



■ TORTURE AND ILL-TREATMENT ■ VIOLENCE AGAINST WOMEN  
■ EXTRAJUDICIAL EXECUTIONS ■ ENFORCED DISAPPEARANCES  
■ HUNGER

# ASIA REPORT 2013



ASIAN HUMAN RIGHTS COMMISSION

# **Asia Report 2013**

- **Torture and Ill-treatment** • **Violence against women**
- **Extrajudicial Executions** • **Enforced Disappearances**
- **Hunger**

A Report by the  
ASIAN HUMAN RIGHTS COMMISSION  
on

**Bangladesh • India**  
**Indonesia • Nepal • Pakistan**  
**Sri Lanka • The Philippines**  
**Hunger in Asia**



ASIAN HUMAN RIGHTS COMMISSION (AHRC)

# Asia Report 2013

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**Cover Photograph:** Kavitha is a 27-year-old mother whom we met at Khandwa district in Madhya Pradesh state, India. Her malnourished son, Mottu (also used euphamistically to suggest 'able bodied' in Hindi) was Grade VI. Mottu passed away six days after this picture was taken. Thousands of children face similar fate in Khandwa, millions in India. *Picture courtesy: AHRC.*

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## **AHRC STATEMENT:**

### **Civil Society Needs to Converge to Protect Rights**

Commemorating the 63rd Anniversary of Human Rights Day, the Asian Human Rights Commission (AHRC) has released a comprehensive report, *State of Human Rights in Asia 2013*, covering Sri Lanka, India, Nepal, Bangladesh, Pakistan, Indonesia, the Philippines, and Hunger in Asia. The global theme for this year is 20 Years: Working for your rights. The theme marks the 20th year of the establishment of the Office of the High Commissioner for Human Rights.

The AHRC report has analysed the functioning of justice institutions in Asia. While in some states the functioning of these institutions contribute to the negation of rights, in others, it is the non-functioning of the justice apparatus that hampers the rule of law.

Of particular emphasis in the report is the widespread use of torture, a phenomenon that the AHRC has documented sans jurisdictions. The report asks why, in countries like Sri Lanka, and the Philippines where torture is criminalised, it is in practice. The report concludes that it is not just adequate legislation that prevents torture; proper enforcement of the rule of law is needed to end torture and impunity. Central to the establishment of the rule of law in Asia is police reform.

Democracy is only possible where justice institutions are conceived, created, and nurtured to prevent arbitrary abuse of power. In Asia what exists today are authoritarian states that, in the garb of democracy, promote impunity and nepotism. In countries like Bangladesh, India, Pakistan, Philippines, and Sri Lanka owing to entrenched corruption and impunity in governance, realising normative rights guarantees has remained elusive. This makes democracy a façade.

The global convergence against extremism has worked as a catalyst in Pakistan and Bangladesh to further state impunity. The ensuing repercussions have increased disrespect for the rule of law.

In Sri Lanka, the government has set up a military state. This has further pushed the country into a financial crisis, from which it will be difficult for the people of Sri Lanka to recover. Inquiry into war crimes and other human rights abuses reported from Sri Lanka, past and present, are being prevented by the state, since it would expose the empty shell of governance based on nepotistic interests.

In India, protection, promotion, and fulfillment of human rights guarantees suffers formidably due to the state's incapacity to encourage, investigate, and adjudicate complaints of human rights abuse. In Bangladesh, impunity and corruption has resulted in the country exporting bloodstained garments. Collective bargaining for better working conditions attracts murder. Politicians of all shades are deeply entrenched in promoting private interests, for which they have intentionally wilted justice institutions.

Nepal continues to keep the democratic dreams of its people in abeyance and prevents justice and closure for the victims of war crimes. Pakistan, on the other hand, poses mortal danger for professional communities like judges and lawyers for standing firm against fundamentalist religious forces that collaborate with the military. Extrajudicial executions and disappearances in Pakistan are alarmingly high.

In Indonesia, the façade behind democratic state-building is exposed in the curtailment of freedom of speech and expression and the widespread practice of torture. The country's judiciary is unable to shake-off its compromised independence.

In the Philippines, human rights guarantees remain a challenge difficult to achieve due to omnipresent use of torture and violence by state agencies, with impunity. Professional freedom of the media to report against human rights abuse is under exceptional control; those who dare challenge it face serious repercussions, including death.

Across Asia, women, children, the underprivileged, and minority communities suffer the worst due to systemic denial of justice. In countries like Pakistan, fundamentalist religious forces, often acting in collusion with the armed forces have made life hell for women, restricting their freedom at all levels, including their right to equal opportunities to education. Pakistan is one of the worst

countries in Asia for women to live in, having the highest number of incidents involving gruesome acts of violence against women.

In none of the Asian states assessed are institutional reforms a state priority. On the contrary, governments keep reform policies suppressed, and prioritise what is projected as 'development'. However, these development models are mere enforcement of state writ that deepens income disparities and keeps millions in poverty, malnutrition, and hunger. Asia's development model is at best the convergence of its privileged, and justice, equality and dignity are the immediate casualties.

To counter an unjust development model, and protect rights of Asian people, the AHRC calls for Asian civil society to collectively challenge the region's governments and demand that development should not be at the expense of justice institutions.

AHRC also wishes to reiterate – on a day that globally rekindles hope for human rights – the best national investment that states can offer to their people is a life with dignity and equality. This, however, is impossible if Asian states do not prioritise institutional reforms to guarantee justice to every human within their jurisdiction.

*Asian Human Rights Commission*  
*10/12/2013, International Human Rights Day*  
*Hong Kong*





# CHAPTER I



ASIAN HUMAN RIGHTS COMMISSION

# BANGLADESH



# BANGLADESH

## Lust for Power, Death of Dignity

### Introduction

Four decades since its independence, the People's Republic of Bangladesh continues to struggle with legitimacy and maintenance of the rule of law. In 2013, human rights violations continued without relent, often under direct orders from the government and the police. The hands of Bangladeshi politicians, the military, and the Rapid Action Battalion (RAB) are stained with blood. Those ostensibly meant to protect Bangladeshi citizens, prey on them, all the while holding themselves above the confines of domestic and international law.

Political factions incite violent confrontation. Opposition leaders are silenced or thrown in jail. Limitations on freedom of speech, expression, and assembly are enforced by the ruling regime; journalists are jailed, threatened, and killed for discussing political or military matters. Human rights defenders face harassment, threats, ill-treatment, and arbitrary detentions for fabricated charges. This is exacerbated if their work conflicts with the interests of the government or big business.

Courts deliver guilty verdicts and hand out death sentences in the absence of appropriate investigative and judicial measures. Suspects, including the falsely accused, are repeatedly tortured by the police to satisfy conviction requirements, extract information, and obtain monetary bribes. Women, whose families are required to pay substantial dowries before marriage, are subject to abuse and then denied remedy for their ill-treatment. Enforced disappearance and extrajudicial killing occur with impunity.

Denial of human dignity has become part of the fabric of daily life in Bangladesh, and outright denial of this reality is the default setting of the Bangladesh government. For instance, in a 2006 correspondence and petition for entry to the UN Human Rights Council, Bangladesh claimed that it "has been at the forefront of promotion and protection of all human rights

at national, regional, and international levels. This has been reflected in Bangladesh's adherence to all major human rights instruments."

Today, life in Bangladesh continues to deteriorate. Various factions fight for control in violent confrontations that consume lives of the innocent. An ineffective judiciary prevents access to justice for the majority of Bangladeshis and allows corruption to flow unopposed throughout the country. A government, which won a majority in the 2008 general election declaring a "crusade" against corruption, has made the country's Anti-Corruption Commission, a paper tiger, and a toothless one at that. Draconian laws, like the Information and Communications Technology Act (ICTA), 2006, have been made more regressive. The likes of the Anti-Terrorism Act, 2009, and the Mobile Court Act, 2009, are used shamelessly as a tool by state agents to repress any contrarian voice. Recent constitutional amendments serve only to increase the power of the government at the expense of citizens.

The credibility of the electoral process is itself in question. Democracy in Bangladesh is nothing but a pretense, a façade for the actual system of manipulation, influence, violence, and entrenched power. In this system, the wealthy gain special favors from the government, big businesses earn money at the expense of the people, and the government manipulates legislation and the constitution in order to maintain its grasp on power.

There are elements common to past and present regimes of Bangladesh. Every regime has weakened critical institutions of governance through nepotism, corruption, lawlessness, and impunity, among other methods which will find mention in this report. Every regime has hindered the exercise of democratic rights and fundamental freedoms of the people. Every regime has used the terms "constitutionality" and "democracy" for political or individual gains and have abandoned ordinary citizens, their rights and freedoms.

## **Illegal Arrest & Arbitrary Detention**

As hired thugs of the ruling regime, law-enforcement agencies have regularly been arresting opposition activists, detaining them in fabricated cases. There is no official statistic of the daily or monthly number of such arrests and detention, but those in the opposition, journalists, and human rights groups have informed the AHRC that around a thousand people, including opposition political leaders, activists, and innocent civilians, are being arrested and detained every month across the country. Extortion of the detainees and their families by the police and paramilitary has risen during the political power struggle.

The meaning of the word “arrest” in Bangladesh differs dramatically from the word’s meaning in countries possessing a functional criminal justice system. The ordinary folks of Bangladesh understand the term “arrest” as “the picking up of persons by state agents, who are not answerable to anyone for their actions.” These state agents never tolerate questions from the victims or their families about the grounds for arrest. Questioning state agents, challenging their lawful authority to apprehend, or demanding an arrest warrant issued by a Court, is invariably met with retaliation. This ranges from abusive language to physical torture of the arrestees and their families. Cases where state agents produce a proper warrant of arrest at the time of taking the person into custody are rare.

Bangladesh police and other agencies, such as the RAB – a paramilitary force dominated by officers of the armed forces enjoying blatant impunity for their crimes – are accustomed to arresting suspects without a warrant, regardless of the alleged crime being cognizable or non-cognizable. “Suspects” are arrested without the collection of sufficient evidence about the involvement of the arrestee in the alleged crime. This keeps their personal coffers full with bribe money, and maintains the façade of work being done. It helps the subordinates in the field show their superiors that they are serious about their responsibility of maintaining “law and order” by arresting “crime suspects”. The entire policing system and the parallel paramilitary forces maintaining “law and order” favour corruption. With such a bent, few bother to consider if an innocent is being arrested or a real suspect is getting away scot-free. More arrests only mean wider scope for grasping illegal income. This is the ultimate goal for the overwhelming majority who choose to join the police or paramilitary forces.

Certain political aspects are integral to the Bangladesh policing system. The politicians, those in power in particular, want the police to arrest, detain, and torture the activists of the opposition. They instruct the police to crackdown on their rivals for the purpose of weakening competition in political contest. Such police crackdowns are treated as “proper service” to their political masters. By rendering this service to the ruling regime, police officers not only keep their jobs, but also secure lucrative postings, promotions, and other rewards. In addition to overt official benefits an unwritten but well-established understanding between the ruling regimes and the police is that broader impunity will be guaranteed to the police officers for serving their masters with such acts of loyalty. This culture of impunity for the police for doing dirty work means that political and financially influential people can use the police to grab assets of others and the police are able to provide such service in exchange for reward, often using illegal arrest, arbitrary detention, and torture as the tools to fulfill their responsibility to their “clients.”

When victims are in detention, following illegal arrest, police have taken to shooting at their legs. This is a recent trend of policing in Bangladesh. Such point-blank shooting has caused permanent impairment to detainees. In many cases the victim's limbs have had to be amputated. The police personnel recruited on the basis of their association with ruling parties are the ones that have taken most to this trend; others follow it as but one of the means to extort money from the detainees' relatives.

The police are also taking advantage of the ongoing war crimes trials, related to crimes against humanity committed in 1971. On the strength of their nexus with political leaders they have been bullying innocent persons, particularly who are bearded and publicly known to be pious Muslims, with threats of implicating them as war criminals. These incidents occur when those with ties to law-enforcement take their inter-personal conflicts to the police, to be "resolved".

To protect actual perpetrators, police often implicate the innocent. For example, in an incident of gang rape, the police included the name of the victim's boyfriend as an accused in the complaint due to bribery and political pressure from the side of the rapists. Four people have been identified as the main perpetrators of the gang rape; however, the police have not registered their names in the First Information Report (FIR). Documentation by a human rights fact-finding team asserts that the alleged perpetrators were supported by an influential leader of the ruling party, who is chairperson of a local governmental unit in Satkhira district, and that the police have allegedly received bribes from the rapists.<sup>1</sup>

Cases where the police do not have a vested interest are difficult to predict. To get any criminal investigation conducted by the police, the complainant has to pay bribes to the relevant police officers. The police seek out the offenders through their sources and demand bribes from those offenders; in exchange, they do not include their names in the investigation report. The police also compel the victim or complainant to pay bribes, with the assurance of making a "true investigation report" that may lead to conviction of the perpetrators. When the perpetrators pay more money, and the victims/complainants fail to afford the demands of the police "investigators," the police pressure the victims/complainants to withdraw the complaint. The perpetrators can so easily succeed in making the police biased in their favour and take advantage of this opportunity to intimidate the victims into settling the matter outside the purview of such criminal justice institutions. In cases that involve violence

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1 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-095-2013/>

against women, the alleged perpetrators offer a proposal of marriage in exchange for the victims not filing any formal complaint or in exchange for withdrawing a case already registered.

## **Torture & Ill-Treatment**

Torture is endemic in Bangladesh. Law-enforcement officers and criminal “investigators” are often the perpetrators. They use torture from the time of arrest to the destination of detention and in the detention facilities of the law-enforcement agencies and security forces. The arrest of a person by the police or any law-enforcement agency of the country is understood to guarantee torture and ill-treatment of the arrestee. The practice of random arrests, often without warrants, spares no one from the sprees of arrests constantly made by the country’s law-enforcement agents. As alluded to before, there is a general public understanding that if a victim of an illegal arrest dares to ask any question challenging the legality of his or her arrest, the risk of sustaining instant and subsequent torture increases dramatically. As the period of detention in police custody is prolonged, the fear of death or permanent or partial disability from ill-treatment increases. As a result, citizens learn to maintain silence and accept illegal arrests and detentions to which they are subjected as normal.

Institutional corruption plays a role here too. The police use torture for extracting bribes and people are forced to pay protection money on a regular basis to maintaining their livelihoods. For example, street-hawkers, shopkeepers, traders, and industrialists all have to pay money to the police just as professional criminals — such as drug-peddlers, smugglers, thieves, robbers, snatchers, and illegal arms-dealers — do, some on a daily basis while the others pay weekly, fortnightly, or monthly, as per police demands. Other reasons for demanding bribes are: including or excluding any name in the list of accused in a criminal case, getting a tailor-made investigation report, arresting any person as accused of an alleged crime or releasing anyone from an accusation, increasing the degree of systematic torture or decreasing and stopping torture of a suspect, the price of the bribe is the only variable factor.



Police seen ill-treating a person on a Dhaka street.  
(AHRC File Photo)



The police and other law-enforcement agencies, including the RAB stay on the lookout for ways to extort the successful. They target those with money, including traders, expatriate citizens, industrialists, and other businessmen. They raid houses and offices, arrest people, detain them for days, and demand ransom. Once the demanded is paid, the detainee can be released. The perpetrators are then able to shelter their illegal assets using the names of their wives, children, or in-laws, and thus there is no effective mechanism or institution for holding the police accountable for their disproportionate income and wealth. The political regimes and the institutions such as the Anti-Corruption Commission, which is obliged to curb corruption, constantly keep their eyes averted so that the rampant corruption can serve their mutual purposes. Subsequently, the chain of command is systematically replaced by a “chain of corruption” within law-enforcement agencies.

In the same way, torture is routinely used by the police and paramilitary forces for the purpose of extorting money in Bangladesh. During the detention described above the detainees are intimidated and have charges fabricated against them. Often the detainees are threatened with death for their failure in paying bribes to the state agents. The police will even target persons from the upper-middle class having fair reputation in the society for these tactics. In addition to torture the police threaten to slander victims publicly with stories of scandalous extra-marital relationships or to brand them as members of Islamist militant groups, again for extortion.

People of different socio-economic backgrounds have been forced to pay bribes to police, from millionaires to hand-to-mouth marginalized people. Those from affluent backgrounds find more ways to cope, but the poverty-stricken, which comprise the majority of people who are subject to custodial torture and ill-treatment, are destroyed due to impunity, inaccessibility to the justice system, inadequate psychological treatment, and lack of support for reintegrating with society.

Torture also changes the demographic picture of Bangladesh, as the majority of torture survivors suffer from the consequences of repressive cycles of torture by law-enforcing agents for generations. The survivors drift in emptiness in all aspects of their life, their mental and physical well-being damaged in a way that negatively affects their personal, socio-familial, and economic life. On the other side of the equation, the political bureaucracy and criminal justice systems complement each other to patronize and solidify torture, obstructing justice. Many survivors see torture as the key pillar of the State, contradicting the theoretical definition of State from the perspective of political science.

After many years of struggle and continued infliction of these atrocities, torture and custodial death have been criminalized in Bangladesh on 24 October 2013. The enactment of the *Torture and Custodial Death (Prohibition) Act, 2013*,<sup>2</sup> which makes torture and custodial violence a criminal offence in compliance with the UN Convention Against Torture (UNCAT),<sup>3</sup> is a significant development in Bangladesh's legislative history. There is no record available yet regarding the use of this new legislation in bringing the perpetrators to justice in cases of torture and extrajudicial killings.

Bangladesh policing, however, remains a far cry from any conception of professionalism. So unless police reform buttresses this new legislation, torture will not abate. While the police are officially responsible for conducting the criminal investigations they incorporate torture as an integral part of the investigative mechanism. Torture is the principal tool indeed used for criminal investigation or interrogation of crime suspects in Bangladesh. The law-enforcement agencies, which lack professional efficiency to investigate criminal cases, depend on torture (called the "third degree method"). It is used for extracting confessional statements, in spite of the constitutional provision, as per Article 35 (4), which states: "[n]o person accused of any offence shall be compelled to be a witness against himself."

The country's civil society, media, and scholars largely agree with the police view that torture is necessary for criminal investigations. There is a notion in the Bangladeshi national psyche that criminal investigation cannot be conducted without torture just as there is an expectation that the police will torture a suspect immediately after arrest. This expectation is itself a manifestation of the belief that trial in courts will ultimately fail to convict the alleged offender. In absence of an effective judicial system, torture is sometimes seen as the sole punishment for criminals who are able to buy their way out of extended jail sentences. If justice cannot be sustained through the courts, torture before and during trial, in the eyes of many, is the only way for justice to be done. Ironically, this only reflects and reinforces people's distrust in the criminal justice system of the country. Any discourse relating to the prevention of torture and the demand of the further criminalisation of torture, is termed as

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- 2 Unofficial English Translation of Torture and Custodial Death (Prohibition) Act, 2013, Act No. 50 of 2013 <http://www.humanrights.asia/countries/bangladesh/laws/legislation/Torture-CustodialDeath-ActNo50of2013-English.pdf/>  
Official Bangla version of Torture and Custodial Death (Prohibition) Act, 2013, Act No. 50 of 2013 <http://www.humanrights.asia/countries/bangladesh/laws/legislation/torture-custodialdeath-act-2013-act-no50of2013-bangla.pdf/>
  - 3 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

an “agenda of western society” being propagated against the “norms” established in Bangladesh.

The passing of the aforementioned statute is, therefore, significant. First and foremost, it is one of few country-specific legislations that acknowledges the problem of custodial torture and extrajudicial killings. A considerable step given that in many Asian countries the problem of custodial torture is widely ignored or accepted as part of society. Initiating anti-torture legislation shows that the Bangladeshi government is ready to acknowledge torture as a criminal activity.

At the same time it is urgent for the nation to understand that a torturous policing system and democracy with a functional rule of law system do not fit together, that the existing policing system is incompatible with democracy and the rule of law. Any commitment to the establishment of the rule of law on the part of the government must come with thorough police reform; torture-free policing is a must to benefit from the legislation criminalising torture and custodial violence.

## Extrajudicial Killing

Extrajudicial killing, one of the most appalling human rights abuses, still plagues Bangladesh. The practice of extrajudicial killings disproportionately affects the poorest and most impoverished in society. While torture is used to extract money, extrajudicial killing is used to terrorize families and communities. Because the murderers are members of the police, army, or RAB, such killings prevent victims and their families from seeking justice and often go on without investigations or even acknowledgement from the authorities. Extrajudicial killing is a tool used by governments that have such little actual power that they must resort to threats, coercion, and murder to maintain control.

The Bangladesh Government wasted five years failing to prove its “zero tolerance” for extrajudicial killings. A political party promised



Police often open fire, with live ammunition, at protestors attending opposition rallies in Bangladesh.  
(AHRC File Photo)

in its election manifesto in 2008 to stop extrajudicial killing and bring the perpetrators to justice, thus winning a majority in the parliamentary election. In the end, they proved that they bluffed the citizens for political gain. The government of Bangladesh Awami League have thereby allowed several hundreds more lives to be added to the ever-growing list of extra-judicially-murdered victims. The country's administrative and criminal justice institutions routinely facilitate the process of covering up the murders and nobody in Bangladesh believes that there is any chance that the families of those killed will find justice or redress.

Human rights groups, such as the AHRC and its sister organization ALRC, have been reiterating the public demand of credible investigations of all cases of extrajudicial murders that are taking place in Bangladesh which authorities have ignored. Criminal justice institutions are not only undermined but rendered functionally non-existent when a country adopts the practice of killing its citizens extra-judicially and guaranteeing impunity to the State's agents for such heinous crimes occurring on so large a scale. The Government, and the "professionals" directly involved in the criminal justice institutions, have made people believe that murders committed by the State itself are not justiciable.

A large number of widows and orphans have been created by the State and this population grows, but there are no orphanage or widow homes to shelter them. The country's healthcare institutions and social security programmes are designed to cater to the needs of these victims whose mental health is in a delicate state. Victims suffer from multiple problems, including an incessant thirst for justice, financial hardships as a result of the unwarranted demise of key sources of income, continued harassment by various state-agents for being related to a person exposed as a "criminal," social disassociation, and subsequent stigmatization in the society. These families carry the burden of multiple grievances, as a result of extrajudicial murder and the subsequent negation by the State and society. They face many other challenges in the process of keeping their lives moving forward; they face embarrassing questions in their academic, professional, and marital life, when they try to move on.

Bangladesh's civil society is highly selfish in terms of caring about victims of State-orchestrated violence, with



Rapid Action Battalion in their usual guise, which helps the authorities create panic in society and silence the people. (AHRC File Photo)

few exceptions. The majority of civil society organizations and people do not focus on the depth of the problems being created by the State. It will not be surprising to see certain segment of the civil society organizations start writing projects for NGO funding after the widows of extrajudicial killings form an association to make their voice heard in public.

## Enforced Disappearance

Allegations of disappearing citizens have been frequently raised against law-enforcement agencies and the country's human rights groups often publish various statistics of enforced disappearance. The numbers of victims, according to rights groups, are increasing day by day.

Theoretically, there is legal remedy available for victims if any Habeas Corpus writ is filed according to Article 102 (2) (b) (i) of the Constitution of Bangladesh, which reads:

*“(2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law – (b) on the application of any person, make an order – (i) directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner[...].”*

But practically, seeking remedy by filing a writ petition to the High Court Division of the Supreme Court, which requires fronting stiff lawyers' fees and facing entrenched corruption in the entire judicial institution, is not affordable for families of disappeared victims. Further, the Office of the Attorney General constantly objects to the petitioners' writ – as the AHRC has experienced in the case of Mohammad Salim Mian – in order to protect state-agents, instead of widening avenues of legal remedies for victims. Such actions of the Attorney General of Bangladesh undermine the very notion of administering justice.

Plunging into the rigmarole of the formal complaint mechanism is simply suicidal for families of disappeared victims: police refuse to register complaints alleging atrocities committed by any law-enforcement agency and instead proceed to intimidate the complainants incessantly. This stonewalling and harassment of devastated families is over and above that which they face from individuals connected to the agencies accused, such as the RAB, which at the very least always, unfailingly, completely denies any disappearances.

It is this denial that pervades government at all levels. When the same matters have been discussed in the UN Human Rights Council, the government has

used such opportunities to deny allegations of enforced disappearance outright. For example, Bangladesh's Foreign Minister Dipu Moni made a strange point during the 16th Session of Universal Periodic Review, held in Geneva in April 2013. In paragraph 66 of the UPR Report, the minister stated that she: "disagreed with the suggestion that enforced disappearance was frequently used by LEAs and clarified that the term did not exist in Bangladeshi laws, which recognized kidnapping or abduction as cognizable offences. She underlined that "the association of LEAs or State machinery with such criminal acts was deliberately done to undermine their credibility and create misperception in the public mind."

How can a government meet its obligation to ensure justice to those who complain against state-agents for disappearing their dear ones if the country's law does not criminalise this particular offence in its law books? Any responsible government should be happy to meet the vacuum of adequate legal provisions by enacting legislation in compliance with the International Convention for the Protection of All Persons from Enforced Disappearance, followed by immediate accession and implementation on the ground. That its Foreign Minister can make such a statement to the international community only betrays the government's insincerity in addressing the calamity besetting the lives of its citizens deprived by those acting on its behalf. The statement only endorses the ongoing actions of the State to disappear its own citizens and deny responsibility.

Continued disappearance will lead to multiple crises in the Bangladeshi society. Firstly, the professionals involved in the institutions of the country's criminal justice system will be utterly demoralised. Seeking judicial remedy even for them will be deemed to be nothing but a dark and twisted joke. Secondly, the number of widows, orphans, and aggrieved parents and siblings will swell. This population, and their relatives, will merely survive the passage of time with complete frustration and distrust towards the state. The state and society will face further withdrawal of people in terms of creative and productive public contributions quintessential for the fair development and future advancement of Bangladesh. This will in turn lead to manifold socio-economic hardships and further alienation of the state and the people.

Enforced disappearance in Bangladesh has been increasing during the past three years due to the fact that the state does not exercise reasonable control over its agencies, engages in human rights abuses, and establishes no measures to prevent disappearances. The agencies include inter alia, the police, paramilitary units, the RAB, and other intelligence agencies working under the influence of or directly controlled by the armed forces of Bangladesh. Additionally, deep and rooted corruption encourages state officers to abduct citizens for ransom

(though they are also paid by private entities to undertake disappearances) often followed by extrajudicial executions.

As argued prior, the executive government tacitly endorses these illegal activities by its agencies and the courts in Bangladesh are unable to address the issue. The judiciary is certainly not immune to corruption and judges of all ranks are also under threat from state agencies. This is so common in Bangladesh that there is a relevant vernacular saying: “if one person parts ways with another, either person could arrange for a disappearance or encounter [*implying extrajudicial murder*] of the other.” Also when writs of *Habeas Corpus* are brought before the court, the Office of the Attorney General of Bangladesh, routinely defends law-enforcement agencies, rather than cooperate with the court to enforce the writ, just as it does for similar crimes mentioned earlier. According to reports from human rights groups, around 50 people have been disappeared since the schedule of the general election was announced on November 25, 2013. Most of the disappeared victims are identified as activists of the opposition political parties.

As noted before, abduction and disappearance caused by state agencies are on the rise in Bangladesh. In most cases state agents carry out abductions in plain-clothes. None of the police stations in the country register a complaint regarding allegations of abduction, particularly when the law-enforcement agencies are named in the complaints. All the police, paramilitary, and security agencies will, in chorus, deny involvement in abductions while human rights defenders in Bangladesh who attempt to assist the victims in such cases face extreme forms of repression by the state agencies (which we will elaborate on later).

The AHRC has interviewed a number of families who alleged that their relatives have been abducted and consequently have disappeared, their whereabouts unknown. The victim families allege that their relatives have disappeared after armed men, dressed as civilians and claiming to be from the RAB and DB police abducted them, which has become a pattern.

Those Victims that return alive from undisclosed detention centers run by the RAB are extremely reticent in reporting a complaint since they fear for the safety of their relatives and their person; in each case disclosed to rights defenders, the victims have requested not to be named publicly. The pattern apparent is that all of victims have been picked up by plain-clothed armed men, introducing themselves as officers of the RAB or of the police. At the time of arrest, they are handcuffed and blindfolded. They are never informed about the reason why they are detained and are held in custody for several months



without bail without being produced before a court or formally charged with any offence by the agents. During their detention, which often ranges from four to eight months, they are subjected to violent forms of torture. Some victims have been constantly instructed to 'confess' criminal acts related to high profile criminal cases under investigation. Some of the long term detainees have been forced, via torture, to make statements about their involvement in Islamic militant organizations. When released they have been driven hundreds of miles and dropped off in isolated rural areas during the dark of night, still blindfolded. In some cases, the local police have arrested the person followed their prolonged ordeal, and the families have been required to collect their relative from the police.

To restate the situation: relatives of the abducted persons are prevented from exercising their right to register a complaint regarding abduction or from learning the details about abduction. On the other hand, the abductors introduce themselves as officers of the RAB or as state officers, usually heavily armed and driving vehicles without registration numbers or license plates. It appears that these kidnappings are undertaken either at the instructions of higher authorities or to create an illegal but authoritative aura of legitimacy for such abductions. All of the cases documented and reported to the AHRC show the arresting agencies neither following the Criminal Procedure Code (which mandates the arresting agency provide the arrestee reason for arrest nor produce them before a local court within 24 hours, and allow them to contact a lawyer). The authorities defend this by stating that there are no complaints about such incidents with the local police and obfuscate by using diversionary tactics. They regularly harass and intimidate journalists and threaten to close down the media; all for asking questions to the Home Minister regarding disappearance of victims. Several journalists have received threats by telephone from high-ranking officers from the RAB and other intelligence agencies. At least, one journalist has been disappeared on December 4 from Dhaka.

Deprivation of life continues unabated as the Bangladesh judiciary, including the Supreme Court, has utterly failed to ensure legal remedy for the victims or their families in cases of enforced disappearance. Neither the government nor the judiciary is engaged in discharging their constitutional mandate. The people's rights to life, liberty, and security are endangered by state-agents and there are no means of redress. This keeps impunity entrenched with the support of the political class which excuses the crimes committed by state agencies, and in doing so, promotes and patronizes state-sponsored lawlessness.



## Freedom of Expression & Opinion

Exercising the right to freedom of expression is a challenge in Bangladesh. There are draconian laws to deny this freedom rooted in a culture of self-censorship developed over decades. Conversely, there are extravagant freedoms of expression enjoyed by select groups that have government protection, especially when used against dissident voices. In this way the State is actively and systematically abusing freedom of speech and expression, especially by denying the right to those who are critical about the misdeeds of the authorities.

Culturally, freedom of expression is an unwelcome right in Bangladeshi family life where the younger family members are, by default, discouraged from having their say, even when there is a valid point against an opinion or decision of the elders. The same custom of deference is applied in academic institutions, from primary school to university. Subordinates are expected to “respect” the opinions of their superiors through silence. The lesson of non-confrontation with seniors remains a very important factor even in a professional career if one wishes to flourish and advance in his or her position. This is the practice in public and private institutions of the country. Expressing a different opinion that challenges the views of teachers or senior officers at the work place may bring with it risks of unfortunate, if not unexpected, consequences. Any ambitious advocate of freedom of expression is liable to pay the price by being identified as a “radical,” a “trouble-maker,” and may be neglected, dishonoured, sidelined, or even removed altogether.

In accordance with customary practice in family, academic, and professional fields, the government of Bangladesh legalized the suspension of freedom of expression in politics. The Constitution of Bangladesh in Article: 70 (1) has made provision banning voting against a parliamentarian’s nominating political party. The Article reads:

*Vacation of seat on resignation or voting against political party:*

*70. A person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if he –*

- (a) resigns from that party; or*
- (b) votes in Parliament against that party;*

*but shall not thereby be disqualified for subsequent election as a member of Parliament.]*

This provision was inserted in the 12th Amendment to the Constitution in 1991, which has been reasserted in the 15th Amendment in 2011. As a result, parliamentary voting has been reduced to a rubber stamp, used only to legitimize the decisions of the party's hierarchy; regardless of whether the party's combined acts provide any contribution to the welfare of the ordinary people in the long run. By denying the freedom of expression of parliamentarians, the Constitution has ultimately silenced the people.

There are other domestic laws in effect that challenge the freedom of expression in Bangladesh. The Telecommunications Regulatory (Amendment) Act, 2010, is one of the draconian laws that deny freedom of expression. Section 97A of this Act, which was inserted in 2006, allows the authorities to tap any conversation or communications of any person "for national security," while section 97 B allows the authorities to use the information obtained by State agents through tapping of communication against suspects. The Evidence Act, 1872, is excluded when trying the persons accused under the Act. The police, paramilitary force, and intelligence agencies have been allegedly tapping all possible means of communications of private individuals and organizations as a part of a campaign of harassment and state-sponsored repression.

The Information and Communications Technology (Amendment) Act, 2013, is another blow to the people of Bangladesh. This law was originally introduced in 2006 when it authorized law-enforcement agents to file cases against alleged suspects only with prior permission from the Government. On August 19, 2013, the Cabinet approved an amendment to this law. Some of the non-cognizable "cyber crimes" under Sections 54, 56, 57, and 61, previously bailable, have now been made cognizable and non-bailable; the maximum penalty has been increased from ten years to fourteen years, with seven years as minimum penalty; and the police or other state agents have been empowered to file a case without permission from the government. On August 21, the President imposed this amended version as an ordinance and it was enacted in Parliament on October 6.



*Odhikar* Secretary Adilur Rahman Khan being taken to Dhaka Central Jail on August 11, 2013. Authorities are trying to silence him under the Information and Communications Technologies Amendment Act, 2013. (Courtesy: *Odhikar*)

These changes to the law were hurried ones, made after the authorities arbitrarily detained Adilur Rahman Khan, Secretary of the human rights organization Odhikar, which has consistently criticized the Bangladesh government for gross abuses of human rights. On November 6, ASM Nasiruddin Elan, Director of *Odhikar*, a colleague of Adilur, was also detained under the same law for publishing a fact-finding report which documents 61 deaths in an overnight crackdown against a pro-Islamist group of demonstrators in the early hours of May 6, 2013. Newspaper Editor Mahmudur Rahman was detained on April 12 under the same law for allegedly hacking into the conversation of a judge of the International Crimes Tribunal-1, which is trying cases related to the 1971 war crimes. The authorities also detained four bloggers for writing defamatory material against Prophet Muhammad (PBUH). And a National University teacher named AKM Wahiduzzaman was detained on November 6, 2013, for posting a sarcastic comment in his personal Facebook Timeline about the Prime Minister's family. Earlier, on June 27, another teacher of the Bangladesh University of Engineering and Technology was given seven years' imprisonment by a Court in Dhaka for posting a status in his personal Facebook account. The status on the social networking site was apprehended as a "threat to life of Prime Minister Sheikh Hasina".

Print, wire, and visual media based in Bangladesh that carry news reports can hardly survive without repression or compromise with the authorities. The government, on one hand, has banned most pro-opposition media during its tenure and, on the other, has widened opportunities for its own allies to open new television channels and online portals. The old media outlets, less directly associated with the ruling regime, have reorganized themselves into incorporating more pro-government share-holders and journalists and showing the door to the more pro-opposition owners and journalists.

Some private television channels have been compelled to close down their critical talk-shows. The few newspapers that have continued publishing the reality (i.e. independent from government propaganda) have experienced continuous threat, intimidation, and constant surveillance by intelligence agencies. Even members of families of senior journalists face threats. On October 10, at midnight, an attempt was made by plain clothed men to abduct a prominent journalist, Mr. Amir Khasru, editor and publisher of vernacular monthly *Amader Budhbar*. Two pro-opposition television channels were shut-down in the early morning on May 6, 2013, for broadcasting the governmental crackdown on the demonstrators of *Hefazat-E-Islam*, a pro-Islamist non-political organization, which protested the blogs containing humiliating statements about Prophet Muhammad (PBUH) and demanded lawful action against those responsible. These channels have not yet been allowed to resume

their broadcasts to date. Those outlets that continue criticizing the authorities do so at risk to the lives of their personnel.

The culture of self-censorship rooted in society has also flowered in Bangladesh politics under the 4th Amendment to the Constitution and subsequent military dictatorships. The journalistic community, like all other professional groups in Bangladesh, is divided in two groups based on political ideology where the influential leaders and flatterers of the pro-government group to enjoy all possible benefits, including advertisement, recruitment, postings in foreign diplomatic missions, public portfolios, allocations of lands in big cities at token prices, and ownership of media houses.

Currently, most print and electronic media are privately owned by corporations, and the owners set individual policies for the convenience of their business interests that are often met through “friendly-relationship” with the government. In order to get their business agenda implemented, the owners recruit journalists capable of endorsing this purpose, particularly those already close to the government; professionalism in terms of ethical standards of journalism is not preferred by the owners. Anyone found to be “stubborn” in maintaining journalistic ethics risk losing their job at the very least.

As demonstrated, much of the media in Bangladesh is sponsored by the state, which leaves little room for dissident media. Members of the opposition or independent media are often targeted for their participation in exposing failures and wrong doings of the incumbent regime and journalists and bloggers face threat and harassment. Arrests for sedition continue to be common, despite freedom of speech being specifically protected under Chapter III, Article 39, of the Bangladeshi constitution, as well as under international covenants, through various laws on national security, criminal libel, and sedition. Anti-government opinions are often considered seditious and can be punished with three years to life imprisonment.

The Special Rapporteur on freedom of expression, Frank La Rue, has warned that journalists and other members of the media faced elevated risk in Bangladesh, especially during protests and clashes with the military:

“The ongoing violence has threatened the safety of journalists in the country and led to the killing of at least one blogger, and injury of a large number of media workers. Twelve websites have also been shut down by the Bangladeshi authorities.”

The daily *Amar Desh* is one publication that has been the target of harassment over the past several years. On April 11, 2013, the Amar Desh Interim Editor,

Mr. Mahmudur Rahman<sup>4</sup> was picked up by members of the Detective Branch of the Bangladesh Police and taken to Kashimpur Central Jail, where he was held on three separate charges: the first, lodged by a prosecutor of the International Crimes Tribunal (ICT) at the Tejgaon Police Station in Dhaka, accused Rahman of sedition for reproducing a Skype conversation, between a Judge of the ICT and a person living abroad, concerning an ongoing trial. The second complaint, levied by the Tejgaon police, accused Rahman of destroying vehicles on the road. Rahman was in police custody on the day of the alleged attack on property, indicating that either Rahman is remarkably talented or the police are quite slow. Rahman has also been accused of having published an unverified letter along with a photograph.



*Amar Desh* Editor Mahmudur Rahman is seen escorted at the Dhaka CMM Court on November 9, 2013.  
(AHRC File Photo)

He was subsequently abused and tortured at the hands of the Detective Branch of the Dhaka Metropolitan requiring treatment at Bangabandhu Sheikh Muzib Medical University (BMSSU). Mahmudur had been targeted by state officials on prior occasions for his involvement in journalism and has faced torture at the hands of the police. The AHRC is skeptical of the charges holding up in an impartial trial for Rahman.<sup>5</sup>

At the same time, the police shut down the daily *Amar Desh* without cause or justification. Mrs. Mahmuda Begum, the Interim Chairperson of the Amardesh Publication Limited, made an alternative arrangement to print the newspaper at the Al-Falah Printing Press. However, a District Magistrate prohibited the printing; 19 workers of the Press were arrested and complaints were levied against Mahmuda as well as the Editor and Publisher of the daily *Sangram*,

<sup>4</sup> <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-076-2013/>

<sup>5</sup> <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-077-2013/>  
<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-080-2013/>

another newspaper of the Bangladesh Jamaat-E-Islami party.

Journalists can be detained under the 1974 Special Powers Act (SPA), which allows for citizens to be held for up to 90 days without a trial, simply for writing a story critical of government policies or officials. This “preventative detention” under the SPA was intended to help protect Bangladesh and maintain public order; however, the act is now used to punish opponents of the government circumventing fair and speedy trials in court and restricting freedom of expression. The SPA also encourages self-censorship by members of the media, especially regarding political, judicial, or military topics.

Bloggers also face the threat of harassment at the hands of the government. In 2013, several bloggers were arrested for a variety of crimes. One of these was defamation of Islam, under which several “atheist bloggers” were arrested. These bloggers also face harassment and threat from the general population, after media paints them as anti Islam.

From a criminal law standpoint, Bangladesh does not have any law to guarantee the protection of victims and other witnesses, let alone any of them. There is also no definition of “victim,” either in the Penal Code, 1860, or in the Code of Criminal Procedure, 1898.<sup>6</sup> “Witness” is defined in Section 118 of the Evidence Act, 1872<sup>7</sup>. The State has an undeniable obligation to protect victims and witnesses, and should immediately create and implement a mechanism to enable this.

## **Dangers Faced by Human Rights Defenders**

The State has orchestrated repression targeting every human rights defender and organisation that has attempted to criticize the gross abuses of human rights of the incumbent regime. Arbitrary arrest and detention in fabricated criminal cases, addressed earlier in this report, have become part of life for rights activists (except those who have maintained a “friendly relationship” with the government). Constant surveillance, threats, and raids are common for human rights supporters, even at their personal residences.

Projects of rights-based activities have either been cancelled or blocked by the NGO Affairs Bureau, a wing under the Office of Prime Minister. The government has drafted a new legislation to control the NGOs with

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6 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-095-2013/>

7 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-095-2013/>



vague definitions to allow for arbitrary enforcement and the law has been criticized by local and international civil society and rights groups for its draconian provisions. The proposed legislation ultimately did not get enacted, nevertheless, the attitude and actions of the government have become more repressive.

Physical attacks on human rights defenders by the ruling party's goons are facilitated by the police and civil administration who allow the perpetrators to escape, a practice of all past regimes in Bangladesh. Due to the culture of impunity in the ruling party, the possibility of getting any legal redress is impossible unless the victim concerned is a high profile one.

The case of Mr. Adilur Rahman Khan,<sup>8</sup> Secretary of *Odhikar*, commented on earlier, is a prime example. Mr. Khan was kidnapped by 8 to 10 men in plain clothes from his residence at No: 35, Road 117, Gulshan, Dhaka, at 10:20 p.m. on August 10th this year. As the victim approached his home with his wife and children, a white minibus and SUV arrived. The security guard at Mr. Khan's house tried to prevent the strangers from entering the private compound, but was unsuccessful.

Likewise, charges were also levied against Mr. Nasiruddin Elan,<sup>9</sup> the Director of *Odhikar*. On the 5th of September 2013, the police filed an FIR and case diary at the Metropolitan Magistrate's Court requesting the Court to file charges against Elan and Adilur under the allegation that they had "direct and active involvement in the preparation, publication, and dissemination of a report" concerning government murders of civilians. The police also



*Odhikar* Director A.S.M Nasiruddin Elan is seen handcuffed (centre) on his way to prison from the Cyber Crimes Tribunal in Dhaka on November 6, 2013. (Courtesy: *Odhikar*)

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- 8 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-142-2013>  
<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-104-2013>  
<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-144-2013>  
<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-166-2013>  
<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-184-2013>
- 9 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-202-2013>  
<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-223-2013>

allege that Elan and Adilur have published false material that has the potential to disrupt social order in Bangladesh. Both of these prominent human rights defenders were detained under the ICTA, Adil for 62 days and Elan for 26 days.

One case that illustrates not only the dangers that human rights activists face but also the impunity under which government forces and big businesses operate in Bangladesh is that of Shahed Keyes.<sup>10</sup> Shahed is a human rights activist, Executive Director of the Subornogram Foundation, and Chief Advisor of the Illegal Sand Extraction Prevention Committee at Mayadip-Nunertek, Sonargaon, who was kidnapped on July 25 from a boat. Shahed's work to educate poor children from low castes in the country side and his advocacy against illegal sand mining in the area were regarded as controversial for challenging the traditional balance of power in the area. He was sailing towards Ramprasador Chor Island in the company of several other philanthropists when several assailants pulled up next to them and attempted to apprehend all the passengers by force. A compromise was reached when Shahed agreed to go with them voluntarily in exchange for the safety of the others.

After his abduction, Shahed was then taken to a nearby island called Faraji Kandi, where over 40 attackers joined in his torture. His assailants began by brutally beating him with rods and sticks, then began stabbing him in the neck and slashing his left wrist. The attackers cursed him for causing them to lose "a lot of money because of [his] movement." Shahed recalled assailants stating that "we made the mistake of not killing you before," and "this time we will kill you. We will cut the arteries on your wrists and legs, tie your hands and feet together, and throw you in the river."



Environment Activist / Educationist Shahed Keyes receiving treatment after being abducted, stabbed. (Courtesy: Kabir Humayan)

10 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-138-2013>



Shahed survived due to the intervention of his friends and (only after significant pressure) the police, but he required urgent medical treatment and hospitalization.

The police however, allowed the perpetrators to escape. The victim filed a FIR no. 38, dated 25 July 2013 and was able to identify the following persons among his assailants: (1) Mr. Zakir Hossain, proprietor of Shahjalal Enterprise; (2) Mr. Md. Mohsin, a person associated with the Four Point Trading & Construction Ltd., owned by Selina Islam; and (3) Wasim, son of Abdul Matin, resident of Sonakanda village of Meghna, Comilla. However, Shahed still receives threats though he enjoys the support of other human rights groups who are calling for the criminals to be brought to justice.<sup>11</sup>

## Freedom of Assembly & Association

Freedom of assembly and association has two sides in Bangladesh. One: the pro-government political and social organizations are given full freedom to organize rallies, meetings and processions, with full protection provided by State-agents, to publicly praise the government and blame the opposition in every way. Two: the pro-opposition or independent socio-political groups and workers demanding their due wages and basic benefits are often denied opportunities to hold discussions, demonstrations, and rallies in public places. In reality, those who are denied exercise of their fundamental right to organize



Supporters of the Bangladesh Nationalist Party are seen agitating, after their having been denied permission to hold a rally in front of their party's central office in Dhaka.  
(AHRC File Photo)

11 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-022-2013>  
<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-139-2013>

rallies try their best to have their say by any means, even without proper approval from the relevant authorities. Thus, opposition groups fall prey to police brutality on a regular basis.

The government has literally kept their political opposition confined at home, not allowing them to hold meetings. The central office of the main opposition parties have been virtually shut down by State-agents in the last few years with frequent unwarranted police raids and arrest of dozens of activists, including a number of senior leaders, across the country. The limits to the right to freedom of assembly and association has reached such an extent that the main opposition parties' leaders have gone into hiding recording their audiovisual speeches from undisclosed locations and disseminating them through the internet.

The obstruction of the freedom of assembly and association is often attached to the denial of personal liberty in the cases of opposition parties. An announcement of a protest rally by the opposition parties brings about arbitrary arrest of the political activists prior to each programme; law-enforcement agents raid the houses, workplaces, and political party's office; and the police and paramilitary forces are seen accompanied by plain-clothed civilian persons with firearms at the rallies where they jointly attack the opposition with guns and other weapons, a decades-old practice.

In 2013, a new trend emerged: force of the police and civilian men escort the processions of the opposition where a civilian actors target activists of the opposition, surround the target(s), and have uniformed police jump on their prey, dragging the person(s) into a nearby vehicle. Thus, not only has the arrest and detention increased but also State-agents are now being assisted by non-State actors in facilitating such arrests. This has contributed to an overcrowding of the country's prisons and other detention centres to more than 300% of the systems actual capacity. When human rights defenders approach to the prison authorities seeking more information on the subject of jail and prison over-crowding, the authorities refuse to share data, claiming that "superior authorities" prohibit disclosure.

At the same time, the constant denial of such events provokes the opposition to violence, a hallmark of Bangladesh's political culture. Through speeches and actions high profile government officials, including the Prime Minister and other top officials of the government, provoke their political opposition to become violent. Rights groups recall that today's ruling party has itself introduced various forms of violence that are replicated on the streets across the country today, crippling public life and creating a cycle for each successive regime.

Numerous innocent people, including women and children, are being victimized by crude bombs and bullets. This violence is being displayed in public the name of “enjoying right to stage political protests” and “controlling violence in the name of politics” by both the opposition parties and the ruling regimes, fueling endless blame-games by the fighting political groups, their respective media, and tame civil society groups.

Ironically, the same party commits exactly the same crimes when in the opposition and blame the ruling regime for compelling them to take the violent path; none of the political groups want to accept that they have been abusing their constitutional authorities and violating the laws of the land for the benefit of few individuals in the parties concerned. The interests of the people get no space in the priorities of warring political groups.

The real weaknesses of the institutions are invariably neglected by political groups. It is understood that political parties want to suck up the benefits from the extremely dysfunctional government institutions and ruin their opponents by manipulating the same institutions. The way the bureaucracy, policing, criminal investigation mechanisms, prosecution and attorney service, and adjudication process have degenerated reflect this scenario. As a result, ordinary people are destined to face the resulting violence, loss of lives, assets, and opportunities to build up their future resulting in utter distrust of State-machinery. The notion of enjoyment of life with freedom – be it the freedom of assembly or freedom of expression – remain far from reach and many Bangladeshis curse their country’s politicians for throwing them into this nightmare.

## **Right to Choice in Election & Credibility of the Electoral Process**

Bangladesh’s centralized political parties have made several terms part of colloquial language. “Constitution”, “people”, “democracy”, and “right to vote” are among those politically-popular ideas. But the more the politicians utter these terms in public speeches, the more they seem to undermine them.

The real strengthening of people’s participation in democracy is tragically missing: voting in elections is only one of the ways for ordinary people to participate in the democratic process. The success of even such participation relies on credible institutions having effective checks and balances. The elected representatives would need to follow due process, in compliance with normative and ethical principles of upholding democracy.

But the scenario in Bangladesh differs from what other democracies offer. The ruling regimes appoint people based on unconditionally loyalty to the incumbent regime. The nation suffers from this practice as every institution, including the Supreme Court, is subservient to this process, even now Bangladesh is paying the price for such subservience and institutional compromise with blood.



Arson attacks on public or private vehicles are a common phenomenon in Bangladesh. (AHRC File Photo)

The Election Commission (EC) of Bangladesh has been reshuffled by the government. Those who are loyal to the incumbent government have been recruited to head the EC, which has further gone on to recruit pro-ruling party activists in field level offices across the country. The EC has complied with the government to weaken electoral procedures. At least 28 provisions of the Representation of Public Order (RPO) have been amended by the government. The delimitation of the parliamentary constituencies has allegedly been made for the convenience of ruling party contestants. Electoral offences can hardly be adjudicated by the EC under the changed RPO. The EC's ability of guaranteeing a transparent and credible election has now been reduced more than ever before. However, the EC has hurriedly announced the schedule of election without taking all opposition parties in confidence, allegedly to please the ruling alliance parties.

By repealing the provision of "Non-party Care-taker Government" in the 15th Amendment of the Constitution of Bangladesh, the incumbent Prime Minister Mrs. Sheikh Hasina, has created a crisis to perpetuate her power. All power of the state is centered and implemented at the direction of the Prime Minister according to the current edition of the Constitution. The Supreme Court was previously used by the Government to effect the 15th Amendment, though Constitutional interpretations by jurists are being replaced by the version of the Premier. Prior to the general election, candidates having capacity to exercise muscle power are chosen by the ruling party so that ordinary voters are made to panic, either to vote in favour of the ruling party or to refrain

from casting their votes. The feuding political parties are waging war against each other using the state agents and non-state actors to establish control. Both political groups are well aware of the powerlessness of the EC.

Because of this, the EC is one the weakest institutions of Bangladesh, a source of chaos and controversy. A majority of the population does not believe the EC to be a credible institution with capacity to act independently. The understanding is that it follows instructions from the Office of the Prime Minister. Nobody believes that the existing EC is capable of holding a credible and transparent general election, scheduled for January 5, 2014. This belief has been contributed to by the EC wanting to curtail its own authority relating to cancellation of candidacy and not objecting to the Government reducing its powers to adjudicate disputes on electoral issues.

The EC has acted shamelessly in favour of the ruling regime ever since it announced the schedule of the general election. Bangladesh's 10th general election has become redundant after the Election Commission has (so far) declared 154 persons "elected uncontested" out of the total of 300 parliamentary seats. In other words, more than half the constituencies do not have two candidates to make it a contest. This is unprecedented. Majority of the declared "winners" are of course nominees of the ruling regime.

Curiously, 21 of these 153 "winners" are nominees of the *Jatiya Party*, led by former military dictator Hussain Muhammad Ershad, who had earlier formally declared that his party was pulling out of the electoral race and requested the Election Commission not to allocate his party's symbol to the contestants' ballot papers. Most of his party nominees did withdraw their nomination papers, save for a few who either have an alliance with the ruling regime, or have buckled under pressure of the incumbent power. It is here that the EC betrayed its complicity. The EC has acceded to the government's demand not to allow withdrawal of the nomination papers of certain *Jatiya Party* candidates. The reason behind the desperate demand is that the incumbent government does not have any political group to prop up as "opposition" in the Parliament, i.e. if the 'result' of this farcical election does allow the formation of a new government. The EC has itself failed to abide by the electoral laws due to governmental pressure. The epidemic of 'uncontested' winners speaks loudly about the democracy and the rule of law in Bangladesh. The government and the EC have jointly contributed to the loss of more than hundred lives. Arbitrary and flagrantly unjust actions of the government and the EC since the election schedule was announced has led to strong opposition protest. And, the government has retaliated with a brutal crackdown, which has directly resulted the loss of over a hundred lives.

## **Rights of Ethnic Minorities**

Demographically, nearly 90% of Bangladesh's 160 million people are Muslims. The remaining 10% is often termed as "ethnic or religious minority," due to their non-Muslim religious faiths. The ethnic minority includes Hindus, Buddhists, Christians, and some aboriginal communities such as Chakma, Marma, Tripura, Murang, Mog, Saotal, Garo, Khasiya, and Manipuri. Most of these communities, except the Hindus and Christians, have their individual dialects and cultures.

The ethnic and religious minority communities are a vital factor in the electoral politics of the country. They are expected to support various political groups – mostly divided under the umbrella of two major political parties – that have shared power by turns in the last two decades. The existing competition for soliciting votes is based on political stereotypes. For example, the ethnic minority communities, especially the Hindus, are perceived to be a "vote bank" for the Bangladesh Awami League (BAL), which claims to be a secular political party. For the same reason, the counterparts of the BAL, namely the Bangladesh Nationalist Party (BNP) and its allies, perceive that the minority communities make a difference in pushing them back in the race of votes whenever an election arrives. Of course, these perceptions are not really accurate as there are both supporters and critics of both political groups amongst the ethnic minority communities.

Historically, in its first years (1949 to 1953), the BAL's name was All Pakistan Awami Muslim League. The word Muslim was dropped in 1953 when the party came under the leadership of Sheikh Mujibur Rahman, who later became the founding President of Bangladesh in 1971. The party increased its acceptability to the communities at large and the ethnic minorities through subsequent policies and actions. The non-Muslim communities have trusted this party due to its backgrounds in leading various pro-people movements against a united Pakistan, which used to express certain hatreds toward the non-Muslim communities in what was formerly East Pakistan.

The BNP was established by military general Ziaur Rahman, who became the President following a series of coups and counter-military coups that rocked the country since the assassination of Sheikh Mujibur Rahman in August 1975. The party leadership has appeared to have a pro-Muslim ideology since inception. This has resulted in the Constitution of Bangladesh upholding Muslim religious faiths in the State's basic principles. It has also rehabilitated a group of pro-Muslim political parties and individuals inside and outside the party. Such background has given rise to the suspicion amongst many



non-Muslim citizens with regard to the party's overall policy regarding the enjoyment of their religious beliefs and culture.

Since the 1990s the BAL, like the BNP, has made certain changes in patronizing the pro-Muslim ideologies for political gain. In using a variety of methods to seek votes, such as: the creation of Awami Ulama League, a political wing of Muslim scholars; political agreements with other pro-Islamist parties; using a Islamic dress in the public domain, especially near elections; making visits to the shrines of late Muslim saints, both parties have drawn closer to each other. The BAL has surrendered itself to Islamization through the 15th Amendment of the Constitution of Bangladesh in July 2011, when it ensured Islam would remain the State's religion in the Constitution. The dignity and identity of the ethnic minority groups are mostly ignored, if not fully denied, creating immense embarrassment, unhappiness and apprehension amongst underprivileged ethnic communities. As a result, many ethnic minorities are becoming cynical of the BAL's secular identity.

In reality, the struggle of "owning" the ethnic minorities for political power continues. The situation has placed the ethnic minority communities in a more vulnerable position although the social fabric of the people of Bangladesh, regardless of their faith and culture, is surprisingly harmonious and exemplary compared to that of neighbouring nations. In a politically polarized country the NGOs, civil society, and media are clearly divided into two major pro-partisan groups that treat minority issues as a political tool to use against opponents. Thus, in politics, the bonds that the people have maintained for centuries, beyond religious or ethnic culture, are often ignored and undermined.

This practice is partially responsible for the failure to report the truth when ethnic minorities are victimized by majoritarian interest groups. The absence of the rule of law has already created grounds for abuse of power in Bangladesh. The minority communities suffer from this fundamental problem, especially when their lands or assets become the target of powerful individuals or groups. Lands belonging to the ethnic and religious minority communities have been appropriated across Bangladesh in the last four decades. The BAL leaders themselves, along with their political counterparts, have grabbed a majority of these lands since the inception of Bangladesh. The State itself has also taken away the lands of the indigenous communities.<sup>12</sup>

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12 'Land Grabbing in Bangladesh', Shelly Feldman & Charles Geisler [www.iss.nl/fileadmin/ASSETS/iss/Documents/Conference\\_papers/LDPI/5\\_Shelley\\_Feldman\\_and\\_Charles\\_Geisler.pdf](http://www.iss.nl/fileadmin/ASSETS/iss/Documents/Conference_papers/LDPI/5_Shelley_Feldman_and_Charles_Geisler.pdf), accessed on December 07, 2013

Heiner Bielefeldt, the United Nations Special Rapporteur on Freedom of Religion, expressed concerns over Bangladesh's ability to guarantee equality to its minority groups, stating, "the Government must ensure that the rights and freedoms of this community are protected in conformity with international human rights law." An area of special concern is the right of Hindus to adequate housing. Many Hindu homes and temples have been destroyed in uprisings and violence. It has left many families homeless. Expert on minority issues, Rita Izsák has stated, "The attacks against the Hindu community are of serious concern, due to the fact that it constitutes a minority group in Bangladesh which has been at risk of violence at various times of the country's history."

## **Rights of Women & Children**

Bangladesh has been ruled by two women, alternately, for more than two decades. Both the Prime Minister and the Leader of the Opposition are women, and the posts have been held by women since the 1990s. The country's Parliament has more than sixty female members, several of them being members of the cabinet and there are a considerable number of women serving in the civil service, judiciary, police, military, and local government institutions today. The mere fact that there are a large number of woman employed in these institutions is used by the government to create a false impression that women are empowered in the country. That there are an increasing number of women participating in administrative, political, and financial sectors, in comparison to two decades ago, bolsters such claims. Conversely, The fundamental points relating to women enjoying their rights as human beings are often ignored, if not eclipsed. Women face continuing violence in Bangladesh, where the society struggles to consider women as deserving the same dignity as men; the lives of women are not secure in the society.<sup>13</sup>

Society's notion of female children within the family itself builds up a mindset that girls are less important than boys.<sup>14</sup> Similar to standards of freedom of expression, multiple forms of discrimination against girls begin at home and continue to the end of their lives as a consequence of this culture. For example, when resources are limited (a common problem), boys in a family are given the better educational opportunities and better quality meals than the girls. Likewise, an opinion of a male member of the family is meant to be accepted by the entire family, while the females do not have a say, regardless of whether

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13 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-095-2013/>

14 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-095-2013/>



either reflects reality. This imbalanced foundation of knowledge, fully biased in favour of the males of the family, spreads through the society, resulting in tremendous violence and injustice to women.

Bangladesh nourishes a culture of paying dowry at the time of marriage. The practice of dowry is rooted over centuries, in all religious communities, including the Muslim community. The Dowry Prevention Act, 1980, remains useless in protecting women from the curse.<sup>15</sup> Families in all segments of society continue this practice and, in turn, endlessly suffer from the culture of paying dowry regardless of affordability. In some cases, greed for a larger dowry leads directly to physical violence against women.

Problems related to the prevention of violence against women center around the failure of criminal justice system. An ordinary female victim of violence does not have any guarantee of getting justice from the criminal justice system as practically every step requires bribery and persuasion of influential individuals from ruling political parties as detailed in previous sections. For women, however, police stations are especially unsafe. Women are at risk group and the police may target them.

This is further complicated by the fact that perpetrators can often become very influential themselves (due to their capacity of paying a higher amount of bribes to the police) and secure the backing of ruling political parties in return for services they may occasionally provide. As a result, the victims and/or their relatives often fear that filing a complaint will be counter-productive; the police may protect the perpetrators, receiving bribes, and/or following political persuasion. In one instance involving an acid attack, the AHRC discovered that the Koyra police in Khulna district insisted a victim marry the person who committed the crime against their person. The police investigator allegedly intimidated the victim, asking her to withdraw the case. It became known that the police officer received bribes from the alleged acid-attacker, who also had backing of the ruling political party members. The latest investigation report has cleared and discharged the alleged perpetrator, despite strong evidence linking him to the crime. The victim could not afford to pay bribes to the police and lacked political connections stronger than those of the alleged offender. No action has been taken against the police officer responsible.<sup>16</sup>

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15 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-095-2013/>

16 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-095-2013/>

Furthermore, excessive cost of litigation, delays in trial, and exposure in public – resulting in social stigmatization – discourage female victims of violence, and their families, from seeking justice from the criminal justice system. As a result, many attacks on women go unnoticed and undocumented in Bangladesh.

Adding to this is a lack in basic expertise and scientific facilities to conduct credible investigations into crimes relating to sexual abuse against women. Sometimes, inefficient police officers fail to collect necessary evidence or neglect to collect evidence. As a result, substantial evidence is either lost or destroyed deliberately. The role of medical doctors and law enforcement agencies in getting medical examination reports is, therefore, vital in the criminal investigation process of Bangladesh. Even if the victim can register a complaint, it becomes the responsibility of the police to take the victim of sexual violence to a nearby public hospital for a medical examination. This serves as another hurdle. The female victims have to face mostly male doctors in hospitals in relation to their medical examination. Among other complications, it is embarrassing and often amounts to further humiliation of the victim.

This is related to an earlier point as well: the country's hospitals hardly have the requisite female doctors for examining female victims of sexual violence, because women are not as valued by society. For example, until a High Court Bench ordered the government to correct the prevailing insensitivity, there were no female medical doctors available to conduct medical examinations for female victims of sexual violence at the largest medical institution of the country. On 16 April 2013, in a ruling, the Court asked the government '*why conducting forensic examinations of rape victims and for age detection by male doctors should not be pronounced illegal?*' The Court found that corruption also inhibits the process: it is so widespread that medical certificates and reports can be bought meaning there is no guarantee that a victim's wounds will be documented or reflected in the medical examination report.

Due to the patriarchal mindset of the police and medical community, inefficiency, lack of modern scientific facilities, and corruption, the entire process is rigged for failure.

In today's justice systems, Deoxyribonucleic Acid (DNA) profiling is an essential component in the criminal investigation of many crimes, especially rape, murder, and acid attacks. In Bangladesh, there is a national-level laboratory for conducting DNA profiling for the purpose of criminal investigation. The DNA profiling tests are very expensive (nearly USD \$ 200 for each person's profile), which becomes another burden on victims. The victims virtually always have to pay the costs despite the Bangladesh High

Court having directed the State to bear all the relevant costs, including that of DNA tests,<sup>17</sup> in all such cases.

In gathering medical evidence and supporting female victims of violence, a role is played by the One-Stop Crisis Centre (OCC). Survivors of domestic violence, physical assault, and sexual abuse often require medical attention during the crisis period and are supposed to receive psycho-social counseling and legal assistance from the OCC, but the OCC does not function properly in providing these services. There are no competent psychologists, counselors, or specialised physicians with comprehensive knowledge of the overall requirements of the victims of violence at the OCCs in Bangladesh. In cases of rape, the medical examination is supposed to be completed as soon as possible after the commission of the crime. However, deliberate delay in conducting medical examinations, preparing the medical report, and submitting the same to a competent Court frustrates the administration of justice.

Custodial violence, particularly rape and other forms of sexual abuse against women and children, is quite common in Bangladesh. The analysis of a case<sup>18</sup> of custodial torture involving college student Sumaiya Sultana Shima and her mother Aleya Akhter shows the real problems that the victims face in Bangladesh. Both persons were subjected to electric shocks and physically tortured during six days of illegal detention in police custody in Kushtia district. Documentation reveals that the process followed by Bangladesh's criminal justice institutions, including the highest judiciary, the State violated its fundamental obligations in the case of sexual abuse of Seema and Aleya.

In order to bar the victims from filing a complaint regarding the sexual abuse and torture that occurred between 10 and 18 September 2012, the police officers implicated Aleya and Seema in a murder case on "suspicion,"<sup>19</sup> although the police have not yet produced any evidence against the victims regarding their involvement in the alleged murder. The Magistrate's Court went along with the machinations of the police, well beyond the purview of law, and ordered Aleya and Seema to be detained on 26 September 2012. Subsequently, after Seema and Aleya were released from the prison on bail for the second time in October 2012, the family has been threatened with further detention during regular visits from police officers and their informants. When human rights groups intervened and took the case to the High Court, the police abducted Seema's younger brother Arif Hossain, a 14-year-old student, in order

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17 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-095-2013/>

18 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-095-2013/>

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to compel Seema and her mother not to proceed with the allegations of sexual abuse and torture against the police officers.

There is no provision of a judicial inquiry for custodial torture, ill-treatment, rape, and sexual abuse of women in the criminal justice system of Bangladesh.<sup>20</sup> However, Section 9 (5) of the *Nari O Shishu Nirjaton Daman (Bishes Bidhan) Ain*, 2000<sup>21</sup> (as amended in 2003) provides punishment for rape in custody. If custodial rape occurs, then the person was in charge of ensuring an environment of custodial safety, as well as those people directly involved in the act, shall be punished with 5 to 10 years imprisonment and a fine not less than 10,000 taka. The penalty for State agents obliged to protect the citizens that for commit crimes should not be lesser than it is for ordinary offenders.

At the Magistrate Court hearing, the two women alleged that they were abused in custody. The Judicial Magistrate of Kushtia district had a legal responsibility under Section 164 (1) of the Code of Criminal Procedure, 1898,<sup>22</sup> to record the allegations. The Magistrate also had the obligation to treat the statement containing an allegation of sexual abuses, as per Section 4 (h)<sup>23</sup> of the Code of Criminal Procedure, as a complaint. The Magistrate should have complied with Regulation 467 (6) (b) of the Police Regulation of Bengal, 1943<sup>24</sup> at the time of recording the statement of Seema and her mother and arranged for a proper medical examination. Instead, the Magistrates protected the police officers who committed the crimes; the Court questioned neither the way the victims were arrested nor the murder case against them.

At least four hearing dates in Seema's case were wasted by the judges of the High Court Division Bench. This reflects the level of sincerity, knowledge, and empathy among the judges of the Supreme Court of Bangladesh.

The judiciary lacks the commitment to hear cases involving heinous crimes like rape in police custody. In such cases relating to police brutality and the sexual abuse of women, the judiciary is expected to demonstrate a heightened sensitivity, as police brutality, abuse of women, and similar violations are all too common in Bangladesh as the judges must have known. In the case of Seema and Aleya, there was a delay of over two and a half months in fixing the case for hearing and no medical board with forensic medicine experts was formed. This

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24 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-095-2013/>

actively deprived the case of valuable evidence that would have greatly assisted the judiciary in examining the allegation of sexual abuse and torture in custody.

The police officers abducted Seema and Aleya again on 26 November 2012, prior to a date of hearing at the High Court scheduled on 29 November. According to human rights defenders, the police wanted to determine if Seema was pregnant, with the intention to force her to have an abortion. The second abduction was revealed in public and it garnered the assistance of human rights groups and media. However, the judiciary of Bangladesh, as in other cases this report has highlighted, did not take much notice of or display much courage in dealing with the illegal actions of the police.

The incidents of violence against women and children are increasing alarmingly and there is no guarantee of justice for the victims. Instead, there are guarantees of impunity to the perpetrators due to their political identities and their ability to pay bribes to the police. This is more than just a flawed criminal justice system. Custodial violence against women and children reminds is another form of the widespread misuse of power by law enforcement agencies that act as violators rather than protectors, victimizing women repeatedly when they are most vulnerable.

## **Worker's Rights**

Internationally, the most widely recognized abuse of human rights in Bangladesh is in the treatment of factory workers, particularly those workers that work in garment factories, i.e. sweat shops. In the past year, over 1,000 garment factory workers have been killed due to fires, factory-building collapses, and other disasters caused by unsafe working conditions. Hundreds of workers are still missing following the building disasters; they are feared dead.

What is lesser known outside Bangladesh is that there is a direct link between deaths in the readymade garment (RMG) sector, entrenched corruption, and the collapsed rule of law system in Bangladesh.

The collapse of an eight-story building, the Rana Plaza, near Dhaka, housing three garment manufacturing plants, resulted in the death of over 1,300 people. The building had been evacuated the previous day due to large cracks in the structure, but employees were required to return to work the next day. As a result, many of them were crushed or trapped in the remains after the eight-story building collapsed. Unfortunately, this collapse was not an isolated event as the government lacks proper safety inspection mechanisms, allowing

unsafe working conditions to persist. The Rana Plaza event made international headlines and highlights issues of labour controls, labour inspections, and the right of workers to unionize.

So far, poor enforcement of labour and industrial establishment laws have prevented Bangladeshi workers and unions from collectively bargaining with factory owners for safer working conditions. The issue of worker safety is further compounded when taking in account many Parliamentarians are factory owners themselves and the remainder are often plied with bribes from factory owners.

Bangladesh claims that it has “cheap labour” for making industrial products for foreign investors, mostly in the readymade garment (RMG) sector. The minimum wages paid in the RMG sector is around \$ USD 45 per month for a worker, while inflation rate hovered around 8% in 2013, according to Bangladesh Bureau of Statistics.<sup>25</sup> The inflation rate on food index in urban area is over 9%. Around four million workers, most of whom are female, around the age group of 20 to 35, struggle to survive on these wages working around 12 hours a day, 6 days a week, without appropriate nutritional intake. Apart from this, workers face numerous challenges in managing family expenditures such as healthcare, education, and rent. Workers survive like bonded labourers in Bangladesh’s current unemployment crisis, which hardly offers any opportunities to its population of 160 million.

Bangladesh claims that it demonstrates human rights commitment by adopting a number of policies for promotion and protection of human rights. For example, it claims that the National Labour Policy, 2011, protects and promotes the rights of the workers. Their actions— such as “disappearing” Aminul Islam, a labour leader, who was demanding increased wages and benefits for workers in the RMG sector, and whose dead body was later recovered from a roadside ditch at Ashulia in Dhaka —belie their real interest, however.

In the same vein, labour unrest related to wages and working environment is a daily ritual in Bangladesh, as are the brutal actions by law-enforcement agencies against the struggling workers. The government, through its actions, proves that it only recognizes the duty to protect the interests of the RMG traders and manufacturers. The government and its agencies have always taken positions

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25 Consumer Price Index and Inflation Rate of Bangladesh Bureau of Statistics, accessed on November 26, 2013, at: [http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/National%20Accounts%20Reports/CPI/CPI\\_October-13.pdf?page=/PageReportLists.aspx?PARENTKEY=145](http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/National%20Accounts%20Reports/CPI/CPI_October-13.pdf?page=/PageReportLists.aspx?PARENTKEY=145)

against the workers. There is hardly any public institution available that takes the responsibility to protect the rights of the workers in terms of their job-security, compensation, working hours, and conditions, as well basic rights as human beings.

One of main reasons behind the existing anti-worker policies of the government is political extortion from the industrialists and businessmen of the country; political parties have surrendered some of their decision making power to the money-mongers and thugs while the poor do not hold any place in Bangladesh politics other than as victims of political power-games. As a result, more than 60% of the parliamentarians in the ninth parliament of Bangladesh are businessmen by profession. Many of the public servants, police, and military officers also maintain their own business – manufacturing readymade garments remains a priority. Many of the owners of the factories and industries are retired civil and military bureaucrats, who are given impunity for their illegal actions while in service and are considered “privileged” citizens or “Commercially Important Persons” (CIP).

The manufacturers of RMG products are among those people who are considered a ‘privileged’ group for their access to powerful portfolios. Collectively, they have ability and resources to influence the civil administration, police, paramilitary and security forces. They succeed in influencing the policies of successive regimes in Bangladesh. For example, the RMG manufacturers or factory owners enjoy duty rebates when they import accessories and raw materials from abroad. They are allowed to enjoy privilege in getting bank loan facilities and shipment facilities with priority.

There is virtually no attempt from the governmental authorities to listen to the plight of the four million workers. Guaranteeing their due wages and improving working conditions are the basic requirements, absent in government policies.

Instead, these labourers are made targets of the “poorly paid police” who are accustomed to use torture, ill-treatment, and other forms of extrajudicial



Female workers of RMG sector are seen arguing with the police. They have to face the state agents regularly whenever they raise their voices for due wage and life with dignity in Bangladesh. (AHRC File Photo)



methods through their work (as noted above). The workers struggle for their survival with minimum human dignity while the investors, traders, and wholesalers across the world multiply their profits and assets. Bangladesh forces its labour force to survive as “cheap labour” ignoring their fundamental needs and rights, while the state machinery protect the interests of the businessmen for their financial contribution to political parties. The state’s rule of lawlessness paves the way for exploitation of the workers by native and non-native companies.

A large number of people are directly or indirectly engaged in agricultural production, while the country has nearly five million people who are landless. According to the World Bank, nearly 45% of the Bangladesh rural population is “already or functionally landless”.<sup>26</sup> Every year, the unemployment problem is increasing in the country and many of the unemployed struggle to find means to keep their life going, as agricultural workers do not have any form of minimum wage or any guideline for protecting their basic rights. Thus, a large number of the country’s population is left in an uncertain destiny in Bangladesh.

## **Right to Redress**

People’s right to redress only exists in the books of law. In real life it is virtually impossible to get legal remedy from the criminal justice institutions in Bangladesh,, unless someone is politically or financially influential (as detailed in other sections). Various members of the criminal justice institutions continually prove their incompetence in administering justice. Instead, Bangladesh maintains a policy of controlling the people by creating fear that can silence the citizens as a whole, a concept incompatible with a functional democracy which requires rendering service to the people through governance with a reasonably transparent system of checks and balance. To create this control, acquiring wealth, abusing the public offices, and maintaining impunity remain at the centre of the agenda of the elected regimes, the methods of which are the subject of this report.

But again, this is not a concept that works for democracy and rule of law; that is why the politicians tailor institutions to silence the vast majority of people that would object. In order to get these things done they need to leave closed

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26 <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/EXTSAREGTOPAGRI/0,,contentMDK:20273763-menuPK:548213-pagePK:34004173-piPK:34003707-theSitePK:452766,00.html>



the doors of complaint mechanisms for the people or at least create fragile mechanisms that can be molded as for their own ends often accomplished with the nepotism or political favor trading.

Subsequently, Bangladesh is full of political slaves in all of its institutions, including the police, prosecution, attorney service, judiciary, bureaucracy, and academia, with few exceptions. This servitude has already plunged the country to the depths of degeneration. The police deny justice-seekers access to the complaint mechanism, (unless as we noted, the complainants are able to influence the police either by bribery or political pressure or both) and criminal investigations follow the same formula. The prosecutors are disposable by nature, as a result of extra-judicial action and other qualified lawyers are recruited amongst the activists of the ruling regimes to serve the purpose of the ruling parties instead of contributing to the administration of justice. The judges are also appointed on the basis of “loyalty” to political masters. Former Chief Justice ABM Khairul Haque is one of the finest examples of the judges who became servant to political masters in Bangladesh as is the servile Attorney General.<sup>27</sup>

When all the institutions exist to serve one particular political group or ruling party, accessibility for the ordinary people or the opposition is severely limited. Lawlessness is promoted in two ways: the privileged exercise their lawless authority and the suppressed are denied lawful action to protect themselves, which can lead to active law breaking on their part. Thus, as the cycle of lawlessness compounds, the entire society gets derailed from justice through peaceful means via national institutions.

Bangladesh is in exactly this derailed state at the moment.

## **Politics of De-politicization & Promotion of Lawlessness**

Degeneration in Bangladesh and the country’s politics have eroded democracy. Instead, the political culture has established an authoritarian State, consolidating power in the Prime Minister. Subsequently, and as we have seen so far, the State is itself exercising lawless actions: disappearing citizens, extra-judicially killing people, and using the police, paramilitary forces, and intelligence agencies as lethal tools against the people. Ultimately, lawlessness is being promoted by the State itself.

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27 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-180-2013>  
<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-081-2013/>

Lawless actions in the name of “maintaining law and order” happen at the command of ruling regimes, regardless of the party in power. By the same token, the opposition parties respond violently, as if they have been pushed to the wall and provoked to become violent for the sake of their political existence (though once in power, they certainly do not stop, provocation or not). Professional criminals are hired by both the ruling and the opposition political parties to commit violence in favour of, or against, each other and to guide public perception while creating justification for the parties’ warlike attitudes. Political programmes are inseparable from the use of crude bombs, vandalizing vehicles on the streets, ransacking public property, and burning State-owned transportation and offices. Arson attacks on travelers in buses or trains have also been introduced in last two decades as hundreds of ordinary people and political activists lose their lives or suffer permanent disability in the violence every year.

Sometimes, the media and civil society support the opposition regardless of the amount and type of violence initiated by the opposition. Interestingly, the media will also support the ruling regime, as it did this year. For example, Bangladeshi media supported the demand for “caretaker government” in 1996 when the opposition parties led by Sheikh Hasina wanted such a governmental system for holding “credible elections.” Public opinion created by the opposition, with the media’s active role in support of the demand, compelled the then ruling regime to create the 13th Amendment to the Constitution.

The media, although they are allegedly pro-government (as the government has closed almost all pro-opposition media in the last five years), has a twisted role in 2013. Sheikh Hasina’s government repealed the “non-party caretaker government” in the 15th Amendment to the Constitution to allegedly fulfill wish of staying in power for the rest of her life. Former Chief Justice A.B.M. Khairul Haque, who has personally benefitted from the Prime Minister’s Relief Fund as a sitting judge, conspired with Prime Minister Sheikh Hasina to pass a judgment suggesting the repeal of the “non-party caretaker government.” He pronounced the short order of the judgment in the open Court on 10 May 2011.

After one week, A.B.M. Khairul Haque retired from his post. The full text of the judgment was not available during his tenure in office but, sixteen months after his retirement, the full text of judgment was made available. The full version of the judgment was altered, deviating from the original ‘short order’ as was pronounced in the open Court.

For example, in the short order the then Chief Justice A.B.M. Khairul Haque held that the non-party caretaker form of government may be continued for

two more terms. It means that the “unelected technocrats” comprising the 11 persons council of advisers will run the non-party caretaker government for holding a credible general election. In the full text, Mr. Haque changed this provision. He directed that the caretaker government could only be held by elected representatives.<sup>28</sup> Jurists of Bangladesh have asserted that after retirement a former judge is not constitutionally eligible for passing or signing any judgment and if anyone does so such documents should be accepted as a judicial order to the nation. In doing so, the Chief Justice violated the basic norms of both judicial conduct and the country’s Constitution.

However, A.B.M Khairul Haque repaid Sheikh Hasina for the donation from the Prime Minister’s Relief Fund by arranging medical treatment of his wife abroad. After the judgment, Prime Minister Sheikh Hasina (who used A.B.M Khairul Haque’s judgment as a reference to make the 15th Amendment to the Constitution without waiting for the full text), awarded her loyal judge with the post of Chairman of the Law Commission.

This nexus between the head of the government and the head of the judiciary is at the centre of Bangladesh’s ongoing political and constitutional crisis. It is the judgment and the subsequent 15th Amendment that have lead to bloodshed in the country. The mainstream media and civil society of Bangladesh, that lean toward the incumbent government and their allies, are deliberately ignoring this for partisan purposes, continuing to promote the governmental position of constitutionality, and berate the opposition for the loss of lives and assets of the ordinary poor. The media has forgotten that the 15th Amendment of the Constitution has been made only for the convenience of one person. The opposition parties demand the “non-party caretaker government” be revived and more than 80% of the people of Bangladesh support this demand, according to latest surveys publicized in the national media. Endemic violence notwithstanding, some independent journalists have alleged that the cadres of the ruling political parties are responsible for burning vehicles when the opposition have called for general strike (hartal) for reviving the non-party caretaker government in order to hold credible general election.

Bangladeshis have been struggling for a democracy guaranteeing equality, human dignity, and social justice while the rulers have been investing their utmost effort to subvert people’s aspirations. State-sponsored lawlessness is provoking and accommodating lawless retaliation in the country which,

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<sup>28</sup> Professor Asif Nazrul, 15th Amendment: Transition of Power, Published on Marcy 17, 2013, in the Daily Star, <http://www.thedailystar.net/beta2/news/transition-of-power/>, last accessed on December 7, 2013.

in turn, is leading the nation away from democracy. At the micro level, the government continues to withdraw criminal cases from the courts, terming the cases “politically motivated,” in order to ensure impunity to the offenders associated with ruling political parties. Withdrawing these “politically motivated” cases has become a trend in the last twenty years. In 2012, the present government continued withdrawing cases using the same excuse. For instance, on 19 September 2012, the National Committee for Withdrawing Politically Motivated Cases recommended the withdrawal of 10 cases of murder and rape.<sup>29</sup>

## War Crimes Trials Lack Credibility

The trial of alleged perpetrators of 1971 war crimes has long been a public demand due to legal, historical, and emotional reasons. The country has taken four decades to acquire the “political will” to hold such trials; indifference and calculations for gains have been behind the delay. All the political parties, including the *Bangladesh Awami League*, have associated themselves with the alleged “offenders of war crimes”, who are mostly involved in the politics of *Bangladesh Jamaat-E-Islami* party.

In a changed political environment, the *Awami League* government established the ICT in 2009 to prosecute Bangladeshi citizens who allegedly collaborated with Pakistan during the liberation war in 1971. Allegations include genocide and crimes against humanity committed against the entire population of the struggling nation. However, the ICT has become increasingly politicized and appears to be a method of stifling dissent rather than way of addressing real issues. In essence, the Tribunal is trying a few alleged war criminals to secure political gains by punishing some leading members of opposition political parties. In fact, many alleged offenders of war crimes have taken shelter in the *Awami League* by establishing marital and business-oriented relationships; war criminals that are friends of the ruling party are apparently immune from prosecution.

Beginning 5 February 2013, mass protests were held in response to results of these tribunals, inciting violence that claimed the lives of 88 people and injured hundreds more. The United Nations Special Rapporteur on extrajudicial executions, Christof Heyns, condemned the violence and encouraged the Bangladeshi government to pursue criminal action against those responsible for the deaths, regardless of whether they were state actors.

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29 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-095-2013/>

The use of the death penalty under the ICT is of particular worry, as sentences are handed out to political activists and members of rival parties. The death penalty under any circumstances is a violation of the right to life and contradicts Bangladesh's obligations under the International Covenant on Civil and Political Rights and international law. This is further compounded by Bangladesh's inability to provide a fair trial and due process. The flaws of this Tribunal are varied and include the denial of bail and pre-trial release, the abduction and intimidation of key witnesses, and even allegations of collusion between prosecutors, judges, and the Government.

Witness protection is also important, in light of attacks on several homes of suspects after they were given guilty verdicts (as described earlier, there are no laws protecting witnesses). Many of these people accused of crimes are Hindus, and the government should provide adequate protection to their families.

### **Trial of Mutiny Suspects Fails Standard**

The government has also tried the suspects of the mutiny held at the Bangladesh Rifles (BDR) headquarters in Dhaka on February 25-26, 2009, which resulted in death of more than 70 people including 57 officers of the Bangladesh Army.<sup>30</sup> The carnage triggered mutiny in several other barracks of the BDR during the same period causing injuries to the officers and soldiers. The governmental probe after the incident failed to answer many questions regarding the incidents. Several thousand soldiers were held on the charges of committing the crimes of murder, using arms and ammunitions without any valid permission, looting, and violating women. Amongst the soldiers, 78 were killed by the law-enforcement agencies, in revenge, while the government claimed that these soldiers were "fugitives." At least 47 suspects died allegedly during torture while in detention. These deaths were officially termed as "death due to heart attacks" which is so medically and mathematically improbable as to be absurd.

For the carnage that occurred in the headquarters the police filed only two cases accusing 850 soldiers and few civilians. A mass trial took place in a special sessions court established in Dhaka. In October 2013, the trial court sentenced 152 soldiers with the death penalty, 161 defendants were given life-term imprisonment, and 256 received other sentences. The court acquitted 277 people. This mass trial has been highly criticized by human rights groups and civil society organizations for lacking credibility in all stages and for having

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30 <http://www.humanrights.asia/resources/hrreport/2009/AHRC-SPR-001-2009-Bangladesh-HRReport2009.pdf>

failed to meet the standards of fair trial. All the suspects have alleged that they were tortured while in custody of the law-enforcement agencies. These claims have been neglected, as is the traditional practice in Bangladesh.

## **Sorry State of the National Human Rights Commission**

Bangladesh's National Human Rights Commission (NHRC) remained an ineffective organization in 2013 as well, while the country's human rights situation drastically fell. Due to the tradition of appointing loyal "puppets" in public institutions, the statutory rights body also has a pro-ruling party person as its Chairman. The activities of the NHRC mostly remained confined to holding some meetings and training programmes to meet the requirements of the projects funded by development partners. Occasionally, the Chairman, who mostly appears in public for making comments at different events, made some rather controversial comments that undermined the cause of rights struggles, as opposed to taking effective action in compliance with the Paris Principles.<sup>31</sup>

For example, the NHRC Chairman, who had earlier expressed his condolences, insisted that the family of Limon Hossain<sup>32</sup> withdraw the case filed by Limon's mother, Mrs. Henowara Begum (though the Chairman was allegedly acting on orders from the Home Minister). His offer to withdraw false charges against the victim was supporting the culture of impunity for the crimes committed by State agents. Limon, a college student of an ultra poor family, was shot in his left knee by members of the RAB in Jhalkathi district in March 2011. Subsequently, his leg was amputated at the knee. The RAB fabricated two criminal cases against Limon branding him a "criminal" to harass the juvenile further. Henowara filed a complaint against the officers of the RAB anyway, and her family has been fighting the case despite continued harassment, intimidation, threats, physical attacks, and other coercion.

The existing role of the NHRC does not transmit a message to the citizens that this institution is going to stand beside victims of human rights abuse in Bangladesh, a country where victims are being produced daily in larger numbers. There is a serious need of reshuffling and restructuring this institution if helping the victims of human rights abuses is expected to be one of the key obligations of the national human rights institution.

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31 <http://www.ohchr.org/EN/NewsEvents/Pages/ParisPrinciples20yearsguidingtheworkofNHRI.aspx>

32 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-075-2011/>  
<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-218-2012/>  
<http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-028-2012/>

## Conclusion

It is hard to find one ordinary citizen in Bangladesh who will be ready to trust a single institution in the country. Anyone who pays attention can easily notice the politically polarized picture of a nation that has not developed. In the current context, life is very difficult for the people of Bangladesh. To reform the country's institutions to a standard acceptable to a democratic state would make them unrecognizable to today's citizens, and is thus a significant challenge. But only with the continuous functioning of such thoroughly reformed institutions will the nation find itself closer to justice, equality, and dignity, without which there is no safety, no happiness, and no hope for Bangladesh and its people.

The needs of the ordinary people of Bangladesh are different from the goals of those who rule the country – the megalomaniacal politicians, bureaucrats, military, and police. The people need a justice-based society providing the basic pillars of a democratic society – individual dignity, freedom, and safety that operates under an applicable rule of law system – so that they can develop their talents and use their gifts for their own good, for the good of the country, and for its people. The ruler's goals are wealth, control, and power. That is why political will remains absent and invisible as far as the reforms of the policing system and judicial institutions are concerned; the rulers do not have any interest in reforming the institutional systems from a normative perspective.

## Recommendations

1. The ongoing rampant illegal arrest and arbitrary detention of ordinary citizens, opposition activists, human rights defenders, and journalists must be stopped immediately. Those who are in arbitrary detention must be released from prisons and detention centres; the fabricated charges against them should be dropped without delay.
2. The crimes of custodial torture and extrajudicial killings since October 24, 2013, should be credibly investigated under the "Torture and Custodial Death (Prohibition) Act, 2013." The perpetrators of these crimes must be prosecuted, with a guaranteed right to fair trial in open courts, immediately. The state must stop the practice of torture for political and economic gains. The cases of torture and extrajudicial killings, including those that took place during the crackdown against demonstrators belonging to the *Hefazat-E-Islam* in May 2013, should be credibly investigated by competent probe commissions headed by retired or sitting judges of the Supreme Court of Bangladesh, immediately. The

full findings of the probe commission should be accessible to the public. The perpetrators and the masterminds of the crimes must be prosecuted and punished in accordance with the standards of fair trial.

3. The authorities should form a probe commission headed by a retired or sitting judge of the Supreme Court of Bangladesh, and comprising at least one member from the human rights organizations that have been active in documenting the cases of enforced disappearances. A thorough investigation should succeed in revealing to the public the truth behind such heinous crimes. Perpetrators should be brought to justice without delay so closure, adequate protection, and compensation can be ensured to the families. Bangladesh should accede to the UN Convention on Enforced and Involuntary Disappearance and make domestic legislations in compliance with it to guarantee protection from such crimes.
4. The ongoing state-sponsored repression against the journalists and human rights defenders must be stopped to guarantee the freedom of press and freedom expression and opinion. The process should begin with the repealing of draconian laws like the Information and Communications Technology (Amendment) Act, 2013, the Mobile Court Act, 2009, and the Anti-Terrorism Act, 2009, in particular, and by allowing those newspaper and private television channels that the authorities shut down since 2009 to begin operating again.
5. Harassing Human Rights Defenders and organizations by blocking their projects and funds must be stopped forthwith. All fabricated charges against human rights defenders, journalists, newspaper editors and other professionals or individuals must be dropped, following credible investigations by competent judicial officials, as regular criminal investigation units lack credibility. Recurrence of similar harassment should be discontinued, regardless of which regime comes to the power.
6. The existing pattern of denying freedom of assembly to civil society organizations and political opposition requires to be changed. The practice of sealing, blocking, and raiding the offices of opposition political parties only push these organisations to fight against state agents, which carries the risk of deteriorating overall conditions across the country.
7. The entire electoral process of Bangladesh and the Election Commission (EC), including its recruitment process, urgently requires thorough reform for the sake of stability and for guaranteeing the rights of the people. The EC needs to have integrity and independence with a checks and balance



system so that it not only guarantees the people's right to choose their competent representatives in a transparent, credible, and fair election but also contributes to create a peaceful political environment.

8. The dignity of ethnic communities has to be ensured constitutionally and socially with enhanced social protection mechanisms being introduced to prevent attacks on ethnic communities for either political or financial gains. All the previous attacks on ethnic communities should be investigated by competent judicial officials and comprise members of the affected communities and human rights organizations.
9. The dignity of women should be restored, and protected from now on via socio-political reform in the public mindset and in institutional structures, regardless of opposing justification that cite faith, social customs, and attitudes.
10. The rights of workers in all sectors, including the RMG sector, should be guaranteed immediately if Bangladesh hopes to develop a sustainable economy. The State and its agencies should not stand against the workers.
11. Basic rule of law institutions, the police, the criminal investigation system, the prosecution and attorney service, the adjudication and trial system require thorough reform. The professionals involved in these institutions must change their slavish mindset. The culture of impunity must end, as impunity cannot grow with democracy and rule of law.
12. The state must compensate those families who have lost lives and suffered injury. The families that have lost their lone bread-winners should be afforded a realistic means to live their life with dignity – an undeniable obligation of the state.
13. The ongoing bloody struggles nation-wide, the extrajudicial murders, and the enforced disappearances require large expansion to the nation's mental health facilities. The society needs to heal. The first step, of course, is that the violence must stop.

# CHAPTER II



ASIAN HUMAN RIGHTS COMMISSION

# INDIA



# I N D I A

## PSEUDO DEMOCRACY GUARANTEES UNDIGNIFIED FUTURE

### Introduction

Democracy, when viewed broadly, is the possibility of realising guarantees that stem from individual freedom with dignity, equality, and the rule of law.<sup>33</sup> The building blocks of democracy are based on values, such as informed participation, and formal rules on procedures, such as those in elections. Important institutions that a democratic state depends on to ensure the actualisation of these defining characteristics are those that comprise law-enforcement.<sup>34</sup>

The state often enforces its writ upon the citizen through its law enforcement agencies. In an unbridled state, this becomes the enforcement of fear, replacing the rule of law. A direct consequence of this shift in character is that these agencies discourage registration of complaints, and the investigative process transforms into a manipulation and bargaining activity. As complaints and investigations are the raw materials for arbitrators like the courts to decide a dispute, whether civil or criminal, the immediate casualty in an uncontrolled state is the very notion of justice.

A critical assessment of a democratic state must examine the functioning of its law-enforcement agencies, most importantly, the police. The Asian Human Rights Commission (AHRC) carefully examines how a state's law-enforcement system functions vis-à-vis the normative rule of law guarantees that it promises its citizens. In assessing a state's human rights promise and fulfilment, the AHRC uses its assessment of the state's justice institution framework as a kaleidoscope to see the larger human rights landscape.

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33 *Defining and measuring democracy*; David Bentham ed., Sage Modern Politics Series, Volume 36, p. 6

34 *The Functions of Police in Modern Society*, Bittner E., Oelgeschlager, Gunn and Hain, 1980

Being the world's largest democracy with a particularly diverse setting – whether one considers socio-religious, geographical, political, or religious factors – India would appear to pose an enormous challenge in such a critical exercise. However, unlike its diverse citizenry, India's justice institution framework is monolithic. It is unified as a jurisdiction. Variances in law and procedure are negligible, if not absent.

Thus, the assessment of India's human rights performance, based on AHRC's work in India, and based on an analysis of the country's criminal justice institutions, most importantly its law-enforcement agencies, is not an exercise of great difficulty. But, the picture that emerges is not a pretty one.

For instance, despite initial momentum to create a landmark legislation to criminalise torture, and in the process fasten accountability to the police,<sup>35</sup> the proposed law and its passing has stagnated. A review of the law by a Parliamentary Select Committee has been kept in the government's legislative cold storage.

Meanwhile, one more year has passed. During this time, a significant number of human rights abuses, most of them involving the police, other law-enforcement agencies, and paramilitary units, have been reported from India. Despite the constitutional promise to uphold the rule of law and the constitution, reflected also in the Voluntary Pledge India made to the United Nations Human Rights Council, the government has not made the least effort in addressing human rights abuse committed by Indian law-enforcement agencies.

In sum, 2013 witnessed neither significant improvement in India's human rights scenario nor devastating deterioration compared to last year.

Based on the information the AHRC has collated in 2013, this report categorizes the assessment of India's human rights record for the year under the following: (i) human rights violations committed by the police and security agencies; (ii) resistance to reform; (iii) violence committed against vulnerable groups and human rights defenders.

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35 The Prevention of Torture Bill, 2010

## **I. Human Rights Violations by Police & Security Agencies**

### ***a. Torture & Custodial Violence***

The practice of torture is endemic in India and used without restraint. It is the most commonly used tool for crime investigation. To extract information from suspects, informants, and witnesses, use torture with impunity. The practice is rooted within law enforcement architecture. Officers are expected to use force while on the job and the judiciary often condones its use.

Torture is not a crime in India. Instead, what exists is a set of non-specific provisions in the Criminal Procedure Code, 1973.<sup>36</sup> Safeguards provided in the law – to produce a person before the Magistrate within twenty-four hours<sup>37</sup> or conduct a medical examination of the detainee<sup>38</sup> – are not followed, and their violation is not adequately challenged in and by the courts.

The prohibition on self-incriminating evidence<sup>39</sup> is meaningless, since criminal investigations are often undertaken not to detect a crime but for mere statistical purposes. This is the only assumption that may be drawn, from the overwhelming use of torture to extract confession statements, which the investigating agency is aware are inadmissible in trials. Criminal investigation in India often begins and ends with a confession statement.

Use of torture is further promoted in the absence of ability and facility, knowledge and resources, to undertake scientific investigations. Simple but important procedures like fingerprinting and DNA analysis take years to render results, if not decades. Crime investigation agencies are not trained regularly, if at all, to undertake scientific investigation. Most police officers do not know elementary processes like how to preserve a crime scene.

Forensic facilities, including those for exhumation and for conducting an autopsy, are inadequate. AHRC's documentation in 2012 has revealed that often unskilled part-time labourers conduct what is known as autopsy

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36 Chapter V, The Code of Criminal Procedure, 1973

37 Ibid., Section 57

38 Id. Section 54

39 Section 26, The Indian Evidence Act, 1872

examination across India.<sup>40</sup> In these circumstances, when officers come under pressure to prove or crack a case, pushed by the political mileage that politicians attempt to draw or defend, officers resort to brute forms of torture to extract a confession.

The casualties in the process are basic norms, like presumption of innocence, prohibition of arbitrary punishment, and ultimately the very concept of justice. In such a contaminated, callous, and demoralised environment, officers use the threat of torture and other forms of physical violence for extortion.

India has also resorted to outsourcing torture. The practice of recruiting, training, arming, and deploying non-state actors named Special Police Officers or village guards is common. This practice started in the state of Jammu and Kashmir where, after decades, it was concluded that such a practice only worked as catalyst to increase animosity within communities. States like Karnataka, Andhra Pradesh, Jharkhand, Manipur, Tripura, Chhattisgarh, and Madhya Pradesh have started massive recruitment and deployment of these non-state elements, with the ruse of dealing with anti-state activities.

Such deployment of state-sponsored militia negates the fundamentals of state responsibility. Additionally, antisocial elements exploit the opportunity to maintain feudal power balances at the local level despite this practice being declared unconstitutional by the Supreme Court in 2011.<sup>41</sup>



**Man tortured by paramilitary forces in Assam for obstructing their sexual assault on his wife. (Courtesy: Anjuman Ara Begum)**

<sup>40</sup> Justice K. Ramaswamy Committee report on autopsy procedures in India, 1999. The government has not acted upon this report. However, the NHRC has issued directions to the state governments to video record autopsy procedures, which only two state governments initially agreed to follow. As of 2013, only seven state governments have agreed to follow the NHRC's directions on video taping autopsy procedures.

<sup>41</sup> Nandini Sundar and others (petitioner) against State of Chhattisgarh and others (respondents), Writ Petition (Civil) 250 / 2007 decided on 5 July 2011



Judicial interventions, mostly limited to defining the contours of the legality of arrest, detention, and the use of torture through a broad interpretation of Article 21 of the Constitution, have failed to control torture.<sup>42</sup> Despite the Supreme Court being informed with sufficient details about the breach of its own directives, the Court has refused to act against the violation of its judgments.

In 2012, during the Universal Periodic Review process, the Government of India informed the Human Rights Council at Geneva that the Prevention of Torture Bill could be made into a law once the definition of torture is fully reflected in domestic legislation. In 1997, India signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). In an effort to facilitate accession to this treaty, the Lower House of the Indian Parliament passed the Prevention of Torture Bill on 6 May 2010. The Parliament's Upper House referred it to the Parliamentary Select Committee for review. Since December 2010, the revised Prevention of Torture Bill with amendments proposed by the Parliamentary Select Committee has been pending before the Government.

The UN Special Rapporteur on Torture has requested the Government of India to grant the Rapporteur permission to visit India since 1993. The request is renewed from time to time. However, there has been no positive response in more than 20 years.

The widespread impunity for torture, even if it leads to deaths in custody, is reflected in the fact that very few police persons are ever charged and convicted for torture. This is not surprising, since there are no independent investigation agencies in India to investigate crimes committed by the law-enforcement agencies. The statistics provided by state agencies like the National Crime Record Bureau (NCRB) is not trustworthy, its statistical data is neither foolproof, nor independently verified. The NCRB's reputation is dubious; it is known to manipulate data to fit government needs.

Neither the civil society nor the government has credible data regarding the actual number of torture cases in India each year. Given the ability of the police to refuse registering a case against police torture, even if a case is referred to the police by a court, the actual intensity of this inhumane and degrading form of treatment of persons by the law-enforcement agencies is anyone's guess.

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42 See further, the D. K. Basu case

Each and every police station, police outpost, and detachment of para-military deployed to assist law enforcement in India resorts to torture.

Custodial violence is also rampant in prisons, related to which, once again, no one has quantifiable information. The sum of this is the alarming scenario that neither the state nor the country's civil society has a clear idea of the actual number of torture victims in the country, despite torture being endemic. The first step for a cure for a disease of such seriousness is diagnosis. This understanding is lacking in India.

### ***b. Extrajudicial Execution***

The AHRC has documented cases of extrajudicial execution from India. This includes cases of fake encounters, excessive use of force leading to death, and secret killings. State investigations into allegations of such practices are rare, and involve a very slow process.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Christof Heyns, reported in April 2013 to the Human Rights Council that “[t]he level of extrajudicial executions in this country still raises serious concern. This includes deaths resulting from excessive use of force by security officers, and legislation that is permissive of such use of force and hampers accountability.” “Impunity represents a major challenge”, he reiterated.<sup>43</sup> The Rapporteur made his report, after visiting India in 2012.

According to the National Human Rights Commission (NHRC), the state of Uttar Pradesh recorded the highest number of “encounter deaths” (138) between 2009–2013, followed by Manipur (62 cases) and Assam (52 cases). However, this does not reflect the real picture since the NHRC does not accept all complaints that it receives.

The fact is, the NHRC does not pass a credibility and independency test.<sup>44</sup> For instance, when



Widow of Ibeyama, killed in fake encounter, mourns at his last ritual in Manipur. (Courtesy: Anjuman Ara Begum)

<sup>43</sup> A/HRC/23/47/Add.1, 26 April 2013

<sup>44</sup> Asian NGO Network on NHRIs - Shadow Report on NHRI, India, *ANNI Report*, 25 May 2011

the Supreme Court appointed the NHRC to undertake an investigation into special police officers in Chhattisgarh state, the NHRC reported that the armed militia is a “spontaneously formed tribal resistance movement” which the Court rejected summarily, since the statement did not have an iota of truth.

The NHRC does not take up cases involving the para-military and military units, with the excuse that it exceeds its mandate. That these forces commit a large number of extrajudicial executions means the NHRC’s report only shows the tip of the iceberg. The NHRC also suffers from a lack of investigative capacity. The strength of the NHRC is only twenty police officers of varying ranks, who are supposed to investigate all the complaints that it receives. Due to this, the NHRC asks the respective state government to submit its report on each case the NHRC accepts as a complaint and often dismisses complaints without a hearing, accepting the government report instead.

Extrajudicial execution is widespread in places declared as “disturbed” in India. The declaration enables the Union Government to deploy armed forces to “assist” (read control) the civil administration of the area. Special security laws like the Armed Forces (Special Powers) Act, 1958 (AFSPA), provides statutory protection to abuse of power and human rights violations, including use of lethal force, without reasoning and justification.

Additionally, the investigation process for crimes committed by the armed forces is not a civilian exercise. It negates all norms of transparency, rendering the process a whitewashing of the crime. This is evident from the virtual absence of conviction of members of the armed forces for crimes they have committed.<sup>45</sup> The Government rarely follows the NHRC’s directions: to video record each autopsy in cases of extrajudicial executions and to send a copy to the NHRC.<sup>46</sup>

This, however, does not mean that extrajudicial execution is unchallenged. In a petition filed before the Supreme Court, the Court appointed a Judicial Commission to inquire into cases of extrajudicial execution reported from Manipur.<sup>47</sup>

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45 What Pathribal means for India, A. G. Noorani, *The Hindu*, 26 June 2013

46 NHRC Annual Reports: 2001 through 2012

47 The Commission of Inquiry, constituted by the Supreme Court of India, in Writ Petition (Criminal) 129 of 2012 [*Extra Judicial Execution Victims Families’ Association and Another (petitioners) Against Union of India and Others (respondents)*] and Writ Petition (Civil) 445 of 2012 [*Suresh Singh (petitioner) Against Union of India and Others (respondents)*]

In its report, the Commission, headed by Justice N. Santhosh Hegde, has found:

- i) in all cases the security forces have blatantly violated the law and procedure and have engaged in cold-blooded murder;*
- ii) the use of disproportionate force against the victims by firing at them even at close range, repeatedly;*
- iii) the negation of the legal procedures, even by administrative officers like the Executive Magistrates;*
- iv) the open and uncontrolled possibility for wanton use of authority, including fabrication of or destruction or tampering of the evidence and the crime scene;*
- v) the abysmal failure of the draconian law, the Armed Forces (Special Powers) Act, 1958 (AFSPA), coupled with the perpetual imposition of emergency under Section 144 of the Criminal Procedure Code, 1973, that has perpetuated loss of faith of the people in their government and institutions and has in fact precipitated only more loss of life and violence in the state.*

### **c. State of Emergency: “Disturbed Areas”**

Several districts in India are declared “disturbed” under the Disturbed Areas Act and AFSPA. The Ministry of Home Affairs, answering a question raised in Parliament on the issue on 5 April 2013 said: (i) the entire states of Assam and Nagaland; (ii) Tirap, Changlang and Longding districts of Arunachal Pradesh; (iii) 20 km-wide belt bordering Assam in the States of Arunachal Pradesh and Meghalaya; (iv) the entire state of Manipur excluding Imphal municipal area; (v) parts of Tripura as notified by the state government; and (vi) districts of Jammu, Kathua, Udhampur, Poonch, Rajouri, Doda, Srinagar, Budgam, Anantnag, Pulwama, Baramulla and Kupwara in the state of Jammu and Kashmir are declared as disturbed area in India.<sup>48</sup>

The Home Minister further informed the Parliament that the Government provided financial assistance in 2011-2012 under its Security Related

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48 Lok Sabha Question Number 1195

Expenditure (SRE) to the affected states. The amounts are: Assam (153.04 crore<sup>49</sup>), Nagaland (83.11 crore), Manipur (28.88 crore), Tripura (39.25 crore), Arunachal Pradesh (27.82 crore), and Jammu and Kashmir (342.27 crore). The Ministry explained that the reason for continuation of such declaration and financial assistance is to prevent “the terrorist activities intended to overawe the government established by law” and that such “activities [are] prejudicial to the security, sovereignty and territorial integrity of India”.<sup>50</sup>

The AHRC does not deny that in some areas there are activities undertaken that challenge the integrity of India. However, such activities are also reported from other parts of the country.

For instance, the 2002 Gujarat massacre did not contribute, in any form, to nurturing the integrity of the nation. The traumatic effect the massacre caused upon the people in Gujarat in particular, and India in general, remains unresolved. Yet one of the key figures responsible for the massacre is projected to be the next Prime Minister of India and the counterpart in the tragedy, the Congress led Government, has ruled India in the aftermath. Similarly, many parts of India, where fundamentalist religious political parties instigate mass violence, are not declared as “disturbed”. Hence, the argument that the exercise of declaring regions in India as “disturbed” is based mostly on discriminatory rather than inclusionary fault lines does, carry some weight.

For instance, the recent declaration of the state of Nagaland as a “disturbed area” for 2014, under the AFSPA, reinforces nothing but the Union Government’s discriminatory policy against the people of Nagaland.<sup>51</sup> Nagaland has been under active ceasefire for decades and there are hardly any casualties resulting from armed conflict since the ceasefire came into effect. Earlier, the “disturbed” status was bestowed on Nagaland for a period from 20 October 2010 to 30 June 2011, ignoring the state assembly’s four resolutions against the extension of disturbed area status in the state. Tripura, a state often held as an example of successful counter-insurgency measures remains “disturbed”. Tripura has had no major armed encounter in recent years.

Those who often benefit from a state, or a region within the state, being declared as “disturbed” are the ruling political class in these states. Mr. Okram

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49 A crore is a unit in the South Asian numbering system equal to ten million

50 Lok Sabha unstarred question no. 6268

51 On 30 June, 2013, the ‘disturbed area’ status has been extended to Nagaland for another year through the Gazette of India Notification No. S.O. (E) dated 30-06-2013

Ibobi, the Chief Minister of Manipur state, is notorious for being one of the most corrupt politicians in India. This is because the “security assistance” money distributed by the Union Government to the states is free from audit. The status also helps the ruling political forces silence opposition using the military might provided by the Union Government.

#### *d. Culture of Impunity*

The existence of both *de-jure* and *de-facto* impunity in India encourages state forces to use excessive force, extrajudicial killings, and other forms of abuse of power. *De-jure* impunity is practiced through several legal instruments that validate impunity for state actions. Section 45, 132, and 197 of the Code of Criminal Procedure, 1973; Section 125, 126 of the Army Act, 1950; Section 45 of Unlawful Activities (Prevention) Act, 1967; and Section 6 of AFSPA, 1958, rules out the jurisdiction of civilian courts to take cognizance of any offence committed by the armed forces “unless previous sanction thereof” is granted by the government.

The process of procuring sanction for prosecution is almost impossible. The government rejects applications arbitrarily. The concept is itself against the principles of justice since, at the very least, the process involves asking permission from respondents before they can be sued.

*De-facto* impunity in India exists because of weak, if not non-functional, criminal justice mechanisms and enforcement institutions. Police often deny or block access to justice by refusing registration of complaints. The process of investigation and trial remains extremely slow and unscientific. Routine practices of torture by security and enforcement agencies create fear and discourage formal complaint against the agencies, propagating a culture of impunity at all levels.

As per available records no case of sanction for prosecution of members of any of the paramilitary forces deployed in the Maoists affected areas is pending with the Ministry since January 2011.<sup>52</sup> The requirement of “prior sanction” is the second biggest hurdle before a complaint is even investigated. The first is the resistance to registering a complaint.

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52 Lok Sabha unstarred question no 6520, answered on 7.5.2013 <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=140616>

The argument that such prosecution will demoralise the armed forces is a misconstrued one; it is lack of discipline and widespread excesses committed by the armed forces that demoralise a force and bring indiscipline.<sup>53</sup> The practice however, continues despite judicial pronouncements declaring that such sanction is required only at the time of framing of charges.<sup>54</sup>

#### *e. Access to Justice*

Access to justice remains a challenge due to judicial lethargy and other factors. According to NCRB records, as of June 2013, 6,041,559 complaints were registered by police under the Indian Penal Code, 1860, and various special laws.

Today in India, there is an estimated backlog of 20,000,000 cases in the trial courts, 4,100,000 cases in the High Courts, and 49,000 cases in the Supreme Court. For a modern democracy, India has one of the poorest judge to population ratio – estimated to be 14 judges per a million people. About 16,000,000 new cases are filed before the courts in India each year. Out of this, about 14,500,000 cases are disposed annually. This implies that a judge decides an estimated 1,050 cases every year.<sup>55</sup> The quality of such “disposals” is anyone’s guess.

A substantial number of cases pending in courts are criminal cases. Given that on average a criminal case could take five to eight years to decide, many under-trial prisoners spend more time in pre-trial detention than the maximum sentence prescribed for the offenses alleged against them.

In 2002, the Supreme Court of India, when it decided *All India Judges’ Association and others (petitioners) against Union of Indian and others (respondents)*, directed the Government to increase judge strength from the then prevailing 10.5 judges for a million people to 50 judges for every million people. However, eleven years later, this proposal has yet to be implemented by the Union Government. Lack of judicial infrastructure, i.e. the number of judges and the facilities for judges to function, punishes the entire society.

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53 Paul Kennedy, *Military Coalition and Coalition Warfare over the Past Century*, Wilfred Laurier University Press, 1983, p.31

54 Framing of a charge is done by the court, after the investigation is over and the accused summoned to the court, under Section 228 of the Criminal Procedure Code, 1973

55 Statistical data provided by the Supreme Court of India



The state governments have also refused to cooperate, having failed to provide adequate financial resources to implement the Court's directives. Additionally, for improving justice delivery it is just not the number of judges, court buildings, and other infrastructure that needs to be increased. For example, appointment of public prosecutors is a matter completely under the prerogative of the state. Often appointments of prosecutors are delayed for unacceptable periods.

## **II. Resistance to Reform**

This year the Government of India resisted several reformatory directives pronounced by the Supreme Court. The government has proposed amendments in the Right to Information Act, 2005, to exclude political parties from its jurisdiction; created an ordinance for the continuation of criminal parliamentarians in the office; and also cleared the passing of the Judicial Appointment Commission Bill, 2013, circumscribing judicial independence.

### ***a. Electoral Reform & Transparency***

The modern concept of "open government" and the democratic culture of open society forbid secrecy and its manifestations in public affairs, as secrecy negates government's responsibility to accountability and violates people's right to know. Official Secrets Act, 1923, and a culture of secrecy has been a part of the governance system in India even after independence, despite the citizen's "right to know" being embodied in Article 19 (1) (a) of the constitution.

The Supreme Court, in several of its interpretations, has reaffirmed that "the concept of an open government is the direct emanation from the right to know" which is implicit in the right of free speech and expression guaranteed under Article 19 (1) (a). Therefore, disclosure of information concerning the functioning of the Government must be the rule and secrecy an exception.<sup>56</sup> The Court has also affirmed that "the people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. To cover with veil of secrecy the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired."<sup>57</sup>

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<sup>56</sup> S. P. Gupta vs. Union of India, AIR 1982 SC, 149

<sup>57</sup> *id.*

The freedom to be informed is guaranteed under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which India has ratified. General Comment No. 10: Freedom of expression (Art. 19) issued on 29 June 1983 defines the scope of Article 19 of the ICCPR as: “protection of the right to freedom of expression... includes not only freedom to ‘impart information and ideas of all kinds’, but also freedom to ‘seek’ and ‘receive’ them ‘regardless of frontiers’ and in whatever medium, ‘either orally, in writing or in print, in the form of art, or through any other media of his [*or her*] choice’”.<sup>58</sup>

The right to information movement in India is exemplary and iconic of people’s participation in governance. The growth of this movement resulted in a law that came into force on 12 October 2005 as Right to Information Act, 2005 (RTI Act). It has been termed a second independence movement in India. The RTI Act is a watershed event in the country and is emulated across the world, since this statute empowers every citizen to seek and obtain information, most importantly information concerning the rationale behind Government decisions and their implementation. The law has brought to the forefront a citizen’s right to be informed, and if sensibly used, has the potential to fasten transparency and accountability in governance.

Promoting the public opinion prevailing in India towards greater transparency in governance, the Central Information Commission (CIC), in a ruling in June 2013, brought six national political parties (the Indian National Congress, the Bharatiya Janata Party, the Communist Party of India, the Communist Party of India (Marxist), the Nationalist Congress Party, and the Bahujan Samaj Party) under the remit of Section 2 of RTI Act, by defining them as public authorities.

The verdict raised hope for ensuring transparency in the country’s political institutions and for making the opaque political space transparent in the country. However, on 12 August 2013, the Ministry of Personnel, Public Grievances, and Pension, on behalf of the Government of India, introduced a Bill in the lower house of the Indian Parliament, seeking an amendment to remove political parties from the scope of the RTI Act.

Political representation in India is an inclusive process and every adult is eligible for political representation based on adult franchise. However, this representation of people in governance is not devoid of accountability and responsibility. In India, legal assurance of transparency in political institutions

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58 General Comment 10, issued on 29 June 1983

is limited to Section 29 (B) and 29 (C) of the Representation of the People Act, 1951.

Section 29 (B) allows political parties to accept any amount as contributions, unless such contributions are from foreign sources or a government company, in which case it is prohibited. Section 29 (C) of the Act stipulates that a political party, in each financial year, is to prepare a report of contributions in excess of Rs. 20,000, failing which it will curtail the political party from claiming any income tax relief under the Income Tax Act, 1961, as amended by the Finance Acts promulgated every year. As observed, political parties in India exploit this dexterity, accepting large unaccounted sums.

The RTI Act could fill the gap of this limitation and usher in a more transparent and accountable political system. The imagination of RTI as a barrier for smooth internal functioning of political parties and its probable misuse by rival political parties cannot be accepted as a valid argument to nullify the ruling of the CIC. In fact, the amendment must be made to bring all political parties under the RTI scanner, not just six of them.

The accountability of a political party arises from the role it plays in ensuring open government, ranging from forming political opinion, policy making, to direct society, and recruiting representatives for government positions, who in turn, become decision makers to ensure social, economic, and political justice for the people. Hence, given this responsibility, political parties cannot exclude themselves from the duty of being transparent and accountable to the people they represent.

Experiences in India show that political parties are often engaged in strategic alliance with extremist groups, funding communal campaigns, money laundering schemes, establishing new political parties using unfair means, corruption, horse trading, and legitimate and illegitimate business. Thus, declaring political parties as “public authorities” under the RTI Act would bring transparency to political organizations and create more legitimacy for their work.

The AHRC believes the proposed amendment to the RTI Act 2005 will negate its aims and objectives and will violate Article 14 of the Constitution, which guarantees equality before the law, and Article 19 (1) (a), which guarantees freedom of speech and expression. In a parliamentary democracy, the norm for open government assumes high value, in principle and practice. Hence, AHRC supports the CIC ruling and opposes the proposed amendment to the RTI Act.

### ***b. Political Reform***

To make political participation free from criminals, on 10 July 2013 the Supreme Court of India upheld a Patna High Court decision that a person who doesn't qualify as an elector under the Representation of the People Act, 1951 (RPA, 1951) is also not qualified to contest the election of either houses of the Parliament or the Legislative Assembly of a state.<sup>59</sup> Politicians of the country disliked the implications of the order: many legislators could lose their elected status.

An analysis by the Association for Democratic Reforms (ADR) and National Election Watch has revealed that about 30% of the members of Lok Sabha (Lower House) have pending criminal cases against them, while 14% of these members are embroiled in serious criminal cases. The figures further show that 1,460 out of 4,807 sitting MPs and MLAs have criminal cases against them.

To counter the Supreme Court's order, the members of Parliament, in a rare occasion of solidarity and unanimity, passed the RPA Amendment Bill on 27 August 2013 with the intention of retaining criminal legislators in the house. The proposed amendment was supposed to bring a change to sub-clause 5 of section 62 of the RPA. The clause states that no person shall vote in any election if they are confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or are in the lawful custody of the police, with the exception of preventive detention. Furthermore, in September 2013, the cabinet approved an Ordinance to negate the Supreme Court order, at a time when the Government's petition to review the Supreme Court order was sub *judice*.

This shameless legal ploy to protect criminals and potential criminals created intense debate in the country. Public opinion has always been stacked in favour of criminal-free legislatures. Embarrassed, members of the ruling party were forced to respond to unanimous public opinion. As a result, the Ordinance was withdrawn by the Cabinet in early October. The resistance against political reform has been temporarily quelled.

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<sup>59</sup> Chief Election Commissioner vs. Jan Chaukidar and others, Civil Appeal Nos. 3040-3041 of 2004

### III. Violence Against Vulnerable Groups & Human Rights Defenders:

#### a. *Impact on Children in Conflict Zones*

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, after visiting India in 2012, expressed concern about negation of child rights in armed conflicts in his report to the UN.<sup>60</sup> Others, including Government-sponsored commissions that studied the effects of militarisation and the adverse impact of AFSPA in the armed conflict affected region in northeast India, have shared the same concern.<sup>61</sup> Particularly worrying is the status of children caught in the armed conflict having been denied adequate schooling and having to live in an environment of violence, fear, and resentment that can cause deep psychological trauma that is passed on over generations.



Child in a relief camp following ethnic violence in Assam. (Courtesy: Anjuman Ara Begum)

The Government of India has denied the existence of armed conflict in the country in its report to the UN Child Rights Committee. This is enumerated in the state party report where the Government elaborates on its commitment on the implementation of Article 38 of the Child Rights Convention.<sup>62</sup>

Extrajudicial execution committed by security forces after an arbitrary detention of the victim, often a male member in the family, has resulted in what are known as the “gun widows” of India. For instance, it is estimated that every year since 2008 approximately 300 women are widowed due to extrajudicial executions of their husbands in the state of Manipur alone.

<sup>60</sup> supra note 11

<sup>61</sup> See for instance, Justice Jeevan Reddy Committee, 6 June 2006

<sup>62</sup> CRC/C/93/Add.5, p. 323

These widows lack financial independence; most of them had depended on their husband's income to run the family and meet the needs of their children. This forces widowed mothers to let their children work, to bring in income, rather than attend school. Child labour also poses additional threat to children like sexual exploitation and trafficking.

Disadvantaged communities do not register births in their family and schooling is often a delayed decision. School enrolment certificates are often used as birth certificates in India. Hence, in rural areas such certificates do not represent the accurate age of the person. Such certificates are considered valid for recruitment which means, for instance, that employment of children in the regular army cannot be ruled out in India.

The state also promotes recruitment of surrendered militants into the army. Between 2005 and 2012, the government claims 7,893 militants have surrendered in northeast India. Often militant groups abduct children from schools or force children to join ranks<sup>63</sup>. So it is possible that a proportion of surrendered children are recruited to the Indian Reserve Battalion.

The presence of the army in educational institutions and its premises is one of the causes of dropouts of female students. The school dropout rate in Tripura, particularly amongst tribal children, is alarmingly high, especially after primary schooling. The dropouts are obvious recruitment targets of insurgent groups. In all the eight states in the northeast region, the dropout rate of children of age group 6-11 from school is 45.91% for boys and 44.87% for girls. This is well above the national average, which is 31.81% for boys and 25.42% for girls. For the age group 6-14, the dropout rate is even higher, with the rate of boys leaving school at 60.08% and girls at 59.32%, in comparison to the 50.84% national average.



**A new born malnourished child struggles for survival in a relief camp following ethnic violence in Assam, 2012. Picture courtesy: Sarfaraj Hussain Khan**

63 Annual Report (2012-2013), Ministry of Home Affairs, India

## ***b. Sexual Violence Against Women***

In India, sexual violence is rampant due to prevalence of gender based discrimination and inequality. A misogynistic society and repressive practices permits violence against women, tolerated in the name of culture. Compounding this is a failed criminal justice apparatus that forces women to refrain from complaining.

The Indian police lacks capacity, a colonial legacy. According to the latest statistics, India only maintains 129 police officers per 100,000 people, compared to the global average of approximately 350 officers, and only 5% of India's police officers are women.<sup>64</sup>

In 2013, the Government of India has made several amendments to existing laws in its attempt to address the outrage related to sexual violence. The gang rape and subsequent death of a medical student in December 2012 ushered these legislative changes. In the frenzy, and due to improper reasoning, death penalty for certain cases of sexual assault was introduced as a result.



Campaign against sexual assault in Delhi in early January 2013. (Courtesy: Purnima Gupta)

However, the fundamental problem has not been addressed: the need for change in the existing state of policing in India. Currently, the government policy in this regard is to have no policy. Police doesn't have advanced facilities and equipment to undertake scientific criminal investigation. It is not a priority for the government or the police.

Sexual offences like rape and sodomy are some of the most complex and cruel crimes that a person could commit upon another. Contrast this with the sophistication of the country's police to investigate these crimes. More than 90% of police constables and low-ranking police officers do not receive any training in criminal investigation other than that which they received before

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64 <http://asiafoundation.org/in-asia/2013/03/06/new-sexual-assault-laws-in-india-only-the-beginning/>



joining the force at cadet school. In a male dominated Indian society, one cannot expect a police officer who abuses the female counterparts at home to be sympathetic to a victim of sexual abuse.

In regions declared “disturbed”, such as in Jammu and Kashmir, north eastern states, and Chhattisgarh, where special security legislations like Public Safety Act and AFSPA are in force, sexual offences committed against women and children often go unreported due to the prevailing culture of fear. Sexual assault committed during “operations” by armed forces deployed in these areas occur often in the cover of darkness and at the victims’ home. Due to lack of possibilities to complain, neither the Government nor the civil society has adequate records that would even approximate such sexual violence. Without information, reforms are impossible.



Campaign against sexual assault in Delhi in early January 2013.  
(Courtesy: Purnima Gupta Gupta)

Several incidents of such violence have been reported by the AHRC. For instance, the AHRC, upon receipt of information from the North East Support Centre and Helpline, reported the case of a 17-year-old girl belonging to a scheduled caste in January 2013. The girl was abducted, drugged, and raped in Manipur.

After AHRC’s intervention the police registered a case. But, no action followed. Furthermore, the police avoided registering a case against the accused under the strong provisions of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989.

Deep-rooted corruption in the bureaucracy, particularly within the law enforcement agencies in which jobs and positions are sold for bribes, has promoted impunity. As women and children are the most vulnerable in the socio-political landscape of India, mere legislative amendments cannot improve their condition unless reforms are made to the criminal justice framework. Unfortunately, this is not a priority for the Government or for a large section of the civil society in India.



### ***c. Threat to Rights Defenders***

Threats to the life and person of human rights defenders in India are not news. The AHRC has reported numerous cases from India during the year. Human rights defenders are harassed, summoned, and monitored by state police commandoes without legal sanction. Fabrication of charges against human rights defenders is a common practice in India. The landmark judgment in *D.K. Basu vs. Government of West Bengal* in 1996 directs that there can be no summoning of innocent people without a warrant or a letter of summons. Yet, the practice continues.

There are no legislative or institutional frameworks providing effective protection to human rights defenders in India. Should the country's justice system function properly, there would be no need for additional measures to provide protection to human rights defenders. However, in the absence of such a safety net the frontline defenders of human rights are subjected to abuse of legal process.

For instance, the Criminal Procedure Code, 1973, mandates that a person can be arrested only when the investigating agency has reasonable suspicion that the person has committed an offense. Upon arrest, the state agency cannot resort to torture and has to inform the detainee and a person of the detainee's choice about the reason for arrest; the place where the person would be detained; and the court in which the person will be produced within 24 hours as mandated in the Code. However, in India, where none of these procedural safeguards are observed and law is abused to harass individuals, human rights defenders fall easy prey to law-enforcement agencies.

In addition, the country has liberally legislated and adopted security legislations from the colonial past. The National Security Act, 1980, is an example. These laws exempt procedural safeguards of arrest and detention and leave initial adjudications that have devastating effects upon individual freedoms, such as the right to bail.

For instance, the Chhattisgarh Special Public Security Act, 2005, authorises a District Magistrate<sup>65</sup> to decide whether a person should be released on bail once charged with an offense punishable under this law. Such laws also give a very low threshold for defining a crime. For instance, under the Chhattisgarh

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65 An executive officer of the state, not a judicial magistrate

special law media personnel can be charged for reporting an incident that the state considers unlawful activity. What is unlawful is left for the executive officer of the state to decide. By the time an act by the state under such a law is successfully challenged, say by way of a writ application to the High Court, the person detained could be in custody for months and the damage done.

## **Conclusion**

The debates that followed the Delhi gang rape in 2012 for once brought some attention to the requirement for comprehensive reform to the criminal justice architecture in the country. The incident exposed every conceivable dimension of the Indian state's inability to ensure safety with dignity and equality to each one of its citizens.

However, the Government's attempts post incident have been limited to the window-dressing act of legislative amendment prescribing severe punishment for sexual offences to pacify the ill-informed section of civil society, politicians, and a large section of the country's media.

A group of civil society actors, which includes the AHRC, that demanded a thorough review of India's criminal justice policy. The basic premise of criminal justice reforms is that it is the certainty of punishment, not the severity of it, which prevents crime. It also implies, that, at the moment, the country's criminal justice architecture, which depends on use of brute force and confessions, is thoroughly incapable of serving a democracy and the cause of justice. It further means that only in a society that does not advocate and operate along the contours of an eye for an eye, concepts like individual freedom, equality, and security with dignity has achievable meaning.

Given the prevailing circumstances in India, and the manner in which the country's criminal justice machinery functions, one need not hesitate to conclude that the country's criminal justice process has debilitating problems which require correction.

Any adjudication of guilt of a person begins with a complaint. Crimes registered for all offences at the instance of a private citizen or of the state are complaints. The principle, thus, is that the complaint registering entity should entertain complaints, be able to record them professionally, and be equipped to deal with them immediately.

How does the single largest complaint receiving entity in India, fare in light of this fundamental?

Police, the very mention, does not infuse confidence in Indians. On the contrary, it generates fear and repulsion. Police stations are notorious for their secretive, fear-generating environments. None would wish to get involved a police station, as complainant, witness, or suspect. To approach this agency people scramble for extraneous support, often in the Indian context, by approaching a local politician. Before approaching the police, ordinary people also ask around what amount of bribes are to be paid to the police – the station house officer, a constable, the driver of the police vehicle, the Sub Inspector of Police, the Circle Inspector, or the Superintendent of Police.

People make these inquiries irrespective of what the person would want to do at the police station. Despite all this, there is no guarantee that the police will do what they are expected to do, according to the law or otherwise. Any person approaching the police runs the risk of being shouted at, humiliated, tortured, raped, and implicated in fabricated charges. Instances where people have lost lives at the hands of the police they have approached to seeking from are not rare.

The fear that women facing domestic abuse feel, causing them to seldom approach the police to make a complaint since they are afraid of being raped in police stations, is real. If women in India feel they are not safe in the company of the police, it is time they collectively stand up and demanded that the Government change this fact. Mere increase in the number of women police officers is not a solution. It is based on the incorrect presumption that women may better protect women and women in distress talk more openly with women. It is incorrect to make such an assumption, particularly in India, since what is wrong is with the entire institution, and its continuing history, not just its gender balance or in the nature of crime.

If criminal investigation in India has serious problems that need to be addressed, the legal minds in the country also suffer from severe dysfunction. The most recent example is the protest by the Delhi Bar, when the suspects in a rape case reported from Delhi in December 2012 were brought to trial. A number of lawyers argued with and tried to manhandle the lawyers who were willing to appear on behalf of the accused, demonstrating their disregard of the rule of law and due process. Such lawyers have no place in the profession, and the Bar Council of India should consider disqualifying them from the profession. Where standards of the profession are maintained such conduct

would not be taken lightly. In India, standards across the criminal justice system are the exception.

The Government of India has made its criminal justice apparatus rot, keeping it thus as pliable as possible. This benefits only criminals in the ruling class. Having no policy of reforming the criminal justice system is India's policy. This must change.

The criminal justice institutions of the country need reform to enable them to:

- (i) encourage and accept complaints;*
- (ii) equip and expand the capacity of these institutions to investigate and prosecute complaints;*
- (iii) revitalise the judicial system, so that adjudications conclude within reasonable times spans, and so that the concept of justice is preserved, rather than decayed in court corridors;*
- (iv) fasten accountability – augmented, if required, by legislative processes like criminalising torture;*
- (v) allow the Government to think and behave in manners that fit a democratic state, and not an authoritarian regime.*

This can only occur if the country realises what was achieved on 15 August 1947 was not a change of guard at New Delhi, but the establishment of the fundamental right of every Indian to live in a democratic country which respects, by guarantee and action, individual freedom and safety with dignity. It is only then that the preamble of the Indian Constitution would, in letter and spirit, reflect what the body of its text guarantees. Until then, every Indian, now and in the future, will live an undignified life in a pseudo democracy.



# CHAPTER III



ASIAN HUMAN RIGHTS COMMISSION

# INDONESIA



# INDONESIA

## DEMOCRACY INCOMPLETE: IGNORED HOMEWORK IN 15 YEARS OF REFORM

### Introduction

Indonesians have witnessed 15 years of reforms, which began with the resignation of the country's second President, General Soeharto, in 1998. Following the crumbling of the authoritarian regime, major changes in different aspects of the government took place. The Constitution was amended, the power of government was decentralised, relatively fair and democratic elections were held, new laws were enacted, outdated laws were repealed, and several new institutions were established. In comparing Indonesia today with what the country was like before, any claim that the country was more democratic under the administration of Soeharto would be difficult to defend.

The democracy Indonesians enjoy today, however, is an incomplete one. In his book, *Democracy and Democratisation*, Georg Sorensen introduced the terminology "restricted democracy" which is relevant to the context of Indonesia. According to Sorensen, restricted democratic countries have "some democratic elements but also with limits on competition, participation and liberties" and are frequently "characterised by the presence of elite groups whose members reserve the right to interfere in the democratic process in order to protect their interests".<sup>66</sup>

Referring to events in the country in 2013 – particularly those related to human rights – this report highlights aspects of democracy that have been missing and ignored in the 15 years of reform in Indonesia. The discussion will focus on three subjects: need for further police reform, unreliability of the judiciary, and restricted liberties. This report does not intend to convey that Indonesia will be a fully democratic country when these three issues are addressed; it recognises that democracy is an ambitious goal requiring substantial reforms in various

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66 Georg Sorensen, *Democracy & Democratization – Processes & Prospects for the Changing World*, Westview Press, p. 46, 2nd edition, 1998.



aspects of the governance. This report wishes to assure, instead, that without addressing the three aforementioned problems, it is perhaps premature for Indonesia to claim itself as a country upholding democracy.

The issues of police reform and independence of judiciary are chosen to be specifically discussed in this report not because the Asian Human Rights Commission (AHRC) perceives the respective institutions as the only state organs responsible for human rights violations in Indonesia. In 2013 the AHRC also documented human rights violations perpetrated by other state organs. These include the Cebongan case in which military officers forcibly rushed into a correctional facility and shot dead four detainees;<sup>67</sup> the torture of inmates by prison guards at Abepura prison, Papua;<sup>68</sup> and the torture of Riko Yandra in West Sumatra.<sup>69</sup> However, this report will not elaborate these subjects or other similar cases. It will instead discuss policing and judicial institutions, because those two state organs play significant roles in upholding democracy and human rights, as well as in enforcing law and providing justice for individuals whose rights have been violated.

## **Partial Police Reforms**

One of the significant measures that took place during the reform period was the separation of the police from the military, legally marked by the enactment of Presidential Instruction No. 2 Year 1999. The Instruction was later followed up by the enactment of a Presidential Decree No. 89 Year 2000, as well as two decrees of the People's Consultative Assembly (MPR) reaffirming the need for the separation of the two institutions. In the same year such decrees were enacted, the 1945 Constitution was amended for the second time. Article 30 of the amended Constitution clearly distinguishes the duties of the police and the military: whereas the former is responsible for protecting, guarding and serving the people, and for upholding the law, the latter's responsibilities are "to defend, protect, and maintain the integrity and sovereignty of the state". Three

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67 'INDONESIA: Military shoot four detainees to death and beat prison guards in Sleman', AHRC Urgent Appeal AHRC-UAC-066-2013, 2 May 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-066-2013>.

68 'INDONESIA: Guards torture 20 prisoners at the Abepura Correctional Facility, Papua', AHRC Urgent Appeal AHRC-UAC-025-2013, 22 February 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-025-2013>.

69 'INDONESIA: A tortured inmate and his family in West Sumatra are under threat for seeking justice', AHRC Urgent Appeal AHRC-UAC-136-2013, 15 October 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-136-2013>.

separate laws further regulating the duties and the roles of both institutions were enacted in the years after. Laws on Indonesian National Police and National Defence were enacted in 2002, whereas a law specifically regulating the Indonesian Military was enacted only in 2004.

The reform of the police, unfortunately, is only happening at the regulatory level without affecting people in their daily lives. Despite the separation, for instance, the police have been criticised by human rights and policing watchdogs for their militaristic approach in performing their duties.<sup>70</sup> Amongst other excesses, the police have been criticised for executing criminal suspects in unnecessary circumstances. Consider a case that took place in end December 2012, in Papua, where a pro-independence activist, Hubertus Mabel, was killed by police officers allegedly attached to the police anti-terrorism unit, the 88 Detachment.<sup>71</sup> A report submitted by local activists to the AHRC reveals that Hubertus, who was unarmed, was forced to lie on the ground and had his legs shot by the police. The report also claims that Hubertus was stabbed in his chest. However, the spokesperson of Papua Regional Police claimed to the media that Hubertus had attempted to attack and obtain the firearm of the police officers and that “one of the special team members then shot him in the foot in order to immobilize him”.<sup>72</sup>

Five months after the shooting of Hubertus, two brothers in Medan suspected in a drugs crime case, were shot to death. The police argued that one of the brothers was attempting to attack the police officers with a knife while the other was attempting to escape. This contradicted the video of the arrest broadcasted by local media that showed no resistance by the brothers.<sup>73</sup> In the same month, April 2013, the police in South Sumatra opened fire against

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70 See, for instance, ‘Indonesian police reform – towards a more democratic policing’, a position paper prepared by the Coalition of Indonesian NGOs for Police Reform, 2008.

71 ‘INDONESIA: Another pro-independence activist killed in custody – police fabricate a story to justify the killing’, AHRC Urgent Appeal AHRC-UAC-203-2012, 21 December 2012, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-203-2012>.

72 ‘Arsons, Gunshots Following Death of Papua Activist’, *The Jakarta Globe*, 17 December 2012.

73 ‘INDONESIA: Police shoot two brothers to death in Medan, questions arise on the proportionality and necessity of the measure’, AHRC Urgent Appeal AHRC-UAC-071-2013, 20 May 2013, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-071-2013>.

peaceful protests in Musi Rawas which resulted in the death of four civilians.<sup>74</sup> Following the incident, the spokesperson of South Sumatra Regional Police, Djarod Padakova, claimed that the shooting was conducted in accordance with police standard operational procedures.

Along with similar cases that have taken place in the years of reform, these cases reflect the need for Indonesia to have a mechanism in which the use of firearms by the police in the name of law enforcement can be independently reviewed. At the moment, police are given the authority to make a unilateral claim that the lethal use of firearms by their officers is justifiable, without any possibility for anybody to challenge such claim effectively. Under the current law and regulation, police officers who have employed both lethal and non-lethal force are only obliged to report to their supervisor for internal evaluation. A criminal investigation is unlikely to take place as complaints from victims can only be submitted to the police.



Selly Satria Aprianto or Kiki, one of the brothers shot dead by police in Medan.  
(Courtesy: LBH Medan)

The absence of independent and effective mechanism to investigate and review the use of lethal force by the police in Indonesia is contrary to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>75</sup> It also violates the right to life, which under international law obligates the state to conduct effective investigation particularly in cases “where state officials have been responsible for the taking of life, or where it is alleged that they have colluded with others to bring about a death.”<sup>76</sup>

<sup>74</sup> ‘INDONESIA: Justice denied due to the absence of independent mechanism to examine summary execution allegations’, joint written statement of the Asian Legal Resource Centre & KontraS to the 23rd Session of the UN Human Rights Council, 21 May 2013 <http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc23/ALRC-CWS-23-03-2013>.

<sup>75</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, paras. 22-23.

<sup>76</sup> INTERIGHTS, The right to life under the European Convention on Human Rights (article 2), p. 41, Aug. 2011.

Lack of an independent investigation and review mechanism is also relevant in the cases of torture perpetrated by police officers in Indonesia. Torture victims and their families have their access to justice hampered by the current arrangement where torture complaints against police officers – either criminal or administrative in nature – can only be investigated by other police officers. Such arrangement has proven to be ineffective in Indonesia where torture is widely practised, mainly by police officers against criminal suspects.

For example, in mid February 2013, seven Papuans in Depapre were reported to have been arrested and tortured by police officers in two separate incidents.<sup>77</sup> Daniel Gobay, Arsel Kobak, and Eneko Pahabol were arrested by five police officers driving a silver painted car on 15 February 2013 at 9 a.m., and Yosafat Satto, Salim Yaru, Matam Klembiap, and Obed Bahabol were arrested an hour later on the same day. Reports from local activists, as well as information obtained by the AHRC from a phone conversation with one of the tortured Papuans, have revealed that the police stripped, beat, kicked, and electrocuted the victims while interrogating them. The police used torture to try and force them to divulge information regarding the whereabouts of Papuan pro-independence activists Sebbay Sambom and Terianus Satto. None of the tortured Papuans have any relationship with the activists. The police themselves later released five of the seven Papuans due to lack of evidence, yet continued detaining the remaining two. The charges imposed on the two Papuans, however, did not have anything to do with their involvement in a pro-independent movement as the police had initially falsely accused.

A few months earlier, in November 2012, the AHRC documented the torture case concerning Frengky Uamang, who was kicked, beaten, and harassed at gun-point by around 10 police officers in Mimika, Papua, also on the false allegation that he was involved with pro-independence group the Free Papua Movement (*Operasi Papua Merdeka*, OPM).<sup>78</sup> In March 2013, two teenagers named Alpons Gobay and Menny Gobay were arrested and physically assaulted

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77 'INDONESIA: Seven Papuans are arrested and tortured on false allegations of having a relationship with pro-independence activists', AHRC Urgent Appeal AHRC-UAC-024-2013, 19 February 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-024-2013>.

78 'INDONESIA: A Papuan was tortured on the unreasonable allegation of engagement with separatist group', AHRC Urgent Appeal AHRC-UAC-201-2012, 11 December 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-201-2012>.

on the same accusation.<sup>79</sup> Shortly after the teenagers' arrest and torture, the spokesperson of the military wing of the pro-independence organisation Leo Yeimo made a public statement that none of their members have been arrested, indicating non-involvement of both Alpons and Menny Gobay in the organisation's activity.

Cases of torture and arrests based on false allegations do not take place exclusively in Papua but also in other parts of Indonesia. Yet, the nature of criminal charges imposed on victims of fabricated charges and torture in other parts of Indonesia outside Papua tend to be less political or not political at all. Syamsul Arifin from Surabaya, for example, was beaten, strangled, and suffocated by four officers from East Java Regional Police. They forced him to confess to the theft of a television.<sup>80</sup> The theft case was examined by a panel of judges at Surabaya District Court. The judges ruled that Syamsul was not guilty and should be acquitted. The judgment was reaffirmed by the Supreme Court following an appeal request by the prosecutor.

In mid 2013, public was shocked by the case of 72-year-old Ruben and his sons who were stripped naked and subjected to repeated beatings by officers from Tana Toraja Sub-District Police. The police officers falsely accused them of being responsible for a murder.<sup>81</sup> The false accusation later led to the courts punishing Ruben and one of his sons with the death sentence. It became public only in 2013 that the real perpetrators of the murder had earlier made a statement claiming that Ruben and his son were not involved in the crime.

In September 2013, based on the report submitted by the Jakarta-based human rights NGO, KontraS, the AHRC documented another torture case which was allegedly based on false accusation. In June 2013, over 10 officers from Jakarta Metropolitan police were reported to apply beatings and electric shocks with

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79 'INDONESIA: Two teenagers are arrested and detained for two weeks over fabricated charges in Paniai, Papua', AHRC Urgent Appeal AHRC-UAC-048-2013, 22 March 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-048-2013>.

80 'INDONESIA: Victim of torture and fabrication of charges in Surabaya is left without reparation', AHRC Urgent Appeal AHRC-UAC-056-2013, 5 April 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-056-2013>.

81 'INDONESIA: A 72-year-old man and his son sentenced to death penalty on fabricated charges', AHRC Urgent Appeal AHRC-UAC-093-2013, 3 July 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-093-2013>.

the aim of obtaining confessions from a young adult and five teenagers in a murder case.<sup>82</sup>

These cases reveal the link between the use of torture and framing of individuals or fabrication of charges in Indonesia. This is not to say that torture in Indonesia only takes place when the police wish to obtain false confession. Jakarta Legal Aid Institute (LBH Jakarta) has released research revealing that around 80% of the detainees in Indonesia have been subjected to torture regardless of their guilt.<sup>83</sup> The identification of a close link between torture and framing or fabrication of charges, however, may be helpful in understanding the root of the problem, which in turn may help in the process of establishing mechanisms to prevent torture.

In 2010, the UN Special Rapporteur on Torture, Manfred Nowak, wrote a report entitled 'Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention'. This particular paragraph of the report is relevant to the context of Indonesia:

*"The resort of torture becomes a tempting option for an individual police officer due to a fatal combination of various elements: 1) officers are under considerable pressure from their superiors, judges, prosecutors, politicians, the media and the general public to solve cases; 2) the lack of state of the art equipment or knowledge of modern investigation techniques (e.g. DNA evidence); and 3) the absence of safeguards, such as the de facto admissibility of evidence obtained under torture or non-representation by a lawyer during interrogation, make the extraction of a confession the most expeditious means of "solving" a case. Furthermore, in many countries I visited, perpetrators of torture were motivated by a profane mix of financial or professional self-interest. The advancement of one's own job position and the promotion to a higher rank and salary is often dependent on the amount of cases solved."*<sup>84</sup>

In an interview with the AHRC this year a victim of torture and fabrication of charges, Syamsul Arifin, raised the allegation that his framing and torture

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82 'INDONESIA: Jakarta police apply beatings and electric shocks to obtain confessions from teenagers and a young adult', AHRC Urgent Appeal AHRC-UAC-124-2013, 23 September 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-124-2013>.

83 'LBH: 83 persen tersangka alami penyiksaan', Vivanews, 19 September 2008.

84 Manfred Nowak, 'Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention', para. 61, A/HRC/13/39/Add.5, 5 February 2010.

were related to the assessment of performance and promotion of police officers in East Java.<sup>85</sup> He has learned that the police have set a target of how many people they will arrest in a month and that those who fail to meet the target would be humiliated at police internal meetings. Syamsul believes that it has led to framings of innocent individuals like him. He was arrested around the time Untung S. Rajab, the then Chief of East Java Regional Police, was newly appointed to his post. The Chief himself was known for high number of arrests of alleged criminals in his jurisdiction. After only three months he was promoted to Chief of Jakarta Metropolitan Police.

Syamsul is not the first person who has raised the allegation of a link between promotion of police officers and fabrication of charges. Whereas, so far there has been no way to prove the allegation to be true, it is also difficult to repudiate it, given the obscurity and non-transparent police promotion mechanism. To national media Kompas, a member of National Police Commission, Hamidah Abdurrahman, has recently mentioned that there being “unhealthy competition” amongst police officers in order to secure certain positions in the institution.<sup>86</sup>

Elements identified by the Special Rapporteur on Torture as reasons why police resorted to torture tell us that the abolition of torture does not only call for the enactment of laws or the establishment of an independent and effective complaint mechanism. Police reforms should also follow to the extent that the mechanism for promotion of police officers is clear, is not arbitrary, and is fair. Criminal investigation methods should also be modernised and training for police officers should be advanced. Similarly, in order to address the problem of extrajudicial execution and arbitrary use of firearms by police officers, measures needed to be taken beyond the creation of an independent and effective review mechanism. In accordance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, a broad range of means to handle resisting criminal suspects or demonstrations should be developed and the police officers should be equipped with various types of weapons and ammunition so resorting to lethal measures will be a last resort.

Police reform should also imply reform of recruitment mechanisms and criteria for selecting new officers. With the possibilities of applicants to use bribes in order to secure a seat in the Indonesian police academy, recruitment of new

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85 Syamsul Arifin, ‘A torture victim’s story of his quest for justice’ in ARTICLE 2, *A façade of justice for torture victims in Indonesia*, p. 40-44.

86 ‘Kompolnas: Ada Jabatan Eksklusif di Tubuh Polri’, Kompas.com, 19 November 2013.



officers is known not to be based on proper screening procedures. Individuals who do not have appropriate moral, psychological, and physical qualities, are therefore selected, and they remain in the policing institution because there is no periodic review after they are recruited to assess whether they have – or retain – the qualities needed. Coupled with fact that Indonesia is lacking an independent mechanism to investigate criminal complaints against police officers, these factors may explain how in many instances police officers often perpetrate violence in circumstances unrelated to their duty of enforcing the law but merely to exhibit their power or “superiority”.

Towards the end of 2013, for instance, national media reported the shooting of a security guard by a police officer in Cengkareng.<sup>87</sup> It was reported that the security guard was shot dead as he refused the officer’s orders to do some push-ups and give a salute. The AHRC notes that similar cases took place in 2013 in which police officers perpetrated violence against individuals in circumstances not related to their duty to enforce the law. In Papua alone there were at least four incidents in 2013 where police officers beat up and shot individuals for petty reasons. These include the shooting of a Papuan suffering from mental illness in Paniai<sup>88</sup> and the beatings of a Bintang Papua journalist merely for petty misunderstandings.<sup>89</sup>

## Unreliability of the Judiciary

The reforms that took place following the fall of Soeharto extended to the judicial institutions. A Constitutional Court mandated to review the constitutionality of laws promulgated by the executive and the parliament was established in 2003. In order to guarantee the independence of the judiciary, the power to administer remuneration of judges was shifted from the executive under the Department of Judiciary to the Supreme Court in 2004. In the same year, the President’s authority to appoint judges was also scrapped.

In his report to the General Assembly, the UN Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, listed the “parameters

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87 ‘Anggota Brimob tembak satpam hingga tewas’, *Antaraneews.com*, 5 November 2013.

88 ‘INDONESIA: Police in Jayawijaya shoot a mentally ill Papuan to death’, AHRC Urgent Appeal AHRC-UAC-111-2013, 20 August 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-111-2013>.

89 ‘INDONESIA: Police officers beat up a journalist in Enarotali, Papua’, AHRC Urgent Appeal AHRC-UAC-113-2013, 23 August 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-113-2013>.



to effectively guarantee the independence of judges”.<sup>90</sup> The parameters include the independence of the judicial function from other branches, guarantee of judicial independence at the constitutional level, and the independence of judicial budget – all of which are legally guaranteed in “reformed” Indonesia. Despite ticking all the boxes in the list, the judiciary in the country has yet to become as independent as it is supposed to be. The judgements concluded are often heavily influenced by other state institutions or by illegal practices, such as corruption and bribery.

In the end of January 2013, Muaro Sijunjung District Court delivered its judgment on the case of torture to death of two minors which took place two years earlier, in 2011. In the judgment delivered on 29 January 2013, the court sentenced four police officers to punishment of between 18 months to three years of imprisonment.<sup>91</sup>

The court found that the four officers were responsible for physical assault prohibited under Article 351 (1) of the Penal Code. A few months following the judgement in the Sijunjung case, Tangerang District Court concluded its examination in the case of Yusli who was tortured and shot to death in December 2011.<sup>92</sup> A panel of judges at Tangerang District Court found two police officers responsible for physically assaulting Yusli, and another officer was responsible for shooting him to death. The first two police officers were sentenced to two years of imprisonment, whereas the shooter was sentenced to five years of imprisonment.



Brother of Faisal and Budri, two minors who were tortured to death in Sijunjung Police Station.  
(Courtesy: Monicha Lelly Awang / AHRC.)

Due to the absence of an independent investigation mechanism for cases of torture perpetrated by the police, torture cases in Indonesia are hardly ever

90 Leandro Despouy, ‘Report of the Special Rapporteur on the independence of judges and lawyers’, see paras. 14-84, A/HRC/11/41, 24 March 2009.

91 Cases No. 135/Pid.B/2012/PN.MR and No. 136/Pid.B/2012/PN.MR, Sijunjung District Court, 29 January 2013.

92 ‘INDONESIA: Lenient punishment for police officers who tortured and shot a young man to death’, AHRC Urgent Appeal AHRC-UAC-2013, 23 May 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-015-2013>.

brought before the court. Given this, one may argue that the conviction and punishment of police officers in Sijunjung and Yusli cases are remarkable. The devilry, however, lies in the details. Although the court found the four officers in the Sijunjung case responsible for committing physical assault against Faisal and Budri, it upheld that the death of the two minors was not attributable to the officers. Instead, the judges who examined the case accepted the officers' claim that the minors had hung themselves, ignoring the findings of an investigation conducted by the National Human Rights Commission (Komnas HAM) and LBH Padang, which concluded that the death was unlikely to be a case of suicide. The same denial of truth that existed in the legal proceedings and judgement in the torture case of Erik Alamsyah, concluded last year, was rerun in the Sijunjung case.

Similarly, the judges of Tangerang District Court who examined Yusli's case accepted the police claim that Yusli was accidentally shot dead as he was attempting to wrestle a gun away. The acceptance was conducted without any deep examination and based merely on the accused police officers' statement. The court accepted the police officers' claim without taking into consideration the testimony from a legal expert or other relevant facts pointing out that the shooting was actually deliberate.

In May 2013, Banten High Court reduced the punishment imposed by Tangerang District Court on the three police officers.<sup>93</sup> The two officers who were "only" responsible for assaulting Yusli had their sentence reduced to one year imprisonment whereas the other officer held responsible for shooting Yusli had his sentence reduced to three years of imprisonment. The high court judges justified the reduction by reasoning that the perpetrators in this case were merely "performing state's duty".

Whilst the Indonesian judges tend to be forgiving and soft in criminal cases against police officers, they are harsh when imposing judgment against common people. South Jakarta District Court sentenced four boys to 3 to 4 years of imprisonment for a murder they did not commit.<sup>94</sup> In arriving at this

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93 Cases No. 54/PID/2013/PT.BTN, No. 55/PID/2013/PT.BTN, No. 56/PID/2013/PT.BTN, Banten High Court, 21 May 2013. See also 'INDONESIA: Banten High Court reduces punishment for police officers who tortured and shot a man to death' AHRC Urgent Appeal AHRC-UAU-027-2013, 4 October 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-028-2013>.

94 'INDONESIA: Jakarta courts sentence innocent teenagers for murder, ignoring torture claims', AHRC Urgent Appeal Update AHRC-UAU-034-2013, 17 December 2013, available on <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-034-2013>.

judgment, the judges ignored evidence that indicates the innocence of the boys. During the hearing, lawyers from LBH Jakarta representing the accused boys presented the court with a printout of a Facebook conversation between one of the real murderers and his friend. In this conversation, the murderer has admitted to his responsibility for the killing and has confirmed the innocence of the four boys. The judges did not take this evidence into consideration. A similar attitude has been displayed by officers of Jakarta Metropolitan Police who have been reluctant to name the real perpetrator as a suspect, despite the perpetrator having surrendered.

In the hearing, the four accused retracted the statements they made earlier to the police which mention their having committed the murder. The boys claimed that the statements were made under threat and coercion. LBH Jakarta had reported that the boys were beaten and electrocuted before being interrogated by officers of the Jakarta Metropolitan Police. The judges, however, did not take the torture claim seriously. They merely ordered a police officer to testify and accepted his testimony that the four boys were never tortured.

What has happened between the police and the judges in this case, as well as in the cases of Sijunjung and Yusli, is unknown to the public. However, the judgments of the courts which were unreasonably in favour of the accused police officers, along with the judges' reluctance to conduct in-depth examination in the cases, raise the suspicion that there might be interference during the legal proceeding. After all, interference in ongoing legal proceeding is nothing uncommon in Indonesia, even after "legal reform". As reported by *The Age*, the US diplomatic cables leaked by the Wikileaks in 2011 indicated that the Indonesian President Susilo Bambang Yudhoyono "has personally intervened to influence prosecutors and judges to protect corrupt political figures and pressure his adversaries."<sup>95</sup> President Yudhoyono was reported, for instance, to have instructed the then Attorney General not to pursue a corruption case involving a well-known politician and the late husband of former President Megawati.

More recently, the Chief Justice of the Constitutional Court, Akil Mochtar, was arrested in early October 2013 over allegations of taking bribes related to several local election disputes.<sup>96</sup> The Corruption Eradication Commission

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95 'Yudhoyono 'abused power', *The Age*, 11 March 2011.

96 See, amongst others, 'MK Chief Justice, Golkar lawmaker arrested for bribery charges', *The Jakarta Post*, 3 October 2013 <http://www.thejakartapost.com/news/2013/10/03/mk-chief-justice-golkar-lawmaker-arrested-bribery-charges.html>.

(*Komisi Pemberantasan Korupsi*, KPK) is presently continuing to investigate the extent of corruption and bribery in the Constitutional Court. The KPK has also been investigating a bribery case involving two personnel at the Supreme Court who have allegedly received IDR 150 million (approximately US\$ 12,800) from an advocate of a well known law firm in Jakarta. One of the Supreme Court staff claimed that a judge was also involved in the case and even asked for extra money.<sup>97</sup>

The Commission has earlier named suspect judges from different courts which include two *ad hoc* judges responsible for examining corruption cases in anti-corruption courts. Last year the Commission arrested Kartini Marpaung, an *ad hoc* judge of Semarang court, who accepted bribes while examining a corruption case involving the Grobogan legislative council speaker, M. Yaeni. She was arrested by the KPK in August 2012 along with another *ad hoc* judge of Pontianak anti-corruption court.<sup>98</sup> Kartini was sentenced to eight years of imprisonment in April 2013.<sup>99</sup> Only few months later in September 2013, her fellow *ad hoc* “anti-corruption” judge, Asmadinata, was also arrested by the KPK.<sup>100</sup> Both Kartini and Asmadinata were reported to have acquitted the accused in several corruption cases.<sup>101</sup>

In a positive view, the arrests of corrupt judges including those sitting at high level courts indicate attempts to eradicate corruption in the country. However, at the same time, the fact that legal judgment could be purchased raises doubt on how reliable the Indonesian judiciary is in providing justice. On paper, indeed the judiciary is separated from other government branches. Yet, in practice, its independence is corroded by power and money.

There are indeed examples in which the legal efforts of common people with no power or money could lead to the punishment of state officials engaging in human rights abuses, as in the cases of Yusli and Sijunjung. However, the “justice” delivered in these cases was conditional. The conviction and punishment in these two cases could only take place since there were enormous and intractable efforts from the families of the victims to demand justice, as

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97 ‘Hakim Andi Ayyub disebut minta tambahan uang urus kasasi’, *Kompas.com*, 21 October 2013 <http://nasional.kompas.com/read/2013/10/21/2316296/Hakim.Andi.Ayyub.Disebut.Minta.Tambahan.Uang.Urus.Kasasi>.

98 See, for instance, ‘KPK Tangkap 2 Hakim Tipikor di Semarang’, *Kompas.com*, 17 August 2012.

99 ‘Hakim Kartini Marpaung Divonis 8 Tahun Penjara’, *Tempo.co*, 18 April 2013.

100 ‘KPK Jemput Paksa Hakim Ad Hoc Tipikor Palu’, *Kompas.com*, 10 September 2013.

101 ‘Ini Daftar ‘Hitam’ Hakim Kartini Marpaung’, *Republika.co.id*, 18 August 2013.

well as strong pressure and strict scrutiny from the public. This surely indicates Indonesian's dynamic civil society and reflects the fact that the public still have bargaining power over its rulers. However, the task of an independent judiciary to deliver justice should not depend on such externalities.

## Some Liberties for Some

Dispersal of peaceful protests took place in various parts of Indonesia in 2013. In end January this year, a peaceful protest attended by activists from different organisations, including WALHI South Sumatra and Sriwijaya Farmers Union of Banyuasin Regency, was violently dispersed by officers from South Sumatra Regional Police.<sup>102</sup> A report received by the AHRC claimed that at least eleven activists and farmers attending the protests were injured. One of them was Anwar Sadat, the Executive Director of WALHI, who was beaten with fists and truncheons. As a result, his head suffered injury and bleeding. Along with other 25 protesters, Anwar Sadat was arrested by the police. Fourteen of them were released the next day, whereas some others were charged. Anwar Sadat and his colleague in WALHI, Dedek Chaniago, were convicted for incitement and sentenced to 7 months imprisonment by the district court. At the appeal level, the South Sumatra High Court reaffirmed the conviction but reduced the punishment to 5 months of imprisonment.<sup>103</sup>

Forced dispersal of peaceful protests and arrest of participating protesters also took place in Papua. The police, for instance, dispersed protests conducted simultaneously in several parts of Papua, ironically in commemoration of the International Day of Democracy in September.<sup>104</sup> Following the dispersal, 71 people were arrested. They were released after being detained for few hours. Protests conducted by student activists in Jayapura in November this year also resulted in the arrest of several student activists and the charge of five of them.

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102 'INDONESIA: Police use excessive force during a peaceful protest in South Sumatera resulting in the severe injury of an environmental activist and others', AHRC Urgent Appeal AHRC-UAC-010-2013, 30 January 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-010-2013>.

103 'Anwar Sadat dan Dedek Chaniago nyatakan kasasi atas putusan banding Pengadilan Tinggi', 17 July 2013, WALHI Sumsel, <http://walhi-sumsel.blogspot.hk/2013/07/anwar-sadat-dan-dedek-chaniago-nyatakan.html>.

104 'INDONESIA: The police in Papua arbitrarily arrest protesters and disperse peaceful demonstrations commemorating the International Day of Democracy', AHRC Urgent Appeal AHRC-UAC-123-2013, 18 September 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-123-2013>.

According to a report by a local activist forwarded to the AHRC, the five student activists were charged with “offensive treatment” under Article 335 of the Indonesian Penal Code.

Earlier, in a peaceful protest on 1 May 2013 in Sorong commemorating Indonesia’s occupation on West Papua, the Indonesian security forces shot two Papuan protesters to death and injured three others.<sup>105</sup> A parallel protest in Biak was reported to be forcibly dispersed. Papuan Behind Bars reported six activists involved in the protest were arrested and imprisoned for raising the Morning Star flag, the Papuans’ pro-independence symbol. In Timika, at least five protesters were arrested and imprisoned for a similar reason whereas an unknown number of activists were arrested in Jayapura.<sup>106</sup>

Responding to such crackdown on mass demonstrations in Papua, the UN Human Rights High Commissioner Navi Pillay stated that “these latest incidents are unfortunate examples of the ongoing suppression of freedom of expression and excessive use of force in Papua.”<sup>107</sup> She further called for the Indonesian government to allow peaceful protest and international journalists into Papua, to hold accountable the individuals involved in the abuses, and to facilitate visits by the UN Human Rights Council Special Procedures. During the session of review of the implementation of the International Covenant on Civil and Political Rights (ICCPR) by the UN Human Rights Committee, a member of the Indonesian government delegation affirmed the restriction on freedom of expression in Papua and insisted that such restriction is necessary to maintain state sovereignty and territorial integrity of Indonesia.<sup>108</sup>

Forced dispersal of peaceful and lawful activities in Indonesia is performed not only by police or military officers but also non-state actors such as youth and religious organisations. In Bekasi, a national labour strike and protest in the

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105 Alex Rayfield, ‘Papuans mourn 50 years of Indonesia occupation’, *West Papua Media Alerts*, 1 May 2013 <http://westpapuamedia.info/2013/05/02/papuans-mourn-50-years-of-indonesian-occupation/>.

106 As claimed on [http://www.papuansbehindbars.org/?page\\_id=17](http://www.papuansbehindbars.org/?page_id=17), accessed on 3 December 2013.

107 ‘Indonesia must allow peaceful protests in Papua, stresses UN rights chief’, *UN News Centre*, 2 May 2013 <http://www.un.org/apps/news/story.asp?realfile/www.unodc.org/html/html/story.asp?NewsID=44812&Cr=indonesia&Cr1=#.Uo8fD9JHKog/>

108 ‘Indonesia affirms restrictions to freedom of expression in Papua to UN Human Rights Committee’, joint press release by Fransiscans International, Human Rights and Peace for Papua (ICP), Imparsial, KontraS, Tapol and the West Papua Network, 11 July 2013, <http://humanrightspapua.org/news/13-2013/49-indonesia-affirms-restrictions-to-freedom-of-expression-in-papua-to-un-human-rights-committee>.

end of October and early November was violently dispersed by members of Youth Pancasila (*Pemuda Pancasila*, PP), a paramilitary organisation involved in the purge of “communists” in Indonesia in 1965-1966. In an interview with the AHRC, the President of the Confederation of Indonesian Workers’ Union (*Konfederasi Serikat Pekerja Indonesia*, KSPI), Said Iqbal, has said that there were 28 workers who were slashed and attacked and three of them were critically injured.<sup>109</sup> There were reports that the police allowed the attack to take place by failing to take measures against the members of Youth Pancasila who were carrying axes, machetes, and big wooden sticks on the day of the attack.

A few days prior to the violent dispersal of labour protest in Bekasi, a meeting held in Yogyakarta by victims of the “communist” purge in the 1960s was also disbanded by the Indonesian Anti-Communist Front (FAKI).<sup>110</sup> Four people were reported injured during the dispersal. Even though the leader of the front has claimed responsibility, the AHRC is not aware of legal action against any members or leaders of the front. The AHRC was informed that in this case the police and state officials had prior knowledge that the attack would take place.



Rev. Palti Panjaitan was named as a suspect in 2013 for blocking attack directed to him. (Courtesy: Answer Styannes / AHRC.)

As in previous years, attacks by non-state actors have been conducted against members of religious minorities with the support or at least passive assent of state officials in 2013. Intimidation against the congregation of Batak Protestant Church Filadelfia (HKBP Filadelfia) in Bekasi continued in 2013 with the leader of the church named as a criminal suspect in March.<sup>111</sup> The leader, Reverend Palti Panjaitan, was charged with physical assault and

109 ‘INDONESIA: Attacks on workers are attacks on democracy – labour activist’, AHRC interview with Said Iqbal, published on 8 November 2013 on <http://www.humanrights.asia/opinions/interviews/AHRC-ETC-038-2013>.

110 ‘FAKI DIY akui telah bubarkan acara eks tapol’, *Kompas.com*, 27 October 2013, <http://regional.kompas.com/read/2013/10/27/2009367/FAKI.DIY.Akui.Telah.Bubarkan.Acara.Eks.Tapol>.

111 ‘INDONESIA: Religious minority group’s leader in Bekasi is named suspect for blocking attack directed to him’, AHRC Urgent Appeal AHRC-UAC-007-2013, 19 March 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-007-2013>.



offensive treatment under Articles 352 and 335 (1) of the Penal Code after he defended himself from an attack by villagers of Jejalen Jaya opposing the presence of his church in their area. The criminal complaint against Rev. Panjaitan was lodged by Abdul Aziz, a villager of Jejalen Jaya who had earlier publicly threatened to kill the Reverend. The prosecutor handling the case has refused to prosecute the church leader due to lack of evidence. However, the police have insisted continuation of the proceeding by using the legal mechanism for minor offences which does not require the involvement of prosecutors. The court has dismissed the case, but the police have not issued a warrant terminating the investigation against Rev. Palti, leaving him in uncertainty.<sup>112</sup>

Collaboration between non-state actors and state officials in hindering the enjoyment of rights and liberties of religious minorities in Indonesia is not only evidenced by intimidation, discrimination, and prosecution against the congregation of HKBP Filadelfia. In another incident in Bekasi, local authorities and two intolerant groups, the Islam Defenders Front (*Front Pembela Islam*, FPI) and the Islamic People's Forum (*Forum Umat Islam*, FUI), collaborated in demolishing Batak Protestant Church Setu (HKBP Setu).<sup>113</sup> The local authorities cited lack of construction permit as the reason why the church was demolished. Such a claim, however, is not in accordance with the relevant regulation which only calls for the postponement of construction process until the permit is granted. The collaboration between authorities in Bekasi and intolerant groups was also apparent in the closure of



Ahmadis praying in front of their mosque in Cianjur that was closed down jointly by local authorities & intolerant groups. (Courtesy: Firmansyah / JAI.)

112 'INDONESIA: Police should stop wasting energy and resources in pursuing fabricated charges against a religious minority leader', AHRC Open Letter to the Chief of the Indonesian National Police, 22 August 2013 <http://www.humanrights.asia/news/ahrc-news/AHRC-OLT-012-2013>.

113 'INDONESIA: Bekasi authorities demolish a church thereby nurturing religious intolerance in the territory', AHRC Urgent Appeal AHRC-UAC-051-2013, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-051-2013>.



an Ahmadi mosque in April 2013.<sup>114</sup> In justifying their action, the authorities referred to discriminatory regulations prohibiting religious activities by the Ahmadi, including the 2008 Decree jointly issued by the Minister of Religious Affairs, Attorney General, and the Minister of Interior, the Regulation of the Governor of West Java No. 12 Year 2011 and the Regulation of the Mayor of Bekasi No. 40 Year 2011.

A similar pattern prevailed in Cianjur, West Java, where three Ahmadi mosques were closed down by hundreds of members of FPI in April 2013.<sup>115</sup> Police and military officers as well as several government officials were seen amongst the crowd during the closure of the mosques. Instead of taking measures to protect the Ahmadi and prevent the antagonist actions, the authorities present tend to provide support for the intolerant groups. The Head of Public Relations of Campaka Sub-District Police, Dedi Supriyadi, was even reported to put a sign in front of one of the mosques indicating closure of the mosque.

Apart from the Christian and Ahmadi communities, the Shias in Indonesia have been subjected to religious based discrimination, attack, and intimidation. Last year, the leader of Shias in Sampang, Tajul Muluk, was punished for blasphemy. The community's residential area was violently attacked, resulting in the death of one person, injury of seven others, and the destruction of 40 houses. Following the attack, members of the Shia community in Sampang were forcibly relocated to a sports hall transformed into a refugee shelter. They were later relocated to flats in Sidoarjo<sup>116</sup> until November 2013 when local authorities, police, and the military moved them to an Islamic boarding school in Surabaya, East Java. Local human rights organisation KontraS believes that the action was aimed at converting the Shias into Sunni Muslims.<sup>117</sup>

Infringement of liberties in Indonesia does not only take crude forms such as dispersal of peaceful demonstration, arrest and prosecution of protesters, or

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114 'INDONESIA: Government of city of Bekasi close down an Ahmadi mosque, allegedly at the demands of non-tolerant groups', AHRC Urgent Appeal AHRC-UAC-060-2013, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-060-2013>.

115 'INDONESIA: Government collaborates with non-tolerant groups in closing down three Ahmadi mosques in Cianjur', AHRC Urgent Appeal AHRC-UAC-064-2013, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-064-2013>.

116 'INDONESIA: "I want to go home" – a member of the Shia community in Sampang', AHRC interview with Ikmal, published on 11 July 2013 on <http://www.humanrights.asia/opinions/interviews/AHRC-ETC-026-2013>.

117 'Masyarakat Syiah lagi-lagi hadapi resiko penggusuran paksa, dibutuhkan investigasi keterlibatan aparat pemerintah yang mengintimidasi Syiah', KontraS, 15 November 2013, [http://www.kontras.org/index.php?hal=siaran\\_pers&id=1813](http://www.kontras.org/index.php?hal=siaran_pers&id=1813).

attacks and discrimination against religious minorities. It also occurs in more subtle forms, disguised by language of law and technology. In 2013, the House of Representatives (DPR) and the government enacted a law concerning mass organisation, some articles of which provide space for authorities to arbitrarily suspend activities of NGOs.<sup>118</sup> The law burdens NGOs with vague obligations, such as “preserving the unity and integrity of Indonesia” and “preserving religious, cultural, moral, ethics and decency values” while, at the same time, imposing vague prohibitions on the organisations, including “committing blasphemy against religions in Indonesia” and “conducting separatism activities which threaten the integrity of Indonesia”. The failure of NGOs to comply with these arbitrary and vague provisions can lead to suspension of their activities up to six months, and can eventually lead to the disbanding of the organisations.

As the discussion to enact the mass organisation law was taking place in Parliament, independent experts of the United Nations expressed their concern.<sup>119</sup> The UN Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, highlighted that the requirement for the NGOs to uphold the belief “in the One and Only God” as well as the provision obliging the NGOs to maintain religious values “can violate freedom of religion or belief”. The UN Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, has emphasised that “associations should be free to determine their statutes, structures and activities and to make decisions without state interference”.

Threats to liberties in Indonesia have made it to the cyberspace accessed by individuals inside the country. Early in 2013, a teacher in Makassar was arrested and detained by the police for his “offensive comments” on Facebook concerning the Regent of Pangkep.<sup>120</sup> The teacher, Budiman, was charged with articles under the controversial Electronic Information and Transaction Law (ITE law) enacted in 2008. Budiman’s case extends the long list of individuals who have been victim to the arbitrariness and vagueness of the ITE law. The

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118 ‘INDONESIA: Penalising freedom of association, disrespecting people’s aspiration – enactment of the mass organization law’, AHRC Statement published on 4 July 2013, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-126-2013>.

119 ‘Indonesia: “Restrictive bill threatens freedoms of association, expression and religion,” warn UN rights experts, 14 February 2013 <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12989>.

120 ‘INDONESIA: A teacher in Makassar faces six years of imprisonment for criticising a government official on social media’, AHRC Urgent Appeal AHRC0UAC-021-2013, 15 June 2013 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-021-2013>.

list includes Prita Mulyasari, a housewife who complained on a mailing list about poor treatment she received in a private hospital, and Alexander Aan, an atheist in West Sumatra who posted a comic and note on Facebook deemed to be “offensive” to Prophet Muhammad.

Liberties in cyberspace in Indonesia are limited not only in the sense that one cannot express one’s ideas freely but also that one cannot access all information. Internet censorship is performed both by the state and by private entities in the country, with minimum public scrutiny and lack of transparency. In mid 2013, the Secretary General of Ourvoice, an NGO promoting the rights of the Lesbian, Gay, Bisexual, and Transgender (LGBT communities) learned that his organisation’s website was blocked by several internet service providers.<sup>121</sup> The Secretary General, Hartoyo, filed a complaint with one of the providers and learned that the blocking was conducted upon the request of the Ministry of Communication and Technology. Previously, the website of the International Gay and Lesbian Human Rights Commission was also reported to be among the list of “blacklisted websites”, and thus could not be accessed in Indonesia.<sup>122</sup>

From Hartoyo, the AHRC has learned the existence of DNS Nawala Project by a private entity, Nawala Nusantara Foundation, which provides service to filter “negative contents which are not in accordance with Indonesian norms of decency and cultures, such as those on porn or gambling”.<sup>123</sup> Whether the foundation is related to the government or on what legal basis it has authority to conduct internet censorship on such a public scale are facts the AHRC is not aware of due to lack of clear regulation and transparency. The AHRC however endorses the view of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, who has stated that “intermediaries, as private entities, are not best placed to make the determination of whether a particular content is illegal, which requires careful balancing of competing interests and consideration of defences”.<sup>124</sup>

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121 ‘National scene: LGBY website shut down by ministry’, *The Jakarta Post*, 16 July 2013.

122 Article 19, ‘Navigating Indonesia’s information highway’, p. 35, March 2013.

123 As claimed on <http://www.nawala.org/>.

124 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, para. 42, A/HRC/17/27, 16 May 2011.

## Conclusion

Although this report specifically refers to cases which have taken place in 2013, the three main subjects highlighted have existed in Indonesia for years without significant attempts from the government to address them. There have been new cases with new victims and perpetrators, but the underlying problems are the same.

In October 2013, General Sutarman was appointed as the Chief of the Indonesian Police, replacing General Timur Pradopo. Among his 12 prioritised programmes, Sutarman promised to strengthen the integrity of members of the Indonesian National Police as well as enhance the police professionalism through education in security and order preservation, law enforcement, and public service. This general promise could be useful in reforming the police as long as its interpretation and implementation are advanced. It is nothing new for the police officers to be given education on the issues of security and order preservation, law enforcement, and public service, but the existing education has failed to decrease unnecessary and excessive police violence. Maintaining it will not bring much good to the institution. Police education therefore should be modernised. It should include lessons on how to obtain information and conduct criminal investigations without resorting to torture and how to use non-lethal incapacitating measures against individuals posing imminent threat.

The prioritised programmes of General Sutarman also focus much on eliminating corruption, collusion, and nepotism (*Korupsi, Kolusi, Nepotisme*, KKN) within the police. He promised, for instance, to develop a “KKN-free” recruitment and promotion mechanism as well as to strengthen effective monitoring mechanism to ensure KKN-free police service. Whereas KKN is indeed an important matter to be addressed in the institution, the General should realise that there are other problems involved in the recruitment and promotion mechanism. As measures are taken to ensure that the recruitment of officers is free from KKN, proper screening tests for police candidates should be developed. Similarly, while KKN is being eradicated, reasonable and fair indicators for promotion of police officers should also be established. Effective monitoring mechanism is also needed not only to eradicate KKN within the police but also for oversight and to receive complaints against other illegal practices by officers, such as torture and extrajudicial killings.

The AHRC welcomes another promise made by General Sutarman: to ensure the neutrality of the police during the upcoming election in 2014, and hopes such neutrality will extend to other areas, including those concerning the

protection of minorities. Examples in this report are evidence to how the police and the government take the side of intolerant groups and support discrimination against minorities. Indonesian Minister of Interior Gamawan Fauzi has even mentioned publicly that the government should work together with the FPI, the country's most notorious intolerant group. The Minister also called the group "an asset to the nation".<sup>125</sup>

As indicated above, in supporting intolerant groups and the discrimination of minorities state officials often refer to laws and regulations which are in themselves biased. Revising discriminatory laws and regulations in accordance with international human rights principles will therefore also be useful in changing the biased attitudes of the police and government officials.

Apart from discriminatory regulations, those which contain provisions that are vague and unnecessarily restrict freedom of expression should be revised in accordance with international human rights law. Two laws that have been mentioned in this report are those on ITE and Mass Organisation. In restricting liberties – both in real life and cyberspace – the Indonesian government typically argues that freedom of expression is not an absolute right and thus may be subjected to limitation. Indeed, Article 19 (3) of the ICCPR indicates that freedom of expression "may therefore be subject to certain restrictions". What the Indonesian government has conveniently failed to mention and understand is that there are a set of rules on restriction to freedom of expression it needs to comply with. Peaceful protests, for example, as political as they may be, should not be violently dispersed – or dispersed at all – if they do not pose any threat to national security or public order, health, or morals. Individuals expressing their view should also not be arrested and punished as long as they are not conducting propaganda for war or inciting others to commit discrimination, hostility, or violence.<sup>126</sup>

One of the basic tests in assessing whether a country is a democracy is by measuring how free the individuals living there are in expressing their ideas. The inseparable link between freedom of expression and democracy has been repeatedly emphasised, amongst other, by international human rights bodies. In its Resolution 12/16, the UN Human Rights Council highlights that "the exercise of the right to freedom of opinion and expression is one of the

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125 'Gamawan describes FPI as an 'asset to the nation', *The Jakarta Post*, 25 October 2013.

126 For more discussion on restriction on freedom of expression, please see General Comment No. 34 on Article 19: Freedom of opinion and expression, paras. 21-49, UN Human Rights Committee, CCPR/C/GC/34, 12 September 2011.

essential foundations of a democratic society.”<sup>127</sup> Similar principles are upheld by the European Court of Human Rights in its judgements on cases related to freedom of expression.<sup>128</sup> Such freedom is described by the Inter-American Court of Human Rights as “the cornerstone of a democratic society”.<sup>129</sup>

Judicial independence is also one of the elements of democratic government, as mentioned in the Universal Declaration on Democracy adopted by the Inter-Parliamentary Council in 1997. Paragraph 17 of the Declaration stipulates that “judicial institutions and independent, impartial and effective oversight mechanism are the guarantors for the rule of law on which democracy is founded”. For this reason, the Indonesian government needs to take serious measures to ensure its judicial independence. The measures taken should be meaningful ones, not formalistic ones. The independence of judiciary should not be understood narrowly, i.e. that the courts are simply separated from the executive or legislative. Instead, it should be interpreted as the state in which the judges can deliver justice without the interference of powerful individuals or money. Consistent law enforcement against corrupt judges is a perfect way to start. Monitoring of judges’ misconduct should be strengthened though, in doing so, the judges’ independence should not be compromised.

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127 UN Human Rights Council, Resolution 12/16 on Freedom of Opinion and Expression, preamble para.2, A/HRC/RES/12/16.

128 See, for instance, *Case of Handyside v the United Kingdom*, App. No. 5493/72, para. 49, European Court of Human Rights, 7 December 1976.

129 *Case of “The Last Temptation of Christ (Olmedo-Bustos et al.) v Chile*, para. 68, Inter-American Court of Human Rights, 5 February 2001.



# CHAPTER IV



ASIAN HUMAN RIGHTS COMMISSION

# NEPAL





# N E P A L

## HUMAN RIGHTS IN ABEYANCE

### Introduction

Throughout 2013, the prolonged political transition to democracy in Nepal marginalized calls for human rights, accountability, and rule of law. Following the dissolution of the Constituent Assembly on May 28, 2012, political bargaining put concern for human rights on the backburner. Institutional reforms to curb torture, guarantee freedom of assembly and expression, and bring security forces under the rule of law have been negated in the absence of an elected parliament.

However, this has not prevented the interim government from attempting to entrench impunity in its push for an ordinance establishing a commission on transitional justice entrusted with power to grant amnesty to perpetrators of human rights violations. Raising voices to demand justice has placed rights defenders, victims, and journalists at risk; a resurgence of attacks against rights defenders working against impunity has been particularly disconcerting.

In spite of the vacuum in political leadership, the Nepali people have continued to demand that impunity for human rights violations committed during the conflict be brought to an end. Notable, in this regard is the “Occupy Baluwatar” movement which has gathered every day since December 28, 2012, in front of the Prime Minister’s residence.

On 19 November 2013, the second Constituent Assembly elections were conducted with a record 78% turnout. Newly elected Parliamentarians face the herculean task of developing strong and stable democratic institutions, ensuring that all in Nepal benefit from the protection of the rule of law.

## **Shut Downs Shut Out Rights**

After the dissolution of the first Constituent Assembly on 28 May 2012, Nepal found itself uncertain about its political future. Political leaders failed to reach consensus on forming an interim government and setting a date for elections. The never-ending political transition sidelined peace, security, rule of law, and human rights. “Bandhs” (closures) and violent clashes crippled daily life.

On January 25, 2013, nine political parties organized a ten days long bandh in Biratnagar, demanding resignation of the Prime Minister Bhattarai. Students unions joined the protest, bringing the country to a standstill. At least twelve people were injured in Banepa, after clashes between protesters and Young Communist Members (YCL) of UCPN-M.

On February 8, the major political parties decided to form an interim government under the Chairmanship of Chief Justice Khil Raj Regmi to conduct elections in Nepal, with no consideration for the principle of separations of powers. That the Chief Justice was placed at the head of the government provided strong leverage for the interim government to push for amnesty to those implicated on war related crimes during a decade long armed insurgency in Nepal.

The decision was followed by a daylong bandh organized by the Baidhya led Communist Party Nepal-Maoist – the hardline faction which had seceded from the Maoist party the year before – that again unsettled the entire country. Bombs were planted in Biratnagar, Morang, and Butwal that were defused by the bomb disposal unit of the Nepal army.

March 2013 witnessed other bandhs where educational institutions, markets, and transportation came to complete halt. The bandhs greatly affected lives of ordinary people. In March, during another protest in Kathmandu, against the appointment of Chief Justice Khil Raj Regmi as head of the interim government set-up to conduct elections; five persons were injured in a scuffle.

More nationwide bandhs in April upturned life of the ordinary Nepali again. The interim government had started voter registrations across Nepal. An alliance of 33 political parties, including CPN-M, opposed voter registration. Normal life came to a halt in May once more, when Madhes parties organized a bandh in Terai demanding that the date for the second constituent assembly elections be fixed. The district administration had to impose curfew in Jumla on 11 June following a violent clash between cadres of Nepali Congress and CPN-Maoists.

After the dates for elections were postponed several times, the interim government decided to organize the second Constituent Assembly elections on 19 November. This decision led to another surge of violence and bandhs. The CPN-Maoists called for a boycott of the elections. The CPN-M and the 33 party alliances began placing hurdles during the registration of election candidates.

More bandhs in September ahead of the election affected Kathmandu and other parts of the country. Cadres of CPN-M launched a donation drive to raise funds for their anti-elections campaign, which affected businessmen and the general public. Two persons riding a motorbike shot dead one candidate, Mohammad Alaam from the CPN UML, in Bara district on 4 October.

Anti-election parties and parties that decided to contest elections then clashed all over the country. As the country approached elections, cadres of CPN-M hurled bombs at public vehicles in Kathmandu and outside Kathmandu, injuring many, even children. CPN-M cadres torched vehicles in Hetauda and even torched parked tourist buses in the tourism-dominated city of Pokhara.

To deal with threats of violence, the government unveiled a coordinated security arrangement plan involving the army, the Nepal Police, and the Armed Police Force. However, lack of transparency, chain of command, and coordination among these forces triggered civil society to call for robust monitoring mechanisms for all cases of election related violence. The monitoring vacuum became acute as the National Human Rights Commission (NHRC), which would have been naturally called upon to play a monitoring role, saw the tenure of all its commissioners come to an end on 16 September 2013. The NHRC thus became dysfunctional; unable to play a role of human rights watchdog during elections.

It is therefore remarkable that despite the fear of violence, more than 78% Nepalese cast votes on 19 November, and elections were conducted in a relatively peaceful way. The newly elected legislative parliament now has the herculean task of bringing back human rights to the center of the political agenda and launching the institutional reforms that Nepal has been waiting for since 2006.

The slow erosion of democratic institutions had left major human rights issues unaddressed. This report now proceeds to underline some of them.

## **Institutionalizing Impunity**

Criminal justice and rule of law reforms, required to create a system of accountability for human rights violations committed, have been pending since the end of the conflict. The dissolution of the Constituent Assembly in 2012 stalled any effort to trigger debate on institutional reforms. Since the end of the conflict, victims of human rights violations have been made to wait for justice. Successive governments took the position that their cases would be dealt using transitional justice mechanisms and refused to recognize the mandate of the regular criminal justice system to deal with the same.

Since 2008, the Asian Human Rights Commission (AHRC) has documented the accumulation of political pressure, interventions impeding the functioning of justice, and attempts by political parties to water down contents of bills proposing to establish transitional justice mechanisms – all to prevent perpetrators from being held accountable. These tactics have contributed to entrench a culture of impunity, in which victims of human rights violations face tremendous obstacles to access justice and are vulnerable to retaliation if they voice their concerns. Detailed later in the report is the surge of violence against human rights activists working on impunity, especially in the first half of 2013, which directly shows how political dedication to impunity has condoned attacks and reprisals against rights defenders.

Systematic patterns of human rights violations during the decade long civil war have been well documented. A special taskforce formed by government to ascertain loss of life and property had found that 17,265 people were killed and more than 50,000 internally displaced.<sup>130</sup> The International Committee of the Red Cross has stated that 3,198 persons have reported the disappearance of at least one of their relatives during the conflict<sup>131</sup> and that, as of 31 July 2013, 1,360 were still unaccounted for. In 2003 and 2004, Nepal was the country with the highest number of disappearances being reported to the UN Working Group on Enforced or Involuntary Disappearances. In October 2012, the UN Office of the High Commissioner for Human Rights released a report mapping the violations of international human rights and humanitarian law which had taken place in Nepal between February 1996 and November 2006, accompanied by an online Transitional Justice Reference Archive. That report lists over 2,000 incidents of suspected extrajudicial killings, more than

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130 [http://www.nepalmonitor.com/2011/07/recording\\_nepal\\_conf.html](http://www.nepalmonitor.com/2011/07/recording_nepal_conf.html)

131 <http://www.icrc.org/eng/resources/documents/report/nepal-missing-persons-report-2013-08-30.html>

2,500 cases of “torture, mutilation and other sorts of cruel and inhumane and degrading treatment”, thousands of arbitrary detentions, and over a hundred cases of sexual violence, a number likely to be underreported.

Despite this bulk of evidence, and of Nepal’s obligations under international law to investigate and bring to book perpetrators of human rights violations, successive governments’ attitude toward the legacy of injustice has been characterized by inaction at best, purposeful sabotage of all attempts for justice at worst. The Comprehensive Peace Agreement (CPA) signed between the government and the Maoists combatants in 2006 put the promise to fight against impunity at the heart of the peace and democratization process, an approach upheld by the 2007 Interim Constitution. Concerns for the victims’ right to truth and to an effective remedy formed the cradle of the reconciliation process in the CPA. The CPA included provisions in which both parties committed to publish names of persons killed or disappeared within 60 days, form a national peace and rehabilitation commission to provide relief support to conflict victims, form a high level Truth and Reconciliation Commission to investigate crimes against humanity and gross human rights violations committed during the conflict to “create the situation of reconciliation in the society”, and investigate and prosecute human rights violations. In this document, both parties explicitly commit to rights of the victims and not to protect impunity. The 2007 Interim Constitution placed the duty on the State to fulfill these commitments and to establish a Commission, which would be entrusted with the investigation of enforced disappearances.

However, those transitional justice mechanisms are yet to be established. Since 2007, different versions of two bills have been drafted without the political parties reaching an agreement on their content. Major doubts have emerged regarding the capacity of the commissions to investigate and prosecute human rights violations, as political parties called for the bills to emphasize “reconciliation” over “justice”, opening the door for amnesty for perpetrators.

In a November 2011 agreement aimed to bring to an end a political deadlock, the three major political parties of Nepal agreed to finalize the bills within a month and set up a task force for this purpose. In January 2012, the taskforce published its conclusions. Its recommendations included removing Section 25 (2) of the draft TRC Bill, which incorporated a list of crimes for which amnesty was not permitted and instead proposed that the Commissions would grant amnesty when both victims and perpetrators agree to reconcile. In the absence of reliable victim and witness protection mechanisms, this clearly would have put the victims at great risk of pressure.

It is in this context that on the eve of the dissolution of the Constituent Assembly / Legislative Parliament of Nepal on 28 May 2012, draft bills establishing the TRC and the Commission on enforced disappearances were withdrawn. As Nepal found itself without an elected legislative authority, the government forwarded to the President for his approval a draft executive ordinance merging both commissions into a unique “Commission of Investigation into Disappeared Persons, Truth and Reconciliation”. The new draft proposed that commissioners would be appointed by political consensus, endangering the independence of the commission. In addition, the ordinance explicitly contained an amnesty provision. The commission was not provided with the power to recommend prosecutions for the perpetrators. However, it would provide for the victims and the perpetrators to “reconcile”, granting amnesty if the perpetrator filed an application for reconciliation, accepted the crime, and showed regret. The perpetrator would also have had to pay compensation to the victim.

In the absence of a victim and witness protection mechanism this emphasis on reconciliation would again have put victims at high risk of being pressured and threatened. More worryingly, the adoption of the commission through ordinance without parliamentary oversight or consultation with victim groups would have negated any possibility to contest or amend the content of the bills. Not only was this ordinance clearly violating international human rights standards, it was also breaching several previous landmark rulings by the Supreme Court, notably that the Commission on Enforced Disappearances should be established as a separate entity and should be granted power to recommend prosecutions.

On 13 March 2013, the (by then) four major political parties of Nepal agreed on a revised ordinance, which would establish the commission. The President signed the ordinance into law the following day. Neither victims’ organisations, nor civil society of Nepal, or the international community were allowed to see the ordinance before it was adopted. Even officials at the National Human Rights Commission claimed that they were refused access to the final version. Although the ordinance had been revised slightly, it fell short of international standards. It contains an explicit amnesty provision.

The preamble of the ordinance emphasizes the truth-seeking purposes of the Commission. Even though the Commission is given the mandate “to end impunity”, section 23 of the bill authorizes the commissioners to grant amnesty with the only constraint that the grounds for amnesty shall be justified in writing by the commissioners. This amnesty provision does not contain any

restrictions concerning which crimes can be granted amnesty and explicitly mentions that “serious crimes, including rape” fall within its scope. This position was denounced by victims’ organisations and the civil society.

The UN High Commissioner for human rights, Navi Pillay, urged the government to modify the amnesty provision: “Such amnesties would not only violate core principles under international law but would also weaken the foundation for a genuine and lasting peace in Nepal. An amnesty for those who committed serious human rights violations will deny the right of thousands of Nepalese to truth and justice. This will not provide a sustainable road to peace”.

Navi Pillay also expressed “that the text of the Ordinance was developed and passed in such a secretive manner, without consultations with civil society, victims, families of the victims or even the national human rights institutions. Past experiences elsewhere in the world have shown that without the active involvement and support of these key affected groups, mechanisms of this type may lead to further divisions and disagreements, so producing the opposite result to that intended.”<sup>132</sup>

Donor countries have expressed their reluctance to fund the Commission until the points raised by the OHCHR are properly addressed. On 24 March, petitioners filed two writs with the Supreme Court of Nepal saying that the ordinance, as it stood, violated Nepal’s interim constitution and the International Covenant on Civil and Political Rights. On 31 March the Supreme Court issued a stay order on the ordinance, *de facto* suspending the creation of the commission.

The new developments concerning the transitional justice institutions are just the latest chapters of a relentless fight by victims and human rights defenders to counteract government, security forces, and political parties’ collusion in preventing accountability for human rights violations. Even the first step of obtaining legal redress for a human rights violation, i.e. filing a complaint at the police station, has typically proven a challenge for victims, due to reluctance by the police to register cases involving the security forces or Maoists. The reluctance stems from the police receiving tremendous pressure from powerful local individuals or organisations connected to the perpetrators. It also comes from a mistaken impression that they do not possess the authority to register such cases. High profile political leaders and government officials

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132 <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13163&LangID=E>



have repeatedly asserted – with no legal basis – that conflict-related human rights violations fall under the exclusive jurisdiction of the transitional justice mechanisms.

Successive governments have, at best, failed to give clear instructions to the police to register and conduct effective investigations concerning conflict-era human rights violations. At worst the governments have wrongly asserted that it was not the police's role to deal with such cases. For instance, when the police arrested the chief suspects in relation to the murder of a journalist during the conflict in January, the Prime Minister reportedly ordered the Attorney General's Office and Police Headquarters to stop investigations into the case and, in a public intervention, deplored the arrests and reasserted that conflict-related cases should be dealt with by transitional justice mechanisms.

This is in spite of several Supreme Court orders to the contrary. In her statement following the adoption of the transitional justice ordinance, Navi Pillay summarized these concerns: "I am also concerned that the Ordinance may be used to avoid or delay criminal investigations and prosecutions of conflict-related cases. Criminal justice should be reinforced, not replaced by other transitional justice processes such as truth and reconciliation commissions."

The investigation process concerning cases that have been registered has been slow and ineffective due to resistance from formerly belligerent parties to collaborating in investigations, and problems arising from a dysfunctional and corrupt policing system which remains subject to influential individuals and political leaders. Court orders, including from the Supreme Court, to launch investigations into violations or to arrest perpetrators have been ignored without consequence.

## **Fight of the Adhikari Couple**

The fight for justice of Krishna Prasad Adhikari's parents made public the suffering of victims' families whose hope in seeing those that murdered their relative brought to justice slowly erode as years passed with no political commitment to justice. The case exemplifies several of the forces operating to protect perpetrators: intimidation and marginalization of the voice of victims and interference from influential political leaders that neutralize power of the police.

Krishna Prasad Adhikari was a young man killed by Maoist cadres in 2004. He was falsely accused of spying for the army as part of a personal dispute. It was a land dispute that had led Nanda Prasad, the victim's father, to find himself under constant harassment from his neighbours led by a local Maoist cadre. On 6 June 2004, Krishna Prasad Adhikari was on his way to his grandfather's house in Chitwan district when men on a motorcycle took him away. Locals reported seeing the abductors bringing Krishna back to the place where he had been abducted at 8 p.m. and gunning him down. Nanda's relatives from Chitwan have said that Krishna was first tortured by the Maoists then killed.

The police first informed Nanda that his son had been found dead as a result of a road accident. He only came to learn later, through a local Maoist cadre that his son had been "wiped out". According to Nanda, the cadre had said that the decision to wipe him out was taken as he was found to have spied against the Maoists and that his brother had enrolled in the Nepal Army. Nur, Krishna's elder brother, applied to the Maoist Village Government which had taken the place of the Village Development Committee to investigate the circumstances of his brother's death. But the Village Government refused to investigate the same. Instead, the relatives of the alleged perpetrators threatened the family that their other son would be killed too if they did not keep silent.

Nanda filed two separate complaints on 11 December 2005 to the District Police Office, Chitwan. The police, as is typical, did not conduct an investigation into the case as the perpetrators were connected to the Maoist party.

On 5 April 2009, the National Human Rights Commission decided to recommend that the government provide the family Rs. 300,000 as compensation, to restore them to their home and ensure their security. To date, they have not received the compensation. No step has been taken to return their home to them or to protect them from threat and attack.

As the investigation into their son's murder was not making any progress, the family have also applied for justice separately to the District Administration Office, Chitwan, the District Police Office, Gorkha, the Ministry of Peace and Reconstruction, and the President's Office. They have not received any response from these authorities.

The victim's family was displaced from their home and moved to the streets of Kathmandu, without receiving the support they were entitled to as conflict victims. On January 2013, they started a hunger strike in front of the residence

of the Prime Minister, Baburam Bhattarai, to protest against the lack of progress in the investigation into their son's murder. They were arrested several times by the police for doing so, and worryingly, forcefully confined for more than a month to a mental hospital.

On 14 June 2013, the police brought them to Bir Hospital, Kathmandu, from where they were transferred to the Mental Hospital Lagankhel, Lalitpur and were diagnosed with mental illness. They were forcibly bed-ridden, bringing their fight for justice temporarily to a halt. There were concerns that the Director of the Mental Hospital was coerced into reaching such a diagnosis of mental illness for the parents or colluded with the police and political interests to prevent the couple from resuming their fight for justice. They were forced to stay in the hospital for 35 days. Neither family members nor human rights activists were allowed to visit them. Following intense campaigning from human rights defenders and extensive media coverage, the hospital agreed to discharge them after consulting with the Metropolitan Police Department, Kathmandu. The hospital published a final report in which it retracted the initial diagnosis and acknowledged that after observing the old couple for five weeks they had come to the conclusion that they did not suffer from mental illness but had just been under a lot of stress in the aftermath of their son's murder.

Following the old couple's release on 19 July, the family went back to the District Administration Office, Kathmandu to resume their hunger strike. Their health deteriorated quickly and they were again forcibly admitted to the hospital on 31 July.

The NHRC met with the Home Minister on two occasions to follow up on its recommendations and to urge him to take action urgently. The first time the Minister refused, as the government had decided to put all cases dating from the conflict era on hold. But the second time he promised that a prompt investigation into the case would be conducted.

Following that decision, on 13 August, the chairperson of the UCPN-Maoist, Pushpa Kamal Dahal, held a press conference in which he warned the government against initiating an investigation into the case. He threatened that an investigation would put the peace process and the elections at risk. He stated that cases of human rights violations committed during the conflict were to be investigated by the Truth and Reconciliation Commission.

Worryingly, he blamed human rights defenders for having unnecessarily pushed this case forward. By making human rights defenders the subject of public blame, he contributed to the deterioration of the climate in which rights defenders have been working in since the beginning of the year.

Eleven persons are listed in the FIR that the family filed in 2005. On 6th September, the Chitwan District Police Office finally arrested the primary suspect. Following news of his arrest, the UCPN-Maoist announced picketing of all 75 District Administration Offices in the country to protest the attempt to hold one of their cadres accountable for a human rights violation. On September 27th, the Chitwan District Police Office submitted its investigation report to the District Attorney Office and recommended jail sentence for Ram Prasad Adhikari and ten other suspects who are all at large. However, the Attorney's office directed the police to release Ram Prasad Adhikari, saying that there was a lack of evidence to continue the proceedings, and he was released on September 29th. The Adhikari couple resumed their hunger strike from 5 December from the Bir hospital bed.

As the fight of those who became known as the Adhikari couple illustrates, government and high-profile politicians have not hesitated to weigh in on the judicial process to grant protection to their supporters, either by intervening directly into individual cases or through more indirect formal channels. Since the signature of the Comprehensive Peace Agreement in 2006, more than 600 cases pending in the courts have been arbitrarily withdrawn following orders by the government, causing long-term damage to the country's rule of law and criminal justice system, and eroding public confidence in the state. In none of these cases was permission received from victims or their family members.

In 2011 a political agreement, which would lead to the election of Baburam Bhattarai as Prime Minister, was signed between the Maoist party and the United Democratic Madhesi Front. Both parties agreed to withdraw cases pending against those involved in the Maoist party and Madhesi ethnic movements, a withdrawal likely to include cases of rape, killings, torture, and enforced disappearances. As Nepal's human rights community made it difficult for the government to carry out these withdrawals, alternatives approaches have been taken to shield government supporters from accountability. For instance, the Baburam Bhattarai government recommended Balkrishna Dhungel, a Maoist lawmaker convicted of murder, for a presidential pardon in 2011, despite him having been sentenced to life imprisonment for murder, a sentence upheld by the Supreme Court.

The incapacity of the criminal justice system to bring human rights violators to book has enabled persons whose involvement in human rights violations is well documented to occupy high ranking positions within the Nepal Police or the Nepal army or to stand for elections. On 27 September, the Supreme Court ruled that murder convicts could not stand for elections. This did not prevent Balkrishna Dhungel from being nominated to stand under the proportional representation system. The Election Commission did annul Dhungel's candidacy after Ram Kumari Jhakri from the CPN-UML filed a complaint highlighting a court judgment that had convicted Dhungel for murder<sup>133</sup>. However, other politicians whose participation in human rights violations are well documented have stood for elections and won. This includes Agni Sapkota, the spokesperson of the Maoist party. Sapkota faces a criminal investigation for alleged involvement in the forced disappearance and murder of school teacher Arjun Lama during the insurgency.

## Defenders Under Attack

The AHRC has been very concerned with the resurgence of attacks and smear campaigns against human rights defenders in the first half of 2013. The most serious attacks were directed against rights defenders who had been working against impunity. The state showed a troubling level of apathy toward the deterioration of the climate in which human rights defenders have been working and some members of the government have themselves taken part in public condemnation of the work of activists. No attack or call for attack against the human rights defenders has been investigated.

Two coincidental events triggered the rise of attacks against human rights defenders: the arrest of five accused in the forced disappearance and murder of a journalist by Maoist leaders in 2004 on 5 January 2013 and the arrest of a Nepal Army soldier in the United Kingdom on 3 January, Colonel Lama, accused of torture during the conflict. Both cases show that the work of rights defenders had gained enough power and credibility to affect the interests of major institutional actors – in political parties and security forces – who had been providing protection to perpetrators.

Dekendra Raj Thapa was a journalist associated with Radio Nepal and several civil society organisations such as Amnesty International and the Red Cross,

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133 For background details see: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-005-2013>

Dailekh. He left his house on the early morning of 26 June 2004 to attend a programme organized by the Maoists. His wife Laxmi later learnt that Dekendra had been abducted by the Maoists and, after being held captive for several weeks, was tortured during interrogation and buried while he was still breathing.

On 16 August 2004, Laxmi found a statement, signed the District Secretary of the Maoist Party, stating that Dekendra had been “wiped out” as he had been charged under ten accusations, including that of spying on the Maoists. On 26 June 2008, Dekendra’s body was exhumed with technical assistance provided by the National Human Rights Commission (NHRC), Nepalgunj. It was found interred in a ditch at Dwari VDC-1, Dailekh. Laxmi filed a FIR on 28 August 2008, which listed eight Maoist cadres as perpetrators of her husband’s abduction and murder. However, the police did not investigate the allegations, alternatively hiding behind the legally flawed pretext that the case would fall under the jurisdiction of the yet to be established transitional justice mechanisms or pretending that the suspects were absconding while they were seen walking freely in their villages.

On 12 December 2012, Laxmi filed a writ petition to the Appellate Court, Surkhet, asking the court to order the police to conduct an investigation in her husband’s case. After the court issued a show cause notice to the Dailekh District Police Office and District Public Prosecutor’s Office to carry out a prompt investigation, the police arrested Laxiram Gharti, one of the alleged perpetrators, and based on the information he provided, managed to arrest four others on 5 January 2013.

However, on 8 January 2013, it was announced that the Prime Minister of Nepal, Baburam Bhattarai had ordered the Attorney General office and the Police Headquarters to bring all investigations related to the case to an immediate end. One of the police officers in charge of the case even reportedly received threats on his life over the phone if he did not stop the investigation. In a public intervention, the Prime Minister denounced the arrest, arguing that the case would fall in the jurisdiction of the transitional justice mechanisms and denounced the work of human rights defenders as work destabilizing the peace process.

On January 26, newspapers reported that a group of twenty-two journalists based in Dailekh fled the district after being threatened by local Maoist cadres on the eve of a Prime Minister’s visit. They were threatened to stop covering legal developments related to this case.

Coincidentally, on 3 January, the United Kingdom, acting under universal jurisdiction, arrested Colonel Lama, a Nepal Army officer, who had been serving in a UN Peace Keeping mission, for his involvement in the torture of suspected Maoist soldiers during the conflict. Lama was facing two charges of torture, allegedly committed while he was in charge of Gorusinghe Army Barracks in Kapilbastu in 2005.

The Maoist-led government of Nepal officially protested his arrest, terming it an attack against Nepal's sovereignty and called for his immediate release. It refused to comment on the fact that there had been no progress in the investigation and prosecution of this case since 2005. The spokesperson of the Maoist party, Agni Sapkota, publicly denounced the role of human rights defenders in the case, specifically naming one of the leading human rights activists of Nepal, Mandira Sharma, and her NGO.

Both cases triggered a series of attacks against human rights defenders, legitimized by accusations of high-profile politicians that activists were acting against the interest and the sovereignty of Nepal and being detrimental to the peace process.

Calls to attack human rights defenders were relayed by leading Maoist newspapers and specifically targeted human rights activists that formed part of an anti-impunity network, the Accountability Watch Committee (AWC).

Media affiliated to the Maoist party, including the weekly magazine *Lal Rakshak* (Red Defender), the blog *Krishnasenonline* and various local FM radio stations, termed the work of human rights defenders as going against the peace process and called for violent action to be taken against them. An article published in the January-February 2013 edition of *Lal Rakshak* accused Mandira Sharma, the Chairperson of Advocacy Forum-Nepal, Subodh Pyakhurel, Chairperson of the Informal Sector Service Centre (INSEC), and Kanak Mani Dixit, a journalist and editor of several magazines of acting against the Maoists and the peace process. Three other human rights defenders were named: Sushil Pyakhurel, former member of the National Human Rights Commission and Chairperson of the Accountability Watch Committee; Charan Prasai, Coordinator of the joint forum for human rights; and Kapil Shrestha, former member of the NHRC. All the human rights defenders targeted were active members of the AWC.

The article accused the human rights defenders of having committed various crimes and called for "People's action" against them. People's action was a term

used by Maoist combatants during the civil war to refer to violent action taken to punish those seen to oppose the Maoist party. Throughout January 2013, three other newspapers and a radio station relayed this call for violent action against human rights defenders.

Disturbingly, these calls for actions legitimized local grievances against human rights defenders and translated into violent action with authorities doing little to prevent or redress them. On 28 February 2013, in the jungle of Srinagar in Vidhyapur VDC-05, Surkhet district, Mr. Yadav Prasad Bastola (32) Executive Director of the Human Rights Alliance, was assaulted and beaten with iron rods by 4 unidentified persons at around 7:30 p.m. His assailants had asked him whether he was the human rights defender who had published an article in a local newspaper earlier that week. The article had denounced impunity for the murder of a teacher in 2002 by a group of Maoist cadre – who had accused the teacher of spying against them – and asked for compensation for the teacher's family. The assailants threatened to kill Mr. Bastola and only stopped beating him upon being interrupted by the arrival of vehicles on the road. A police investigation yielded no result. No one has been held accountable for the attack. The attack on Mr. Bastola is likely to have stemmed from repeated calls for attacks against rights defenders in the media, condoned by the attitude of politicians.

## **Journalists, Peaceful Protestors Suffer Shrinking Democratic Space**

Several times have the police attacked and harassed peaceful demonstrations, held to protest impunity and gender-based violence in what was called the “Occupy Balutawar” movement.

On 25 January around 300 protestors had gathered in front of the Nepal Rastra Bank Central Office to express solidarity with the movement from 9 a.m. in the morning. The day marked one month since the beginning of the protests against impunity for perpetrators of violence against women. At least one person, namely Ms. Bhakti Shah, was severely injured, and 32 persons, including 19 women and 13 men, were arrested when the protestors tried to wade through the restricted area abutting the official residence of the Prime Minister at around 10:30 a.m. Bhakti Shah, a transgender activist participating in the protest, was deliberately targeted by four police personnel who indiscriminately kicked and manhandled her until she was pulled away by other protestors. Those arrested were kept in the open ground of 2 number Gan



(Barrack) of Nepal Police, Maharajgunj, Kathmandu, and were only released after three hours. Relatives of those victims to human rights violations, human rights activists, lawyers, and journalists were among the arrested.

On 10 June 2013, the police charged a protest movement organized by the Indigenous, Dalit, and Backward Class Coordination Struggle Committee in Biratnagar. Demands of the protestors were for financial transparency and inclusive allocation of the municipal budget for traditionally excluded groups. Five protesters and two journalists were injured in the clash. Around 50 to 60 protesters were singing slogans, peaceably blocking the entrance to the City office when, without prior warning, the police charged the protesters, hitting them with lathis (sticks).

The charge commenced at office opening time in order to open the door to the municipal office. About 25 police officers and 60 to 70 staff of the Sub-metropolitan City Office joined the assault. Kaushal Niraula, a correspondent of Terai Television and Makalu F.M. (Biratnagar), was taking pictures of the protest and of the scuffle between the police and the demonstrators when angered staff from the city office attacked him and tried to seize his camera. He was punched on the mouth, which got cut on impact. Brahmadev Yadav, his colleague and correspondent of Popular FM (Sunsari) and Nepal Patra (Kathmandu), tried to help him but the police beat him on his back and his legs with a baton. Witnesses reported hearing orders to target and attack the journalists.

It is not only rights defenders working on impunity that have been endangered by the decay of the rule of law and the resurgence of attacks. Human rights defenders working on caste discrimination and gender violence have also suffered from the deterioration of the political climate. One case presented in the caste-based discrimination section of this report tells the story of how a 23-year-old woman subjected to an attempted rape and a rights defender who helped her report the case were assaulted by a mob to force them to drop charges.

During its Universal Periodic Review in 2011, Nepal accepted recommendations to establish a system protecting human rights defenders and to adopt a legislation protecting their activities and establishing specific punishment for attacks against human rights defenders. However, such legislation was not adopted during the tenure of the first Constituent Assembly. Following its dissolution, these recommendations have been put on the backburner and ignored by the interim government. Even in the absence of a

law addressing safety of human rights defenders, government and police apathy in investigating attacks, and the calls for attacks, are condemnable; they are factors condoning the rise of violent action against defenders.

It is essential that the work of rights defenders, journalists, and victims of human rights violations seeking justice be protected to guarantee the dynamism and strength of Nepal's new democratic institutions. Such work can play a complementary role to that of the Constituent Assembly, giving substance to the formal democratic institutions that will be established. The government of Nepal should acknowledge the positive role played by human rights defenders in the Nepalese peace and democratization process, and commit to an attitude of zero tolerance toward any action endangering the work of human rights defenders, the right to peaceful protest, and the right to information.

## **Police Accountability & Torture Eradication**

There is still no law criminalizing torture in Nepal and, after the Constituent Assembly dissolution, no Parliament to adopt it. There is no functioning rule of law framework to ensure that law enforcement officers who have committed a human rights violation can be held accountable for having done so, and no political will to allocate the resources and energy required for the creation of strong justice institutions. That the police force remains out of the reach of the law is something that has sustained high levels of police torture in Nepal, even post-conflict. Although after 2006, instances of police torture have declined, the rates of detainees reporting torture, or being subjected to inhuman, cruel, or degrading treatment have hovered around 20%. According to Nepali NGO Advocacy Forum, in 2012, 22.3% of the 3,773 detainees they interviewed reported torture. For juveniles, this rate is as high as 34.7%.<sup>134</sup>

Several cases documented this year speak of a pattern of abuses in which once a person has been arrested he or she is deprived of the protection of the law and exposed to abuse of power. Procedural guarantees and fundamental rights which should be protecting detainees, such as mandatory health checkups or mandatory presentation within 24 hours before a judicial authority are trampled upon blatantly without consequences. Extreme delays in rendering justice, fear of reprisals, and no effective protection of witnesses and victims

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<sup>134</sup> Nepal: is the government unwilling or unable to prevent torture, Advocacy Forum 26 June 2013 report, <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-June-2013-english-version.pdf>

have led to a general failure of justice and a lack of fair trials. Missing victim protection and witness protection mechanisms exposes victims to abuse and threats if they want to report torture and as a result, most of them choose to keep silent. Collusion between the police and governmental authorities has also exposed victims of torture to further retaliation. In particular, quasi-judicial powers entrusted with the Chief District Officers have come under scrutiny by the Supreme Court for encroaching upon the concept of separation of powers.

Under the Public offences act, the Chief District Officer (CDO), a government official, has the power to remand detainees for a period of up to six months without proper judicial trial, in spite of a September 2011 Supreme Court order to review this act that found it to be unconstitutional. The Committee against torture in October 2012 had also found that these provisions breached guarantees of due process. In spite of the order, no measures have been taken to strip the CDO of its judicial powers. The AHRC and its partners have documented several cases in which the CDO has colluded with the police to remand victims of torture for extended periods without proper judicial oversight, preventing victims from announcing that they had been tortured.

Individual stories of torture victims documented throughout 2013 illustrate how few procedural guarantees and rights benefit detainees as police arbitrarily decide to ignore these guarantees and rights, openly defying court orders or breaking laws without consequences.

### ***Two arbitrarily arrested, tortured, for 12 days in Kathmandu***

Dudhraj Tamang and his housemate, Rabi Shrestha, were arrested on 12 September and detained in the Metropolitan Police Crime Division (MPCD), Hanumandhoka, Kathmandu. They were then kept together and tortured in a room containing a table, chairs, bamboo sticks, and plastic pipes. Rabi was blindfolded and the three police officers present in the room punched and kicked his face, his chest, his bottom, his thighs, and his back. They slapped his ears, cheeks, face, and eyes several times. They forced him to stand on his head and hands and used bamboo sticks to beat the soles of his feet. The torture lasted until he could not bear the pain anymore and agreed to everything they asked. The torture then stopped and the policemen started the interrogation again.

As Rabi could not answer their questions, the policemen handcuffed him, forced his knees through his handcuffed hands and inserted a stick through his bended knees. Two policemen lifted the stick and a third policeman kicked

on his bottom and back. They lifted him and let him fall down on the floor several times. Rabi became unconscious repeatedly. The torture continued until one policeman told the others to stop for fear that the victim would get killed. Then he was given some water and time to rest. However, the policemen then started to torture him again turn by turn. After the victim told them that one of his legs had been broken in a car accident, they beat more intensively the previously injured leg. They forced him to jump, a way to attenuate the appearance of bruising due to torture. As he could not jump properly, they kicked him and beat him again using sticks. The torture continued until late into the night.

Dudhraj was tortured on the other side of the room. After he denied knowing anything about the stolen gold, a police inspector ordered his subordinates to torture him. Some policemen forced him to lie down on the floor and one of them stepped on his legs with his boots. They beat on the soles of his feet, slapped his face, and made him jump. The torture continued until 11 p.m. that evening when he was brought down to the Metropolitan Police Range (MPR) with Rabi.

They were not provided with any food that night, with the exception of noodles and biscuits shared by co-detainees. Rabi reports that he could not sleep for the whole night due to the pain in his whole body.

Both men were remanded under the Public Offence Act by the Chief District Officer, Babar Mahal, and they were held for 7 days, charge under the Public Offence act. Until a court remanded them on September 6, the CDO remanded them several times to custody. By allowing the remand into custody without the oversight of a judicial authority, the two detainees have been exposed to further torture and abuse. The same day, in fact, they were taken to the Bir Hospital for a health checkup but the doctors there did not ask them if they had been tortured.

For the following three days they were tortured from the morning to evening. They were threatened that they would be forced to urinate in the electric heater or be charged with drug smuggling, under which they could be detained for a period of up to six months, without trial, a clear violation of international human rights law.

The fifth day after their arrest, they were taken to the MPCD again where they were tortured for three nights and four days in a row by different groups of policemen. In addition to the beatings, they were forced to stare at an electric

light continuously during the night. Whenever they blinked, they were beaten. Throughout those three nights and four days, they were not given enough food to eat and, as reported by one of the victims, “were gradually losing their energy and hope to live.”

On 3 September 2013, Dudhraj and Rabi were presented before the District Administration Office, Kathmandu, asked to deposit NRs. 5,000 each and released. However, without even taking their handcuffs off, the police immediately rearrested them and brought them back to the MPR, Hanumandhoka. On 6 September, they were given an arrest warrant and a detention letter and remanded on an abduction charge the same day by the Kathmandu district court. They were brought to Bir Hospital to receive a health checkup on 8 September, but again the doctors did not ask whether they had been tortured. Only after 6 September were they given access to a lawyer.

It is worth noting that in Dudhraj’s initial charge sheet, the police requested the DAO, Kathmandu, to handover the detainee if he was to be released as another case was pending against him. However, the complaint against both men in the abduction case was filed only on 5 September 2013. The re-arrest of both men on 3 September, therefore, has no legal basis.

Due to the torture, Rabi Shrestha vomited for four days. He developed bruising on his left eye, his bottom, his legs, and his feet. Both his ears had clotted blood. His legs became swollen; he was not able to move or to walk properly for several days. His hands and his chest remained painful for several days. He had difficulty breathing and could not sleep due to the pain. He underwent dizziness and loss of appetite for several days. For three to four days, Dudhraj Tamang vomited every time he took food and felt dizzy. The pain in his whole body and especially under his armpits was so severe that he was unable to sleep.

### ***Threatened by police, torture victim afraid of reprisals***

On 23 June 2013, Padam Bahadur Shahi (42), an ex-policeman, was arrested by three policemen following his dispute with a bus driver. On the scene of the dispute, two of the policemen punched him on the face. Then they put him on a motorcycle and took him to the Area Police Office at Kohalpur, where he was detained. After a while, Sub-Inspector Narpati Bhatt entered the cell and punched Shahi’s neck, face, and chest four to five times. The police officer also kicked Shahi’s knees and legs three to four times. He punched him hard on his right cheek. At the same time a detention guard, a Head Constable whose

surname is Chaudhary, punched Shahi's left armpit three times, punched his neck and head five to six times, and kicked the victim's knees with his police boots nine to ten times. The kicking left red and blue bruises on his chin.

When the victim asked why they had only arrested him and why they were torturing him, one of the policemen told him not to talk anymore, adding "nothing will happen to us even if we kill you and throw your body somewhere." They then took him to the women detention cell, which was empty.

They handcuffed his hands and fixed them to the door. Four to five policemen including Head Constable Chaudhary tortured him. They beat his body with sticks, punching with fists and kicking with police boots. They broke one of his molars. Due to the torture, the victim's mouth was bleeding, his right cheek swollen, his right elbow injured, and skin on his right elbow scratched.

After an hour, one of the victim's friends came to the police station, accompanied by a local leader of a political party. The police brought him out of the police station, still handcuffed. They accused the victim of having broken a fan set outside the detention room and asked him to pay NRs. 2,800 as compensation. Although the victim denied having done so, the police still forced him to pay them NRs. 1,400. He was released later that day.

The following day, the victim visited Nepalgunj Zonal Hospital for treatment. The doctor said that his right cheekbone was broken and referred him to a hospital in Kathmandu or in Lucknow, India.

As of 3 June 2013 the victim, who could not afford further treatment, remains at home. He complained to local human rights defenders of sleepless nights and said that he is now afraid each time he sees a policeman. The victim did not seek legal action, as he is afraid of reprisals from the perpetrators.

### ***15 year old torture victim threatened with false charges***

Faizan (15 – name changed) was sleeping in his house in Banke district on 19 February 2013 when eight to nine policemen forcefully entered and arrested him at 3 a.m.. He was taken in a van to the District Police Office. During the journey, one of the policemen kicked Faizan's back with his police boots and beat his shoulder with a bamboo stick while questioning him about a robbery case.

In the DPO, he was detained in a cell with adults. There he met three men he knew already who had been arrested for stealing from passersby and had given his name to the police. At around noon that day, a policeman handcuffed Faizan and took him on his motorcycle to Ward Police Office, Fultekra, Nepalgunj, Banke. There, he blindfolded Faizan with a piece of cloth and Faizan just had time to see that the policeman was holding a stick in his hands. He was taken to a room where he heard different voices leading him to believe that three or four other persons were also present. He was forced to kneel down and the policeman beat his legs with the stick while interrogating him about a robbery and tried to force him to confess that he was in possession of a pistol. The torture lasted half an hour. As the pain became unbearable, Faizan, out of exhaustion, accepted all the accusations. Only then did the torture stop.

Faizan was transferred back to the DPO the same day at 5 p.m. Later that evening, two policemen brought him to the top floor of the DPO where four policemen were sitting. The policemen handcuffed him and forced him to lie down on the floor. Two of them used the pipe of a bicycle pump to beat the sole of his feet approximately 30 times, while asking him the same questions as in the afternoon. The torture lasted for half an hour.

He was taken to a hospital for a medical checkup but the doctor did not ask him whether he had been tortured or needed medication but just verified whether he had consumed any alcohol, a routine practice in Nepal. Faizan was kept in a detention cell alongside adults for the night.

That night, at midnight, a policeman identified as David picked Faizan up from the detention cell. He caught his nipples, twisted them and pulled him up. The pain was severe, making Faizan cry. The policeman, wearing heavy boots, jumped on his stomach three times, and violently round-house kicked Faizan's waist. He slapped Faizan on his ears. He told Faizan that his legs would not heal for another year and threatened him not to tell anyone about the torture or else he would lose his job and would not leave him in peace.

On the same day, 20 February 2013, the police made public those they had arrested in relation to the case of looting passersby in a press conference. Faizan was displayed as one of the criminals arrested.

Although the Nepali law mandates that Faizan should have been provided with a detention letter immediately upon his arrival in the DPO, it was only two days after his arrest that he received a detention letter and an arrest

warrant. He was brought before the court on 21 February, i.e. two days after his arrest, despite domestic provisions that all detainees should be presented before a judicial authority within 24 hours. Faizan was therefore kept in illegal detention, which made him more vulnerable to abuses as his presence in police custody was undocumented.

Although he was initially arrested and interrogated in relation to allegations of being illegally in possession of a pistol and being involved in a robbery, the police have found no evidence of such involvement and have filed a case against him under allegations of drug smuggling. Suspects charged under the Narcotic Drugs (Control) Act 1976 can be detained, without trial for a period up to 3 months, with the permission of the court.

Faizan remained in custody of those who had tortured him and threatened him with reprisals should he share the truth of his torture with anyone. The policemen threatened to charge him with Arms and Ammunitions case if he were to speak of the torture during the hearing of the drug smuggling case.

***Torture victim in the custody of torturer policemen, who stage a mock execution***

On 15 February 2013, Parshuram Chaudhary was asked to present himself before the Metropolitan Police Crime Division, Hanumandhoka, Kathmandu, in relation to an investigation into a robbery which had taken place at his landlord's house the day before.

Later that day, he presented himself to the police station and was taken to the litigation section. There, three policemen tortured him. They beat him with sticks, slapped him with the palm of their hands, and kicked him with their boots to force him to confess his involvement in the robbery. He was released, called again to Hanumandhoka MPCD, and tortured under interrogation three times, each time after a four to five day interval.

Following that incident, Assistant Sub-Inspector (ASI) Yadav started calling Parshuram Chaudhary's cell and asked him to meet him in different places where he would ask him to pay the bill covering tea and snack charges of him and other policemen. This happened on four occasions. The policeman threatened Chaudhary that he would send him to jail if he refused to pay the bill. So Chaudhary paid NRs 240 for the dumplings. In total he had to pay 375 NRs under threats from ASI Yadav.



On 2 March, Mr. Chaudhary was asked to report to the Metropolitan Police Circle (MPC), Boudha, and was detained there. At 4 p.m., two policemen took him to a room on the first floor of the police station and locked the door. He was blindfolded and handcuffed. One of them took off his police boots and using them hit Mr. Chaudhary five to six times on his face, head, and other parts of his body accusing him of theft. The soles of his feet were beaten with sticks and he was threatened that he would be shot if he did not provide information. In a mock execution, a police officer put a pistol on his temple and asked him what his last desire was.

The beating cut Mr. Chaudhary's left eyebrow and he fell unconscious. When he woke up, he found that his face was covered in blood. One policeman asked him to sign a paper without letting him see its contents. After a while, a police constable took Mr. Chaudhary to a medical practice near Boudha Stupa where a doctor applied 2 stitches to the wound and gave medicine to stop the bleeding.

Mr. Chaudhary was brought back to MPC, Boudha, and detained there. After that day, Mr Chaudary has not been taken to the hospital again, even to remove the stitches. He was tortured in a similar fashion on the three following evenings. Twice was a pistol put to his head with him being threatened with imminent death.

On 19 March 2013 he was transferred to the MPCD, Hanumandhoka. While being interrogated about the case, a policeman dressed in civil clothes punched his chest during an interrogation. They took his statement but they did not read it out loud for him. He signed the paper without knowing what was written on it. He was then brought back to MPC, Boudha, and detained there.

While in detention, the victim was also threatened that he would be falsely charged in a drug smuggling case and sent to jail for 17 years. His lawyer has reported that he has a two inch long wound on his left eyebrow covered with two stiches and several blue marks on his back. He is complaining of dizziness and being unable to sleep at night.

### ***Repression of Peaceful Protests***

It is not only the right of all Nepalese not to be tortured, which is being denied by the lack of police accountability. It is also their right to protest peacefully or to share information with the public. In the section of the report, dedicated to

human rights defenders and journalists, several instances from 2013 are detailed in which the police violently repressed demonstrations or attacked journalists covering them.

A draft bill criminalizing torture the “Torture or Cruel, inhuman or degrading treatment (offence and punishment) Act, 2012” was tabled in the Parliament Secretariat on May 2012, but its contents fail to build the effective system of checks and balances needed to bring the police under the frame of the rule of law. As cases in this report show, eliminating torture in Nepal will require focusing attention on developing an effective and comprehensive system of checks and balances that is able to hold police officers accountable for abuse of power.

Newly elected Parliament need to make the adoption of such legislation a priority. The last annual report of the AHRC contained exhaustive comments on the changes required to bring the torture bill in conformity with international human rights standards and to ensure that it can provide an effective tool to end torture in Nepal.

These suggestions included:

- Setting up a mechanism of regular visits by independent bodies to places of detention in order to monitor the respect of human rights on their premises, inspired by the mechanisms already developed by NGOs such as Advocacy Forum.
- Making medical checkup, conducted by a professional, mandatory and free, and making illegal the presence of police officers in the room while the checkup is conducted.
- Developing a separate piece of legislation dealing exclusively with witness and victim protection. Developing a comprehensive, strong, independent, and credible victim protection mechanism is a pre-requisite to making the law work.
- Including a provision ensuring that victims, complainants, or witnesses still in custody that may be directly exposed to reprisals / further torture are transferred to another detention facility immediately.
- Developing a truly independent and professional mechanism to investigate allegations of torture. In light of the cases documented in Nepal by the

AHRC and its partners in recent years, some of which are presented in this report, the absence of an investigation body mandated to investigate complaints of torture contributes to the failure of most investigations. Currently, the head of police retains control of the investigation process, even when it concerns his or her staff: an open conflict of interest. Often, the District Police Office is involved in the enquiry team, investigating their own subordinates, despite significant evidence pointing to the DPO being active in obstructing the investigation process, which includes the tampering of evidence or encouraging victims to find a negotiated settlement.

- Developing an independent complaint mechanism on the conduct of security forces, which would make the victims feel safe from harassment if they want to report a case of torture.
- Adopting penalties proportional to the gravity of the crime. At the moment, the draft bill only provides for a maximum punishment of a 5 years jail term or a NRs. 50,000 fine or both. The possibility that a perpetrator of torture may get away with a simple fine is inappropriate and the law should provide a mandatory prison sentence for anyone convicted of torture. Just a fine would prevent the law from being a deterrent. It would fail to signal the resolution of the government to ban torture. As in the CAT jurisprudence, a significant prison sentence, i.e. a minimum sentence of 6 years and a maximum sentence of 20 years imprisonment, may be considered as an appropriate punishment for acts of torture.
- Removing any statutory limitation on reporting cases of torture. At the moment, the draft bill includes a 35-day statutory limitation, which would defeat the primary purpose of the law.
- Ensuring that no provision creates loopholes which could be exploited to absolve perpetrators of criminal liability. At the moment, section 12 of the draft bill, specifying which acts do not fall under the definition of torture, leaves room for an interpretation authorizing excessive or disproportionate use of force during arrest or demonstration for instance. Section 35, providing “protection for acting in good faith”, should also be scrapped.

## **Legacy of Caste-based discrimination & violence remains**

*“My final words of advice to you are educate, agitate and organize; have faith in yourself. With justice on our side I do not see how we can lose our battle.” - Dr. B.R. Ambedkar*

Nepal marked the year 2013 with remarkable achievements in terms of successfully conducting the second Constituent Assembly elections. However, the election was unable to meet the expectations of the Dalit community, as few Dalit leaders were nominated this time around. Out of 1,031 candidates from 122 political parties, only the CPN-Maoists nominated 9 and the CPN UML nominated 6 Dalit candidates. There were no Dalit candidates from the Nepali Congress, the party that returned with the most seats in the second Constituent Assembly elections.

This is a matter of concern for the Dalit community. There were 50 Dalit representatives in the first Constituent Assembly in 2008, which was 8.31% of the total 601 members. According to the Census 2011, Dalits constitute 13.6% of the population. These figures have been challenged and opposed by Dalit civil society, which holds that their population is closer to 20%. Traditionally, Dalits are excluded from the decision-making process and from state mechanisms. The decreased number of candidates from the Dalit community shows that political parties are not committed to changing the trend and addressing the issues of Dalits in Nepal. This is disconcerting, as the AHRC has received cases of human rights violation based on caste from Nepal in 2013 on a frequent basis.

The Caste-Based Discrimination and Untouchability (Offence and Punishment) Law, 2011, has not been effective in upholding the rights of the Dalit community. The Office of the High Commissioner for Human Rights (OHCHR) in Nepal and the National Dalit Commission (NDC) joined together in 2008 to draft the Caste-Based Discrimination and Untouchability Bill. There was strong lobbying and advocacy from Dalit NGOs and AHRC partners such as the Jagaran Media Center (JMC) and Feminist Dalit Organization (FEDO) in Nepal. The AHRC supported this lobby nationally and internationally. However, there is serious lacuna in its implementation. The government has not given adequate attention to publicize and make arrangements for its strict implementation of the law.

The law does not address the discrimination carried out in private properties and private spaces, often a loophole for perpetrators to go scot-free. Simultaneously, it is a rather soft law where culprits can walk free, merely by paying the penalty. The police often recommend victims of caste-based discrimination to manage the cases with mutual agreement with their perpetrators rather than follow the legal process. This mindset is visible in most cases when a victim of caste-based discrimination approaches a police station with a complaint.

The Dalit civil society movement started in the 1940s, and is one of the oldest movements in Nepal after restoration of democracy in 1990. The National Dalit Commission was established in 2002, which paved the way for declaring Nepal an “Untouchability Free State” in 2006. Though caste discrimination is punishable in law, it is still widely practiced in society. However, when talking about achievements, the discourse on caste discrimination is still mostly limited to inter and intra Dalit discrimination in Nepal. Often Dalit members accept caste discrimination as a legacy of their birth. This hierarchical psychological attitude, which is often embedded in Dalit minds and hearts, leads to the fear of being discriminated against. The Dalit civil society and leaders are divided and hardly came together to raise the matters of rights violations of Dalits.

When caste is rooted in a society like Nepal, where the social law reigns over national and international law and convention, victims need to receive greater attention for speedy justice. There is the question of safety for victims. Often, due to the negligence of state authorities and security agencies, the perpetrators of caste discrimination are not properly investigated and prosecuted. Caste incidents need urgent intervention. Better coordination among civil society and rights NGOs could ensure greater safety for victims. The government commitments need to be translated into action. The following case documented by our partner in Nepal, Jagaran Media Center, presents unfortunate lack of coordination and state negligence.

Locals of Belabari VDC of Morang District brutally attacked a Dalit woman and a journalist from the Dalit community. Maya Sarki reported that Jivan tried to sexually assault her. The police called both parties at the police station. They found that Jivan was not involved in the sexual attack as Maya claimed that she had bitten the hand of the perpetrator during the assault before he ran away. (Maya’s husband is working abroad and she has two children. Local youths have tried to rape her in the past, soon after her husband left for work abroad.) Maya apologized to Jivan.

However, the villagers, mostly relatives of Bhetwal, called her to a public place and behaved with brutality. They covered her face with black shoot, garlanded her with shoes and slippers, and paraded her through the village. They blamed her for charging Jivan for assault even though she did not have any proof, just to take revenge for past family issues. Then, the frenzied mob went to the house of Manoj and smeared his face black.

When Maya and Manoj went to the local police station to file a complaint, the officers were not ready to receive their complaint. Later on, the complaint was filed. Pressure of the perpetrators and their families resulted in an agreement being reached that such actions would not be repeated again.

However, due to intense pressure from Dalit organizations like the Jagaran Media Center in Nepal, the incident was followed nationally and internationally. The police administration caught five alleged perpetrators, Jivan Bhetwal, Amit Bhetwal, Sewika Bhetwal, Chandrakala Bhetwal, Ambika Bhetwal, and Kamala Bhetwal. The other ten perpetrators fled the village. The District Court Morang gave their verdict to release those arrested on bail upon payment of NRs. 7,000 each.

It should be noted that according to the Caste Based Discrimination and Untouchability (Offence and Punishment) Law 2011, those who practice caste-based discrimination should be punished with a fine of NRs. 25,000 or 3 years imprisonment or both.

In 2013, Dalits have been found thrashed for merely entering temples. Police have usually arrived late in response to these incidents. The AHRC has noted with concern how in 2013 beatings and injuries sustained by Dalit victims have not been given cognizance by the state. The question of human dignity, when Dalits are treated less than animals has been neglected. Another example is the case documented by a consortium of Dalit NGOs, where Dalit villagers were beaten in Pipariya of Rautahat district merely for entering a temple of worship. Despite the law that mentions the right of entry into a temple, non-Dalits imposed their own law to bar Dalits from entering the temple.

Dalits tried to enter a local Bramhasthan Bhagwati temple in Pipariya VDC in Rautahat district on 14 May 2013 to celebrate a marriage ceremony. When local non-Dalits, mostly from the Yadav caste, learned of this they tried to bar the Dalits from entering. The “Rams”, who belong to the Chamar caste, were barred from entering the temple. The Dalit villages reported this issue to the police, but did not receive any help. This angered the Dalits. Mostly young

Dalits then decided to enter the temple again on 7 June 2013. This incident summoned reprisal from non-Dalit villagers.

An angry mob of non-Dalits entered the village armed with sticks and stones. A total of 18 Dalits were injured in this incident and 65 Dalit houses were vandalized. Some of them received serious wounds, like Guru Dayal Ram who suffered grievous head injuries. Dalit youths fled the village fearing further attack. But the situation was worse than expected as Dalits own only the patch of land where their houses are built. In order to graze their cattle, use public water taps, and use the toilet, they have to go outside their houses. Non-Dalits stopped allowing them to do so. On top of this, non-Dalit women and children were found guarding the temple preventing Dalits from entering. The situation became so tense that an entire police team was stationed at the village to provide safety to Dalits and guard against any further incident.

The injured received treatment at Anamika hospital in Gaur, the district headquarters. The victims had to live under open sky, without appropriate relief. Though the police were informed about the incident on time, they arrived only after 24 hours. The police remained unreachable throughout the 4 hour long attack, a routine police practice when it come to Dalit persecution in Nepal. This gave enough time for most of the perpetrators to cross the border and escape to India. The police were, however, successful in arresting two persons involved on this incident, Chhotelal Yadav and Ram Dev Yadav.

Dalit organizations condemned this incident and organized a press conference in coordination with Dalit organizations in Kathmandu. They submitted a memorandum to Khil Raj Regmi, Chairperson of the Interim Government, Lila Mani Poudel, Chief Secretary, and Madhav Prasad Ghimire, Home Minister.

A joint fact finding mission was conducted with participation of heads of the Dalit NGOs in Kathmandu. The government also dispatched a monitoring mission, where members from the civil society were included. The NHRC strongly condemned the incident and demanded free and fair investigation.

These cases show what is wrong in our societies as it occurred around Nepal. Dalits and other marginalized people face inequality and difficulty in administrative and police procedures; being Dalit bars them from accessing justice. On the other hand, police operate in support of the influential non-Dalit locals when they come across cases of untouchability and caste discrimination. The cases detailed show how difficult it is for Dalit victims to

access justice in Nepal. The police routinely neglect recording complaints made by Dalits, often mocking the victims for bringing such “trivial” issues that could be handled at the village level. Even if the case is filed as a result of pressure and advocacy from Dalit organizations, civil society, and international human rights watchdogs, the justice process is too lengthy and expensive for the victims to cope with. Many decide to abandon seeking justice after a while.

Even the Dalit organizations and human rights organizations start shying away from such cases. The politics between Dalit organizations leading cases is often problematic for victims. There is a big question mark on coordination between Dalit organizations. Whenever Dalit organizations have joined hands, they have been able to help the victims of caste-based discrimination.<sup>135</sup> But often, the AHRC has found that Dalit organizations are divided and do not come up with a joint strategies and individual efforts of Dalit organizations do not bring effective outcomes. Less coordinated efforts slow the justice process while victims of caste discrimination are further victimized.

State authorities are unsupportive when an incident of caste-based discrimination emerges. Caste is often tangled in politics. This hinders victims from getting justice or even approaching justice mechanisms and institutions. Victims are neglected; they receive further harassment during the complaint registration and investigation process.

Dalit organizations should forget their differences and come together to help victims of caste-based discrimination. Dalits are considered stateless citizens and in many cases in the Terai, in fact they do not have citizenship. Dalits do not have access to state mechanisms. Laws and conventions still have not become effective despite the declaration of Nepal as an untouchability-free state. With growing incidents of caste-based discrimination being documented, the declaration of Nepal being an untouchability free state is ironical.

Unless the state gives written commitment with deadlines for its implementation of the Caste Based Discrimination and Untouchability (Offence and Punishment) Law, 2011, the plight of the Dalit community will remain the same in the coming years. Law has clearly termed practice of untouchability and caste discrimination as illegal, but there is no real practice of law. Perpetrators should be booked and brought to justice promptly. The government, political leaders, and the law enforcement authorities should act responsible in order to

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135 <http://www.humanrights.asia/opinions/news/urgent-appeals/AHRC-UAC-038-2009>



prevent incidents of caste discriminations. The question is not just about the implementation of laws, it is about the will power of the state to implement them. If Nepal is committed to end caste-based discrimination, and provide justice to victims of caste based discrimination, the capacity and interest to uphold the rights of Dalits should be increased.

## **Conclusion**

There is a widely quoted judicial opinion that, “justice must not only be done, it must also be seen to be done”. The transitional period however, continued through 2013 and stalled any progress on human rights matters in Nepal. Not justice, but more of the extended limbo was seen. The political vacuum halted everything in the country. The first Constituent Assembly was not able to deliver the constitution before its demise on May 2012. The political parties stayed divided. Parties and leaders could not come into agreement. The situation became more tense after caretaker Prime Minister Baburam Bhattarai resigned from the government. It was followed with bandhs, clashes, bombings, and people killed in broad daylight. There was rise of insecurity in the country.

However, the Khil Raj Regmi led technocratic government was able to successfully conduct the second Constituent Assembly elections on 19 November. The elections were lauded peaceful by media, national and international organizations, and even political parties, right after its completion. However, UCPN-Maoists have blamed election fraud and boycotted results and meetings called by the Election Commission.

The UCPN-Maoists, along with other 15 smaller parties decided to boycott the first meeting called by the Election Commission on 3 December 2013. They have threatened to boycott the Constituent Assembly until and unless the Election Commission conducts investigations onto election frauds. The UCPN-Maoists also decided not to submit a list for proportional representatives before the Election Commission conduct investigations. Seeing their wins, UCPN-Maoists are expected to receive 54 seats through the Proportional Representation system. They have received 26 seats through the First Past the Post system. It still makes them the third largest party in the second Constituent Assembly elections held on 19 November 2013. They have earlier demanded formation of “Consensus Government” before they join the Constituent Assembly, which has been opposed gently by the Nepali Congress and the CPN UML, parties who have the largest seats after the second Constituent Assembly elections.

If the political stalemate continues, Nepal faces the institutionalization of impunity. The formation of Truth and Reconciliation Commission and passing the Anti-Torture bill has been pending. Human rights defenders and journalists continue to be attacked and killed in broad daylight. Police routinely practice torture during their investigations and torture victims are threatened not to report their torturers. Victims of the insurgency period, torture victims, and their families are still awaiting treatment, and compensation. Dalits are being threatened, humiliated, beaten, and displaced.

The AHRC suggests political parties embrace democratic practices and engage in drafting a human rights friendly constitution. The victims of the conflict have waited long for the establishment of the Truth and Reconciliation Commission (TRC). It should be established without further delay. There should be strong political commitment to impartial investigation human rights violations (including war crimes) and perpetrators should be booked accordingly. Otherwise Nepal faces the institutionalisation of impunity.



# CHAPTER V



ASIAN HUMAN RIGHTS COMMISSION

# PAKISTAN



# PAKISTAN

## COUNTRY HAS TURNED INTO A KILLING FIELD

### Introduction

Pakistan's criminal justice system is deeply flawed, inefficient, and corrupt. It is not independent, and investigators and prosecutors lack the resources, training, and security for successful prosecutions. Every time the criminal justice system is circumvented, it becomes weaker and irrelevant, and the culture of impunity that thrives in its place fuels further cycles of consequence-free violence and crime.

Law-enforcement agencies are not equipped to gather forensics and other evidence, while intimidation and political intervention make guilty verdicts a rarity. As a result of this ineffective criminal justice system's failure to end the culture of impunity, Pakistanis remain at the mercy of those state and non-state actors who resort to violence as a means to secure power.

Violations are widespread due to failings and lack of reform in the country's institutional framework, in particular key institutions of the rule of law - the police, prosecution and judiciary. This is compounded by persisting impunity enjoyed by Pakistan's military and intelligence agencies. Unproductive investigations and ineffective prosecutions, in the rare cases where alleged perpetrators are brought to court, result in violations going unpunished, especially where those responsible are state agents or members of powerful groups. The Government of Pakistan has failed to implement recommendations to ensure fair trials, punish abuse by security forces and ensure victims' access to protection and redress.

Absence of a functioning criminal justice framework has also allowed, or even caused torture in custody and extrajudicial executions to increase rapidly this year. Every police station has its own private torture centre, in addition to its lock ups. Every cantonment of the armed forces runs at least one torture centre and the Inter-Services Intelligence (ISI) offices have their 'safe houses'. The

Asian Human Rights Commission (AHRC) has documented numerous cases in which these centres have been positively identified. These have been published and sent to the authorities.

In 2013, hundreds of incidents of sectarian violence, targeted killings, terrorist attacks, and suicide bombings were witnessed, as well as killings conducted by armed forces and intelligence agencies and those via US un-manned drone attacks. In these incidents at least 7,200 persons have been killed and 8,792 injured. In drone attacks this year, 188 people including civilians and foreign terrorists have been killed, whereas 6,982 persons have been killed in sectarian violence and other incidents of targeted killings and bombings.

It was a busy year for Pakistan in many ways. The nation faced the promulgation of draconian laws and the merger of the Ministry of Human Rights with the ministry of Law and Justice. It also witnessed judicial corruption, impunity of supra-constitutional forces, absence of the rule of law, killing of persons from Muslim minority sects, honour killing, trafficking of women and children, torture in custody, disappearance after arrest, extrajudicial execution by the police and armed forces, suicide attacks on religious sites, churches, and Ahmadi mosques, persecution of the Ahmadis, forced conversion to Islam, forced marriages, jirgas, assassination and harassment of journalists, enslavement of children and women, unequal water distribution among provinces, poor industrial working and health conditions, inadequate housing and educational facilities, poverty levels rising to 34%, and power blackouts that brought industrial and commercial activities to a standstill.

The year 2013 also witnessed, for the first time in Pakistani history, peaceful transfer of power from one civil government to another following a general election. Although every political party, including that which won the elections with a two-third majority, complained about gross vote rigging in the May 2013 election.

The new government, on assuming power, immediately began acting on its distaste for human rights. It merged the Ministry of Human Rights with the Ministry of Law and Justice and thus denying the people opportunity for redress for human rights abuses. The previous Parliament, in May 2012, enacted a new law creating an independent National Commission for Human Rights (NCHR) in accordance with Paris Principles. However, the government has taken no initiative to complete the process of creating the NCHR. The government has conspicuously not constituted its members and chairpersons at the federal and provincial levels. In fact, the government has turned a blind eye

to the arrogance of the police and armed forces in its blatant refusal to comply with the orders of the courts.

The second round of setbacks from the new government, within a few days of taking power, was the lifting of the moratorium on death sentences. Its ministers and party workers were briefed that death sentences are in accord with Islamic teaching and should be continued. Fundamentalist groups were also used for this purpose. However, the European Union stopped trade relation with Pakistan as a result, and the government had to restore the moratorium on death sentences.

The government, in attempt to limit freedom of expression, freedom of movement, constitutional protection from arbitrary arrest, security of individuals, right to property, and civil liberty promulgated ordinances by providing law enforcement and security agencies unlimited powers to search houses without warrants, shoot suspects on sight, confiscate property, and established a parallel judiciary by creating special courts and special prosecution under new ordinances. These ordinances were promulgated to bypass both Parliament and open debate.

Balochistan remains in a grave situation. Thousands of people are missing after arrest and human rights abuses continue. Military checkpoints are a common sight in Balochistan, even in educational institutions. The government has imposed authoritarian rule in the province and handed over control and the power of policing to the Frontier Corps (FC). With this power the FC has brutalized the people: torture, disappearances, and arbitrary arrest are frequent as a result. Extrajudicial executions eliminate evidence of disappeared persons. Since July, 2010, over 730 bodies of missing persons have been found in Balochistan. To date around 200 women are missing and Balochi nationalist groups claim that more than 100 children are being illegally detained by the military. Cabinet members from the area live in Islamabad and only rarely visit the province and the government has constituted two commissions to investigate causes behind extrajudicial execution and enforced disappearance in Balochistan. One commission assigned to complete a report within three months has still not presented it while the other was formed but has failed to conclude its investigation.

In the Khyber Pakhtoonkhwa (KPK) province, over 1,000 people are missing who were suspected to be members of Al Qaida and the Taliban. The same in Sindh province, where more than 600 activists of nationalist groups are missing after their arrest by law enforcement agencies and paramilitary forces.



In Pakistan-held Kashmir, the nationalists struggling for independence of both Kashmiri sections disappear constantly.

Disappearances, as previously mentioned, are associated with torture in custody and extrajudicial killings. In 2013, 180 bodies of formerly missing persons were dumped on the road-side as a result of apparent extrajudicial execution during their undocumented detention. The killing of Baloch people also continued in the Irani province of Siestan, bordering Pakistan including 16 Baloch political prisoners who were executed in Iran in an act of revenge for an attack on Iranian border security forces. It was alleged that the Baloch prisoners crossed the border from Pakistan and were executed after an encounter with Mersad, an Iranian paramilitary group and another armed group. Public prosecutor Mohammad Marziyeh announced that 16 rebels linked to groups hostile to the regime were hanged in the prison of Zahedan in response to the death of border guards in Saravan, Iran.

There are hundreds of missing person complaints before the higher courts, including the Supreme Court of Pakistan, notably concerning alleged abductions by state intelligence agencies. However, the military and intelligence agencies brazenly ignore Supreme Court orders to produce the victims. Two judicial commissions established to probe cases of disappearances have been unable to get explanations from the intelligence agencies, and their recommendations have been ignored.

The government has ratified the International Convention on Civil and Political Rights (ICCPR), the United Nations Convention Against Torture (UNCAT), the International Convention on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). However, the country has not enacted legislation that would let these international human rights commitments become justiciable rights with remedies in Pakistan. As a consequence, many groups remain unprotected, especially women and children who are treated as beasts of burden across the country.

YouTube and over 1,000 other websites remain banned in Pakistan. During the year, nine journalists have been killed in targeted attacks, bombings, and in while in custody of law enforcement agencies.

Appeasement for hardliners means religious minorities are harassed and killed daily. Leaders and spokesmen from banned organisations, some internationally

wanted, are allowed to make hate fueled speeches in public. The government has arrested thousands of alleged extremists over the past four years, but there have been no successful prosecutions due to lack of proper witness protection and half-hearted attempts by the prosecutors. These criminal elements now utilize the weaknesses of the law to their own benefit and collect public donations but are not arrested for fear of upsetting extremist groups.

In spite of the constitutional guarantee of freedom of religion, minority groups are not protected. Targeted attacks of the Shiites take place in daylight and on public roads in the presence of uniformed personnel; every year, around 200 Shiites are killed in this manner. The groups that claim responsibility for these killings move freely and even have offices in major cities. The Ahmadis are also frequently targeted for their belief, their places of worship are attacked and they are not allowed to carry out their religious observances.

Religious fanatics who rape and abuse Christians and Hindus with no fear of consequence or reprisal consider the women of these communities free game. Harassment, forced marriage, and forced conversions of both Christian and Hindu women to Islam is common. When victims do manage to reach the courts, judges rule in favour of their abductors, who are equally supported by religious fundamentalists. This Religious discrimination is forcing native Pakistani Hindus to flee their homeland.

Pakistan ranks third in the Global Slavery Index. It is estimated that there are 2,000,000 – 2,200,000 people involved in various forms of modern slavery in Pakistan. Often children working in brick kilns and construction sectors are not paid but remunerated with food, once a day. There are also reports that over 2,000,000 children have gone missing and possibly been trafficked.

The new government lifted the moratorium on death sentences in June 2013 but, after finding strong reaction from civil society and international donors, restored the moratorium. The government is of the opinion that death sentences are in accord with Islam and should be used. It is believed that the government also wishes to continue with death sentences on the pretext of the war against terrorism.

While there have been only two official executions of death row prisoners in Pakistan in four years, more than 8,000 convicts are on death row. Muslim political parties have been exerting pressure on the government to retain the death sentence and the government is aware it requires their support in forthcoming elections.

The economic conditions of the country have been deteriorating and the government has to borrow money from the market to cover daily expenses. Foreign debt has ballooned to \$ USD 45 billion, which is 42% of the annual budget. This has directly hit the budgets on education, health, and poverty elimination. Yet the defence budget never fails to increase; up to 29% from 23% of the budget; thus development allocation has to be slashed to fulfill the demands of the powerful armed forces so 'democracy' does not suffer. Additionally, prices of essential items increased in 2013, up 13% compared to last year. The reason is said to be the renewal of contract with the IMF consortium.

## **Killing Field**

Absence of the rule of law and the impotency of the courts has made Pakistan a killing field where militants (the Taliban and Muslim fundamentalists among others), and the security forces operate with impunity. Neither these factions nor the civilian rulers have any sense of dignity, respect for life, or desire for justice. Innocent Pakistanis are seen as mere cannon fodder; the right to life has lost all meaning in the ruling political circles elected by the people they are now failing to protect.

Since the rise of militancy in Pakistan not a month goes by without innocent people being sacrificed to the war on terror. The court, prosecution, and the investigation authorities are so afraid of the militants that they turn a blind eye to the killings while enjoying and demanding increases in their budgetary allowances to maintain their offices. In this situation the state has shown itself to be unwilling in protecting the lives of the people they have sworn to protect. The only response by the President, the Prime Minister, and other officials is predictably nothing more than empty expressions of condolence to the victims and their families in an effort to mollify them. The lives of women and children are of no importance to these functionaries that are happy to quote the increased numbers of killings in order to get foreign aid and public money in the guise of providing protection.

The state, as the saying goes, has gone to the dogs, and the militants are enjoying unopposed power in legal and judicial affairs. This is a catastrophic failure in the criminal justice system and until the civilian government of Prime Minister Nawaz Shareef reestablishes the system the mayhem will continue. However, it is apparent from their lack of action that the government has no political will to control militancy throughout the country. It is also apparent

that the government is using militancy to cover up their incompetence in dealing with the growing economic crisis facing the country. The absence of democratic rule and regard for due process has been the major contributing factor to the rise of communal tensions in Pakistan that bears an eerie resemblance to numerous cases of burgeoning dictatorships throughout history. In total, about 7,170 persons have been killed and 8,746 were injured during the year in attacks by armed forces and state intelligence agencies.

### ***Killing by Numbers***

*Data compiled by AHRC (from January to November 28, 2013):*

#### Sectarian Violence & Target Killings

Total Attacks: 491

Killed: 2350

Injured: 3786

#### Terrorist Attacks

Total Attacks: 250

Killed: 2286

Injured: 1609

#### Killings by Armed forces & Intelligence Agencies

Killed: 1526

Injured: 1746

#### Suicide Attacks

Total Attacks: 38

Killed: 820

Injured: 1445

#### Drone Attacks

Total Attacks: 25

Killed: 188

Injured: 160

#### Total Attack Incidents & Killings

Total incidents: 804

Total killings: 7170

Total injuries: 8746

Documented in the rest of the report are a fraction of these cases, each used to illustrate the complex and interconnected problems that Pakistan faces in regards to human rights. It is worth remembering that as terrible as these cases are, they are only the tip of the iceberg; many more occur every day.

## **Torture**

Torture in custody is common in Pakistan, there is no law in the country that can stop it. Pakistan ratified UNCAT and the ICCPR in 2010 and despite the prohibition of torture in the Constitution of Pakistan under the article 14 (2), police and other law enforcement agencies run detention centres and torture cells across the country. The Parliament of Pakistan needs to enact laws that criminalize torture: the government must respect all international treaties and ratify the optional protocol on torture. But, instead the government and powerful vested interests, including the armed forces, police, and Muslim fundamentalists, have opposed making a law against torture and ill-treatment. The government has also put forward reservations about making such a law, declaring that it would be against Shariah (Islamic teachings), when in fact, Shariah opposes torture in custody. This is further complicated because the implementation of any law in Pakistan wholly depends on the police and the responsibility of the police has been to maintain rule of law, rather than rule by law (the judiciary is trying to play its role but it is still dependent on the police).

As noted in the introduction to this report, due to the absence of a functioning criminal justice framework, and as a result of feeble attempts at prosecution, torture in custody and extrajudicial executions has increased rapidly. Every police station has its own private torture centre, every cantonment area of the armed forces runs at least one torture centre (the Air Force and Navy operates their own torture cells), and the ISI offices have their 'safe houses. Again, AHRC has documented many cases in which these centres have been identified and passed this information to the government to no avail.

In Pakistan, torture (as defined in the UNCAT) is endemic and deeply rooted. There are around 1,300 police stations in the country and everyday at least one person undergoes physical torture in every police station (to say nothing of psychological torture). Torture is thought of as the best way to control crime and a consensus exists that without torture no one would confess, which is the justification the police use to maintain private locations for the specific purpose of torturing suspects. They also use such private locations to avoid

identification of police facilities in the event that a victim does make a claim. Given this police culture it would be unimaginable for a person who is arrested to be spared. Therefore, it is reasonable to assume that more than 1,300 persons are subjected to torture and ill-treatment in Pakistan every day. If we add the people tortured in the torture cells of the armed forces, this figure will be much higher.

Acting with greater disregard for consequences, the Pakistan Army is running 52 torture cells, many located in cantonment areas. The Pakistan Air Force has a number of torture cells in their bases, including one in its Islamabad headquarters. The Pakistan Navy is also running torture cells in Islamabad and Karachi, which includes Mehran Base, Karachi.

To make matters worse, torture and extortion go hand-in-hand. Torture is not only used to get information; it is also used to a threat to extort money from victims and their family. This can occur throughout the process as well: victims already being tortured will pay bribes in hopes of reducing the severity of future events. In other cases, after taking accused persons into custody, the police do not formally arrest him / her for several days. They ask for a bribe to file a case under a bailable offence and if the bribe is not paid, then the person is arrested under a heinous crime as punishment for not bribing the police.

To eradicate torture, there is a strong need for basic reform in the policing system. In Pakistan, no institution has ever thought about developing or reforming the present policing system into a modern civil policing system because the military and various politicians would have to abdicate their authoritarian power.

The essence of the criminal justice system in the country is torture and ill-treatment, which is a perfect system in the eyes of the government. It yields quick results and requires little process or support. Moreover, it is not politically disadvantageous as generally only poor people are tortured and most of the time powerful individuals (and even the middle class) can use the police (or pay them) to find other suspects. This is exacerbated by the culture, mentioned previously, that believes confessions (or any useful data) are best or only obtainable through torture.

Torture also has a broad and deep effect on society as a whole: just as it is believed that torture is the best way to combat crime, it has increased intolerance and violence in society. To address this systemic problem the government must immediately make basic reforms and develop a criminal

justice system: adoption of modern methods, including forensics techniques are necessary. A witness protection law must be developed, enforced and private torture cells run by the police and the armed forces must be closed, and rehabilitation centers must be established for torture victims as well. The judiciary's methods must be changed as well and prosecutors must receive appropriate training to deal with torture related cases.

At a societal level the subject of torture must be included in the school curriculum, so that children learn about its bad effects on society and begin building toward more humane alternatives. A strong effort from the government must be made to respect the inherent dignity of human beings and to help the public learn to do so as well.

### ***Torture Cases***

Police officers have been exonerated, by their own internal inquiry, from the charge of killing a young Christian, Adnan Masih, (18), resident of Sharaqpur Sharif District Sheikhpura, Punjab, who was tortured to death on 10 June 2013 while being illegally detained. After the killing, and in a bid to fool the Christian community, senior police officials announced that all police officers involved in the matter, including the Station Head Officer (SHO) had been arrested and suspended, and that an inquiry would be conducted. However, the officers were, in fact, never arrested and, after an internal inquiry, all of the perpetrators were exonerated from the charges of torture and death in police custody.

Iqra (24), a Christian by faith, daughter of Saddique Masih of Sohiwall Village, Toba Tek Singh, Punjab, was tortured by four policemen and a landlord. after a series of attempts to assault and rape her (described in detail in other sections of this report) the police officials broke into her family's home and started assaulting the girl by slapping her face, kicking her, and punching her before throwing her to the floor in the yard. The police warned her parents and family members not to intervene while Arif Gujjar tore off her clothes. Arif Gujjar and the police constables then threw her into the street. Naked, she was forced to run and hide elsewhere in the neighbourhood. No case has been filed against the police constables or the landlord.



A Christian, Rafiq Masih (40), was tortured in police custody for 12 days for information on his brother who married a Muslim girl, Shagufta Bibi. His younger brother, Patras Masih (25), married Shagufta in a civil court of Lahore. Upon marriage, they left the Lahore. Pressure from the bride's Muslim family resulted in the elder brother being detained illegally in the police station and tortured. He was released by order of the court. The victim did not file a case against police as he had witnessed a 70-year-old man brought to the police station tortured to death and then dumped in the garbage.

A tea vender, Mr. Aamir Baloch (19), was sodomised and poisoned by members of the police. He later died in hospital. Two days before he died, he identified four people, including policemen and local leaders of PML-N, the ruling party of Punjab province (Ali Arselan Chillar and Mazhar Iqbal) as his attackers. These individuals sodomised him, tortured him, left him to die on a muddy roadside one and a half kilometers from his house, where he was eventually found by a milk seller that returned him to his family. He died days later in the district head quarter hospital. But the police have still not made any arrests.<sup>136</sup>

Mr. Khalid Shahzad (25), a day labourer, was arrested along with seven persons on 20 January 2013 from Gulberg Chowrangi, Federal B' Area, Karachi where they had to gathered to find jobs, as was their common practice. Police officials from Manghopir police station were passing by and sought bribes from those doing business on the roadside. When the labourers were unable to pay any amount, all of them were taken to the police station at Manghopir, (12 kilometers away) and thus violated the law, police regulations, and court procedures, that require them to consult the local station to arrest individuals outside of their jurisdiction.

A deal on payment of a huge amount was eventually settled at the police station and four of the workers were released on bail. The victim, Khalid Shahzad, however, was hanged upside down and beaten while the remaining three persons were forced to pay the bribe. Shahzad was left hanging, was denied food and water, and died next morning.

The police reacted to his death by attempting to dump his body at a garbage site, but several individuals witnessed the attempt. This compelled the police to take the body to the hospital. Members of the community came out onto the street after hearing about the incident and protested, blocking the main road.

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<sup>136</sup> See: AHRC-UAC-002-2013



During the protest passing vehicles were burned, which attracted attention from the media. The police first responded with denial, then tried to claim the death was a suicide by hanging, and finally determined that it was a suicide by fall from the roof of the station (though they have no explanation as to how the victim would have gotten to the roof).<sup>137</sup>

On February 17, Mr. Muhammad Ali Murtaza (27) was making his way to a relative's home in Pakistani Kashmir near the Line of Control (LOC) Before he could reach the house he was picked up by an army unit from Chattar area in full view of numerous witnesses, the only apparent reason for his arrest was the fact that he passed by a military zone. and was immediately handed over to the ISI. During a bodily search, it was found that he held a Pakistani identity card, (i.e. not one from Pakistani Kashmir). He explained to his captors that he was working in Lahore with his elder brother who runs a business there.

Suspecting him to be an Indian agent, his captors transferred him to Jhelum city, on the Pakistani side of Punjab, which has one of the largest garrisons in the country where he was evidently tortured to death. His feet had apparently been nailed and the rest of his body showed signs of torture including marks from an electric drill. The military refused to hand over the body to his family until they agreed not to accept the military's story that he died due to Indian firing at the Pakistan border and make no mention of torture. The military also promised that the victim could be buried with official protocol and given the rank of army captain posthumously as a condition of the family's cooperation.<sup>138</sup>

In a different case, a young man from the province of Punjab was tortured to death, and months after he died was requested to participate in an inquiry. Mr. Ali Usman, was abducted by five police informers on 9 July 2012 on the suspicion of his having an illicit relationship with the wife of Mr. Muhammad Yaqoob (one the perpetrators). He was held for nine days in a private torture cell while he was tortured with an electric drill on his legs and sexual organs in an attempt to obtain a confession. Ali Usman died five months after his ordeal which was doubtlessly a result of government hospital authorities that refusing to provide treatment for the injuries he sustained in spite of a direct appeal from a local authority. The local police had apparently demanded that the hospitals and their officials not admit him.

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137 See: AHRC-UAC-014-2013

138 See: AHRC-UAC-026-2013

The chief minister secretariat of Punjab province eventually formed a medical board for Ali Usman's treatment and, in March 2013, sent a letter to his father asking the deceased to appear (3 months after he had died). The board has since determined the victim was tortured, however the people responsible for the abduction, the torture, and the denial of medical treatment remain free despite orders from the highest police officer of the district.<sup>139</sup>

Even family members of law enforcement are not fully safe from such methods. Mr. Tahir Naveed (18) (also known as "Sunny") died in police custody after being tortured for 13 days in a facility run by the police. His father Mr. Naveed Iqbal is an on-duty constable at the Investigation Wing of the Johar Town Police Station, Lahore but was unable to save his son; higher ranked officials prevented Naveed from meeting his son during the latter's detention. The case has been pending for two years before the High Court and the judge is reluctant to hear the petition filed by the mother of the victim, Dilshad Begum in spite of a postmortem report that confirms that the victim died as a result of severe torture which included the use of an electric drill and repeated threats to her family to drop the case. The higher ranked police officials of Lahore, Punjab, have exonerated the perpetrators in their inquiry reports with the excuse that no one saw the police officers committing the torture.<sup>140</sup>

Mr. Sabir, (26) of KPK province, was tortured and permanently injured by police officials of City Police Station, Haripur. Sabir was working as at his shop as an auto electrician on June 19, when he was forcibly detained by three policemen. The abductors had arrived demanding the victim fix the care of the SHO, and when he told them to return in the evening (as the repair would take considerable time) they arrested him. He was then taken to police station where he was tortured. The methods employed included dragging by his hair, being slammed into the ground with force, and various beating that left his legs partially paralyzed. When the policeman noticed the paralysis, they brought him to a women and children's hospital where he received treatment for the severe injuries that resulted from the torture. Although the doctors first refused to start treatment without registration of a First Incident Report (FIR), the police eventually secured treatment for the victim by threatening the hospital staff.<sup>141</sup>

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139 See: AHRC-UAC-065-2013

140 Please refer to: AHRC-STM-107-2013

141 See: AHRC-UAC-087-2013

## **Restriction on Freedom of Expression**

Freedom of expression is under assault by the government, militant organizations, and self-censorship of media houses and the government is doing little to help fix the problem.

The Constitution of Pakistan mentions freedom of expression in Article 19, but at the same time permits the state to impose “reasonable restrictions.” Article 19 states:

*Every citizen shall have the freedom of speech and expression, and there shall be freedom of press, subject to any reasonable restrictions imposed by the law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with the foreign states, public order, decency or morality, or in relation to contempt of court or incitement to an offence.*

With so many restrictions allowed by the Constitution itself, freedom of expression in the country is already at risk. Freedom of speech, expression, and thought are so limited that even people in private meetings try not to talk openly for fear of persecution. This has become especially true of issues that could be construed as blasphemy.

### ***Blasphemy Charges***

As a country that has an officially endorsed religion (i.e. Islam) Pakistan already has a limited scope for fundamental rights, such as freedom of thought. Education from the primary level teaches hatred against other ideas, especially those from science, alternative religious thoughts, and non-conforming versions of history. History taught in these schools is based on portraying Islamic rulers as righteous ones and that which comes into conflict with the Islamic way of life is considered un-Islamic or even blasphemy.

Blasphemy laws have become a powerful tool for suppression in the hands of the state and fundamentalists to suppress freedom of thought in society. If any person is accused of blasphemy, particularly on the charges of defiling the name of last prophet (PBUH), he or she has to face the death penalty from the law or state, and if not fundamentalists will murder him or her.

This is critical not just as a restriction to freedom of expression, but also as a tool of religious violence, and as a unique problem in its own right. Various

aspects will be explored in other sections, but for now a brief introduction and some case examples should suffice to show its influence in eroding the right of expression.

In a case of two Christians who were sentenced under section 295 B and released by the High Court, the ruling by Mr. Justice Arif Bhatti stated that as they were scavengers and cannot read a word they should be released. Upon release they left Pakistan to protect their lives. They survived. But Justice Bhatti was murdered for releasing them.

Likewise, a judge of the Session court had to leave the country when he sentenced to death the killer of former Governor of Punjab. He was declared by the fundamentalists as “liable to be killed” because he had punished to a hero of Islam. The Governor of Punjab had been murdered because he used his right of freedom of expression in support of Asia Bibi, who was sentenced on charges of blasphemy.

Fundamentalist and Jihadi groups who desire to force their beliefs and interpretations of Islam onto society often pressure the government to use these laws (or use them on their own authority) to attack their enemies. Successive governments have given great deference to these groups with the state and its policies patronizing fundamentalists. Consequently, religious debate (and questions of corruption) is all strongly discouraged.

The media is extremely careful about what it says regarding the religious extremists as it can expect no protection from the authorities or judiciary on this subject. This was evident in the cases of the assassinations of the governor of Punjab, Mr. Taseer, and the Federal Minister on Religious Minorities, Mr. Bhatti. The perpetrators of the violence have either gone unpunished or are being treated as heroes and the lawyers themselves, supposed to be protectors of the law, came out in support of the assassins, accusing the victims of blasphemy.

Similarly, in the Constitution, Ahmadis have been declared non-Muslim (more on that in the section on religious minorities). This is essentially a contradiction since the Constitution on one hand declares the freedom to practice religion of one’s choice, and on the other, places Ahmadis in a position that leaves them open to attack by fundamentalists. Any media house coming out in their support or criticising the fundamentalists is liable to the same degree of violence as the Ahmadis themselves.

### ***Other Methods of Suppression***

Pakistan has been declared, since its partition from India, as a national security state. This also contributes to restriction of freedom. No media groups or individuals are allowed to raise questions about the actions of the armed forces. If any soldier dies in a road accident, the soldier must be referred to as Shaheed (martyred), otherwise the person can be held to be anti-state. During the military regimes, more laws were imposed against the freedom of expression and these laws have been carried on by civilian governments as part of the legacy of military rule. The infamous Pakistan Electronic Media Regulatory Authority (PEMRA) was established by the military regime of General Musharraf and has been used by successive governments as an effective tool to curb freedom of media organizations.

Sadly the voices that really need to be heard, those of the peasant farmers, poverty-ridden people, and labourers in the industrial areas who are mostly ignored or even silenced by the media whose sole purpose is to gain advertising revenue. It is not a secret that the media groups are controlled by the armed forces through their Inter Services Public Relations office. The judiciary, which also remains under influence of the armed forces, has never really served the nation in this regard throughout its history. This has, however, earned them a great deal of protection from the ruling powers (so long as they avoid risk of blasphemy, as mentioned before).

More than 1,000 websites are banned in the country by the Telecommunication Authority on the pretext of obscenity and anti-Islam material. One of the most well - examples is that YouTube was blocked by former Prime Minister Raja Pervez Ashraf in 2012. Since then, various segments of society have demanded restoration of access to the website. Ahraf had imposed the ban after YouTube refused to remove its website a film, *The Innocence of the Muslims*, considered blasphemous. The government said it was considering lifting the ban after Eidul Fitr (in October this year) but the ban has still not been lifted.

Even the website of *Al Jazeera* was unavailable for a couple of days in Pakistan at the time of the publication of the report of a commission of retired judges constituted to address the attack on the residence of Osama bin Laden in Pakistan's military zone. The commission's report contained sensitive information regarding the negligence of armed forces when USA marines violated Pakistani airspace and took away bin Laden's body after killing him. The report also placed responsibility for allowing bin Laden to stay in the country.

For two days, November 21 and 22, the International Movie Database (IMDb) website was blocked, to the considerable bewilderment of all, there being no official explanation for the block. IMDb is one of the most popular websites on the internet so there was speculation in the social media that the ban might be linked to the inclusion of the video that triggered the banning of YouTube but a search of IMDb reveals that the offending blasphemous video was not listed there.<sup>142</sup>

On Thursday, 3 October 2013, the Information Minister for Sindh province forwarded a summary to the Federal Ministry of Interior to impose a three-month blanket ban on instant messaging and VoIP services. The reason for the proposed ban was to combat terrorism and safeguard national security. The Sindh Information Minister said it was needed because the Sindh law enforcement agencies are unable to monitor VoIP services, which are increasingly being used by “criminal elements and terrorists.” The proposed ban is a disproportionate and overly broad measure as it will curb the fundamental rights of people in Sindh province and undermine the use of widespread communication platforms for legitimate purposes. Instant messaging and VoIP services, such as Skype, Viber, Tango, and WhatsApp, are increasingly popular with Pakistani smart-phone users looking for affordable means of communication and now all of these services are now under threat of being suspended, though the Sindh authorities have not indicated how they will carry out this proposal: whether, for example, they will use filtering or blocking.

Other restrictions on freedom of expression stem from the citizens themselves. For instance, the government’s decision to block 12 websites (including the popular blog site, *blogspot.com*) in 2006 was intended to satisfy Pakistani protesters who were outraged over cartoons of Muhammad that were circulating on the Internet (though the controversial cartoons were originally published in a French newspaper they quickly spread online).

The entertainment industry has been under violent restrictions from certain citizen groups as well. Some religious conservatives who believe modern movies and music are immoral have been taking matters into their own hands as exemplified in June 2007 when there were more than 20 bomb attacks on movie and music businesses in Pakistan. The government also keeps tight watch over the entertainment industry and Indian TV channels and movies are routinely banned.

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<sup>142</sup> Source: *Express Tribune*, November 24, 2013.

### ***Journalists Killed in 2013***

Nine journalists were murdered in 2013 either by bombings, targeted killings, or died after abduction by law enforcement agencies. A total of 55 journalists have been killed in the line of duty in Pakistan in the last ten years; 36 of them were deliberately targeted and murdered because of their work, according to the Pakistan Press Foundation (PPF). In its latest report, the PPF states that for every journalist deliberately targeted and murdered, there are many others who have been injured, threatened, and coerced into silence. Sadly, the perpetrators of violence against journalists and media workers enjoy almost absolute impunity in Pakistan. This is seriously hampering freedom of the press throughout the country.

#### ***The following journalists were killed performing their duty in 2013:***

Salik Jaffery, (22), of Geo News was killed November 23 in a bombing at Incholi, Karachi. He was an Associate Producer of Geo News.

Mr Razzak, the Balochistan-based journalist (he was sub-editor of a Mastung-based publication in the province of Balochistan) had been missing since 24 March after being taken by members from a state intelligence agency while leaving his office. He was tortured to death and his body was found in Karachi, Sindh, in August. It took Mr Razzak's family 24 hours to identify his mutilated body because only his arms and legs were sufficiently intact to enable identification.

The BBC reported that Mirza Iqbal Hussain, a photographer for News Network International, a Pakistani independent news agency, died in a hospital from injuries sustained on January 10 in a bombing that occurred 10 minutes after an initial explosion near a billiards hall in Quetta, Baluchistan. According to NNI editor Tariq Nadeem and local news reports, the twin blasts killed dozens, including police, emergency workers, and journalists who rushed to the scene of the first explosion. The billiards hall is in a predominantly Shia area of Quetta. The bombings were part of a series of bomb attacks reported across Pakistan that day. Mr. Saif ur Rehman, a senior reporter for Samaa TV, died in a hospital from injuries he sustained in the same bomb blast. Mr. Imran Shaikh (35) a senior cameraman for Samaa TV, was also killed in the same blast. Shaikh's colleague, Saif ur Rehman, a senior reporter for Samaa TV, was severely injured in the blast as well and died a few hours later in a hospital.

On March 1, Mehmood Jan Afridi (48) of The Daily Intekhab (and head of the Kalat Press Club) was killed by armed men while heading to a local press club from his home in the city of Kalat, Balochistan.

On February 27, 2013, Mumtaz (48) was fired upon by unidentified men in a car with tinted windows as he drove to his home in Miran Shah, in the main city of North Waziristan. Mumtaz, a journalist for more than 20 years, had worked for Geo News television and the daily News International in both English and Urdu. He had been elected president of the regional press club shortly before his death. His most recent print stories included coverage of the general violence in North Waziristan and a report on the controversial issue related to the local polio vaccination program. (Health workers administering polio vaccines were killed in December by militants who called the program a cover for intelligence gathering activities.)

## **Disappearance & Extrajudicial Killings**

Pakistan has the highest number of forced disappearances in the world, many carried out in remote areas affected by armed conflict. Disappearances continue in Balochistan, beset by the long-standing conflict between government forces and Balochi nationalist armed forces; Sindh province, where Sindhi nationalists are demanding autonomy over resources; KPK province, notably under counter-terrorism and often in connivance with foreign forces; and Pakistani-held Kashmir, typically for refusal to participate in the “Jihad” inside Indian-held Kashmir or to provide information to the intelligence agencies. The AHRC has received information concerning hundreds of disappearances throughout these provinces since 2008.

The military government of General Musharraf introduced enforced disappearances following arrest by plain clothed people. After the fall of the Musharraf regime, state intelligence agencies under the command of the military replaced this system. They also introduced the system of extrajudicial killings of disappeared persons to eliminate the evidence of disappearances. From 2010 to date, at least 510 persons have been killed in this way with their bodies commonly dumped on road sides. The most damning indictment of the extra-legal activities of military intelligence agencies arrived when the chief justice said that the ‘death squads’ of the ISI and MI (intelligence agencies) should be abolished.



Similarly, the military establishment has faced tough resistance from secular Baloch nationalist groups for most of Pakistan's history. But that resistance turned into a province-wide insurgency after a leading Baloch leader, Akbar Bugti, was killed in a military operation in 2006. Instead of seeking a political solution, Pakistan's security establishment began a ruthless campaign of crushing dissidents and insurgents by any possible means. The government, however, has failed to introduce legislation to make enforced disappearances a crime and the police and armed forces continue to rely on such disappearance as an instrument of terror; as a result, disappearances have increased through the current four-year Universal Periodic Review.

### ***Commission vs. Court = Stalemate***

The Human Rights Commission of Pakistan (HRCP) has stated that Pakistan has been unable to move away from the illegal practice of enforced disappearance and it is entrenched in Balochistan, Khyber Pakhtunkhwa, and to a lesser degree in Sindh. The HRCP is of the opinion that impunity for the perpetrators in Balochistan is encouraging the spike in such violations in other provinces as well and urges the government to sign, ratify and enforce the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>143</sup> Likewise, the International Commission of Jurists (ICJ) and Human Rights Watch have both urged the Pakistani government to affirm its commitment to end enforced disappearances by ratifying the International Convention for the Protection of All Persons from Enforced Disappearances.

On 18 May 2013, the Supreme Court disposed of, by means of a short order, the HRCP's constitutional petition regarding enforced disappearance of citizens that was filed in 2007. The Court observed that the petitioner could pursue the matter before a government Commission established to deal with the issue of missing persons. The HRCP is of the view that the short order did not address the grievances cited in the petition and has therefore filed a review petition. The HRCP has contended that the jurisdiction of the Supreme Court under Article 184 (3) could not be replaced by a Commission that is comprised of a majority of non-judicial authorities, especially since the matter raised is of public importance, and clearly involves violation of fundamental rights, the enforcement of which falls squarely within the jurisdiction of the Court. The HRCP has highlighted that 47 people on its list submitted to the Court were still untraced and their families have not been given any access to the

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143 Please refer to: HRC-FPR-048-2013

Commission set up by the Government of Pakistan.<sup>144</sup>

Despite repeated denials by Pakistan's security agencies, the Supreme Court of Pakistan has acknowledged and human rights groups have documented evidence of the involvement of intelligence and security agencies in enforced disappearances. In July, Pakistan's Attorney General admitted that more than 500 disappeared persons are in the custody of security agencies.

### ***Balochistan Province***

As mentioned in the introduction, Balochistan is in a crisis, it has gotten bad enough that everyone is aware of the problem. The President of the Balochistan High Court Bar Association Mr. Hadi Shakeel told the Supreme Court in February 2011 that there were more than 5,000 cases of enforced disappearances pending in Balochistan. Authorities in Balochistan now confirm some 2,500 people in the province remain "missing" after arrest. They say that more than 590 mutilated bodies have been found in the province since 2010.<sup>145</sup> While Baloch activists allege that more than 10,000 people, most of them sympathetic to separatists, have disappeared in unclear circumstances. The AHRC has collected information from the Voice of Baloch Missing Persons (VBMP), an organisation that compiles records of missing persons and extrajudicial killings, that indicates during the year 2013 alone 180 persons were extrajudicially killed after their abduction and 450 persons were abducted by security agencies.

VBMP has also compiled a list of abductions and extrajudicial killings on a monthly basis, which illustrates the rising tide of violence. In the month of January this year, 53 people were abducted, one was recovered and nine were killed during military operations in different parts of the province. In February 54 people were abducted, five were recovered, eleven mutilated bodies were found and eight people were killed during military actions in different areas. In March, 61 people were abducted, among them five people were recovered, eleven mutilated bodies were found and the rest remain missing. Seven people were killed in military actions in different districts. In the month of April, 69 people were abducted, no one was recovered, six mutilated bodies were found and two people were killed in military actions. It must be noted that the bodies recovered may not refer to those abducted in the same month.<sup>146</sup>

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144 Please refer to: HRC-FPR-029-2013

145 Please refer to: AHRC-STM-171-2013

146 Please refer to: AHRC-STM-110-2013

With the continuous acts of disappearances, extrajudicial killings, arbitrary arrests, military operations, bombings that occur with impunity, and other attacks on religious minority groups, a sense of deprivation has set in the minds of the population. Families have lost all confidence in the institutions of justice and have begun leaving the province.

Professionals are also at risk: according to the Pakistan Medical Association, Balochistan Chapter, 32 doctors are missing and 28 doctors have so far been killed. Likewise, dozens of lawyers are missing and many have been extrajudicially killed after being abducted. Additionally, two hundred professors of universities and medical colleges in the province have asked for and received transfers to other provinces. One political leader, Abdul Zahir Kasi, was abducted by unknown people and there has been no ransom demand. Various political circles claim that he was abducted by state intelligence agencies and detained in a military torture cell outside Balochistan province.

Moreover, banned organizations that have their bases in the Punjab province, under the patronage of the Punjab government, are allowed to operate freely in Balochistan. Every month they conduct bombings in the residential areas of the Shia community, or stop vehicles going on pilgrimage to Iran and kill passengers in areas controlled by military and paramilitary forces.

These disappearances are a result of the government using militaristic methods to 'solve' the Balochi political conflict. Legal and diplomatic methods are largely ignored and rule of law has been hounded into nonexistence by the military and intelligence agencies. The FC has been given police power to handle the long conflict, but there is no effort to reform the centuries-old criminal justice system. Balochistan is treated as a threat to law and order and not as a land with humans that are denied their fundamental rights, especially regarding their resources.



**Protest Against Disappearances**  
(AHRC File Photo)

April 24 was a day where 23 bullet ridden bodies of activists were found in different parts of Balochistan and Punjab. According to the information received from Asansol News, in the Pashni area of Balochistan 21 bodies have been recovered, of which 18 Baloch political activists have been recognized. The Baloch nationalists whose mutilated bodies were found in interior Pashni are: Raza Khan, Arif Badami, Gulab Shambey, Khalid Dukan Wala, Meer Zubair,

Enzo Shahdad, Wasim Jamal, Yasin Meer Rahmat, Hafeez Karachi Wala, Siddique, Junaid, Ali, Janzaib, Zubair, Gaffar, Rauof, Salaam, Musadiq. The other three bodies have not been identified. These individuals were picked up by military and police raiders in the area when they were advocating a boycott of the election. They had terrorist charges leveled against them and, without being tried in any court of Pakistan, they were punished in unimaginable ways.

In response to such brutality in Balochistan a long march for the recovery of missing persons has taken place. The march that began in Balochistan ended in Karachi, the capital of Sindh with relatives of missing persons travelling by foot for 730 kilometers. During the march, the participants received death threats by unknown persons intent on ending the march. A notable participant was the march leader, a 70 year old man named Mama Qadeer Baloch, whose son was abducted by state agencies in 2009. His son's body was found in 2012. Throughout the route of the long march hundreds of people welcomed them and joined them and upon arriving in Karachi, the participants undertook a hunger strike in front of the Karachi Press Club.



Long March of families of the disappeared victims. (AHRC File Photo)

### ***Sindh Province***

In recent times, law enforcement agencies operating in Balochistan have extended their jurisdiction to other provinces. Today Baloch citizens are being abducted from Karachi, the capital of Sindh province, where they go for higher education. The Baloch Students Organisation-Azad (BSO-A) is the target of supra constitutional forces. Students between ages of 16 to 24 are kidnapped by people dressed as civilians and members of the FC. Two of them were extrajudicially killed, two were recovered (with disabilities) after continuous torture, and two remain missing since January 2013.

In another case in April, two tortured and bullet riddled bodies were found in Khairpur Nathan Shah, Sindh. The deceased were identified as Sajjad Markhand and Amir Khuawar. They had been abducted from Larkana and were known to be Jeay Sindh Mutehda Mahaz (JSMH) activists. The two had been picked up by the unknown members of the government and Rangers from Larkana on April 24, when they were preparing for a public meeting to mark the 18th death anniversary of G.M. Syed, the founder of Jeay Sindh

movement, which espouses the cause of independent Sindh. The bodies of the two activists, bearing marks of grotesque torture, were found on Chokhandi link road near Khairpur Nathan Shah.<sup>147</sup>

More complex incidents occurred on Independence Day, including an example of how even law enforcement officers can be victims of these tactics. On Independence Day nationalist groups observed a 'black day' by holding protests and several Sindh nationalists were shot dead in planned encounter. The chief minister of the province announced a reward of Rs two million for the shooting but the very next day the Station Head Officer (SHO), who was in charge of the police party, was suspended on the charge of killing a Deputy Superintendent of Police (DSP) in a planned encounter. An inquiry eventually found that the killing of the DSP was used to scapegoat protesters (and possibly as revenge for an unrelated incident), but the police have not withdrawn their reward.<sup>148</sup>

***Additional examples include:***



Mr. Zahid Pazeer son of Haji Pazeer Baloch, was abducted from Raees Goth Karachi on January 28. His mutilated body was found on March 10 along with that of another missing person, Abdul Rehman Baloch. Their internal organs, hearts, livers and kidneys had been surgically removed (harvested), most likely for sale on the black market.

Mr. Babu Iftekhhar Baloch, son of Mansoor Ahmed Baloch, a student, was also abducted from Raees Goth, Karachi, on January 28 by persons in uniform and plain clothes. He was a resident of Panjgur city, Balochistan. He was killed during the disappearance and his bullet-riddled and torture-marked body was found on March 6, 2013.



Mr. Ejaz Ghulam Baloch son of Ghulam Jan Baloch, a student, was abducted on January 24 from Dalmia, Karachi, by people in a jeep, generally used in Balochistan by agencies to abduct nationalists. Since then he has been missing and his whereabouts remain unknown. He was a resident of Panjgur, Balochistan.

<sup>147</sup> See: AHRC-UAC-067-2013

<sup>148</sup> See: AHRC-UAC-112-2013 and AHRC-UAU-024-2013

Mr. Waseem Fazal Baloch, son of Fazal Kareem Baloch, a student, was abducted by agents of state intelligence from Raees Goth, Karachi, on January 28. His whereabouts remain unknown.



Mr. Aman Jan Baloch son of Sayyed Ahmed Baloch, a student, was abducted from Chitkan, Panjgur, Balochistan on February 22. He was kept in an unknown place in Karachi. He was eventually released by his captors but is paralysed and can no longer walk.

Mr. Shakir Baloch son of Mohammad Jan Baloch, a student, was abducted by plainclothed men in February, 2013 from Chitkan, Panjgur, Balochistan. He was kept in a torture cell in Karachi. He received injuries on different parts of his body and he also cannot walk properly anymore.



Mr. Manzoor Ahmad Qalandarani was abducted from Gulshan-e-Iqbal, Karachi, midnight of February 8. He is a student of the Iqra University Karachi, and the son of a tribal leader Mushtaq Qalandarani. It is worth noting that 30 of his relatives have also been abducted. Among them, 15 have been released but 13 remain missing. Two of them have been extrajudicial killed.

The increase in human rights violations is linked to the election process. The supra-constitutional forces remained busy in their attempts to sabotage the general elections in 2013 as they feared that the citizens of Balochistan would join mainstream politics. The most recent abductions and extrajudicial killings are seen as a warning to Balochis, among others, to keep clear of the political arena and to deny them the fruits of democracy.

### ***KPK Province***

There are around 1,000 persons missing from KPK province, bordering Afghanistan. Many were arrested in Pakistan by the security forces for abetting Taliban/Al-Qaida fighters or providing logistical help. In addition, the army has taken 41 inmates from an Afghanistan jail and removed them to an unknown location. The whereabouts of all of these individuals remains unknown since their arrest.

The family members have approached higher courts, particularly Supreme Court and provincial high courts, and have learned that the missing persons are in the custody of army but neither the army nor the defence ministry appear in court or and their usual response it to deny that they have kept them in

custody, instead they claim that such persons have joined Jihad against the USA and its allied forces.

The higher courts have taken notice of such statements and pressured the army and other law enforcement agencies for their recovery by directing the Ministry of Interior to provide information on these people by November 25. However the court's order was ignored by the Defence Ministry.

### ***Families of Victims at Risk***

Threats from law enforcement are also a common way to further victimize the families of those abducted, disappeared, or murdered, and there are many cases that serve as examples for this technique. One such example is that of Shahid Junejo, son of Muhammad Ibrahim Junejo; Zamir Hussain, son of Gulsher Khaskeli; and Asghar Jamali, son of Imam Bux Jamali, who are residents of Larkana, Meharh and Jamshoro districts, Sindh province

The three young men from Sindh province were taken into custody from Balochistan province by personnel from the security forces. Their arrest prompted continuous protests from Sindh nationalists following which ISI personnel informed their family members that they are detained in two different Cantonments in Sindh province. The ISI officials went on to say that if the families continued to protest their detention the families would receive their dead bodies. The detainees were Sindhi nationalists and belong to the Jeay Sindh Quomi Mahaz (JSQM) which is striving for greater autonomy for Sindh province.

On 13 September, the detainees left Karachi for Quetta in search of employment. On 16 September, many Sindhi language daily newspapers, specifically, Daily Kawish, Daily Awami Awaz, Daily Koshish, Daily Fatah, Daily Jeejal, and Daily Fast Times, published the news that the security forces had picked them up from Sorab Road, Quetta, the capital of Balochistan. The news of their arrests reached their families after two days and people of the province started agitating for their safe recovery and the news was widely covered in the local media.

After eight days of illegal detention, on 21 September, two people who introduced themselves as employees of Brigadier Qasim of Pakistan's notorious intelligence service, the ISI, told the families that two of the detainees, Shahid Junejo and Zamir Hussain were in Pano Aqil Cantonment, Sindh, and the third one, Asghar Jamali was being held in Malir Cantonment, Karachi, Sindh.



One of the Brigadier's employees introduced himself as Mr. Anwer whereas the other one kept quiet throughout the meeting. Anwer threatened the family and the lives of the detainees in order to stop them from providing news to the media and to impede the JSQM from holding any further protests. When the family member of Mr. Shahid Junejo tried to explain their position, Anwer simply announced that they had come to tell them the situation and not to enter into any discussion with them. After this both of them left immediately.<sup>149</sup>

### ***Individuals Missing from Military Custody***

There is also evidence that the Pakistani military is victimizing people turned over to them by foreign governments as well. For example, an application filed by the Justice Project Pakistan (JPP), saying that six Pakistani men, Hameed Ullah Khan, Sabeel Suleiman, Abdul Qadir Imran, Muhammed Riaz, Abdul Karim and Palak Jan, were originally detained by the United States at the Bagram prison in Afghanistan, handed over to Pakistani authorities and not been heard of since. A JPP representative told the court that Pakistani authorities were holding the men and that the men had no access to lawyers or their family members.

A representative of the Ministry of Foreign Affairs later confirmed their release but said the ministry had no knowledge of their whereabouts. The ministry's counsel told the court that it could only confirm release and transfer but did not know their whereabouts and status. The Interior Ministry and Foreign Ministry have no knowledge in this regard.

### ***Justice Advocates at Risk***

Advocates for such victims are also targeted by state in the same way. In doing so, due process is undermined. Perhaps the clearest case of such an attitude is that of Awais Sheikh, the lawyer of Indian terrorist Sarabjit Singh. The lawyer and his family received death threats and was abducted by state intelligence agencies after several days was recovered, though injured, near Sheikhpura three days after he and his son were abducted. Police said that there were signs of torture on his body when he was recovered 30 kilometers from Lahore. Officials claimed that there were four kidnappers who took the lawyer from his home and later abandoned him on the highway, adding that Sheikh's son, Shahrukh, is still in captivity. The lawyer's client, Sarabjit Singh, died in April

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149 See: AHRC-UAC-112-2013



this year back in Lahore's Jinnah Hospital where he was under treatment after being beaten up by fellow inmates in Kot Lakhpat Jail. The Indian terrorist was sentenced to death for his role in a bomb blast in Pakistan which left many Pakistanis dead 23 years ago. What mattered to the perpetrators here was clearly not the verdict of the justice system as that was already on their side; the goal could only have been to reject due process and deter those who would support a strong justice system.

In a similar case Mr. Zaheer Ahmad Gondal, a lawyer from Punjab province that has been missing since July after he attended Supreme Court cases involving missing persons. Law enforcement agencies, however, deny that he is in their custody. And, in another case a lawyer of an Indian prisoner received death threats and was abducted by state intelligence agencies and released after several days.

### ***Petty Disputes also Create Risk***

Even where politics or other factors commonly associated with government conflict do not exist, the risk of disappearance or murder is still very real. A telling case is that of Tasif Ali, whose wife (Mrs. Abida Malik) claims that Major Haider of Military Intelligence took away her husband last year and has provided no information about him. Dr Aslam, father-in-law of the missing man, claims that he personally met Major Haider, who used to deal in timber with Tasif, but that the Major got annoyed over a business dispute. Abida Malik filed a petition under Article 204 of the Constitution, read with Contempt of Court Ordinance 2003. She has asserted that Defence Secretary Lt Gen (r) Asif Yasin, Chief of Army Staff General Ashfaq Pervez Kayani, Chief of General Staff Lt Gen Rashid Mehmood, and GHQ Military Secretary Lt Gen Mazhar Jameel all collectively impeded the process of investigation, which is itself an offence under the Pakistan Army Act. However, the appeal has not been successful so far.

### ***Other Examples & Notable Cases***

Mr. Afzal Panhwar, son of Munawar Ali Panhwar, a student of M.sc. Biochemistry, Sindh University, Jamshoro and resident of Allama I. I. Qazi hostel block, filed a constitutional petition, number 863 of 2011 on May 11, 2011, seeking the provision of all student facilities according to the catalogue and student's activities calendar 2011 (STAGS) and the



Afzal Panhwar with his mother (AHRC File Photo)

expulsion of police personnel from the student hostels of the university. (He was a leader of the Jeay Sindh Student Federation (JSSF) affiliated with the JSMM, a nationalist organization striving for the independence of the Sindh province from Pakistan.)<sup>150</sup> He was arrested and interrogated by the MI and the ISI for allegedly placing bombs on the railway track. He was arrested on the same charges again on August 15, 2013 and within hours was shot dead by while in custody.<sup>151</sup>

Twenty-four activists from separatist groups were extrajudicial killed in Sindh and Balochistan provinces while they were campaigning against the general elections. Among the dead many bodies were found with bullet and torture marks. Most of the bodies were found on the same day though one activist's body was found several days before the major incident. The deceased were abducted by the police and rangers in uniform along with some in plain clothes that are likely agents of intelligence agencies.

According to the information received from Asansol News, at Pashni area of Balochistan 21 bodies have been recovered among which 18 Baloch political activists have been recognized. The names of the Baloch nationalists whose mutilated bodies are found in interior Pashni are:

Mr Raza Khan, Arif Badami, Gulab Shambey, Khalid Dukan Wala, Meer Zubair, Enzo Shahdad, Wasim Jamal, Yasin Meer Rahmat, Hafeez Karachi Wala, Siddique, Junaid, Ali. Janzaib, Zubair, Gaffar, Rauof, Salaam, and Musadiq. The names of three more were not identified.

These victims were from a separatist group of Balochistan who are fighting for the separate land from Pakistan who were campaigning against the general elections and telling people that if they participate in the elections Pakistani occupational forces will again exercise illegal power on the people of Balochistan.<sup>152</sup>

### ***Potential Positive Developments***

The Chief Justice of the Peshawar High Court, addressing the members of one of the Bar Associations of Khyber Pukhtoon Kha Province, claimed that 1,500 missing persons have been recovered and sent home as a result of steps taken by

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150 See: AHRC-UAC-2013-2011 for details on Afzal Panhwar's disappearance in 2011.

151 See: AHRC-UAU-024-2013 and AHRC-STM-212-2013

152 See: AHRC-UAC-067-2013

the judiciary, while a further 1,000 missing persons had been found to be in the custody of the security forces and are now allowed to meet with their families.

If this statement of the Chief Justice is taken at face value, it is inspiring that with the efforts of the higher court of a province, which remains under attack of Islamic militants and subsequent military actions, 1,500 missing persons have been found.

Even acknowledging the recent achievements of the High Court as a positive sign for the recovery of disappeared persons held in illegal detention by law enforcement agencies. However the Asian Human Rights Commission remains skeptical. The High Court or its Chief Justice appears to still approve of the illegal acts of arrest and disappearance by security forces and encourages them to retain such persons in custody for further investigation.<sup>153</sup>

## Gender Violence in Pakistan

Gender-based violence and sex discrimination remain a manifestation of patriarchal norms, values, and conventions in Pakistan. Future opportunities for development will hinge on how Pakistan resolves deep-seated gender and social inequities. Challenges need to be overcome so that women are able to exercise their basic rights. This requires a broad change in attitude as well as policy changes at the federal and provincial levels of government. To add to this difficult situation, implementation on the ground is often hampered by capacity gaps, a lack of awareness of people's rights, and negative social attitudes.



Women, being vulnerable and marginalized, continue to face hurdles in exercising basic human rights. This is compounded by socio-cultural norms which deny access to facilities and opportunities. Pakistan ranks among the lowest countries across the globe in human development, gender development, and equity.

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<sup>153</sup> See: AHRC-UAC-125-2013

### ***Women & 2013 General Elections***

Article 25 of the 1973 Constitution of Pakistan guarantees equal rights to all citizens without discrimination between men and women. Pakistan has adopted similar international legal obligations through the Universal Declaration of Human Rights (UDHR) and by acceding in 1996 to CEDAW. General Elections 2013 was the first in Pakistan since ratification in 2010 of the ICCPR, which protects freedoms related to elections, including the right “to take part in the conduct of public affairs, directly or through freely chosen representatives” (Article 25) without discrimination on the basis of sex (Article 2).

In addition to these legal obligations, female parliamentarians made more substantive contributions during the 13th National Assembly (2008-2013) than their male counterparts, in several respects. Women Members of the National Assembly (MNAs) were more active, assertive, and effective for their constituents than their male counterparts during the five years of the 13th National Assembly, which ended on March 16, 2013.

In a country where the political potentialities of women are underestimated and under-documented, the role of women parliamentarians sets a benchmark for their male counterparts to follow. Despite representing only 22% of the total number of legislators, including 18 elected on general seats and 60 on seats reserved for women, female MNAs accounted for more Questions, Calling Attention Notices (CANs), Private Members’ Bills, Resolutions, Motions and Matters of Public Importance than male MNAs.

During the General Election Campaigns 2013, most political parties declared in their campaign rhetoric and manifestos a commitment to women’s equality. Nevertheless, women continue to face challenges to full participation in political and electoral processes. Increasing women’s participation in every aspect of Pakistan’s elections – as candidates, voters, election officials, polling agents, security officials, and in every other role – is essential for meaningful elections that represent the will of the Pakistani people.

According to the official results announced by the Election Commission of Pakistan (ECP), 14 women were successful in the May 11 General Elections, winning six National and eleven provincial assembly seats. No woman succeeded in Khyber Pakhtunkhwa and Balochistan assemblies on general seats, however. According to the Election Commission of Pakistan and the UN, 516 women stood for elections this year on general seats – 161 for the National Assembly and 355 for the four provincial assemblies.

Election 2013 provided a hope for continued democracy in the 66-year-old country. But, women in Pakistan still face an uphill battle both as candidates and voters. Reserved seats for female candidates have always been a part of Pakistan's constitution. In the National Assembly, 60 of the 342 seats are reserved for women and most candidates contesting come from elite backgrounds.

Many women in urban areas were actively engaged in political discourse but the women in rural areas of Pakistan do not have the similar opportunity. In 8 districts of Khyber Pakhtoonkhwa, women were not allowed to cast their votes after the illegal and unconstitutional written pact of all political parties. The Election commission has determined that over 47,000 women were deprived of their right to cast vote.

According to Articles of the Constitution of Pakistan (37, 32, 10-A, 140-A, 10) "each province shall, by law, establish a local government system & devolve political, administrative & financial responsibility and authority to the elected representatives of the local governments" and "the state shall encourage Local Government institutions composed of elected representatives of the areas concerned & special representation will be given to peasants, workers and women." This has had little real effect; new regulation in Punjab and Sindh had the effect of reducing women's representation in local government.<sup>154</sup>

### ***Gender Inequality & Violence***

Pakistan's international commitments on gender equality include the Beijing Platform for Action, adopted in 1995; CEDAW, ratified in 1996; CRC, ratified in 1990; Convention on the Elimination of Racial Discrimination (CRD), ratified in 1966; and Millennium Development Goals (MDGs).

These commitments are expressed through the National Plan of Action for Women (adopted 1998); National Commission on the Status of Women (established 2000); National Policy for Development and Empowerment of Women (adopted 2002) as well as for the first time, in 2009, Women Parliamentary Caucuses at national and provincial levels. The 18th Constitutional Amendment too has resulted in the devolution of the Ministry of Women's Development to the provincial level.

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<sup>154</sup> Please refer to: <http://www.ncsw.gov.pk/news-archive.php>

A report by Aurat Foundation on violence against women states that although the number of reported cases of violence against women has decreased, a sharp rise in several forms of extreme violence has been noted. The report further reveals an alarming rise in extreme violence – 144% increase in burning incidents, 89% rise in acid crime, 62% rise in domestic violence and 11% in murder.

However, all statistics in the report have been compiled from newspapers, with no additional research to crosscheck the figures or put them in perspective. Still, according to the figures, Punjab remained on top with 4,766 cases. This may be because women have easy access to law enforcement agencies, without accounting for the fact that Punjab is also the most populous province. Sindh had the second highest instances of violence against women with 1,628 reported cases, KPK stood third with 674 cases, while Islamabad was fourth with 281 cases, and Balochistan fifth with 167.

During the year, abduction was the most frequently reported crime against women with 1,607 cases, followed by 1,745 of murder, 989 of domestic violence, 828 of rape and gang rape, 575 of suicide, 432 of honour killing, 58 of sexual assault, 83 of acid throwing, 71 of burning, with 1,134 cases listed as ‘miscellaneous’.

Last year, 7516 cases of violence against women were reported in Pakistan with 822 of them of the rape cases. And anyone familiar with the perverted concept of honor and shame knows that 822 is a sorry fraction of the actual number.

Rape cannot be prevented by forcing women to cover up; it can only be prevented by women empowerment, promotion of gender equality, and the eradication of antiquated myths that teach how women are the property of men who must keep a watch on them. When it is stated or implied that women are property and that men exercise superiority, it is enabling a culture that accepts rape. Thus, everyone who bears this double standard of modesty, the people who teach shame of one's body are responsible.

Throwing acid on the face, leaving the victim burned, maimed, and disfigured sadly happens often around the globe and the victims are almost always women. At least 150 acid attacks were reported in Pakistan last year and many more are not reported, because victims are instructed by their families and community to keep quiet. A new law gives acid burn survivors some legal recourse, but the scales of justice are often stacked against them. All forms of violence against women must not be considered a private matter and the government should take measures to address such carnage.

### *Child Marriage, Stealing Innocence*

Pakistan is signatory to the CRC, which defines child marriage as marriage below the age of 18. Yet, the country allows marriages at age 16. The government of Pakistan is yet to prohibit the practice of child marriage and declare the legal age of marriage as 18 years for both males and females. In fact, the Child Marriage Restraint Act of 1929 says that the police cannot intervene directly in underage marriage, implying that Sharia law is to be consulted if the government needs to intervene. In the recent past the government of Pakistan passed the “Anti Women Practices Act 2011,” dealing with forced marriage, making the punishments for “wani” (a traditional tribal term for child marriage) harsher. Despite this, the tradition of “wani” lives strong. While legislation on child marriage can serve as a solid foundation for modifying the practice, even the strongest laws and policies are ineffective without adequate adherence and enforcement.

Child marriage devastates the lives of children (particularly girls), their families, and their communities. Millions of the girls in Pakistan are married before they turn 18 and girls as young as seven or eight become victim to this custom. This harmful practice is more common in poor, rural communities, and its consequences contribute to perpetuating the chronic cycle of poverty.

Often, child brides are pulled out of school, depriving them of education and meaningful careers. They suffer health risks associated with early sexual activity and childbearing, leading to high rates of maternal and child mortality as well as sexually transmitted infections, including HIV. They are more likely to be victims of domestic violence, sexual abuse, and social isolation.

The risk of death for pregnant girls under the age of 15 is five times higher than it is for women in their 20s. Taken together, the costs of this practice are catastrophic. Child marriage is not only violation of a girl's rights; it also compromises efforts to reduce gender-based violence, advance education, overcome poverty, and improve health indicators for girls, women, children, and by extension society as a whole.

When a girl is pulled out from school and forced to marry young, her personal development is stunted. She is left with few, if any, social skills and therefore has limited ability to contribute or exercise decision-making power in her new household (assuming her opinion is respected). Because this means that many child brides are often uneducated and unskilled, they are therefore dependent on their husbands and in-laws to survive, rendering them vulnerable to various

types of exploitation. In short, pulling girls out of school and forcing them into early marriage ensures that poverty will be handed down from a mother to her daughter, and family-to-family, for generations.

More than 60 million girls around the world were married under the age of 18 in 2012, out of which 24% were from rural Pakistan and 18% from urban Pakistan. Child marriage in Pakistan is rooted in poverty and in centuries-old patriarchal traditions, with devastating effects on girls that last lifetimes and generations.

Approximately 30% of girls in the country are married off as child brides. While the practice is widespread, the situation is worst in the interior of Sindh province. Girls living in rural areas of Pakistan are hardest hit by child marriage, with a prevalence rate of 37% as opposed to 21% for girls from most urban areas.

### ***Forced Marriage***

Child marriage is only part of the problem; forced marriage of women in general (especially those of religious minorities, as discussed later in this report) are also a prevailing problem. Free and Fair Election (FAFEN), in a recent report, has cited a high increase in forced marriages, with 324 cases being registered in February 2013 and 403 in May 2013. This represents an increase of 24%, with Faisalabad leading with 43 cases. Other districts high in “this crime” in May are Rahim Yar Khan (39 cases) and Vehari (31 cases). The FAFEN governance monitors visited 88 offices of district police officers in May, and reported a total of 985 FIRs of crimes relating to women, around one-fifth (219) of which were related to rape, up 46% compared to February, when 150 such cases were recorded. A total of 33,705 cases were recorded in 88 districts during the reporting month of May, with 21% being cases of attack on modesty, 3% honor killings, and 2% insult to modesty.

### ***Subjugation by Sharia***

The CII was also of the view that Islam has set procedures to determine cases of rape and said Islamic procedure should be adopted during investigation. This led to disappointment and alarm in Pakistan when the Council of Islamic Ideology (CII) declared that DNA test results are not acceptable as primary evidence in cases of rape (though it may still be possible to use such evidence in support of confirming the crime). The assertion is regressive: it helps the rapist and is exceptionally insensitive and abusive to rape victims. The CII



recommendation refuses to take into account the rights of rape victims and the need to punish the criminals who are proven guilty beyond doubt. Such recommendations also demonstrates how dangerously conservative and out of touch with the times CII is today. It discredits the CII, and the country.

Women comprise more than 50% of Pakistan's total population. But, on an average, the situation of Pakistani women vis-à-vis men is one of systemic gender subordination and The Global Gender Gap Report by the World Economic Forum has ranked Pakistan as the worst. Although there have been attempts by the government and enlightened groups to elevate their status in society, numerous Pakistani womenfolk, especially in the rural areas, still suffer atrocities, such as rape, acid attacks, honor killings, forced marriages, and forced prostitution.

### *Cases of Rape*

Grown women remain vulnerable to abduction and sexual assault and the rapists find impunity through both common and Shariah law. Rapes occur across Pakistan for an array of reasons – for pure lust, for revenge, to avenge a rejected marriage proposal, for religious and ethnic reasons, or simply to satisfy a predatory man's desire to exert unadulterated brutality and power. Even more horrifically, they also occur because HIV positive men believing they can be cured through sex with a virgin. Adding to the unrelenting horror, the social stigma surrounding rape frequently leads to the victim committing suicide, often aided and abetted by her own family, or in her being forcibly married to her attacker to preserve her family's "honor." In fact, rape is so common and under reported that the perpetrators in Pakistan are rarely arrested, let alone tried, convicted, and jailed.

Pakistan is especially stunted in attempts to address this problem because women are not secure even in the hands of those that should be providing them security like their parents, relatives, siblings, police, politicians, and the military. Instead of justice they are threatened with death. Religious leaders, instead of fighting to eradicate such crimes against women, are suggesting that even minor girls must wear veils in order to avoid sexual assault.

For instance, impunity has been granted to the perpetrators (from the ruling political party) who dragged a woman to the streets and tied her to a tree with the intention to hang her.<sup>155</sup> The police reached the scene just as the

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155 See: AHRC-UAC-114-2013

perpetrators were getting ready to hang her, but they demanded that the victim pay a bribe in order to file a case against her attackers. The policemen also threatened the journalists and human rights defenders who tried to aid the woman in her fight for justice, and case was filed against unknown persons for interfering in the official work of the police. The Station House Officer says that the journalists and human rights defenders protesting against the police and perpetrators would be booked in the “open FIR.”

In another instance, two young sisters were gang raped in custody, and police officials threatened that if anyone complained they would rape every woman in the village.<sup>156</sup> This was supposedly to solve a four-year old case of abduction for ransom. A member of the Sindh provincial assembly, also a member from the ruling party, is trying to get the rapists released as they helped him to win the elections. The SHO in charge of the police station threatened journalists reporting the case with strict punishment. One junior police officer filed a case against the perpetrators after pressure from government, civil society, and the media, but it appears that the FIR was meant to save the rapists. Consequently, the family members of the victims have left their houses and gone into hiding in another city because of continuous threats from the police and the provincial assembly member. The police are trying to negotiate with the victims and come to a settlement while the SHO is being treated like a VIP in the police lock up and as revealed through various electronic media.

Another incident that took place this year, which exposes the vulnerability of women in Pakistan, involves the gang rape of a poor minority woman in the Tharparker district of Sindh where the lady was raped by five men in front of her husband and three children. The police registered a case against the accused, who are supported by the Mr. Mahesh Kumar Malani, MPA representing the Pakistan People’s Party (PPP) in Tharparker. The police of Chachro sub-division have arrested the five accused of committing the crime, but the remaining three are absconding. Medico-legal reports are not in favor of the victim. According to the reports, due to no sign of violence and marital status of the woman, it is not possible to ascertain gang rape though the victim’s clothes have been sent to the chemical lab in Karachi for further analysis.<sup>157</sup>

The gang rape of a Thari minority woman in Sindh Province who was raped in front of her family. In this case a political party leader has sided with the culprits.

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156 See: AHRC-UAC-137-2013

157 See: AHRC-UAC-137-2013

A mother of three, Ms. Yasmin, was abducted by a gang and raped. This also took place in Sindh province.<sup>158</sup>

In Peshawar, KPK province, two sisters were kidnapped and held captive in a house where they were repeatedly raped for five days. Later they were thrown unconscious on the road side.

Another girl was raped in Hafizabad by a man who called the girl to his house under the guise of offering her employment. However, after she entered the house of the accused he raped her and fled the scene.<sup>159</sup>

### ***Vulnerable Status***

A different example of vulnerability may be witnessed in the case of a father selling his two minor daughters so that he could undertake a second marriage; the police have sided with the father. The police of two different stations are trying to arrest the first wife, who is hiding with her children, in order to hand over the two minors to their father, in spite of his intent to sell them. The male family members of the first wife have tried several times to lodge a criminal case against the perpetrator but the police refuse to assist them. The man has already murdered four people for not handing over a girl to be his wife and has terrorized witnesses in the case of these murders until they have left the village. The case is therefore pending before the court with little chance of a fair trial as the judge involved is incapable of providing protection to the witnesses.<sup>160</sup>

Another tragic example is the case of a young woman stoned to death by her uncle and other relatives. Arifa, a mother of two, has been stoned to death on the orders of the panchayat (tribal court) after she was found to have a mobile phone.<sup>161</sup>

A case that becomes a nexus for two target groups (i.e. women and religious minorities) involves Christian women attacked and paraded naked by a landlord and an armed mob with the support of the ruling party in the village of Kasur, Punjab province. This attack was supposedly provoked after a goat owned by the women's family entered the landlord's fields and that the goat damaged some crops. The mob, after the initial attack, started shouting to attract the

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158 See: AHRC-UAC-119-2013

159 Please refer to: AHRC-STM-178-2013

160 See: AHRC-022-2013

161 See: AHRC-UAC-114-2013

attention of the people nearby to let them see the extent of the revenge and power of the landlord and brandished weapons to insure that no one would challenge them. As a consequence of the shouting, the victim's screaming, and a need to end the attack several elderly people of the village came out and put their turbans on the feet of the attackers (a sign of high respect and honour). After this, the attackers released the women but threatened the villagers that if they complained about the incident they will face more trouble and, using their influence in the ruling party (PML-N) had the local police filed a case against the victims. Conversely, they have not acted upon the complaint of physical abuse filed by the Christians.<sup>162</sup>

In another case a police officer, with the help of his wife, kidnapped an 18 year old woman, raped her, and then declared her his second wife after having an illegal marriage. According to a report, additional Sessions Judge Tariq Javed ordered the Sadr SHO to register a case against SI Khalid Mehmood Ghuman, currently posted at Satellite Town Police Station, and his wife Sakeena Bibi, on charges of abduction and rape. Bushra Bibi, the mother of the victim, alleged that the accused couple came to her house on June 22 and took her 18-year-old daughter Sadia with them for shopping but her daughter did not return. When she made inquiries, the accused SI and his wife threatened to kill her. Later, her daughter told her the accused policeman had raped her and prepared fake marriage documents. The accused policeman had contracted several marriages and was also involved in the murder of one of his wives. The police claim they are "investigating."

### ***Forced Conversion***

The Jihad to convert Hindu girls is continued unabated under the indifferent attitude of Pakistani authorities. In recent months, seven Hindu girls have been targeted in the conversion to Islam campaign. Of the seven, five have been abducted and converted by Muslim goons. One Hindu girl was abducted and forced to convert to Islam, but she has been subsequently recovered by the police. In another case, the attempted abduction was foiled by the passers-by.<sup>163</sup>

A case that illustrates this (which also serves a nexus of victim status and related crimes) is that of a young Christian nurse and her family members that have been facing threats and harassment from a former assistant to a minister of Sindh province, an influential landlord, who is trying to forcibly and marry

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162 See: AHRC-UAC-085-2013

163 Please refer to: AHRC-STM-136-2013

her convert her to Islam. The nurse has been threatened with a disfiguring acid attack, among other things, if she does not marry him and attempts have been made to abduct her from her workplace as well which has forced her to move from hospital to hospital in an effort to avoid these attacks. The severity of the situation has reached the point that the entire Catholic community in Sanghar district is living in fear, expecting an attack from a Muslim mob backed by the provincial government and police who are providing full protection to the perpetrator. As evidence: the Karachi police have also filed a case against the nurse and her parents for stealing cash and gold from the house of the perpetrator and the man has already kidnapped and raped several Hindu girls from nearby villages but, because of his influence on local police and magistrates, he has never been arrested or tried for these crimes.<sup>164</sup>

### ***Rape of Minors Rises***

Statistics show that cases of child rape have risen from 668 in 2002 to 2,900 this year but rights groups caution that these statistics represent just a fraction of what's going on in the country. There are many cases not reported for fear of backlash from powerful persons and the police. Also, as with other cases of rape, and as alluded to earlier in this section, many instances have been buried and forgotten in hopes of preserving the victim family's honour.

On September 14 in Multan, Punjab, a seminarian who teaches the Quran to children tried to molest a 3-year-old girl; the cleric drugged the girl and took her to a nearby graveyard where he dug a hole for her. A grave digger saw the cleric taking his clothes off and when he approached he saw the child. The grave digger tried to grab the cleric and shouted for help. He later told the police that the cleric initially tried to undress but on seeing other men approach, left his clothes behind, and fled. The girl was taken to Nishtar Hospital, Multan, Punjab, where she was later said to be out of immediate danger.

Just a few days earlier a 5-year-old girl was abducted and raped by an unknown individual who later dumped her, unconscious, outside Ganga Ram hospital in Lahore. As usual, the police are busy doing their traditional "probe." This case was highlighted by the civil society and media, who stood for justice for the little victim but after more than a month, the police had failed to arrest the accused despite footage from several CCTV cameras present at the hospital.<sup>165</sup>

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164 See: AHRC-UAC-109-2013

165 Please refer to: AHRC-ART-108-2013

Another case was reported on September 17 in Daily “The News” that a 6-year-old girl and daughter of a poor bricklayer, was kidnapped sexually assaulted, and left unconscious by an unknown man. The police are conducting an investigation but, as is usual, they have yet to arrest anyone.

On October 19, a 6-year-old girl was been victimized amid Eid celebrations in a densely populated locality in Nusrat Colony near Upper Mall Road Lahore when a man dragged the child into a room and raped her. The victim’s mother, Shazia Shafiq, told police that she was visiting her parents on the occasion of Eid-ul-Azha, along with her four children.

In February, in Kot Mithan, Sanhgi, a 12-year-old girl went for Quran recitation, where the imam of mosque had the other children leave before he raped the girl.. Later he physically tortured her before fleeing the scene and the girl had to be admitted to the hospital.

On 27 September, the body of 13-year-girl was found at Karachi beach. She had been missing since September 24. Before her death, she was raped by at least two persons.

In month of June, a 12-year-old Hindu girl was raped by imam of a mosque. She was found in critical condition, and has been admitted to the hospital.

A 17-year-old girl from a poor Christian family, Miss S. was raped by three Muslim men in Faisalabad, on September 27. The incident came just weeks after a 10-year-old Christian girl was raped by a 60-year-old man in the same city on August 25. The case provides evidence of escalating abuse of children in Pakistan, especially of Christian minors, victimized by the weight of the country’s social norms.

On January 5, 2013, a 15-year-old Christian girl, daughter of Malooka Masih of Village Rooda, District Kausar was undressed and raped returning from the fields after helping her father, by two Muslim men who imprisoned her in a room.

October 12, a six-year-old girl was reportedly raped by her cousin in Orangi Town area of Karachi. Her cousin was arrested after the girl told the police that he was the one responsible for the crime.

A similar incident was reported from Kotri, Jamshoro, Hyderabad, where a 7-year-old girl was allegedly raped by a young man. The girl’s father said the victim was returning from tutoring class in the evening.

On September 14, a 10-year-old girl was kidnapped by unknown people and gang raped on her way to school in Faisalabad. The rapists then threw her body in the bushes and fled. She is struggling for life in Faisalabad's Allied hospital, following vaginal and anal tearing.

In June a 9-year-old girl was kidnapped and brutally gang-raped in Bahawalpur and need to be hospitalized. The girl's mother has named the abusers and while local police have launched a criminal case against seven men for the kidnap and rape.

The bullet-riddled bodies of two teenage girls, aged around 14 and 16 years, respectively, suspected to be raped, were recovered on August 6 from the side of a nallah in Gujranwala.

On July 20, a 12-year-old Christian girl in Gujar Khan was gang raped by a group of madrasa students. A teacher who reportedly witnessed the rape stated that they raped her while threatening that they would shoot her in the forehead if she screamed for help.

Naida, a 13-year-old of Swabi, KPK, was returning home when unidentified culprits raped her and then strangled her to death. Following this, they dumped her body in a maize field and fled.

On October 14, a senior police officer and two of his subordinates raped two teenage sisters. The incident took place at a police station in Ghotki district.

A 16-year-old Christian girl was also raped by three men on July 21 in Farooqabad. The three men, who work for the same Muslim employer as her father, overpowered her while she was at home.

In Faisalabad, a 13-year-old girl was kidnapped, raped, and buried alive in a remote muddy grave after the attackers assumed she had died. The girl managed to dig her way out and caught the attention of passers-by who helped her to a local medical centre.

Although this section focuses on crimes against women, it should be noted that girls are not only the victim of this heinous crime. A shocking case was reported about sexual abuse of little boys and they are not safe, even in educational institutions:

In July, a 4-year-old school boy was allegedly gang-raped by a school principal, watchman, and two others in Faisalabad. The father of the victim said that

his son was subjected to the sexual and physical abuse and the boy has been suffered severe injuries.

In July, a 12-year-old boy from low class peasant family, was found sitting in a field next to a 16-year-old girl of a feudal family. The feudal lords of the area kidnapped the boy and raped him to punish him for associating with the girl.

## **Religious Minorities Strangled**

Pakistan is a glaring example of extreme religious intolerance. Pakistani non-Muslims, even minority Muslims, are downtrodden and marginalized and their communities have to face brutality at every level – their faith being their only crime. They face increasing religious intolerance that successive governments have done nothing to halt.

Religions in the minority include Ahmadis (declared non-Muslim in the constitution), Christians, Hindus, and Shi'a. These religious groups, their neighborhoods, and their places of worship are targeted with under the pretext of laws designed to protect Islam, or with the use of accusations and mobs that perpetrated mass violence.

The motives behind these attacks are broad. The attacks are not just fueled by religious difference; they also included personal vendettas and property interests that are pursued with knowledge that government response ranges from apathy to support for the perpetrators. The public's response is likewise unsympathetic to the plight of the victims, or at least unhelpful, and leans towards support for the perpetrators. The combination of a variety of motives and an inability or unwillingness to protect these minorities means that the rights of religious minorities are threatened across the board, not just in the sphere of expression.

One common tool in religious violence is the use of blasphemy laws (which we will discuss in depth later). While the laws themselves are somewhat draconian, they are spelled out in an understandable and arguably equal way. However, the ways in which the laws are applied and enforced are unacceptable. Alleged incidents of blasphemy by religious minorities is often used to fuel mob violence, targeted sectarian killings, looting, burning of houses, burning of places of worship and holy books, land grabbing (particularly of Christian graveyards), churches, and properties belonging to Christians and Ahmadis. The Shi'a Islamic sect has also been attacked by sectarian groups: dozens of Shias have been killed in the presence of the security forces.



Other problems confronting Pakistan are suicide attacks, bombings, and increasing terrorist action by the Taliban, Al Qaeda and others. Additionally, there are incidents of hate based violence against religious minorities, sexual harassment at the workplace against Christian and Hindu women, forced conversion to Islam after abduction, and other forms of degrading treatments by state and non-state actors.

Successive governments have preferred to appease or join forces with the fundamentalist groups and so these attacks, and to a greater degree the prejudices, religious intolerance, and discriminatory practices motivating them have the patronage of the state (as seen in the hate based curriculum in many schools). As a result, the number of killings of innocent citizens by political groups and banned terrorist organizations is alarming.

Religious minorities do not enjoy equal political participation. Political parties select certain non-Muslims political representatives just to buy their vote in the parliament. These so called political parties' representatives have no influence to address the challenges faced by the non-Muslims of Pakistan. These non-Muslim political puppets have no real power and wholeheartedly endorse and obey their parties' leaders, working and campaigning for their respective causes. The selection of token minority politicians in this manner is unconstitutional and is political disenfranchisement of non-Muslim citizens of Pakistan. The non-Muslim citizens of Pakistan are thus unrepresented and virtually leaderless which, in turn, leads to unfairness and frustration. These citizens are suffering because of so-called politicians as they are not capable of raising their concerns in the parliament.

The US Commission on International Religious Freedom (USCIRF) recently published a fact sheet on religious communities in Pakistan, covering the last 18 months. Since January 2012, the Shia community was reportedly attacked 77 times, with 635 members killed and 834 injured. They also suffered 18 bombings and witnessed 46 targeted shootings.

Christians, the second biggest religious community in Pakistan, were attacked 37 times: 11 persons were killed and 36 injured. They were also attacked in targeted shootings that claimed three lives. Five Christian girls were raped. Ahmadis witnessed 54 attacks, including one bombing, 26 incidents of targeted shootings in which 22 Ahmadis were killed and 39 injured.

According to the report, Pakistani Hindus suffered the most in terms of rape. In 18 months, the rapes of at least seven Hindu girls were reported. Two Hindus

died and four were injured in 16 attacks. Three Hindus were killed in targeted shootings.

Pakistani Sikhs, a minority within a minority, were attacked three times with one fatality. Smaller minority groups were attacked 16 times, resulting in 46 deaths and 195 injured victims. Pakistani minorities have very few friends in Islamic society. At government levels, they are practically voiceless. The electoral system has few advantages for minorities and their own MPs are not capable of speaking up for them or are under pressure from Government or extremists not to do so.

### *Christians*



Christian family, victim to church attack (Courtesy: Nadeem Anthony)

Blasphemy laws are undoubtedly a fundamental tool, if not the root cause, of persecution against Christians and other religious minorities, and these groups will continue be insecure in Pakistan until these laws have been suitably amended. According to some reports, over 1,200 people were charged under blasphemy laws between 1986 and 2012. The number is much higher for those who are accused (not charged) and

punished through mob violence and vigilantism. Of the estimated 1,200, at least half are minorities. This is disproportionately high; minorities make up only 5% of the 180 million people living in Pakistan. Christians see themselves as the main targets as they have experienced more attacks on their churches, villages, and members than any other religious minority.

The newly democratic government has failed to curb against the uprising militancy and unable to maintain law and order, let alone due process, in all the four provinces. The government's failure is allowing, and in a sense causing violence against Christians, as seen in Joseph Colony, Lahore, and the Twin Suicide attack on All Saints Church Kohati Gate, Peshawar.



All Saints Church Peshawar, attacked in suicide bombing (Courtesy: Nadeem Anthony)



**Suicide bombing brings gruesome death**  
(Courtesy: Nadeem Anthony)

will continue to attack foreigners and Christians until the USA halts its drone attacks on Pakistani soil. He went on to say that Christians are the enemies of Islam and therefore they will continue to kill them, suggesting that the violence will continue regardless. The government, however, has not taken any significant steps against the perpetrators for these attacks.

According to the details, around 500 people attended the Sunday service. At 11:40 a.m. as the priest ended the service and the parishioners were about to leave, two suicide bombers entered the Church and detonated their bombs. There were two explosions which left the dead and dying across the floor of the Church. The force of the explosions left gaping holes in the walls. Appallingly, delays in the emergency services provided by local authorities resulted in more casualties.<sup>166</sup>

The burning of Joseph Colony was also responsible for eroding the security of Pakistani Christians. St. Francis Church



**Christian community grieves**  
(Courtesy: Nadeem Anthony)



**Rights Defender with grieving Christian family**  
(Courtesy: Nadeem Anthony)

<sup>166</sup> Please refer to: AHRC-STM-172-2013

Kot Lakhpat Church Lahore, Oblates of Mary Immaculate Church, Convent, School and Bishop's house in Quetta, Balochistan province, were also attacked and Christian Pastors and Missionaries have been threatened with violence, further attacks, and death. One example from November 4, 2013, is a Christian Colony of more than 150 households located at Wasan Pura, Raiwind Road, Lahore, was threatened through a pamphlet. The residents were warned that if the colony was not abandoned willingly they would be burnt and killed.<sup>167</sup>

Similarly, ransacking, looting and burning of 180 Christian houses in Lahore, the capital of Punjab province occurred, likely at the behest of the government of Punjab and land grabbers.

The incident began as an alcohol fueled quarrel between three Christian and Muslim friends. The dispute happened on Tuesday, March 5 but after three days local authorities pressured the Muslim involved in the initial dispute, a friend of a Christian alleged to be a blasphemmer, to lodge a FIR with the police station on Friday, March 8 which they then used to incite a mob to attack the settlement and inevitably to appropriate the land and property owned by the Christians.



Christian houses being burned in Lahore  
(Courtesy: LEAD)

On March 8, during the Friday prayers, it was announced through the mosque loud speaker that a man named Masih committed blasphemy by passing remarks against the last prophet of Islam. The police who were already prepared arrested Masih when a crowd attacked the community under the leadership of Imran. In the ensuing incident they beat Masih's father seriously. The police asked the community to vacate the area as there were chances of further attacks, totally ignoring their responsibility to protect members of the religious community. The police left the area thereby providing a perfect opportunity for the attackers to return the next day, March 9. It is unconscionable that among the attackers were members of the assembly and even one from the national assembly, Mr. Riaz Malik. There was also one member of the Punjab provincial assembly, Mr. Asad Ashraf. Both of these men are from the ruling party of the province, the PML-N.

<sup>167</sup> See: AHRC-UAC-085-2013

The three Christian women who were severely beaten and paraded naked by armed men and a local landlord over the alleged crimes of their goat (as previously detailed in the section on women's rights) is another case where religion played a role.<sup>168</sup>



Justice demanded for the 3 Christian women who were paraded naked (Courtesy: LEAD)

The case of Adnan Masih, previously mentioned in the section on torture, is also an example of religious discord. After his death, and in a bid to fool the Christian community, senior police officials announced that all police officers involved in the matter, including the SHO, had been arrested and suspended, and that an inquiry would be conducted. The inquiry was purely internal and quickly exonerated the officers without any acceptable explanation.

A member of the Punjab assembly, Mr. Asghar Munda (who is from the ruling party) urged the police to release a Muslim man who allegedly abducted a Muslim girl, telling the police to punish someone from the Christian community instead, a request the police complied with. Senior police officers are continuously intimidating the family members of the victim, telling them to withdraw the charges against the police. The senior officers have threatened that, if charges are not withdrawn, the family will face severe consequences. The police officers demonstrated their hate against Christians during the boy's illegal detention. They said that such young people need exemplary punishment when they dare to have friendships with Muslim girls.<sup>169</sup>

A Christian, Sajjad Masih was sentenced for life imprisonment in a blasphemy case in Toba Tek Singh. A Christian couple was blamed for sending blasphemous text messages and a blasphemy case FIR No. 407/13 offence under section 295-C of the Pakistan Penal Code (PPC) was registered at police station Gojra City. Christian Pastor Asif Pervaiz based Lahore was likewise accused of sending blasphemous text messages and a blasphemy case FIR No. 675/13 offence under section 295-A, 295-B & 295-C of the Pakistan

168 See: AHRC-UAC-085-2013

169 See: AHRC-UAC-099-2013

Penal Code (PPC) was registered at the police station Township, Lahore. Three Christian men namely Mushtaq Masih, Irfan Masih and Adnan Masih falsely accused for writing derogatory remarks against Prophet Muhammad and blasphemy case FIR No. 678/13 offence under section 295-A, 295-B & 295-C Pakistan Penal Code (PPC) was registered at the police station Green Town, Lahore. A Christian woman namely Martha Bibi fled from Pakistan to Sri Lanka, after she was booked in a false blasphemy case FIR offence under section 295-B of the Pakistan Penal Code (PPC). Victim Younis Masih, also accused of blasphemy was acquitted by the honorable Lahore High Court, after 8 years of imprisonment and degrading treatment, when no evidence related with the blasphemy was found against him.

Iqra (24), a Christian from to a poor family (mentioned in the section on torture) was also denied justice. Iqra, in an effort to help her father, was working as a housemaid at the house of Arif Gujjar, an agriculture land owner from the same locality. After working there for several days Iqra noticed that Arif Gujjar was looking at her with evil intentions.

Iqra's parents informed Arif's family of the problem and at the same time told them that she would not continue her job. On July 28, 2013 Arif Gujjar learned that Iqra was leaving and attempted to rape her. The attempt failed, but he kidnapped her and held her at his Dera: a place usually used to store livestock and agricultural articles. He then called four police personnel and suggested that they all rape the girl. Fortunately, Iqra managed to escape and narrated story to the parents before they could assault her.

Arif Gujjar was infuriated at his failure to rape the girl and at her escape, and shortly thereafter the four police constables raided her home. After breaking in through the main entrance the police officials started assaulting the girl by slapping her face, kicking her, and punching her before throwing threw her to the floor in the yard. The police warned her parents and family members not to intervene while Arif Gujjar tore off her clothes. Arif Gujjar and the police constables then threw her into the street where she was forced to run naked and take shelter in the neighbourhood. No case has been filed against the perpetrators.

### ***Ahmadis***

Ahmadi Muslims in Pakistan continued to be persecuted, prosecuted, humiliated, harassed, tortured and subjected to target killings. In the very recent past hundreds of Ahmadis have been murdered for their faith and belief and this horrifying brutality continues.



It is a fundamental tenet of democracy that all citizens have certain rights and freedoms, of which freedom of faith is an integral part. In Pakistan, however, the Ahmadis, a sect that claims to be an ardent follower of Islam, has been declared as non-Muslim by national law, are excluded from the electoral system on account of their faith and beliefs. They cannot register as a voter because all Muslims in Pakistan, have to make a mandatory declaration pronouncing the Founder of the Ahmadiyya Community as an imposter and a liar in order to get their I.D cards which are essential for registering as a voter.

These devious, and frankly unacceptable, procedures have usurped the fundamental rights of Ahmadis for decades and prevents them from standing as candidates for any assembly, national, provincial or even district. Ahmadis have no representation even in the town council of their own town Rabwah, Nasim Nagar, Punjab, where they make up 95% of the population. The Government of Pakistan thus has not only denied them their freedom to faith, belief and practice, but also proactively victimizes them socially, economically, and educationally.

Since the promulgation of the anti-Ahmadi Ordinance XX (No. 20) of 1984, at least 231 Ahmadis have been murdered because of their faith. 51 of these casualties were in Sindh, including 21 in Karachi. Most of the victims in Karachi were well-known professionals in their fields. Not a single killer of Ahmadis has ever been arrested, which shows that Pakistani authorities are colluding with the killers. But even where the persecution against Ahmadis does not result in murder, there are countless ways in which the local authorities, or even the public, can intimidate, marginalize, and abuse this minority.

Mr. Bashir Ahmad Kiyani (70), was shot dead while on his way to Friday Prayer Services at the nearby Mosque in Korangi, Karachi. This was the culmination of the previous three months when both Mr. Kiyani's son and son-in-law were also killed by Muslim fundamentalists. This happened in spite of his good reputation in the community and had no apparent personal disputes with anyone. Instead, it appears he was killed purely and simply for his faith as an Ahmadi.

On September 4, Ijaz Ahmad (36) left his house in Karachi for work as usual in the morning and on the way two unidentified motorcyclists approached and shot him at point blank range; the bullet struck him in the head and he died while being transported to the hospital. His brother-in-law, Mr Muhammad Nawaz, was also killed in Orangi Town last year for the same reason. The only motivating factor in both deaths appears to be that they were Ahmadi.

On August 31, an Ahmadi homeopathy doctor, Syed Tahir Ahmad, was murdered as he was working in his clinic by an individual pretending to be a patient. As with the previous cases, no motive other than religious hatred has been found.

On August 21 another Ahmadi, Zahoor Ahmad Kiyani, was gunned down outside his house by two unidentified motorcyclists at 11.30 in the morning, the victim of an apparent target killing on the grounds of religious hatred in Karachi.



Assailants killed Mr. Jawad Kareem, an Ahmadi, at his home because of his faith. Kareem, a resident of Green Town, was coming downstairs to go to meet his wife at her clinic, when unknown assailants entered his house and shot him. The bullet hit him in the chest. On hearing the noise from the attack, his elder brother, who lives on the ground floor, came out. The assailants fired a few shots in the air, and told him,

“Next, it is your turn.”



Mr. Hamid Sami (48), a chartered accountant, was shot dead in the afternoon on a busy road on June 11, 2013. He was in a car on his way home from work with a friend and a business colleague accompanied him in the car when unidentified men on motorcycles approached his car and shot him at least 6 times, killing him on the spot. On June 11, 2013, Mr. Naveed Ahmad, son of Rasheed Ahmad, was shot by three unknown

men, who came to his shop on a motorbike. They originally had asked for water, but when they came inside the first one pointed a gun at him and when he resisted he was shot in the face and the liver.

On May 31, in Pasroor, Sialkot district, Punjab, Ahmadis offered their congregational Friday prayers at the residence of the local missionary, as they do not have their own mosque as authorities do not allow Ahmadis to build a place for worship. A police inspector arrived there while Ahmadis were during the ceremony and told the Ahmadis they were not allowed to offer prayers there. The Ahmadis explained their position to him and the inspector demanded an NOC (a No Objection Certificate that relates to certain types of cross-border business practice) authorizing the practice. When he was told that there is no need for an NOC, the inspector said, “They are offering prayers in the mosques and you are offering it in a house, so you need permission. I need to enforce this in view of the law and order situation.” Ahmadis then went to a



senior police official for help, but he told the Ahmadis not to say their Friday prayers until he had spoken to the Mullahs (who by law and custom regard Ahmadis as non-Islamic and would certainly not help them).

A religious fundamentalist, Muhammad Yaqub, filed an application with the police to register a case under the blasphemy law against the Ahmadi editor and publisher of the weekly 'Lahore' paper (along with two other people) for the production and distribution of 'objectionable' material. He also approached a local judge to order the police to register the case. The move was supplemented by a vigil by the Khatme Nabuwat activists against the office of the weekly publication. In the face of this threat, the editor, Yasser Zeervi, had to stop going to his office, and the publication of the weekly paper came to a stop. On June 13 2013, at around midnight, a group of policemen, accompanied by 3 Mullahs, broke the locks, went inside the office where they collected various books and publications. The presence of the Mullahs with the police party is intriguing, and raises serious questions as to the control local religious leaders exert on law enforcement. Mr. Hamid Hussain, an Additional Sessions Judge, ordered the police to register a case under the Ahmadi-specific clause PPC 298C. The case is registered in FIR 282/2013 in the Mazang Police Station, Lahore.

Another example of religious leaders using law enforcement against Ahmadis occurred on June 26: two policemen and one man in civilian clothing came to a large Ahmadiyya mosque in Shaikhupura, Punjab, and told the management that a Mulim fundamentalist, Maulvi Manzoor Vattoo, had filed an application against the Kalima (Islamic creed) written outside the Ahmadiyya mosque and demanded its removal. The management told the visitors that it was not Ahmadiyya practice to remove the Kalima and they also would not allow a private party to do so (as to do so would be considered blasphemy). Thereafter, four officials from the CID (Criminal Investigation Department) visited the site in the evening and repeated the mullah's demand and were given the same reply. Then, at around 10:30 p.m., police officers arrived in two vans led by a District Superintendent of Police (DSP) and an inspector and four constables came to the mosque gate, climbed up, and defaced the Kalima.

In a similar case another fanatic, Mullah Rana Muhammad Tufail, lodged a complaint in the Model Town Police Station that the Ahmadis had inscribed Quranic verses on their graves at Model Town. He insisted that the epigraphs containing these texts should be removed. Hassan Mavia was a witness in the case, the trial of which has been ongoing for a long time. Then in January 2013, unknown miscreants entered the graveyard, desecrated the graves and

demolished the epigraphs containing holy verses. It is believed that Hassan Mavia was the person behind this incident.

On June 14, the police came to Chak 107 RB Sharqi village and forbade local Ahmadis to proceed with the construction of a mosque that was being built inside an Ahmadi's house and was near completion (as mentioned in the introduction to this section, it is illegal for Ahmadis to construct mosques). The president of the local Ahmadiyya community, Mr. Munawwar Ahmad, was called to the police station where the DSP and the SHO pressured the Ahmadis into promising to demolish the mosque by June 16. The Ahmadis claimed that they only agreed because they are trying to resolve this matter peacefully as they feared that the government would get help from miscreants to attack locations where Ahmadis assemble for worship and arrest Ahmadis *en masse* for such violation of laws.

The police raided the workshop of a book-binder, Syed Altaf Hussain, and arrested him, his son, and his workers on February 22. Although they were not Ahmadi themselves, they were charged with binding books for others that were Ahmadi. Two days later, the police released four of the detainees but kept Syed Hussain in detention at Old Anarkali police station. Mr. Asmatullah, an Ahmadi, who was also implicated in the Black Arrow case, had been granted bail in that case but was not released because he was also involved in this case. Syed Hussain and Asmatullah are still behind bars. The court heard their pleas for bail but rejected them sending a clear signal that merely assisting Ahmadis is also considered a crime.

On April 10, the police registered a case against the editor, Mr. Abdul Sami Khan, and the printer, Mr. Tahir Mehdi Imtiaz Ahmad, of the daily Al-Fazl, as well as four others, under the Anti-Terrorism Act and Ordinance XX (which is widely considered anti-Ahmadi). The latter four accused are Mr. Khalid Ashfaq, Mr. Tahir Ahmad, Mr. Faisal Ahmad and Mr. Azhar Zareef, and they were arrested in Lahore by the Islampura police. On May 7, the judge granted bail to two of victims, Mr. Azhar Zareef and Mr. Faisal Ahmad, and denied bail to the other two, Mr. Khalid Ashfaq and Mr. Tahir Ahmad who remain behind bars. Lahore High Court heard their pleas for bail on June 6 and rejected them.

On April 28, 2013, Muhammad Hassan Mavia, a known religious leader of the area along with his associates targeted a prayer center in Gulshan-e-Ravi. He registered a complaint with the help of his followers who live adjacent to the prayer center; they would later claim that an unknown person had broken into a follower's house, ran away, and was hiding in the prayer center.

Hassan Mavia came on the scene with his mob, forcibly entered the building, searched the premises (in the presence of the police who did nothing to prevent them), collected books from the library, and arrested seven men, a woman, and a twelve-year-old child who were then taken to the Gulshan-e-Ravi Police Station. The woman and child were released at 3 p.m. but a report was registered against the arrested persons on based on the fictional allegations and the police sealed the Prayer Center and the arrested persons were transferred to the Central Jail.<sup>170</sup>

In another incident, on April 10, an Ahmadi boy named Khalid Ashfaq was delivering an Ahmadi Newspaper, ALFAZL to the house of a member of the Jamaat when Hassan Mavia along with members of his mob seized the boy, tortured him and confiscated the newspapers. Later a case was registered against the boy under 295-B, 298-C of the Pakistan Penal Code (PPC) and Section 11 of the Anti Terrorism Act.

A previous incident incited by Hassan Mavia occurred in January 2013 the attack was on the house of the president of the Ahmadiya Community, Garhi Sahhu, Mr. Abid Chughtai. The names of Allah were removed from the walls of his house, allegedly by the followers of Hassan Mavia.

Hassan Mavia's harassment continued in the same month when he lodged a complaint under charge sheet 298-B of the PPC against a 16-year-old boy, named Atif Ahmad, in Samanabad Police Station. The case was registered for keeping religious books by the young boy. Later he was arrested and due to the threats by the plaintiff the family was forced to flee to a safer location.

On March 25, a crowd of more than 60 people attacked the house of Mr. Malik Maqsood Ahmed Anjum, a resident of Shamsabad, sub district, Choonia, district Qasoor, Punjab. The family members (including women and children) locked themselves inside for their protection but the crowd broke open the doors and dragged all of them out. Anjum was beaten by the crowd with iron rods, sticks and fists and kicked before the family, and forced to convert to "Islam" and leave the Ahmadi sect. When he fell unconscious, the attackers left him on the road thinking that he was dead. The attack was witnessed by at least 10 policemen present at the scene but none of them intervened to prevent the violence. After the incident a police party from Chooni police station finally arrived and rather than providing assistance to the victim, they assumed he was

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170 Please refer to: AHRC-STM-086-2013

dead and threw him in a police jeep. The police then took him to the district hospital of Choonia and, when Anjum was found to be still alive, the police left instead of investigating or gathering evidence and testimony. In response to this incident, the local authorities have announced that all the Ahmadis should immediately leave their houses and vacate Shamsabad village as the local people do not want Ahmadis in their village.<sup>171</sup>

These are tragic incidents which have become the fate of Ahmadis in Pakistan. The Government authorities intentionally deny Ahmadis any protection or security. The judiciary too takes no notice of Ahmadi cases and Ahmadis are discriminated against in every sector of life. The dissemination of anti-Ahmadiyya hate literature is also constantly on the rise. The government can stop this but they are consciously ignoring it so that a religious fanaticism can be promoted.

### *Hindus*

Hindus are the largest minority community in Pakistan. They make up about 2% of the population of 180 million and most of them live in Sindh province. The members of the Hindu community also remain victims of persecution by Islamic fundamentalist groups. As addressed in the section on women's rights, girls and women are abducted, forcibly converted to Islam (often after being raped), Hindu businessmen are abducted for ransom and only released after paying huge sums of money, and their houses are attacked and ransacked in an effort to drive them away. In essence, Muslim fundamentalists have launched a Jihad (holy war) against Hindus and treat them as Indian not Pakistani even though they have been living in the border areas of Sindh and Punjab provinces for centuries.

The Jihad to convert Hindu girls has continued unabated under the indifferent attitude of Pakistani authorities (as alluded to in the section on women's rights). It has been alleged by the Hindu community that girls are sold to the Taliban after they are converted to Islam.

In the course of several months, seven Hindu girls have been targeted in a conversion campaign. Of the seven, five have been kidnapped and converted by Muslim abductors (though one girl has subsequently been recovered by the police). In one case, the attempted abduction was foiled by passers-by.

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171 See: AHRC-UAC-050-2013

The Muslim abductors have also begun using new *modus operandi*. In one case, a Muslim man first became the “brother” of a Hindu girl, and also observed the *Rakhi Bandhan*, a custom cementing the bond between brothers and sisters. Later, the same ‘brother’ abducted his ‘sister’ after which, he marries her. Local religious zealots encourage this by emphasizing that such men will be rewarded after death for converting someone to Islam. This thinking was evident in the decision of the Supreme Court in the case of Rinkle Kumari and Dr. Lata. The Court decided in favour of perpetrators hailing from a notorious seminary that abducted and converted Rinkle Kumari to Islam. The Chief Justice himself met the abductor of Rinkle Kumar during Friday prayers and congratulated him for converting a Hindu girl to Islam.

This case illustrates how abductions are music to the ears of Muslim fundamentalists and powerful local elements that operate freely within and around the local administration. Furthermore, these incidents do not appear to be a concern of the provincial governments, especially in Sindh. In fact, there is evidence to suggest they are even complicit in some of the cases.

According to advocate Veerji Kolhi, President of Progressive Hindu Alliance and Council for the Defense of Bonded Laborers, two Hindu sisters belonging to a low Hindu caste were abducted on 7 July 2013 by armed men from their village Kohli Vairi, located in Nangar Parka Taluka, Tharparkar District, Sindh. The girls, Ms. Tarki (16) and Ms. Beena (14), daughters of Vanoon Kohli, were abducted by Hanif Nohri, Inayat Nohri, Majnoon Nohri, Jamal Nohri and Ismail Khoso, residents of Bado and Jud’dan villages located in the same taluka and district. They forcibly entered the house of the Kohli family in the night at 8 p.m. Mrs. Savarian Kohli, mother to the girls, was taking dinner with her children when the armed men entered her house. The abductors are alleged to be henchmen of the former chief minister of Sindh who has now joined the ruling party, the PML-N. Mrs. Kohli fears that her daughters will be moved to another location, converted to Islam forcibly, and/or killed by her abductors, as they are powerful and have great influence in the area. Demonstrators also appealed to the authorities to search the madressas for the recovery of the girls.

According to the Internationally Unity for Equality (IUFE), on 28 June 2013, a Hindu girl Ms. Rekha was abducted by Mr. Yaseem Lashari when she was on her way home from her work place. Rekha and her mother, Naavi, work in the factory where they met with Yameen Lashari. He made Rekha his sister and Rekha tied him a Rakhi (thread cementing bond between brother and sister, tied on the Hindu festival of Raksha bandhan by a girl around the wrist of boy, making them both brother and sister). Lashari became close to the family.

He often visited their home. One day Rekha didn't come back home from work and on the same day Lashari was also absent from the work place. Navvi realized that her daughter had been abducted by Yameen. She filed a case of kidnapping against Yameen Lahari. On the day of the hearing the couple came to court and Naavi tried to meet with her daughter, but Lashari did not allow them to meet and talk. He abused and insulted Navvi and told her to get out of the court. Navvi informed the police about the incident but police didn't take any action. Later, one day, Lashari informed the mother through a messenger that he and Rekha have gotten married and there is no need for her to follow them.

Jamna Kumari (12), was abducted by influential persons from village Arbab Rind, located near Bhit Shah, Hyderabad. According to the father of the girl Altaf Rind, Pathan Rind, Wazir Rind along with their companions entered his house, looted cash, gold, and other valueable things. After looting, the men dragged out and took away his daughter Kumari. He filed a FIR against the criminals and the Bhit Shah police arrested the men, but after taking bribes, the police released them. The perpatrators are said to be from a religious seminary. The whereabouts of Jamna is still unknown. Her Hindu family fears that the girl will be sold to the Taliban in Peshawar, the capital of Khyber Pakhtunkha, after her forced conversion to Islam.

Likewise, the kidnapping of a Hindu girl, Manisha Kumari (14), from Jacobabad in Sindh on August 7 sparked widespread concern in the minority community.

In March 2013, Ganga (18), daughter to gold trader Ashok Kumar, was abducted at dawn from her home located Jhanjhri Street, Sarafa Bazaar, in the limits of the City Police Station, Jacobabad. Mr. Asif Ali, the son of another gold trader Bahadur Ali Surhio, converted the abducted girl to Islam and married her. The marriage ceremony took place at the Amrot Sharif shrine. A FIR was lodged by the parents of the girl against Asif Ali, Bahadur Ali Surhio, and Miran Bukhsh. This abduction occurred at the time of the election of the Hindu Panchayat, which was postponed until this incident could be resolved. A big protest was organized against the alleged abduction and forced conversion. The protestors demanded protection of Hindu girls and Hindu people. They demanded the reunion of Ganga with her family.<sup>172</sup>

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172 See: [www.sociableinfo.com/hindus-protest-after-woman-converted-to-islam-in-pakistan/#.UeY5sG2bFVU](http://www.sociableinfo.com/hindus-protest-after-woman-converted-to-islam-in-pakistan/#.UeY5sG2bFVU) and [www.awamiawaz.net/jacobabad-protest-4](http://www.awamiawaz.net/jacobabad-protest-4)

Such cases are so prevalent that, according to the Hindu Panchayat, every month around 20 girls are abducted and forcibly converted to Islam. The role of officials in the police and in the Courts is clearly questionable in these cases and the general view is if they were to act in accordance with the laws of the country, they would stand to lose the reward awaiting them after death for such a conversion. Furthermore, there is fear that the majority Muslim society, especially the more fundamentalist sects, will retaliate against them, declaring them as infidels or agents of India.

The Hindu community has protested that even after forcibly converting the girls to Islam and marrying the girls, the perpetrators never allow the girls to meet with their parents. In many such cases even the courts have not allowed the girls to meet their parents. In the case of Rinkle Kumari and Dr. Lata the Supreme Court did not allow such a meeting to take place for fear that the real story would be told. As a result the two following cases stand out as being unusually successful.

On April 6, six people riding motorbikes tried to abduct a Hindu woman from a bus near Toban Shakh, in Kanri, Sindh. The bike riders stopped the passenger bus and tried to drag out a married Hindu woman, Ms. Tarri, from the bus. When they were pulling her, she cried and shouted loudly for help. Other passengers and bystanders near the bus came to her aid and the perpetrators ran away. The Hindu community tried to file a first information report at the Kinri police station, but even after six hours of making the complainants wait, the police refused to file a case because, according to the police, the incident took place outside the limits of the Kinri police station.

The *Daily Awami Aawaz* has recently reported that the case of Hindu Girl from Tendo Jam village who was kidnapped on the pretext of a "love marriage" has been solved. Police have arrested a man, Mr. Mohammad Ali Machi, along with a woman, said to be his sister. There was an emotional scene in the police station as the girl, upon seeing her father Lilaram and mother Laxmibai, embraced her mother and started crying. In her statement the girl said that she came to Korti with her maternal uncle. She visited a dargah to seek blessings, after which she proceeded to the Md. Ali Machi residence where she was forcibly taken to Kinri, converted to Islam, and married to Md. Ali Machi. She pleaded to be handed over to her parents. After recording the statement of the girl, the police arrested Md. Ali Machi, along with his sister Zarina. A case of kidnapping has been registered against them.

In the absence of fair trial, the Hindu community continues to fall prey to “Islamic Justice” often as it is defined by the perpetrators. The role of higher judiciary is dubious in dealing with forced conversion of Hindu girls. The courts particularly Supreme Court, has given the impunity to the perpetrators of abductors of Hindu girls.

Additionally, there are many Islamic seminaries (Madressas) operating freely and provide shelter to the abductors and victims. Some seminaries are running under the political leaders. The media and right based organizations have several times pointed out the places which are involved in such business but authorities did not take action.

To avoid these abductions Hindu families have begun trying to keep their girls in their house (which, as some of the aforementioned cases illustrate, is not always enough). Others take advantage of religious festivals in India and use them as an excuse to Pakistan altogether and gain asylum status in the neighboring country. This includes at least 600 Hindu families including one member of the provincial assembly, Mr. Pervani so far. Another imetus for this is that the Hindu community feels that Pakistan is determined to exist as an Islamic state, comprising only of Sunni Muslims. The policy of the government is to subject the minorities to terror attacks and push them to wall, allow terror to sink in enough to cause a general exodus, mainly towards India.

The Hindu Panchayat of Pakistan also revealed that Hindu community in Mirpurkhas, Sindh, bordering with India and its surrounding areas are being targeted by criminals and that Police pay no attention to their plight. Hindu families are consequently left with no option but to leave Pakistan. Evidence of this is, the homes of 70 Hindu families in Mirpurkhas and nearby areas were burgled in a short period of time, two youths were killed for not paying extortion money, and two kidnapped businessmen were freed after they paid millions of rupees as ransom. However, following the reports of the exodus, Pakistani immigration authorities stopped 250 Hindu pilgrims on their way to India at the Wagah border, last year. The Hindus were allowed to travel to India after leaders of the community assured the government that they would return to Pakistan after the pilgrimage.

With no let up in the incidents in which Hindus were targeted, members of the Hindu Panchayat sent letters to the Indian High Commission and the US embassy, seeking their help. Perwani, a former member of the Sindh Assembly, said the step of writing to foreign missions was taken after the police and politicians did not address their grievances.



Kidnapping for dispute or for ransom is also rampant here as elsewhere. Members of the Hindu community, especially traders and professionals like doctors, have been the target of kidnapping for ransom and extortion demands in the restive southwestern Balochistan province. A three-year-old Hindu girl in Pakistan was rescued by police here in an operation during which her four captors were killed. Mahi Suchdev, daughter of Sunil Sachdev was kidnapped in July from the hospital where both of her parents worked and a ransom of Rs. 50 million was demanded by her kidnappers.

Mohan Meghwar, a student of Mehran Engineering University, Jamshoro was kidnapped by Pakistani law enforcement agencies.

Ramesh Kumar, the finance secretary of JSMM is on close watch of the ISI, the agency is believed to be involved in extra-judicial killings of the Hindus to pursue their vendetta (The Megh Samaj has been facing special hatred from the Islamists for their one time influence over Sindh) by labeling them as political activists whom they then brutally kill. The frustrated Islamists have thus started treating the Hindus as third class citizens and the Megh Samaj are treated worse yet.

The rape of Vijyanti Meghwar (5) from Hyderabad this year is a dark example of this scenario. After a couple of weeks the same Islamists brutally mutilated and beheaded a Meghwar boy in the same area only because a Muslim girl loved him. The JSMM and JSQM protested this killing.

### ***Sikhs***

The Sikh Community protested over the desecration of their holy book Guru Granth Sahib across cities of Interior Sindh as Dal Darbar in Panu Aqil, Guru Nanak Darbar in Mehar Taluka of Dadu District, Samadha Ashram, Sajal Sher Jhooley Lal Darbar and Khatwari Darbar in Shikarpur. Since, as mentioned blasphemy laws are written to be fair, this should be punishable in much the same way that accusations of blasphemy against Islam are. However, these cases are largely ignored by the government and Muslim majority of the public.

A Sikh namely Mahinder Singh, resident of Khyber Agency was kidnapped in 2012 by a militant group and in January 2013 his beheaded and chopped dead body packed into a sack and dumped at Zakhakhel Bazaar in Khyber Agency. The motivation appears to be religious hatred.

## *Shia*

As usual the year 2013 was dark year for the Shia Muslim religious community which remained prey to the militant and sectarian groups of Sunni majority, just as the previously mentioned minorities have. The year 2012 ended with the killing of Shia and the new year of 2013 started with the killing of Shia in Balochistan province (as noted in the section of this report dedicated to killings) which has been under the control of security agencies since 2000. In 2012 more than 325 Shias were killed in targeted attacks, bombings and suicide attacks that took place across the country. This continued as, in the first two months of this year alone, 225 were killed in bombings in Quetta, the capital of Balochistan province. The first one took place on January 10, and killed 90 people. Then in the short space of just one month and seven days, another blast occurred which cost the lives of 107 people. In both incidents more than 500 people were injured. The second bombing took place despite the presence of the army, the FC, and more than three intelligence agencies working under the military command.

After the first blast on January 10, the government suspended the assembly of the province and imposed Governor's Rule in a bid to control the sectarian terrorism. However the efforts seem futile as the root of the issue has not been properly addressed. In a similar manner acts of bloody terrorism have



Shias protest bombing in Quetta (AHRC File Photo)

been ongoing in different parts of the country for more than a decade. They are carried out by well known and identified militant groups, particularly in Karachi and in many parts of the Khyber Pakhtoon Kha province.

Various terrorist groups view the Shia community as an easy target since sectarian groups have safe havens in Punjab province where the government has provided them political patronage. The ruling party in the Punjab province and federal governments have allotted party tickets or made alliance on 50 candidates in the general elections of May 2013. Because of alliance the ruling party was able to get majority and defeated secular parties. The Shia community blames the ruling party and its ministers for providing offices and training centers to the banned sectarian parties which are routinely victimizing the Shia.

In this decade alone, more than 2,000 members of Hazara community have been mercilessly targeted and killed (with over 2,000 children have killed or wounded) in the southwestern town of Quetta of Pakistan's turbulent Balochistan province, though Many more Shia Muslims have been killed in northern areas of Pakistan such as Gilgit, Baltistan, Parachinar and Chelas as well. The non-state militias i.e. Lashkar-e-Taiba, Jaish-e-Muhammad, Sunni Tehreek, Ahle Sunnat wal Jammaat, etc., throughout Pakistan all claim their goals are based in Islamic Sharia. and often, with support from the military establishment (especially after 2010), they engage in mass killings of Shias and other minorities reminiscent of the holocaust in the 1930s and 40s in Nazi Germany. These organizations though proponents of dissenting sects have never clashed on sectarian lines, instead they find common ground by actively targeting unpopular political parties, Shias, and other disenfranchised groups.

Near the end of November, after clashes between Shia and Sunni sects in Rawalpindi, garrison city, that left hundreds dead, the prime minister instructed the authorities to adhere to a 2004 ban of using mosque loudspeakers for anything other than prayer in hopes of preventing their use in stirring further violence and hatred. Nevertheless, banned organizations are holding public meeting and using loudspeakers with impunity throughout the country, as well as graffiti blaming Shia;s as the Infidels and inciting people to kill them and many of the banned sectarian parties that perpetrate this violence have been allowed to collect funds openly in the streets

The role of the Supreme Court in the deterioration of justice is also a cause for alarm. To date the judiciary has acquitted more than 900 militants. The judiciary's pliant sympathy for fundamentalists and other extremist organizations is a matter of public record.

On November 22, two bomb blasts hit a Shia based community, the Ancholi, Karachi, where 8 people died on spot. The Tehreek-e-Taliban Pakistan (TTP) claimed the responsibility and announced that killing of Shia will continue.

On November 15, at least 11 people were killed and 50 wounded when gunmen opened fire on a Shia Muslim religious procession in Pakistan as it passed a Sunni seminary which lead to violent clashes. The police, who were conspicuously absent during the battle, resposned with a four day curfew.

In November, 18 people were injured in two separate blast near Shia mosques in Karachi as Pakistan was on high alert ahead of street processions for Muharram, the mostly Shia Muslim gathering that begins for mourning. In a separate attack the next evening, a grenade was thrown at a police check point

near another Shia mosque injuring two policemen, according to Amir Farooqi, a senior superintendent of Karachi police.

The police in of Gujranwala killed six men believed to be from Lashkar-e-Jhangvi, a Sunni sectarian group, suspected of planning a suicide attack on the main Shia procession.

On November 1, heavily-armed militants shot and killed six Shia Muslims in Mach, in Pakistan's troubled southwestern province of Balochistan. Security sources said the attackers managed to flee the scene before policemen cordoned off the area. No groups or people have yet claimed responsibility for the deadly attack, but pro-Taliban militant groups have been blamed for such attacks in the past.

On November 11, a Shia Muslim was shot and killed and his Sunni co-worker was injured when LeJ's terrorists of Sipah-e-Sahaba stormed into their shop in North Nazimabad, Karachi and fire at them. Asif Rizvi and his Sunni co-worker Ashraf were sitting in their shop in Mianwali Colony. The terrorists stormed into the shop and opened fire. In the aftermath the victims were rushed to hospital in critical condition where Asif Rizvi succumbed to his wounds.

On November 4 in Karachi 5 Shias were among 7 people killed in sectarian attacks in the city. In one of the incidents of violence, a Shia doctor was gunned down by unidentified armed men, riding motorcycles near Liberty Chowk, Tariq Road. while standing near his apartment; he died instantly. Separately, a medical technician at the Leprosy Hospital in Manghopir was killed in Garam Chashma area. The victim, identified as Sher Ali, was going to drop his children to a nearby school on his motorcycle when unidentified armed men on motorcycles intercepted him and opened fired. Initial investigation suggests it was a sectarian attack and an outlawed organisation was behind the attack.

In Karachi, a tailor from the Shia community was gunned down along with his friend while three others were also injured in the attack. The tailor was identified as Nadeem Raza, his slain friend Shoaib and the injured Mohsin, Sohail and Imran. They were present inside Nadeem's shop when at least four armed men, riding two motorcycles, opened fire on them and escaped. Another Shia man was shot dead in the Gulshan-e-Iqbal area. According to police, the deceased was identified as Muhammad Shan. He was walking in the area along with the Zuljinah when armed motorcyclists opened fire, killing both Shan and Zuljinah on the spot.

Separately, a man, Mansoor, was shot dead near Dabba Mor in Orangi Town while the bullet-riddled body of a man, Abdul Rasool Baloch, was found in Baldia Town. Following the killings, hundreds of Shias staged protests in Shia-dominated areas, including Ancholi and Abbas Town. Shia leaders also condemned the killings and declared it failure of the government and law enforcers.

Shias are not immune to persecution by blasphemy law either. Mr. Hamid Hussain (25) was arrested and taken from his house at 2.30 A.M. on 21 March 2012 in a FIR which was lodged on December 29, 2011 on the charge of blasphemy under sections of 285-A, 298 A and 34 of Pakistan Penal Code (PPC) for publishing and distributing a booklet against the holy personages and companions (Sahaba) of the Holy Prophet (PBUH).

A young Shia, Hamid Hussain, is facing trial on blasphemy charges because he did not pay a bribe to the police and a judge of the anti-terrorism court (ATC). The witnesses in the case have not identified him as accused defendant and even the sketches made by the investigators did not resemble him. In fact, Hamid Hussain's name was not mentioned in the FIR and nor did the three accused persons at any time of the investigation give his name. However, being a person from the Shia Muslim sect the police implicated him presumably for the purpose of extortion (they solicited bribes for police officers). As is common there appears to be no motive other than religious differences. Indeed, he was arrested on the basis that a phone stolen from him 5 years prior had its number displayed on a booklet that was picked up as evidence in the case. This case is unique, however, in that the victim is the nephew of a popular anchorperson of a television channel, who preaches Islam. The preacher refused to help him fearing that he too would be accused of being a Shia and lose his position, much in the same way that advocates for other at risk groups are persecuted. The victim was also tortured at the police station and two different prisons and eventually forced to confess that he was involved in publishing the booklet.<sup>173</sup>

In a recent attack, a senior Pakistani Shia leader was shot dead in Lahore by assailants riding motor cycles. According to the police, Tehrik Nifaz-e-Fiqa Jafferia Multan chapter president Allama Nasir Abbas was returning from a Majlis (Shia gathering) in a car



Allama Nasir Abbas  
(Courtesy: Jafria News)

<sup>173</sup> See: AHRC-UAC-063-2013

on the night of December 5 when four motorcyclists fired at his vehicle near Foreman Christian College. Abbas, his driver and security guard, suffered critical injuries. The Shia leader succumbed to his injuries at the Sheikh Zayed Hospital.

Similarly, on December 6, a prominent Shia religious leader Allama Deedar Ali Jalbani was also gunned down by assailants riding motor cycles in Karachi. He was deputy secretary general of Majlis-e-Wahdatul Muslimeen (MWM). Sunni religious leaders have not been spared the carnage in Pakistan either. A Sunni Muslim scholar Maulana Shamsur Rehman Muavia, was gunned down in Karachi's central district on December 6 while he was visiting a doctor, who was also killed in the firing.

And, in the latest sectarian attack in Pakistan, a bomb explosion outside a Shiite mosque in north Pakistan on December 18, killed at least three people and wounded 14 others. The blast took place in the Gracy Lines neighborhood of the garrison city of Rawalpindi.

## Death Sentence

Despite over 150 countries officially abolishing the death penalty, Pakistan continues to hold on to this archaic form of punishment. Most would agree that there is no easy way to address the devastatingly high crime rates in the country, but the government killing its own citizens is not the answer as studies have yet conclusively proven that the death penalty is a deterrent for violent crime. Addressing failures within the government, including corruption, impunity, and bribery would be a more productive approach. The pressure of the death penalty stay has also affected the mental health of these prisoners, many of whom have been waiting for years in limbo to know their fate.

In 2010, Pakistan ratified the International Covenant on Civil and Political Rights, Article 6 (1) of which states: *Every human being has the inherent right to life. This right shall be protected by law...*

On October 3, the Government of Pakistan made a move back towards respecting human rights and announced its decision to renew the moratorium on the death penalty. This decision came in response to a great international pressure from NGOs and media outlets calling on Pakistan to respect the right to life. The moratorium had been in place since 2008 when the PPP took office, and expired on June 30, 2013. In an attempt to crackdown on criminal

activity and terrorism, the new leadership under the Pakistan Muslim League-N (PML-N) was set to begin executions in August of this year. For the time being, the decision to reinstate the moratorium has saved the lives of over 8,000 inmates currently on death row. It is a positive step by the government to make recognizable changes in regard to protecting human rights. Yet, 27 different crimes still qualify for the death penalty under Pakistani Law including treason, terrorism, apostasy, and adultery the definitions of which are also vague and leave room for interpretation.. The most common crimes receiving the death penalty are terrorism, murder, and aggravated murder. The death penalty is often the result of the absence of fair trial, something that plagues Pakistan. Pakistan cannot even minimally guarantee the right to fair trial and due process as prescribed under Article 10A of the Constitution of Pakistan and Article 14 of the ICCPR

In March of 2011, the Asian Human Rights Commission reported on ‘the saga of the prisoners waiting in death row’, and stated that although the number of death row inmates has increased from 5,447 in 2005 to 8,300 today, and 300 more are sentenced yearly. Prison capacity has not been increased to hold them, leaving them to subsist in inhuman and inadequate living conditions.

Even in most countries widely held to have a fair trial process, the death penalty has been abolished in light of the possibility that innocent people could be put to death. It is dangerous to allow the death penalty to continue under a judicial system that cannot guarantee its people a fair and impartial trial

Corruption and bribery still play a significant role in Pakistan and all too often the wealthy are able to buy their way out of trouble while the poor, often innocent of the charges they face, are left to their fate. Pakistan fails to meet the basic requirements of guaranteeing an impartial trial, adequate legal representation, and independence of the judiciary from outside influence, including pressure from the government itself. The Qisas and Diyat Ordinance, which allows for families of victims to accept “blood money” further muddles the judicial process as criminals with money are able to pay their way out of crimes such as murder.

Poor living conditions and the corrupt monopoly run by the prison guards only serve to increase recidivism and criminal behavior, even within the jails themselves. Networks of criminal gangs operate in and outside of the prisons, exemplified by the most recent storming of Dera Ismail Khan Jail in Punjab. The Taliban conducted a fourteen hour raid on the jail, freeing 248 and killing 13, including Shiite prisoners. Of the freed prisoners, 6 were on death row.



The PPP has called on the new government to review the list of crimes punishable by death which include blasphemy, sex outside of marriage, smuggling of drugs, and sabotage of the railway system. These crimes extend far beyond the scope of 'most serious crimes' under which the death penalty can be awarded according to ICCPR Article 6(2).

To cement its commitment to respecting the lives of its citizens and to keep in step with international human rights norms, Pakistan must draft formal legislation abolishing the death penalty in all cases. In 2008, the government made an attempt to do this, but settled for a moratorium due to political opposition to the move. A temporary stay of the death penalty is a laudable step but not enough to fortify Pakistan's position as an advocate and supporter of international human rights.

Should Pakistan resume executions, as they tried to do earlier this year, it will face serious economic repercussions, especially in regard to free trade agreements with the EU under the Generalized Scheme of Preferences, which allows developing economies access to European markets tariff-free. GSP is only granted to countries that, amongst other criteria, ratify and implement international human rights and labour standards. It is not given to any country that allows for the death penalty.

The government must also commute its current death sentence cases to sentences of life imprisonment. It is degrading for current death-row prisoners to continually face uncertainty regarding their fate. The death penalty directly contradicts the second protocol of the ICCPR and violates the Right to Life as prescribed in the Universal Declaration of Human Rights. Killing prisoners will only serve to perpetuate violence and increases the risk of retaliation by militant groups and religious fundamentalists.

## **Blasphemy Law**

Blasphemy law, is meant to prevent desecration of the Prophet Mohammad (PBUH), but can easily be turned against individuals or groups by vested interests as we have detailed in previous sections. The Council of Islamic Ideology in Pakistan held a meeting on May 29. The meeting was led by Maulana Sherani. The Council threatened that if blasphemy laws are amended, the country's minorities will be in danger. The council has been working to make Pakistan a pure Islamic state which is something that has been on the agenda for a number of religious political organisations since Pakistan came into



being. The hazards associated with the blasphemy laws are cannot be overstated, particularly for the innocent, as you have already learned in numerous previous section of this report. The subject still needs to be addressed more closely, and to that end we require strict scrutiny of existing procedures.

The following are relevant sections of the blasphemy law, under the Pakistan Penal Code (PPC):

*295-B: Defiling, etc, of copy of Holy Quran. Whoever will fully defiles, damages or desecrates a copy of the Holy Quran or of an extract therefrom or uses it in any derogatory manner or for any unlawful purpose shall be punishable for imprisonment for life.*

*295-C: Use of derogatory remarks, etc; in respect of the Holy Prophet. Whoever by words, either spoken or written or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Mohammed (PBUH) shall be punished with death, or imprisonment for life, and shall also be liable to fine.*

*298-A: Use of derogatory remarks, etc..., in respect of holy personages. Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo or insinuation, directly or indirectly defiles a sacred name of any wife (Ummul Mumineen), or members of the family (Ahle-bait), of the Holy Prophet (PBUH), or any of the righteous caliphs (Khulafae-Rashideen) or companions (Sahaaba) of the Holy Prophet description for a term which may extend to three years, or with fine, or with both.*

*298-B: Misuse of epithet, descriptions and titles, etc. Reserved for certain holy personages or places.*

*Any person of the Qadiani group or the Lahori group (who call themselves Ahmadis or by any other name) who by words, either spoken or written or by visible representation:*

*refers to or addresses, any person, other than a Caliph or companion of the Holy Prophet Mohammad (PBUH), as "Ameerul Momneen", "Khalifat-ul-Momneen", "Khalifat-ul-Muslimeen", "Sahaabi" or "Razi Allah Anho"; refers to or addresses, any person, other than a wife of the Holy Prophet Mohammed (PBUH), as Ummul-Mumineen; refers to, or addresses, any person, other than a member of the family (Ahle-Bait) of the Holy Prophet Mohammed (PBUH), as Ahle-Bait; or refers to, or addresses, any person, other than a member of the*

*family (Ahle-Bait) of the Holy Prophet Mohammed (PBUH), as Ahle-Bait; or refers to, or names, or calls, his place of worship as Masjid; shall be punished with imprisonment or either description for a term which may extend to three years, and shall also be liable to fine. Any person of the Qadiani group or Lahore group, (who call themselves Ahmadis or by any other names), who by words, either spoken or written, or by visible representations, refers to the mode or from of call to prayers followed by his faith as "Azan" or redites Azan as used by the Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.*

*298-C: Persons of Qadiani group, etc, calling himself a Muslim or preaching or propagating his faith. Any person of the Qadiani group or the Lahori group (who call themselves Ahmadis or any other name), who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representation or in any manner whatsoever outrages the religious feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.*

This law has become an overpowering tool of oppression in the hands of the state and fundamentalist Muslim groups. Hate-based syllabi at the primary education level has made the majority of the population believe that Pakistan is only meant for specific views Islam and other religious communities do not have a right to live in the country. Christians, Hindus, and other are forced to study selective Islamic teachings and are denied their own religious education. Examination copies of the students are not confidential either, which puts religious minority students at a disadvantage and singles them out as targets. By the same token, Muslim students are declared blasphemers for independent thought and views when it comes to religion.

Blasphemy law is used for land grabbing, the drug business, persecution, and forced conversion to Islam (as shown earlier). No political party or government has had the courage, or the political will to address this abuse and. The few individuals with authority that have proposed amendments, such as Punjab Governor Salman Taseer (a Muslim) and Minorities Minister Shahbaz Bhatti (a Catholic), have been murdered.

According to data collected by the Episcopal Commission for Justice and Peace of Pakistan (NCJP), at least 964 people have been charged under the law

from 1986 to August 2009. They include 479 Muslims, 119 Christians, 340 Ahmadis, 14 Hindus, and 10 of unknown religion.

Since the law was adopted, more than 40 extra-judicial killings have been carried out in mob / individual attacks against innocent people, all in the name blasphemy of Islam.

The statistics mention that since 1990, 52 people have been extrajudicially murdered, for being implicated in blasphemy charges. Among these were 25 Muslims, 15 Christians, five Ahmadis, one Buddhist and one Hindu.

According to different reports, more than 1,000 people have been charged in Pakistan for committing offences against blasphemy laws. Among them are young, old, and children belonging to all faiths and creeds. Some of them are mentally challenged, physically impaired, or illiterate, even to the point that they are incapable of having committed the alleged acts.

No other law in the country has ever been the cause of so many controversies. The objective of the law, say its supporters, is to discourage people from taking the law into their hands. But the opponents of it say that it only served the interests of radicals and that it has been abused in a major way to target religious minorities by whipping up religious sentiments of the people, often creating the very thing it seeks to protect against. For example, The blasphemy case that triggered a mob of around 2,000 Muslims to run riot in the Joseph Colony of the Christian community in Lahore (as detailed in the section on religious minorities) was a cause of disgrace and remorse for the country and its leadership. The incident took place on 10 March 2013 when a row between two drunken Muslim and Christian friends set off blasphemy allegations that later turned into chaos. A frenzied mob took the law into its own hands and torched more than 150 houses of poor Christians in the area.

Events like this have caused minorities to suffer since these laws were introduced by General Zia Ul Haq in 1986. Education is the key to changing Pakistan: to reduce religious intolerance, and to promote harmony and peace in society. Based on this assumption, the Commission "Justice and Peace" of the Episcopal Conference submitted to the new Prime Minister, Nawaz Sharif – (engaged in the formation of a new government) the topic of religious discrimination in textbooks taught at school. In a note sent to Fides Agency, the Commission also noted that non-Muslim students, enrolled in public school, are forced to follow Islamic studies and this is a violation of their inalienable rights. Furthermore, in its published study the Commission "Justice for Peace"

it notes that 55 chapters in 22 textbooks used in Sindh and Punjab contain false, offensive, and discriminatory statements against religious minorities. Peter Jacob, executive director of the Commission, in writing to Fides Agency has stated that, paradoxically, the dilemma is between “education or spreading hatred”, given that the texts report distorted historical facts and create prejudice in boys and girls and feed intolerance towards religious minorities. According to Jacob, “this approach is visibly discriminatory against non-Muslim citizens of Pakistan and in violation of Articles 18, 20, 22 and 25 of the Constitution.”

The Commission has stated that discriminatory comments have increased over the years: in 2009, there were 45 cases reported related to textbooks, while the number rose to 122 in 2013. Political parties and institutions, notes Jacob, are called to intervene, given that the issue touches the human rights sphere, religious freedom, and the education system. The Commission suggests that the new government should review the education policy. It has called for action to remove “discriminatory lessons against minorities.”

To do this an independent Commission of scholars and historians should be established. Non-Muslim students should be allowed not to follow Islamic study classes but can study their respective religions or alternative studies.

### ***Additional Cases***

A Christian boy named Mard-e-Khuda (19), resident of Tehsil Haroonabad, District Bahawalpur, was barbarically assassinated in January 2013 after he was falsely accused of having an affair with a Muslim girl. Local Muslims had threatened him and proclaimed openly that they would kill him. The attack was executed by three Muslim men named Muhammad Shafique, Illyas (Eidoo), and Sufiyan, who broke into the victim’s house, held him down, a hit his head with an axe, and stabbed him with a dagger, retreating only when the victim’s father woke up and began shouting.

Mr. Patras, a factory worker was the victim of attempted murder on January 15, 2013, in Eid-ul-Muladul Nabi. While on holiday at home with his family members several Muslim drug sellers, passed in front of his door and began firing at him when they saw him come out.. He was able to escape, and when he mentioned this incident to other Christians. he was told to inform other respectable Muslims and the attackers parents so that they would stop them from doing such dangerous activities. However, while attempting to do this they were all fired on forced them to stand in a row, and threatened that if any of them submitted with the incident to the police they would be killed. They

attackers said, "You are Christians insects and have no power to do anything against us".

On April 3, 2013, Christians of Francis Abad, Gujranwala, were attacked in their village leaving one dead and two injured. It seems that a personal rivalry turned to religious violence when an angry Muslim mob attacked Christians houses, and gunfire was exchanged. Police responded promptly and the injured were taken to the hospital. Lazarus Allah Rakha and Rana Adnan, representatives of World Vision in Progress, have said that the gunfire exchange started when Christians were attacked and one of them (named Samuel) was seriously injured requiring hospitalization.

Another Christian community in Pakistan was attacked by an angry Muslim mob on 26 April 2013 in a village near Khanewal, Multan (southern Punjab).

On July 13, the Gojra Additional Sessions Court convicted Masih of committing blasphemy under Section 295-C of the Pakistan Penal Code, by insulting Muhammad. Masih had been accused of sending blasphemous text messages in a case first lodged in December 2011. In spite of the facts that the SIM card was registered to a different person, neither the card nor the phone were found in his possession, and there was no other evidence found that would implicate him, Masih was found guilty and sentenced. According to some analysts it is likely that the lower court judges, who are provided little security in Pakistan, conceded to pressure from religious groups in blasphemy cases and convict the accused as has been well documented in the past (and elsewhere in this report).

In September Boota Masih (58), a Christian goldsmith and head of his family, was killed and falsely accused of blasphemy. It appears, a business rival (also a gold scavenger) was behind the murder, but when the family reported it the police initially refused to investigate and still are making little effort to arrest or investigate the perpetrator who remains free and unpunished. Meanwhile, armed men have threatened the victim's family, telling them to convert to Islam or face death (the police, however, have arrested three of these men). The details of the case are best summed up by the words of the victim's son, George Masih "We were told that Asif kept shouting that my father was an infidel and had spoken derogatory words against Prophet Muhammad (PBUH) as he mercilessly stabbed him and then slit his throat with a dagger," Masih said. "A large number of people, including four policemen and private security guards of the market, witnessed the entire scene, but no one tried to stop the killer, who walked away waving the dagger in his hand." Another friend added: "I

was not present at the crime scene, but all of us are sure that Masih was not a blasphemer,” Faraz said. “Asif was apparently jealous of Masih because most jewellers only allowed the Christian to scavenge gold particles from their shops. He was a humble man and liked by everyone, which probably provoked Asif to kill him. We condemn the killing of an innocent man in the name of our Holy Prophet (PBUH).” George Masih said the family has registered case No. 226/13 with the Liaqatabad Police Station.<sup>174</sup>

## **Human Rights Defenders Under Attack**

Human rights defenders live the most precarious lives in the country. They are prey to the police, security agencies, and influential people. Rights defenders have also been subjected to targeted killings by non-state actors opposed to their work. While these are crimes in domestic law, under international human rights law the state bears responsibility if it does not exercise diligence, that is, if it fails to prevent such abuse and fails to ensure that the perpetrators are brought to justice.

As you may have noticed in several cases in previous sections, human rights defenders – be they journalists investigating and documenting the wrongdoings of state agents, lawyers representing victims of human rights abuse in court, or human rights activists campaigning to end violations – have been subject to a range of rights violations themselves. They have been harassed, arbitrarily arrested and detained, subjected to enforced disappearance, tortured, and extrajudicially executed. Contrary to the spirit of the UN Declaration on Human Rights Defenders, state agents are committing such violations at an increased rate and with continued impunity. This crackdown on human rights defenders is occurring at a time when violations are being reported at an ever increasing rate, making the role of human rights defenders in supporting victims, campaigning for legal redress, and working to end abuses more essential than ever.

The violence against rights defenders, civil society organizations, and journalists by state actors and Muslim groups is rising. It indicates failure of the government to honour its obligation to protect defenders.

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<sup>174</sup> See: <http://www.pakistantoday.com.pk/2013/09/20/news/national/christian-slaughtered-in-karachi-over-blasphemy-charges/#sthash.gG0fB5IV.dpuf>

The UN Declaration on Human Rights Defenders specifies obligations of States to guarantee and protect the rights of human rights defenders. Pakistan also has a duty to protect all human rights established in the Universal Declaration of Human Rights (Article 2), the ICCPR (Article 2), and CEDAW (Article 3). Activists such as Farida Afridi, who, despite threat to their lives, work tirelessly to promote the rights of women and girls as enshrined in Pakistan's obligations under CEDAW, must be protected by the government and justice conferred if violations occur.

The United Nations Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, took note of violations against human rights defenders working on women's rights and gender in Pakistan, pointing out in her December 2010 report that six communications had been sent to the Pakistan Government on the matter between 2004 and 2009. In her August 2010 report, she stated, "... all violations of the rights of defenders should be investigated promptly and impartially and perpetrators prosecuted. Fighting impunity for violations committed against defenders is crucial in order to enable defenders to work in a safe and conducive environment."

The UN Special Rapporteur on violence against women, Rashida Manjoo, urged the Pakistani government to investigate Afridi's murder and promptly ensure the perpetrators are held accountable. She stated that women human rights defenders "... are commonly perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity and the role and status of women in society, while reclaiming their rights or the rights of their communities." Manjoo also stated that the killing of women is indeed a State crime when tolerated by public institutions and officials.

Additionally, in the June 2008 report of the Working Group on the Universal Periodic Review of Pakistan, Pakistan was called upon to "... combat impunity for attacks on human rights defenders by effectively investigating allegations and by prosecuting those responsible."

### ***Perveen Rehman:***

Tragically, the well-known social worker, educationist, and development expert Parveen Rehman was shot dead in Karachi on 13 March, 2013. She had been working hard for the emancipation of the poor and marginalized in Pakistan,





for more than two decades and had more recently been documenting the situation in villages (Goths) around Karachi that are many centuries old, and now virtually under the control of land grabbers, Muslim extremist groups like the Taliban, and the police. Ms. Rehman was murdered close to her office as she arrived in a car by armed men riding two motorcycles who opened fire on her. She was struck twice in the face and once in the neck, was rushed to the Abbasi Shaheed Hospital, and died of her wounds while being treated. It is believed that she was assassinated by Deobandi militants of Ahle Sunnat Wal Jamat (ASWJ) who are said to be the same militants responsible for the deaths of four female anti-polio workers, and for the attack on Malala Yusufzai. She had apparently been receiving death threats for some time.<sup>175</sup>

***Abdul Waheed Khan:***



On May 13, a well known human rights defender, social activist, and educationist, was assassinated, allegedly by religious extremists suspected to be members of the Taliban. Mr. Abdul Waheed Khan (35), was running a co-educational school, the Naunehal Academy under the Bright Educational Society, in the Qasba Colony, Karachi. He was also running a pharmacy providing free medicines to the poor and had started the Bright Educational Society in the late 1990s. He was shot dead by three men in front of his house when he was with his one-year-old daughter and his brother who were both injured as well. The killers also threw a powerful and loud fire cracker at his body after killing him in an effort to deter pursuit. This was foreshadowed when one year earlier, his elder brother, Mujeeb, and Abdul Waheed's close associate, were shot and injured as they refused to stop educating girls and boys with "modern education." Abdul Waheed had been receiving threats for more than a year.

***Sardar Arif Shahid:***

A prominent human rights defender and active writer from the Pakistani part of Kashmir, Sardar Arif Shahid (chairman of the National Liberation Conference (NLC) and the All Parties National Alliance (APNA)), was gunned down in front of his house in the garrison city



<sup>175</sup> Please refer to: AHRC-STM-061-2013



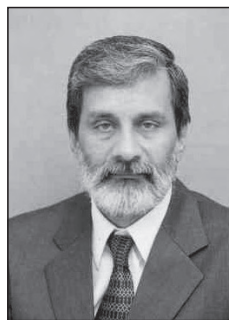
of Rawalpindi. Before his murder, he had been arrested and released when he visited his native town along with some Kashmiri non Muslim visitors from the Jammu part of Indian Kashmir. Mr. Sardar was a vocal critic of Pakistan's alleged role of sending militants to fight a "proxy war" against India in Indian-administered Kashmir. He also criticised Pakistan's policy of treating Kashmir as its "colony" and was opposed to the occupation of Pakistan in Kashmir and Gilgit-Baltistan. The Pakistani government banned him from travelling abroad in 2009, and later confiscated his passport and other identification documents placing him on the exit control list. The High Court had given him relief in December 2012. It is believed that he was assassinated by the ISI who had been repeatedly threatening him.

### ***Judges and Lawyers Targeted***

The Asian Human Rights Commission has documented cases of armed attacks, killings and kidnappings of judges and lawyers in Pakistan. In 2013, judges and lawyers were targeted in attacks in which ten lawyers were killed and three were kidnapped. Only three of them survived the deadly attacks. Most were killed in sectarian violence. The whereabouts of kidnapped lawyers still remains unknown. Law enforcement agencies have failed to provide security to lawyers and have taken no steps to counter notorious acts of violence against innocent citizens of Pakistan.

### ***Justice Maqbool Baqir:***

On June 6, 2013, the convoy of a senior most judge of the Sindh High Court Justice Maqbool Baqir and present Chief Justice of Sindh High Court was bombed when on Burns Road, Karachi. Nine people were killed and 15 received serious injuries. Justice Baqir sustained injuries to his head, hit by the debris and glass of the car in which he was travelling. The spokesperson of the banned outfit, Tehrik-e-Taliban, admitted responsibility for the attack and alleged that the judge was on the hit list due to his anti-Taliban and anti-Mujahideen decisions. The militant organization further threatened to continue targeting the judiciary. Justice Baqir has served as a Judge in special anti-terrorism courts and has awarded sentences to convict terrorists. He is reputed for his honesty and competence.<sup>176</sup>



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<sup>176</sup> Please refer to: AHRC-STM-121-2013

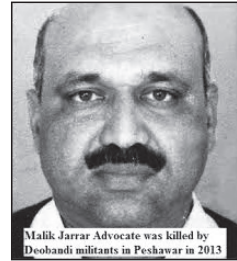
### ***Syed Ahtesham Ali:***

On January 1, 2013, Mr. Syed Ahtesham Ali, Additional District & Sessions Judge in Peshawar and his wife, a Civil Judge in Peshawar, survived an attack. The injured judge is a resident of Kohat District and is son of former Chief Justice of Peshawar High Court, retired Justice Syed Ibne Ali (1995 to 1997). The couple was returning home from the Judicial Complex, Peshawar. Attackers opened fire on their vehicle near Ghani Bagh Phase II, Hayatabad, Peshawar. Mr. Syed Ahtesham Ali is a Shia Muslim. The Taliban claimed responsibility for the shots fired.

### ***Lawyers Killed***

#### ***Mian Muhammad Tariq:***

On February 8, 2013, a senior lawyer of Sindh High Court, Mian Muhammad Tariq (55), was shot dead by an unknown assailant in Karachi. He was a prominent human rights defender and was former officer of the HRCP. The deceased was parking his car at Haroon Royal City near his residence located at Gulistan-i-Jauhar, Karachi. He was fatally injured after a single shot hit him in the back. The assassin escaped after the shooting. The deceased was immediately shifted to a private hospital nearby. He belonged to the Shia Muslim community as well which, as we have show previously, put him at even greater risk.



#### ***Malik Jarar Hussain:***

On February 08, 2013 Malik Jarar Hussain Advocate; a Supreme Court lawyer; resident of Asad Anwar Colony, Gulbahar, Peshawar; and a Shia was shot dead when two motorcyclists attacked his car while he was dropping his children off at school. He was known human rights activist and was serving as Council Member and had previously served as Vice-Chairperson of the HRCP Khyber Pakhtoon Khawa Chapter. He was killed instantly and his attackers managed to elude capture.

#### ***Saqlain Kousar:***

On May 28, 2013, a senior lawyer, and Zakir of the Shia Community, Saqlain Kousar, along with his sons, Aoun Abbas (15) and Muhammad Abbas (12)

were gunned down at Mauripur Road, Karachi, by unknown assailants. The attackers were riding a motorbike. He was killed while driving to drop his two sons off at school. His sons died on the spot, Saqlain Kousar sustained severe injuries. He succumbed to his wounds in hospital. It was a sectarian killing. An investigation is under way.

### ***Syed Zaheer Abbas Naqvi:***

In March 2013, a Peshawar based senior lawyer Syed Zaheer Abbas Naqvi was gunned down by armed militants when he was on his way to the Court of Sessions, Peshawar. The deceased sustained bullet injuries and was shifted to a private hospital but died from loss of blood. Later, the police found that the deceased belongs to Shia community and was advocating cases of Shia prisoners across Pakistan.

### ***Mir Muhammad Kohala:***

On March 28, 2013 a senior lawyer Mir Muhammad Kohala, Advocate of the Supreme Court of Pakistan was shot dead by unidentified assailants near Fauji Foundation Hospital, Rawalpindi, Punjab province. Mr. Khan served as the president of Lahore High Court Bar (Rawalpindi Bench) and was a senior lawyer of the Supreme Court. The attackers fired at his car, killed him on the spot, and fled after the killing. He was a human rights defender.

### ***Chaudhary Zulfiqar Ali:***



On May 6, 2013, Chaudhary Zulfiqar Ali, a prominent lawyer and state prosecutor for the Federal Investigation Agency (FIA) was shot dead, while driving towards court in Islamabad. He was investigating the killing of the former Prime Minister, Ms. Benazir Bhutto, and also prosecuting former military dictator, General Pervaiz Musharraf. He had been appearing in a case which had involved the arrest of Pervaiz Musharraf. He had argued for refusal of the bail application of Pervaiz Musharraf and pleaded as state prosecutor before the honorable court that Musharraf should not be allowed bail in the case where Musharraf was accused for conspiring in the murder of Ms. Bhutto. His bullet-ridden body was rushed to the hospital he did not survive.

### ***Shakeel Ahmed Jan Bangash:***

On May 06, 2013 Mr. Shakeel Ahmed Jan Bangash Advocate of Sindh High Court, and his father, Advocate Ahmad Jan, were shot dead in Karachi. They belonged to the Shia Community. The police have registered a murder case against unidentified people.

### ***Zaman Khan Marri:***

On September 06, 2013 the bullet-ridden body of an Advocate of the Balochistan High Court Zaman Khan Marri was found in Ghuncha Dhor, Mastung. His body was shifted to the hospital for identification. Later the brother of deceased Zaman Khan Marri, was able to identify the body. According to the family and the paramilitary, the deceased was kidnapped by unknown assailants.

### ***Raja Omer:***

On July 04, 2013, Raja Omer, senior lawyer and member of the District Bar Association Rawalpindi, was attacked while he was on his way to home. The moment he stopped to refuel his car, two armed motorcyclists attacked him and leaving him with critical injuries. He was rushed to Holy Family Hospital Rawalpindi and managed to survive. The police have registered a case against the unidentified attackers, though the cause of the attack is in question; does the lawyer have any personal disputes nor is he pursuing high-profile cases, according to the police.

## ***Lawyer Activists Kidnapped***

### ***Mir Salahuddin Mengal:***

On April 03, 2013, Mir Salahuddin Mengal, Advocate Supreme Court of Pakistan, and former Advocate General Balochistan, was kidnapped outside his residence. On the day of the kidnapping he, along with his brother, was on his way home to Siryab Road, Quetta. According to news reports, the kidnapped lawyer later returned home on May 21, 2013. The kidnapping still remains unsolved. He was an activist in a lawyer's movement in Balochistan province.



***Basharat Ullaha:***

On April 21, 2013, an activist of the lawyer's movement and an advocate of the High Court, was kidnapped near his residence at the Defense Housing Authority, Rawalpindi, Punjab. He was physically assaulted by unknown assailants for several hours. Later the assailants dropped him at a CNG Station near Rawat, G.T Road, near Rawalpindi. The reason for his kidnapping was revealed to be his active role in the lawyer's movement against former military dictator Pervaiz Musharraf.

***Mujeeb-ur-Rehman Kiani:***

On April 30, 2013 an experienced lawyer, Mujeeb-ur-Rehman Kiani, Member of Punjab Bar Council, and resident of Rawalpindi, was on his way to meet a friend. He was kidnapped that morning from Sector I-8, Islamabad. He was thrashed into critical condition by the kidnappers. Later, his kidnappers released him on the main G.T Road, Rawalpindi. He was a figure in the lawyer's movement against former military dictator Pervaiz Musharraf.

***Mr. Mushtaq Gill:***

A Christian lawyer, Mr. Mushtaq Gill, has received death threats from militants. If he continues to provide legal assistance to the three Christian women who were stripped naked and paraded on the street by henchmen of the ruling party he will face dire consequences, according to the threats (this case was discussed in a previous section). Mr. Gill is the director of the National Director of Legal Evangelical Association Development (LEAD). He has been raising his voice for the Christian minority, as militants often violate their rights.<sup>177</sup>

***Health Workers Killed, Abducted***

As mentioned prior, six polio health workers, including female health workers, have been killed while facilitating the anti-polio campaign. Additionally, news about the kidnapping of health workers, doctors, and NGOs staff have often been broadcast by national media. The frequency of such violent incidents has damaged the work those who are engaged in social and economic development of the poor and marginalized people in the country. Frequent violent incidents against pro-development actors clearly indicate that federal and provincial

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177 Please refer to: AHRC-STM-114-2013

governments have failed to provide protection to those working for betterment of society.<sup>178</sup>

On another occasion, eleven teachers carrying out polio vaccination in Bara division of Khyber Agency were kidnapped when they were preparing to set out for a vaccination drive. A political administration official confirmed that the teachers had been abducted from a school in the Sipah area of Bara Khyber Agency where they had gathered to administer polio vaccinations as part of a three-day polio drive which started on November 20. The abductions occurred on November 23, during an extension of the campaign designed to cover denial cases and the remaining children who had not been vaccinated.

Khyber Agency is one of the most volatile areas for the polio virus. At least 16 cases have been reported from there in 2013 and Bara has been leading in number of polio affected because children have missed out on the campaign due to violence and unrest.

### ***Women's Rights Defenders Suffer***

#### ***Shamim Akhter:***

Ms. Shamim Akhter (50), a women's rights defender has been killed by her husband, who acted with the assistance of a police head constable. The local police held an internal inquiry and exonerated the police constable, going so far as to say that there was no such murder. The woman's body was chopped up and her eyes were gouged out, but police have not even examined how she was killed, instead asserting she was not murdered. The victim's sister and her nephew have been declared to be mentally ill persons and have received threats. The husband is hiding after the incident though the police have not made any attempt to find him.<sup>179</sup> Tragically, Shamim's younger sister, Ms. Tasleem Akhter, who was pursuing the murder case against the police and her deceased sister's husband, was murdered by three people riding a motor bike less than a month after her sister's death. Within 25 days, both sisters have been murdered by an official and his henchmen from the same police station. The police refuse to investigate this case too.<sup>180</sup>

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178 Please refer to: AHRC-ART-030-2013

179 See: AHRC-UAC-092-2013

180 See: AHRC-UAU-020-2013

***Sahib Khatoon:***

A young female activist, Ms. Sahib Khatoon, was allegedly brutally murdered by her husband, acousin she was forced to marry (neither were happy with the arrangement) while returning home from her job in an NGO. It seems she was killed because she was working to raise awareness on human rights and when her own right to marry the person of her choice was violated she protested which was embarrassed her husband. He first confessed that he murdered his wife but after one night at the station, he retracted his confession, and the police, who allegedly received a bribe, are now calling the case an honour killing.<sup>181</sup>

***Sikandar Bhutto:***

A journalist and human rights defender has been implicated in an honour killing by a powerful tribe to punish him for raising the domestic abuse and murder of a woman, who had been declared Kari (black woman / bad character). The victim is in hiding while perpetrators are raiding his and his relatives' houses to find him and murder him. The police have conspicuously refused to file a criminal case against the perpetrators on the application of the victim. The Sindh High Court has directed the high-ranking police officials to intervene in the case of murder threats to the journalist and to report to the court, but police refuse to comply with the court order. The woman's killers are from the ruling Pakistan People's Party and the tribal chief has remained as chief of the union council on his party's ticket, using police influence on the people of the district.<sup>182</sup>

A human rights organization working on women and children's issues has been banned by the government of Gilgit-Baltistan, in the Northern area of Pakistan, due to the pressure from Muslim extremist groups. The government, through a notification, asked the AGHE to immediately close down all the organization's activities, including imparting education to girls. The orders regarding banning all the activities of AGHE was not delivered to the organization nor was it verbally informed. But a letter was issued to all the deputy commissioners and police officers of various districts. The letter, written two years ago, was issued on February 25, 2013. This represents a shameful act for the civilian and elected government of Gilgit-Baltistan, which has followed the footsteps

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181 See: AHRC-UAC-126-2013

182 See: AHRC-UAC-007-2013

of military governments to appease Muslim fundamentalist and sectarian organisations.<sup>183</sup>

### ***Sardar Mushtaq Gill:***

On 2 November 2013, gunshots were fired in the street outside the home of human rights defender Mr Sardar Mushtaq Gill in Pattoki Tehsil, Kasur District, Punjab Province. The victim had been the subject of threats and other methods of intimidation at the time, and in this instance was instructed by his wife via SMS to not return to his home. Sardar Mushtaq Gill's brother reportedly found bullet shells on the street later. On 3 November, the human rights defender told his brother to make a complaint at a local police station. Sardar Mushtaq Gill, as mentioned in a case previously, is the National Director of LEAD, a non-government organisation that provides legal aid to marginalised people and defends the rights of religious minorities in Pakistan. He is currently living in a secure location for fear of his life.



## **No Rights for Children**

In Pakistan, where corruption is rife, and the country suffers unemployment, inefficiency, incompetence, terrorism, and natural disasters, a large proportion of the population lives in deprivation, particularly in the rural areas. In Pakistan about one third of the population lives below the “poverty line” and in such circumstances women and children are especially affected. While many of the topics contained in this section have been addressed in other areas of this report, it is useful to view those and previously unaddressed complications within the scope of rights of children.

Many parents are unable to provide their children quality food, clean drinking water, safe and healthy living space, primary education, and opportunities to develop their talents. Millions of children are out of school and thousands do not complete primary education. Parents prefer, or are forced, to send their children to work – to contribute to the financial support of the family.

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183 See: AHRC-UAC-032-2013



Unfortunately, once grown up, these uneducated children become illiterate adults with no prospects to improve their living condition, hence fueling the circle of poverty across generations.

Child labor is persistent all over South Asia, with a worrying concentration in Pakistan. It is exacerbated by large family sizes and the absence of strictly enforced laws, especially regarding the minimum age for work. The majority of child laborers work full-time, having no chance to attend classes or engage in any educational activity which can contribute towards their future betterment and development of essential skills. Furthermore, the majority of them do not have access to basic health care, or vaccinations, resulting in their having poor health.

In urban centers like Karachi and Islamabad, a number of children are engaged in minimally paid or totally unpaid domestic work in private households, sometimes up to fifteen hours per day. A majority of children working as domestic servants are girls, often victims of abuse and sexual exploitation at the hands of their employers. In urban areas, many children are also employed, mainly on daily wages, in grocery stores, mechanic and flower shops, and factories, especially in manufacturing activities. Many of them also sell different items in markets or are ultimately forced into begging in the street. The number of street children has grown in recent decades because of urbanization, unemployment in rural areas, poverty, family disintegration and large family size, and natural disasters which destroy entire villages and crops. Domestic violence, mistreatment, and neglect are also among the reasons compelling children to leave for good their homes at a young age and seek work in big cities.

Child labour connects to modern forms of slavery, which is unfortunately widespread in Pakistan. The Global Slavery Index 2013, the first index of its kind, found slavery in Pakistan to be the worst in the region. By pure numbers, instigating factors, and concentration, modern slavery in Pakistan is abominable. Primary industries (brick kilns especially), manufacturing, commercial sexual exploitation, forced begging, and domestic servitude are reported as the areas in which slavery concentrates. In terms of geography, bonded labour, is particularly prevalent in the Sindh and Punjab provinces. The combination of poverty and illiteracy affects many children, who are abused in several and extensive manners.

Children involved in any sort of labour are exposed to exploitation and abuse, including offensive language, ill treatment and sexual abuse. The link between poverty, child labour and violence against children is well established. Children

living in poverty are at the greater risk of violence, especially at their work place. It becomes difficult for them to find support and lodge a complaint in a police station.

Altogether, children are an extremely vulnerable sector of society and they face high risk of abuse and violence at home, at school, in public places and even in religious settings. In September, a five-year-old girl was found unconscious and in critical condition near a crowded hospital in Lahore. Later, a medical examination confirmed that the girl had been raped; a happening which shocked the country and has again ignited the public debate about violence against children and the lack of safety they suffer. Rapists, pedophiles, and others who abuse children can be members of the law enforcement agencies (such as policemen), parents, relatives, teachers, school staff, as well as religious leaders.

Pakistani children are victims, intended or accidental, of numerous systemic flaws. The effect of the flaws is pervasive in lives, across social groups. The government has failed to find remedy, and in many cases has contributed to further undermining systems designed to protect and provide for children.

Poverty has a compounding effect on children; lack of funds often leaves them with inadequate food and shelter which, in turn, can cause other problems (discussed below). Necessities are ostensibly the obligation of the parents. However, the CRC makes it clear that government also has an obligation to help provide these necessities.

Recent data shows that the percentage of people living in poverty in Pakistan has increased significantly in the last years. While it is more prevalent in rural areas, it is a threat in urban areas as well.<sup>184</sup> Poverty in Pakistan leads to child labor, which interferes with the children's' educational opportunities and creates a risk of continuing cycles across generations. Children of varying ages work a variety of jobs to help pay for their family's needs. Many of these children are forced to forgo formal education, including the education required by Article 28 of the CRC. The government has not conducted a survey to address child labor since 1996 (where the estimate was 3.3 million children being exploited) and current NGO estimates range from just under 10 million, to as much as 12 million.<sup>185</sup>

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184 Please refer to: AHRC-ART-073-2013

185 Please refer to: AHRC-FST-027-2013

Violence against children (some of which has been discussed in other sections of this report) is a risk of child labor, though it is not exclusive to it. Numerous cases where children are abused, both physically and emotionally by employers abound. In July, it became known that a 13-year-old boy was pressed into service and eventually killed his employers.<sup>186</sup> Likewise, society fails to protect children even outside their place of work. A mother killed her own daughter with acid because she had looked at a boy. It appears the mother's defense of "it was in her fate to die this way" will be held sufficient.<sup>187</sup> This is exacerbated in cases where there is a confluence of 'at risk' groups (e.g. minors who are female, Christian, etc.) who are often ignored or even victimized by the government. Children were among those killed in the attack on the All Saints Church.<sup>188</sup> Ahmadi children have been subject to kidnapping attempts in Peshwar.<sup>189</sup> In so many such instances involving religious minorities, the government is unhelpful. This has led to under reporting and, according to estimates, a significant increase in violence towards children.<sup>190</sup> This is highlighted by the tragic rape of a 5-year-old in Lahore in September.<sup>191</sup>

Even outside the risks of exploitation and intentional violence, children in Pakistan are neglected with fatal results. The WHO has reported that over 300 children died from measles (a very preventable disease) in 2012 alone, with more deaths in the Punjab in 2013<sup>192</sup>. While physical abuse and malnourishment (often a result of poverty) can contribute to making victims more vulnerable, the direct and indirect effects of disease (as indicated by the number of victims from below the poverty line), the lack of proper medical care, especially vaccines, are often crucial.

It has been argued that "Pakistani health care ... is sliding downward... due to lack of direction and resources."<sup>193</sup> Again, ineffectiveness or absence of government response is a significant factor; many blame corruption and lack of awareness (a possible result of poor education) as reasons why proactive measures are unavailable. This is especially true of measles and polio, diseases easily preventable with readily available vaccines that have been eradicated

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186 Please refer to: AHRC-FST-029-2013

187 Please refer to: AHRC-ART-061-2013

188 Please refer to: AHRC-ETC-034-2013

189 Please refer to: AHRC-FPR-008-2013

190 Please refer to: AHRC-ART-108-2013

191 Ibid.

192 Please refer to: AHRC-ETC-018-2013

193 Please refer to: AHRC-ART-003-2013

in most countries. However, Pakistani society as a whole also bears some responsibility, as evidenced by reports of attacks on health workers dedicated to fighting polio (mentioned in previous parts of this report).<sup>194</sup> Additionally, the views that lead to those attacks are held not just by the undereducated or the religious elite, but also by the media which has published arguments against such vaccines.<sup>195</sup>

Pakistani society's obstruction of medical workers is not an accident: various sectors have railed against vaccines as poisons, as violations of religion, and as vast foreign conspiracies among others, and this is reflected in educational materials. Thus, even when children are able to overcome other obstacles to their schooling, when they go to class they are often met with classes that focus on ideological indoctrination, as shown by a syllabus obtained by the AHRC.<sup>196</sup> This type of education was clearly not what the authors of the CRC Art. 28(a) (1) had in mind. This type of education fails to provide children with a practical knowledge to better their lives and drives them to deny assistance from those that wish to help. Alternative education is often undermined as well. For example in Rabwah authorities allowed the mullahs to prevent Ahmadi children from attending their schools.<sup>197</sup> In short, education is no longer a means to overcome the obstacles that children face; it has become an obstacle itself.

Consequently, the children of Pakistan seem to be assailed from every angle with problems compounding upon others. Poverty leaves them malnourished and forces them into abusive jobs, limiting their education and their health; their limited education prevents them from rising above poverty and avoiding debilitating but avoidable illness; poor health and abuse can prevent them from pursuing an education and may even lead to preventable death; the education they can obtain is focused on ideological studies that undermine attempts to help, perpetuating the poor conditions that lead to these problems; and the little practical support that is offered is obstructed or even actively denied. The rights guaranteed to children in Pakistan through the CRC are eroded to the point that nothing at all remains.

Due to their vulnerability, whether they are street children, orphans, labourers, or survivors of violence, children should be guaranteed a safe environment which facilitates and fulfils basic needs. Allocation of apt resources is what the

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194 Please refer to: AHRC-FAT-011-2013

195 Ibid.

196 Please refer to: AHRC-STM-185-2013

197 Please refer to: AHRC-FPR-008-2013

national government, together with provincial social welfare departments and child protection authorities, should promptly undertake. Legislators need to develop better child protection policies and intensify the punishment for those who abuse children in any way.

# CHAPTER VI



ASIAN HUMAN RIGHTS COMMISSION

# SRI LANKA



# S R I L A N K A

## END THE 'AUTHORITARIAN PROJECT'

### **Introduction: The Military has Tasted Power**

In previous editions of this Report we have traced the development of the Sri Lankan political and legal system, i.e. its having moved away from the democratic and rule of law framework upon which it was founded at the time of independence in 1948. We have traced the process of “rooting out” this constitutional framework with the 1978 Constitution and the practices developed thereafter. We have noted, in particular, the ousting of the 17th Amendment to the 1978 Constitution with the 18th Amendment; all these “shiftings” of the constitutional framework has ultimately resulted in the displacement of the basic aspects of the system of the rule of law in the country.

In this year's Report, we observe how an authoritarian system has taken root in Sri Lanka and how the military is being introduced into greater roles within the country's political system and economy. In 1962, a coup was attempted by certain leaders of the armed forces of Sri Lanka. This coup was uncovered and suppressed. However, the military has, through a different path, now entered the political mainstream and, as a natural consequence, is entering the economic life of the country.

The idea of “the military residing in the barracks” is no longer a phrase describing reality. While the origins of militarization can be traced back to the anti-terrorism drive against the JVP as well as the Liberation Tigers of Tamil Elam (LTTE) insurgencies, the crushing of the JVP insurgency by the early 1990s and the defeat of the LTTE insurgency in May 2009 did not end military involvement in the civil life of Sri Lanka. The military, making use of these insurgencies, has in fact grown larger in strength, influence, number, and other aspects. In short, it has tasted power and it desires more.

However, what confirms the military as a prominent factor in the Sri Lankan State structure is not merely its strength during the period of conflict.



The Presidential system has developed its own security structure and this development has brought the Ministry of Defense to power as the most influential ministry of the Sri Lankan State. We have commented on this development in last year's Report. Today, the Ministry of Defense controls almost all aspects of the country - not only the security apparatus, but the entire State structure. It is the Minister of Defense that has strategically put the armed forces in positions of control and allowed them to play a part in the economic life of the country.

What the people have a taste of now is not military personnel who merely have a salary that goes with their job, but many military officers who have become highly successful entrepreneurs within the Sri Lankan economy overnight. This phenomenon of high ranking military officers being more than salaried officers, giving them authority to run their own businesses, will have a drastic impact on the power equations within the country. When we look to neighboring countries in Asia, such as Pakistan, Burma, Indonesia, and Cambodia, we see that due to various historical developments armed forces have become one of the main stakeholders in those economies and have adversely affected political life as a consequence.

In short, the major impact of a military growing in strength and beginning to exert influence within the economy creates formidable obstacles for political opposition in Sri Lanka. The opposition political parties, as well as Trade Unions and other stakeholders in the political life, will have to deal with not only the ruling political parties, but also the armed forces and the security apparatus in its entirety. Electoral politics will become a mere show and the real possibilities of democratic transition, through the power-of-the-ballot, will be an illusion rather than reality. The opposition political players are already aware of this.

Another factor has crept into this developing role of the security apparatus, in the recent years: the growth of the intelligence services penetrating all areas of ordinary life. In post-independence Sri Lanka, intelligence services had only a limited significance; however, due to counter-intelligence work, their roles have expanded and now, with the new political culture of totalitarian and military developments, intelligence services have acquired a much greater role and more state funds are spent on consolidating power for them. The ultimate aim of these services is to constantly watch and monitor citizens, a "big brother" styled approach has developed where everything that anyone may choose to do, may become subject to scrutiny by these services. Today, it has become quite a natural occurrence, for an intelligence officer to walk into any premise

and announce his or her arrival, in order to find out whatever that particular organization or individual is up to.

In the past, there may have been a time when people dared to challenge anyone arriving in this manner as an intruder, and questions may have been raised what business he or she may have to probe a particular affair in this manner. Moreover, unless such a person could claim that his or her concern is related to an investigation of a crime, no one would have thought of having any obligation to comply. However, today's intelligence officers are not merely engaged in investigations into crime, their scope has been widened. They may pry into the affairs of trade unions or civil society organizations and may even require these organizations to keep the intelligence services informed of any and all activity in which they are engaged. The intelligence services may also probe the affairs of enterprises, including companies and corporations, requiring them to provide information about their economic activities. Perhaps most importantly, every kind of political activity has become a domain in which these services claim they have a right to probe, even at the request of someone in government or the armed forces who may want such information solely for the purpose of interfering with economic activity. Another area intelligence services poke their noses into, is the activities of journalists and various publications, either in print or electronic media. In fact, this list could go on, to include any and everything. The ordinary citizen is therefore helpless and simply has to comply tolerate every kind of interference with his or her privacy. In fact, the defence of privacy hardly makes any sense, any longer. Under the pretext of interfering on behalf of the state, intelligence services have become tools of various private entrepreneurs who cover their personal interest under the guise of some claim on behalf of the State. Often, the pretext used for such expansion of the intelligence services is national security in general and, in particular, the need to defend the victory against terrorism by protecting the country from the diaspora whose sole interest, as claimed by the Government, is to bring back the LTTE or a similar organization. Such claims of threats to national security are made often as a cover-up for private motivations, to justify any such interference. Again, Sri Lanka in this way is following the path of other countries which have had military regimes such as Pakistan, Burma, Cambodia, and Indonesia to name a few. These examples show that such expansion of intelligence services is perhaps the greatest danger that can develop within any given society.

The threat is not only for private citizens such as teachers, farmers, and the like, but also to those who work for the State, such as government officers, judges, even police and military officers, and this is gradually extending through all

sectors of society. When things are at their worst, even intimate circles of family are not safe from the interference of intelligence services. It is within this context that the problems of human rights need to be considered. The space available for assertion of rights by both individuals and organizations in Sri Lanka has shrunk in every extent possible.

The idea of legal protection of rights has lost its relevance, as the power of the judiciary has been severely suppressed. The attack on the Supreme Court, by way of removal of the Chief Justice Dr. Shirani Bandaranayake, was only an overt demonstration of what was happening behind the scenes over a period of time and a glimpse of what is yet to come. Already observers have noted that there are fewer and fewer people seeking recourse in the system of Courts on matters relating to their constitutional rights. Moreover, the general perception of the judiciary has been negative and there is greater suspicion now than ever before of the Executive directly interfering with the judiciary; the survival of any judicial officer who dares to take action against the Executive has now become widely doubted. Added to this the greater public belief that more judicial officers are corrupt than ever before and enormous doubts appear about the protection of human rights by any legal means, let alone through any judicial intervention.

More than ever, the possibility of the protection of individual rights, both in the area of civil and political rights, as well as economic, social, and cultural rights, lies entirely with the will of the population to resist and protest against violations. While this has become more difficult, there is greater public perception that this is the only road open. The way in which the changes of political perception among the people will find expression in actual political life will mostly depend on the seriousness with which those who are more politically sensitive understand and articulate the present situation, and how the population as a whole can be brought to a collective realization of actions in defence of their own survival. In short, these are politically serious questions. How the collective understanding of the collective will of the people will forge their own strategies is what any serious observer should watch under the present circumstances.

## **Rising Authoritarianism & Militarism**

In a media statement, from Colombo, on 31 August 2013, Dr. Navi Pillay, the United Nations High Commissioner for Human Rights, said:

*“I am deeply concerned that Sri Lanka, despite the opportunity provided by the end of the war to construct a new vibrant, all-embracing state, is showing signs of heading in an increasingly authoritarian direction.”*

What are the features of this increasing authoritarianism?

The following have been observed:

- ***No place for law:*** During British colonialism in Sri Lanka, from 1815 to 1948, law was established as the overall organizing factor in society. There was a law for more or less everything. The operational principle was that whatever any legitimate authority does should be defined in terms of law. It can be said that after over a century of government based on law, law became imbedded in the Sri Lankan consciousness, and therefore a basic foundation for the rule of law was quite settled in Sri Lanka. However, the constitutional changes introduced in 1972 and 1978, and the events of the last 40 years, have undermined that functional system in which government actions had legitimacy and justifiability. Thus, it is now difficult to determine what is legal and what is illegal at any given moment. This uncertainty and ambiguity runs into everything, including criminal law, public law, and property laws. It has also unsettled the courts significantly undermining their importance. Public perception, in turn, treats the courts as increasingly irrelevant as the citizens have lost faith in the possibility of legal redress for wrongs suffered. In fact, the uncertainty of the legal situation has also resulted in ambiguity about what legally recognized wrongs are. In this way, the creation of uncertainty and ambiguity about the law, legal wrongs, and legal remedies has permeated every aspect of life.
- ***Uncertainty & ambiguity about all public institutions:*** What the Parliament is and what it is supposed to do are questions that citizens will find difficult to answer. Practical experience shows that the Parliament merely does what the Executive President wants and there is nothing that the Parliament can do that the Executive President does not want. Making laws in line with the consent of the people is a notion that does not have even the remotest importance. The capacity of the Executive President to do whatever he wants and to get a stamp of approval, either before or after such actions, gives the appearance of legitimacy to whatever he does, though even such a facade is not really a requirement as there is no capacity for any individual or institution to challenge him. This renders the notion of legitimacy insignificant.

- ***Judicial independence undermined:*** The undermining of the law and the problems that exist in relation to the Parliament itself have affected the independence of the judiciary. Additionally, the system of appointments and the removal of judges from the highest courts have created great doubt in the minds of the citizens (including the lawyers) about what kind of outcomes are possible through litigation. The idea of pursuing a case on the belief that the final outcome would be based on merit has diminished. The notion that there are many ways through which political influence can affect what the result is deep and widespread among lawyers, clients, witnesses, victims, and others. The idea that litigation is also an arena for market manipulation has also gained ground. All this questions what the courts can be expected to accomplish.
- ***Displacement of civilian policing:*** The change in public institutions and the manner in which their role and capacity have become ambiguous is revealed in the Sri Lankan policing system. Ineffective policing is not merely due to incapacity of the police force, it is largely a product of the overall crisis of the legal and political systems. Police officers, including high-ranking officers, are often powerless. It is difficult for any officer to fathom what he/she should or should not do, especially since extraneous forces often play a part in the process. Generally, the actions of public institutions are controlled from the outside and there is no practical way for officers to resist these influences. Besides this, the intelligence services, special security forces, and the armed forces are being called upon to engage in actions that, in previous times and under a rule of law system, would have performed only by the civilian police. These outside forces are directly controlled by the Ministry of Defence and are only accountable to those who hold power within that ministry. The crisis in courts and of law affect the relationship between the security apparatus and the police as well. A further factor that has affected the nature of the police is the dwindling importance given to criminal law and procedure. Both in terms of the powers and resources given to the police (particularly budgetary allocations for the work of criminal investigations) who are treated as an institution of the least importance. The Sri Lankan police force today is extremely backward, from the point of view of training and capacity, as well as in terms of the space available for it to exercise its functions independently. One of the consequences of undermining this institution is extreme use of brutality on suspects. There is considerable documentation on the routine torture exercised on almost everyone brought to a police station. Resulting from these factors, there has been a breakdown of discipline within the police establishment including the

complete loss of disciplinary control seen in former times. Higher-ranked officers and their subordinates, are involved in wrongdoings ranging from political subservience to corruption and police hierarchy lacks the authority enjoyed by forerunners. This collapse of the policing institution has aggravated the undermining of law.

- ***Political control of Attorney General's Department:*** One of the legacies of the British is the Attorney General's Department, modeled after the British Advocate General's Office. For a long time, this department produced competent prosecutors and leading lawyers on behalf of the state. They were aware of traditions and guarded their independence and the department developed a strict protocol in dealing with government ministries. As the chief legal advisor to the government, the Attorney General gave advice on the legality of proposed laws and actions through a system that was geared to ensure that conformity to the law. Unfortunately this has been undone. The process of its undoing went on for several decades and is today in a state of deep degeneration. The department is now under direct political control of the Presidential Secretariat while the protocols that guaranteed independence have been abandoned. Prosecutions are filed against political opponents under political instruction and indictments that have already been filed on sound legal basis are withdrawn or modified to suit powerful politicians' preferences. The Attorney General who was supposed to oppose proposed legislation that is illegal and against the rule of law no longer serves this function. Illustrated during the unlawful removal of the Chief Justice, Dr. Shirani Bandaranayke, when the Attorney General's Department went out of its way to support the government. The Attorney General had himself filed an action against the Court of Appeal's judgment against the Parliamentary Select Committee, a judgment that the government refused to carry out. Likewise, the tradition of the Attorney General not to support alleged perpetrators in cases of human rights violations, particularly fundamental rights violations, has been abandoned; department lawyers now take active part in opposing fundamental rights applications filed by citizens. Negative impression of the department among the people has sunk in deep.
- ***Growth of all-powerful state propaganda machinery:*** What is being offered in place of legality and legitimacy is the machinations of extraordinarily powerful propaganda machinery which attempts to convince the people that any action taken by the government is right and that those who oppose these actions are evil. Such attacks on any

kind of rational opposition are part of a vicious campaign unleashed through the media and channeled into every house in the country. Many of the government's actions are prepared beforehand through prolonged misinformation, including attacks on anyone against whom the government wants to take action. The attack on Chief Justice Dr. Shirani Bandaranayake while she was still in office also included a vilification campaign, the likes of which had not been witnessed before. The campaign started with the view to force her out of office on her own, but when this did not happen, propaganda was intensified to create the impression that the government was right in what it was doing and that every move taken for the purpose of her removal was laudable. The content of such propaganda is viciously manipulative, as is the language. The lowest levels of language are used to humiliate opponents. The victims themselves are not given any opportunity to have their version of events heard either, if they are even given a chance to speak at all. These hate campaigns against opponents are reminiscent of the type of medieval campaigns read about in western history books. Heavy repression against the free media has also become a permanent feature in Sri Lanka, while assassinations, abductions, forced disappearances, physical harm, and threats of murder and other harm directed at journalists, publishers, and media establishments of all kinds have created an environment of fear and intimidation. In consequence, Large numbers of competent journalists have left the country to live in exile creating circumstances that force private media to sell their establishments to shells closely associated to the ruling regime is also an ongoing occurrence. As a result of this repression, people have lost the opportunity to listen to alternative views on matters of public importance.

### ***Consequences of the Radical Departures***

All these radical departures from what existed in the country have already had disastrous consequences. Some consequences are as follows:

- ***Resort to direct violence:*** Direct use of violence is facilitated by various developments. For instance, there is a change in practices relating to arrest and detention, including large-scale practice of killing people after detaining them. This began in the aftermath of the 1971 JVP insurrection, during which it is generally estimated, around ten thousand individuals were killed. These killings were not combat killings: people were arrested, often interrogated, and thereafter disposed of. This practice

was reprised in the South, from 1987 to 1991 and a similar practice was also carried out in the North and East throughout the 27 year conflict between the LTTE and the government. The government appointed Commissions into Involuntary Disappearances, which documented around 30,000 such disappearances. As the commissions pointed out, the word “disappearance” during this time meant abductions in place of arrest, followed by interrogations, killings, and disposal of bodies. In Sri Lanka, the idea of taking political prisoners does not seem to exist (except in rare instances) following the killing of several prisoners during July 1983 riots when murder after arrest became a frequent practice. There may be complex reasons that give rise to this situation, though the overall approach seems to be based on the fact that this method is the most convenient and does not carry many logistical and administrative obligations; the whole matter is over within a short time, with the disposal of the body. In contrast, if political prisoners are to be kept, arrangements need to be made for recording their statement and other matters leading to obligations under criminal procedure laws. Perhaps the most difficult of these is to ensure that there is an investigation that could proffer evidence justifying the arrest and detention in front of the courts. Disposal of persons in this manner also removes the obligation to keep people in prisons whereas keeping them in prison imposes heavy obligations. There are the ordinary requirements of giving prisoners food, space, and facilities for sleep, health, and sanitation. Equally important is the need for heavy security. As political prisoners, their organizations may attempt to rescue them from prisons or during transportation to and from the courts. There are even greater problems arising from the heavy political propaganda that results from keeping political prisoners. As long as such prisoners are in custody, there will be agitation from political organizations, human rights groups, and the families of the prisoners calling for the inmate’s release. During elections, matters relating to political prisoners can weigh heavily against the incumbent government and from the point of view of the media, the existence of political prisoners generates much news and political commentary. Most, or even all such issues can be conveniently avoided by disposing of persons after arrest. Furthermore, this method has the effect of compounding intimidation of the population. Such fear deters many from participating in political agitation and protest. Therefore, keeping this level of intimidation high is advantageous for maintaining an authoritarian form of government. The decisions in relation to extrajudicial killings are left to the security forces or the police while the functions of arrest, interrogation, and disposal of remains are all left to the decision of whoever actually commits the murder. Due process



and the decision-making by the courts are thus ignored and, of course, the possibility of appeal does not arise at all.

- ***Loss of memory of law, procedures, & redress:*** Further consequences include the problems of the legal system, described as a loss of memory regarding law, legal procedures, courts, and other aspects of legal redress. In over a century under colonial rule, a system of law was introduced and, as a result, mental and social habits were developed. During the last 40 years, along with the undermining of the legal process, much of this memory has been wiped out. Lawyers complain about many judges having a much lower quality of legal understanding than in previous generations, which has precipitated the crisis of law. There is also stark degeneration in relation to legal knowledge and ethical practice amongst lawyers, which is spreading to litigants; in fact, the entirety of the population is losing this memory of the law. With time, such loss of memory becomes much greater. Additionally, extra-legal methods for resolving conflicts develop and new mental habits and attitudes are formed, which spread to everybody as well. Thus, while positive knowledge about the law is lost, there is a negative kind of knowledge about doing things by illegal means that takes its place. The loss of memory also affects the whole of the civil administration in this regard. Previously, traditions were established to ensure rational administration within the civil service. However, all these habits have now been lost due to political manipulation, which the civil servants have been unable to resist. The loss of discipline that was established through long years of education and development of individuals who personified the best aspects of rational administration will be one of the greatest problems that the country will face in the future. As a result, there is a development of underground and powerful elements, which attempt to intervene to resolve problems through direct violence.
- ***Spreading administrative negligence:*** As a result of the loss of relevance of law, and the loss of law-based administrative practices, negligence has spread to all areas of the administration, including local government administration. In the past, there were supervisory and monitoring mechanisms built into all programmes and projects. However, such supervision and monitoring has weakened, leaving negative developments unnoticed, with no attempts to take preventive action to avoid adverse consequences. Some glaring instances have already surfaced. For example, in Mulativu, Kilinochchi, and Vavuniya in the Northern Province, there are problems relating to shortages of clean drinking water. People endure severe difficulties and there has been a decline in health due to

poor quality drinking water. Similar complaints about drinking water also exist in the North Central Province and Uva Province, and there are complaints about the large number of cases of chronic renal failure. The problems relating to drinking water in Rathupaswela, Weliveriya (in the Western Province) surfaced recently and is believed to have been caused by the operation of a factory dealing with rubber products that releases wastewater into the surrounding lands resulting in increased acidity levels of the ground water. Under the previous administration there were regular checks of such factories because of the possible effect on the health of the people in the surrounding areas, however, such monitoring is now neglected. Also, for several years, dengue hemorrhage fever has been spreading, reaching epidemic proportions. Earlier there existed an efficient system of mosquito control and other such parasite controls, and significant achievements were made. However, the problems caused by administrative neglect prevent concerted efforts from being made to overcome this problem. Efforts to control illegal narcotics have also failed: there are regular reports about the drug trade, which is widespread in cities as well as in other areas of the country, operating with impunity and manipulating the weakened legal system in the country. Drug addiction has also become a big problem as a consequence. Another associated problem is the spread of money laundering as, according to reports, Sri Lanka has become a hub for money laundering in the region. These are only few examples of the manner in which the spirit of neglect has now spread throughout the administration. It is likely that many other unforeseen problems will occur because of this neglect, throughout the country and all areas of life.

- ***Unprecedented corruption:*** The success achieved by the Commission to Investigate Allegations of Bribery or Corruption is limited. In the past these issues were not such big problems, but now they are one of the areas in which law enforcement is most ineffective. The present administration of the commission has failed to take effective action relating to those who are associated with, or part of, the ruling political regime. Instead, the commission, like other legal institutions, is being manipulated for political purposes, namely as a tool of revenge against those politically targeted by the government. The action taken against Chief Justice Dr. Shirani Bandaranayake is a clear example of this also. Corruption has spread to the extent that the country's business sector, including the foreign investment sector, is inundated by this problem. There are reports about many people being threatened into selling their properties far below market value with no alternative option. Law enforcement officers are often a part of such

corruption networks. The recent arrest of a Deputy Inspector General of Police, alleged to have been involved in the killing of a businessman on a contract given to him and a gang that operated under him, is an indication of the extent of the linkage between law enforcement agents and networks involved in corruption. Many scandals that have come to public notice relating to the stock exchange also manifest the spread and depth of corruption in prevailing practices. Given the crisis of law, there is no solution to this problem and it is likely to spread even more, harming all areas of life. One result of the collapse of discipline in law enforcement and civil administration is large scale brain drain. Educated, well-trained, and highly motivated individuals that do not want to be a part of corrupt system of administration look for other avenues of employment, which they often find outside the country. This loss of intellectual resources will also be one of the factors that will create serious negative consequences for Sri Lanka in the future.

- ***Rising intolerance:*** Undermining the law and administration of justice has provided a base for any kind of fanatic to provoke violence against others. There are often attacks on minority religious groups, including reports of attacks on mosques and churches, and hate speech against one religious group by another is common. Thus, the crisis of law has removed the environment needed for tolerance and peaceful coexistence. When the government is criticised for the failure to prevent such attacks, it makes some public pronouncements about protecting minorities. However, when the whole legal system is in chaos, the government does not have the capacity to do anything beyond offering these hollow words and the provocateurs continue to manipulate the crisis of law enforcement to their advantage.
- ***North, East, & consequences of prolonged conflict:*** The crisis relating to the law and system of administration will remain the greatest obstacle for achieving a solution to the specific problems in the North and East, including conflict-related accountability and reconciliation. The replacement of the civilian police with military, intelligence services, and special security services, has had a profound impact on the situation in the region. The government's propaganda, carried out through its media channels, about the possible return of the LTTE also profoundly affects this situation. Without law as the basis of social organization, the problems affecting the people of these areas cannot be appropriately resolved. The crisis of the legal environment of Sri Lanka is the fundamental problem that affects all its minorities, including the Tamils. Unfortunately, this is

not being adequately recognized by the Tamil diaspora, who still want to find the solution to problems in the North and East alone. However, such a perspective is practically impossible to implement; the crisis of the legal environment is an unavoidable obstacle every step of the way to finding a solution to minorities' problems. Additionally, those who oppose special attention being given to the minority issues are able to manipulate the crisis of the legal system to the hindrance of the minorities. The highly provocative political environment in the country could continue to be manipulated to cause disturbances for some time to come.

- ***No implementation of LLRC recommendations:*** The precondition for the implementation of the LLRC recommendations is the rule of law but, as repeatedly shown in this report, the overall crisis of the administration of justice is incompatible with the rule of law. It is this incompatibility that prevents the implementation of LLRC recommendations, which have been the core issue of the dispute between the government and the international community's demands for peace and reconciliation.
- ***Negative psychological impact of the crisis:*** The entire population of Sri Lanka is psychologically oppressed due to the environment of lawlessness and the absence of protection through a functioning system of administration. This psychological condition affects the health of the entire population and it is the children who suffer most. They lack the environment to develop their personalities on the basis of positive human values with the scars caused by these psychological situations having a lasting impact on their future. Students studying in the universities are being adversely affected by this psychological environment as well, preventing a regular way of life and disrupting their academic work. The government often treats these students as a possible threat to security. Women are especially affected by this environment too, where insecurity has become a way of life. Thus everyone is facing a continuously traumatic situation with no way out.

## **Practice of Torture & Ill-Treatment**

### ***Right Against Torture is not Justiciable in Sri Lanka***

Today, internationally, it is agreed that all human rights are justiciable. However, this is not in practice in most Asian countries. The right against torture illustrates this. International law states that this is a basic and absolute

right. However (excepting Hong Kong) there is no jurisdiction in Asia where this right is justiciable. Sri Lanka, the Philippines, and now Bangladesh have laws criminalising torture and ill-treatment; without legal mechanisms for their enforcement. As for other countries in Asia, even a law criminalising torture does not exist and, the question of justiciability cannot not arise.

The dictionary definition of justiciability is the capability of a matter to be decided by a court. The way the court decides may depend on the particular remedy available in law; if a particular wrong is considered a crime, the remedy lies in criminal law. However, there are also civil wrongs and wrongs which are of a public nature, in which case the remedies may lie within public law. So to say that a right is not justiciable means that no legal remedy is available for a person complaining about a violation of that particular right.

For there to be a remedy within criminal law, following legal elements need to be present:

- (i) *Violations of the right are recognized in law as a crime.*
- (ii) *The law provides a mechanism for victims to make a complaint of violation.*
- (iii) *Once a complaint is made, the state is obligated to investigate the complaint.*
- (iv) *In order to investigate the complaint, there is an authorised agency (or agencies) that has the obligation to investigate on behalf of the state.*
- (v) *If the investigations establish that the complaint is credible and that there is sufficient evidence which, if placed before a court, may lead to a conviction, then it is the obligation of the state to prosecute on the basis of these findings.*
- (vi) *The state has established an agency (or agencies) that has the power and competence to prosecute the case before a court of law.*
- (vii) *It is the obligation of the state to establish courts where such prosecutions could be conducted and it is also an obligation of the state to provide for all expenses necessary for proper functioning of such courts, as well as the agencies mentioned above.*
- (viii) *These courts must have the power to enforce their decisions.*

When we look at most Asian countries, we find that very few or none of these requirements are being met. Let us consider Sri Lanka, which has a law which recognises torture and ill-treatment as a crime: the Convention Against Torture (CAT) Act, Act No. 22 of 1994, which has created a domestic law relating to the UN Convention Against Torture.

It is not that Sri Lanka does not have capable and competent criminal investigators to investigate complaints of torture as for a short period between 2006 and 2009 there were several credible investigations into torture complaints, it is that the policy was changed and the practice now is to not investigate any of these cases. When there is no investigation there cannot be any further steps taken from the standpoint of justiciability.

What is worse is that government agencies, such as the intelligence services, the military, the police, and other persons who act in connivance with these agencies, engage in intimidation, harassment and even assassination of complainants. The overall impression created is that any person who makes a complaint against the police or other security agencies runs is risking their and their families' lives. Even if someone dares, despite these fears, this risk lasts many years as litigation in Sri Lanka takes a long time. Furthermore, when complaints are made, the relevant agencies do not consider it an unshakeable obligation to investigate the complaint. Instead, rather than conducting investigations, such agencies subvert the investigation and complaints regarding subverted investigations have become quite common in Sri Lanka. Over and over again, the police file reports stating that they have been unable to identify the culprits or to find adequate evidence to prosecute. To sum up, public impression is that it is foolish to expect proper inquiry regarding the police or any other security agency.

Another, rather new, factor that frustrates all attempts at justiciability is the rapid loss of judicial independence in Sri Lanka. This has been illustrated by the illegal dismissal of Chief Justice, Dr. Shirani Bandaranayke, condemned by internationally reputed jurists and Bar Associations, as well as the local Bar Association and civil society. The written legal opinion submitted by two international jurists whose opinion was sought by the Commonwealth Secretariat (Justice P.N. Langa of South Africa and Professor Sir Jeffrey Jowell from the UK). have now been published and in their lengthy submissions, they have categorically and unequivocally described the removal of the Sri Lankan Chief Justice as unconstitutional, illegal, and completely contrary to the independence of the judiciary, the separation of powers, and the rule of law.

### ***Who Will Investigate Torture?***

One question frequently asked about the prevention of torture is who will investigate complaints of torture and ill-treatment. It is quite natural to have tremendous distrust and disbelief in relation to the police itself investigating crimes perpetrated by policemen, or the military investigating torture committed by their own; the possibility of an impartial inquiry can hardly exist if investigations are carried out in that manner. In some countries, higher ranking police officers are expected to carry out inquiries into the wrongdoings of lower ranking officers. However, this too is mistrusted as more and more ranking officers are complicit in the wrongdoings of their subordinates. The experience is that higher ranked officers, when called upon to investigate torture and ill-treatment, attempt to discourage the complainants and even intimidate and threaten them concluding with reports claiming that the complainants themselves have withdrawn their complaint or settled the matter.

On the other hand, human rights commissions or the national institutions do not have neither the capacity and the power needed to investigate torture and ill-treatment as a crime nor the mandate to investigate crimes. Moreover, such organisations do not have the formidable powers of the police and military, who bear arms and who are perceived as powerful agencies within a nation, that is needed since criminal investigations require the capacities of arrest, detention, interrogation, and dealing with courts within the framework of the criminal procedure of the country. For example, the national institutions have their powers modeled under ombudsman institutions and they cannot be a substitute for basic criminal investigation mechanisms of a country. Besides, the appointments to these institutions, as well as the removals, are more susceptible to direct political pressure. Thus, in terms of developing a permanent institutional framework for the implementation of criminal law relating to torture, these institutions are unsuitable.

Who then can investigate complaints of torture and ill-treatment? When a country has achieved police reforms that bring the policing institution to modern standards, the problem of who is to investigate torture and ill-treatment does not pose great difficulty. This very modernisation will ensure that the policing institution can function effectively and that it will have separate divisions with the capacity to investigate itself under the ultimate supervision of the judiciary. Having an institution with internal controls, through supervision and discipline, is a well-proven model.

The question in countries where such substandard policing is all that exists, as in Sri Lanka, is: until thorough police reforms bring policing systems of these countries on par with the systems in more developed countries, what can be done about the complaints regarding torture and ill-treatment? This is a question that needs to be addressed and without finding a practical solution to this problem much of the discussion on torture and ill-treatment, including achievements relating to legislation, will not be of much use to the public and particularly not to the victims of torture. Thus, in what we may call the transitional period before such substantial changes are achieved, methods have to be developed for credible, independent, investigations into torture. Thankfully, there are some noteworthy examples.

Under pressure from the United Nations human rights agencies and under heavy criticism about the large scale prevalence of torture, in 2006, Sri Lanka took a step towards investigating complaints of torture. It proved quite effective as long as the measures taken were not obstructed. The method adopted was for the Inspector General of Police or the Attorney General to refer complaints of torture to a Special Unit of Inquiry (SUI) of the Criminal Investigation Division (CID) for inquiry. The SIUs usually consisted of officers whose capacity and integrity had been recognised by the institution. Within a period of two to three years such SIUs investigated a significant number of cases and they found that there was adequate evidence to prosecute officers in about 60 cases. The files of these cases were presented to the Attorney General's Department with recommendations for prosecution. This is so far the only example in Asia where effective measures have been taken for the investigation and prosecution of torture and ill-treatment cases. Unfortunately this approach was abandoned due to pressure from the police and the military, which reacted strongly against the investigations.

What this brief effort proved is that during the transitional period in question ways can be found to institute a special group of investigators with competence and integrity to conduct investigations into complaints of torture. However, whether this will happen or not depends on the political will of the government concerned, which in turn, will be influenced by the amount of pressure from civil society to have such effective investigations (at least to some extent). Civil society organisations committed to the documentation of torture cases and giving assistance to torture victims by way of legal, medical, and psychological measures is an essential component to create the local and international pressure necessary to make the governments attend to this important task. In this regard, conscientious legislators can play an important role to mobilise civil society as well as to initiate other effective measures.



These considerations about justiciability need to be given the highest attention and priority by all people and organisations that promote the implementation of human rights. At the international level, in spite of some concerns expressed, an adequate discourse has not taken place on this issue. Part of the reason for this international silence may be due to the fact that in more developed democracies, which play a leading role in the human rights community, the problem of justiciability in the manner that is expressed above does not exist. Centuries of development in their legal systems have ensured that a right, when recognized, can be effectively brought to a situation where it is capable of being decided by a court.

However, that is not the case in most parts of the world and certainly not the case in most of Asia. If the rights discourse is to be taken seriously by the people, then this tremendous problem needs to be addressed as thoroughly, comprehensively, and quickly as possible. Until then, rights without remedies will be regarded by the majority of the people, particularly by the poor, as empty promises.

### ***Specific Cases of Torture***

#### **1. Ms. Achala**<sup>198</sup>

Achala, an 18-year-old school girl from Ratnapura has been assaulted by an ex-army soldier in presence of several witnesses and when she reported the matter to the police very little or nothing was done to investigate the assault. The victim and her family believe that this is due to the influence of the assailant's employer who is a wealthy businessman and who has unduly influenced both the police and health authorities to protect the assailant. Although the victim was hospitalized she was forcibly discharged and it is believed that this was also due to the influence of the employer. She has suffered hearing loss due to the assault, still lives in fear of her life, and has appealed to the AHRC for justice and for the safety of her and her family.

#### **2. Ms. Sujani Weerakkodi**<sup>199</sup>

A Buddhist Monk, Bowelle Wimaladhamma Thero, verbally abused and physically assaulted Ms. Sujani Weerakkodi, a government employee working

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198 Urgent Appeal Case: AHRC-UAC-017-2013

199 Urgent Appeal Case: AHRC-UAC-019-2013

as a Science and Technology Officer, at the Udapalathe Vidatha Resource Centre under the Ministry of Technology in her office on 22 January 2013. According to Sujani the monk had entered the office, which was being rented from him, and threatened her “not to deal with him in the same manner in which she deals with her staff” and continued to act in a violent manner by throwing a chair across the room, the impact of which caused her to fall and hit her head. Her immediate superior and the police refused to take action against the monk due to his political influence and the victim was later abused at both the Gampola and Kandy hospitals. Furthermore, the doctors and nurses tried to portray her as being mentally unbalanced at the monk’s request. This is the second case the AHRC has received through its Urgent Appeals desk, of a Buddhist monk abusing a woman and using his authority to evade the administration of justice process.

### 3. **Mr. Suntharallngam Ketheeswaran**<sup>200</sup>

On Saturday 23 February 2013 at around 10:30 p.m. Mr. Suntharallngam Ketheeswaran, along with another prisoner named Kanagaratnam Wilendran, was in cell No. 9 at the Tangalle Prison where he was inhumanly attacked to the extent that his genitals were severely injured and his entire body was swollen and bruised causing unbearable pain and difficulty breathing by a prison guard who was under the influence of alcohol he was then returned to the Magazine Prison in serious condition and, in spite of his complaint to the officers, he has not been sent for treatment to the National Hospital or seen by a Judicial Medical Officer (JMO) for a report.

### 4. **Ms. Punchibandage Indrani**<sup>201</sup>

Ms. Punchibandage Indrani was tortured by the Officer-in-Charge (OIC) of Rajanganaya Police Station. In this case police officers, including the OIC (named Kumarasena), came to Indrani’s home and assaulted her brother-in-law. Prior to the beating neither the OIC nor any of the officers present gave any reason for the assault.



200 Urgent Appeal Case: AHRC-UAC-017-2013

201 Urgent Appeal Case: AHRC-UAC-030-2013

Indrani said that her brother-in-law, while being assaulted by the police had managed to scamper to a nearby toilette after which the OIC forced Indrani and her daughter into a Police jeep and took them to the Rajanganaya Police Station at around 8:30 p.m. with only male police officers accompanying them. The OIC forced them into nearby room and asked an officer to bring two cans of illicit liquor (Kasippu). The OIC tried to persuade Indrani to place her fingerprints on one of them. A few minutes later, he produced a two and half feet long hose pipe and threatened her, again in an effort to get her to put her finger prints on the can. He began to beat her six or seven times on her back, thighs and head. Due to the blows to her head Indrani was temporarily blinded.

Indrani was remanded for 14 days. When she was at the Anuradhapura Prison she was admitted to the prison hospital due to the pain in her hands. Indrani's health deteriorated and on 22 November she was admitted to the Thambuththegama Government Hospital. Now she cannot raise her hands due to the severe pain. She said that she was taken by the police for no reason and was tortured by the OIC, whose name is Kumarasena. Indrani has been falsely charged with obstructing the police and having illegal liquor. She has made a complaint to the Human Rights Commission of Sri Lanka but to-date no action has been taken.

## 5. Mr. Janaka Darshana Kumara<sup>202</sup>

Mr. Janaka Darshana Kumara was arrested by the OIC of Sub Police Watch, Deniyaya, on suspicion of rape. He was taken from his sister's place to Matara Headquarters Police Station where he was tortured brutally, harassed sexually and detained illegally by the Senior Superintendent of Police (SSP) Matara, Deshabandu Thennakoon.



While being tortured and beaten by Police Officer Mendis, Janaka had pleaded with him to stop to no avail. He was later stripped naked with his mouth and nose was wrapped in a shirt, and forced to sit on a chair. His head was forced backwards and water was poured over the cloth covering his face. Water filled in his throat obstructing his breathing. When he screamed they stopped

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202 Urgent Appeal Case: AHRC-UAC-031-2013

monetarily but continued shortly thereafter until the large cup of water was empty. The next day (12.12.2012), they were taken again to the Office of SSP, Matara where Janaka had to remove his clothes and was shown a bottle of Siddhalepa balm. He was forced to apply it on his penis. The SSP squeezed and dragged his scrotum and penis asking to tell him the truth. He cried and pleaded that he was innocent after which he was struck on his thighs and back seven or eight times with a pole.

After three days of detention he was forced to promise not to take any action against them and released with his brother-in-law on police bail and a false certificate from a JMO without being produced or charge in any court. Due to this torture, Janaka was hospitalized at the Karapitiya Teaching Hospital, discharged on 18 December, 2012 after 4 days of treatment. He continues to receive treatment for the bruising.

While being tortured and beaten by Police Officer Mendis, Janaka had pleaded with him to stop saying, and he was later made naked, his mouth and nose was wrapped by a shirt and forced him to sit on a chair. His head was forced backwards and water was poured over the cloth covering his face. Water filled in his throat and it was hard to breathe. When he screamed it was stopped but again and again the same thing was happened continuously until the large cup of water was empty.

The next day (12.12.2012), they were taken again to the Office of SSP, Matara where Janaka had to remove his clothes and was shown a bottle of Siddhalepa balm. He was forced to apply it on his penis. The SSP squeezed and dragged his scrotum and penis asking to tell him the truth. He cried and pleaded that he was innocent. He was struck on his thighs and back seven or eight times with that pole.

Janaka and his brother in law were released on police bail without being produced in any court or being charging for anything. Janaka was thereafter admitted to the Karapitiya Teaching Hospital and he was discharged on 18 of December, 2012, after 4 days of treatment. He continues to receive treatment for the bruising.

## 6. **Mr. Varnakulasingham Arulanandam**<sup>203</sup>

Mr. Varnakulasingham Arulanandam (42) is a former LTTE child “recruit”, who was abducted and forced to join the LTTE in 1996 (he managed to escape in August 2006). On 17 May 2009 he was living in the Internally Displaced People’s (IDP) Camp in Chettikulam. While in the camp at when asked to identify if they had any connection to the LTTE and after Arulanandam identified himself he was separated from the family and was taken to Vaani Vidyalam (school) in Vauniya and then to Colombo and from there to Galle. He was produced in Galle Magistrate’s Court on the 21 January 2010 and was then released by the Galle Magistrate as there was no credible evidence against him.

However, following his release on several occasions he was called to the Terrorist Investigation Division (TID) at Colombo for further interrogation. He obtained his released order on 3 April 2012, and while he was leaving for Qatar for employment, Arulanandam was rearrested at the Katunayake International Airport. At the time of his arrest no warrant or reason was given. He was then taken to the TID Office in Colombo, detained for one month and then kept at Boossa Detention Center; he has never been produced before any court. Furthermore, according to his wife Christina, Arulanandam was tortured by the TID officers after his arrest at the airport. So far his wife has visited Arulanandam at the Boossa Detention Center twice on the 13 August 2012 and on the 12 December 2012. She questions why he was arrested for no apparent reason tortured, and detained without trial after he was released by the Galle Magistrate.

## 7. **Mr. Kitnasami Rajendran**<sup>204</sup>

Mr. Kitnasami Rajendran (57) Udayarkattu North, Udayarkattu in Mullaitivu District was illegally arrested in 2008 and has been tortured in the custody of the Colombo Criminal Investigation Division after being produced in the Vavuniya Magistrate’s Court and the Colombo Magistrate’s Court and is now detained at the Anuradapura Remand Prison . Through what now amounts to more than 4 years, Rajendran has never been shown a charge sheet describing the alleged crimes, though according to his wife Komadi he is accused of having explosives in his possession, an accusation which he and his wife

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203 Urgent Appeal Case: AHRC-UAC-034-2013

204 Urgent Appeal Case: AHRC-UAC-037-2013

vehemently deny adding that he has no connections with the LTTE. Rajendran is now detained at Anuradapura Remand Prison. Komadi says that Rajendran is innocent and that he is from Southern Province of Sri Lanka, Galle, and after the arrest Rajendran and his wife lost two of their sons Vasantha Ruban (24) and Sathya Ruban (21) on 3 February 2009 as a result of a shelling while in their house at Udayakattu. As a result of this tragedy Komadi is living without income along with the youngest son who is still in school.

## 8. Mr. Balasundaram Jeyamagudam<sup>205</sup>

Mr. Balasundaram Jeyamagudam (32) was illegally arrested, detained, and tortured by TID officers for months without being produced in court ostensibly for connections to the LTTE, an allegation that both the victim and his wife, dispute. He was arrested on 13 January 2013, four years after the civil war ended.

Balasundaram was interrogated at the TID office at length and tortured for 10 days in an effort to force him to admit that he was with the LTTE. According to his wife, he was beaten with poles, slapped and TID officers stood on his chest until he passed out. Due to the torture Balasundaram was injured, bleeding heavily, and required treatment at Vauniya General Hospital. After supposedly admitting his involvement with the LRRE, he was subsequently brought to the Colombo TID office on the 23 January 2013 and where he is still detained. His wife was expecting a baby at the time and she has no parents as both have died during the war and she has no income to look after the son, she also believes that the reason for his arrest, and that of other innocent victims, is to justify the continued presence of the TID and the army in the north.



## 9. Ms. Kumarapperuma Arrachige Dileeka Shanthi Kusum<sup>206</sup>

Ms. Kumarapperuma Arrachige Dileeka Shanthi Kusum (33), a mother of two, was beaten in public by the Chairman of the Co-op Lanka, Kotapola. The attacker, Mr. Bandu Ranawake, struck the victim in the chest until she fell to the floor. This fall caused her to hit the back of her



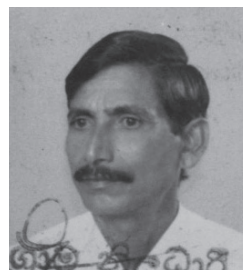
205 Urgent Appeal Case: AHRC-UAC-038-2013 and AHRC-UAC-131-2013

206 Urgent Appeal Case: AHRC-UAC-046-2013

head, and when other employees tried to help her back to her feet the attacker struck her head again causing her to lose consciousness. When the victim was finally able to get back to her feet, she went to the Pitabaddela Police Station and made a complaint under CIB 248/184 about the incident. She was, the same day, admitted to the Morawake Government Hospital for symptoms including vomiting and light-headedness (resulting from the attack). She is still unwell, continuing to suffer from headache and backache and is unable to return to work. Her complaints to the Pitabaddera Police Station, Human Rights Commission (HRC), Inspector General of Police (IGP), National Police commission (NPC) and the Attorney General (AG) have not led to any action by those groups and the police appear to be protecting Mr. Ranawake instead. It should also be noted that other employees (Ms. J.D. Chandra, Ms. D.Y Pushpa and Ms. K.D. Seelawathi) were also brutally beaten by Mr. Bandu Ranawake and had received injuries including a broken finger.

#### 10. Mr. Vidana Mahaduralage Somarathne<sup>207</sup>

Mr. Vidana Mahaduralage Somarathne, a farmer, was illegally arrested, detained, and tortured by the four police officers attached to the Polpithigama Police on 20 March 2013 at Ma Eliya Junction.



Early the next morning, he started screaming in pain and was rushed to the Polpithigama District Hospital. The on duty doctors admitted him to the Intensive Care Unit where he died at around 1 p.m. that day. Despite being aware that the victim had been tortured the JMO claimed that the cause of Mr. Vinda's death was a heart attack. His son Mr. Anuradha campaigned vigorously for a second post-mortem examination which was eventually granted by a Magistrate but the results of which have not yet been made public though Anuradha believes that his father died as a result of torture during his detention. Relatives have also complained to the IGP, NPC, AG, and Sri Lanka Human Rights Commission (HRCSL) on 25 March 2013 regarding the death by custodial torture of Somarathna and requested impartial and independent inquiry in to the incident. However to-date, none of these authorities have taken any action whatsoever on these complaints.

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**11. Mr. Amarasinghege Priyantha Samanthilake<sup>208</sup>**

On 27 April 2013, at about 9.30 a.m., Samanthilake was returning home after taking his daughter to her tuition class. Police Constable (PC) 51752 Jayasiri and two other unknown people in civilian dress arrived on two motorbikes and without any explanation they beat him brutally and damaged his motorbike before leaving. The attack required Samanthilake to be admitted to the Negambo Hospital. Samanthilake made a complaint under the Number of CIB I 269/ 554 at the Negambo Police Station. Following his complaint PC Jayasiri threatened him saying that Samanthilake had done something wrong and warned him to be careful or he would face bigger problems. Acting on his complaint police officers went to see the place and took a statement from the eye witnesses as well. However, the Headquarters Inspector (HQI) of Negambo Police Station withdrew his complaint and sent it to the mediation board without the victim's permission. To-date he is still unwell and continues to suffer from the damage to his teeth and left shoulder.

**12. Mr. Krishnaswami Ramachandran<sup>209</sup>**

Mr. Krishnaswami Ramachandran was arrested on suspicion of his involvement in the bomb blast at Daladha Maligawa in 1998. He was tortured into making and signing a confession upon which the charges are based. Ramachandran states that he was not given a fair trial and that the trial was held in Sinhalese which is not his mother language and due to this he was unable to follow the proceedings. Ramachandran's daughters also affirm that their father did not get a fair trial as he was not kept apprised of the proceedings and that his full testimony was never submitted and to the trial judge who did not consider the scant information that he actually received. As a result, the victim was sentenced to death by the Kandy High Court in 2003 though he vehemently denies the charges and insists that he was convicted and sentenced for a crime he did not commit. In this regard Ramachandran has filed an appeal against the verdict of the High Court in the Court of Appeal of Sri Lanka which, according to his two daughters, is still pending.

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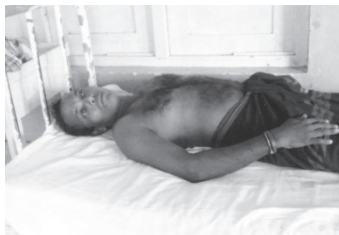
208 Urgent Appeal Case: AHRC-UAC-074-2013

209 Urgent Appeal Case: AHRC-UAC-076-2013



### 13. Mr. Dewasundaralage Thushar<sup>210</sup>

Mr. Dewasundaralage Thushar was detained in the Excise Department office in Puttalam where he was tortured and forced to place his fingerprints on cans and bottles of illicit liquor and then write and sign a statement incriminating himself. The officers concerned asked Thushara to identify the person who was manufacturing illicit liquor and when he denied any knowledge of this the officer started beating him. . On 21 March 2013, he was taken to the Magistrate's Court of Puttalam and a case was filed against him under the B/76251 based on the false charges of obstructing officers of the Department of Excise and having illegal liquor. He released on bail of Rs. 15,000 and Rs. 5,000 surety but as the relevant office was closed he could not fulfill the bail conditions and was remanded in prison for another 5 days. He was finally released on bail on 25 March 2013. Thushara was admitted to the Puttalam District Hospital for treatment of injuries he sustained which had worsened and was discharged on the afternoon of the 26th.



### 14. Mr. Chandila Padmakumara Gurusinghe<sup>211</sup>

Mr. Chandila Padmakumara Gurusinghe (35), of Kiripedda, Babuwo Kanda, Karadeniya in Galle District was illegally arrested, tortured, and humiliated by officers of the Karadeniya Police Station. Police officers tricked him into accompanying them saying that they had a job for him at the police station where he was brought to the kitchen of the police station by SI Mendis, PC 53241 and another officer. There, the officers ordered him to remove all his clothes. The officers started to shout at him using obscene language including accusing him of being “Hakura” (a derogatory word used to insult and degraded people belonging to that caste) which Chandila felt was discriminatory. The officers further humiliated him by saying that they “wanted to use his anus”.



The officers then bound Chandila's hands behind his back and threw another rope over a ceiling beam,

210 Urgent Appeal Case: AHRC-UAC-077-2013

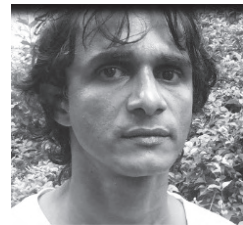
211 Urgent Appeal Case: AHRC-UAC-082-2013

which they attached to the rope binding Chandila's hands. He was made to stand on a chair and the officers pulled the hanging rope tight. Thereafter, PC 53241 kicked the chair out from under Chandila, leaving him hanging painfully by his wrists with his arms stretched behind him. Chandila was in enormous pain and felt as if his shoulders and wrists were broken. Then SI Mendis asked him, "How are you feeling now, are you ready to tell the truth now?" With considerable courage, Chandila replied that he had nothing to say and that he had not committed any crime. SI Mendis then told other two officers that he had still had not sweated enough and to leave him in the same position for some more time.

After three days of detention and torture inside the police station, the officers produced Chandila before the Magistrate of Elpitiya on 10 May 2013. The Magistrate had him remanded until 16 May 2013 and taken to the Galle Remand Prison. On 16 May 2013, Chandila was produced before the Magistrate of Elpitiya and released on bail (though the police had threatened to sodomise him if he caused any trouble for them). He is being treated for the injuries he suffered at the police station.

### 15. Mr. Madawala Maddumage Don Aruna Nilupul Indika<sup>212</sup>

Mr. Madawala Maddumage Don Aruna Nilupul Indika (39) is an interior designer by profession. After he completed a job at the house of Attorney-at-law Anoma Siriweera, the lady's husband approached him and accused him of burglarizing the house. Nilupul denied the accusation. And, at the instigation of the Attorney and her husband Nilupul, was illegally arrested, detained, and tortured by officers of the Matugama Police Station, one of whom Nilupul was able to identify as Raveendra Pushapakumara, attached to the Crime Branch of the Matugama Police. At 1 p.m. on the following day Nilupul was taken out of the cell and handcuffed by an officer who grabbed him roughly by the neck and took him to a room in the officer's quarters, which are behind the station. He was then forced into a sitting position on the floor of the living room where three officers were present, including Raveendra Pushapakumara, who was in uniform (the other two officers were in civilian dress). Pushapakumara then shouted at Nilupul and told him that he had to admit to selling a stolen electric grinder; otherwise they would beat him so



<sup>212</sup> Urgent Appeal Case: AHRC-UAC-083-2013

badly that he would never be able to work again. However, Nilupul denied the accusation and said that he had never engaged in any illegal act.

At that time Nilupul noticed that one of the officers was holding a bag of Kochchi chilies (a small but very strong chili). Pushapakumara placed the chilies in a disused sock and used a piece of hosepipe to crush them before adding some water to make a chili juice. Another officer made Nilupul lie on the floor facing upwards. He then tore off the victim's sarong and underpants and as they held him down Pushapakumara squeezed the sock so that the chili juice ran into Nilupul's eyes. When he tried to close his eyes to prevent the chili juice running into them the officers forced his eyelids open. Nilupul suffered enormous pain due to this treatment and felt that he was losing the vision in his eyes. He started struggling violently enough that they placed a couple of chairs over him, which they then sat upon to prevent him from moving. Pushapakumara again began to drip the chili juice into his eyes and urged Nilupul to admit to the crime of theft but, despite the torment, Nilupul refused.

This torture was repeated until Pushapakumara stopped to take a telephone call on his mobile and went outside to answer it. One of the other officers then brought a pole with which he beat the soles of Nilupul's feet after which he was left there for an hour until the three officers returned and the torture with the chili juice resumed.

He subsequently made a complaint to the IGP, the SSP of Kalutera, and the HRCSL. None of these authorities have initiated any inquiries into this case.

#### **16. Mr. Kopiya Waththage Don Chaminda Priyantha Kumara<sup>213</sup>**

Mr. Kopiya Waththage Don Chaminda Priyantha Kumara was accused of having stolen a mobile phone and arrested by officers of the Kalutara South Police Station. After severely beating him and forcing him to sign a statement which he was not permitted to read they implicated him in further unsolved cases. The officers then took him to a bathroom at the rear of the police compound where he was stripped naked and forced to lie face up on a bench where One of the officers used a wooden mallet to beat his testicles. Following



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213 Urgent Appeal Case: AHRC-UAC-084-2013

this his ankles were cuffed and he was tied to the bench with coir rope after which one officers climbed onto the windowsill and jumped onto Kumara's chest. Following this the officers moved the bench on which Kumara was tied to the wall where there was a tap and hose pipe where an officer sat astride him as another tied a cloth about his eyes and started to force water into his mouth and nose. While this was going on another officer started to beat the soles of his feet with the cinnamon stick. The officers took turns torturing him this way. While this was going on the officers accused him of stealing mobile phones, computers, the burglary of a banana shop where he stole soap and washing powder. The officers asked him how many houses he had burgled. When Kumara could no longer stand the pain he started to struggle. He was taken to the Additional Magistrate of Kalutara who remanded him without even seeing him as Kumara was forced to wait outside his chambers. On 31 May he was again produced before the Magistrate of Kalutara who released him on Surety bail of Rs. 15,000.00. At no time did any lawyer appear on his behalf. As there was no one to sign for his Surety he was returned to Remand Prison. On 3 June he was released from the Remand Prison and told that he was to appear before the Magistrate of Kalutara on 13 September 2013.

#### **17. Mr. Sundaramani Sivakumar<sup>214</sup>**

Mr. Sundaramani Sivakumar (36), upon receiving a message from the Kandy Headquarters Police Station to make a statement, went to the station with his father-in-law where he was arrested and detained by the TID without explanation. He was continuously detained there for a period of three months during which he was threatened with death. Out of fear for his life and fear of being continuously tortured he signed the blank sheets of paper. Sundaramani states that he has now been in detention for 4 years and 11 months without any reason. He further states that he is among hundreds of other detainees who have been detained without any charge. He also states that all his rights – guaranteed to him under the Constitution - were denied to him by the law enforcement agencies.

#### **18. Mr. Nanthamuni Arachchilage Asitha Sri Dewanandha<sup>215</sup>**

Mr. Nanthamuni Arachchilage Asitha Sri Dewanandha (34), of No: T19, Ella Road, Iginiyagala in Ampara District had been suffering from a mental disorder

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214 Urgent Appeal Case: AHRC-UAC-096-2013

215 Urgent Appeal Case: AHRC-UAC-108-2013

for a long time. He has been under psychiatric care for some time and has been taking regular medication since 2002. Frequently he would not take his medication and as his family is very poor they are unable to sometimes provide him with the adequate food. In such circumstances, he is known to become a nuisance to his family and neighbours and when this happens complaints are made to the police, who are by now well aware of his condition, and he is arrested and sent to the Angoda Mental Hospital in Colombo.

On 26 May 2012, he scuffled with some of the police officers attached to the Inginiyagala Police Station and accidentally injured an officer's head. The officers from that station did not like Asitha, considering him a nuisance, and following the incident they searched for him until the morning of the 28th when they arrested him. At the time of the arrest the officers were in plain clothes and it was obvious from their demeanour that they did not consider him a mentally disturbed person. At the time of the arrest they assaulted him brutally. His arrest and torture was witnessed by his neighbours who heard him screaming, "Please release me, please, don't beat me, please don't kill me". Later Asitha was able to inform his mother that as many as 30 police officer's at the Iginiyagala Police Station had beaten him. They beat him with batten poles and some of the policemen trampled his body. He was assaulted in different rooms from time to time and on occasion was struck with a car battery. In an act of unbelievable cruelty they had also inserted a bottle into his rectum.

Asitha's relatives have made complaints to the HRCSL, the IGP and the NPC requesting them for an impartial and independent inquiry. However, to this date, all of these authorities have failed to take any action.

### **19. Mr. Ganeshan Pushparaj & Mr. Ganeshan Govi<sup>216</sup>**

Mr. Ganeshan Pushparaj and his brother Mr. Ganeshan Govi of Odinton Estate, Lindula, Thalawakalle in Nuwara Eliya District have been detained for more than 5 years by the TID and it is believed that the reason for their continued detention is their failure to pay the bribe demanded by the TID officers. On 15 October 2008 Pushparaj was taken by officers attached to the TID of the Kandy Headquarters Police Station. At the time they promised that they would record a statement from him and send him home though he was not given any explanation of why they wanted a statement from him.

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216 Urgent Appeal Case: AHRC-UAC-110-2013

During his detention, he was tortured and forced to sign blank papers and documents, pleading guilty to crimes that he had never committed or was involved in. He was finally produced before the Magistrate of Teldeniya, the Magistrate of Panvila and the Magistrate of Matale on fabricated charges following which he was detained at Bogambara Remand Prison. Later Pushparaj learned that the Attorney General has filed another two cases against him: HC/83/2013 and HC/25/2013. He remains in remand prison due to the constant delays in the hearing of the cases.



Pushparaj's brother Ganeshan Govi (30) was also arrested on 22 December 2008 and was detained at Katugastota Police Station. Pushparaj was treated in Kandy Teaching Hospital for injuries resulting from tortured by the police officers attached to the TID. Govi his brother also sustained injuries due to the torture he suffered in police custody. Their mother Murudai has learned that the Kandy TID officers have taken money from families of detainees who have been detained under the Prevention of Terrorism Act (PTA), amounting to sums of up to Rs. 2 million to either release them or frame lighter charges.

## 20. Mr. Velu Yogarasa<sup>217</sup>

Mr. Velu Yogarasa (26) of Marugola, Ukuwela (Matale District) was arrested under the PTA on 9 August, 2008 and has been in Bogambara Remand Prison for the last 5 years. He was arrested and detained under the Prevention of Terrorism Act (PTA) and was severely tortured on 30 September, 2013 by being beaten with a high tension electric wire.

In the early morning of 30, September 2013, when Velu Yogarasa was taken to another cell and severely beaten with a high tension electric wire on his head, feet and back and one of his fingers was broken. He screamed for help but to no avail. The prison officer, known to the prisoners as "Galle Mahattaya" (as he is from Galle), threatened Velu and said: "I am from the south, I am not afraid of anyone". This ordeal went on for 15-20 minutes and when the other prison officers discovered that Velu was bleeding he was sent to the prison hospital. The doctor gave him a few Panadol pills but Velu requested the authorities take him to a general hospital. His request was refused. Velu Yogarasa was then met by his lawyer at around 11 a.m. who testifies that Velu told him that he had

<sup>217</sup> Urgent Appeal Case: AHRC-UAC-130-2013

been subjected to severe torture, that he had seen the marks all over the victim's body, and that one finger was still broken and bleeding.

## **21. Mr. Jayantha Aberatne<sup>218</sup>**

On 21 June 2013 at 1 p.m. when Jayantha was on duty, he was summoned to the office of the Teldeniya Headquarters Inspector of Police. When he met the HQI named Dharmaratne, he was questioned about some white sandalwood that was lost at the Magistrate's Court and, when Jayantha told him he had no knowledge of the matter, the HQI locked his office door and severely beat him including kicking him in the groin and stomach and in the process, breaking a finger on his right hand. He was also stripped of his uniform.

After he was tortured, Jayantha was asked by the HQI to admit that he helped others to steal the white sandalwood from the Magistrate's Court. Afterwards, one by one around three people were brought to the office and Jayantha had to say: "I did this business with you"; it turned out that the white sandalwood was in the custody of the Magistrate's Court as case productions and had merely been misplaced.. Jayantha states that after severe torture he had no option other than to do what the HQI ordered him to do. On 22 June Jayantha was produced in court and remanded at the Bogambara Remand Prison where, upon his arrival, he told the prison officers about the torture he had endured and was admitted to the Prisons Hospital. He was bailed out on 24 June and following his release he was admitted to the Teldeniya Government Hospital where he received further treatment until 27 June.

## **Violence Against Women**

A recent UN led survey into violence against women across the Asia and Pacific region revealed shocking statistics on Sri Lanka, one of six countries included in the three year study, (along with China, Indonesia, Bangladesh, Papua New Guinea and Cambodia).<sup>219</sup> The study revealed that 15% of men surveyed in Sri Lanka admitted to having committed rape, 65% of these men said they had

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218 Urgent Appeal Case: AHRC-UAC-134-2013

219 The UN Multi-country study on men and violence in Asia and the Pacific - <http://www.partners4prevention.org/about-prevention/research/men-and-violence-study> -The Sri Lankan section of the study was conducted in Colombo, Nuwara Eliya, Batticaloa and Hambantota, with respondents answering sensitive questions anonymously to try and ensure honest disclosure.

committed rape more than once, with 40% committing their first rape before the age of 20. Most alarmingly, only 3.2% of those who admitted rape had been arrested, and only 2.2% had been jailed. In other words, in 96.5% of rape cases the rapist experienced no legal consequences. Only 34% said that they felt worried or guilty about what they had done. These last two figures are the worst among the countries involved in the study.

This data is supported by evidence recently revealed showing that in Sri Lanka only 600 perpetrators of sexual abuse had been remanded in 300,000 cases, i.e. only 2% of the abusers. According to the report<sup>220</sup>, a woman is raped every 90 minutes in the country, 95% of women who use public transport experience sexual harassment, and 3-5 children are raped every day. Despite this, 65% of men said that the law made it too easy to bring charges against a rapist.

### ***Women in Conflict***

Sri Lanka suffered enormously from the conflict which resulted in more than a million people being internally displaced. The male population has continued to decline due to disappearance or death, which has increased the female proportion of the population in the North and East of the country. Today, more than 4 years after the end of the conflict, women in the north are taking up a new and challenging role as breadwinners, with more women becoming day labourers to support their families.

A survey conducted by the Jaffna-based Center for Women and Development, a non-profit group, revealed that the northern region had approximately 40,000 female-headed households - more than 20,000 in Jaffna District itself.<sup>221</sup> Although accurate statistics are hard to come by because many people remain displaced, government sources indicate that the northern and eastern regions combined are home to some 89,000 war widows. "Over 50 percent of them [*women who head households*] are single parents under 30 years of age supporting their own and extended families."<sup>222</sup> This has had a drastic affect on livelihood options.

### ***Overseas Domestic Workers***

Large numbers of Sri Lankan women of all ethnic and religious groups, most between the ages of 18 and 45, are employed as domestic helpers in the

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220 *ibid*.

221 [www.irinnews.org/report/90429/sri-lanka-women-take-over-as-breadwinners-in-north](http://www.irinnews.org/report/90429/sri-lanka-women-take-over-as-breadwinners-in-north)

222 The Association for War-Affected Women (AWAW)



Middle East. Many of these women are taken advantage of by employment agents, some of whom charge as much as Rs. 40,000 (USD \$ 4,000), almost 15 times what the law permits, for their services.<sup>223</sup> Furthermore, since good health and childlessness are prerequisites for employment in the Middle East, many women are subjected to humiliating and potentially dangerous medical procedures, drugs and even torture at the hands of both employment agents and their employers; the abuse does not end when the women arrive in the Middle East as many more are forced to work 12 to 15 hour days and being refused the wages agreed upon, in addition to to outright physical, psychological, and sexual abuse – which has seen a drastic increase in the recent past.

### ***The Legal Rights of Women***

In 1981, Sri Lanka ratified the United Nations Convention on the Elimination of Discrimination Against Women. Domestically, the Sri Lankan constitution guarantees equality before the law and equal protection of the law to all citizens<sup>224</sup> and further states that “no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion...”. Despite the convention’s provisions and constitutional guarantees, however, inequalities remain since most laws and government programmes contain no special measures to ensure gender equality and women’s equal access and participation. In the Katunayake Investment Promotion Zone (Free Trade Zone), where 86% of workers are women, conditions for factory workers are not regulated, unionization is prohibited, and workers are subject to long hours and inadequate remuneration. According to Kumari Jayawardena, a Sri Lankan feminist, “wages between men and women are unequal [*in agriculture*], while in other fields women are given the less skilled jobs”. The presence of women in politics has also been minimal.

### **Freedom of Expression**

While most of the incidents of grave concern against the freedom of expression in Sri Lanka remain unanswered, the space for expression is not simply shrinking. It is faltering, degenerating, disintegrating, and shattering in the deteriorating authoritarian system noted by the High Commissioner of the

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223 Reuters 24 Apr. 1990

224 Subsection 12.(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka

Human Rights, Dr. Navi Pillay.<sup>225</sup> After dozens of journalists were victimised by this system, almost all media institutes based in Colombo operate under enormous political influence, mostly of the President, Mr. Mahinda Rajapaksa, and other key players in the government, (several also from the Rajapaksa family). Meanwhile, while large numbers of journalists are already in exile others are also leaving the country due to harassment, intimidation, and attacks on their basic rights.

In the meantime, the government is clearly taking a position that they are not willing to accept freedom of expression but are rather trying to bring it under the thumb of the ruling regime and their personal desires and agendas. Freedom of expression in Sri Lanka is nothing other than a daydream under the political culture of President Rajapaksa.

It was in the middle of 2013 that the government information department, headed by the former senior lecture who had headed the department of communication in the University of Kalaniya, Colombo, organized a workshop on, "Patriotism and the role of the media". There was a message from the Minister of Mass Media and Information, Mr. Keheliya Rambukwella in the workshop which stated the following:

"Distorting of information, misleading the people and destabilising society by using the media are also taking place. In this regard that it is important that the professional journalists should act with the right understanding. As it has been emphasised in the Mahinda Chintanaya, it is my belief that instead of using the media to fuel political animosity, it should be used with self restraint for achieving the country's social, cultural and economic development objectives and to raise the glorious name of the country without damaging social and moral ethics."<sup>226</sup>

He elaborated the government position by saying, "if the people get correct information about things happening in the country at all times, they will come to the right conclusions."<sup>227</sup> Perhaps, it is "essential to identify the right path the media should take,"<sup>228</sup> said the Minister.

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225 Opening remarks by the UN High Commissioner for Human Rights (<http://un.lk/news/opening-remarks-by-un-high-commissioner-for-human-rights-navi-pillay/>)

226 Available at: <http://freemediasrilanka.wordpress.com/2013/05/05/united-nations-world-media-freedom-day>

227 *ibid.*

228 *ibid.*

Interestingly, the “Mahinda Chinthanaya”, the election manifesto of the President Rajapaksa, emphasized the importance of freedom of expression, lauded by most of allies of the President. The manifesto states: “recognizing the right of the people to have to access to correct information, the foundation of our media policy is to get the broad participation of the media toward achieving country’s social, cultural and economic development objectives”.<sup>229</sup> The manifesto further reads, “state media will be made to be the highest example of in the use of an independent and responsible media and toward this. The state media will be de-politicized.”<sup>230</sup>

However, the real circumstances, as given by the actual reality of the situation shows a clear-cut picture of intimidation and harassment of journalists and their institutes while the State’s own media engages in vulgar slander campaigns against selected people who raise their voices against the government. It was clearly proved how the state media functioned during the first and second resolutions on Sri Lanka tabled at the UN in Geneva, and also the impeachment against the 43rd Chief Justice, Dr. Shirani Anshumala Bandaranayake.<sup>231</sup> As the AHRC pointed out, one of the people that conducted campaigns against selected people through state media was politically motivated to make baseless allegations and to try and humiliate those speaking out against the government.<sup>232</sup>

It is a sheer fantasy to believe or take seriously what the “Mahinda Chinthanaya” pointed out on the freedom of expression. It was aimed purely to grab public votes. However, when it’s come to implementation it is a completely different story. The prevailing strategy of the government, regardless of “Mahinda Chinthanaya” is do as we say not as we do.

Even after the civil war ended in May 2009, the government showed its colours by assaulting journalists and their institutes in the North as well as in the South. For a period there was concern about the slight privileges that most newspapers based in Jaffna peninsula deserved in terms of the space to publish realities, but the heavy militarization in the North not only decreased freedom

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229 Mahinda Chinthanya (English Version): <http://www.president.gov.lk/pdfs/MahindaChinthanaEnglish.pdf>

230 *ibid.*

231 Impeachment of Shirani Bandaranayake: [www.en.wikipedia.org/wiki/Impeachment\\_of\\_Shirani\\_Bandaranayake](http://www.en.wikipedia.org/wiki/Impeachment_of_Shirani_Bandaranayake)

232 SRI LANKA: Rajpal Abeynake calls Chief Justice John Marshall a “cunning” and “devious” person and Justice Vigneshwaran a schizophrenic: <http://www.humanrights.asia/news/ahrc-news/AHRC-ART-150-2012>

but also forced many journalists to flee the country or remain silent. This continued with a series of attacks on Udayan,<sup>233</sup> an independent daily based in Jaffna, by an unknown armed gang which caused injuries to several people on 3 April 2013.<sup>234</sup> However, the government offered no solution other than tomfoolery; it conducted no proper investigation.

It was few days before the official fact finding visit of Dr. Navy Pillay, organized upon request from the Government of Sri Lanka in response to the attack and robbing of a senior journalist's house by, it later turned out, security forces. In that case Mrs. Mandana Ismail Abeywickrama, the associated editor of the *Sunday Leader*, and the president of the newly formed Sri Lanka Journalists' Trade Union (SLJTU), was attacked by five men armed with hand grenades and knives. In responding to the incident the government provided different versions of the events, incident, labeling it as an attempted robbery by some deserters. "Nevertheless the police and army swiftly described the incident as a burglary that was not aimed at stifling the media" reported the BBC correspondent in Colombo.<sup>235</sup>

Interviewed by a Paris-based rights group Mrs. Abeywickrama narrated the incident as follows:

*"After entering my room and ransacking the wardrobes, I was asked by the assailants what was in the chest of drawers in the room. I said files and documents. I was then asked if I was sure it contained files and documents. I said yes. They asked me to open it. When I said I did not have the key since it belonged to my husband, one of the assailants assaulted me. I said they could break open the chest of drawers and see for themselves. They then broke the chest of drawers and took out the drawers and unloaded the files on to the bed. They then went through the files one by one. While they were ransacking my room, one of the assailants received a telephone call on his mobile phone. He then went to a corner of the room and answered the call. Even when I asked one of the assailants hours later as to why they were not leaving after taking whatever they want, he asked another assailant, "Ask what's to be done now?"*

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233 Udayan , a daily based in Jaffna: <http://onlineuthayan.com/>

234 Sinhala medium Statement issued by the Free Media Movement in Colombo/

235 Sri Lanka Sunday Leader's Mandana Ismail Abeywickrema flees <http://www.bbc.co.uk/news/world-asia-24148142>

*I have told all these to the police. All I can say is that these actions of the assailants have left several questions that need to be answered.”*<sup>236</sup>

She further elaborated, “it is not safe for journalists who believe in being a voice for the voiceless and seek to report the truth by exposing corruption, fraud and other wrongs that take place in the country. The incidents faced by me in the past few weeks have clearly shown that journalists who follow principled journalism are facing danger.”<sup>237</sup> Mrs. Abeywickrama left for a North American country<sup>238</sup> on 17 September 2013, as she felt Sri Lanka was no longer safe for her.

In a joint appeal to the High Commissioner of the Human Rights, Dr. Navi Pillay, Reporters without Borders (RSF) and its partner organization, Journalists for Democracy in Sri Lanka (JDS), summarised the threat that the media personnel and their institutes face in the present political circumstances in the island nation. “Media workers have been killed, abducted, made to disappear and forced to flee the country while media institutions have been bombed and burnt. Sri Lanka’s only provincially produced newspaper, Jaffna based ‘Uthayan’ alone, has come under brutal attacks over 37 times and at least five of its journalists have been killed since 2002. While all these crimes were committed in an extremely militarised area, no one so far has been brought to book,”<sup>239</sup> the appeal noted.

Many senior journalists still remain outside the country, and political influence and interference are at the highest levels against local media in the country. The personal liberties of not only journalists but also the citizens at large are quickly evaporating. Many formally outspoken people are remaining silent out of fear for their lives while landmark cases against media freedom, like the brutal killing of Mr. Lasantha Wickrematunge<sup>240</sup> and the forced disappearances

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236 ‘Principled journalism brings danger’ - Mandana Ismail Abeywickrema  
<http://www.jdslanka.org/index.php/2012-01-30-09-31-03/media-a-culture/387-principled-journalism-bringsdanger-mandana-ismail-abeywickrema>

237 Ibid

238 Sri Lanka editor flees after armed attack  
<http://english.alarabiya.net/en/media/print/2013/09/18/Sri-Lanka-editor-flees-after-armed-attack.html>

239 RWB and JDS address open letter to Navi Pillay  
<http://en.rsforj.org/sri-lanka-rwb-and-jds-address-open-letter-to-27-08-2013,45104.html>

240 Lasantha Wickrematunge (5 April 1958 – 8 January 2009)  
[https://en.wikipedia.org/wiki/Lasantha\\_Wickrematunge](https://en.wikipedia.org/wiki/Lasantha_Wickrematunge)

of Mr. Prageeth Eknaligoda<sup>241</sup> remain under the cynical manipulation of the government with no chance of a fair prosecution in the judicial procedure.

Political influence combined with military influence has evaporated the last traces of the freedom of expression in the country. Most people who have access to internet have to rely on sources of information and publications based outside the country and are losing faith that the truth will, or even can, be told by local media. Thus, media personnel are losing the quality of their profession due to this authoritarian government behaviour.

Just a few days before the Commonwealth Meeting in Colombo, security officials raided<sup>242</sup> a meeting organized by the Free Media Movement, where two foreign activists who had visited a friend in the movement were detained, without a warrant. Later, those two activists arrested by the security forces were deported.<sup>243</sup>

Though the incidents of killings, kidnapping, and disappearances of journalists are fewer compared to past years, the reason is not that the government now respects the freedom of expression. To the contrary, it is due to the creation of the culture of silence and the spread of fear across society. According to the New York-based Committee to Protect Journalists (CPJ),<sup>244</sup> there are over 400 journalists living in exile the world over, and nearly one fourth of them are from Sri Lanka,<sup>245</sup> a distinction any country claiming to be a democracy should do its best to avoid. A noted journalist, editor of a Colombo-based daily, published an account recently on exiled journalists from Sri Lanka.<sup>246</sup>

The situation is yet worse. While there is hardly space to publish the truth, and access to original sources has been closed by either politicians or military personnel in the country, the President Mahinda Rajapaksa and his family

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241 Prageeth Eknaligoda  
[https://en.wikipedia.org/wiki/Prageeth\\_Eknaligoda](https://en.wikipedia.org/wiki/Prageeth_Eknaligoda)

242 FMM workshop raided  
<http://www.srilankamirror.lk/news/11460-fmm-workshop-raided>

243 Sri Lanka to deport Australian media activists  
<http://www.theaustralian.com.au/media/sri-lanka-detains-australian-activist-jacqui-park-says-rights-group/story-e6frg996-1226750151883>

244 Country Report: Sri Lanka – Committee to Protect Journalists: <https://www.cpj.org/asia/sri-lanka>

245 Government aggressively censors outlets, blocks information: <https://www.cpj.org/2013/02/attacks-on-the-press-in-2012-sri-lanka.php>

246 Exiled, from journalism : <http://www.ceylontoday.lk/59-31472-news-detail-exiled-from-journalism.html>

members have created a culture where no one has the right to talk rationally about them either. Only praise of their work with optimism can be broadcast (Reports show that over three hundred and fifty relatives of President Mahinda Rajapaksa are holding key positions in bureaucracy). The Sri Lanka Campaign<sup>247</sup> shows five extremely important infographics about Sri Lanka, including that of the Rajapaksa family.<sup>248</sup> Under these circumstances, criticizing any family member of the Rajapaksa clan is taboo in the public domain and those violate this are treated as traitors.

Religious extremism and a culture of intolerance are key strategies of social control. The Ministry of Defence, under the Secretary, Lt. Col. (Rtd.) Gotabaya Rajapaksa (a brother of the President) has direct involvement in sponsoring extremist groups. These groups have been involved in spreading nihilistic and baseless allegations against targeted individuals, including those engaged in journalism. The government is in no mood to lift the ban on targeted websites blocked by the main internet service provider in the country, while the court has dismissed the case filed by the Free Media Movement, a media watchdog, against the blockade.

The system has rotted, degenerated, and vitiated layers to cover up reality which are used as a counterbalance against those who question the government. It was in September 2013 that President Mahinda Rajapaksa, in an interview with Al Jazeera,<sup>249</sup> said that there is an exaggeration made by certain groups about his government and that people are spreading baseless allegations against him.

Under the name of development and patriotism there are grave dangers prevailing against freedom of expression in the country, while the society at large suffers in anxiety. Either obedience or avoidance are the most suitable strategies that aspiring journalists will follow, forget engaging in public awareness or talking candidly about the situation. It is time for the international community, with the help of the United Nations, to urge the government to live up to its obligations to allow freedom of expression.

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247 The Sri Lanka Campaign is a group of activists: <http://www.srilankacampaign.org/welcome.htm>

248 Five infographics about Sri Lanka: <http://blog.srilankacampaign.org/2013/03/five-infographics-about-sri-lanka.html>

249 Mahinda Rajapaksa: 'This is all propaganda': <http://www.aljazeera.com/programmes/talktojazeera/2013/09/mahinda-rajapaksa-this-all-propaganda-201392716130376448.html>

## *Land Rights*<sup>250</sup>

Acknowledging that land is one of the most fundamental resources necessary for human beings to survive, post-war Sri Lanka has seen major scale development particularly in the former war affected areas. Yet political motivations compelling acquisitions/evictions have led to tensions within communities. A careful analysis of the Sri Lankan experience clearly demonstrates a pattern where, regardless of the law, government power is increasingly being used in order to acquire land for development or militarization purposes. In this context the absence of transparency in the functioning of state organs in regard to acquisition/eviction procedures has resulted in the process becoming less participative and more arbitrary as evident in the former war affected regions of the North and East with the resulting impact felt most by tenants without security of tenure, women, and children who cannot produce title documents to land.

From a comparative perspective, it may be relevant to note that for around a century, colonial land acquisition legislation in the entire sub-continent, was not accompanied by corresponding legally enforceable resettlement and rehabilitation norms. In Sri Lanka, the government agencies, entrusted with the duty to provide an equitable framework for resettlement of internally displaced persons, have not done their job.

Justice indeed must be done according to law, but we ask the question: is justice currently being done according to law in the context of state practice with regard to the wholesale acquisition of privately owned land in Sri Lanka? The same question applies in regard to hasty evictions from state lands occupied by individuals whose families have been living in those lands for generations. This trend is now seen in rural communities all over the country.

Moreover, the impact of recent government-led initiatives in regard to post-war development is worrying. The general thrust of the National Physical Plan<sup>251</sup> forms an important part of these concerns. Acts such as the Tourist Development Act No 14 of 1968, and the Strategic Development Projects Act,

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250 The AHRC acknowledges the contribution to this Chapter, by the Law and Society Trust, with their study titled *'Not this Good Earth; Rights to Land, Displaced Persons, and the Law in Sri Lanka'* by Jayantha De Almeida Guneratne, Kishali Pinto Jayawardena and Radhika Guneratne, Law and Society Trust, October 2013.

251 (Approved on 03/07/2007 by the National Physical Planning Council chaired by the President as per Section 3 (1) of the Tourist Country Planning (Amendment) Act No 49 of 2000) to be implemented over a period of 20 years (2011-2030)



No.14 of 2008 are particularly used very frequently in the North and Eastern areas of the country. These laws enable the acquisition of properties of private landowners without prior payment of compensation, for strategic development purposes such as the development of tourism. When compensation for such acquired land is claimed against the State, the State may submit that there are no funds to defray such compensation. The judiciary in the country is then unable to compel the State to pay such compensation (going by recent judicial decisions).

### ***Constitutional Protections & Legislative Guarantees***

The Constitution of Sri Lanka does not recognize the right to own land as an expressed fundamental right. However, an acquisition by the State may be challenged on the ground of arbitrary action postulated by the concept of the Rule of Law, flowing from the right to equality under Article 12 (1) of the Constitution. An acquisition could also be challenged under Article 140 of the Constitution through an application for an Order in the nature of a Writ. Appellate courts have consistently held that, when the Minister of Lands declares by Gazette under the provisions of the Land Acquisition Act that any land is required for a public purpose, such executive fiat cannot be questioned in any court.

### ***Acquisition of Private Lands***

There were many statutes enacted to deal with Land and which made provision for the issuing of permits, grants, licences, etc. since the 19th century. At present, lands are acquired by the State using the Land Acquisition Act and the Urban Development Authority Act. The Minister of Lands is empowered to acquire a privately owned land under the Land Acquisition Act while the President of Sri Lanka could sanction an acquisition under the Urban Development Authority Act.

The requirement of any private property being required for a public purpose and the payment of “just compensation” operate as conditions precedent to the actual “taking” of a private land by the government. The Land Acquisition Act of Sri Lanka confers power on the Minister to set in motion the exercise of acquiring private land for “a public purpose” by merely declaring that by gazette notification that a private lot is required for such a purpose. The Act does not require the Minister to actually state the “public purpose” for which such private land is needed as determined in a series of decisions of the Appellate Courts of Sri Lanka.

The overall pattern of how privately owned land is being acquired by State authorities reveals that on the presentation of bogus deeds coupled with brute force, owners of land possessing prima facie valid deeds are being obliged to vacate. This is particularly plaguing the Tamil and Muslim citizens, due to the militarization of the North and East after the war. Those who had been compelled to vacate their lands during the war are now faced with frauds that are perpetrated on them by people possessing political influence and power. In the Southern regions meanwhile, the poor and marginalized Sinhalese citizenry are pitted against the might of a pronounced State policy centered on the acquiring of private properties citing an urgent public purpose and in many cases, selling them to private companies thereafter for hotel development. Evidence of this is administrative practice during the period under review during consultations with provincial land commissioners and officers that discloses several instances where the Urban Development Authority (UDA), as well as local authorities, have acquired private land ostensibly for the purposes of urgent public purpose but thereafter used the land to construct hotels.

### ***The Impact of Devolution***

In 1987, Parliament passed the 13th Amendment to the Constitution and insofar as lands were concerned, the President of the Republic was ultimately vested with the power to make grant or dispose of such land. Though the 13th Amendment made provision for a National Land Commission, (the constitution of which includes members of Provincial Councils) which was empowered to formulate a National Lands Policy, this has not been established up to date. In particular instances, the interplay between the dual authority bestowed in respect of matters concerning lands on both the Centre and the Provinces has resulted in increasingly complex legal dilemmas which highlighted unresolved fundamental ambiguities inherent in the 13th Amendment with regard to powers of the Provincial Councils concerning land.

### ***Case Studies***

Several case studies set out below highlights that people from almost all parts of Sri Lanka have faced issues with regard to the acquisition of their lands by the State.

- In the North and East, the issue of High Security Zones (HSZs) established during the war and now evolved into military strongholds, negatively impacts the livelihoods of the owners of the lands situated in the HSZs.

- In Sampoor, in the Trincomalee District land previously designated as an HSZ is now being used for a new coal power project initiated in collaboration with India.
- In Thiriyai, a mainly Sinhala populated village the government is refusing to let many villagers who had been displaced due to the war return on the pretext of claims by the Forest Department to their lands.
- In the Batticaloa District, Pavachikudiyena or Paduvankarai Muslims who had been chased away or fled during the conflict are now returning to their lands, but the Tamils who are currently in occupation of those lands are unwilling to return them creating much tension between the communities.
- In the Ampara District, in Panama the mostly Sinhalese villagers around the area have lost their lands to armed groups who have attacked and evicted them from their lands.
- In Olvuil, people have lost their lands for the construction of a commercial port.
- In a village called Kesankerni (Ashraffnagar) the inhabitants are being deprived of their land for the establishment of a military camp in the area.
- In the Northern Province, meetings with villagers confirmed that even outside the so-called High Security Zones (HSZs) the SL military has appropriated acres of land in the peninsula from civic bodies and private owners.
- In Karainagar for example, the SL Navy has appropriated lands from the local government bodies.
- In April 2013 a notice by the Land Acquiring Officer for Jaffna acting upon the instructions of the Minister of Land, was issued notice of the acquisition of a vast tract of land (6381 acres, 38.97 perches) within the Tellipalai HSZ in Valigamam North for the purported reason of building a Defence Battalion Headquarters [Jaffna]. More than 2000 affected landowners have filed fundamental rights and writ petitions in Court contesting this purported land grab.

- In the Southern Province, land has been acquired for many developmental projects including the newly established Mattala Airport and the Hambantota Port.
- In the Uva Province, the Uma Oya multipurpose project has given rise to many concerns regarding the impact on livelihood of the affected people.
- In the Central Province, in Dambulla, the declaration of a Sacred Area within the town led to many landowners being sent quit notices.
- In Negombo, in the Western Province there has been a remarkable increase in the un-authorised filling up of “lagoon lands” by persons having political patronage, several local politicians have been directly accused of acquiring vast tracts of a mangrove forest belt spanning on a 36-acre strip along the Negombo lagoon, historically identified as a marshy land rich in biodiversity.

Therefore, it would appear that Sri Lanka’s public authorities (no doubt subjected to enormous political pressure in many instances) are not adhering to stipulated legal procedure in regard to the acquisition of land. Granted, laws impacting on the land rights of individuals in Sri Lanka are presently governed by statutes dating back more than a 1 ½ century and could be described as archaic; nevertheless, if the political regime is sensitive and functions within a Rule of Law framework, the existing legal framework still carries potential (with appropriate modifications and/or amendments) to cater for those who have lost their lands as a result of conflict as well as post-war development in Sri Lanka. Yet the problem in Sri Lanka of non-adherence of the political establishment in any sort of a rule of law framework has pervaded the economic, social, civil and political rights of all.

## **Sri Lanka’s Debt Burden**

Sri Lanka has come under severe criticism regarding Government borrowings at high interest rates, borrowings which for the most part are being used to repay previous debts. Critics point out that despite the Government claiming that this borrowing is for development purposes, the money is in fact channeled to pay salaries and pension payments of government employees, almost half of whom consists of armed forces and police personnel. Money is also allocated to

provide food and other facilities for the armed forces. In the not so distant past the interest rates of government borrowing was around 2 - 2.5%. However the government today, borrows at around 9% which is unprecedented. The loans are not obtained on soft conditions either, as in the past when 10-15 year grace periods were given for repayments together 35 – 40 years' time for physical repayment of such loans. Presently the Government borrows from the Banks on their own terms. The critics have also pointed out that all this will lead to more and more loans and will culminate in a situation where the Government will be compelled to maintain its cash flow through borrowing.

The implication of all this is that the Government is unable to provide for facilities to stabilize the country by strengthening its prime and basic national institutions. This situation will negatively affect all institution deemed unimportant and too cumbersome to maintain, a list that will likely grow with the debt and will surely include those relating to the administration of justice. The result would be for the Government to rely on “more efficient methods” such as direct use of force by way of extra judicial killings, torture, ill-treatment, and other deprivation of liberties of its own citizens without any regard for due process.

### ***Appropriation Bill 2014 & Debt***

The Appropriation Bill for the year 2014 was presented by the President on 4 October 2013. According to the Bill,<sup>252</sup> the expenditure estimated was approximately Rs. 1.542 trillion and loans authorized to not exceed Rs. 1.1 trillion. Further, it showed that Sri Lanka plans Rs. 234 billion of foreign borrowing in 2014, including Rs. 97.5 billion commercial borrowing, which is only a fraction lower than the previous year's allocation of Rs. 247.1 billion.<sup>253</sup> It is clear the Government's attempt to grant blanket authorization to raise Rs. 1.1 trillion as loans during 2014 a figure over 71% of the projected total expenditure of Rs.1. 542 trillion.

What is pertinent to note, is that provisions in the Bill provides for neither Parliamentary authorization, nor review by the Parliament of individual Government loans. Therefore the Government is given a free hand in raising, the entire borrowings to the tune of Rs. 1.1 trillion through domestic and foreign loans at interest rates set by those Banks.

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252 Clause 2(1) of the Appropriation Bill

253 Appropriation Bill, 4 Oct. 2013, issued on 07.10.2013 at the Gazette of the Democratic Socialist Republic of Sri Lanka

This reveals that the government can arbitrarily, and without Parliamentary approval, decide to raise loans which will drag the country into a deepening debt crisis.

### ***Inadequate State response worsening crisis***

In 2013, the Sri Lankan Rupee depreciated 3.6% and is now under heavy pressure due to the lack of export earnings and reductions in the remittances of expatriate workers. The situation has worsened due increased demands of importers and failure to obtain the necessary foreign direct investments (FDI). In 2013, the government encouraged financial institutions and the commercial and state banks to take international loans. Following this the Sampath Bank of Sri Lanka raised USD \$ 500 million from international markets. Further, the National Savings Bank of Sri Lanka also issued bonds worth USD \$ 800 million for a 5 year bond plan. In addition, the Central Bank of Sri Lanka also relaxed financial regulations, allowing the private sector Banks to apply for international loans.

The continuing trend in demanding foreign currencies for a higher rate of imports would create further depreciation of the Rupee. Further depreciation of the Rupee would create even more pressure on the government to repay its loans and the private entities and the banks would also face the same pressure. Thus pressure escalating on these main institutions would eventually result in the collapse of the basic national institutions in the country, as explained earlier.

## **Past Human Rights Violations, Including Alleged War Crimes**

Sri Lanka does not have a tradition of investigating allegations of gross violations of human rights, particularly associated with periods of insurgencies during its post-independence history. Beginning early 1971 there had been allegations of serious violations such as large scale killings following arrests and forced disappearances. There had also been allegations of serious violations relating to torture and ill-treatment during the aftermath of the 1971 insurgency. The total number of people allegedly killed, most following arrests and forced detention in the immediate aftermath of the 1971 insurgency, is estimated at around 10,000 persons.

In the South, a further period of insurgency and counter insurgency related violence took place between 1987 and 1991. According to reports of several Commissions appointed to inquire into involuntary disappearances, the figure was set around 30,000 people, all of whom were alleged to have been abducted or disappeared during this period. Despite the availability of such extensive information, no serious criminal investigation was ever carried out regarding these allegations.

In the North and East, from the early 1980s till May 2009, there had been a protracted conflict, where both the LTTE and the Sri Lankan armed forces stand accused of conducting extraordinary forms of cruelty and violence, some of which have been characterized as possible war crimes. Particular attention has been drawn to the final period of the conflict, a time which saw serious allegations of killings in large scale of civilians, rape of women, forced disappearances, torture, and other forms of violence made against both the LTTE and the Sri Lankan armed forces.

This particular conflict was one of extraordinary confrontations, described by one President as a “killing match”. The LTTE claimed that the only means of penetrating the defences of the armed forces was the use of suicide bombers, and it engaged on a mass scale in the training and use of this tactic. To meet the demands of this cruel and gruesome conflict, it is alleged that many persons were forcibly recruited by the LTTE into their ranks including children. The retaliation by the armed forces was also extraordinarily violent in nature.

In a phase that is demanding inquiries into all violations, the Government's official stand, is that raking the past will only serve to create fresh wounds and therefore the approach should be one of “restorative justice” – the resettlement and rehabilitation of rather than criminal justice. However, this approach is unable to create the necessary environment for a full revelation of what has taken place on the ground. It is rather an abuse of the principle tenets of restorative justice, to claim that justice can be meted out in while ignoring what has taken place on the ground.

The Government is set to lose a lot by allowing any type of real investigation into what took place during the time in question. It is obvious that the Government is already aware of the many details of the actual events. Therefore, obstructing a criminal investigation is more for the purpose of burying even the available evidence and thus to create a vacuum in history or a memory loss relating to this entire period of the conflict. However, the very enterprise of attempting to create a memory loss is an unrealistic project as

there are large numbers of survivors of violence both from the LTTE as well as from of Government armed forces. While many of these individuals are living in the north and east of Sri Lanka, there are others who live in other parts of the country and others still who live outside of Sri Lanka. To demand that all these persons should suppress whatever knowledge they have of what happened is to make an impossible, unreasonable, and cruel demand, which in any case is asking them to deny justice itself.

At minimum people who have become victims of violence and injustice should be allowed to tell their story the rest of the society. No Government has a right to refuse the opportunity and the people also have to know that such demands are being made of those who have lived through extraordinary forms of suffering. Such demands are a direct challenge to the moral and ethical foundations of the entire society. By making such a demand, the Government of Sri Lanka is pushing the Sri Lankan society into a situation which cannot be justified in any manner whatsoever. If this approach proposed by the Government is to succeed, the Sri Lankan State will remain in a state of ethical and moral chaos for a long time to come.

Preventing people who are suffering from pain from speaking out could be done only by imposing extraordinary forms of repression throughout the country. It is only if the people live in a state of extraordinary fear that they would keep silent about their pain and suffering. Therefore, the large scale presence of the military and the intelligence services, in the north and east in particular, as well as the methods discussed previously in this report, should come as no surprise.

While such a presence may have been a result of many considerations, keeping the people silent about their own grievances is certainly a persistent reason for the armed forces to remain in these areas in large numbers.

Providing opportunities for people to state what has happened to them, to speak out concerning their suffering, and to be heard should become one of the major issues of political and social discourse in Sri Lanka. The reason for this is the resolution which the United States of America placed before the United Nations Human Rights Council last year. This resolution will reach a crucial stage during the sessions of the Council, fixed for March 2014.

The gist of the demands now is that either the Government should make genuine and credible investigations possible or pressure will be exercised on the HRC to initiate an international inquiry. For anyone who takes a balanced



view, it is impossible not to support this basic demand on the Sri Lankan Government as it is simply an unavoidable, legal ethical, and moral obligation to provide for such an inquiry through its own initiative. People of Sri Lanka have a legitimate right (and an obligation) to demand that the Government complies.

## **Conclusion: The Future**

Human Rights strategies of all different groups, local and international, those who have interest in the general human rights situation and those who have specific interests (for example issues relating to minorities, gender, children, migrant workers and others), should all learn to converge around a common strategy for the defense of themselves and their rights if they are not to become victims of the formidable and adverse political environment growing in Sri Lanka. Merely maintaining narrow interests, for whatever reason and regardless of benevolent intent, will only bring greater danger to each of these groups as well as to everyone in general.

The development of common strategies around which everyone can converge requires agreement on the overall situation and the common problems faced by all. If one were to apply a metaphor used by perhaps one of the greatest thinkers of our times John Rawls, we should be able to stand behind “the veil of ignorance”, where we could forget purely from a strategic point of view, the specificities of individuals or specific groups and look to the basic dangers faced by all. This is the necessary pre-condition for developing a collective agreement and a collective will to fight against the great political evil that poses a danger to everyone. In this regard, the following aspects are unavoidable: the development of a common strategy between the minorities and the majority on the basis of common and obvious threats faced by the entire population to all of their basic rights.

If the “authoritarian project” expands further, and if the armed forces are absorbed into that project and Sri Lanka becomes a beehive for intelligence services, there is no hope of a decent life for anyone in the land. This is the common danger, which must be understood despite the grave distrust and great amount of bitterness that exists between the minorities and the majority community. It is still possible on the basis of common interests to get together and to put up a determined fight for survival. If all the intelligent and the creative energies of the more thoughtful and articulate elements of the country put their heads and emotions together, Sri Lankans can organize themselves

together, as they have in the past, as they demonstrated in the 1953 “Hartal”. There is a reason, more so today, for that kind of genuine and realistic unity which requires much more than mere sentimental speeches of unity.

The international community needs to understand that the threat is faced by the entire population and all the systems within Sri Lanka. During the long conflict, between the LTTE and the Sri Lankan military, the world at large misperceived the Sri Lankan problem as purely an ethnic conflict. Without doubt, there were serious aspects of ethnicity and discrimination of the minorities; however, the overall problem that developed in Sri Lanka since the Constitutions of 1972 and 1978 was one of undermining the democratic framework and the people it should represent. Unfortunately, it seems that the international community has yet to come to grips with the totality of this situation, although there had been some understanding within the United Nations and within the developed world.

It is in the best interest of everyone in Sri Lanka - irrespective of whatever community they belong – to bring about a common understanding within the international community of the totality of this problem that all Sri Lankans face today. Every step that the international community might take, without understanding the overall situation, could result in extreme and great divisions in the country which could further damage the fragile situation. It is to be hoped that the perspective within the international community will be based on an understanding that encompasses the totality of the problem and will be on a basis that is just, towards everyone.

Back to democracy, back to the rule of law, and an end to the “authoritarian project”, which includes the military, should be the overall perspective and the slogan for the future if the despicable and dismal situation that Sri Lanka now finds itself in is to come to an end.



# CHAPTER VII



ASIAN HUMAN RIGHTS COMMISSION

# THE PHILIPPINES



# THE PHILIPPINES

## **'LICENCED' TO TORTURE, KILL & TO SILENCE THE OPPRESSED**

### **Introduction**

In last year's human rights report, we took note of the strengthening of the normative legal framework on the protection of rights and the efforts by victims and their families of these violations by testing the efficacy of these remedies. We have raised concern on their effectiveness due to many reasons, notably the deeply flawed justice institutions. We also took note of the emerging confidence, real or imagined, in obtaining remedies from violations of these rights by the victims and their families.

Our report for 2013 will reflect on the state of the country's human rights by examining whether remedies for violations of rights, including torture, extrajudicial execution, enforced disappearance and so on, have been obtained and are consistent with the strengthening of the legal framework. We will examine the emerging trends and reasons why there were remedies in some cases, and none at all in others. We will comment on the social and political reasons for this. Furthermore, we will provide updates on the ongoing negotiations for political solution to the Mindanao question.

In our previous reports, we provided details and explanations on the reasons for the absence of remedy, but this report will try to articulate, after examining the cases it has documented this year and in the past, the reasons why, despite the severity and intensity of violations of fundamental rights, they continue to happen. For the most part these cases do not obtain adequate remedy due to the country's thriving social and political structure. It should not come as a surprise, regardless of the nature and severity of violations, that they are ignored because the country's institutions of justice operate to protect certain parties and persons and not the individual citizen.

In writing this report, another incident drew the attention of the international community: the renewed fighting in southern and central Mindanao, in

response to the ongoing peace negotiations between the government and largest rebel group, the Moro Islamic Liberation Front (MILF). There is a section on this commenting on the implications of these events on the protection of rights.

## **De Facto Licence to Kill, Torture, Fabricate Charges & Disappear Persons**

### ***License to kill***

Cases of targeted extrajudicial killings, torture and disappearances were still evident this year. While there was a reduction in the frequency of deaths this was not an indication that the condition has improved. The targeting of human rights and political activists who are deeply engaged in assisting victims or seeking remedies on violations of fundamental rights continue unabated. The reason why these attacks continue and why victims are not going to get a remedy is due to de facto license by the police, soldiers and the public officials to commit criminal acts and human rights abuses without repercussion.

The strengthening of a legal framework fails to displace, if not restructure, flaws in the process of investigation, prosecution and the adjudication of cases. The effect of how the prosecution and the judiciary operate is not to hold perpetrators accountable for their crimes, but rather provide justifications to legitimize their acts. Legally murder and torture are crimes, but victims of these crimes have consistently failed to obtain adequate remedy due to the subversion of legal process. The institution that should prosecute and adjudicate these crimes allows the perpetrators to get away with them.

One example is the prosecutor's decision not to take action against the soldiers who killed Juvy Capion and her two boys, in Tampakan, South Cotabato in October 2012. Capion was a member of an organization of the Blaan tribe who was opposed to the entry of Xstrata-Sagittarius Mines, Inc. (SMI). In our last year's report<sup>254</sup>, we noted that it is "likely that there will be no redress for new cases of massacre." Juvy and her two sons were inside their house preparing for her children to go to school when the soldiers open fired at them. The prosecutor's decision was in contradiction to the conclusive findings of the

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254 AHRC: The State of Human Rights in 2012: "Philippines: Strong rights, No remedy," p. 9-10, can be accessed at: <http://www.humanrights.asia/resources/hrreport/2012/ahrc-spr-009-2012.pdf>

Commission on Human Rights (CHR) who concluded, after conducting its investigation, that the soldiers breached the 'rules of engagement',<sup>255</sup> and that they were liable for the deaths.

The outcome in Capion's case was not surprising. In fact, there had been many cases of murder and extrajudicial killings where victims have not obtained remedy at all, even when the case reaches court and is tried for many years. The reasons for this are the soldiers and the police claim, as their defense, that these deaths were the result of a 'legitimate encounter,' it implies that victims had been killed in an armed encounter. The prosecutors and judges rely heavily on their arguments as against the evidence presented to them in court. The prosecutors and judges, in effect, abdicate their role of investigating whether the victims were armed and fired at the soldiers, whether or not they are rebels. They merely rely on what the soldiers and police say.

This explains the case in the killing of Bacar Japalali and his wife, Carmen. After nine years of trial, in October this year the court acquitted the soldiers from charges despite compelling testimonial and forensic evidence that they killed Bacar and his pregnant wife, Carmen, while they were sleeping in their home in Tagum City, Mindanao in September 2004.<sup>256</sup> This was despite the soldiers' admission that they opened fire at the couple's house. The court's reasoning was based on conjectures to create doubt effectively allowing soldiers to get away with it. It held the soldiers could not have shot at the victims unprovoked because they were veteran soldiers. The testimonies of expert witnesses that the victims proved negative for gunpowder burns; and eyewitnesses, that the couple was asleep and unarmed; were ignored. The husband's body was still inside a mosquito net when he was found.

While prosecutors and judges justify the criminal acts of soldiers and police when they are the accused; in incidents of 'legitimate encounters' where those killed are the police, soldiers and those who work for them, anyone can be charged, arrested and detained, issued with arrest orders, prosecuted, and tried. This happens regardless of whether there is convincing evidence that could illustrate that there was 'probable cause' that the accused could have perpetrated the crime or there was 'cause of action' to prosecute.

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255 Mindanews, "CHR to sue military for killing of tribal leader's wife, 2 sons in Tampakan," 17 February 2013, can be accessed at: <http://www.mindanews.com/environment/2013/02/17/chr-to-sue-military-for-killing-of-tribal-leaders-wife-2-sons-in-tampakan/>

256 AHRC Forwarded Statement, "TFDP assails judge for the military's acquittal in couple's slay" 14 November 2013 can be accessed at: <http://www.humanrights.asia/news/forwarded-news/AHRC-FPR-050-2013>



In cases of 'legitimate encounters,' often it is the word of the victims and witnesses who survived the attack as against the accounts of the military or the police. We have already demonstrated that the prosecutors and the judges tend to rely heavily on the police and the military's version of the account of the incident. The police and the military are presumed to be acting according to law; thus, unless the victims or the witnesses could show proof that the accused acted otherwise, they have leverage in the judicial process. It is assumed that the difficulties in proving convincing evidence of the police or soldier's intent to kill was said to be due to the absence of documentation, such as video recording.

In practice, where there are strong evidence, including video recordings, of the police and the military's act of killing or torture, the prosecutors do not act promptly. Take the case of 17-year-old Arnel Leonor,<sup>257</sup> a boy who was killed during a violent demolition by the police of houses in April 23, 2012 in Paranaque City. It took over a year for the National Bureau of Investigation (NBI) to complete its investigation into the boy's death, and even after completing its investigation the victim's families were not given copies of it despite their repeated requests from the NBI. The victim's mother, Glenda, has yet to know the reason of her son's death and the wounding of other villagers.

This is despite clear evidence, as shown in this video,<sup>258</sup> of the use of excessive and disproportionate force against the informal settlers in the Silverio Compound in Paranaque City, Metro Manila, who opposed the demolition. What happened to Arnel Leonor and his fellow villagers is no different to other informal settlers who have been killed and wounded after they were violently attacked by the dispersing demolition teams. It happened to John Khali Lagrimas,<sup>259</sup> a 14-year-old boy, who was killed when a demolition team fired live ammunition at him in San Roque village, Tarlac City in October 12, 2012; and to three persons,<sup>260</sup> including a 7-year-old boy, who were killed when the policemen opened fired at the informal settlers who resisted demolition in Pasay City in November 23, 2009.

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257 AHRC Open Letter, "Release investigation report of boy's killing during demolition to his mother," 21 February 2013, can be accessed at: <http://www.humanrights.asia/news/ahrc-news/AHRC-OLT-006-2013>

258 Tudla Productions, "Silverio Demolition: Rapid fire. Almost 30 gun shots rang in a minute," 24 April 2012, can be accessed at: <http://www.youtube.com/watch?v=hU7ZOeiKj-I>

259 AHRC Urgent Appeals, "Killing of a 14-year-old boy due to live ammunition used during forced evictions in Tarlac City," 12 October 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-181-2012>

260 AHRC Urgent Appeals, "Three people die, including a 7-year-old boy, when policemen illegally demolish shanties of informal settlers," 23 November 2009, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-159-2009>

To our knowledge, none of the policemen and government officials involved in Arnel Leonor's death and the wounding of villagers has been charged since the incident happened. Despite the deep concern that we have expressed on this, our appeals were not acted upon. It is evident that even when there is clear and convincing evidence of the police act of killing, there is no guarantee that the prosecution of cases would be prompt. This delay is clearly due to the deliberate act of depriving the victims and complainants access to information and the lack of transparency in investigation.

### *License to fabricate cases*

These cases include human rights and political activists, who have been routinely, systematically and in a widespread scale, charged for ambushes despite their strong testimonial and documentary evidence and defense of alibis to show they were not physically present at the crime scene. Some accused are too weak, sick and ill, to carry out such attacks; and some have not even been to the place where the crime occurred in their entire life. But nevertheless they were included in the charges.

In Luzon, this includes the murder charges laid on Roy Velez, of the Kilusang Mayo Uno (KMU), and Amelita Gamara, of Defend Job Philippines, and other activists who were charged for supposedly attacking a military camp in Barangay Maot, Labo, Camarines Norte that killed four soldiers on April 29, 2012.<sup>261</sup> In addition to this case, Roy and Amelita, and other activists, namely Randy Vargas, Raul Camposano and Rene Abiva, were also charged with murder for supposedly attacking a convoy of soldiers in an attack on April 25, 2012 that killed ten soldiers and a civilian in Barangay Gumbang, Tinoc, and Ifugao.<sup>262</sup>

In these two cases, the inclusion of the names of the accused in the charge sheet was based on testimonial evidence by persons who claimed to be former rebels, and is under the supervision and control of the military as intelligence assets. Legally, prosecution of a person for criminal offenses must satisfy the test of probability; however, in these two cases, the prosecutors and judges relied

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261 AHRC Urgent Appeals," Two urban poor leaders and 30 others falsely charged with murder," 19 December 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-036-2012/>

262 AHRC Urgent Appeals," Arrest order on activists laid with fabricated charges of murder cancelled," 27 August 2013, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-025-2013>

heavily on testimonies of the military assets in resolving that there was a case for the accused to answer in court and in their issuance of arrest orders respectively. Neither were the witnesses present at the crime scene nor the soldiers who survived from the fighting had personal knowledge the victim committed the crime.

The prosecution of human rights and political activists in the murder cases in Labo, Camarines Norte on April 29, 2012 and Tinoc, Ifugao, on April 25, 2012, therefore were based on assumption that, since the witnesses were former rebels, thus they must have personal knowledge of other rebels who perpetrated the attacks and the accused named in the charges, whom they claimed are the same persons. However, in this particular case the place where the murder happened could not possibly have been perpetrated by the accused as it was too far from each other's place of residence. Also, Amelita Gamara, one of the accused, was too weak and ill to travel from one place to another.

In the Visayas, Zara Alvarez, a licensed school teacher and staff member of the Northern Negros Alliance of Human Rights Advocates (NNAHRA), and Anecita Rojo, a church worker, were prosecuted on false charges of robbery in band<sup>263</sup> together with 31 other human rights and political activists in Sagay City, on July 16, 2011; and for murder,<sup>264</sup> for the death of a soldier in an armed encounter in Cadiz City, Negros Occidental on in March 7, 2010. Zara is the co-accused of Ronald Ian Evidente,<sup>265</sup> a trade union organizer and spokesperson of Kilusang Mayo Uno (KMU), in the robbery in band case. He pleaded not guilty.

In Mindanao, the fabricated murder charges on Temogen "Cocoy" Tulawie, an indigenous human rights activist from Sulu, has not been withdrawn by the prosecutors despite compelling evidence that the evidence used by the prosecution on him are taken by way of forced confessions.<sup>266</sup> Temogen is

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263 AHRC Urgent Appeals, "Falsely charged labour leader submits himself to trial to clear his name and those of others," 29 August 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-152-2012>

264 AHRC Urgent Appeals, "Another two falsely charged activists to be arraigned for robbery tomorrow," 27 May 2013, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-017-2013>

265 AHRC Urgent Appeals, "Falsely charged labour leader submits himself to trial to clear his name and those of others," 29 August 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-152-2012>

266 AHRC Urgent Appeals, "False murder charges on activist must be dropped," 26 January 2013, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-002-2012>

charged for multiple frustrated murders and multiple attempted murders<sup>267</sup> for allegedly ‘masterminding’ and ‘plotting’ to assassinate Abdusakur Tan, present vice governor of Sulu, in a bomb attack in Patikul, Sulu on May 13, 2009.

This kind of practice by the soldiers and the police to keep witnesses, usually self-proclaimed former rebels and terrorists, in their custody ready to testify on any crime to support the military’s version in criminal cases against persons they had pre-conception of arresting, detaining and prosecuting in courts, is done routinely, systematically and on a widespread scale. We have observed, not only this year, but also in our previous reporting that this kind of pattern is systemic targeting human rights and political activists.

For example, in 2010, there is the case of eleven human rights and political activists who were prosecuted on fabricated charges.<sup>268</sup> The prosecutors used the testimony of a witness who was under the custody of the soldiers. He claimed the accused had supposedly launched an attack on an army camp that killed a military officer, a civilian and wounded four other soldiers in Pili, Camarines Sur, in May 25, 2006.

In 2009 we reported the case of labour lawyer Remegio Saladero and 19 other human rights and political activists<sup>269</sup> were falsely charged with arson and conspiracy to commit rebellion for allegedly burning a cell site in Lemery, Batangas on August 2, 2008; and for murders and multiple attempted murders in an ambush of policemen on March 3, 2006 in Puerto Galera, Oriental Mindoro. They were exonerated after spending months in jail.

In effect the police and the prosecutors have violated these victims’ fundamental rights and freedom from arbitrary arrest, detention, fair trial, to be heard and to confront the witnesses against her or him in court, and so on. Under the law, witnesses for criminal trial must be under the custody of the Witness Protection Program (WPP), under the oversight and supervision of the Department of Justice (DoJ). The reason for this is to ensure that witnesses are not only safe

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267 AHRC Statement, “Temogen Tulawie case - prosecutors uses forced confessions as evidence,” 16 January 2012, can be accessed at: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-011-2012>

268 AHRC, “Philippines: The State of Human Rights in 2010,” 10 December 2010, p. 3-4, can be accessed at: <http://www.humanrights.asia/resources/hrreport/2010/AHRC-SPR-008-2010.pdf>

269 AHRC, “Philippines: The State of Human Rights in 2009,” 10 December 2009, p. 12-13, can be accessed at: <http://www.humanrights.asia/resources/hrreport/2009/AHRC-SPR-007-2009-Philippines-HRReport2009.pdf>

and protected, but also to keep the credibility and integrity of the testimony they are giving in court. But when it comes to the military their witnesses are kept in their custody, neither the prosecutors nor the court judges question their credibility and their testimonies in trial.

In cases involving the government's counter insurgency and terrorism campaign, the use of questionable and false witnesses by the police and soldiers is a commonplace. There are supposed to be adequate legal safeguards vested upon the authority of the prosecutors in filing criminal offenders in court. Ideally, the police ought to conduct effective investigations to collect evidence to be used by prosecutors. In weighing the evidence the police provided, the public prosecutors are supposed to examine thoroughly whether there is a 'probable cause' that could justify prosecuting the accused.

### ***License to torture***

The abdication by the police and the prosecutors from their obligation to observe this legal safeguard has resulted in either commission of or increase risk of torture. These are one of the manifold reasons why police, military and other agents of the states torture suspects and get away with violating the Anti-Torture Act of 2009. The prosecutor has become similar to the police motivated by showing to the public that a person or groups of persons have been arrested, detained and charged for crimes, regardless of whether the evidence they had on hand for the prosecution had established the probability that a crime has been committed and the of the accused are ascertained.

Ideally, the police and the prosecution system should operate not only to protect the interest of the State, but they should also ensure that in exercising this authority the fundamental rights and freedoms of the accused are not violated. However, in numerous cases, the existing Anti-Torture Act has neither prevented nor restrained the police and the military from repeatedly committing acts of torture in investigating cases.

In Mindanao, Saldy Sultan Pangsayan, a street vendor, of Katoli, Sultan Kudarat was arrested on September 8. The police tortured, detained and laid fabricated charges on him after he returned a mobile phone to its owner, which he and his wife, Saguera, found in General Santos City. Saldy was to return a mobile phone to the owner, who promised to give him money as a reward, but connived with the police in fabricating charges against him that he stole the mobile phone and that he was extorting money from her.

Apart from Saldy, there have been numerous documented cases of torture committed by the policemen in General Santos City. In fact, Saldy was arrested, tortured and detained by policemen attached to the same police station who tortured Anuar Hasim, 30, a tricycle (rickshaw) driver, in April 2010; and Misuari Kamid, a utility man of Malapatan, Sarangani Province, was also tortured by policemen in the same city in April 2010,<sup>270</sup> after the Anti-Torture Act took effect, and many other torture victims even before the law was enacted. Like the torture of Hamsa Pedro, market labourer, whom police abducted 18 June 2005;<sup>271</sup> and Alex Salipada, an Imam, who was abducted on 20 June 2005. None of these cases have resulted in the punishment of the torturers for their crimes.

However, while the torturers avoid punishment, the torture victims have to endure many years of trial to prove their innocence, and even after they are cleared from the fabricated charges, like in the case of Jejhon Macalinsal,<sup>272</sup> they have been unable to obtain any sort of remedy. Jejhon is one of the three men who were falsely charged in bombing a mall in April 2004. It is clear that for nearly a decade now the policemen in General Santos City have been repeatedly torturing suspects with impunity.

Unlike Jejhon, in Luzon other former torture victims, like Aristedes Sarmiento,<sup>273</sup> a victim who still suffers from the torture he experienced in April 2006 have been rearrested on July 16, 2013. Aristedes, a peasant activist, is one of the five victims collectively known as the Tagaytay Five, who had been cleared of charges two years after they were arrested. Aristedes was arrested on this time occasion on allegations that he and a person named "Alias Ka Nikki/ Ka Liling," one of the persons responsible in the murder of Police Officer 3 Diosdado Corilla on January 30, 2011 in Atimonan, Quezon, is one and the same person.

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270 *Article 2*, Special Report: Torture in the Philippines & the unfulfilled promise of the 1987 Constitution, Vol. 10 - No. 01 March 2011, "Eleven recent cases of torture in the Philippines," can be accessed at: <http://www.article2.org/mainfile.php/1001/390/>

271 AHRC Urgent Appeals, "Trial of two men tortured and falsely charged seven years ago drags on," 8 October 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-178-2012>

272 Danilo Reyes, "The narrative of a torture victim: a quest to clear one's name eleven years on," 24 October 2013, can be accessed at: <http://www.humanrights.asia/news/ahrc-news/AHRC-ART-120-2013>

273 AHRC Statement, "Torture victim rearrested: unchecked prosecutorial power leads to fabrication of charges," 4 September 2013, can be accessed at: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-164-2013>

In Aristedes's case, the evidence put forward by the Prosecutor for including Aristedes and four others in the case are sworn statements by witnesses, who claimed to be former rebels but are also under the custody of the military. They claimed to know all of the accused. But nothing in their testimony supports the fact that they had personal knowledge of the crime Aristedes was alleged to have committed or were in any way present when the accused allegedly committed the crime.

The arrest of Aristedes, however, is more of showing to the public that the police and the prosecutors have been able to arrest and prosecute those responsible for murdering a policeman than the pursuit of the real suspects. The motivation to arrest Aristedes this time is likely similar to the reason why the police arrested him and four of other human rights and political activists for rebellion in April 2006. Like, Aristedes his co-accused, Riel Custodio, Axel Pinpin, Enrico Ybanez, Michael Mesias,<sup>274</sup> were tortured in custody of the navy and police officers. Axel<sup>275</sup> and Riel<sup>276</sup> narrated their experiences in an interview. All of them were acquitted from the fabricated charges of rebellion.

Not only Aristedes, but even ordinary persons like Rolly Panesa,<sup>277</sup> a security guard, who had no involvement whatsoever in any political activities at all, have been arrested, tortured and detained in October 2012. He was to stand trial under the name of a person, Benjamin Mendoza, who is not him; however, in August this year, the court held Rolly is not Benjamin, and granted his petition for *habeas corpus* ordering his release from detention. The military appealed the court's decision questioning its jurisdiction to hear Rolly's petition for *habeas corpus*. The military's challenge over the decision, however, evolved beyond whether or not Rolly is Benjamin, but what is at stake for the military.

Based on a report by Karapatan, a local human rights group, Gen. Emmanuel Bautista, the chief of staff of the Armed Forces, handed over 5.6 million peso

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274 AHRC Urgent Appeals, "Five missing persons are allegedly being detained in the army camp in Lipa City," 30 April 2006, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/UA-143-2006/>

275 AHRC Press Release, "Torture survivor recalls his dark experience in a video interview," 24 June 2009, can be accessed at: <http://www.humanrights.asia/news/press-releases/AHRC-PRL-028-2009>

276 Torture victims speak out--"I cannot easily trust the police and military anymore" -- Interview 3, 31 March 2011, can be accessed at: <http://www.humanrights.asia/opinions/interviews/AHRC-ETC-018-2011>

277 Karapatan Human Rights Update, "Military abducted and tortured security guard and family in Quezon City, Philippines; claimed they were "CPP officials" (UA No: 2012-10-04), 18 October 2012

reward<sup>278</sup> to one of his own military assets who identified Rolly as Benjamin. For the military not concede to the court's decision is not surprising. If they do, they would have to recall the reward they gave, the recognition to their soldiers and police for the arrest of a supposed top communist, and most importantly, no one could be charged for criminal offenses the rebels are alleged to have committed. Thus, it explains why Rolly must be Benjamin. It is for this reason too, that the police and soldiers tortured Rolly to force him into admitting he is Benjamin.

In Mindanao, arresting, torturing and prosecuting persons in the place of the real accused is common place. Mohjeennar Dagam Cabalo,<sup>279</sup> was an ailing man whom the police have illegally arrested and detained as a substitute for a man wanted for bombing in March 5, 2013 in Zamboanga City. The witnesses produced by the soldiers neither had personal knowledge of the bomb blast nor he had seen the victim for identification. They charged the victim because the witness, after looking at the photograph of Mohjeennar the police had secretly taken, Mohjeennar and "Aman Kabalu" 'look the same.' Mohjeennar's family has produced documentary evidence to prove he is not "Aman Kabalu", one of the suspects in the October 5, 2007 bombing in Kidapawan City, but the prosecutors ignored them.

Mohjeennar was not the only person the police and military arrested, detained and falsely charged based on a testimony of witnesses by the soldier, who claimed that the victim and the real suspect are one because they 'look the same' by merely looking at the photographs of the police 'rogues gallery.'

The 'rogues gallery' contains collections of photographs of alleged terrorists, recidivist criminals, and wanted persons, ready to be presented to any victims, complainants and witnesses coming to the police station for identification. In practice, the gallery is not a only collection of faces of alleged criminals but they are often used as evidence by the police to arrest, torture, detain and file criminal charges--from petty theft to serious criminal acts--on any suspects they can get their hands on. They only need a witness who could testify that a person they arrested and the real accused 'look the same'.

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278 Karapatan Human Rights Update, "Anomalous "wanted with rewards" scheme of the AFP" 19 August 2013

279 AHRC Urgent Appeals, "Police justify arrest and detention of an ailing man as a substitute for a wanted man because they 'look the same'," 3 June 2013, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-018-2013>



This is exactly what has happened to Andaman Mokiding Binago.<sup>280</sup> When Andaman was first arrested in November 1, 2010 by the National Bureau of Investigation (NBI) in Davao City, they first accused him for snatching a mobile phone and included his photographs in the ‘rogues gallery’; however, after his photograph was shown to one of the witnesses in a bomb blast at a lottery stall in January 2007 in General Santos City, even though his person and real name is different from the real accused they had him prosecuted for murder in connection to the bomb blast that killed six people and wounding 20 others. Now, Andaman is no longer a petty theft, but a ‘high profile terrorist’.

The case of Andaman and Mohjeennar were not the only, and they will likely not be the last, persons whom the police would be arrested, tortured, detained and falsely charged for supposedly perpetrating murders, ‘terrorist’ activities, and so on. There have been numerous accused, most of them are poor, whom the police and military arrested who are forced to endure the tedious prosecution and trials in court to clear their names. This pattern has continued unabated in recent years.

Similar cases were reported in our previous reports: in 2012, Ramon Dadulo,<sup>281</sup> a villager was prosecuted in place of the real accused, Nasser Malaguia, one of the accused in the 2009 Maguindanao massacre. In 2011, Abdul-Khan Balinting Ajid,<sup>282</sup> a villager was prosecuted because the soldiers insisted that he and the accused in the arrest order is the same person despite the fact that their names are different. They tortured him and set him on fire after his arrest in Sumisip, Basilan on July 23, 2011.

### *License to forcibly disappear*

After 25 years of lobbying, in December 2012, President Benigno Aquino III signed into law the Anti-Enforced Disappearance Act of 2012, making

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280 AHRC Statement, “Negative impact of torture and delay in trial of accused in bomb blast,” 8 November 2013, can be accessed at: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-207-2013>

281 AHRC: Philippines: The State of Human Rights in 2012, p. 4

282 AHRC, State of Human Rights in 2011, “Philippines: In a flawed system of justice: The social & systemic implications are irreparable”, 10 December 2011, p. 12, can be accessed at: <http://www.humanrights.asia/resources/hrreport/2011/AHRC-SPR-009-2011/>; for details of his case, see AHRC Urgent Appeals, “Soldiers torture a man and set him on fire,” 8 September 2011, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-157-2011>

Philippines the first country in Asia to criminalise enforced disappearance. However, neither prior to or after the enactment of this law have victims of enforced disappearances, their families and those who support them, obtained remedy, notably the 14 cases of disappearances documented in the last three years, based on the reports by Karapatan, a local human rights group.

A month after the law took effect, Sheikh Bashier Mursalum, a Muslim scholar and Muin Kahal Hamja,<sup>283</sup> whose brother was earlier briefly disappeared and located in police custody, were abducted from their home in Basilan in January. They were never seen again. None of those responsible for their disappearance have been prosecuted. And for families of disappeared victims Jonas Burgos, who disappeared in 2007; James Balao<sup>284</sup> in 2008; Sherlyn Cadapan and Karen Empeno in 2006,<sup>285</sup> who choose to seek legal remedies, their pursuit for remedy for the punishment of the perpetrators and to ascertain their whereabouts has been arduous.

With or without this specific law on enforced disappearance, police or soldiers who are responsible for disappearing victims have yet to be held to account. Notorious among them is the retired Major General Jovito Palparan, who was responsible for the disappearance of Sherlyn Cadapan and Karen Empeno. Palparan and his accomplices have yet to be arrested, detained and convicted for these crimes seven years on.

There are systemic reasons why Palparan will not be arrested anytime soon.<sup>286</sup> It is not due to the difficulty of locating him but because he still has connections and influence in the military. The inability of the government, despite their enormous resources in intelligence gathering; and the breadth of the security forces, scattered all over the country which monitor and arrest wanted persons, demonstrates that after decades of authoritarian rule the influence of the

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283 Karapatan Press Release, "Two cases of disappearance reported to human rights groups after enactment of Anti-Enforced Disappearance Law," 28 January 2013, can be accessed at: <http://www.karapatan.org/Two+cases+of+disappearance+reported+to+human+rights+groups+after+enactment+of+Anti-Enforced+Disappearance+Law>

284 AHRC Urgent Appeals, "Human rights activist disappears; subject of overt surveillance," 8 October 2008, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-222-2008>

285 AHRC Urgent Appeals, "Two female student activists and a peasant forcibly abducted and disappeared; one of the victims is pregnant," 20 June 2006, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/UA-245-2006>

286 AHRC Statement, "The importance of arresting retired general Jovito Palparan Jr.," 30 March 2012, can be accessed at: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-075-2012>

military establishment remains deeply embedded in the security apparatus. The emerging interference by the Armed Forces of the Philippines in the judicial processes<sup>287</sup> is proof of this.

While Palparan cannot be arrested, the police or other non military persons who torture and forcibly disappear their victims, like Senior Inspector Joselito Binayug, a police officer in Manila City who was caught on video in August 2010, torturing Darius Evangelista, a suspected thief, was arrested. Binayug and other policemen who were charged under the Anti-Torture Act of 2009 for the torture of Darius and his subsequent disappearance, have been arrested,<sup>288</sup> detained and are now being tried in court. Therefore, while it is possible to arrest perpetrators who are policemen, for some reason there is difficulty in arresting and prosecuting soldiers who are charged with torture and disappearance.

This explains some of the reasons why the whereabouts of Benjamin Villeno,<sup>289</sup> a labour leader who disappeared in August 27, 2013, could not be easily ascertained even though he himself sent an SMS message to his colleague “he was being followed by persons he believed to be military men” somewhere in Cavite. Not only was his family and colleagues unable to locate his whereabouts, none of the government institutions, like the police, the Commission on Human Rights (CHR), amongst others, are known to have intervened or conducted their own investigation in line with the Anti-Enforced Disappearance Act. This also explains why local organisations, notably those engaged in human rights and political activities, do not take lightly reports of surveillance in their office and amongst their staff members when the culprits are alleged military or their intelligence officers.

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287 AHRC Statement, “Why does the court allow the military to interfere in the judicial process?,” 6 November 2013, can be accessed at: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-200-2013>

288 Philippine Daily Inquirer, “Cop who was caught on camera torturing suspect falls,” 15 April 2013, can be accessed at: <http://newsinfo.inquirer.net/391241/cop-who-was-caught-on-camera-torturing-suspect-falls>; see also AHRC Statement, “Policemen in torture videos: one in jail, another is free,” 30 August 2013, can be accessed at: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-160-2013>

289 AHRC Urgent Appeals, “Labour leader disappeared after he was followed by persons believed to be military personnel in Cavite,” 9 October 2013, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-132-2013>

This includes the case of Sr. Ma. Famita N. Somogod,<sup>290</sup> Sub-Regional Coordinator of the Rural Missionaries of the Philippines in Northern Mindanao (RMP-NMR), who was visited in September 30, by persons who falsely introduced themselves as staff of a funding agency; the threats on Rodel Bonghanoy,<sup>291</sup> a volunteer of the United Farmers of Davao del Sur (Nagkahiusang Mag-uuma sa Davao del Sur [NAMADDS]) by soldiers in Kiblawan, in Davao del Sur in September 1; the renewed surveillance by soldiers on Pastor Junever Mangao,<sup>292</sup> a member of the United Church of Christ in the Philippines (UCCP) in Mabitac, Laguna in August 20; the surveillance by soldiers on Rodolfo “Ka Rudy” Sambajon,<sup>293</sup> Secretary General of Makabayan Coalition-Central Luzon, a local chapter of the Patriotic Coalition (Makabayan), in Orani, Bataan on August 2.

## **Unabated Reprisals Against Journalists, Activists, & Indigenous People**

Human rights defender and political activists are not taking lightly the threats, overt surveillance, and harassment they face. Indeed, it is clear evidence of targeted attacks and unabated reprisals against them. There is clearly a continuing systematic and widespread pattern of attacks targeting particular individuals, and social groups, regardless of whether they are Filipinos or foreigners within the country.

What is common among those targeted are: they are persons or groups who are seeking redress or assisting victims and their families for violation of their rights; those who expose violations of rights committed by police, military and other state agents; those who expose corrupt practices by the government and its officials; and those who challenge the *status quo* of the social and the political structure—like members of the political party opposing the policies of the

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290 AHRC Urgent Appeals, “Overt surveillance on a religious group assisting farmers in Mindanao,” 4 November 2013, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-139-2013>

291 AHRC Urgent Appeals, “Another activist faces threats in Davao del Sur,” 8 October 2013, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-129-2013>

292 AHRC Urgent Appeals, “Renewed surveillance by military agents on a Pastor in Laguna,” 7 October 2013, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-128-2013>

293 AHRC Urgent Appeals, “Overt surveillance on a peasant leader in Bataan,” 3 September 2013, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-115-2013>

government, persons or groups of persons with strong convictions in support of protecting national autonomy and identity from foreign influences.

### ***Reprisals on journalists***

The latest victim of a targeted attack of persons critical of the corrupt practices of the government and the local politicians was Joash Dignos, a radio commentator of “Bombardeyo” at DXGT Radyo Abante in Maramag, Bukidnon. Joash was shot dead by four attackers on November 29, in Valencia City, in Mindanao.<sup>294</sup> His radio program is listened to because it was known for “exposing alleged irregularities by politicians.” Not only broadcast journalists in the community radio but even a well known broadcast journalist, Ces Orena-Drilon, of ABS-CBN, is being threatened<sup>295</sup> for exposing corrupt practices by local officials. In her report, Ces “quoted a source as saying that (lawyer Arnel) Manoloto is being used by the Ampatuans as a “dummy” to hide their assets.”

The murder of Joash adds to the 157 journalists who had been killed in the line of duty since 1986, at least 18 of these were committed since President Benigno Aquino III came to office in 2010, in the record<sup>296</sup> of the National Union of Journalist in the Philippines (NUJP). The threat made on Ces Drilon cannot be taken lightly. Manoloto is the lawyer for the Ampatuans, a political clan who are accused in the killing of 58 people, including 32 journalists and media workers, in the Maguindanao massacre of 23 November 2009. The threats on Ces Drilon demonstrate that anyone who challenges the power and influence of the Ampatuans would suffer the consequence.

Also, the families of the journalists who were killed in the massacre, like Myrna Reblando, widow of Alejandro “Bong” Reblando, one of the journalists killed in the Maguindanao massacre, whose interest is only to seek redress for the death of her husband and other victims of the massacre, are targeted. She has

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294 Mindanews, “Broadcaster gunned down in Valencia City,” 30 November 2013, can be accessed at: <http://www.mindanews.com/top-stories/2013/11/30/broadcaster-gunned-down-in-valencia-city/>

295 ABS CBN, “NUJP condemns threats vs. Ces Drilon,” 25 July 2013, can be accessed at: <http://www.abs-cbnnews.com/nation/metro-manila/07/25/13/nujp-condemns-threats-vs-ces-drilon>

296 Interaksyon, “NUJP blasts Coloma for saying media killings ‘not serious’,” 25 November 2013, can be accessed at: <http://www.interaksyon.com/article/75542/nujp-blasts-coloma-for-saying-media-killings-not-serious>

had to endure a hard life<sup>297</sup> after she was forced to leave the Philippines due to absence of adequate protection. Myrna and other families of the victims have to endure threats, harassment, and overt surveillance, amongst other things, at the same time that they pursue remedies and redress for their loved ones.

Keeping in mind the case of Joash Dignos, Ces Drilon and Myrna Reblando, it is clear that regardless of who the person is—they may be a community journalist, like Joash; a family member of the journalists who were killed, like Myrna; or a known person, like Ces—those who target them do not make any distinction to attack them. This pattern demonstrates the extent and the depth of the absence of adequate protection to those exposing wrongdoings, and those who seek redress for the violations committed on their person. In the Philippines, to some extent, journalists and their families have had some sort of protection, given their level of connection with the known, powerful and influential persons in the government. The extent of reprisals and targeted attacks on journalists and their families demonstrates that no one could be protected.

### ***Reprisals on human rights activists***

If adequate protection for journalists and their families is lacking, the situation of human rights and political activists is far more severe. Unlike journalists, activists not only expose and report on violation of rights, they also criticise the wrongdoing of the government and its institutions, demand from them to ensure remedies are afforded to victims and families, and that those who committed the violation are punished. The work of human rights and political activists is not only targeted at few individuals, but challenging the institutional power structure of the government.

From Mindanao there is the case of Cristina Morales Jose. She was a leader of a group known as Barug Katawhan (Visayan dialect for People, Rise up!). She was shot dead in Bagangga, Davao Oriental, Mindanao, on March 4, 2013,<sup>298</sup>

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297 Philippine Daily Inquirer, "Awaiting justice, massacre widow endures hard life in HK," 29 November 2013, can be accessed at: <http://globalnation.inquirer.net/92651/awaiting-justice-massacre-widow-endures-hard-life-in-hk#ixzz2mDv1zPct>

298 Statement of the Kowloon Union Church, Hong Kong, "Justice for Cristina Morales Jose and all victims of extrajudicial killings and other human rights violations in the Philippines!" 17 March 2013; see also AHRC Urgent Appeals, "Renewed pattern of targeted attacks on human rights and political activists," 6 March 2013, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAG-001-2013/?searchterm=AHRC-UAG-%20%20001-2013>

after questioning the government, notably the Department of Social Welfare and Development (DSWD) for allegedly “hording stacks of rice, that were supposedly distributed to the typhoon-stricken families” including her own village where she was also a councilmember. Cristina was assisting her fellow villagers to get relief goods and food from the government after her village was hit by super typhoon Pablo (international name Bopha). To suppress discontent in the village, soldiers attached to the 67th Infantry Battalion of the Philippine Army (IBPA), have been deployed who reportedly intimidated the residents there.

In another case, transport activist Antonio “Dodong” Petalcorin, Sr.,<sup>299</sup> president of the Davao City-based group, Network of Transport Organizations (NETO), was shot dead in his home in Davao City after he and his group had exposed corruption in the Land Transportation Franchising Regulatory Board (LTFRB) and had called for the resignation of its director, Benjamin Go. Petalcorin’s wife was at home when he was shot. She immediately called the emergency hotline; however, the emergency team, along with policemen, arrived after 15 minutes and by that time he had died of his wounds. In Luzon, in October 19, Elisa Tulid,<sup>300</sup> a land rights activist, was killed in front of her husband and daughter in San Andres, Quezon province. The victim and her family had been demanding the ownership of the land that they cultivate from their landlord. The gunman has been arrested and charged. However, the identities of his accomplices and those who ordered the killing of the victim and her family have yet to be ascertained by the police.

Also, after the cold-blooded murder the daughter of the victim continues to suffer severe trauma but, as of now has not received any form of counseling. The girl remains terrified and panics when hearing a firecracker, any loud noise and falling objects. She also suffers sleepless nights and awakens, crying and calling for her mother.

Not only were these human rights activists killed, even those who obtained quasi-judicial orders which affirmed that their rights have been violated, and obtained orders for the enforcement of their rights, were subjected to

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299 AHRC Urgent Appeals, “Transport leader murdered for exposing corruption in the government transport board,” 5 August 2013, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-103-2013>

300 AHRC Urgent Appeals, “A female land rights activist killed in front of her husband and daughter who remains traumatised,” 15 November 2013, can be accessed at: <http://www.humanrights.asia/news/forwarded-news/AHRC-FUA-004-2013>

reprisals. Typical is the case of the union leaders and workers of the Bleustar Manufacturing and Marketing Corporation (BMMC), a manufacturer of the branded footwear Advan, in Muntinlupa City. In August 2008, we issued an appeal about the illegal dismissal and sexual abuse of these factory workers.<sup>301</sup>

After our appeal, the company signed an agreement on September 22, 2008 with the factory workers at the National Labor Relations Commission (NLRC), agreeing to reinstate all the workers they had illegally terminated and agreed to comply with all their workers' demands. After four years the company has not complied and abrogated from the agreement by imposing policies undermining the workers' employment security and protection.<sup>302</sup> The company imposed forced leave, delayed payment of the worker's salaries, and refused to recognize their union and to negotiate with them. The company is also not giving their social benefits on time.

What happened to the Bleustar workers is no different to the workers of Bacolod Columbia Marketing Inc. (BCMI), a retail company in Bacolod City. In October 20, 2012, we issued an appeal about the illegal dismissal of 26 workers and union leaders.<sup>303</sup> After the workers went on strike, Ms. Rosalinda Baldoz, secretary of the Department of Labor and Employment (DoLE), took over jurisdiction of the labour dispute. By November 9, 2012, Secretary Baldoz instructed the company to allow all the workers and locked out employees to return to work within 24 hours. The company did allow some of the workers to return to work; however, they also imposed numerous repressive policies and measures at the workplace targeting them making it difficult for them to work.<sup>304</sup>

Not only the workers, but also those who support, assist and advocate for the protection of workers' rights have been targeted. Early this year, we reported the

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301 AHRC Urgent Appeals, "Labour department's complicity in unlawful acts deprives sexually abused workers from creating a union," 1 August 2008, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-173-2008/>

302 AHRC Urgent Appeals, "Reprisals on another illegally dismissed workers four years after their reinstatement to work," 5 April 2013, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-012-2013>

303 AHRC Urgent Appeals, "Twenty six workers and union leaders illegally dismissed in Negros," 20 October 2012, can be accessed at: <http://www.humanrights.asia/news/forwarded-news/AHRC-FUA-009-2012/>

304 AHRC Urgent Appeals, "Reprisals against illegally dismissed workers after they were reinstated," 20 March 2013, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-008-2013>



renewed pattern<sup>305</sup> involving ten cases of systematic, widespread and targeted attacks on the human rights and political activists, labour activists belonging to a particular group critical of the government, notably those affiliates of Karapatan.<sup>306</sup>

On May 24, five of their colleagues: namely Jude Baggo, secretary general of the Cordillera Human Rights Alliance; William Bugatti, a paralegal of the Cordillera Human Rights Alliance, in Ifugao; Claudine Panayo and Fernando Alikes, of the Ifugao Resource and Development Center (IRDC) and Willy Kuan of the Regional Development Center - Katinnulong Daguiti Umili ti Amianan a Luzon (RDC-KADUAMI), were harassed, vilified and subject to overt surveillance by the soldiers in Cordillera region.<sup>307</sup>

### ***Reprisal on indigenous people***

Persons or group of persons belonging to the vulnerable section of the society, notably the indigenous minorities, have also been targeted. The expansion of foreign owned and public owned corporations in its exploration in extracting mineral resources, the expansion of mono crop industries, and landlords taking a grip over its ownership of lands rich, either in mineral deposits or potential agricultural lands for mono crops, have also increased tensions in rural areas targeting indigenous groups.

The targeting of the indigenous people, like the murder of Gilbert Paborada,<sup>308</sup> of the Higaonon indigenous tribe, by two unknown men near his home in Puntod, Cagayan de Oro City, for his and his groups opposition to the expansion of the oil palm plantation by a big US-based company, in Misamis Oriental, clearly demonstrates the continued systematic, targeted and widespread attacks on the indigenous groups. There are clear evidences that

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305 AHRC Urgent Appeals, "Renewed pattern of targeted attacks on human rights and political activists," 6 March 2013, can be accessed at: [www.humanrights.asia/news/urgent-appeals/AHRC-UAG-001-2013](http://www.humanrights.asia/news/urgent-appeals/AHRC-UAG-001-2013)

306 "Karapatan condemns the series of arbitrary arrest and illegal detention of civilians, calls it a repeat of mistaken identity cases," 17 September 2013, can be accessed at: <http://www.karapatan.org/Karapatan+condemns+the+series+of+arbitrary+arrest+and+illegal+detention+of+civilians%2C+calls+it+a+repeat+of+mistaken+identity+cas>

307 An email sent to the AHRC by Karapatan, "Threats vs. Rights Defenders, Development Workers in the Cordillera region, Philippines," 24 May 2013, unpublished.

308 AHRC Urgent Appeals, "Another indigenous leader killed for opposing the incursion of a US-based palm oil company," 9 October 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-179-2012>

Gilbert's murder was not an isolated case, but rather part of a widespread pattern of abuse targeting indigenous people.

For example there is the case of Daniedo Cambo, Mylen and Loreto Cambo and two other villagers, Arnel Cambo and Reynaldo Libay.<sup>309</sup> They are indigenous villagers claiming ownership of the ancestral lands from their forefathers in Malalag, Davao del Sur. The Cambos and the Libays are indigenous people who belong to the Taga-Kaulo tribe, an indigenous tribe who cultivates and lives in the land now under control by others private firms. To suppress them, the police connived with the military to file false charges and accused them of being rebels. It was not until we intervened that the police dropped the charges.

A few months after we exposed the case of the Cambos, the police, military and the local intelligence renewed their threats, intimidation and harassment on the same allegations from which they had already been cleared. In September 1, Rodel Bonghanoy,<sup>310</sup> a volunteer of the United Farmers of Davao del Sur, was questioned, harassed and threatened by soldiers for conducting activities in support of the indigenous groups. In an interview with Loreto Cambo,<sup>311</sup> he described how and why, after a year, him and his fellow indigenous tribes, continue to endure harassment and threats by the soldiers, police and those who work for them in the village. In another incident, soldiers have harassed and prevented indigenous villagers,<sup>312</sup> who were displaced *en masse* due to an armed conflict, in Malawanit, Magsaysay, Davao del Sur, from getting access to their farms to harvest crops.

The reprisals and targeted attacks on indigenous people also happened in other parts of the country, such as the island of Luzon. This pattern includes killings, threats, harassment, fabrication of charges, and so on. In November, we reported that the Aeta Tribal people in the provinces of Zambales and

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309 AHRC Urgent Appeals, "Indigenous activist accused of being a rebel is exonerated," 12 November 2012, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-034-2012>

310 AHRC Urgent Appeals, "Another activist faces threats in Davao del Sur," 8 October 2013, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-129-2013>

311 AHRC Article, "Tribute to Loreto Cambo, my Macli-ing Dulag of Davao del Sur," 22 October 2013, can be accessed at: <http://www.humanrights.asia/news/ahrc-news/AHRC-ART-119-2013>

312 AHRC Urgent Appeals, "Soldiers prevent displaced indigenous villagers from access to their farms," 23 May 2013, can be accessed at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-075-2013>

Pampanga, who have been cultivating the 700 hectares of land they inherited from their ancestors, have been laid with fabricated charges, threatened and forcibly evicted from their ancestral land in Porac, Pampanga.<sup>313</sup> This case clearly illustrates that despite the National Commission for the Indigenous People (NCIP), a government agency mandated to protect the indigenous right to own land, declaring the victims indeed own the land they were not immune from targeted attacks.

### **Zamboanga Seige: Attacks on Civilians, Medical Personnel**

In 2009, the Philippine Act on Crimes against International Humanitarian Law, Genocide, and Other Crimes against Humanity, a law that incorporates provisions of international law, was enacted. The law protects civilians, medical personnel and persons who are not taking part in the hostilities<sup>314</sup> from being targeted during internal armed conflict. Domestically, the law cemented the legal framework in protecting and affording redress for civilians and those who are not taking part in the conflict with some legal remedies.

In Mindanao, the enactment of this law did produce expectations that the systematic targeting of civilians, if not justifying the attacks on them as 'collateral damage,' would be minimized if not actually prevented as it is a criminal offence. However, the efficacy of this law and the institutions responsible to enforce it has been tested during the renewed conflict in many parts in Mindanao this year.

One of these incidents was the renewed fighting between government forces and the Moro National Liberation Front (MNLF), under the faction of Nur Misuari, after the latter made siege of Zamboanga City for nine days in September 9, 2013. The fighting erupted after Misuari's forces had reportedly attempted to hoist a flag at the City Hall, seen as a gesture of declaring the Bangsamoro Republik. During the siege, 150 civilians were held hostage and

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313 AHRC Urgent Appeals, "Indigenous people falsely charged, threatened for planting crops on their ancestral land," 21 November 2013, can be accessed at: <http://www.humanrights.asia/news/forwarded-news/AHRC-FUA-005-2013>

314 Section 4 (c) (1 to 4) of the Philippine Act on Crimes against International Humanitarian Law, Genocide, and Other Crimes against Humanity.

used as human shields by the rebels; 90 people were killed<sup>315</sup>. Of those killed, 72 were rebels, eight were soldiers, three were policemen, and the remainder was civilians. Several others were also wounded, including five volunteers from the Philippines Red Cross.<sup>316</sup> The fighting displaced about 26,000 families who were forced to live in evacuation centers and with their relatives.<sup>317</sup>

The fighting briefly spilled over to other parts of Mindanao where other rebels were sympathetic to the Misuari-led MNLF. According to reports received by the AHRC daily from the Mindanao Human Rights Action Centre (MinHRAC), fighting has also erupted in remote villages in the towns of Tuburan, Tipo- tipo and Lamitan, province of Basilan. Basilan is where the Misuari-led rebels have strong followers. Apart from Basilan, there was sporadic and scattered fighting also in Central Mindanao.

It has been widely reported that Misuari's faction of the MNLF refuses to honor the ongoing negotiations between the government and the Moro Islamic Liberation Front (MILF), another rebel group in Mindanao, that would create an improved autonomous region, the Bangsamoro Juridical Entity (BJE). The BJE would absorb the Autonomous Region in Muslim Mindanao (ARMM), the existing autonomous region which was a product of Misuari's peace agreement with the previous government.

The siege in Zamboanga city and the renewed fighting in other parts of Mindanao clearly shows the vulnerability of civilians and their communities, medical personnel, and others not taking part in the hostilities, from being targeted in attacks. The holding of about 150 civilians as hostages and using them as human shields, the injuring of Red Cross volunteers, killing of an elderly person whose house was hit by a mortar attack,<sup>318</sup> are clear evidence that despite the incorporation of the international norms on the protection of

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315 GMA News Online, "Death toll from Zamboanga crisis up to 90 – Armed Forces," 18 September 2013, can be accessed at: <http://www.gmanetwork.com/news/story/326915/news/regions/death-toll-from-zamboanga-crisis-up-to-90-armed-forces>

316 Mindanews, "5 Red Cross volunteers, cop injured in Zambo standoff," 14 September 2013, can be accessed at: <http://www.mindanews.com/top-stories/2013/09/14/5-red-cross-volunteers-cop-injured-in-zambo-standoff/>; see also Philippine Star, "5 Red Cross personnel, 6 others hurt in Zambo grenade attack," 13 September 2013, can be accessed at: <http://www.philstar.com/nation/2013/09/13/1207001/5-red-cross-personnel-6-others-hurt-zambo-grenade-attack>

317 MinHRAC's email to the AHRC, October 4, 2013, unpublished.

318 Interaksyon, "Mortar round kills woman cooking for troops in Zambo," 21 September 2013, can be accessed at: <http://www.interaksyon.com/article/71180/day-13--mortar-round-kills-woman-cooking-for-troops-in-zambo>

civilians in the domestic legal system in the conduct of war between conflict parties, the government's and the rebel's conduct of war in the country remains primitive.

Apart from the above there have been allegations also that rebels whom the soldiers and the police have captured have been tortured.

In the case of a 16-year-old boy<sup>319</sup> who was arrested together with other rebels; the boy claims that he took arms and joined the rebels after his father promised him he would be given cash if he joined a peaceful rally. However, the supposed peaceful rally that he attended ended up in the fierce battle. When the soldiers arrested the boy he was questioned in the absence of a legal counsel, deprived of food and forced to admit he was part of the rebel group by way of psychological torture. The soldiers used the ploy that they had allegedly killed one of his rebel companions, thereby forcing him and the other arrestees to admit they were rebels.

The most serious allegations against the soldiers what that they allegedly opened fired at the civilians while rebels were holding them hostage.<sup>320</sup> The government, however, have yet to publically release the results of its investigation. If this allegation is substantiated, this could be tantamount to violations of crimes against humanity.

## **Conclusion: Impunity is Deeply Systemic**

In conclusion, after thoroughly examining and reviewing the state of human rights in the Philippines in 2013, we have concluded that there is adequate, strong and convincing evidence of a systematic and widespread practice where security forces and state agents violate fundamental rights and freedom with impunity. When we say 'impunity' in this report, we do not mean the absence of punishment alone—but rather the acts of commission or omission by security forces and state agents within the system that condones violation of rights.

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319 AHRC Urgent Appeals, "Torture of a 16-year-old boy caught in a fight between soldiers and rebels," 22 October 2013, can be accessed at: <http://www.humanrights.asia/news/forwarded-news/AHRC-FUA-003-2013>

320 Philippine Star, "Video footage of soldiers firing at civilians mere propaganda," 24 October 2013, can be accessed at: <http://www.philstar.com/headlines/2013/10/24/1248698/video-footage-soldiers-firing-civilians-mere-propaganda>

In this report, we distinguish ‘impunity,’ as it is commonly understood that means perpetrators cannot be punished or get away from their crimes; from ‘impunity,’ as discussed in this report this goes beyond the notion of the ‘absence of punishment’ or ‘the perpetrators getting away’ with punishment. Where impunity is systemic, the strengthening of the legal framework on the protection of rights—like the enactment of laws against torture, enforce disappearance and crimes against humanity, and so on—would become meaningless because the legal system from where victims seek redress has condoned, if not allowed it to happen.

In this report, it is clear that, invariably, perpetrators of torture, disappearance, and so on, have been charged and prosecuted in court. However, these types of cases are exceptions rather than the norm. For example, in torture cases, while low ranking policemen could be prosecuted, arrested and detained, none of the high-ranking policemen and military officers has been prosecuted for torture. Four years after the Anti-Torture Act was enforced, none of the perpetrators of torture have been convicted; and a year after the Anti-Enforced or Involuntary Disappearance Act, none of the whereabouts and the plight of victims whom police and soldiers allegedly made to disappear has been ascertained.

In fact, many of the soldiers who were allegedly involved in committing acts of torture, for example, Brig. Gen. Aurelio Baladad, formerly deputy chief for operations of the Armed Forces of the Philippines (AFP), who was implicated in illegally arresting, torturing and detaining the ‘Morong 43,’ have been promoted.<sup>321</sup> Baladad’s appointment succeeded amidst a protest by the victims and their families about his promotion. Also, Sergeant Jerry Napoles, the military commander and one of the accused in the murder of a couple in their home in Tagum City on September 2004,<sup>322</sup> would now be likely allowed to retire from the military service after having been acquitted by the court.

Not only the police, military and other state agents violate rights with impunity, they also systemically and on a widespread scale, target human rights defenders and political activists, for exposing their criminal acts, and for assisting the victims in seeking redress. The connivance between policemen and the prosecutors in, say using testimonies extracted by way of torture as evidence in courts; the use by prosecutors of fabricated evidence from the police in their

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321 Philippine Stat, “AFP official in ‘Morong 43’ case promoted Army division chief,” 8 July 2013, can be accessed at: <http://www.philstar.com/headlines/2013/07/08/963090/afp-official-morong-43-case-promoted-army-division-chief>

322 See note 3.

criminal prosecutions; and the targeting by the police and the prosecutors of a particular persons or social groups, notably those critical of the government and its policies, in criminal prosecution, are clear evidence of systematic violations of rights.

Thus, the question would arise: can the victims and their families, whose absolute and fundamental rights like freedom from torture are violated, obtain remedies to the violations committed on them, and see their perpetrators punished, should they seek redress? As we demonstrated in this report, obviously there is no evidence or precedence that any violations of rights, notably torture, have obtained adequate remedy. It is good that the legal and normative framework has developed in recent years; however, the prevailing impunity clearly shows that the system of justice that ought to protect rights, is either unable to protect fundamental rights or condones these violations.

# CHAPTER VIII



ASIAN HUMAN RIGHTS COMMISSION

# HUNGER IN ASIA





# A S I A

## **Economic Powerhouse is Home to Hunger**

### **Introduction**

The tale of hunger, as a factor of poverty and malnutrition in Asia, is a baffling one of people who have slipped through the cracks. Such people should enjoy the universal human rights promised to all human beings but they have become invisible. As their states celebrate economic growth and development that, on further examination appears inequitable, it becomes clear that these victims have been left behind in the margins of society. Thus, a substantial section of the population stands at the threshold of poverty and food insecurity due to skewed development policies adopted by their governments, such as the case of the Philippines; in other cases, such as India, there is neglect of communities who are socially and economically exploited and discriminated against on the basis of caste. Apart from these socio-economic factors the geographical terrain and limits to physical access play an important role in poverty and hunger: plains are much more accessible than mountain ranges. In this way, disadvantaged and vulnerable groups have to face numerous obstacles from varying sources to access what should be available to them as a matter of right. While the nature of the problem of hunger and food insecurity manifests itself differently in various countries, it would not be too farfetched to generalize that hunger continues to remain a constant barrier for Asian countries trying to reach their goals of development and equitable growth.

It needs to be understood that hunger and extreme poverty do not persist because of the states' failure to recognize them as real issues, rather it stems from neglect and insensitivity toward the victims throughout the policies of these countries. This is seen in instances where the governments choose to address the concerns of a small but influential minority when formulating plans for development. This collaboration with private partners, exportation of agricultural products, and undertaking of "development projects" often caters

to such influential minorities, and aims to attract tourism, at the expense of local populations.

Left with no other alternative, victims are forced into a lifestyle of migrancy, subjecting them to emotional and physical distress and requiring them to travel vast distances on foot to find employment. These stories play themselves out across Asia with some variation: the exodus to Metro Manila in the Philippines, the flocking to sweatshops in Dhaka, and the disappearance from government records in India are just a few examples. Adding to this unhappy reality are unemployment, poverty, lack of healthcare and educational facilities, a generally poor standard of living, and unsatisfactory working conditions when employment is available. Moreover, the labour available is often outside the skill set of these migrant workers as well, further limiting their options. This, in turn, puts a great stress on the already broken systems of health, education, housing, and other basic needs leading to a cycle that only feeds upon itself.

Politically these problems are often compounded by a neoliberal model of development, shoved down the throats of some of the governments while happily adopted by others, that has left large sections of national populations impoverished by forcing the states to withdraw from welfare schemes and services delivery systems. Suspension of hard earned labour rights in what is referred to as “special economic zones” in India or “export processing zones” in the Philippines has also played a crucial role in victimizing much of the labour force by eliminating many of their rights.

Among the factors perpetuating food insecurity in the region faulty prioritization of concerns by the national elites requires further mention. Nepal is a salient case where the quest of political democracy has pushed everything else, the problem of hunger included, into the background. The country has been in “transition” for too long while the political leadership lets large sections of its population starve. The problem here, though similar to other countries, is aggravated because transnational migration of a largely male population into neighbouring India leaves the women behind to fend for themselves without support.

At the ground level, the issue is exacerbated by delivery mechanisms which are weak and opaque. The fact that corruption is prevalent across Asia is internationally accepted and it is clear that much of the funds meant to reach

the desired target communities rarely reach them intact. Embezzlement, theft, and corruption along the system are part of life in many of these countries and allow only a small amount of funds to reach the intended beneficiary. This malfeasance is guarded by the lack of transparency in the system as no proper checks and balances are maintained.

Most of these countries have ratified or are a signatory to many international covenants which make it mandatory for them to ensure that their citizens are provided with basic rights. In addition, the constitutions of these countries also provide for a right to life and livelihood (though the exact nature of this may vary). However, it seems that the governments routinely ignore their duties, and it falls on other organizations and campaigns in various countries to fight for food security. They do so by pressuring the governments to make food security achievable for citizens; in the case of India, this resulted in the passing of the food security act in 2013. Though it has many limitations, such an act is definitely a positive step given the widespread hunger and malnutrition that has lead to deaths in the country.

Addressing the problems of transparency, corruption, policy planning, grievance redressal mechanisms, and utilizing feedback remains central to making food security a reality. In its endeavour to support the struggle for right to food for everyone, the Right to Food desk of the Asian Human Rights Commission (AHRC) is actively engaged in six Asian countries, though to varying degrees. These countries are India, Nepal, Pakistan, Bangladesh, the Philippines, and Indonesia. The basic idea central to the right to food programme is to change the dominant discourse in these countries that sees right to food as non-justiciable or even a mere favour from the state, and to make this right an inalienable part of right to life with dignity. In other words, the basic objective is to radically restructure the discourse on right to food and make it a right of the people. This can only be achieved through a relentless focus on building an honest delivery mechanism with corresponding facility for addressing grievances. Only in the presence of a strong initiative by the governments of these countries and a strong delivery mechanism can food security be achieved. In the absence of this, relentless pursuit of the faulty policies of inequitable growth will only continue to deepen the crisis already faced by these countries.

Following are short reports of AHRC desk's interventions and experiences at the grassroots in Bangladesh, India, Nepal, and the Philippines.

## **Bangladesh: Extreme Poverty Amidst Spectacular Success**

The fight against hunger in Bangladesh is fraught with hope and despair. Go by the Global Hunger Index 2012, and it is one of the seven countries that made the most “absolute progress” among 120 evaluated countries in slashing rates of hunger from 1990 to 2012. Conversely, it still stands in the “alarming” range. The progress, howsoever piecemeal, was largely accomplished by integrating poverty alleviation, with a focus on vulnerable and marginalized sections, as an integral part of national development strategy in 2008. The strategy worked and resulted in significant reduction of poverty levels in the country: the national incidence of poverty has decreased from 34%, to 25% from 2000 to 2005. This substantial development was also found in human development indicators. The complication, however, is that extreme levels of poverty persisted while these strides in development were being made.

To understand this, consider that the Bangladesh Bureau of Statistics has not been declaring the percentage of the population whose direct calorie intake falls below a threshold of 2122 calories, despite having the necessary data. Instead it noted the 3.56% increase in overall calorie intake per capita per day to 2318.3 K.cal in 2010. This raises serious doubts that the gains achieved by the country during 1990-2005, when it brought down the number of people below the 2122 threshold from 47.5% to 40%, have either been lost or worse. Further, the survey also claimed a significant decrease in the overall incidence of poverty which stood at 31.5% in 2010 compared to 40% in 2005. The analysis put poverty levels at 21.3% (it was 28.4% in 2005) and 35.2 % in rural areas (43.8% in 2005). The survey, again, leaves much to be explained as such a sharp decline in poverty levels in rural areas seems impossible to achieve in a Bangladesh faced with steep price hikes of food baskets turning costlier by 36% in 2011 alone.

Contrast this analysis with the World Bank dollar-a-day standard – the most popular linear scale for poverty - which holds the universal standard of extreme poverty at \$1.25 (USD) a day, and it becomes clear how difficult it can be to address the issue. The World Bank standard does not address the differences in the disparity of poverty where certain regions and sections of the population being more vulnerable to poverty than others. It also does not address the cause of distress migration when populations are forced to relocate to other regions in

search of employment and related facilities for education and health. Invariably the extreme poverty makes it difficult for these populations to achieve a basic minimum standard of living in all spheres. Thus, it relates to hunger and the 1996 World Food Summit definition of food security, “when all people, at all times, have physical and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life,” may actually be more informative.

One area where Bangladesh did succeed was a significant reduction in the number of underweight children; brought down to 36% in 2011 from a precariously high 66% in 2005. There is little to celebrate, though, as this high rate of under nutrition is still unacceptable.

Ensuring food security in Bangladesh has become a challenge largely due to extreme poverty of a sizable section of its population coupled with a complete lack of implementation of social welfare policies. The government itself concedes only 24.57% of households have been supported by at least one public safety net program over last twelve months. This is evidence of the gap between the official poverty level and the number of households receiving government support, howsoever abysmal, shows the loopholes that plague social welfare policies in Bangladesh.

In addition, the governmental policies and initiatives have largely tended to address poverty only through short term plans and programmes, thereby making no substantial difference to the living conditions of the majority of its population. Furthermore, the economic growth obsessed policy pushed on Bangladesh (among others) and pursued by the government ignores the conditions of extreme poverty and presumes that a general model of development would reach the marginalized section and bring about change. However this model has not worked and consequently the conditions of food insecurity, poverty, health, and education of a substantial section of the population are still endangered.

This is why the news of individuals and communities starving to death in 2013 took the sheen off the claims of progress and indicated that the fight against hunger was far from over. For instance, the condition of several elderly women and men living in destitution in the Palashbari area of the Gaibandha district of the Rangpur division bought up the fact that the excluded and marginalized

section of the population continues to face extreme poverty. Most of these people have no one to look after them and are physically unable to make ends meet by themselves. Further, despite being both entitled to and most needy of various social welfare schemes of the government, such as the Vulnerable Group Feeding (VGF) program aimed at ensuring food security for the marginalised groups, they are denied the benefits because of endemic corruption and malignant inefficiency that define the system. As a consequence, most of them are forced into begging or living on doles offered by kind hearted neighbours for survival. Unfortunately, the neighbourhoods in this district frequently get lashed by floods and droughts and are often in no condition to help.

The reality for the people of Rangpur is typical of almost all of rural Bangladesh that still depends largely on agriculture that, in turn, depends upon the benevolence of nature. Unlike much of the rest of the world, Bangladesh is ravaged by foreseeable natural disasters, namely floods, year after year but fails to put preventative measures in place. The floods do not merely cause havoc, they also significantly affect paddy production exposing all those dependent upon local agriculture to hunger. Bangladesh's dependence upon the world rice market is another factor that significantly affects the poorest sections of its population leading to food procurement almost always making up more than 40% of their expenditures.

Government coffers do not face a shortage of funds to help alleviate these problems. Since the late 1990s the various Poverty Reduction Strategies were funded by the World Bank and the IMF to advance Bangladesh's development. What is lacking is a commitment on the part of the government coupled with methods to deal with faulty planning, corruption, lack of coordination, and other systemic flaws. Consequently, instead of having a clearly thought out policy framework to provide employment and food security, authorities end up addressing the issue with knee-jerk responses and half-hearted attempts to sort out specific crisis situations.

This leads to two issues that need addressing. Firstly, the condition of extreme poverty and lack of availability and accessibility to resources, which perpetuates poverty. Secondly, faulty planning policies forcing more households to slide into extreme poverty over a period of time. Poverty can never be alleviated without providing the people with employment opportunities and this is where Bangladesh seems to have squarely failed. Largely an agrarian society,

Bangladesh is often forced into seasonal unemployment by the vicious pattern of a drought and floods that renders people jobless twice a year. In addition, Monga, also known as Mora Kartik, which refers to months of death and disaster because of floods from September to November and from March to April, also has a devastating effect on society. With no other industries in the district, the loss of jobs in Monga months renders people absolutely out of work and exposes them to the brutal cycle of debt and bondage while the agricultural department of the Government of Bangladesh continues to neglect these farmers, even at the level of policy formation. Farmers thus have to work for the interests of less benevolent powers to secure seed, fertilizer, diesel, and electricity required to grow their crops. The situation is so bad that even in the years when farmers do manage to gather a productive harvest they fail to get good prices for them.

Conditions are even more arduous for the landless agricultural labourers. With no work available in the 5 Monga months of the year, they have two choices, either to depend solely on the mercy of landlords or run to Dhaka to work in any of the sweatshops that masquerade as garment factories for wages that are often not enough even for survival.

To compensate for the deficiency of the state in addressing hunger, nongovernmental organizations (NGOs) sought to place poverty alleviation within the ambit of millennium development goals and focus on microfinance programmes in order to reach to the extreme poor. Thirteen countries worldwide recognized the right to food or provided for state obligations relating to food and nutrition as state policy as of December 2010 - Bangladesh, Brazil, Ethiopia, India, Iran, Malawi, Nigeria, Pakistan, Panama, Papua New Guinea, Sierra Leone, Sri Lanka, and Uganda. Currently, NGOs in Bangladesh are pushing for a constitutional amendment to guarantee the legal right to access food or a food security “framework law” that will hold the state liable for any scarcity according to the IRIN report. Further it also outlines the fact that “According to the most recently published National Demographic and Health Survey (DHS) from 2011, 40% of children are too short for their age (known medically as ‘stunting’), a harbinger of lifelong development delays and one of the leading causes globally of brain damage. Some 36% of the surveyed children in Bangladesh under the age of five were underweight for their age (showing signs of stunting, and/or ‘wasting’ - weighing too little for their height). While there has been a slight improvement in child nutrition levels



since the last DHS in 2007, there are still too many nutrition-deprived hungry children nationwide.”

In international politics there have been quite a number of ratifications and conventions to which Bangladesh is a signatory. These include the UN Declaration on the Right to Development, which in 1986 made it the state's responsibility to create “conditions favourable to the development of peoples and individuals” as well as the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights (which said everyone has the right to a standard of living adequate for their health and well-being, including food) in 1993. Apart from these Bangladesh is also a signatory to covenants which focus on economic social and cultural rights. Likewise, neglecting food security and employment has also spiraled into a neglect of other basic rights. It has ratified the International Covenant on Economic, Social and Cultural Rights in 1998. Unless Bangladesh works towards ensuring and protecting the basic minimum rights of its people, poverty and hunger will continue to remain an unresolved problem.

It is in this regard that Bangladesh has taken some welcome steps like abandoning neo-liberalism and getting increasingly engaged in supporting agriculture. Subsidizing fertilizers for farmers and building a buffer stock of food grains, rice in particular, are some of the most important; Bangladesh is also trying to procure lands in foreign countries to strengthen the food security of its citizenry. Its decision to sell food in open market in times of scarcity to stabilize prices is not an encouraging sign however, and it must evolve a public distribution system based on the principle of entitlements. It must also ensure that these interventions are not appropriated by criminal or corrupt interests deeply entrenched in the system.

In sum, though the successes achieved by Bangladesh in bringing down the levels of absolute poverty and malnutrition is commendable, it still has a long way to go. It is good that the government seems to continue the trend by promising to spend 3% of its GDP on safety net programmes in 2014-15, yet the emergence of sweatshops with little or no protection for the working classes is a clear threat to progress.

## India: Eradicating Hunger Demands Action

India is also an example of hunger, starvation, and the assorted illnesses that accompany them. Not only have the civil rights and human rights organisations documented and raised the issue of chronic hunger and malnutrition repeatedly, but the government itself has acknowledged this fact with the Prime Minister of India referring to hunger as a “national shame.” Yet this solemn realisation has not translated into concrete action aimed at reducing the unacceptable levels of hunger and poverty experienced by a majority of the Indian population; in fact, the hunger levels and availability of food has never been lower in the history of the country and India has been ranked in the “alarming” category on the Hunger Index prepared by the International Food Policy Research Institute. Noted economist Utsa Patnaik has said the last time that similarly low levels were seen was during the great Bengal Famine and around the period of World War II.<sup>323</sup> Notably, every single country in Asia, barring Bangladesh, has been performing better including war torn countries like Afghanistan and Iraq. Even Guinea-Bissau, Togo, Burkina Faso, Sudan, Rwanda, and Zimbabwe were found to be feeding their people better than India. The ranking is commensurate with findings of Prof. Patnaik who had decisively shown that an average Indian family in 2005 was consuming a staggering 110 kg less grain as compared to that in 1991.<sup>324</sup> If one goes by the criteria for famine put forward by the World Health Organisation (WHO), then the world’s largest democracy can be labeled as “famine stricken.” One of the WHO criteria defines a community with more than 40% of its population having a body mass index (BMI) of less than 18.5; by that yardstick, Indian children as a whole and many other communities (mostly the Dalit and tribal communities) are in the grip of a near-perennial condition of famine.

The alarming nature of this situation becomes clear when one observes that the high rates of hunger existing simultaneously along with millions of tons of food grains rotting in the godowns of the Food Corporation of India (FCI) every single year. While replying to a question in parliament Sharad Pawar, the incumbent minister for Food and Agriculture, informed the lower

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323 Patnaik, Utsa, 2007, *The Republic of Hunger and Other Essays*, Three Essays Collective, New Delhi.

324 Patnaik, Utsa, “Origins of the Food Crisis in India and Developing Countries”, *Monthly Review*, Volume 61, Issue 03 (July-August). Accessed here: <http://monthlyreview.org/archives/2009/volume-61-issue-03-july-august-2009>

house that over 11,700 tons of food grains worth 68.6 million Indian rupees (or approximately \$1.5 million USD) were found damaged in government warehouses.<sup>325</sup> This wastage of food could be interpreted as – and dealt with as – a criminal offence in other countries and in India this may be an attractive position given the level of hunger. Added to this is the fact that at any given point in time the FCI stocks almost double the amount of buffer norms, an amount that hovers around 30 million tons of food grains. Evidently, the government is not hard-pressed with any shortage of food; on the contrary, it has more than enough to release that it could not only save children from malnutrition but also avoid unused food grains rotting.

The tragedy of the situation becomes more pronounced when one considers that though the country is unable to feed its own citizenry, the Cabinet Committee on Economic Affairs (CCEA) approved the export of two million tonnes of wheat from Government stock, at subsidised rates, as fodder for livestock in the developed world. This could give rise to concerns of corruption, as a political and financial deal for the government being preferred over the malnourishment of children seems antithetical to common sense and good faith. The government's role in bending the rules to help private entities profiting from scams like "humanitarian" export of non-Basmati rice to several African countries<sup>326</sup> is further evidence of mal-intent. It should also be remembered that concerns of transparency, leakages, corruption, delivery mechanisms, and grievance redressals are not recent ones, they have been plaguing the system for a long time. One has to only recall the then Prime Minister Rajiv Gandhi conceding back in the 1980s that nearly 85% of the funds allocated to various schemes was lost to corruption.

Add conscious attempts to keep the markers of poverty at extremely low levels and thus pushing a substantial section of the population out of the social security net to the sordid saga of corruption, and claims of growth and equity fall flat. The policies presumably meant for inclusion have been subverted time and again and The Justice Wadhwa Committee identified this as the core problem plaguing the system asserting that the very basis of adjudging the

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325 "Over 11,700 tonnes of foodgrains damaged in FCI godowns" *The Economic Times*, July 27, 2010. Accessed here: [http://articles.economictimes.indiatimes.com/2010-07-27/news/27602784\\_1\\_fci-godowns-foodgrains-fci-depots](http://articles.economictimes.indiatimes.com/2010-07-27/news/27602784_1_fci-godowns-foodgrains-fci-depots)

326 Dutta, Saikat. 'Whose Name On A Grain Of Rice?' *Outlook*, July 2009. Accessed here: <http://www.outlookindia.com/article.aspx?250566>

poverty level at an expenditure of less than 15 rupees a day was “too low.” It also submitted to the Supreme Court that nearly half of the poor do not have Below Poverty Line (BPL) cards and are thus disenfranchised.<sup>327</sup>

This denial of rights is not an anomalous matter. The Planning Commission of India has the audacity of first putting a central cap on the number of BPL families in the provinces and then defending it while asserting that it does not harm those genuinely needy. For the uninitiated, the “central cap” is an arbitrary figure that state governments have to stick to while identifying families below poverty lines. Families in excess of the cap are then left to their fate. In others words, they are just denied away by the magic wand of statistics.

The Planning Commission acknowledged this complaint in a written submission to the Supreme Court and said that “is aware that many States complain that people who are indisputably poor are left out of the BPL list because of the cap imposed by the Central Government. It is not denied that this is indeed the case in many states.”<sup>328</sup> It then blamed all of the consequences on state governments, arguing that the problem has been caused by improper identification by the states. Any rational person would find the argument not merely baffling but absurd, as did the Supreme Court. In an order dated 29 March 2011, the court expressed its dismay over the issue and asserted that it failed “to comprehend the rationale and justification of putting a cap by the Planning Commission.” The fact of the matter is that the state governments, taken together, have identified 111 million Indian families eligible for the BPL, well above the central government’s estimation that puts the BPL count at around 60 million. It should not need to be mentioned that the remaining 51 million families have been abandoned by the state and thus condemned to live in a state of perpetual food insecurity.

Chronic hunger does not affect the citizenry as a whole as much as it affects those condemned to live on the margins of Indian society. Even a cursory glance at any data on hunger brings this fact out. The Hunger and Malnutrition (HUNGaMA) report, whose findings the prime minister based his “national

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327 Justice Wadhwa Committee report accessed here: <http://pdscvc.nic.in/report%20on%20computersisation%20of%20PDS.htm>

328 The cap was fiercely protested by the Right to Food Campaign, India. More details accessed here: [http://www.righttofoodindia.org/data/pds/June\\_2011\\_report\\_protest\\_planning\\_commission\\_%20poverty\\_line\\_23\\_may\\_2011.pdf](http://www.righttofoodindia.org/data/pds/June_2011_report_protest_planning_commission_%20poverty_line_23_may_2011.pdf)

shame” comment on, underscores that the children from Muslim and Scheduled Caste/Scheduled Tribal households are among the largest numbers of victims and they suffer more than others. In a social system, aptly described by Dr. B.R. Ambedkar as a system of “graded inequalities” that penalises people for accidents of heritage (instead of giving equal opportunities to all individuals irrespective of their caste, creed, or community), the primary responsibility for helping those on the margins lies with the state. This is why the state is treated as *parens patriae* (parent of the citizens) and has the right to intervene in cases of interest to the citizens such as in matters of health, physical comfort, and welfare whenever such interests are threatened. But the Indian state would have none of this. Instead, it seems prepared to let its citizenry live in a political arena rendered futile by extreme levels of socioeconomic inequality, as forewarned by Dr Ambedkar.

The failure of the state to address the excluded communities is further evidenced in the condition of government run programmes such as the Integrated Child Development Scheme (ICDS). The ICDS was formulated in 1975 with a mandate of fighting malnutrition among children under six years of age. The most conservative estimates, as acknowledged even by the government, peg malnutrition among children at 42%. A closer look at the budgetary allocation for the scheme brings out that every child is entitled to a mere 4 rupees (\$.08 USD) per day. Even in the absence of corruption this amount is itself cruel to the country’s poor.

Again, the government is aware of this and it keeps setting up committees and commissions commensurate with the enormity of the issue. It had set up, for example, the Prime Minister’s Council on India’s Nutrition Challenges way back in 2008 which only met once, in 2010. Not a single decision taken in that meeting, like the restructuring and strengthening of the ICDS, was ever implemented in spite of recommendations from various governmental committees as well as civil society groups. All other decisions taken in that meeting, such as making efforts for universalisation of the ICDS by providing for an Anganwadi centre for 500 to 1,000 people instead of existing upper limit of 1500; providing a second Anganwadi for a population of 1,000 to 2,000, and another for every additional 1,000 people; an Anganwadi for every 150 to 500 people in tribal areas; and a mini-Anganwadi centre for places with a population of less than 150, remain unfulfilled as well. Similarly, Prime Minister’s Manmohan Singh pledge that all children below the age of 6 years

would be brought under the protective cover of Integrated Child Development Scheme (ICDS) by March 2012 remains unrealized. Other proposals included ensuring a compulsory monthly weighing of children under the age of three at Anganwadi centres for keeping a tab on their nutritional situation, universal registration of births, issuing mother and child protection card, and upgradation of Anganwadi centres into Anganwadis-cum-crèches.

In the absence of any clear-cut guidelines, several ministries have made controversial decisions like the involvement of private sector in child survival and nutrition. The move has paved the way for private profiteers to enter the sector with packaged food for the marginalized, as exposed by the civil society. For example, private companies in cooperation with vested interests in administrative and political hierarchies have been found to have stolen more than INR 1000 Crore, or \$185 million (USD) in the state of Maharashtra alone as per the findings of a report of Biraj Patnaik,<sup>329</sup> Principal Adviser, Commissioners to the Supreme Court and were submitted to the court with reference to SLP (Civil) No. 10654 of 2012 in the matter of Vyankateshwar Mahila Auyodhigik Sahakari Sanstha v. Purnima Upadhyay and Others listed along with Civil Writ Petition 196 of 2001 (PUCL v. UOI).

It is in this respect that recently passed National Food Security Act 2013 comes across as a welcome (though grossly inadequate) step in India's fight against hunger. The need of a Food Security Bill covering almost 67% of the population exposes the hollowness of government's claims over significant reduction in poverty and shows that the claims of having brought it down from 37% in 2004-05 to 22% in 2011-12 are absurdly inaccurate. The Bill also serves as evidence for the fact that the rural distress caused by the agricultural crisis is yet not over. It shows that the crisis has now hit urban centres as well. The bill furthers reaffirms various findings of how majority of India are barely surviving. NSSO's findings, for example, for 2011-12 (July-June) show that INR 521.44 is all that the bottom 5% of the population has to survive a month in rural areas and INR 700.50 in urban ones. These findings, shockingly, bursts another bubble: the myth of Indian middle classes' march into an era of prosperity. This evidence pegs average monthly expenditure of top 5% of Indian population at a lowly INR 4481 in the countryside and only a marginally better INR 10,282 in the cities. Adjust it for the expenditures of the

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329 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-223-2012>

rich significantly lifting the average and we get a horrible scenario of widening gulf in incomes between the top 5% of Indian population and the rest of the public. To understand the what this means, the average monthly expenditure on a national level is a meagre INR 1430 for rural areas and just INR 2630, or about the cost of a family of five watching a single movie in a multiplex, in urban centers.

This is why the Right to Food Campaign has raised serious concerns regarding the Act even while welcoming its amendments to turn this piecemeal bill into a comprehensive food security law that “incentivises agriculture production, provisions for local procurement and local storage along with a decentralised and deprivatised universal PDS; along with special entitlements for children, mothers, aged, disabled, widows, migrants and destitute including universalised ICDS; monthly pensions, community kitchens and destitute feeding programmes; effective measures for grievance redress, transparency and accountability and safeguards against commercial interference including GMs in any of the food/nutrition related schemes and against the introduction of cash transfers in place of PDS ” are necessary.

The biggest omission is that the bill makes food security merely a legal, and not a constitutional, right and thus leaves it susceptible to tweaking from other interests in the future. Continuing the targeted Public Distribution System (PDS) remains another contentious issue with the Bill. In order to help the poor and needy through the PDS, governments opened fair price shops selling subsidised rations, kerosene oil (and even clothes, in the distant past) in as many villages as it could. Most of these shops remain closed to the needy and their rations and kerosene get siphoned off to the open market in yet another instance of corruption. Of course there are officials entrusted with addressing this problem, but most of them join with the contractors and take their own cuts. Such a system is of no benefit to the poor and dispossessed; it not only makes the needy vulnerable to errors of both unfair inclusion to unjust exclusion but also supports serious doubts over effective implementation of the act by connection with PDS. Further, not linking the Bill with agricultural and other such entitlements significantly reduce the efficacy of the Bill whose implementation is entwined with the issues of production, availability, and distribution. As a consequence, the implementation of the Bill would require serious and urgent policy level changes in land and labour rights to make it truly effective.

The system, of course, has a grievance redress mechanism at the lower levels, offering remedies to anyone whose rights or freedoms are violated. Unfortunately, this system is as inefficient and corrupt as its counterparts in the administrative and legislative branches. Again, even the Supreme Court of India has taken notice of the corruption and inefficiency rampant in the judicial ranks. The situation is far worse at the lower rungs of the judiciary, which often is the first point of contact for a person seeking remedy and the rest of the system.

Ensuring food security of the impoverished majority of India is not a simple task as it would upset many private interests deeply entrenched in the system. According to Bloomberg, corrupt politicians and their criminal affiliates have siphoned away \$14.5 billion (USD) worth of food intended for India's poor, or roughly 60% of the total food allotted for this purpose. Of the food that does reach its beneficiaries, much of it is unfit for humans to consume even by the minimal standards set by the Indian government. The absolute failure of the Indian executive indicates government inefficiencies, disregard for human rights, and a continued relationship between corrupt private businesses and political players.

Ensuring the right to food would thereby mean that the government would have to act on many levels simultaneously. It would need firstly to stop deaths arising due to malnutrition and hunger by addressing malnutrition through strengthen the ICDS system. This should allow effective monitoring of all the stages in the ICDS supply chain, in turn curbing corruption and leakages at all levels. Also, a well maintained record of the funds received against expenditure would enable checks for excesses. There should be a focus on ensuring that goods and services reach their intended beneficiaries through a more transparent system, utilizing an independent committee to investigate and identifying individual offenders. This would also mean that there needs to be a mechanism through which the administration can efficiently deal with any infractions in the future.

This approach would also require targeting corruption and impunity in the Indian government. Because the right to food is inherently linked to the right to life, the Indian Supreme Court has itself agreed that it is the responsibility of government to provide nutrition and public health. Independent studies into the status of other welfare schemes, ranging from Mahatma Gandhi National



Rural Employment Guarantee Act (MNREGA) to Mid-day meal scheme, tell the same tales of unbridled corruption and embezzlement from funds earmarked for those in need of assistance.

What the government needs to do is radically restructure the whole system with an emphasis on building an honest delivery mechanism with corresponding mechanisms for addressing grievances. The government would do well to start at the grassroots, say by making the system transparent and giving communities a stake in running the mechanism. For example, the experiences of social audits in the case of the MNREGA have been tremendously encouraging. Not only have the social audits seen massive participation by the community members but they have also helped fight corruption. Almost all studies on the MNREGA have found that it has been most successful where the process of social audits backed by community-based organisation has become institutionalised. Devising a similar mechanism could be a beginning to ensuring food security, alleviating hunger, and preventing diversion of food grains meant for the community. Making the lower judiciary more accessible and affordable is a further step in the right direction for ensuring that those subverting the system are dealt with. The only way to deal with the issue perhaps is to guarantee that fights concerning hunger, social exclusion, dispossession, and other such ills work through a system of justice. A system, in turn, that can only be based on rule of law ensuring effective, efficient, and immediate remedies to people whose rights or freedoms have been violated through the malignancy of the current system.

Until the government begins to adopt such reforms to address these shortcomings all talk will likely remain tragically hollow.

## **Nepal: Democratic Transition Pushes Poverty to Background**

“Transition” is the definitive word in Nepal’s desire to turn towards democracy from religious monarchy. Human rights activists talk of it in terms of transitional justice while asserting the need for something like the South African process of truth and reconciliation. Development professionals talk of it while underscoring the need of international action for ensuring food security of the impoverished masses. Yet the painstaking process of political transition

is also what has pushed everything else, in this case widespread hunger, into the background; “we have to get the constitution sorted first, all else can wait,” seems to be the unspoken consensus.

For most, such as the inhabitants of the Karnali division (the very poor, landless, and a few marginal farmers), this is a dire threat. They cannot produce anything beyond three months of supplies because of the rocky and barren nature of the land and lack of irrigation. Owing to these circumstances, the village witnesses large-scale distress migration of entire families to different parts of India. With no access to land, livelihood, and often water, the government is all they can depend upon; the same government that is too busy to help.<sup>330</sup>

The predicament of residents of Karnali remains the same for scores of others inhabiting in similarly inaccessible and hilly areas. Most of them have no sustained work opportunities and often feel the need to migrate to India. Those who cannot afford to do so eke out physical survival by working for daily wages when work can be found. Even then, earnings from erratic daily work often cannot cover the expenses of buying food and the villagers have to go hungry despite of social welfare schemes entitling them to ten kilograms of rice per family per season. The reasons behind this are manifold, often the Nepal Food Corporation godowns have no food, and even when they do, prevalent corruption ensures that the food is siphoned off. There is a lot of money to be made in this corruption as the market rates of food grains and other subsidized items are many times over the NFC rates. For example, the rice selling for NPR 40-55 per kg sells for NPR 100 in the open market. Just as in the other countries in this report, corruption eats into whatever little savings they might have and makes them vulnerable to exploitation.

This is a typical example of food insecurity that keeps a huge section of Nepalese population, almost 3.4 million, in perpetual fear of going hungry. The situation has recently deteriorated because of the growth in population, the lack of agricultural productivity, and weak infrastructure. Moreover, nearly 5 million have fallen below the poverty line in the past few years; consequently poor health, malnutrition, and hunger are becoming pressing issues for the country. According to the Nepal Demographic and Health survey (2006), half of the children below the age of 5 suffer from chronic malnourishment

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330 <http://www.humanrights.asia/news/hunger-alerts/AHRC-HAC-005-2013>

which results in stunting. The situation is worst in the far and mid western hill and mountain regions. Further, more than a third of Nepalese children suffer from low birth weight (LBW), which originates with poor maternal nutrition. Around a quarter of Nepalese women have a BMI below normal and about 36% of pregnant women are anemic.

As per the recent Global Hunger index in 2010, Nepal's score is 20 which make it 27th out of 84 ranked countries having faced substantial deficit of food grains in the past couple of years. Reports such as the World Food Programme mention Nepal as the country worst hit by malnutrition in Asia and places it on par with countries such as the Democratic Republic of Congo, Sudan, and Uganda.

Contributing almost 82% of country's total exports, agriculture continues to be an important factor in Nepal's fight against hunger. Agricultural productivity, however, has been on a decline since the 1980s and the share of agriculture in the GDP has fallen from 66% to 38% in the past two decades without any corresponding increase in manufacturing or service sectors. The infrastructural development remains quite low with only 15% of households having access to electricity, with the situation being much worse for rural households at 3%. Only 30% of the rural population has access to roads in all seasons and 15 of the government's district headquarters have no access to roads remaining largely unconnected.

Food insecurity in Nepal depends considerably upon geography. So, generalizing for the nation as a whole not be helpful. The mountainous regions of the nation stand in complete neglect as against the Kathmandu valley and the Terai region. The barren and rocky terrain make alternative livelihood options in mountainous regions scarce. Lack of accessibility to far-flung regions makes it difficult to address emergencies.

The important issue in the hills and mountains in the far and mid-western regions is simply the lack of availability of food. This situation is more grim because of the lack of purchasing power of the people and the increasing market prices. The transportation costs to get to these regions further fuels the rise in price thereby making it difficult for supplies and international aid to reach these regions.

On the other hand, food insecurity in Terai and lower hills is quite a different case as these are food surplus regions. The problem here is not of lack of food; instead it is faulty distribution and lack of efficient monitoring mechanism to support those not able to procure food for themselves. These regions witness a lower incidence of poverty than those found in mountain regions. Coincidentally, these are also the regions of more skewed income distribution as per World Food Programme's observation.

The hardest hit vulnerable groups include landless peasants, small farmers, urban poor, Dalits, indigenous people, women, and other minorities who face insecurity on a sustained basis. Accordingly, Dalits (nearly 20% of Nepali population), Adivasis (37%), single women households, and the destitute are often the ones with no or little access to resources. These groups are structurally discriminated against and policies seldom take their context into account. Additionally, due to weak mechanism, the benefits of governmental schemes rarely reach them. The changing demographics of the region has led to many households being left with only the old, women, and children as men travel to find work. This has resulted in women being forced to work as agricultural labor for very low wages. Women, even as an independent group, face more food insecurity even in relatively better off houses because of socio-cultural practices. Thus, the role of the state in applying the principles of non-discrimination, accountability, and participation remains central to achieving food security.

A closer scrutiny of the problem in Terai reveals that food insecurity in the region is as much structured along economic fault lines around social and cultural indices, most notably caste. Terai, like rest of Nepal, also suffers lower yields because of limited technological developments reducing fields capable of having three yields a year to produce only two. Contributing to the problem is that the area is largely rain fed and prone to fluctuations of weather. Climate change is also believed to be having an adverse impact on the agricultural growth of the region (though the topic is somewhat outside the scope of this report).

It is in this context that we can make sense of the fact that while agriculture provides the principal livelihood for more than 80% of all working adults in Nepal; studies have shown that up to 50% of them go hungry. A primary reason behind this is unequal landholding patterns. Surveys indicate that the bottom 47% of the agricultural households operate only 15% of the total

agricultural land while the top 5% own more than 37% of the land. Further, the small land holdings are fragmented with more than 70% of the peasants owning less than one hectare of land. Such small landholdings make farming economically unviable and force the peasants to live under continuous threat of debt and bondage. The same situation is reflected in water resources where only 35% have been found to have access to improved sanitation. The situation is particularly worse for vulnerable groups who are routinely barred from using common land and water bodies by the feudal forces still wielding much of the power in rural Nepal. A particular instance of note is the 1992 Water Resources Act that gives ownership of water resources to the state but grants the right to use water to individuals and other private parties. The Act also lists the different priorities for water usage, such as drinking, sanitation, cultural and religious use, irrigation, agriculture, hydropower, and industry. Though it is the role of the state to ensure equitable growth, this has not turned into a reality where land is increasingly being converted for commercial and other reasons.

The food security in the region was also damaged due to changes in food aid after the global recession over the last few years. Much of the food aid to Nepal through various international organisations and countries had either reduced in quantity or were stopped due to a change in the global market. This, coupled with an internally changing polity and economy, made it difficult to cope with food security on a sustained basis. Much of the food security crisis of Nepal is similar to other south Asian countries, wherein the state has not given a sufficient priority to ensure that hunger and malnutrition are addressed. Lack of accountability, lack of proper infrastructure and mechanism for the percolation of resources, and no safety mechanisms to rely on in case of a calamity has made the population unendingly vulnerable to chronic food insecurity.

Given these conditions, the Supreme Court of Nepal published a key decision in 2011, regarding the right to food in the country. It clarified that everyone has the right to adequate food. The court also emphasized on the role of authorities to ensure that food is accessible and affordable for the people. Further, a link between food and other human rights, such as right to social security and basic necessities, was laid out. The basis for these directives also emerges from relevant international covenants to which Nepal is a signatory or state party. These include the ICESCR, UDHR, CEDAW, CRC etc. State parties have been encouraged to take steps to protect their citizens from food insecurity and it is thus the responsibility of the state to ensure that the right to food is not violated either by acts of commission or omission. This also includes

the state putting emphasis on the interest of its citizens; this is the reason the state has been criticized for its preference of focusing on changing agricultural practices rather than directly ensuring food security at the household level. For instance, in 2010 farmers in the southern plain suffered due to failures in seed setting in a hybrid maize crop which was a donor sponsored and government run mission. The lack of ancestral seed supply aggravated the situation and agriculture catastrophe resulted as low quality seeds were sold to farmers. The consequence was the failure of more than 15000 hectares of maize crops. While this opened the market to seed companies, it further harmed the situation of a population already suffering from the seed failure.

### **The Philippines: Urban Poor, Hungry & Hounded**

As mentioned in previous sections, hunger is experienced most acutely by those condemned to live on the fringes of the society. The Philippines provides no exception. The pattern here is quite discernible: increasingly disappearing job opportunities in the countryside force the people into distressed migration to urban centers, Metro Manila in particular. Once in these urban centers, the people bear the brunt of an onslaught of a neoliberal economic regime, ranging from development projects to assaults on their income opportunities with only meager assistance (if any). Forced evictions, in fact, have become a major cause for much of the disruption of livelihood, access to land, and related resources. Couple this with recurrent natural disasters, typhoons being a recent dramatic example, and a substantial section of the population is forced to go hungry, homeless, and poor.

Despite the clear indications of the widespread prevalence of hunger in the Philippines, there is a stark lack of hard statistics on the issue. Most of the data that comes out is not timely and the sample size is often limits useful conclusions to vague generalizations. The primary reason behind the time lag is that the Family Income and Expenditure Survey (FIES), a nationwide survey of households that serves as the main source of data on family income and expenditure, is undertaken only once in three years by the National Statistics Office (NSO).<sup>331</sup> The rest of the data on hunger, poverty, and related

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331 <http://www.census.gov.ph/content/filipino-families-poorest-decile-earn-six-thousand-pesos-monthly-average-2012-results-2012>

disparities can only be sourced by surveys conducted by NGOs and are often limited in their coverage. One of such surveys conducted by the Social Weather Stations (SWS) pegged incidence of hunger in first quarter of 2013 at 19.2%, a significant increase of 3% points over the 16.3% hunger incidence recorded in December 2012.<sup>332</sup> The survey grimly noted an increase in the incidence of hunger in all regions of the country, barring Metro Manila (which experienced a slight decrease).

The findings are commensurate with those of different watchdogs which have repeatedly placed Philippines as the fifth most hungry country. For another example, more than 70% of country's total population of 95 million people had to live with less than 1.25 dollars a day in 2008 (the World Bank standard for poverty) and there is no indication that the situation has improved. When broken down into specific criteria, this general approximates that the number of those who must be compelled to go hungry at least once in three months, account for around 24% of the population. Consequently, the task of meeting the millennium development goals seems to be even harder with slowing economic growth and an increasing rate of poverty as more than 23 million people are already living in poverty by the most conservative estimates.

Below the poverty line the nutritional status of children is grim. The National Nutrition Survey of 2011 shows that the Philippines has made no significant progress in fighting under-nutrition and malnutrition over the last decade and the rate of underweight children under five years old remained at a staggering high of 20%. The corresponding data for children who are below the average height-to-age ratio remains at 30%.<sup>333</sup>

This is further corroborated by the World Bank findings which state that the rate of decrease of malnutrition in Philippines is much lower than the rate in many other countries. For example, Cambodia's average yearly decrease in malnutrition is 1.1%; Laos, 0.9%; Burma, 0.8% and the Philippines is lagging behind with a mere 0.66%.

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332 <http://www.philstar.com/headlines/2013/05/22/945070/sws-hunger-rises-among-pinoy-families>

333 [http://www.fnri.dost.gov.ph/images/stories/8thNNS/fnri\\_facts%26figures2011.pdf](http://www.fnri.dost.gov.ph/images/stories/8thNNS/fnri_facts%26figures2011.pdf)

Accessibility to food is a concern that includes both physical and economic aspects of access to food. The existing conditions do not make food affordable and available to a majority of the population. Regulation of prices is not enough as it does not necessarily mean improved physical access to food and related resources. Even then food meant to be subsidized is sold at much higher rate than intended and the quantity of food meant to be given at lower rates is significantly reduced.

Cash transfer schemes fail terribly in guaranteeing food security because they do not protect against price fluctuation and inflation. The conditional cash transfer programme initiated by the government of Philippines entitles all extremely poor families with children below the age of 14 to receive financial support (provided that their children attend school and undergo regular health checks). Apart from this, one of the other programmes is the cash/food for work which is run by the social welfare and development offices of the local governments. This involves payment in cash or food for undertaken projects. Though the beneficiaries are supposed to be paid food equivalent to 75% of the minimum wage, the value of the food packs provided has been questioned time and again. The scheme also does not cover all families in need as restrictions are put on the total number of beneficiaries for fear of costs to the government exchequer.

While these schemes might improve economic accessibility to food, they still fail to address the rising food insecurities of the impoverished masses. The quality and nutritional value of food, its safety, and regulation continues to be a problem as far as subsidized food is concerned. Moreover, the schemes do not necessarily address emergency situations e.g. communities affected by a typhoon) because the beneficiaries of such schemes are required to wait for these goods to reach them for the purpose of procurement.

The schemes are also affected by the malice of widespread corruption that include slippages in the mechanism of delivery, embezzlement, selling of subsidised food at retail prices, and forging of licenses that make it difficult for the poor to get a consistent and adequate supply of food. For instance, certain reports indicate that even the richest areas purchased food grains meant to be sold at subsidy rate. The estimated loss because of this is nearly 45%.



In 2007, the Accelerated Hunger Mitigation Program (AHMP) was launched with the objective of mitigating severe hunger in 42 provinces. The main goal of this has been to increase food production and to enhance the efficiency of delivery of food. However, the problem associated with this has only multiplied with certain regions being over-emphasised compared to others. Further, the AHMP did not analyse the real causes for persistent and widespread hunger. The basic assumption behind the scheme was that people did not have money to buy food because they have low income and a large family, ignoring the structural reasons that produce the disparities in the income and access to food in the first place. The scheme failed also, in tackling people's and community's access to resources such as land, water, and credit (which are monopolized and controlled by a few elite families) among other contributing factors. As a result the short term measures of AHMP have met with minimal success.

Consequently, the disparity in income and growth is widening. This also indicates the failure of the agrarian reforms which has not managed to create a more equitable and just distribution of land and resources. This is a basic reason why many people, especially in the rural areas, are poor, hungry, and cannot afford to buy adequate nutritious food. "On the Negros Island, for instance, only 1,761 sugar planters out of the 20,425 planters own more than 25 hectares. These 1,761 planters control 119,100 hectares while 14,952 small sugarcane planters, on the other hand, whose land does not exceed 5 hectares, only control 32,274 hectares."<sup>334</sup>

Concerns born out of the government of Philippines' pursuit of neoliberal economic policies that prescribes economic growth as a cure for everything, including hunger, are similar. Even the most cursory glance on the data brings out the flaws of this logic. The gross domestic product (GDP) of the country grew from 4.7% in 2003, 5.1% by 2005, 5.4% in 2006 and 7.2% in 2007. The growth, however, did not seem to address the issues of poverty and hunger in the country; indeed, both of them increased together with the growth. To put this into perspective: the latest data from the National Statistical Coordination Board (NSCB) shows that the absolute number of poor Filipinos has increased, while other figures shows at best a status quo despite growth. Similarly a finding by the Asian Development Bank indicated that nearly 60% of income is allocated for food in poor families, out of which nearly 7.18% is spent on

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334 [http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/FIAN\\_Philippines41.pdf](http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/FIAN_Philippines41.pdf)

rice alone. An increase in food price means that nearly 2.7 million would be added to the total number of people, while a 30% increase might lead to nearly 8.8 million more impoverished people. With the worldwide increase in prices, the Philippines has been importing food grains from other countries to meet its deficit. This, along with internal factors such as lack of sufficient emphasis on agriculture, the flooding of market by imported rice, and lack of measures to assist rice producers, have led to a further disparity in growth and increase in poverty and malnutrition levels.

The lack of access to productive resources like land and increasing poverty and unemployment has made it difficult for many rural poor to sustain themselves. The disparity in distribution of resources continues in spite of the constitution, which provides that the state would undertake an agrarian reform founded on the rights of farmers and farm workers. It further established that it would focus on ownership, individually or collectivity, of those who till lands or a just share in the production. But land still continues to be held by influential and powerful families. For illustration: out of the 5.16 million hectares targeted for redistribution, only around 3.96 million hectares of the land have been distributed. The strong opposition to this have often resulted in violence and killing of peasants by the landowners which, along with corruption at different levels, make it almost impossible for secure the right to food. Thus services, credit, and technologies are not only inadequate but their effects are diluted. Misappropriation of funds has led to near collapse of many schemes such that there are no safety nets in place. The office of the Ombudsman, claimed that in past 2 decades more than USD \$ 40 billion has been lost due to corruption.

Lopsided development projects are another area where governmental neglect is apparent as communities are forced to relocate repeatedly. Unfortunately, the authorities seem to be oblivious or dismissive of these circumstances. Various projects carried out by them have caused forced displacement of a substantial section of the population with harassment which usually accompanying such eviction. Equally disappointing is the arbitrary grounds on which families are chosen to be offered compensation. A brief look at the role of Department of Public Works and Highways (DPWH) in August 2013 makes this amply clear. The department, pursuing R-10 Road Widening Project under the North Harbor Privatisation Project, served a notice of eviction on the families living along the R-10 or Road 10 in Tondo, Manila. While serving eviction notices to more than 550 families, the list of families qualified for compensation was

only 300.<sup>335</sup> Such capricious administrative decisions ignore the reality of livelihoods being threatened as most of the members of the community get their menial jobs at the nearby seaport. Similar threats of a demolition drive are affecting more than 5500 families, 30000 people of San Roque, North Triangle in Quezon City,<sup>336</sup> and countless others in different parts of the country. In the case of 78 families served eviction notices in the coastal area of San Dionsio: the families who had occupied this area had already faced evictions from other places like Marina and Tambo. To persuade them to move to this area, the Philippine Estate Authority (now Philippine Reclamation Authority) had entered into a formal agreement with them and promised them priority status in the housing programme. However, this time, the authorities are threatened them with second forced eviction from their settlements in less than 6 years. In a more ridiculous example, the government was intent on relocating a fisher-folk community, dependent on water bodies for their livelihood, to the mountains!<sup>337</sup>

The Philippines have also been witnessing the authorities joining hands with private companies for profits and ignoring the loss of opportunities for the poor. The eviction of vendors in Luneta Park by the National Parks Development Committee (NDPC) vendors in February, 2013 despite the protest of the vendors and civil society groups is the epitome of such disruptions. Most of these vendors had been living and marketing their wares in the park for more than 15 years, had repeatedly approached the authorities for getting their legitimate rights, but received only hollow promises. Inquiries by civil society groups into the issue revealed that the authorities decided to remove victims to make way for a multinational food chain.<sup>338</sup> Depriving the vendors of their traditional market in favor of a larger business which, as detailed above, can be a crucial factor in deepening food insecurity of the vulnerable sections of the Philippines population.

If forcible evictions, harassment, and a neglect of the majority of the population were not enough, the apathy of the government towards the vulnerable is seen in the neglect towards these populations in times of natural calamities. Tropical

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335 <http://www.humanrights.asia/news/hunger-alerts/AHRC-HAC-013-2013>

336 <http://www.humanrights.asia/news/hunger-alerts/AHRC-HAC-008-2013>

337 <http://www.humanrights.asia/news/hunger-alerts/AHRC-HAC-003-2013>

338 <http://www.humanrights.asia/news/hunger-alerts/AHRC-HAU-001-2013>

storm Trami is an example; it affected approximately 402,415 families and 1,928,685 individuals across 16 provinces. In this specific instance, an oil spill caused by a leaky marine pipeline of the Petron Corporation (an oil company with a depot in the municipality) had necessitated the declaration of a state of calamity in the coastal areas of Rosario, Cavite in August 8, 2013. The oil spill forced the local government to immediately suspend fishing activities in the affected areas. However, by the time the areas were improving it began raining on and slowly developed into a tropical storm, forcing the fishermen indoors. These factors put together made food security a dire matter.<sup>339</sup>

It is thus apparent that in the Philippines what one witnesses is the continuous violation of the rights of the majority for the benefit of the small but influential minority. The only thing that can address the issue of hunger and poverty in such a scenario is governmental reform to protect the rights of at risk citizens. To this end, the government must engage in a genuine dialogue with the community members for a building a consensus on a comprehensive development program addressing the concerns of both the industries and the people. The Philippines must also ensure a moratorium on forced evictions of communities for development and ensure that relocation does not hamper people's access to other basic services like health, sanitation, transportation, and water. Until such constructive steps are taken disparity and inequity will only further erode food security and threaten the lives of the victims.

As a signatory of the ICESR which provides for "everyone to be free from hunger" and "the right to adequate food," the Philippines is obligated to take such steps. It is commendable that the government has implemented policies such as cash/food transfers for work and Accelerated Hunger Management Programme (AHMP) to reduce hunger and poverty in the recent past, but it must understand that such small steps cannot be a substitute for an urgently needed national food policy. Moreover, it must also understand that allocation of budget plays a crucial role in implementation of social welfare legislation and policies, something the authorities have singularly failed to do. For example, it allocated USD \$ 1.65 billion to the Department of Agriculture and Agrarian Reform as compared to nearly USD \$ 2.8 billion allocated for defense in 2012. One cannot fight hunger with such a small amount of money. Finally, the lack of redress of grievances permits the continuation of misappropriation of

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339 <http://www.humanrights.asia/news/hunger-alerts/AHRC-HAG-003-2013>

funds and resources without a means to stop them. In short, a strong policy formation and proper mechanisms are imperative to aim for food security and alleviation of hunger.

## **Conclusion:**

Economic status notwithstanding, the experiences of hunger across Asian nations expose the criminal negligence of states in addressing the issue. Despite customary lip service that the political leadership of these countries offer to the issue, they have rarely taken concrete steps to lift their citizens out of the vicious cycle of poverty and hunger. The onslaught of neoliberal economics has compounded the problem by dismantling whatever structures of social security have been operational in these countries, and forcing governments to withdraw from the social sector. Experience over the past two decades has proven that the burden of ensuring food security cannot be left to the whims of the market.

This is why Asian countries must immediately embark upon a process of making national policies on the right to food, with special emphasis on the vulnerable and marginalized sections of the population, a priority. They should also build public distribution systems capable of delivering to the needs of the people and free of corruption. An urgent attempt must also be made to link the questions of food security to land and employment opportunities, as eradicating hunger would remain an impossible dream without guaranteeing people's access to sources of sustained income. This is the only way these countries, most of which are signatory to various international covenants like the ICESCR, UDHR, CEDAW, CRC etc., can fulfill their obligation of protecting their citizens from food insecurity and ensure that their right to food is not violated by acts of commission or omission.



The AHRC report provides thorough analysis about human rights situations in Asia. The analysis is based on the AHRC's work in Asia in 2013. The casework undertaken through partner engagements cited in the country chapters, underline the fact that the protection, promotion and fulfilment of human rights in Asia will be only possible with criminal justice institution reforms. The report argues that the existing state policies, of resorting to fear generation as essential part of governance in Asia, should end, if Asian states were to truly promote human rights in the region.

The report is an essential read for everyone interested in human rights in Asia.

