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article 2

2(3). Each State Party to the present Covenant undertakes:

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

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

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

of the International Covenant on Civil and Political Rights

A sister publication of Human Rights SOLIDARITY

About *article 2*

article 2 aims at the practical implementation of human rights. In this it recalls article 2 of the International Covenant on Civil and Political Rights (ICCPR), which reads,

> 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
>
> 3. Each State Party to the present Covenant undertakes:
>
> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
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> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> (c) To ensure that the competent authorities shall enforce such remedies when granted.

This is a neglected but integral article of the ICCPR. If a state signs up to an international treaty on human rights, it must implement those rights and ensure adequate remedies for persons whose rights have been violated. Mere talk of rights and formal ratification of international agreements has no meaning. Rights are given meaning when they are implemented locally.

Human rights are implemented via institutions of justice: the police, prosecutors and judiciary. If these are not functioning according to the rule of law, human rights cannot be realized. In most Asian countries, these institutions suffer from grave defects. These defects need to be studied carefully, as a means towards strategies for change.

Some persons may misunderstand this as legalism. Those from countries with developed democracies and functioning legal systems especially may be unable to grasp what it means to live in a society where 'institutions of justice' are in fact instruments to deny justice. As persons from such countries guide the global human rights movement, vital problems outside their experience do not receive necessary attention. For people in many countries, international human rights discourse then loses relevance.

After many years of work, the Asian Legal Resource Centre began publishing *article 2* to draw attention to this vital provision in international law, and to raise awareness of the need to implement human rights standards and provide effective remedies at the local level in Asia. Relevant submissions by interested persons and organisations are welcome.

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Waiting for answers in Thailand

Editorial board, *article 2*

Scant respect for the physical integrity of human beings remains one of the major obstacles to the realisation of human rights in Asia. This is manifest by the routine torture, extrajudicial killings and disappearances that take place after arrest in countries throughout the region. However, the recent death of a large number of persons already under army custody in Thailand is a marked example of how these practices persist, and also of the bewildering official explanations that typically follow such events.

What went wrong?

At least 85 persons are known to have died after army and police violently broke up protesters outside a police station in Tak Bai, Narathiwat province, near the border with Malaysia, on October 25. Six were killed outside the police station, 78 while being transported in army trucks after arrest under martial law provisions; one died in hospital of injuries sustained outside the police station. There are reports that another three bodies were fished from a nearby river.

The crowd had assembled to demand the release of six persons detained for almost two weeks on relatively minor weapons charges; all of them bailable. Since the tragedy, the six men have in fact been freed. However, their detention came at a point of intense friction in the far south of Thailand, caused by heavy-handed police and military actions in the border provinces. The protest occurred during a time when hundreds of southerners have been killed and disappeared, and an unknown number tortured in police and army custody. The gathered crowd, therefore, had genuine cause for concern over the wellbeing of the men being kept in the police station.

Although the security forces had stated that they had fired over the heads of the protesters, at least nine persons in hospital are reported to have had gunshot wounds. Government officials had also initially stated that protesters had been under the influence of unknown drugs; however, medical examinations found no evidence to support this allegation.

The 78 protesters who died in custody were among over 1300 persons arrested out of a crowd of an estimated 3000. They were loaded into army trucks like logs, and most are reported to have died from suffocation and the effects of tear gas, although witnesses have claimed that many were severely beaten before being loaded into the trucks. The army has said that there were not enough vehicles to transfer the detainees to a distant army camp, and therefore they were loaded in this manner.

"At every point in the events of October 25, somebody made decisions, and somebody is responsible for those decisions"

This explanation is as shocking as the incident itself. If animals were transported in this way, it would be regarded as cruelty to animals. However, it does not seem to have been of any concern to those responsible to treat humans in this manner. Even up to now, those responsible for this action have not been arrested, and it seems very unlikely that anyone will be brought before courts on serious charges of mass murder.

At every point in the events of October 25, somebody made decisions, and somebody is responsible for those decisions. To arrest a very large number of people, in this case around 1300, a decision had to be made. And because of the large number, there had to have been some discussion, which should have led to the question, "Where are we going to keep the detainees?" In order to arrest people there must first be a place to keep them. The arresting officers have an obligation to establish the place and means of detention. This is a very important element in this case; if it was not discussed and planned in advance, there is something radically wrong and someone must be held responsible.

Even supposing that the army arrested the protestors first and only then realised they had such a large number of people, the next obvious question would have been, "What are we going to do now?" At that stage alternatives should have been considered. Maybe it would have been prudent to take the details of most of the detained persons and release them pending further inquiries, holding only those who were suspected of criminal wrongdoing. That decision could have been made, thereby saving a great deal of anguish and lives lost. Who made the decision that led to the fatal outcome?

That most of the people fortunate to survive were subsequently released without any further consequences speaks to the fact that they could have been freed in the first instance. The responsibility for the decision to keep or release those arrested must have lain with the field commanders in consultation with their superiors. If these officers did not consider the alternatives to simply arresting everyone and trying to figure out what to do with them later, it must raise even more serious questions over the management of the entire operation.

PHOTO: DAILY NEWS

The shortage of vehicles is also a key element in the case. The arresting officers would have known that the persons being arrested would have to be sent to detention, and therefore vehicles would be necessary to transport them. This matter should have

been considered in detail already, but under any circumstances, the military can hire nearby private vehicles at short notice, and under martial law they can even take them. For the army to find transportation for 1300 people is not a big deal, and it was the duty of the officers in charge to have secured the necessary vehicles by the time they made the arrests. Clearly no such measures were taken before the arrest. What is the excuse for this? Can it be accepted that the military, acting on behalf of the government, did not think of it? The explanation given so far that the whole thing was an accident caused by an oversight regarding the number of trucks available, defies public belief. It is hard to accept that the military chain of command was so ineffectual that even the most rudimentary thinking about moving the detainees from place to place was absent.

"It is hard to accept that the military chain of command was so ineffectual that even the most rudimentary thinking about moving detainees from place to place was absent"

Who decided to pack the detainees one on top of the other? Was it a decision made by one person on the scene, or by an operations command? Who has the authority to give such an order? Did not the drivers of the trucks even point out that the people could not live long in that condition? Did the soldiers at that stage still not consider the natural consequences of their actions? Or did they act as they did with the anticipated outcome of mass deaths? Indeed, some survivors reported that the soldiers stomped on them and told them to 'go to hell' when they cried out in the crush. Finally, why was it that the journey to the camp took many hours longer than it should have? Where were the trucks all that time? There must be rational answers to these questions: ordinarily, these are to be found in routine internal records. Do such records exist, and what can they tell of what happened?

All of these questions point to very serious failures for which people must be held criminally liable. If the arrests were not thought out properly beforehand and only after the persons were arrested was there the realisation that the situation was larger than anticipated, emergency steps should have been taken to avoid causing harm to the detainees. Again, the conclusion must be that decisions had to have been made that led to these deaths, and therefore that somebody is criminally responsible.

Why no answers yet?

Normally after a military operation like this it is the role of military intelligence and other internal agencies to examine the matter immediately, establish the facts clearly, and then make reports to the supreme military command and prime minister. However, nothing has been told to the public yet. So to whom can the public turn to in the hunt for answers?

After a state signs the International Covenant on Civil and Political Rights (ICCPR), it is expected under article 2 to have the means to investigate human rights violations. This means having an agency or agencies take down complaints quickly and thoroughly, investigate and collect evidence, hold the perpetrators liable and offer redress to the victims.

Does such an agency exist in Thailand? This question is increasingly relevant not only because of this latest mass killing in the south—the second this year—but also since the extrajudicial killings of thousands of alleged drug traffickers in 2003. It is the first and most important question for anyone interested in securing the rights guaranteed under the ICCPR in Thailand, keeping in mind that Thailand has ratified the Covenant and recently submitted its first report to the Human Rights Committee.

"An investigation by a human rights commission or equivalent is no substitute for criminal investigations"

At this stage the National Human Rights Commission (NHRC) must be excluded from consideration. The NHRC is not the kind of body envisaged to secure these rights by the ICCPR. It is only a subsidiary body; it does not have the legal power required to enforce these rights. In fact, in some countries in Asia, a human rights commission is used as a proxy instead of a judicial inquiry to quieten critics and allow the perpetrators to escape judicial actions. An investigation by a human rights commission or equivalent is no substitute for criminal investigations, which is what is anticipated by the ICCPR. This means having a body inside the government overlooking other authorities, with powers to act legally against perpetrators.

Both local and international laws have obligations pertaining to the minimum standards of treatment of detainees. In particular, article 26 of the 1997 Constitution of Thailand states that, "In exercising powers of all State authorities, regard shall be had to human dignity, rights and liberties in accordance with the provisions of this Constitution." Minimum standards of treatment for detainees are laid out in articles 7, 9 & 10 of the ICCPR. There must be an investigating authority to ask these questions, and by now there should have been some answers. If they are not forthcoming, it is partly because the questions that need to be asked are not being asked.

One of the most serious questions to be asked is what are the duties of the public prosecutor under the law of Thailand in this instance? Section 148 of the Criminal Procedure Code of Thailand stipulates that when a government agent causes the death of a person, the rights of the victim are upheld by way of a post mortem autopsy and investigation into the cause of death. Under section 150, three agencies are involved: the forensic doctor, police, and public prosecutor. With the autopsy completed and report submitted, it is then the job of the public prosecutor to approach the court in order that it carry out an inquest and rule on the cause and surroundings of the death, with a view to entering into criminal proceedings if necessary. This process, from inquiring doctor to public prosecutor to the court, should under no circumstances be delayed, such as by reason of a politically appointed inquiry also being under way. It is the role of the public prosecutor to investigate and prosecute all crimes, including those committed by government officers, without regard to other factors. There is no substitute for this role.

PHOTO: MANAGER

> **"It is the constitutional requirement of a public prosecutor to pursue investigations, obtain compliance of necessary agencies, and take the matter into the courts"**

After October 25, what has happened? Four doctors from the Forensic Science Institute conducted partial examinations of the 78 victims removed from army trucks, and took samples for further testing. Their role was critical in exposing the scale of the tragedy at a time that the military might have preferred to conceal it. However, full autopsies were not conducted, nor were officials from the police or public prosecutor reported to be present. Questions then arise as to the consequences of this investigation, and its significance for the role of the public prosecutor.

A commonly held excuse by public prosecutors in many countries in Asia is that where autopsies are botched or police investigations inadequate, they are unable to proceed with the case due to procedural failings or lack of evidence, thereby permitting the perpetrator to escape criminal liability. But this is no excuse. It is the constitutional requirement of a public prosecutor to pursue investigations, obtain the compliance of other necessary agencies, and take the matter into the courts. Failure to do this amounts to failure to do the job altogether. Why have a public prosecutor who does not prosecute?

So what is the public prosecutor doing in this case? Has an investigation been opened? Have the reports been sought from the forensic doctors? If there is confusion about the procedure relating to the autopsies, have steps been taken to deal with this as quickly and expediently as possible? In short, are the necessary questions being asked to bring criminal proceedings against those persons responsible for the deaths of October 25? It is the job of the public prosecutor to address these questions and to take a leading role in the business of obtaining answers without further delay.

What comes next?

As the victims of the killings all belong to a religious minority, being Muslims, and predominantly ethnic Malay, this latest misadventure by the army is bound to have tremendously negative long-term consequences, as amply demonstrated by other similar events in Asia. Close studies of violence perpetrated on individuals by state agencies in Asia have demonstrated that it is both unnecessary and counterproductive. Armed groups with political objectives grow directly from fears created among those who would have otherwise engaged in peaceful democratic politics. They are the products of misused political power, which acts violently and therefore demands violence in response. Torture, extrajudicial killings, disappearances and other gross violations of human rights give rise to similar reactions, from which springs the bloodshed that causes social instability, and sometimes leads to permanent social divisions.

The enormous cruelty that may stem from this incident would be hard for most people in Thailand to imagine, as indeed it was for people in Sri Lanka before events of the 1980s there turned the country upside down. What has today become known as an 'ethnic' conflict there can be traced to the growth and

consolidation of a separatist movement due to a series of tragic mistakes by the military not unlike what has recently occurred in the south of Thailand. These killings caused moderates to lose leadership, and allow more militant leaders to take over. The general public lost morale, and withdrew from active attempts to stop the society from slipping into insanity. Normal controls were lost, and finally a primitive condition of justifying killings as the best defence became the order of the day. Once the violence passed a certain point, there was hardly anything that anyone could do to stop it. The abyss widened and swallowed up everybody with it. It would be advisable for the people of Thailand to pause and take a good look at what happened in Sri Lanka before proceeding with any further poorly considered actions.

"After such a colossal event, purely artificial gestures at reconciliation will compound the calamity"

After the earlier massacre at the Krue Se Mosque in April, it was already obvious that the events of that day would have a long-lasting impression on all the citizens and law enforcement agencies of Thailand. Whether this impression would be that large-scale killings could be tolerated, or the contrary, depended very much on how the matter was handled. Unfortunately, rather than treating a detailed report by a fact-finding commission into that event with the respect and weight it deserved, the administration brushed it aside with casual remarks about compensation and letting bygones be bygones. It ignored calls for independent judicial inquiries into the killings, and dealt with matters through internal procedures. The consequences of that inadequate response have now been realised at Tak Bai. The lack of resolute action taken to deal with those responsible for the atrocities committed earlier has left the door wide open to further gross violations of human rights.

The same cannot afford to be done today. It would be very foolish for anyone to understate, let alone try to justify, what happened on October 25. The enlightened among Thai society, the families of the victims, and anyone who cares strongly for the future of human rights in Thailand must now resist all attempts to cover up what has happened. Failure to do otherwise will mean that any remaining threads of faith that the minority in the south may still have in the majority of the country will be severed completely. After such a colossal event, purely artificial gestures at reconciliation will compound the calamity. At such times, the only way forward is to face the truth, feel genuine remorse, and make the necessary changes in the military and civilian institutions to prevent its recurrence and punish those responsible.

PHOTO: MANAGER

Appendix: Letter by the Asian Legal Resource Centre to the UN High Commissioner for Human Rights

28 October 2004

Ms Louise Arbour
High Commissioner for Human Rights
OHCHR-UNOG
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1211 Geneva 10
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Pages: 10

Dear Ms Arbour

RE: CALL FOR IMMEDIATE INTERNATIONAL INTERVENTION TO ADDRESS CRISIS SITUATION IN NARATHIWAT PROVINCE, THAILAND

You will no doubt have heard of the tragic incident in Narathiwat province, southern Thailand, of this October 25, in which at least 85 persons are now known to have died, 78 of them inside army vehicles, six outside a police station, and one at hospital. Another 16 persons in hospital are believed to be in critical condition. Please find attached a list of the names of victims that have been made public.

According to the Royal Thai Army, 1292 persons at this time remain in detention at an army camp in a neighbouring province, without access to visitors. Their names have not yet been made available. However, outside sources have to date been able to compile a list of 224 names from victims' families, which we also attach.

Additionally, there are differing accounts of numbers of disappeared persons. The names of those attached are from a list compiled by the Royal Thai Army. The circumstances of their disappearances and how the list has been compiled are not yet known.

The tragedy occurred after a protest had assembled to demand the release of six persons who had been detained for almost two weeks on weapons charges, at a time that hundreds of persons in the south of Thailand have been killed and disappeared. An unknown number have been tortured. The Asian Legal Resource Centre (ALRC), an organisation with General Consultative Status at ECOSOC, and its sister organisation the Asian Human Rights Commission (AHRC) have already raised deep concern over the case of five men who were seriously tortured by the police in the same province earlier this year. Four of them are still in detention, and their lawyer, Mr Somchai Neelaphaijit, has been

forcibly disappeared. Five police have been charged in connection with his disappearance; all have been released on bail. No action has been taken against the police accused of torture.

The ALRC is troubled by how it is possible that so many persons could have died from suffocation in army vehicles. There are now deep contradictions emerging from various accounts. According to Dr Pornthip Rojanasunand, deputy director of the Forensic Science Institute, most of the 78 persons who died were packed into the front of army trucks and had no serious injuries. However, a government spokesperson said that some in the trucks had died of injuries sustained outside the police station. Dr Pornthip also suggested that all of the victims had died at around midnight on Monday. This corresponds to the time that the army says the victims were in transit to the camp in the neighbouring province, 120kms away. How could all have died around the same time in the course of such a long journey, in more than one vehicle? And how is it that they would have not sustained injuries while convulsing or suffocating, and that the drivers of the trucks and other security personnel would have not heard anything, let alone done something about it? Why is it that the journey is reported to have taken some six hours? According to media reports, Dr Pornthip has not ruled out the possibility that the victims were deliberately suffocated, although this has not been confirmed due to limitations in conducting of autopsies. Meanwhile, senators, senior community members in the south, and victims' families have all cast serious doubts on the explanations being offered.

It should be added that earlier statements by Thai government officials that troops had not shot at protesters, and that protesters had been under the influence of drugs, are now being proven unfounded. At least nine of the 33 persons in hospital are reported to have gunshot wounds. Medical examinations of the six persons killed at the site of the protest are also understood to have failed to uncover any evidence of drug usage.

The whole event throws into relief Thailand's obligations to its citizens both under its own constitution and under international law. Without regard to other factors, once the victims were in custody of the Royal Thai Army, its personnel had a duty of responsibility and care for them. The custodial deaths of such a large number of persons raise serious questions about the failure of the security personnel concerned to exercise those obligations.

The ALRC notes with regret that Thailand has not signed or ratified the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, although it has indicated for some time that it will do so. However, the ALRC avers that the deaths of the 78 persons in the trucks fall under the definition of cruel and inhuman treatment under that Convention. The ALRC also asserts that the actions of the Government of Thailand in this instance have violated its obligations under the International Covenant on Civil and

Political Rights, by exceeding its provisions beyond "the extent strictly required by the exigencies of the situation", as provided in article 4.

The ALRC is also worried for the very large number of persons still in custody. No reasons have been given by the Royal Thai Army as to why they are being detained up to this time, other than that they are being held for questioning. Given the number of persons involved and the very deep public concern arising from this incident, the ALRC opines that the Government of Thailand must do more to provide answers and give access to these detainees, or release them. Failure to do so will only create many more questions about why these persons are still in detention, what they may have witnessed, and what the military is trying to achieve by prolonging the crisis in this manner.

The Prime Minister, Dr Thaksin Shinawatra, has now indicated that an inquiry will be established to probe the events in Narathiwat. However, early indications suggest that a committee may be hastily established under the control of regional administrative officials with instructions to dispose of the matter as quickly as possible. This would be a far cry from the full independent judicial and legislative inquiries at the highest levels that are now absolutely essential.

The ALRC believes that given the scale and nature of the killings, the Government of Thailand must be prepared to admit a role for international bodies in uncovering the truth and finding a way forward. Accordingly, it is today calling upon all relevant mechanisms under the mandate of the High Commissioner for Human Rights to approach the Government of Thailand to this end. The chairperson of the National Human Rights Commission has indicated publicly that he believes there should be international involvement in inquiries.

In particular, given the gravity of the event, the ALRC urges you in your capacity as High Commissioner to engage the Government of Thailand immediately and unequivocally regarding the recent events in Narathiwat province as a matter of extreme concern. The Asian Legal Resource Centre and Asian Human Rights Commission strongly believe that the prevailing circumstances in Thailand warrant your direct and personal involvement. It is to be hoped that quick intervention on a large scale by international agencies, notably the Commission for Human Rights, will create strong awareness within the Government of Thailand of the extremely serious attention being paid to its handling of the outcome of this tragedy from abroad.

Yours sincerely

Basil Fernando
Executive Director

Inaccessible justice in Pakistan

Ali Saleem, Project Coordinator,
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Access to justice has emerged as a top priority and main area of international funding in Pakistan in recent years. Although such campaigns have been promoted and generated great publicity for the current government, they have failed to achieve their goal of bringing justice to the poor of Pakistan.

After the military government assumed power in October 1999, one of its main early initiatives was to devolve power to the local level. The assumption was that accountability at that level would improve service delivery, including that of law and order, and dispensation of justice. Although there have been rampant claims of success from the government and its sponsor the Asian Development Bank, real access to justice remains a far-fetched dream for ordinary citizens.

In a 2001 overview, Dr Shoaib Suddle, Inspector General of Police in the province of Baluchistan, highlighted the constraints in policing in Pakistan as follows:

1. An outdated legal and institutional framework;
2. Arbitrary and whimsical (mis-)management of the police by the executive authorities of the state at all levels: i.e., police officers are increasingly recruited, trained, promoted and posted without regard to merit and mainly in recognition of their subservience to people with influence and power;
3. Inadequate accountability;
4. A poor system of incentives;
5. Widespread corruption; and,
6. A severe lack of resources.

In light of Dr Suddle's conclusions, the government set about reforming the policing system by way of its Police Order 2002. However, although the order was introduced on the pretext of making reforms, in preparing it the state once again failed to provide a framework through which issues relating to public accountability, institutional depoliticisation, and people-friendly

policing could be raised. Feudal lords and their cronies continue to manage police affairs and have ultimate responsibility over which officer is good for their area and which is not. Hence, they control the efficiency and operations of the police force. Ironically, in the name of reforms, the government has handed still more power to local politicians and feudal lords, the very persons responsible for causing gross injustices in the first place.

"Ironically, in the name of reforms, the government has handed still more power to local politicians and feudal lords, the very persons responsible for causing gross injustices in the first place"

A May 2003 study sponsored by the United Nations Development Program (UNDP) has suggested that ordinary people in rural areas know very little of the institutional changes that are already being trumpeted as successful from offices in the capital, Islamabad. The survey was designed to assess progress in obtaining access to justice for ordinary citizens, and the role of police in the community after the introduction of Police Order 2002. The findings, under the title *A benchmark study on law-and-order and the dispensation of justice in the context of power devolution* found that:

> Fifty-six respondents had approached the police, and of these, 54 percent thought it was difficult to file an FIR (First Information Report) that is necessary for a case to be investigated. The bulk of those who thought it was difficult said this was the case because the police required a bribe to file the FIR and, as poor people, they had difficulty in coming up with the requisite funds. Moreover, they thought the police generally catered to the rich and influential. Eighty-four respondents said that they had made up to an average of 19 visits (with the maximum in the range cited as 300). Given that the average distance of the police station from where they lived was nine miles, this represented a high time cost. Other expenses, including fee, documents, transportation, and particularly bribes, were also high. Sixty-four respondents claimed to have spent an average of Rs, 95,000 and another 10 claimed to have spent an average of over Rs. 40,000, significant amounts for poor households. Even so, two-thirds said they would go back to the police and 86 percent said this was because they had no other real choice. Only 4 out of 56 who responded to this question said they would go back to the police because they considered the police fair. Only ten respondents mentioned having gone to the local bureaucracy such as the assistant commissioner (5) or the deputy commissioner (1).

So it is obvious that to obtain even a modicum of justice continues to be an expensive affair in Pakistan, and one vulnerable to the whims of the political elite at all levels. But the above findings also speak to the impracticality of expecting to improve the dispensation of justice via devolution without addressing the power structures that impede fair delivery of these services. Apparently, while it was undertaking research with a view to reforms, the National Reconstruction Bureau was very impressed by the accountability and behaviour of Japanese policing. Perhaps it was felt that institutional reorganisation along the lines of Japan would bring a similar desirable state of affairs to Pakistan. What this approach failed to consider is that a system like that in Japan functions because the public is directly involved in police affairs, and have a sense of ownership of the system. That means taking the management of police out of the hands

of politicians, and establishing the means for public accountability of the institutions, rather than political accountability.

Sadly, Pakistan seems a long way from such a day: even many legal minds in the country favour the use of feudal methods to resolve disputes, despairing that the judicial system and the courts are not up to the task. It is even openly admitted and used as an argument in the courts that it is the usual practice for feudal lords to put pressure upon the parties in a criminal case to surrender to them and reach a negotiated settlement in order to avoid criminal punishment.

"It must be recognised that no serious reforms can be undertaken without challenging the impunity of state officials"

What are some of the things that need to be done?

First, the devolution of power needs to be properly thought through and studied with a view to keeping it properly documented and out of the hands of the feudal and political ruling classes. This is something that international donors must consider with far more seriousness than at present.

Secondly, the government should establish an independent police reforms commission or equivalent to ensure the depoliticising of policing.

Thirdly, as a matter of principle the government must ensure that civilians are given oversight of police work, which is a basic requirement for good governance. This does not mean choosing select civilians to run institutions, but rather, it means involving ordinary citizens in the running of their institutions at national and provincial levels.

Fourthly, the Asian Development Bank and other concerned international agencies must take greater responsibility in encouraging the government to ensure that law and order and policing is considered a central part of social policy in both the long and short term. This would entail bringing all concerned parties to the table, including opening up the discussion to public debate and criticism in a way that has not happened to date.

Fifthly, it must be recognised that no serious reforms can be undertaken without challenging the impunity of state officials. As no independent body yet exists to monitor the police and hold them accountable for their actions, one must be established, and made accessible to the ordinary citizens. Above all, this agency must be absolutely free from the influence and control of politicians and feudal lords. Special measures will need to be considered to ensure that people in rural areas are given opportunities to make complaints.

Sixthly, judicial corruption must also be addressed. One of the reasons for the strong reliance on alternative means to obtain justice is that the courts are widely seen as corrupt and ineffective. For a change in this situation, due recognition must be paid to the dismal state of affairs in the courts themselves.

> **"The shame of the recent reforms is that rather than sending the right message to the people of Pakistan, they have sent altogether the wrong one"**

To the ordinary person in Pakistan, what matters most is that should he require a response from the police he can get it without having to ask his local member of parliament or feudal lord. He also wants that should police officers commit a crime or abuse against him, he or his relatives can seek redress without fear that political heavyweights will get involved. And he requires that if he ends up in police custody, he will be treated as innocent until proven guilty and not summarily killed because a local feudal lord wants it to be so. The ordinary citizen wants that should she enter a police station, she will not be intimidated, tortured, and kept in arbitrary custody. As a woman, she wants special provisions to protect her from harassment. Minorities are also particularly concerned that they will not become the easy targets of fabricated and falsified cases to boost records of police efficiency. These are the concerns of most people in Pakistan, which persist despite the grand blueprints for change drawn up by government bureaucrats and their international partners.

The shame of the recent reforms is that rather than sending the right message to the people of Pakistan, they have sent altogether the wrong one. The changes are incomplete and inadequate, and reinforce popular perceptions that politicisation, corruption, mismanagement and impunity are here to stay. People understand only that their lives are subject to the whims of elite groups and feudal lords and that in fact the power those persons hold is growing. Under these circumstances, it can be said that the Pakistani criminal justice system is no longer serving any purpose. Whereas the aim of punishment under the rule of law is to reform criminals and deter them from further acts, the same cannot be said of the 'punishments' awarded by the authorities in Pakistan today, which are intended only to protect criminals and permit more abuse.

An exceptional collapse of the rule of law

The Asian Legal Resource Centre (ALRC) has released a new book, *An exceptional collapse of the rule of law: Told through stories by families of the disappeared in Sri Lanka.*

The 202-page book details the ordeal of parents, spouses and others who witnessed forced disappearance of their relatives among the roughly 30,000 people forcibly disappeared in 1988–92 at the hands of state agents.

"By telling their stories, these families are breaking the silence about the most fundamental aspects of Sri Lankan society," says Basil Fernando, executive director of the ALRC.

Copies of the book can be obtained by writing to the ALRC, at books@ahrchk.net, or the postal address. Further details are available online, at http://www.ahrchk.net/pub.

Effects of Pakistan's Legal Framework Order on the judiciary

Naeem Shakir, Advocate,
Lahore High Court, Pakistan

The Legal Framework Order, or LFO as it is commonly known, has been under fire inside and outside Pakistan for the changes it brought in 2002 to the 1973 Constitution, although it was just the latest in a seemingly endless series of challenges and changes to the constitution. In fact, the present military ruler General Pervez Musharraf took powers in 1999 from an elected government that alone had effected 29 constitutional amendments. However, the LFO gained notoriety because of how it institutionalised the role of the military in national politics and administration, in order that one person might be the chief executive and president at the same time.

A short history in constitutional game-playing

The judiciary in Pakistan has been backing down from the political players over the constitution since even earlier than its inception. Before the first Constituent Assembly established under the Independence Act of 1947 could deliver a constitution it was dissolved in 1954 by the Governor General; the act was challenged, and the Sindh Chief Court held that it was unlawful, but the decision was reversed in the Federal Court. The Constituent Assembly was re-established in 1955 and brought the first constitution into effect in 1956. However, by 1958 a declaration of martial law was already undermining the status of the constitution. When the matter came to the Supreme Court, it again gave the military the green light, by stating that the effect of martial law was to overrule the constitution and existing legal order. The new president, General Muhammad Ayub Khan, was free to take complete control and finally introduce a new constitution in 1962.

In 1965 the second constitution was also abrogated by the new military ruler, General Yayha Khan, who in his Provincial Constitutional Order of 1969 also took away the jurisdiction of

the superior courts and installed himself as president. He introduced the first Legal Framework Order, under which general elections were held in 1970. When the matter of martial law, the LFO and other actions by the government came to the Supreme Court this time, it refused to support the military takeover, and declared it illegal; at the same time the country split, with Bangladesh declaring independence. In order to run the business of the state, an interim constitution was promulgated in 1972, until the third constitution, which ostensibly remains in force to this day, was introduced the following year. In 1977 a new military regime took control, and the Supreme Court yet again upheld its right to do so. General Muhammad Zia ul Haq suspended the constitution altogether in 1981, installed himself as president via referendum in 1984, and brought in a handpicked parliament in 1985.

"A blanket constitutional amendment in 1985 introduced separate electorates on sectarian lines and a parallel judicial system empowered to undo any law passed by the legislature deemed as 'un-Islamic'"

General Zia took it upon himself to 'Islamise' the society, and thereby effected more than one hundred amendments to the constitution on sectarian lines. This meddling with the constitution was so ruthless and crude that its democratic spirit was mutilated, and it amounted to a completely new constitution brought in through a blanket constitutional amendment in 1985. This amendment introduced, apartheid style, separate electorates on sectarian lines and a parallel judicial system, the Federal Shariat Court, empowered to undo any law passed by the legislature deemed as 'un-Islamic'. In 1988 General Zia dissolved the assemblies under a newly introduced provision, but his order was assailed and the judiciary was again put to the challenge. Although he died in the interim, when the Lahore High Court examined the matter it held that the dissolution order was illegal; a decision upheld by the Supreme Court. The Supreme Court, however, did not restore the assemblies but thought it proper to allow the electorate to choose representatives afresh.

The new government survived until 1990, when the president dissolved parliament. After the matter came to the superior courts, this time they simply refused to interfere and allowed new elections to proceed. However, when the process was repeated in 1993, the Supreme Court upheld an appeal that the assemblies stand. The court supported the next dissolution, in 1996, on the ground that the government had completely broken down. Finally, in 1999 the current regime took control through a proclamation of emergency and a subsequent series of orders to consolidate military control, among which was the newest version of the Legal Framework Order.

The judiciary again gives way to the military

The Legal Framework Order 2002 was promulgated by the military regime on 21 August 2002. It was passed into the constitution, by way of the Constitution (Seventeenth Amendment) Act 2003, which went through parliament on 31 December 2003. This constitutional amendment has validated all of the regulations established, appointments made and other

steps taken by the government under the LFO, and protected it from legal action against persons who would have it otherwise. The legal authority that the military commander has exercised to effect those constitutional amendments stem from a Supreme Court order in the case of *Zafar Ali Shah v. Pervez Musharraf* (PLD 2000 SC 869), the relevant portion of which is reproduced hereunder:

> 6(i) That General Pervez Musharraf, Chairman, Joint Chief of Staff Committee and Chief of Army Staff through Proclamation of Emergency, dated the 14th October, 1999, followed by PCO 1 of 1999, whereby he has been described as Chief Executive, having validly assumed power by means of an extra-constitutional step, in the interest of the State and for the welfare of the people, is entitled to perform all such acts and promulgate all legislative measures as enumerated hereinafter, namely;
>
> (a) All acts or legislative measures which are in accordance with, or could have been made under the 1973 Constitution, including the power to amend it:
>
> (b) All acts which tend to advance or promote the good of the people;
>
> (c) All acts required to be done for the ordinary orderly running of the State; and
>
> (d) All such measures as would establish or lead to the establishment of the declared objectives of the Chief Executive.
>
> (ii) That the Constitutional amendments by the Chief Executive can be resorted to only if the Constitution fails to provide a solution for attainment of his declared objectives and further that the power to amend the Constitution by virtue of clause (i) (a) ibid is controlled by sub-clauses (b)(c) and (d) in the same clause.
>
> (iii) That no amendment shall be made in the salient features of the Constitution i.e., independence of judiciary, federalism, parliamentary form of government blended with Islamic provisions.

"The Supreme Court has allowed the same person to hold the office of president and commander of the armed forces, despite the fact that this contravenes the spirit of the 1973 Constitution"

As the Supreme Court conferred these powers on the government, it is now very difficult to challenge its legal legitimacy. However, some jurists hold that the Supreme Court cannot confer such powers on an individual, as only the chosen representatives of the people can exercise them. It should also be added that the court reserved the right for superior courts to judicially review the actions of the armed forces, including the proclamation of emergency, as deemed necessary.

It can also be noted that the Supreme Court has allowed the same person to hold the office of president and commander of the armed forces, despite the fact that this contravenes the spirit of the 1973 Constitution. There can be no question that it is undemocratic for the same person to hold these offices, as one is a position of public service whereas the other is a public office through which to represent the people. Inevitably, this subject also came before the Supreme Court in the case of *Qazi Hussain Ahmed, Amir Jamat Islami v. Gen. Pervez Musharraf* (PLD 2002 SC 853). In this instance, lawyers asserted that the 1973 Constitution still remained the supreme law of the land and the powers of the present government were strictly circumscribed as per the

Supreme Court judgement in Zafar Ali Shah's Case. However, the court again refused to take on the military ruler, by deciding that the relevant provisions of the constitution were still being held in abeyance.

"Judges were retained or dismissed by the new government on the basis of their political allegiance"

The Legal Framework Order 2002 and the judiciary

It is appropriate to provide some background to explain the real intent of the LFO with regards to the judiciary, as judges were retained or dismissed by the new government on the basis of their political allegiance. Superior court judges have from the beginning been obliged to take an oath of office to uphold the constitution. However, the relevant provisions of the Provisional Constitution Order 1 of 1999, introduced by the current president, ran as follows:

> No Court, tribunal or other authority shall call in question the Proclamation of Emergency of 14th day of September 1999 or any other Order made in pursuance thereof. No judgement, decree, writ, order or process whatsoever shall be made or issued by any court or tribunal against the Chief Executive or any other authority designated by the Chief Executive.
>
> All persons who, immediately before the commencement of this Order, were in service of Pakistan as defined in Article 260 of the Constitution and those who immediately before such commencement were in office as Judge of the Supreme Court, the Federal Shariat Court or a High Court or Auditor General or Ombudsman and Chief Ehtesab Commissioner, shall continue in the said service on the same terms and conditions and shall enjoy the same privileges, if any.

Then the Oath of Office (Judges) Order was promulgated on 25 January 2000, with the intent that judges take a new oath to continue serving. Reproduction of the relevant provisions of this order will make it clearer how a policy to weed out undesirable judges was set in place by the government:

> 3. Oath of Judges — (1) A person holding office immediately before the commencement of this Order as a Judge of the superior Court shall not continue to hold that office if he is not given, or does not make, oath in the form set out in the Schedule, before the expiration of such time from such commencement as the Chief Executive may determine or within such further time as may be allowed by the Chief Executive.
>
> (2) A Judge of the Superior Court appointed after the commencement of the order shall, before entering upon office, make oath in the form set out in the Schedule.
>
> (3) A person referred to in clause (1) and (2) who has made oath as required by these clauses shall be bound by the provision of this Order, the Proclamation of Emergency of the fourteenth day of October, 1999 and the Provisional Constitution Order No. 1 of 1999 as amended and, notwithstanding any judgement of any Court, shall not call in question or permit to be called in question the validity of any of the provisions thereof.

The form set out for the oath of office was of course framed for obedience and allegiance to the instruments referred to in clause 3. Many members of the judiciary naturally became apprehensive about the designs of the new rulers. The result was a sudden exodus of judges, especially from the Supreme Court. Six of its judges, including the Chief Justice, refused to take the oath. Some of the Judges of the high courts also did not make the oath, notably those of the Lahore High Court, High Court of Sindh and Peshawar High Court.

"Unquestionably, the superior judiciary of the country was in this instance intimidated and ridiculed by the military"

The matter itself came before the Supreme Court in Zafar Ali Shah's Case, by which time the judges in question had left from office. The court refused to consider the specific cases, declaring the matter closed, and stated that:

> Clearly, the Judges of the Superior Judiciary enjoy constitutional guarantee against arbitrary removal. They can be removed only by following the procedure laid down in Article 209 of the Constitution by filing an appropriate reference before the Supreme Judicial Council and not otherwise. The validity of the action of the Chief Executive was open to question on the touchstone of Article 209 of the Constitution. But none of the Judges took any remedial steps and accepted pension as also the right to practice law and thereby acquiesced in the action. Furthermore, the appropriate course of action for Supreme Court in these proceedings would be to declare the law to avoid the recurrence in future, but not to upset earlier actions or decisions taken in this behalf by the Chief Executive, these being past and closed transactions.

Unquestionably, the superior judiciary of the country was in this instance intimidated and ridiculed by the military. Those who refused to succumb to the pressure from the regime acted valiantly, and the assertion in the judgement that they might have done otherwise ignores the extenuating circumstances.

The Seventeenth Constitutional Amendment, which confers absolute power in General Musharraf, is opposed to the spirit of parliamentary governance enshrined in the constitution. It is true that the people of Pakistan have again been provided an opportunity to elect a representative to run state business, but the fact remains that it is a government tailored to the desires and requirements of a military regime. General Musharraf vigorously presents his case inside and outside Pakistan, asserting that he is indispensable for the state and the people on the premises of security and for the reforms he has brought about for the good of the country. His assertions bring to mind John Adam, who rightly said, "Power always thinks it has a great soul and vast views beyond the comprehension of the weak; and that it is doing of God's service when it is violating all his laws."

The mechanics of 'honour' in Pakistan

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Pakistani society is built on the Purdah system, which discourages contact between a man and woman who are not related because it could lead to a sexual encounter. Consequently, where such contact does occur it is therefore presumed to be sexual. Under these circumstances, the woman concerned will be subjected to questioning by her kinsfolk over her intentions and morality, as in Islam women are portrayed as the sex who must be subjected to control in body and speech. Where this control is transgressed, it violates the men's honour and may be subjected to punishment. This is reinforced by the fact that the 'negative' conduct of the woman also has consequences for the reputation of the whole family, and particularly on any unmarried sisters.[1] Therefore, the behaviour of a woman is judged differently from that of a man, whereby it is likely to bring a much greater calamity onto the family than anything a man might cause to happen.

It seems that honour in Pakistan determines the faith of a family and that revenge finds its consolation in death. Unfortunately, not only do 'honour' crimes treat women as less than humans, but they are also used to settle disputes between families that often have little to do with the woman in question, let alone anything to do with honour.

The genesis and growth of *jirgas*

Although 'honour killing' is a crime in Pakistan, the state has done little to stem the practice. Rather than attempt to unify and rationalise the legal system, the government has left justice in the hands of the tribal judiciary, commonly known as *jirga*. These jirgas operate as a parallel justice system. Although many Pakistanis link honour killings and jirga rulings with religious practice, the jirga are rooted in the power of feudal lords, not Islamic doctrine.

The origin of the jirgas is embedded in the custom that came about as a result of the redefinition of crime, custom and law shaping honour codes by the British administration and Baluch tribe. This arrangement allowed people to seek justice through traditional authorities rather than resort to state institutions, even though they came under direct state authority.

"The justice system in Sindh during the early years of the British military government was not much different from the earlier one"

The justice system in Sindh during the early years of the British military government was not much different from what it replaced. The manner of dealing with crime was as arbitrary and interpretive as that of the tribal leaders, if not more so. Whereas the province had earlier at least been under a confederacy, now it was ruled by a single autocratic regime employing martial law for that purpose. Earlier, the appellate power of life and death was in the hands of the tribal rulers; it was transferred by conquest to the military commander turned governor.

The first judicial and advocate-general of Sindh, a Captain Keith Young, wrote that there seemed to be no fixed idea of what a justice system should do or be. Captain Young remarked that it would be 'better to have no trials at all' than those taking place at the time, recording at least one instance in which, in the absence of the accused, the judge sentenced the witnesses instead.

The only significant difference between the tribal and colonial legal system was that the law went from being oral to written, causing an increase in the procedures and role for bureaucracy. For the British, the Baluchi system was no system, because there was no writing and records of cases. British summary justice created the semblance of fixed codes and rules, and the first advocate-general was thoroughly preoccupied with the making of these.

Although the difference between the British and Baluchi systems related more to differences in conceptions of crime and punishment, the British presented the two as a radical opposition between a civilised system and a barbaric one. For instance, the Baluch tribal leaders were barbaric because they were lax in punishment. The British administrators, on the other hand, were humane, even when they ordered whippings and hangings. This led to the introduction of new laws governing killings arising out of adultery, which was reinterpreted, and consensus built around the traditional justice system now using codified legal structures.

In Sindh, from the 1860s the British opted for strategic compromises to secure indirect rule through a class of local middlemen. This led to the merging of tribal arbitration with British law. The result was a new configuration of power, a nexus between the middlemen, chiefs and British administrators colluding in exercising power. It was at this time that the supreme jirga was established for the settlement of the inter-tribal disputes, including cases of honour killings. The 'barbaric'

customs that British law had opposed now became 'humane' methods for mediation, including encouraging them to exchange women as a means to settling disputes.

"The jirga's aim is to restore the balance disturbed by a woman's alleged misdemeanour, not to elicit truth and punish culprits"

Honour in deceit

The new hybrid system made political agents key figures to an unprecedented extent. They became centres of power playing roles both as custodians and enforcers of law. The end result is a state where today tribal considerations are paramount. Tribes are seen to order their lives through notions of self-help, vested in the individual but supported by the collective; the state in Pakistan in effect still encourages the seeking of justice through these notions, encouraging people to settle matters among themselves, rather than in the courts. New ways of adjusting and strengthening tribal affiliations, primarily by organising justice within the framework of honour, have followed; 'custom' has been manipulated, renewed and reinvented to suit the purposes of the day.

The sanctity of the jirgas is secured in the eyes of the rural population through the unquestioned power of the feudal lords, who act as the exclusive rulers of their domains, keeping people socially and economically dependent. Their economic supremacy also allows them control over police and state officials, and guarantees their collective role as the heads of Pakistan's jirgas, which thereby furthers their capacity to subdue local populations.

The jirgas today generally sit and give judgments when both sides (the victims and the accused) agree to place the matter before them, or if a matter is taken as involving the honour of the tribe. In cases regarding women, their aim is to restore the balance disturbed by a woman's alleged misdemeanour. They are not intended to elicit truth and punish the culprits. The balance is restored when compensation for damage is negotiated and settled. In a case of honour killing after alleged illicit sexual relations, the *karo*, the person alleged to have had illicit sexual relations with a woman, the *kari*, must pay the compensation. This is to allow for his life to be spared, for the loss of honour of the man to whom the kari belonged, and for the woman the man who killed her lost. The amount of compensation is fixed within each tribe, but jirgas also decide how the compensation is to be disbursed. Compensation can be in the form of money or women or both. The jirgas not only consist exclusively of men, but also deny the rights of women even to be heard. Many of those men may be members of government assemblies and other officials, who in exchange for the central government surrendering power over local 'private' affairs offer guarantees of political stability. In practice, this means that a small and homogenous segment of the population is given absolute power over all others, particularly women.

The transfer of women in particular is considered by many tribal leaders to be a good way to settle disputes. The Sardar of Shikarpur, Khadim Hussain Jatoi, has stated that "the giving of

women is the best way to cool tempers, to heal a conflict and to bring families together by the links of marriage". Where one woman is killed, two can be given as compensation. Nawab Muhammad Aslam Raisani has explained that this accounts as one woman for the life of the woman killed, and one in lieu of the life of her illicit lover, who will be spared. A lawyer in the Sukkur High Court Bar Association has rationalised this calculation slightly differently: "One woman is given to compensate the man for the disturbance in his life and one to replace the kari." Whatever the reasoning, women are treated as chattel in compensatory exchanges after murders, forced to live in hostile environments without their consent, to be treated ignobly all their lives.

"Although tribal leaders assert that their decisions effectively settle disputes and provide lasting peace, the evidence does not support this claim"

Although tribal leaders in upper Sindh and Balochistan assert that their decisions effectively settle disputes and provide lasting peace, the evidence does not support this claim. Settlements are often flouted and women killed despite their decisions, as to break a jirga settlement is not dishonourable. Killing and violence, deceit and the breaking of promises are not dishonourable where they are intended to restore honour. Therefore, rulings are readily ignored, and karos who have paid heavy compensation are sometimes killed years later; karis returning to their families on promises of safety invariably end up being slaughtered.

The declining status of women in Pakistan

Honour killing prevails because gender discrimination is present at all levels of society in Pakistan, including its legal system, and is growing. Under Mohammad Ali Jinnah, the founder of Pakistan, the status of women was slowly improving; however, this trend has been reversed since the time of President Zia ul Haq, who politicised Islam in order to forge legitimacy and popularity. He introduced a series of legal changes in the name of Islam that were highly detrimental to women, notably the Hudood Ordinances, which punish adultery with a maximum of 10-years imprisonment and the infliction of 30 lashes.[2] Not only have thousands of women since been imprisoned under these regulations, but women who have been raped have also been charged with adultery or fornication and jailed.

In fact, although chastity, virtue and honour are all supposedly matters of strict concern for Pakistani men, women are daily victims of sexual assault as men are rarely punished for the crime, and women rarely even report it. Hence, rape is often used as a weapon of revenge. One researcher has written that

> 50 % of reported rapes in the country are gang-rapes, usually carried out when someone wants to take revenge against a man. The most common way to do it is to rape the man's female relatives. Allah Wasai, for example, who was eight months pregnant at the time, was brutally gang-raped by twenty-six men to settle a score with her father in law. After the attack, she was paraded naked through her community.[3]

"The the level of violence against women has only increased, while the government acts to appease feudal lords and Islamic authorities in order to stay in power"

It is a pity that three decades after General Zia's rule the Hudood Ordinances have not been repealed, despite the fact that they were introduced without any parliamentary debate. The current administration could have done something, and indeed began with establishing a national commission on the status of women in 2000 and promising to review the laws undermining the status of women in Pakistan. But the level of violence against women has only increased, while the government acts to appease feudal lords and Islamic authorities in order to stay in power. So the ordinances remain intact.

Pakistani society revolves around honour, yet 'honour' is being used as a pretext to preserve and maintain existing social relations at the expense of the rights of women. Under any circumstances, the government is morally and legally responsible for changing this dissatisfactory situation. Article 25 of the constitution explicitly states that nothing "shall prevent the state from making any special provision for the protection of women". Furthermore, under international law the state is obliged to ensure that everyone in its jurisdiction enjoys equal rights before the law. Even if jirgas are left to carry out state functions the state still has to ensure that the rights of all persons are fully protected. But what the government of Pakistan ought really to be doing is working towards the elimination of the jirgas and repealing the Hudood Ordinances. Those steps may be a beginning towards a system of justice that protects, rather than violates, human rights, and in particular, those of Pakistan's women.

Endnotes

[1] Jasmin Mirza, *Between Chaddor and the Market*, Oxford University Press, 2002, p. 30.
[2] See further, Naeem Shakir, 'Women and religious minorities under the Hudood Laws in Pakistan' and Ijaz Ahmed, 'The destiny of a rape victim in Pakistan', *article 2*, vol. 3, no. 3, June 2004, pp. 14–28.
[3] Jan Goodwin, *Price of Honor*, Plume Books, 2003, p. 52.

Urgent Appeals File: Tahmeena & Abida Bhutto— A trip to visit grandparents ends in an unmarked grave

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On 1 May 2004, Tahmeena Bhutto, 17, and her cousin Abida Bhutto, 18, left their village of Jano, in Shikarpur district of Sindh province, to visit their grandparents in nearby Sukkur. However, they failed to inform their family members or obtain permission prior to going. The following day, two groups went in search of the girls: one consisted of Abida's father, Dad Mohammad, together with Hajji Shafi Mohammad Bhutto, Hajji Nazeer Bhutto and Sanaullah Bhutto; the other consisted of Tahmeena's brother, Hidayatullah Bhutto, led by the local tribal leader, Abdul Rasheed Bhutto, together with Younis Bhutto. It was the latter group that found the girls together with their grandfather, and brought them back to their district.

However, rather than bringing Tahmeena and Abida home, Abdul Rasheed Bhutto brought the girls to his bungalow at Lakhi gate, Shikarpur, whereupon he called a group of eight other men to discuss the case. Dad Mohammad, Hidayatullah and Fazaluddin Bhutto were also called to be present, and were told that the girls would be kept under the leader's protection before being handed back to their families the following day.

The next day, May 3, the three men again went to get the girls, and found that all nine of the men were again present. They were told by Abdul Rasheed to go back to their village, and

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This article is derived from a number of appeals by the Asian Human Rights Commission (AHRC) and additional documentary material provided by the Human Rights Education Forum. Visit the AHRC website to see further: PAKISTAN: Girls killed for visiting grandparents without permission in another 'honour killing' (FA-12-2004); PAKISTAN: Three of the nine perpetrators were arrested but the police officer was pressured politically (UP-23-2004); PAKISTAN: Jirgas and feudal lords continue to undermine the rule of law in Pakistan (UP-46-2004). The case was also described in brief in *article 2*, vol. 3, no. 3, June 2004, pp. 37–8.

that he himself would bring the girls. Unknown to the girls' relatives, the gathering of nine men comprised a tribal council, or *jirga*, which sat in judgment on the girls, despite a decision by the High Court of Sindh on April 23 to outlaw jirgas as contrary to the Constitution.

"The families received constant threats, and were ostracised for approaching the police and defying customary law"

The men walked back to their village, as it was late at night and there was no public transport. It was around 1am the following morning that they reached the graveyard beside the village, when two cars came alongside, carrying the members of the jirga and the girls. The girls were ordered out of the cars. Then, according to Fazaluddin,

> They ordered us to kill the girls because, according to them, they are "*Karis*" (having bad character). We prayed to them not do so because the girls don't have bad character. Thereupon, Abdul Rasheed Bhutto, Younis Bhutto and Sulaiman Bhutto took out TT pistols, and Jamaluddin Bhutto took out a double-barrelled gun from a car. We again solicited them not to do that. Thereupon the armed perpetrators pointed their guns to the girls and fired upon them with intentions of killing them. The bullets hit the girls; they fell down on the ground before us and died. Then the perpetrators forced us not to report the incident to the police, "Otherwise the same thing will happen to you." Then the perpetrators put the dead bodies in the cars and went towards Sindh canal in order to hide them.

Fazaluddin, Hidayatullah and Dad Mohammad went home and conferred with their families about whether they should report the killing to the police or not. After deciding to do so, they went to the Officer in Charge of the police station in New Foujidari to make their complaint. It was lodged as Case No. 65/2004, under sections 302, 201, 147, 148 and 149/506/2 of the Pakistan Penal Code at 6:20pm the following day. These sections include charges for murder, concealing evidence, conspiracy and harassment; all are bailable offences.

The families subsequently received constant threats, and were ostracised in the village for approaching the police and defying customary law. Abdul Rasheed Bhutto contacted the families and told them to accept a fine (for their wrongdoing) and withdraw the case. He refused to hand over the dead bodies of the girls because, according to him, they had decayed. After allegedly being intimidated by Abdul Rasheed Bhutto, Fazaluddin next approached the Human Rights Education Forum (HREF) to help in the case. Iqbal Detho, the coordinator of the HREF, recalls what happened:

> Neither the police nor the press was aware of the whole happening. The girls' families were faced with a situation of 'to be or not to be'. After the incident, Mr Fazaluddin came to my office and related the whole thing. It was really shocking and motivating to me as a human and a human rights activist. I immediately called Mr. Zahid Noon, a correspondent at a local newspaper, *Kawish*, in order to raise the issue in the media. Zahid collected all the facts from the complainant and made a story that appeared in the newspaper the next day. It shocked the whole district government and the average person on the street as well. The police, who had managed to acquire a heavy favour from the main culprit in order to

hush up the case, yielded to pressure and recorded a FIR [First Information Report]. The FIR was lodged due to public pressure, but sincere progress on the part of the police was still wanting.

On May 9, I went with Mr. Fazaluddin to the District Police Officer (Operations), Mr. Khameeso Khan Memon, to complain about the slow progress in the case and deficiencies of the police in discharging their duties. By this time, not even a single culprit had been arrested; they were walking freely in the city. But the response of the District Police Officer [DPO] was very cold. He replied to me with a harsh tone that the police were discharging their duties appropriately. Therefore, he said, I need not interfere in the process of the inquiry. He also observed that the killings were an act of honour. Perhaps influential persons in the area had already reached him, or he had received a heavy bribe.

By this time the victims' families were like drowning persons who had seen a piece of floating wreckage—the DPO—and reaching for it had found that it too had sunk. Having seen the behaviour of the DPO, they became desperate. In the meantime, there was only one police officer that really cooperated in efforts to bring the perpetrators to account: DPO (Investigation) Mr. Fida Hussain Mastoi.

Dad Mohammad

At this time, the AHRC released the first urgent appeal on the case, and contacted senior government officials and the concerned police officers by telephone and fax. The urgent appeal issued by the AHRC was picked up on by local and national media. The Human Rights Commission of Pakistan also investigated the incident. Feeling some pressure both domestically and internationally, DPO Mastoi established a Special Investigation Cell consisting of five police officers and directed it to recover the bodies of the victims and arrest the perpetrators. The police found the bodies buried in a dry pond on the property of Abdul Rasheed Bhutto.

On May 14, the bodies were exhumed in the presence of the fourth civil judge, Shikarpur, the DPO, and two Woman Medical Doctors, who conducted an autopsy in the same day and concluded that the "injuries were caused by discharge from firearm" some 10 to 14 days earlier. The bodies were handed over to the victims' relatives after the autopsy. This in itself was a remarkable achievement by normal standards in Pakistan, where it is enormously difficult to recover the bodies of victims in honour killings, let alone prosecute the perpetrators. The same day, DPO Mastoi obtained an order to prevent Abdul Rasheed Bhutto from leaving the country.

The following day, DPO Mastoi reconstituted the Special Investigation Cell under the direct supervision of the District Superintendent of Police (Investigation), and ordered daily progress reports. The investigating officer also applied for further charges, including one under the Anti-Terrorism Act.

On May 17, the police obtained an eight-day physical remand over three of the accused. However, they brought the men to the anti-terrorism court, Sukkur, so the judge refused to remand the three men, as the case did not fall under the anti-terrorism law. He directed the police to obtain a remand order, and later they brought the accused to the judicial magistrate at Shikarpur.

PHOTO: HREF

On May 18, a demonstration was held against the murder of Tahmeena and Abida, calling for the immediate arrest of the other six perpetrators, including Abdul Rasheed, and that steps be taken against the persons who organised the jirga.

On May 26, the police again approached the anti-terrorism court on the case by attaching more supporting documents to illustrate that the girls' murders had spread fear and insecurity among the family and the community. Iqbal Detho describes:

> After recovering the bodies, DPO Mastoi imposed two more sections of the Anti-Terrorism Act against the accused, and sought permission to proceed with the case in the Anti-Terrorism Court [ATC]. The court objected on the ground that the case didn't fall within the mandate of the court. Those require that it hear only cases over which there stands the possibility of public uncertainty and mob actions. However, the DPO tried again with special reference to the Urgent Appeal and letters sent by the AHRC, the HREF and other human rights organisations. In that attempt he succeeded to register the case with the ATC.

The court ordered that hearings begin on June 5.

Up to this point, under public pressure the case had proceeded well. However, the danger lay in the feudal links between the main accused, Abdul Rasheed, and influential persons in Pakistan, notably Ghous Bukhsh Khan Mahar, and Dr Muhammad Ibrahim Jatoi, two members of the national assembly from Shikarpur. Ghous Bukhsh Khan, previously the minister for railways, currently minister for narcotics control, had supported Abdul Rasheed from the start of the case.

On August 12, DPO Mastoi, the police officer instrumental in achieving progress, was given a notice of transfer to a new posting; his transfer is believed caused by the influence of the two members of the national assembly.

Ghous Bukhsh Khan Mahar is also reported to have called a second jirga, in violation of state law, to resolve the case and hamstring the proceedings in the courts. Under intense pressure, the victims' families have been forced to submit to the will of this hearing, which is reported to have decided that the families would receive about 600,000 rupees per victim. Since this event, the families of the victims have avoided contact with human rights groups. Iqbal Detho comments:

> It is wretchedness for the victims' families that one jirga snatched the lives of the girls, and another was held to redress the wrong that had been done to them. What is the state of the judiciary in Pakistan that these two jirgas could be held in such a short time after the Sindh High Court declared such gatherings illegal? That these two jirgas have been staged even after that judgment violates not only the court's decree, but is also a blow for human rights in Pakistan.

The court cases against the accused have now ground to a halt. Although the names of all nine of those on the original complaint have been recorded by the courts as respondents, six have not been arrested, including Abdul Rasheed Bhutto. Although

the case is pending before the anti-terrorist court of Sukkur, the last hearing was on 20 July 2004, and evidence has not yet been presented to the court. The accused are understood to have lodged a petition in the High Court of Sindh to have the case removed from the anti-terrorism court and kept in the ordinary court system. The reason for this application is that in the ordinary court system it is possible for compensation payments to be made in lieu of criminal penalties for killings organised under the tribal system in accordance with the Ordinance of Qisas and Dayat. This is not possible in the anti-terrorism court.

Fazaluddin Bhutto

At the end of October, Basil Fernando, executive director of the AHRC, wrote to the president of Pakistan expressing concern over the apparent lack of progress and political interference in the case. In his letter, Basil Fernando also raised the matter of efforts by the state authorities in Sindh to reverse the decision of the high court prohibiting the use of jirgas to validate 'honour killings' through the proposed Sindh Amicable Settlement of Dispute Ordinance 2004. This ordinance will have the effect of again legalising the jirga system retrospective to the date of the high court order in April, which the letter referred to as "a deeply regressive step that serves only to further undermine the rule of law in Pakistan". In the event that this ordinance is passed, the likelihood that the killers of Abida and Tahmeena Bhutto will be brought to justice will be significantly reduced.

Appendix: Letter from the Asian Human Rights Commission to the President of Pakistan

3 November 2004

General Pervez Musharraf
President
Office of the President
Pakistan Secretariat
Islamabad
PAKISTAN

Fax: +92 51 922 4768/ 920 1893 or 1835
Pages: 2

Dear General Musharraf

Urgent Appeals File
(FA-12-2004)

RE: INACTION AND POLITICAL INTERFERENCE IN CASE PENDING AGAINST MURDERERS OF TWO GIRLS (PS NEW FOUJIDARI CASE NO. 65/2004)

We write to you further to our most recent letter of August 18, with reference to the murder of two girls, Abida and Tahmeena Bhutto, in Sindh Province last May under the orders of a Jirga headed by Mr Abdul Rasheed Bhutto (PS New Foujidari Case

No. 65/2004). The case has been lodged in the Sessions Court Shikarpur under PPC sections 302, 201, 147, 148, 149/506/2 and in the Anti-Terrorist Court Sukkur under ATA section 6/7.

Although the case is pending before these two courts, the last hearing known to us, before the Anti-Terrorist Court, was on July 20, at which time the court was still establishing procedure for the case and had not yet begun hearing evidence. Meanwhile, nine of the six respondents, including the first accused, are reported to be still at large, while a petition has been lodged in the High Court to transfer the case out of the Anti-Terrorism Court in order that the accused may escape criminal responsibility by paying compensation.

In our last letter to you, we expressed deep concern over negative developments in the case seriously inhibiting the possibility of the victims obtaining justice. To recap, our main concerns pertain to alleged political interference in the case by influential persons acting to protect the first accused. According to the information we have received, two members of the National Assembly, namely Dr Muhammad Ibrahim Jatoi, and your Minister for Narcotics Control, Mr Ghous Bukhsh Khan Mahar, were behind the transfer of the police officer actively pursuing the case, one DPO (Investigation) Fida Hussain Mastoi, on August 12. It can only be concluded from this unfortunate turn of events that police officers in Pakistan seen to be doing their jobs properly when the accused are persons with political connections are 'rewarded' by being replaced with less interested and perhaps less competent personnel.

More seriously, Mr Ghous Bukhsh Khan Mahar is alleged to have headed a second Jirga to settle the case outside of the courts by way of a compensation payment to the families of the victims, also complainants in the case, at 600,000 rupees per victim. We again note to you that although the High Court of Sindh outlawed Jirgas in April 2004, it appears that the practice continues unabated even among the highest circles of your own government. This is particularly ironic in light of the recent National Assembly decision to increase penalties for honour killings, although we note with concern that the new provisions do not prohibit the practice of compensation payments for killings under the Ordinance of Qisas and Dayat. We also condemn as a matter of principle the death sentence for any crime.

Furthermore, we are deeply concerned by steps undertaken by the state government of Sindh to undermine the judicial decision mentioned above by introducing an ordinance entitled the Sindh Amicable Settlement of Dispute Ordinance 2004. This ordinance will have the effect of legalising the Jirga system retrospectively from the date of the court's decision. This is a deeply regressive step that serves only to further undermine the rule of law in Pakistan.

Accordingly, we again urge you to take particular interest in this case in order to ensure that all of the accused men are arrested, brought to trial, and judged and sentenced in accordance with the law. In particular, we request that you see the case expedited in order that the alleged perpetrators not enjoy the luxury of further time to intimidate the complainants and witnesses and distort the evidence in order to escape the consequences of their crime. We also urge you to take the necessary steps to ensure that the families of the accused are properly protected from intimidation and threats. Furthermore, we recommend that you undertake to investigate allegations that Dr Muhammad Ibrahim Jatoi, and Mr Ghous Bukhsh Khan Mahar were responsible for influencing the outcome of the case by way of having the chief investigating officer transferred and holding a second Jirga to settle the matter out of court. Finally, we urge you to take steps to override any attempts by the state authorities in Sindh to reverse the decision of the High Court, thereby prohibiting the use of Jirgas to validate the practice of 'honour killings' through its proposed ordinance for the payment of compensation to victims' families.

Please be informed that we are taking a strong interest in this case, the outcome of which can be sure to have an effect on the international reputation of Pakistan, for better or worse depending upon the decisions that you and other persons in positions of responsibility choose to take.

Yours sincerely

Basil Fernando
Executive Director

Urgent Appeals File
(FA-12-2004)

Human Rights Correspondence School lessons out on multimedia CD

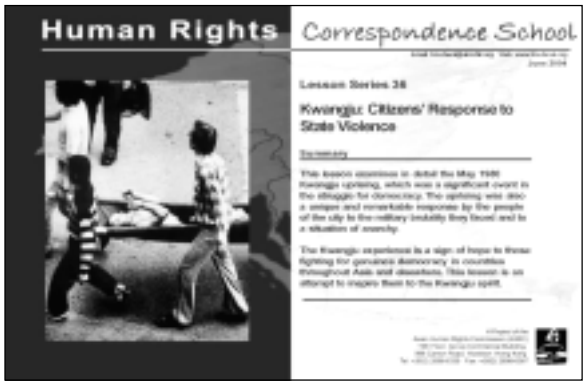
The Human Rights Correspondence School, a programme of the Asian Human Rights Commission, has released its first lessons in multimedia CD format.

The lessons are the most comprehensive archives and documentation on the May 1980 Kwangju Uprising against the military dictatorship in South Korea available in English.

The CD consists of two series of lessons. The first examines the uprising in detail, and its significance in the ultimately successful struggle against the military dictatorship in Korea. The second follows the painful but determined struggle of the victims' families and Kwangju citizens to reveal the truth about the 1980 uprising, commemorating both the victims and their fight for democracy.

Apart from the text of the lessons themselves, the CD includes video footage of the uprising, a photo gallery, victims' testimonies, an art gallery containing prints by a prominent Korean artist—Hong Seong-dam, poems and more. It is truly the complete resource on this important event in the protection of human rights in Asia.

To obtain a copy or copies of the CD lessons, and to be put on the Human Rights Correspondence School mailing list, please email: hrschool@ahrchk.org. You can also write to: Human Rights Correspondence School, AHRC, 19th Floor, Go-Up Commercial Building, 998 Canton Road, Mongkok, Kowloon, Hong Kong, China.



The multimedia lessons will also be posted to the Human Rights Correspondence School website: http://www.hrschool.org.

More lessons are planned for CD format. Users are invited to submit suggestions on future topics.

hrschool@ahrchk.org

http://www.hrschool.org

The Asian Human Rights Charter on enforcement of rights and the machinery for enforcement (www.ahrchk.net/charter)

15.1 Many Asian states have guarantees of human rights in their constitutions, and many of them have ratified international instruments on human rights. However, there continues to be a wide gap between rights enshrined in these documents and the abject reality that denies people their rights. Asian states must take urgent action to implement the human rights of their citizens and residents.

15.4.a The judiciary is a major means for the protection of rights. It has the power to receive complaints of the violation of rights, to hear evidence, and to provide redress for violations, including punishment for violators. The judiciary can only perform this function if the legal system is strong and well-organized. The members of the judiciary should be competent, experienced and have a commitment to human rights, dignity and justice. They should be independent of the legislature and the executive by vesting the power of their appointment in a judicial service commission and by constitutional safeguards of their tenure. Judicial institutions should fairly reflect the character of the different sections of the people by religion, region, gender and social class. This means that there must be a restructuring of the judiciary and the investigative machinery. More women, more under-privileged categories and more of the Pariahs of society must by deliberate State action be lifted out of the mire and instilled in judicial positions with necessary training. Only such a measure will command the confidence of the weaker sector whose human rights are ordinarily ignored in the traditional societies of Asia.

15.4.b The legal profession should be independent. Legal aid should be provided for those who are unable to afford the services of lawyers or have access to courts, for the protection of their rights. Rules which unduly restrict access to courts should be reformed to provide a broad access. Social and welfare organizations should be authorised to bring legal action on behalf of individuals and groups who are unable to utilize the courts.

15.4.c All states should establish Human Rights Commissions and specialized institutions for the protection of rights, particularly of vulnerable members of society. They can provide easy, friendly and inexpensive access to justice for victims of human rights violations. These bodies can supplement the role of the judiciary. They enjoy special advantages: they can help establish standards for the implementation of human rights norms; they can disseminate information about human rights; they can investigate allegations of violation of rights; they can promote conciliation and mediation; and they can seek to enforce human rights through administrative or judicial means. They can act on their own initiative as well on complaints from members of the public.

15.4.d Civil society institutions can help to enforce rights through the organization of People's Tribunals, which can touch the conscience of the government and the public. The establishment of People's Tribunals emphasizes that the responsibility for the protection of rights is wide, and not a preserve of the state. They are not confined to legal rules in their adjudication and can consequently help to uncover the moral and spiritual foundations of human rights.

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ALRC invites submissions to ***article 2*** by interested persons and organisations concerned with implementation of human rights standards in the region.

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