

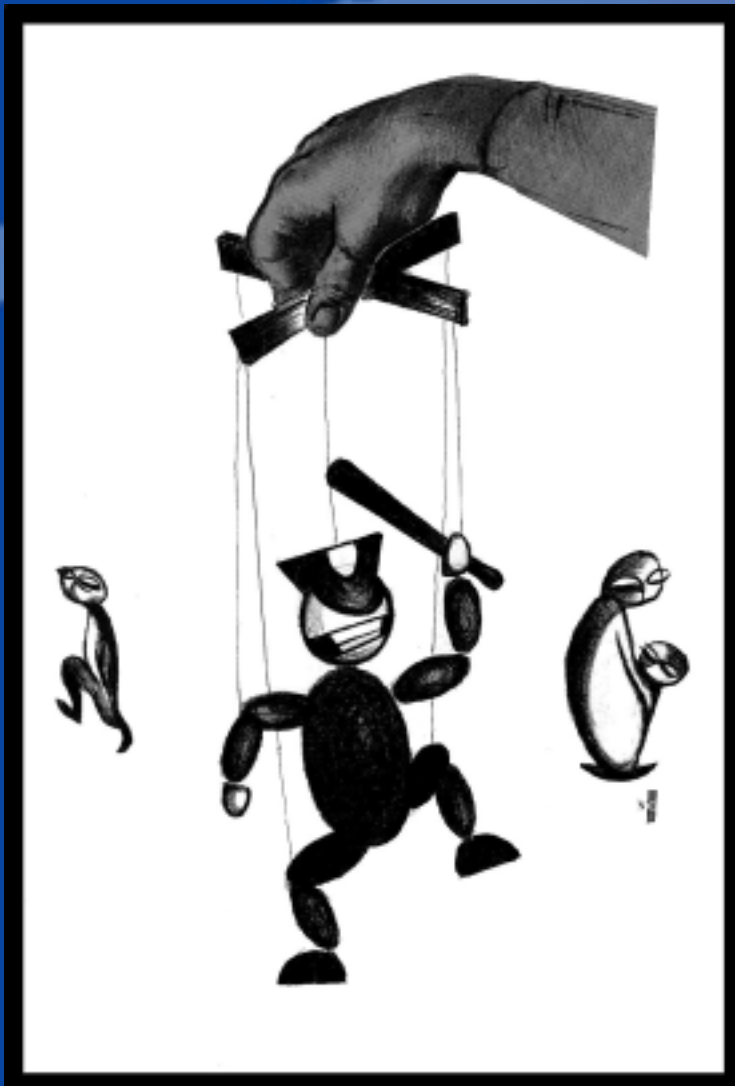
Lesson Series 41

Rule of law: The role of police in human rights implementation

Summary

In many countries throughout Asia, the police are said to be the greatest obstacle to effective rule of law and the worst violators of human rights.

This lesson, the second of a four-part series, offers an in-depth view of police abuse of power, laws and rights throughout the region. The lesson further discusses the factors that give them impunity, including systemic flaws.



THEME: Rule of law: The role of police in human rights implementation

The Issue

When law enforcement officials themselves flaunt the law, there can be little hope for society to function under rule of law; rather, it will most likely function under fear, violence and oppression. Human rights can only be protected when the rule of law flourishes, and thus there is a firm link between the behaviour of the police and human rights violations in the society. If the police refuse to file a complaint due to bribes, if they fabricate charges against someone for personal motives or if they threaten the life and liberty of those who are willing to fight for justice, they are not only violating individual human rights, but are giving lie to the justice system that is meant to protect citizens' rights.

The Lessons

Lesson 1 consists of cases detailing police abuse of power and violation of laws in various Asian countries.

Lesson 2 describes the various factors that lead to impunity for the perpetrators of abuse, thereby encouraging them to continue committing violations.

Lesson 3 examines the systemic flaws that allow police abuse and impunity.

Cover and other illustrations by Nick Cheesman

Lesson 1

The primary duties of any police force relate to the prevention and investigation of crime and the protection of citizens' rights, all of which are to be undertaken in accordance with the law. The following sections relating to arrest, detention, filing complaints and conducting investigations—all of which are central to effective policing, are also particularly vulnerable to police abuse throughout the Asian region. Not only is this abuse a failure to carry out their duties, but also a crime.

A. Procedures of arrest and detention

Illegal arrest and detention are routine aspects of police behavior in too many Asian countries. Not only are police violating procedural provisions for lawful arrest and detention when they engage in these actions, but they are also—and more seriously—committing crimes by violating basic human rights. Some of these crimes include death and torture, which are grave abuses, particularly when committed by state law enforcement officials. The death of Kanai Santra in West Bengal, India was one such death, a result of illegal arrest and detention.

On 25 May 2004, 38-year-old Kanai Santra, of Chakdaulat-Kalitala village, West Bengal, India died at the Bangur Government Hospital. He had been brought to the hospital only hours earlier, following his falling into a state of unconsciousness due to a brutal assault. This assault was at the hands of several policemen, who used their fists, feet and sticks to beat Kanai so severely that he collapsed to the ground and never regained consciousness. The same policemen then used their authority to cover up the murderous act by filing a false complaint regarding the assault, claiming that other persons were responsible for Kanai's death.

The reason for the assault that led to Kanai's death was that feeling anxious and suffocated while in the Alipur court lock-up, Kanai had called out to the attending police officers to release him. Their response however, was to beat him so inhumanly that he fell to the floor unconscious. They then chose to abandon him in his cell.

Later that evening, when police officers from the Nodakhali Police Station—who had initially arrested Kanai—came to the court lock-up to take Kanai back to the police station as the court had rejected his bail application, they found that he was still lying unconscious. Only then was he sent to the Bangur Government Hospital, where he died as a result of his injuries at 8:40pm that evening.

The Nodakhali police committed numerous procedural violations during Kanai's arrest and detention. When he was arrested on 23 May 2004, Kanai was not informed by the police officers of the reason for his arrest. Nor was he provided with a memo of arrest, which the police are obliged to do. It was only when Kanai's family inquired into the matter that they learnt that Kanai was suspected of stealing ornaments from a nearby Kali

temple. His family however, insist that the allegation was baseless, emphasizing that not only had the family donated a number of valuable ornaments to the temple, but Kanai had himself supplied all manner of electrical accessories to the temple and had installed them free of charge.

The police officers then illegally detained Kanai until May 25, when his case was produced before the Sub Divisional Judicial Magistrate (SDJM) Court in Alipur, Kolkata, even though article 22(2) of the Constitution of India states that arrested persons must be produced before the nearest magistrate within 24 hours of their arrest. Further violating the Constitution as well as the Criminal Procedure Code, was the police's failure to physically produce Kanai before the magistrate; only legal papers were produced on his behalf, while Kanai remained in the court lock-up. Though it is common practice at the Alipur SDJM for Under Trial Prisoners (UTPs) to be rarely produced before a magistrate, such practice is illegal. Kanai's complaint regarding his prolonged detention in the court lock-up then led to his death.

After learning of Kanai's death, the Officer-in-Charge of the Alipur court lock-up, Mr Samir Mukherjee, lodged a false complaint with the Alipur Police Station, stating that Kanai had been assaulted by the other UTPs he shared a cell with at the court lock-up (Case No. 82 dated 25/5/2004 under sections 325/308 of the Indian Penal Code). Officers from the Alipur Police Station visited the Bangur Government Hospital after the complaint was registered, and after confirming Kanai's death, the Investigating Officer Mr S. A. Khan, added an additional penal section 304 IPC to the initial complaint (304 IPC is related to the case of unnatural death).

As the Bangur Government Hospital is under the jurisdiction of the Jadavpur Police Station, the Unnatural Death case of Kanai should be registered with them; the Jadavpur Police however, registered his case (No. 241) only on May 26 even though Kanai died on May 25. Furthermore, their negligence led to a delay in the autopsy; although executive magistrate Mr Jiban Krishna Ghosh conducted an inquest on May 26, where multiple external injuries were found on Kanai's body, the Jadavpur Police did not take the papers to the Calcutta morgue for Kanai's post-mortem until May 27, at around 3pm. The inquest had found bruises, cuts, haematoma on the left side of the chest, left eye, toes of left foot, fingers of right hand, left wrist, left knee, as well as other injuries [See further: AHRC UA-54-2004, 1 June 2004].

Such procedural violations by the police personnel involved in this case and their subsequent action in falsifying charges to cover up their own crimes, demonstrates many of the problems that exist within the police force in West Bengal—the police wield inordinate power; they are not held accountable for their actions; and they work within an environment that allows for abuse of the system. In India, the court lock-up is fully managed by the police personnel. Therefore, such incidents are not possible without police action. Principally the court lock-ups should be governed by the judiciary. However, in West Bengal the functions of the lower criminal courts are managed by the police. The magistrates are also dependent on the police in their judicial functions.

The SDJMs are reluctant to obey the Constitutional provisions. In most cases, the order of the court is written by the police even before the case is heard.

Kanai's case is unfortunately common not only throughout India, but in various countries. From the moment of his arrest to his post-mortem, the police and other relevant authorities committed numerous violations and did their utmost to cover these up.

Police throughout the region arbitrarily arrest and detain innocent citizens, in many instances hoping to obtain confessions from them regarding crimes of which they know little. While international law provides that everyone has the right not to be tortured, including those arrested by the police and accused of crimes, police are known to routinely commit torture. The lack of adequate domestic legislation means that in some countries torture is not considered a crime, a punishable offence or even an act that requires compensation. India for instance, adamantly refuses to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), stating that constitutional and other provisions exist to prevent torture, and yet, as Kanai Santra and numerous others' experience clearly shows, this is not the case.

B. Registering complaints

Registering complaints is a focal point for investigations into crimes and abuses, and the first step towards redress made by those seeking justice. However, filing complaints at police stations is a complicated and even dangerous business for most victims in Asia. On the other hand, those with police and other influential connections find it easy to file even false complaints. W. Inuka Prasad Kumara Alwis' neighbour for instance, filed such a complaint against him at the Panadura North Police Station, Keselwatte, Sri Lanka after a dispute. His connections with Officer-in-Charge (OIC) Prasanna meant that before any investigation into the complaint was carried out, Alwis and his companion Sithura Nissanka were illegally detained and tortured.

On 15 February 2005, after Alwis' neighbour filed the complaint, three policemen from the Panadura North Police Station came to Alwis' house. As he was not home, the policemen told Alwis' wife that her husband should report to the police station the next day.

Accordingly, on February 16 Alwis went to the police station with four friends. One of his friends, Sithura Nissanka, accompanied Alwis inside the police station while the others waited outside. Police Constable No. 22197 began to question Alwis about a man named Jeevantha and his brother-in-law Rohan. When Alwis replied that he did not know where Jeevantha lived, the constable threatened him. Nissanka then queried why the constable was questioning Alwis instead of Jeevantha.

Overhearing this conversation, OIC Prasanna ordered the constable to bring Alwis and Nissanka to his room, where he assaulted them both, stopping only when Alwis said he was suffering from a chest ailment. OIC Prasanna then threatened them, boasting of how he had broken one person's arm and shot another person. Alwis was then told to leave the room, while Nissanka was further tortured. Alwis stated that his neighbour—who had filed the complaint—was present at the police station and watched him and Nissanka being tortured.

Alwis was later brought to the OIC's room again, where he was threatened with false charges of illegal weapons possession, and forced to apologize to his neighbour. Alwis was then told to give a statement and leave, while Nissanka continued to be detained. Before Alwis and his friends—those waiting outside—left, their addresses were taken and they were ordered to report to the police station every Saturday; the police alleged that they were suspected of stealing from the complainant. The complainant however, was told to 'leave without fear' and was even promised police protection henceforth [See further: AHRC UA-43-2005, 15 March 2005].

Torture victim Marasinghe Arachchige Anura Dissanayaka however, found it impossible to file a complaint with the police regarding his assault by drunken Sergeant Nimal of the Wadduwa Police Station, Wadduwa, Sri Lanka. The assault was witnessed by five other police officers, none of whom stopped the assault, and further refused to file Dissanayaka's complaint the next day.

At 12:30am on 24 January 2005 Dissanayaka was awoken and informed by a neighbour that a man was standing in front of his house. After identifying the man as Sergeant Nimal of the Wadduwa Police Station, Dissanayaka greeted him by saying 'hello'. Sergeant Nimal, who was in plainclothes and was drunk, immediately raged at Dissanayaka, saying, "Who the devil are you to call me hello? (kavuda yako mata hallo kiyanne?)" He then hit Dissanayaka around the face and ears, stopping only after Dissanayaka's wife intervened.

At the time of assault, Sub Inspector Rajapaksha and four other officers from the Wadduwa Police Station were also present, but did nothing to prevent or stop the assault. Before leaving, Sergeant Nimal warned Dissanayaka not to inform any higher authorities about the incident.

Regardless, at 10:00am on the morning of January 24, Dissanayaka went to the Wadduwa Police Station to lodge a complaint. Sub Inspector Rajapaksha requested him not to make the complaint, but he persisted. Police constable Upali refused to take down the complaint however, and directed the victim towards the Officer-in-Charge (OIC), who likewise refused to accept the complaint. Finally, Dissanayaka went to the Senior Superintendent of Police-Panadura and lodged a complaint on January 25.

The assault resulted in Dissanayaka's eardrums being ruptured, for which he is receiving treatment at Navaloka Pvt. Hospital, after initial treatment at Nagoda Government Hospital from January 27-31. His family live in a state of instability, unsure of what will happen next regarding the brutal assault by Sergeant Nimal. Even after finally filing a complaint, no serious investigation has been conducted into the case [See further: AHRC

UA-21-2005, 8 February 2005].

In many Asian countries such as India, where the police are heavily influenced by politicians and religious or communal elements, minority and marginalized groups also find it particularly difficult to file complaints and seek redress for injustices committed against them. In a recent incident, officers at the Tarun Police Station, Tehsil Bikapur, Faizabad, Uttar Pradesh, India refused to file the complaint of a Dalit villager, stating that ‘it is your problem’.

The complainant, Babu Lal, had his home destroyed and possessions looted by a group of armed villagers from the peasantry community on 8 July 2004, who opposed the granting of land to Dalit villagers under a state scheme. They reached his house in Balli Kripal Pur village, Tehsil Bikapur sub-district, Faizabad district, Uttar Pradesh, India at around 11am, when Babu Lal, a landless farmer belonging to the Chamar community of Dalits, was not at home. Only his wife Mantora, his son Prem Kumar and his daughter-in-law Kamlesh were present, all of whom were severely beaten by some of the armed villagers, while the others demolished the house and took all their possessions. Among them were Ramjeet and Mansha Ram, both of whom belong to the powerful Kurmi family, which is part of the village’s peasantry community. Although the attack took place during daylight, the attackers left the house without any fear or obstruction.

After the incident, Babu Lal’s family rushed to the Tarun Police Station—located within three kilometers from the victim’s house—to lodge a complaint. The police refused to file a case however, allegedly saying, “It is your problem. We would not like to be a party to your game. We don’t want to come there even for urinating.” Even when the *sarpanch* (head of village administration) approached the police to take action regarding this matter, they refused to do anything.

Babu Lal then lodged complaints with the National Commission for Scheduled Castes, the Uttar Pradesh State Human Rights Commission, the Chief Minister of Uttar Pradesh and District Magistrate of Faizabad regarding the incident. Since then, Babu Lal took the case to the local magistrate court where it is currently pending, while the authorities have taken no action regarding the case under the pretext that the matter is in court. Babu Lal however, is skeptical as to whether his family can get justice; he says that the judicial system in India is too slow. Since the incident, Babu Lal and his family have lost all their possessions and live in a desperate situation. They are staying in a small hut together with another Dalit family. The family also lives in fear of a second attack by the perpetrators as they are pursuing the case in the court [See further: AHRC UA-29-2005, 24 February 2005].

Not only do the police in many Asian countries thus refuse to file legitimate complaints, but when it serves their personal gain they even harass those who come to complain. This harassment has often taken the form of death threats, particularly when complaints are simultaneously being made to other agencies. Gerald Perera not only suffered from threats and pressure to withdraw his complaints against Sri Lankan police officers who



allegedly tortured him brutally, but finally lost his life fighting against injustice. He was shot just a few days before he was to appear in court to testify against those who had tortured him. Those responsible for his death have been arrested; they are the officers accused of torture [See further: AHRC UP-14-2005, 16 February 2005].

C. Investigations

The refusal of the police to file complaints will simultaneously mean the lack of investigation. However, even when complaints are registered, there can still be little corresponding investigation. This lack of proper investigation is a prime cause for the increase in crime and impunity of perpetrators throughout Asia. It also prevents victims of abuse from obtaining justice and redress, which are not possible without adequate investigations and prosecutions. Apart from instances where the police deliberately refuse to investigate or manipulate the investigation, the police are also guilty of using torture and assault as a means to obtain confessions from the accused—these actions are then termed as practices of a routine ‘investigation’.

In Thailand, a recently awarded 10-year sentence shows how corrupt and ineffective investigative practices of the police resulted in an innocent man being harshly sentenced. Chanon Suphaphan was traveling along a road near the Tantanote temple, Muang district, Singburi province at around 6:00pm on 24 November 2002, when he was hailed by a local villager who asked him to assist a man injured in a motorcycle accident. Chanon helped the injured man, Mr Thawatchai Nakthong, back to his feet and ensured that he was not seriously hurt. He did note that Thawatchai, who suffers a disability in his right leg, was incoherent and unable to stand or walk properly, but concluded that this was due to Thawatchai being drunk and not because of the accident he had just been involved in. Thawatchai is known locally to be a drunkard and his state on that day was not unusual. Therefore, all parties involved, including the nine persons who witnessed Chanon assist Thawatchai, left him by the roadside with his motorcycle and went their respective ways.

On 17 December 2002, Chanon was summoned to the Singburi District Police Station, where he was charged with robbery of Thawatchai. Apparently, Thawatchai had complained to the police on December 2 that he was beaten and robbed by Chanon. He claimed that Chanon had asked him for three Buddha amulets, but he refused to give them. He also claimed that Chanon assaulted him at the site where he had fallen from his motorcycle.

Although Chanon denied the allegations and was released on bail, the police did not do anything to investigate this case. When Chanon and his parents, together with seven other witnesses, were at the police station to make bail on December 17, the police failed to take any statements from the witnesses. The same occurred when the witnesses returned on December 27. On January 10, when the witnesses tried for a third time to have their statements taken, the police agreed to take statements from just four of them.

During this time, the police were also negligent in their duties of investigating the material evidence. For instance, Pol. Sub-Lt. Sornsaran Kaensingh did not collect material evidence himself. A relative of Thawatchai took photographs of the site of the incident and Pol. Sub-Lt. Sornsaran certified them without going to the place in person. In fact, the photos were of the wrong location, around 50 metres from where the accident actually occurred.

On 3 April 2003 the public prosecutor filed a criminal case against Chanon. He was then appointed a lawyer. However, the lawyer did not study the case or meet with witnesses, but simply told them not to worry because they had a village headman—a government official—as a witness. At no point did he visit the site of the incident or speak to any of the persons concerned.

On 22 October 2004 the trial opened in Singbhuri Provincial Court and statements by the plaintiff and three witnesses were heard. None of the three were eyewitnesses to the event. One was the superior officer of Pol. Sub-Lt. Sornsaran, Police Lieutenant Colonel Sirisak Naksuk. The second was Mr Nern Lukindra, a health care officer from the local public health centre who reported treating Thawatchai for injuries to his face the following day, November 25. He was not aware when he came to the court that he was being summoned as a witness for the plaintiff. The third was the aunt of Thawatchai, Mrs Samnao Indrarit, who met him the morning after the alleged assault.

On October 26, the accused and two witnesses were heard. The police presented the complaint and photographs to the court in evidence, but did not present the witness statements taken on 10 January 2003. At no time were these statements mentioned. The appointed defence attorney also did not raise this issue. Outside the court, Chanon's relatives asked the police why they did not present the witness statements for the defence, but the police did not respond.

On November 26 the court found Chanon guilty of robbery under section 339(3) of the Penal Code and sentenced him to the maximum ten years in jail. It also ordered the return of the three amulets, or payment of 500 Thai baht, to the injured party. Chanon has now appealed against the case. He is obtaining alternative legal assistance. Over 200 local villagers have signed a petition supporting his claim of innocence [See further: AHRC UA-40-2005, 9 March 2005].

There have also been several recent cases in Thailand of the police using torture to obtain confessions as a means of conducting investigations. On 2 November 2004, Mr Ekkawat Srimanta, 21, was arrested by officers at Phra Nakhon Si Ayuttaya Station in Aythaya Province, on allegations of robbery. After being taken into custody, Mr Ekkawat had a hood draped over his head and was then brutally tortured by 12 police officers in their attempt to have him confess to robbery. However, when he did not confess Mr Ekkawat was transferred to Uthai Police Station, as the stolen goods were meant to be in the area of its jurisdiction. Upon his arrival, Mr

Ekkawat was mercilessly electrocuted by 11 police officers from that station, who applied electrical equipment to his genitalia. As a result of this torture inflicted by the 23 police officers (all of whom are ranking police who hold the position of sergeant or higher), Mr Ekkawat suffered severe burns to his testicles, penis, groin and toes. He also had bruising on his back, swelling to his face, throat and thighs and was bleeding from his eyes. Despite the police officers' determination to gain a confession, they never did so and Mr Ekkawat was released without charge [See further: AHRC UA-153-2004, 9 November 2004].

Police in Sri Lanka are also known to arrest and torture people on mistaken identity and wrong information. In fact,

The type of assaults committed... show that police officers are not making an attempt at all to collect information relating to crimes in an independent or rational manner, as the law requires them. In all these cases, and many others, the very first thing the police seem to do is to beat people mercilessly with the hope some information may come out from suspects. However, the frequently extraordinary level of torture makes the victim incapable of remaining normal.

Gerald Perera's case demonstrates the problem very clearly. The police were inquiring into a triple murder that had taken place some time before his arrest. The police apparently were under enormous pressure to show the results of the investigations into this very serious crime. They were unable to deal with forensic evidence. They were also not qualified in the use of rational methods for discovering information. They seem to have been arresting people on unverified information. All these added together resulted in some major consequences. One of the first persons to be arrested in this triple murder case was a three-wheel taxi driver. He was harassed into admitting involvement in the crime. He has since attempted to commit suicide, unable to bear the harassment and accusations, about which he knew nothing...

The second victim was Gerald Perera, who also has subsequently been declared absolutely innocent. In his case, as so many others, no evidence of any sort existed against him at the time of arrest. Someone's casual remark was enough. No statements were recorded from anyone making accusations. A belief that beating people is the path to discovering the truth was all that these criminal investigators went by...

Most disconcerting is the popular perceptions that develop among the people regarding police stations. The atmosphere in police stations is one of terror, and that does not in any way help to obtain the type of cooperation from the public that is very essential for criminal investigations. On the one hand, there is an extreme breakdown of cooperation between the public and the police. On the other hand, as a result, there is even more torture, which results in a further loss of confidence and contact with the people. The criminal investigator thus functions in a vacuum [Basil Fernando, 'Trying to understand the police crisis in Sri Lanka', *article 2*, vol. 1, no. 4, August 2002, pp. 42-3].



The above cases describing the way police conduct arrests, file complaints and carry out investigations clearly speak to the absence of rule of law in these countries. The police blatantly violate legal procedures and ignore citizens' rights without fear of reprisal.

Questions For Discussion

1. Have you heard/come across similar instances of police behaviour? What is the situation in your country regarding
 - a. Filing complaints at police stations
 - b. Police conduct of arrest and detention
 - c. Police investigations
2. Discuss reasons for police misbehaviour: What is the relationship between rule of law and police abuse; between procedural violations and human rights abuse?

Lesson 2

The main reason that the abuses described in Lesson 1 continue is the impunity given to the perpetrators. That the police are not held accountable for their actions has led to people having little confidence in the very institution meant to uphold the law and protect their rights, while at the same time giving free reign to the perpetrators to continue their abuse.

This lesson highlights the various factors that contribute to this impunity; before that however, it is essential to understand that in the majority of Asian countries, there is a significant difference between what is known as law enforcement officers and the police. In fact, in most of these countries, maintaining law and order are two different things. While the intellectual or theoretical premise—which may be realized in more developed democracies in other parts of the world—is that all order to be established must be done in lawful ways, this premise means little in the context of Asian society. The reality is that order must be established at any cost, with or without the law. Rule of law is thus sacrificed under the pretext of maintaining order.

Order enforcement vs. law enforcement

1. The concept of order-enforcement is not derived from that of the rule of law. The concept of law-enforcement, on the other hand, is based on that of the rule of law.

2. Law enforcement mandates criminal investigations to prove that crimes have been committed, undertaken through the submission of evidence. Order enforcement, however, does not require investigations or proof according to the law. This distinction has huge implications for the understanding of policing functions.
3. Criminal investigations require training, which requires basic education. Investigations also require facilities, such as forensic labs. These are not required by a police force designed to keep order through whatever means.
4. Law enforcement makes the elimination of use of torture and degrading punishment a possibility. Among order-enforcers this is not possible, and such officers have even been used to commit extrajudicial killings-sometimes on a large scale.
5. In law enforcement, policing is a function subordinated and controlled by the judiciary and prosecutors. Officers who are mobilised simply to maintain order, however, are free from such controls.
6. Law enforcement presupposes equality before the law. Order enforcement has no such prerequisite, and in fact unequal treatment is inherent in the system.
7. Order enforcement is associated with impunity while law enforcement is not.
8. Law enforcement can be a transparent process, and transparency can be maintained by procedural means, such as by keeping the required records. Order enforcement does not have such a requirement. Indeed, often an order enforcement officer is discouraged from keeping records.
9. Communication between the hierarchy and subordinates in a law-enforcement agency is usually based on written codes of ethics and discipline. Order enforcement does not require such codes, either written or unwritten [Basil Fernando, 'An Overview of the Police and Rule of Law in Asia', *Monitoring The Right for an Effective Remedy For Human Rights Violations*, (Hong Kong: AHRC, 2001) pp. 9-10].

This distinction between law and order enforcement helps to understand the factors granting impunity to the majority of police officers in Asia, seen as 'order enforcement officers', described in detail below.

Politicization of the police

Authoritarian regimes and corrupt politicians will use the police as a tool for their own ends. In this case, they will do everything possible to ensure that the law is not followed. This can even involve getting rid of police officers who insist on doing their jobs ethically and lawfully, as in Pakistan, when a police officer was transferred for investigating an honour killings case.

District Police Officer Fida Hussain Mastoi, the officer dealing with the murder case of two teenage girls Aabida and Tahmeena, killed on the pretext of honour killing for visiting their grandparents without permission, was given notice of his transfer on 12 August 2004. It was alleged that Mr Ghous Bux Mahar, a national assembly member (MNA) from Shikarpur, present Cabinet Minister and a landlord of the Mahar tribe, was instrumental in getting District Police Officer Fida Hussain Mastoi transferred as was another MNA from Shikarpur, Dr Muhammad Ibrahim Jatoi.

Mr Ghous Bux Mahar had been supporting the primary accused, Abdul Rasheed Bhutto from the beginning of the case, and headed the jirga that established the murder of the two girls as 'honour killings'. It is essential to note that the jirga in this case was called *after* Abdul Rasheed Bhutto and his eight accomplices killed the two girls. At the jirga meeting, the murder of the two girls was labeled as honour killings through an agreement among all the perpetrators, six of whom have yet to be arrested by the police: Abdul Rasheed, Younis, Jamaluddin, Hajji Abdul Karim, Ghulam Sarwar and Sanaullah.

An FIR was lodged regarding this case on 4 May 2004, the day after the two girls were killed. It was registered under sections 302, 201, 147, 148, 149 and 506.2 of the Pakistan Penal Code. All these sections are bailable. (Later, the case was registered at the Anti-Terrorist Court). Only three of the nine accused were arrested on May 7 and are currently still being detained without securing bail: Hajji Nazeer, Hajji Shafi Mohammad and Sulaiman.

As the case was challenged in the District Sessions Court of Shikarpur and as there was more attention given to the case by the press and human rights groups, DPO Mastoi constructed a Special Investigation Cell consisting of five police officers, strictly directed at recovering the dead bodies of the victims and arresting the perpetrators.

The police found that the bodies were buried in Abdul Rasheed Bhutto's fishpond and after obtaining permission for the exhumation and post-mortem inquiry of the bodies, on May 14 the bodies were exhumed from the identified location and handed over to the victims' relatives after the autopsy.

The victims' families have been given about Rs. 20 0000 and ten acres of cultivation land as compensation, and are continually being pressured to withdraw the case and to seek reconciliation by the perpetrators. This pressure and the transfer of the DPO does not bode well for the obtainment of justice for the victims' families. Unless those agencies and individuals working towards implementing the April 2004 decision of the Sindh High Court banning all jirga trials as illegal are resolutely supported and interference in their work prevented, progress will not be made in improving Pakistan's justice mechanisms and human rights situation [See further: AHRC UP-46-2004, 17 August 2004; UP-23-2004, 27 May 2004; FA-12-2004, 11 May 2004].

In many instances, politicization of the police force takes a much more overt tone, as described in the Concerned Citizens Tribunal report regarding the Gujarat pogrom of 2002.

The police

Evidence before the Tribunal clearly establishes the absolute failure of large sections of the Gujarat police to fulfil their constitutional duty and prevent mass murder, rape and arson—in short, to maintain law and order. Worst still is the evidence of their connivance and brutality, and their indulgence in vulgar and obscene conduct against women and children in full

public view.

To start with, the Godhra incident would not have taken place had the police taken due precautions right from the beginning. Once the Godhra tragedy had occurred, the Gujarat police made no preventive arrests.

It was obvious that the situation was tense and could get out of hand. The minimum that the state does in similar situations is to effect preventive arrests of persons who are likely to cause violence. Section 151 of the Criminal Procedure Code (CrPC) permits preventive arrests by the police...

On February 28, former Congress MP, Shri Ashan Jafri from the Gulberg society in Chamanapura, made repeated frantic calls pleading for police assistance against a huge mob in a murderous mood. He kept calling the control room for several hours, until, finally, with no one to check the mob, he was charred to death along with 65 of his relatives and neighbours. Pleading anonymity, police officials who met the Tribunal confirmed that Shri Jafri had also made frantic calls to the Director General of Police, the Police Commissioner, the Chief Secretary and the Additional Chief Secretary (Home) among others. Three mobile vans of the city police were on hand around Shri Jafri's house but did not intervene... It was only *nine hours* later that the Rapid Action Force (RAF) of the central government intervened, by which time it was far too late.

"The police tried their best, but they couldn't stop the mobs. They were grossly outnumbered when the mobs grew," Ahmedabad's Police Commissioner, Shri P C Pandey had pleaded. But in most cases, inadequacy of forces is a mere excuse touted by serving police officers who fail in their primary duty. Even in Gujarat this time, in several cases where good officers held out against political pressure, the same small deployment was enough to act decisively and control the situation. In the vast majority of cases, however, the police either did not act or acted on behalf of the mob.

The Gujarat police force has finally admitted that it killed more Muslims than Hindus in its ostensible attempts to stop what was clearly targeted Hindu violence against Muslims. Of the 184 people who died in police firing since the violence began, 104 are Muslims, says a report drafted by Gujarat police force itself.

Apart from targeting sections of the Muslim population with bullets, the Gujarat police have further blackened their conduct by indiscriminate arrests of innocent young Muslims all over the state. The Tribunal has recorded details of these arrests and we estimate that at least 500 innocent Muslims languish in police lock-ups and jails of the state.

The overtly partisan behaviour of the Gujarat police can be assessed from the language contained in the charge sheets related to the major incidents of mass massacre. For instance, the charge sheet filed in the Gulberg society killings, where no less than 60-70 persons were brutally killed, virtually begins with a defence of the accused and paints the victims as instigators.

In a similar misrepresentation, the Tribunal records with horror the way the Naroda Patiya charge sheet reads: “The unruly crowd at Naroda Patiya went on the rampage after a mini-truck driven by a Muslim ran over a Hindu youth and the mutilated body of a Hindu was recovered from the area... the crowd was anguished by the incident.” ...

Police conduct after the Gujarat carnage, with regard to the registration of crimes, conducting of investigations etc., has been marked by a desire to please political bosses and an utter disregard for the law of the land. The Tribunal has evidence of the police bullying victim-survivors into filing First Information Reports wherein only mobs are mentioned, without naming the assailants and mob leaders whom the victim-survivors had clearly recognised during the incidents of violence [‘Genocide in Gujarat: Government and police complicity’, (ed) *article* 2, vol. 2, no. 4, August 2003, pp. 35-7].

The political responsibility for the actions of the police thus ensures that police officers themselves are not held accountable. As the government wanted to incite communal violence, the police not carrying out their duties effectively was necessary.

Similarly, the Thai government used rewards and punishments to ensure the police cooperated with its 2003 drug war. The Thai police were directed to organize murder through policy memos.

Between February and April 2003 the Thai government incited police and public officials to organize and endorse murder in the name of ridding the country of drugs. Through a series of official orders and public statements, the government pushed officials to massively overstep their normal authority. It also set up numerous positive and negative incentives, including promises of financial rewards and promotions, and threats of transfers and dismissals. By May, more than 2000 persons were killed, and the country’s key institutions for the protection of human rights were seriously compromised.

Administering murder

On January 28 the Prime Minister of Thailand, Thaksin Shinawatra, set the anti-drug crusade in motion. Prime Minister’s Office Orders 29/2546, 30/2456 and 31/2546, effective from February 1, aimed to combat the enormous drug manufacture, trafficking and use in Thailand “quickly, consistently and permanently”. They ordered the establishment of the National Command Centre for Combating Drugs, chaired by Deputy Prime Minister Chavalit Yongchaiyuth, to oversee the “Concerted Effort of the Nation to Overcome Drugs” campaign. They set out its basic responsibilities, including planning, coordination and reporting, and established an administrative structure and tasks throughout the country. The orders gave the programme the “highest priority”, indicating to officials that they would be closely monitored, and that the government was prepared both to reward high performers and punish laggards. The Prime Minister boosted incentives in two sets of regulations issued on February 11. One of those was the Prime Minister’s Office Regulations on Bonuses and Rewards Relating to Narcotics (No. 3). This document amended two earlier reward regimes, and effectively encouraged the murder of drug suspects by providing grades of bonuses where the most efficient and expedient means for officials to be rewarded was simply to kill the accused...

At later dates, certain rewards were increased so that, for instance, a state official seizing property that had been purchased with drug money could get up to 40 per cent of its value.

Public statements enabled and encouraged what was on paper. The Prime Minister consistently portrayed drug dealers as sub-humans deserving to die. He also played down the deaths relative to the apparent successes of the campaign, wondering aloud why the killing of thousands of people who had not yet been proven guilty of any crime should be worthy of public attention or scrutiny. Even in reiterating the official line, that most deaths were just cases of “bad guys killing bad guys”, or “killing to cut the link”, he stated that the government had no responsibility to protect these undesirable citizens. This position, however, was already quite a step-down from remarks he reportedly made to senior government officials from across the country at a meeting in the lead-up to the campaign on January 15. “We have to shoot to kill and confiscate their assets as well, so their sinful inheritance will not be passed on,” he is reported to have said, adding, “We must be brutal enough because drug dealers have been brutal to our children. Today, three million Thai youths are into drugs and 700,000 are deeply addicted. To be cruel to drug dealers is therefore appropriate.” The Prime Minister’s remarks were supported at all levels of government, not least of all by the Interior Minister, Wan Mohamad Noor Matha, who remarked memorably that drug dealers “will be put behind bars or even vanish without a trace”. The language used by the Prime Minister and his officials throughout the campaign also sought to evoke a feeling of being at war, such as in a March 2 address when he said, “Don’t be moved by the high death figures. We must be adamant and finish this war... When you go to war and some of your enemies die, you cannot become soft-hearted, otherwise the surviving enemy will return to kill you.” He also referred to drug dealers and their accomplices as “traitors”. Over time, this language found its way into policy documents, such as Prime Minister’s Order No. 60/2546, which states in its preamble that “the ‘Concerted Effort of the Nation to Overcome Drugs’ is specifically regarded as a state of war”.

Provincial governors and police chiefs were motivated to act according to a strict timetable. Their performance was measured by statistics on drug dealers ‘removed’ from society on a month by month basis, starting with 25 per cent of the total by the end of February, 50 per cent by the end of March, and 100 per cent by the end of April. The final figure was later reduced to 75 per cent, and a plan drawn up to deal with the remaining 25 per cent at a more leisurely pace by the King’s birthday in December. Underachieving provinces were announced publicly and senior officials openly threatened with the sack or transfers. Clearly an enormous amount of pressure was applied to meet unreasonable and arbitrary targets. And it was not enough for officials merely to present figures of arrests, convictions and deaths of dealers: they had to target thousands of specific persons, whose names were on lists [Nick Cheesman, ‘Murder as public policy in Thailand’ *article* 2, vol. 2, no. 3, pp. 30-1].

Such explicit instructions to the police show how those in power expect the police to become their tools in achieving their policy aims. When these aims are met through unlawful means, or when the aims themselves are unlawful, the complicity of the police seriously undermines the principles of justice and human rights.

Similarly, the recent comment on national television by a senior Thai police officer that torture is acceptable, is an affront to the same principles. Police Lieutenant-General Amarin Niamsakul, the Commissioner of the Immigration Bureau, said on a popular talk show in 2004 that the police everywhere beat up people or torture them to extract information and confessions, so it is alright for this to be the practice in Thailand. He also said that more important than the law itself, is the ability of the police to punish bad people, for which torture is again necessary. While the Minister of Justice spoke out against his remarks, it is obvious from the number of police torture cases that occur throughout Thailand that there exists an underlying acceptance of torture and forced confessions.

Furthermore, if the police were ever to be held accountable for their abuse, their superior officers—including politicians and government officials—would also be implicated. To prevent this, the police are granted impunity.

Militarization

Political manipulation of the police can even lead to a blurring of lines between the police and security forces, which is common when a government is preventing ‘terrorism’ and protecting ‘national security’, or when the country is under a state of emergency. In these situations, what happens—linked to the above mentioned ‘order enforcement’—is that the police, who are meant to be a civilian force, become para-military institutions. They either become intelligence agencies for the military, or undertake some of the functions of the military, thereby using greater force and weapons than normal for a civilian institution. In the South of Thailand and Nepal for instance, the police operate together with security forces under joint command units. In these circumstances the roles to be played by respective police and military officers become confused.

In a recent special report, ‘The mathematics of barbarity and zero rule of law in Nepal’, *article 2*, vol. 3, no. 6, December 2004, the Asian Legal Resource Centre documented numerous cases of abuse by the Nepalese security forces, including the joint units.

While many of the arrests, torture and disappearances are ostensibly aimed at addressing the insurgency, these cases speak to the fact that in many instances people are taken at random, and—particularly in cases of torture in urban areas—often on accusation of involvement in conventional crimes. The victims are also taken without discrimination: they include children, elderly, women and the handicapped...

Criminal suspects are routinely tortured. The methods of torture described by victims speak to the fact that they are totally institutionalised in policing in Nepal. Additionally, as the lines between various security agencies have been blurred, the army also engages in horrific torture of detainees who are accused of ordinary crimes, like Narayan Nepali, who was electrocuted on the forehead. The blurring is also evidenced by the fact that the police are reported to carry out arrests on instruction of the army, without knowing for what purpose, such as in the case of Upendra Timilsena [‘The mathematics of

barbarity and zero rule of law in Nepal', pp. 15-6].

Narayan Nepali was arrested by Royal Nepalese Army soldiers on 31 March 2004 and taken to the Jagadal Barracks, where they beat him with pipes and sticks and gave him electric shocks. Only on April 23 was he taken to the district police office and then on April 26 produced before the court on drug charges. It was also found to be common for the army to thus brutally torture a victim and then send them to the police station for bogus legal proceedings, usually after the external effects of torture had gone.

Another aspect of joint operations is that it is unclear which group or department the security officers belong to, thereby having nowhere to place responsibility for the actions committed. This further encourages abuse.

Those governments that are military in nature will have a greater effect on civil society such as in Pakistan, where the military continues to dominate all public institutions;

Apart from the president's refusal to step out of uniform, the increasing number of serving and retired military officers being brought into the civil service is sabotaging efforts at participation by the civilian public. The hand of the military is seen increasingly in the work of the police, prosecution and judiciary. Recent incidents in Okara, where people were brutally assaulted and tortured into signing agreements to hand over land for a military farm speak to the extent of control the army now feels free to exercise over the country [AHRC AS-60-2004, 8 December 2004].

The impunity granted to the police thus comes with the manipulation of the police by other actors; it is necessary to ensure the police are not held accountable in order not to implicate those giving the orders. This serves to legitimize any violence committed by the police, be it ordered from above or not.

Questions For Discussion

1. How do you think ordinary people would describe policemen in your country?
2. What is the most significant factor influencing police behaviour in your country?
3. Discuss the greatest obstacle preventing the police from upholding the law and protecting the rights of the people. How can this be overcome?

Lesson 3

The justice system throughout Asia has numerous defects that not only hinder the protection of human rights, but in fact give leeway for the violation of rights, particularly by the police. This lesson examines these systemic flaws.

A. Criminal justice system

Existing laws, particularly with regard to the country's criminal justice system will affect the behaviour and outlook of the police force. In its 2003 human rights day statement, the Asian Human Rights Commission (AHRC) warned of the increasing politically expedient laws and practices that are being favoured over international law throughout the world.

In recent years...the absolute prohibition against torture has been steadily undermined, under the guise of the war against terrorism. Alarming, in more developed democracies, particularly the United States, several centuries of international jurisprudence are being brushed aside in favour of politically expedient and highly dangerous policies and regulations.

The argument that torture is justified has both corrupted intellectual debate and led to increased torture throughout the world. While in the United States torture is proposed as a means to defeat terrorists, in other countries it is justified on many grounds, such as a means to fight growing organised crime. As a result, other abuses - particularly extrajudicial killings - are also on the rise, and are likewise openly justified by the perpetrators. Behind these developments lies a change in the way punishment is itself being understood. Torture, murder and other extrajudicial means are being openly advocated as a means to deter others from crime. The guilt or innocence of the accused is of little relevance. Law enforcement agencies are being freed from the need to produce evidence of guilt, and from the fear of punishment should it be found that they acted outside of their authority. Impunity is becoming ideologically acceptable. The draconian powers enjoyed by investigators and prosecutors in earlier centuries are being steadily reinstated [AHRC Human Rights Day Statement, 10 December 2003].

It is for this reason that throughout Asia, laws intended to violate rather than protect human rights are being perpetuated: the Internal Security Act in Malaysia and Singapore, the National Security Law in the Republic of Korea and the Prevention of Terrorism Act in India all permit detention without trial and threaten the rule of law. These laws are inevitably used widely and indiscriminately, as has been seen in numerous instances in the region.

As for punishment of crimes, Sri Lanka has reintroduced the death penalty as an irrational means to abolish the increase of crime within the country. Under Malaysian law, whipping and caning are acceptable punishments

to be exercised by police officers.

In Nepal, while the Torture Compensation Act prohibits torture, it does not consider it a criminal offence. Thus, the act in no way inhibits police and security forces from committing torture. Furthermore, complaints made against the act are treated as civil cases and the amount of compensation to be awarded is minimal.

Nepal's domestic legislation regarding torture is thus weak even though it has ratified the CAT. India on the other hand, has yet to ratify. Although custodial torture and death are enormous problems in India,

The Indian government often excuses itself from ratifying the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) on the ground that all the provisions of the CAT are already in the constitution. The argument is spurious. For a constitutional remedy, a victim must go to a High Court or Supreme Court. Such action is beyond the means of most persons in the country, and certainly these courts could not manage even a fraction of the existing torture cases in India today.

There is no specific legislation on torture whereby a case can be filed at a local court. Under the Indian Penal Code, torture is not mentioned as a crime. There is only a section providing that 'excesses committed by a police officer' or forced confessions are illegal. However, under this section it has to be proved that the offence was committed in conjunction with the person's authority in order to demonstrate the gravity of the act. Under the Criminal Procedure Code, a magistrate can order an inquiry into a complaint of torture. However, this inquiry will likely be undertaken by the same police station where the accused is on duty. The result of such an inquiry is easy to imagine. For these reasons, few complaints are ever filed, and even fewer are actually taken to court.

Despite some judicial interventions against torture committed by the police, such as the Supreme Court's recommendations in the D K Basu case, the situation has not improved. Even though India is a common law country, in practice, the D K Basu recommendations are not followed. There is also some question as to how many police officers are actually aware of these recommendations. In any case, the Indian government must come up with actual remedies to address torture, which can only be done by effective domestic legislation, in other words, ratifying and implementing the CAT.

In the rare instances that cases of torture are actually heard in court, minimal compensation is awarded, and after a very lengthy procedure: in one case, it took the victim 25 years. Under any circumstances, compensation alone is not redress for torture. If a police officer is ordered merely to pay compensation, the gravity of torture has not been addressed. Therefore, there should be a procedure whereby the perpetrator is tried for having committed a heinous offence, and punished accordingly. The Indian government should establish a special unit to take and investigate complaints of torture, and prosecute the perpetrators accordingly ['Bringing the Convention against Torture to India', *article 2*, vol. 3, no. 2, April 2004, pp. 27-8].

Furthermore, the Committee on Reforms of the Criminal Justice System, set up by the Government of India in November 2000, supposedly to assess and propose changes to the way criminal trials are conducted, has proposed measures that allow the police greater control over the judiciary and prosecution, while at the same curtailing the rights of the accused. For instance, the Committee has suggested that an officer at the rank of Director General of Police be appointed as Director of Prosecution. This appointment would virtually end the separation of the criminal investigation and prosecution functions, as both would be in the hands of the police. This proposal together with the suggestions that the burden of proof be changed from “proof beyond reasonable doubt” to a “clear and convincing” standard of proof as well as that confessions be made admissible by amending section 25 of the Evidence Ordinance, would mean that the police would have greater room to abuse their power and the rights of victims. From what has already been described about the police, no one interested in effective rule of law and human rights principles would say that such proposals are the way towards ensuring justice.

B. Disciplinary procedures and code of conduct

Any institution is governed by its mandate and code of conduct, both of which will be affected by the reasons for its establishment. The police force too, is an institution established for specific reasons, which then shape the behaviour and attitude of those within it. In many Asian countries the police force was created during the colonial era. According to a 1947 commission looking into the Sri Lankan police,

The old order of society in this Island neither required, nor produced a Police Force. Such an institution was new-TO US. It was not a natural growth within the social order, but was introduced under the British regime for specific purposes.

After the British occupation of this Island in 1815 a Malay Regiment was imported to maintain civil order. The Police Force in Ceylon, as it exists today, is the lineal descendant of these mercenaries. Their main task was to suppress rebellion and so enforce the laws established in this country by the new Government...

While, in a sense, the Police Force in Britain was the creation of public opinion in that country, and has been repeatedly reformed and modernized with the approval and support of the public in England through the various Royal Commissions that were appointed for the purpose, in Ceylon, the Police Force continued to expand and develop under an impetus unaffected by public opinion.

The 1861 Police Act in India—which to this day is the guiding legislation over the Indian police force—is an authoritarian instrument devised to suit the specific needs of the colonial rulers. The Indian police force was conceived in the aftermath of the 1857-58 uprising and was “obliged to quell dissent and enforce obedience whatever the costs. [The] basic duty was to provide an ambience of peace and tranquility for the single-minded

exploitation of the enormous resources of raw materials and a captive market” [Manoje Nath, ‘Human rights and the police’, *Policing India in the new millennium*, P J Alexander (ed.), Allied Publishers, New Delhi, 2002, p. 463]. The current government also confers arbitrary power to the police on the pretext of maintaining law and order, thereby legitimizing human rights violations. It follows that there would seem to be little difference between the motives giving birth to the Indian police 150 years ago, and present-day motives for using it to maintain the status quo.

The use of such archaic mandates together with conflicting political stances is the reason that policing institutions throughout Asia are lacking in discipline. Unless this breakdown in discipline is addressed, little can be done to improve the effective functioning of the police, as well as regain public confidence in the institution.

Disciplinary control requires clear guidelines for appropriate action and behaviour of the police, as well as strict sanctions for those that do not comply. In instances where the codes of conduct of the police are centuries old and do not address current circumstances, such as in the case of Sri Lanka, amendments must be made. The Establishment Code, which governs the discipline of all government officials including the police, was also created under colonial rule, when fundamental rights were not recognized. For this reason, there are no provisions regarding fundamental rights violations. Therefore, a prevalent view within the police establishment is that a finding against any police officer by the Supreme Court of Sri Lanka on a fundamental rights application filed under Section 126 of the Constitution has no impact on the officer’s promotion or dismissal. To claim that a law enforcement officer can violate rights—which are not only recognized by the Constitution but for which legal remedies are made available constitutionally—and not face disciplinary procedure is an absurdity. Furthermore, whether any police officer found guilty of human rights abuse should ever be promoted or allowed to be a policeman at all, must be considered from a moral standpoint.

The lack of discipline is also the reason for the corruption that is rife in policing institutions throughout Asia, as well as the links police have with criminals. In the Asian Legal Resource Centre’s March 2005 alternative report on Thailand to the Human Rights Committee, ‘Institutionalised torture, extrajudicial killings & uneven application of law in Thailand’ it is stated that,

13. ...It is well known that the police in Thailand are both highly corrupt and highly politicised. This is public knowledge. During 2003, a nightclub kingpin who has now turned politician went so far as to hold a series of press conferences during which he played guessing games with the media about how much he had paid entire police stations to run illegal businesses. In November 2004 a group of academics reported on a study of police stations across Bangkok that found every rank in every police station engaged in some kind of graft on a daily basis [See further: http://www.alrc.net/doc/mainfile.php/unar_hrc_th_2005/].



The art of giving (and receiving)

The Independent Commission Against Corruption (ICAC) in Hong Kong is an example of an independent monitoring body that for the first three years of its existence focused exclusively on eliminating corruption within the police force. This was due to its firm belief that unless the police, the guardians of law, were held accountable for their actions under the very same law they were meant to protect, there could be no improvement in the rule of law situation in the rest of society.

Independent monitoring body

If the police are to sacrifice the rule of law, there is no necessity for any independent body that monitors the police to exist. Without such a body, there is also no way for complaints made against the police to be adequately addressed; one can easily imagine what would occur if an individual went to a police station to lodge a complaint of abuse or harassment against an officer of the same station. Even if a different police station was approached, it is highly unlikely that objective and efficient procedures would be carried out regarding complaints against fellow police officers.

An example of such a body would be the National Police Commission of Sri Lanka (NPC), which although has some defects, is a useful institution. In fact, the power of the NPC under the constitution and its own mandate is quite significant. The Sri Lankan constitution was amended in order to allow for the establishment of the NPC. Under article 155G(1)(a) of the Sri Lankan Constitution as amended, disciplinary control of police officers other than the Inspector General of Police (IGP) is vested with the NPC. Article 155G (2) further states that “The Commission shall establish procedures to entertain and investigate public complaints and complaints of any aggrieved person made against a police officer or the police service, and provide redress in accordance with the provisions of any law enacted by Parliament for such purpose.”

As the Asian Human Rights Commission noted in one of its statements,

The disciplinary control of the police is, as envisaged by the Constitution, a far more important matter than even appointment, promotion and transfer of police officers. This is particularly so given the history of the country in the last few decades. It is an incontrovertible fact, the understanding of which is reflected in the NPC Chairman’s speeches during the last year. It is a fundamental obligation of the NPC to ensure full control of the discipline within the police service. If the Chairman of the Commission claims there is no legal provision granting the Commission power over the lower ranks of the police, this is a clear misunderstanding of the law as enshrined in the 17th Amendment. However, if the Commission itself has handed back this power to the IGP then this is a completely different matter. If the Commission has done so this is a decision which is fundamentally flawed. However, what seems to be the actual case is that the NPC has not seriously taken any practical steps to use the power it has for the disciplinary control of the police. Its time has been mainly spent on matters relating to appointments, promotions and transfers.

It is suggested that the NPC face up to its Constitutional responsibility to exercise direct disciplinary control over all officers. The major problem with the Sri Lankan police is the breakdown of discipline. Nothing can save the institution until this very serious problem is adequately addressed. There is no Constitutional authority other than the NPC that can address this important task. To abdicate from this role is an act of colossal neglect particularly at a time when the country is faced with very serious problems of social instability and increase of crime. Discipline, particularly within the lower ranks of the police is an essential condition for proper criminal investigations directed towards the deterrence of crime. If the NPC neglects to take its proper responsibility for the disciplinary control of such officers, the fight against crime has very little possibility of success [AHRC AS-21-2004, 20 July 2004].

The lack of such a body ensures greater impunity to the police. With no one to check their actions, and with little hope for victims who complain due to systemic loopholes as well as the support—even if it is only silent or passive—of the perpetrators’ colleagues and superior officers, police officers are left to ensure order as they wish. This can take the form of abusing those they or their supporters have grievances against, or delivering ‘justice’ in exchange for monetary gain.

With regard to authoritarian regimes or extremist ruling parties, a lack of independent monitoring means the use of the police as tools of repression, such as in Nepal, Pakistan, Indonesia.

C. Police training and facilities

The lack of qualified criminal investigators hampers the criminal investigations in Sri Lanka, the Solicitor General of Sri Lanka was quoted as saying on 5 September 2004. This statement, on which there is complete consensus by officials and political leaders as well as the public, is commonly identified as the reason for the failure to detect crimes and arrest the perpetrators, as well as why unqualified officers engage in torture. Little has been done to resolve the problem however.

Linked to a lack of criminal investigators, is the forensic facilities that are terribly lacking in the majority of Asian countries. Without these facilities, it is not possible for the police to use scientific methods to investigate crimes and arrest perpetrators, leading them back to using their muscle rather than mind.

Torture is the cheapest method of criminal investigation

One of the most common justifications of torture is that it is the cheapest method of criminal investigation. Though not expressed openly, this view is shared by the state, though publicly-and particularly for international audiences-it expresses the opposite view.

How has torture become the cheapest method of criminal investigation? By relying on cheap labour. The average police officer in Sri Lanka counts among the least educated persons in the country. Becoming a lawyer, doctor, or even a teacher takes years of education. Achieving some prominence in these or another profession requires many years of patient practice. No such basic education is necessary to be a police officer. (This is not to deny there are a handful at the top who have a basic degree, and a few with longer training.) Those police officers with hardly any basic skills associated with an inquiring mind are the investigators of crime under normal circumstances. Their sensibilities are so underdeveloped that engaging in acts of brutality does not create much of a problem for them. “The rougher the person, the better”, is an underlying principle of selection, though this is not openly expressed. The recruitment, use and manipulation of cheap labour are primary elements of policing in Sri Lanka. The result is that no real selection criteria are applied in practice, though they may be used for publicity purposes.

Professional training of police in many countries now takes several years, after which they are selected on the basis of particular criteria. In some countries it takes three to four years. No such expense needs to be spent when the aim is simply to use cheap labour for policing. Just three months of ‘training’, if any-most of which is spent on physical exercises-is all there is. In fact, this may be a matter of policy. How can a better-trained officer adjust to the rough and brutal practices that go on in police stations?

Both the elements of cheap labour and inadequate training explain why it is difficult for the institution to impose a high degree of discipline on the average police officer. The subject is not really capable of such discipline. Thus cheap labour implies a high degree of tolerance of corruption within the police institution.

Under such circumstances, nothing more than cheap investigations can be expected. Cheap labour in policing means use of muscle, rather than the mind. Thus, the whole police institution becomes a monster that challenges every principle of decent social dealings and shows its fist to every one, saying, “If you have us cheap, you have no grounds to complain about what we do” [Basil Fernando, ‘Trying to understand the police crisis in Sri Lanka’, *article 2*, vol. 1 no. 4, p. 46-7].

There was a case in 2004 where a police recruit committed suicide while at training camp in Kerala, India due to the torture and harsh conditions he was made to undergo. Manu K. Paulson, a 27-year-old police constable trainee at the Kerala Armed Police Battalion, Maniyar Police Camp in Pathanamthitta District found the rigorous training physically and psychologically excruciating and started using painkillers to ease his pain. When his superior came to know about this, he seized the medicine and accused the victim of consuming drugs. Manu was taken to the camp commandant and subjected to torture under the supervision of the camp officers. Finding the situation intolerable, Manu applied for leave and left for home. He later extended the leave for a few more days and finally committed suicide on 16 February 2004. Manu’s relatives allege that he was a jovial person with high

spirits and had no other reason to commit suicide but for the horrendous torture he faced in the police training camp, in the name of strict training.

The training programme for new recruits at the Kerala Armed Police camps is brutal. The camps lack basic amenities including water. The training often occurs in treacherous conditions with the new recruits left at the mercy of their commandants, who often push the recruits to their limits and abuse their power. Any failure to obey the commandants will be dealt with further brutality in the name of discipline.

While human rights training is also given to the new recruits, this training has little value in the face of their physical and combat training; while the human rights sessions may speak of respecting human life, their armed training focuses on committing severe torture without causing external injuries. The very nature of police training and the lack of room for complaints gives the trainees their attitude for future service [See further: AHRC UA-19-2004, 17 February 2004].

Questions For Discussion

1. How would you describe the rule of law situation in your country? What role do the police play in this situation?
2. Discuss domestic and international laws governing police behaviour. Are these implemented? If not, discuss the reasons and how these can be overcome.
3. In your opinion, what is the role played by other institutions such as the prosecution and judiciary in the rule of law situation?