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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

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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:
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> (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;
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> (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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Eating the seeds from a camel's dung: A discussion on the right to food

Permanent People's Tribunal on the Right to Food & the Rule of Law in Asia

Justice H Suresh

Although the Universal Declaration on Human Rights addresses the concept of the right to food in article 25, it is in article 11 of the International Covenant on Economic, Social and Cultural Rights that freedom from hunger is recognised as a *fundamental* right. This article makes clear that by this it means obtaining *nutritious* food for the purpose of maintaining an adequate standard of living. So eating rotten mango kernels, for instance, as has been suggested by the Chief Minister of Orissa, would not constitute fulfilling the right to food. In assessing whether or not these rights are being fulfilled, we have to look into a range of subsidiary areas suggested by article 11, including methods of production, conservation and distribution of food. These necessarily encompass stability of food supply, and access to natural resources for the production of food.

One of the main reasons for denial of the right to food is poverty. Poverty is the worst violation of all human rights. Poverty leads to the denial of all basic rights—the right to food, right to education, right to health, right to shelter, right to livelihood, and above all, right to live with human dignity. Poverty is also the cause of violence and social conflicts. Very often, poor people are the victims of state terrorism and torture. Therefore, any investigation into the right to food must necessarily take into account all those aspects as well as the causes and consequences of poverty.

At the end of April 2004, the members of the Permanent People's Tribunal on the Right to Food and Rule of Law in Asia met with staff of the Asian Human Rights Commission in Hong Kong to discuss their mandate. This article consists of an abridged version of some of the remarks made by the participants during the discussion. For details on the Permanent People's Tribunal and its members, see *article 2*, vol. 2, no. 2, April 2003.

In India, economic rights, including the right to food, are not expressly included under the Fundamental Rights of the Constitution. While civil and political rights have been incorporated in the chapter on Fundamental Rights and are enforceable in a court of law, most economic and social rights are in a chapter entitled Directive Principles of State Policy, and are not enforceable judicially. So the question that has come up is, how far we can take up these principles in the courts? Once we obtained a judgement saying that the right to life includes everything that goes towards ensuring life, then we had a chance to give these rights vibrant meaning. We took Fundamental Rights cases to the courts on the rights to housing, health and education, and then we thought that we could do the same for food. And there we made use of article 32 of the Constitution to petition the Supreme Court on a fundamental right violation case involving the right to food. This petition was the first of its kind involving the right to food as a legally enforceable right in India, and it led to every state government being given notice to indicate whether or not starvation deaths are occurring under its jurisdiction. The government of West Bengal replied that there were none; subsequently we went to West Bengal and proved otherwise.

Justice Suresh:
"The right to food doesn't mean that you go to the court, knock on the door and get a morsel of food; it means many other things"

In fact, despite various directions given by the courts in India, until today there are thousands of starvation deaths. In some cases these have occurred because of the closure of mines and other places of employment, and thousands of workers and their families have nowhere to go—some have been there for generations, and most don't know any other kind of work. Another case involves the closure of tea estates, with the same consequences for the workers. There are also places where even the water from rivers is being sold to companies, and the nearby villagers are being denied access to these resources, with terrible consequences. And yet, to date on the food issue, our courts have not gone beyond some orders for distribution of rice in the event of starvation. So what we are working on now is taking the right to food beyond some simple distribution and rationing system. That is not enough.

Ultimately, the right to food doesn't mean that you go to the court, knock on the door and get a morsel of food. No, it means many other things: it includes the right to livelihood and everything else that is required for a person to meet their basic food needs. So what we need to establish across Asia is that the right to food is an enforceable right. And the question is, how will we do this? That is the most basic question we are facing.

Professor Buddhadeb Chaudhuri

The right to food does not mean only food—it has much broader implications. It means decision-making power, and it implies an improvement in the quality of life overall. Mere availability of food also doesn't guarantee the right to food. The important issue is *access* to food. An important element in establishing access to food is access to the natural resources necessary to produce it.

In this respect also, the access to resources of one person shouldn't affect the access and concomitant rights of another. In particular, this relates to the question of development strategies in Asia. So we have to think about these things in a holistic way.

Prof. Chaudhuri: **"Sometimes the situations we come across in India are so shocking it is hard to imagine"**

Recently, for instance, the ruling elites in different parts of India have imposed many restrictions on forests, and set up regimes for protection or development that are not genuine and do not protect the rights of the local people. Comparatively, we can see now that the people living in more remote areas are doing better in terms of their food rights than people in less remote places who are very negatively affected by such programmes. These are the kind of factors and developments we have to consider.

In fact, sometimes the situations we come across in India are so shocking it is hard to imagine. A number of years ago I did a study in the Darjeeling tea areas; there are some sub-divisions there in which other crops are grown also. The land is owned by large landholders living in urban areas, leasing out their property to sharecroppers. There we were shocked to find that the sharecroppers do not eat the rice that they themselves grow. They eat maize. Rice is a delicacy for them, because the entire quantity must be given to the landowner to cover the lease, and the farmers themselves just grow maize with which to feed their own families. This is the kind of issue that needs to be exposed, and pressure made for reforms.

Basil Fernando

This kind of work requires a combined approach of seeking legal remedies along with other methods outside the courts. And the kind of advocacy techniques we have used for work on civil and political issues, like torture, can be applied to work on economic and social issues, like food. The first assumption that we have to make when starting this work, which comes from our work on torture, is that much of the problem is not known even to the persons actively involved in this kind of work. We might have a surface understanding, know a few details, and have good intentions that we should do something, but there is no depth of understanding even among ourselves. Secondly, we have to expect that the answers will not come through conventional research methods, like doing literature studies and empirical surveys the likes of which academics are so fond. These methods don't touch on the real issues, and don't come to the problems affecting ordinary people, which is what the food problem is all about.

So we have to find some way to get access to places where things are going wrong, and become aware of what is really happening. This is the method we have used regarding torture. We began by forming small groups not based among the urban elites, who dominate much of the human rights discourse in our countries, but rather, based closer to the ordinary people. So

the people in these groups do not go to make artificial visits and find facts; they themselves are living very close to the problems they are addressing, and they get to know about violations by natural ways. When we build and work with such groups, we learn about violations routinely, not as a result of some two-week 'fact finding' visit. And the stories we obtained from doing this type of work regarding torture revealed to us that none of the theories about torture put forward in the past could explain what is happening in Asia. So once we understood the extent and nature of the problem, we could start studying why it is happening and what can be done to stop it.

What we have to our advantage these days is modern communication facilities that allow for information about cases to be transmitted very fast, even from remote rural areas, and to be used very effectively. If, for instance, out of some 700 people who have died from starvation in a part of India, 20 of those stores are thoroughly documented and shared widely, they will have a huge impact. In fact, it will far exceed the impact to be had from collecting minimal data in each and every one of those cases, because statistics don't allow us to understand why something is happening in a certain way. And the effect of this kind of work regarding food can be even greater than the impact we have had when applying these techniques to torture. In the case of torture, there is still some justification for the practice due to ingrained habits of saying that torture is necessary, whereas there can be no justification for hunger or starvation.

In many places in Asia where starvation is taking place it is due to easily correctable conditions. In some cases, of course, such as North Korea, it may be due to an entire social and political system, but in most instances it is not. We need to identify places where quick intervention of this kind, combined with a legal approach, where suitable, can lead to real changes. Even the more extreme cases caused by authoritarianism are deserving of study, for reason that they reveal neglect. It is not that these governments are so draconian that they consist of bad people doing bad things all the time. The real problem is that authoritarian rule causes systemic negligence, which results in so many bad things, including hunger. And to one degree or another we can apply this argument to virtually all of our societies, as most of them have only the façade of democracy. In fact there is no way that anything can be challenged seriously; gradually a culture is built up in which no one intervenes, and no one acts to solve hunger, poverty and other social problems. It is not that we are poorer now than before. So why is it that the problems are exacerbated? It must in part be attributed to the greater degree of negligence that exists today, despite sophisticated systems for communications and management that should be preventing it. So whatever we can do in this respect to challenge these issues will have more effect than actions in the field of civil and political rights, where it may take much longer to bring about a change.

Basil Fernando:
"Our concern is not with preconcieved ideas of what has happened, but with the actual violations"

Our concern is not with preconceived ideas of what has happened in a place, but with the actual violations. We let the story determine our thoughts and actions. We are not going to try to prove, for example, that some person's lack of food is due to the presence of a multinational company. Although that is a legitimate approach for some groups, it is not the object of our work. Without any preconceived ideas, we go to a place and we ask, "What has happened? Why has it happened?" Then we get explanations, and in hearing those, discover so many things that could have prevented this situation. This is the opposite of making sweeping generalisations, such as whether globalisation is right or wrong. You can say a lot of things about globalisation policies, and then go to find poor people to prove your point, but if you go into it, you will find so many other factors to explain a given situation. So we have to look at every facet of a case. This is not to say that there aren't problems associated with globalisation, development policies, and so on, but just to start from the position that these are wrong and try to make a point about this is not helpful for us.

This is basically a common-sense approach. We are not trying to prove a point. We are victim-oriented, and we seek to intervene on behalf of the victims. What this means is that we make the analysis based on victims' stories, not from general data. It does not mean that we accept unequivocally the victim's view of the problem, but it does mean that we *don't exclude* the victim's view. We don't start by going to the victim in order to tell him what to do and explain the situation. We start by going to the victim in order to listen, and listen seriously. Without this starting point, our work is meaningless. With this starting point, it should bring about a change not only in the life of the victim, but also in the person going to do that work.

When we started *article 2* we spoke of the micro-studies approach—not to go into policy and other macro-level issues, but to begin with the small issues and details. At the beginning this can be random. Once the work develops, it can take shape and direction. But at first we start with whatever story comes that shows something is radically wrong. So we let the story reveal to us what is going wrong. And then sometimes as a result, we uncover many more things than we went looking for, much worse than we had thought. We find that whatever the real situation is, it is not as simple as we thought.

This is an area where there is a lot of denial. Food is such a sensitive issue that at the international level various agencies go out of their way to prove they have made progress towards various goals through various strategies. So we cannot follow the normal methods. And that is why even exposure of a small issue can have big impact, because once it is out it cannot be denied. In fact, all the major agencies know that the situation is serious and will grow worse, but in order to continue with the same policies and working methods they deny it. And the newspapers and other media go along with this, and restrict

reporting to polite debate, rather than get to the real issues. There are socially prescribed limits that they won't cross, which means that they don't reach the real problems. Even the human rights people who go to do research invariably restrict themselves to the statistics, and deny the true stories, or the full extent of them. For example, one thing I have heard from a very reliable person but never seen in writing is that some Dalit groups in India collect the seeds out of camel dung for food. Yet nobody would want to believe this type of thing, and it is the kind of story that can never come out through statistics or conventional reporting.

There is an underlying censorship whereby you don't bring the most desperate issues into the discussion. The topic is kept polite. We have to break this denial to confront people with the problem. And this is not a question of going out and finding something completely unknown. It is about changing our own attitudes and the attitudes of others towards these issues and our work. Very often the sense of shame about not getting enough food for oneself is so great that the people suffering will themselves also subtly deny the problem. For example, a parent will often talk about not being able to get enough food for their child, but not say that she herself did not eat yesterday. So these people themselves may not tell the full story, unless the person talking to them is very sensitive to their way of talking and what issues need to be raised.

Prof. Kwak:
"Thousands of refugees from North Korea in China are risking starvation and face arrest and deportation"

Professor Kwak Nohyun

In my opinion, one instance of starvation is enough to signify some kind of systemic problem. Whether one or hundreds are starving, the system has failed. Under these circumstances, the first natural thing that is done is to provide some relief, but we have to go beyond this.

Although it is not possible to do something practically about North Korea right now, we can concentrate on the thousands of refugees in adjacent areas of China, who are risking starvation and face arrest and deportation from China at any time. A very large number of these are malnourished children, whose height and weight is far less than it should be for their age, such that one would be surprised, when asking a child who looks around eight, "How old are you?" and being told, "I'm 12." By drawing attention to the plight of such people we can also lead into the situation in North Korea itself. The problem with most existing studies on these people and their situation is that they are excessively politicised and directed towards attacking the regime in the north; so we need to take the discussion far beyond the point at which it is currently stuck. This is a something we can do to great effect.

Professor Mark Tamthai

There seem to be different situations in Asia relevant to our analysis. There are cases of severe hunger that may involve areas of a country where the rule of law has broken down to

varying degrees. We may identify two places where the problem of hunger is similar but the degree to which the rule of law has broken down is different. In a situation where the rule of law has completely broken down, it may come as no surprise to us to find that the food situation also is bad. On the other hand, if there are cases where the rule of law as a whole has not collapsed but the food situation is nonetheless bad, it may be deserving of special examination. There are many different situations involving many choices. Sometimes the choices are made at the policy level, for instance, between food security and national security. A government might say, "In order to keep the border secure in this area, some people are going to have to suffer a food shortage." That kind of decision can be changed if the stories are brought out and there is debate about whether this is a genuine choice or not. That is not a wide systemic problem caused by the breakdown of a system; it is hunger as a direct consequence of a specific policy decision that can be reversed or otherwise altered.

Prof. Tamthai:
"There tends to be a view among theoreticians that somehow hunger is always going to be with us; from that position, talk about hunger just becomes more statistics"

In Thailand there are some hill groups living in areas that up to today are still under martial law, and while many organisations go to work with these people, the issue is always about getting them citizenship. They never talk about the effects of statelessness on earning a livelihood, getting access to public health, getting food. Most of this work is concentrated in the north of the country, where the majority of these people are, and various groups provide services to ensure that they do not fall into utter starvation. However, in the central parts of the country there are also large numbers that have gone unnoticed. In fact, what would really shock people is that many of these people, in order to survive, escape into Burma to grow crops in remote places there. When I tell this story to other people in these areas, they think it is an exaggeration.

There tends to be a view among theoreticians and others that somehow hunger is always going to be with us, that it is not possible to have an economic system that can eradicate hunger. From that position, talk about hunger just becomes more statistics. It doesn't take on a sense of urgency. It is just a way to measure conditions in one country as against another. It is normalised, and the general population is beguiled into believing this kind of argument. This is something we have to address seriously.

Hunger Alert! hungeralert@ahrchk.net

The Asian Human Rights Commission (AHRC) has announced the launch of a Hunger Alert, to create awareness and generate regular action on poverty-related issues, with particular stress on hunger and malnutrition.

Hunger Alert aims to publicise the stories of individuals or groups either currently facing hunger and related problems, or the threat of hunger. Once verified, these stories will be shared with a large audience throughout the world by way of email networking and websites. The approach will be modelled on AHRC's Urgent Appeals system (ua@ahrchk.org, www.ahrchk.net/ua.)

We need Hunger Alert because today we need a new type of e-news, by which actual problems faced by ordinary people in different parts of the world can be shared with as large an audience as possible in order to create quick responses. This is a more effective method than the publication of reports from time to time. Stories of actual problems are shared without delay, to generate action locally, regionally and internationally by individuals and organisations. In this way opinions can be made constantly and a public debate kept up daily on these problems. We need ongoing people's debates on people's problems. This can only happen if information on people's problems is shared constantly.

For example, at a recent meeting of Asian human rights groups it was reported that in recent years in some parts of India people have had to eat rats due to lack of food. This is not an area where the eating of rats is a traditional practice; those eating the rats have done so out of desperation. In some rubber plantations, rats are reported to have completely disappeared. However, concerned people in other parts of the world do not know of this situation; it has gone unnoticed and the people have suffered in silence. Hunger Alert aims to break this silence and make such matters issues of public concern.

Stories or reports can be sent to:
hungeralert@ahrchk.net

The individual or organisation sending the information should give sufficient contact details for AHRC to reach them and others, by which to verify the news and obtain further information as necessary. However, the sender may request not to be mentioned in the alert itself.

For further details, contact Basil Fernando at the Asian Human Rights Commission.

Eliminating torture remains our foremost challenge in Asia

Asian Human Rights Commission

Torture is the most serious obstacle to the advancement of human rights in Asia, whether civil and political rights or economic, social and cultural rights. This is because torture is the prime generator of fear, which inhibits people's ability to react when other rights are threatened. Where large numbers of people decline to participate in ordinary social affairs because of this fear, there is no social progress.

Torture is violence. So long as torture is used by state agencies, the global fight against violence will not succeed. When the officers of police stations or other government security agencies routinely use torture, they are sending a strong message that the state justifies the use of violence. Under these circumstances, the state cannot take a moral stand against violence among the population. And without a moral position, violence cannot be overcome. Thus, if states in Asia are serious about eliminating violence in their societies, they must begin by ensuring that state agencies do not resort to torture under any circumstances.

Torture is absolutely prohibited under international law. By consenting to the Universal Declaration of Human Rights or by ratifying either the International Covenant on Civil and Political Rights or the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the state accepts this absolute prohibition. However, very little action has been taken in Asia to see this prohibition implemented. In most countries, torture has not been made a serious crime. Even where it has been made a crime the law has not been enforced to ensure that torturers are punished. There are hardly any independent

This is the text of a statement by the Asian Human Rights Commission for the International Day against Torture, 26 June 2004. It is followed by a special comment for the countries of South Asia, and the text of a written statement to the United Nations Commission on Human Rights' sixtieth session this April 2004 by the Asian Legal Resource Centre (ALRC). The full text of all written statements to the Commission can be found on the ALRC website, http://www.alrc.net.

and credible agencies to investigate complaints of torture. Prosecutors are often unable and unwilling to fully implement the law. Other government departments lack genuine commitment to the principle that torture is absolutely prohibited.

Internationally there have been serious setbacks in the fight against torture. Powerful countries are relegating the absolute prohibition of torture to secondary importance. The use of torture is in some quarters being openly advocated as a means to eradicate terrorism. These attempts to diminish the absolute prohibition of torture are extremely dangerous. They encourage violence, and polarise and undermine sensible discourse aimed at obtaining peace.

Together we must put up a strong defence of the absolute prohibition of torture. We must take firm steps to see torture eradicated, lest we be prepared to suffer the disastrous consequences if the principle is altogether breached.

Victims of torture must be assured of justice. In Asia, we must work together to get all countries to ratify the Convention against Torture, and implement it fully. This means every country of Asia declaring torture a serious crime, and establishing competent and independent investigative agencies to deal with cases of torture. It means prosecutors and judges being educated about the absolute prohibition on torture, and the history of the struggle to eliminate torture, to ensure that they act without reservation to properly and fully enforce the law. It means ensuring that the police and other law enforcement agencies understand that the use of torture in criminal investigations is completely prohibited.

Victims of torture must be given proper care. This means establishing and allocating facilities for their physical and psychological recovery. Such facilities do not exist in most parts of Asia. Prompt and effective action should be taken to improve the quality of available treatment. The professional integrity of doctors is also vital in eradicating torture. Doctors can contribute enormously by providing proper medical certificates upon which legal action against torturers can stand.

Above all, victims of torture need our solidarity. Only with strong solidarity will victims of torture develop the confidence to protest against what they have suffered. Only with strong solidarity will victims of torture be sustained through long struggles to obtain justice in courts. Only with strong solidarity will victims of torture overcome their physical and psychological injuries. Only strong solidarity can rekindle trust in the hearts and minds of persons who have been brutalised by torture. And only strong solidarity can stand up to attempts to undermine the absolute prohibition of torture, upon which our common humanity rests.

Make the SAARC region a torture-free zone!

As the world commemorates the International Day against Torture 2004, the countries of South Asia continue to be known only for their collective record of endemic torture. From the pre-colonial period to the present day, horrendous torture has been a characteristic of law enforcement throughout the region. In virtually every police station of every South Asian country, torture is today routinely practiced. Police stations remain in the dark ages: there is neither investment nor interest to modernise criminal investigation techniques, nor bring policing in South Asia as a whole into the twenty-first century. As a result, torture persists as the most common method of criminal investigation.

As the South Asian Association for Regional Cooperation (SAARC) works to promote common interests and solve common problems, torture should receive the attention of all its member states and peoples. In fact, the foremost item on its agenda for social change should be to outlaw and eradicate torture, without which other ventures such as poverty alleviation will be all but meaningless. Therefore, the SAARC should

a. Make a public declaration proclaiming the SAARC region a torture-free zone.

b. Adopt a SAARC convention against torture, fully incorporating the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

c. Encourage all member countries to ratify the CAT and make torture a serious crime, as required by the Convention, and also sign its Optional Protocol.

d. Establish guidelines for compensating torture victims, and offering adequate medical and psychological care at hospitals and other facilities accessible to torture victims from any of the SAARC member countries.

e. Form expert teams of judges, lawyers, doctors and human rights activists for the purpose of realising the CAT in the region.

f. Encourage all national human rights commissions to develop effective means to implement the CAT.

g. Call for a conference immediately to discuss and devise effective strategies towards the above ends.

The undermining of the absolute prohibition on torture

(Text of a written statement to the United Nations Commission on Human Rights sixtieth session this April 2004 by the Asian Legal Resource Centre)

1. As the Asian Legal Resource Centre first warned during the fifty-ninth session of the Commission (E/CN.4/2003/NGO/146), in recent years the absolute prohibition against torture has been dangerously undermined. In the more developed

democracies of the West, particularly in the United States, there have been serious attempts to dilute legal provisions on torture refined by centuries of international jurisprudence. For the United States, this is part of the propaganda war against terrorism. As a result, dictators, military regimes and other ruthlessly violent political groups are now readily justifying their disregard for the absolute prohibition on torture.

2. The argument that torture is necessary and justified has not only corrupted intellectual debate but also has resulted in increased torture throughout the world. Inevitably, extrajudicial killings are also increasing in many countries, justified one way or another, be they "encounter killings" of alleged criminals, killings of purported drug dealers, or killings of "suspected terrorists".

3. When the absolute prohibition of torture is slighted, other principles are undermined: these include the notions of fair trial and independence of the judiciary. It is no surprise that there have been some calls to abolish the Geneva Conventions. Others, such as the Malimath Committee in India, have suggested abandoning established principles of fair trial as a means to deal effectively with increasing crime figures.

4. Behind these disturbing developments is a growth in new notions on punishment. Deterrence as a method of social control, irrespective of the guilt or innocence of the accused, has been revived as a common premise. Another is that law enforcement agencies should not be overburdened with the difficulties associated with proof, but should be liberated from fears of being punished for abuse of authority. Together these amount to an ideological defense of impunity. Principles relating to certainty of guilt and punishment, developed during a centuries-long arduous battle against the draconian powers of investigators and prosecutors, are rapidly evaporating.

5. The Asian Legal Resource Centre wishes to draw the attention of the global human rights community to understand that the very fabric of the values we defend is now under threat. This attack is unprecedented: it is not an attempt to relativise human rights on cultural or other grounds, like those that have come before, but rather a large-scale effort to abandon completely human rights as inconvenient and irrelevant.

6. In the fight against this assault on the foundations of human rights, absolute principles, such as the prohibition on torture, should be openly and strongly defended. All persons concerned with the protection and promotion of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment need to revive debate on the most basic principles it represents. A global campaign in favour of the Convention is now imperative. The defense of the physical integrity of everyone, irrespective of whatever allegations may be made against them, is essential if the whole body of human rights thought is to be reasserted and enriched.

Women and religious minorities under the Hudood Laws in Pakistan

Naeem Shakir, Advocate,
Lahore High Court, Pakistan

Despite international treaties, covenants, human rights declarations, movements at global or local levels and resistance against repressive laws, norms, customs, administrative measures and policies, fundamental human rights continue to be enormously violated in the world in general, and throughout Asia in particular. The weaker and marginalised sections of society are more vulnerable and hardest-hit. In Pakistan, religious minorities and women have suffered tremendously because of state legislation, especially on account of the Hudood Laws. General Zia-ul-Haq promulgated these laws to introduce the punishments of *hadd* into criminal law, in order to bring it into conformity with the injunctions of Islam as set out in the Holy Quran and Sunnah. These laws include the

I. Offence of Zina (Enforcement of Hudood) Ordinance 1979;

II. Offences against Property (Enforcement of Hudood) Ordinance 1979;

III. Prohibition Enforcement of Hadd Order IV 1979;

IV. Offence of Qazf (Enforcement of Hudood) Ordinance 1979; and,

V. Execution of the Punishment of Whipping Ordinance 1979.

These laws were supposedly made to Islamise Pakistani society, and provide justice to the people. However, in the process, the military adopted administrative and legislative measures in an arbitrary, non-democratic and sectarian manner. Apart from legislation on religious lines, a religious court was established by amending the Constitution. The introduction of a new court, the Federal Shariat Court, not only jeopardized the whole judicial system of the country but impaired the independence of the Parliament as well because it was empowered to annul any regulation found repugnant to the Holy Quran and Sunnah in its judgement.

Ironically, these provisions and the Islamic punishments—which included stoning to death, amputation of hands and feet and flogging in public—were also made applicable to non-Muslim citizens of the country. Minorities have been consistently raising their voices against the application of a Shariah to which they do not belong. Women too have been very critical about the enforcement of these laws, particularly against the law relating to adultery and rape.

The Offence of Zina (Enforcement of Hudood) Ordinance 1979 (the Ordinance) has been the most contentious piece of legislation because of its conceptual inaccuracies, textual errors, religious and gender discrimination, and of course, abuse in application of law. A brief examination of the law will help capture the vulnerable situation felt by women and religious minorities in Pakistan. But unless the text of the law is laid before the reader, it cannot be properly appreciated. Therefore the text is given hereunder.

The Offence of Zina (Enforcement of Hudood) Ordinance, 1979

An Ordinance to bring in conformity with the injunctions of Islam the law relating to the offence of zina

WHEREAS it is necessary to modify the existing law relating to zina so as to bring it in conformity with the Injunctions of Islam as set out in the Holy Quran and Sunnah;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now THEREFORE, in pursuance of the Proclamation of the fifth day of July 1977 (C.M.L.A. Order No. 1 of 1977), and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

1. Short title, extent and commencement.

Short title, extent & commencement

(1) This Ordinance may be called the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on the twelfth day of Rabi-ul-Awwal, 1399 Hijri, that is, the tenth day of February 1979.

2. Definitions.

Definitions

In this Ordinance, unless there is anything repugnant in the subject of context,

(a) "adult" means a person who has attained, being a male, the age of eighteen years or, being a female, the age of sixteen years, or has obtained puberty;

(b) "hadd" means punishment ordained by the Holy Quran or Sunnah;

(c) "marriage" means marriage which is not void according to the personal law of the parties, and "married" shall be construed accordingly;

(d) "muhsan" means-

(i) a Muslim adult man who is not insane and has had sexual intercourse with a Muslim adult woman who, at the time he had sexual intercourse with her, was married to him and was not insane; or

(ii) a Muslim adult woman who is not insane and has had sexual intercourse with a Muslim adult man who, at the time she had sexual intercourse with him, was married to her and was not insane; and

(e) "tazir" means any punishment other than hadd, and all other terms and expressions not defined in this Ordinance shall have the same meaning as the Pakistan Penal Code, or the Code of Criminal Procedure, 1898.

Ordinance to override other laws

3. Ordinance to override other Laws.

The provision of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.

Zina

4. Zina.

A man and a woman are said to commit 'zina' if they willfully have sexual intercourse without being validly married to each other.

Explanation:- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of zina.

Zina liable to hadd

5. Zina liable to hadd.

(1) Zina is zina liable to hadd if:-

(a) it is committed by a man who is an adult and is not insane with a woman to whom he is not, and does not suspect himself to be married; or

(b) it is committed by a woman who is adult and is not insane with a man to whom she is not, and does not suspect herself to be, married.

(2) Whoever is guilty of zina liable to hadd shall, subject to the provisions of this Ordinance,-

(a) if he is a muhsan, be stoned to death at public place; or

(b) if he or she is not a muhsan, be punished, at a public place, with whipping numbering one hundred stripes.

(3) No punishment under sub-section (2) shall be executed until it has been confirmed by the Court to which an appeal from the order of conviction lies; and if the punishment be of whipping, until it is confirmed and executed, the convict shall be dealt with in the same manner as if sentenced to simple imprisonment.

Zina-bil-jabr

6. Zina-bil-jabr.

(1) A person is said to commit zina-bil-jabr if he or she has sexual intercourse with a woman or a man, as the case may be, to whom he or she is not validly married, in any of the following circumstances, namely:-

(a) against the will of the victim,

(b) without the consent of the victim,

(c) with the consent of the victim, when the consent has been obtained by putting the victim in fear of death or of hurt, or;

(d) with the consent of the victim, when the offender knows that the offender is not validly married to the victim and that consent is given because the victim believes that the offender is another person to whom the victim is or believes herself or himself to be validly married.

Explanation:- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of zina-bil-jabr.

(2) Zina-bil-jabr is zina-bil-jabr liable to hadd if it is committed in the circumstances specified in sub-section (1) of section 5.

(3)Whoever is guilty of zina-bil-jabr liable to hadd shall subject to the provisions to this Ordinance,-

(a) if he or she is a muhsan, be stoned to death at a public place; or

(b) if he or she is not muhsan, be punished whipping numbering one hundred stripes, at a public place, and with such other punishment, including the sentence of death, as the Court may deem fit having regard to the circumstances of the case.

(4) No punishment under sub-section (3) shall be executed until it has been confirmed by the Court to which an appeal from the order of conviction lies; and if the punishment be of whipping until it is confirmed and executed shall be dealt with in the same manner as if sentenced to simple imprisonment.

7. Punishment for zina or zina-bil-jabr where convict is an adult.

Punishment for zina-bil-jabr where convict is an adult

A person guilty of zina or zina-bil-jabr shall, if he is not an adult, be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both, and may also be awarded the punishment of whipping not exceeding thirty stripes:

Provided that, in the case of zina-bil-jabr, if the offender is not under the age of fifteen years, the punishment of whipping shall be awarded with or without any other punishment.

8. Proof of zina or zina-bil-jabr liable to hadd.

Proof of zina or zina-bil-jabr liable to hadd

Proof of zina-bil-jabr liable to hadd shall be in one of the following forms, namely:-

(a) the accused makes before a Court of competent jurisdiction a confession of the commission of the offence; or

(b) at least four Muslim adult male witnesses, about whom the Court is satisfied, having regard to the requirements of tazkiya al-shuhood, that they are truthful persons and abstain from major sins (kabair), give evidence as eye-witnesses of the act of penetration necessary to the offence:

Provided that, if the accused is a non-Muslim, the eyewitnesses may be non-Muslims.

Explanation:- In this section "tazkiya-al-shahood" means the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness.

9. Case in which hadd shall not be enforced.

Case in which hadd shall not be enforced

(1) In a case in which the offence of zina or zin-bil-jabr is proved only by the confession of the convict, hadd, or such part of it as is yet to be enforced, shall not be enforced if the convict retracts his confession before the hadd or such other part is enforced.

(2) In case in which the offence of zina or zina-bil-jabr is proved only by testimony, hadd or such part of it as is yet to be enforced, shall not be enforced, so as to reduce the number of eyewitnesses to less than four.

(3) In the case mentioned in sub-section (1), the Court may order retrial.

(4) In the case mentioned in sub-section (2), the Court may award tazir on the basis of the evidence on record.

Zina or zina-bil-jabr liable to tazir

10. Zina or zina-bil-jabr liable to tazir.

(1) Subject to provisions of section 7, whoever commits zina or zina-bil-jabr which is not liable to hadd, or for which proof in either of the forms mentioned in section 8 is not available and the punishment of qazf liable to hadd has not been awarded to the complainant, for which hadd may not be enforced under this Ordinance, shall be liable to tazir.

(2) Whoever commits zina liable to tazir shall be punished with rigorous imprisonment for a term which [may extend to] ten years and with whipping numbering thirty stripes, and shall also be liable to a fine.

(3) [Subject to sub-section (4), whoever] commits zina-bil-jabr liable to tazir shall be punished with imprisonment for a term which shall not be less than four years nor more than twenty five years and shall also be awarded the punishment of whipping numbering thirty stripes.

(4) When zina-bil-jabr liable to tazir is committed by two or more persons in furtherance of common intention of all, each of such person shall be punished with death.

Kidnapping, abducting or induciing women to compel for marriage, etc.

11. Kidnapping, abducting or inducing women to compel for marriage, etc.

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she will be forced or seduced to illicit inter-course, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine; and whipping not exceeding thirty stripes, and shall also be liable to fine; and whoever by means of criminal intimidation as defined in the Pakistan Penal Code, or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit inter-course with another person shall also be punishable as aforesaid.

Kidnapping or abducting in order to subject person to an unnatural lust

12. Kidnapping or abducting in order to subject person to an unnatural lust.

Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty five years, and shall also be awarded the punishment of whipping not exceeding thirty stripes.

Selling person for purposes of prostitution, etc.

13. Selling person for purposes of prostitution, etc.

Whoever sells, lets to hire, or otherwise disposes of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine.

Explanation:-

(a) When a female is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she be used for the purpose of prostitution.

(c) For the purposes of this section and section 14 "illicit intercourse" means sexual intercourse between persons not united by marriage.

Buying person for purposes of prostitution, etc.

14. Buying person for purposes of prostitution, etc.

Whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purposes of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or for knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine.

Explanation:- Any prostitute or any person keeping or managing a brothel, who buys, or hires or otherwise obtains possession of a female shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage

15. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief, shall be punished with rigorous imprisonment for a term which may extend to twenty-five years and with whipping not exceeding thirty stripes, and shall also be liable to fine.

Enticing or taking away or detaining with criminal intent a woman

16. Enticing or taking away or detaining with criminal intent a woman.

Whoever takes or entices away any woman with intent that she may have illicit intercourse with any person, or conceals or detains with intent any woman, shall be punished with imprisonment of either description for a term which may extend to seven years and with whipping not exceeding thirty stripes, and shall also be liable to fine.

Mode of execution of punishment of stoning to death

17. Mode of execution of punishment of stoning to death.

The punishment of stoning to death awarded under section 5 or section 6 shall be executed in the following manner, namely:-

Such of the witnesses who deposed against the convict as may be available shall start stoning him and, while stoning is being carried on, he may be shot dead, whereupon stoning and shooting shall be stopped.

Punishment for attempting to commit an offence

18. Punishment for attempting to commit an offence.

Whoever attempts to commit an offence punishable under this Ordinance with imprisonment or whipping, or to cause such an offence to be committed, and in such attempt does any act towards commission of an offence, shall be punished with imprisonment for a term which may extend to one-half of the longest term provided for that offence, with whipping not exceeding thirty stripes, or with such fine as is provided for the offence, or with any two of, or all the punishments.

Application of certain provisions of Pakistan Penal Code, and amendment

19. Application of certain provisions of Pakistan Penal Code, and amendment.

(1) Unless otherwise expressly provided in this Ordinance, the provisions of section 34 to 38 of Chapter II, sections 63 to 72 of Chapter III and Chapters V and VA of the Pakistan Penal Code, shall apply, mutatis mutandis, in respect of offences under this Ordinance.

(2) Whoever is guilty of the abetment of an offence liable to hadd under this Ordinance shall be liable to the punishment provided for such offence as tazir.

(3) In the Pakistan Penal Code,

(a) section 366, section 372, section 373, section 375 and section 376 of Chapter XVI shall stand repealed; and

(b) in section 367, the words and comma or to the unnatural lust of any person, shall be omitted.

Application of Code of Criminal Procedure 1898 and amendment

20. Application of Code of Criminal Procedure 1898 and amendment.

(1) The provisions of the Code of Criminal Procedure, 1898, hereafter in this section referred to as Code, shall apply, mutatis mutandis in respect of cases under this Ordinance:

Provided that, if it appears in evidence that the offender had committed a different offence under any other law, he may, if the Court is competent to try that offence and award punishment therefor, be convicted and punished for that offence.

Provided further that an offence punishable under this Ordinance shall be triable by a Court of Sessions and not by a Magistrate authorized under section 30 of the said Code and an appeal from the order of the Court of Sessions shall lie to the Federal Shariat Court:

Provided further that a trial by a Court of Sessions under this Ordinance shall ordinarily be held at the headquarters of Tehsil in which the offence is alleged to have been committed.

(2) The provisions of the Code relating to the confirmation of sentence of death shall apply, mutatis mutandis, to confirmation of sentence under this Ordinance.

(3) The provisions of section 198, section 199, section 199A or section 199B of the Code shall not apply to the cognizance of an offence punishable under section 15 or section 16 of the Ordinance.

(4) The provisions of sub-section (3) of section 391 or section 393 of the Code shall not apply in respect of the punishment of whipping awarded under this Ordinance.

(5) The provisions of Chapter XXIX of the Code shall not apply in respect of punishments awarded under section 5 or section 6 of this Ordinance.

(6) In the Code, section 561 shall stand repealed.

Presiding Officer of Court to be Muslim

21. Presiding Officer of Court to be Muslim.

The Presiding Officer of the Court by which case is tried, or an appeal is heard, under this Ordinance shall be a Muslim.

Provided that, if the accused is a non-Muslim, the Presiding Officer may be a non-Muslim.

Saving

22. Saving.

Nothing in this Ordinance shall be deemed to apply to the cases pending before any Court immediately before the commencement of this Ordinance, or to offences committed before such commencement.

This legislation has played havoc with the lives of women in Pakistan due to the inherent flaws and lacunas in the text, and because it has been applied in bad faith by prosecuting lawyers, both public and private. The National Commission on the Status of Women, a statutory body of the federal government of Pakistan, has recognized this fact in that 80% of women languishing in jails are there as a result of the ambiguities in this legislation with regards to adultery, rape, kidnapping and abduction.

Rape is endemic in Pakistan. The 2002 annual report of the Human Rights Commission of Pakistan observes that 'one woman is being raped every two hours, and one woman is gang-raped every eight hours'. Most of the cases go unreported because of social taboos and the stigma that the wretched act carries against a woman. For those who do come forward, they face immense legal and administrative obstacles to having their cases heard.

"Under the Ordinance, sexual intercourse is adultery whether it is with or without the consent of a woman who is not married with a man"

The Commission recently assigned a Special Committee, consisting of judges, lawyers and Islamic scholars, among whom the author was a member, to review the Hudood Laws. The Special Committee has taken serious exception to the lacunas, abuse and flawed application of the legislation and has made recommendations that would bring about radical changes in the statute, and make it inapplicable to non-Muslim citizens of the State. Some areas of the Ordinance that the Special Committee took particular exception to are as follows.

Under the Ordinance, sexual intercourse is adultery whether it is with or without the consent of a woman who is not married with a man. The result has been that whenever a woman has complained of rape, particularly if coming from a village, she has been roped into the offence. Her statement that she has been engaged in sexual intercourse has been treated as a confession allowing her to be charged with the offence of zina. At the same time, it is virtually impossible for her to prove that she was raped, and did not engage in the sexual act voluntarily, because section 8 of the Ordinance requires evidence of at least four adult male Muslim eye witnesses who have physically seen the act of penetration. But the matter does not end here. The credibility of the witnesses has to be measured and tested in the light of the Islamic principle 'tazkiya tu shahood', which requires a witness to be a person who abstains from major sins as described under the injunctions of Islam.

Pregnancy is considered to be absolute proof of having committed the offence. Jehan Mina, a 15-year-old, was sentenced to 100 stripes after she was found to be pregnant. Her two male relatives had raped her. The Federal Shariat Court, while taking a 'charitable view', reduced the number of stripes to 10. Safia Bibi's case brought shame to the whole nation when the world media flashed the news. Safia Bibi is blind, and so she was unable to identify her rapist, and thus was sentenced as her pregnancy served as absolute proof against her. Ironically, the judgement records that 'taking a lenient view due to Safia Bibi's blindness, she is sentenced to 30 stripes only'. Fahmida was the first woman who was sentenced to 100 stripes along with Allah Bakash, who was awarded punishment of death by stoning.

Zafran Bibi was sentenced to death by stoning for committing the offence of zina in April 2002. This is another case that embarrassed all, including the state functionaries, as the world media once again exposed the shameful situation for women in Pakistan. The female victim was sentenced but the male accused was acquitted for lack of evidence. According to Zafran Bibi, her brother-in-law Jamal Khan repeatedly raped her while her

husband Niamat Gul was in jail. Her pregnancy again amounted to 'evidence' of her crime. Her father-in-law Zabta Khan lodged the report but in order to save his other son he accused a neighbour, Akmal Khan, of the offence.

"The provisions of the Ordinance overriding other statutes offend the spirit of the Constitution"

This Ordinance also creates a gender imbalance, as the age for criminal liability is 18 for a male and 16 for a female, or on attaining puberty. The rationale adopted by the authors of the Ordinance may have been that girls develop earlier than boys. But an essential ingredient in the commission of an offence is the intent to commit the offence. How can a girl of 11 or 12 years, having attained puberty, be expected to understand the implications of adultery, or rape, if enticed away and abused?

There is a difference of opinion among Muslim scholars on the punishment of hadd. Most agree that Hadd is punishment as provided in the Holy Quran. However, a few maintain that—and the Ordinance follows this argument—'Sunnah' (the practice of the Prophet) is also a source of law upon which such punishment can be given. The punishment of stoning to death for adultery has been drawn not from the Holy Quran but from the Sunnah. Therefore this debate is very crucial for determination of this punishment, which underpins the whole Ordinance. Likewise, the offence of zina-bil-jabr has been derived from the Sunnah, as the offence of rape is not mentioned in the Holy Quran.

Religious minorities have been hard-pressed under the rigours of this law, on which even Muslim scholars are in disagreement, particularly with regards to marriage. The concepts of marriage and divorce among the citizens of other religions are not the same as Muslims. Polygamy is allowed in Islam whereas other religions strictly forbid it. Some provisions of the Divorce Act applicable to minorities are in conflict with the Ordinance. Yet, section 1(2) of the Ordinance says that it shall extend to whole of Pakistan, and section 3 declares that its provisions shall have effect notwithstanding anything contained in any other law for the time being in force. These provisions are repressive, arbitrary and discriminatory, as despite being based on the Injunctions of Islam (as set out in the Holy Quran and Sunnah), they have been imposed on non-Muslim citizens as well.

All laws are subject to the Constitution of the Islamic Republic of Pakistan. Whereas article 227 of the Constitution provides that all existing laws shall be brought in conformity with the Injunctions of Islam, however, article 227(3) has declared that, "Nothing in this Part shall affect the Personal Laws of non-Muslim citizens or their status as citizens." Therefore, the provisions of the Ordinance overriding other statutes offend the spirit of the Constitution. It may be recalled that in 1991 a federal statute was promulgated whereby Islamic Shariah became the supreme law of the land. Section 1(4) of the Enforcement of Shariah Act lays down that, "Nothing contained in this Act shall affect the Personal Laws, religious freedom, traditions, customs and way of life of the non-Muslims." Therefore this law that has subjected non-Muslims to repression and discrimination for the last 24 years should be invalidated on these grounds alone.

The destiny of a rape victim in Pakistan

Ijaz Ahmed, Judicial Magistrate, Pakistan

Although the case of Zafran Bibi, a rape victim sentenced to death by stoning under Pakistan's Zina Ordinance obtained worldwide attention, too little thought has been paid as to how it is possible for innocent illiterate young victims to be so thoroughly abused by the country's judicial system. Given the inherent weaknesses in the investigation system, with all but a zero per cent chance of punishment to the assaulter, hardly any rape cases are reported to the police. That in this case the victim ended up the accused, and was convicted with the maximum punishment available under any law in the country, speaks to how a rape case can be twisted to a perverse conclusion under the current legislation. How could it be that the victim reported that she was subjected to a crime against her will while the police insisted that she was a consenting party? What were the consequences? To answer these questions, we must begin with some examination of the law under which the unfortunate victim was convicted.

The Zina Ordinance

General Zia-ul-Haq's regime introduced the Offence of Zina (Enforcement of Hudood) Ordinance in 1979. Offences covered under this law are: fornication and adultery, rape, kidnapping, abducting or inducing a woman to illicit sex or compelling her to marriage against her will, enticement or detaining a woman with criminal intent, or selling or buying a person for purposes of prostitution. The age for criminal liability for an accused girl is 16 or on attaining puberty, while for a boy it is 18.

There are two sets of punishments under this law: hadd and tazir. Hadd means punishment prescribed by God Almighty as revealed in the Holy Quran. Tazir is punishable under the Pakistan Penal Code, when the offence cannot be proved under the Hudood Laws. Hadd is fixed prescribed punishment, leaving no discretion with the court. The confession of the accused before a competent court allows hadd to be awarded. If before execution of sentence the accused retracts the confession, hadd cannot be imposed. The number of witnesses and requirements pertaining

to them are also specified in the law. A hadd sentence requires the evidence of four adult male Muslim witnesses (who are truthful persons and abstain from major sins). Non-Muslim males can only be witnesses when the accused is a non-Muslim.

Under the Hudood Laws, rape, which is termed *zina-bil-jabr*, has been differentiated from wilful sexual intercourse, *zina*. In order to understand fully the case of Zafran Bibi it is necessary to note the relevant sections of the Zina Ordinance.

- Section 4, wilful sexual intercourse, zina: A man or a woman are said to have committed the offence if they wilfully have sexual intercourse without being validly married to each other for which commission penetration is sufficient to constitute the offence.
- Section 5, punishment for zina liable to hadd: The offence is liable to hadd punishment if it has been committed by a Muslim who is an adult and is not insane with a woman to whom he is not and does not suspect himself to be married; or vice versa. Whosoever as aforesaid is guilty of the offence of wilful sexual intercourse be stoned to death at a public place if he or she is *muhsan.* If he or she is not muhsan and is guilty of the offence then he or she is to be punished at a public place with whipping numbering one hundred stripes. 'Muhsan' refers to a man or a woman who is adult and not insane and has had sexual intercourse with an adult woman or man respectively who at the time he or she had sexual intercourse with her or him was married and not insane.
- Section 6(1), rape, zina-bil-jabr: A person is said to have committed the offence if he or she has sexual intercourse with a woman or man as the case may be to whom he or she is not validly married, in any of the following circumstances:

  a) Against the will of the victim,

  b) Without the consent of the victim,

  c) With the consent of the victim, when the consent has been obtained by putting the victim in fear of death or of hurt, or

  d) With the consent of the victim, when the offender knows that the offender is not validly married to the victim and that the consent is given because the victim believes that the offender is another person to whom the victim is or believes herself or himself to be validly married. For this, penetration is sufficient to complete the offence.
- Section 6(3), punishment of rape liable to hadd: The offence is liable to hadd punishment if it has been committed by a Muslim who is an adult and is not insane with a woman to whom he is not and does not suspect himself to be married; or it is committed by a woman who is an adult and is not insane with a man to whom she is not and does not suspect herself to married. Whosoever is guilty of the offence of rape will be stoned to death at a public place if he or she is muhsan. If he or she

is not muhsan and is guilty of the offence then he or she will be punished at a public place with whipping numbering one hundred stripes, and with such other punishment, including the sentence of death, as the court may deem fit having regard to the circumstances of the case.

- Section 8, proof of zina or zina-bil-jabr: (a) The accused makes a confession of the commission of the offence before a court or competent jurisdiction; or, (b) At least four adult male witnesses, about whom the court is satisfied, having regard to the requirement that the witness is a truthful person and abstains from major sins, give evidence as eyewitnesses of the act of penetration necessary to the offence. Provided the accused is a non-Muslim, the eyewitnesses may be non-Muslim.
- Section 10, zina or zina-bil-jabr (rape) liable to tazir punishment: Whosoever commits the offence of zina or zina-bil-jabr who is not liable to hadd or for which the proof as mentioned earlier is not available, shall be liable to tazir. In the case of wilful sexual intercourse liable to tazir it shall be punished with rigorous imprisonment for a term which may extend to ten years and with whipping numbering thirty stripes, and shall also be liable to a fine. In a case of zina-bil-jabr liable to tazir, whoever commits the offence shall be punished with imprisonment for a term which shall not be less than four years nor more than twenty five years and shall also be punished by whipping numbering thirty stripes.

"The investigation officer became the complainant in the case, despite there being no provision for this in the Zina Ordinance"

Brief facts of the case

On 26 March 2001, it was reported to the police that when Zafran Bibi had gone to cut fodder at a hill nearby her house Akmal Khan had overpowered her and raped her. The report states that thereafter she returned to her house and informed her mother-in-law about the incident. Her mother-in-law advised her to wait for the return of her father-in-law, who had gone to visit his imprisoned son—Zafran Bibi's husband—and report the matter to the police if advised by him to do so. After making the report, Zafran Bibi was referred to a hospital for an examination. The medical officer there found her to be over seven weeks pregnant. Given the discrepancy in the period between the alleged rape and her pregnancy, the police arraigned Zafran Bibi also as an accused along with Akmal Khan under section 5/8/10 of the Zina Ordinance. The allegation was that she had consented to sex with Akmal Khan but had only disclosed it when she became pregnant. The investigation officer then became the complainant in the case, despite there being no provision for this in the Zina Ordinance, which only stipulates that victims or witnesses can be the complainants in offences of zina or zina-bil-jabr.

During the trial, however, she alleged that the police had recorded a version of her complaint at the insistence of her father-in-law, which would implicate Akmal Khan. She maintained that it was in fact Jamal, her brother-in-law, who had raped her

repeatedly, but her father-in-law implicated Akmal Khan to save his son. The trial court acquitted Akmal Khan and on the basis of circumstantial evidence and her statement sentenced Zafran Bibi to death by stoning under section 5 of the Zina Ordinance. The court ruled that she had not been raped but had committed adultery, which entails this punishment.

"There was no reason to conclude that her delay in reporting the matter was on account of her consent to the sexual act"

When Zafran Bibi's in-laws saw that the person whom they had implicated had been acquitted and the victim was adamant that the actual culprit was her brother-in-law, her husband gave a new twist to events by telling the superior court through an affidavit that his wife was pregnant by him. He stated that although he is imprisoned, he works at the jail superintendent's house where his wife frequently visited him and they had sex there, resulting in the pregnancy. If this is the truth then Zafran Bibi must be insane to have lodged a rape complaint, and not retract her story throughout the trial. How could it be that the parents would not be aware that their daughter-in-law had become pregnant by their son? And why did the husband not submit an affidavit to this effect in the trial court in the first instance, and put the matter to rest there?

Presumption made against the complainant

The variance between the period since the supposed commission of the crime and the period of pregnancy should have been ascertained by the police in order to implicate the persons who connived to cover up the offence. Presumption in this case should have gone against the in-laws and not the victim, because if there were any wrongful act on the part of the victim she would have never reported the matter to the police. Anyway, there is no crime in which variance between the said occurrence and the effects of the crime upon the victim raise a suspicion that the victim was in connivance with the accused. However, this was the ground upon which Zafran Bibi was implicated. The prosecution consistently drew a presumption against the complainant on the basis of delay in the lodging of the report. It ignored the fact that in a case like this, family honour and reputation is at stake. Members of the family are normally hesitant to report promptly to the police about such a case, and usually wait to get the approval of the senior male members of the family before doing so. On this understanding alone the superior courts have held that a mere delay in reporting is no basis for drawing an adverse inference. In this case, the delay has also been plausibly explained in the First Information Report itself. Zafran Bibi waited for return of her father-in-law to lodge the report, as advised by her mother-in-law. Therefore, there was no reason to conclude that her delay in reporting the matter was on account of her consent to the sexual act and she only disclosed the occurrence when she came to know that she was pregnant.

Conviction overturned

The conviction order of the Additional Sessions Judge was set aside by the Federal Shariat Court, which hears appeals against orders given in hadd cases. The Court acquitted Zafran Bibi as there were material irregularities in the procedure in the lower court, and fundamental aspects of the law had been ignored. The Court observed that

> "The whole case was based on circumstantial evidence, coupled with statements made by Zafran Bibi"

- The earlier conviction was illegal because of insufficient proof as stipulated under section 8 of the Zina Ordinance. The whole case was based on circumstantial evidence, coupled with the statements made by Zafran Bibi at different stages. The trial court considered these statements as a confession and, taking into account the fact of pregnancy and subsequent delivery of a child, the court thought it sufficient for conviction. However, neither accused had in fact made any confession of wilful sexual intercourse, nor was the required testimony of four Muslim adult male witnesses available.
- Mere pregnancy or birth of a child is not sufficient for conviction under hadd. If the woman's defence is that she was raped and the test of proof contained in the Ordinance is not met, a conviction cannot be made.
- The prosecution had selectively interpreted parts of the statement of the accused in order to formulate its case. However, according to the established principles of criminal law the statement had to be accepted in entirety; the prosecution could not simply take benefit from some absurdity contained in the statement and use it alone as evidence against the accused.

The Ordinance in the dock

Although Zafran Bibi was finally acquitted of wrongdoing, the judgement in the trial court brought global criticism upon the Zina Ordinance. For its part, the Federal Shariat Court has stated that

> The ordinance is based on the clear injunctions contained in the Holy Quran and Sunnah of the Holy Prophet (Peace be upon him). These time-tested laws mainly aim at preservation and protection of life, honour and property of the citizens of an Islamic State and dispensation of justice without any discrimination. Irrespective of the consideration for sex, wealth, religion, creed, colour, language or any other factor, these laws provide safeguards to enable the citizens enjoy peaceful environment, free from any encroachment on their fundamental human rights. Like other laws, the prosecuting or other components of law-enforcing machinery may err in its application in respect to various facts and circumstances, however, the ideal nature of these laws in ensuring maintenance of public law and order, besides its other deterrent and reformative aspects, is admittedly far-superior to the man-made laws on account of its highly balanced approach to individual and public interests. In fact the depth of wisdom of these laws is unfathomable. The brutal offenders who commit murder, rape or dacoity, therefore need to be dealt with iron hand otherwise their unbridled activities open the floodgate of innumerable crimes at the cost of lives, honour and property

of innocent people. One can only well realise the far-reaching effects of the wisdom contained in these laws if one could only visualise oneself stepping in the shoes of the aggrieved individuals and families subjected to the heinous offences.

"Rape in the absence of any witness is no crime at all under the Zina Ordinance; therefore, instead of discouraging rape, it does the opposite"

Unfortunately, in its bid to defend the Ordinance, the Court has overlooked its many inherent ills and weaknesses. Among these, first, the Hudood Laws are clearly discriminatory, as they exclude altogether the testimony of female witnesses in awarding the punishment of hadd. If a woman is raped in the presence of any number of women, the rapist cannot be punished under the Ordinance. In all cases a victim has to have at least four male Muslim witnesses meeting the moral standards set by the Ordinance. Rape in the absence of any witness is no crime at all under the Zina Ordinance. Therefore, instead of discouraging rape, it does the opposite. Secondly, as the offence of zina is based on the injunctions of Islam it comes within the domain of Muslim personal law. Hence, non-Muslims should be exempted from this law, which at present they are not. Thirdly, the law does not protect a child victim who has not attained mental maturity. The only criteria set forth by the Ordinance are that a male be aged 18 years while a female be aged 16 years or have attained puberty. This means that a 12-year-old girl can be punished with having had wilful sexual intercourse out of wedlock if she has started menstruating. The Ordinance does not in any way account for the girl's mental maturity, which in criminal law is a fundamental requirement to construe criminal liability. Finally, the law does not contain a single word about the compensation or rehabilitation of the victim, neither as a result of being raped in the first place, nor subsequent to wrongful prosecution and all of the suffering and anguish that it has caused.

'Honour killing' in Pakistan

Asian Legal Resource Centre

1. The Asian Legal Resource Centre is gravely concerned with the continued honour killings in Pakistan, and the impunity with which they are committed. During 2003, around 1261 cases of honour killings were reported, with 938 committed against women and 323 against men. Of these 1261 cases of violent crimes related to so-called "honour," 94 were reported in January, 82 in February, 120 in March, 92 in April, 148 in May, 135 in June, 86 in July, 170 in August, 107 in September, 106 in October, 53 in November and 68 in December.

2. In most of the honour killing incidents, women are killed on assumed suspicions without any chance to defend themselves. These murders are committed in obstinacy and in most cases the culprits go unpunished, sometimes by courts of law.

3. A case in point: a medial report of 19 December 2003 stated that an elderly woman elected councillor, Faiz Batool, from Sillanwala tehsil of Sargodha, was paraded naked through a bazaar by goons of the Kalyar tribe. This was done for an alleged brawl involving the tribe. The victim's family alleged that the influential tribe is now pressurising them to withdraw the complaint lodged with the police. The police did nothing to protect the victim or to apprehend the culprits. A member of the Parliament and of the Kalyar tribe, though not related to the accused, knows the details of the case, but did not help the victim in getting redress. The surfacing of this incident failed to move the higher authorities to effect any change in the way the administration, at local and tehsil level, operate in coherence with local feudal lords and their muscle-men.

4. In another incident, Mohammad and Shanzia Hassan, who were married of their own free will, were killed by a firing squad in pursuance of a decision made by the jirga, despite the resistance of the girl's father, who told the jirga that he

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The Asian Legal Resource Centre (ALRC) submitted this written statement to the sixtieth session of the United Nations Commission on Human Rights this 2004, under item 12(a), Integration of the human rights of women and the gender perspective: Violence against women. The full text of all written statements to the Commission can be found on the ALRC website, http://www.alrc.net.

had pardoned his daughter. Their marriage was resented by the Khaskheli clan, to which the girl belonged. The couple was summarily arrested and illegally imprisoned for some time prior to their deaths. The police registered a case against the unknown murderers, failing to record the names of the arrested persons who were standing near the dead bodies of the couple with an unlicensed pistol in the First Information Report.

5. This is indicative of the violence and discrimination that girls and women face in Pakistan. It also illustrates that the government of Pakistan is doing little to change the situation. While 33% participation of women is established in legislature at all tiers, including local, provincial and national, records show that there has not been a single resolution passed, nor is there a discussion of the menace of honour killings at any level. Not only this, but female members of parliament rarely even speak out in sessions.

6. According to a female MPA, Sassui Palijo of the Sindh assembly, the mere presence of women in parliament does not mean that any changes will occur, because there is no rule of law and even government ministers openly support discriminatory practices such as honour killings and the Jirga system. When one particular member of parliament attempted to raise the issue of honour killings in an assembly session, he was not allowed to speak and was later threatened.

7. Similarly, although the government of Pakistan formed the National Commission on the Status of Women (NCSW) in July 2000 to make recommendations for the review of discriminatory laws against women, none of the Commission's recommendations has been heeded as of yet. A report recommending the repeal of the discriminatory and controversial Hudood Ordinances of 1979 was submitted last August to the cabinet, but has not yet even been taken up for consideration.

8. The jirga system present in Pakistan is the main obstacle to the ending of honour killings, as the Asian Legal Resource Centre stated in its previous submission on the matter [E/CN.4/2003/NGO/95]. The government of Pakistan has so far done little to unify the country's legal systems. Rather, the government has given more power to politicians and feudal lords under its schemes to allegedly dispense justice, such as the 2002 Police Order, on which the Asian Legal Resource Centre has made a separate submission.

9. An example of the country's slow and ineffective justice mechanisms is that only in December 2003 did the country's highest court of law, the Supreme Court of Pakistan, rule that an adult Muslim female was entitled to marry of her own free will, without having to obtain the consent of her wali, or guardian. In its judgement, the court observed that a Muslim female, on reaching 18 years of age, and being sane of mind,

was not required to seek the permission of her guardian or father to enter into a valid contract of nikah, or marriage, and that an attestation by the couple was sufficient proof of marriage. The verdict has overturned the ruling of a provincial court, in two separate decisions in 1997, confirming that any marriage without the approval of a guardian was invalid. However, human rights activists fear that persons opposing such a marriage can always plead that the woman in question is insane.

10. These cases of honour killings will not be stopped unless the state immediately bans the traditional jirga system, which is the prime protector of the honour killings tradition. The government and state machinery are natural allies of the feudal lords, and the feudal lords are the upholders of honour killings.

11. With this in mind, the Asian Legal Resource Centre urges the Commission to:

(a) Pressure the government of Pakistan to take necessary action to stop the Jirga and Panchayat based parallel system run by local feudal lords.

(b) Ensure that the recommendations of the National Commission on the Status of Women are implemented and laws are amended accordingly.

(c) Urge the government of Pakistan to enact legislation on honour killings and take necessary action to stop such events.

Recent cases of 'honour killing' in Sindh Province, Pakistan

Asian Human Rights Commission &
Human Rights Education Forum (Pakistan)

This article comprises summaries of some cases of 'honour killing' in Sindh Province of Pakistan received by the Asian Human Rights Commission (AHRC) via the Human Rights Education Forum (HREF–Pakistan) in recent months. In most cases the Urgent Appeals were issued because of fear that police would fail to act on the crime.

In Pakistan, each year hundreds of women and girls are killed because of alleged relations with males, or for refusing to abide by their parents' choice of husband. In September 2003, a human rights organisation in Pakistan reported that at least 631 women and six girls died in 'honour killing' cases perpetrated by their own relatives during the first eight months of 2003. These figures were based only on newspaper reports, which fall far short of the total number of actual killings, likely to be that figure a number of times over. The male relatives who usually commit the murders are rarely sanctioned within their communities. It appears that any action by a female that is deemed to compromise the family reputation, whether real or merely suspected, is considered a valid reason to commit murder.

Although illegal under national laws, and inconsistent with Islamic doctrine in both the Quran and Shariah, these killings are generally dealt with—and often ordered by—the feudal landlords operating tribal courts, jirga. In Sindh Province the jirga system is particularly strong, so even where the families of victims lodge complaints with the police and motivate them to investigate cases, these cases do not usually end up in court due to high costs and long delays in getting justice. Therefore, victims' families resort to the jirga, where the cases are mostly settled within a few days, usually by way of compensation and without any possibility of punishment for the perpetrators, under the Ordinance of Qisas (law of retribution) and Diyat (law of compensation). Under this Ordinance, if the guardian of the victim forgives the offender and the offender provides compensation, the offender can be released without any punishment. For this reason too, in many killings of women that

are not actually 'honour killings', the perpetrators claim that the woman was an adulterer or otherwise, in order to avoid criminal proceedings and have a jirga decide the matter.

On 23 April 2004, in a significant decision, Justice Rehmat Hussain Jaffery of the Sukkur Bench, High Court of Sindh, outlawed tribal jirgas as contrary to the Constitution. He also strictly banned efforts to organise or arrange any type of jirga, and bound law enforcement agencies to take several steps against them. In his judgement, Justice Jaffery stated that:

> 47. … Private persons have no authority to execute the decision of jirgas nor the jirgas have the authority to execute their own decisions through their own sources. If such decisions are carried out and executed by killing persons, then the offence of murder will be committed and they will be liable for action as per the law… the jirgas have also usurped the powers of the executing authorities which is not permissible under the Constitution or the law.
>
> 48. The Constitution is based on a trichotomy of powers, i.e. legislature, judiciary and executive, whose powers and duties are enshrined in the Constitution ..... in jirgas the powers of legislature, judiciary and executive authorities are being exercised. All the learned counsel are unanimous that jirgas are against the trichotomy powers of the Constitution. It thus appears that jirgas are undermining or attempting to undermine the provisions of the Constitution.
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> 49. Apart from the above position, in jirgas the assembly may be in the first instance lawful, but the purpose for which they assemble is unlawful and then they conspire to commit some offences therefore they expose themselves for action as provided under various and relevant provisions of [the Pakistan Penal Code]… In such a situation it is the public duty of the police to act swiftly and to exercise their powers and perform their duties to curb the offences being committed or book the persons who committed the offences… It is also one of the public duties of the police to protect the life of the citizens who complain to them…

The judge's ruling sets a precedent, but is applicable only to Sindh, and it is now necessary for the same to occur in the Supreme Court of Pakistan for the practice to be prohibited across the country.

Meanwhile, the judgment having been made, it is yet to be practically enforced in Sindh, as a number of the following cases—which occurred after the ruling—illustrate.

1-2

VICTIMS
Malookan & Ali Dost

ALLEGED PERPETRATORS
Bhooro Subzoai (nephew), Asghar

DATE
5 February 2004

PLACE
Kandhkot town, Jacobabad District, Sindh Province

URGENT APPEAL
UA-16-2004
12 February 2004

1. Malookan & Ali Dost: Shot dead at their houses

Malookan (45 years old) and Ali Dost, alias Moran Jakhrani (25 years old), were killed in Kandhkot town, District Jacobabad, Sindh Province on 5 February 2004. They were allegedly shot dead by Bhooro Subzoai, a nephew of Malookan's husband, along with another man named Asghar, on the pretext of 'honour', because Bhooro Subzoai suspected his aunt of having had sexual relations with Ali Dost. Bhooro Subzoai reportedly came to Malookan's home with Asghar in the morning of February 5 and shot her as she was working. After that they both went outside and killed Ali Dost at his house in the same street.

After the incident the police sent the bodies of the victims to Kandhkot Hospital for an autopsy. Two separate reports were then lodged at A-Section Police Station Kandhkot, against ten culprits, although the above-mentioned two alleged culprits were identified in both reports. One report (Crime No. 14/04 Section 302 of Pakistan Penal Code), was lodged by Sanwal Subzoai, the father of Malookan, against five persons; Bhooro Subzoai, Asghar, Zulfiqar,Sijawal and Khan Mohammad. Meanwhile, the other report (Case No. 15/04, section 302 Pakistan Penal Code), was lodged by Abdul Karim Jakhrani, brother of Ali Dost, against five persons; Bhooro Subzoai, Asghar, Malook, and two unknown persons. He has stated that his brother was falsely accused of sexual relations with Malookan.

According to Malookan's father, Bhooro Subzoai killed one of his nephews a year ago and had forbidden him to meet his daughter. However, he still went to meet his daughter during the Eid Festival on 2 February 2004, and Bhooro Subzoai killed both the victims out of anger. He has also insisted that his daughter had not had sexual relations with Ali Dost. Despite the lodging of the two reports, at the time of the Urgent Appeal being issued the police were yet to take action with regards to the alleged perpetrators.

3

VICTIM
Hidayat Mahar

ALLEGED PERPETRATOR
Momin Ali Mahar (husband)

DATE
29 February 2004

PLACE
Lakhi Ghulam Shah town, Shikarpur District, Sindh Province

URGENT APPEAL
UA-28-2004
8 March 2004

2. Hidayat Mahar: Killed while working in her fields

Hidayat Mahar, 30-years-old, married Momin Ali Mahar, her cousin, over ten years ago. They had since lived in Dal village, Lakhi Ghulam Shah town, Shikarpur District, Sindh Province, had worked their farm together, and had two children.

According to Karim Dino Mahar, father of Hidayat, in the early morning of 29 February 2004, the couple was working their field adjacent to where he was working his own land with his two sons. He continues, "I saw my son-in-law had a single-barrelled gun in his hand. They worked at the field for some time and then… they started to quarrel with each other. Then Momin Ali Mahar pointed the gun at my daughter. She ran to our side, but Momin fired at her and she fell on the ground. I ran to my daughter along with my sons. When we reached the scene, we saw that she was bleeding, with injuries on her left buttock. In the meantime, my son-in law had fled. We took her to the Chuk Hospital immediately, but she died at the hospital."

Karim Dino Mahar then went to lodge a complaint at the Chak Police Station (Case No.20/2004, section 302 Pakistan Penal Code) on the same day. While he recorded that the murder was the result of a domestic quarrel, a claim of 'honour killing' has since arisen. There is no information available to indicate the reason for the quarrel or murder. The HREF has therefore indicated that the case may be disposed of by way of settlement under the Ordinance of Qisas and Diyat, and without effective police action.

3. Shahul Shar: Yet another domestic dispute ends in murder

4

VICTIM
Shahul Shar

ALLEGED PERPETRATOR
Manthar Ali Shar (husband)

DATE
21 February 2004

PLACE
Garhi Yaseen town, Shikarpur District, Sindh Province

URGENT APPEAL
UA-30-2004
22 March 2004

Shahul Shar, 25-years-old, married her cousin Manthar Ali Shar about nine years ago. They had since lived together with the family of her brother, Khair Bux Shar, in Bakhshoo Ujan village, Garhi Yaseen town, Shikarpur District, Sindh Province.

On the evening of 21 February 2004, Manthar Ali and Shahul had a domestic quarrel. That night, according to Khair Bux Shar, he and two of his cousins were sleeping in their rooms, while Manthar Ali and Shahul were sleeping in the dairy farm, located a short distance away. At about 8:30pm, they heard a gunshot from the dairy farm. They ran there, and saw Manthar Ali fleeing over a thorn fence, holding a pistol in his hand. Shahul was bleeding seriously, and died shortly after.

Khair Bux Shar lodged a report about the incident (Case No. 8/04, section 302 Pakistan Penal Code) at Dakhan Police Station, to the effect that his sister was killed because of a domestic dispute. However, the accused has claimed that it was a case of 'honour killing', although there is no evidence to substantiate this claim. HREF has reported that the police have attempted to conceal the details of the case, and have it dealt with by way of a compensation payment, rather than charge the alleged perpetrator with murder.

4. Koonjan: Child-wife murdered and body dumped

5

VICTIM
Koonjan

ALLEGED PERPETRATORS
Ahmedan Bangwar (husband), and four other in-laws

DATE
4 March 2004

PLACE
Kandhkot town, Jacobabad District, Sindh Province

URGENT APPEAL
UA-34-2004
7 April 2004

Todo Bahilkani married his daughter Koonjan to Ahmedan Bangwar two years ago, when she was around 11-years-old. Since that time she had lived with her husband in Kato Bangwar Village, Kandhkot Town, Jacobabad District, Sindh Province.

On 4 March 2004 Todo Bahilkani went to meet his daughter at her husband's home, on the way joining with his two cousins, Bilawal and Rasool Bux. After arriving, the three were chatting together with her. Around 8:30pm, Ahmadan, his father Todo, his uncle Mehar, his brother Khalid and another relative named Rahmatullah came to the house, all with guns in their hands. Ahmedan dragged Koonjan to the ground and accused her of having a sexual relationship with a person named Tahir Bahilkani. He and his family members then shot her to death. After that, they took away her body in a bullock cart. Koonjan's father and his two cousins saw everything, but they could not do anything because they were unarmed. They then rushed back to their village to contact their tribal head, Ghargaje Khan, who was out of the village at that time. He came back to the village on March 6 and advised Todo to lodge a report at the police station.

Todo Bahilkani reached the Kandhkot Town Police Officer (TPO) Masroor Jatoi on the same day (March 6), and made a complaint about the incident. The TPO ordered the Karampur Police Station to investigate the matter, where it was lodged as a complaint (Case No. 15/04 section 302, 210 Pakistan Penal Code). The police raided the houses of the alleged offenders, but

they had already fled. Nor did the police succeed in recovering Koonjan's body. When Subdivisional Police Officer of Investigation Kandhkot, Gul Hassan Khan, was contacted regarding the case on March 31 and April 1, he said that the body of the victim has not yet been found.

6

VICTIM
Hazooran

ALLEGED PERPETRATORS
Gulshan Ali (husband), Dilawar (brother-in-law)

DATE
14 April 2004

PLACE
Garhi Yaseen town, Shikarpur District, Sindh Province

URGENT APPEAL
UA-41-2004
19 April 2004;
UP-25-2004
10 June 2004

5. Hazooran: Domestic argument made to appear like 'honour killing'

On 13 April 2004, Ali Sher went to visit his 36-year-old sister, Hazooran, at her house in Drakhan village, Garhi Yaseen town, Shikarpur District, along with his maternal cousin Allah Wadhayo and his friend Ghulam. According to him, after they arrived, they found that Hazooran had quarrelled with her husband of some 21 years, Gulshan Ali, over a domestic matter. In the evening they left her house to go back to Taraai village. They went to Darkhan Bus Stand, but could not find a vehicle going to their village because it was already too late, so they came back to stay overnight with Ali's sister.

The next morning (April 14), they woke up early to leave for their village. At about 6:30am, Hazooran and her husband Gulshan started to quarrel, and Gulshan verbally abused his wife. Ali Sher says that he asked Gulshan not to use such language towards his sister. Gulshan became furious and he and his brother Dilawar started to beat Hazooran. Ali Sher and his companions tried to stop the quarrel but Gulshan brought out a pistol and shot Hazooran in the belly, killing her. Ali Sher and his companions tried to catch Gulshan and Dilawar, but Gulshan warned them not to follow him and his brother or he would shoot them too.

Ali Sher immediately went to lodge a complaint at the Drakhan Police Station, while his companions stayed at the house. Although he reported the murder as due to a domestic dispute (Case No. 27/04, section 302, 34 Pakistan Penal Code), the counter-claim arose that it was a case of 'honour killing'.

Notwithstanding, the police arrested Gulshan Ali in his village on May 30, and detained him at the Shikarpur District Jail. His case has been sent to the court and the judiciary is now handling it. With regards to the arrest, the HREF has remarked that, "It seems that the police are realizing their responsibility due to outside pressure." However, the AHRC has expressed concern that it might take several years to obtain a decision from the court, and is monitoring further developments in this case.

6. Wazeeran Mahar: Accused of adultery in killing over property dispute

Wazeeran Mahar lived with her husband Nawab and three children in Sanjrani Street, Rohrri town, Sukkur District. She was an elected counsellor for Taluka Subdivision in the Rohrri Union Council.

She has another house in her home village, Rustam, Shikarpur District. Some time back, Zaheer and his family offered to buy the house in Rustam from Wazeeran, but she refused the offer.

Wazeeran's brother, Hakim Ali, states that on the afternoon of 6 March 2004 he and his son-in-law Ali Asghar came to Rohrri to visit Wazeeran. Around sunset, Zaheer Ahmed, Mohammad Salih and Bhooral came to Wazeeran's house. Her husband Nawab was away working at a dairy farm. The three nephews again offered to buy Wazeeran's house in Rustam, and again she refused. Then they asked her to stay there the night. They were given a separate room, while Wazeeran, her son Sadaruddin and Ali Asghar slept in the corridor.

At around 5:30am the next morning (March 7), Hakim Ali went to the toilet. He says that when he came back, he saw that the three nephews had all come into the corridor holding pistols. Zaheer woke up Wazeeran and asked her whether she would sell her house to him or not. At that time, the victim's son and Ali Asghar woke up due to the noise. When Wazeeran said no, Mohammad Salih told the others to kill her. Zaheer then fired on Wazeeran and hit her right cheek. Qaaim-u-ddin fired on her right shoulder and Wazeeran fell down on the bed and died. After that the three fled, firing randomly so that witnesses could not catch them. Hakim Ali then immediately went to the Rohrri Police Station to report the incident (Case No. 21/04, section 302, 114, 34/337Hii Pakistan Penal Code). He stated in the report that the murder was due to the dispute over the house.

However, when Nawab was contacted about the case on April 19, he stated that the offenders had falsely accused Wazeeran of committing adultery in order to escape punishment. He also said that since the killing, the offenders were constantly threatening his family and pressuring him to withdraw the complaint. He said that as Zaheer's father Sherdil is a police head constable in Sukkur District, the police had to date taken no serious action to investigate the matter.

Wazeeran was a political activist who had a long career. As noted, at the time of her death, she was elected as a counsellor representing women in the Rorrhi Union Council under a programme of devolution of power. Due to this, a resolution was moved in the Sukkur District Council to arrest the perpetrators, but it did not get any positive results.

7

VICTIM
Wazeeran Mahar

ALLEGED PERPETRATORS
Zaheer Ahmed, Qaaim-u-ddin & Mohammad Salih (nephews-in-law)

DATE
7 March 2004

PLACE
Rohrri town, Sukkur District, Sindh Province

URGENT APPEAL
UA-44-2004
24 April 2004

7. Tahmeena & Aabida Bhutto: Killed for visiting grandparents without permission

On 7 May 2004, Fazal Bhutto approached HREF to seek help over the killing of his sister, Tahmeena, age 17, and his cousin, Aabida, 18. He claimed the influential landlord of his village, Abdul Rasheed Bhutto, had organised the killing of the two teenagers out of 'honour', and had it approved by the jirga, because the girls went to visit their grandparents in the nearby city of Sukkur on May 1 without informing their family members.

8-9

VICTIMS
Tahmeena & Aabida Bhutto

ALLEGED PERPETRATORS
Abdul Rasheed Bhutto (tribal chief) & other members of jirga

DATE
4 May 2004

PLACE
Shikarpur town, Shikarpur District, Sindh Province

URGENT APPEAL
FA-12-2004
11 May 2004;
UP-23-2004
27 May 2004

On May 2, Dad Mohammad, Aabida's father, together with Hajji Shafi Mohammad Bhutto (accused no. 8) and Sanaullah Bhutto (accused no. 9), went to search for the girls. Another group consisting of Hidayatullah Bhutto, another of Tahmeena's brothers, together with Abdul Rasheed Bhutto (accused no. 1) and Younis Bhutto (accused no. 2) went to Sukkur to search for the victims as well. The second search party found the girls with their grandfather. Abdul Rasheed Bhutto brought the girls to his bungalow at Lakhi gate, in Shikarpur. Then, being the tribal leader, Abdul Rasheed called Jamaluddin (accused no. 3), Hajji Abdul Karim Bhutto (accused no. 4), Ghulam Sarwar (accused no. 5) and Sulaiman (accused no. 6) to his bungalow to convene a jirga. He also called Fazal Bhutto, his brother Hidayatullah, and his uncle, Dad Mohammad. The men were told that the girls were under his protection, and would be handed back to the family the following day.

On May 3, Fazal Bhutto, his brother and uncle went to Abdul Rasheed to get the girls. Abdul Rasheed told them to go back to their village of Jano, and that he himself would bring the girls. Fazal and the other two men walked back to the village, as it was late at night and there was no public transport. As they reached the Bhutto graveyard beside the village, the perpetrators came with the girls in their cars and stopped alongside. They ordered the girls out, and told Fazal, his brother and uncle to kill the girls. They said that they had loose morals for not getting permission to visit their grandparents. The men refused, and begged for the girls to be released unharmed. However, the men from the cars took out pistols and shot the girls dead, and then warned the three men not to report the case to the police unless they also wanted to be killed. After that, they took the bodies away; they were later located in a dry pond about one kilometre away from the village.

Fazal Bhutto and his relatives went home and conferred with their family about whether they should report to the police or not. After deciding to do so, they went to the Officer in Charge of the police station in New Faojdari to make their complaint (Case No. 65/04, section 302, 201, 147, 148, 149/506/2 Pakistan Penal Code). The family subsequently received constant threats to withdraw the case, and has been ostracised in the village, while the perpetrators are being protected. Abdul Rasheed Bhutto contacted the family 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 have decayed.

After the original Urgent Appeal was issued and the local police station notified, the police assigned two policemen to provide security to the family members of the girls.

On May 17, the police obtained an eight-day physical remand of three of the accused, Hajji Nazeer, Hajji Shafi Mohammad and Sulaiman. 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 from the judicial magistrate. Later, the police brought the accused to the judicial magistrate at Shikarpur and obtained a remand order.

On May 18, a demonstration against the murder of Tahmeena and Aabida was held, demanding the immediate arrest of the other six perpetrators, 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, including documents from HREF and AHRC, to illustrate that the girls' murders had spread fear and insecurity among the family and the community. The police appear to have pursued the cases relating to the three men arrested in order to make an example of them. However, six other accused persons, including Abdul Rasheed Bhutto, who made the decision to kill the girls, were still at large at the end of May. HREF and AHRC have also received information that the District Investigation officer dealing with the case, Fida Hussain Mastoi has been pressured politically, and there is apprehension that he maybe be transferred to another place.

8. Begum & Manzoor Ahmed Lund: Police refuse to register case under pressure from tribal chief

10-11

VICTIMS
Begum Lund & Manzoor Ahmed Lund

ALLEGED PERPETRATORS
Three unidentified persons

DATE
31 May 2004

PLACE
Near Jagan village, Shikarpur District, Sindh Province

URGENT APPEAL
UA-64-2004
9 June 2004

Begum Lund and Manzoor Ahmed Lund were killed in Ali Mohammad Lund village, near Jagan, Shikarpur District, Sindh Province, on 31 May 2004. When a relative of one of the victims tried to lodge a complaint with the police, the Station House Officer (SHO) Watch and Ward, Zafar Ali Shaikh, who is the Sub Inspector of the Jagan Police Station, is said to have refused to register it. He is known to be under pressure from a local tribal chief, Kora Khan Bhayo, who wants the matter settled outside a court of law.

However, after HREF informed the District Police Officer (DPO) Shikarpur, Khameeso Khan Memon, of the case, the DPO conducted his own investigation. Satisfied that the killing occurred, the DPO ordered SHO Zafar Ali to register the complaint. On his intervention, the case then was lodged at Jagan Police Station in Humaayoon, Taluka, Shikarpur on 3 June 2004 by Zafar Ali on behalf of the state (Case No.26/2004, section 302, 201 Pakistan Penal Code). After the case was lodged, Sub Inspector Asad Soomra became the person in charge of conducting an inquiry into this case.

The report mentions that the police had received secret information about the dual murder of the above-mentioned victims on the pretext of 'honour killing', and that three unknown persons had killed the victims. It adds that the victims' bodies had not been located, and accuses the villagers of concealing the facts of the case under pressure from powerful persons. Even the relatives of the victims have gone quiet.

12

VICTIM
Khairan Sadhayo

ALLEGED PERPETRATOR
Ghulam Hussain (husband)

DATE
9 June 2004

PLACE
Near Humayoon town, Shikarpur District, Sindh Province

URGENT APPEAL
UA-68-2004
16 June 2004

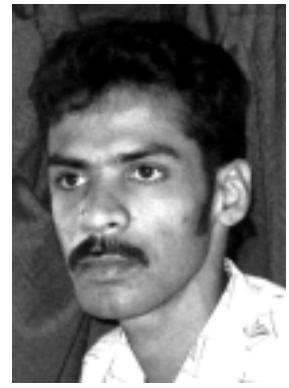
9. Khairan Sadhayo: Shot dead for financial reasons

On the afternoon of 9 June 2004, Ghulam Hussain Bhutto shot dead his wife of some eight years, Khairan, at their home in Shahul Sadhayo village, near Humayoon town, Shikarpur District. At the time, Khairan's brother, Sher Mohammad, and two other relatives, Mohammad Nawaz and Shafi Mohammad, were sitting outside the house. Upon hearing the gunshots, they ran inside, where they saw Ghulam Hussain holding a rifle and firing directly at his wife. They urged him to stop, but he pointed the weapon at them and warned them to stay away. He said that his wife had engaged in sexual relations with a certain Illahi Bux, and that he would not let her live anymore. Having said that, he fled. The men went to Khairan, but found that the bullets had hit her chest, right shoulder and right leg, and that she was already dead.

According to Sher Mohammad, his sister had nothing to do with Illahi Bux, who is working in another city, and the reason for the killing was to extort money from Illahi Bux over the allegation. He lodged a complaint with the police (Case No. 28/ 2004, section 302 Pakistan Penal Code) shortly after the killing at Jagan Police Station, Humayoon. Meanwhile, Illahi Bux and his family are said to have gone into hiding. The police have made raids and arrested certain family members of the accused, but Ghulam Hussain remained free at the time of the Urgent Appeal being issued.

Urgent Appeals File: Tissa Kumara— Incomprehensible cruelty & systemic neglect in Sri Lanka

Asian Human Rights Commission



Koralaliyanage Palitha Tissa Kumara, a prominent 31-year-old artisan and father of two took leave from his work restoring two historic houses on 2 February 2004 and returned to his home at Halwala, Matugama, the same night.

About 8:30am the next day, February 3, a police jeep and Pajero arrived at Tissa Kumara's house. There were four officers in the jeep and six officers in the Pajero. Sub Inspector (SI) Silva and the driver got out of the Pajero. P Rajitha, his wife, describes what happened next:

This article is the compilation of a number of appeals that the Asian Human Rights Commission (AHRC) has made on the case of Tissa Kumara. See further: SRI LANKA: Severely injured torture victim needs urgent medical treatment (UA-18-2004, 13 February 2004); SRI LANKA: Torture victim acquires tuberculosis by the direct action of the police (UP-21-2004, 30 April 2004); SRI LANKA: A call for the immediate release of the Sri Lankan citizen whose mouth the police got a TB patient to spit into resulting in that citizen acquiring Tuberculosis (AHRC-PL-36-2004, 3 May 2004); SRI LANKA: Tuberculosis patient kept in solitary cell due to fabricated charges by police (UP-22-2004, 3 May 2004); SRI LANKA: Police pressure torture victim to withdraw case by threatening his family (UP-28-2004, 24 June 2004); Lack of fax machines in courts causes delay in justice in Sri Lanka (AHRC-PL-48-2004, 28 June 2004). All documents are available on the AHRC website (www.ahrchk.net). The case was also included among those in the second special report on torture by the police in Sri Lanka, 'Endemic torture and the collapse of policing in Sri Lanka', published in *article 2* (vol. 3, no. 1, February 2004). The sheer brutality of the torture has also brought domestic and international media attention.

The interview with P Rajitha, wife of Tissa Kumara, extracts of which appear in this article, was conducted and translated by Shyamalie Puvimanasinghe, an attorney-at-law and independent researcher.

This is the second article in the new 'Urgent Appeals File' series in *article 2*, which raises in detail recent Urgent Appeal cases taken up by the Asian Human Rights Commission. The case of Mousumi Ari in West Bengal, India (UA-33-2004), the subject of the first Urgent Appeals File (*article 2*, vol. 3, no. 2, April 2004), has recently been published in a Bengali-language book by Manabadhikar Suraksha Mancha. Despite concerted efforts, however, the criminal government officials responsible for covering up her murder are yet to be held to account for their actions.

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(UA-18-2004)

> **"SI Silva made Sarath, who had been suffering from tuberculosis, spit into my husband's mouth"**
> ***– P Rajitha***

> One of them said to me, "Call Tissa Kumara out, we want him to make a sign for us." Therefore, I called for my husband, whom I refer to as Palitha. When Palitha came out SI Silva assaulted and kicked him right before my eyes. SI Silva also shouted at him in obscene language. Then the police pushed my husband into the back of the police jeep and threw his shirt onto him. When I queried why my husband was being arrested, I was also scolded in obscene language. The police jeep left with Palitha inside.

The police then went to the house of Galathara Don Shantha at Galathra junction. Mr Galathara was also brought out of his house, and put in the jeep. Several other young people were picked up on the way back to Welipenna police station.

After arriving at the police station, the police took Tissa Kumara to SI Silva's room, and he was told to sit on the floor. The other persons were taken to the cells. A little later, Galathara was brought in and made to sit opposite him. Then SI Silva took a cricket post and started hitting Tissa Kumara repeatedly, between the shoulders. While hitting him, he told Galathara, "Look—this is how the others will also be treated." He pulled up Tissa Kumara and kept hitting him hard all over his body. P Rajitha recalls what her husband told her later had been done to him:

> There were several others who had also been arrested along with my husband on suspicion of robbing a boutique nearby. However the others had confessed to their involvement, so they had not incurred the wrath of the police. Palitha refused to confess, as he was not involved. One Sarath had been apprehended on suspicion and had falsely implicated Palitha as revenge [thinking that Tissa Kumara was somehow to blame for his arrest].

> My husband told me that SI Silva severely assaulted him, demanding information and shouting, "Give me the bombs, give me the weapons and tell about the robbery." He had been beaten all over his body, especially over the chest and heart. While hitting Palitha on the heart SI Silva had remarked, "I am going to kill you." After each beating, Palitha had also been dragged and soaked with cold water. He also said that SI Silva made Sarath, who was a co-suspect in the case for which Palitha was arrested, and who had been suffering from tuberculosis, spit into my husband's mouth, saying, "You too will be dead within two months from today due to TB."
>
> After the spitting incident, another policeman had given Palitha some water with which to rinse his mouth. This same policeman had taken pity on him and given him a mattress to sleep on. However SI Silva had subsequently arrived and had taken the mattress away, thus forcing my husband to spend the night on the floor.

The beating went on for possibly two hours, and in that time Tissa Kumara recalls being hit about 80 times, on all parts of his body, soaking his clothes with blood. The blows were often so forceful and wild that the officer also hit and smashed an electric bulb on the ceiling. Throughout this time, Galathara was watching in terror. Tissa Kumara noticed that he had involuntarily urinated on seeing the manner in which he was beaten up. After this, even other officers became concerned at the relentless beating and savagery of the attack. Another came

in and said to SI Silva, "Are you trying to kill this man? Stop this hitting." However, he did not stop. Then the officer left and came back with about eight other officers, and one of them literally had to pull the cricket post out of SI Silva's hands. It was after this that SI Silva brought Sarath and forced him to spit into Tissa Kumara's mouth, the victim all the while pleading for him not to do this, saying that he would catch the disease and spread it to his wife and children, but to not avail. P Rajitha relates how meanwhile she had been desperately trying to intervene:

> I, together with my two children and my mother, rushed to the Welipenna police station. We saw Palitha inside the station. He said that he had been assaulted but that he did not know the reason for his arrest. Then a policeman handcuffed him and took him inside the police station. Thereafter I left [with the youngest infant] to meet Palitha's employer in Aluthgama. I wanted to tell him of the terrible plight that has befallen Palitha and ask him to help us.
>
> My mother stayed in the police station with my five-year-old son. When I returned in the evening from Aluthgama, my mother told me that she had heard my husband scream in agony from within the police station. After I returned from Aluthgama, I stayed at the police station till evening. The police wanted me to bring my husband a bread roll, some plantains, and a Ginger Beer. I obliged and handed these items over to a policeman. I stayed there till 7pm and then having failed to see my husband, returned home.

PHOTO: DAILY MIRROR

SI Silva:

"This is where your heart is and I am hitting so that you will die"

Tissa Kumara was first kept in the cell for about three days. In that time he often vomited, and could not eat or drink. He could not even urinate in the corner hole, despite attempts by Galathara, who was locked in the same cell, to help him. Each time he tried to stand up, severe pain in his right ear caused dizziness and disorientation. On the third day SI Silva came and told him to get up, raise his arms and bend down. He found it very difficult, and so the officer punched him in the chest about 13 times, and once in the face. While punching him he said, pointing, "This is where your heart is and I am hitting so that you will die in two months." On another occasion SI Silva came and handcuffed Tissa Kumara to a bar of the cell door, and then pulled the door open and shut, injuring his wrist. During this time, P Rajitha continuously sought out ways to meet with her husband:

> On the two days following his arrest, I visited the Welipenna police station in the morning but was chased away by the police. However the food I took for my husband was accepted. My brother too took food for Palitha, which was also accepted by the police. But none of us were allowed to see Palitha.
>
> On February 5, in desperation, I visited the office of the ASP [Assistant Superintendent of Police] in Kalutara. The ASP who is in charge of the Welipenna police was not present at the time but I told my problem to another ASP. This gentleman gave me a 'chit' to be presented to the Welipenna OIC [Officer in Charge]. Thereafter, I arrived at Welipenna police station and met with the station OIC. The OIC pointed to the accused and told me, "there he is", and I saw my husband lying on the ground and shackled to a bar of a police cell. I think that the OIC was not present at the police station at the time my husband was arrested. In fact the OIC had only come on February 5, the day I met with him.

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"The police rushed my husband into court, covered by a cloth; they prevented us from entering"
– P Rajitha

On February 5, some officers took Tissa Kumara to Itthapana District Hospital. The doctor who examined him refused to admit him because his injuries were too serious. The police brought him back to the station and then again took him to the hospital, to be examined by another doctor, who also said he could not be admitted there. After that the police took Tissa Kumara to the Wetthewa Government Hospital, where he was likewise refused admission. But while there, a lawyer came and met him and talked to the police officers, after which he followed them back to the station. The lawyer demanded the police bring Tissa Kumara before a magistrate, and waited for some time at the station. However, eventually he came to the cell and told Tissa Kumara that it did not seem that the police would bring him before a magistrate and because of other commitments he had to leave.

That night SI Silva came back to the cell and took a grenade out of its packing. Then he pulled Tissa Kumara's hand through the bars and took his thumbprint with warm ceiling wax, which he in turn he planted on the grenade. He took down Tissa Kumara's personal details and came back with a statement that he forced him to sign, without explaining anything of the contents. He also fingerprinted him.

In the morning of February 6 Tissa Kumara was again taken to Wetthawa Government Hospital, but he received no treatment and was kept handcuffed while the police went to get a signature on some documents from one person there. Then the officers brought him back to the police station. At about 5:30pm he was taken to an office in the Magistrates Court of Matugama, where he was produced with several others before an acting magistrate. Tissa Kumara told the acting magistrate that he was severely assaulted and that his thumbprint had been planted on a grenade, and asked for medical treatment. A lawyer appearing on his behalf requested that he be examined by a Judicial Medical Officer (JMO), which the acting magistrate duly recorded. After the hearing, Tissa Kumara was taken to Kalutara Remand Prison and admitted to the prison hospital. P Rajitha recalls how the police manipulated the court proceedings as follows:

> On February 6, I together with my two children, my parents, my three brothers and some friends went to the Magistrates Court of Matugama in the hope that Palitha would be brought to court that day. Then I saw the police van going past the court premises. I later found out that the police had been taking my husband to Wetthawa hospital. I do not know what happened at the hospital, but thereafter, my husband had been taken back to the police station. My husband also told me that the police had taken him to two hospitals, but both these hospitals had refused to admit him, as his injuries were so serious.
>
> My family had also retained the services of a lawyer to appear on behalf of my husband and inform the court of the injuries caused to him at the hands of SI Silva. This lawyer had made several calls to the police inquiring as to what time Palitha would be brought to court, since he had to attend to some other business in the evening. My family and I waited patiently. Finally Palitha was brought to court only around 5pm, by which time the lawyer had left. The police rushed my husband into

court, covered by a cloth. They chased us away, and prevented us from entering the court. Thereafter, Palitha was taken away by the police. I was not aware of what happened in court. I only know that my husband was further detained.

On February 10 Tissa Kumara was again brought before a magistrate, and on February 12 he was taken to a JMO at the General Hospital of Colombo. Several doctors examined and noted his injuries, took X-rays and photographs. The JMO instructed that he be brought for further examinations.

The police filed two fabricated cases against Tissa Kumara, for possession of a grenade and for robbery. Although he complained to the Human Rights Commission of Sri Lanka (HRC) and National Police Commission (NPC), he did not obtain any immediate relief; instead, he was remanded at Kalutatra Remand Prison, where he received no treatment. Throughout this time his wife visited him regularly, and describes his condition then as follows:

> He was treated as some kind of a 'special' remand detainee, segregated from the rest. During his period of remand, he had been taken to the Colombo National Hospital for an X-ray and several medical tests. He had also been operated on for a boil on his buttocks, at the prison hospital. This boil was a result of his assault at the Welipenna police station. I continued to give him Panadol and Siddhalepa [popular local ointment for aches and pains] for his ailments every time I visited the remand prison. I also did this while he was at the police station.
>
> When I visited him on about April 24 he complained of chest pain and of coughing up blood. He also gave me a prescription for certain medicines. He had received the prescription from the prison hospital. The prison hospital had also told Palitha that he might be suffering from tuberculosis when he reported to them that he had been coughing up blood.
>
> I purchased these medicines from a private clinic and sent them to my husband on April 27. On April 29, I met Palitha after he had been taken to the Nagoda hospital, where again he had been treated. He told me that two blood samples and his phlegm had also been taken to be tested at the Nagoda hospital. I visited him again on May 3 but his condition had not changed. I have not yet been able to know the results of these tests.
>
> My husband also told me that he had been warded at the prison hospital ever since he started coughing blood with his saliva and complained of chest pains. Since then, he has been confined to a secluded room [formerly reserved for chickenpox patients] and for all intents and purposes, kept in isolation. Even his food is passed to him from under the door.

The test at Nagoda General Hospital confirmed that Tissa Kumara has in fact contracted tuberculosis.

Immediately upon hearing of the diagnosis, Basil Fernando, Executive Director of the Asian Human Rights Commission, wrote two letters to Ranjith Abeysuriya PC, Chairman of the NPC, urging him to take action without delay to secure the release of Tissa Kumara from remand custody. The letters called on the Chairman to verify the facts swiftly if needed, and see to the release of Tissa Kumara so he might get immediate medical treatment in order to arrest the development of the disease. The letters also pointed out that it was detention on fabricated charges that had

P Rajitha:

"He complained of chest pain and of coughing up blood; the prison hospital had told him that he might be suffering from tuberculosis"

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prevented the patient from getting the treatment he required, even when many organisations and individuals were willing to offer assistance. Therefore, the letters stated, the Chairman should secure from the Inspector General of Police an explanation as to the incident itself. It was also necessary to explain how the victim could be kept in custody for so long after this horrendous act of torture had already been widely publicised, and the Chairman himself informed of the case by the AHRC. In the first letter, of April 30, Basil Fernando wrote that

"The AHRC wishes to record its utter dissatisfaction into the manner in which your National Police Commission has dealt with the numerous cases of torture that we have brought to your notice"
– Basil Fernando

> The AHRC wishes to record its utter dissatisfaction into the manner in which your Commission has dealt with the numerous cases of torture that we have brought to your notice. Had you taken a sufficiently serious approach to the issue of torture incidents such as the one suffered by Koralaliyanage Palitha Tissa Kumara could have been prevented. In this particular case we made our complaint to your Commission on 13 February 2004. We further reported this case in a special report entitled 'Endemic torture and the collapse of policing in Sri Lanka' at page 57-60 in our publication *article 2* which was published in February and shared a copy with your Commission. Despite such complaints made by us and others, this despicable police officer, one SI Silva who did this most cruel act, is still on active duty as a police officer. Neither your Commission nor anybody else seems to care or have the courage and leadership to rid the police service of this sort of extreme cruelty and inhumanity. We are compelled to state that your Commission has failed to meet the expectations of the human rights community. Even at this late stage we urge you not to abdicate the constitutional and the moral responsibilities that have been placed on your Commission.

In the second letter, of May 3, he added the concerns of the AHRC for the family of the victim:

> The cruelty perpetrated on K P Tissa Kumara has put his wife in a tremendously vulnerable position. She has seen her husband, an artisan of repute, with no criminal record of any sort, being brutally tortured, subjected to fabricated charges and kept in a remand prison. Despite her knowledge that the police got a TB patient to spit into her husband's mouth she was not able to get medical care for him as he was in remand custody. The burden of supporting the family is also on her. Now she has learned that her husband has caught this deadly disease and is in no position to be of any help to him. She has urged us to do all we can to help her in this most difficult situation.

P Rajitha also comments on the intense physical and psychological suffering the family has experienced as a result of the torture inflicted on her husband:

> I have two little sons. At the time of the arrest, the eldest was five years and the infant was nine months old. I am breastfeeding the little one. My husband was a talented artisan. He worked for an employer in Aluthgama as well as in several other places, including Galle and Matara. He usually worked away from home every other week, while during the intervening weeks he spent time at home. The income he earned from his work was adequate to maintain our little family. I do not go to work and do not have an income of my own. I looked after my two children at home. After my husband's arrest, I had to move in with my parents. My father sells betel leaves for a living, and with this meagre income he now supports my children and myself. Though I have three brothers and one sister, they are not in a position to help me financially.

When Palitha spoke with me on February 6, he showed our five-year-old son the injuries he received from the police beatings. He told our son, "Look son, this is what the police did to me." After my eldest son saw his father's injuries, he cried incessantly and began to limp. Over the next few days, his limp worsened and finally he was unable to walk. His crying too was uncontrollable. Thus I took the child to a private doctor, who said that there was an illness going around that affected children. Hence on February 8, I got scared and took my child to Nagoda hospital. There the child was admitted and kept under observation for two days. But when we told the hospital medical staff that the child's father had been arrested a few days earlier, they told me that the most probable reason for the child's symptoms was mental trauma. After two days they discharged the child from hospital. Now he appears to be all right. He seems to have got over the initial trauma and has come to terms with the absence of his father. However, his school attendance is disrupted every time he has to accompany me to visit his father.

My problems do not end there. My infant son had developed a hernia prior to my husband's arrest. I had been asked to bring the child to hospital on February 16, most probably for a hernia operation. However, due to all these problems and my present state of mind, I did not do so. Then in March the child's condition became worse and he started vomiting and crying. I then rushed him to hospital in a three-wheeler. The child was admitted and surgery was performed to remove the hernia on March 16. He was discharged from hospital after three days. The infant now needs further surgery for another physiological problem. But I am postponing attending to it and hope it can wait until all these problems are over.

"After my eldest son saw his father's injuries, he cried incessantly and began to limp; over the next few days, his limp worsened and finally he was unable to walk"

– P Rajitha

The preliminary hearing of the fundamental rights petition in Tissa Kumara's case submitted to the Supreme Court was heard on May 10. On May 24, the state counsel, appearing for the Attorney General, said that he is satisfied that the allegation of torture is true, and that the Special Investigation Unit is conducting an inquiry to prosecute the perpetrator under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) Act, No. 22 of 1994. The case was heard by Chief Justice Sarath N Silva and Justices J A N de Silva and Nihal Jayasinghe, who gave leave to proceed. According to persons in the courtroom, the judges looked visibly shocked to learn the details of the case.

The SIU is reported to have obtained permission to record statements from all of the police officers attached to the Welipenna police station. However, to date of writing the alleged perpetrator, SI Silva, continues to work at the police station, despite the outrage of local and international human rights organisations, and constant strong communications to the concerned authorities.

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At the time the third update to the initial Urgent Appeal was issued by the AHRC on June 24, Tissa Kumara was still in jail awaiting completion of formalities to be released on bail. When contacted regarding the delays, an officer of the Matugama Magistrate's Court said that it could not carry out the bail order because the documents sent by the Court of Appeal granting the release contained typographical errors. This communication

caused the AHRC to issue a press release on how unreasonable delays in justice are caused in Sri Lanka by the fact that many courts and government offices are without basic communication facilities, like fax machines. Basil Fernando commented that:

> Tissa Kumara may still be remanded in prison for a few more days to wait for the correction of the errors as the communication and transfer of the papers takes some time. Had there been a fax machine in the magistrate's court to receive the relevant information quickly, he would have been released and obtained proper medical treatment earlier.

"Had there been a fax machine in the magistrate's court to receive the relevant information quickly, he would have been released and obtained proper medical treatment earlier"
– Basil Fernando

Tissa Kumara has also been alternately bribed and threatened to drop the formal complaints he has made against SI Silva. On June 16, he had a visit from a 'socially important person' who carried a message from the police that he would receive 500,000 rupees (around US$5000) if he would withdraw the cases that have been filed based on his complaints. Meanwhile, in a separate incident, he received a message through a third party that his wife and child would be crushed to death by a vehicle if the complaints were not withdrawn.

The Matugama Magistrate's Court finally released Tissa Kumara on bail on June 28, some five months after he was originally taken into custody. The AHRC has undertaken to pay for the medical expenses incurred for his treatment of tuberculosis. Meantime, Tissa Kumara has not been required to report to the police station where he was tortured, as is normally required in granting bail. He will be ordered to appear in the High Court on the charges against him once notified. The petition in the Supreme Court will proceed on September 6. In the meanwhile, steps are being taken by local organisations to protect him and his family from physical danger.

Graceful apologies and the pain of victims: Consideration of Sri Lanka's periodic reports to the UN Committee against Torture

Kishali Pinto-Jayawardena, Convenor,
Rule of Law Centre, Colombo

When Yosef Lamdan, the Israeli Permanent Representative to the United Nations, complained that his country had received the most flak from the UN Committee against Torture (the Committee) at sessions in Geneva during the spring of 1998, he advanced a novel reason for his petulance. He complained that his country was being critiqued because it was being too honest. The Israeli government had, in fact, maintained before the Committee that interrogation practices such as violent shaking, handcuffing in uncomfortable positions, hooding for long periods and sleep deprivation amounted to "moderate physical pressure" that could be applied to terrorist suspects in order to obtain information that might foil future attacks.

Not surprisingly, the ten members of the Committee, appointed to monitor the implementation of the UN Convention against Torture by state parties, disagreed. The members noted that "the state of insecurity that Israel is presently coping with, cannot justify practices amounting to torture". The response from Lamdan was colourful and aggressive, stating—among other things—that while his government continued to battle with the "agonizing dilemma" of terrorism, its report was brought before the Committee like "a lamb going to the slaughter". Israel was

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being held to a higher standard than other countries, he alleged, "because its government operations were more open than those of other states".

"Sri Lanka wished to reiterate its commitment to the stringent standards of international human rights law; the government, it appeared, neither did any wrong, nor wished to do any wrong"

At that stage, as if to illustrate his point in a none too subtle manner, the very next report considered was that of Sri Lanka, coming before the Committee for the first time since it ratified the Convention in November 1994.

In contrast to Israel, the Sri Lankan report was a model of decorum, causing many to comment that such faultless mechanisms to protect human rights must be the envy of less fortunate countries. At first glance, the twenty-eight-page report was indeed impressive, starting from the cataloguing of several formal legal provisions that guarantee the right to freedom from torture. Not only did the Constitution explicitly forbid torture with the Supreme Court "jealously protecting this right" but also specific legislation referred to as the Convention against Torture Act of 1994 made torture a criminal offence punishable by stringent penalties. Again, procedures relating to investigation and the taking of a suspect into custody and detention outlawed torture, and human rights education and information formed a significant part of the training of police officers, members of the armed forces, and prison officers.

A plethora of committees, commissions and bodies supervised the actions of law enforcement officials while the recommendations of a 1995 committee to "inquire into and report on the reorganization of the police" were being considered. Complaints against police officers, including complaints of alleged torture, could be made to a special sub-unit set up under a senior Deputy Inspector General. Action was being taken to refer complaints against police officers to an independent panel and to set up a "cell" directly under the Inspector General of Police to monitor these complaints. In a burst of exuberance, it was even announced that a separate directorate had been established at army headquarters to deal exclusively with international humanitarian law. Meanwhile, three commissions on disappearances had completed their work and issued reports. The government was now considering how to implement their conclusions, including possible prosecutions.

The report, in other words, could not have been more different from that of Israel. Sri Lanka wished to reiterate its commitment to the stringent standards of international human rights law. The government, it appeared, neither did any wrong, nor wished to do any wrong. Perish the thought of "moderate physical pressure". On the contrary, it gracefully apologised for any excesses that may have occurred, relegating them to the status of "isolated acts of torture carried out by some individuals, and not the outcome of a deliberate policy". The strategy, it seemed, was one of subterfuge with a few clever nuggets of truth thrown in. Did it work at that time?

The government representatives left Geneva as, at very least, relieved defenders of their briefs. However, each country had to pay its price. While in the case of Israel, it had to justify its undeniably arrogant admission that it applied "physical pressure" to those in its custody, Sri Lanka was called upon to answer in a different way, perhaps less severe but nonetheless very stern.

In May 2005 the Committee will consider the combined second and third periodic reports submitted as a single document by Sri Lanka recently. The state party report, this time around, does not hold anything new. It consists of the same weary plethora of matters pending and investigations continuing. There are more graceful apologies for any 'aberrations' that may have occurred. In the meantime, the pain of those innocents without remedies for what they have suffered also continues unabated. What, indeed, has changed between May 1998 and May 2005? What about the efficacy of these much-touted mechanisms for dealing torture? Have they succeeded in bringing perpetrators to justice?

These are not difficult questions to answer. In the years in between, torture and attendant abuses of the poor and unfortunate—as opposed to 'terrorists' and 'subversives'—have increased dramatically. Supreme Court judgements in fundamental rights cases against torture perpetrators have now become commonplace, and the most brutal torture generally evokes no reaction other then cynicism.

Despite many clear judicial decisions regarding the culpability of individual police officers, these very same officers continue in their posts and claim a formidable shield of impunity. The frustration of the Court itself at this state of affairs has become legendary. In one particularly heinous case from 1995 where a 14-year-old girl had been tortured by police officers resulting in the impairment of her sight in one eye, the Supreme Court expressed its dismay in the following manner:

> In many cases in the past, this Court has observed that there was a need for the Inspector General of Police to take action to prevent infringements of fundamental rights by police officers, and where such infringements nevertheless occur, this Court has sometimes directed that disciplinary proceedings be taken. The response has not inspired confidence in the efficacy of such observations and directions…

Apart from disciplinary inquiries within the police structure, other methods of control, including prosecutions based on information disclosed in a fundamental rights application before the Supreme Court, have also not been exercised. And what of the much-vaunted procedures under the Convention against Torture Act, whereby the High Court can be moved by the Attorney General to look into cases of alleged torture? We have strange contrasts between then and now. In May 1998 not a single case had been brought before the High Court in this manner. The Sri Lanka country report grandly and somewhat speciously attributed this to the fact that the victims prefer to go before the Supreme Court, rather than press a criminal trial in the High Court, where proof is stricter and procedures more complicated.

"Despite many clear judicial decisions regarding the culpability of individual police officers, these very same officers continue in their posts and claim a formidable shield of impunity"

> **"None of the rights-monitoring bodies set up by the state have done much to displace the continuing immunity of state officers who commit crimes of torture"**

In a caustic commentary on the report at that time, Sri Lanka's Civil Rights Movement (CRM) remarked that this is a rather strange explanation, stating that if this argument is correct, one wonders what the need is for the Convention against Torture Act at all. CRM went on to articulate its concerns thus:

> Even despite the Supreme Court's requests for further action in a number of cases, the absence of even a single case being filed for a period of three years, let alone a conviction, raises questions of the government's seriousness with regard to the effective implementation of its obligations under the Convention Against Torture… It is not our contention that every finding of torture by the Supreme Court means that there is sufficient evidence for a prosecution… Our concern is that the absence of a single prosecution (let alone a conviction) under the Act, and indeed the sparseness at all times of prosecutions, even under the normal law, suggests that the necessary will to engage in follow up investigations and institution of legal proceedings is lacking.

In 2004, these concerns remain stronger than ever. Up to the time of the presentation of Sri Lanka's fourth and fifth periodic reports under the International Covenant on Civil and Political Rights (ICCPR) before the UN Human Rights Committee in November 2003, no convictions had taken place since the Convention against Torture Act passed into law in 1994. Both in 1998 and now, the state sought to explain itself on the basis that allegations of torture by state officers are only isolated instances. This explanation is belied by the number of cases that are being documented, which constitute a fraction of the total, being only those of persons brave enough to challenge their tormentors, at considerable personal risk.

Meanwhile, it is fair to conclude that none of the rights-monitoring bodies set up by the state, including the National Police Commission recently appointed under the 17th Amendment to the Constitution, have done much to displace the continuing immunity of state officers who commit crimes of torture.

Sri Lanka's problem is that its custodial officers persist with the same mindset they developed due to massive powers granted by old emergency regulations and prevention of terrorism laws, even though these laws have now lapsed with the cessation of active conflict in the North and East. These extraordinary national security laws encouraged aberrant behaviour on the part of law enforcement officers because they set no minimum safeguards relating to conditions of detention, admitted confessions to senior police officers (though conviction on a mere confession was rare), and did away with normal procedure for inquests, postmortem examinations, disposal of bodies and judicial inquiry after deaths in custody.

In 1998, the Committee asked the government to ensure a review of the emergency regulations and prevention of terrorism laws. It also recommended that the National Human Rights Commission be strengthened to ensure its impartiality and effectiveness, and urged that the government allow individual communications on alleged torture cases to be submitted to it

directly. While the first question is now largely academic, given that these regulations are no longer in force, it is still necessary to examine thoroughly the parent statutes so that a future government cannot promulgate these very same regulations at its own whim and fancy.

The Committee's second and third concerns are still extremely relevant. Overall, there needs to be a serious and concerted effort by all state and non-governmental monitoring bodies to address the impunity of state officers who commit grievous human rights violations, and bring them to justice. To do this, it will be necessary to displace the worrying culture of denial prevalent among Sri Lankans, particularly as to the gravity of the abuses concerned. We need to see this issue occupying news spaces in much the same manner that America is now being forced to confront abuse by military personnel in its prisons and other facilities in Iraq and Afghanistan. To bring a measure of sanity back into our legal system, it will be necessary first to reawaken our collective conscience.

"There needs to be a serious and concerted effort by all state and non-governmental monitoring bodies to address the impunity of state officers who commit grievous human rights violations, and bring them to justice"

The key question posed to the Sri Lankan government in the May 1998 UN sessions was as to what measures are being taken to eradicate torture, as opposed to measures to compensate victims? At that time, it was clear that despite the numerous conferences held and research papers written on the prevalence of torture, and despite the conceptually perfect judgements and directions by our courts, law enforcement officers continued to commit acts of torture with impunity.

We have much the same situation now. The only difference perhaps is that the line of questioning by the international human rights community is getting increasingly sharp. Witness the peremptory direction issued by the Human Rights Committee in November 2003, that Sri Lanka report back within one year on particular issues, including the question of accountability regarding torture perpetrators.

This is one indication that graceful apologies by state representatives are getting increasingly short shrift. In turn, those vested with the unenviable task of defending Sri Lanka's record on human rights in a manner compatible with its international obligations are having a noticeably more difficult task. Linking up the international monitoring systems with the victims in far-flung villages in Sri Lanka, appears accordingly (if not sadly), to be the most effective manner in which recourse to justice may be obtained in the face of immediate domestic indifference to their plight.

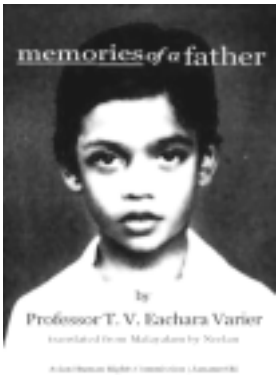
Book review: *Memories of a father*

Bijo Francis, Advocate, Kerala, India

Varier, T V Eachara, *Memories of a father*, Asian Human Rights Commission, Hong Kong, China, May 2004, ISBN 962-8314-23-8, 116pp.

Torture and disappearances have occurred in many places and at many times. They have happened before, are happening now, and will happen in the future. What makes *Memories of a father* by Professor T V Eachara Varier such a valuable book is that in narrating the struggle and agony of his family after the arrest and disappearance of his son, it captures the universality of these events with uncommon beauty and openness. This book explores the tragedy of every disappearance through the deeply personal loss of one family, giving it a purpose and relevance that goes far beyond the specific events it describes some 28 years ago, in Kerala, southern India.

Professor Varier's son was arrested on 29 February 1976, and was later tortured to death in police custody, although his body was never recovered. He was just one of many young men who disappeared during a period of dark repression in India, a time when emergency regulations permitted state security agents a free hand to kidnap, torture and kill. Professor Varier paints a dreadful picture of this time, revealing the total failure of the rule of law, and how the 'elected' representatives of the largest democracy in the world used their authority to commit gross atrocities. He describes the brutal torture practiced by the police, and tells the stories of some survivors of the camp from which his son did not emerge. He relates his own visit to the camp, and offers a bleak insight into how the police conducted their dark operations outside the law. He relates the torturous and ultimately futile route he followed through India's government offices and courts in his attempts to obtain the truth. The Supreme Court ruling on the case is contained as an appendix.



Feelings of agony, sorrow, confusion and helplessness permeate the pages. Reading the book, one senses the emotional roller-coaster ride still being experienced by this father, questioning what was done to his son and justifying his surges of anger towards

certain persons, particularly among the police, and the system as a whole. This emotional experience, as a father, husband, teacher, and ultimately destitute victim of torture, is the backbone of the book. The lingering expectations of the family and uncertainty associated with the never-ending search for the disappeared is also successfully communicated. At some points, Professor Varier expresses appreciation for the political opposition in Kerala during the emergency period. It is only natural for someone to be thankful to those who offer some small support or word of concern during a time of loneliness and desperation. History proved, however, that those persons with whom the author sympathises were capable of the same kind of atrocities when they gained power later.

"The importance of this book lies not in its description of a single disappearance and murder; it is rather in its capturing of an unending social crisis that others fail to voice"

The importance of this book lies not in its description of a single disappearance and murder in a small state of India almost three decades ago; it is rather in its capturing of an unending social crisis that others fail to voice. Public language today denies the emotions and thoughts of victims and their families. As a result, most persons suffering serious human rights violations fail to speak out. Instead, they carry their pain to the grave. With this book, Professor Varier is breaking the silence. No matter how many years have passed, his wounds are as deep and as fresh as on that terrible day in 1976. *Memories of a father* challenges the deliberate silence and ignorance that cloak mass disappearances, torture and murder. By publishing the English translation, the Asian Human Rights Commission (Hong Kong) and Jananeethi (Kerala) have done a great service. The work of the translator, Neelan, is truly remarkable in communicating the meaning of phrases and idioms from the original Malayalam without awkwardness or loss of clarity. All in all, *Memories of a father* is a rich and deeply meaningful book that should be read by anyone trying to grasp the experience of torture and disappearance, whether as a direct victim, a relative or friend, or simply a fellow human being.

A plantain leaf and a bowl of rice kept waiting

Professor T V Eachara Varier (retired), Kerala, India

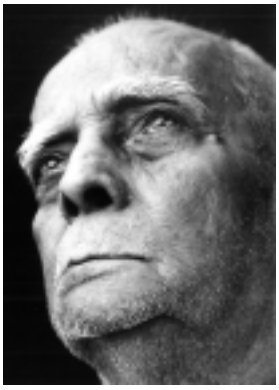
"Please give this to our son Rajan. I trust only you."

She didn't utter a word after that. Cold death had already touched her.

The next day after her death, I had a nap on the couch. The weight of that packet of coins, which she entrusted to me, was still in my hands.

March 10, 1976, Manmohan Palace at Trivandrum was quiet. The atmosphere of the Emergency even lay upon that historical building, the residence of the State Home Minister, but there were no khaki-clad men around.

We were not made to wait long to enter the room of Mr. K. Karunakaran, the State Home Minister. It was one of the last doors I was knocking at. I was at the residence of Mr. Karunakaran in search of my son, who had been taken by the police from the front yard of the Calicut Regional Engineering College hostel. There were two others with me: Surendran, one of my former students, and his friend, a professor from Vennala, Ernakulam. This professor was a close friend of Mr. Karunakaran.



Surendran and I had started early from Calicut and reached Ernakulam before dawn the next morning. We spent the rest of the time at Ernakulam North railway station, on a cement bench, fighting the mosquitoes and the chilly wind, waiting for light. I was burning inside. There at Ernakulam, some three to four kilometers away, my son's mother and his sisters were still asleep in our house, ignorant of what all are happening.

When the day dawned, we reached the professor's house at Vennala and told him of my problems. He immediately came along with us. He too seemed to be worried about my son Rajan's

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This is the first chapter of *Memories of a father*, by Professor T V Eachara Varier (Asian Human Rights Commission—Hong Kong & Jananeethi—Kerala, 2004). Copies of the book can be obtained by contacting the Asian Human Rights Commission (AHRC) via books@ahrchk.org, or writing to 'Books', AHRC, 19th Floor, Go-Up Commercial Building, 998 Canton Road, Mongkok, Kowloon, Hong Kong, China. A PDF version of the book is also available online, via the AHRC website, http://www.ahrchk.net.

disappearance. He was so close to Mr. Karunakaran that he had access to even the inner rooms of the Minister's house. Mr. Karunakaran's wife, Mrs. Kallianikutty Amma, was also close to him. When we reached Trivandrum, the professor went straight to the residence of Mr. Karunakaran and arranged an appointment.

"It was on February 26, 1976 that I last met my son Rajan"

Mr. Karunakaran greeted us with a broad smile, but as he saw me did that smile fade a little? Foolish thoughts, I consoled myself.

He hugged me. "Why didn't you tell me all this earlier? I would have taken care of it then and there," he said. A hope flashed in my mind.

"This name Rajan seems to be familiar to me. He seems to have got into some serious trouble," he continued.

I folded my hands in respect. I was unsteady with an unknown emotion.

"No, he is not capable of doing things like that. When the extremists attacked the police station at Kayanna (near Calicut) he was participating in the youth festival at Farooke College. He was the Arts Club Secretary at the Engineering College he studied," I said.

Karunakaran touched my shoulders. His voice was very soft. "I will enquire and let you know. I will do whatever I can. That's the relationship we have, isn't it?"

I paid respect to him once more with folded hands. My eyes were blurred in the sun at the front yard of Manmohan Palace. Was that fading too, the last island of hope?

It was on February 26, 1976 that I last met my son Rajan. He was then a final year student of the Chathamangalam Regional Engineering College, 13 kilometers away from Calicut. I was a professor at the Hindi department of the Government Arts and Science College at Calicut. I was staying in Kerala Bhavan Lodge, just opposite to the General Hospital near Muthalakkulam. Rajan used to come there often to meet me. He last came for some money. I met him in my room on February 26. I asked him to come home during the vacation. He nodded yes.

I was born at the Thiruvullakkavu Varriam at Cherpu, in Trichur District. After partition of the ancestral property I left that home, moved to Ernakulam, and built a house in Parambithara road. We named the house 'Sauhrida Nilayam' ['house of friendship']. I was living there with my wife and three children, my sister, Kochammini Varasyar, and her husband, Mr. Achutha Varier. He was my wife Radha's brother. He worked with the Railways.

"Once more I turned back to look at the camp; the policeman was still staring at me; when he saw me looking at him he turned his eyes to the nearby hills"

On March 1, 1976, when I reached my college as usual, I came to know that the police had taken my son into custody. One of Rajan's friends, Mr. Karmachandran, informed the college authorities of this by telephone. It was 10am. With the permission of the principal, I rushed to Chathamangalam.

The premises of the Engineering College were as quiet as a cemetery. Rajan had been arrested on the morning of February 29. He was coming out of the college bus in the front yard of the Engineering College, after returning from the youth festival at Farooke College. The police were waiting for him. According to the information then available, he was first taken to Calicut and then to Kakkayam Camp, a police camp established to investigate the attack on Kayanna police station. Many people told me that no purpose would be served by going to the Kakkayam camp. But I went.

The camp at Kakkayam was established at the asbestos-roofed building of the State Electricity Board. There was a pond in front of the camp. Access was through a temporary wooden bridge, guarded by a police sentry with a rifle. I spoke to him. He was very serious, but didn't utter a single indecent word to me. He went into the camp, and came back to tell me that I would not be permitted inside. He told me that my son Rajan was inside, and was well. My emotion cooled a little, but I told him, "I just want to meet my son." He was standing in my front like a mountain.

I felt so lonely that I shouted out. I shouted loudly.

"I can do nothing," He replied. Then his face darkened.

"Then allow me to meet Mr. Jayaram Padikkal at least," I was adamant. Mr. Jayaram Padikkal was the camp 'monarch', and a Deputy Inspector General of the crime branch.

My childlike adamancy echoed back from the watery surface of that pond. I stood still in front of that guard. His upright rifle wavered sometimes to the sides. He tried not to listen, or care for me.

Waiting alone there a sob got trapped in my throat. I felt, as though I heard a cry calling me, "Oh, father..." from somewhere through the walls of the detention room of the camp.

I felt tired and started walking back. Once more I turned back to look at the camp. The policeman was there still staring at me. When he saw me looking at him he turned his eyes to the nearby hills.

After the meeting with Mr. Karunakaran, a reporter of the Mathrubhoomi daily called Mr. Sadirikkoya telephoned me. He was one of the dear disciples of Mr. Karunakaran. I had met him three times to find out the details of my son. "I am at it" was the only reply I got. But this time he gave me a very different version of things. He told me that Rajan had escaped from custody while being taken to an extremist's secret den.

I asked him as to where he got this information.

"From reliable sources," was the reply. The source, I knew, was Mr. Karunakaran himself. Mr. Sadirikkoya's revelation gave me some hope. It brought along with it black clouds of anxieties too. I continued the search.

The principal of the Engineering College, Professor Vahabudeen, had visited the police camp at Kakkayam together with another professor. Mr. Jayaram Padikkal's behaviour was very rude with these loving teachers. The students in custody peeped through the windows to see their principal. Rajan was not among them.

I steadfastly believed that Rajan would come back. I always asked my wife to keep apart a bowl of rice and a plantain leaf for him. He may step in any time. He may be hungry. There should be rice ready at home for him. Yes, he will come back. Sure he will…

At night when the dogs barked and made noise for no reason, I woke up and waited at the doorstep… waiting for a call of "father". Keeping the door open, I went back and fell tired into the bed. A sob, "Oh my little child", got choked in my throat. But I shouldn't cry. I shouldn't allow even a teardrop to roll down my eyes, for there was his mother, Radha, ignorant of all this…

"I steadfastly believed that Rajan would come back; I always asked my wife to keep apart a bowl of rice and a plantain leaf for him; he may step in any time; he may be hungry"

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article 2 on recycled paper

The Asian Legal Resource Centre is pleased to announce that with this edition of *article 2* it has switched to recycled paper. Readers may notice a difference in the colour and texture of the pages as a result. Comments or suggestions from readers are welcome. Please write to editor@article2.org, or via the postal address on the back cover.

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.

In this issue of *article 2*

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