Ethics in Action

Vol. 4 No. 2 April 2010 ISSN 1997-2997

Asian Human Rights Commission

Cover photo:

Rallyists holding banners from signature food campaigns across India.
Source: Reetika Khera

Published by

Asian Human Rights Commission (AHRC)
19th Floor, Go-Up Commercial Building
998 Canton Road, Mongkok, Kowloon
Hong Kong, China
Telephone: +(852) 2698-6339
Fax: +(852) 2698-6367
E-mail: ahrchk@ahrchk.net
Web: www.ahrchk.net

April 2010

Printed by

Clear-Cut Publishing and Printing Co.
A1, 20/F, Fortune Factory Building
40 Lee Chung Street, Chai Wan, Hong Kong

CONTENTS

India's National Food Security Act: Entitlement of Hunger

Sachin Kumar Jain

In a complex context of rising food prices, well maintained under-nutrition among children and women, growing hunger and inequality, the Government of India initiated a process to enact National Food Security Act (NFSA). The Empowered Group of Ministers (EGoM) was set up by the central government to outline the framework of this act.

The two key—and problematic—points proposed by the EGoM in the draft food security law are that the definition of food security would be "limited to the specific issue of food grains security (wheat and rice) and be delinked from the larger issue of nutrition security"; and only 25kg of food grains are provided per family, despite the fact that an average family of five, including two children, requires about 60 kg of food grains, 5kg pulses and 4ltrs of edible oil per month.

According to article 47 of India's constitution, "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties". Any discussion and legislation on food security should therefore cover all nutritional aspects needed for survival; sufficient micronutrients and calorific norms should be provided through local foodstuff.

One of the major causes of increasing malnutrition in India is the dearth of fat and protein in the food plate. By keeping the quota of grains so low and without ensuring entitlement of pulses (for protein) and edible oil (for fat), India will not be able to reduce or eliminate malnutrition—this is a point that the pro-market government must comprehend!

Every Indian adult should be eligible for 14kg of grains (including nutritious coarse grains like jawar, bajra and jaudhari) at the rate of Rs 2 per kg, 1.5kg pulses at the rate of Rs 20 per kg, and edible oil at the rate of Rs 35 per kg. It should be ensured that children get half of the above mentioned quota. Furthermore, the ration card should be made in the name of the female head of the family. In fact, the proposed provision of 25kg grain

---

The author is a development journalist, writer and researcher, associated with the Right to Food Movement in India. He may be contacted at: sachinwrites@gmail.com / www.mediaforrights.com.

is far less than the 35kg per family quota fixed by the Supreme Court in its 10 January 2008 order. If the 25kg entitlement is legalized, it will demean the verdict of India's apex court.

The path on which government officers such as agriculture minister Sharad Pawar are progressing shows no interest in providing food security to deprived sectors of society, such as the elderly, widows, disabled persons, children, destitute and pregnant women. Today, 46 percent of India's children and 55 percent of its women are malnourished, the world's highest infant mortality, child mortality and maternal mortality are recorded in India, and 40 percent of the world's starvation-hit people live in our country. In these circumstances, limiting legal food entitlements is a constitutional outrage, and a testimony that the present structure of the state corresponds to profit mongers and neo-capitalists rather than people suffering from chronic hunger, exclusion and social insecurity.

During the past 10 years, when India's GDP grew fastest at 8 and 9 percent, there was also the fastest increase in the number of starvation-hit people. Ignoring the fact that drought, floods, typhoons and climate change have led to an increase in starvation is an insult to democracy. Change in agriculture patterns and crop priorities, such as food for bio-fuel and the diversion of agricultural land for industrial purposes, have led the world to a food crisis. Should not the draft food bill address these structural causes of hunger, or is the state's obligation met by the distribution of limited food grain and conditional cash transfers?

The continual statements by India's prime minister, agriculture and finance ministers that the rising prices of food commodities is out of control, shows the failure of the government and of the world's fastest growing economy in controlling food production and distribution mechanisms. It also proves that development priorities now are controlled by the market and certain corporations. Since 2005, the government has been promoting the corporations' direct food grain procurement from the farmers, instead of strengthening systems to protect farmers and food production.

The Indian government seems to have no compunction in violating the Supreme Court's order on right to food, which the Court significantly linked to the fundamental right to life. Since 2001, the apex court is hearing public interest litigation on hunger, malnutrition, social insecurity and employment related rights issues, and has passed 65 such orders that hold the government accountable and require it to allocate sufficient resources. It is now clear that the government is attempting to save itself from the directives of the Supreme Court through this new proposed law; its intention is not in fact to fight hunger. The Mid-Day Meal scheme and the anganwadi (child care) centers are also schemes for food security, but the government is trying its best to keep them

out of the legal rights ambit—these and other existing schemes are not included in the proposed law—so that the private sector may be given leeway into the production and supply of supplementary nutrition and school meals. It can be said that the government is trying to unravel the relationship between life and food—as defined by the judiciary—by restricting food security provisions to Below-Poverty-Line families and 25kgs of food grain.

The Supreme Court's progressive orders ensuring a multitude of food rights, such as providing 35kgs ration per family, subsidized rations for poor families under the Antyodaya Anna Yojana scheme, supplementary nutritious food and care for infants and children under the age of six through the Integrated Child Development Services, security to pregnant and lactating women under the National Maternity Benefit Scheme and the Janani Suraksha Yojana, mid-day meals at schools, national old age pensions, along with provisions for the destitute, urban poor, homeless children, single women and widows. Government officials are making their best efforts to bury these rights. The EGoM's draft law proposes deficient rights to be delivered through a collapsed public distribution system (PDS), as well as a boycott of certain social sectors at a time when the Justice Wadhwa Commission recommends widening the ambit of these rights and reforms in the PDS,[1] in its recent report to the Supreme Court. This suggests that the group of ministers is strategically moving to systemically demolish interventions designed in the court for ensuring citizens' right to food.

The draft law makes the central government responsible for identifying poverty levels and allocating food or money to state governments, while the state governments are responsible for the implementation and monitoring of the resources. It seems some in the government are working hard to fabricate a political rhyme out of this law. After all, vases of dried flowers adorn big palaces even if they lack life or scent. If dead things can add to the beauty of palaces, then beauty can be looked for in people living and dying with hunger too, as is being done in the proposed law.

State governments are not allowed to make decisions in accordance to state needs, to extend rights or provide better food security, under the proposed law. This will only add to the pressure on state governments to give more of their own resources. If the example of Chhattisgarh state is taken, the government is forced to spend Rs 18 thousand million per year, just to provide food grains to beneficiaries. If the central government does not fulfill its responsibilities and if all poor families are not entitled to food grains, state governments would have to spend an estimated Rs 230 thousand million from their

1 The present public distribution system is on the brink of total destruction as 40-60 percent of its grain is lost in the absence of vigilance and accountability.

own budgets. It is surprising that state governments and opposition political parties are remaining silent on this atrocious law. Their silence will diminish the democratic space and pride of the poor and food insecure in India.

Furthermore, no special authority, commission or special courts would be set up to look into violations of rights and entitlements under the proposed food security law. This means that victims of rights violations would only have the present justice system as their recourse, which is not particularly accessible to the poor and marginalized, and where 1.4 million cases are still waiting to be resolved. Under these circumstances, not only would an increase of hunger related deaths be imminent while waiting for court decisions, but entire families could disappear.

Another surprising factor is that the government is only talking of grain distribution, but is silent on issues such as grain production, security to farmers, and preventing the diversion of agricultural land, forest and water for corporations. In the near future, food grains will be imported so that multinational companies benefit through public resources. Efforts are also being made to employ a policy of conditional cash transfers in place of food grains to the beneficiaries, so the government does not have to procure grains and could thus save on the subsidy money. Whether this will in fact lead to any savings will only be known later, but what would happen to the farmers? Has the government given any thought to this question? The open market is already prepared to eat up India's farmers and farming without any hiccup.

Confessions and blame will not save 30,000 children destined to die this year

(Edited statement issued by the Asian Human Rights Commission: AHRC-STM-053-2010)

Mr Anoop Mishra, Madhya Pradesh state Minister of Public Health and Family Welfare said in the state legislative assembly on 8 March 2010 that 30,000 children under the age of five die of malnutrition every year in the state. The shocking admission by the minister about the state government's criminal neglect in addressing the need of its citizens is contrary to its known practice of denial about the pitiable affairs in the state, particularly concerning health and family welfare.

For all practical purposes, the minister's statement can only be viewed as a belated attempt to accept the fact but to consciously deny responsibility. This is evident from the farcical explanation offered by the minister for the high infant mortality rate in the state; he blamed the mothers for their children's poor health and eventual death.

The minister attributed child malnourishment to the early marriage of girls; pregnancy immediately after marriage; newly born children being underweight; want of complete vaccination; mothers not breast-feeding children up to six months; not providing supplementary food to children in time; and infections and poor economic conditions. The minister did not however, explain the source of the information, or the scientific basis for the opinion.

The government's lack of seriousness in addressing the issue is highlighted by the minister's response—to open 25 additional nutritional rehabilitation centers to the existing 200 centers.

Over the years, government and non-government studies have shown that the infant mortality rate in Madhya Pradesh is much higher than what has been admitted by the government. For instance, the central government sponsored National Family Health Survey (NFHS-3) has repeatedly held that an estimated 60 percent of the state's children are malnourished. The state administration however, has been denying this data over the past several years. The NFHS-3 is conducted by the International Institute for Population Sciences (IIPS) in association with a number of grassroots organizations since 1992, on assignment from the Government of India.

In this context it is not surprising that out of the eight causes narrated by the minister resulting in child malnutrition and infant deaths, four (1, 2, 5, and 6), place the blame upon the mother. The minister can then avoid discussions on the root causes of child malnutrition and infant mortality that will invariably place the state administration in the dock.

In addition, the state administration does not have credible data to deal with the problem. Different state entities have inconsistent and mutually contradicting data concerning infant mortality and malnutrition. According to the Health Department for instance, there are no infant deaths reported in Dhar (from April 2005 to September 2008) and Chindwara districts (from April 2006 to September 2008). The Monthly Progress Report of the Department of Women and Child Development however, claims that 560 infants died in both these districts between November 2007 and May 2008.

For the last four years, Satna, Chhatarpur, Balaghat, Shivpuri, Guna, Rewa, Shahdol and Sidhi districts are reportedly highly affected by food and health insecurity, resulting in child malnutrition and mortality. Among them, the child malnutrition and deprivation of right to food in Rewa and Sidhi districts have been reported by the Asian Human Rights Commission [for details please visit http://foodjustice.net/].

As each case proves, the families of the malnourished children are mostly landless tribals living in rural areas. They do not have a regular source of income to feed their children. In addition, the NFHS-3 survey found that 57.7 percent of women in the state were anemic. It appears that the minister expects landless parents, deprived of a stable source of income, to nevertheless provide their children with supplementary food. That the malnutrition of the parents hampers their ability to guarantee their children's food security is apparently not noticeable to the minister and his department, which he heads spending tax payers' money.

Most of the malnourished children in the AHRC reported cases were not registered at the Anganwadi Centers (AWC, child care center). This means that those children are not officially recognized as undernourished by any of the government agencies. Furthermore, the mothers have not received proper information and lack knowledge about the specific nutritional needs of their children. This is a legally binding international obligation upon the government, under article 11 (2) of the International Covenant on Economic, Social and Cultural rights and article 24 (2e) of the International Convention on the Rights of the Child, both of which India has ratified. Thus far the AWCs have failed to play their role as a bridge between the government and the people concerning child care.

A 2009 report titled 'Moribund ICDS' on Madhya Pradesh states that 89 percent of the AWCs surveyed for the report did not possess any medicine kits and were therefore

unable to provide medical relief to children. As a result, the NHFS-3 found that only 31.5 percent of the children from 0 to 71 months in Madhya Pradesh have received health check-ups in an AWC and only 37.8 percent of them had received immunization.

It is a sad irony that while the country projects itself as becoming a developed nation within the next few years through dramatic economic growth, its proportion of budgetary allocation for citizens' health is far less than any developed country. In Madya Pradesh, the budgetary allocation to health out of the total state expenditure has been decreasing every year since 2000, dropping from 5.1 percent to 3.9 percent in the past year. The case of Sidhi district specifically reflects that the budget for health service accounts for merely 2.4 percent of the total state budget. While child malnutrition has been increasing for the last five years, not a single Public Health Center has been built in the district during this period. Of the 4,708 medical officers' posts 1,659 are left vacant, and 1,098 Auxiliary Nursing Mothers' posts are yet to be filled.

Similar anomalies exist in other government programmes. For the Reproductive and Child Health Programme aimed at reducing infant and maternal mortality, the government made a budgetary provision of 650 million rupees (USD 14 million) between 2005 and 2010. Only 379.6 million rupees (USD 8.2 million) has been spent so far.

The problems underlying child nutrition are so numerous and complex that the government's response should not limit its scope to any single aspect of the issue. The opening of 25 Nutrition Rehabilitation Centers may provide short-term relief to local undernourished children, but will not address the root causes of the problem.

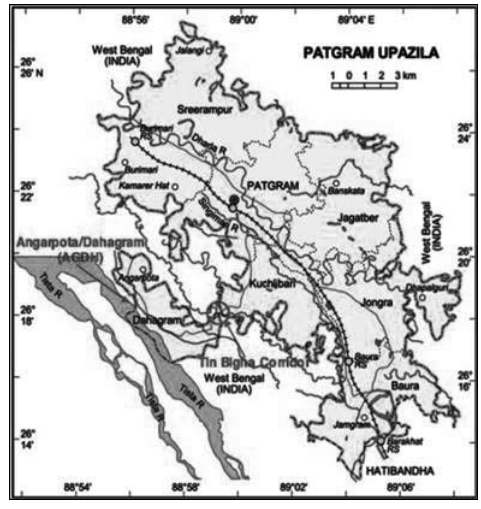
Most of the children whose right to food is violated belong to landless families, who are deprived of regular sources of income. In many cases, parents work as migrant workers and earn extremely low wages insufficient to feed the family. Therefore, the government must take broader measures to introduce land reforms in Madhya Pradesh and promote developmental projects favouring local employment opportunities notably through investment in local agricultural infrastructures. Feudalism, a wealth source for most politicians in the state, must end.

Effectively addressing the problem of child malnutrition requires strong coordinated policies between concerned ministries and departments, such as the Health and Family Welfare, the Women and Child Development, the Agriculture and Rural Development, which is unfortunately a remote possibility.

Bangladeshi exclave dwellers are nobody's headache

Md Ashrafuzzaman

Dahagram and Angarpota are two villages within Indian territory, belonging to Bangladesh following a bilateral agreement signed in 1974 between the heads of the governments of Bangladesh and India. According to the agreement, which was signed on 16 May 1974, Bangladesh exchanged 'enclaves' with neighboring India. Bangladesh agreed to give away an area named Berubari of 2.64 square miles in exchange for 'an area of 178 meters × 85 meters near 'Tin Bigha' to connect Dahagram with Panbari Mouza', under the Patgram police station of the Lalmonirhat district.



After the agreement was signed by the two countries, separate legislative formalities were needed to approve the agreement in parliament. On 28 November 1974, the parliament of Bangladesh completed these so the agreement could be put into effect. The Indian parliament however, has not yet ratified the agreement, following a number of lawsuits and political debates.

A team from the Asian Human Rights Commission (AHRC) recently met with government representatives from the Dahagram Union Council and residents while visiting the area. The AHRC was told that the official population of the whole territory was 16,664 in a total land area of 22.68 square kilometers. However, the actual population, last counted in the 2001 census, shall be approximately 20,000 by the present time. There has been no electrification of the territory in over four decades, due to obstructions from the Indian authorities. An agreement between the two governments was made in January 2009 regarding the electrification of the territory by Bangladeshi authorities.

The territory is located in the Cooch Bihar district of West Bengal, India, with the Tista river on the west. It is otherwise surrounded by the areas of the Cooch Bihar district except for a gap of 500 meters or so, including the no-man's lands between the mainland

of Bangladesh and India. Some parts of the territory are fenced in along the border by the Indian authorities.

Movement, security and dignity

Mr Touhidul Islam, a community policeman of the Angarpota village, told the AHRC,

> The state of Bangladesh only existed in the hearts of the people of this territory, as there was no direct assistance or facilities available from the public institutions. We had no opportunity to leave the place unless anyone could manage to get consent from the Indian border guards following repeated requests. It was also highly humiliating for us.

For instance, Touhidul noted that, "the Indian guards used to put identification marks on women's blouses and petticoats whenever they allowed them to go out of the territory for medical treatment for a serious disease, and they were obliged to keep the marks and wear the same clothes when returning home". Nobody should be sick at night however, Touhidul said, particularly after 9pm; the Border Security Force (BSF) guards at the gates of Tin Bigha simply dither for hours with innumerable excuses.

> People normally seek help from the soldiers of the BDR (Bangladesh Rifles) whenever there is any serious patient like a woman with labor pains. Our soldiers request their Indian counterparts, who take time apparently to call the higher authorities, waste time, and finally say 'no'! In most cases they claim that the relevant official was 'unfortunately' unreachable despite repeated attempts, and without that particular official the request cannot be entertained.

Mr Shamsuddin, a Dafadar (messenger) of the Dahagram Union Council describes daily life, where even buying groceries requires permission from the BSF. Residents had no choice but to comply and accept "the instructions and intimidation of the Indian forces, as there was nobody from the Bangladeshi authorities to protect us in such a vulnerable condition. We are surrounded by Indians." Even demanding facilities from the Bangladeshi authorities resulted in regular repression by the BSF and Indian police, Shamsuddin noted. He continued,

> Our people were seriously beaten by Indian soldiers after the visit of President General Ershad, who came here in the 1980s to see our situation, and with whom we shared our problems.
>
> The confinement continued until 26 June 1992, when people got their first opportunity to go to the mainland of Bangladesh crossing the Tin Bigha. That's the day when the Indian government implemented one of its agreements to open the gate at the Tin Bigha corridor for only 12 hours a day in two slots of three hours each. We felt that we were liberated!

According to another community policeman, Mr Hafizur Rahman, "The people of Dahagram and Angarpota did not have even a minimum freedom of movement, allowing them to go from the territory to the mainland of Bangladesh." While the territory may officially be termed an 'enclave'[1], it remains an 'exclave'[2] in terms of people's "dignity and security; we still do not have our sovereignty here". Explaining the situation, Hafizur said,

> Earlier, the Indian authorities did not allow the Bangladesh Police to enter into this place. Now, the police can come without any arms. They can only carry sticks. We have a police camp comprising 16 personnel including one Sub Inspector and an Assistant Sub Inspector. The Bangladesh Army is not allowed to come here. For the first time in history, an army team came to Dahagram having special permission from the Indian government during the general election on 29 December 2009.

Medical assistance and natural calamities

There is only one public hospital in the territory, with an official number of 10 beds, and a reported staff of 12, including two doctors. In reality however, there has been no qualified doctor to treat the patients.

The AHRC team met Mr Jillur Rahman at the hospital, who is a staff member there, with a Diploma of Medical Faculty (DMF). He is a new recruit, and says, "At this stage I have no alternative but staying here. Most staff do not prefer staying inside the Dahagram area due to the lifestyle, which seems confined." This is because there are only 12 hours to get to the mainland and return home again.

If there is any delay due to transportation or any unexpected inconveniences at arriving at the gate of the Tin Bigha corridor, which is fully controlled by the BSF, the person can only return home on the following morning after the gate opens again. This condition of confinement causes a lot of problems to the people.

---

1. An enclave is a territory whose boundaries lie entirely within another territory.
2. An exclave is a territory legally attached to another territory with which it is not physically contiguous.

Jillur was checking a patient's pulse and injecting a vaccine for which he received money from the patient, while talking to the AHRC. He said the Dahagram hospital barely receives any supply of medicine from the government. As a result, patients have to buy medicine from the mainland, which incurs extra transportation costs as well as other hazards of travelling. So, whenever Jillur visits the mainland he buys common medicines to help the patients.

Apart from suffering at the hand of political and bureaucratic idiosyncrasies, villagers also have to endure natural catastrophes due to the erosion of the Tista river. The erosion destroys households along the eastern bank of the river, increasing the number of homeless families. In order to control the erosion, the government constructed a dam on the eastern side of the river. However, inhabitants of the eastern bank allege that the relevant company and officials were mired in corruption, resulting in a poorly made dam. Therefore, the erosion continues and new houses are destroyed every year, deepening people's sorrows. Nobody knows whether the river will take away their home or not. The people can do nothing but blame their own fate.

Detainees, the world's forgotten

Jo Baker

As the UN's top investigator into torture and punishment prepares to end his tenure later this year, he has chosen to focus on a group of people he considers to be the most vulnerable to discrimination and neglect. Detainees, says Professor Manfred Nowak, are the world's 'forgotten'.

The theme has become central to the Austrian professor's six year tenure and in his report to the UN Human Rights Council this March, he reiterated his call for a convention to protect them.

Where other forms of discrimination, by creed, conviction, gender or class, are seen being strongly countered by global social movements, the rights of those considered 'criminal' tend to generate less interest, and certainly less popular sympathy. There is a long-standing tolerance of prison systems that are closed and secretive in which exceptional measures may 'need' to be taken or procedures relaxed. The attitude has allowed standards to slip badly. "As soon as they are behind bars, detainees lose most of their human rights and often are simply forgotten by the outside world," Novak reported in Geneva in March, having repeatedly highlighted 'appalling' average conditions of detention that constitute 'cruel, inhuman and degrading treatment'.

This is despite the commitment of 192 states to uphold the Universal Declaration of Human Rights and its two binding covenants, much of which covers conditions of detention. As noted by the High Commissioner for Human Rights Navi Pillay in 2007, "Some rights are necessarily restricted by detention. But regardless of the reasons why they have been deprived of their liberty, individuals in detention are more vulnerable to human rights violations… Governments have the obligation to respect, protect and fulfill [these] rights."

Yet the 71-page report recently released by Professor Nowak's team cited experiences among detainees in Nigeria—who were penned in cells by the hundreds and tortured in front of one another—and in Nepal and Sri Lanka where cells were so crowded that prisoners could not lie down to sleep at the same time. On a mission in Uruguay he found that conditions were inhuman for both inmates and guards in the maximum security Libertad Prison where small metal containers built for one would hold three, with barely any light or air, and no water or toilet. He was not singling out these

countries for censure he insisted, but offering them as representative of the situation in most countries in the world at the moment.

Prison authorities commonly fail to provide inmates with the basics for survival: food, water, clothing, a toilet, medical care and a proper place to sleep. It is a responsibility, says Nowak, very often left to visiting family members. Some states go a step farther, however. In Burma for example, where the military junta still bars the Red Cross from its prisons, the Asian Human Rights Commission (AHRC) has documented the routine placing of inmates in prisons hundreds of kilometers from their home towns, and therefore from any form of support. Nowak noted that those without help from the outside can die, or be forced to denigrate themselves by performing 'services' for prisoners or staff in exchange for provisions. The AHRC has documented the 'trades' that result from this set up in countries like Sri Lanka and Bangladesh, in which goods from families are 'taxed' by police or prison guards. (These can be read about in AHRC/ALRC publications, among them 'Use of police powers for profit', *article2*, vol 8, no 1, March 2009).

In the Philippines, the question of detainees' right to health was highlighted in 2008 and 2009 by the deaths of two remanded labour rights activists from tuberculosis. Melvic Lupe, 29 and Leo Paro, 25 had been fit two years ago when they were remanded in Cainta City Jail after striking against Karnation Industries and Export Inc, a home décor company. Their families accuse the prison authorities of criminal neglect, and have been unable to find out whether the men had been medically treated, or to obtain a copy of their medical report. Like many in their situation, the men had been essentially sealed away, though they had not even been convicted.

By tolerating the seclusion of prisons and the secrecy in their operation, society allows them to become gateways to all kinds of other human rights violations, from extreme corruption to torture and extrajudicial execution. Examples only tend to surface in the media sporadically; for the US-led abuses in Guantanamo Bay it took sexually explicit photographs, and in France, which is infamous for its shabby prisons, a significant increase in suicides. Headlines are harder to make in many Asian countries where accountability remains low and the death count in prison is high but badly documented. In Indonesia the issue flared up last year when a corruption task force discovered wealthy VIPs living in air conditioned luxury, with LCD televisions and spa products in central Jakarta, while elsewhere prisons are notoriously overcrowded; audits of prisons are now being taken across the country.[1] Efforts by prisoners in Bogambara prison in Kandy, Sri Lanka over Christmas 2009 were less successful: five days of fasting on the prison roof to

1 As reported by Indonesian human rights e-journal Caveat in January 2010, the Minister on Justice and Human Rights acknowledged last year that "nationwide our prisons should only hold 80,000 prisoners, while the total number of inmates today is 130,000".

demand either trials or bail saw no constructive response from the prison authorities, and prompted more hunger striking. A large proportion of Sri Lankan inmates are in remand and can wait for a trial for years, many held under the draconian—and with the war over, arguably redundant—Prevention Against Terrorism Act.

Indeed, thanks to immense delays in justice and widespread corruption, trials—fair or otherwise—can be hard to come by. According to the latest World Pre-trial Imprisonment List (October 2007), two and a quarter million people are known to be held in pre-trial detention (and other forms of remand imprisonment) throughout the world, many of them in debilitating conditions. About another quarter of a million are held in countries such as Sri Lanka, on which data cannot be gathered.[2] Nowak's call for action this year therefore extends essentially to the machinery that allows these situations to continue unchallenged. More funding and much greater political will must be brought into play, he notes, for justice systems to start functioning independently, professionally and swiftly.

A convention for detainees would make states more answerable to the expectations of their peers; signatories would be legally bound into a communication channel with experts on the issue, and held regularly and more comprehensively to account. For states that did not sign, the process would still encourage a measure of self-reflection while generating much needed publicity, shining a much-needed, globally-powered light into those places where millions of our most vulnerable are left waiting in the dark.

Key human rights documents relating to detention

Treaties

- International Convention on the Elimination of All Forms of Racial Discrimination
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

2 In Bangladesh it has documented that 68 percent of its entire prison population has not yet been tried; in India it puts the pretrial population at 250,000, in the Philippines 60,000, in Pakistan 57,000, in Indonesia 47,000 and in Thailand 33,000. It has been estimated that there are as many as 100,000 untried prisoners in China.

- Convention on the Rights of the Child
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- International Convention for the Protection of All Persons from Enforced Disappearance
- Convention on the Rights of Persons with Disabilities

Guidelines

- Standard Minimum Rules for the Treatment of Prisoners
- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)
- Guidelines for Action on Children in the Criminal Justice System
- International Guidelines on HIV/AIDS and Human Rights
- UNHCR revised guidelines on applicable criteria and standards relating to the detention of asylum seekers,
- Recommended Principles and Guidelines on Human Rights and Human Trafficking

(Published in 2008, as part of the United Nations and OHCHR year-long advocacy campaign to mark the 60th anniversary of the Universal Declaration of Human Rights (UDHR) under the theme: "Dignity and justice for all of us".)

Sri Lanka's Judicial Medical Officers, their concerns and the torture shortcut

Lewis Davis, Intern, Asian Human Rights Commission

A Judicial Medical Officer (JMO) is a full-time specialist consultant in forensic pathology. Forensic medicine is the field that links medicine with law and the legal process. The role of the JMO in Sri Lanka is duly recognized and JMOs are highly qualified in forensic pathology with extensive post-graduate training both in Sri Lanka and internationally. The JMO is a servant of the state—employed by, and accountable to, the Ministry of Justice.

The duties of a Judicial Medical Officer are varied and numerous and are consistently conducted in an environment of inadequate resources and too many cases. The days of a JMO are long, with their expertise and focused attention in constant demand. A JMO's time is split between extensive full-time in-hospital duties, conducting autopsies, post-mortem investigations and exhumations, submitting evidence in court, time-tabled teaching of junior doctors and bachelors students, conducting training programs for junior and high ranking police officers and also undertaking independent research into forensic science, to mention nothing of familial duties. It is in the capacity of their full-time hospital duties that JMOs are usually the first and only experts to come into contact with bodily injuries caused due to torture, cruel or inhuman treatment.

Duties to the living: Process from hospitalization to court

As part of their duties with regard to living persons, a JMO is responsible for examining patients who have undergone suspicious physical trauma and documenting their findings for the purposes of a criminal trial. First, a person is admitted to hospital with suspicious injuries—i.e. those not caused by himself. The JMO will then give him/her a thorough oral and physical examination to determine the history of the injuries, according to the victim, and record their opinion as to their cause, thus establishing whether the injuries

---

This article is based on two one-hour long recorded interviews with Dr Fernando, a JMO and non-practicing lawyer working in the south of Sri Lanka on 18 and 25 November 2009. All names have been changed to protect the identities of those professionals still working in Sri Lanka and all *emphasis* is added.

are consistent with the patient's account of events. These findings are then documented in a **Medico-Legal Examination Form (MLEF)** (see below). This process does not apportion blame to a particular person for inflicting the injuries; the MLEF is not accusatorial. The JMO only suggests a link between the injury pattern and the victim's account of events. It is then left to the courts to link this evidence with a perpetrator.

Upon completing the MLEF a copy is given to the police. If the injuries are deemed to be sufficiently serious, the police will form an opinion as to whether a criminal investigation should be initiated and the case referred to the Magistrate's Court.

The Medico-Legal Examination Form (MLEF):

1) **Detail the history of the injuries according to the patient's account**
2) **Identify the injury types**
3) **Classify/ categorize the injuries according to severity, direction number etc**
4) **Assess circumstances in which it happened –weapons used, drugs, alcohol, fight, car accident etc**
5) **Give an opinion as to the cause of the injuries**

If the case is referred to the Magistrate's Court the JMO compiles a Medico-Legal Report (MLR) which is a detailed expansion of the MLEF. The Magistrate's Court will then summon the JMO to send his report to court. If the case is referred to the High Court, the medical officer must give evidence as a witness for the prosecution.

Inquirer into sudden deaths and duties to the deceased

The Inquirer for Sudden Deaths (ISD), is akin to the British coroner and is appointed by the Minister of Justice. Although they bear quasi-magisterial powers, almost all of them are non-medical, non-legal appointees who are heavily dependent on the police and forensic pathologists for death investigations.

If a person dies under suspicious or unexplained circumstances (i.e. where cause of death is unknown) the death is reported to the police and the medico-legal system is activated. The police then inform the ISD who undertakes a fact-finding inquiry to determine the cause of death.

If the ISD is unable to determine the cause of death he refers the case to the Judicial Medical Officer and asks the JMO to do an autopsy and a post-mortem report (PMR). The JMO will then conduct a second inquiry to determine the circumstances and cause of death.

The nature and prevalence of torture in Sri Lanka

My conversation with Dr Fernando quickly turned to the issue of the casual, everyday, routine torture that pervades police stations across Sri Lanka in the most banal fashion, and which has been well-documented in recent years:

"I have seen cases of gross human rights abuses as early ago as my student days during the conflict—even before I became a doctor—both in the south and the north. From the late 1990s we were seeing torture victims from the north and east. Most of the victims had been detained in prisons and were tortured for information. Most of the methods used were physical, but psychological methods were also used. Many of the injuries examined were typical—injuries on the body surface caused by blunt instruments—normally whatever they [the police or military] can grab in the police station or detention centre. One of the most common methods in Sri Lanka is beating, in most cases it's with batons and other kinds of weapons… boots… anything that they can grab to use as a blunt weapon.

"These injuries are seen on the skin as abrasions, lacerations or contusions. Occasionally there are various fractures, maybe to the long bones such as the hands or legs as well as bruises on the back and injuries to their eyes due to the repeated beatings on the face. Another way is to apply force through suspension—this imposes both fear and pain. People will be suspended in various positions that are difficult to carry the weight of the body—sometimes from their fingers, sometimes from their thumbs. This can crush the nerves, leading to significant injury.

"One method used is the so-called 'Palestinian hanging'—this rotates the whole shoulder joint backwards so the nerves going through the arms to the hands are rotated and can lead to the limbs being totally paralyzed. This can lead to permanent damage depending on the duration they are hanged. However, in most cases they do not do it to cause permanent damage—they do not want to cause injuries that will leave permanent scars because this will put them in danger of prosecution. Instead, they carry out this torture for a period that is just long enough to obtain whatever information they want, but not to cause long-term permanent damage. We can see that over the years the torturers have been learning from what they're doing."

Do you see cases of psychological torture?

"The incidence of psychological torture is certainly under-reported as JMOs do not examine victims for psychological injuries—JMOs are only specialist in examining physical signs of injury. Cases of suspected psychological abuse have to be referred to a psychologist or psychiatrist. However, many of the psychologists have been trained

abroad and have stayed there. Also, many of these torture victims were from the rural north where there are no psychologists. There is a very big need for the examination of psychological torture in Sri Lanka because torture is the major human rights violation in this country.

"It has been suggested recently that the incidences of torture here are going down, which is a controversial topic. Are we really experiencing a decline in torture cases? Some believe so, but I do not. We are not in a position to say that torture is in decline in Sri Lanka because no one has statistics—the government has never produced official statements about the numbers so we only have the numbers reported to various NGOs, but this number is not an accurate representation."

Are instances of such torture common?

"In my opinion these incidents are common, but that should be explained; the police here have enormous power. Their argument is that they run and maintain the institutions for the government, so it is necessary for them to have more power to do this so as not to cause the government any problems. The other problem is that the police do not have proper facilities to conduct proper scientific investigations, so they tend to take short cuts by taking information from third parties which is not reliable or tested—this is the shortest way of catching 'the culprit' for them. Because of these factors, torture is going to continue to become more and more experienced in this kind of society.

"If the police are taken to be the major perpetrators, it is said that we JMOs should be involved in their training. There are conflicted opinions among JMOs on this issue; some believe that we should not only assist victims but should teach the police how to obtain information properly without torturing and also how to do proper medical check-ups, while others believe this is unethical and that it is not our role to assist the police with their training. There are still others who maintain that we should at least engage with the police as they are the ones that will commit this torture."

Main issues affecting proper medico-legal documentation of state abuse

Proper medico-legal documentation is vital for successful torture prosecutions, as it is the MLEF/MLR which is presented in court and links the torture injuries to a particular incident that occurred during a particular time period, and which were caused using a particular method. It can be seen however, that the MLEF is a short document used for documenting injuries caused by physical abuse. It is not adequate for documenting injuries arising from physical or psychological torture or sexual offences such as rape. Changes are slowly being made to address this issue, which currently does not easily allow for full and proper documentation of the full spectrum of injuries that could be inflicted.

Police influence in rural areas

There are only 42 Judicial Medical Officers in Sri Lanka, which has a population of over 20 million people, meaning that there is a significant shortage of forensic experts to handle the demand. The consequences for the victim when there is no JMO in their area are serious and points to the problem of under-skilled junior doctors, and police in rural areas exerting authority to exploit connections with newly qualified doctors to cover up abuses by tampering with the medical documents or due to false or inaccurate recording of injuries[1]:

"Hospitals in the north and east did not have a single JMO for the last 10 years [due to the decades long conflict between the LTTE and the Sri Lankan government]. Hospitals in the 'peripheries' [referring to the very rural areas outside major cities] do not have full-time JMOs so junior doctors will carry out these responsibilities, but they are not specialists trained in forensic science. Often the doctor is new to the area and so will rely on the police and magistrates to help him find accommodation. Also, people tend to associate with people that work in the same field as themselves; as a result sometimes these doctors will have an obligation to the police, who they have unofficial friendly links with, and occasionally that prevails over their obligation to the patient. This is especially the case in rural areas.

"Furthermore, the victims are often examined by inexperienced doctors who are actually performing some other medical duties; the police have more authority at that stage and sometimes can bring out some false information about the victim. Additionally, injuries are not properly documented—sometimes these doctors cannot identify hidden injuries. What's more, these victims are not brought soon after the event, meaning that some of the injuries have healed. These doctors are not competent in assessing injuries for timing."

Resources

JMOs face a lack of adequate resources to assist them in properly documenting medical injuries caused by torture. JMOs are not provided with equipment to assist their work such as cameras to photograph injuries, a laptop, photocopier, UV lights to identify bruises on dark skin, examination beds and the like. This makes a JMOs job more difficult and as a result they must buy these things with their own money as the government is reluctant to provide state-funding for this equipment as torture victims are

1 Such as the case of Lasantha Kumarage who died due to extensive injuries from police torture in June 2000. Here Dr Piyasoma (the JMO who first examined him)'s conduct was said to have been "disgraceful and dishonorable...and would shock the conscience of medical men".

not high on their list of priorities and further, such cases of torture may even implicate state agents.

"If a person comes to us after one week we are successful at examining and documenting these injuries because a one week gap is not very long and most of the injuries are caused by a blunt weapon causing lacerations or contusions. However, bruises by definition occur under the skin and on superficial examination it appears that there is no injury, but on closer inspection with a magnifying glass or UV light we can examine underneath the skin. But, we do not have these UV lights.

"A bigger problem occurs when these injuries occur after six months; then it is very difficult for us to time injuries caused by blunt weapons. We can only say that it was probably caused during this time period but we cannot be specific—scars disappear and change colour, and injuries heal. But up to six months we are quite okay with being specific with the timing and probable cause of these injuries.

"After examining people for a long time we still need more resources and we need more scientific resources so that we can verify our data and findings and so that we can give more scientific light to our own work, as we are bound to provide all this information to courts. This would bring redress to victims in a more effective manner."

The efficacy of police-medical training programs

In working at the intersection between the medical and legal aspects of forensic pathology, and in working to improve the collection of forensic evidence for criminal investigation, many JMOs are engaged in training programs with police cadets as well as with experienced police officers. How successful are these training programs given the continued prevalence of abusive practices in Sri Lanka's police stations?

"They are not effective. There is a common belief within the police that with the limited resources they have and with the speed in which the investigation is required to be completed, they have no choice. The police here are heavily politicized and so the government puts a lot of political pressure. So the police use torture as a short cut to obtain information."

The torture shortcut

Torture is prohibited under article 11 of the Sri Lankan constitution, and confessions obtained through torture are not admissible in court. However, the Prevention of Terrorism Act (PTA) and Emergency Regulations, which came into force in 1979 and have recently been extended in 2010, state that a confession—whether verbal or written,

whether taken while in custody or not, or whether in the course of an investigation or not—is *not irrelevant* when made to a police officer above the rank of Assistant Superintendent [article 16 of the PTA]. The burden of proving that such a confession is irrelevant is on the person claiming it to be irrelevant—the victim. Furthermore, the PTA grants the police powers to arrest and detain any person suspected of a crime under the Act for up to 18 months without trial, subject to monthly review. Dr Fernando explains the irony of police using the torture shortcut and why the conviction rate in Sri Lanka is only 3-4 percent:

"Confessions here are not admissible in court *but the information obtained can be used to gather further evidence that can be used in court or to find people*. So the police can maintain the case but they cannot win the case which is why the conviction rate is so low. In the long-run this is really a serious loss.

"In fact, JMOs have been involved for many years in giving lectures to police on how to perform forensic examinations, how to conduct crime scene examinations and how to conduct scientific examinations and evidence collection. This is a part of their police and forensic training but in fact the police have completely forgotten the scientific background. There are also various in-service training programs for the police, but the system has not been successful—we are still experiencing the same thing. The police are under pressure to bring in results in the shortest possible time with limited resources and they are under the belief that this torture will not go back into society because these things have happened for many years without the notice of the public."

Fundamental rights cases trends and successes

Under the Sri Lanka constitution, any citizen whose fundamental rights—under articles 10–17—are violated by an arm or agent of the state has the right to petition the Supreme Court within 30 days, in a civil case, for legal redress.

"According to the 1978 constitution of Sri Lanka, chapter 3, article 11, there is a prohibition on torture identical to that in the UN Convention against Torture. Since around 1980 there have been many cases filed under this article in the Supreme Court. So I looked at all the torture cases and compiled all the successful cases into one publication which was published in two volumes in 2004. It documented the fundamental rights cases from 1980–2004. There were around 65 'success stories'[2]. However, there are many

2 These are not all the successful cases. According to the Sri Lankan court system, not all cases are documented in the legal reports; the unreported cases were omitted from Dr Fernando's compilation. However, if one includes the reported and unreported cases, it is estimated there would be over 200 cases for this time period.

out-of-court settlements by people not willing to go to court because this is not an easy or inexpensive procedure; just to 'ask for leave' from the court a person will have to pay between 55,000–70,000 rupees [USD 418–673]. Tortured persons are often not in a position to find that money, unless they can get help from an NGO or legal aid.

"We always have to remember that the real number of victims is always under-reported as many people having undergone torture don't come forward. Also, it's a long process and the proceedings are severely delayed maybe for many years. So one would have to have remarkable patience to go through these procedures and people don't want to subject themselves to that. So there's always under-reporting at every level when it comes to both the legal proceedings and the medical examinations.

"…My criteria for a 'successful case' was whether the courts accepted the complainant's affidavit and duly awarded compensation from the perpetrator, medical assistance, welfare assistance, compensation or compensation for damage to property…Most of the success stories are from that period where a person has come to a JMO on his own initiative or was sent by a court within weeks or months of the incident.

"During my investigations I have also found that article 13 often goes hand-in-hand with article 11 because in most of the cases people that have been tortured have also been illegally detained. However, there are changing trends. In the 1980s and 1990s we had some very good success stories, up to 2004-5. They were successes because the victims were given large amounts of compensation and their versions of events were found to be consistent with the JMO findings and were accepted by the courts.

"In the last couple of years we have seen a change in the trend however. It may be due to the change of the judges (this is one reason given by the lawyers), or it may be that these judges have been 'approached' by people at the higher level. It has to be understood that an issue like torture has many political involvements, it is not just an issue related to a single police officer in a remote police station or a certain officer in a certain station, it is more than that. Torture harms Sri Lanka's image. The government knows that torture has been the practice for the last two and a half decades, and now people are using the constitution and filing cases, and judges are compensating victims with large amounts, when compared with general compensation levels awarded by the Supreme Court. So maybe the Attorney General's department has analyzed this and discussed with magistrates and judges not to give a large amount of compensation because that will promote more fundamental rights cases."

Psychological assessments for police torturers and suggestions as to why people torture

"From a medical perspective there are many issues which can make someone a torturer—personal issues such as alcohol dependency or a traumatic childhood, including assault; these bad experiences tend to get repeated, especially when someone is in a position of authority.

"Another thing is disturbed family relationships, especially if they are separated or divorced, or the children are not living at home, especially because now more women are going overseas to find employment and they are leaving the father to maintain the home, contrary to traditional custom. As a result, the father does not know how to do this and so he will take advantages with the money for alcohol or gambling. These kinds of relationships can affect someone.

"It should also be said that there is no way for us to examine the perpetrators. Most of the perpetrators are named in fundamental rights applications, but usually the courts do not ask us to examine them. This is something lacking in our system. We should be able to examine the perpetrator and ask why he committed torture or assault. Was he capable of committing this? And under what circumstances did this happen? Unless he comes to us for separate psychological assistance or therapy, we will not know.

"Also from my experience of working with the police I know that there are also procedural pressures on them, especially after the 1970s, the police became very politicized. Even now the Inspector General of Police is appointed by the President and many parliamentarians and ministers are involved in the day-to-day activities of the police station. The police often get calls and demands from the minister representing that area, and they will have to obey. With short time periods to complete investigations, officers revert to the shortcut of torture to get a confession or information. If you can satisfy the political leaders you can go for promotion. Credit is important, but political reference is also important, so if you have connections with political party members you can easily climb the career ladder. This problem has become almost like a cancer, and it cannot be removed due to the length of time it has been occurring for.

"But we should also work with the police. We work all the time with the victims, but the police are the one's committing these acts so we should work on training them as well. But I'm not sure how successful these training processes are; in practice, there has not been much impact."

Conclusions and recommendations

Torture is used as part of routine police operations in Sri Lanka, and has been seen by doctors for the last two decades. The Judicial Medical Officers having to deal with these patients are over-burdened and under resourced, while being motivated to do justice to the victim. As a means of doing this they are using ingenuity and determination to overcome these problems in order to maintain integrity in their profession.

There is a continuing lack of resources and state funding which makes it difficult for JMOs to easily identify the hidden injuries caused due to torture and limits their capacity to handle more cases. To compensate for the lack of resources, JMOs have started to include a 'references' section in the MLR where they refer to similar cases conducted by forensic doctors abroad who have better resources and equipment. They are also buying necessary equipment themselves with their own money. However, it is the government's responsibility and obligation to allocate the necessary funding for JMOs to discharge their duties. It would also be useful to organize international exchanges, where doctors working on human rights issues could meet and discuss their difficulties and best practices, as well as creating a medical database for more effective documentation of torture injuries.

When junior doctors are sent to rural areas on graduation, they are adversely influenced by police officers from this area. As a result they are not submitting accurate documentation and sometimes do not even examine victims. Also, there is a skills and education void here with many junior doctors not trained in how to recognize signs of torture and the severe consequences of neglecting this for the victim. It is therefore necessary for them to undergo further training to recognize the signs of torture, conduct a proper examination and correctly write a medico-legal report. They should also be educated as to the detrimental effects of incorrect report writing. Taking photographs of the victim's injuries is not a requirement at present but it should be because of excessive court delays of several years. Photographs would aid the recall process.

The JMO relationship with the police is professional and 'good' despite JMOs creating reports that implicate police in custodial torture and deaths. There is no undue influence on them from the police, as there is with junior doctors in the peripheries, due to their high social status and strong trade unions. As a result, and due to the seriousness of torture, JMOs have requested all junior doctors to send all suspected torture cases to them to overcome intimidation from police and their lack of experience. Most of the successful fundamental rights cases relating to torture are from that period where a person has been examined by a JMO within weeks or months of the incident, so early examination should be ensured. At present many people do not see a JMO until several weeks after the injuries were inflicted, due to being kept in detention.

There is a lamentable shortage of JMOs and psychologists in Sri Lanka which prevents proper psychological examination of victims to assess for signs of mental trauma. Furthermore, there is no psychological testing for police officers who are accused of being involved in torture; this is something that JMOs would like so as to contribute to the total sum of knowledge about torture issues. In this respect the referrals system to other specialists could be improved. Moreover, all persons should undergo psychological assessments before being recruited into the police force, and existing problems with alcohol, drugs or domestic violence should be taken into account or should disqualify them.

There is also a lack of victim knowledge and education on what to do when they have been abused. This is coupled with a mentality that is subservient to those in authority and prohibits them from even questioning violence against them. Police exploit this and use past convictions to 'bargain' with victims to prevent reporting of incidents. A general lack of publicity about JMOs, their work and their findings contributes to the malaise. Public education and awareness campaigns should therefore be initiated.

While JMOs conduct teaching and training programs for the police, the impact of these is questionable. Political will is very important in ensuring that police officers abide by legal procedures of investigation and do not take the torture shortcut.

Corruption and counter corruption across Asia

Editorial board, article 2

The problem of corruption is rampant in many Asian countries. It seriously affects all aspects of people's lives, as almost nothing can be done without giving bribes. If you want to make a complaint to the police or any authorities, you have to give bribes. If you want to get a driving licence or open a shop, you have to give bribes. If you want to receive a public service, such as education and healthcare, you have to give bribes. If you want to be properly treated in police custody, you have to give bribes. Even if you want to make a petition to court concerning all these problems, you have to give bribes. All the public institutions, which are supposed to provide services and protection to safeguard the human rights of people, have become dysfunctional because of corruption. In this sense, corruption is a main obstacle for the protection and promotion of human rights, as it destroys the proper functioning of the public institutions.

Corruption is the enemy of the rule of law. Under corruption, there is no respect for laws, because laws cannot be enforced or they are enforced arbitrarily in favour of people who have power or can afford to pay bribes. The key institutions for the rule of law--the police, the prosecution and the judiciary--become dysfunctional. As a result, people have no means to make complaints or seek remedies. It is a total denial of justice.

To tackle the problem of corruption, the Asian Legal Resource Centre held a Regional Consultation on Anti-Corruption Mechanisms in Asia, in Hong Kong on 11-15 January 2010. The aims of the consultation were to develop knowledge and critique existing mechanisms for the elimination of corruption in Asia and to introduce the participants to the Independent Commission Against Corruption (ICAC) in Hong Kong, so as to provide opportunities for comparative studies on corruption control.

Fifteen participants from nine countries (Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, South Korea, Sri Lanka and Thailand) took part the consultation. The participants included the commissioners of anti-corruption commissions, activists of anti-corruption NGOs, human rights lawyers and scholars.

During the consultation, participants presented the situation of corruption and the functioning of anti-corruption mechanisms in their countries, exchanging experience and

---

This article was originally published in *article 2*, vol 9. no. 1, March 2010, www.article2.org.

ideas on how to enhance the development of effective anti-corruption mechanisms. The participants also spent a day to visit the ICAC to learn about its successful experience in fighting corruption.

The papers of participants for the consultation constitute this issue of article 2 (vol. 9, no. 1, March 2010). They provide an in depth picture and wide range of experience in fighting corruption in these Asian countries. The common concerns and principles in tackling the problem of corruption raised by the participants are contained in the statement of the consultation, which opens the issue.

The edition follows with a paper on Sri Lanka that focuses on the problems with the appointment, mandates and powers of the Bribery and Corruption Commission in the political context of the non-functioning of the Constitutional Council. For some years, the president has appointed the commissioners without checks and balances. Other attendant problems are the extreme politicization of the commission and its activities, the disallowance of the commission to investigate complaints on its own initiative and the lack of an independent investigative force as possessed by the anti-corruption body in Hong Kong.

The experience in Indonesia provides a very valuable lesson for other Asian countries on how to develop effective anticorruption mechanisms with the support of the public. The two papers on Indonesia, one by an anti-corruption commissioner and another by an anti-corruption activist, together give a comprehensive picture of the development of the Corruption Eradication Commission (KPK), the selection process of its commissioners, its powers and functions, what has been achieved and the present challenges. In his paper, KPK Commissioner Mochammad Jasin emphasizes that the KPK has accompanied law-enforcement efforts with prevention, supervision and coordination of all law enforcement institutions involved in processing corruption cases, and has at all points sought the participation of the public. The KPK is an independent body with a wide range of powers in investigation. The second paper discusses the advantage of the KPK of its support from civil society, the media and the public. However, it underscores that the political environment is still difficult, with the police fighting back
and lack of support from political elites. The KPK also needs to develop its own investigative force instead of depending on the police to conduct investigations.

The paper on Pakistan highlights the key areas of corruption and problems of anti-corruption arrangements there, tracing corruption in land grabbing and allocation of state resources that have been institutionalized to provide benefits to the powerful sectors in which military personnel are dominant. The most important implication of this institutionalized corruption is that powerful actors--whether they are state or non-state--cannot be brought under the anti-corruption laws extant in Pakistan. The military, judiciary and lately the Islamic clergy are all by law outside the authority of anti-corruption mechanisms. The paper suggests the creation of a constitutional body to

oversee all aspects of corruption and to include all groups, the strengthening of capacity and functions of the auditor's office, and bureaucratic reform as some possible solutions.

The paper on Thailand discusses the role of civic organizations in fighting corruption through education, monitoring and watchdog functions. It illustrates four successful cases to show how civic organizations fight corruption. As corruption is still prevalent, Thailand needs to strengthen both state institutions in charge of fighting corruption from the top, as well as to multiply and strengthen civic corruption watchdogs that can chase and catch corruption at the bottom.

As described in the next paper, corruption in Bangladesh is so deeply rooted and institutionalized that it has become the way of life. The paper concentrates on the problems of corruption in the judiciary, describing the methods associated with corruption, from jumping the queue of cases to be heard on a given day to getting a copy of the judgment. The paper emphasizes that people should be willing to eliminate corruption and suggests some steps towards this end.

Corruption in Cambodia is still rampant. The paper on this country gives an overview of the existing laws and legal mechanisms for counter-corruption activities and assesses the prospects for development of anti-corruption mechanisms. The government has approved a draft anti-corruption law, but its contents have not been disclosed and the law is now waiting to be passed through the National Assembly. The lack of seriousness and political will to fight corruption is the key problem. The paper suggests several ways in which assistance could be given to promote anti-corruption work in Cambodia.

Instead of describing practices of corruption directly, the paper on India describes how people have been deprived of their livelihood through programmes for access to food and work due to the corruption patronized by the state. The state adopts growth based development policies and squeezes public resources to provide benefits to the private and corporate sectors, whereas the poor and the marginalized are denied basic rights. Unaccountability has been fostered in a manner to further enhance corruption.

Protections enshrined in the constitution and laws are not respected and ensured for people in need, as most public resources are sacrificed to corruption.

All in all, the edition paints a bleak picture of the situation in most parts of Asia, but also gives some cause for hope that more and more people are determined to effect some kind of lasting change to the cultures of corruption that have eaten into countries across the region for so long. Although there are no short-term or easy solutions, the fact that people like those who assembled in Hong Kong for this consultation are thinking seriously through their problems, articulating them and looking for ways ahead in itself raises the possibility of a future for the region that will be markedly different from its past.

Indonesia's pluralism in peril

Ricky Gunawan

Indonesia has long been proud of being the world's third-largest democracy and having the world's largest Muslim population. It is a country in which democracy, pluralism and Islam coexist; a place where tolerance and diversity are widely celebrated.

At least, this is how Indonesia is portrayed in international forums. Yet recent events show a different reality, revealing that diversity is such a threat to one group that it feels it must be met with violence.

At the moment, various human rights groups in Indonesia are filing a constitutional review to the Indonesian Constitutional Court requesting to annul Law No 1 of 1965 regarding the Prevention of Religious Abuse and Blasphemy, which allows the state to prosecute people for committing acts deemed to damage religion.

During a break at a hearing on March 24, a team of lawyers representing human rights organizations were attacked by a gang wearing the clothing and insignia of the Islamic Defenders Front (FPI). The lawyers were harassed and verbally abused by their attackers, who called them "Satan." Luckily, court security guards managed to protect the lawyers and avoid serious injury.

This attack was a violation of human and civil rights, and a vivid statement that differences are not respected by a fundamentalist majority. It was also an attack on the dignity of the Constitutional Court, given that the court itself is a place where legal issues are debated and where freedom of opinion, thought and religion—the substance of the contested law—are all guaranteed by the Indonesian Constitution.

Sadly, a similar unpleasant incident took place a few days later in Surabaya, East Java where the Asian regional conference of the International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA) was scheduled to be held from March 26-28. Reportedly, the Surabaya police decided not to provide a permit for the conference

---

This article was originally published on 1 April 2010 at http://www.upiasia.com/Human_Rights. Ricky Gunawan holds a law degree from the University of Indonesia. He is program director of the Community Legal Aid Institute, or LBH Masyarakat, based in Jakarta. The institute provides pro bono legal aid and human rights education for disadvantaged and marginalized people.

due to strong protests from the local branch of the Indonesian Council of Ulema (MUI), a body of Islamic clerics.

According to the Jakarta Globe, Abdusshomad Buchori, chairman of the East Java chapter of the MUI, said the conference was an attempt "to ruin the people and the young generation".

The East Java Islamic Mass Organization Forum (FOIJ) surrounded the hotel in which the participants were staying and demanded that they all check out by noon on Saturday, March 27. Worse, to ensure that they did so, representatives from the FOIJ raided the participants' rooms one by one. Foreign participants were given a bit more tolerance and required to leave on Sunday at the latest.

Prohibiting such a conference is a violation of the rights to assembly and to freedom of expression as enshrined in the Indonesian Constitution, as well as the International Covenant on Civil and Political Rights, which Indonesia ratified in 2005.

Arguments based on majority morality should not be allowed to proscribe the rights of minority groups. In the context of a regional conference, such prohibitions will only damage Indonesia's image as a democratic country in the international community, given that it has failed to allow a peaceful conference to take place. The conference's objective was to unite Asia's LGBT communities and organizations and draft an action plan by which they could cooperate to protect their rights.

In Indonesia, as elsewhere, LGBT communities face profound stigmatization and discrimination, and have subsisted in a milieu of marginalization, coercion and violence. These horrendous circumstances only amplify their vulnerability to HIV/AIDS, a vulnerability rooted in the social, cultural and legal state of affairs they are subjected to. The situation is amplified by society's lack of understanding of HIV, bigotry, social fears and moral resentment.

These two incidents reveal that pluralism in Indonesia is at risk, while diversity is negated and human rights are diluted by fundamentalists. In an environment in which pluralism and human rights are upheld, there is no place for any single group to force its truths or values upon others.

The government should take immediate and appropriate action to ensure that those who are responsible for these two incidents are held to account. Failure to do so would only add to the long list of examples of state impotency in the face of Muslim hardliners.

Thailand: Censorship and policing public morality in a state of emergency

Statement issued by the Asian Human Rights Commission: AHRC-STM-058-2010

The Asian Human Rights Commission (AHRC) joins other concerned groups and individuals around the world to condemn the blocking in Thailand of 36 websites. The websites were blocked under a state of emergency that the unelected Prime Minister, Abhisit Vejjajiva, declared on 7 April 2010 in response to continued protests in Bangkok. Most of the 36 are sites belonging to or closely aligned with the anti-government protestors; however, the list includes the independent news and commentary sites Prachatai (no 8) and Fah Diew Kan and its affiliate (no 34, 35). At time of writing, some of these sites are partly or fully reoperating, or are operating on mirror sites. Some can be accessed outside Thailand, but not in the country.

The AHRC calls for the unqualified lifting of restrictions on all these addresses without delay, and guarantees that there will be no further censorship of these or other sites.

But the blocking of these Internet addresses is merely one highly visible manifestation of a much more sinister program that comes with the state of emergency in Thailand, about which the AHRC is gravely concerned. A reading of the order for their shutdown reveals deeply anti-democratic and anti-human rights aspects of the government programme that require closer public scrutiny and much more open debate.

First, the order, signed by Deputy Prime Minister Suthep Thaugsuban, claims that the blocking of the websites was authorized under item 9(2) of the declaration of the state of emergency, which translated roughly reads as follows:

> It is prohibited to report or distribute information that may cause alarm among the public, such as in newspapers or other media or anything with intent to cause misunderstanding about the state of emergency which will damage state security or peace and order or public morality across the kingdom.

This typically nebulous provision permits the authorities in Thailand to take any steps they like against any persons or associations on any pretext associated with the declaration of emergency. The websites were targeted only because the Internet is a part of the public domain that the authorities have great difficulty in keeping in check, unlike the broadcast

media, most of which is under direct control, and the print media, which is largely complaisant. The targets of the state of emergency declaration, while including Internet sites, are by no means limited to it.

Second, the order is signed under the letterhead of the Centre for the Administration of Peace and Order (CAPO), which up until a few weeks ago was a hitherto little-known agency. From what the AHRC can ascertain, the CAPO was established in 2009 under section 16 of the Internal Security Act, which reads in translation that,

> In the event of a need to overcome problems affecting internal security in any area, the Director [of the Internal Security Operations Command] with the approval of the Board shall have the power to establish one or more special operations centres. The structure, staffing, administration, duties, control and coordination or command of operations centres... shall be as determined by the Director with the approval of the Board...

Strangely, the contents of the CAPO's website provide no immediately obvious details on its structure, staffing, administration, duties, control and coordination or command. It appears to be based at an army regiment and comprised mainly of army officers, while an announcement from last year indicates in only the most general terms that it includes both military and combined civilian-military-police units, about which nothing is explained.

Given that this agency is at the forefront of counter-protest actions and is issuing orders for the closure of websites, it is particularly ironic that there is little clear information available about its existence and workings. The Asian Human Rights Commission therefore calls, in addition to its unreserved demand for the cessation of censorship in Thailand and for the ending of the state of emergency at the earliest possible time, for intense public pressure from inside the country and abroad to clarify the functions, personnel and funding of the CAPO, and its precise role in the current state of emergency.

What is CAPO, why is it shutting down websites, and how is it qualified to police public morality?

‘Lakbay Dangal’—Jose Rizal and Filipino history in Hong Kong today

Stewart Sloan

On Sunday 14 March 2010, a unique organization met in Chater Gardens, Hong Kong. The brainchild of Fr Roberto Reyes, well known as the ‘running priest’, a group of Filipino domestic helpers, journalists and friends met to inaugurate *Lakbay Dangal*—an association determined to bring out the historians and tour guides among the Filipino community in Hong Kong.

After introducing the concept of the organization, Fr Roberto led the group in a tour of historical areas of the Central District, Hong Kong’s business hub. Many of us, myself included, had no idea that the antiquities board, dedicated but not the most audible of Hong Kong government departments, had raised several plaques dedicated to the memory of Jose Rizal.

Jose Rizal is perhaps best known for his activism against the Spanish colonial government in the Philippines and his subsequent execution. However, perhaps not many people are aware that he was a man of wide ranging talents and skills. Rizal's multifacetedness was described by his German friend, Dr Adolf Meyer, as nothing short of stupendous. He was a polymath with the ability to master various skills and subjects. He was an ophthalmologist, sculptor, painter, educator, farmer, historian, playwright and journalist. Besides poetry and creative writing, he was interested in architecture, cartography, economics, ethnology, anthropology, sociology, dramatics, martial arts, fencing and pistol shooting. He was also a Freemason, joining Acacia Lodge No 9 during his time in Spain and becoming a Master Mason in 1884. Jose Rizal was executed by firing squad in December 1896 at the age of 35.

At least one of these plaques had been in place for several years and I could not help but wonder how many times I had passed underneath it without the slightest knowledge of its existence. The one in D’ Aguilar Street identifies the location where Rizal opened one of his eye clinics.

Lakbay Dangal—a 12 month ‘histourism’ training programme

Fr Roberto’s plan in creating Lakbay Dangal has many aims. The first is to reveal to the Filipino community itself that there is a link between Hong Kong and the Philippines

in Rizal's history in the territory. By bringing this to the fore he also hopes that the Filipino ladies who work here as domestic helpers will see themselves, and be seen by others, as much more than cleaners and babysitters. A good knowledge of the various historical sites in and around Central and other areas of Hong Kong will give these ladies the opportunity to show off these sites and reveal their historical and cultural significance to others.

Fr Roberto Reyes introduces Lakbay Dangal to a group of over 30 Filipinos. On the far right is Mr Vim Nadera, a respected Filipino journalist who accompanied Fr Roberto on this special trip.

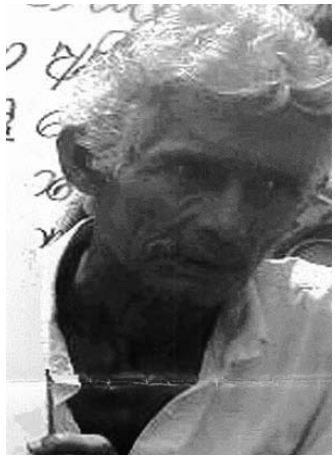
In order to accomplish this, trips are planned to sites such as Stanley, where you can experience both history—in the form of the War Cemetery where many of the soldiers and civilians killed during the Japanese invasion were laid to rest—and popular tourist attractions, such as Stanley Market. Stanley used to be famous for its 'seconds' shops; shops that sold items of clothing rejected by buyers and picked up by Stanley vendors. Sadly, as with all things, progress stepped in and many of the shops are now up-market and costly. However, that does not seem to deter many of the western tourists that visit the place.

Speakers will be tasked with the job of finding out as much as they can about the various sites and take turns at giving lectures to their fellow trainees. One such gathering was held on Sunday, April 4, and another is planned for April 25. The ladies have shown great enthusiasm for this project and are to be congratulated for their zeal. Thanks must also go to Fr Roberto who will visit the territory as often as his schedule permits to encourage and assist in the training.

Domestic Helper Tour Guides: Ladies with the knowledge, willingness and ability to show others, not only Filipinos, but anyone interested, that there is more to Hong Kong than tall buildings.

A tribute to Elaris Fernando, an old man who courageously fought against torture

Statement issued by the Asian Human Rights Commission: AHRC-STM-062-2010



Elaris Fernando of Kandana is a special friend of the Asian Human Rights Commission (AHRC). He passed away today, April 14, after suffering from worm illness. In 2002, when his grandson was tortured by a group of policemen at the Kandana police station, Elaris Fernando began a fight seeking justice against such behaviour. His fight continued to the last.

Lalith Rajapaksa was Elaris Fernando's grandson. Elaris was a labourer who carried heavy loads at the Colombo harbour, transporting goods. Later, he took to felling trees as his job. As an expert tree feller, his services were sought by many. When his grandson ceased to go to school due to some problems, he took custody of him and Lalith accompanied him in his work. Lalith was 17 when he was seriously tortured by the Kandana police. Due to the severe abuse, Lalith fell completely unconscious and was taken to the hospital, where he remained unconscious for over two weeks.

Elaris heard of his grandson's arrest a day later, and immediately came to the Kandana police station to see him. He found Lalith unconscious on the floor of the police station. Due to the old man's shouts, a police officer came and took Lalith to the hospital.

Elaris Fernandos's timely intervention saved his grandson's life. He sought the assistance of many to complain about the torture, but was not successful. Finally, he met a lawyer interested in human rights, who introduced him to the AHRC. After narrating the details of his story to an AHRC representative, he stated that 'all these things happen to us because we are poor'. His sense of powerlessness and deep indignation was clearly seen on his face. He vowed to do all he could to seek justice to the very end, if he could only find the assistance of someone to take this matter to court.

Elaris was assisted by the AHRC to first take the case to the magistrate court at Wattala, and then to the Supreme Court by way of a fundamental rights application. Elaris also accompanied Lalith's mother to the magistrate and high courts when the case was finally filed under Sri Lanka's torture law, the CAT Act no 22 of 1994, against two police officers who allegedly tortured Lalith.

Several years later, when the trial was taken up at the Negambo High Court, Elaris was there to give lengthy evidence. He bravely answered a long cross-examination stating truthfully and with conviction everything that he saw and heard relating to the matter. To be a witness in seeking justice for his grandson was a matter of pride for Elaris.

There were many attempts by police officers and local politicians to convince Elaris to abandon the case. He refused to give in to this pressure and told his own political party leaders, 'I have all my life voted for you and perhaps in the future also I may vote for you. However, don't ask me to abandon my request for justice for my grandson. Even if you cut my neck you will not get that response from me.' He pursued his case to the very end, when he fell seriously ill.

At one stage, the officer in-charge of the police station even attempted to poison Elaris through a trader who had a small shop close Elaris' house, but the trader did not cooperate and the attempt failed.

Elaris died without being able to see justice being done to his grandson. The Sri Lankan justice system today fails the ordinary citizens of the country. Elaris Fernando is a symbol of the ordinary folk of Sri Lanka who want justice. With an iron will, Elaris pursued his cause for justice. The belief that the weak and innocent do not seek justice, that they are subdued, was disproved by this grand old man who firmly stood seeking justice, despite all adverse circumstances.

The Asian Human Rights Commission honours the memory of Elaris Fernando, the courageous old man who has left a memory worthy of imitation by other Sri Lankans. We express our condolences and solidarity with Elaris' grandson and other family members.

Sri Lanka: The intelligence apparatus' emergence of power

Tapan Bose

A book review

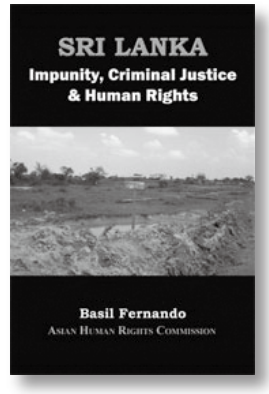
Sri Lanka: Impunity, Criminal Justice and Human Rights

By Basil Fernando

ISBN: 978-962-8314-48-5

Pages: 164

March 2010



The book *Sri Lanka: Impunity, Criminal Justice and Human Rights*, authored by Basil Fernando and published by the Asian human Rights Commission, is about Sri Lanka's descent into utter lawlessness. The book is not a chronicle of events, but provides an insight into the country's "abysmal lawlessness and the zero status of the citizens", the militarization of the state, the bypassing of the constitution, and the levels of impunity that the executive enjoys. The author inquires into how such a situation could arise in Sri Lanka, where the institution of parliamentary democracy was introduced nearly eight decades ago.

Basil Fernando tells us that the very foundation of universal human rights, which is based on the concept of "equality for all" and "equal treatment before the law", remains an alien notion to the ruling elite of many countries in Asia. These countries might have adopted constitutions granting basic fundamental rights to all citizens, and ratified various international human rights covenants. However, the ruling elite of the postcolonial countries of South Asia remain rooted in the region's feudal and caste-based systems of

---

Tapan Bose is a well known Indian journalist, film producer and political activist.

governance and justice. The sad reality is that even after sixty years of the adoption of the Universal Declaration of Human Rights, and an enormous investment by the UN and other international agencies in the propagation, education and training in human rights, the very basic of these rights are still not available to the people of these countries.

One of the sad realities of the post 9/11 world is that some of the most developed democracies of the western world have also abandoned their commitments to uphold their citizens' personal freedoms. Peoples' rights to privacy and freedom of movement are being curtailed in the name of "national security". However, in the democracies of the West, there are possibilities for citizens to challenge these actions of the state and force the states to revise its positions; for instance, the return of the Guantanamo Bay detainees to mainland USA and bringing the detainees under US civilian law.

Basil Fernando argues that developed democracies function within the framework of "rule of law". In these polities, the institutions of law and justice are well developed and cannot be dismantled or bypassed at will by the executive or any other organ of the state. In these countries, while the executive may get away with suppression of the basic rights of the citizens in the name of "national security" for a short period, the citizens would challenge any attempt to prolong these violations in the courts, and these attempts would in all probability be overturned by the judiciary. However, the picture in "non-rule of law" countries is very different.

The institutions of rule of law, together with the principles of equal rights for all, which were grafted by the British and subsequently introduced into the constitution of Sri Lanka, failed to transform the criminal justice system and the country's actual political and legal operations. Similarly, the various attempts to provide "human rights training" to the law enforcement agencies and lower judiciary, achieved very little.

Through the narrative of the case of Gerard Perera, a victim of police torture who was subsequently murdered for testifying in the court against his torturers, Basil says, "Perhaps the biggest lesson that was learnt from Gerard Perera's case was that all inquiries into police misconduct stop at the level of the Officer-in Charge of the police station". Nothing came out of the lengthy legal battle against the police in Gerard Perera's case. Today his widow and other members of his family are scared for their own safety. The book contains many such narratives of Sri Lankan citizens' search for justice through the judiciary and the failure of the judiciary to deliver justice. As Basil points out, the failure was not due to the absence of laws, but the unwillingness of judicial officers to discharge their duty for fear of inviting the wrath of the executive, or due to their caste and class prejudices.

In fact, it is the narrative section of the book that exposes, through the words of the victims, the real nature of the prevailing system of social control that is not based on law, "but on constant creation of fear, particularly among the rural population". As Basil points out, despite its "modernization", Sri Lankan society still remains predominantly rural. In the rural areas the police play a big role. Though the power of the local police may not be much, it is strengthened by the fact that the local political establishment itself is based on policing institutions.

The island has experienced 40 years of civil conflict. Beginning with two insurrections in central and south Sri Lanka in the 1970s and 1980s led by the JVP, and the emergence of the Tamil militancy in the north in the mid 1980s, the country has been in a state of civil war. The criminal justice system of Sri Lanka, which was based on British common law, was jettisoned for effective control of "terrorism". The argument was that the crimes of the terrorists could not be proved in a court of law as no witness was willing to come forward for fear of retribution. Special laws empowering the security forces with extraordinary powers made a travesty of justice. The security forces became the investigator, the judge and the executioner. The unfortunate part of this was that while the elite accepted this transformation in the interest of safety from "terrorists", the poor had no option but to accept this system which condoned murder by the state. The only silver lining is that it is also the poor people of Sri Lanka who despite this abysmal situation have from time to time raised their heads and aought justice. Unfortunately, Sri Lanka's judiciary and the human rights community have failed to honour the justice seeking poor people of the country.

Today, nobody feels safe in Sri Lanka. There is an elected president. The election to the parliament has just been held. Yet this is the country where the main opposition candidate in the presidential election was summarily taken away by the military police and is now being forced to face a military court martial on trumped-up charges. In Sri Lanka, whether one is a businessman or a politician or a judge or a media person, no one escape the scrutiny of the intelligence wings of the state. The most powerful organ of the state is the intelligence apparatus of the government. This is a return to the "Arthashastra", the ancient Indian treaties on governance written by Chanakya. The advice of Chanakya to the Prince was that the success of the regime depended on the system's ability to get the subjects to spy on each other and constantly report to the state.

Practicing Ethics in Action

Ethics in Action begins with the realization that both law and morality have failed the people of many countries, who are today facing incredible forms of cruelty that they have little power to eradicate. Despite all the rhetoric of empowerment, the reality witnessed in most Asian countries is desperation and powerlessness. The two ingredients necessary for any real empowerment of ordinary people are law and morality. If living conditions are to improve, defective legal systems and the failures of upholding ethics and morality cannot be ignored. *article 2,* a publication of the Asian Legal Resource Centre, sister organization of the Asian Human Rights Commission, is devoted to discussing matters relating to defective legal systems obstructing the implementation of human rights. *Ethics in Action* will be devoted to discussing how movements and leaderships claiming to uphold ethics and morality have failed to promote and protect human rights.

Other regular publications by the Asian Human Rights Commission:

Article 2 – This quarterly publication covers issues relating to the implementation of human rights standards as proposed by article 2 of the International Covenant on Civil and Political Rights.

Human Rights Solidarity – Also a bi-monthly publication and available both in hard copy (from July 2007) and on-line. This publication covers stories and analysis of human rights violations in Asia.

Asian Human Rights Commission
19/F Go-Up Commercial Building 998 Canton Road
Mongkok Kowloon, Hong Kong
Tel: (852) 2698 6339 Fax: (852) 2698 6367 Web: wwww.ethicsinaction.asia

ISSN 1997-2997
9 771997 299005