

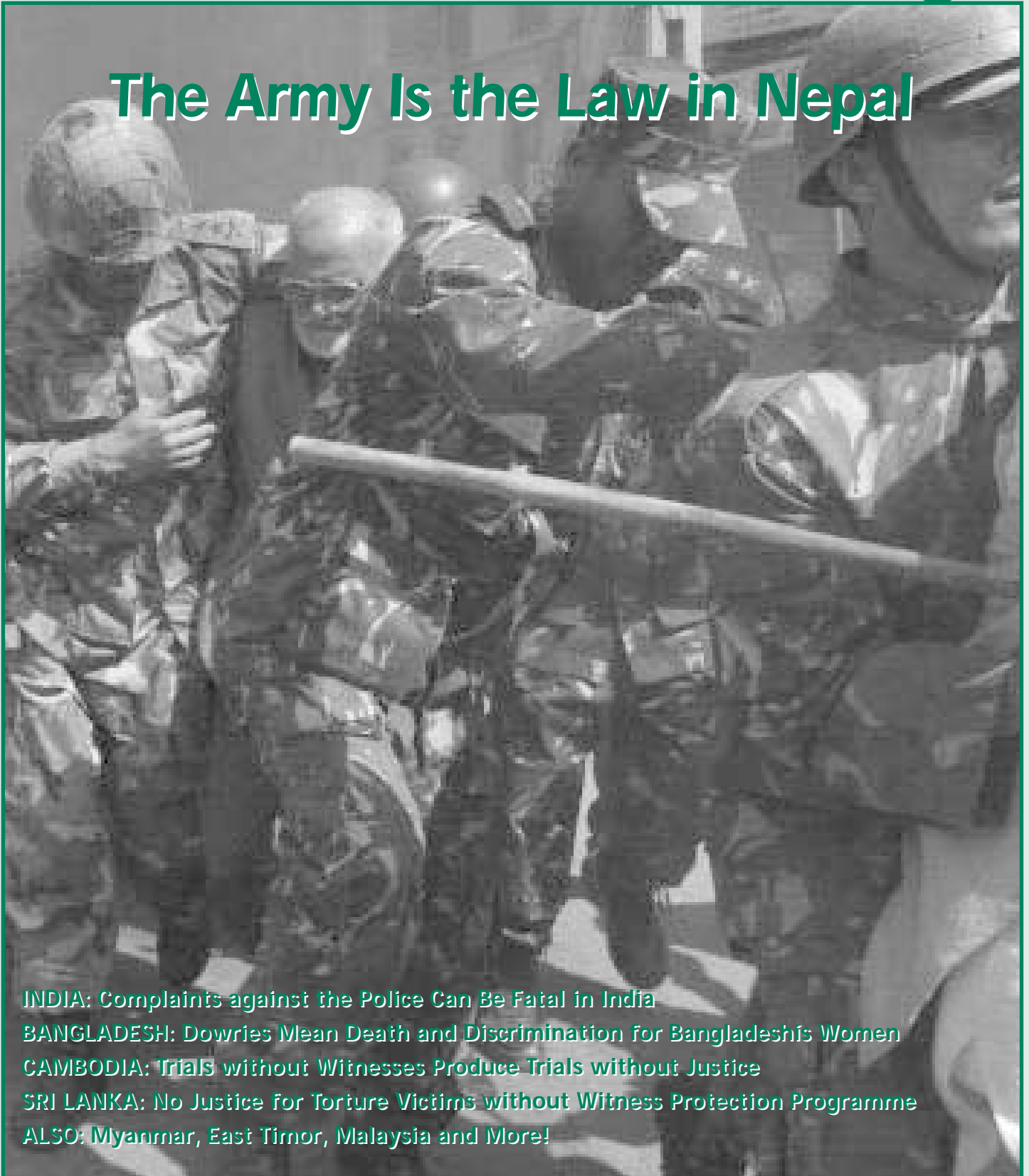


March 2005
Vol.15 No.2

A Publication of the Asian Human Rights Commission and
Asian Legal Resource Centre

Human Rights **SOLIDARITY**

The Army Is the Law in Nepal



INDIA: Complaints against the Police Can Be Fatal in India

BANGLADESH: Dowries Mean Death and Discrimination for Bangladeshis Women

CAMBODIA: Trials without Witnesses Produce Trials without Justice

SRI LANKA: No Justice for Torture Victims without Witness Protection Programme

ALSO: Myanmar, East Timor, Malaysia and More!



Even before King Gyanendra's coup on Feb. 1, 2005, the Royal Nepalese Army showed contempt for the country's courts and enjoyed impunity for the human rights abuses it committed. (Photo: cgi.worldnews.com)

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Human Rights SOLIDARITY

CONTENTS

Nepal

A Land without Law	Page 3
Children Treated as Adults in Nepal's Legal Vacuum	Page 7
Resolution Calls for Restoration of Democracy and Human Rights in Nepal	Page 10

India

Complaints against the Police Can Be Fatal in India	Page 12
Minorities Starving to Death in World's Largest Democracy	Page 14
U.N. Commission on Human Rights Approves Subcommittee's Resolution	Page 16

Human Rights at the Grassroots: India

We Are Almost Treated like Slaves	Page 18
-----------------------------------	---------

Bangladesh

Dowries Mean Death and Discrimination for Bangladesh's Women	Page 19
Government Fails to Brake Widespread Torture in Bangladesh	Page 21

Myanmar

Impunity Obstructs Justice in Myanmar	Page 22
---------------------------------------	---------

East Timor

Compromise and Impunity Is No Substitute for Justice	Page 24
--	---------

Malaysia

Internal Security Act: A Licence to Torture and Unjustly Detain Dissent	Page 25
---	---------

Cambodia

Trials without Witnesses Produce Trials without Justice	Page 26
---	---------

Sri Lanka

Fair trials in Sri Lanka Threatened by Police Referral Service	Page 27
No Justice for Torture Victims without Witness Protection Programme	Page 28
Poor Quality Staff Undermining Work of Human Rights Commission	Page 29

Editorial: Nepal

The Missing Element in the U.N. Human Rights System - Commitment	Page 31
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Human Rights SOLIDARITY is the newsletter of the Asian Human Rights Commission (AHRC) and Asian Legal Resource Centre (ALRC).

AHRC and ALRC are independent non-governmental bodies which seek to promote greater awareness and the realisation of human rights in the Asian region and to mobilise Asian and international public opinion to obtain relief and redress for the victims of human rights violations. AHRC and ALRC focus on pressing human rights concerns within the Asian region with respect to issues of civil, political, cultural, social and economic rights and the right to development.

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Human Rights SOLIDARITY is published by the Asian Human Rights Commission.

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Annual Subscription Fees for 12 Issues

- Hong Kong HK\$250 • Asian countries US\$35 • Outside Asia US\$50

To subscribe, send your name and mailing address with a bank draft payable to the "Asian Legal Resource Centre Limited".

ISSN 1682414-8



Print on recycled paper

A Land without Law

Asian Legal Resource Centre



With parliament dissolved and the courts ignored by Nepal's security forces, people have no means of protection and redress when their rights are violated, such as journalist Subid Guragain, who was seriously assaulted by Royal Nepalese Army personnel in June 2004. (Photo: AHRC archives)

(Ed. note: The written submissions to the 61st session of the United Nations Commission on Human Rights [UNCHR] in Geneva, Switzerland, submitted by the sister organisation of the Asian Human Rights Commission [AHRC], the Asian Legal Resource Centre [ALRC], comprise most of the contents of this issue of Human Rights SOLIDARITY. A total of 40 written submissions were made to the commission this year, all of which are available at www.alrc.net/doc/mainfile.php/61written. The six-week sitting of the commission for 2005 began on March 14 and ends on April 22.)

Although landlocked Nepal escaped the destruction of the tragic Indian Ocean tsunami in December 2004, the country has instead been hit by a man-made tsunami that has caused at least as much damage. Yet, whereas the international community has commendably sprung into action to address the needs of the millions affected by the natural disaster, it has all but ignored this man-made crisis. The latter is not only causing death and mayhem but also ruining all the basic institutions for the functioning of a country: its courts, law enforcement

agencies and bureaucracy.

In a 124-page report released in January 2005, the Asian Legal Resource Centre (ALRC) and the Kathmandu-based Advocacy Forum have described how the fundamental rights of people in Nepal have been suspended as institutions for the rule of law have ceased to function. In other statements made to the commission this year, the ALRC has detailed incidents of torture, forced disappearance, extrajudicial killing and violence against women in Nepal. In this submission, it concentrates on the zero

rule of law there as the cause of these gross violations of human rights.

A regime for human rights protection in Nepal no longer exists because the legal system has ceased to function. In terms of basic human rights protection, the practice of law in Nepal today is futile. This is due mostly to the deliberate withdrawal of cooperation by the Royal Nepalese Army and other security agencies and concomitant threats directed towards legal personnel as well as demonstrated disdain for the institution as a whole.

At the same time, the government of Nepal has introduced draconian legislation, most recently the Terrorist and Disruptive Activities (Control and Punishment) Ordinance of 2061, which effectively surrenders its authority to the security forces, and gives a green signal to continue with arbitrary detention, torture, disappearances and extrajudicial and summary executions.

The state security forces committing most abuses are under the joint command of the Royal Nepalese Army, which includes the Armed Police Force and regular police. As the police are now organised along military lines, they have ceased to engage in ordinary law and order functions in accordance with instructions from the courts and instead operate according to the directives of the military.

The case of Jhurri Teli, a 16-year-old resident of Banke District arrested by plainclothes security forces at about 7 a.m. on Sept. 9, 2004, speaks to how the police and administration in Nepal now work on behalf of the army. After being beaten and interrogated, Jhurri was taken to the Western Pritana Army Headquarters where he was illegally detained for seven days while kept

blindfolded and restrained. He was then delivered to the district police office of Banke where police forced him to sign a statement that he was not allowed to read. At 10 a.m. on Sept. 16, he was taken to the Banke prison and on the same day received a preventive detention order signed by the deputy of the district administration office under the Public Security Act.

Jhurri's family filed a writ of habeas corpus at the appeals court in Nepalgunj on Sept. 23. On Nov. 28, the appeals court found that Jhurri's detention was illegal and issued a release order. The family went to the prison along with lawyers and human rights defenders on Nov. 29, but a team of policemen came in a van and rearrested him as he was released. At the time of writing, his whereabouts remain unknown.

The irony that lies in this contempt for the courts on the part of the security forces is that it was the king of Nepal who precipitated the rot in the system in order to ensure that these same agencies enjoy impunity for their actions. The effect was both to destroy the possibility that institutions of justice may operate effectively and to guarantee continued insurgency. By dissolving parliament, he further removed literally all the checks and balances built into the constitution, in accordance with international law, intended to protect the rights of citizens.

The net result is that citizens of Nepal have been rendered powerless to stop abuses committed against them. For their part, the courts have all but given up trying to demonstrate a degree of authority. The non-attempt to exercise authority epitomises the collapse of the country's judiciary. No greater admission of failure can be made than to not even put on a show of legitimacy. While lawyers doggedly take cases to the courts

on behalf of desperate family members, seeking some way – any way – to protect their loved ones, the courts are either unwilling or incapable of acting on their behalf.

When a habeas corpus writ for a disappeared person reaches a high court in Nepal, it calls for records of arrest. In most cases, the authorities reply that the records do not exist. The conclusion is that the person was not arrested. The court dismisses the application on the ground that there is no evidence the person is in custody; but even where the lawyers and family of the missing person make heroic efforts to prove that the person is in detention, the court does nothing to protect the evidence, the victim, the lawyer representing them or the family members. The unflagging efforts of some lawyers and rights groups to help their clients put them and others in grave peril before a system that has completely surrendered its independence by refusing to entertain any matter relating to the security forces and their operations. In the end, the courts' reluctance to entertain habeas corpus writs for disappeared persons speaks to the wider policy of approving forced disappearances and concomitant gross human rights abuses. Where court orders are issued, they are invariably ignored or otherwise violated by the security forces.

The case of Jivan Shrestha, a 38-year-old arrested at his Kathmandu shop on Sept. 15, 2004, by army personnel, is indicative. Jivan and a friend were kept at Singhnath Barracks for six days before being produced before the chief district officer of Bhaktapur who ordered him detained under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance of 2001. Jivan was subsequently sent to the central jail in Kathmandu. There he told lawyers

from Advocacy Forum that he had been tortured and forced to confess to being a Maoist. A habeas corpus writ was filed on his behalf on Oct. 7. On Nov. 16, the Supreme Court ordered that he be released. The same afternoon the jail authorities freed him but only after his wife had signed a document that his lawyer was not permitted to see. The police immediately rearrested him, reportedly on army orders. He was subsequently transferred back to Singhnath Barracks.

On Nov. 18, another writ of habeas corpus was filed, and Jivan was released on Nov. 24 on the condition of the army that he must report to the barracks on Dec. 15. He dutifully went and was taken back into custody. When his wife came repeatedly to beg for his release, she was threatened and blamed for filing habeas corpus writs and telling human rights groups about what had happened to her husband. Finally, Jivan was again released but only on the condition that he again report to the barracks, this time with written proof that the writs issued against the authorities had been withdrawn.

In a similar case, soldiers arrested Jimdar Kewat, a 16-year-old resident of Banke District, and his 50-year-old father Keshu Ram Kewat on April 15, 2004. At the Fultekra Barracks, they were kept blindfolded for four days and were beaten on their backs and the soles of their feet for about 10 minutes each day. Army personnel also poured water down their noses and told them to provide information related to the Maoists, about which they did not know anything. For one-and-a-half months, they were kept in illegal detention. On May 31, the army handed the two over to the district police office in Banke, and they were given a three-month preventive detention order under the Public Security Act, signed by



The weakening of controls over the army and police in Nepal unleashes forces that deny people their rights with impunity. (Photo : Daily Times)

the chief district officer on the same day. They were then taken to the central prison in Banke.

On July 1, a writ of habeas corpus was filed; and on Sept. 19, the court ordered Jimdar and Keshu Ram be released. However, prison authorities refused to release them, saying that they had not received the court order. When lawyers and family members came back the next day, they learned that the two had been taken out of the prison and immediately rearrested by a team of security forces. On Sept. 20, lawyers from Advocacy Forum found the two in the Wada police office in Nepalgunj. When they tried to intervene, another preventive detention order was issued to keep them in detention. At the time of writing, they have not been released.

The non-functioning of agencies intended to uphold the rule of law and basic human rights is no accident. In Nepal, it has been achieved through deliberate steps taken by the government to allow security forces a free hand in pursuing counterinsurgency objectives.

The weakening of controls over the army and police will result in far greater atrocities than anything envisaged by the government and far beyond its control.

While the United Nations and international community are now alerted to what is happening in Nepal, there is as yet little understanding of the nature and scale of the unfolding crisis. Powerful neighbours, particularly India, lack clear strategies to address the daily worsening events. Nor do they appear to be taking steps to develop any. Without a quick awakening, it is quite likely that the world will watch another tragedy of Cambodian proportions unfold in Nepal in the not-too-distant future.

All people of goodwill within Nepal and outside have a legitimate right to intervene in any way possible and demand that the gross violations of human rights by the security forces there come to an end. International organisations, and particularly strong neighbours, like India, must use all their influence towards ending the extreme violence enveloping the country. It is

neither in the interests of the people of Nepal nor the international community that the United Nations and concerned governments should maintain a disinterested silence and expect that things will sort themselves out.

Nepal is rare among countries in Asia in that it is a party to most of the important international human rights conventions and their attendant bodies. Yet the number and intensity of violations within its borders now outstrip virtually all other territories in the region. Ironically, very few individual complaints are ever brought from Nepal to the U.N. bodies to which it is answerable.

The government of Nepal must be made to understand that it has no option other than to bring its security forces under control. The blanket of impunity covering the army and police must be removed without delay. However, it cannot be presumed that the government of Nepal is capable of making the necessary decisions to do this of its own accord: every piece of evidence suggests the opposite. International intervention must therefore amount to more than the posting of some advisers to the government.

Accordingly, the ALRC urges the commission to take serious initiatives directed at ending the practices of large-scale disappearance, killing and torture in Nepal and ensuring thorough investigations of those atrocities that have already been committed. Treaty bodies in particular cannot afford to sit idly by drafting finely worded statements. In the face of overwhelming chaos in Nepal, the ALRC urges all mechanisms of the commission to put their means for effective monitoring and intervention to the test.

Featured Web Sites for Human Rights

To disseminate the information produced by the Asian Human Rights Commission (AHRC) as widely as possible, the organisation has consistently used web sites and the power of the internet to promote and protect human rights in the region. We wish to highlight here several web sites that focus on a specific ongoing theme of AHRC's work or an issue that we feel warrants special attention as well as new web sites that have been recently constructed.

Nepal: < <http://www.nepal.ahrchk.net>>

Disappearances in Nepal: < <http://nepal.disappearances.org>>

article 2: < <http://www.article2.org>>

The first web site above was constructed to respond to King Gyanendra's coup on Feb. 1, 2005. It collects the responses of the international community to the coup, including the United Nations, as well as the urgent appeals, statements and press releases issued by AHRC.

The second web site, as its name indicates, focuses on disappearances in the country and includes an online petition that invites people's signatures as well as a cyber memorial to Nepal's disappeared. In addition to this web site, the entire issue of *article 2* for December 2004 contains a report about the problem.

No Torture: < <http://notorture.ahrchk.net>>

AHRC has campaigned against the widespread use of torture in Asia for many years. This web site contains AHRC's urgent appeals, statements and press releases related to torture in the region as well as a variety of other materials and resources on the issue - books, reports, posters, etc.

Sri Lanka Human Rights: <<http://srilanka.ahrchk.net>> in English and <<http://srilanka.ahrchk.net/sin>> in Sinhalese

The fatal shooting of Sri Lankan torture victim Gerald Perera on Nov. 21, 2004, is currently highlighted on this web page. Perera, who was tortured in the Wattala police station in June 2002, was killed about a week before the criminal trial of the seven police officers accused of torturing him was to begin on Dec. 2. Updated information about the case, including the arrest of the persons allegedly responsible for his death, is also included on the web page. Other urgent appeals, statements and press releases produced by AHRC about Sri Lanka are provided on this site as well.

Protection & Participation: < <http://www.southasiahr.net>>

AHRC's newest publication, *Protection & Participation*, is now available on the internet. The magazine seeks to offer a platform to discuss the common problems of protecting human rights in South Asia, a subregion characterised by weak democracies, impunity and citizens living in fear and silence. Analyses of the cause of these problems and strategies to confront them are also part of the content of the publication.

Torture, Rape, Disappearance, Extrajudicial Killing Children Treated as Adults in Nepal's Legal Vacuum

Asian Legal Resource Centre

In a 124-page report released in January 2005, the Asian Legal Resource Centre (ALRC) and the Kathmandu-based Advocacy Forum have described how the fundamental rights of people in Nepal have been suspended as institutions for the rule of law have ceased to function. In other statements made to the United Nations Commission on Human Rights this year, the ALRC has described the zero rule of law in Nepal and has detailed incidents of extrajudicial killing, forced disappearance, torture and violence against women. In a number of those, it details incidents of killing, forced

disappearance and torture of children. In this submission, it adds some further cases of gross acts of violence committed upon Nepalese children, speaking to the total collapse of any means for the protection of human rights in the country in breach of Nepal's commitments under the Convention on the Rights of the Child (CRC).

As the rule of law in Nepal has all but ceased to exist, children have been subjected to the same torture, killings and forced disappearances as adults in the country. Since Nov. 26, 2001, when the Royal Nepalese Army was unleashed

on the population under a yearlong national state of emergency, it has also systematically violated the rights of all people throughout the country without regard to other factors. When carrying out operations, the Nepalese security forces do not discriminate between a 12-year-old and a 21-year-old.

The brutal torture and murder of 14-year-old Kaliram Tharu and some friends in Bardiya District dramatically illustrate this point. Kaliram and his friends were minding cattle and playing together around 3 p.m. on April 25, 2002, when a



Many Nepalese children not only have to work for survival, but are also at risk of being tortured, raped, forcibly disappeared or extrajudicially killed or of becoming Maoist child soldiers. (Photo: Child Workers in Nepal Concerned Centre [child labourer], Nepali Times [child soldier])

group of 50 to 60 uniformed and armed Joint Security Force personnel approached. The troops asked the boys if they had learnt martial arts. Being children and seeking to impress the soldiers, one of them boastfully replied that they had training and were paid 150 rupees (US\$2.15) a month. The security officers then accused the boys of being Maoists. Despite the boys saying they were just students, the officers started beating them and took them towards a nursery located on the eastern side of the village. As they were being taken, Kaliram's mother approached the troops and asked why they had taken the boys. The soldiers replied that the children were Maoists.

At the nursery, the boys were beaten and kicked for a further 15 minutes after which they were taken to the Vici Barracks where they were forced to strip to their underwear and lie on the dirt. Then they were taken to the district police office where Kaliram could not eat the food due to swelling on his face. At around 7 p.m., three of the boys, including Kaliram, were taken to the east of the village in a van. They did not come back. Only one person who had been taken to the police station, 27-year-old Bhikhu Tharu, was released. The next day Radio Nepal routinely covered up the killings by announcing that three Maoists had been killed in an encounter in the Mohamadpur area, and bombs, pistols and other materials had been seized. The news did not give names.

Some other acts of torture, rape and killing of children by the security forces in Nepal detailed in the ALRC-Advocacy Forum report include the following:

- a. Bandara, a.k.a. Ram Prasad Dhobi, a 15-year-old student in grade five, was killed along with four men – Munabber Khan, 25; Mohammad Khan, 30; Rajjab Khan, 25; and Mahendra Barma, 30 – by security forces around 6 a.m. on April 3, 2004. A group of about 12 personnel from the joint command came on bicycles and captured all the five people of Banke District while they were sleeping on the roof of the Ram Janaki Temple in Sonbarsha village. They tied the hands of the five behind their backs, forced them to lie on the road and beat them with batons and kicked them with their boots. They then told each of the men to run towards the fields in turn and shot them in the head. Initially, they spared Ram Prasad, but an officer from one of two vehicles that arrived later shot him too. Afterwards they loaded the bodies into one vehicle and drove in the direction of Nepalgunj.
- b. Kumar Lama, a 15-year-old seller residing at Lazimpath in Kathmandu, was arrested in Taku at 11 a.m. on Dec. 29, 2003, and taken to the district police office in Hanumandhoka. According to Kumar, he was sitting in the shop where he worked when two plainclothes policemen arrested him. He was brought to Hanumandhoka in a van and taken to the interrogation section where he was beaten for half an hour. The police beat him with a wooden stick on his back, the soles of his feet and his chest. At 10 p.m. that night, he was taken to the interrogation section again and beaten for about two hours. Similar beatings continued for about four days for half an hour each day. While beating him, they told him to admit to committing theft and to name his friends. His older brother was subjected to similar treatment. Both were presented in court on Jan. 14, 2004, on charges of robbery. The judge did not ask them about torture nor were they provided any kind of medical treatment.
- c. Reena Rasaili, an 18-year-old grade seven student, and Subhadra Chaulagain, 17, of Kavrepalanchok District were shot and killed separately by a group of security personnel after midnight on Feb. 13, 2004. According to Reena's father, about 10 plainclothes armed security personnel came to his house at midnight and called for him to open the door. He did not open the door because of fear so they broke it open and entered the house. After searching it, they pulled his daughter from her bed and took her to the cowshed. The house occupants then did not hear any conversation between Reena and the security personnel, only her painful cries and moaning, which continued for almost five hours. At around 5 a.m., the security personnel took Reena 100 metres away from the shed and shot her three or four times. The family found her body totally naked with bullet injuries to her head, breasts and eyes. She also had injuries and scratches on her stomach and chest. A national radio broadcast on Feb. 13 named Reena among three "terrorists" killed that night in an encounter with security forces.
- d. Subhadra Chaulagain, a 17-year-old grade nine student and resident of Kavrepalanchok District, was detained by the security forces after they gang-raped Reena Rasaili on Feb. 13, 2004. When several personnel came to her house around midnight, a friend who was sleeping upstairs reportedly jumped out and ran away out of fear. The security forces fired at him but could not capture him so they went and

dragged Subhadra from her bed and took her outside. She cried, saying that she had not done anything wrong, and begged them to take her to the district headquarters instead of killing her. However, the personnel started to beat her brutally and pulled her along. The family, which was forced back inside, then heard around nine gunshots. After that, four security personnel severely beat up her father, blaming him for supporting the Maoists. He finally lost consciousness from the assault but could not go to the hospital because of threats by the security forces. After the incident, Subhadra's 14-year-old brother, Ram Kumar Chaulagain, went into shock, refusing to eat or drink, and went to offer food to the dead body of his sister instead.

The absolute impunity with which the armed forces in Nepal today operate is also evident in the forced disappearance of Prahalad Waiba. Around 11:30 a.m. on March 1, 2004, an armed contingent of about 50 to 60 Royal Nepalese Army soldiers arrived on the road leading to the Shri Krishna Secondary School under the command of the lieutenant in charge of the Farping checkpoint. Four of them in civilian dress and carrying bags on their backs sneaked towards the school. One remained at the school gate while the rest, among them the lieutenant, walked into the school office to the surprise of the headmaster and his staff. The lieutenant unfolded a piece of paper that was in his pocket and after scanning it asked the headmaster for Prahalad Waiba. The headmaster then went to get 18-year-old Prahalad from class nine and brought him to the office. The soldiers took him about 15 metres away from the room, saying that they needed to talk privately with the

boy. More than a quarter of an hour passed after which the soldiers returned Prahalad's books and class attendance register to the office before taking the boy from the school before the eyes of all his teachers and friends. When the headmaster asked why they were taking his student, he was told to learn to keep records of his students and staff and that Prahalad was a Maoist.

Prahalad's father, who has been working at the same school as an attendant for the last six years, was shocked that the soldiers could take his son out of the school premises before the eyes of hundreds of people without any warrant. Prahalad's friends and teachers, who state that Prahalad was a naive, introverted and honest boy who spoke only after his name was called a few times, always helped with chores and never left his home before his arrest, were stunned as well.

On April 28, 2004, Prahalad's mother went to the Farping checkpoint to meet her son as he had still not returned home, and she wanted to give him some clothes. However, she was told that she could not meet him. After two months, his father filed complaints with the National Human Rights Commission and the International Committee of the Red Cross (No. 200847). However, to date, there has been no news of his son's whereabouts.

As the ALRC has stressed in other statements to the 61st session of the commission, the massive violation of all human rights in Nepal, including the rights of the child, is occurring because of a total breakdown in the rule of law. Under the circumstances, it is very difficult to produce recommendations to counteract such violence. As noted in a separate submission, what is the

possibility of making meaningful suggestions to the international community when there are no longer any mechanisms within Nepal through which human rights can be protected? Given these conditions, the many international conventions to which Nepal is a party, including the CRC, are of little or no significance. Thus, it is with this caveat that the ALRC urges that

- a. the commission should pay special attention to the gross acts of torture, forced disappearance, killing and other violence committed against children by the security forces in Nepal, including those incidents described above, in particular through the Committee on the Rights of the Child;
- b. the commission should create an international alert on the human rights situation in Nepal whereby the situation in the country can be monitored constantly and reported upon to other agencies to permit a rapid response;
- c. neighbouring states and key international agencies, such as India and the European Union respectively, should raise the deteriorating security situation in the country as a key issue for discussion at the Security Council and in other relevant gatherings with a view to active and speedy intervention; and
- d. international humanitarian agencies must reconsider their current activities with a view to keeping abreast of the rapidly worsening conditions in Nepal and concentrating on necessary steps for the protection of fundamental rights there.

Resolution Calls for Restoration of Democracy and Human Rights in Nepal

United Nations Commission on Human Rights

(Ed. note: The United Nations Commission on Human Rights passed the resolution below on Nepal on April 15, 2005, during its 61st session in Geneva, Switzerland.)

The Commission on Human Rights,

Recalling that Nepal, having ratified six major human rights treaties, has freely accepted the obligation to protect the human rights of the people of Nepal,

Recalling the importance of the implementation of Security Council resolutions 1265 (1999) of Sept. 17, 1999 and 1296 (2000) of April 19, 2000 on the protection of civilians in armed conflict, 1325 (2000) of Oct. 31, 2000 on women and peace and security and 1539 (2004) of April 22, 2004 on children and armed conflict,

Seriously concerned at the growing number of civilian victims of the ongoing conflict since the breakdown of the ceasefire on Aug. 27, 2003,

Deeply concerned about the situation of human rights in Nepal, including violations attributed to the security forces, in particular unlawful killings, all forms of sexual violence, forced displacement and disappearances, and attacks against the physical integrity and safety of political leaders and party activists, human rights defenders, journalists and others and also deeply concerned about the prevailing situation of impunity,

Strongly condemning all acts of violence against civilians and other criminal acts such as attacks against life, physical integrity and personal liberty and safety, including unlawful killings, all forms of sexual violence and extortion, committed by members of the Communist Party of Nepal (Maoist),

Conscious of the fact that the Commission's appeals are mainly directed to the Government of Nepal as it is subject to international obligations; additionally gravely concerned at the serious breaches of humanitarian law committed by members of the Communist Party of Nepal (Maoist), which may constitute war crimes and crimes against humanity,

Recalling His Majesty's Government of Nepal's declaration of commitment on the implementation of human rights and international humanitarian law of March 26, 2004,

Bearing in mind the Chairperson's statement on human rights assistance to Nepal (E/2004/23-E/CN.4/2004/172, para. 716),

Taking note of the efforts of the Government of Nepal in establishing a Human Rights Promotion Centre in the Prime Minister's Office and human rights cells within the security forces,

Taking note of the report of the Working Group on Enforced or Involuntary Disappearances on its mission to Nepal (E/CN.4/2005/65/Add.1) and the report of the Office of the United Nations High Commissioner for Human Rights on its activities in Nepal, including technical cooperation (E/CN.4/2005/114),

Expressing its deep concern about the serious setback to multiparty democracy and the weakening of the rule of law through the royal proclamation and the declaration of a state of emergency of Feb. 1, 2005,

Deeply concerned about the arbitrary arrests and secret detention, in particular of political leaders and activists, human rights defenders, journalists and others, and about continued enforced disappearances, as well as allegations of torture,

Welcoming the signing of the Agreement between the Government with the Office of the High Commissioner concerning the establishment of an office in Nepal on April 10, 2005, while also taking into account actions taken by the Government in some cases of human rights violations,

Taking note of the visit of the Representative of the Secretary-General on human rights of internally displaced persons and the invitation extended to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,

1. *Calls upon* the Government of Nepal urgently to restore the multiparty democratic institutions enshrined in the Constitution of Nepal and to respect the rule of law without exception;

2. *Requests* the Government of Nepal to bear in mind that, in accordance with article 4 of the International Covenant on Civil and Political Rights, certain rights, in particular the right to life and the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment, are recognised as non-derogable in all circumstances and that any measures

derogating from the provisions of the Covenant must be in accordance with that article in all cases, and underlining the exceptional and temporary nature of any such derogations, as stated in general comment No. 29 (2001) on derogations to the Covenant during a state of public emergency of the Human Rights Committee;

3. *Calls upon* the Government of Nepal to reinstate immediately all civil and political rights, to cease all state of emergency-related and other arbitrary arrests, to lift the far-reaching censorship, to restore freedom of opinion, expression and the press as well as the freedom of association, to release immediately all detained political leaders and activists, human rights defenders, journalists and others, to allow all citizens to enter and exit the country freely and to respect all international and national obligations as well as the 25 points of the commitment of March 26, 2004, as freely undertaken by Nepal;

4. *Strongly condemns* the repeated practices of members of the Communist Party of Nepal (Maoist), such as:

- (a) Unlawful killings, rape, extortions, forced displacement, mass abduction and forced recruitment and labour targeted at civilians;
- (b) Persecution and attacks against the life, integrity and safety of political leaders and party members, human rights defenders, journalists, peace activists and others;
- (c) Attempts to blockade Kathmandu and other urban areas with a view to cutting off supplies of food and other essential supplies to the civilian population;

5. *Firmly condemns* the recruitment and use of a large number of children in Maoist forces and urges the members of the Communist Party of Nepal (Maoist) to stop the recruitment of children as well as to demobilise immediately those currently participating in these groups, as set out in Security Council resolution 1539 (2004);

6. *Strongly urges* the members of the Communist Party of Nepal (Maoist) to comply with international humanitarian law and to respect the legitimate exercise of all human rights by the people of Nepal as well as immediately and unconditionally to cease and renounce violence,

disarm, and enter into negotiations with the genuine intention of rejoining the political process, thereby helping to ensure that the people of Nepal are free to choose their own Government;

7. *Calls upon* all parties to the conflict to respect human rights and international humanitarian law, in particular common article 3 of the Geneva Conventions of Aug. 12, 1949, as well as to act in conformity with all other relevant standards relating to the protection of civilians, particularly of women and children, and to allow the safe and unhindered access of humanitarian organisations to those in need of assistance;

8. *Urges* the Government of Nepal:

- (a) To take all necessary measures to prevent and put an end to extrajudicial and summary killings, all forms of sexual violence, enforced disappearances, arbitrary arrests, illegal incommunicado detention as well as torture and other cruel, inhuman or degrading treatment or punishment;
- (b) To take all appropriate measures to clarify the fate of all cases of persons allegedly victims of enforced disappearance, including, where appropriate, taking into account the work of the national committee and international expert bodies in this field;
- (c) To ensure that all anti-terrorism and security laws and measures are in accordance with all relevant international norms and standards as well as the Constitution of Nepal;
- (d) To take appropriate measures to ensure the protection of the civil and political rights of political leaders and activists, human rights defenders, journalists and others;
- (e) To take appropriate measures to protect women and girls from gender-based violence, as emphasised by the Security Council in resolution 1325 (2000), and to prevent and prosecute traffickers in women and children;
- (f) To take all necessary measures to protect and respect the human rights of refugees, including the principle of non-refoulement;
- (g) To combat impunity by ensuring that all allegations of violations of human rights and international humanitarian law are investigated promptly, independently and impartially and, as appropriate, prosecuted through the criminal justice system, in accordance with the Constitution of Nepal and international standards of justice, fairness and due process of law;
- (h) To begin urgently a national dialogue with political parties to restore peace, stability,

the promotion and protection of human rights and to safeguard democracy;

- (i) To request the technical assistance of the international community and the United Nations in planning free and fair local elections, following their announcement;

9. *Calls upon* the Government of Nepal to provide urgent protection and assistance to internally displaced persons, taking account of the particular needs of women and children, to facilitate their safe return, reintegration and resettlement elsewhere in the country, as appropriate, and to develop appropriate policies and legislation in this regard, using the Guiding Principles on Internal Displacement;

10. *Also calls upon* the Government of Nepal to ensure the independence and effectiveness of the judiciary, and therefore urges the Government to safeguard effective judicial remedies, in particular respect of habeas corpus orders, and to comply fully and faithfully with all judicial orders;

11. *Further calls upon* the Government of Nepal:

- (a) To ensure continued independence, institutional continuity and stability of the National Human Rights Commission of Nepal in conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights annexed to General Assembly resolution 48/134 of Dec. 20, 1993 (the Paris Principles) and the Human Rights Commission Act, 2053 (1997);
- (b) To ensure full and unimpeded access without prior notice of the National Human Rights Commission of Nepal, the Office of the United Nations High Commissioner for Human Rights and the International Committee of the Red Cross to all persons held in detention, including places of detention under the authority of the Royal Nepalese Army;
- (c) To provide necessary support to the National Human Rights Commission of Nepal, including its regional offices, in carrying out its statutory mandate and to ensure the necessary protection by, and cooperation of, governmental entities, including the security forces, to enable the members of the National Human Rights Commission to promote and protect human rights in Nepal;
- (d) To support the Office of the High Commissioner in its continued assistance to the National Human Rights Commission;

12. *Welcomes* the efforts of the Government of Nepal to comply with the obligation to submit

periodic reports to the respective treaty bodies, in particular under the International Covenant on Civil and Political Rights, and urges the Government to implement their recommendations, particularly the recent recommendations of the Committee on the Elimination of Discrimination against Women of January 2004 and of the Committee on the Elimination of Racial Discrimination of March 2004;

13. *Encourages* the Government of Nepal to extend invitations to the special procedures of the Commission to visit Nepal, to cooperate fully with them and implement their relevant recommendations, in particular the recent recommendation of the Working Group on Enforced or Involuntary Disappearances, specifically the recommendation to enforce a complete prohibition on incommunicado detention in military barracks;

14. *Requests* the High Commissioner, in accordance with the Agreement signed with the Government of Nepal on April 10, 2005, to establish an office in Nepal with the mandate to assist the Nepalese authorities in developing policies and programmes for the promotion and protection of human rights, to monitor the situation of human rights and observance of international humanitarian law, including investigation and verification nationwide through international human rights officers and the establishment of field-based offices staffed with international personnel, to report in accordance with the Agreement and to work in cooperation with other United Nations and other international organisations based in Nepal in this regard;

15. *Calls upon* the Government of Nepal to implement promptly and fully the Agreement with the Office of the High Commissioner and to extend its full cooperation to the office of the High Commissioner in Nepal, to assist the office in the discharge of its mandate and to take all necessary steps to ensure that its officials and experts on mission have free and unlimited access to any persons in Nepal whom they might wish to meet;

16. *Encourages* the international community to assist the Government of Nepal in implementing the present resolution;

17. *Requests* the High Commissioner to submit a report on the human rights situation and the activities of her Office, including technical cooperation, in Nepal to the General Assembly at its 60th session and to the Commission at its 62nd session;

18. *Decides* to continue its consideration of the situation of human rights in Nepal at its 62nd session under the same agenda item.

Complaints against the Police Can Be Fatal in India

Asian Legal Resource Centre

Lilabati Chowdhury, seven months pregnant and a mother of two, was brutally beaten by a police patrol party from the Beharampore police station in the Indian state of West Bengal at midnight on Aug. 7, 2004. Mrs. Chowdhury's husband, Chhutka Chowdhury, is a daily wage labourer who catches fish in his spare time. The Chowdhury family belongs to the Dalit, or so-called Untouchable, community and is very poor. On the night of Aug. 7 while Mr. Chowdhury was fishing in a nearby river, the police were searching for him. When they reached the Chowdhury's house, they prodded Mrs. Chowdhury awake with their batons. Mrs. Chowdhury asked them why her family was being harassed since no complaint had been made against them. She also protested against the vulgar language used by the police towards her. The police then brutally assaulted her with their batons, seriously injuring her. Mrs. Chowdhury was admitted to the Baharampur Block Hospital in critical condition. Several uniformed policemen went to the hospital late that night and threatened her not to speak to anyone about the incident.

India has rejected all calls to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment (CAT) on the grounds that the domestic mechanisms available in the country are capable of preventing brutality and inhuman treatment. The incident mentioned above occurred in West Bengal. It was while deciding a similar case from West Bengal in 1997 that the Supreme Court of India ruled that torture in all forms must be prevented within the country. The Supreme Court directed the government to take all steps necessary to prevent torture in the country. The court also directed the government to instruct its law enforcement agencies to implement the court order forthwith without any default whatsoever.

Mr. and Mrs. Chowdhury were not aware of the decree of the Supreme Court. Neither did they know that the Criminal Procedure Code of India and the Police Act, though centuries old, also mandate that if any house is to be searched the police must obtain a search warrant from a magistrate. Furthermore, if there are any female occupants in the house, the search must be conducted in the presence of a female police officer. All that Mr. and Mrs. Chowdhury knew for sure was that, had they dared to complain about their ordeal, it would be investigated by the same officers that had attacked Mrs. Chowdhury and that they

would be further persecuted and charged with an offence that they did not commit. They would then most likely be thrown in jail as is a common practice in India.

Any person who dares to complain about police officers in India faces the wrath of the law enforcement agency. As with so many others, this was the experience of Mr. Madhusudan Seth, a businessman from Bardhaman District in West Bengal. Mr. Seth was taken into custody on a petty charge for which the prescribed punishment is a fine of less than US\$50. However, Mr. Seth was detained in custody at the Manteswar police lockup for the night where he was allowed to wear only his underwear. The next morning he was paraded in public semi-naked and then put onto a public bus and taken to the Kalna Magistrate's Court. The magistrate did not take any action about the parading and presenting of the detainee in court in only his underwear despite Mr. Seth making a complaint regarding this degrading treatment.

The police detained Mr. Seth after he lodged a complaint against a police officer from the Chapra police station in Nadia District. Mr. Seth complained that the officer had behaved in an

inhuman manner and had used vile language when Mr. Seth visited the Chapra police station regarding another matter. Mr. Seth further lodged a complaint with the National Human Rights Commission, though the commission has yet to take any action. Mr. Seth is perhaps lucky as many in his position have been killed in retaliation for complaints they have made.

Mr. Abhijnan Basu, who was serving his prison sentence at the Presidency Jail in West Bengal, was one such person who was not so lucky. Officers at the prison murdered him because he dared to complain about the inhuman conditions and poor quality of food. Three prison wardens set him ablaze on Nov. 12, 2004. The jailer, who is duty bound to protect the prisoners, supervised the entire incident.

Many officers in the police and law enforcement agencies in India are criminals and murderers in uniform. In its written submission to the commission for its 60th session, the Asian Legal Resource Centre (ALRC) already noted that the situation of policing in India had deteriorated to such an extent that serious action must be taken to prevent further decay.

Torture in India is widespread, unaccounted for and rarely prosecuted. It contributes to the state of anarchy and lawlessness in many parts of the country. Torture is used as a cheap and easy method of investigation and also as a tool for oppression. In the hands of the wealthy and influential, Indian law enforcement agencies have also strengthened links with criminal elements. Even the judiciary in India

cannot sever this nexus between police and criminals.

The judiciary has tried to address torture in India. However, its involvement has been limited to select cases, and many instances of torture have gone unreported. The government highlights rare cases as examples to assert that there is rule of law in the country, though most torture cases are either not reported due to fear of further persecution or fail to be prosecuted due to a lack of proper laws and corrupt practices. Local courts often deny remedies due to the ignorance of judges and a nexus also between police officers and members of the judiciary.

The national and state human rights commissions have no authority to change this situation. There is no independent body to inquire into reported cases of torture. Commission orders are mere recommendations and are often ignored. Where torture is state-sponsored, the recommendations rarely get executed. The Human Rights Act is simply eyewash for the international community. Since it cannot be enforced, it is useless.

India has signed the CAT but not ratified it on the pretext that existing laws have adequate provisions to prevent torture in addition to constitutional safeguards. However, the provisions of the Criminal Procedure Code, Indian Evidence Act and Indian Penal Code are worthless since there is no procedure for independent inquiries into torture and compensation for victims. Apart from this, the government has implemented new draconian laws, like the Prevention of Terrorism Act, which denies the

accused any guarantees to a fair trial. Constitutional remedies too are meaningless for most victims. The constitutional courts are virtually inaccessible to ordinary people; and even if a victim is successful in getting a case heard, these usually experience huge delays. The lack of motivated lawyers and legal assistance and a defective prosecution system worsen this situation.

The ALRC therefore recommends the United Nations Commission on Human Rights to

- a. request the government of India to take immediate steps to prevent custodial torture and deaths by making police at the rank of officers-in-charge of stations and above accountable for every case of violence in custody and holding them personally liable;
- b. provide the means and encouragement for India's National Human Rights Commission to conduct independent inquiries into alleged cases of torture and enforce its findings;
- c. pressure the government of India to ratify the CAT immediately. To date, there have been very few efforts to this end from the international community. Persuasive attempts to ratify a convention have in the past yielded results. In the case of India, there should be an immediate and consistent attempt from international bodies so that India ratifies the convention and implements it domestically.

Minorities Starving to Death in World's Largest Democracy

Asian Legal Resource Centre

Throughout Asia, the actions of state agents pose a serious threat to the food requirements of local populations. The Asian Legal Resource Centre (ALRC) has made separate written statements to the 61st session of the United Nations Commission on Human Rights on the right to food in Thailand and Myanmar. Discrimination and ineffective rule of law have also led to the violation of the right to food for numerous communities and individuals in India. It is of great concern to the ALRC that systemic abuses throughout India continue to leave ordinary people hungry and suffering from malnutrition or starvation. In particular, discrimination towards minority groups, collusion between local officials and the lack of effective administration has led to numerous cases of starvation in 2004.

One such case occurred in September 2004 in the village of Mahuabari in eastern Uttar Pradesh where all but two of 13 landless Dalit families – so-called Untouchables – were classified as Above Poverty Line even though they were approaching starvation and their children were wracked with malnutrition-related fevers. This classification effectively bars the families from access to government – supported schemes and discounted rations. Widows had also not received their pension entitlements from the government with one widow, Gujarati Devi, stating that she lodged an application for a pension three years ago but so far had received

no information. Meanwhile, local authorities were understood to be using resources for social service programmes on other parts of the village community while neglecting the Dalits.

The Dalit families belong to a group known as Bansfors, traditionally working as basket and fan makers. Ever since they had been banned from collecting bamboo, which they use to make their products, in the forest, they had to resort to borrowing money from local moneylenders who charge exorbitant rates to buy the bamboo around their houses, owned by powerful upper-caste villagers. As the ALRC discusses in a separate written statement to the 61st session of the commission on caste, Dalits in India have faced discrimination for centuries and lack legal entitlements to anything.

The relationship between land and food in India was highlighted by the ALRC in its previous submission to the commission through the plight of numerous landless communities in Maharashtra. To date, however, the situation of these communities has not improved with the Indian government doing little to address the systemic factors responsible for their hunger and landless status. Furthermore, these factors are not confined to the state of Maharashtra. In August 2004, Adivasi, or tribal, villagers of Sonebhadra District in the state of Uttar Pradesh travelled a



A boy at Paraspur village in Murshidabad runs to get food after three days' hunger. He is one of the many malnutrition and starvation victims in India, but the authorities have done little to ease their plight. (Photo: AHRC archives)

gruelling 40 kilometres on foot during the monsoon season to complain about food shortages to the district magistrate in Robertsganj. This was after widespread malnutrition and starvation had been documented there in 2003 by civil rights groups: in Raup village, for example, 19 children had died of starvation within a one-month period. The state government had subsequently provided some assistance to the villagers – wheat, kerosene, rice and potatoes – after the National Human Rights Commission filed a petition to the government. However, such short-term and superficial assistance did nothing to address the underlying problems faced by the community.

In fact, the villagers are currently surviving on roots and leaves with no other food to eat. Officials responsible for the distribution of necessary rations and district medical officers have ignored the plight of this community despite being aware of the severity of their situation. Most of the Adivasis work as labourers for farmers; they either have no land or have been given barren land. A 10-year-old Supreme Court order directing local officials to conduct a survey into land in the region for the purposes of recognising the land rights of local Adivasi populations has been ignored.

Such indifference to Supreme Court orders merely underlines the slow decay of the rule of law throughout India. In fact, that people are starving or going hungry in a country that possesses surplus food grains speaks to the collapse of the effective administration of justice. If welfare codes, relevant legislation and court rulings were effectively implemented at state and district levels without corruption or discrimination, India's people would not today be going hungry.

Another case in which the Supreme Court has been ignored occurred in the subdistrict of Kashipur in the state of Uttaranchal. The court's order, issued in February 2004, clearly stated that land stolen by a local company from Dalit villagers 10 years ago must be taken over by the state with the intention of redistributing it to the villagers. The land in question had been tilled by the Dalit community for more than 30 years and was even declared "surplus land" under a state law in 1992 by a local government official, which meant that legal rights to the land could be conferred to the villagers. However, a local company named M/s Escort Farms Ltd.

contested the granting of the title through the Allahabad High Court and simultaneously connived with local officials to violently evict the villagers in 1993. After the court held in favour of the villagers, the company appealed to the Supreme Court, which finally ruled in favour of the villagers in 2004. However, to date, the land has not been restored to the affected people.

Meanwhile, hunger is prevalent within the community, which has struggled to survive since the eviction. Villagers such as Veer Singh, who work as a sugarcane cutter for under the minimum wage, do not eat until coming back from work at the end of the day. One of Veer's sons died due to a lack of medication. Veer had no money for doctor's fees and most days his family goes without any rations. Other villagers are in a similar situation. Dhoom Singh, 52, who has one son and four daughters, has been without land since the eviction, and his children have had to work as labourers instead of going to school.

These incidents go to the heart of the concern that the ALRC has over delays in justice as a primary cause for the perpetuation of radical human rights abuses in South Asia. The reasons for these delays are primarily deliberate: the rights of victims are not only wilfully neglected but are often obstructed by corrupt state agents who, instead of implementing court orders, openly collude with the perpetrators of abuses. That is the experience of these Dalits in Kashipur; there can be no other explanation for the delay in implementing the Supreme Court order. The consequences, apart from a lack of relief, are that people lose confidence in the capacity of the judicial system to serve justice.

In light of the above, the ALRC urges the commission to demand that the government of India

- a. address all cases of starvation and malnutrition and not only provide immediate relief but address the larger issues responsible for the hunger and lack of food of its citizens;
- b. investigate reports of local violence and corruption obstructing the rights of Adivasi and Dalit communities and ensure that legal and disciplinary action is taken against offenders;
- c. ensure that all Supreme Court orders regarding land and food are implemented immediately as are local laws regarding welfare and distribution systems;
- d. examine methods and programmes through which land and food can be provided to indigenous and Dalit communities throughout the country.



An Adivasi woman of Sonebhadra District in the state of Uttar Pradesh displays roots and leaves, which the villagers eat because they do not have anything else. (Photo: Social Development Foundation, Delhi)

U.N. Commission on Human Rights Approves Subcommittee's Resolution

Special Rapporteurs Appointed to Investigate Caste-Based Discrimination

(Ed. note: On April 19, 2005, the United Nations Commission on Human Rights [UNCHR], meeting at its 61st session in Geneva, Switzerland, adopted the decision made by the Subcommittee on the Promotion and Protection of Human Rights in August 2004 to appoint two U.N. special rapporteurs to conduct a three-year study of discrimination based on work and descent and to draft principles and guidelines to end this form of discrimination. The U.N. subcommittee's resolution [E/CN.4/Sub.2/2004/L.8] on which this action of the UNCHR is based is provided below.)

The Subcommittee on the Promotion and Protection of Human Rights,

Reaffirming its resolution 2000/4 of Aug. 11, 2000, in which it declared that discrimination based on work and descent is a form of discrimination prohibited by international human rights law,

Acknowledging the constitutional, legislative and administrative measures taken by some States to abolish practices of discrimination based on work and descent, as outlined in the expanded working paper on this topic submitted by Mr. Asbjørn Eide and Mr. Yozo Yokota (E/CN.4/Sub.2/2004/31),

Concerned that discrimination based on work and descent affects communities in many regions of the world,

Noting the need for further study on this topic, and for the formulation of principles and guidelines for the elimination of discrimination based on work and descent,

1. *Urges* concerned States to ensure that all necessary constitutional, legislative and administrative measures, including appropriate forms of affirmative action and public education programmes, are in place to prevent and redress discrimination based on work and descent, and that such measures are respected and implemented by all State authorities at all levels;
2. *Welcomes* the expanded working paper on discrimination based on work and descent submitted by Mr. Asbjørn Eide

and Mr. Yozo Yokota (E/CN.4/Sub.2/2004/31) and endorses the conclusions and recommendations contained therein, including with regard to the importance of undertaking a study on the issue of discrimination based on work and descent and the preparation of a draft set of principles and guidelines for the elimination of discrimination based on work and descent;

3. *Decides* to appoint Mr. Yozo Yokota and Ms. Chin-sung Chung as Special Rapporteurs with the task of preparing a comprehensive study on discrimination based on work and descent on the basis of the three working papers submitted on this issue (E/CN.4/Sub.2/2001/16, E/CN.4/Sub.2/2003/24 and E/CN.4/Sub.2/2004/31) as well as the comments made and discussions that took place during the sessions of the Subcommittee to which those working papers were submitted, and requests the Special Rapporteurs to submit a preliminary report to the Subcommittee at its 57th session, a progress report at its 58th session and a final report at its 59th session;
4. *Requests* the Special Rapporteurs to focus on the finalisation of a draft set of principles and guidelines for the effective elimination of discrimination based on work and descent, addressing all relevant actors including Governments, local authorities, private sector entities, schools, religious institutions and the media, based on existing applicable standards and best practices and taking into account the framework proposed in the third working paper and the contents of General Recommendation XXIX (2002) of the Committee on the Elimination of Racial Discrimination;
5. *Also requests* the Special Rapporteurs, for the purpose of identifying best practices, to obtain more comprehensive information on constitutional, legislative, judicial, administrative and educational measures taken to address discrimination based on work and descent, including through the elaboration and submission of a questionnaire to Governments, national human rights institutions, relevant organs and

agencies of the United Nations system and non-governmental organisations;

6. *Encourages* the Special Rapporteurs to undertake this study in cooperation and collaboration with relevant treaty bodies and United Nations organs, agencies and mandates, including the Committee on the Elimination of Racial Discrimination, the Special Rapporteur on contemporary forms of racism, the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organisation, and in consultation with representatives of affected communities;
7. *Requests* the Secretary-General and the United Nations High Commissioner for Human Rights to provide the Special Rapporteurs with all the assistance necessary to enable them to accomplish this task;
8. *Recommends* the following draft decision to the Commission on Human Rights for adoption:

“The Commission on Human Rights, taking note of resolution 2004/. . . of . . . August 2004 of the Subcommission on the Promotion and Protection of Human Rights, approves the decision of the Subcommission to appoint Mr. Yozo Yokota and Ms. Chin-sung Chung as Special Rapporteurs with the task of preparing a comprehensive study on discrimination based on work and descent, on the basis of the three working papers submitted to the Subcommission on this topic (E/CN.4/Sub.2/2001/16, E/CN.4/Sub.2/2003/24 and E/CN.4/Sub.2/2004/31), the comments made during the sessions of the Subcommission at which these working papers were submitted and the provisions of the above-mentioned resolution, and of responses from Governments, national human rights institutions, relevant organs and agencies of the United Nations system and non-governmental organisations to a questionnaire to be elaborated and circulated by the Special Rapporteurs. The Commission also approves the request to the Special Rapporteurs to submit a preliminary report to the Subcommission at its 57th session, a progress report at its 58th session, and a final report at its 59th session, and the request to the Secretary-General and the United Nations High Commissioner for Human Rights to provide the Special Rapporteurs with all the assistance necessary to enable them to accomplish this task.”

9. *Decides* to continue consideration of this question at its 25th session under the same agenda item.

Latest Lessons of the Human Rights Correspondence School

The Right to Food

(The Human Rights Correspondence School of the Asian Human Rights Commission [AHRC] can be found on the internet at www.hrschool.org.)

In the latest two lesson series, the Human Rights Correspondence School examines the right to food and the indivisibility of rights.

Lesson Series 38

The right to food, or the right to be free from hunger, is a fundamental human right without which there can be no right to life. Yet millions of people struggle on a daily basis to find enough food to survive. This struggle for survival occurs even as a minority of the world's population lives with overabundant food supplies and even wrestles with obesity.

This lesson explains the nature of the right to food and examines the issue in the context of a breakdown in the rule of law with examples of starvation and food shortages in India and Burma.

Denial of the right to food, in fact, does not occur merely due to natural disasters or a lack of resources. All too often it is caused by systemic negligence and misguided state policies.

To protect the right to food, legal provisions must be effectively enforced. Genuine democracy and effective rule of law are thus necessary to perpetuate human rights and equality, including the equal distribution of food and water.

Lesson Series 39

Whether they are economic, social and cultural rights or civil and political rights, all human rights are indivisible. The right to food, which falls in the grouping of economic, social and cultural rights, is largely affected by the violation of other rights, this lesson asserts.

By examining the forced eviction of people in Bellilius Park in India's West Bengal and the struggle of an indigenous community in the Indian state of Maharashtra, the lesson points out that people's right to food is denied because of caste discrimination and the refusal of the authorities to respect their right to land. This prejudice and contempt for people's land rights occur despite the fact that India's constitution and its international obligations require the government to protect the rights of its citizens.

In reality, it is common in India – as in many Asian countries – for local officials to misuse legislation, ignore court rulings and intimidate ordinary citizens who are attempting to assert their rights.

The lesson further explains the inherent relationship between the rule of law and the protection of all human rights, including the right to food. Effective rule of law not only includes legal provisions on paper but their adequate implementation and room for redress. The right to food, in particular, must be made justiciable in courts of law if people are to truly enjoy this and their other rights.

Human Rights at the Grassroots

'We Are Almost Treated like Slaves'

Gajriben Farambhai Kotvalia

(Ed. note: Human Rights at the Grassroots is a regular feature of Human Rights SOLIDARITY that was first published in the January 2005 issue of the magazine. Its aim is to give a deeper understanding of the reality of life and human rights at the local level in Asia.

This column describes the struggles of Adivasis, or indigenous people, in India who work in sugarcane factories in the state of Gujarat. Most of the 14 factories in the state are managed and controlled by large landlords who often live overseas in Britain, the United States or Africa.

Stanny Jebamalai, who provided this story, works with Adivasis through Adivasi Sarvangi Vikas Sangh [ASVS], a people's organisation in Gujarat with a membership of more than 19,000 Adivasis of whom 50 percent are women.)

I am Gajriben Farambhai Kotvalia, a woman from the village of Kanbha in Vyara Taluka. I am an Adivasi. My age is around 35. My village is about 18 kilometres from Vyara, the headquarters of the *taluka* (an administrative area of about 80 to 100 villages). Most of our people do not have land. We traditionally prepare various household items from bamboo. For the bamboo, we depend on the forests. The officials of the Forest Dept. though do not allow us to gather bamboo directly. They only supply us a very limited quantity, which suffices 30 percent of our requirements at their whim. Forest officers harass us unnecessarily. They allow the big, influential and powerful people to destroy the forest for their selfish reasons, but they neither give us enough nor tolerate a few bamboos that we pick up near our surrounding areas. Because of these problems, we are unable to earn enough to sustain our lives so we have to find alternative work. Therefore, I go to work as a sugarcane

cutter in the fields near various sugarcane factories. There are a lot of people like me.

These sugarcane fields are very far away from our village. Contractors, who are the middlemen, engage us for the work on behalf of the sugarcane factories. Trucks come to our villages to pick us up. We carry most of our essentials and board the trucks. For about six to eight months, people like me say goodbye to the village and go. Since we will be absent for such a long time, we often carry with us our children and even chickens. Our ailing parents – we have to leave at the mercy of our neighbours as we cannot take care of them in the camps.

We are put up in camps outside the villages that are closer to the fields. The camps have no facilities at all for normal human beings to stay. We do not have proper shelter and water facilities, both for drinking and other needs – no facilities to answer nature's call and bathing. In the camps, no such facilities like fair price shops or government health clinics or education for our children are available. The grains that we buy at the shops are substandard. We do not get electricity so often in the darkness insects or snakes bite us. Living in such conditions, I often think that at home even my dogs and cattle live in better conditions. The villagers where our camps are located do not allow us to use facilities available in their villages as they consider us lesser human beings.

We work for more than six to eight months, depending on the availability of the work. Once we finish in one area, we move to another area. While in the camps, our contractors force us to do extra work so that they can make more commissions and get a good name from the factories. They make us

slog but pay us not according to our work. Our wages are fixed on the basis of the quantity of sugarcane we cut. The rate is 105 rupees (US\$2.40) per ton per pair. Usually a pair consists of a husband and wife. We are required to do all the jobs related to this process – cutting, stacking, loading either in trucks or bullock carts. Our normal working hours are from 7:00 a.m. in the morning to 6:00 p.m. in the evening. But very often, since the trucks or carts come even at midnight, ours is almost 24-hour duty.

We do not know the type of accounts the contractors and factories keep with regard to our work or the wages and expenses incurred on our behalf. If we borrow any money, we are charged heavy interest to the tune of 200 percent. We are almost treated like slaves. We are not able to complain about anything to anyone. If some visitors come and we talk to them, immediately we are questioned and threatened. If we open our mouth, we are threatened, saying that we will be kicked out from the work immediately without any pay; and in the future, we will never be hired by them. Since we are poor and landless, we put up with all these things. Often we women are exploited physically by the landlords. There is also a wage disparity for the same work men and women do. In short, we are treated inhumanly just because we are poor.

Often I get worried about a few things while in the camp. Since my children also join me in the camp, their education is spoiled so they will be forced to take up this type of work. There are also so many women like me doing such menial jobs in order to keep them alive. What will be their future? Just because we are poor and doing such work, what is the meaning of human dignity? How long will such oppression and inhuman treatment continue?

Dowries Mean Death and Discrimination for Bangladesh's Women

Asian Legal Resource Centre



Dowry-related violence against women in Bangladesh continues unabated although there are laws to control such abuses. Participants at a rally in Dhaka demand 'No More Dowry' on International Women's Day 2004. (Photo: The Hunger Project)

Dowry-related violence is a common feature in Bangladesh affecting the lives of many women. Other than specific acts of violence, such as killings, torture, the throwing of acid and the like, dowry demands affect the lives of women socially and culturally in a much deeper manner. Fundamentally, they undermine the equality of women and create culturally accepted forms of discrimination against them. They can affect the life of a girl from the very start.

Preference for boys often begins with the parental realisation that the burden of finding dowries falls on them as soon as the child is born. Thus, the devaluation of a child takes place in culturally subtle forms from the very beginning. This continues throughout their early years and up to the time of marriage.

On Jan. 10, 2004, the *Daily Star* newspaper in Bangladesh made the following observation:

“A woman on fire has made dowry deaths the most vicious of social crimes. It is an evil prevalent in the society and despite efforts by some activists and women's rights organisations to eliminate this menace, the numbers have continued to climb. In villages marriage was once considered a very sanctified bond united in the worst or best of times, in sickness or in health through the vicissitudes of life.

But dowry-related deaths have shattered that bond of peaceful and happy relationship. A recent survey by the Bangladesh Human Rights Organisation, and Bangladesh Women Lawyers Association revealed that in 2001, there were 12,500 cases of women repression, in 2002 the figure rose to 18,455 and in the year ending in 2003 the figure climbed to 22,450. The grisly act of a brute and greedy husband in Chapai Nawabganj as reported in the newspapers in Dec. 27 last is a story better not be heard. Having failed to realise a dowry claim of Tk. 20,000/= Shamsheer killed her wife Marina just on the 22nd day of their marriage. The most grisly side of the story is that Shamsheer hired three other monsters for Tk. 300/= and Marina was slaughtered by Shamsheer after she was forced to be gangraped by four human monsters including himself” (text as received).

Dowry-related violence is, in part, caused by a misplaced get-rich-quick mentality whereby dowries are seen as the perfect instrument for upward material mobility. Middle- and upper-class as well as better-educated grooms demand huge dowries. Often, even after the payment of a dowry, the husbands or their families may demand more money or goods. The following story from the same media report cited above is just one out of so many such tales of violence:

“Beauty Akhtar of Dhamrai Upazila was married to Muntaj Ahmed of Arpara village in Manikganj about two and a half years ago. Beauty’s father met his son-in-law’s dowry demand by paying three lakh taka.

But Muntaj’s greed was insatiable. He started torturing her for more money and at one stage locked her in a room for three days without food. It so happened that on Nov. 12 last, the entire family including husband, father-in-law, mother-in-law and other in-laws beat her with iron rod in a row” (text as received).

The statistics on dowry-related violence against women in Bangladesh give cause for alarm. According to a report on human rights violations in Bangladesh by the human rights organisation Odhikar, “267 women, including one child, were victimised due to dowry-related matters. Among them, 165 were killed, 77 were tortured by acid violence, one was divorced and 11 committed suicide due to incessant dowry demands.” According to Odhikar, these figures were collected from newspaper reports on dowry-related violence published throughout 2004.

Dowries put women in a helpless position as they are never part of the discussion regarding payment. Dowries are often a monetary deal between two men: the bride’s father and the groom. Such cultural arrangements completely violate the dignity of women and the quality of their personal relationships.

There have been some laws enacted to control such violence against women, such as the Acid Control Act and the Dowry Prohibition Act. However, the level of violence, which continues unabated, demonstrates that such laws do not have the capacity to bring this situation to an end. While such laws are passed under pressure from women’s groups and international lobbies, the

state often fails to put in place implementation mechanisms to enforce such laws. Within the law enforcement agencies, deep-seated prejudices regarding the giving of dowries and the predominance of male over female are entrenched. The government of Bangladesh issued appeals to all heads of public and private universities and the Education Board to wage war against the practice of dowries in the country. However, there does not appear to be a strong social movement to eliminate this practice.

In light of this, the Asian Legal Resource Centre urges the United Nations Commission on Human Rights to

- a. pressure the government of Bangladesh to adopt a more proactive approach to the elimination of dowry;
- b. urge civil society organisations and the media in Bangladesh to conduct a vigorous campaign against dowry problems;
- c. request the special rapporteur on violence against women to engage the government on this issue and encourage an international study on the matter;
- d. establish an international database on dowry issues and dowry-related violence that would contribute to having this matter brought to much broader public scrutiny. It would also ensure more effective methods of eliminating this practice, thereby enhancing the dignity, self-respect and self-confidence of women.

Government Fails to Brake Widespread Torture in Bangladesh

Asian Legal Resource Centre

In a December 2004 report, reputed human rights organisation Odhikar stated that there were 90 publicly reported custodial deaths due to torture in Bangladesh during the year. The Asian Legal Resource Centre (ALRC) opines that these are but a handful of the total number of cases of severe torture, including torture resulting in death, occurring in Bangladesh each year.

Although the government of Bangladesh has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it has taken hardly any steps to see it implemented. It has not yet made torture a crime. It has not yet passed any enabling legislation. It has not yet introduced any legal provisions for compensation and rehabilitation of the victims. It does not provide any medical facilities for treatment of physical and psychological injuries caused by torture. Furthermore, it does not have any immediate plans to do any of these things.

The criminal justice system in Bangladesh has hardly changed since the British colonial era. The implementation

of laws is very backward and completely out of touch with rapid developments in communications, transportation and the attitudes of the people. The policing system itself is very primitive. Police officers have a range of day-to-day duties on top of conducting criminal investigations. For every 13,000 citizens, there is one badly paid and poorly trained police officer. Public prosecutors are politically controlled and change every time a new government comes to power. Thus, the skills needed for proper prosecuting do not develop, and instead, political bias is the determining factor. Moreover, the prosecuting and investigating branches in criminal cases function completely separately. The police misuse their powers, guarantee impunity for powerful people and fabricate cases against the poor. There is no special branch to investigate police officers for violations of human rights. There is no witness protection programme, and the police and criminal elements collude to intimidate and silence ordinary people.

Several human rights groups in Bangladesh are trying to work against such malpractices. Some provide torture rehabilitation with the assistance of

outside agencies in lieu of the state. Some are also speaking about necessary legal reforms. However, the two major political parties are in a constant state of conflict, and this obstructs any consensus on how to deal with torture and attendant abuses.

In light of the above, the ALRC recommends that, first and foremost, the government of Bangladesh must promulgate a law to make torture a crime and implement the provisions of the convention to which it is a party. Meanwhile, the establishment of a national institution similar to the human rights commissions now functioning in several other Asian countries would provide an avenue for complaint-making, investigations and the granting of redress for victims of torture. The commission, particularly its Committee against Torture and special rapporteur on the question of torture, should call upon the expertise of civil society organisations, such as Odhikar, in order to intervene effectively to eliminate torture in Bangladesh. More intense international publicity on the practice of torture in the country may dramatically speed up the development of practical measures for redress.

Impunity Obstructs Justice in Myanmar

Asian Legal Resource Centre



Although a law was passed in 1999 in Myanmar outlawing forced labour, the practice is still widespread. If people stand up for their rights and seek remedies, however, they instead face further abuse and suffering. (Photo: Canadian Friends of Burma)

It is of great concern to the Asian Legal Resource Centre (ALRC) that two years after the special rapporteur on Myanmar declared there to exist only the “un-rule” of law in Myanmar government officials continue to enjoy a degree of impunity that makes it impossible for ordinary citizens to obtain any justice. Not only does the absence of any rule of law within the country allow local authorities and state agents to violate the rights of citizens, but citizens are further victimised if they attempt to seek redress for these violations.

The experience of U Ohn Myint and Ko Khin Zaw, both of whom were charged with criminal defamation for complaining of forced labour, is indicative. Although the government of Myanmar outlawed the use of

forced labour in 1999, reports of the practice continue to be widespread, and attempts to lodge complaints in accordance with existing legal provisions have proved futile. When Ko Khin Zaw and U Ohn Myint filed a complaint in the Henzada Township Court in Ayeyawaddy Division in July 2004 after being jailed for failing to do sentry duty at a village monastery, their complaint was summarily thrown out of court. However, the same judge then entertained a complaint of criminal defamation by the vengeful local administrative officials. The two villagers were found guilty and were offered a fine or imprisonment for six months. In an act of defiance, the two men chose jail.

Not only is the criminal defamation

law used in this case problematic - in recent years criminal defamation has been condemned globally as offensive to people’s basic rights and many countries have removed it from the statute books - but the case demonstrates the punitive actions taken against citizens in Myanmar attempting to exercise their rights. The fact that U Ohn Myint and Ko Khin Zaw were recently freed after the fines imposed on them were reported to have been paid by military intelligence officers further highlights the absence of any rule of law in the country. U Ohn Myint and Ko Khin Zaw’s complaints of forced labour are typical of the situation throughout the country, particularly in remote areas. The only difference is complaints from far-flung regions are little publicised, let alone heard in the courts.

In another instance, on April 18, 2004, police Cpl. Aung Naing Soe came to Thida Street in Thida Ward in Kyinmyindaing Township and began to clear away homeless people present in the vicinity, including Ma San San Htay, a betel nut seller, who quarrelled with him. He then hit her in the mouth, grabbed hold of her hair and before many witnesses dragged her along the road while she cried out for help. When 26-year-old Kyaw Min Htun intervened, the police officer hit him, whereupon Kyaw Min Htun hit back, breaking the officer's nose. Kyaw Min Htun was then taken and charged under Section 333 of the Penal Code with inflicting violence on a public servant while in the performance of his duties. On June 24, 2004, the Kyinmyindaing Township Court found Kyaw Min Htun guilty and sentenced him to two years' imprisonment with hard labour.

This case demonstrates how local authorities operate to guarantee impunity for government officers under any circumstance in Myanmar. In reaching its verdict, the court did not assess the relative merits of the arguments on both sides or even ask if there was any validity to the claims of assault against the police officer. While the court sentenced Kyaw Min Htun, it did not question whether hitting and dragging a woman by her hair would be appropriate behaviour for an officer "in the course of his duties." It merely established that the accused hit the officer and sentenced him accordingly. This underlines the nexus that exists between local police officers, government officials and the judiciary throughout Myanmar that denies the possibility of natural justice for any person challenging one or another of these authorities.

This nexus is particularly visible in the

sentencing of Ma San San Aye, 16, and Ma Aye Mi San, both from Pyapon Township in Ayeyawaddy Division, in October 2003 to four years' imprisonment for lodging a police complaint against U San Net Kyaw, a local official who raped them. The case is particularly disturbing because the guilty official was even charged with rape after a local tribunal conducted an investigation, but he was not arrested by the district police, which instead referred the matter to the township law office. Upon instruction from the Pyapon District Law Office, the charges against him were dropped, but ironically the victims were charged and sentenced to four years of hard labour on Oct. 20, 2003, for falsely accusing a government officer. Their current whereabouts are unknown.

In recent years, there have been credible reports of soldiers, often under the instruction of superior officers, systematically raping women belonging to minority groups located in remote parts of the country. The case of Ma San San Aye and Ma Aye Mi San shows that even in central areas not far from the capital people in positions of authority are capable of raping with impunity and that victims are likely to be punished by the courts if they dare to challenge the legality of a state official's actions, irrespective of circumstances.

It is thus of particular concern that not only do U Ohn Myint, Ko Khin Zaw, Kyaw Min Htun, Ma San San Aye, Ma Aye Mi San and countless other victims of human rights violations have no channel for effective redress, but they have to suffer further from the punitive action taken against them for attempting to exercise their rights. Moreover, the message delivered to the

Myanmar public is that asserting their rights is both dangerous and meaningless.

This type of punitive action is taken against all those who do not acquiesce to state action. In November 2004, for instance, several high-level officials from the judiciary and legal system, including Supreme Court judges, were removed from office for refusing to give legal advice to convict former Prime Minister Khin Nyunt on corruption charges.

In light of the above, the ALRC urges the United Nations Commission on Human Rights, and in particular the special rapporteur on Myanmar, to take the necessary steps in order that the government of Myanmar

- a. investigate immediately the above-mentioned cases and ensure that the law is correctly enforced, offenders prosecuted and punished accordingly and the victims compensated without regard to their relative social status or official position;
- b. fulfil its international obligations by introducing and implementing the domestic legislation necessary for protecting the rights of its people;
- c. establish an independent body to investigate complaints concerning state officials, which should have executable authority;
- d. cooperate effectively with agencies, such as the International Labour Organisation, to prevent forced labour rather than attempting to disguise the issue.

East Timor's Truth and Friendship Commission

Compromise and Impunity Is No Substitute for Justice

Asian Legal Resource Centre

The Asian Legal Resource Centre (ALRC) is extremely disturbed by the stance taken by the political leaders of Indonesia and East Timor to allow perpetrators of crimes against humanity to go unpunished for the atrocities they committed during East Timor's independence struggle.

On Dec. 21, 2004, the governments of Indonesia and East Timor agreed to the formation of a Truth and Friendship Commission. The commission's intent is to examine the referendum-related violence that took place in 1999, the purpose of which is to bring closure to this period and resolve all related problems. However, details of the commission are not available, and the proposal itself has not been formulated in consultation with the people of East Timor, who suffered most.

The proposal for the Truth and Friendship Commission is to bring the U.N. tribunal in East Timor's capital of Dili to an end. The tribunal has convicted 72 people of offences committed during the transition to independence; yet all convictions were of low-level East Timorese functionaries. Though senior officers have been indicted as bearing principal responsibility for the violence, they remain in Indonesia and are protected by their government. Thus, the real purpose of the Truth and Friendship

Commission appears to be to undermine the Dili tribunal and avoid justice being sought against those responsible for the most serious of crimes.

U.N. Security Council Resolution 1272 demanded that all those responsible for the violence be brought to justice. However, this resolution failed to be realised as those who bear the principal responsibility for the events of 1999 have not been brought to trial. There had been a move at the highest U.N. level to investigate the quality of the trials, and there are efforts to establish a commission of experts to assess whether these trials were impartial and within the standards of international law. If the commission of experts finds that the trials have fallen short of international standards, then there would be international moves to upgrade the quality of these trials.

The birth of the small nation of East Timor, the latest sovereign state growing out of colonialism, was watched with a sense of hope by people around the world. The U.N. Mission in East Timor, designed to establish a legitimate government, was supported in all corners of the globe. However, the long struggle for freedom against colonialism, including 25 years of occupation by Indonesia, culminated in the Indonesian National Army (TNI) and its Timorese

militias going on a campaign of murder, arson and forced expulsion after the people of East Timor voted for independence in a U.N.-administered referendum. It was the hope of the local population, as well as the international community, that the violence and crimes against humanity committed during that time would be brought before legitimate tribunals and be properly dealt with, ushering in an era of justice for the people of East Timor.

Present developments to bring these matters to an end by way of compromises and to ensure impunity will defeat the commitments given to the East Timorese people by local leaders, the United Nations and the international community. The direct consequence of this would be to spread a high level of demoralisation throughout East Timor as well as through all Asian countries and around the world. The world will see that even giant steps taken by way of U.N. peacekeeping missions end up - finally - without achieving substantial results in the field of justice.

The ALRC urges the United Nation Commission on Human Rights to pressure the relevant U.N. authorities and the international community to take a serious interest in this matter and to ensure that the aim of U.N. Security Council Resolution 1272 is realised.

Malaysia's Internal Security Act

A Licence to Torture and Unjustly Detain Dissent

Asian Legal Resource Centre

On Dec. 8, 2004, 12 detainees under the Internal Security Act (ISA) were beaten up by prison security officers in Kamunting Detention Camp. The next day another eight detainees were assaulted in the same camp. Security officers stomped on the detainees' fingers and toes, beat their knees and elbows with batons and shaved their heads and beards. The detainees were then put into solitary confinement.

Reports of torture and cruel, inhuman and degrading treatment against ISA detainees are not new in Malaysia. According to the "Report of the Public Inquiry into the Conditions of Detention under the Internal Security Act 1969," made by the Human Rights Commission of Malaysia, or SUHAKAM, in 2003:

"[T]here appears to be sufficient evidence to justify a finding of cruel, inhuman or degrading treatment of some of the detainees who testified before the Inquiry Panel. Slapping of detainees, forcible stripping of detainees for non-medical purposes, intimidation, night interrogations, and deprivation of awareness of place and the passage of time, would certainly fall within the ambit of cruel, inhuman and degrading treatment by virtue of the need to interpret this term so as to extend the widest possible protection to persons in detention" (para. 6.2.11).

In January 2004, 31 detainees held at the Kamunting Detention Camp

submitted a memorandum to SUHAKAM alleging various abuses. These included being stripped naked, spat on and forced to drink spittle. In March 2004, 43 Kamunting detainees conducted a hunger strike for 19 days to protest their detention and poor living conditions, ending only when the Home Ministry promised to review their cases.

Detention without trial, as provided by the ISA, is a key factor behind torture and cruel, inhuman and degrading treatment of detainees. Section 73 of the law empowers police to arrest those suspected of committing activities prejudicial to national security and allows for initial detention of up to 60 days. After the expiry of this period, the police may recommend that the minister for home affairs issue a two-year renewable detention order under Section 8. The government of Malaysia has used the ISA as a political tool to arrest and detain reformists and political activists from opposition political parties and non-governmental organisations. It deprives the rights of detainees to access judicial safeguards. No judicial order is needed for detention. The detainees are also denied access to both their lawyers and family members, and all visits are discretionary. Torture and cruel, inhuman and degrading treatment are used to threaten the detainees and pressure them to "confess their guilt."

In light of the above, the Asian Legal



In spite of widespread and repeated calls since Malaysia enacted the Internal Security Act, or ISA, in 1960, the government refuses to abolish it. Officials' sweeping powers under the law have permitted torture against ISA detainees to take place. (Photo: Aliran)

Resource Centre calls on the United Nations Commission on Human Rights to

- a. condemn the practice of torture and cruel, inhuman and degrading treatment against ISA detainees in detention camps;
- b. demand that the government of Malaysia establish the means for prompt inquiries into all torture and cruel, inhuman and degrading treatment against ISA detainees and take steps to punish fully those responsible;
- c. pressure the government of Malaysia to abolish the ISA and release all ISA detainees immediately; and
- d. urge the government of Malaysia to allow the detainees' families, SUHAKAM members and lawyers to have access to the detainees.

Trials without Witnesses Produce Trials without Justice

Asian Legal Resource Centre

After the U.N.-sponsored elections in 1993, Cambodia adopted a new constitution and accepted rule of law principles as the basis for organisation of a new society. The constitution incorporated all international human rights covenants and conventions, including the International Covenant on Civil and Political Rights (ICCPR), and it expressly recognises the right to a fair trial.

Since 1993, there have been many attempts to develop a court system and a legal profession that are competent enough to ensure a fair trial. However, the practices of trial in Cambodia are as yet very rudimentary: only recently have cases begun to be properly documented through an initiative by civil society organisations.

The Asian Legal Resource Centre (ALRC) is concerned by the deeply flawed procedures that continue to dominate criminal trials in Cambodia. In this, it has relied on research findings and commentary by the Centre for Social Development.

Article 24(1) of the UNTAC Law requires that “witnesses mentioned in the police file, including police officers, must be heard in court.” Notwithstanding, it is estimated that some 76.3 percent of cases in Cambodian trial and appeal courts are decided without the presence of witnesses. Instead, what happens is that a clerk reads witness statements as the police have earlier recorded them. This practice is a flagrant breach of Article 14(1) of the ICCPR, which states that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law” where “public” means

that witnesses too must be heard in court.

A fair trial is a public trial. This principle, evolved over centuries, is essential because it allows the public also to judge the reasonableness of the final decision. The essence of a fair trial is that not only should this decision be based on reasonable grounds but also the presentation of evidence should itself be reasonable. When a statement taken down earlier and in private by the police or prosecutors is read in court, it is no substitute for this principle. Obviously, this practice gives enormous power to those taking down statements to manipulate proceedings and coerce witnesses to suit their own purposes.

Investigations and trials are two completely different things. In a trial, the evidence that investigators are relying upon to prove the guilt of a person is tested. A defence counsel is engaged to cross-examine and probe for falsehoods. The judge is present, not as a public face representing the investigators, but as the examiner of their evidence. This function is negated when witnesses do not come before the court to have their testimonies verified and their demeanour assessed. In short, without witnesses, there is no trial. The conviction of suspects under these circumstances, as is common in Cambodia, is illegal, invalid and farcical.

Various reasons have been mooted for the absence of witnesses in Cambodian courtrooms. One is historical. Under the earlier judicial system, statements in the absence of witnesses were permitted; hence, although now illegal, some practices from that period persist. A second is that witnesses may face threats against their lives, families

and property. Cambodia still does not have a witness protection programme. This fear factor is very serious and must be addressed if more witnesses are to appear in court. Third, many witnesses may be unwilling or unable to lose a day’s income by attending the court. Fourth, witnesses may also not understand the purpose of giving evidence in court; for after long years of exceptional cruelty, most Cambodians have no awareness of fair trial practices and concomitant weakened civic consciousness.

Some proposals to obtain greater witness participation in the courts are that the government of Cambodia and concerned international agencies, including those working in conjunction with the United Nations Commission on Human Rights, should

- a. introduce a bailiff’s office charged with the issuance and delivery of subpoenas or summons;
- b. commit funds for a specialised witness protection programme, including long-term protection through relocation in serious cases;
- c. reimburse witnesses for the cost of transportation to the court; and
- d. conduct public education programmes on the role of witnesses in the courts and legal obligations to attend the court if summoned.

As a fair trial is fundamental to the rule of law and human rights, the ALRC urges the special representative of the secretary-general of the United Nations for human rights in Cambodia to examine seriously the effect of trials without witnesses and make specific proposals for reform.

Fair Trials in Sri Lanka Threatened by Police Referral Service

Asian Legal Resource Centre

The Asian Legal Resource Centre (ALRC) has in a separate statement to the 61st session of the United Nations Commission on Human Rights expressed its concern over the denial of citizens' rights to fair trials in South Asia. In this statement, it directs its attention to the manifold malpractices mitigating the right to proper legal representation for people accused of crimes in Sri Lanka. Together, these undermine the rights to a fair trial stipulated in Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR) to which Sri Lanka is a party.

A recent letter from the Wattala branch of the Bar Association of Sri Lanka to the officer-in-charge of the local police station received wide publicity after it was also forwarded to senior police and the main offices of the Bar Association. The letter complained that local police officers were referring suspects to specific lawyers to act as their counsel in court. After the letter was publicised, lawyers across the country complained of similar practices. The police involved then demand commissions from the lawyers, sometimes exceeding 50 percent of their fees for a given case.

While these transactions are in themselves a cause for deep concern, they also give rise to many other questions regarding investigation, prosecution and management of criminal trials in Sri Lankan magistrates courts. Procedure demands that in a criminal trial the police act as investigators seeking the successful prosecution of the accused, who

engages a lawyer in his defence. When police and defence lawyers collude, the conduct of all investigations and legal proceedings is compromised.

Accused persons are thereby put in a very difficult and entirely unexpected situation. An accused may be advised to tender a plea on the advice of a lawyer acting to satisfy the police who sent the case. If the accused, realising that they are being denied the right to construct a proper defence, demands that the lawyer fight for their innocence or attempts to engage a new lawyer, they may antagonise both the lawyer and the police. As a consequence, they may be implicated in other cases or face other forms of retribution.

Where courts are under pressure from a large workload, collusion between the police and defence lawyers is likely to increase. Judges and other staff will be satisfied to deal with as many cases as possible without having to go to a full trial. There is less tolerance of people insisting on not guilty pleas. Quick settlement becomes the central characteristic of the courtroom; proper judicial process disappears. As a consequence, the public has a less and less favourable view of the courts. Legal professionals too become increasingly demoralised.

Although the Bar Association of Sri Lanka should be playing a central role in addressing these deficiencies, in recent times, it has itself been subjected to increasing criticism over numerous shortcomings. In the *Daily Mirror*

newspaper of Jan. 21, 2005, the Bar Association president wrote:

"We have experienced how arbitrarily issues concerning the judiciary have been dealt with. We have experienced how some members of the Bar, including those in the official Bar, have been dealt with. We have experienced how damning allegations have been made against the members of the judiciary. In all these instances, the [Bar Association] had maintained a deafening silence and had continued unperturbed, engaging solely in welfare work [and] obviously mixing up its priorities. Many members of the Bar have taken up these issues from time to time in the Bar Council with no response at all."

With the Bar Association in decline, unhappy litigants' complaints of alleged malpractices by lawyers are not dealt with in a prompt and professional manner. For instance, torture victim Dingiri Banda has complained that his lawyer in a fundamental rights application case arrived at a settlement with the accused police officers despite his express written instruction not to settle under any circumstances. Despite many reminders, this matter has not been investigated.

In light of all of the above, the ALRC urges the commission to raise concerns with the government of Sri Lanka over non-application of Article 14(3) of the ICCPR with a view that appropriate action be taken to ensure compliance.

No Justice for Torture Victims without Witness Protection Programme

Asian Legal Resource Centre

On Jan. 8 and 9, 2004, D. G. Premathilaka was arrested and tortured by officers attached to the Katugastota police station in Sri Lanka for giving up his illicit liquor business, which is profitable for many police officers. Following this incident, Premathilaka lodged a complaint, the outcome of which is still ongoing. On Nov. 16, 2004, officers from the same police station threatened Premathilaka, demanding that he withdraw his complaint against them. Afterwards Premathilaka lodged a second complaint with the Sri Lankan authorities, including the Human Rights Commission of Sri Lanka.

Despite two complaints having been lodged against police officers from the Katugastota police station, a further incident of torture against Premathilaka has taken place. On Jan. 23, 2005 at about 2 a.m., Premathilaka was tortured by 12 police officers, including the officer-in-charge of the Katugastota police station. The officers broke the lock of Premathilaka's front door and forced their way into his home. Claiming that a warrant had been issued for Premathilaka's arrest, the officers dragged him out of his house and into their jeep.

The following day Premathilaka's wife went to the police station. She could see that her husband's sarong was wet with blood, and he complained to her about the brutal assault he had received. At 1 p.m. on the same day, Premathilaka was presented before the Kandy magistrate, and a lawyer - appointed by the same police officers who had beaten him - appeared on his behalf.

On Jan. 25, Premathilaka had to appear before the Kandy magistrate again where he was charged with selling illicit liquor. He was not granted bail and remained in custody until Feb. 8. The purpose of instituting new charges against Premathilaka and getting him remanded was to obstruct him from pursuing a further complaint against the police and getting proper medical treatment.

This is the reality of seeking justice in Sri Lanka today. Retaliations against those who lodge complaints against the police are on the increase, and there is little done to rectify this situation by way of providing witness protection. Gerald Perera was killed only days before he was to give evidence in his own torture case against the police. When the perpetrators were finally arrested, it was revealed that they were the three police officers who are accused of torturing Gerald.

Torture victim Channa Prasanna Fernando, into whose case an inquiry was being conducted, was kidnapped, and an attempt was made on his life, which he only narrowly avoided. While two cases against the perpetrators were then ongoing, there was a third attempt on Channa's life one night while he was sleeping. He was able to run away and is now in hiding.

In the case of Lalith Rajapakse, he was repeatedly threatened and intimidated. As a result, he is currently in hiding. His family, meanwhile, has received police protection as has human rights activist U. L. A. Joseph Perera after he was threatened for having helped Rajapakse.

Amarasinghe Morris Elmo De Silva, who was allegedly tortured by officers of the Jaela police station, was forced to flee the country due to threats to him and his wife because of a case against the perpetrators ongoing at the Negombo High Court.

As shown in the cases above, criminal behaviour by police officers, including threats and intimidation to complainants of police abuse, occurs with impunity in Sri Lanka. These officers are allowed to continue in their posts with no disciplinary action taken against them. Not only does this encourage further criminal behaviour, but it denies any personal security for those who seek justice for crimes committed against them.

In light of the above, the Asian Legal Resource Centre urges the United Nations Commission on Human Rights to pressure the government of Sri Lanka to

- a. investigate each of the cases mentioned above and have any police officer involved in a pending case transferred;
- b. take disciplinary and/or legal action against any police officer found to have threatened and intimidated a complainant of police abuse;
- c. have the inspector general of police make a list of officers who are accused of torture and subject them to psychological tests; and
- d. provide witness protection to any victim, particularly of torture, who lodges a complaint against the police.

Poor Quality Staff Undermining Work of Human Rights Commission

Asian Legal Resource Centre

The Asian Legal Resource Centre (ALRC) has over a number of years commented to the United Nations Commission on Human Rights on deficiencies in the Human Rights Commission (HRC) of Sri Lanka. In this statement, the ALRC establishes how, despite its recomposition and development of a strategic plan, the HRC is struggling to meet its mandate due to the poor quality of its staff.

A new group of commissioners was appointed to the HRC on April 3, 2003; and with them, a three-year strategic plan was devised. The HRC declared its aims to develop

- a. stronger institutions and procedures for human rights protection and a culture among all authorities of human rights awareness and accountability;
- b. public awareness of fundamental and other human rights and a willingness and capacity to enforce them; and
- c. itself into an efficient and effective organisation able to fulfil its mandate to promote and protect the human rights of everyone in Sri Lanka.

The HRC also adopted a “zero tolerance” policy regarding torture and launched a Torture Prevention Unit. The unit was intended to begin

investigations on torture cases within 24 hours, question officers-in-charge of police stations where deaths in custody had taken place and interdict police found guilty of torture by the HRC or the Supreme Court. It was also proposed that a memorandum of understanding be entered into between the HRC and the inspector general of police to ensure direct accountability for cases of torture at police stations and to seek the interdiction of officials who were found to have violated fundamental rights.

However, these new policies have been poorly realised, due primarily to the poor quality of HRC staff. An internal investigation found that an estimated 81 percent of permanent staff lacked the required qualifications for their posts. Some holding important posts as investigators did not have even the GCE Advanced Level qualifications, the minimum prerequisite. At least one of the regional coordinators did not even have a GCE Ordinary Level certificate (grade 10) although he was supposed to be in charge of a very large province.

Other weaknesses include

- a. poor working habits formed under previous commissioners, who made no attempts to nurture understanding of basic human rights norms and standards;

- b. a lack of supervision by commissioners as none are engaged full time;
- c. a lack of skilled professionals who are knowledgeable in investigation and mediation procedures; and
- d. ineffectiveness of education programmes.

Many of these problems were manifest in the highly publicised case of the HRC Kandy area coordinator. These problems first arose in relation to a complaint of torture in which the area coordinator allegedly colluded with the police. Numerous other complaints then arose, including one relating to 13 missing files. When the coordinator was transferred, a staff union was formed, and a strike followed. A case has now been filed in court.

The difficulties in dealing with the numerous transgressions of the Kandy area coordinator all spoke to the fact that since its inception the HRC has not developed any internal disciplinary code or procedures. In their absence, the HRC has had to follow the antiquated Establishment Code. As human rights work demands higher than average moral standards, this default arrangement is clearly unsuitable and should not be allowed to continue, lest it further damage public faith in the

institution. Perceptions of bias towards perpetrators, corruption or negligence have more debilitating effects on a human rights commission than they do on other state agencies. The HRC needs its own disciplinary code that lays down standards and criteria for staff behaviour at different levels and in different posts with particular regard to investigation officers.

In the past year, HRC staff made some serious attempts to visit places from where complaints of illegal detention and torture had been received. However, these staff members came under attack, on two occasions facing direct physical threats and assault. Worse still, rather than come to the defence of these personnel, in a circular of Sept. 27, 2004, the then-inspector general of police placed limits on the rights of HRC staff to visit police stations. The circular stipulated that human rights officers who are coming for inspections must inform the concerned assistant superintendent of police before entering the premises. The effect of this directive is to grant perpetrators the time to remove torture victims before the inspecting officers arrive, thereby negating the whole purpose of these visits. The practical consequence of this circular has been to discourage human rights officers from visiting places of detention and to encourage police officers to engage in torture without fear of being detected. The directive in this circular must be retracted if torture is to be stopped in Sri Lankan police stations.

The HRC reacted quickly and effectively to the tragic killing of well-known torture victim Gerald Perera on Nov. 21, 2004, which has been described in a separate statement by the ALRC on torture in Sri Lanka. The HRC expressed concerns that the

killing would discourage victims from making complaints. It called the offices of the inspector general of police and the attorney general for a meeting and inquired about what action would be taken to prosecute the offenders. It also pressed the officials to ensure that the criminal case pending against the police accused of torturing Perera would continue and that suitable action would be taken for the prevention of similar occurrences. The HRC also designated a lawyer to represent it at the hearings in the case. Its quick reaction and decision to intervene directly in the case set the standard for the work that it should do in the future. In fact, the HRC should consider having legal counsel present at all torture cases filed under the Convention against Torture Act, No. 22 of 1994.

The HRC has not as yet developed any programmes for trauma counselling and healing for victims of torture and other gross human rights abuses. The destruction caused by the recent tsunami has also created a huge number of victims, including orphaned children, deeply in need of treatment for trauma. It is essential that the HRC look into this area as a key component of its work.

However, the greatest problem facing the HRC of Sri Lanka is the quality and discipline of its staff. In this regard, the ALRC recommends that the HRC

- a. adopt a disciplinary procedure without delay and take action against all officers who are unwilling or unable to discharge their duties specifically in accordance with the HRC mandate;
- b. lay down the basic ethical standards required of the staff, particularly

when dealing with alleged perpetrators of human rights abuses, and respect the confidentiality of information provided by victims and their advocates;

- c. enforce rules to eliminate habits of receiving gifts or other favours;
- d. recruit more qualified staff and assign them to more senior positions; and
- e. encourage committed volunteers with the required qualifications and moral standing to join in the work.

**AHRC Victims Fund
Human Rights
Victims in Asia
Need Support**

The poor in Asia are often the victims of human rights violations. They and their families frequently suffer financial hardships as a result of the physical, emotional and psychological abuse they have been forced to endure.

To respond to these personal, but widespread, tragedies in the region, the Asian Human Rights Commission (AHRC) has established the Victims Fund for which we seek your support. You can contribute to this fund by mailing a cheque in U.S. dollars payable to the "Asian Legal Resource Centre Ltd." to the following address:

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The Missing Element in the U.N. Human Rights System – Commitment

Bruce Van Voorhis

The recent proposals put forward by U.N. Secretary-General Kofi Annan to reform the response of the United Nations to human rights violations are an initiative to be seized upon by the world's governments and international human rights community if there is to be a serious multilateral effort to address the daily abuse of people's rights and lives in Asia and around the world.

At the centrepiece of Annan's proposals made to the Commission on Human Rights on April 7 in Geneva is the replacement of the present 53-member commission that meets six weeks a year with a smaller Human Rights Council that will be a permanent body on a par within the U.N. system with the Security Council and the Economic and Social Council. In this way, Annan envisages the elevation of human rights to the same status as the other two primary *raison d'être* of the United Nations – security and development. The new Human Rights Council, Annan suggests, will be a "society of the committed" elected by a two-thirds vote of the General Assembly whose task it will be to "evaluate the fulfilment by all states of all their human rights obligations" with every member state being reviewed periodically. Underpinning his proposals is the acknowledgement that the "era of declaration" in which human rights have been articulated, codified and enshrined for the past 60 years should move forward towards an "era of implementation."

In concluding his address to the commission, Annan observed that "the gap between what we [the United Nations] seem to promise, and what we actually deliver, has grown. . . . Our constituents will not understand or accept any excuses if we fail to act."

Annan, first of all, should be congratulated for publicly admitting the shortcomings of the present U.N. human rights system and for proposing structural changes that, at the very least, offer the hope of a new beginning. Admittedly, many of the details of his bold recommendations require further refinement – what part of the old structure, for example, will be retained and how will the remnants of the old structure relate to the new

structure. As the secretary-general himself has noted, it would be wise to maintain the special rapporteurs and the close link that now exists between the commission and the NGO community and to strengthen the seven treaty bodies, such as the U.N. Human Rights Committee overseeing adherence to the International Covenant on Civil and Political Rights, and the Office of the High Commissioner for Human Rights.

In response to the secretary-general's reform proposals, many current members of the commission remarked that the existing problems of the U.N. body are rooted in the politicisation of the system and the use of double standards. A way to overcome these issues to a great extent is to make the new Human Rights Council a body of individuals nominated by the U.N. member states who would be, using Annan's formula, elected by a two-thirds vote of the General Assembly. It is unreasonable to expect the U.N. members states – a club of governments – to police the human rights records of their fellow members without politics and double standards being part of the process. Thus, by basically creating a council of experts, the politics of human rights would be largely squeezed out of the system. The new council also needs enforcement powers if the "era of implementation" is to move beyond rhetoric. Otherwise, its criticism of human rights abuses will have little practical effect.

In addition, if the future Human Rights Council is to have an impact on the long-term improvement of human rights, it should also be a body that investigates the root causes of human rights problems as well as be a forum of condemnation, i.e., it should examine the *why* of complaints as well as the *what*. It can then be in a better position to offer technical assistance to countries to improve their human rights record as well as to monitor their respect for people's rights. Above all, if there is to be any improvement in the U.N. human rights system, it will require the political will and commitment of the world's governments. If this resolve does not exist, one failed system will merely be replaced by another disappointing system.

WITHOUT FOOD, THERE CAN BE NO RIGHT TO LIFE!

- ❖ Neimuddin stated that his brother Azizul Haque died of hunger because of no work to earn a livelihood. Neimuddin said that before his brother died he had not witnessed any cooking at his home for days. His brother finally died of starvation. Up to today, Azizul's wife and son are starving and may also die from hunger soon.
- ❖ Sukuda Bibi, a relative of Alimuddin Seik and his wife Jahida Beoa, said that both of them died recently after their bodies swelled up from malnutrition. Sukuda Bibi told the Rural Health Centre of Sadikhanrdeyar that there was no food at home. Whatever they had, no matter how unhygienic or lacking in nutrition, they ate in a desperate, and ultimately failed, attempt to survive. Dr. Ashish Kumar Ghosh, the medical officer attached with the Rural Health Centre, said, "[M]alnutrition was one of the major causes of her suffering. I visited the victims' village and found that the entire area is under threat of insufficient nutritious food."
- ❖ Sattar Seik died of hunger at the Behrampur District Sadar Hospital. Dr. Matiur Rahman, a doctor attached to the hospital, said, "The patients who have been referred here are not in condition even to utter a word. They have been kept on oxygen, but nothing can be said regarding their improvement."
- ❖ Shyamali Halder said, "Another 5-year-old boy also died suffering from the same cause. Five days ago his stomach was swelled up. It was found out that he had been living by eating dirt. For many days, there had been no cooking in his house."



(Cases collected by Manabadhikar Suraksha Mancha [Masum] in West Bengal, India, and contained in an urgent appeal issued by the Asian Human Rights Commission [AHRC] on March 7, 2005.)

**People Are Starving to Death in India, but
the World's Largest Democracy Ignores Them!**