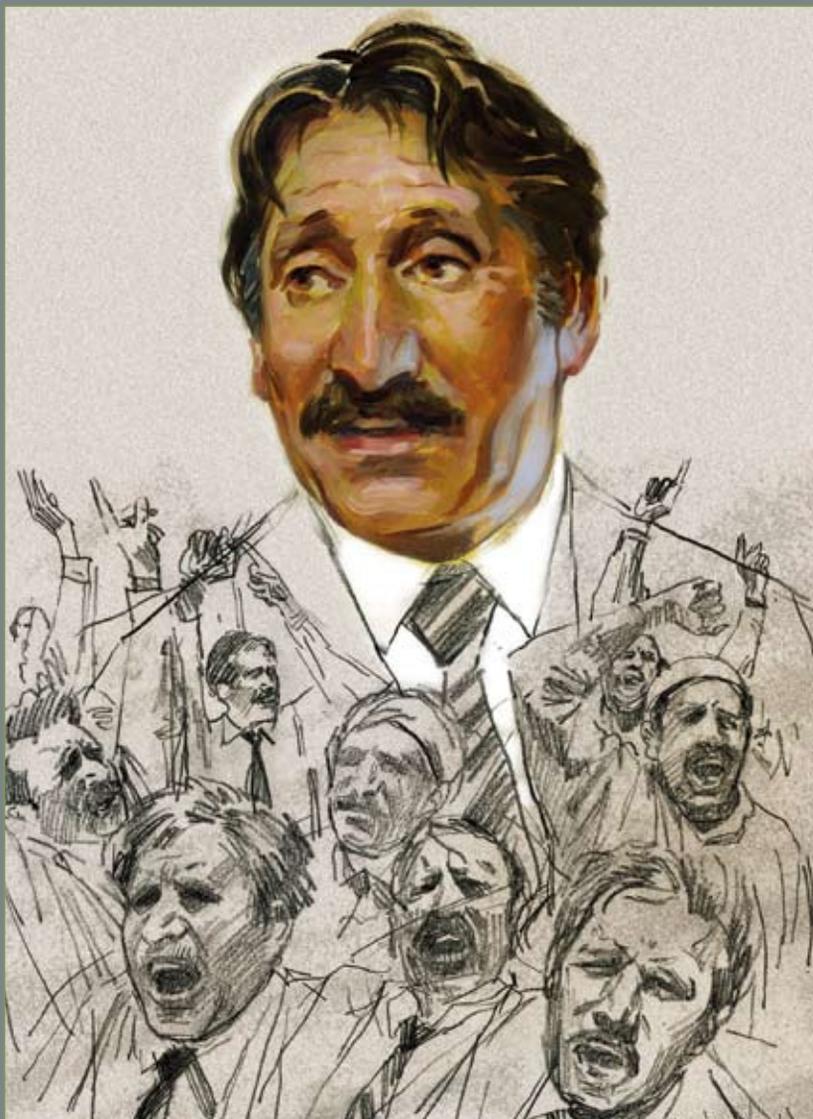


# Ethics in Action

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Asian Human Rights Commission

# Ethics in Action



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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](mailto:ahrchk@ahrchk.net)  
Web: [www.ahrchk.net](http://www.ahrchk.net)

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# **Asia: A year of historic struggles for human rights**

*Asian Human Rights Commission*

*Statement to mark International Human Rights Day 2007: AS-281-2007*

The year 2007 will be remembered as a year in which historic struggles for human rights brought out increasingly belligerent responses from ruling elites across Asia. It is certain that throughout the region more and more people are resolved to assert their rights. It is also clear that its autocrats will respond more and more aggressively in order to keep control. Instead of acknowledging the need for change, states throughout Asia are continuing to prefer overt violence and blatant constraints on basic freedoms.

To mark International Human Rights Day, 10 December 2007, the Asian Human Rights Commission (AHRC) is releasing its latest annual report on the human rights situation in eleven Asian countries. Among them are Burma and Pakistan, which witnessed immense popular uprisings against military rule during the year. Also included are Bangladesh and Thailand, which have returned to periods of heavy military authoritarianism during the year. And there are Sri Lanka and the Philippines, where conflict and gross rights violations persist as a way of life, despite the superficial workings of elected governments. Other sections are devoted to Cambodia, India, Indonesia, Nepal and South Korea.

## **BANGLADESH**

A prolonged and unjustifiable state of emergency has increased lawlessness and abuses of human rights in Bangladesh since January 11, 2007. All fundamental rights have been suspended. The armed forces have since enjoyed unbridled power and sheer impunity. Many human rights defenders have been threatened and intimidated, arbitrarily arrested and detained, tortured and implicated in fabricated cases. As a result, most human rights organizations have put a halt to controversial work, including fact-finding missions to document cases of abuse. Torture is rife but has not yet been criminalized, despite the government having ratified the UN Convention against Torture in 1998. The country's prisons are overcrowded. Private houses are being used to hold prominent persons detained on corruption charges. Custodial deaths from violence and neglect continue, with around 100 reported in 2007. Security forces also extrajudicially killed at least 148 persons up to the end of October. In not a single case of torture or extrajudicial killing were the alleged perpetrators brought before a court; the courts are not yet independent however, despite their powers having been formally separated from other parts of the state at the start of

November. There is no independent prosecution department or attorney general's office. Country report link: <http://material.ahrchk.net/hrreport/2007/Bangladesh2007.pdf>

## **BURMA**

The mass protests in Burma during August and September have shown that there is wide consensus for a transfer of power from the military regime to a civilian government. The government's response, with killings, disappearances and the arbitrary detention of thousands entirely outside of any legal process obliges the international community to take a determined stand, in particular through the United Nations. China and India, as Burma's big neighbors, have important roles and responsibilities. Thailand too must understand that its security depends upon improved conditions in its neighboring country. If economic conditions further deteriorate and dissent is stifled rather than acknowledged as legitimate, then it will cause further outpourings of persons in search of work and safety. All of Asia and indeed the world can only but benefit from a change in political and social arrangements in Burma, and thus it is in the best interests of all to see that it occur. Every society has its threshold, the point after which it will no longer tolerate things going on as before: Burma has reached its threshold. It is beholden on all of us to see that it does not spill over that point and into further uncontrollable violence and illegality, as it is sure to do if nothing is done to address the legitimate grievances of millions.

Country report link: <http://material.ahrchk.net/hrreport/2007/Burma2007.pdf>

## **CAMBODIA**

Throughout 2007 the government of Cambodia continued to exhibit hostility towards UN human rights mechanisms, particularly the special envoy appointed by the Secretary General. In June the Cambodian ambassador in Geneva said that the government no longer recognized the envoy's mandate and effectively signaled that it will no longer cooperate with him. But at the same time, the country continued to join international human rights agreements, early in the year ratifying the Optional Protocol to the UN Convention against Torture. It has at the same time embarked on a number of reform programmes, although judicial reforms have lagged behind others. In February, a Code of Ethics for Judges was adopted, which if effectively enforced would be a remedy to endemic corruption and could inspire more public confidence in the courts; however, it lacks details and relies too much on political will to be made effective. Meantime, in August the Code of Criminal Procedures was finally brought into effect, after years of work; however, there remain doubts about its capacity to ensure fair trial, over the extent to which the justice minister may interfere with the workings of the judiciary, over inadequate protection of the rights of the accused, victims and witnesses; over the insufficient relaxing of pre-trial detention provisions, and over its silence on redress for human rights violations. During 2007 criminal lawsuits and arrests continued to be used as a tool for political repression, particularly in land and labor disputes, and there were many restrictions on freedoms of the press, of expression and of assembly. Land grabbing was rife and remains one of the most serious economic and

human rights issues in the country today.

Country report link: <http://material.ahrchk.net/hrreport/2007/Cambodia2007.pdf>

## **INDIA**

Economic and political leaders across the world have referred to India as a model for the convergence of a new global order: democracy and capitalism going hand in hand. But from a human rights standpoint, India did not improve much in 2007, but rather increasingly showed up its failures and inabilities to give even the most basic guarantees to all of its citizens. While the central government tried its level best to cover up abuses in sensitive regions, like the northeast, state governments have continued to turn blind eyes towards extrajudicial killings and widespread custodial torture. The state administration of Gujarat even filed an affidavit in the Supreme Court that it had authorized its police to run interrogation chambers to 'elicit' evidence from suspects in an Indian version of Guantanamo Bay. Meanwhile, all government authorities in the country, particularly at the state level, have continued to neglect rural people to the extent that violent opposition groups have in some parts rapidly gained ground. Continuing caste-based discrimination and deaths from lack of food and simple illnesses have fanned anti-state sentiment in villages across the country, causing violent responses from security forces in Chhattisgarh and Andhra Pradesh, among other states.

Country report link: <http://material.ahrchk.net/hrreport/2007/India2007.pdf>

## **INDONESIA**

Changes initiated in recent years have not been pursued, due in large part to a lack of political will. Police reforms have stalled, torture has not yet been prohibited according to international standards, the military continues to be the dominant institution in many regions and historic injustices have not been righted. Impunity remains the key feature of law and order, particularly with regard to torture and other gross abuses of human rights. Torture has not been criminalized; nor do mechanisms exist through which evidence of torture can be properly recorded, complaints made and investigated or any sort of redress obtained, either through the ordinary courts or the Human Rights Court. There remains heavy resistance to the amending of the outdated Penal Code. Even though a law on Victim and Witness Protection was passed in 2006, the Witness Protection Agency has not yet been established to give it effect.

Country report link: <http://material.ahrchk.net/hrreport/2007/Indonesia2007.pdf>

## **KOREA**

One bright moment for human rights in Asia during 2007 came with the passing of a revised Criminal Procedure Act in the Republic of Korea (South Korea), which will be passed into law in 2008. The revised act sets in place many new measures to prevent abuses during criminal investigation, including provisions for non-custodial inquiries, rights to an attorney and to remain silent throughout interrogations, and technical innovations,

specifically the use of videotaping, including special provisions to prevent tampering after recording. It also has amended and tightened procedures on warrants, court hearings, review of arrest and detention, and emergency searches and seizures. And it has explicitly introduced an exclusionary rule on evidence obtained not according to correct procedure. However, some major human rights concerns persist over laws relating to migrant workers; the rights of “irregular” workers; restrictions on freedom of assembly, and the continued use of the National Security Law. The persistent absence of any mechanisms to implement international jurisprudence and laws mean that decisions on Korea at the UN Human Rights Committee have not been given effect; the government has so far failed to take up recommendations of the National Human Rights Commission that it address this gap in the country’s human rights framework.

Country report link: <http://material.ahrchk.net/hrreport/2007/SouthKorea2007.pdf>

## **NEPAL**

Following a tumultuous year in 2006, in which popular uprisings effectively ousted the King of Nepal and the alliance of seven political parties signed the Comprehensive Peace Accord with the Maoists, bringing to an end a decade-long bloody internal armed conflict, it was expected that 2007 would be a year of progress towards peace, democracy and respect for human rights. Unfortunately, political gamesmanship and the lack of political will by all parties to address the much-needed human rights issues, such as the widespread impunity concerning forced disappearances, extrajudicial killings, torture and the rights of marginalized people led to increased criminalization and the proliferation of armed groups. Society, which had earlier shown great unity, began to break apart along ethnic, social and political divides. At the end of 2007, the Maoists have left the country’s government, grave rights abuses are ongoing and there is a palpable fear that the country may soon again return to conflict. Addressing past and present rights abuses remains the only way to ensure stability, security and progress in the country—it is time for the country’s leaders to start taking credible measures in this regard.

Country report link: <http://material.ahrchk.net/hrreport/2007/Nepal2007.pdf>

## **PAKISTAN**

This year was one of great upheaval in Pakistan, culminating in General Pervez Musharraf declaring a state of emergency and suspending the constitution in October. The crisis has centered on the judiciary’s heroic struggle to free itself from executive control, led by Chief Justice Iftekhar Chaudhry, who has now been deposed from his post for the second time in one year. Thousands of lawyers and others have been held under detention in recent months, outside of the ordinary workings of law. Heavy restrictions have been placed on the media, with the broadcasts of two networks from abroad shut down. The question of disappearances remains unaddressed, with the failure of the military authorities to respond to earlier attempts by the courts to obtain answers in over a hundred specific cases. Torture remains habitual. Women and minorities continue to suffer violence and

discrimination disproportionate to that already shared out among the rest of the population. Without the unconditional restoration of the judges dismissed since the state of emergency, without a complete lifting of its provisions and removal of restrictions on the media, and without addressing the growing numbers of forced disappearances and other grave abuses of human rights the situation will only continue to deteriorate. If that indeed happens then it will be a very serious cause for concern throughout the entire region.

Country report link: <http://material.ahrchk.net/hrreport/2007/Pakistan2007.pdf>

## **PHILIPPINES**

Continued failure to prosecute and punish the perpetrators of extrajudicial killings has caused the situation of human rights in the Philippines to go from bad to worse. Repeated government assurances that it would take legal action have come to naught. Neither the recommendations of the presidential-appointed Melo Commission or those of international agencies have been given serious consideration. Institutions exist, yet fail to perform as mandated; the reasons for the failure have not been examined in any detail. Human rights defenders, labor unionists, peasant leaders and others continue to face grave threats to their lives. The Human Security Act introduced in 2007 will pose further threats to these persons as it gives enormous new powers to the police on the pretext of combating terrorism. Even without this law, the police have been a major impediment to human rights, both through their acts and omissions. Investigations are poorly done or are not impartial. Witness protection is for all intents and purposes non-existent. Neither police nor soldiers need fear the possibility of being brought before the courts over incidents of human rights abuse. Bills on human rights have stood before the national legislature for years without being brought into law, notably those on torture and enforced disappearance.

Country report link: <http://material.ahrchk.net/hrreport/2007/Philippines2007.pdf>

## **SRI LANKA**

In Sri Lanka, the last months have seen a return to the situation prevalent before the ceasefire agreement in 2002. The result is the arrests of thousands of people purely on the basis that they are Tamil, and on the other hand both parties to the conflict, the armed forces and the LTTE, have engaged in attacks on civilians, killing many. Virtually no investigations are taking place concerning violations of rights in any part of the country, either under the control of the government or the LTTE. The presidential commission appointed for inquiry into gross violations including disappearances has proven to be a farce. Sri Lanka has the highest frequency of disappearances reported to the UN. Under these circumstances the Sri Lankan government's refusal to allow any international human rights monitoring amounts to sanctioning of the prevalent levels of violence in the country. The present situation requires immediate scrutiny and action on the part of the UN and the international community. And the international community must examine whether it is justifiable to remain inactive purely on the grounds of the government's unwillingness to allow intervention to stop the high levels of violence in the country. The levels of

insecurity for Tamils and Singhalese alike are the worst seen in recent times as 2007 comes to a close.

Country report link: <http://material.ahrchk.net/hrreport/2007/SriLanka2007.pdf>

## **THAILAND**

Throughout 2007, the military and its allies decisively reasserted their prerogative to determine the shape and direction of Thailand, following the coup of last September. It pushed through a new constitution of its own liking a year later, under extremely adverse circumstances, and is set to return power to a civilian government only after an election that it is also clearly determined to manipulate as much as possible. The constitution has compromised the senior judiciary by giving judges powers that are outside of their ambit and can but only subject them to greater political pressure and undue influence from other parties. Meanwhile, the army has awarded vast increases in funding to itself with no outside accountability, and reestablished a cold-war era command to oversee domestic affairs. It is set to have its appointed national assembly pass a security law that will give it unprecedented powers. It has throughout the year anyhow kept much of the country under martial law, and the southern border provinces under special emergency regulations. And while it announced investigations into the human rights violations of the former government it firmly blocked efforts to investigate killings, torture and other abuses committed under its administration, particularly those of soldiers. Country report link: <http://material.ahrchk.net/hrreport/2007/Thailand2007.pdf>

This year also saw the finalizing of the new UN human rights body, the Human Rights Council. The council is yet to impress or convince, but needs to be given some more time in which to prove it is capable of performing according to its mandate. Its mechanisms, notably the Universal Periodic Review and interactive dialogues with Special Procedures offer some new avenues for human rights groups. However, its membership remains problematic, with many of the grave human rights violators playing significant negative roles.

The complete reports on each of the 11 countries contained in the AHRCs 2007 human rights report are available on the internet at <http://material.ahrchk.net/hrreport/2007/>.

# Ethics in action workshop

## *Religious Groups for Human Rights desk, Asian Human Rights Commission*



The Religious Groups for Human Rights, a programme of the Asian Human Rights Commission (AHRC), held a workshop in Hong Kong from 9-14 December 2007, which concentrated on bringing ethics into action. Eighteen participants from Bangladesh, Cambodia, India, Indonesia, Pakistan, Sri Lanka and

Thailand attended, representing the faiths of Buddhism, Islam and Christianity. The participants discussed grave situations of instability, insecurity, and repression that exist in their countries. While participating in discussions, they also joined religious services.

The major theme of the discussion was how to bring basic moral and ethical principles into actual practice. Participants realized that despite much talk of morality in their countries, there are in fact serious forms of abuse of power within the policing, prosecution and judicial systems, which make up the justice administration mechanisms.

The ultimate question is how individual morality can be sustained when the justice administration system does not provide opportunities for people to settle their disputes in a peaceful and rational manner. Many civilian disputes lead to extraordinary violence and crime as society's normal dispute settlement mechanisms have been undermined. When people find that the usual complaint mechanisms are no longer working, there is a tendency to settle problems through violence and crime.

As a result, new forms of insecurity have developed in societies. Kidnapping for ransom for instance, has become a very common phenomenon. This affects all classes of people, particularly women and children. People feel that law enforcement agencies are unable to deal with this problem; in fact, they suspect certain sections of law enforcement agencies of cooperating with those engaging in organized abductions. This is particularly the case in remote areas of many countries, where women are trafficked by organized groups.

The police in many countries are not equipped to deal with the increase in criminal activity seen in many societies, because their criminal investigation capacity is limited. While social circumstances have rapidly changed, police mentality remains at a backward stage. They are unable to cope with sophisticated populations and modern technology. The police often resort to torture to solve crimes; torture remains the foremost method of criminal investigation in many Asian countries. Police also tend to arrest innocent individuals from poor communities as substitute criminals. If these persons are not given civil society support, they may languish in jail for many years for crimes they have not committed. It is thus the poor and marginalized sections of society who bear the brunt of the problems created by bad policing systems.

Those individuals and groups concerned with moral issues therefore cannot ignore the problem of policing in their countries. The police force is the most direct state institution that all citizens come in contact with and its presence is spread into even the remotest village areas. Its own rational behavior would significantly influence the rest of the population. Its terrorizing behavior on the other hand, will terrorize the population and set a negative example.

The nature of policing can change through civilian involvement in monitoring and critiquing police activities. In this way, while the community can help the police to function decently, the police—by their good behavior—can contribute to the development of a society that upholds moral values. Part of the work of those concerned with religion must include enabling citizens to discharge their civic duties towards the community and the state. Mere talk of general moral principles will not suffice; it is necessary to understand their practical implications. Given the circumstances in their countries today, it is important for persons representing different religions to understand the actual justice administration mechanisms in their countries. They must articulate the problems faced by ordinary people in accessing these mechanisms, and create a social dialogue. Only through such dialogue and debate can reform be initiated.

In many Asian countries, democracy is often talked about only as the parliament and elections. The result of overlooking the system of justice administration is that the electoral process becomes so corrupt that democracy is defeated even with multiple elections. A strong justice administration system is vital for a viable democracy. This issue needs to be

discussed much more effectively in these countries, and made part of the mainstream political discourse.

Religious groups can play a significant role in building viable democratic principles and preventing the development of corrupt political systems. At the same time, the use of religion in a partisan way will negatively affect democracy and can lead to divisions in society. To truly serve the well being of individuals, religious thought and practice must be rooted in understanding the issues of justice administration. If popular discourse on moral and ethical principles is combined with the discourse on justice administration issues, religious groups would greatly contribute to their society's emergence from grave and complex problems.



# **Special Representative of the Secretary-General for human rights in Cambodia concludes fourth official visit**

United Nations, Cambodia Office of the High Commissioner for Human Rights

*Phnom Penh 10 December 2007* - The Special Representative of the Secretary-General for human rights in Cambodia, Yash Ghai, concluded his fourth official visit to Cambodia today. The purpose of the visit was for the Special Representative to update himself on recent developments in advance of preparation of his next report to the United Nations Human Rights Council which will focus on the issues of rule of law and access to justice.

The Special Representative regrets that no members of the Royal Government of Cambodia were available to meet with him during the mission. The Special Representative is aware that he has been criticized by the Government for not taking its version of events sufficiently into account in his reports and presenting a view which it considers overly sympathetic to the Government's critics. In advance of this mission, meetings were requested with the Prime Minister, the Ministers of the Interior, Agriculture and Justice, the Co-Chairs of the Council for Legal and Judicial Reform, as well as the Chairman of the Government's Human Rights Committee. None of these meetings materialized. It is difficult to see how the Government's criticism of the Special Representative can be sustained, when it declines all opportunities to present its view. Nevertheless, the Special Representative remains willing to meet with the Government to discuss the human rights situation in Cambodia in a spirit of impartiality and openness.

During his stay, Mr Ghai was able to meet with representatives of civil society, political parties, members of the legal profession, Cambodian and International Judges at the Extraordinary Chambers in the Courts of Cambodia, United Nations agencies and the diplomatic community.

The Special Representative paid particular attention to the courts, the legal profession, and the prison system. He focused on the extent to which these institutions meet international norms and are able to uphold the rule of law and protect the rights of Cambodian citizens,

especially vulnerable and disadvantaged groups. The Special Representative examined some aspects of criminal procedure. He looked in some detail at the Extraordinary Chambers of the Courts of Cambodia, as much for their expected contribution to raising criminal procedure standards—and awareness of these standards amongst the general public—as for their contribution to ending impunity for human rights atrocities committed by the Khmer Rouge from 1975 to 1979.

Mr Ghai sought to obtain an in-depth understanding of the issues of housing evictions and land disputes, especially cases alleged to involve the unfair acquisition of land from communities. He traveled to Rattanakiri to obtain first-hand information on land disputes in the province and meet with community activists and their lawyers, as well as court and provincial government officials. He also paid a visit to the prison in Banlung to get a sense of the conditions in which prisoners are kept, and of the resources made available to the prison administration.

The Special Representative visited the Phnom Penh communities of Dey Krahorm and Group 78 who face the threat of being forced from their homes. He was deeply distressed to see the conditions in which people live, even in the heart of the capital city, and to learn of the fears of those faced with imminent eviction. The Special Representative regrets that his earlier recommendations for more equitable procedures to protect the rights of vulnerable groups had not been acted upon. State authorities as well as companies and politically well-connected individuals show scant respect for the law. This unprincipled approach to law has undermined the foundations of the rule of law.

It is not for the Special Representative to pronounce on the merits of cases before the courts. But it is very striking to note the people's lack of trust in those courts. People have little faith that they will get justice even if their case is heard. Ironically, even the rich and powerful apparently have little faith or patience—for they often meet legal claims with counter-charges of defamation or incitement, rather than allow the normal legal process to take its course. The Special Representative is gravely concerned at recent attempts to place restrictions on the ability of lawyers to represent their clients' best interests. In particular, the charges of incitement against legal aid lawyers represent an unwarranted attempt to criminalize the lawful activities of lawyers.

The courts and the legal profession have, or should have, a key role in protecting the rights of citizens. It is a cardinal principle that all are equal before the law. In reality, all countries face challenges in living up to the ideal. But in Cambodia that shortfall seems to have the proportions of a gulf. The system has failed the people of Cambodia woefully.

The Special Representative has been struck by the extent to which non-governmental organizations' space for action has been restricted in recent months. He heard many

complaints of increased executive interference. This makes it harder for these bodies to play their own important role in upholding the rule of law—a role made even more important given the official court system’s ineffectiveness in protecting rights. The NGO sector is not alone in living with fear and a sense of repression by an almost all-powerful executive.

The appropriation of land and evictions are sometimes justified as making way for “development”. The reality seems to be that the poverty of some is worsened, while the wealth of others grows apace. The legal system seems to be the tool of the rich and the powerful, while the poor are further impoverished as the courts show no willingness to take a stand against manipulation and bribery.

These matters are not for Cambodians alone. The international community plays a very important role in the country. It is not enough to say “we must not interfere”. It already “interferes” by its support for development projects, and its very significant financial support for the government’s budget. The United Nations and the international community have an obligation to ensure that the system they are supporting does not violate the very norms that the international community purports to stand for.

On a more positive note, the Special Representative is pleased that the long-awaited Codes of Penal and Civil Procedure have finally entered into force and hopes that the implementation of the new procedures will provide an opportunity for the courts to apply international standards of justice in accordance with Cambodia’s international obligations. Laws alone are not enough of course. The Special Representative hopes that the authorities will allow the law to be used to convict the guilty. Similarly, it is not for lack of laws that Born Samnang and Sok Sam Oeun were convicted and remain in detention, despite convincing evidence that they are not guilty of the murder of Chea Vichea.

He also welcomes the recent accelerated progress at the Extraordinary Chambers. At the same time, certain developments, including the re-assignment by the Executive branch of government of one judge to another post and the allegations of corrupt recruitment practices, are causes for concern. The Special Representative hopes that the ECCC, as an integral part of the Cambodian court system, will strictly apply international standards and thereby set a positive example to be followed in the domestic courts. He discussed with judges and officials ways in which to make this a reality so that the ECCC positively influences the consciousness of the people as well as the functioning of the legal system. He feels, however, that the effectiveness of the ECCC in terms of ending impunity will be blunted if it limits its proceedings to a politically-agreed number of individuals.

The Special Representative will issue his next report early in 2008 and will present it to the Human Rights Council in Geneva in March 2008.

# **Sri Lanka's denial of investigations into gross disappearances**

*Asian Human Rights Commission*

*(This is the edited text of a statement issued by the Asian Human Rights Commission: AS-245-2007)*

Disappearances have been occurring on a large scale in Sri Lanka's south, north and east. Two local Sri Lankan groups, the Families of the Disappeared and the Right to Life, will commemorate these disappearances on October 27, together with the Asian Human Rights Commission (AHRC). The commemoration events will be held at Raddoluwa Seeduwa, where a monument for the disappeared was erected in 2000. It has become a source of much inspiration for family members of disappeared persons and others.

This year's commemoration will see family members gather to pay respect to their disappeared loved ones, perform religious ceremonies and discuss issues of accountability relating to these disappearances. Several Sri Lankan civil groups, including the Law Society and Trust, INFORM, CPD, the Civil Monitoring Commission, the Association for Disabled ex-Service Personnel, the Neelan Tiruchelvam Trust and the Meepura Newspaper will also take part.

On such an occasion, it is prudent to spotlight some salient features of disappearances in Sri Lanka:

## **Disappearances are usually preceded by abductions**

Any arrest, according to law, has to be carried out by identifiable officers with the authorization of their immediate superiors. Some jurisdictions even require arresting officers to provide a receipt of arrest. They are also required to fax details of the arrest to higher ranking police officers and the Human Rights Commission. Law enforcement officers are expected to travel in their official vehicles, which are clearly identifiable.

In Sri Lanka, those who disappear are usually taken away by unidentified persons, to unidentified locations. Such abductions occur without any written authorization, and may be carried out by persons who do not belong to the law enforcement agencies, but with the direct or indirect approval of certain law enforcement officials. This serves to obscure

responsibility, while creating an atmosphere of collusion between various agencies and personnel.

In this way, disappearances, unlike authorized arrests, remove liability from law enforcement officials. When individuals are abducted, their captors disguise themselves and use vehicles that cannot be easily recognized. In this way, legal obligations relating to arrest are circumvented.

### **Abductions are not reported to courts**

Although strict regulations exist regarding the production of arrested persons before court within the time stipulated by law, no such procedures are followed in the case of abducted persons. Again, legal provisions and judicial safeguards against arbitrary arrest and detention are circumvented.

### **Places of detention are kept hidden**

Places where persons may be detained are established by law; to hold persons in a place other than an authorized detention center amounts to a criminal act. When persons are arrested for the purpose of making them disappear however, they are kept in a separate place, a place not legally established, and therefore, *de facto*, a place where the law has little reach.

### **No written records are kept**

There are clear legal provisions requiring the police or military officers who make arrests to take detailed notes about the arrest, detention and interrogation of individuals. Higher authorities are expected to examine these records and to take appropriate steps on the basis of the information provided; to either initiate legal action against the suspects, or to release them. None of this applies to cases of disappearances; by not keeping records of abductions, authorities can avoid liability.

### **Killings in custody**

Every disappearance in which a law enforcement agency is involved, directly or indirectly, is a killing in custody. It is a violation of both domestic and international law. It is murder by deliberate intent, since the entire process—from abduction to disappearance—is organized in a way to culminate in the death of the individual while in the custody of law enforcement officers. By way of command responsibility, senior law enforcement officials are also responsible for such custodial deaths.

### **Illegal disposal of bodies**

Disappearances involve not only killings, but also the secret and illegal disposal of bodies, for instance in mass graves. Again, the process of illegal disposal is one that aims to make identification difficult, and remove responsibility from respective law enforcement agencies.

### **State responsibility**

Large scale disappearances, as seen in Sri Lanka since 1971, can only occur when there is political approval for such activities by those in power. Law enforcement agencies can only engage in serious breaches of the law—as described above—with the assurance that no investigations or prosecutions will take place. It must be noted that disappearances and other serious crimes are also carried out by militants and criminals in Sri Lanka. While these cannot be blamed on the government and its law enforcement agencies, they must take responsibility for their failures in preventing such crimes and in investigating, arresting and prosecuting the offenders.

Sadly, there exists today an entrenched political and legal culture, the basis of which is a firm undertaking to *not* investigate or prosecute disappearances and other gross abuses of human rights. To this end, the country's criminal justice system is allowed to operate only outside the boundaries of the implicit agreement of impunity between the political regime and the law enforcement agencies.

The result has been the crippling of the criminal investigation system. There have been many Criminal Investigation Division (CID) officers, who put themselves at grave risk, and whose careers have suffered serious setbacks, due to their attempts to operate in accordance with their professional obligations, rather than to political dictates. Whereas previously Sri Lanka's investigating officers were able to successfully investigate crimes—investigations into former Prime Minister's Bandaranaike's assassination and into the 1962 attempted coup to overthrow the government are clear examples—today, perverse and unprofessional trends have taken over the system. Investigations into cases involving state agencies are now considered an act of great disloyalty. It is therefore not the capacity of the institutions that is faulty, but their credibility.

A close study into the reasons for the country's political authorities to create such boundaries for criminal investigation suggests that it is to keep the military happy. Serious investigations into disappearances and other gross human rights abuses, particularly those in which the military could be involved, are perceived by political authorities as a possible cause for an enormous rift between them and the military. There are fears that without military support, Sri Lanka's political system cannot survive, particularly due to the country's internal war on terrorism. As a result, state law enforcement agencies are allowed to function largely as they wish, with implicit guarantees of impunity, while the justice system is left crippled.

What does a crippled criminal investigation system mean for ordinary citizens? According to Sri Lanka's criminal procedure code, there are detailed procedures to be followed in the recording and investigation of complaints, as well as the prosecution of criminal cases. Individuals affected by gross human rights abuses will therefore go to their local police authorities to register their grievances. In cases of forced disappearances and other human rights abuses, victims and their families will quickly learn of the hidden agenda to not

investigate or prosecute crimes committed by state officials.

After having exhausted all domestic remedies with no results, individuals may seek help from international human rights organizations, including the United Nations mechanisms. At this time, the same state that denies them domestic investigations, declares that international agencies need not interfere as there are local legal mechanisms to deal with such issues. Citizens are thus deprived of access to local as well as international remedies to the tremendous abuse they have faced. Indeed, if a state has the will and capacity to carry out investigations into gross violations such as forced disappearances, there is no justification for the United Nations human rights agencies to intervene. When such will or capacity is absent however, international agencies are obliged to stand in solidarity with victims and prevent further abuse. Sri Lanka's clear lack of political will to address the ongoing human rights violations therefore demands an urgent response from the UN.

The government should not be allowed to hide behind notions of state sovereignty after placing its citizens under grave circumstances with no redress. Whatever may be said by the country's propaganda machinery about the existence of local remedies, it is commonly known that no substantial action will be taken in support of victims. In fact, local and international human rights groups are resented by Sri Lanka's propagandists precisely because their exposure of systemic human rights abuses makes their job of falsification all the more difficult. They wish to silence all human rights groups and those who publish citizens' grievances.

It is clear that the propaganda machinery is an essential part of state repression. While one arm of the state commits disappearances and human rights abuses, another arm—the political leadership—guarantees impunity for such acts. The third arm—the propagandists—uses its pens to create the illusion that either the reports of such abuses are exaggerated, or that tough measures are taken to deal with such abuses.

The rough treatment Ms Louise Arbour, the UN High Commissioner for Human Rights received in the country, as well as the huge misinformation campaign in relation to her visit, carried out by the propaganda industry of the government, can only be explained within this understanding that exists between the political leaders of the state and the police and the military. It is in this area that much more research and study is needed if the present obstacles to the protection and promotion of human rights within Sri Lanka are to be successfully countered.

This year's commemoration of disappearances should be a day of reflection for all who want to see a decent way of life, free from repression and violence, prevail in Sri Lanka. Only when people become aware of the chains binding them, will they find the means to free themselves. When citizens see through the means by which their rights have been denied, and the obstacles they face in obtaining remedies, no amount of propaganda will silence them.

# **Monitoring and investigation through a UN field office in Sri Lanka**

Since 2006, there have been calls for international human rights monitoring in Sri Lanka. In his March 2006 report, the UN Special Rapporteur on extrajudicial killings, Philip Alston, clearly recommended international monitors to be present in Sri Lanka. In April, after Sri Lanka's Human Rights Commission had ceased to function due to a constitutional snag, the Asian Human Rights Commission (AHRC) wrote an open letter to the UN Secretary General, stating that the country's complete lack of domestic human rights monitoring mechanisms was more than sufficient cause for international monitors. This was subsequently echoed by the UN High Commissioner for Human Rights, Louise Arbour, and the European Parliament in September.

Sri Lanka's deteriorating human rights situation was brought up in the 2007 Human Rights Council sessions as well. A group of Sri Lankan and other civil society groups submitted a written statement requesting the consideration of an Office of the UN High Commissioner for Human Rights (OHCHR) field office in Sri Lanka. The statement noted the escalation of human rights abuses throughout the country, as well as the lack of domestic institutions and political will to deal with them. Although several European Union member countries attempted to push for international monitoring during the sessions, they were not successful.

Most recently, the UN Special Rapporteur on torture, Manfred Novak and Louise Arbour, after their visits to Sri Lanka in October 2007, noted the necessity for UN monitors in the country. Prior and during Ms Arbour's visit, there was much local debate regarding her 'agenda' and the actual necessity of having a UN field presence in the country. A few articles from different sides of the debate are reproduced below.

## **Louise Arbour as a political football Secretariat for Co-Ordinating the Peace Process (SCOPP) Report October 15, 2007**

The Sri Lankan government recently invited the UN High Commissioner for Human Rights to visit Sri Lanka. The poor lady is now here, and has found herself the focus of a series of articles in which she is presented as the potential savior of the Sri Lankan people. Her visit is presented for instance as a test for the political leadership of the country. No matter that

simultaneously this claimant declares that the 'political intellect of the country has sunk to its lowest depths...the political intellect remains in a state of stupor.'

What is this stupor? Certainly those who view the lady as a modern day St George, battling a dragon, are very clear about what the battle is about. They are sure that she will recommend a UN monitoring mission, and all their arguments are intended to ensure that that mission is established.

Whether or not Louise Arbour came here with a determination to recommend such a mission, as they have all assumed, is not relevant. Though some foot soldiers in the human rights army were already gearing up their applications for positions in that mission, the Sri Lankan government which invited her has to assume that she is adult enough to reflect on a situation she came here to observe, and to decide what recommendations may best serve the purpose she is dedicated to achieving.

What is more interesting is the motivation of those who have predetermined that such a mission is essential, and who are counting on her to promote their agenda. Foremost amongst these it would seem is the UNP, as represented by Mr Lakshman Kiriella, who not only keeps requesting such a mission but even claims that nothing can stop it if the UN recommends it. He goes so far as to claim that there would be an economic embargo from the European Union if the government tried to stop it. Sadly he has now been joined by Mr Mangala Samaraweera, who has reiterated the constant refrain of his erstwhile critics in claiming that Sri Lankan government is 'being isolated by world'.

Then we have Mr Basil Fernando, a doughty activist in the past who had to flee the country when the UNP death squads were in their element, who compares Sri Lanka with the Nepal of 2005 and the Cambodia of 1989. The former accepted a High Commissioner's office to 'monitor human rights in order to deal with the conflict that existed between the authoritarian regime of the king and the Maoist rebels'. In Cambodia it was not a human rights office, it was a Transitional Authority that had in effect to run the country because of the 'crisis as four factions were engaged in an armed struggle which led to the collapse of Cambodian society.'

But, as Aristotle put it, recalled in time by one of the Human Rights Watch activists in Geneva, the roots of injustice lie in treating like things in unlike ways and unlike things in the same way. This had clearly not occurred to the Portuguese ambassador to the UN in New York, when, talking on behalf of the United Nations, he clustered together Sri Lanka and the Sudan and Somalia and Iraq and the Democratic Republic of the Congo. The Portuguese ambassador in Geneva, who had engaged with the Sri Lankan Mission there along with his colleagues, was much more circumspect and laid aside the resolution he had originally indicated he had been instructed to put forward.

There is reason to suppose that he did this because of the constructive engagement pursued by the model Sri Lanka Mission in Geneva. That indeed is the policy of the government, to discuss issues openly, weigh up advice, and respond constructively. After all, we have a

democratic government, elected twice as it were, in elections that have been universally accepted as fair, except for the plaintive cry of the UNP that they were deprived of the mass vote they were anticipating. Interestingly, the EU monitors for the 2004 election gave it a clear bill of health except in the North and East, which produced the 22 TNA MPs the UNP was counting on to give it a majority.

Despite such successful and we trust productive engagements, which the government continues to pursue, not only in Geneva, not only with Ms Arbour, but also with the world at large – and in particular our Asian friends who seem in Mr Samaraweera's view no longer to constitute the world – the Human Rights army believes that there is only one way to engage, one way for Ms Arbour to react to the Sri Lankan situation, one way for the Sri Lankan government to respond. The pluralism that should be the pride of Sri Lanka socially is to be avoided in moral and intellectual activity, whether Ms Arbour's or that of the rest of us.

What are the weapons they use to pursue their agenda? Sadly, chief amongst them is falsehood, persistent falsehood, on the Goebblian grounds that if you lie loudly and often enough, people will believe you. So we were assured a couple of months back that there would be a EU resolution against Sri Lanka. When that did not transpire, we were told that Sri Lanka narrowly escaped censure. We were also told that Sri Lanka was saved by 'banana republics and potty regimes', which presumably characterizes all the countries in Asia and Africa and the Americas and the whole Non-Aligned Movement who pledged their support for Sri Lanka. Jehan Perera, normally more moderate than most of his peers, argued that the UN Human Rights Council was so myopic that it would not discuss the situation in Myanmar, his article appearing on the very day I believe that a debate on Myanmar did take place.

People of course believe what they want to believe. However it is only in Sri Lanka that such beliefs appear as responsible journalism, combined with an awesome respect for things Western, and a naïve belief that all Westerners are deeply interested in the Sri Lankan situation. Thus there was a categorical claim that the European Union Parliament was to debate the human rights situation in Sri Lanka, when in fact all that happened was that one parliamentarian set up a discussion with Human Rights Watch which attracted just one other parliamentarian. And even Basil Fernando showed his rather sad devotion to the mother country when, in citing a ridiculous article that appeared in Sri Lanka, he claimed falsely that it was from the 'London Daily Mirror'.

Then there is emotional language. None of these characters obviously has read Orwell, and his strictures on clichés and extravagant adjectives. Basil Fernando cannot conceive of abuses, they have to be gross, a crisis must be acute, a situation must be abysmal, helplessness is utter. The adjective political is applied to lunacy, realism, intellect and disasters, plus another half dozen or so words. Dr Saravanamuttu has now decided to dwell on words such as apparatchiks and fellow travelers, and accuse the targets of his criticism of abuse and invective, whilst relishing his own use of words such as silly, myopic, callous, antediluvian, obsolete and obsession.

Does all this matter? It would not, in the ordinary world, but Sri Lanka is not ordinary. In this country relentless propaganda has contributed to change of government that nullified the wishes of the electorate. Mrs Bandaranaike was the victim of this in 1964, Mrs Kumaratunga in 2001, though she now seems to have forgotten this.

More seriously, it is not only the opposition that wants such change, or the few foreigners who, as an American recently put it, have an unhealthy nostalgia for the Wickremesinghe regime. The most concerted determination to upset the government comes from the LTTE, which has been anxiously plugging the Human Rights angle when it found that others did not work.

The tragedy is that it has so easily found followers for this. Most of them may be sincere, but they have then to be seen as at best illogical. There is for instance the influential European Union official, who was at the forefront of threats about economic sanctions, who seemed to oppose elections in the East since he had been advised that they would be controversial. His principle reason seemed to be that no remedies had been found for the strictures of the European Union monitors on the last parliamentary election.

He does not seem to have revealed the source of his advice. Not entirely coincidentally, the most vociferous opposition to elections in the East has come from the TNA, who were the chief beneficiaries of the flaws noticed by the European Union monitors. But that factor would escape the notice of a doubtless idealistic European who has no time to go into details.

The link between our Human Rights army and the LTTE became clear when Tamilnet on September 30th reported on a meeting at which the speakers included Ms. Sunila Abeyssekera, Executive Director, INFORM, Ms. Karen Parker, Mr. David Rampton, School of Oriental and African Studies (SOAS), Dr. Paikiasothy Saravanamuttu, Executive Director, Centre for Policy Alternatives (CPA), Rev. Fr. Alphonsus Bernard, Director, CEPAHRC, Jaffna, Fr. Jeyakumar (HUDEC, CARITAS Jaffna) and Mr. Kasinather Sivapalan, Deputy President, Northeast Secretariat on Human Rights (NESOHR) and local nominee to SLMM Trincomalee. Karen Parker, it should be noted, is the American lady who put up a spirited defence of recruiting children over 15 as fighters in her intervention at the UN Human Rights Council.

Now there is nothing wrong in engaging in discussion and debate with the LTTE. The Sri Lankan official delegation to the Council also had this privilege, as regards Mr Sivapalan, who it seems is now resident in Ireland, and Fr Bernard, who also has been abroad for some time. The problem with those Sri Lankans who are usually in Sri Lanka is that they would not engage in the debate to which we had invited them, nor did they invite us to their discussion, which was publicized after we had all left Geneva. The representatives of the UN and Western missions who came to the debate we had set up would doubtless have welcomed listening to an exchange of views, but instead of that our own home grown activists and the LTTE representatives now living abroad had their own cosy little meeting at which they seem to have agreed with each other, like Lear's Pelican Chorus.

On the strength of such meetings, these Catos, who in their little Senates give themselves their own laws, have decided that ‘The fact of grave human rights crisis has been established.’ So they can assert that Ms Arbour’s ‘visit is not a fact finding mission’. I have no idea whether Ms Arbour shares this view. But one would hope that she is experienced enough to ensure that her office is not used as a tool for political agendas that have no place—particularly when shared by terrorists—in the constant struggle to promote human rights worldwide.

Rajiva Wijesinha

Secretary General, Secretariat for Coordinating the Peace Process

**ASIA: Orwell, Rajiva Wijesinha and the discussion on human rights monitoring in Sri Lanka**

**A Statement by the Asian Human Rights Commission (AHRC)**

**AS-243-2007; October 15, 2007**

The following is a reply to a report published on October 12, 2007 in The Official Website of the Sri Lankan Government’s Secretariat for Coordinating the Peace Process, written by the Secretary General, Rajiva Wijesinha,

My comments in some previous columns regarding Cambodia and Nepal seem to have appeared dangerous to Rajiva Wijesinha, who seems to think that Sri Lanka’s problems are different. Naturally no conflict is similar to another. However, what are similar is the consequences of prolonged conflict on any place; that is, the serious disruption or even complete collapse of all the state institutions and the consequent disruption of life in the society. In short, all prolonged conflicts create a state of lawlessness. That is what is common to Cambodia, Nepal and Sri Lanka. Unless some extraordinary measures are taken to make a beginning towards a recovery this situation will not only create abysmal results but can even create catastrophes. What happened in Cambodia and Nepal was an intervention by the United Nations which helped to create a beginning in the direction of recovery, while in Sri Lanka the downward spiral still continues.

Rajiva Wijesinha is quite aware of the downward spiral. For many years he has been writing books and articles on the erosion of democracy in Sri Lanka. Among his best contributions are the detailed analyses of J.R. Jayawardene’s contributions to the collapse of democracy by the introduction of the executive presidency and the pursuit of the same through many other measures by Jayawardane as the first executive president. With regard to the plunge into the dark depths of authoritarianism and the resulting dismantling of the constitutional framework, I would not think Rajiva Wijesinha would argue, that these things have come to an end. In fact, constitutionalism is a word without much meaning in Sri Lanka now. Together with the new conception of power developed by the executive presidency the basic institutions such as the police, the prosecution system under the attorney general, the judiciary under Sarath Nanda Silva, and the parliament itself have suffered extraordinary setbacks. I have constantly referred to these systems as having become dysfunctional. This

means that these institutions now produce the opposite results of what they are meant to produce within a system of the rule of law and democracy. Jayawardene's scheme of displacing the rule of law and democracy continues with greater vehemence now, and, sadly, even some critics of that scheme such as Mahinda Rajapakse and Rajiva Wijesinha have now also become operators of the same scheme.

### **Squealer's Role**

Referring to some adjectives that I have used he says: "Then there is emotional language. None of these characters obviously has read Orwell, and his strictures on clichés and extravagant adjectives. Basil Fernando cannot conceive of abuses, they have to be gross, a crisis must be acute, a situation must be abysmal, helplessness is utter. The adjective political is applied to lunacy, realism, intellect and disasters, plus another half dozen or so words." While the belief that he alone must have read Orwell can be excused as trivial vanity of a Sri Lankan professor teaching English, Rajiva Wijesinha must surely know that Orwell also wrote, among other things, two celebrated works, those being: *Animal Farm* and *1984*. While the particular historical circumstances that Orwell's writings are based on may be different, the essential content of the political systems he wrote of remain more valid today, not only to those particular historical circumstances but also to others. Today's Sri Lanka is very much a reflection of the Orwellian nightmares. Despite long years presumably teaching these texts, Rajiva Wijesinha has been unable to see the connection. In the present context of being a part of a propaganda machinery of an authoritarian state, he, among others, has taken on the role of Squealer in Orwell's *Animal Farm*. (The character of Squealer represented the Russian media, which spread Stalin's version of the truth to the masses).

The problem about adjectives is that when describing situations of the collapse of the rule of law it is difficult to find words that can adequately describe the actual depth of the tragic situation. Like some natural tragedies, for example the recent experience of the tsunami or manmade tragedies by way of wars and civil wars, language becomes an inadequate tool to describe the experience. One has unfortunately to rely on adjectives which fall far short of expressing the enormity and human and social consequences of such tragic experiences. However, Rajiva Wijesinha, in his role of Squealer, objects to these adjectives for a very simple reason: he has to make out that no really big problems exist in Sri Lanka. His role is to deny or trivialize or understate the situation that the country is actually facing.

Orwell's argument in "Politics and the English Language" is that the bad language used is a result of the failure to think clearly. That is really the problem that one has to address in thinking about the continuing catastrophe in Sri Lanka. What I mentioned in my column is that there is a degeneration of the political intellect in the country and a lack of capacity to develop political realism that some of the political leaders in places like Nepal and Cambodia developed as a result of the sufferings caused by a prolonged crisis. Even bad leaders who have themselves contributed to the civil war in these countries realized that, even from the point of view of their own self-interest, some outside help was needed to bring an end to the ongoing civil war. The help obtained from the United Nations did not

and could not solve all their problems. But it did help to bring the violence and civil war to an end. It is on those issues that clear thinking is needed in the country. And of course if one has opted to play the role of Squealer, then one has to abandon even the wish to think clearly.

Orwell also wrote *Burmese Days* which also provides insight into the types of characters that Rajiva Wijesinha has to deal with in his new role. The character of U Po Kyin (an excerpt from the book is given below), is very much similar to many Sri Lankan characters active in political and public life in the country. It is not an enviable task to become a spokesman responsible for whitewashing the acts of such characters.

### **U Po Kyin**

As a magistrate his methods were simple. Even for the vastest bribe he would never sell the decision of a case, because he knew that a magistrate who gives wrong judgments is caught sooner or later. His practice, a much safer one, was to take bribes from both sides and then decide the case on strictly legal grounds. This won him a useful reputation for impartiality. Besides his revenue from litigants, U Po Kyin levied a ceaseless toll, a sort of private taxation scheme, from all the villages under his jurisdiction. If any village failed in its tribute U Po Kyin took punitive measures—gangs of dacoits attacked the village, leading villagers were arrested on false charges, and so forth—and it was never long before the amount was paid up. He also shared the proceeds of all the larger-sized robberies that took place in the district. Most of this, of course, was known to everyone except U Po Kyin's official superiors (no British officer will ever believe anything against his own men) but the attempts to expose him invariably failed; his supporters, kept loyal by their share of the loot, were too numerous. When any accusation was brought against him, U Po Kyin simply discredited it with strings of suborned witnesses, following this up by counter-accusations which left him in a stronger position than ever. He was practically invulnerable, because he was too fine a judge of men ever to choose a wrong instrument, and also because he was too absorbed in intrigue ever to fail through carelessness or ignorance. One could say with practical certainty that he would never be found out, that he would go from success to success, and would finally die full of honour, worth several lakhs of rupees.

And even beyond the grave his success would continue. According to Buddhist belief, those who have done evil in their lives will spend the next incarnation in the shape of a rat, a frog or some other low animal. U Po Kyin was a good Buddhist and intended to provide against this danger. He would devote his closing years to good works, which would pile up enough merit to outweigh the rest of his life. Probably his good works would take the form of building pagodas. Four pagodas, five, six, seven—the priests would tell him how many—with carved stonework, gilt umbrellas and little bells that tinkled in the wind, every tinkle a prayer. And he would return to the earth in male human shape—for a woman ranks at about the same level as a rat or a frog—or at best as some dignified beast such as an elephant.

**Emotions**

Rajiva Wijesinha writes about the emotional language of what he calls the foot soldiers of the human rights army. He seems to have acquired the capacity to speak unemotionally about, for example, the massacre of the 17 aid workers belonging Action Contra La Faim. His comments on the issue to the effect that this French NGO was itself responsible for the 17 deaths caused embarrassment even to the Sri Lankan government, his employer, which through its Minister for Foreign Affairs clearly stated that his comments did not represent the view of the government. An appeal to be unemotional while talking about massive disappearances, extrajudicial killings, torture and lawlessness implies that one has to accept these things rationally as unavoidable occurrences.

This is quite different to a one-time Rajiva Wijesinha who wrote quite emotionally and at some length about the extrajudicial killing of his school mate Richard De Zoysa. In that article he exposed everyone involved in the role and quite rightly exposed the role of the then Attorney General Sunil Silva, regarding the inquiries into that death. Perhaps Richard deserved different treatment as a friend and what Rajiva Wijesinha called in that article, a member of a family of the Sri Lankan aristocracy to which he thinks he also belongs. What that aristocracy is I have never understood but the class distinctions that are made between the ordinary folk and the elite are quite common in Sri Lanka. The elite are quite unemotional when talking about disappearances and other matters of the people of other classes in the south, north or the east. Those who are presumed to have read Orwell are treated in one way and those who have not in a different way. Despite of the long connections of Rajiva Wijesinha with what was called the 'liberal party' in Sri Lanka, his mindset is no different to many others of that group called the elite whose origins was the ambition, to use Orwell's language in *Burmese Days*: 'To fight on the side of the British, to become a parasite upon them.'

One would ask what is wrong with being emotional. Human beings are both rational and emotional. An integrated personality is one where reason and emotion are always present. However, when one has to espouse a cause that is morally indefensible, such as to justify human rights abuses, naturally one cannot be emotional about it. All Squealers are very unemotional people and to criticise others for being emotional is a common Squealer technique.

Rajiva Wijesingha refers to my fleeing to escape from the UNP death squads. The death squads and the executive presidency are twins. As long as the present form of executive presidency remains the death squads will also remain. The death squads were a product of this political system. It is the role of death squads that is being whitewashed when one tries to deny the disappearances, extrajudicial killings and the like.

He also refers to the foot soldiers of the human rights army. This is no accident because he is a spokesman for the real army. He sees his opponents as another 'army'. We are reminded of Don Quixote's battles and the imagery Don Quixote created for himself in order to make someone appear to be another knight who was provoking him into a fight. In Rajiva Wijesingha's new role he will have to invent armies that he can fight and conquer. The

latest adventure for him is to create the impression that he, with a few others, has successfully defeated a possible UN resolution on the need for human rights monitoring in Sri Lanka. What a great victory!

Ms. Louise Arbour, the United Nations High Commissioner for Human Rights, at the end of her visit to Sri Lanka stated that ‘The weakness of the rule of law and the prevalence of impunity in Sri Lanka were alarming.’ In an article published in the Sunday Times (October 14, 2007) Ms. Arbour went on to say:

“While the government pointed to several initiatives it has taken to address these issues, there has yet to be an adequate and credible public accounting for the vast majority of these incidents. In the absence of more vigorous investigations, prosecutions and convictions, it is hard to see how this will come to an end,” she said.

The Squealers of Sri Lanka may boast that they managed a victory by avoiding any discussions on these matters with the UN High Commissioner. The continuity of the situation, the weakness of the rule of law and the prevalence of impunity in Sri Lanka is of course a matter of little concern to them.

Basil Fernando  
Executive Director  
Asian Human Rights Commission

**Entertainment from the Human Rights Establishment: The forgetfulness of the Asian Human Rights Commission Secretariat for Co-Ordinating the Peace Process (SCOPP) October 17, 2007**

The Peace Secretariat is delighted at the new levels of debate developing in the Human Rights industry with the comparison of me to a character from an Orwell novel. Literary comparisons and a sense of humour are always welcome, and it is good to see that Basil Fernando of the Hong Kong based Asian Human Rights Commission has not lost his touch.

I am also grateful for his recognition of the criticisms I used to make of the Jayewardene regime. Earlier he graciously, having cited extracts from a report of the Jaffna University Teachers for Human Rights, asserted their credibility in terms of what he quoted as a certificate from me. I believe this shows he understands that I am supportive of Human Rights organizations that strive for objectivity in highlighting problems. This does not mean I accept that everything they say is true, but I would argue that their complaints must be taken seriously and investigated.

I am sorry therefore that I have now upset him. But what worries me is blanket generalizations and falsehoods that are either deliberate or culpably careless. I am also

worried about intellectual shoddiness. If I might cite just one sweeping line from his most recent statement he claims that ‘Together with the new conception of power developed by the executive presidency the basic institutions such as the police, the prosecution system under the attorney general, the judiciary under Sarath Nanda Silva, and the parliament itself have suffered extraordinary setbacks.’

Unfortunately Basil seems to have forgotten completely the situation in the eighties, when the concept of the all powerful executive presidency was developed. Though the power of the position has declined, not least because the massive parliamentary majority that backed it, with ready expulsion of MPs who opposed the boss, no longer exists, I am immensely proud of my opposition to the system then – when there was no Human Rights industry and, apart from the sterling Civil Rights Movement, criticism was by lone individuals.

To take one simple instance of Basil’s failure to appreciate salient differences, he may disapprove of Sarath Nanda Silva, as he calls him, but no one would claim that the current Chief Justice is seen as an instrument of the government. There is not the slightest possibility of him being hauled before Parliament as happened to poor Neville Samarakoon, Jayewardene’s personal lawyer, who was elevated to the post but finally decided that the regime was execrable.

Again Basil may disapprove of the attorney general, but there is nothing like the deliberate distortions that began well before the Richard de Zoysa murder with for instance the Ananda Sunil case, a mirror image involving a much poorer family that I have highlighted in my writings. Sadly, the establishment in those days did not care, and there was no one to protest, unlike today when everything can be questioned. And with all these questionings, there has been no challenge to the integrity or the intelligence of the current Attorney General, unlike Shiva Pasupathy who blindly followed Jayewardene and is now blindly following the Tigers, not wholly unlike some elements in the UNP.

### **The Time Machine of the Fantastic Four**

But the Human Rights establishment really gets more preposterous every day. Now it claims that the government did not permit Louise Arbour to visit the East. The government tried very hard to persuade her to go to the East, but she strenuously refused, citing a lack of time. Where she would have found the time to go to Kilinochchi when she had no time to visit the East is another question, but doubtless, in pursuing her determination as she put it to convey her concerns to the LTTE she would jolly well have found the time. With regard to the East perhaps she was reassured by Sir John Holmes’ comment that the situation there was much better than he had been led to believe.

Then we have the sanctimonious pronouncements of four members of the establishment, that they have resigned from a government committee, a resignation that has received much international publicity. One reason cited for this is that the government is not serious about reform, another is that the government sought to stop them speaking out because they were on the committee, another that they had been criticized by the Peace Secretariat.

The four have been members of the committee for well over a year, and have not between them attended many meetings. The reason for their resignation may well have to do with SCOPP, in that when one of them was holding forth in Geneva one of our staff pointed out that they were on a government committee, and should have attended its meetings and made such points there. It is not perhaps entirely coincidental that the discovery that the government was not serious occurred after twelve months and more, at the same time as Louise Arbour's visit when maximum publicity for the resignation could be achieved.

All this sleight of hand may not be noticed internationally, where reporters may not realize why opponents of the government are terribly anxious to claim that there is now a 'Showdown on key HR issues'. But it would be sad if the purported showdown diverted attention from what should be the more urgent responsibility of the international community, to persuade the LTTE to negotiate, instead of hoping that these shenanigans would weaken the government.

Rajiva Wijesinha  
Secretary General  
Secretariat for Coordinating the Peace Process

**Blind refusal to see the realities for what they are**  
**By Kishali Pinto Jayawardena**

Inflammatory debate on whether or not United Nations High Commissioner for Human Rights Louise Arbour had called for the presence of a UN monitoring mission in Sri Lanka has served to conveniently obfuscate some eminently sensible points made by her last week. It is doubly unfortunate that the 'Secretariat for Coordinating the Peace Process' has joined in this shrill exchange. Indeed, the Secretariat's angrily incessant verbosity hardly serves as encouraging sober discussions on these issues and leads one to question whether it may not be more appropriate to rename it rather, as the 'Secretariat for Coordinating the War Process.'

Leaving aside relative trivialities such as these however, the points made by Arbour go to the very roots of the credibility of Sri Lanka's domestic institutions that supposedly exist to enforce legal accountability. This is made clear in the formal press statement issued by her Office at the conclusion of her mission. The overall concern is the absence of 'an adequate and credible public accounting for the vast majority' of rights violations and the absence of 'more vigorous investigations, prosecutions and convictions.'

Arbour's further remark that 'critical elements of protection have been undermined or compromised' in relation to the Singarasa case together with the ICCPR Act which, as she points out 'only partially addresses the issues and risks confusing further the status of different rights in national law' is also extremely pertinent. Equally so is her warning that confidence (both locally and internationally) in the efficacy and independence of the Human Rights Commission of Sri Lanka has been undermined leading to a possible loss of accreditation to the international body governing these institutions.

The issues that she has raised, remain agonizingly familiar to domestic rights activists. As repeatedly adverted to in this column, the question of political will in regard to the investigations, prosecutions and convictions of grave human rights violations is central to any argument made on behalf of the government that national institutions are working perfectly satisfactorily.

The actual fact is that national institutions whose primary task is to ensure legal accountability, are not working satisfactorily at all, as buttressed by hard statistics thereto. One virtually unchallengeable example is the number of convictions of members of the security forces and the police for enforced disappearances of thousands of Sinhalese, Muslims and Tamils during the eighties, (as disclosed in official data submitted by the Government of Sri Lanka to the Committee Against Torture in February 2007), which are a mere twelve. In one hundred and twenty three cases, the accused had been discharged in the High Court. Many more cases have been pending for long years.

And these are just the relatively small number of cases that made it to the court in the first place whereas thousands of perpetrators were not brought before the law in that limited sense even though they were identified as such by the three 1994 Commissions of Inquiry into Involuntary Removal or Disappearances of Persons as well as the subsequent 1998 Commission. The law is meanwhile even more truant in regard to its enforcing of accountability in regard to wanton killings of civilians in the North/East. Specific documentation showing the all encompassing and (dare one say it) the seemingly deliberately engineered failure of the legal process thereto, illustrates this point very well.

So how, in the name of all that is sensible, could we say that our legal process is working satisfactorily, citing meanwhile only one or two high profile instances such as the Krishanthi Kumaraswamy case or the Embilipitiya disappearances?

Rather than empty rhetoric, actual prosecutorial and judicial will to bring about deterrent convictions of perpetrators is needed. Clumsily put together Commissions of Inquiry in terms of a law that was originally used for inquiring into the conduct of persons holding public office rather than for investigating complex cases of extra judicial executions and enforced disappearances, can accomplish only very little. What we need are carefully thought out changes to the prevalent criminal law and procedure, which is (in any event) not working satisfactorily even ordinarily, as manifested again by the 4% rate of convictions for grave crimes.

The fact that there have been just three convictions in terms of the Convention Against Torture Act from 1994 (date of enactment of this law) to date is another good reminder that there is great dysfunction between the reality of grave human rights violations and the response of the law thereto. Merely enacting a Witness Protection law will not do. There must be a comprehensive effort to adapt the system to confront one of the greatest challenges that the country faces today; namely the restoration of public faith in the efficient and apolitical working of the law in regard to extra judicial executions and enforced disappearances in particular.

This same logic applies to the reactivation of the 17th Amendment and the constitutional commissions. The credibility of the Human Rights Commission (HRC) of Sri Lanka is at its lowest ebb today. The strictures passed by Arbour are important given a scheduled re-accreditation of the HRC this month by the International Coordinating Committee (ICC) of National Institutions for the Promotion and Protection of Human Rights, for which the Secretariat is the National Institutions Unit of Arbour's office.

The HRC is due to be examined by the ICC on two questions. First, whether the appointment of the current Commissioners is in compliance with the law of the Commission and in compliance with the Paris Principles, given that the prior approval of the Constitutional Council was not obtained. Secondly, whether the actual practice of the Commission remains balanced, objective and non-political, particularly in regard to the discontinuation of follow up to 2000 cases of disappearances in July 2006.

This second question relates to the HRC advancing an extremely disturbing reason for stopping the inquiries into these disappearances "for the time being, unless special directions are received from the government." A verbatim citation from a note of the Secretary to the Human Rights Commission dated 29 June 2006 attributed this decision to the fear that "the findings will result in payment of compensation, etc". With public outrage following the leaking of this instruction, the Minister of Human Rights was ludicrously compelled to advise the HRC to proceed, stating that it does not need 'instructions from the government' to do so. While the inquiries continued thereafter, their credibility remained in doubt.

Other recently contested actions of the HRC include the arbitrary issuance of a circular without public discussion, purporting to limit the period of time within which a petition could be filed before the HRC to three months, despite the fact that the empowering Act under which the HRC is established prescribes no such time limit. Indeed, in recent months, a staffer of a Colombo based nongovernmental organization had been threatened with contempt by a Commissioner for attempting to question the current working of the HRC.

This detailing of what is wrong with our domestic institutions is not to say, as this column has reiterated previously, that a UN monitoring mission will be the magical cure for all ills. First and foremost, we need to be able to remedy our own ills and use international support constructively and carefully for that purpose. But there is no doubt that those who insist that we have no ills to be remedied, should be clouted on the ear for their blind, complacent and self serving refusal to see the realities for what they are.

# Lists of those disappeared, abducted or killed

The following are lists of persons who have been disappeared, abducted and/or extrajudicially killed, mainly in the north and north east of Sri Lanka, between the months of October and November 2007. These names are those that have been reported to and verified by local civil groups, and publicized through the urgent appeals system of the Asian Human Rights Commission (AHRC).

It is widely accepted that a much larger number of persons are being disappeared and killed on a daily basis. In the south, a large number of arbitrary arrests and detentions are also occurring.

**November 2007**

## **Victims of extrajudicial killings**

**Name, (gender), address of the victim /age/date of incident/district/brief detail of the case**

1. **Sanmuganathan Paheeranathan** (M) – Naranthanai, Jaffna / 28 / 28 October 2007 / Jaffna / Employee of Danish Demining group, was kidnapped on October 28 and shot dead. His body was found by noon the following day and sent to the Jaffna Teaching hospital on October 30.
2. **Thangarajah Sujeevan** (M) – Stanly Road, Jaffna / 26 / 16 November 2007 / Jaffna / His body was handed over to the Jaffna Teaching Hospital at about 10pm on the night of 16 November. There were bullet wounds on the body but it was unclear where he was shot.
3. **Velupillai Sabathipillai** (M) – Chavakachcheri, Thenmaradchy / 21 November 2007 / Thenmaradchy/ A father of three children from Varany in Thenmaradchy, was shot dead by unknown armed men who had come on a motorcycle. It has been reported that he had been taken for questioning the previous day by the security forces and was sent home. He was shot dead when he was passing Iyattalai after work. He was a Technical Officer in Chavakadchcheri.
4. **Palaniyandy Selvarasa** (M) - Jaffna / 32 / 24 November 2007 / Urumpirai / He, an employee of a trade centre, was bringing water to the establishment and was shot dead at 7am on November 24 in Urumpirai.

5. **Thurairajah Jeyarasa** (M) - Ananthan Vadaly Road, Ariyalai / 42 / 24 November 2007 / Jaffna / A laborer, he was shot dead by unknown persons when he was going to the cow-shed to spend the night after dinner.
6. **Kantavanam Ketheesan** (M) - Jaffna / 26 / 24 November 2007 / Jaffna / Private Security person on duty at the University branch of the People's Bank was shot dead by unknown persons when he was on duty.
7. **Jeyakumar Kesavan** (M) - Adiyapatham Road, Nallur / 25 / 25 November 2007 / Jaffna / He was shot dead by unknown armed men while he was traveling on a motorcycle from Kopay towards Jaffna at around 3:30pm.
8. **Sinniah Mahalingam** (M) - Kondavil / 53 / November 2007 / Jaffna / He was called out from his house by an unknown armed group which arrived by motorcycle at about 4:30pm, then they shot him dead and escaped.
9. **Kanthiah Koneswaran** (M) - Navaly North / 37 / November 2007 / Jaffna / A father, was shot dead by unknown persons while he was at his trading centre alone at about 11:15am.

## **Victims of disappearances**

### **Name (gender) and address of the victim/age/date of incident/district/brief detail of the case**

1. **Thanapalasingam Jenaskumar** (M) - Columbuturai / 28 October 2007 /Jaffna/ Kidnapped by an unknown person at 7:30pm on October 28.
2. **Sivaguru Panchalingam** (M) – Kuppilan, North Eralalai / 66 / 31 October 2007 / Jaffna / Kidnapped by men in a white van on October 31. He was living alone while his wife and children live abroad. Two persons arrived on a motorcycle on the morning of the 31st and called him out of the house and were chatting to him when suddenly a white van appeared, grabbed him and sped away. It is understood that he had recently returned to Sri Lanka from Switzerland.
3. **Thiyagarasa Prasanna** (M) - Jaffna / November 2007 /Jaffna/ Displaced from Chavakadcheri and living in Jaffna, was reported missing after he left for Kodikamam.
4. **Rasathurai Thileepkumar** (M) – Perumal, Kokkuvil west / 30 / 3 November 2007 / Jaffna / He was missing since October 3, he did not return home after leaving to worship at Perumal Temple.
5. **Mahalingam Mathiseelan** (M) - Eralalai East / 4 November 2007 / Jaffna/ Father of three children of Eralalai East, reported missing since October 4.
6. **Shereen Sithranjan** (F) – Unknown location /36 / 4 November / He was reported missing after he went out as usual for work on his motorcycle.
7. **Nadarajah Nithiyarajah** (M) - Thumpalai, Point Pedro /36 / 17 November 2007 / Jaffna /An electrician and father of one child, reported missing after he did not return from work that day.

8. **Vadivelu Nimalarajah** (M) – Kachcheri-Nallur Road, Nallur / 31/ 17 November 2007 / Jaffna / Reported missing as he did not reach home after leaving his workplace in the evening.

## October 2007

### Victims of extrajudicial killings

#### Name (gender) and address of the victim/age/date of incident/district/brief detail of the case

1. **Nadarasa Ravi** (M) - Velanai Jaffna/ na / 2 October 2007 / Jaffna / While he was in his house at Velanai, Jaffna, an armed group came there and called him by his name. When he came out, they shot him several times then he died.
2. **A person** (M) - Batticaloa / 41 / 2 October 2007 / Batticaloa / He was shot and killed by an unknown armed group.
3. **S. Nirmalanathan** (M) - Nallur / 24 / 3 October 2007 / Jaffna / He had a tea boutique near Nachchimar Temple, Jaffna. On that day an unknown armed group came there and shot him inside the tea boutique. He died immediately.
4. **S. Sivajikaneshan** (M) - Alvai, Vadduwaththai, Vadamaradchi / 56 / 3 October 2007 / Jaffna / An unidentified gunman entered his restaurant near Mayakkai Pillaiyar Temple, Alvai and shot him.
5. **Suntharam Jeyaraja** (M) – Kamparmalai, Valvettithurai / 34 / 4 October 2007 / Jaffna / About 3:30am, during curfew, an armed group came there in a vehicle, shot and killed him in his own house.
6. **Krishnasamy Palasupramaniyam** (M) - Pololy South, Thuraiyamunai / 50 / 4 October 2007 / Jaffna/ He was shot dead by an armed group in his own business centre at Manthikai, which is in the High Security Zone. This happened at about 8:30am.
7. **Two corpses** – Batticaloa / 4 October 2007 / Batticaloa / Two corpses were found near the Siththandy Railway Station at Eravur Batticaloa.
8. **One person** (M) - Jaffna / 4 October 2007 / Jaffna / An army intelligence group (four persons) shot and killed the man at the village of Konavil in Kokuvil at around 6pm. The body is not identified.
9. **Two corpses** / 5 October 2007 / Puttalam / Two corpses were found near the Chilaw seashore at Puttalam. They were blindfolded.
10. **One corpse** 6 October 2007 / Colombo / People found one corpse which was thrown in the river in the suburbs of Colombo.
11. **S. Mahinan** (M) - Jaffna / 60 / 7 October 2007 / Colombo / A professor of mathematics from the University of Jaffna was killed at Kollupiddy, Colombo. The body showed marks of torture.
12. **A person** (M) / 8 October 2007 / Jaffna / At about 6pm, a Military Intelligence Group coming by a motorbike shot and killed him. The body was not identified.

13. **Kathirkamar Ravichsanthiran** (M), Father of Ravichsanthiran (no. 14) – Vavuniya / 50 / 10 October 2007 / Vavuniya.
14. **Ravichsanthiran** (M), Son of Kathirkamar (no. 13) – Vavuniya / 20 / 10 October 2007 / Vavuniya  
*[A father (no. 13) and his son (no 14) were killed by an unknown gang at Kanesapuram Vavuniya within 15 minutes interval]*
15. **A youth** (M) 10 October 2007 / Colombo / While he was walking on the road in Colombo Harbour area at about 9:30am, an unknown group came by car and shot him and escaped. He was mortally wounded and immediately taken to the Colombo National Hospital, but died.
16. **A person** (M) / app. 35 / 12 October 2007 / Jaffna / At about 9:30am he was shot and killed by the Sri Lankan Army near the Jaffna Kurunagar Water Tank.
17. **A person** (M) / 58 / 12 October 2007 / Jaffna / He was murdered by an unknown armed group at Valvettithurai in Jaffna.
18. **Jeyarajah Kanthasamy** (M) - Batticaloa / 20 / 15 October 2007 / Batticaloa / He went to Santhivei, Batticaloa to meet his relations. On his way back home he was shot and killed by an unknown armed group.
19. **M. Uvais** (M) / 15 October 2007 / Batticaloa / He was running a trade center on main street of Akkaraipattu Amparai. At around 7:30pm, an armed group came by and shot him to death.
20. **Two persons** (M) – Moothur Trincomalee / na / 16 October 2007 / Trincomalee / They were shot and killed in Narayanapuram Moothur in Trincomalee.
21. **Kanapathippillai Pathmanathan** (M) – 10th Word Pungudutheevu Jaffna / 52 / 17 October 2007 / Jaffna / He had a trade center at Pungkudutheevu in Jaffna. When he was in his shop, Sri Lankan Intelligence group on three motor bikes entered the shop pretending to buy things. They unexpectedly shot him to death.
22. **A person** (M) 17 October 2007 / Trincomalee / He was shot and killed by unknown persons at Kiliveddy in Trincomalee.
23. **P. Kumarasuwamy** (M) / 57 / 18 October 2007 / Vavuniya / He, the village headman, was shot and killed by an unknown armed group at Goods Shed road, Thonikkal, Vavuniya.
24. **Jebamalai Jesuthasan** (M) / 55 / 18 October 2007 / Mannar
25. **Maximus Milaxsini** (F) / 15 / 18 October 2007 / Mannar
26. **Maximus Dilaxsan** (M) / 11 / 18 October 2007 / Mannar  
*[While three members of one family (no. 24, 25 & 26) were going to India as asylum seekers by boat at Pesalai Mannar, the Sri Lankan navy shot and killed all of them]*
27. **Sithamparam** (M) – Eravur Batticaloa / 55 / 19 October 2007 / Batticaloa / A paramilitary group shot and killed him at Eravur Batticaloa.
28. **Piratheepan Sivarasa** (M) - Veeramunai Amparai / 29 / 19 October 2007 / Amparai / He went to his friend's house in Veeramunai Amparai. On the way, he was shot and killed by gunmen on bicycles.

29. **Jeyarasa Thavaruban** (M) - Ealalai North Jaffna / 21 / 19 October 2007 / Jaffna / He was a student of Kokuvil Hindu College in Jaffna. He was shot and killed near his home Ealalai in Jaffna by the Army.
30. **A person** (M) 60 / 19 October 2007 / Amparai / He was killed and his body showed marks of torture at Karaitheevu in Amparai. He was placed in the Karaitheevu hospital for identification.
31. **Kannautham Peethamparam** (M) – Vantharumoolai Batticalao / 55 / 20 October 2007 / Batticalao / He was sleeping in his home with his three children. At about 1am an unknown armed group came and shot him to death. His wife reported the incident to the Eravur police station.
32. **Two persons** (both male) – Vantharumoolai Batticalao / 20 and 24 / 20 October 2007 / Amparai / They were shot and killed by unknown persons at Sammanthurai in Amparai.
33. **Jeevaratnam Rajan** (M) - Karaitheevu Batticalao / 26 / 21 October 2007 / Batticalao.
34. **Kanapathippillai Saththiyaseelan** (M) - Karaitheevu Batticalao / 26 / 21 October 2007  
*[Both (no. 33 and 34) were recovered in front of the Addaipalam Mariyamman Temple at Sammanthurai Amparai. The public in that area alleged that an unknown paramilitary group of the Sri Lankan Army kidnapped and killed them.]*
35. **A person** (M) - Jaffna / 74 / 21 October 2007 / Jaffna / He was shot and killed in Thenmaradchi Jaffna.
36. **Sivasupramaniyam** (M) - Kaithady Jaffna / 59 / 22 October 2007 / Jaffna / He was recovered with the wound by a knife at Kaithady area, Thenmaradsi in Jaffna. It is said that he was kidnapped by an unknown persons on previous day.
37. **Ratnasamy Premasiry** (M) - Thevanagar Trincomalee / na / 22 October 2007 / Trincomalee / When he carries fire wood on his cart, the cart went over the land mine. He died of explosion of the mine.
38. **Selvamani Krisdeen Janarthanam** (M) – Nallur Jaffna / 25 / 23 October 2007 / Jaffna / At about 9:10am an unknown group with guns shot and killed him on the side of the Kanthasamy Temple in Nallur in the Jaffna Point pedro road.
39. **Selvanathan Parimalam Ranji** (F) – Periyamadu Mannar / 20 / 25 October 2007 / Mannar
40. **The infant of no 39** / na / 25 October 2007 / Mannar
41. **Jeyapalasingam Kowsalya** (F) – Periyamadu Mannar / 10 / 25 October 2007 / Mannar
42. **Somasuntharam Jeyapalasingam** (M) - Periyamadu Mannar / 61 / 25 October 2007 / Mannar  
*[The people numbering from 39 to 42 were displaced by the military operation and were staying in the Periyamadu refugee's camp. When the Sri Lankan military base attacked a Shell Gas at Thallady in Mannar, the Shells fell on the refugee camp and killed them]*
43. **A dead body** (M) - Amparai / na / 25 October 2007 / Amparai / his body was recovered in the sea shore at Kathankudy in Amparai

44. **Palani Selvarasa** (M) / na / 25 October 2007 / Jaffna / His body was recovered with the wounds of the gun shot by the side of the Kokuvil Hindu College. His body was handed over to the Jaffna Teaching Hospital. His identity card revealed his name.
45. **Two dead bodies** (Both are Males) / na / 25 October 2007 / Jaffna / They were recovered with the sounds of gun shot at Kilaly area in Jaffna. They were handed over to the Jaffna teaching hospital
46. **Kanagarasa Partheepan** (M) - Kokkuvil East Vithanaiyar Veethy Jaffna / na / 26 October 2007 / Jaffna / He was a media personnel and shot and killed by an armed group inside the municipality boundary, near the Brown road of Jaffna.
47. **Sanmuganathan Pageerathanathan** (M) - Naranthani North Thanthonreeswarar Kovilady / 28 / 28 October 2007 / Jaffna / He was shot and killed by unknown gun men group in Naranthanai north Jaffna after getting him from his house. He was working in the Denis Land mines group.
48. **Kunaratnam Ilanko** (M) – Koththiyapulvu Batticaloa / 37 / 30 October 2007 / Batticaloa / He is a father of four children. At around 7:30pm he was abducted by Vavunatheevu police in previous day and recovered death with the wounds of the gun shot by the side of the Koththiyapulavu Kali Kovilady.

## **Victims of disappearances**

### **Name (gender) and address of the victim/age/date of incident/district/brief detail of the case**

1. **Aapathsakayam Sugan** (M) - Meesalai East Meesalai / 1 October 2007 / Jaffna / He was missing after having gone out from his home.
2. **Kanapathipillai** (M) - Tharumasanen, Navali, North Jaffna / 34 / 1 October 2007 / Jaffna / He, a father of four children, was kidnapped at about 2:40am by the paramilitary who came in a white van at Navaly North in Jaffna.
3. **Murugaiah Ashokkumar** (M) / 32 / 1 October 2007 / Trincomalee / He and his wife were on the road at Uppuveli in Trincomalee when a group of gunmen in a white van kidnapped the man.
4. **A woman** (F) - Vavunatheevu / 26 / 1 October 2007 / Batticaloa / She was kidnapped by an unknown armed group of seven persons at Vavunatheevu.
5. **A boy** (M) - Mavadivempu / 15 / 1 October 2007 / Batticaloa / He was allegedly kidnapped by members of the Karuna group.
6. **Muththuthamby** (M) - Jeyakanthan - Kondavil, North Jaffna / 31 / 2 October 2007 / Jaffna / He was taken by an unknown group.
7. **A civilian** (M) - Jaffna / 2 October 2007 / Jaffna / His disappearance was reported to the Human Rights Commission, Jaffna branch.
8. **A civilian** (M) - Savukkady, Eravur Batticaloa / 62 / 2 October 2007 / Batticaloa

9. **A civilian** (M) - Batticaloa / 2 October 2007 / Batticaloa  
[They (No. 8 and 9) were kidnapped by an unknown armed group]
10. **Poopalasingam Mahinthan** (M) - Vadaliyadaippu, Pandaththarippu, Jaffna / 25 / 3 October 2007 / Jaffna / He went missing after he visited his relatives in Jaffna.
11. **Paramasivam Nanthakumar** (M) - Ayili, Karainagar Jaffna / 26 / 3 October 2007 / Jaffna / He is mentally handicapped. He has no identity card. While he was going to Jaffna, he was stopped by the Army at Siththankerny Junction and went missing.
12. **A civilian** (M) - Valikamam, Jaffna / 26 / 3 October 2007 / Jaffna / It was reported to the Human Rights Commission's Jaffna branch that a civilian was missing in Valikamam.
13. **A civilian** (M) - Amparai / 30 / 3 October 2007 / Amparai / He was kidnapped by an unknown armed group.
14. **Vinayagamoorthy Anurajah** (M) - Arumukanavalar Veethy, Chundukkuli / 20 / 4 October 2007 / Jaffna / He was taken by an army intelligence group at 3:30am.
15. **Thadsanamorthy Ahilaraja** (M) - Thehivalai / 22 / 4 October 2007 / Colombo / He was born in Dehiwala and is working the Lanka Expo Company at Wellawatte, Colombo. On the day he went missing he was on his way back from an official visit to Pettah.
16. **Ponnaiya Thangavel** (M) - Mullaitheevu / 49 / 4 October 2007 / Colombo / He went to Colombo and was staying in a lodge at Vevekanantha Street. He was taken by unknown men and disappeared.
17. **A civilian** (M) - Trincomalee / 44 / 5 October 2007 / Trincomalee / He was kidnapped by an armed group in a white van at Puliyankulam Trincomalee.
18. **Kantharaja Sooriyaraja** (M) - Uppuveli / 25 / 6 October 2007 / Trincomalee / He was taken by an armed group in a white van. This incident was reported by his parents to the Human Rights Commission, Trincomalee branch and the Sri Lankan Police, Trincomalee.
19. **Fradman** (M) - Palaiyoottu Trincomalee / 33 / 6 October 2007 / Trincomalee / He was the father of three children, was taken away from his home by an armed group.
20. **Sinnaththurai Sriskantharasa** (M) - Karaveddy Puthu Veethy / 35 / 6 October 2007 / Jaffna / He was the father of three children. On that day he went to Jaffna on duty but did not return. This incident was reported to the Human Rights Commission, Jaffna branch.
21. **A civilian** (M) - Vellaveli / 6 October 2007 / Batticaloa / He was kidnapped by an unknown armed group at Vellaveli Batticaloa.
22. **Selvanayakam Ramesh** (M) - Karaveddy Karanavai West Anthiran / 25 / 7 October 2007 / Jaffna / The incident was reported to the Human Rights Commission, Jaffna branch.
23. **Sinnaththamby Inthirakumar** (M) - Mandan Karanavi West Karaveddy / 24 / 7 October 2007 / Jaffna / At 7:30am he disappeared in Jaffna.
24. **A civilian** (M) - Trincomalee / 7 October 2007 / Trincomalee / He was kidnapped by an unknown armed group at Vellaveli Batticaloa.

25. **Sivalingam Sunenthiran** (M) - Puthukkudiyiruppu / 33 / 8 October 2007 / Batticaloa / The father of three children, was kidnapped by a group in a white van at about 3:30pm.
26. **Sivakadadsam Kamaleswaran** (M) - Wellawatte / 29 / 9 October 2007 / Colombo / He is an auto driver from Wellawatte, Colombo. On that day he went to a video shop at Pamankadai. He did not return home.
27. **Nadaraja Santhalinkam** (M) - No 320 Manippai Veethy Five Junction / 44 / 10 October 2007 / Jaffna / The complaint was made to the Human Rights Commission, Jaffna branch.
28. **A civilian** (M) - Velvettithurai / 10 October 2007 / Jaffna / The complaint was made to the Human Rights Commission, Jaffna branch.
29. **Two brothers** (M) - Vavuniya / aged 11 and 14 / 10 October 2007 / They were kidnapped by unknown persons in the town of Vavuniya.
30. **A civilian** (M) - Batticaloa / 26 / 10 October 2007 / Batticaloa / He was kidnapped by unknown armed men from his working place in Batticaloa.
31. **Sinnaththamby Inthirakumar** (M) - Mandan Karanavai West, Karaveddy / 11 October 2007 / Jaffna/ He was kidnapped. It was reported to the Human Rights Commission Jaffna office on the following day.
32. **Suppaiya Sureshkumar** (M) - Kaithady Central, Kaithady / 12 October 2007 / Jaffna / He was kidnapped and it was reported to the Human Rights Commission, Jaffna branch.
33. **Pathmalinkam Thulashika** (F) - 3rd Part Pungudutheevu Jaffna / 21 / 14 October 2007 / Jaffna / She was a student and was studying in a Private Tuition center. She was last seen close to the Sri Lankan Navy Camp. It was reported to the Human Rights Commission, Jaffna branch.
34. **S. Vamathevan** (M) - Kallappadu Mullaitheevu / 60 / 14 October 2007 / Mullaitheevu / He went fishing from Kallappadu Mullaitheevu, but did not return.
35. **A civilian** (M) - Vantharumoolai Batticaloa / 18 / 15 October 2007 / Batticaloa / He was allegedly kidnapped from his house by members of the Karuna group.
36. **A civilian** (M) - Amparai / 37 / 15 October 2007 / Amparai / He was kidnapped from his home at Akkaraippattu in Amparai.
37. **Rasalinkam Srikanthan** (M) - Kochchikadai, Colombo / 35 / 16 October 2007 / Colombo / While he was traveling from Kochchikadai, Colombo to Wellawatte on a motorbike, he went missing. This incident was reported to the Presidential Commission on Disappearances.
38. **A woman** (F) - Thirunelveli Jaffna / 16 October 2007 / Jaffna / She was living in Vavuniya. From Vavuniya she came to Thirunelvely Jaffna and stayed for a short period. At that time a gang came in a white van and kidnapped her. She came from Vavuniya to see her daughter who was staying in a lodge at Maruthanarmadam and was studying. Before this incident the family was threatened with murder. The husband of the family went to the Human Rights Commission, Jaffna branch and asked if he could stay in the Jaffna Jail for his own safety.

39. **Sellaiya Rasalingam** (M) - Madduvil, Chavakachcheri, Jaffna / 44 / 16 October 2007 / Jaffna / It was reported to the Human Rights Commission, Jaffna branch. He went for work and did not come back home.
40. **Kanapathippillai Kanthasamy** (M) - Piranpattu, Pandaththarippu, Jaffna / 58 / 18 October 2007 / Jaffna / He was a father of four children. He went for work and disappeared. It was reported to the Human Rights Commission, Jaffna branch.
41. **A woman** (F) - Kiran Batticaloa / 24 / 18 October 2007 / Batticaloa / She was allegedly kidnapped from her home by two members of the Karuna group.
42. **A civilian** (M) - Amparai / 19 October 2007 / Amparai / This man went to the office of the Karuna group in Amparai to enquire about the whereabouts of his son-in-law who was kidnapped. Then he too disappeared.
43. **Thankavelu Kirupakaran** (M) - Varani Polykandy Jaffna / 23 / 20 October 2007 / Jaffna / While he was going along the main road in Polykandy, Jaffna unknown persons in a white van kidnapped him and left.
44. **Kanthasamy Kalairuban** (M) - Uduppiddy Jaffna / 23 / 20 October 2007 / Jaffna / It is reported that he went from Uduppiddy in Jaffna, but did not return.
45. **Piraisoody Suthakaran** (M) - Samarapagu Polykandy, Jaffna / 26 / 21 October 2007 / Jaffna / An unknown armed group went to his house and threatened the house owners, and then kidnapped him.
46. **A civilian** (M) - Savukkady Batticaloa / 18 / 21 October 2007 / Batticaloa / He was allegedly kidnapped by the Karuna group at Savukkady Batticaloa.
47. **Sanmugalingam Thaneshwary** (F) - Ariyalai Jaffna / 11 / 23 October 2007 / Jaffna / She went with her friends to see the exhibition in Ramanathan Academy in Maruthanarmadam, Jaffna, but she went missing. It was reported to the Human Rights Commission, Jaffna branch.
48. **Sinnaththurai Siththiravellutham** (M) - Iluppaikulam, Sampaltheevu, Trincomalee / 37 / 23 October 2007 / Trincomalee / Eight armed personnel came in a white van to his home and kidnapped him at Sampaltheevu in Trincomalee.
49. **Nadarasa Looganathan** (M) - Veerapperiyankulam Panankamam Mannar / 23 / 23 October 2007 / Mannar / He went to hunt at Neddankandal area in Mannar, but he did not return.
50. **Somasutharam Santhakumar** (M) - Ariyalai Jaffna / 37 / 26 October 2007 / Jaffna / He went to a shop and was reported missing.
51. **Thavarasa Thavanesan** (M) - Colombothurai Jaffna / 20 / 27 October 2007 / Jaffna / He went out from his house, but did not return. It was reported to the Human Rights Commission, Jaffna branch.
52. **Kulasingam Senthuran** (M) - Iyankerny Eravur, Batticaloa / 21 / 30 October 2007 / Batticaloa / Over 10 personnel of Karuna group came to his house and kidnapped him at around 9:30.
53. **Sivakuru Panchalingam** (M) - Kuppilan North Ealai Jaffna / 66 / 31 October 2007 / Jaffna / At around 7am, an unknown armed group in a white van came to his house and kidnapped him. His wife and children are living abroad.

# **Continuous intervention needed for Rizana Nafeek**

*Asian Human Rights Commission*

*(This is the edited text of a statement made by the Asian Human Rights Commission: AS-284-2007)*

The appeal of Rizana Nafeek continues to be heard in Saudi Arabia's Appellate Court. Rizana Nafeek, who was 17-years-old when she was accused of murdering a four-month-old baby, was sentenced to death by the Dawadami Court, despite her claim of innocence. Rizana claimed that she was an inexperienced teenager who came to work as a cleaner and doing other household chores, but was instead assigned the duty of feeding and looking after the infant, for which she had no experience or training. She claimed that while she was trying to bottle feed the infant without any assistance from any adult, the child choked which resulted in the death. There was no intentional killing and she had only been working in the household for a few days before the incident happened.

After the passing of the death sentence an appeal was filed on her behalf by the legal firm of Kateb Fahad Al-Shammari within the period of appeal and thereafter she has continued to be held in the Dawadami prison while awaiting the outcome; the appeal hearing began last Saturday (8 December 2007).

Although the appeal is being heard, there is still reason for concern as Saudi Arabian law places high value on confessions and whether the confession is obtained through duress does not become the subject matter of a separate inquiry. Under this system a confession obtained through duress is not regarded as inadmissible evidence.

Rizana Nafeek was handed over to the police immediately after the alleged incident and a confession was obtained from her by the use of torture. She later retracted this confession in court and explained the circumstances of the incident; that it was an accident rather than a crime. However, the original court sentenced her to death on the basis of the confession she made at the police station, which is given greater weight than any subsequent explanations.

There is still the possibility therefore, that this legal principle may be applied even at the appeal stage despite there being no collaborative evidence of any sort to indicate there was any intentional murder. There are many persons in Saudi Arabia who have made representations in favour of Rizana Nafeek in this case, and have stated many principles

within Shariah Law to the effect that there is good reason in the present case not to attach undue weight to the confession, but rather, that all the circumstances should be taken in their totality to address the case.

Rizana Nafeek's case drew global attention, and thousands of persons have written letters to His Majesty, King Abdullah bin Abdul Aziz Al Saud to pardon the girl. The global media has also highlighted the case consistently. Similarly, there has been great awareness in Sri Lanka regarding this case.

The Asian Human Rights Commission (AHRC) urges all concerned persons to continue to appeal on behalf of Rizana Nafeek to King Abdullah for clemency and pardon. We also urge the media and human rights community to keep up a continuous vigil on this case; it was the support of numerous persons that made it possible for the AHRC to assist in financing the appeal on her behalf to higher courts in Saudi Arabia.

The continuous appeal to King Abdullah is necessary despite the legal efforts, as he has the authority to pardon her.

(For reference to our earlier appeals please see: <http://www.ahrchk.net/ua/mainfile.php/2007/2463/>)

## **Pictures for reflection: Pakistan**

### **Torture of lawyers**

Mr Munir Malik (far left in photo), former President of the Supreme Court Bar Association and one of the lawyers defending suspended Chief Justice Iftekhar Choudhry, is at present seriously ill at an Islamabad hospital. He was reportedly poisoned and beaten while in detention from 3-22 November 2007. His kidneys have failed, and according to his family, doctors have suggested that he be taken abroad for treatment. Security officers stationed at the hospital however, claim that Malik is still under detention.



Malik was first arrested on 3 November 2007, during protests at the imposition of emergency rule in the country, together with many thousands of lawyers and judges, some of whom were subsequently beaten and tortured in custody. More than 70 judges of Pakistan's higher judiciary—including the Chief Justice and other judges of the Supreme Court—were kept under house arrest. Their houses were cordoned off by heavy contingencies of armed policemen and military personnel; houses were bugged and their families were denied access to essential medicines. Videos of the private lives of some judges had shamelessly been produced and used to bribe them into taking an oath on the provisional constitutional order of President Musharraf.

After his arrest Malik was taken to the Adiala Jail in Rawalpindi, where he was severely beaten, and two days later was shifted to the Attock Jail in the north western frontier province, infamous for its torture of detainees.

Malik had been detained incommunicado for a week while being held at the Attock Jail. His cell measured four feet in width, and five feet in height, making it nearly impossible for him to move comfortably. He was briefly allowed out once a day. During the day his detention cell was completely dark, while a powerful light bulb was switched on at night, making it extremely difficult for him to sleep. He was not allowed any visitors to ascertain his condition after arrest, including his family.

In fact, the superintendent of the Attock jail told Malik that he was the first victim of Chief Justice Choudhry, and that revenge would be taken against all those who had worked to restore the ousted Chief Justice.

Only after Malik's urine started to emit traces of blood was he taken to a government hospital for treatment. Despite having not recovered fully, he was again taken back to the Attock Jail after a few days in hospital.

On November 22, Malik was taken to the PIMS hospital (Pakistan Institute of Science Management) in Islamabad, but his condition has since worsened. This time, he was admitted to the hospital's Intensive Care Institute (ICU) after the physicians examining him discovered the severity of his condition; both his kidneys and liver are no longer functioning properly, requiring him to undergo dialysis.

When Malik regained consciousness he told his physicians that after he was taken back to prison from the hospital earlier, the jail authorities had forced him to drink some liquid—he was told it was juice. Malik suspected that his food and drink may have been poisoned. He had also been deprived of regular medication. His condition continues to deteriorate. While government officials have claimed that Malik has been released from detention following pressure by the legal community, security forces attached to the government's anti-terrorist squad have not been removed from the hospital.

The Asian Human Rights Commission (AHRC) issued a statement on November 20 with the names of over 500 lawyers and judges who have been detained, tortured or put under house arrest following the imposition of the state of emergency. The strength and commitment of these persons was already noted during the heroic protests against the illegal suspension of the Chief Justice. At that time the lawyers publicly announced that they would not bow down to the 'intimidating tactics of the government' and were ready to sacrifice their lives for the independence of the judiciary. This action indicated the high level of discontent in the country, especially within the legal community. It also highlighted the courage of the legal professionals in Pakistan, who risked everything to defend the integrity of their institutions and professional credibility, in the interests of the entire public. They earned their victory when the Supreme Court ruled that the suspension of the Chief Justice by the president was illegal.

The struggle of the people in Pakistan continues today, to ensure that genuine democracy and rule of law is established in their country. This struggle is manifest in the individual incidents of courage and commitment undertaken by persons such as Iftekhar Choudhry, Munir Malik and their fellow lawyers, judges and citizens.

# **Pictures for reflection: India**

## **Child starvation**

One in every third malnourished child lives in India. Three-year-old Mukesh is one such child; he suffers from Grade IV Malnutrition, weighing only 5.5 kilograms. Mukesh's father, Mr Ram Lagan, belongs to the Chamar community of Bhaisa village, Jaunpur, Uttar Pradesh.



While Mukesh was at the Pandit Din Dayal Upadhaya Hospital—where he was admitted on 13 November 2007—his case came to the attention of local human rights activists. The appalling conditions of Ram Lagan's family have made it nearly impossible for him to take care of his son; he already sold his three-wheeler cycle to pay for Mukesh's earlier treatment. The People's Vigilance Committee on Human Rights, (PVCHR) took over his care, but there were concerns that without specialist medical assistance, Mukesh was likely to die soon.

After this information was publicized through the Asian Human Rights Commission's (AHRC) Urgent Appeals system, Dr Lenin of the PVCHR was contacted from the office of Mr Rahul Gandhi, son of Mrs Sonia Gandhi, enquiring how Mr Gandhi could help the child and his family. Dr Lenin expressed that Mukesh urgently required specialist medical treatment, while long term support was also needed for Mukesh's family and other families within the Dalit community facing similar situations.

Accordingly, Mr Gandhi made arrangements for Mukesh to be examined by a child care specialist, for his opinion whether Mukesh could be shifted to a hospital in New Delhi for treatment. The specialist confirmed that it is safe for Mukesh to travel to Delhi, where he is to be admitted at the All India Institute of Medical Sciences, which is among the most advanced medical facilities in the country and in Asia.

Such action by Mr Gandhi, as well as by the local human rights activists, is to be credited. By providing assistance to Mukesh, they have protected his right to food and right to life, which are in fact responsibilities of the state. It is appalling therefore, that the PVCHR and Dr Lenin are being threatened for their work in reporting cases of hunger and starvation. (For more information please see AHRC UA-335-2007.)

### **State responsibility**

Mukesh's family is entitled to 35 kilograms of rations from the local Public Distribution System shop under one of India's numerous welfare assistance schemes, the Antodaya Anya Yojana. Not only is the distribution of rations irregular however, but the rations also do not provide adequate nutrition, especially for infants.

India also has government run centres—Anganwadis—where nutritious food and primary medical care is expected to be provided to the poor children. It is also a place where the staffs are expected to keep records of the general health conditions of rural children who visit the Anganwadi. These records are vital because they are also used by the state governments to take policy decisions regarding medical care for rural children. Like many children however, Mukesh was not registered at the Anganwadi centre in his village.

The Anganwadi staff are trained in adopting World Health Organization protocols. These include the continuous mapping of severely malnourished children in villages, the regular weighing of children with the involvement of mothers, referral services and home visits by Anganwadi helpers. In particular, children with Grade III and IV malnutrition are to be monitored for signs and symptoms of infections and referred to relevant health centers for treatment. The staff of the Anganwadi in Bhaisa village are terribly negligent however, resulting in numerous incidents of starvation deaths. Moreover, such negligence is not limited to Bhaisa. Neglect of duty and lack of proper accountability of primary health care staff is in fact common throughout India. The AHRC in the past has reported several cases where poor children from rural backgrounds have lost their life due to such neglect. See <http://www.foodjustice.net/> for details.

# 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 bimonthly 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 bi-monthly 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: [www.ahrchk.net](http://www.ahrchk.net)