Hospital, for treatment of his injuries. After a medical examination, Mr. Meheran was transferred to Anuradhapura Teaching Hospital. He was admitted to ward 11, then to ward 14, and was discharged on June 4th.

Although Mr. Meheran has returned home, he is unable to do any work, as he continues to suffer from his injuries. His legs and arms are numb and he suffers from severe migraines. Since Mr. Meheran is unable to work, his entire family is suffering, particularly his child who requires medical treatment for a kidney problem.

Mr. Pramal 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 Thabuththegama Police Station. None of these authorities have initiated a credible, impartial investigation into the abuse he suffered at the hands of state agents, and the blatant violation of his basic rights. Mr. Pramal seeks justice and the protection of his rights enshrined in the Constitution of Sri Lanka.

R.M. Chamara[339] (*name changed for privacy & security*)

According to information that the Asian Human Rights Commission has received, Mr. R M Chamara of C/o R M Karunawathie, Periyamadu,

339 AHRC-UAC-121-2012; 04 July 2012

Andigama in Puttalam District was physically and sexually assaulted by a group of intoxicated police officers for a crime that he did not commit. Mr. Chamara is 17-years old and is in training to be a motor mechanic.

On May 27, 2012 at about 7 p.m., Mr. Chamara's neighbour, Mr, Asoka, along with one of Mr. Asoka's relatives, visited Mr. Chamara to tell him that they could not find several pieces of jewelry (total worth Rs. 10,000) and believed that Mr. Chamara had stolen the items. Mr. Chamara denied the allegation, and his father spoke further to Asoka and his relative on Mr. Chamara's behalf.

On May 28th, at about 9 a.m., Police Officer Jayapathma (41510) of Pallama Police Station visited Mr. Chamara's home and recorded a statement regarding the theft. Later that day, at around 7:30 p.m., ten officers dressed in civilian clothes from Pallama Police Station visited Mr. Chamara's residence. Three of the officers arrested Mr. Chamara. As they led Mr. Chamara away from his home, one of the officers (who shall be referred to as Officer X and can be identified by the victim through an Identification Parade) put his hand around Mr. Chamara's neck and said "I have a son like you. If you tell us the truth, we will release you now." However, Mr. Chamara maintained his innocence. The officers took him to the Pallama Police Station.

On the way to the police station, the officers stopped to buy beer at a liquor shop, where another officer from Pallama Police Station was waiting on his motorcycle. According to Mr. Chamara, Officer X told the officer on the motorcycle to keep ropes, a pole and a bottle of petrol ready at the station. Officer X asked Mr. Chamara about the stolen items again, and Mr. Chamara, once again, maintained his innocence. Officer X responded that he would make him vomit the stolen items.

Mr. Chamara was taken inside the police compound by several officers who were consuming alcohol, and was told to sit on the bed. They again asked him to tell them the truth, and threatened to hang him from a ceiling beam if he did not comply. When Mr. Chamara insisted that he was innocent, Officer X removed Mr. Chamara's clothes, and tied his hands together with his sarong. He then used wooden poles to hang Mr. Chamara across two chairs. Even though Mr. Chamara pleaded for them to release him and maintained his innocence, the officers hit his heels, shoulders, backside and ears. Then, a police officer inserted the empty bottle of alcohol into Mr. Chamara's rectum. They officers tried to pour petrol into Mr. Chamara's rectum, but were dissuaded from doing so by Officer Jayapathma, who said that he knew Mr. Chamara's aunt.

Mr. Chamara's aunt and another relative tried to visit him at the police station that evening, but were turned away. According to information AHRC has received, Officer Jayapathma assured Mr. Chamara's aunt that he would not be tortured. After Mr. Chamara's relatives had left, the police officers ordered Mr. Chamara to do exercises. However, due to the severity of his injuries, Mr. Chamara was unable to do the exercises. He was unable to sleep, or even lie on the ground, due to the extent of his injuries.

On May 29th at about 7:30 a.m., Mr. Chamara was taken back to the room in which he was tortured, and was hand-cuffed to the bed. At around 10 am, Mr. Chamara's parents and aunt visited the police station, and this time, the officers permitted them to see their son. Mr. Chamara told his family that he had been hung up and brutally assaulted for a crime that he did not commit. Despite his family's requests, the police officers did not release Mr. Chamaraa.

On May 30th, one of the police officers who had tortured Mr. Chamara wrote a statement on a piece of paper and told Mr. Chamara to sign it. The officer did not read the document to him, nor did he allow him to read it. Due to fear of further abuse, Mr. Chamara signed the document.

Later that day, Mr. Chamara was produced before the Puttalam Magistrate Court. He was accused of stealing his neighbours' jewelry and was remanded for seven days. He was released on bail on the seventh day. Shortly after he was released, Mr. Chamara was admitted to Chilaw Basic Hospital for medical treatment of his injuries. He has not fully recovered as yet.

Mr. Chamara's family has filed an official complaint with the Human Rights Commission of Sri Lanka (HRCSL) and the Inspector General of Police (IGP). None of these authorities have initiated a credible, impartial investigation into the abuse Mr. Chamara suffered abuse at the hands of state agents, which constitutes a blatant violation of his basic rights. Mr. Chamara and his family seek justice for the crimes committed against him. They call for his rights enshrined in the Constitution of Sri Lanka to be upheld.

Yapa Mudiyanselage Chaminda Priyashantha [340]

According to information the Asian Human Rights Commission has received, Mr. Yapa Mudiyanselage Chaminda Priyashantha (35) of No: 83 Watthe, Bandaranayakapura, Vanathavilluwa in Puttalam District was brutally assaulted in front of a roomful of people by the OIC of Vanathavilluwa Police Station for a crime that he did not commit.

Mr. Priyashantha is married with one child. He works as a Caterpillar Machine Operator in Vanathavilluwa Gampaha in Puttalam. On 17 March 2012, Mr. Priyashantha visited a friend, Jayantha, at Jayantha's residence after he had finished work. Mr. Priyashantha and Jayantha went with their families to see a musical show at 16 Miles Stone, in which Mr. Priyashantha and Jayantha's daughter were performing a song.

After the show, the two families returned to Jayantha's residence, and at about 1:30 am, Mr. Priyashantha and his family arrived home. The next day, Jayantha told Mr. Priyashantha that he had heard that there had been a dispute between a group of people from Puliyankulama and 16 Mile Stone at the musical show.

On 20 March at about 10:30 a.m., Mr. Priyashantha was working when he received a call from someone who identified himself as Gihan. Gihan said that he was calling from the local police station about the dispute that occurred at the musical show. He went on to say that the Officer in Charge (OIC) at the Vanathavilluwa Police Station had called Mr. Priyashantha in for questioning, and that he should come to the police station immediately with his friend, Rahula. When Mr. Priyashantha asked why he was being called in for questioning, Gihan said that one of the parties involved in the dispute had said that Mr. Priyashantha incited the dispute and ensuing assault.

Mr. Priyashantha and Rahula went to the police station with their friend, Dilanka. They arrived at the police station and were sitting on a bench waiting for an officer to attend to them when a woman who was later identified as Mrs. Kaluwa, pointed to Mr. Priyashantha and said that he had encouraged people to beat their children. Mr. Priyashantha denied this allegation, and said that he was with his friends and family at the musical show, supporting his daughter.

340 AHRC-UAC-122-2012; 5 July 2012

The officers called Mr. Priyashantha, Rahula and Dilanka into a room in which the OIC, Gihan, Mrs. Kaluwa and several other police officers were waiting. The OIC asked Gihan to explain why Mr. Priyashantha was present, and in response, Mrs. Kaluwa cried and told the officers that Mr. Priyashantha had bribed a number of people with drugs and alcohol, and urged them to beat their children. The OIC then began to beat Mr. Priyashantha in front of the others in the room Mr. Priyashantha insisted that he was innocent of the crime which he had been accused of, but the OIC continued to beat him. The OIC then told the police officers to put Mr. Priyashantha, Kanishka and Rahula in a jail cell. After about two hours, the three men were released from the cell and taken to the complaint desk. There, they met Gihan and his associates, who said that they did not want the case to go to court, and would like to settle the case. Mr. Priyashantha recorded and signed a statement and they left.

Mr. Priyashantha has categorically stated that he has never been engaged in any illegal activity. He said that he was not questioned about the incident by police officers at any time. He said that he did not know who Mrs. Kaluwa was. He believes that he was publicly assaulted to fulfill the whim of an unknown third party. Rather than investigating the dispute using procedural legal provisions, he was tortured.

As the result of the assault, Mr. Priyashantha experienced pain in his head, ears and legs, and found it difficult to carry out his daily work as normal. On one occasion, he fainted. He was admitted to Ward No. 3 of Maravila Government Hospital for treatment of his injuries. The hospital police recorded Mr. Priyashantha's statement on 23 March, and he was discharged on 24 March. He was told to visit the clinic at Chilaw Basic Hospital for treatment of his earache, and a clinic at Maravila Government Hospital for further treatment.

Mr. Priyashantha has filed a complaint with the Human Rights Commission of Sri Lanka (HRCSL), and the National Police Commission (NPC) regarding the fundamental violation of his rights by the OIC of the Vanathavilluwa Police Station. However, neither the HRCSL nor the NPC has taken any step to instigate a credible, impartial investigation process so as to prosecute the perpetrators of this crime and bring the police officers to justice. Chaminda seeks redress of the gross violation of his rights enshrined in the Constitution of Sri Lanka.

Don Prasanna Dilrukshana Aquinas Mallawaarachchi [341]

Mr. Don Prasanna Dilrukshana Aquinas Mallawaarachchi (22) of No: 721/S /3, 30th Lane, Pubudugama, Uswattakeiyawa in Pamunugama Police Division in Gampaha District, is a bachelor and three-wheeler driver by profession.

On August 6, 2012, in the early morning, Prasanna received a telephone call from a person who he identified as a police officer attached to the Pamunugama Police Station who informed him that they needed Prasanna to appear before the police that day. Prassana went to the Pamunugama Police Station at 10.30 am with his mother Kanugalawattage Prasida Nirmale Perera. When they entered the police station a police officer on duty started to shout at them using obscene language. Prasanna was accused of having an extra-marital relationship with a married woman, which he denied. Prior to entering the police station he observed that several people were also waiting there. He identified them as villagers, Ms. Nirasha, her mother Kumudu, her husband, her husband's mother all residing at 6th Lane of Pubudugama in same village. Prasanna was aware that they had been living together out of wedlock for the past few days.

A few moments later, Inspector of Police (IP) Priyantha approached them and also started to shout at Prasanna and her mother. He also accused Prasanna of having an extra-marital relationship with a woman, which again Prasanna denied. However, IP Priyantha continued to verbally abuse Prasanna and his mother. Then IP Priyantha called a lady called Nirasha who was also waiting at the station and started to blame her. She was threatened and questioned as to whether she is having a relationship with Prasanna. She became frightened and was unable to answer.

Then IP Priyantha, after observing that Nirasha apparently refused to answer, ordered a police officer to bring a cane. Accordingly, the officer brought a cane from the inside of the police station which was about 3 feet long with a circumference of 3/4 of inches. IP Piyanath then started to beat Nirasha on her buttocks, back, hands and legs while threatening her with obscene language. Despite seeing this illegal abuse and torture by an officer of the state Nirasha's husband and mother did not intervene.

IP Priyantha ordered Prasanna to come to the scene and observed the way in which Nirasha was beaten. Prasanna told the officer, "Sir, do not hit her". Upon

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hearing this IP Piyanath started to beat Prasanna about his head, face and other parts of his body with his fists.

As a result of beating and severe torture, Nirasha fainted and fell to the floor. When Prasanna tried to lift her and seat her on a chair, IP Piyanath kicked his waist at which Prasanna also fell to the floor. IP Priyantha then continued to beat and kick Prasanna brutally. Despite his pleading with the officer IP Priyantha did not stop. At the same time Prasanna observed that Nirasha fainted several times.

On observing her son being beaten by the police officer, Prasanna's mother pleaded with the officer to stop. She told the officer that her son never had any relationship with that woman. Then IP Priyantha started to beat the mother with his fists before chasing her away from the place. Prasanna's mother then tried to make a call to her younger son to inform him about incident but IP Piyanath ordered an officer to take away her phone. She was then prevented from leaving by going away. In an attempt to save the phone she put it under her blouse but a female police officer put her hand inside her clothing and grabbed it from her. She then gave the phone to IP Piyanatha. IP Piyanath told a police officer, "You must do what I tell you. You must send them to the prison by putting 20 heroin packets each to two of them".

Thereafter, Prasanna was released by the police officers and his mother brought him first to the home. However, as Prasanna fell ill during the night due to the torture and the wounds caused by torture his mother on the following day on 7 August took him to the Ragama Teaching Hospital where he was admitted for treatment. Then he had to make a statement to the Hospital Police Post at Teaching Hospital of Ragama explaining how he was severely tortured at the Pamunugama Police Station by the police officers including IP Piyanath. He is still undergoing treatment at the Ragama Hospital as in indoor patient in Ward No: 5 at bed No: 13.

Prasanna state that he has not committed any crime under the law of the country. He further states that he was forcefully arrested and detained at the police station. Further he was punished for a crime he has never committed and tortured in front of several people. He states that his fundamental rights guaranteed by the Constitution were violated by the police officers attached to the Pamunuwa Police Station. Prasanna further states that he still do not know whether police have filed a fabricated charge against him for possession of illegal drugs as they threatened to do so against him and his mother. He is presently in fear of facing illegal prosecution. No investigation has yet been

initiated against the torturing and illegal arrest and detention in police custody. Prasanna seeks justice against the fundamental rights violations by the police officers.

Dadallage Ajith Kusumsiri [342]

Mr. Dadallage Ajith Kusumsiri (38) of No.113/1, Sriya Niwasa, Kandakatiya Aluth Para, Ratmalwala,Tangalla in Hambantota District is married and the father of one child. He is labourer and works in the brick-making industry in the area. On the July 6, 2012, at about 5.30 a.m. in the morning one Shantha living in the village of Kailawelpotawa, came to Ajith's house and asked him whether anyone gave him a water pump. Ajith said no.

He argued with Ajith and then left the place. Again at about 8:00 a.m. same day, he came with another two or three persons carrying wooden poles and threatened Ajith. Then and there Ajith telephoned Police Emergency Unit 119 and made a complaint. Shantha and his companions then left. After some time they came again and threatened Ajith.

At about 1.30 p.m. in the afternoon, two police officers from Middeniya Police Station arrived at Ajith's house. On their instructions, Ajith went to Middeneiya Police Station and lodged a complaint regarding the incident.

Following day, July 8, 2012, Ajith went to the police to face the inquiry; the above mentioned Shantha too was there. Shantha admitted his fault, and the case was solved. Shantha was asked to leave the police station, but Ajith was asked to remain as two officers from Angunapalassa, would come to take down a statement from him. At about 10.30 am Officer in Charge (OIC) and two sergeants from Angunapalassa Police Station arrived and arrested him.

When he asked for the reason for arresting him the OIC said that "You will know when you go to the police station". Then they made Ajith sit on the floor of the jeep and pushed his head under the seat. They took him to

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Angunukolapalassa Police Station where they brought Ajith to the office of the OIC. Then Ajith noted that Shantha too was there. The OIC asked Ajith that "some time back you blamed some innocent persons of robbing your house?" He further said, "Your case will be on the 31 of this month", and asked, "Whom do you think will go inside?" Ajith replied, "Kuruvita Ruwan". This was due to the police investigation, and according to the information that police officers provided him earlier. Then the OIC said, "Not Kuruvita Ruwan, you will go to jail". The OIC started to slap Ajith across the mouth three or four times, breaking three teeth. The OIC further asked Shantha, "What did this fellow rob from you?" Shantha replied, "Goods worth of about three hundred thousand." Ajith then told the OIC that "Shantha is lying, this morning there was an inquiry at the Middeniya Police Station, there Shantha admitted his fault and the case was settled". But the OIC was not ready to listen to Ajith, and continued assaulting him. Ajith fainted. When he came to he found himself inside a cell, in darkness.

After some time, two police sergeants, whom Ajith noted were clearly intoxicated, came to the cell and tied Ajith's hands with a rope and tried to hang him. They then removed all his belongings which they took into custody. That moment one police officer, who lives in Ajith's village, named Ranasinghe, came onto the scene and shouted at the police officer, "Don't hang him", and rescued him. He gave Ajith some water to drink and poured water over his body too.

Ajith did not know either the full name of officer Ranasinghe, or the names of the two sergeants. The OIC asked Ajith whether he knows of a lonely house at Kailawalpotawa. When Ajith replied that he did not. Then the OIC said to the two sergeants: "Release this fucker".

The two sergeants took him out of the cell and made him sit on a chair and told him "we are going to file a case against you accusing you of possessing two kilograms of ganja (Cannabis) and also accusing you that that you are selling ganja through your 17 year old son". Ajith pleaded the officer not to drag his son into this matter. The officer then asked him if he had any money. If yes, they can consider releasing him. They told him that "if you have money we can save you". And that 'we will charge you for some ganja and you can pay about Rs.2,000 as a fine and get away free".

Ajith answered, "Do not send me to jail; I will give you some money." The officer demanded Rs.15,000, but Ajith told him, "I do not have that amount of money. I can give about Rs.12,000". This amount he agreed to. The officer

then took Rs. 200 from Ajith's wallet and put in some ganja and made a false charge, and then he told Ajith that "when you go in front of the Magistrate don't say we assaulted you .If you ever reveal it to anyone you will not come out. When you are produced before the Magistrate you should plead guilty." Ajith agreed to all as he was in fear of further torture. Ajith was not handed over any of the things which were with him at the time of arrest, at any time.

On July 9th, at about 3 p.m., Ajith was presented at Angunapalassa Magistrate's Courts, where he pleaded guilty and he was fined Rs.2000. Even at that time Ajith's "PET" card (ATM card issued by the People's Bank of Sri Lanka) and the mobile phone were with the sergeant. After Ajith came out of court compound, one of the sergeants who tortured him approached him and took him to the Branch of the People's Bank in the town and gave his "PET" card and the mobile phone back. He was forced to withdraw Rs.12000 and give it to the sergeant. Out of fear, he complied.

On July 10th, Ajith went to Middeniya Police Station to make a complaint regarding the incident. But the officers on duty did not record the complaint. Ajith informed them that he wanted to make a complaint about the assault and the fabricated charges for illegal possession of ganja.

Again, on the same day, Ajith went to the office of Namal Rajapakse, the Member of Parliament of the District of Hambantota at Beliatta, and made a complaint.

All these complaints were in vain. Ajith was so depressed and in mental agony that, on the 13 July 2012, at about 7.30 a.m. in the morning, he climbed on to the roof of Middeniya Bus Stand and started a peaceful "fast unto to death" demonstration. At about 8.30 a.m. Superintendent of Police (SP), of Tangalle, Balagalle, and Officer Mr. Mahesh, from the coordinating office of MP Namal Rajapakse, arrived at the scene and had a discussion with Ajith. They promised to hold an inquiry, and do justice. On their assurance, Ajith decided to give up the fast.

Later, Ajith complained to Human Rights Commission of Sri Lanka (HRCSL) regarding the violation of his rights. On July 10, 2012 he made a verbal complaint at Middeniya Police Station. On July 18, 2012, written complaints were sent to Inspector General of Police (IGP), Deputy Inspector General of Police (DIG) Southern Province, National Police Commission (NPC) and the Attorney General (AG).

But, the authorities concern has failed to grant him justice. Ajith states that all he can do is start another "fast unto death". He further said that most probably it would be in front of President's private residence, 'Carlton' at Thangalle. He has stated that none of the law enforcement agencies in the country have provided justice for the violation of his rights.

G R Sampath Prasanna Piyadasa[343]

Mr. G R Sampath Prasanna Piyadasa (37) resides at No: 114, Ihala Owala, Kaikawela, Rattota in Matale District and is a three-wheeler driver by profession. Sampath was able to purchase his three-wheeler after his wife went to Middle East as a migrant worker and returned from there with the money she earned. The couple has three children. Sampath used to park his three-wheeler at the park designated for three-wheelers close to the Kaikawela Divisional Secretariats Office, where he waited for passengers.

On June 3rd, 2012, at around 9.30 p.m. Sampath was called for a hire by a person by the name of Pradeep Sarath Kumara who wanted to go to Kaikawela from Rattota in Matale. As Sampath was moving-off a lorry blocked their way and Padeep requested the driver to move to a siding and this led to a small dispute.

However, as they took off in the three-wheeler and were proceeding to Kaikawela they noticed that a van was following them. Then a little while later they also noticed a motor cycle following them along with the van. Fearing the van and the motor cyclist, Sampath was asked by Pradeep to stop the three-wheeler in a house compound nearby for safety. As the three wheeler stopped Pradeep alighted and ran away, telling Sampath to run for safety as well.

Sampath, however, climbed the hill behind the house where the three-wheeler was parked and from his hiding place watched what was happening to his vehicle. The mob of around seven men, who alighted from the van and the motor cycle, smashed the three-wheeler with poles while calling for Pradeep.

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In the meantime Sampath called his wife Nilanthi Kumari from his mobile phone and informed her about the incident. In turn, she called 119 (the emergency number) and made a complaint to the police but the police officers asked her to make a Written Complaint at the Rattota Police Station to initiate proceedings.

When Sampath came home, he went along with his wife to the Rattota Police Station. When he entered into the police station the officers on duty informed them that the police station has received a phone call believed to be from a person who identified himself as Musamil about the same incident, accusing Sampath of stealing a bag of cinnamon.

Hence, Sampath and his wife were treated rudely by the police officers and they were not allowed to make a complaint. Instead, Sampath was locked up in the police cell and was severely beaten by several police officers. Later the police officers visited the scene and found that the badly damaged three wheeler that had been thrown into a nearby river. Sampath was detained in the police station for two days from June 3rd to June 5th. Later, a statement was recorded from Nilanthi at around 5.30 a.m. on June 4th, 2012.

Then the police officers forced Sampath to place his signature on several documents, which Sampath refused. When the officers threatened him with further torture, Sampath finally agreed to sign them out of fear. Sampath categorically states that those documents did not contain anything recorded from him. He further states that he was never shown the content of the documents.

The police produced Sampath before the Magistrate of Matale at 1.30 p.m. on June 5th. The case which the police filed against him is numbered B/ 907/12. He was released on bail. At the Magistrate's Court he learned that the police accused him of engaging in a theft, which he denied before the Magistrate. Sampath was able to identify the three police officers, who were involved in torturing him as, Wasantha, Weerasinghe and Hennanayake – all attached to the Rattota Police Station.

Sampath later learned that police officers were bribed by a very rich estate owner named of Musamil, who suspected Sampath of stealing of some cinnamon. Sampath states that he has never stolen anything and does not know Musamand is unaware of any of his properties. Sampath states that Musamil and the police officers illegally arrested, detained, severely tortured and filed fabricated charges against him baselessly. Sampath further states that there is no

evidence against him. The police never revealed any complaint or explained any details which identified him as a person engaged with the theft.

Sampath states that police filed this fabricated charge to prevent him from proceeding with legal steps against the perpetrators who severely tortured him. Sampath's wife, in the mean time, attempted to make a complaint at the Rattota Police Station regarding the torture by the police officers and damage to his three-wheeler by an unknown group of people. But her request was denied by the officers on duty.

Later, she complained to the Assistant Superintendent of Police (ASP) regarding the refusal of the officers at Rattota Police Station. Then, with the intervention of the ASP, she was allowed to register her complaint. However, the officers have not taken any steps to investigate any of these illegal activities of any of the parties. Sampath states that he is being denied justice.

Sundaram Sathies Kumar [344]

Mr. Sundaram Sathies Kumar (34) of Kandy Road, Kodigamam, Jaffna, was a detainee under the prison authorities of Sri Lanka. As a result of severe torture suffered during his incarceration, Sundaram is in a critical condition and being treated at the National Hospital of Sri Lanka in Colombo (NHSL). He is presently in a coma and in danger of losing his life. Considering the immediate threat to his life AHRC is making this special appeal for urgent intervention to provide the necessary prompt and essential medical assistance and protection for his security.

Sundaram was a businessman when he was arrested by the military officials attached to the Sri Lanka Army on August 15, 2008 along with his wife and the son. His wife and the son were released later in 2010, after being detained for two years at the Welikada Remand Prison without any charge.

At the time of arrest, they were not given any reason for their arrest or shown any warrant issued by any court of the land. They were among the many hundreds of Tamils who were arrested from the same area by the Armed Forces of Sri Lanka during the armed conflict in the North and East of the country. Sundaram was detained in several detention camps in areas of the North. Later, he was detained at New Magazine Prison along with hundreds of other Tamils who were detained under the Prevention of Terrorism (Temporary Provisions)

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Act No. 48 of 1979 (PTA). Before he was detained he was produced before court, but he did not know anything about the case which the Terrorist Investigation Department (TID) of the Sri Lanka Police had filed against him. Sundaram's relatives vehemently deny that he has been involved in any criminal or terrorist activities and state that the TID has filed fabricated cases against him.

On August 21, 2012, Sundaram was brought by the prison officers from New Magazine Prison to the Galle Remand Prison. When he was transferred, he was informed by the prison officers that he was to be produced before the court in Galle for a case filed against him.

But Sundaram did not know anything about the case. Before he was produced before the court, he was detained at Galle Remand Prison. Then, the next morning, instead of producing him before the judge he was admitted to the Karapitya Teaching Hospital by prison officials. It was during this time that he suffered severe torture that has placed him in a coma and in danger of losing his life.

At the hospital, first he was treated at ward No: 14. The doctors examined a large number of severe injuries on his body. There were clearly visible severe injuries on his head, shoulders, and face. The left side of the body was paralyzed and he was unconscious.

When the prison authorities informed his relatives, the wife and son visited him at Karapitiya Teaching Hospital. When they visited Sundaram, they understood that he is in a critical condition, and is being kept alive with the help of a life support system.

When the wife contacted the medical authorities, several nurses ordered her to sign a document giving her consent for the further treatment and for subjecting Sundaram to surgery. When she questioned the nurses for the cause of the illness they were not able to explain anything. As all the documents were in Sinhala, which she cannot read or speak, she refused to sign them.

As his condition worsened on August 28, 2012, the hospital authorities transferred him from the Karapitiya Teaching Hospital to the National Hospital of Sri Lanka in Colombo.

When Sundaram's wife questioned the prison officials as to why they tortured him, she was told that he had sustained the injuries falling out of bed. When

his wife and his son went to visit him in the hospital, his 10-year-old son tried to talk to his father saying, "Dad what happened to you". Sadly Sundaram was unable to identify either his son's voice or the boy himself. Sundaram's wife categorically states that Sundaram was in good health when he was detained at New Magazine Prison on every occasion when she visited him. His condition was very much equal to the health of any other 34-year-old man and he has no history of any chronic illness.

It is obvious that whatever injuries Sundaram sustained happened when he was in the custody of the prison officers, during the process of producing him before the court in Galle, and during his transfer from New Magazine Prison to Galle. Such horrendous injuries could not have been the result of 'falling out of bed'.

The wife of Sundaram clearly states that he was severely tortured by the prison authorities. She further states that when she met Sundaram earlier, she learned that he was in fear of his life and being subjected to torture for being a Tamil detainee. He further told her that the Terrorist Investigation Division (TID) officers were trying to file fabricated charges against him for aiding and abetting the activities of the Liberation Tigers of Tamil Eelam (LTTE). He told her that he was being treated by the prison officers as an enemy.

There have been numerous incidents of prisoners being severely tortured in the immediate past in Sri Lanka. Two detainees died after they were severely tortured by prison authorities at Vavuniya Prison and Mahara Prison.

When one prisoner, Nimala Ruban, was declared dead on arrival at the Ragama Teaching Hospital, the police wanted to bury the body at the Mahara Jurisdictional Area, and prevent the relatives from taking his body to his native village. When the parents made a request to the Magistrate of Mahara for approval to transport the body to their home, the police objected with the baseless reason that the people would protest against the officers. Then the parents filed a Fundamental Rights Applications in the Supreme Court of Sri Lanka and the Court ordered the authorities to hand over the body to the relatives so that they could pay their last respects and conduct the burial.

The Asian Human Rights Commission has reported numerous incidents of torture and custodial deaths of detainees while they have been in the custody of either the police or prison authorities.

The wife of Sundaram further states that Sundaram was detained for more than four years without any reason. Even to date, the law enforcement authorities

have not filed an indictment against him. She states that the fundamental rights guaranteed by the Constitution of the country have been violated by agents of the state. Sundaram's relatives seek an immediate and transparent investigation into the incident and prosecution of the perpetrators of his torture. They further seek the authorities to provide necessary protection for the life of Sundaram as his life is presently in peril.

Gallalagama Arachchige Thilanka Niroshan Gamaarachchi [345]

Mr. Gallalagama Arachchige Thilanka Niroshan Gamaarachchi (27) resides at No: 8/2, Kothalawala Road, Kolamadiriya, Bandaragama in the Kalutara District and is a Marketing Officer by profession.

On May 16, 2012, at 8.45 p.m. Thilanka received a call on his mobile informing him that his brother had been arrested by a team of police officers and that he was requested to come to the Kolamadiriya Temple to help his brother. The caller identified himself as Damith Dushmantha. When Thilanka received the call he was with his mother and one of the sisters of his mother. Along with these two ladies, Thilanka went to a location near to the Kolamadiriya Temple. He saw his brother, apparently under arrest and sitting on the rear seat inside a police jeep. Thilanka approached the police officers at the scene and respectfully asked them the reason for the arrest of his brother. Without saying a word the police officer, later identified as Police Sergeant Sarath Perera attached to the Bandaragama Police Station, slapped Thinka several times and started to beat him with fists about his face and head.

Sergeant Perera ordered Thilanka to get into the police jeep. Thilanka was in great pain and told the police officers that he had not committed any crime and that he only questioned the reason for arrest of his brother. Sergeant Perera shouted at Thilanka using obscene language. The police officers then brought Thilanka along with his brother to the Bandaragama Police Station, while Sergeant Perera followed on a motor bike. At the police station, Sergeant Perera observed that Thilanka was sitting on the bench in the compound. He ordered an officer who was on duty to lock Thilanka in a cell.

Then next morning at 6 am, June 17th, Thilanka was brought out from the police cell and a statement was recorded from him, following which he

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was returned to the cell. Later that day, at 2 pm, Thilanka and his brother were brought to the Magistrate's Court of Horana and produced before the Magistrate. When the case was called, police officers informed the Magistrate that they had arrested the brothers only on suspicion. The Magistrate then released Thilanka on bail and the only condition was that he was ordered to appear before the court on June 19th.

Thilanka went home, but as he was suffering from the pain of his injuries received as a result of the torture, he went to the Bandaragama Government Hospital. After examining him, the doctor advised him to be admitted for treatment. Thilanka remained in the hospital for two days and was discharged on the morning of June 19th. Thilaka then went to the Magistrate's Court of Horana, where the Magistrate ordered a bail of Rs. 2500. Thilanka complied with the bail condition and left the court. The Magistrate postponed the case as the police wanted to have further time to investigate the case.

Earlier that day when Thilanka was discharged from the hospital, the authorities advised him to obtain a Medico Legal Examination Form (MLEF) from the Bandaragama Police Station. Thilanka collected the form from the police station and handed it over to the hospital. Later, the same day, Thilanka made a complaint to the Assistant Superintendent of Police (ASP) of Horana regarding his illegal arrest, torture, and the filling of fabricated chargers against him by the police officers attached to the Bandaragama Police Station.

The following day, on June 20th, he was summoned to the Bandaragama Police Station and informed that the police had decided to hand the matter over to the Mediation Board and that he was to proceed there. They further informed him that he has to appear before the Mediation Board on June 23rd, 2012.

Thilanka states that police officers illegally arrested, detained, tortured, and filed fabricated charges against him. He further states that police directed this case to the Mediation Board for a settlement which is illegal under the law of the country, as torture cannot be settled by the Mediation Board, and that this is being done because the police wanted to protect the culpable officers. Thilanka states that justice has been denied to him. He seeks an impartial, transparent and prompt investigation into his case.

Abasinghegedara Mahesh Niroshan Palamakumbura [346]

Mr. Abasinghegedara Mahesh Niroshan Palamakumbura (19), of Kothalawala Road, Kolamadiriya, Bandaragama in the Kalutara District is a machine operator by profession.

On June 16, 2012, at 8 p.m., Mahesh went from his house to a shop in his village to buy betel and areca nut. When he was passing the estate of a man called Wasantha, suddenly Wasantha along with another person, grabbed Mahesh, ordered him to be silent and then dragged him to a house in the estate. On shutting the door, they tied his wrists and ankles and started to beat Mahesh.

After some moments, they called a person called Sarath Perera. Later Mahesh was able to identify him as Police Sergeant Sarath Perera, attached to the Bandaragama Police Staiton. They informed him that they had caught someone and requested to come to the place. Within just ten minutes Sergeant Perera arrived on the scene.

Sergeant Perera started to torture Mahesh. He beat the soles of his feet with a pole. Then he started to beat him about the head and face as well. Mahesh started to faint due to the pain and trauma and the police officer released his hands and legs. Mahesh believes that the other person who was with Wasantha was also a police officer, considering the way he talked and behaved with Sergeant Perera.

After the beating, Sergeant Perera ordered Mahesh to make a statement that persons called Thushara and Damith had committed a theft. Mahesh told the officer that he was not aware of such information. Then Sergeant Perera threatened Mahesh that if he did not do what he was told he would face more vigorous torture than he had already experienced. Further, Sergeant Perera told him that he was going to record him when he made that statement.

At first, Mahesh refused. Then Sergeant Perera took up an a electric timber cutter and showed it to Mahesh. He told Mahesh that if he did not comply

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with his orders he would cut off his legs and hands. On hearing that, and being afraid of further torture, Mahesh told the officers that he would make the statement. A little while later Mahesh was brought to a police jeep, which was parked close to the estate and they went in the direction of the Bandaragama Police Station. On the way, the police officers stopped the jeep and arrested a person called Thushara.

At the police station Mahesh was locked up in a cell. The next day at 10 a.m. he was brought out from the cell to make the statement, and when he was asked to sign the document he did as he was ordered. At 2 p.m. he was produced before the Magistrate of Horana and remanded for two days. When he was brought to the Kalutara Remand Prison, one of the duty officers assaulted him with his fists. When he informed the prison officer that he was tortured at the hands of the police officers, he was admitted to the Prison Hospital. When he was produced in court on June 19th he was realsed on bail. As his condition worsened, he was adminted to the Bandaragama Government Hospital, where he was treated for two days and discharged on June 21st.

Mahesh states that he was illgally arrested, detained and tortured as the police wanted to have a witness for fabricating a case against two other persons. Finally, they filed a fabricated charge againt him also as they wanted to remand him and suppress the story of the torture they committed on him. Mahesh states that his fundamental rights guaranteed under the Constitution of the country were violated by the police officers and that justice has been denied. After Mahesh was released from the remand prison he made a complaint to the Assistant Superintendent of Police (ASP) Horana regarding the violations of his rights and requested an independent investigation. To date no authority has started any investigation into the violation of his rights.

Randunu Pathiranalage Susil Priyankara Seneviratne [347]

Mr. Randunu Pathiranalage Susil Priyankara Seneviratne (27) of No 411/3, Nawa Theldeniya, Galadivulwewa in Anuradhapura District is a businessman and owns a communication center in Thambuththegama Town.

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On August 3, 2012, the day that followed a demonstration, when Priyankara opened his shop at 9 a.m., about 10 police officers traveling in a police jeep and on several motorcycles arrived. Six of them entered Priyankara's shop. One officer by the name of Jagath caught Priyankara by his neck while another officer grabbed Priyankara's hands from behind. Then other officers, namely Prasanna Karunajeewa, Upali, Abey, Karunathilake and Wijethunga started to brutally assault Priyankara with their helmets and fists.

When Priyankara asked them the reason for the assault one officer told him, "You assaulted police with stones" (referring to the demonstration of the previous day). Priyankara replied that he had not been anywhere other than in his shop the whole day. He told them they could ask the neighbouring shop keepers for confirmation of this. The officers told him rudely, "We know everything". Then they dragged Priyankara along the floor as they continued to assault him.

Priyankara suffered enormous pain and continuously pleaded with the officers to stop. The adjoining shop keepers came out and, while watching scene, told the police officers that on the day of the demonstration Priyankara had been in the shop for the whole day. They further explained to the officers that he did not go anywhere. But the police officers did not listen and pushed Priyankara into the police jeep. In the jeep, Priyankara observed that the officers had arrested three more persons from the Kuda Bilibawa, Pahalagama areas, and they were also in the police jeep. They all were brought to the Thambuththegama Police Station and locked up inside a cell. The police officers ordered Priyankara to sign documents, which were already drafted, and which he was not allowed to read. Priyankara did so out of fear of further torture.

Priyankara was produced before the Thambuthegama Magistrate, where he learned that the police had filed a fabricated case against him, accusing him of damaging state property. When he was produced, he denied the charges in front of the Magistrate. The Magistrate granted him bail with the condition of two surety bonds of Rs.100,000 each.

After he returned home, Priyankara's health condition worsened and he was admitted to the Thambuththegam Government Hospital. After his admission, he was transferred to the Teaching Hospital of Anuradhapura for treatment. Priyankara was treated as an in-house patient for 3 days and on August 7th, 2012. During that time the Judicial Medical Officer (JMO) examined him.

Before the arrest and the torture by the police officers, Priyankara was in good health. However, following the brutal and inhumane assault by the

police officers he is now suffering various health ailments and has difficulty in performing his daily activities. He is still undergoing treatment. One of the injuries resulted in damage to his left ear and he is now short of hearing. He is going to get further treatment for this from the consultant medical practitioner. Priyankara complained to the Inspector General of Police (IGP), National Police Commission (NPC), Senior Superintendent of Police (SSP) North Central Province, Assistant Superintendent of Police (ASP), Officer-in-Charge of the Police Station Thambuththegama, Director Special Investigating Unit (SIU) of Criminal Investigation Department (CID) of the Sri Lanka Police and the Attorney General (AG) regarding the violations of his rights. None of these authorities have started any investigation into his complaint. He states that his right to have his complaint investigated has been violated and he seeks justice from the state of Sri Lanka.

D.P. Anil Thushara [348]

Mr. D P Anil Thushara, 34 years old, of No: 62, 3rd Mile Post, Rajangana Road, Thambutthegama in the Anuradhapura District, is a farmer by profession.

In the morning of August 2, 2012, Thushara went to the office of the former Chief Minister of North Central Province Mr. Berty Pramalal to inform the minister about the economic hard ships that he and his family were facing due to the drought that has affected the area for several months. He wanted to know how to make an application for the government assistance scheme for farmers who lost their harvest due to the drought and ask for the advice of the minister how to do so. While he was in the minister's office, he heard the noise and commotion of a public demonstration so, out of innocent curiosity, went to the front of the office to see what was happening.

Thushara walked behind the people, and saw the cause for the demonstration. He observed that the demonstrators were carrying the dead body of a lady (killed in a road accident), and blaming the police for releasing the driver responsible, who was drunk at the time, courtesy favoritism. Then the police officers arrived and opposed the demonstrators

348 AHRC-UAC-159-2012; 31 August 2012

and this was followed by an exchange of stones between the police and the demonstrators. Thushara then left the place, as he thought that it could turn dangerous and returned to the office of the former Chief Minister. However, due to the large crowd of people there as well Thushara decided to return home.

Thushara returned to the office of Chief Minister the following day, August 3rd, for the same purpose, and while he was inside the office, at 11 am, about ten officers from Thambuththegama Police Station, arrived in a jeep and some motor cycles. The officers, later identified as Karunathilaka (32787), Jagath (48123), Premathunga (35275) rushed into the office and got hold of Thushara, handcuffed him, and assaulted him mercilessly. Police officer Jagath then struck Thushara with his helmet and officer Karunaratne beat him with a wooden pole as they dragged him to the police jeep. There, Police Inspector (IP) Ubeyananda, attached to Nochchiyagama Police Station, thrashed Thushara with a long rounded piece of plastic. When Thushara asked the police officers for the reason they were assaulting him one officer said that "You attacked our OIC during yesterday's demonstration". Then, immediately, Thushara explained to the police officers that he has never done any such attack. Further, he explained that he was inside the former Chief Minister's office during the demonstrations. He admitted that he had gone out to see what was happening, but had never participated in the confrontation. However, the officers did not listen to him and continued their assault. Janaka Sampath from Thushara's village and some others who had been in minister's office witnessed this beating.

The officers arrested Thushara and brought him to the Tambutthegama Police Station by police jeep. At the station the assault by Jagath and Karunathilaka continued as they caught Thushara by his shirt collar and pulled him out of the jeep and dragged him into the station. A villager by the name of Sisira, who had been inside a police cell, saw this happen.

Then the Officer-in-Charge (OIC) of the Thambuththegama Police Station, Upul Seneviratne aproached Thushara and assaulted his head with a wooden pole, thus cracking Thushara's skull. He then dragged him and made him sit on a bench. Despite his already pitiful condition, the torture continued as Thushara was dragged to a table. He was then ordered to sign a document which had been prepared before-hand. Initially Thushara refused to sign and demanded to know the contents of the document. This was refused, and he was threatened with further abuse if he did not comply with the officers instructions. Out of fear of further torture he signed the papers.

Thushara was produced before the Thambuthegama Magistrate's Courts, where he learned that the police had filed a fabricated case against him, accusing him of damaging state property. When he was produced, he denied the charges in front of the Magistrate who granted bail.

After he returned home his family members brought him to the Thambuththegam Government Hospital where he was admitted and treated for two days. He was transferred to the Teaching Hospital of Anuradhapura for further treatment. Thushara was treated in Anuradhapura Teaching Hospital for seven days. Since this brutal and inhumane assault Thushara's health condition is very bad and he suffers continuous headaches due to the torture.

Thushara complained to the Inspector General of Police (IGP), National Police Commission (NPC), Senior Superintendent of Police (SSP) North Central Province, Assistant Superintendent of Police (ASP), Officer-in-Charge of the Police Station Thambuththegama, Director Special Investigating Unit (SIU) of Criminal Investigation Department (CID) of Sri Lanka Police and the Attorney General (AG) regarding his rights violations. But none of these authorities have started investigation into his complaint. He states that his rights to have investigations and justice have been violated by the states agencies of Sri Lanka.

1.6 Human Rights Defenders

1.6 (a) Attempted Abduction of Activist

Herman Kumara, human rights activist, fighting for fisher folk, writes in his own words about the attempted abduction and continuing threat to his life [349]

The following is an English translation of a written statement made by Herman Kumara to the police:

I am Mr. Wijetunga Appuhamilage Herman Kumara of Sandalankawa, Irabadagama, [located in the Kurunegalle District]. I am 48 years of age, married and a father of two children. While, I am the Chief Executive, or National Coordinator, of the National Fisheries Solidarity Movement (NFSM) of Sri Lanka, I am also the Special Representative of the World Forum of Fisher People (WFFP). I am a Roman Catholic by religion.

349 AHRC-STM-039-2012; March 02, 2012

In a written statement that was released earlier on the February 28, 2012, I released information about the different threats to my life and intimidation I have been subjected to in the last few days. After leaving for Rome on February 18, 2012, to take part in a Farmer Forum organized by the United Nation's International Fund for Agricultural Development (IFAD), I arrived back at the Katunayake Airport, Sri Lanka, on February 24, 2012, at 1.30 pm on-board flight EK348 from Rome.

While I was presenting my travel documents to an officer in the Immigration section of the Airport, I noticed that three individuals were observing me and behaving in a suspicious manner. They were loitering around the immigration counter where I had given my travel documents, after which they started to enter and exit a room that was located behind the counter. I even heard one of the three, who I suspected to be the leader of the three men say "now finish this [objective] we will look after the other things later" to the other men. In addition to this, I noticed that the Immigration officer paid a special interest to the details in my travel documents.

After this, the arrival of my baggage in the baggage retrieval section was delayed by a short period. While I was waiting for my baggage to arrive, I noticed that two of the officials that I had noticed observing me earlier, had come close to where I was and they paid a keen interest towards me. After I had proceeded to meet my wife and friends at the public lobby and continue on, towards the car park, we all noticed that these two officials walked past us, crossed the road and hid behind a pillar to observe us in a suspicious manner. I noticed that they were using mobile phones to engage messages at this time. Freddy Gamage, a friend of mine who had come to pick me up from the airport stood next to the two men and heard what the two officials were saying over the phone. Freddy had heard they say "bring the vehicle quickly, the man is about leave" in a hurried manner.

When the group that came to pick me up joined me and my wife to leave the airport in the van that my wife had come in, we noticed that a green colored car bearing license plate number 301-2865 with one of the officials who we had noticed earlier, was following our vehicle. While our vehicle turned towards Negombo on the Colombo – Puttallam main road we stopped the vehicle I was travelling in at a food and drink shop in Katunayake so that some of my friends who had come to pick me up could get off the vehicle and go back home. The vehicle that was following us went past us and stopped a little ahead of where we were parked.

When we restarted our journey, the vehicle which was following us, which had been parked in a manner so that we could not see it, started to follow us again. Due to this, I felt deeply suspicious and a fear about my own safety. Hence, without going to my house as planned earlier we proceeded to travel faster, to lose the car that was following us and proceeded to a relative's house.

However, even though the car could not follow us, the car bearing license plate number 301-2865 had gone close to my own residence and asked for details from my neighbours. The officials had told the neighbours that I had applied for a bank loan and hence they needed details about me. These officials had taken down information from my neighbours about my house and family, my job, and the vehicles I use. They had obtained this information from the homes of 3 neighbours.

Due to these incidents, I had to go into hiding for a few days. However on the February 25, 2012, I decided to inform the people and the media by making a statement about these incidents and the threats faced by me, when I gave a speech at the 'Platform for Freedom' event at Cardinal Cooray Centre, Negombo on February 25, 2012. We found out that intelligence officers were in attendance at that meeting. One individual we suspect to be from the Security Forces. He had then gotten onto a motor cycle bearing license number WP VX 2375 with another individual and left the meeting before it ended. When we finished the meeting and were leaving the meeting hall to go home, we noticed that a motor cycle bearing license plate number WP – 6442 (other letters were not visible) started to follow our line of vehicles. However, we were able to lose this motorbike by using one vehicle as a decoy to turn off from our route. Due to these continuous incidents I believe that some kind of group intend to either abduct me, making me disappear, or do some sort of harm to me.

A number of suspicious activities had also happened before these incidents took place. On the February 0, 2012, while I was out of the country, an individual identifying himself to be from the intelligence section of the Kuliyapitiya Police had inquired whether the details he had about me and my vehicle numbers were correct from the agricultural officer of my village. He had also inquired whether the news about me being out of the country was correct.

In addition to this, Minister for Fisheries Rajitha Senaratne had repeatedly made public statements that he feels it is me and my organization that are behind the protests and struggles of fishermen. On February 21, 2012, the Minister had made a statement in Parliament that it was I who was behind the

fisherman's protests and that I am responsible for the death of a fisherman who was killed during the protests. He had stated my name quite clearly during this statement. Even though it is not a surprise that our organization makes special interventions on behalf of fisherman's rights, these fishermen's protests and struggle were not done by our organization. This had been stated publically by fishermen's organization involved in the fishermen's struggle. I heard that the Minister for Fisheries was not happy with me because we organized a protest against landing Sea Planes in the Negombo lagoon.

On the January 25, 2012, I was given a call on my mobile phone by Hon. Father Lester Nonis the head of Periyamulla Mission. He is also in charge of Fishermen's activities for the Catholic community. After asking about whether I had made any interventions in relation to the issues faced by the Fishermen of Sinnapaduwa he proceeded to say "you go around inciting fishermen everywhere, even the cardinal asked about this" and "we will take care of this" in a threatening manner.

But I had not had any discussions in relation to these issues. After the Negombo protests Father Lester Nonis had made a statement in the Independent Television Network (state owned) that an opposing group, who were not fishermen and opposed to fishermen, had thrown rocks at the security forces and created this conflict. He had then stated that these were NGO people and that they were to blame for this.

The father's statement is a statement which targets us. After this, the father's statement was used by many government MPs and Ministers to state that the fishermen's struggle is the work of NGO's. These allegations were especially prevalent in Lake House newspaper publications. In addition to this, in the last few weeks groups identifying themselves as intelligence have shown up at the houses of two employees from my organization and asked for details about our office and about me.

In this situation, I suspect that there is an initiative to either kill me, abduct me, or cause some other kind of harm to me. Due to this reason, I must spend my time hiding in different places. Our organization; the National Fisheries Solidarity Movement (NFSM) of Sri Lanka is a state registered organization. Responsibly, I can say that neither I, nor the organization that I represent, has been engaged in any illegal activities. While, the police or any other security forces organizations can utilize the accepted procedures under law to obtain information to obtain any information they need to know about me or our organization, I would like to state that we are happy to completely support them in this regard.

On the February 24, 2012, my wife, Ms. Shrini Kumuduni Pradeepika Adihettie made a complaint to the Pannala Police Station in reference to these incidents and it was recorded with reference as, CIB (1)/241/490. Due to us seeing no fair investigation being conducted in this regard I have decided to send this written statement to you. I request that you accept this written submission and conduct a thorough, fair and efficient investigation in this regard. I request that you protect my life, the lives of my family and the lives of the employees of our organization. I request that you protect my house and my office.

This is my written submission, I have read it, understand it completely and sign it on the February 28, 2012 in Negombo.

1.6 (b) Two arrested from JVP Dissident Group [350]

Mr. Premakumar Gunarathnam, the leader of the JVP dissident group and Ms. Dimuthu Attigala, a member of the same group are reported to be missing from yesterday night. According to a report, published today in the Daily Mirror, both have been arrested. However the grounds on which they were arrested or the location of the place of detention have not been revealed.

The JVP dissident group has been known for taking a proactive stand in supporting the struggle of workers and other marginalized groups such as the fisher folk who have, in recent weeks, held various protest activities against the rise of oil prices and other livelihood issues. It is no secret that the government and the Ministry of Defense are concerned about their activities.

The security of the two arrested persons is a matter of serious concern for all the human rights groups. Torture and other extra-legal punishments are a common practice of the 'law enforcement' agencies in Sri Lanka and there are genuine fears for the well-being of these men.The two persons arrested in

350 AHRC-STM-081-2012; April 7, 2012

December from this same group, Lalith Weeraraj and Kugan Muruganathan still remain missing[351].

The Asian Human Rights Commission expresses concern about the security of these two persons and requests the government to reveal the reason for their arrest and their place of detention. The AHRC further urges the government to either release these two persons immediately or, if in fact they have committed a crime, produce them before a court of law within the 24 hour period stipulated by law.

1.6 (c) Lalith Kumar Weeraju & Kugan Murugan kept in Detention [352]

The Asian Human Rights Commission, as well as other human rights organisations, has kept up a constant vigil on Lalith Kumar Weeraju and Kugan Murugan, who were abducted on December 10, 2011, while engaged in putting up posters for Human Rights Day.

There had been no news about them since. However, some media channels in Sri Lanka and human rights activists have brought to our notice that, in fact, both Lalith and Kugan are being held in detention at the Police Welfare Building at Pettah, Colombo 11. According to the information we have received, the Human Rights Commission of Sri Lanka has been informed about their detention at this building and requests have been made for the Human Rights Commission to visit the premises and obtain their release.

Lalith and Kugan also belong to the same political faction of the JVP as Mr. Gunaratnam and Ms. Attigala, who were abducted and released after the intervention of the Australian government. This JVP faction formed themselves into a new party just this week under the name of the Frontline Socialist Party. Concerned persons request everyone to take steps to pressurize the Sri Lankan government to release these two persons immediately[353].

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351 For details please see: SRI LANKA: The disappearances of Lalith Kumar Weeraju and Kugan Murugan.

352 AHRC-STM-090-2012; April 13, 2012a

353 For details of the abduction kindly see: SRI LANKA: The disappearances of Lalith Kumar Weeraju and Kugan Murugan

1.6 (d) Sandya Ekneligoda harassed[354]

The harassment of Ms. Sandya Ekneligoda, by the government's supporters in Geneva and by the Attorney General's department, for joining the UN Human Rights Council

Mrs. Sandya Ekneligoda was one of the speakers during a side event held on March 19, 2012, during the 19th sessions of the UN Human Rights Council in Geneva. The side event was titled "Rule of Law and human rights violations in Sri Lanka: Perspectives from women, minorities and families of disappeared".

She was invited to share her perspectives as the wife of a disappeared journalist / cartoonist Prageeth Ekneligoda and as woman human rights defender who had been engaging with various Sri Lankan legal institutions and government officials as well as international bodies to search for her husband while also advocating more broadly for democratization in Sri Lanka and on the plight and aspirations of families of disappeared.

During the side event, Mr. Douglas Wickramaratne, a well known supporter of the Sri Lankan government delegation in Geneva for a number of years, attempted to intimidate Mrs. Ekneligoda by saying that "you are coming to Geneva with a smiling face, you are not a victim". Immediately after the event, another group of men had come to her, identified themselves as Sri Lankan Muslims and said "We are sad about what happened to your husband, but you should not betray the country, even though we are Muslims, we have come here to defend the country" They also accused Mrs. Ekneligoda of being manipulated by the money of various organizations. Ms. Farah Mihlar, another women human rights defender, who was a speaker at the same panel, was also harassed by members of the Sri Lankan Government delegation.

A day after returning from Geneva, Mrs. Ekneligoda attended the hearing at the Homagama Magistrate's Courts (Colombo district) on March 26, 2012. The hearing was an inquiry in connection with Mrs. Ekneligoda's plea to the High Court to summon Mr. Mohan Peiris, Advisor to the Cabinet of Ministers and former Attorney General, to courts to give evidence in relation to a statement he had made in Geneva on November 9, 2011, to the UN Committee against Torture that Mrs. Ekneligoda's husband had not disappeared, but was living abroad.

354 AHRC-STM-092-2012; April 16, 2012

During the court hearing on March 26, Mr. Shavindra Fernando, Deputy Solicitor General, appearing for the Attorney General's department, appeared to harass and intimidate Mrs. Ekneligoda by questioning her at length on matters related to her participation in the 19th session of the UN Human Rights Council. Mrs. Ekneligoda asserted that she although she will respond to these questions she felt that these were not relevant to the question at hand: summoning Mr. Peiris to give testimony to courts.

When Mr. Fernando questioned Mrs. Ekneligoda about what she expected from the courts, she emphasized that her aim was to find her disappeared husband or at least his body. Mr. Fernando then asked whether she trusts the judiciary, she answered 'yes' to which he asked 'Then why did you take this matter up internationally? Mrs. Ekneligoda was asked why she complained about her husband's disappearance to the UN and she responded that this was her right and that the UN's Working Group on Disappearances is mandated by member states of the UN to receive such complaints.

Mr. Fernando asked who invited and paid for expenses of the visit to Geneva and whether she received any money. The defense objected saying the questions did not pertain to the objective of the case, to which Mr. Fernando replied "I am entitled to ask any question to find out whether international organizations and NGO's are provoking something against the state".

Mrs. Ekneligoda responded that she had been invited overseas several times by various organizations, such as the Cartoonist's Rights International Network, IMADR and this time by a coalition of German NGOs. She also explained that all her expenses, including travel costs, accommodation, meals were covered by the hosts and that she was provided per-diem for expenses on days the hosts didn't provide meals. She was also asked whether she spoke at a side event and she answered that she had. Mr. Fernando also asked her whether she was aware that the government of the Unites States of America had tabled a resolution on Sri Lanka which was to be voted on few days after the side event and Mrs. Ekneligoda responded that she was indeed aware of this, as this had been reported extensively in various media in Sri Lanka before she left Sri Lanka for Geneva.

This questioning took most of the time, close to an hour, while there was very little said in terms of getting Mr. Peiris to testify in courts about his statement that the disappeared journalist was in a foreign country. Mr. Fernando tried his best to prevent Mr. Peiris being summoned to courts by saying that the certified copy of the transcript of Mr. Peiris's statement provided by the UN

Office of the High Commissioner for Human Rights couldn't be taken as a true copy and that it was not proper to summon Mr. Peiris, as he (Mr. Peiris) had made that statement about the disappeared journalists whereabouts as an official representative of the Government.

During the early stage of the questioning by Mr. Fernando, Mrs. Ekneligoda said that it was around 9.30 pm on that fatal day that she suspected that her husband might have been abducted and that since it was late in the night she could not go to the police station to make a complaint and that it was only the next morning at about 10 am that she was able to find someone to accompany her to the Police. When asked why she did not go then and there to the police station, she said there was nobody to go with her at that time of the night. Mr. Fernando then asked her why she didn't take her elder son who he said must be 18 years old. She corrected him by saying that when this incident happened he was only 16 years old. This line of questioning showed a lack of appreciation of the fact that this mother must have been fearful of taking an underage child for company and rushing to the police station at 10 pm in the night, just after her husband's disappearance.

The line of questioning appeared to be aimed at establishing that it was wrong for a family of a disappeared person to complaint to the UN and attend sessions of the UN Human Rights Council and to show that Mrs. Ekneligoda was getting money from foreign organizations and betraying the country. The line of questioning was also thoroughly unsympathetic towards a woman who was already in great anguish after the husband's disappearance, especially after she repeatedly told court that her children were traumatized by this shattering experience.

1.6 (e) Update on the Disappearance case of Prageeth Eknaligoda [355]

The Court case in relation to the disappearance of Journalist Prageeth Eknaligoda was taken up for hearing at the Appeals Court in Colombo on April 24. The hearing opened as the attorney appearing for Mr. Eknaligoda's wife, Sandhya, explained the proceedings of the case held at the Magistrate Court in Homagama on March 26.

Sandhya's attorney pointed out that he may have to seek the intervention of the Appeals Court to summon former Attorney General, Mohan Peiris, to testify

355 AHRC-STM-095-2012; April 25, 2012

in Court on the comments he made at the UN Committee against Torture on November 9, 2011 in Geneva. The attorney noted that, as per his comments made in Geneva, former AG Pieris was aware that Mr. Eknaligoda was alive and living overseas. The Homagama Magistrate held an order on the same request with no date specification. The government lawyer re-iterated that his objection to summon former AG Mohan Peiris remains unchanged. The basis for his stance is that the UN document, purporting to be the transcript of Mr. Peiris' statement submitted to the Court by the petitioner, was not entirely accurate. He went on to say that the statement contained therein could have been made on government instructions for which Mr. Peiris cannot be held personally accountable.

The Appeals Court will allow the Homagama Magistrate to ascertain the accuracy of the UN transcript of Mohan Peiris' statement at UN Committee against Torture when the case is heard on May 17. A hearing however, will take place on May 31 at the Appeals Court where the proceedings of the May 17 hearing will be submitted. At the May 17 hearing, the lawyers will also cross-examine the last person to speak to Prageeth over the phone.

1.6 (f) Concern over the safety of the Bishop of Mannar, Rev Joseph Rayappu [356]

The Asian Human Rights Commission is concerned over the safety of the Bishop of Mannar, Reverend Joseph Rayappu who has a long-standing record of being a spokesperson on the democratic rights of the minority Tamil community in Sri Lanka. As a pastor of his people and a conscientious religious leader he has consistently expressed his concerns about the problems that affect the Tamil people.

On May 13, 2012 the Sunday Leader revealed that, "Rev Joseph Rayappu, Bishop of Mannar, was questioned by the police on his statement to the Lessons Learnt and Reconciliation Commission(LLRC) regarding the disappearances of about 146,000 during the last phase of the 30-yr war that was brutally ended in May 2009"[357].

The police spokesman SP Ajith Rohana confirmed that officers from the Criminal Investigations Department visited the Bishop and questioned him.

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356 AHRC-STM-103-2012; May 16, 2012

357 The original article may be accessed www.thesundayleader.lk/2012/05/13/mannar-bishop-grilled-on-disappearances/

Under the criminal law of Sri Lanka the power of investigations is based on a suspicion of the commission of a criminal offense. However, it has now become a common practice to question individuals without having any such criminal suspicion against them. Such questioning without revealing the nature of the inquiry violates the basic rights of citizens and creates a climate of fear and distrust.

Following this investigation there are fears that the Bishop may fall victim to some conspiracy. Abductions and disappearances are common occurrences in Sri Lanka and there have been several priests and even Buddhist monks who have been victims of extrajudicial killings or forced disappearances.

Following the passing of the resolution by the Human Rights Council in late March of this year, many persons have been exposed to various types of harassment and vilified as traitors as they called for credible inquiries into the alleged human rights abuses relating to the Tamil people. Rev. Rayappu has also written to the President of Sri Lanka and the Human Rights Council on such abuses and the need for justice and reconciliation. One such letter was published by *Transcurrents* on March 4, 2012.

Those who exercise freedom of expression, airing their concerns about the rights of their fellow citizens, are now being exposed to serious dangers in Sri Lanka. Under such circumstances many persons are anxious about the security of the Bishop of Mannar, Rev. Rayappu.

The Asian Human Rights Commission urges the Sri Lankan government and all opposition parties to take all steps to ensure security for him. The AHRC also calls upon the international community, including the diplomatic community in Sri Lanka, to express their concern to the Sri Lankan government on this matter.

1.6 (g) Threat to Safety of Dr. Nimal Devasiri of University Teachers Union[358]

The Asian Human Rights Commission has received information that, two days ago, a group of people who have identified themselves as members of the Ministry of Defense, visited the neighbourhood in which Dr. Nirmal Raanjith Devasiri, (the President of the University Teachers Union and the Secretary of

358 AHRC-STM-128-2012; June 22, 2012

the Arts Faculty Teachers' Association of the University of Colombo (AFTA-CU) resides, and made inquiries about him and his family, in what appears to be an attempt to intimidate them.

Last night, a jeep without a proper licence plate was seen parked near his house. Today, a complaint was lodged at the Mahargama Police Station regarding these intimidating and suspicious actions. The FUTA is preparing to hold a press conference today to inform the media about these incidents.

In a letter written to Gotabaya Rajapakse, the Secretary of the Ministry of Defence and N.R. Illangakoon, the Inspector General of Police, Professor Asanga Tilakaratne, President of the AFTU-CU has stated:

"It has been brought to our notice that a group of men claiming to be from the Ministry of Defence have been behaving suspiciously within the neighbourhood of the secretary of Arts Faculty Teachers' Associations (FUTA), Dr. Nirmal Ranjith on June 19, 2012. They have questioned neighbours regarding Dr. Devasiri's movement's and details regarding his family. Dr. Devasiri has lodged a complaint with this regard at the Maharagama Police Station on 21.06.2012. We are deeply concerned about this and request you to immediately launch an investigation into this matter."

The University Teachers Union has been working to improve the livelihoods of university teachers, notably by campaigning for wage increases and improved working conditions. The Minister of Higher Education, the Hon. S.B. Dissanayake, has publicly opposed these efforts.

Trade unionists and political activists who campaign for wage increases and the improvement of working conditions, are frequently threatened, and even, physically attacked. The forced disappearances of unionists and activists who disagree with government officials are a regular occurrence in Sri Lanka. Indeed, last week, a shooting in a small meeting of the JVP led to the deaths of two people.

The Asian Human Rights Commission is extremely concerned about the security of Dr. Davasiri, and calls upon the government of Sri Lanka to enquire into this complaint regarding threats made to Dr. Davasiri and his family, and to take concrete measures to ensure his safety.

1.7 Freedom of Expression

1.7 (a) The UN Rapporteur on the right to freedom of opinion and expression refers to attacks on human rights defenders[359]

What follows is a reproduction of the section on Sri Lanka from the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. The Report was submitted to the Seventh Session of the Human Rights Council[360].

Sri Lanka

Urgent appeal

2019. On 17 March 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal concerning ***the existence of a worrying and increasing trend aimed at delegitimizing the activities of human rights organizations, individual human rights defenders and journalists working in Sri Lanka****. Such information includes reports regarding physical attacks, threats, intimidation and public smear campaigns.*

2020. Such attacks and threats, while experienced since 2006, have tangibly intensified following the Special Session of the Human Rights Council on Sri Lanka, which was held on 26-27 May 2009. It is reported that the Human Rights Minister, Mr. Mahinda Samarasinghe commented in The Hindu newspaper that "The people who go and sit in the cafeterias in the UN and lobby people in a very subjective manner putting forward those kind of sentiments (against Sri Lanka) would be inviting a very stern response from the government of Sri Lanka".

2021. In another article published in the online edition of the newspaper Divayina on 25 May 2009, it was alleged that "an NGO team goes to Geneva to defend the LTTE leadership. A team of people from NGOs in this country, including a representative of the Free Media Movement, has reached Geneva airport (…) with the aim of going before the Human Rights Council with inaccurate and false statements against the government of Sri Lanka and the security forces". It is further reported that the Inspector General of the Police claimed in an interview on ITN

359 AHRC-STM-132-2012; June 27, 2012

360 The full report can be viewed at: www.humanrights.asia/news/alrc-news/human-rights-council/hrc17/ahrc1727.pdf/view

TV station on 28 May 2009, that several journalists were on LTTE payroll. The Inspector General of the Police further alleged that these journalists have committed treason and distorted and misreported against Sri Lanka.

2022. On 3 March 2010, the Sri Lankan news website Lanka News Web published an article and a list containing the name of 31 human rights defenders and journalists allegedly compiled by the Sri Lankan State Intelligence Services. The list includes human rights defenders and journalists categorized according to their work, and a brief description of the activities of each individual. The list contains the names of individuals who have been engaged in "international outreach" on human rights related issues and grades them according to their perceived importance to the intelligence services. Several human rights defenders and journalists are referred to as "providing information on human rights issues and IDPs to several local and international outlets", as "international platform speaker on media/human rights" and as a person who "speaks on human rights and media freedom and involved in advocacy overseas". While the purpose of the list remains unclear, it gives rise to a serious concern about the physical and psychological integrity of the individuals contained therein.

2023. The head of Transparency International's Sri Lanka office, Mr. J. C. Weliamuna is at the top of the list. It was reported on 8 March 2010 that the Government of Sri Lanka is planning to arrest Mr. Weliamuna in connection with the alleged misuse of funds. This information comes amidst a media campaign targeted against the Sri Lankan branch of Transparency International. It is feared that the allegations may be related to reports that Transparency International issued in December 2009 and January 2010, which included allegations about violation of election laws and misuse of public resources by the ruling party, and would be aimed at discrediting organizations engaged in monitoring elections. Mr. Weliamuna was the subject of a communication sent on 6 October 2008 by the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the situation of human rights defenders and the Chairman of the Working Group on Enforced or Involuntary Disappearances. We have not yet received a response to this communication from your Excellency's Government. The communication related to a grenade attack on the house of Mr. Weliamuna, causing damages to his property. It is reported that no credible inquiry has been carried out into this attack.

2024. Mr. Paikiasothy Saravanamuttu, Executive Director of the Centre for Policy Alternatives, has been listed number three in the list. Mr. Saravanamuttu has been receiving death threats mainly in connection with the extension of GPS Plus (Generalized System of Preferences) status by the European Union to Sri Lanka

in case it should have been rejected. Mr. Saravanamuttu was the subject of an urgent appeal sent on 24 August 2009 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders. A response from your Excellency's Government to this communication was received on 25 August 2009.

2025. Mr. Sunanda Deshapriya, a prominent journalist and human rights defender, who is number six on the list, has been living in exile in Switzerland since May 2009, due to the threats received and the ongoing denigration campaign in the media following his participation and intervention at the March 2009 session of the Human Rights Council and the 11th Special Session on Sri Lanka. He has been accused of being a "traitor" and a "liar" due to his participation at the Special Session. Videos containing death threats against him have been posted on the social networking site Facebook; he has received numerous threatening text messages and has been vilified in television and radio shows and a number of editorials. The Prime Minister of Sri Lanka, Mr. Mahinda Rajapaksa allegedly stated in an interview on 7 June 2009 in The Nation that it was a betrayal by Mr. Deshapriya to talk against his own country and to say that Sri Lanka violates human rights, while countries like India, China and Russia were firmly standing by the Government. In an interview with ITN TV on 4 June 2009, Mr. Mahinda Samarasighe, the Minister of Disaster Management and Human Rights allegedly did not object to the talk show host's suggestion that Mr. Deshapriya should be expelled from the country for his intervention at the HRC Special Session. Mr. Deshapriya was the subject of urgent appeals sent on 7 June 2006 and 23 May

2005 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A response from the Government to this communication was received on 27 June 2006.

2026. Concern was expressed that threats and harassment of, and intimidation against human rights defenders and journalists, including media smear campaigns, may be related to their legitimate activities in defense of human rights, in particular to their international advocacy and outreach efforts. Further serious concern was expressed that some of the threats may be related to their having cooperated with the UN Human Rights Council and Special Procedure mandate holders. Given the extent of the allegations, an overarching concern was expressed that the threats, attacks and media smear campaigns may form part of a broader attempt to delegitimize the activities of human rights defenders who are critical of actions and policies of the Government.

Observations *2027. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to*

his communication of 17 March 2010, and to earlier communications sent on 9 February 2010, 6 November 2010, 15 October 2010, 9 October 2010, and 8 October 2010. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

2028. The Special Rapporteur remains seriously concerned about the situation of journalists and human rights defenders in Sri Lanka, and restrictions to the right to freedom of opinion and expression, as well as the rights to freedom of assembly and association. In particular, he expresses his grave concern regarding physical assaults, abduction, intimidation and harassment of journalists, and lack of effective investigation into such acts and prosecution of perpetrators.

2029. In this regard, the Special Rapporteur expresses his continued concern regarding the disappearance of Mr. Prageeth Eknaligoda since 24 January 2010, who had been reporting on the 26 January 2010 presidential elections and had completed an analysis that favoured the opposition candidate, Mr. Sareth Fonseka. He urges the Government to undertake independent and effective investigation into his whereabouts and the circumstances of his disappearance, and to bring responsible persons to account.

1.7 (b) Attack on the Freedom of the Press

The Rape of the Legal Process [361]

As the criticism both from within the country as well as internationally mounts against what is happening in the name of law and order in Sri Lanka, new types of distortions and aberrations are taking place in the country's courts.

There has been quite a lot of criticism about the delays of adjudication in courts and in recent times this has been highlighted regarding cases of rape. Just last week one report stated that a rape takes place in Sri Lanka every ninety minutes. Other reports on sexual abuse of children also reveal facts which are quite shocking. This led many local and international organisations to highlight this scandalous situation. Among others some of the international organisations to highlight the issue of delays relating to rape cases were UN agencies.

What is the result?

361 AHRC-STM-121-2012; June 13, 2012

There has now emerged a practice in several courts to deal with this issue by way of offering to end the cases by way of paying compensation by the offender without imposing any prison sentences or even fining the offenders if such fines would affect their future employment. The going rate of compensation is around Rs. 100,000. Thus, an accused in a rape case could escape liability if they are willing and able to pay this amount.

Sometimes this can lead to very pathetic results. There was a case of the rape of a disabled woman and the police tried to settle the matter by the payment of Rs. 10,000 to the victim's family. The family refused and made complaints, which also received quite a lot of publicity. As a result the police had to bring the rapist to the court. When the case was taken up at a Magistrate's Court the judge asked the victim's mother what compensation she wanted and added that he was not in a position to offer anything more than Rs. 100,000. The mother of the victim, who is thoroughly ignorant of the law and what can be done in courts, muttered Rs. 80,000. The judge ordered that amount to be paid in compensation and that was the end of that case.

In some instances when the accused is a government servant and might lose his job if he was to pay a fine as a result of a conviction there are instances where a compromise is reached not to impost the fine but to make a payment for what is called, state costs.

The whole process of adjudication even on very serious matters like rape and torture, the habits of the market place are now being practiced in the courts and the matters are dealt with by way of such kind of negotiations and compromise. There is also the news of a pilot project for speeding up child sex abuse cases in three courts with the view to conclude a case within a period of three months. Such arrangements are unlikely to lead to an actual trial and are more likely to end in a similar kind of compromise.

Sri Lanka has moved far, far away from the rule of law. Any and every possible pragmatic arrangement is possible irrespective of the principles enshrined in the laws in the statute books.

1.7 (c) Sri Lanka Mirror, Online Paper, Raided [362]

According to reports the office of a well-known online daily newspaper based in Colombo, Sri Lanka is currently being raided. The raid is being conducted

362 AHRC-STM-133-2012; June 29, 2012

by dozens of security officers of the Ministry of Defense. According to a source quoted in the Sri Lanka Guardian, the security officers entered the offices showing a search warrant but are preventing people inside the premises from leaving and also preventing anyone outside from entering. It is also reported that the editor of this paper Ruwan Ferdinand's house is being surrounded by security officers at the same time.

Attacks on online newspapers and websites have been going on for several months now and several online publications have been banned in Sri Lanka. Sophisticated technology is being used to keep to maintain the ban and to control all internet publications.

Earlier the Sri Lanka Mirror was banned along with others but after a court case it was allowed to operate. Now suddenly it has been raided. Regarding the ongoing suppression of web publications we reproduce a forwarded statement published earlier.

Last week the president of the Federation of University Teachers' Unions, Nirmal Ranjith Devasiri, complained that some persons saying that they were from the Ministry of Defense visited his neighbourhood and inquired after his whereabouts. The extent to which the Ministry of Defence is interfering into the liberties of persons in Sri Lanka is reflected in the statement we issued today.

1.7 (d) Yet another attempted Abduction of a Journalist [363]

Yesterday, July 5, there was an attempt to abduct a web journalist, Santha Wijesooriya, reported the BBC Sinhala Service. The incident is reported to have happened at Nugegoda. Santha

Wijesooriya noticed that he was being followed by a white van and took the precaution of changing his route in order to avoid the van. While he was doing so, two persons attempted to catch him. One caught him by his shirt and tried to drag him towards the van, but he managed to kick the person away and escape. Thereafter, he reported this matter.

Santha Wijesooriya is a person who is known to have been working with several websites. He is well-known as a web journalist. He has also written many

363 AHRC-STM-139-2012; July 6, 2012

articles relating to corruption and mismanagement. One of the recent articles he has written is about the link between the Rajapaksa family and Julampitiya Amare a.k.a. Geegana Gamage Amarasena, the criminal who has been evading warrants for many years while enjoying the close company of many associates in the government.

Santha Wijesooriya in his article gives a great deal of information about Amare. In the article, Amare is supposed to have been remanded the first time for an alleged crime at the age of 18. Thereafter, he has worked as a security guard at the Walawwa (chateau) of Nirupama Rajapaksa. In July, 2002 a number of prisoners at Tangala Prison staged a riot against the guards. Amare was identified as a leader in that riot. The government at the time stopped the riot with the use of the armed forces. It is reported that during the riot, President Rajapaksa, who was then an opposition Member of Parliament, went to the prison with the then Minister of the Interior and it was after he called on Amare that he surrendered. Later, he became the best known underworld leader in the south. He is suspected of 24 murders, 15 robberies and around 20 arson attacks. However, he was evading arrest and had acquired about 100 acres of land by force and was freely enjoying possession. Recently he sold about 20 acres of land.

Santha Wijesooriya gives considerable detail about the criminal activities of this man and how he was protected by some members of the Rajapaksa family. The article, written in Sinhala may be found here. It was a few days after the publication of this article that the abduction attempt took place.

Just last week we reported the arrest of several persons by a unit from the Ministry of Defense, who entered their premises and inspected all the computers, two of which were confiscated. A total of eight persons were produced before a magistrate who granted them bail. According to reports, the magistrate criticised the police stating that it is not permissible to arrest anyone thinking that they might commit a crime.

The attempted abduction of Santha Wijesooriya and the attack on Srilanka Mirror are part of a series of actions by the Sri Lankan government, which has maintained consistent vigil and attack on all web publications. In a situation where local print publications are controlled by intimidation and attacks, web journalism has become an important alternative media which provides information otherwise not available to the public.

All such actions are taken on the basis of national security. When each incident happens the responsibility is denied by the Ministry of Defense which is the

controlling agency in all matters relating to 'internal security'. However, that the Ministry of Defense is carrying out an extensive activity under the guise of internal security is well known.

An assumption that is fast becoming established is that there are no legal limits to the powers of the Ministry of Defense. No justification needs to be given to anyone for whatever the Ministry of Defense does.

How an institution can function completely outside any kind of legal responsibility to justify its actions on the basis of the law has no rational explanation. Such explanations are no longer considered necessary. That the government can do whatever it likes is the unofficial doctrine that is operating in the country and it is this approach that provides the motivation for persons undertaking such abductions and illegal attacks on websites, including illegal arrests and also secret surveillance of individuals as was reported in the case of the president of FUTA recently.

It is the duty of the parliament and the judiciary to question the mode of operation of the Ministry of Defense. As long as they fail to do so, there is no guarantee of any protection for any individual from any kind of attack on their civil liberties.

There needs to be an investigation into this attempted abduction. However, judging by the absence of inquiries into previous abductions there is scepticism among many as to whether such an investigation will take place.

1.8 Women's Rights

1.8 (a) Failure of State Protection from Rape, Sexual Harassment, & Murder [364]

At Kahawatte, representatives from several religions met and addressed a press conference on the issue of insecurity relating to the women living in this area. Ten women have been raped and killed in this area within a short period of time; the most recent incident occurred one month ago.The police have failed to identify and arrest the persons responsible for this heinous crime.

The women representatives from the different religions stated in very clear terms that now women are afraid to stay alone in their houses in the Kahawatte

364 AHRC-STM-043-2012; March 7, 2012

area. Amongst those who expressed their concerns were nuns from the Buddhist and Catholic faiths. They all stated that the night has become a terrifying time for them and that if there were no men in the house they would rather leave home and stay elsewhere. The fear of rape and murder has gripped the locality.

All the speakers attributed this deep sense of insecurity to the failure of the police and went on to say that this is not something new to the Kahawatte area. Indeed, all over the country people identify the failure of the police as the main reason for the increase in crime and the spread of insecurity in their respective localities.

The women who held the press conference stated that the police are no longer interested in their law enforcement functions but, are rather being used to hunt political opponents of the ruling regime. The concerns of the police are directed at those who hold demonstrations relating to the high increases in the cost of living or other forms of repression which are prevalent in the country. Hunting down dissenters is now the task for which the police are used and their function as the protectors of the people has taken a back seat.

The fear of rape and the very real possibility of being murdered are wide spread throughout the country. In 2011 alone 1,350 cases of rape were reported. It is well known that anywhere in the world that the numbers of persons who dare to report a rape are very few. Thus, the figure of 1,350 is just a fraction of the women who have been subjected to this abuse. How many of these cases have been investigated and how many of the perpetrators have been brought to book? If, indeed, there are any at all it would only be a handful. The sense of futility of making complaints to the police is such that from among 30 women that were interviewed on the question as to whether they would go to a police station if they had a problem almost every one of them answered categorically that they would not dare.

A variety of reasons were given. The foremost being that they are afraid that they would be subjected to an even worse form of treatment than the one about which they were making a complaint. The fear of rape or sexual harassment at police stations is quite common among women.

When the lack of trust in the police has fallen to these depths with regard to protection and when the lack of confidence is so well-known to the government and the authorities and still no action is taken what expectation can there be of protection for women. At the moment there is nothing to attach one's hope

to and there is no real demand that could be made of the government with any real expectation that action will be taken.

Thus, the core of the problem of the rape and murder of women and other insecurities that they face relates to a deeper problem of the failure of the government to take up the task of law enforcement with any kind of seriousness or any sense of obligation. One of the primary tasks of any government is to ensure the enforcement of the law through its agencies, such as the police, and thereby create the assurance to everyone, particularly the vulnerable groups such as the women, children and the elderly that their protection is a matter for which the government places the most serious attention. This consideration no longer exists in the Sri Lankan context.

Therefore, what anyone is seriously concerned about in the protection of women as the representatives of the religious groups who gathered at Kahawatte should do is to seriously ponder the failure of the government in this regard and to address the root causes of the failure of the government to take its primary obligations seriously. In any inquiry into such root causes it will become extremely clear that the structure of the government that is being imposed through the 1978 Constitution has failed completely. The executive presidential system has proven itself to be a complete failure in every aspect including that of the basic protection of citizens.

Press conferences or protests against rape and the absence of protection for women will be of little use as long as the ineffective system of governance, created and imposed on the people by the 1978 Constitution would be enforced. The only kind of protection that the people would have under these circumstances is whatever they can do for themselves and not what they should expect from the government.

The executive presidential system is a threat to the protection of women and even a basic problem like rape cannot be prevented as long this form of governance will be the one that people of Sri Lanka have to live under.

Therefore, the women who make up half of the population, together with others should combine their efforts to address the root causes of the problems of insecurity and direct their attention to the removal of the system of governance that exists in Sri Lankan under the 1978 Constitution.

1.9 Crimes

1.9 (a) Murder of British national and Rape of Russian lady at Tangalla [365]

The murder of Kuram Shaikah Zaman (32), a prosthetic expert who was working in the Gaza Strip for the International Committee of the Red Cross, allegedly by a local politician, accompanied by a gang, has led to sharp criticism against the failure of the Sri Lankan government to maintain law and order and for its encouragement of lawlessness and criminal behaviour.

Zaman and an associate, a Russian lady by the name of Ms. Victoria Alexandrovna, (23) went to Sri Lanka for a short vacation. A number of foreign girls, including Victoria were enjoying a party when the Chairman of the Pradeshiya Sabha, Sampath Chandra Pushpa Vidanapathirana, wanted to dance with the girls; however, they refused. The infuriated chairman started a quarrel with the girls and Zaman, who was outside at the time came in and tried to stop the altercation. At this stage Zaman was assaulted and stabbed with a sharp instrument; he was also shot at, according to the reports of eye-witnesses.

The alleged murderer, Sampath Chandra Pushpa Vidanapathirana, in the company of president Rajapakse

After the attack, Victoria was brutally raped and was found naked by the time the police arrived to investigate. She also suffered blunt trauma and sustained a skull fracture. According to an eye witness she was raped even as she lay bleeding from the head wound.

Several eye witnesses who had seen the incidents and made statements are now being threatened and are expressing concern for their own safety. Meanwhile several journalists who have reported the incident have also received death threats and reported the matter to their media agencies.

A government spokesman's first reaction to the media was to deny the rape. This is the usual pattern of government spokesmen, who try to defend

365 AHRC-STM-001-2012; January 3, 2012

government politicians even when these politicians are involved in serious crimes.

This murder and rape does not come at all as a surprise. Throughout the country similar gruesome murders and rapes were reported during 2011. The Asian Human Rights Commission has repeatedly brought these cases to the notice of the public, stating that the criminal justice system has been brought to a halt due to the political control of the policing system. The local politicians, on many occasions, have acted in a wild manner, due perhaps to the political patronage they have from the government.

Due to the publicity this incident has attracted, Chairman Vidanapathirana surrendered to the police. On assurance of anonymity, a policeman explained that such surrenders are nothing but a game. All the conditions of how to deal with the situation and the manner in which the surrendering suspects are to be released are all prearranged, he said. The whole process of criminal investigations is so manipulated by the government politicians that in many similar incidents the suspects have escaped any criminal punishment. The most glaring example is that of Duminda Silva, a Member of Parliament and a close associate of the Rajapakse family who was known to be a drug dealer and who was responsible for the attack that led to Baratha Laksman Premachandra and several others being killed. Duminda Silva was never named as a suspect in the reports of the criminal investigations submitted to court. The government's excuse was that the police have failed to name him as such.

The murder and rape of these two foreigners is the result of the failure on the part of the government to take the necessary measures to maintain law and order. The murder and rape are not accidental incidents but one of the many gruesome crimes that are taking place throughout the country due to the failure of law enforcement system.

The Rajapakse regime has clearly shown that it cares little about the law. Every kind of illegality has been permitted and the criminal investigation system has been brought to a standstill.

Lawlessness is part of the ruling style of the Rajapakse regime. The government claims, as its right, to engage in any kind of illegality for the maintenance of its power. Assaults of opposition parliamentarians inside parliament itself has now become the rule and this kind of behaviour is condoned by the president and the hierarchy of the regime who are for the most part, members of the same family.

Assassinations, death threats and other forms of intimidation of the media are so frequent and still no investigations take place into the complaints relating to such allegations. It is as if the Rajapakse regime has given a holiday to the officers of the Criminal Investigation Division.

The absence of investigations into serious crimes is the rule now. When some incidents become social scandals some persons are arrested and then a government spokesman claims that the crime has been solved. However, thereafter hardly any criminal process takes place and many such suspects, particularly those who are close to the government, are let loose after their initial arrest.

The result is that the policemen themselves, as well as the public have lost faith in the whole mechanism of law. The cynical comments could be heard about this system constantly.

This murder and rape and the similar incidents will keep on happening as long as the Rajapakse regime belittles law and criminal justice. The responsibility for this murder and rape lies not only on the culprits but also on the Rajapakse regime as a whole.

The statement of the wife of Mohamed Sali Mohamed Niyas (Loku Seeya shows the kind of gruesome murders taking place in Sri Lanka).

> *According to the post mortem, he was strangled and his throat slit. He had also been pounded in the head and stabbed a number of times. He was also administered 3 injections of unknown chemicals. I am still an unable to imagine how brutal that had been. The body had over 100 kgs of weight strapped on to it which was wrapped with barb wire. The body was then covered with polythene and secured further with chicken fencing. It also had something like an anchor attached to the body. In spite of all that it had washed ashore to Akkarai Paththu. The body was flown back home and the funeral proceedings conducted.*

What has happened in this incident is an extension to foreigners of two countries what is normally happening to Sri Lankan citizens all the time. This incident should be an eye opener to the government of the respective countries as well as to others about the state of lawlessness that prevails in Sri Lanka.

Without local and international effort to undo what the Rajapakse regime does to the legal system of Sri Lanka the future of all citizens as well as the visitors

to Sri Lanka will remain a dismal one. There is regret at the moment about the adverse impact of this incident on tourism. However, the problem is not one of tourism alone. It is about total failure to create opportunities for a decent way of life in the country.

The Asian Human Rights Commission, while condemning this incident, calls upon Sri Lankans as well as the international community to boldly resist the Rajapakse regime's undermining of the rule of law in Sri Lanka. This descent to animal-like behaviour can only be stopped if the Rajapakse regime changes its policy of taking complete political control of the police. As long as the nation's law enforcement agency is unable to act to protect society from crime, there is no way to stop similar incidents from happening again.

1.9 (b) People express frustrations by burning some houses at Kahawatte[366]

After intense public pressure, the police have revealed that they have identified the culprits behind the assassination of a mother and daughter at Kahawatta which took place one month ago. The failure of the police to take action so far has been attributed to political interference which has prevented them from carrying out their duty. Complaints of political interference with regard to the police are quite common.

The anxiety felt by the people, particularly the women, due to the recent murders, and the failure of the police to investigate led to the people protesting in large numbers, said to be over 2000, in Kahawatta. Following the news that the suspects had been arrested, houses belonging to the brother of one of the suspects were torched by the protesters. The owner of the houses is a Pradeshiva Sabha (council) member and the coordinating secretary to a minister.

According to information published so far, the council member is said to have ordered the murders of these two women. In the meantime the council member and his family have fled the area fearing retribution from the protesters.

The participation of such a large number of persons and the torching of the houses is a clear indication of the frustration that the people are feeling due to

366 AHRC-STM-048-2012; March 8, 2012

the failure of the policing system. A similar incident, including the burning of a house, occurred a few months ago when a doctor was murdered and the people discovered the identity of the killer. In many other instances also there have been large scale interventions of the people who have protested against police inaction in relation to serious crimes.

While arson needs to be condemned, as an act of lawlessness that can create a greater sense of insecurity, the participation of the people of a locality in such large numbers needs to be seriously pondered. Attempts must be made by the authorities and other concerned persons to understand the depth of frustration that is expressed by such protests.

Such protests clearly demonstrate that the frustration is not merely with the police but with the government itself which has clearly demonstrated that it lacks the political will to deal with the complicated problems of the failures of law enforcement throughout the island. In the past the excuse of the civil conflict in the north was given as the explanation for such failures. However, there is no real connection between the problem of the civil conflict in the north and the failures of the policing system in the rest of the country. In any case, this excuse no longer holds water after the May 2009 defeat of the LTTE.

The incapacity of the government to deal with the failures of law enforcement speaks to far deeper causes than the mere negligence of the local police or even the police hierarchy. The existing situation is the result of a systemic failure which arises from deep structural reasons rather than mere negligence of particular individuals.

As pointed out by the Asian Human Rights Commission earlier, the most difficult problem relating to law enforcement as well as the democratic process in Sri Lanka is the political structure imposed through the 1978 Constitution, which has clearly emerged as one that cannot be practically implemented. Empowering a single individual, the executive president, with all the authority of managing the political and administrative structure of the country was, from the very inception an impractical idea. No single individual has the capacity to run the civil administration of a country. The authority that the head of a state has is that of a coordinator rather than that of a commander, looking into every problem that exists in a country. Thousands of new problems and new situations arise within a country and these situations are multiplied in each locality by way of new situations and new problems.

There need to be persons at different levels of government with the power and the capacity to comprehend the manifold problems that arise within a country

and these authorities should also have the power to take the necessary action on their own. Making these decisions on their own implies that their authority should not be interfered when carrying out their duties. The idea of supervision or the command responsibility of higher authorities does not imply the direct control of each and every individual holding office and depriving such authorities of the right to take the necessary action to deal with the problems that they are confronted with.

What has happened under the 1978 Constitution is that all decisions of all authorities have come under the direct political control of the executive president. As a result of the exercise of this kind of political authority over various institutions, the authorities within those institutions have learned that they do not have the independent power to make decisions and solve problems. They have learned to wait for orders. This mentality, of fear to deal with one's own responsibilities with one's own initiative, is the cause of the paralysis of all the institutions in Sri Lanka, including the police. This means that the frustrations that the people have in the failures of the institutions is not going to be resolved until this system which has been imposed through the 1978 Constitution remains the operative system within Sri Lanka.

As a result, for each event, for example on each murder, the affected people in the localities have to generate an enormous amount of pressure if they want to get any kind of action from the relevant authorities such as the police. The whole system depends on the ability of the people to become directly involved in every problem and to hold public protests in order to create pressure.
Therefore, this is not a rational system that relies on multiple sources of authority acting on the basis of the responsibilities that are conferred on them by law and authorities that hold themselves responsible to carry out the duties that are imposed on them within the framework of the law.

The present situation is a direct policy imposing system and not a law enforcement system. Every officer has to be waiting for the command from the top indicating what he or she should do and such authorities cannot depend on the legal mandates that are given to them by the very office they hold.
Therefore, the responsibility for the violence that took place at Kahawatta, by burning the houses of the alleged culprits of the crime the responsibility should be laid, not on these helpless people acting out of sheer desperation, but on this presidential system that has forced the people to take such action. It is the President that should be held responsible for these acts of violence.

The question simply is who is going to take the initiative to undo this failed system? Though the incumbent president promised to take that initiative when

seeking a political mandate for the highest post in the country, that promise has not been kept. Without the president taking that initiative it is not possible for anyone in the government to take any action for the dismantling of this failed system.

This implies that the initiative for changing the failed system rests with the people themselves. Instead of the desperate action of torching the houses of alleged criminals the peoples' initiative should be more rationally directed towards dismantling of the executive presidential system which is the cause of their grievances, their frustrations.

1.9 (c) Fort Police steals from Cambridge graduate & Charges him with Theft [367]

The Asian Human Rights Commission is forwarding the following letter from Mas Rashid Singawangsa, a Sri Lankan citizen, which gives detailed information of the ordeal he suffered at the hands of the Fort Police.

What follows is the letter from Mas Rashid Singawangsa:

I humbly and respectfully submit the following facts with the fervent hope of getting redress and justice:

I am a Cambridge University qualified English teacher. I studied in the US and UK and then taught in Yemen (I have lived out of the country for over 15 years). Afterwards I returned to Sri Lanka on about February 2012 and went on a tour around the island.

On or about 15 March 2011, I applied for a Police Clearance Certificate to enable me to take up employment abroad before undergoing some specialized Chinese treatment in Malaysia for a skin problem I have been suffering for a long time. I had already bought a ticket to Malaysia to leave by 10th May 2011.Since the clearance was getting delayed I visited the Police HQ several times without getting any positive response. Again, I visited this office on the 9th of May 2011, and met ASP Ms. Renuka who had earlier given me an appointment to see her and was told it was not ready and if I wanted earlier I could write a letter of appeal to DIG, which she could take to him to expedite the matter. Accordingly, I handed over a letter to her and left her office. After about half an hour I received a call from OIC

367 An article by Basil Fernando, AHRC-ART-098-2012; October 15, 2012

Mr. Alwis of the Clearance Section Police HQ who asked me to report at his office and collect the Clearance Letter. Since I was taking some Ayurvedic treatment for my eczema (a skin problem) and also was having loose motions, I called Ms Renuka and asked if I could come a little later and if she could leave the letter at the entrance. She said it was not possible and asked me to come before 5.00 p.m.

I arrived at OIC Clearance office around 5.00 p.m. and met Ms Renuka. She told me that she took a lot of trouble by personally seeing the DIG to obtain the Clearance Letter. Then I asked OIC Mr. Alwis for the letter and he kept me delayed up to one hour saying the letter was still under process.

All of a sudden I saw SI Mr. Wijedasa (who I later learnt was from the Fort Police station) along with a number of PCs walked in and asked me to follow them to a corner of the hallway, surrounded me and strip-searched me. They removed all the items in my possession and went through them. They left my things on the floor which was put back into my bag later. However, they kept back my wallet which had approximately Rs.70,000 in S/L currency and Two Travelers Cheques of USD $ 100 each, among other items. Then the SI took my wallet to ASP Renuka's office while I was asked to stay outside the office. I was completely unaware as to what was happening inside the office. The officers who were present there were joking at me calling me "Bin Laden" apparently for my beard in spite of my protests. One of the officers however, repeated this name many times which appeared like insults. After about 15 minutes the SI came out of the office and accompanied me with another officer out of the HQ and took me to Fort Police Station on a Three Wheeler. At this stage my bag and wallet were still in their custody. At the Fort Police Station, they had me seated and asked me a few questions which I don't fully recollect. I asked some of the officers around why I was taken here for which they were reluctant to answer. However, one of the officers jokingly said "you have been arrested for a theft of Rs. 8,000", which I too took as a joke as they did not show any anger towards me. Then I was shocked when I was taken to the cell and locked up. I was lying there for some time and also performed my prayers. Then I was brought to the office and was asked to sign a statement for the items which they found in my wallet. I looked at the amount mentioned as Rs.55,000 and disagreed about the amount as it was short by Rs.15,000. Also, the receipt mentioned only one TC x US$100 whereas I had two TCs. I counted the money in my wallet and after discovering the amount stolen, I banged the wallet on the table saying, "you know how much was in it and you know who took it". The officers there did not react to my shouting. They kept insisting me to sign the statement which I totally refused to do. I was then put back into the cell. I spent the most agonizingly sleepless night since this was the first time I ever experienced such a dreadful event in my entire life.

On the following day morning, a police officer from the Tourist Police (I was told) forced me to provide a statement the way he wanted relating to the incident. I was not sure what the incident was. He said, if I don't give a statement I would be given another prison sentence. He asked me several questions and wrote down on his own words. From the questions I inferred that I was being framed to have committed a theft of some money from the Police HQ. It looked ridiculous to me to imagine even a hard core criminal could have had the courage to steal cash from the Police HQ. Here I would mention that due to absence from Sri Lanka for a long period of time due to employment abroad and studies I had been out of touch with Sinhala language and my accent sound foreign. The Officer was perturbed that I could not manage in Sinhalese and even cursed me intermittently, "you fucker, you forgot your language", and was very angry with me notwithstanding the fact that I am not a Sinhalese and throughout my life I used English as my home language. I asked him to write the exact words I spoke, which he refused and used his own words and insisted me to sign the statement.

I remember signing the document with my comment at the bottom "with reservations" within brackets. After the interview I was put back in the cell and later I was asked to sign for the "release of my property that included money". I refused to sign as part of my money was missing as mentioned before. Then they told me they would not return rest of my money if I did not sign the receipt they had with them. I was therefore compelled to sign the document in order at least retrieve the rest of my own money. However, I mentioned that "missing Rs.15000 and a TC for USD $100" after my signature on the document. Also, the trouser belt they removed the previous night before putting me in the cell was not returned to me. I had to wear my trouser without the belt which made me very inconvenient as I had to hold on to it with my hands.

I was taken to the Magistrate's Court, Fort where the Fort Police read out a statement to the judge. I did not see the statement which was read out at the courts which I could not follow fully well as it was hardly audible. The honorable judge did not ask me a single question, when I was prepared to tell her my version of the events. Later, some prison officers took me to the Magazine Prison.

Up to now I am not clearly told what crime I had committed or given any charge sheet. I spent 14 days or so at the prison and after the initial court appearance. On my second appearance I was offered bail which I could not utilize as I did not know any procedure and was put back into the cell notwithstanding the fact I was represented by a Lawyer arranged by the Police against my will. After a few more days, through a motion I was released on bail on 30th May 2011. Having spent most of my hard earned money on the above matters, I have now become almost

a pauper, without a job, unable to go abroad for employment, unable to face the world and suffer through mental agony. Inside the prison, I had to stay with some of the worst criminals and drug dealers I have ever come across in my entire life, and also had to tend to my bleeding wounds without any proper medicines. All these when I remain not even knowing what I am really accused of. My plan to obtain treatment in Malaysia for my skin problem has failed and the problem has worsened since then.

Though I am fully aware of the true incident (that it was a total fabrication), I leave that decision with you to decide. However, apart from that, any laymen can say with certainty that the police have made inaccurate and contradictory statements under oath, as a cursory perusal of the documents will show. Out of the more than 40 contradictions, let's take the following as an example:
The alleged lost money was kept in the following locations:

(a) In an open cane basket (A,1,26) (b) under a book (B,4,19) (c) under a file (P1,4,5) (d) on a shelf (P2,8,3) (e) on W1's left side of table

***Since a person's life would depend on the statements made by police, one could even get a life sentence based on a wrong wording**. Therefore, under such circumstances, I believe it is irresponsible to have such characters to continue service since they clearly pose a risk to the well-being of our society as they have themselves clearly demonstrated through their work, without a shadow of a doubt, in statements under oath, that they are incapable of doing their duties properly and thus putting people's lives at risk. I was myself in prison for 3 weeks. Although out on bail, I can never forget the miserable time I had to endure. I can't forget being dragged in chains and hand cuffed while being taken to the hospital and spending sleepless nights in drug and cigarette smoke filled environments next to murders, rapists and criminals. I am now on psychiatric medication, and to date suffer from strange rashes in my body and groin areas. The perpetrators are no other **than criminals in uniform. So long as they and their likes remain employed, I will never feel safe, nor you or your family, dear reader or anybody else known or unknown**. I am sure everybody will disagree as dangerous if we have former prisoners work in the police force. Likewise, as responsible citizens, those police officers must be stripped from their positions and brought to trial as the evidence is established with certainty based on their own statements made under oath. I believe police officers engaged in such misconduct ought to be suspended so as to discourage further crime since they have committed perjury as noted in the proceedings as well in complete disregard to the judicial system.*

I therefore request that proper charges be brought against those responsible and that

they be taken to task to the fullest extent of the law so that it remains a lesson to would-be-criminals. I also request that the evidence be looked into and that I be acquitted and the case dismissed, ***if you are satisfied of my innocence****.*

I lodged a complaint with the Human Rights Commission (1636/11) a photo copy is attached herewith within a month after being released on bail and therefore would like to file a fundamental rights petition.

Below are some of the violations:

1) Falsely and knowingly bringing false charges + imprisonment.
2) Stealing money in my possession.
3) Refusing (Fort Police) to lodge my complaint.
4) Refusing a copy of the first information.
5) Refusing to provide a clearance for work.
6) Tarnishing of my character.
7) Causing physical and psychological damage.

I therefore most humbly request that I be released and absolved of all the charges, if any, which I never committed to the best of my knowledge and belief. I also hope the perpetrators of this criminal injustice to me be legally taken to task as they tarnish the good image of this government and our beautiful nation.

1.9 (d) Attack Killing 2 Attending JVP Meeting is a Forewarning[368]

Two persons were killed and several others injured attending a JVP meeting on 15th June. This has once again reminded the country of the system of political terror, which has undermined the political and legal system. The killing was the result of shots fired by motorcyclists, who fled after the incident and according to the JVP, the shooting was carried out by an underground elements. The JVP believes that it was a political assault for which the government is responsible.

What has created the suspicion about the government's involvement is the media version given by some channels immediately after the attack which said that it may have been caused by break away rival groups of the JVP itself. The spokesmen for the police also tried to give this interpretation, even though there was no evidence at all to back it up.

368 AHRC-STM-123-2012; June 19, 2012

Whenever the government is involved in a political attack, it is a common feature to attempt to attribute such attacks to some other sources. In a country where political terror is so deeply entrenched, committing and attributing the blame on various groups and elements is now the norm.

The JVP has stated in public that they have provided sufficient information which should enable the arrest of the culprits. However, the police claim that there is not enough evidence to rely on and that they are investigating the matter through several investigating teams.

Making claims about ongoing investigations is also a common feature in Sri Lanka after political attacks. However those investigations hardly ever lead to any genuine arrests. Indeed, there are so many cases where for years the investigations are said to be on going but no findings have been made. The cases of Lasantha Wickramatunga, Pradeep Eknaligoda and many others relating to journalists and people representing opposing views to the government are quite well known.

On the other hand, when it comes to the people who are friends of the government, such as Duminda Silva, the police investigators do everything they can do to ensure the protection of these culprits. President Mahinda Rajapaksha and the defense secretary Gotabaya Rajapaksha should take the blame for the state of the prevalence of state of the terror in the country and for the failures of the police investigations.

This killing of people who are faithfully participating in a small political gathering in a peaceful manner is a warning of another round of terror that is being ushered in. That the JVP is the target being relentlessly pursued by the government is no secret. These attacks have happened over and over again and it is quite likely that there will be many more of them.

In such circumstances, to remain silent is to encourage the recurrence of another round of violence. The protest against such violence should above all come from those who have supported the government. Surely many of those who have supported that government have not done so just to see the recurrence of a period of terror.

The opposition parties and civil society organizations should rise against this resurgence of terror attacks irrespective of whatever their may be views about JVP's political ideas. If they remain silent, such terror will soon be directed against all opposition parties and the civil society organizations.

1.10 Attack on the Right to Property

1.10 (a) Disappearance of Land Titles among other Frauds [369]

The Asian Human Rights Commission wishes to bring to the attention of the Sri Lankan public that we have learned about the massive frauds relating to tampering with land titles and also other frauds by the misusing the criminal justice process by way of fabrication of charges.

The incidents narrated hereunder would explain the nature of fraud that is taking place on land titles, by the removal of District Land Registry documents from the land registrar's offices. The cases will also reveal, how, by unscrupulous manipulation of false charges on innocent people, some massive frauds are taking place.

For reasons of security, the AHRC has withheld the names of the persons who were directly victims in these stories. However the incidents are real and have taken place recently.

Story 1

Upali (1) is a businessman who owns land in a reasonably important area in Galle. He has owned about 40 perch of land (one fourth of an acre), which is his family property for over 80 years. As is becoming more common these days some unscrupulous persons made a false deed and registered it in the District Land Registry for this same land. Upali (1) is unaware of this registration. The newly registered owner sold the land to a company dealing in real estate. This company was requested by a politically powerful family who is trying to develop a big project in the area to find land for them. The company sold several pieces of land including that belonging to Upali (1) to the family.

When the project tried to take possession of the land they discovered that Upali (1) is the legitimate owner of the land but claimed that they were the lawful

369 AHRC-STM-187-2012; September 17, 2012

owners. The company who sold the land to the project was questioned about this issue. It was only at that point that the company found out that the deeds of the person who sold the land was falsely registered and that the lawful owner is Upali (1). The politically powerful family who are the owners of the project placed the matter before the Ministry of Defence who questioned the company about the complications of the transaction.

The company, on the one hand, tried to negotiate with Upali (1) offering a certain amount of money for him to vacate the land and hand it over to the company so that it could in turn, hand it over to the project. On the other hand the company explained to the Ministry of Defence about the complications involved and Upali (1)'s resistance to hand over the land.

While the company was involved in this difficult process tried to correct the mistake they had made in buying the land from the person who had the falsely registered deed and at the same time please the politically powerful family by trying to obtain vacant possession of the land, they explained the complications to the investigators from the Ministry of Defence.

While the negotiations were ongoing between Upali (1) and the company one day he went to a public event and there, two uniformed officers who arrived in a white van arrested him. They told a family member of Upali (1) who was present that they were taking him to a particular police station. Later, members of Upali (1)'s family went to that police station only to be told that there had been no such arrest. The police further stated that they had no information on Upali (1)'s whereabouts. They then contacted the employee of the company who had led the negotiations and learned that the Ministry of Defence was making enquiries about the land and the complications. He also said that he was unable to do anything about this matter and that it was being handled by big people. He was a small man, he told them and it was out of his hands.

Two years have passed since the disappearance of Upali (1) and to date, no one knows his whereabouts. He is considered to be a disappeared person. The family members who are still trying to find Upali (1) are harassed and threatened to give up their enquiries. Eventually they had to flee the country for their own security.

Whatever the claims or land titles that Upali (1) once had are lost and the politically important family has now become the owners of the land as well as other lands which are being used for the project.

Story 2

Upali (2) is the owner of a tea estate, which is fairly large and a well-known person in the area. Between 1987 and 1991, which was when, the JVP was in conflict with the government, one night he was abducted and brutally killed by unknown persons. The family was not sure whether it was a JVP team or one from the UNP who also considered him to be an opponent.

Twenty years later we are now telling his story.

Some persons had allegedly written false deeds for his land, which was registered, and they were trying to claim ownership. The surviving family members had to find their own solutions to their lives and are distanced from this affair. The persons who registered the false deeds are aware of the possible complications and it was to profit from these complications that they registered the false deed and tried to claim the land of the owner who was extra-judicially killed during those days of terror.

Story 3

Upali (3) was a Deputy Inspector General of Police who rose to that position after working for several decades. One day, an amount of gold worth millions of Rupees was stolen from his house. Despite of all possible enquiries the police were unable to arrest anyone. Some months later the suspect was apprehended in another theft. The Head Quarters Inspector of Police (IP) in another area had arrested the suspect. This IP was a powerful person with connections to local and national politicians. He had been accused of many human rights violations including the extrajudicial killing of a person who had complained of police torture by the OIC and other officers under his command. However, he had been able to avoid any kind of enquiry or any disciplinary action. Even the extrajudicial killing of the complainant of torture was never investigated.

After the arrest of the suspect, the IP discovered that the man had been involved in the robbery from the DIGP and was able to recover the gold. He released the thief but kept the gold and gems for himself. Sometime later the thief was arrested again in another area and there, among other things he revealed his arrest by the HQ IP and how the officer took the gold and gems. The IP was later arrested on charges of robbery from the DIGP.

Story 4

Upali (4) is a young businessman and is also a qualified accountant who learned in the recent years to invest some money in the shares market. He discovered that by careful watching the market and investing his money properly, he could make a profit. Realising that he had learned his trade well he put most of his savings into the market, which amounted to around Rupees Ten Million. Suddenly within a few days he lost around Rupees Nine Million. He then learned that due to a massive fraud that had taken place within the share market he had been thoroughly cheated. There was nothing he could think of by way of legal action to take action on the cheating that had gone on in the shares market.

Story 5

Upali (5) is a young man who had taught himself a few languages and found a job as a tourist guide. He was in the job for some years and as a result he had a big advantage over the other guides and got to know a lot of people. Knowing so many people he became engaged in small transactions where he would do jobs for traders and make a commission for himself. He was previously from a fishing community and because of this he knew people who made and sold boats.

One day two persons approached him and asked where they could find a company that would sell them a boat. They told him the boat would be used for fishing. He introduced them to a company which sold them a boat for Rs. Three Million and gained a commission of Rupees 50,000.

Sometime later, as often happened, some tourists asked him to find them a hotel and he took them to a particular hotel for the night. That night the police raided the hotel and arrested the tourists and charged them with illegal migration to Australia by a private boat. The police questioned the owner of the hotel as to who had brought the tourists there and he identified Upali (5).

Upali (5) was then arrested by a number of police officers. He was assaulted and threatened with death. He was blindfolded and overheard the officers saying, “Let’s kill him now.” Another replied, “No, let’s get the information and we can kill him afterwards”.

When they took a statement from him he told them of how he had introduced people to buy the boat and gave the police their names. Later these people were also arrested. They paid a large bribe to the arresting CID officer and these people who were in fact, the organisers of the illegal migration and who had taken money from people promising employment, were released.

Upali (5) was charged with organising the trip and recruiting people for illegal migration and he then spent a period of almost two years without bail. There was no evidence of any sort against him except for the fact that he had brought the tourists to the hotel. While the actual culprits escaped by payment of a heavy bribe Upali (5) was charged for their offense. The making of fabricated charges by the police and CID is quite usual.

Story 6

Upali (6) is a retired officer from one of the three main forces of Sri Lanka, and held a senior rank. Some 40 years ago while he was still serving he bought a house in a prestigious area of Colombo and lived there with his family. While in retirement when he was trying to do some alterations to accommodate another family member, another person claimed the land on the basis of a false deed. When making enquiries in the Land Registry he found that all the registration books entries relating to his land were missing. Now he is facing a challenge in court where the man who falsely registered the deed is claiming the title on the basis of prior registration. In order to prove the falsehood in the registration Upali (6) is unable to get the necessary documents from the Land Registry as these books are missing.

Under these circumstances it is advisable for everyone to have a proper check in the respective District Land Registries about the documents relating to their properties. Where there is any reason to suspect fraud, the people should take appropriate action through the criminal as well as civil processes, and where these fail to resort to publicity to get assistance from the media. The others who face serious threats to their life and liberty through manipulation of criminal processes by way of fabrication of charges should also take precautions for their protection.

1.11 Rizana Nafeek

1.11 (a) Nothing moving to save Rizana Nafeek, who awaits her Beheading[370]

Ever since the initial verdict of the Dawdami High Court sentencing her to death, the Asian Human Rights Commission has maintained that she is innocent of the charges and that it was the duty of the Sri Lankan government to do all it can to save her life. As the government refused to assist her to file her appeal, the failure of which would have led to her death 30 days after the verdict, the Asian Human Rights Commission took the initiative to collect the lawyer's fee for filing her appeal (USD $40,000) and got the appeal filed in time. Ever since, there has been worldwide attention on this case and literally all the leading media agencies in the world highlighted her plight, and millions of people from around the world campaigned on her behalf. Most recently, even the European Union expressed their concern for her and stated that her case is being monitored.

However, Mr. Dilan Perera, Minister of Foreign Employment Promotion & Welfare in Sri Lanka, stated publicly several times that such campaigning may be counterproductive in the context of Saudi Arabia and that the government of President Rajapaksha is engaged in diplomatic efforts in order to save Rizana Nafeek. Minister Perera made the same remarks even at the Sri Lankan parliament when questioned about the matter.

However, from the reports that have subsequently appeared, it has become very clear that the government of President Rajapaksha has failed to take any effective measures to ensure successful negotiations with the family of the deceased infant in order to secure a pardon for Rizana Nafeek. It now appears that all the Minister Perera has done is to attempt to stop a worldwide campaign to release Rizana Nafeek due to the political embarrassment it has created for the Rajapaksha government. He has done this by taking responsibility to get Rizana's release and thereafter doing nothing about it.

What was most embarrassing for the Sri Lankan government was the rise of criticism of the government's failure in this matter by many Muslim leaders in Sri Lanka and also the Muslim community as a whole. Besides this, the

370 AHRC-STM-115-2012; May 31, 2012

women's movements in Sri Lanka and also organisations for the protection of migrant workers and many others, including other religious groups, have been actively engaged in demanding that the government secure her release.

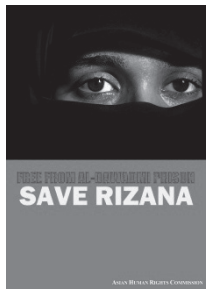
While the government of President Rajapaksa has failed to initiate any diplomatic measures to secure her release, its efforts have been to silence critics and to dampen the campaigners for her release by making false promises of taking the responsibility for her release.

The Asian Human Rights Commission, which has throughout campaigned for her release, is shocked and saddened by the utter negligence and lack of concern shown by the government on this issue.

On an earlier occasion, AHRC wrote an open letter to President Rajapaksa on this issue. We once again reiterate that the life of Razina Nafeek lies in the hands of President Mahinda Rajapaksa and that if her death sentence, which has been delayed due to worldwide interest shown on her behalf, is to take place, the entire responsibility for her life would lie with the hands of the President and his government.

1.11 (b) Rizana Nafeek awaiting beheading is forgotten by the government[371]

The AHRC releases a dossier on all relevant documents relating to the campaign to obtain release for Rizana Nafeek.



Rizana Nafeek, arrested in 2005 and sentenced to death by beheading in 2007 is still languishing in the Dawdami Prison in Saudi Arabia as the government of Sri Lanka has failed to take the necessary diplomatic steps to obtain her release despite of their promises to do so.

As pointed out by the Asian Human Rights Commission, the allegations against Rizana, who was 17 at the time of the alleged incident, was baseless. She was charged with the murder of an infant under her care while, by all circumstances, it is clear that she had no involvement of any sort regarding this death and that in all probability the child died of natural causes. No foul play of any sort by her

371 AHRC-STM-143-2012; July 11, 2012

was alleged, even at the courts and there was no post-mortem report giving the cause of death. Purely on the basis of a confession obtained under severe duress, by police officers who spoke only in Arabic, a language she had no understanding of, and without the benefit of a translator.

The sole basis for her conviction and the later affirmation of the conviction during appeal was that, under Saudi Arabian laws, a confession has finality and there is no room to challenge such confession during the trial.

There was an international outcry against the sentence and concern for her has been expressed by way of massive interventions on her behalf requesting her pardon from His Royal Highness, the King of Saudi Arabia.

His Excellency, the president of Sri Lanka, Mahinda Rajapaksa also wrote a letter to His Royal Highness requesting a pardon. In Sri Lanka the government spokesmen have repeatedly claimed that missions have been sent and negotiations conducted with the family of the deceased child to obtain a pardon. However, in close examination of reports available in the media it becomes clear that the Sri Lankan government has failed to established contact with the family and therefore there are no effective negotiations going on at all. This means that the order for her execution could be carried out at any time.

Among those who have expressed concern for this case is the European Parliament, where the EU High Representative and Vice President, Catherine Ashton has said that, "The EU will continue to follow it (Rizana's case) very attentively in close coordination with the authorities in her home country, Sri Lanka (May 10, 2012)".

The Asian Human Rights Commission is today issuing a dossier on all documents relating to the case of Rizana Nafeek and call upon everyone to make a renewed attempt to get her release by intervening with His Royal Highness the King of Saudi Arabia and also pressuring the Sri Lankan government to undertake effective diplomatic efforts to obtain her release.

CHAPTER X

ASIAN HUMAN RIGHTS COMMISSION

THAILAND

THAILAND

SMALL ADVANCES BELIED BY LACK OF WILL

Introduction

In its 2011 annual report, the Asian Human Rights Commission highlighted further consolidation of the revived internal security state, on the rise since the 19 September 2006 coup. The AHRC noted that in the first six months of the new administration, following the July 3, 2011, election of Pheu Thai Party and Yingluck Shinawatra to the post of Prime Minister, little progress on human rights has been made. The new government appears similar to the ones that have preceded it. On key issues, such as accountability for the use of violence by state security forces during the April-May 2010 clashes, the curtailment of freedom of speech through prosecutions under Article 112 and the Computer Crimes Act, as well as the broader frame of ending impunity for state violence caused by state security forces during their routine work and protecting the rights of citizens to exercise their right to dissent, little progress has been made.

Loosening the constriction of freedom of expression and ending impunity for state violence, have, as a common obstacle, the refusal of state institutions to change. This means that while small advances for human rights have been made, due to the actions of courageous citizens and, more rarely, state officials, support for accountability and rights remains local and unusual in Thailand. If the human rights situation in Thailand is going to meaningfully improve, and along with it the prospects for democracy and the rule of law, then significant transformations of state institutions must occur. Without widespread institutional and legal reform, small advances, and instances of accountability and support for human rights, risk being lost.

The urgency for the development and consolidation of a culture of respect for human rights is underscored by the May 2012 death in custody of Amphon Tangnoppakul, to which this report now turns.

Dehumanization & Death in Custody

Since the Cold War counterinsurgency of the 1970s, reference to the protection of the trilogy of nation-religion-king has been used by the Thai state and security forces in order to legitimize the use of violence and maintain an environment that allows the persistent violation of human rights. Following the 19 September 2006 coup, the third part of this triumvirate, the king, or the institution of the monarchy broadly-speaking, has been fully politicized by elite and conservative forces inside and outside the government. Reference to the need for the protection of the institution has been a call widely deployed to intimidate dissident voices and ensure compliance from citizens. This politicization of the institution, and subsequent violation of the human rights in its name, has been one fully grounded in law.

Section 8 of the 2007 Constitution positions the King centrally within the Thai polity: "The King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action." Article 112 of the Criminal Code goes on to prescribe punishments for violations: "Whoever defames, insults or threatens the King, Queen, the Heir-apparent or the Regent, shall be punished (with) imprisonment of three to fifteen years." Although Article 112 in its current form has been law since the last revision of the Criminal Code in 1957, statistics provided by the Office of the Judiciary indicate a sharp rise in lese-majesty charges filed since the 19 September 2006 coup, with 33 charges filed in 2005, 30 filed in 2006, 126 filed in 2007, 77 filed in 2008, 164 filed in 2009, and an extraordinary 478 charges filed in 2010. While statistics released for the first five months of 2011 indicate a reduction in the number of charges filed, information for the second half of 2011 and 2012 to date has not been made available publicly. The failure of the Government of Thailand to provide information itself raises many questions about the use of the law to diminish space for freedom of expression through secrecy and the generating of uncertainty.

A third law, the 2007 Computer Crimes Act (CCA), stipulates additional punishments for alleged violations of national security—including insulting the monarchy—which take place online or are otherwise mediated electronically. The relevant section of the Computer Crimes Act in this case is Section 14, Parts 2 and 3, which specify:

> "If any person commits any offense of the following acts shall be subject to imprisonment for not more than five years or a fine of not more than one hundred thousand baht or both: (2) that involves import to

> a computer system of false computer data in a manner than it likely to damage the country's security or cause a public panic; (3) that involves import to a computer system of any computer data related with an offence against the Kingdom's security under the Criminal Code."

The definition of "computer system" is noted in Section 3 as "a piece of equipment or set of equipment units, whose function is integrated together, for which sets of instructions and working principles enable it or them to perform the duty of processing data automatically." The way in which this law is written means that the CCA may be used to target communication and speech using various forms of transmitting technology, not only computers. The lack of a definition of "security" within the law means that there are wide opportunities for abuse as the authorities can define any dissident or otherwise objectionable content to violate the "security" of the nation.

Compounding these problems, in present-day Thailand, the social and political crisis surrounding the monarchy and the fraught relationship between the institutions of the monarchy and those of democracy mean that while alleged insults to the monarchy are categorized formally as crimes of national security, they are categorized informally as crimes of sedition. Within this context, it then becomes possible for those charged with, or convicted of, insulting the monarchy to be treated as less than human, and for their persecution to be naturalized. The November 2011 conviction and the May 2012 death in custody of Amphon Tangnoppakul is an exemplary case of the danger of the naturalization of this persecution, as well as the specific problems with Article 112 and the CCA.

On 3 August 2010, a group of 15 police officers raided the home of Amphon Tangnoppakul on the outskirts of Bangkok. Amphon, then aged 61, was arrested and detained for 63 days of pre-charge detention before being granted bail on 4 October, 2010. He was then formally charged by the prosecutor on 18 January, 2011 with violations of Article 112 and the CCA. In particular, the prosecutor alleged that that Amphon sent four SMS messages with vulgar language defaming the Thai queen and insulting the honour of the Thai monarchy to Somkiat Klongwattanasak, personal secretary of the former Prime Minister, Abhisit Vejjajiva. At the time he was charged, Amphon was already suffering from oral cancer for which he had been receiving regular treatment, and his counsel immediately requested bail while awaiting trial on this basis. The court denied this request, as it did seven subsequent requests made before his trial, at the time of his conviction, and up until several months before his death. At the time of Amphon's last request for bail, in February 2012, the

Appeal Court ruled that this frail and sick elderly man with little money or resources was a flight risk, and that his illness, which constituted one of the grounds for the request, did "not appear to be life-threatening."

When questioned about the repeated denial of bail in Amphon's case, Sorawut Benchakul, the Deputy Secretary-General of the Office of the Judiciary, noted that while the right to bail is a fundamental human right, section 108 of the Thai Criminal Procedure Code allows for its denial when the court fears that the defendant might flee. Sorawut claimed that when Amphon requested bail, the medical certificate presented did not indicate grave illness. While Sorawut claimed that the vast majority of those charged under section 112 and the Computer Crimes Act are granted bail, in the absence of full statistics released by the judiciary on these cases, the claim cannot be confirmed.

Amphon's trial (Black Case No. 311/2554) took place on 23rd and between 27 and 30th September 2011. On 23rd November 2011 he was found guilty and sentenced to 20 years in prison for four alleged violations of Article 112 and the CCA. As the AHRC noted at the time of Amphon's conviction, the prosecution's actions raised serious questions about the validity of evidence in cases of this sort, and pointed to lacunae in the 2007 Computer Crimes Act. The prosecution argument rested on the assertion that the mobile phone that sent the four allegedly criminal SMS messages had the same IMEI (International Mobile Equipment Identifying) number as the mobile phone which Amphon had used to call his children. From the beginning, Amphon maintained his innocence, noting that he did not know how to send SMS messages and that the number that sent the message to Somkiat was not his number. The response of the prosecutor to Amphon's assertion was to discount it, and note that as the IMEI number of the cell phone that sent the messages to Somkiat belonged to Amphon, he was responsible.

The fact that Amphon received the longest sentence under Article 112 or the CCA given to date underscores the need for examination of the legal ambiguities and lacunae in both laws. In June 2012, the Asian Legal Resource Centre (ALRC), the sister organization of the AHRC, made the following observations about the court decision in a submission to the United Nations Human Rights Council:

> *"Similar to other court decisions in cases of alleged violations under section 112 and the CCA, the judges in this case had to infer the meaning of the four SMS messages in question (which was imprecise), the alleged intention of the defendant, and speculate on any potential damage caused to the*

monarchy and national security. At best, the court's interpretation could be described as legally inexact. At worst, it can be described as complete fiction.

2. The court's logic in finding the four SMS messages in question criminal rested on an argument about the validity of the information contained within them and on what this might cause readers of the messages to believe. More specifically, the judgment reads that the messages were

'… the import to a computer system of false computer data, that was defamatory, insulting, and threating [sic] to the king, queen, heir-apparent, and regent. [This information] would cause those who saw it to believe that the content of the messages was the truth, which would damage the nation's security. As a result, some of the aforementioned actions of the defendant are likely to damage the honor and reputation of the king, queen, heir-apparent, and regent and to cause them to be insulted and despised. [The defendant acted] With an intention to cause the people to dishonor, fail to venerate, and threaten the king, queen, heir-apparent, and regent.'

Throughout the decision the adjective "likely" is used; in other words, damage was not caused by the SMS messages, but was probable in the opinion of the court. The ruling was not one that found the defendant guilty beyond doubt, but rested on a highly uncertain balance of probability.

3. In addition, to interpret under the CCA the sending of a rude SMS message as "the import to a computer system of false computer data" is to stretch the category of "false computer data" beyond the already broad ambit provided by the law. Several pages later in the court decision, "false" is elaborated in political, rather than scientific or legal terms. The judges write that the four SMS messages in question

'… are entirely false because the truth reflected for the people around the country is the king and the queen are full of compassion. They are concerned for every person in the land and perform their royal duties for the benefit and happiness of the Thai citizenry.'

While this may be the judges' opinion of the monarchy, to categorize it as truth is an ideological stance inappropriate for an ostensibly independent judiciary to take, and does not constitute any form of grounds for conviction under law. Further, given the increased frequency with which section 112 is being enforced, this statement is difficult to appeal against, either in law or in public debate, without also risking being charged under the law.

> *4. Finally, even if the accused in this case had committed the offences as alleged, the 20-year sentence raises significant concerns about the proportionality of punishment for crimes of defamation in Thailand and speaks manifestly to an imbalance in the law of Thailand as written and as currently enforced between protecting the sovereign and protecting the human rights of people residing in the country."*

The tension between the protection of the sovereign and the protection of the human rights of people residing in the country was made manifestly clear in the five-and-a-half-months following Amphon's conviction. At the time of his conviction, the AHRC expressed concern about his health and noted that he had been unable to access proper treatment for his laryngeal cancer during detention before and during his trial. The AHRC commented that there was no reason to believe that this would change once he had been convicted, and, in fact, depending on what prison he is transferred to, that there might be further concerns over his safety and well-being. As has been clear in the case of Daranee Charnchoengskilpakul, who suffers from severe jaw disease, and is currently serving a fifteen-year sentence for alleged lese-majesty, the authorities have no qualms about denying necessary medical treatment and violating the rights of political prisoners. In the case of Amphon, this denial of medical treatment led to his death – clear negligence, which should have been avoidable.

On 8 May 2012, three months after the assessment of the Appeal Court that Amphon's illness was not a threat to his life, Amphon died in prison. While the full details have not yet been made available, partial information made publicly available about the conditions surrounding his death point to significant problems of capacity, as well as routine negligence, which together amount to a grave threat to the human rights of prisoners. As reported in Khao Sod newspaper, several days after Amphon's death, Police Colonel Dr. Supol Chongphanichkulthorn, spokesperson for the Police General Hospital, said that the preliminary results from the autopsy indicated that he died as a result of liver cancer that had metastasized throughout his body and caused respiratory failure. Dr. Cherdchai Tantisirin, a Member of Parliament from the majority Pheu Thai Party, who was also present for the autopsy, commented that,

> "We have to separate the issue of what is human from the issue of the case. If a person in detention is found to have cancer, he should be released in order to be treated outside [the prison]. Moreover, in the case of Amphon, as far as I have seen, there are no indications of the actions of physicians or nurses trying to resuscitate him or otherwise help him." [AHRC translation]

Whether the failure to take action was an intentional decision to explicitly harm Amphon or the result of negligence or lack of capacity, the resultant violation of his human rights was the same. The United Nations Standard Minimum Rules for the Treatment of Prisoners, and in particular section 22(2) and 25(2) of the rules, mandate that:

> *"Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers."*
>
> *"The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment."*

It is clear that in the case of Amphon Tangnoppakul, the treatment he received did not even approximate the Standard Minimum Rules, but rather stood in direct contravention to them. On 16 May 2012, Dr. Sunai Chulpongsatorn, a Member of Parliament from the majority Pheu Thai Party and the chair of the Parliamentary Foreign Affairs Committee, convened a meeting with representatives from relevant parties, including the Department of Corrections, the Prison General Hospital, the Office of the Judiciary, the National Human Rights Commission, as well as Amphon's family and lawyers, to discuss his life and death. The comments made during the meeting suggest that the treatment of Amphon was not unusual and is rather representative of gross inadequacies that place Thailand far from meeting the guidelines outlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners.

In particular, Dr. Bunmee Wibulchak, a doctor at the general hospital of the Department of Corrections, acknowledged that the conditions in the hospital were not as good as hospitals outside the prison system: they did not have a full staff, and on the evenings and weekends, there were no doctors on duty, only nurses. If a prisoner was in need of medical treatment that a nurse could not provide, then she would call the doctor, who would provide orders via telephone. He further noted that several months earlier, when Amphon had come to the prison clinic complaining that he felt as though his cancer had returned, the conclusion by the prison physician and the ear, nose, and throat specialist who examined his mouth and throat was that it was not cancer. When Amphon entered the prison clinic and then the hospital in the days before he died, he had a painful stomach ache. By Friday, 4 May 2012, the decision had

been made that he needed further examination and testing, which could only take place during normal working hours and days. Four days later, before any further steps were taken, Amphon Tangnoppakul died.

In the years since the 19 September 2006 coup, many people have paid a high price for alleged disloyalty to the monarchy, with sentences whose length is comparable to those of persons convicted for drug trafficking and murder. The death in custody of Amphon Tangnoppakul indicates that the price of loyalty is too high: a man paid for four SMS messages with his life, and his family paid with the loss of their husband, father, and grandfather. The tragic circumstances surrounding his death indicate the grave dangers posed by the combination of dehumanization of those perceived to challenge an unchallengeable institution with a strong security apparatus. His death, which reverberated throughout Thai society and caused discomfort to even staunch royalists, must be remembered. Amphon Tangnoppakul's death is a clarion call to take immediate action to redress the human rights violations caused by Article 112 and the CCA, and the broader judicial and security apparatus which contains them.

Step Towards Accountability for Drug-War Deaths

Securing accountability for the violent actions of state agents carried out against citizens is persistently difficult in Thailand. The 2011 decision in the case of disappeared human rights lawyer Somchai Neelaphaijit illustrates this well. After a seven-year legal battle by the Neelaphaijit family to find out what happened to Somchai and secure accountability, during which the police consistently failed to provide evidence and in which witness protection was plagued by unprofessional and dangerous failures, the police were fully acquitted. Not only was the Neelaphaijit family denied justice, but also in so doing, the right of families of victims of disappearance to seek justice was broadly denied.

In this context, the decision by the Criminal Court to hold the police responsible for the murder of a young man in Kalasin province is both surprising and significant. While the decision is not without its problems, the case nonetheless raises hope about the possibility of justice in Thailand. The specific details of the case, the court decision, and events in the aftermath of the decision illustrate this possibility, as well as obstacles to it that remain.

In February 2003, ousted Prime Minister Thaksin announced the beginning of the "war on drugs" with an unequivocal message to police and other state officials—that any and all necessary actions should be taken to free the country

from the drug menace, including killing. Over the next three months, it became apparent that the message served as a carte blanche for the use of murderous violence against citizens, rather than using provisions of the Criminal Code to investigate and prosecute those involved in the drug trade. By May 2003, an estimated number of over 2,500 people had been killed.

Kalasin Province was the first province in the country that the government declared it had "won" the war. This alleged victory was achieved at the cost of many lives taken illegally, at the hands, or bidding of, state agents. Yet, despite the "victory", the "war on drugs" did not end in Kalasin in May 2003. It just made extra-judicial violence a common tactic of police.

In this setting of routinized state violence, Kiettisak Thitboonkrong, then aged 17, was arrested for a minor crime, tortured, and killed by police. On 16 July 2004, the police arrested him for allegedly stealing a motorcycle. When his family heard this news, they went to the police station and attempted to talk to him. After returning multiple times, his grandmother was allowed to witness his interrogation on 22 July, 2004 and told to wait for him to be bailed out later that day. But Kiettisak never came home and the next day his mutilated body was found in a neighbouring province.

Following his death, his family launched a campaign to investigate and hold the police in Kalasin accountable for Kiettisak's murder and the murders or enforced disappearances of 27 other individuals by police of the same station during and following the so-called "war on drugs." In 2005, the Department of Special Investigation (DSI) in the Ministry of Justice began investigating the case. Under the Special Investigation Act (SIA), the DSI is the state agency tasked with investigating cases in which state officials have committed violent crimes against citizens. The DSI took three years to conduct the investigation. On 18 May 2009, the public prosecutor charged six police officers with premeditated murder and with concealing Kiettisak's corpse to hide the cause of death. Because this case was investigated under the SIA, it was sent to the Criminal Court in Bangkok. The public prosecutor conducted the case and Kittisapt Thitboonkrong, father of Kiettisak, successfully sought and obtained permission from the court to act as a joint plaintiff, represented by lawyers from the Lawyers' Council of Thailand working pro bono. The hearings took another three years.

In the decision in Black Case No. 3252/2552, 3466/2552, read on 30 July 2012, the Criminal Court found five, out of the six police officers accused, guilty of murdering Kiettisak Thitboonkrong. The Criminal Court found

Pol. Snr. Sgt. Maj. Angkarn Kammoonna, Pol. Snr. Sgt. Maj. Sutthinant Noenthing, and Pol. Snr. Sgt. Maj. Phansin Uppanan guilty of premeditated murder and hiding a corpse. It sentenced them to death. Pol. Lt. Col. Sumitr Nanthasathit the court found guilty of premeditated murder and sentenced him to life imprisonment. Pol. Col. Montree Sriboonloue it found guilty of abusing authority to aid in protecting his subordinates from criminal prosecution and sentenced him to seven years imprisonment. The five policemen have been released on bail while they appeal the decision.

At the time of the decision, the AHRC heralded it as an important step towards ending impunity for state violence in Thailand. It is the first case, of which the AHRC is aware, in which police responsible for killings during the "war on drugs" under the government of ousted Prime Minister Thaksin Shinawatra have been held to account for their crimes. It is also the first case arising from the so-called "war" that the DSI investigated.

Rather than holding state officials who used extrajudicial violence against these citizens to account, in the worst cases, perpetrators of crimes have been rewarded. In most cases they have been tacitly and conveniently ignored. One of the long-term effects of this approach has been the further consolidation of impunity for state violence in Thailand. Therefore, this case stands out among other cases of extrajudicial killing in Thailand over the last ten years, in which courts have been unwilling to hold state officials to account, notably in the cases of the mass deaths in custody following the Tak Bai incident, and, at least thus far, the April-May 2010 killings. Even in cases in which courts have ruled that a citizen has died while in state custody due to the actions of state officials, such as the March 2009 torture and death of Imam Yapa Kaseng, the actions of state officials have been classed as matters of official "duty" and they have been exempted from allegations of murder. This is the larger context in which Kiettisak was murdered, in which his relatives and other Kalasin residents struggled to secure justice and accountability, and against which the Criminal Court gave its ruling. Given that this is also the first case in which a court decision has been reached, the AHRC welcomed the guilty verdict as a clear sign that the judiciary is willing to hold police to account for their use of extrajudicial violence against citizens.

Yet at the same time, the AHRC expressed several concerns about this case, concerns which have grown only deeper in the months since the decision. The AHRC, as a matter of principle, opposes the death penalty under all circumstances, and called for the sentences in this case to be reviewed, such that the convicted police officers instead received appropriate prison terms. Second, it is of serious concern that the convicted officers obtained bail pending appeal.

The convictions for these sentences are of such gravity that good reason exists to expect that the convicted police will attempt to evade punishment by absconding or other means. They may also seek to obtain revenge against one or more persons who testified against them. Somchai Neelaphaijit, one officer convicted of an offence in connection with Kiettisak's disappearance, himself subsequently disappeared, and is suspected to have faked his own death; he was subsequently acquitted on appeal. In the meantime, Somchai's family has received frequent threats against their own lives. The AHRC fears that in the case of Kiettisak Thitboonkrong as well, the police may yet find ways and means to pervert the course of justice and undermine this hard-fought result.

Yet, these actions are nothing in comparison to what took place, quietly, two months after the initial ruling. On 25 September 2012, Pol. Lt. Gen. Sompong Khongpetchsak, the Police Region 4 commander, presented Pol. Lt. Col. Sumitr Nanthasathit and his four colleagues with 100,000 baht ($ USD 3,265). This news was posted on the website of Police Region 4. According to the website, this money was intended as welfare support to the five police for "having been found guilty resulting from carrying about their duties at the Kalasin police station."

While the landmark conviction is a clear sign that the judiciary in Thailand has at last been willing to hold the police to account for their use of extrajudicial violence against citizens, the action by Pol. Lt. Gen. Sompong Khongpetchsak stood in sharp contrast. His action indicated the clear unwillingness of the police to draw a line between duty and extrajudicial violence, and also indicated unequivocal support of the police leadership for the use of extrajudicial violence against citizens.

Pol. Lt. Gen. Sompong's financial gift to the five police officers, and the assertion that it was to aid them in facing a conviction that arose from actions they took while carrying out their duty speaks of a culture of non-accountability that pervades the Royal Thai Police. It should be understood as an attempt to undo the courageous stand taken by the Criminal Court and thereby restore the "normal" order of things, in which police enjoy impunity for torture, killing, enforced disappearance, and other gross abuses of human rights. The financial gift, and the open acknowledgment of it, defies the court's attempt to place the police under the very laws that they claim to enforce. Indeed, it is an act that erases the chasm between law and extra-judicial violence altogether, by implying that to torture and murder a young man are acts consonant with the normal course of a police officer's duty, and not acts for which he or she ought to be punished.

The Criminal Court decision in the case of the murder of Kiettisak Thitboonkrong in Kalasin is significant because it is the first of a series of police killings in Kalasin moving through the investigative and judicial process and because there are many other resonant cases of state killing in Thailand. These include the still unaddressed cases of state violence in April-May 2010, and many cases of unresolved torture and murder in which state security forces are implicated in the three southernmost provinces of Thailand. If the police do not respect the decision of the court, and instead act to undermine it officially and unofficially, the result is that impunity will be further consolidated and the power of the police to defy the court's authority, as well as systematically violate the rights of citizens, will be revealed. While the decision in this case has the potential to stand as an example of best practices, unless the commitment to end impunity is taken up through the judicial system and state security agencies, its effect will at best be muted, and at worst be erased.

Constricted Freedom of Expression

In its 2011 report, the AHRC highlighted the ongoing restriction to freedom of expression caused by the expansion of the uses of Article 112 and the Computer Crimes Act (CCA). Prosecutions, charges, and convictions, as well as official and unofficial intimidation of those that attempted to challenge the law, all contributed to the constriction. One year later, the constriction remains.

The case of Amphon Tangnoppakul, with which this report began, illustrates the gravity of the challenge to human rights from the enforcement of these two laws in the service of the institution of the monarchy and vaguely-defined "national security." While there have been several prosecutorial or court decisions which indicate possible changes within the judiciary around these cases, the broader social and political frame remains one hostile to abolition, or even reform, of both laws. In the midst of this crisis, there has also been a dramatic movement by human rights defenders (HRDs) and citizens to reform Article 112 and redress the problems caused by it. The response to this movement, which has included official state dismissal and unofficial intimidation, indicates the growing depth of the crisis, the necessity for transformation, and the urgency of protecting HRDs working around this issue. The AHRC's position is that both Article 112 and the CCA should be immediately revoked, current legal proceedings against individuals accused of violating them halted, and those currently imprisoned released.

One of the problems caused by Article 112 is that any citizen can file a complaint of an alleged violation of the law. The police are then compelled to

investigate and decide whether or not to forward the results of the investigation to the prosecutor. The prosecutor must then decide whether or not to bring formal charges against the individual(s) accused and begin formal court proceedings. This process can take years, during which time the persons in question face uncertainty over their possible fate.

In a majority of Article 112 cases, for which information is publicly available, cases sent to the prosecutor by the police result in charges being brought. Yet, in the case of Chotisak Onsoong and his friend (name withheld), the prosecutor chose not to bring formal charges of alleged defamation of the monarchy. The complaint stemmed from the couple's decision not to stand during the royal anthem and video montage lauding the life of the king played prior to the screening of a movie in a central Bangkok theatre on the evening of 20 September, 2007. When they did not stand up, Navamintr Witthayakul, a man standing in front of them, turned around and yelled at them. When they did not comply, an argument ensued and Navamintr physically assaulted Chotisak. Later that evening, Navamintr filed a complaint against Chotisak and his friend of violating article 112. Simultaneously, Chotisak filed a complaint against Navamintr for physical assault.

Four-and-a-half years later, in a letter dated 11 April 2012, Visit Sukyukol, Special Prosecutor for Southern Bangkok 4 noted that the complaint was dropped and the reason was that there was insufficient evidence to send the case to court. Visit notes that on 20 September 2007, at approximately 7:45 pm, while the royal anthem and video montage were being played, prior to the beginning of a film at the Central World cinema, Chotisak and his friend remained seated while all other moviegoers in the theater "stood up to pay respect." This caused another moviegoer, Nawamintr Witthayakul, to turn around and say, in English, "Stand up." According to Visit, Chotisak turned around and said, "Why do I have to stand up? There is no law mandating it." This comment led to disagreement between the two, and caused Navamintr to file a complaint with the police alleging that Chotisak and his friend had violated Article 112.

Despite establishing this series of events, Visit, in his order to close the prosecution, commented that their words and actions did not have the characteristic of insulting or causing shame, loss, or humiliation to the king. Further, he noted that there was no clear evidence suggesting that Chotisak and his friend intended to defame the king. Visit's decision was a clear statement that Article 112 cannot be applied to any and all speech or actions that question the relationship between the monarchy and the people, the monarchy

and democracy, or the monarchy and human rights. Discussions about these topics—or at the very least, the legality of them—are urgently necessary if there is to be the possibility of the rule of law and the consolidation of human rights in Thailand.

Despite the outcome of this case, the slow pace at which the prosecutor's inquiries proceeded remains of concern. Chotisak and his friend waited over four years for this outcome: the complaint against them was filed in September 2007, and police lodged charges in April 2008, with the case file going to the prosecutor that October. From then, until April 2012, the two accused lived in daily fear that they might have to face charges in court at any time. By contrast, the prosecutor decided to drop the charges of physical assault brought against Navamintr for his assault of Chotisak in September 2008. Such delay – and others like it, such as the current drawn-out prosecution of Somyos Prueksakasemsuk – functions as a de-facto punishment, constricting the lives and rights of those facing prosecution. It contributes to insecurity and uncertainty.

Like in the case of Chotisak and his friend, the court decision in the case of Chiranuch Premchaiporn is another in which the accused party was forced to face years of uncertainty before an outcome was delivered. Chiranuch is the web-master of Prachatai, an independent online news site, which has served as an important platform for critical news, discussion, and debate for over seven years in Thailand. In Black Case No. 1667/2553 she was charged with ten alleged violations of the CCA. These charges stemmed from her alleged failure to remove comments deemed offensive to the monarchy from the Prachatai web-board quickly enough. The court found Chiranuch guilty for one out of the ten charges, and she was sentenced to one year in prison and a 30,000 baht fine. Resulting from her cooperation with the court and the fact that this was her first offence, this was immediately reduced to a suspended sentence of eight months and a 20,000 baht fine.

As the AHRC noted at the time of the decision, it was a relief that Chiranuch was able to remain outside prison and continue her, and Prachatai's, ground-breaking work, expanding and sustaining the space for freedom of expression in Thailand. Yet, the guilty verdict in her case represents the continued broader threat to freedom of expression and human rights represented by Article 112 and the CCA. Throughout her case, what was of concern was the use of the CCA's vague provisions to constrict freedom of expression by not only making an individual who writes or posts a comment, image, or video online potentially criminally liable, but also making the providers of internet

services, such as web-board moderators, equally liable. Under Section 15 of the CCA, the service provider found "intentionally supporting or consenting to" the use of the computer for an offence under the law is equally liable as the person committing the offence, which, in the case of Chiranuch, is the crime of lese-majesty, as stipulated in Article 112 of the Criminal Code. In the case of Chiranuch Premchaiporn, the prosecution alleged that she should have removed comments deemed to be damaging to the monarchy more quickly, and in not doing so, had violated the CCA.

One of the crucial issues for both the prosecution and the defense was the determination of what constitutes "intentionally supporting or consenting to" an offence, and, more specifically, an appropriate length of time within which questionable web-board comments must be removed. In the decision, the judges responded with an assessment of what an appropriate length of time would constitute. The decision noted that nine of the ten comments in question were removed within one to eleven days, and that this indicates that Chiranuch did not intentionally support or consent to them. In the instance of the tenth comment, which remained online for twenty days before she removed it, however, the Court concluded that this indicated "implied consent". On the basis of this assessment, Chiranuch was found guilty of one charge of violating the Computer Crimes Act.

As Google noted, in a statement released after the verdict was announced on 30 May 2012, the CCA poses threat to a free and open internet in Thailand because it lacks "transparent rules about how to identify and react to unlawful content:

> "Although Thailand's legal system is not precedent-based, this decision partially begins the process of clarifying the constituent vagueness of the Computer Crimes Act. Within this decision, a period of up to eleven days to remove a comment deemed damaging is acceptable and legal; a period of twenty days is unacceptable and criminal. Yet the decision introduces another dangerous lack of clarity with the category of "implied consent."

The text of the CCA mentions intentional support and consent, and the category of "implied consent" indicates that whether or not the consent is explicit or implicit is immaterial in the eyes of the law. Further, in the abbreviated decision the Court addressed the issue of freedom of expression and its relevance in this case. As a reminder, Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a state party, mandates that:

> *"1. Everyone shall have the right to hold opinions without interference.*
>
> *2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
>
> *3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
>
> *(a) For respect of the rights or reputations of others;*
>
> *(b) For the protection of national security or of public order (ordre public), or of public health or morals."*

Not acknowledging Article 19, the Court has selectively addressed section 3 (b). It is worth quoting from the decision herein:

> "*The court acknowledges that freedom of expression is a basic right of citizens that is guaranteed and protected in the Thai Constitution. This is because freedom of thought and expression reflects good governance and the democratization of a given entity or nation. Criticism from the people, both positive and negative, provide an opportunity to improve the nation, given entity, and individuals for the better. But when the defendant opened a channel for the expression of opinions within a computer system, she was the service provider and it was within her control. The defendant had a duty to review the opinions and information that may have impacted the country's security as well as the liberty of others who must be respected as well.… [with respect to comments found to be damaging] the defendant cannot cite freedom of expression in order to be released from responsibility.*" [AHRC translation]

On the one hand, there is nothing vague about this statement. Webboard moderators, editors, service providers, and anyone else covered by Article 15 of the CCA must anticipate potential threats to national security by anyone who writes, posts, or uses their services. Yet on the other, what remains unclear is the precise method by which the comments on the Prachatai webboard were a threat to national security or the liberty of others. Within this unexplained gap, restrictions on the freedom of expression and related human rights violations

flourish. The onus remains on the court to precisely outline the meaning of national security and the specific threats posed to it. Until the judiciary does so, the law will remain flexible enough to serve as a weapon of intimidation of human rights defenders (HRD), journalists, dissidents, and ordinary citizens.

Despite the ambiguities in Article 112 and the CCA, and therefore the potential for abuse, the state has been unwilling to recognize the danger they pose to human rights. In response to criticism by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression during the June 2012 UN Human Rights Council meeting, the Thai state delegation said:

> *"As regards to Thailand's lese-majesty law, the Thai delegation would like to stress that the law itself is not aimed at curbing the rights and the legitimate exercise of academic freedom, including debates about the monarchy and the institution. Issues that have arisen with regard to the lese-majesty law lie not in any fundamental problem with the law itself, but in the abuse of the law for political gain in the context of political conflict which has been ongoing in Thailand for the past few years. Indeed, an ongoing lively public debate has been taking place on the lese-majesty law to which the Thai people will find an appropriate solution for themselves."*

Yet the sincerity of this comment has been called into question by the official state dismissal of criticism and complaint about the law, and para-state intimidation and violence with which attempts by Thai HRD's to reform the law have been met.

In January 2012, a group of seven law lecturers at Thammasat University (Worachet Pakeerut, Jantajira Iammayura, Thapanan Nipithakul, Teera Suteewarangkurn, Sawatree Suksri, Piyabutr Saengkanokkul, and Poonthep Sirinupong) proposed an amendment to Article 112 in the Khana Nitirat (i.e. "Law for the People" in Thai). The proposed amendment of the Khana Nitirat left the position of the monarchy within the Thai polity as it is currently, but aimed to reduce the potential for abuse under Article 112 in several significant ways. The proposed amendment would make the punishment for alleged lese-majesty proportionate to the crime, limit who – rather than any ordinary citizen – can file a complaint to the Office of His Majesty's Principal Private Secretary, differentiate sincere and truthful criticism from threats to the monarchy, and categorize violations of Article 112 as that concerning the honor of the monarchy, rather than a matter of national security.

The proposed amendment by the Khana Nitirat became the basis for a nationwide campaign by the Campaign Committee to Amend Article 112 (CCAA 112), a coalition of HRDs, intellectuals, media activists, and human rights activists. Under the 2007 Constitution, if at least 10,000 citizens sign in support of a proposed amendment, the Parliament is obliged to examine it. Beginning on 15 January 2012, CCAA 112 began to gather signatures. Almost immediately, there was sharp criticism from some quarters. There was a dangerous combination of statements, asking the campaigners to halt their activities and vaguely threatening violence, made by commanders of the state security forces, with growing vigilante rhetoric propagated by civil society actors. In particular, there were specific death threats made in the comments section of articles on Manager (Phuchadkan) newspaper online, including calls for the members of the Khana Nitirat to be beheaded and their heads placed on stakes outside the university gates, and calls for them to be burned alive with their families outside the homes.

Several weeks later, this rhetoric took concrete form, when Professor Worachet Pakeerut, an HRD and leader of the Khana Nitirat was assaulted by two men outside his office at the Faculty of Law at Thammasat University. The two men punched Professor Worachet several times in the face until he bled and his eyeglasses broke. He was subsequently treated at Thonburi Hospital and released. Although the AHRC was heartened by the swift prosecution of the two men who assaulted Professor Worachet, the assertion by the two during the investigation – that they assaulted him because they disagreed with his ideas – is an indication of the tension and looming crisis around this law.

Despite the attack on Professor Worachet, the CCAA continued their campaign. On 28 May 2012, they submitted 30,838 signatures, gathered from citizens around the country, in support of the proposed amendment. In late October 2012, the parliament announced that it had decided not to hold a debate on the proposed amendment. In addition to the parliament's decision being in contravention of the Constitution, it is a matter of concern that it is unwilling to consider the amendment. While its inaction is not a form of violence equivalent to the assault on Professor Worachet by the two young men who disagreed with the idea of reforming the law, the effect of silencing discussion around an alternative to the current status quo is the same. As the death of Amphon Tangnoppakul, recent cases, and ongoing prosecutions indicate, the status quo is not sustainable for human rights, the rule of law, or democracy and justice broadly conceived, in Thailand.