

# **SOUTH ASIA**

**HUMAN RIGHTS INDEX 2008**

**SRI LANKA**

**BANGLADESH**

**BHUTAN**

**PAKISTAN**

**MALDIVES**

**NEPAL**

**INDIA**

**AFGHANISTAN**

**Asian Centre For Human Rights**







# **SOUTH ASIA**

## **HUMAN RIGHTS INDEX 2008**

**ASIAN CENTRE FOR HUMAN RIGHTS**

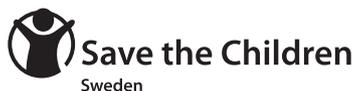
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## **SOUTH ASIA HUMAN RIGHTS INDEX - 2008**

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## PREFACE

*The South Asia Human Rights Index 2008* covers key human rights events of 2007 in the South Asian sub-region. This is the second regional report by ACHR. This series is the first of its kind by any organisation or institution in the South Asian sub-region.

The report indexes the human rights records of the member States of the South Asian Association for Regional Cooperation (SAARC) - the sub-regional inter-governmental organisation. Indexing human rights records of the governments is a controversial exercise as there are no foolproof or universally acceptable yardsticks to measure records. Given the scale of the task, this report is not exhaustive but rather aims to chronicle patterns, practices and the implications for the concerned countries.

While this report is an index, it also demonstrates that all South Asian countries have serious human rights problems. A regional analysis also shows a high level of commonality in human rights patterns. Discrimination is endemic, institutionalised and in many cases legalised. Human rights violations are integral to counter-insurgency operations conducted by the military in the sub-region. Human rights are routinely violated in police detention including the routine use of torture. National security laws tend to be poorly framed, routinely abused and used as blanket cover to silence legitimate dissent rather than tackle security. These are not the assertions of one organisation but repeatedly confirmed by national and regional and international NGOs and the various UN bodies established to monitor human rights.

Human rights activism follows the dictum that each and every violation of human rights deserves equal attention, condemnation and demands measures to be taken to prevent its occurrence. Many independent national civil

society groups also feel that human rights record of their government is the worst. Governments will tend to seriously underplay their human rights records.

Yet, the first Index report, *SAARC Human Rights Report 2006*, raised considerable interest and provoked debate – something desperately needed in the region.

However, due to the lack of financial resources, the subsequent issue for the year 2007 could not be published.

The Asian Centre for Human Rights would like to thank *South and Central Asia Regional Office of the Save the Children – Sweden* for the contribution to print this issue of *South Asia Human Rights Index 2008*.

The Asian Centre for Human Rights would also like to express its sincere gratitude to the Editor for his pro-bono editing and analysis in this report.

**Suhas Chakma**  
Director



# SOUTH ASIA HUMAN RIGHTS VIOLATORS INDEX 2008

Rank	Country	Political freedom	Right to life	Judiciary & administration of Justice	NHRIs	Press freedom	Violence against women	Violations of the Rights of the Child	Human Rights Defenders	Minorities/Indigenous Peoples	Total score	Total score (minus minorities)
1	Sri Lanka	4	7	4	4	6	6	7	7	7	52	45
2	Bangladesh	7	6	6	6	5	4	2	5	5	45	40
3	Bhutan	6	2	7	7	7	1	1	6	6	43	37
4	Pakistan	5	5	1	5	4	7	6	4	4	41	37
5	Maldives	3	1	5	2	3	3	3	2	-	23	23
6	Nepal	2	3	3	3	2	2	5	1	3	24	21
7	India	1	4	2	1	1	5	4	3	2	23	21

## I. Methodology

*South Asia Human Rights Violators Index 2008* is based on comparative assessment of records of the governments in 2007 on nine thematic issues crucial for enjoyment of human rights: political freedom, right to life, judiciary and administration of justice, status or effectiveness of National Human Rights Institutions, press freedom, violence against women, violations of the rights of the child, violations of the rights of the minorities and indigenous/tribal peoples and repression on human rights defenders. Though other issues like prison conditions, refugees, internally displaced persons etc have been extensively covered; these issues have not been taken into consideration for indexing purpose.

### Ranking explained

Human rights violations cannot be justified under any circumstances. Therefore, the scoring is ranked from worst to best i.e. the country having the worst record on a specific thematic issue is given the highest ranking of seven (7) and the country having the best record on the same thematic issue is awarded one (1).

Though there are eight countries in South Asia, Afghanistan has not been included for indexing purpose. Afghanistan's security is ensured by international forces over which the government of Afghanistan has no mechanism to establish accountability - a necessary condition for indexing. Therefore, indexing is limited to seven countries.

Ranking is complex. It combines both dynamic i.e. changes that took place, either negative or positive, and more constant features like no separation of Executive and Judiciary in Maldives.

For example, on judiciary and administration of justice Bhutan has the worst record and scores seven (7). Bhutan performed so badly not only because of the outstanding problem that the King is the head of the judiciary but also because the King's appointment of three civil servants as High Court judges who between them had no legal background or experience. Bhutan's record is completed by the fact that many decisions of Bhutan's courts are guided by personal opinion rather than reference to any law.

The Maldives was awarded second place scoring six (6) as it is difficult to separate the judiciary

from the executive. The President can overturn any decision of the High Court. Court decisions in the Maldives regarding rape and gender in 2007 were nothing short of abominable.

Bangladesh is number three in the ranking and awarded five points (5). The Supreme Court in Bangladesh validated the illegal orders/decrees of the military backed care-taker government. It overruled the positive judgments of the High Courts on a number of issues. It applied the Emergency Power Rules, 2007 retroactively. The judgements of the Supreme Court had negatively impacted the administration of justice in Bangladesh.

Sri Lanka is ranked number four and awarded 4 points because of the Executive interference in the Judiciary. Since his appointment as Chief Justice, Justice Sarath Nanda Silva had a perfidious influence over the Supreme Court. Justice Silva is well known for political rather than legal rulings. Further, virtual ban on giving temporary residence permits to ethnic Tamils from North and Eastern parts directly denies them access to the Supreme Court based in Colombo.

Nepal is ranked number five with (3) points. The independence of the Judiciary was weakened when the Supreme Court has been made accountable to the Prime Minister of Nepal. In 2007 the Judiciary demonstrated its independence when on June 1, the Supreme Court ruled on a large number of enforced disappearance cases. The Court ordered the government to immediately investigate all allegations of enforced disappearances. The court ordered that the Commission of Inquiry must comply with international human standards.

In South Asia, Indian judiciary has always demonstrated high levels of independence but in 2007, it must yield to the Pakistan's judiciary for its struggles against oppression in 2007. Pakistan's Judiciary demonstrated real independence in the face of repression from President Pervez Musharraf. *First*, the Supreme Court of Pakistan ruled the suspension of the Chief Justice illegal. *Second*, the Supreme Court took *suo motu* action against large scale enforced disappearances. *Third*, bailiffs, lower magistracy

etc continued to visit detention centres to release illegal detainees.

### **III. South Asia Human Rights Violators Index 2008**

#### **Rank 1 : Sri Lanka**

With 52 points, Sri Lanka ranks South Asia's No.1 human rights violator. Sri Lanka's human rights indicators must be considered within a context of very high levels of impunity which tend to suggest a worsening over the human rights picture over the long term.

In 2007, President Mahinda Rajapaksa continued to attack political freedoms in Sri Lanka.

Sri Lanka scored the highest negative points for the right to life, the rights of the child, attacks on human rights defenders and violations of the rights of the minorities. On press freedom, it ranked No.2 violator only after Bhutan – which has no independent press – because of the systematic attacks on the freedom of expression and journalists. That there was more political freedom in Sri Lanka than in Pakistan and Bangladesh, the two other countries where a State of Emergency was imposed, failed to change Sri Lanka's overall ranking.

While many South Asian countries are afflicted by war, in Sri Lanka where the prospects for a negotiated settlement between the government and LTTE appear set on souring the environment by war mongering. Discrimination lies at the heart of the problem and the introduction of restrictions on Tamils travelling to Colombo are a powerful symbol of government intent. The political ramifications of the exclusion - not least in terms of prospects for a peaceful settlement of the conflict - of an entire ethnic group from the nation's capital are of deep concern.

The war had serious implications on the right to life. As Amnesty International stated civilians have not just been "caught in crossfire", but have also been deliberately targeted by the security forces, the LTTE and other armed groups. There

are no precise figures on the number of persons killed because reporting on war is banned.

Disappearances rose again: 540 persons disappeared across Sri Lanka from January to August 2007. Tamils again suffered disproportionately from disappearances – 78.89% compared with 1.85% (Sinhalese) and 3.52% (Muslims). Jaffna district was the worst affected by disappearances (50.19%) followed by Colombo with 14.44%. Torture was routine in Sri Lanka.

The rule of law had weakened since the appointment of Justice Sarath Nanda Silva, former Attorney General and Legal Advisor of former President Chandrika Kumaratunga as the Chief Justice. Justice Silva has a long legacy of political, rather than legal, judgements and has regularly interfered with political processes in Sri Lanka.

On NHRIs, among South Asian countries having National Human Rights Institutions (Afghanistan, India, Maldives, Nepal and Sri Lanka), Sri Lanka is again the worst performer. Bhutan, Bangladesh and Pakistan scored worse for their unwillingness to establish national institutions.

In December 2007, the Sri Lankan Human Rights Commission was downgraded to *observer status* by the International Coordinating Committee of National Institutions citing government influence on its independence. President Mahinda Rajapaksa appointed members of the Commission in 2006 in clear violation of the National Human Rights Commission Act that stipulates that President can only appoint on the recommendations of the Constitutional Council which lapsed in 2005.

On press freedom, Sri Lanka had the second worst performance. Sri Lanka was the most dangerous place for journalists with the killing of 7 journalists during 2007 to make it No.2 violator of the press freedom.

Human rights defenders face repression across South Asia. But in Sri Lanka, human rights defenders and aid workers were subject to the highest level of threat from all sides to the

conflict. In September 2007, the Asian Human Rights Commission stated that at least 43 aid workers were killed and 14 others were missing in Sri Lanka since 2006. In no other South Asian country, so many human rights defenders have been killed.

Minorities including indigenous/tribal peoples face repression across South Asia because of their ethnic, religious or linguistic origin. Sri Lanka's oppression is naked. There is a virtual ban on Tamils from North-Eastern provinces to live in Colombo. They are required to bring letters from their *Grama Sevakar* (village level officers), explaining the reason for their visit to Colombo. This implies those who live under the LTTE held areas cannot visit Colombo where the Supreme Court and many other essential government and private institutions sit. The victims are unlikely to get or obtain permission to approach the Supreme Court, the only court from where victims hope to get justice for violations of their fundamental rights.

In June 2007, about 500 ethnic Tamil minorities including women and children were evicted from their lodging in Colombo and forced onto the waiting Ceylon Transport Corporation buses for deportation to Northern and Eastern parts of Sri Lanka. Again in early December 2007, in an incident of mass intimidation security forces conducted mass arrests of nearly 2,200 ethnic Tamils including women and children after the LTTE was held responsible for two bomb attacks in November 2007. Colombo practices racist policies with regard to the ethnic Tamils and worst performer in South Asia. .

On violations of the rights of the child, Sri Lanka by far has the highest number of child soldiers in South Asia. By the end of 31st December 2007, UNICEF reportedly received 6,248 cases of recruitment of child soldiers by the LTTE and 453 cases by the Tamileela Makkal Viduthalai Pulikal, the Karuna Group. It is the policy of the State to allow the Karuna group and the Eelam People's Democratic Party to recruit child soldiers.

On violence against women, Sri Lanka was

ranked No.3 violator because of the continued torture and rape of ethnic Tamil women by the security forces.

## **Rank 2 : Bangladesh**

In *South Asia Human Rights Violators Index 2008*, Bangladesh ranked second worst with a total score of 46 points. Bangladesh's human rights indicators must be considered within a context of very high levels of impunity which tend to suggest a worsening over the human rights picture over the long term.

On political freedom, Bangladesh scores the worst in the region. By definition, any care-taker government must function within the ambits of the Constitution and other national laws to facilitate and expedite the installation of a new government with the people's mandate.

Instead, after taking power following the imposition of a State of Emergency on 11 January 2007, political freedom was severely curtailed and the care-taker government banned all political activity, including processions, strikes and trade union activities, and banned political discourse (freedom of expression and opinion) including in print and electronic media under the Emergency Powers Rules, 2007 imposed on 26 January 2007.

On 8 March 2007, the care-taker government issued a blanket ban on political activities including "indoor politics". In the first 10 months, a total of 440,684 people were arrested and of these, only 2,39,480 arrested persons had arrest warrants and only 778 were wanted by the police for alleged criminal offences. Those arrested included political activists, criminals, businessmen, journalists and alleged corrupt persons.

On the right to life, the Rapid Action Battalion (RAB) was of deep concern. Formed in March 2002 to combat crime, RAB personnel have been responsible for systematic and widespread "extrajudicial executions" euphemistically called "cross-fire" killings. 184 persons were killed in 2007 in so called crossfire killings. The use of torture was routine in Bangladesh.

On judiciary and administration of justice, Bangladesh is the only country in South Asia where the Emergency Powers Regulations of 2007 were applied retroactively – a non-derogable principle in the administration of justice under international human rights law.

Though the High Courts resisted these ordinances, the Supreme Court validated them. The lack of independence of the Supreme Court of Bangladesh affected the administration of justice as hundreds were sentenced by speedy trial courts. The UN Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, expressing concerns over the trial of Sigma Huda, then UN Special Rapporteur on trafficking in persons, especially in women and children, stated that "the right to legal representation and the independence of the court were severely affected during her trial".

On National Human Rights Institutions, Bangladesh started the process of establishing an NHRI in 1996. On 19 March 2007, the care-taker government, in principle, agreed to set up a National Human Rights Commission but no measures were taken till the end of 2007.

On press freedom, Bangladesh ranked poorly. The care-taker government not only restricted the media under the Emergency Power Rules, 2007 but also arrested numerous journalists in cases that raised serious concerns over the application of the law.

Bangladesh ranked poorly with regard to its treatment of the indigenous /tribal peoples and minorities. Bangladesh not only failed to implement the CHTs Peace Accord of 1997 but intensified the implantation of plain settlers in the Chittagong Hill Tracts. There were repeated instances of 'land grabbing' of the lands of indigenous Jumma peoples by plain settlers with the support of the military.

Further, Hindu minorities continued to be targeted and their religious freedoms violated. A new study showed that some 1.2 million or 44 per cent of the 2.7 million Hindu households in Bangladesh were affected by the Enemy

Property Act, 1965 and the Vested Property Act, 1974 which empowers to identify the Hindus as enemies of the State and seize their properties.

On human rights defenders, Bangladesh performed poorly. Human rights activists are subject to surveillance but human rights defenders from indigenous and minority communities or those working with indigenous and minority communities were the subject of particular harassment.

On women, Bangladesh again performed poorly. Minority and indigenous women were vulnerable to violence from the majority community.

### **Rank 3 : Bhutan**

Bhutan's relatively positive records on the right to life, status of women and status children have been marred by its record on political freedom, freedom of expression, judiciary and administration of justice, status of National Human Rights Institutions, violations of the rights of minorities and ban on the human rights defenders. With 43 points Bhutan is ranked no.3 human rights violator in South Asia.

On political freedom, Bhutan is second worst in the region for the introduction of limited and guided democracy. This is however a step forward from ban on any party politics. Four political parties were formed in Bhutan – People's Democratic Party, Bhutan People's United Party, Bhutan National Party, and All People's Party were registered in a watershed development.

On judiciary and administration of justice too, Bhutan has been awarded the highest negative points (7) as there is no independent judiciary. The King remained the absolute authority to grant pardon, appoint and dismiss judges. Of the five new judges appointed in 2006, three were senior civil servants who have no legal background.

As Bhutan has no National Human Rights Institutions nor has it expressed any intention to establish one, it was the worst performer on this thematic issue.

On press freedom too, Bhutan was the worst

performer despite allowing registration of two private newspapers - *The Bhutan Times* and *The Bhutan Observer*. The government continued to repress press freedom. In June 2007, the "www.bhutantimes.com" website was blocked from viewing in Bhutan.

On the violations of the rights of minorities, Bhutan has been ranked No. 2 behind Sri Lanka. Bhutan continued to have discriminatory laws, policies and practices against the ethnic Nepalese. Since the release of 2005 census report, about 80,000 mainly ethnic Nepalis remained identified as "foreigners". About 70,000 "foreigners" were reportedly prevented from taking part in the mock elections in April 2007.

Given the virtual ban on independent civil society organisations, Bhutan again performed very badly on human rights defenders.

### **Rank 4 : Pakistan**

With 41 negative points, Pakistan had the fourth worst performance in South Asia Human Rights Violators Index 2008. Pakistan's human rights indicators must be considered within a context of very high levels of impunity which tend to suggest a worsening over the human rights picture in the long term.

On political freedom, Pakistan was ranked behind Bangladesh which banned all political activities and Bhutan which allowed guided democracy. Throughout the year President Musharraf increased political repression in order to retain position and power. Oppression intensified after the imposition of emergency on 3 November 2007. Political freedom was particularly poor in Balochistan and the Federally Administered Tribal Areas.

On the right to life, Pakistan performed poorly. Hundreds have become victims of enforced disappearances and President Musharraf in his memoirs, "In the Line of Fire", acknowledged that 689 persons were held during the war on terrorism and from amongst them, 369 persons had been handed over to the US for money. The security forces continued to engage in extrajudicial

executions in the War Against Terror in addition to an extraordinary number of custodial deaths. Ethnic minorities in Balochistan were victims of large-scale disappearances and killings. The use of torture was routine in Pakistan. Yet, Pakistan performed better than Sri Lanka where disappearances have multiplied and Bangladesh, where very large number were killed by the security forces in non-conflict situations.

On judiciary and administration of justice, Pakistan performed well. On 20 July 2007, the Supreme Court struck down the suspension of Chief Justice Iftikhar Muhammad Chaudhry and restored him to the seat of Pakistan's Chief Justice. The Supreme Court *suo motu* intervened against disappearances. ACHR also documented numerous cases where bailiffs/ raid commissioners/ lower court judges themselves raided detention centers and rescued numerous detainees from arbitrary detention - a precedent for the rest of South Asia to replicate.

On NHRIs, although a draft National Human Rights Commission Bill was presented in February 2005, the government of Pakistan failed to adopt it in 2007.

Though human rights defenders of Pakistan also came under attack following the imposition of emergency; the situation of human rights defenders remained more precarious in Sri Lanka (7), Bhutan (6) and Bangladesh (5) than Pakistan (4).

On press freedom, Pakistan Electronic Media Regulatory Authority (PEMRA) was a serious threat to press freedom. The media came under attack from government and armed opposition groups. At least six journalists were killed, 1 disappeared after abduction and many were attacked by law enforcement agencies, political activists and fundamentalists groups in 2007. Yet, despite these attacks press freedom in Pakistan was the third best in South Asia after Sri Lanka and India. Bhutan (7) does not have an independent press; Sri Lanka (6) was the most dangerous place for journalists in South Asia; the care-taker government of Bangladesh (5) systematically attacked journalists.

Pakistan's performance on discrimination against women was appalling. Apart from 'cultural' cruel practices, reports of custodial rape were widespread. The application of Sharia law and inability of the government to confront cultural practices increased violence against women. Under the Offence of Zina (Enforcement of Hudood) Ordinance of 1979, a rape victim must produce at least four adult male Muslim eyewitnesses, who must be truthful persons and abstain from major sins (*kabair*) and have physically seen the act of rape in order to prove her case. If unable to prove rape, a woman can further be prosecuted under the Hudood Ordinance for adultery. Honour killings and rape of women at the order of *jirga* (traditional court) were common. Between January and December 2007, at least 1,305 people including 792 women and 34 minor girls were victims of honour killings.

Pakistan was behind only Sri Lanka on the violations of the rights of the child. There were consistent reports of sexual abuse, forced marriages of children under traditional custom of '*vani*', system. In 2007, the conditions of juvenile offenders remained deplorable. The number of juvenile detainees has also increased. In four provinces of Pakistan, there were 1,719 in December 2007 in comparison to 1,507 juvenile offenders as on 12 December 2006.

Pakistan continued to remain a dangerous place for the religious minorities and ranked poorly on the rights of minorities. Religious minorities particularly Hindus, Christians, and Ahmadiya sect of Islam were targeted under blasphemy laws. In 2006, 90 cases of blasphemy were reported. Out of these, only 48 were registered with the police in which 27 accused were Muslims, 10 Christians and 11 Ahmadis.

## **Rank 5 : Maldives**

Maldives has been making slow but perceptible progress towards democracy since 2005. Political parties are part of the political system of Maldives today. Further, Maldives ratified key international human rights instruments UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,

International Covenant on Civil and Political Rights (ICCPR), the Optional Protocol to the ICCPR, and the International Covenant on Economic, Social and Cultural Rights.

Independence of judiciary remains Maldives weakest point. President Maumoon Abdul Gayoom is head of the Judiciary and could rule or overrule on any of the decisions of the High Court, the highest court in the country.

On National Human Rights Institutions, the Maldives ranking improved as the Human Rights Commission has been vested with more powers including the power to inquire into cases that occurred after the enactment of the law, and cases that occurred prior to the enactment of the law but not before 1 January 2000. The new Act was approved by the Parliament and ratified by the President on the 17 August 2006.

On press freedom, the Maldives performance remained unchanged. However, the government continues its attempt to suppress the press freedom and it attempted to bring the Draft Bill on Freedom of the Press. A number of journalists were arrested and assaulted by the security forces.

The Maldives' treatment of women remained appalling. Women have restricted access to public life. There was increased reporting of sexual violence such as rape, assault, domestic violence etc. There is no law on violence against women. Court judgments were atrociously lenient and did not commensurate with the gravity and barbarity of the crimes committed against women. The punishment for rape is banishment in an island and not imprisonment.

## Rank 6 : Nepal

The prospects for a long term improvement in political freedoms diminished as public security continued to wither on the back of overwhelming impunity. Nepal's human rights indicators must be considered within a context of very high levels of impunity which tend to suggest a worsening over the human rights picture in the long term.

Political freedom began to resemble chaos in

Nepal as demonstrations, *bandhs* and strikes crippled the country throughout the year. The biggest concern was not so much State violation but rather the absence of State; an absence that in 2007 facilitated political violence by the Communist Party of Nepal (Maoist) and the proliferation of armed groups and violence in the Terai.

On the right to life, Nepal performed poorly. According to OHCHR-Nepal, at least 130 civilians were killed from January to October 2007 in Nepal, particularly in Central and Eastern regions of the Terai. Of them, 29 persons were killed by the police who used excessive force upon the protestors. INSEC stated that 33 persons were killed by the security forces in 2007. The Maoists and Mahdesi armed opposition groups were also responsible for violations of the right to life. Torture is systematic in Nepal.

Nepal's judiciary was undermined by the Peoples Court of the Maoists and the government's contempt for the Supreme Court and ranked poorly. The independence of the Judiciary was weakened when the Supreme Court has been made accountable to the Prime Minister of Nepal. In 2007 the Judiciary demonstrated its independence when on June 1, the Supreme Court ruled on a large number of enforced disappearance cases. The Court ordered the government to immediately investigate all allegations of enforced disappearances. The court ordered that the Commission of Inquiry must comply with international human standards.

On NHRIs, the appointment of new Commissioners, following the resignation of the Royally appointed members was an improvement.

Freedom of the press improved in Nepal. However, it came under regular attack from the Maoists.

Nepal ranked poorly on rights of the child after Sri Lanka. Children continued to become victims of renewed armed conflicts in the Terai. The armed opposition groups were responsible for abduction of many children.

Human rights defenders did not face overt repression. Civil society itself, for the most part,

looked increasingly willing to take political rather than human rights positions.

### **Rank 7 : India**

India is the best human rights performer in South Asian in *South Asia Human Rights Violators Index 2008*. Undoubtedly, cases reported from India were more voluminous than other SAARC countries. But, India has over one billion people in comparison to 152.6 million in Bangladesh according to 2001 census, 132 million in Pakistan according to 1998 census, 22.73 million in Nepal according to 2001 census, 18.73 million in Sri Lanka according to 2001 census, 0.67 million in Bhutan according to 2005 census, and 0.28 million in Maldives according to 2004 census.

Again while India might record more numerous human rights violations this is in part because India provided more political freedom than in other SAARC countries and actually attempted to record these violations. However, it failed to ensure political freedom of the vulnerable groups like Dalits, about a million people, mainly Sikhs, who migrated from Pakistan to Jammu and Kashmir in 1947 and the Chakmas and Hajongs of Arunachal Pradesh. However human rights indicators in India must be considered within a context of high levels of impunity which tend to suggest a worsening over the human rights picture in the long term, particularly with regard to the context of growing internal conflicts.

On right to life, India's record is worse than Nepal, Bhutan and Maldives. Both the security forces and the armed opposition groups were responsible for widespread violations of the right to life. According to the 2007-2008 Annual Report of the Ministry of Home Affairs (MHA), the National Human Rights Commission (NHRC) received a total of 1,459 cases of custodial deaths during the period from 1 April 2007 to 31 December 2007. In addition, large numbers of civilians have been killed by a burgeoning number of armed opposition groups.

India's judiciary remained more independent than its counterparts in South Asia but backlog of cases are a huge problem.

Despite being the most effective National Human Rights Institution in South Asia, the NHRC continued to suffer from credibility crisis due to statutory limitations and operational flaws.

Minorities and vulnerable groups like Dalits and indigenous/tribal peoples continued to face gross human rights violations. Official statistics have limited value given the mistrust of the Scheduled Castes and the Scheduled Tribes for formal state mechanisms. Yet, India performed better than others in the region as it has serious affirmative action programmes and legal protections available, though poor implementation remained a growing concern.

Women were also victims of violence and atrocities. There are numerous credible allegations of rape, custodial torture and deaths against the security forces. The NCRB absurdly reported that 2 custodial rape cases in 2006, 7 in 2005 and 2 in 2004. Yet, India scored better than other countries in the region because of the existence of legal and quasi-legal mechanisms and the fact that violence against women was not as systemic as in Pakistan.

India performed poorly on the rights of the child. The establishment of National Commission for Protection of Child Rights, a statutory body of Government of India under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) in March 2007 has not helped. The National Crime Records Bureau recorded a total of 18,967 cases of crimes against children reported in the country during 2006 as compared to 14,975 cases during 2005, reflecting an increase of 26.7%. Most disturbingly, children are increasingly being used by the State and the AOGs in armed conflict situations.

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# SRI LANKA

*“The most serious human rights issue is the lack of credible public information on the large number of unresolved cases of abductions, disappearances and killings... These cases are not properly recorded, investigated and there is no prosecution.”*

- Louise Arbour, United Nations Commissioner for Human Rights during her mission to Sri Lanka in early October 2007,<sup>1</sup>

## I. Ranking in Human Rights Violators Index: 1st

With 52 points, Sri Lanka ranks South Asia’s No.1 human rights violator. Sri Lanka scored the highest negative points for the right to life, the rights of the child, attacks on human rights defenders and violations of the rights of minorities. On press freedom, it ranked No.2 violator only after Bhutan – which has no independent press. That there was more political freedom in Sri Lanka than in Pakistan and Bangladesh, the two other countries where a State of Emergency was imposed, failed to change Sri Lanka’s overall ranking. The rule of law had weakened since the appointment of Justice Sarath Nanda Silva, former Attorney General and Legal Advisor of former President Chandrika Kumaratunga as the Chief Justice. On NHRIs, among South Asian countries having National Human Rights Institutions (Afghanistan, India, Maldives, Nepal and Sri Lanka), Sri Lanka is again the worst performer.

## II. Political freedom

The Constitution of Sri Lanka guarantees “freedom of movement and choosing his residence”.

The government of Sri Lanka repeatedly restricted the movement of Tamils in 2007. New regulations

were introduced to restrict the temporary stay of Tamil civilians visiting Colombo from north-eastern provinces. These visiting Tamils were asked to bring letters from their *Grama Sevakar* (village level officers), explaining the reason for their visit to Colombo, and to register their presence.<sup>2</sup> The restriction has a very wide ranging impact on the lives of ordinary civilians who need and have a right to visit the capital for all manner of reasons including attending examinations, interviews and to make arrangements to travel overseas etc. This is a clear violation of freedom of movement guaranteed under the International Covenant on Civil and Political Rights to which Sri Lanka is a party. The political ramifications of the exclusion, not least in terms of prospects for a peaceful settlement of the conflict, of an entire ethnic group from the nation’s capital are of deep concern.

Hundreds of ethnic Tamils were forcibly evicted from Colombo in the name of ‘security’. In June 2007, about 500 ethnic Tamil minorities including women and ‘children were evicted from their lodging in Colombo and forced onto the waiting Ceylon Transport Corporation buses. From there they were deported to the conflict regions of Northern and Eastern parts of Sri Lanka.

The deportees were reportedly given just half-an-hour to pack their luggage. The government of Sri Lanka claimed that the eviction was without “communal consideration”. Apparently the official justification that Tamils staying in Colombo “without valid reasons” pose serious “security threats” is not communal!<sup>3</sup>

In early December 2007, in an incident of mass intimidation security forces conducted mass arrests of nearly 2,200 ethnic Tamils including women and children after the LTTE was held responsible for two bomb attacks in November 2007. Although, the government claimed to

have released 1,800 of them, many continued to be detained despite having all necessary documentation.<sup>4</sup>

### **III. Human rights violations by the security forces**

The security forces were responsible for serious human rights violations such as indiscriminate killings, torture, mass arrest and illegal detention during 2007. Violations are not a matter of contention. The United Nations Special Rapporteur on Torture Manfred Nowak visited Sri Lanka in October 2007. He concluded that the practice was widespread and concluded that: "This practice is prone to become routine in the context of counter-terrorism operations."<sup>5</sup>

The National Police Commission (NPC) reportedly received 1,216 complaints against police officers and rankers within the first seven months of 2007. Out of the 1,216 complaints, 380 were related to police inaction, 53 for assault, 48 for torture, 318 for misuse of powers, 132 for partiality, 85 for unlawful arrest and detention, 32 for framing false charges and detention, 57 for bribery and corruption, 10 for harassing of women and children, 27 for internal complaints by the police, 11 for death in police custody, 1 for accidental police fire and 62 for others.<sup>6</sup>

Human rights violations by the army are seldom recorded by any agency.

#### **a. Disappearances**

Disappearances are endemic in Sri Lanka. Successive governments have established a series of Commissions - Presidential Commission of Inquiry into Involuntary Removal of Persons of 1991, Regional Commissions of Inquiry in 1995, a Board of Investigation of the Ministry of Defence of 1996, All Islands Commission of Inquiry in 2000 - to inquire into disappearances of about 27,200 persons. In September 2006, President Mahinda Rajapakse set up his own Presidential Commission of Inquiry headed by former High Court Judge Mahanama Titlakaratna to enquire into disappearances. All attempts at a national

solution to disappearance have failed.

According to a finding by Law & Society Trust, in collaboration with four local partners, including the Civil Monitoring Commission and the Free Media Movement, 540 persons disappeared across Sri Lanka from January to August 2007. Again, Tamils suffered disproportionately from disappearances – 78.89%, compared with 1.85% Sinhalese and 3.52% Muslims. Jaffna district was the worst affected by disappearances (50.19%) followed by Colombo with 14.44%.<sup>7</sup>

The Sri Lankan Human Rights Commission stated that about 100 abductions and disappearances have been reported in two months from January to February 2007 alone. The majority of these abductions took place in the capital Colombo, Batticaloa in the Eastern Province and Jaffna peninsula in the Northern Province.<sup>8</sup>

The Justice Mahanama Tilakaratna Commission of Inquiry submitted its first interim report on 22 December 2006 and the second on 23 March 2007. On 20 June 2007, President Mahinda Rajapaksa directed the Public Administration and Home Affairs Ministry and the Police Department to implement the recommendations of the Presidential Commission's interim reports.<sup>9</sup> On 31 August 2007, Mahanama Thilekeratne Commission revealed that out of 1,992 persons who had allegedly disappeared, 1,425 persons have returned. However, the Commission did not reveal the name of the persons who have returned.<sup>10</sup> Earlier, the Special Presidential Commission on Disappearances recorded the killing of around 430 persons, mostly minority Tamils, in five months from September 2006 to February 2007. Many of the victims were executed with their hands tied behind their backs and shot through the head.<sup>11</sup>

The Human Rights Commission is also investigating 16,305 past cases of disappearance left 'un-inquired' by the All Island Commission on Disappearances.<sup>12</sup>

On 4 July 2007, Keheliya Rambukwella, security spokesman for the government stated that the police had arrested a former air force officer, a

serving airman and four police officers for their alleged involvement in civilian abductions in June 2007. However, detailed information was not provided as investigations were still pending.<sup>13</sup>

On 6 March 2007, Sri Lanka's Inspector General of Police (IGP), Victor Perera, stated that over 400 persons including "ex-soldiers, serving soldiers, police officers and underworld gangs and other organised elements" had been arrested since September 2006 on charges of abduction. Mr Perera refused to divulge further details.<sup>14</sup>

The Human Rights Commission (HRC) in Jaffna received several complaints on disappearances during 2007. Some of these included:

- Subramaniam Ramachandran has been missing since 15 February 2007, Vadamarachchi reporter for Tamil language dailies *Yal Thinakkural* and *Valampuri*; <sup>15</sup>
- Ms. Anjani Robert Lessia from Naaranthanai in Kyats who disappeared in Tricomalee on 13 April 2007; Sivasami Raku from Velanai who disappeared on 19 April 2007;<sup>16</sup>
- Rasenthiram Thavarasa who disappeared from Manthuvil area in Thenmaraadchi on 13 June 2007 and Kumarasamy Sivanesan from Arasady who disappeared after he reported to Sri Lanka Army (SLA) camp 29 July 2007; <sup>17</sup>
- Vadivel Nirmalarajan, a proofreader with the Uthayan newspaper has been reported missing since 17 November 2007; and Denis from Rajasingham Veethi who went missing from Kurunakar in Jaffna town on 18 September 2007.<sup>18</sup>

There have been reports of 'armed men carrying out abductions from a white van in Jaffna. The Jaffna offices of the Human Rights Commission received several complaints of such abductions. On 5 May 2007, four students identified as R. Ramanendran (18), Suntharalingam Yasotharan (17) and Nagarajah Venukanthan (18), all students of Jaffna Hindu College, and Kugarajan Kannan (17) of St. John's College were reportedly abducted by armed men in Jaffna district.<sup>19</sup>

## b. Violations of the right to life

Reports on the violations on the right to life must be seen in the context of the ban on reporting from conflict areas and the use of disproportionate force on civilian targets including aerial bombing. There have been widespread reports of human rights and humanitarian law violations, including the right to life, by the security forces from North Eastern and the Southern region of Sri Lanka. According to Amnesty International, at least 4,000 people are reported to have lost their lives in the conflict since late 2005<sup>20</sup>

The Sri Lankan Air Force continues to bomb indiscriminately in LTTE held areas. Bombing is inherently indiscriminate and make it difficult, if not impossible, for the Sri Lankan security forces to respect the basic International Humanitarian Law principle of distinction between those who are directly participating in hostilities and those who are not. This amounts to indiscriminate use of lethal force. Clearly the extent of the violations of the right to life has not been reported.

Amnesty International also recorded their concern that civilians have not just been "caught in crossfire", but have also been deliberately targeted by the security forces, the LTTE and other armed groups.<sup>21</sup> Violations of existing laws have been compounded by repeated statements by politicians and senior members of the security forces to ignore the rule of law in carrying out their duties. For example, in April 2007, the Police Chief Victor Perera stated that the Police have to go beyond the law to combat crime.<sup>22</sup>

Custodial deaths are reported at regular intervals. The majority of the victims died as a result of torture and ill treatment. Even official reporting provides indicators of concern. For example, the National Police Commission (NPC) reportedly received 11 complaints of death in police custody within the first seven months of 2007.<sup>23</sup>

On 21 July 2007, fisherman Thadallage Chamil Weerasena, resident of No. 25, Katupolwatte, Panwila, Ratgama, was tortured to death in custody of the Ratgama police after arrest. The deceased, before his death, reportedly alleged

torture and his injuries were seen by a witness. However, the report signed by the Magistrate of Galle concluded that the victim died of hanging. No further action was taken.<sup>24</sup>

On 27 May 2007, two alleged suspects identified as E. A. Amaradasa and his brother E.A. Upasena were shot dead by a police team after they were allegedly taken to a house in Delgoda where the police claimed that the suspects had hidden weapons. The police stated before the Gampaha Magistrate's Court that they shot them in self defence as the suspects had tried to throw a grenade at the officers. The Magistrate ruled that the act was: "justifiable homicide in the act of self defence".<sup>25</sup>

In 2007 the Sri Lankan Army personnel continued to be repeatedly implicated in the use of extrajudicial executions. The victims included:

- Rev. Nallathamby Gnanaseelan, (38, pastor of Tamil Mission Church in Jaffna) who was allegedly shot dead by Sri Lankan security forces at the road block at Library junction, Wembedy School Road, Jaffna on 13 January 2007;<sup>26</sup>
- Sinnathurai Sujjeyanthiran who was allegedly killed by Sri Lanka Army (SLA) when he entered the SLA Front Defence Line area at Sentaankulam after losing his way on 29 May 2007;<sup>27</sup>
- four Tamil civilians who were allegedly killed by SLA in retaliation for a hand grenade attack on a SLA street patrol at Naakathampiraan koayil Veethi under Earavoor police division in Batticaloa district on 12 June 2007;<sup>28</sup>
- fishermen Gnanaruban Rutson and Robert Thevathas who were shot dead by the Sri Lanka Navy (SLN) in Kayts on 18 May 2007 as alleged LTTE suspects. The victims were later identified by their relatives;<sup>29</sup>
- Sakathevan Dilaxsan (24) who was allegedly shot dead by the army intelligence at Kokuvil in Jaffna on 1 August 2007;<sup>30</sup>

- Thanikasalam Sasiruban, (24) who was allegedly followed by Army intelligence and shot dead at Thirunelvely Tharankavil Pillaiyar Muhamavady Junction in Jaffna on 2 August 2007;<sup>31</sup> and
- S.Sasikaran (26) who was allegedly shot dead by the army at Maddu in Kalavai Batticaloa on 4 August 2007;<sup>32</sup>

There were also reports of killings of civilians in air strikes. On 29 May 2007, 56-year-old woman Meyyaappillai Alaku was killed when two SLAF aircraft bombed Puthukkudiyiruppu in Mullaiththeevu.<sup>33</sup> On 13 August 2007, Ariyaratnam Subajini (21, resident of Karumpullian Mallavi Mullaitivu) was allegedly killed during an air strike by the air force while in a passenger bus at Nedunkerny Katkulam in Vavuniya.<sup>34</sup> In most of the cases, the security forces justified the killings by claiming that those killed were LTTE cadres.<sup>35</sup>

Fearing arrests and killings, several persons reportedly voluntarily reported at the Jaffna Office of the Human Rights Commission (HRC). In July and August 2007, nearly sixty civilians including women sought protection from the Jaffna Office due to alleged death threats from Sri Lanka Army and SLA-backed paramilitaries.<sup>36</sup>

### c. Arbitrary arrest, detention and torture

Article 13(1) of the Sri Lankan Constitution provides that: "No person shall be arrested except according to the procedure laid down by the law. Any person arrested shall be informed of the reason of his arrest." However, these rights were not adhered in practice.

As noted earlier the UN Special Rapporteur on Torture has noted the routine use of torture in Sri Lanka.

Ethnic Tamils were again particular targets of arbitrary arrest, detention and torture. Following the assassination of then Foreign Minister Lakshman Kadirgamar, the Sri Lankan government imposed a State of Emergency

and enacted the Prevention of Terrorism Act on 13 August 2005. These draconian measures remained in place.

The Government of Sri Lanka reinstated the draconian Prevention of Terrorism Act (PTA) in 2006. The PTA, which was revoked after the 2002 ceasefire was signed with the Liberation Tigers of Tamil Eelam (LTTE), gives the security forces sweeping powers to detain and interrogate terrorist suspects without trial.

Following an attempt to assassinate Defence Secretary Gotabhaya Rajapaksa, on 6 December 2006, President Mahinda Rajapaksa promulgated a further amendment to the Prevention of Terrorism Act to make “any other activity in furtherance of any act of terrorism or specified terrorist activity committed by any person, group or groups of persons” an offence under the Prevention of Terrorism Act.

Many Tamils including women were detained under the Prevention of Terrorism. An estimated 220 Tamils, men and women, were detained in the Boosa detention camp run by the Terrorist Intelligence Division under the PTA in the Galle town in the southern province as of 28 August 2007.<sup>37</sup>

The National Police Commission reportedly received 85 complaints for unlawful arrest and detention and 32 for framing false charges and detention against police officers within the first seven months of 2007.<sup>38</sup>

Those arrested are often subjected to torture. During his visit to Sri Lanka from 1 to 8 October 2007, Mr. Manfred Nowak, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment received “numerous consistent and credible allegations” from detainees who reported that they were ill-treated by the police to extract confessions, or to obtain information in relation to other criminal offences. Similar allegations were also received with respect to the army. The Special Rapporteur found “overwhelming evidence that torture is routine” at Boosa detention centre.<sup>39</sup>

More than 23 cases of alleged torture by SLA

soldiers and police personnel were reported to the Jaffna office of the Human Right Commission in June 2007 alone.<sup>40</sup>

On 30 June 2007, Visuvaratnam (22) was arrested by the SLA and subjected to torture at the Chhavakachacheari camp. The victim was allegedly hung upside down and was subjected to beating. He sustained torture marks in his upper body and face.<sup>41</sup>

On 10 May 2007, S. Kingsley de Silva (48) was reportedly tortured by four army officers attached to Army Unit at Old Sri Sumangala Boys School following his arrest from his residence at Thalpitiya in Wadduwa without warrant. Before he was handed over to the Wadduwa police station, each of them hit him with their fists, boots and guns at his face, eyes and body. While in detention, the police did not provide him medical attention despite serious injuries.<sup>42</sup>

In a rare case, on 20 July 2007, Colombo High Court Judge Upali Abeyratne sentenced Inspector of Police, Shelton Saley, and Police Constable W. S. Stanley Thisera to seven years rigorous imprisonment after they were convicted of torturing Ms Anjalin Roshana Michael in police custody at Narahenpita in 2000.<sup>43</sup>

#### **d. Impunity**

Impunity is the single most important factor contributing to increased human rights violations in Sri Lanka. The alarming escalation of human rights abuses over the past years clearly shows that existing domestic mechanisms for the protection of civilians and delivery of justice have failed.

In October 2007, four human rights activists who served on Sri Lanka’s Advisory Panel on Human Rights resigned due to their concerns over the Sri Lankan government’s commitment to upholding human rights.

The Presidential Commission of Inquiry (CoI) set up by President Rajapaksa to investigate 16 serious cases of rights violations including the killings of 17 aid workers in Muttur made no progress. The International Independent Group of Eminent Persons (IIGEP), an 11-member body

headed by Justice P.N. Bhagwati, appointed by President Rajapaksa to observe the inquiry by the CoI repeatedly complained about the inquiry being compromised - including the absence of transparency, interference from the Attorney General's department and the Office of the President and failure to protect witnesses.<sup>44</sup> In its public statement of 19 December 2007, the IIGEP stated that the Presidential Commission of Inquiry's process "falls short of international norms and standards. For instance, all sessions conducted by the Commission have been held to the exclusion of the public, the victims and their families and, on occasions the IIGEP".<sup>45</sup>

At present, Sri Lanka does not have a witness protection law. Witnesses were reluctant to testify for fear of retribution. For instance, legal cases dealing with writs of *habeas corpus* filed with the Jaffna High Court of those abducted and missing since 1996 proceed with great difficulty because of the fear of witnesses to testify against the security forces. In May 2007, Jaffna High Court had to postpone a hearing of *habeas corpus* petitions pertaining to disappearance of 25 civilians from Kaithadi and Naavatku'li in Thenmaraadchi as the witnesses failed to appear<sup>46</sup> ostensibly because of fear.

A Draft Bill for the Assistance and Protection of Victims of Crime and Witnesses has been lying with the Ministry of Justice and Law Reform.<sup>47</sup> By the end of the year the Bill was not placed before the parliament.

## **IV. Judiciary and administration of justice**

The Supreme Court is the highest court of the country. The court of appeal, provincial high courts, district courts, magistrates' courts and primary courts are other courts.

Political interference in the Supreme Court and the Judicial Service Commission (JSC) has seriously undermined the independent functioning of Sri Lanka's justice system. The JSC, vested with the task of transfer, dismissal and disciplinary control of all minor judges, has

been acting unconstitutionally since 2006. The 17<sup>th</sup> Amendment to the Constitution, passed in 2001, required the appointment of the members of the JSC to be approved by an apolitical Constitutional Council. However, the President and Parliament have failed to put the Council in place in its second term. In 2006, the President made direct appointments to the Judicial Service Commission, Supreme Court, Court of Appeal and to the post of Attorney-General in violation of the 17<sup>th</sup> Amendment to the Sri Lankan Constitution.<sup>48</sup>

The arbitrary transfers of magistrates inquiring into high profile cases of human rights violations including execution of the 17 aid workers of *Action Contre La Faim* was another indicator of concern for the independence of judiciary.<sup>49</sup>

Judicial delay continued to undermine the judicial system in Sri Lanka. There were about 11,000 backlog cases with the Court of Appeal as of June 2007. About 1,700 cases are filed in the appeal court every year but only 600 are processed thereby increasing the backlog.<sup>50</sup>

In Jaffna, many lawyers are reportedly threatened with death, intimidation allegedly by Tamil vigilante groups collaborating with SLA.<sup>51</sup>

The Sri Lanka Police have also disregarded court directions. In October 2007, the police buried the bodies of 21 Black Tiger cadres killed in an attack on Anuradhapura airbase on 22 October 2007 without permission of the court. The Court had ordered the Headquarters Inspector of Anuradhapura police station to consult the courts after the inquest.<sup>52</sup>

## **V. Effectiveness of National Human Rights Institutions**

The Sri Lanka Human Rights Commission (SLHRC) has been undermined by its failure to operate transparently. The lack of powers to enforce its recommendations and inadequate financial resources remained serious impediments to its effectiveness and independence.

The Sri Lanka Human Rights Commission lost all

its credibility because of political appointments. In 2006, President Mahinda Rajapakse appointed the members of the Human Rights Commission after its terms of office members expired in violation of the 17<sup>th</sup> Amendment to the Sri Lankan Constitution. Appointments to the Human Rights Commission are to be made by the President on the recommendation of the Constitutional Council which lapsed in 2005. In December 2007, the Sri Lanka Human Rights Commission (SLHRC) was downgraded to Grade B by International Coordinating Committee of National Institutions citing government influence on its independence. The Commission was reduced to observer status and no longer has the right to vote in international meetings. It is not eligible to stand for election to the International Coordinating Committee.<sup>53</sup>

In June 2007, the SLHRC issued a circular stating that only cases which had been filed within three months of the incident in question should be taken up despite no legal stipulation to this effect.

In July 2006, SLHRC had stopped follow up action in as many as 2,000 cases of disappearance. In a note dated 29 June 2006, the secretary of the SLHRC had stated that it had decided to stop inquiring into these complaints “for the time being, unless special directions are received from the government”.<sup>54</sup>

## VI. Repression on human rights defenders

Human rights defenders and aid workers, particularly those belonging to the Tamil minority were targeted by the Sri Lankan security forces. In September 2007, the Asian Human Rights Commission stated that at least 43 aid workers were killed and 14 others were missing in Sri Lanka since 2006.<sup>55</sup> On 22 November 2007, the Government of Sri Lanka banned the Tamil Rehabilitation Organization (TRO), which played pivotal humanitarian role after the 2004 tsunami, on charges of links with the LTTE.<sup>56</sup>

The Sri Lankan Red Cross workers were also subjected to attack. At least three Red Cross Workers were killed in 2007 as given below:

- On 14 December 2007, Thavarajah, Chairman of the Red Cross Jaffna branch, who won the “best volunteer” award in 2005, was found dead after being abducted in Jaffna.<sup>57</sup>
- On 1 June 2007, two Tamil Red Cross workers, Sinnarajah Shanmuganathan, 38, and Karthigesu Chandramohan, 28, who had come to Colombo for a training program in Tsunami work, were abducted and killed by men claiming to be Sri Lanka Police from Fort Railway Station. Their bodies were found at Kiriella in Ratnapura near Colombo on 3 June 2007.<sup>58</sup>

On 1 April 2007, six ethnic Sinhalese civilians identified as Welage Chandrasiri, T.M. Dhanapala and his 18-year-old son Dhanapala Wijetunga, T. Wijakon, and two brothers, L.M. Dayananda Kapporal and Maduranga Kapporal, working on a post-tsunami construction project, were shot dead. Three others identified as V. U. Nandanage and two Tamils, Indran Pirapaharan and Maduramuththu Nagarasa were injured at Mailampaaveli in the eastern district of Batticaloa. The government blamed the LTTE for the killings but the LTTE denied its involvement and blamed the Karuna group.<sup>59</sup>

On 23 July 2007, Mr. Arumainayagam Alloysius, a Sri Lankan staff member of the Danish Refugee Council was reportedly shot dead by unidentified gunman while he was on his way to work in Jaffna.<sup>60</sup>

The workers of the international humanitarian de-mining organization, Halo Trust came under repeated attack:

- On 4 January 2007, Halo Trust employee Subramaniam Parameswaran was abducted from his home at Racca Road in Jaffna by unidentified men in a white van.
- On 9 January 2007, C. Rajendran, a driver of Halo Trust disappeared in Jaffna.
- On 9 February 2007, Nagarasa Narenthiran, an employee of Halo Trust reportedly disappeared in Jaffna.

- On 18 June 2007, Sivarasa Vimalarasa (20), staffer of a Danish Humanitarian Demining Organization, was reportedly abducted by unidentified men while on his way to work in Jaffna.<sup>61</sup>

The workers of the Tamil Rehabilitation Organization (TRO) were also targeted. On 24 March 2007, a humanitarian worker of the TRO, Muthuraja Aruleswaran was killed and three other officials including the Assistant Executive Director Vadivel Ravichandran, International Planning Director Seenithamby Parameswaran, and the Director of Akkarayan Development Organisation, Selvarajah Nixon were wounded in a claymore allegedly planted by a Deep Penetration Unit of the Sri Lanka army at Periyamadu in Mannar district. The victims were returning after monitoring the relief assistance to the displaced civilians following the Sri Lanka Army operation in Mannar Vavuniya border.<sup>62</sup>

On the night of 13 June 2007, Antonio Villeomour from Philippines, attached to the Mercy Corps, an International NGO, was injured after being shot at by a Sri Lanka Navy sailor after he failed to stop walking towards the sentry post at the SLN naval detachment.<sup>63</sup>

On 31 March 2007, the Consortium of Non-Governmental Organizations in Jaffna (which has a membership of more than 47 Jaffna district-based organizations) decided to stop releasing their monthly reports to the media as they had received death threats over the publication.<sup>64</sup>

In April 2007, Thamir Makkal Viduthalai Pulikal Party (TMVP) headed by Col. Karuna, reportedly sent two email threats to humanitarian NGOs (members of the Consortium of Humanitarian Agencies) as well to the UN workers in Eastern Sri Lanka. The NGOs were asked to fill out a registration form and submit it before 30 April 2007. The emails warned that those failing to register would not be allowed to carry out humanitarian work in war-zones and the faction would kill them.<sup>65</sup>

## VII. Freedom of the press

According to Information and Media Minister Anura Priyadharshana Yapa, there were about 35 Sinhala, Tamil and English daily and weekly newspapers, eight Sinhala television channels, four English television channels and two Tamil television channels, nearly 20 radio channels, and about 10 news websites in Sri Lanka.<sup>66</sup>

Sri Lankan media continued to be a target of oppression and assault. Sri Lanka was ranked the third most dangerous place for media in the world by Geneva-based Press Emblem Campaign (PEC). NGOs and analysts continued to demonstrate attempts by both the government of Sri Lanka and the armed opposition groups (AOGs) to prevent independent media coverage of the conflict. The methods of both sides included killing, arrest, threats, intimidation and physical attacks on journalists. PEC recorded the killing of 7 journalists in Sri Lanka during 2007<sup>67</sup> including the following:

- On 16 April 2007, Mr. Subash Chandrabogas, editor of the monthly magazine Nilam (the Ground), was shot dead at his residence in Thirunavatkulam in Vavuniya;
- On 29 April 2007, Mr. Selvarajah Rajivarman, working at Jaffna's Uthayan newspaper, was shot dead by gunmen riding on a motorbike at Naavalar Road, Rasaavin Thoaddam junction in Jaffna.<sup>68</sup>
- On 1 August 2007, 22-year-old Tamil journalist Nilakshan Sahapavan of the Media Resource Training Centre in Jaffna University and a part-time reporter was shot dead by unidentified gunmen at his house in Jaffna.<sup>69</sup>

ACHR is unaware of a credible investigation into any of the attacks on journalists or newspaper offices.

Many journalists were arrested. Anti-terrorism laws were invoked by the government as the reasons behind the arrest. Other journalists were arrested without legal grounds and subjected to

interrogations by the security forces.

- On 26 February 2007, Dushantha Basnayake, director of *Mawbima* Sinhala weekly, was arrested by the Terrorist Investigation Department (TID) of the police and detained under the Prevention of Terrorism Act (PTA).<sup>70</sup>
- On 15 February 2007, journalist Subramaniam Ramachandran was allegedly arrested by the military north of Jaffna.<sup>71</sup>
- On 21 March 2007, the Supreme Court of Sri Lanka ordered the release of Tamil journalist Maunasami Parameswaree working for *Mawbima* after she was arrested for having close links with the LTTE in November 2006. She was detained for more than four months under the PTA without charge.<sup>72</sup>
- On 30 May 2007, Tiran Alles, publisher of the Sinhala weekly *Mawbima*, was reportedly arrested by a police team from the Terrorist Intelligence Bureau from a private hospital in Colombo.<sup>73</sup>

On 16 May 2007, Ms. Sonali Samarasinghe, Editor of *The Morning Leader*, was interrogated by the Criminal Investigations Department of the Sri Lanka Police for over four hours in an attempt to force her to reveal the sources of an investigative article.<sup>74</sup>

On 18 June 2007, SLA soldiers and police reportedly entered the premises of Jaffna popular daily, *Yarl Thinakkural* and searched the premises, locked cabinets were broken and all documents were examined.<sup>75</sup>

On 28 June 2007, journalist K P Mohan attached to the Tamil daily *Thinakkural* was allegedly assaulted and injured by a group of armed Air Force personnel while on his way to the Presidential Secretariat to cover a meeting between President Rajapaksa and the Maha Sangha.<sup>76</sup>

On 18 September 2007, U Wijesinghe, Pothuvil correspondent for *Lankadeepa* and *Daily Mirror* newspapers, was harassed and threatened by a

member of the police after he had gone to cover a police recruitment programme.<sup>77</sup>

In another potent symbol of the political environment and its facilitation of violation there were repeated incidents of journalists intimidated by government ministers. On 17 April 2007, Sri Lanka's Defence Secretary Gotabhaya Rajapaksa, brother of President Mahinda Rajapakse, allegedly threatened Ms. Champika Liyanarachchi, editor of *Daily Mirror* for the paper's coverage of actions of the Karuna Group. In an article titled "Armed Karuna faction running its writ in Pottuvil" of 16 April 2007, the *Daily Mirror* had reported, "The Karuna faction is said to be creating havoc in the Muslim-dominated Pottuvil town in Ampara, moving around freely with weapons in government-controlled areas while law enforcement authorities are allegedly turning a blind eye."<sup>78</sup>

On 27 December 2007, Cabinet Minister Mervyn Silva stormed into the office of State run television station Sri Lanka Rupavahini Corporation with thugs and assaulted the News Director Mr. T.M.G. Chandrasekara for not broadcasting a speech made by him at a public meeting in the channel's TV news bulletins.<sup>79</sup>

On 24 October 2007, Arthur Wamanan, Tamil staff reporter of *The Sunday Leader*, was arbitrarily arrested by the Criminal Investigation Department (CID) based on a telephone complaint by the Sri Lankan Minister of Enterprise Development following a critical article.<sup>80</sup>

The Karuna faction also intimidated media persons. On 9 June 2007, K.T. Rajasingham, Asian Tribune Editor, was reportedly threatened with death by V.Muralitharan alias Karuna Amman through his alleged associate I. Iniyabarathi for publishing adverse reports about Karuna and Tamil Makkal Viduthalai Pulikal.<sup>81</sup>

## VIII. Violence against women

Sri Lanka ratified the Women's Convention in 1981. The Sri Lanka Parliament passed the Prevention of Domestic Violence Act in

2005. Yet, the condition of women remained deplorable in Sri Lanka. Violence against women including killing, rape, domestic violence, sexual harassment, forced prostitution and trafficking, etc was rampant. The Sri Lanka Police recorded 696 cases of rape/incest within the first six months of 2007, while 1463 cases of rape/incest were recorded in 2006.<sup>82</sup>

According to a 2006 survey by the Ministry of Child Development and Women's Empowerment, 60 percent of women were victimised by domestic violence in Sri Lanka, while 44 percent of pregnant women were subjected to harassment.<sup>83</sup>

The security forces were responsible for violence against women. The National Police Commission (NPC) reportedly received 10 complaints for harassment of women and children against police officers within the first seven months of 2007.<sup>84</sup>

Tamil women have been specific target of violation including rape and torture during the war because of their gender.

On 3 July 2007, Ms. Kathiravelu Pushparanee (60) lodged a complaint with the Jaffna Human Rights Commission stating that she was tortured along with five other young women including her daughter by SLA soldiers who forcibly entered her house at Maariyamman Koayilady in Thirunelveli demanding information about a youth.<sup>85</sup>

In December 2007, a Tamil woman was gang raped allegedly by SLA and SLA-backed paramilitaries after she was abducted from her home in Imaiyaanan close to the Jaffna-Point Pedro road in Vadamaradchi, Jaffna. The victim suffered severe injuries during the attack and was taken to hospital.<sup>86</sup>

## **IX. Violations of the rights of the child**

The rights of children continued to be violated in Sri Lanka. According to UNICEF figures, there were 1,448 outstanding cases of under age recruitment by the LTTE as of 31 October, 2007. Of these, 290 were under the age of 18 and 1,158

were recruited while under 18 but are now older. While there were 223 outstanding cases of under age recruitment by the Karuna group during the same period. Of these, 169 were under the age of 18 and 54 were recruited while under 18 but are now older.<sup>87</sup>

Children continued to be abducted in 2007 for forcible recruitment. The Jaffna Office of the Human Rights Commission reportedly received 147 complaints against armed opposition groups and political parties for abducting children by end of March 2007. Of these, 71 were against the Karuna group, 66 were against the LTTE and 10 against the Eelam People's Democratic Party (EPDP).<sup>88</sup>

However, the Karuna faction denied the allegations and claimed that it released 14 children to UNICEF in February 2007.<sup>89</sup> As of 31st December 2007, UNICEF reportedly received 6248 cases of recruitment of child soldiers by the LTTE and 453 cases by the Tamileela Makkal Viduthalai Pulikal (TMVP).<sup>90</sup>

The recruitment by the TMVP is conducted under the aegis of the government. The camps of the Karuna groups where abducted children are held are in government-controlled areas and in close proximity to military outposts, army checkpoints and camps. The training bases in Theevuchenai, Muttukal in the Welikanda area and Kadiraveli – are wholly under government control. The Sri Lankan Human Rights Commission made no effort to visit these camps.<sup>91</sup>

## **Sexual exploitation:**

Cruelty and sexual exploitation of children is common. The Sri Lanka Police had recorded 170 cases of cruelty to children and sexual exploitation of children within the first six months of 2007. While 362 cases of sexual exploitation of children were recorded in 2006.<sup>92</sup>

## **X. Rights of indigenous peoples**

The plight of the indigenous Veddas community continued to be of concern. The government failed to take appropriate steps to improve their

overall conditions. Apart from discrimination, lack of education and poverty, they were targets of religious conversion.<sup>93</sup> In August 2007, four indigenous Veddas were arrested for collecting honey at Maduru Oya National Park, Sri Lanka.<sup>94</sup>

## **XI. Status of IDPs and returnee refugees**

The escalation of violence between the government and LTTE has resulted in displacement of thousands of people.

At least 480,000 people are currently internally displaced in Sri Lanka due to the conflict between government forces and the rebel Liberation Tigers of Tamil Eelam (LTTE) by the end of 2007.<sup>95</sup> The Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin following his official visit to Sri Lanka from 14 to 21 December 2007, stated that more than 220,000 persons had been displaced in the Eastern Province between April 2006 and March 2007. Although the majority of them have returned, they faced security and livelihood problems. According to Kälin, the returnees faced “continued incursions and attacks by the LTTE; disappearances, abductions and looting; threats and attacks upon individuals by irregular and armed groups such as the Tamil Makkal Viduthalaip Puligal (TMVP), including infiltration of camps at night; incomplete or delayed mine-clearance; approaches used by security forces in response to security incidents, including roundups, methods to identify suspects, and detention of individuals without proper notification of family members of the reasons for and location of the individual’s detention; challenges of civilian police to respond adequately and in a timely manner to security incidents and threats against IDPs; and limitations on IDPs’ and returnees’ freedom of movement based on screening and documentation of their place of origin”. The returnees were also given limited access to fields or fishing grounds by the authorities. They faced risk of attack or abduction from paddy fields and harassment at checkpoints.<sup>96</sup>

On 10 May 2007, 10 refugees were injured when an unidentified person reportedly threw a hand grenade at a refugee camp located at Saratha Vidyalayam in Magnchatthoduvaay in Kaaththaankudi police division in Batticaloa district.<sup>97</sup>

The Government of Sri Lanka resettled many internally displaced people in 2007. Many displaced people were reportedly forced to return to their homes despite unsafe conditions. According to aid agencies, 140,000 Tamils displaced by military offensives were forced to go back to their homes despite unsafe conditions in Batticaloa.<sup>98</sup> However, the conditions of those resettled continued to be deplorable due to lack of basic facilities including food and adequate shelters.<sup>99</sup>

The escalation of war forced Tamils to flee to Indian coast in southern Tamil Nadu State. On 11 April 2007, 4 refugees were reportedly drowned and remained missing after their boat capsized near the Indian waters off Palk Strait.<sup>100</sup>

## **XII. Violations of the prisoners’ rights**

Torture of prisoners is common. United Nations Independent Expert on torture and other cruel and degrading punishment Prof. Manfred Nowak stated that he had been told that prisoners had been beaten, suspended from the ceiling, burnt with cigarettes and asphyxiated with plastic bags. There were also “various forms of genital torture”.<sup>101</sup>

Prisons remained overcrowded with high number of pre-trial detainees. According to Special Rapporteur Mr. Nowak, there were some 28,000 prisoners being held in prisons that have the capacity of only 8,200.<sup>102</sup> Sri Lankan prisons were in severe shortage of prison officials despite overcrowding. The Prison department had only 4,932 officials as in early November 2007. Of these, 3,439 were prison guards.<sup>103</sup>

The prison conditions were unhygienic. In May 2007, 45 youths who were placed in the

protective custody in Jaffna prison for fear of death were produced in courts for their release due to deteriorating health standards, danger of infections and lack of space.<sup>104</sup>

In October 2007, a remand prisoner (name not disclosed) reportedly committed suicide by hanging himself in the toilet of the Galle Prison.<sup>105</sup>

### **XIII. Violations of the rights of minorities**

The root causes of the civil war in Sri Lanka, especially, in Northern and Eastern parts is discrimination against the Tamil minority. Other minorities also faced discrimination from the majority Sinhalese.

The plights of the Muslim minority in the Northern Province who were forcibly evicted from their homes by the LTTE in 1990 continued to be a concern.. Around 130,000 Muslims continue to live in refugee camps under miserable conditions. Poverty, unemployment, lack of basic facilities including health and education make their lives critical.<sup>106</sup> Besides, more than 2000 Muslim voters expelled from the north were not registered.<sup>107</sup>

In the Eastern Sri Lanka, Muslims faced threats from various armed groups like the Karuna Group, particularly in Pothuvil, Eravur and other Muslim dominated areas. In 2007, the chairman of the Pothuvil Pradeshiya Sabha was threatened by the Karuna faction who wanted the group's building.<sup>108</sup>

Hindus too were targeted. On 7 February 2007, Selliah Parameswar, priest at the Pillaiyar Hindu temple, was shot dead by unidentified gunmen near his house in eastern Batticaloa district.<sup>109</sup>

Tamil students continued to be discriminated in university admission. In May 2007, nine Tamil students from Jaffna district filed separate petitions in the Sri Lanka's Court of Appeal seeking the court to order the University Grants Commission (UGC) of Sri Lanka to admit them to medical faculties in universities for the current academic year. The petitioners alleged that they

were not given admission due to discriminatory policy of the UGC in granting admission to Tamil students.<sup>110</sup>

### **XIV. Violations of International Humanitarian Law by the AOGs**

There were reports of serious violations of international humanitarian law including killings and abduction by the armed opposition groups (AOGs).

The LTTE was responsible for widespread violations of international humanitarian law in particular by targeting civilians with explosive devices

The Sinhalese civilians have been targeted by the LTTE in 2007.

- On 12 April 2007, seven Sinhalese civilians including six women were dragged out of their homes and shot dead by alleged LTTE cadres at Avaranthalawa village in Vavuniya.<sup>111</sup>
- On 26 November 2007, suspected LTTE allegedly killed four Sinhalese civilians including a woman at Mahawilachchiya village bordering Wilpaththu Sanctuary in the Anuradhapura district.<sup>112</sup>
- On 27 May 2007, three civilians were killed when suspected LTTE set off a road side bomb in Thirukkivil.<sup>113</sup>
- On 28 November 2007, 19 people including school children were killed in an alleged LTTE-triggered bomb explosion in Nugegoda junction in Colombo.<sup>114</sup>
- On 5 December 2007, at least 15 civilians were killed and another 23 injured in an alleged LTTE claymore mine attack on a CTB passenger bus traveling on the Anuradhapura-Janakapura road in Padaviya near Kebithigollewa.<sup>115</sup>

There were also regular reports of abductions.

On 1 September 2007, suspected Karuna group members reportedly abducted Thilaiampalam Paramalingam, employee of Ninthaavoor hospital at Kalladi Uppodai area in Batticaloa district.<sup>116</sup>

Some have been abducted for extortions. Often they were killed for failing to pay ransom. On 29 July 2007, Tamil youth identified as Ignatius Mahotharar, an engineer by profession, was found dead after he was abducted from Kotahena in Colombo on 15 July 2007.<sup>117</sup>

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# BANGLADESH

## I. Ranking In Human Rights Violators Index: 2<sup>nd</sup>

Bangladesh is ruled by a Care-taker government, which has no mandate of the people. By definition, the Care-taker government must function within the ambits of the Constitution of Bangladesh and other national laws to facilitate installation of a government with people's mandate. However, the Care-taker government has not only set aside the Constitution of Bangladesh but has also assumed the role of the judiciary by retroactively applying the Emergency Powers Rules of 2007. With 45 points, Bangladesh has been ranked No.2 violator of human rights in SAARC for banning political freedom to the extent of banning "indoor politics", continued extrajudicial executions in alleged cross fire, targeting of indigenous and minority human rights defenders, attacking the press, the failure to establish a National Human Rights Institution and continued racially and religiously motivated attacks on indigenous peoples and minorities.

## II. Political Freedom

Following the imposition of a State of Emergency on 11 January 2007, political freedom was severely curtailed. On 26 January 2007, the care-taker government promulgated the Emergency Powers Rules 2007 and banned all political activities, including processions, strikes and trade union activities, and banned political discourse including in print and electronic media.<sup>1</sup> On 8 March 2007, the care-taker government issued blanket ban on political activities including "indoor politics".<sup>2</sup>

On 10 September 2007, the ban on "indoor politics" was partially lifted in Dhaka to allow political parties to hold discussions on matters relating only to the general election.<sup>3</sup> On 12

September 2007, the Election Commission started talks on electoral reforms with the political parties.<sup>4</sup>

Numerous political leaders including two former Prime Ministers - Sheikh Hasina of the Awami League (AL) and Khalida Zia of the Bangladesh Nationalist Party (BNP) were arrested as part of crackdown against corruption. Unfortunately the government invoked charges of corruption selectively. No army personnel was arrested for corruption.

Thousands of people were arrested. According to Odhikar, a human rights group, a total of 440,684 people were arrested on various grounds across the country during the first ten months of the emergency. Of these, only 2,39,480 persons arrested had arrest warrants issued against them and 778 were criminals wanted by the police.<sup>5</sup> Those arrested included political activists, criminals, businessmen, journalists and corrupt persons.

On 4 March 2007, the interim government amended the Special Powers Act of 1974 to reinstate Section 16 of the Act which empowers the State to try any person who is under preventive detention. Section 16 of the Act was scrapped by then President Shahabuddin Ahmed in February 1991 on the grounds that such sweeping powers could be misused.<sup>6</sup>

On 21 March 2007, the interim government amended the Emergency Powers Rules with a retrospective effect from 13 February 2007 to deny bail to any detainee both under Penal Code and Emergency Rules and redress from any higher court until a case is resolved in trial court. The amendment gave sweeping powers to the Anti-Corruption Commission (ACC) to investigate, arrest and seize property without the permission of the government.<sup>7</sup>

### III. Human rights violations by the security forces

Human rights violations continued to be reported throughout the year. According to Odhikar, a human rights group, 184 persons have been killed in 2007. Of them, 94 persons were killed by Rapid Action Battalion (RAB), 64 persons by the police, 3 persons by the joint forces of RAB and the police, 7 persons by the army, 7 persons by the army-led joint forces, 3 persons by the navy, 1 person by the jail police, 2 persons by the Department of Narcotics Control, 1 person by the Coast Guard, 1 person by the Bangladesh Rifles and 1 person by the Forest Guard.<sup>8</sup>

On 4 September 2007, Hasan Mohammad Khandakar, Director-General of Rapid Action Battalion stated that about 400 members of the RAB have been punished for various offences since its formation three years ago. But he did not reveal the names of the individual RAB personnel, nature and quantum of punishment etc.<sup>9</sup>

#### Violations of right to life

Numerous people have been killed in the custody of the security forces. Those who died/killed in the custody of the security forces included:

- Shamsuddoha alias Taleban, a local Jubo League (Youth League) leader at Sudharam police station in Noakhali district on 19 January 2007;<sup>10</sup>
- Abdul Wahab (55), a freedom fighter in Satkhira district on 31 January 2007;<sup>11</sup>
- Bolai Hossain, an alleged cadre of outlawed New Biplobi Communist Party in Kushtia on 24 February 2007;<sup>12</sup>
- Abu Musa Mia, a bus driver of Bangladesh Road Transport Corporation who died at Dhaka Medical College Hospital on 7 February 2007 after being tortured in army custody;<sup>13</sup>
- Sajedul Islam Saju, an activist of Jubo League who died in police custody in Narayanganj

on 4 March 2007;<sup>14</sup>

- Sheikh Motaleb Hossain who died in police custody at Rampal in Khulna on 6 March 2007;<sup>15</sup>
- Fariduddin, an activist of Jatiyatabadi Juba Dal (Nationalist Youth League) who died in the custody of the army in Tajumuddin upazila in Bhola district on 21 March 2007;<sup>16</sup>
- Abdul Halim, a cigarette vendor who died in police custody in Dhaka on 24 March 2007;<sup>17</sup>
- Nazrul Islam alias Nazu, an alleged member of an unidentified “outlawed party” who died in the police custody within five hours of his arrest in Chuadanga on 2 April 2007;<sup>18</sup>
- Janangir Alam, a local Jubo League leader who died in police custody in Cox’s Bazar on 4 May 2007;<sup>19</sup>
- Quamrul Islam Majnu who was allegedly tortured to death in the custody of the Rapid Action Battalion at Chhoto Bongram in Rajshahi district on 19 May 2007;<sup>20</sup>
- Munshi Monsur Ali who died in police custody in Comilla on 2 July 2007;<sup>21</sup>
- Kala Mia who died in police custody at Idgao police outpost in Cox’s Bazar district on the night of 13 July 2007;<sup>22</sup>
- Abdus Samad, an accused in a murder case, who died in police custody at Kalai Police Station in Joypurhat in Bogra district on the night of 23 July 2007;<sup>23</sup>
- Nurul Haider alias Nuru Munshi, a suspected patron of banned Jamaatul Mujahideen Bangladesh who died in police custody in Mymensingh on 28 August 2007;<sup>24</sup>
- Ismail Hossain who allegedly died of torture in RAB custody in Dhaka on 2 September 2007;<sup>25</sup> and
- Morshed Rana who was allegedly tortured to

death in the custody of the Narsingdi Sadar Model police station within four hours of his arrest on 28 October 2007.<sup>26</sup>

On 29 March 2007, UN Special Rapporteur on extrajudicial executions Mr Philip Alston accused the Bangladeshi security forces of extrajudicial killings and asked the government to stop “using murder as a policing technique”. Mr Alston further stated that his request for information on 27 deaths that authorities had attributed to “crossfire” in police shootouts had gone unanswered.<sup>27</sup>

Yet, civilians continued to be executed in alleged “crossfire”. Those executed in cross -fire included:

- Kamal Hossain at Jagannathpur Bazar, Kumarkhali upazila in Kushtia on 4 February 2007;<sup>28</sup>
- Abdus Salam at Gotria village Kumarkhali upazila in Kushtia on 8 February 2007;<sup>29</sup>
- Mamun, an alleged terrorist, at Savar in Dhaka district on 6 March 2007;<sup>30</sup>
- Sohel Rana, Saleh Ahmed, and Mostaque Ahmed in Dhaka on 12 March 2007;<sup>31</sup>
- Shameem alias ‘Negro’ Shameem at Mirpur in Dhaka on 23 March 2007;<sup>32</sup>
- Akter Hossain, an alleged robber at Mugdapara in Dhaka on 15 May 2007;<sup>33</sup> and
- Akmal Hossain, an alleged terrorist, at Dighalkandi in Kushtia district on 9 May 2007.<sup>34</sup>

#### IV. Judiciary and administration of justice

The care-taker government acted as a supra-judicial authority and the Supreme Court of Bangladesh failed to ensure its own independence. On 30 August 2007, the UN Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, expressing concerns over the trial of Sigma Huda, then UN Special Rapporteur

on trafficking in persons, especially in women and children, stated that “the right to legal representation and the independence of the court were severely affected during her trial”.<sup>35</sup>

In a number of cases, independence shown by the High Court was nullified by the Supreme Court. The High Court accepted the habeas corpus petitions challenging the legality of the detentions under emergency rules and the Special Powers Act. On 26 February 2007, the High Court declared the detention of former Awami League Member of Parliament Kamal Majumder, two officials of Proshika namely Palash and Aminul, and Ward commissioner of Kafrul in Dhaka, Quiyum Khan under the Special Powers Act hours after the emergency as illegal.<sup>36</sup> However, on 28 February 2007, the Appellate Division of the Supreme Court stayed the High Court’s order.<sup>37</sup>

On 3 April 2007, the Appellate Division of the Supreme Court also suspended for one more month the High Court’s various verdicts since 26 February 2007 that declared illegal the preventive detention of 53 people.<sup>38</sup>

On 22 April 2007, the High Court reiterated its authority to grant bail under Sections 497 and 498 of the Code of Criminal Procedure even under the state of emergency.<sup>39</sup> On 20 September 2007, the Appellate Division of the Supreme Court allowed the government to appeal against the High Court verdicts to allow bail in cases under the Emergency Powers Rules.<sup>40</sup> This process of nullifying the orders of the High Court continued throughout the year.

Therefore, the announcement of 1 November 2007 on the separation of Judiciary from the Executive had little effect.

In general, the judiciary was overburdened with too many pending cases and too few judges. According to the report submitted by the government to the Appellate Division of the Supreme Court, 4,84,832 cases were pending with the courts of magistrates across the country as of 28 February 2007 and at least 890 magistrates were required to deal with them. However, only

655 posts of judicial magistrates were created. Out of them, only 218 judicial magistrates were appointed to handle over 400,000 backlog cases. The Judicial Service Commission would appoint the remaining 453 judicial magistrates within three months.<sup>41</sup>

The judiciary is also hamstrung by corruption. According to Transparency International's 2007 global corruption report, two-thirds of the people going to courts for seeking justice in Bangladesh have to pay bribe.<sup>42</sup>

Lawyers face threats. On the night of 11 April 2007, Advocate Hyder Hossain, a lawyer who prosecuted six militants including Abdur Rahman, the head of the banned Islamic group Jamaatul Mujahideen Bangladesh and his deputy Bangla Bhai, was shot dead by unidentified gunmen in Jhalakathi.<sup>43</sup>

## **V. Status of National Human Rights Institutions**

In 1995, Bangladesh initiated the process for the establishment of a NHRI (Please refer to SAARC Human Rights Report 2006). On 19 March 2007, the care-taker government, in principle, agreed to set up a National Human Rights Commission (NHRC). The Council of Advisors headed by Chief Adviser Fakhruddin Ahmed ordered formation of a committee to look into details of the proposed NHRC. But the Committee did not comprise any representative from the civil society groups and had only the secretaries of law, home and foreign ministries.<sup>44</sup>

## **VI. Repression of human rights defenders**

Human rights activists in general remain under surveillance, human rights defenders from indigenous and minority communities or those working with indigenous and minority communities were specifically targeted. On 10 February 2007, Mr S M Nuruzzaman, Secretary of Phulbari unit of National Committee to Protect Oil, Gas, Mineral Resources, Power and

Port which spearheaded resistance to the coal mining project of the Asia Energy Corporation at Phulbari in Dinajpur in 2006, was arrested by the joint forces.<sup>45</sup> The police implicated him in a case of theft of a motorcycle but he was released on the night of 12 February 2007 following public protests.<sup>46</sup>

After the imposition of emergency, the government started to implement the Eco Park in Modhupur forest which would result in the eviction of about 25,000 indigenous peoples mainly Garo and Koch communities.<sup>47</sup> When the indigenous Garos tried to protest against the Eco Park, their leader Mr Cholesh Ritchil was arrested and tortured to death by the joint forces stationed at Khakraid under Modhupur Police Station in Tangail district on 18 March 2007. Along with Ritchil, three other indigenous peoples - Protap Jambil, Tuhin Hadima, and Piren Simsang were arrested and tortured by the army before releasing them. Following national and international protest, the government set up an inquiry headed by Special Court Judge Rofiuddin Ahmed.

Despite obvious sequelae of torture, two autopsies conducted on Cholesh's body claimed that "Cholesh died from heart failure". Judge Rofiuddin Ahmed committee heard many witnesses. Numerous pictures taken of the tortured body of the deceased were also submitted before the judge.<sup>48</sup> But the government failed to bring the perpetrators to justice.

Earlier on 27 February 2007, District Social Welfare Department of Khagrachari issued a notice to Trinamul Unnayan Sangstha, an indigenous peoples' organisation to stop all its activities on the charges of being involved in "anti-state and anti-people's interest activities". The authorities did not specify what "anti-state and anti-people's interest activities" were committed.

At least 50 Jumma activists were arrested, including 20 members of Parbattya Chattagram Jana Samhati Samiti (CHT United Peoples Party) and 10 members of United Peoples' Democratic Front (UPDF) as of August 2007.<sup>49</sup>

Those who remained under detention are:

- Mr Tatindra Lal Chakma, Central Member of PCJSS, who was arrested in connection with a false extortion case on 5 May 2007;
- Milton Chakma, Assistant Coordinator of the Hill Watch Human Rights Forum who was arrested on 29 May 2007; and
- Santoshito Chakma alias Bakul, General Secretary of the Chittagong Hill Tracts Jumma Refugee Welfare Association who was arrested on 3 June 2007.<sup>50</sup>

On 13 February 2007, the local military administration demolished the “Sree Sree Bhabani” Hindu Temple at Bhabhanipur Sherpur in Bogra district. Earlier on 13 August 2005, Mohamed Atigur Rehman, Joint District Judge under suit no. 39 of 2002 ruled that the property comprising 17.31 acres of the Sree Sree Bhabani temple was not government land and the rights of the Hindus should be protected. Instead of honouring the court’s order, the local administration filed a false case of anti-state activities against Mr. Robindra Ghosh, President of the Human Rights for Bangladesh Minorities who had moved the court for protection of the temple land.<sup>51</sup>

By comparison the interim government appeared to offer leniency to radical Islamic NGOs. The government of Bangladesh renewed the licence of the Revival of Islamic Heritage Society, a controversial Kuwait-based non-governmental organization banned by the United Nations and blacklisted by the US State Department for its alleged involvement in funding Islamist militant organisations. The renewal order was issued by the NGO Affairs Bureau of the government of Bangladesh on 2 February 2007 but the date of renewal was backdated to 6 November 2006.<sup>52</sup>

## VII. Freedom of the press

Immediately after the imposition of the emergency, the government restricted the media under the Emergency Power Rules, 2007. The guidelines issued to the media restricted

publication and broadcast of news reports, editorials, post-editorials, articles, features, caricatures, cartoons, talk shows or discussions on provocative statements, activities, protests, public meetings in newspapers or in the electronic media including internet, or in any other mass media. The violators faced a maximum of five years or a minimum of two years rigorous imprisonment along with fines.<sup>53</sup>

On 25 April 2007, the Information Ministry banned 10 television channels namely Channel V, Zoom, Ren TV, Fashion TV, AXN, Gcop, Music India, Cine Max, The Music and Trendz for “operating against the Cable Television Network Operation Act, 2006”.<sup>54</sup>

Journalists faced threats and intimidation. On 1 November 2007, Sangbadik Sramik Karmachari Oikya Parishad, an organisation of journalists and media employees, alleged that the government was employing a detective agency to collect the details of journalists across the country.<sup>55</sup>

On 1 June 2007, Mostafa Kamal Uddin, editor of weekly *Haque Protibad* was killed by unknown assailants in Jessore district.<sup>56</sup>

Several other journalists were physically assaulted. They included Prof Anisur Rahim, editor of the daily *Satkhira Chitra*, who was attacked and seriously injured by activists of Awami Swechchhasebak in Satkhira district on the night of 27 January 2007,<sup>57</sup> and Shifarul Sheikh, Dakha University correspondent of the *Bhorer Kagoj* who was beaten inside the Dhaka University premises by eight Jatiyatabadi Chhatra Dal (JCD) activists on 2 May 2007.<sup>58</sup>

Numerous journalists faced arrest and detention. Many were arrested for alleged extortion and other charges.

A large number of journalists were also arrested under the Emergency Powers Act. They included:

- Aditi Sengupta, deputy programme manager of Channel-1 TV on 22 January 2007 and detained under section 2 (F) of the Special Powers Act 1974.<sup>59</sup>

- EAM Asaduzzaman Tipu, correspondent of *The Daily Star* who was arrested on 21 March 2007 on the allegation of an ‘unethical demand’ made to a fertilizer dealer Biswajit Bhoumik Bapi following publication of a photo of the dealer on the daily;<sup>60</sup>
- Apurba Sharma, correspondent of Bangla daily *Ajker Kagoj* and General Secretary of Sylhet Press Club who was arrested by the joint forces on extortion charge on 7 April 2007;<sup>61</sup>
- Babul Akhter, chairman of private television channel *Rupashi Bangla* who was arrested by the joint forces in Jessore on the charges of loan default on 16 May 2007;<sup>62</sup>
- three journalists - Udoy Chakraborty, correspondent of *Dainik Sangbad* and Sirajul Islam of *Dainik Spandan* and GM Abdus Salam, correspondent of *Dainik Ittefaq* who were arrested by the joint forces on bribery charges and interfering in the action of the forces respectively in Khulna on 16 June 2007;<sup>63</sup>
- Kazi Tarik Ahmed, editor of *Gono Michil*, a fortnightly published from Khulna city who was arrested by the RAB on charges of corruption in Khulna on 12 July 2007;<sup>64</sup>
- Sihab Uddin, editor of two local dailies *Bazrapat* and *The Daily Mateer Dak* who was arrested by the police in Kushtia on the night of 3 September 2007 under the Emergency Powers Act though there was no case against him;<sup>65</sup> and
- *Prothom Alo’s* cartoonist, Arifur Rahman who was arrested for publishing a cartoon hurting the religious sentiment of the people on 18 September 2007.<sup>66</sup>

While many were released on bail, a few others were given various terms of imprisonment by the courts for alleged extortion. Those convicted included:

- Ahmed Farook Millat, correspondent of *Daily Jugantor* who was sentenced to two

years’ imprisonment and fined Tk 5,000 by a Speedy Trial Tribunal in Moulvibazar on 6 May 2007;<sup>67</sup>

- Sajal Das, Sylhet bureau chief of Dhaka based daily *Khabar* who was sentenced to five years rigorous imprisonment, journalist Abdul Hakim who was sentenced to five years of rigorous imprisonment and Apurba Sharma, Sylhet correspondent of Dhaka based daily *Ajker Kagoj* who was sentenced to two years of rigorous imprisonment by a Speedy Trial Tribunal in Sylhet on 12 July 2007;<sup>68</sup> and
- Abdullah Al Ridoy, a correspondent of local daily *The Daily Bhorer Chetona* who was sentenced to five years rigorous imprisonment by a Speedy Trial Tribunal in Brahmanbaria on 12 July 2007.<sup>69</sup>

## VIII. Violations of the rights of indigenous Jumma peoples of the CHTs

The Bangladesh Army exercises extraordinary powers in the Chittagong Hill Tracts. Since the imposition of the Emergency on 11 January 2007, the situation deteriorated further.

The CHTs Peace Accord of 1997 has no relevance. Other than ceasing hostility between the Government and the erstwhile Shanti Bahini, many of the important issues including demilitarisation of CHTs, returning back lands to the original indigenous owners remained unimplemented. On 27 August 2007, the High Court issued notice to the government of Bangladesh to explain as to why the CHTs Peace Accord should not be declared “illegal” following a public interest litigation writ filed by a Supreme Court lawyer, Mohammad Tajul Islam, challenging the 1997 treaty. The High Court also allowed illegal plain settlers who were implanted into the Chittagong Hill Tracts to be registered in the voters’ list which is against the CHTs Peace Accord.<sup>70</sup>

## **i. Forcible grabbing of indigenous peoples' land**

The Bangladesh army intensified grabbing of the indigenous peoples lands in CHTs for military purposes as well as for facilitating settlement of illegal settlers. During March – November 2007, a total of 399.22 acres of land belonging to 133 Jummas and a primary school in 14 villages under four Unions of Maischari, Kiang-ghat, Kamalchari and Khagrachari Sadar No.1 under Khagrachari district have been forcibly grabbed by illegal plain settlers.<sup>71</sup>

In March 2007, the Ruma army cantonment in Bandarban acquired about 7,570 acres of ancestral land of indigenous peoples for expansion of the Ruma garrison and ordered more than 4,000 indigenous families mostly belonging to Mro community to leave the area. Mro leaders had not been consulted before acquiring the land. According to the Movement for Protection of Land Rights and Forest, a land rights organisation based in Rangamati, 40,077 acres of land had been given in lease to the illegal settlers, 94,066 acres of land were acquired for so-called afforestation projects and 75,686 acres were acquired for establishment of military bases in Bandarban district alone.<sup>72</sup>

On 8 March 2007, an army camp was set up on the land of an indigenous jumma identified as Prithwiraj Chakma at Dantkupya village under Khagrachari district to provide security to the plain settler families. In June 2007, the Bangladesh military reportedly settled at least 200 families of illegal settlers at Dantkupya village after forcibly evicting 12 indigenous families from their ancestral lands.<sup>73</sup>

In August 2007, illegal settlers forcibly captured 59 acres of land belonging to 17 Jumma peoples in Kobakhali Mouza (No. 51) under Dighinala Police Station in Khagrachari district. In an operation from 1 to 15 August 2007, large groups of illegal settlers led by former Union Parishad member Md. Abu Taleb of Hashinchonpur village and former Union Parishad member Md Kader of Kobakhali bazaar took control of the hilly lands

of the indigenous Chakma peoples with the direct assistance of the army personnel, para-military forces and the local Village Defence Party members. The army reportedly planned to settle 200 plain settler families in Kobakhali Mouza.<sup>74</sup>

On 8 December 2007, Major Gaffar reportedly summoned Niroti Chakma, Headman of Ugudochari Mouza and Biswajit Chakma, Chairman of Kiang-ghat Union to the zonal headquarters and threatened them with dire consequences if they did not agree to the army's plan to settle more Bengali people in Ugudochari.<sup>75</sup>

## **ii. Arbitrary arrest, detention and torture**

In the CHT the Bangladesh military carried out extrajudicial killings, arbitrary arrests, illegal detention, lodging false cases and terrorizing the people by frequent raids, military operations, torture, threats and intimidation.

Those indigenous peoples who were tortured to death in the custody of the security forces included Suresh Mohan Chakma (son of Phedera Chakma of Choichari village in Rangamati district) who died on 7 March 2007 due to alleged torture in the custody of the army and Rasel Chakma (son of Paritosh Chakma of Dewan Para village under Naniarchar sub-district in Rangamati district) on 5 August 2007.<sup>76</sup>

On 11 July 2007, at least seven Jumma villagers including minors were tortured by army personnel from Bannyachola sub-zone (24 Field Artillery) at Bannyachola village in Khagrachari district. The victims were identified as Suryasen Karbari; Bindu Chakma (32, son of Chikkonno Chakma); Sadhan Kumar Chakma (35); Gangkullya Chakma (16, son of Lakshmi Kumar Chakma of Bannyachola village); Dipayon Chakma (6, son of Anjana Bap of Kamalchari village); Aljya Chakma (10, son of Mongol Dhan Chakma of Kamal Chari village); and Bhubon Chakma (14, son of Lakshannya Chakma of Morachengi village).<sup>77</sup>

On 23 November 2007, Ram Kamal

Chakma (son of Summey Chakma) of Hullyang para village in Khagrachari district was arrested by the army personnel from Mahalchari zone without any reason. He was returning from Mahalchari bazaar when Major Gaffar, second-in-command of Mahalchari army zone (24 Bengal), detained him and took him to the army camp. He was tortured in the army camp before being released.<sup>78</sup>

## **IX. Violations of the rights of religious minorities**

Religious minorities in Bangladesh continued to face severe repression. In a rare case on 20 August 2007 a court in Dhaka sentenced Mohammad Salauddin, a leader of the banned Islamic militant group Jamayetul Mujahideen Bangladesh for killing Hridoy Roy in April 2003 “because he was engaged in converting Muslims into Christians by showing films on Jesus”.<sup>79</sup>

On 12 September 2007, Md. Abdul Matin, the Sub-District Executive Officer of Mahalchari in Khagrachari district issued a public notice to prohibit “construction of new Mosque, Hindu temple and Buddhist temple” in Mahalchari sub-division without prior permission of the authorities concerned. The order was not targeted against the Muslims or Hindus but against indigenous Buddhists.<sup>80</sup>

Ahmadiyyas, an Islamic sect, continue to face repression and physical assaults. On 1 May 2007, near-simultaneous explosions took place in railway stations in Dhaka, Chittagong and Sylhet allegedly triggered by a new Islamic militant group named “Zadid al Qaeda, Bangladesh”. A message left by the attackers read: “The Kadiyanis (i.e the Ahmadiyyas) and NGOs prepare for death. It is haram [prohibited] to work in NGOs and having relation with the Kadiyanis. All must quit NGO jobs by May 10, all Kadiyanis must recognise Prophet Muhammad (SM) as the last and best prophet and if you fail to do it before the aforesaid time, your death is a must”.<sup>81</sup>

Christians also faced repression. On 26 June 2007, majority Muslim villagers beat 10

Christian converts at Durbachari Bhatiapara and Laksmirdanga villages in Nilphamari district. The attackers tied several Christian villagers including women with ropes in their homes and beat them up. Several victims required treatment in hospital. At least one Christian house was reportedly destroyed in the attack. Death threats were also made against two Christians. On 27 June 2007, they were served an ultimatum to leave the village within 24 hours and threatened with more attacks and burning down of their houses if they failed to leave. When the Christians went to the police, the police refused to register their complaint and instead allegedly threatened them with arrest for “converting Muslims.”<sup>82</sup>

In August 2007, local Muslims and foreign Muslim missionaries Tablighi Jamat allegedly forced 27 Christian converts to re-embrace Islam at Durbachari village in Nilphamari district. On 28 July 2007, eight police officers were deployed at Durbachari village to protect the Christians. But the police officials left on 5 August 2007 following which the local Muslims began capturing and hauling all male converts to a mosque and forced them to sign or provide fingerprint signatures on written or blank papers. The Muslims who converted into Christianity were allegedly not allowed to net fish in the river.<sup>83</sup>

Hindu communities faced constant persecution from the Muslim fundamentalist elements. Hindus were physically attacked, women abducted and raped, houses burnt down, idols vandalized and land seized. The repressive policies of the successive governments of Bangladesh have been responsible for the alarming decline of Hindu population which has dropped by 50% between 1971 and 2001.<sup>84</sup> Discrimination against minorities is underlined by the fact that there has been no Hindu Minister at the Cabinet level since August 1975. Though Hindus constitute about 13% of the total population, the number of Hindus employed in public and private services including the army, police and cadre services is less than 3%.<sup>85</sup>

According to a research conducted by Professor Abul Barkat, a professor of economics at Dhaka

University, some 1.2 million or 44 per cent of the 2.7 million Hindu households in Bangladesh were affected by the Enemy Property Act, 1965 and the Vested Property Act, 1974 which empowers to identify the Hindus as enemies of the State and seize their properties. Although in 2001, the then Awami League government enacted the Vested Property Return Act to restore the “vested” properties to their original owners, Hindus continue to loose property under this communal law. During the reign of the BNP-led government from 2001 to 2006, about 200,000 Hindu families lost 1,22000 bighas of land, including their houses most of which were grabbed by politically powerful people. 45% of the land grabbers belonged to BNP while 31% to Awami League, 8% to Jamaat-e-Islami and 6% to the Jatiya Party and other political parties.<sup>86</sup>

On 1 August 2007, minority Hindus alleged that local BNP cadres grabbed the lands and other properties of 50 Hindu families at Louhajang in Munshiganj and forcibly ousted them from their homes.<sup>87</sup>

On the night of 7 January 2007, 50 houses of minority Hindus were burnt down at Amueer village in Dinajpur district. Over one hundred armed people surrounded the minority Hindu community of the village, and then torched houses with petrol. The attackers also allegedly threw a child named Shampa Rani (5, daughter of Srikanta Rai) into the fire. They also looted many houses before leaving. About 22 Hindus including Himu Bala (42), Shankul (45), Govinda (35), Banbala (34), Subal (30) and Shampa Rani (5) were injured in the attack. The victims complained that the Officer-in-Charge of the local police station, Matiur Rahman, refused to register a case on 8 January 2007.<sup>88</sup>

On 8 January 2007, 10 Hindu houses were burnt down at Gunpur village in Habiganj district allegedly by the majority Muslims in order to forcibly evict Hindus. The perpetrators looted the properties before setting them on fire. Bholanath Das (60) was seriously injured as a result of burn injuries.<sup>89</sup>

On 6 April 2007, at least 10 Hindu idols of

different temples at Gobindapur village in Gaibandha district were vandalized allegedly by some Muslims. The police arrested one Masir Uddin (son of late Mafiz Uddin of Baluapara village) in connection with this incident.<sup>90</sup>

On 16 May 2007, holiгоons demolished the Sarbojonin Durga Temple of the house of Dr. Biswapad Das of Nanupur Union in Chittagong district. The police arrested two persons Dr. Sayed Shaikutul Alam Prokash and Abdul Matin in connection with the incident.<sup>91</sup>

## Buddhists

Religious persecution was common in the Chittagong Hill Tracts. Buddhist monks were often harassed, assaulted and Buddhist temples were attacked.

On 10 January 2007, a group of army personnel harassed Rev. Sharadhatissyo Bhikkhu, the chief priest of Aryo Mitra Bouddha Vihara in Lakshimichari in Khagrachari district. The army personnel surrounded the Buddhist temple and interrogated Rev. Sharadhatissyo Bhikkhu about another Buddhist monk Rev. Nanda Bhikkhu who had earlier in the day delivered a religious sermon at the temple premises.<sup>92</sup>

On 17 July 2007, a group of army personnel from Shuknachari army camp raided a Buddhist meditation centre “Bhujuli Bhavana Kendra” situated on remote Bhujulichuk hill-top in Lakshimichari sub district in Khagrachari district. They arrested two Buddhist sramans (novices) identified as Shashan Ujjal Sraman (22) and Nykishtic Sraman (26). The army later released them after noting down their personal information and photographing them.<sup>93</sup>

## X. Violations of the prisoners’ rights

On 13 March 2006, then Minister of Law, Justice and Parliamentary Affairs, Barrister Moudud Ahmed admitted that “*Prisoners are languishing in inhuman conditions, two-thirds of them staying in without any charge or case...*”

*We're trying to improve the condition of jails and increase facilities so the prisoners could live with minimum humanity.*"<sup>94</sup> In 2007, the condition of the prisoners deteriorated further as thousands of people were arrested under the Emergency rule. As of 1 June 2007, a total of 86,000 prisoners were reportedly housed against a detention capacity of 27,000 prisoners.<sup>95</sup> On 9 November 2007, the prisoners at Jhenidah Jail launched a protest demanding improvement of food quality, arrangements for meeting relatives and external supply of food.<sup>96</sup>

According to the Bangladesh Human Rights Commission, a total of 38 persons died in the jail custody in the period January- September 2007.<sup>97</sup> Those who died in included:

- Saidur Rahman, leader of BNP student wing Jatiyatabadi Chhatra Dal, who died in judicial custody in Lakshmpur on 4 February 2007;<sup>98</sup>
- Undertrial prisoner Lutfor Rahman (55) who died in Chapainawabganj General Hospital on 23 June 2007;<sup>99</sup>
- Superintending Engineer of Chittagong City Corporation, M Shahidullah who died on 4 July 2007 while in detention in Chittagong jail on corruption charges;<sup>100</sup> and
- Abu Bakar Gazi, an undertrial of Satkhira jail died on 11 November 2007.<sup>101</sup>

There was widespread corruption in prison administration. In 2006, the Prisons Directorate even introduced "spies" in prisons to monitor corrupt jail staff and unlawful activities in 66 jails across the country.<sup>102</sup>

## **XI. Violence against women**

The government of Bangladesh failed to withdraw reservations on Articles 2 and 16 (1) (c) of the CEDAW on the ground that "they conflict with Sharia law based on Holy Quran and Sunna". Article 2 requires a State party to adopt appropriate measures/ legislations and to repeal anti-women provisions in the national law

to end discrimination against the women. Article 16 (1)(c) states that the State party shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and ensure "The same rights and responsibilities during marriage and at its dissolution".

The refusal of the government of Bangladesh to amend the gender discriminatory laws perpetuates a climate facilitating abuses against women. In 2001, the High Court banned all kinds of "fatwas" (religious edicts) issued by Muslim clerics and asked the government to enact legislation to stop such illegal practices.<sup>103</sup> Yet, illegal practices continued. Bangladesh Mohila Parishad (Bangladesh Women's Council) stated that at least 50 persons, mostly women, have been victims of fatwa during January-April 2007. 66 cases of fatwas were reported in 2006.<sup>104</sup>

The "hilla marriage" is one kind of fatwa in which a woman is forced to marry another man as a token marriage before she can re-unite with her actual husband if they wish to reunite after separation through instant divorce (talak). On 6 May 2007, the High Court issued a notice to the government to explain why direction should not be given to take legal actions against the offenders for "hilla marriage" which violated the Muslim Family Law Ordinance.<sup>105</sup>

On 9 July 2007, a Woman and Children Repression Prevention Special Tribunal Court in Panchagarh sentenced a man identified as Toimul Haque to death for killing his wife for a dowry in July 2004.<sup>106</sup> But even the death penalty failed to act as a deterrent to dowry killing. According to Bangladesh Human Rights Commission, at least 94 women were killed for dowry and 182 women were raped including two who were raped in jail custody during January-September 2007. During the same period, 48 women were killed after rape.<sup>107</sup>

Women were victims of both domestic and societal violence. On 19 May 2007, Bangladesh Mahila Parishad stated that a total of 6,054 women were the victims of different forms of violence in Bangladesh in 2006. Of them, 1,086 were killed,

549 were raped, 1,118 were physically tortured, 327 were abducted and 324 women and children who were victims of trafficking.<sup>108</sup>

On the night of 24 May 2007, a female journalist identified as Rahena Begum, 26, staff reporter of a local newspaper *Shyamol Sylhet* committed suicide at her home at Darga Mahalla in Sylhet due to alleged torture by her in-laws.<sup>109</sup>

### **a. Status of minority and indigenous women**

Women members of minority communities face particularly serious violations. As stated above, the Bangladesh Hindu Bouddha Christian Oikya Parishad recorded 6 cases of rape of minority women during January-March 2007 alone.<sup>110</sup>

On 5 January 2007, police recovered the dead body of a 23-year-old Adivasi woman in Gabtoli area in Dhaka with her hands and legs tied up with rope. Police stated that she was abducted, raped and then killed.<sup>111</sup>

On 9 January 2007, a group of persons allegedly led by former Upazila (sub-district) Chairman Shadat Hossain attacked Horen Pramanik's family at Arambagh area of Ward no.5 of Mothbaria municipality town in Pirojpur district with a view to evict the family. No male member was present at the time of the attack. The attackers allegedly dragged the female members outside the house and hacked them with a machete, injuring them grievously. The victims were identified as Horen Pramanik's daughter Moharani (40), two daughter-in-laws Bizli (35) and Dipali Rani (40).<sup>112</sup>

## **XII. Violations of the rights of the child**

Violations of the rights of the children continued, including custodial death, rape and abduction. On 29 May 2007, two police constables identified as Didarul Islam and Jahidul Islam of Kotwali police station were arrested for allegedly raping a 13-year-old girl in Kautoli area of Brahmanbaria district on 27 May 2007.<sup>113</sup> On 23 June 2007,

Jamal Uddin, (17, son of Abdul Malek) died due to alleged torture in police custody at Kafrul police station in Dhaka.<sup>114</sup> Many children including girls were abducted by criminals and many of them were killed.<sup>115</sup>

There was severe lack of medical and nutrition facilities for children. According to the UNICEF, 48% of the children under the age of five were underweight and 36% children were underweight at birth in Bangladesh.<sup>116</sup> Around 100,000 infants reportedly die due to diarrhoea every year.<sup>117</sup> As many as 60 children aged between one to thirty days died in Dinajpur Sadar Hospital in the month of January 2007 due to alleged lack of life saving medicines and equipment, unhygienic conditions, negligence and abstention of on-duty doctors. Many ailing children had to receive treatment on the floor due to shortage of beds.<sup>118</sup>

Child labour was rampant. According to National Child Labour Survey 2003, there were over seven lakh working children and more than 90 percent of them were in the informal sectors.<sup>119</sup> Child labourers were exploited and deprived of real wages.<sup>120</sup>

### **a. Status of indigenous and minority children**

Children of minority communities were particularly targeted. They were targets of rape, abduction and forced conversion.

On 13 March 2007, a Hindu girl (daughter of Hiralal Das) was allegedly abducted and raped by seven Muslims including four lawyers at Babulia village in Satkhira district. The victim was forced to embrace Islam by making an affidavit and married to one of the accused identified as Haidar Ali. On 20 March 2007, the victim's mother Mati Rani Das filed a case with Sadar police station against the seven accused under the Woman and Child Repression Act of 2002.<sup>121</sup>

On 24 April 2007, a 10-year-old Hindu girl identified as Soma Rani Paul (daughter of Haradhan Chandra Paul of Shingerbil village in Brahmanbaria district) was raped by Taher Miah. The accused took the victim by promising to help

her getting a Vulnerable Group Feeding (VGF) card. On 12 May 2007, Human Rights Congress for Bangladesh Minorities investigated the matter and found that the police neither arranged any medical treatment for the poor victim nor made any genuine effort to arrest the rapist.<sup>122</sup>

On 28 March 2007, an Adivasi handicapped child (11) (daughter of Chaikhoay Marma) was raped in Panchori in Khagrachari district. The police arrested Abdul Motaleb in connection with the rape.<sup>123</sup>

On 4 April 2007, the police arrested one Ajor Ali (son of Johur Mollah) for raping a minority girl of 14 years of Raigram village in Narail district when she went to Dighilia village to attend a religious festival.<sup>124</sup>

Even the security personnel were responsible for rape of children of minority communities. On 6 November 2007, an Assistant Sub-Inspector Samir Uddin was arrested on charge of raping a tribal schoolgirl (14 years) at Lama in Bandarban district on the night of 3 November 2007.<sup>125</sup>

Minority children were also abducted. The victims included Kingkor (14, son of Ananda Ayech of Sufakati village in Jessore district) who was abducted by an unidentified person when he was returning home from school on 13 January 2007;<sup>126</sup> an Adivasi girl named Putul who was abducted in Naikhongchari Upazila of Bandarban district on 4 February 2007;<sup>127</sup> and an Adivasi girl who was abducted on her way to the school in Madhabpur union in Moulovibazaar district on 19 February 2007.<sup>128</sup>

On the night of 13 April 2007, a minority girl of Toktabonia village in Barguna district was reportedly gang raped allegedly by four Muslim youths identified as Masud, Liton, Setu and Abdul Malek. The police arrested Abdul Malek (22), one of the four rapists.<sup>129</sup>

On 12 May 2007, a 7-year-old girl of Garo community was raped by one Mofazzal Hossain (son of Kalim Uddin khandakar) at Kamaria village in Mymensingh district.<sup>130</sup>

On 19 July 2007, a 17-year-old Jumma girl

named Supta Chakma was gang raped by a group of miscreants in Free Port area under Bandar Police Station of Chittagong.<sup>131</sup>

On 4 February 2007, the illegal settlers kidnapped a sixteen-year-old Marma indigenous girl identified as Ms Nunu Ujai Marma in Nakkyangchari of Bandarban district.<sup>132</sup>

## **b. Juvenile justice**

The government of Bangladesh failed to implement the order of the High Court of 9 April 2003 which directed the government not to keep any child in conflict with law in prison. As of 31 January 2007, a total of 461 children, including 413 boys and 48 girls, were held in various jails. The three state-run juvenile development centres (Kishore Unnayan Kendra) at Tongi, Jessore and Konabari accommodated only 163 juveniles although the total capacity was 700 as of 31 January 2007.<sup>133</sup> On 4 March 2007, the High Court issued a *suo moto* notice to the government to explain why action had not been taken to stop confining children, both convicts and under-trial in jails. In 2003, the High Court had ordered the separation.<sup>134</sup> The number of children in jails continued to climb. In May 2007, the official figure of juveniles in jails increased to 690.<sup>135</sup> On 24 July 2007, the High Court ordered the government to immediately transfer the children from jails to juvenile development centres.<sup>136</sup> But the High Court's order was not implemented.

Toddlers were implicated in a number of criminal cases even after police and judicial inquiries were conducted in such cases. During 24-29 January 2007, magistrate courts in Barisal district granted bail to three child-accused namely - Golam Hossain Mithu (5 years) of Harta village accused in a criminal case of forged deed registration and granted bail on 24 January 2007; Maksudur Rahman Momin (5 years) of Char Batkhara village accused in a cheating case and chargesheeted following a judicial investigation but were granted bail on 28 January 2007; and Shafiqul Bepari (8 years), resident of Khejurbari village accused in a case of clashes between neighbours.<sup>137</sup>

### c. Trafficking of women and children

Bangladesh continued to remain a source and transit country for trafficking of men, women, and children. An estimated 20,000-25,000 persons are trafficked to India, Pakistan, Bahrain, Kuwait, and the United Arab Emirates etc each year.<sup>138</sup>

According to Home Ministry, conviction rate in trafficking cases was only 37.98 per cent. 79 cases of trafficking in women and children against 230 people were disposed off in 2005 but the accused were acquitted in 49 of the cases.<sup>139</sup>

The alleged involvement of government officials in human trafficking made the issue of trafficking more difficult to resolve. In November 2006, police unearthed links of the officials of Bureau of Manpower, Employment and Training (BMET) with the human traffickers in Dhaka. On 17 November 2006, four officials of BMET, one staff of Bangladesh Biman, and five women were arrested from Zia International Airport on the charges of alleged human trafficking.<sup>140</sup>

## XIII. Status of refugees

### a. Plight of the stateless Biharis

There are 250,000 – 300,000 Urdu speaking Biharis, also known as “stranded Pakistanis”, who had been living in 116 squalid slums without citizenship right in Bangladesh for the last 15 years.<sup>141</sup> In 2003, the High Court recognized them as citizens of Bangladesh, but the government which did not challenge the order refused to honour the High Court’s order.

On 5 September 2007, an inter-ministerial meeting agreed in principle to include the stateless Biharis who were born in Bangladesh and sworn allegiance to the country in the voter list and issue them national identity cards. The government however refused to consider granting citizenship rights to those who had not recognized the independence of Bangladesh and had sworn allegiance to Pakistan.<sup>142</sup> According to sources in the Home Ministry, about 140,000 Biharis would be eligible for

citizenship while the rest would have to continue to wait for an agreement on their fate.<sup>143</sup>

### b. Plight of the Rohingya refugees

According to UNHCR, as of May 2007, there were 26,317 Rohingya refugees in two UNHCR-administered refugee camps at Kutupalong and Nayapara in Cox’s Bazaar district. But the government of Bangladesh only recognizes 21,255 of them on the basis of its 1992 registration. There has been no registration of refugees after 1992. As a result, some 5,000 refugees living in the camps have not been registered which in effect denies them any rights to the entitlements enjoyed by other inmates in the refugee camps. In addition, there were about 100,000 – 200,000 Rohingyas living “illegally” outside the camps throughout Cox’s Bazaar and the Bandarban district of the Chittagong Hill Tracts.<sup>144</sup>

The presence of the Rohingyas had severe impact on the survival of the indigenous Jumma peoples as they have been involved in grabbing the lands of the indigenous Jumma peoples.

In March 2007, Bangladeshi authorities destroyed a large part of a refugee settlement called “Tal” which housed over 6,000 Rohingya refugees at Teknaf, south of Cox’s Bazaar. No alternative shelter was provided for the displaced people.<sup>145</sup>

The Camp-In-Charge, the police and the *Mahjees* (refugee leaders) were allegedly involved in torture, sexual and gender violence against the women and children in the refugee camps. Mahjees in connivance with the police allegedly arbitrarily detained refugees, imposed taxes for entering and leaving the camps for employment, extortion from the refugees, etc.

Local villagers were also involved in beating refugee children and raping refugee women when they ventured outside the camps to collect firewood and water. The villagers entered the camps freely to use the wells, intimidate the refugees and to find young women. In 2006, at least 365 Rohingya refugees were arrested of which 267 were released on bail and 98 were in detention (6 convicted and 92 pending trial).

The women whose husbands were in detention and young women were specifically targeted for sexual abuse.<sup>146</sup> Those who met UNHCR officials or any visiting delegation in the refugee camps were punished and some were even imprisoned. In March 2007, UNHCR held consultations with the refugees of the two camps, where both men and women expressed fear of reprisals for having participated in the consultations.<sup>147</sup>

Over 56% of the total refugee population in the camps were under 18 years of age. As of January 2007, an estimated 2,461 children below the age of 18 years were not registered. The refugee children were prohibited from accessing formal education within or outside the camps. Education was only provided informally for primary education. There was no specific service available to refugee children with special needs/disabilities.<sup>148</sup>

Food shortage and lack of cooking fuel were serious problems. Women, especially women heads of households were highly vulnerable and had to resort to borrowing, begging and in some cases prostitution to support themselves and their children. The recognized refugees have to share their rations with their unrecognised kin who do not have access to food distribution.<sup>149</sup>

The healthcare facilities were deplorable. The healthcare staffs as well as the drugs were highly inadequate. The most common diseases in the camps included TB, stomach ache, skin diseases, respiratory problems, high fever, poor nutrition, poor eyesight and dental problems.<sup>150</sup>

There is no solution in sight for the Rohingya refugees, who are Muslims by faith. So far only Canada has resettled 23 Rohingya refugees.<sup>151</sup> As the military junta in Myanmar launched brutal crackdown on the pro-democracy activists in Myanmar, the voluntary return of the Rohingya refugees from Bangladesh became increasingly unlikely.

## **XIV. Status of Internally Displaced Persons**

The internally displaced persons (IDPs) are

mainly concentrated in the Chittagong Hill Tracts. The present number of the Jumma IDPs is not known but in 2000, the Task Force on the IDPs prepared a list of 1,28,364 IDP families, including 90,208 indigenous and 38,156 non-tribal families. In addition, there were some 10,000 tribal IDP families who were left out by the Task Force and even the refugees who had become internally displaced after repatriation from India were not included in the Task Force's IDP list.<sup>152</sup> On the other hand, by including the non-tribal IDPs, the government sought to legitimize the settlement of the Muslims from the plains in the CHTs under the State-sponsored ethnic cleansing programme.

While the Jumma IDPs were not provided any rehabilitation or food aid, educational facilities, health care services, sanitation and safe drinking water etc, illegal settler families have been provided free rations and other facilities by the government since 1978.

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# BHUTAN

## I. Ranking In Human Rights Violators Index: 3<sup>rd</sup>

Despite the introduction of the first ever Draft Constitution providing limited two-party democracy<sup>1</sup> and handing over power to his 26-year-old son Jigme Khesar Namgyel Wangchuck by His Majesty King Jigme Singhye Wangchuk,<sup>2</sup> Bhutan essentially remains a repressive regime run by the Royal family. Bhutan officially discriminates against the minorities. A landlocked and closed country, little information on the human rights violations was available. The serious restrictions on the freedom of movement in the name of preserving the so-called “Shangrila” made collection, collation and analysis of human rights violations in Bhutan the most difficult in South Asia. In more ways than one, the absence of a written constitution, control of the Royal family on the political parties, freedom of association and assembly, press, independent judiciary and continued identification of over 70,000 Bhutanese of Nepali origin as alleged “foreigners” and prohibition of their participation from taking part in the first mock elections held in April 2007<sup>3</sup> made Bhutan No. 3 human rights violator (43) in South Asia in 2007. However, if absence of reports on human rights violations were to be the yardsticks for measuring the state of human rights, the Democratic Peoples Republic of Korea will have a better human rights record than most democratic countries.

## II. Political freedom

There is no political freedom in Bhutan. The government of Bhutan considers political dissidents/protestors as “Ngolop”-anti-nationals.

Following the declaration of holding elections, four political parties were formed in Bhutan –

People’s Democratic Party, Bhutan People’s United Party,<sup>4</sup> Bhutan National Party,<sup>5</sup> and All People’s Party<sup>6</sup>. In July 2007, the All Peoples’ Party and the Bhutan Peoples United Party merged to form Druk Phuensum Tshogpa.<sup>7</sup> However, in September 2007, the Bhutan People’s United Party again became a separate political party.<sup>8</sup>

Article 5 of the Third Draft Constitution of Bhutan (1st August 2007 version) provides that “Representation in the National Assembly shall be by two political parties established through a primary round of election in which all registered political parties may participate”. The two political parties obtaining the first and the second highest number of votes in the primary election shall be declared as the two political parties to contest the general elections (Article 7).

On 2 July 2007, the Election Commission of Bhutan (ECB) announced that the primary round of the National Assembly election would be held in February 2008 and the general election in March 2008.<sup>9</sup> But the Election Commission of Bhutan effectively ensured that only two parties were registered to contest the general elections by disqualifying the Bhutan People’s United Party (BPUP) on 27 November 2007. The ECB rejected the application of BPUP on five grounds - lack of organisational capacity and competence, alleged illegality of membership, membership not broad-based, accepting illegal contribution and the party charter “had no clear ideology, vision and mission.” The BPUP appealed to the ECB explaining all the five points but the ECB refused to recognize it as a political party.<sup>10</sup> Only two political parties - People’s Democratic Party’s (PDP) headed by former Prime Minister Sangay Ngedup; and Druk Phuensum Tshogpa (DPT) headed by former Home Minister Jigmi Y Thinley – have been recognized by the Election Commission of Bhutan to contest the first Parliamentary elections in 2008.

Both PDP and DPT are strong royalist supporters. The PDP's election brochure states, "The PDP pledges to serve His Majesty the Fifth Druk Gyalpo Jigme Khesar Namgyal Wangchuck and future Monarchs with absolute loyalty and devotion, and the people of Bhutan with humility and dedication."<sup>11</sup>

The control over political parties still remains within the family. PDP chief, Mr Sangay Ngedup is the elder brother of the present Queen. DPT chief Mr Jigmi Y Thinley is the husband of the Queens' cousin.

### **III. Arbitrary arrest and denial of fair trial**

Asian Centre for Human Rights has a list of 39 persons of Nepali origin including school students who were arrested by the Royal Bhutan Police in Samtse District on the charges on being member of the Communist Party of Bhutan (Marxist-Leninist-Maoist) from 25 May – 19 June 2007. The arrested persons included women and children as young as 3 years old.

In December 2007, the Samtse district court sentenced 30 of them to jail terms ranging from five to nine years under the National Security Act of Bhutan, 1992 and the Penal Code of Bhutan, 2004. The whereabouts of 9 others were not known after their arrests.<sup>12</sup> The convicted persons were allegedly denied access to fair trial.

### **IV. Judiciary and administration of justice**

At present, the Bhutanese legal system has a three-tier court system. The High Court is the highest court followed by the Dzongkhag (district) and Dungkhag (Sub-district) Courts. There were no courts or tribunals of special jurisdiction in Bhutan. The High Court had three branches. There were 20 District Courts, and three Sub-district Courts.<sup>13</sup>

Bhutan does not have an independent judiciary. His Majesty remained the supreme head of the

judiciary and the only authority to grant pardon, and appoint and dismiss the judges. His Majesty exercised these powers in the name of National Judicial Commission.

The draft Constitution of Bhutan proposed setting up a Supreme Court headed by the Chief Justice of Bhutan. But under Article 2(19) of the proposed Constitution, the King would appoint the Chief Justice and other judges of the Supreme Court, and the Chief Justice and other judges of the High Court and have the power to remove them. Article 21(15) states that the judges of the Supreme Court and the High Court would enjoy independence "provided that a Drangpon [judge] may be censored or suspended by a command of the Druk Gyalpo [i.e. the King of Bhutan] on the recommendation of the National Judicial Commission for proven misbehaviour, which, in the opinion of the Commission, does not deserve impeachment". The National Judicial Commission will consist of the Chief Justice of Bhutan as Chairperson; the senior most judge of the Supreme Court; the Chairperson of the Legislative Committee of the National Assembly; and the Attorney General and all of them would be appointed by the King under Article 21(17). Moreover, the draft Constitution does not define what constitutes "misbehaviour", and any act or sign of defiance of the King by the judge could be construed as "misbehaviour" leading to his/her removal by the King.

As the members of the National Judicial Commission (NCJ) are appointed by the King, it is the King who controls the decisions of the NJC. Under such circumstances, Palace supporters are likely to be the only persons appointed or / promoted. Even bureaucrats were appointed as judges of the Apex Court. On 24 January 2006, the King appointed five more judges to the High Court on the recommendation of the National Judicial Commission. Of the five new judges, three were senior civil servants - the National Assembly Secretary, Jigme Zangpo; Thimphu dzongda (district officer), Dasho Sherub Gyeltshen; and Surveyor General, Sithar Namgyal. The Chief Justice Lyonpo Sonam Tobgye defended the appointment of the three senior civil servants to

the judiciary by saying that they were experienced and had good traditional backgrounds.<sup>14</sup>

The 18th National Judicial Conference held in Thimphu from 30 April – 4 May 2007 among others resolved to dispose of cases within 12 months from the date of filing.<sup>15</sup> At the end of 2006, 2,378 cases were pending in the country, including 11 cases in the High Court.<sup>16</sup>

## V. Status of National Human Rights Institutions

Bhutan does not have a NHRC. Nor has it expressed any desire to establish one.

## VI. Repression on human rights defenders

There are no independent human rights actors in Bhutan. The government of Bhutan does not allow non-governmental organization (NGO) to operate in the country if they express dissent of any kind. Human rights organizations can not operate.

Only the relatives of the King or persons enjoying King's support are allowed to run NGOs. A few pro-government NGOs operated in the country. These are National Women's Association of Bhutan (founded in 1981), the Royal Society for the Protection of Nature (founded in 1986) which works under the royal patronage of His Majesty the Fifth King of Bhutan, Jigme Khesar Namgyel Wangchuck,<sup>17</sup> Tarayana Foundation which was founded in 2003 by Her Majesty the Queen, Ashi Dorji Wangmo Wangchuck,<sup>18</sup> Respect, Educate, Nurture & Empower Women (established in 2004) was the brainchild of Her Majesty Ashi Sangay Choden Wangchuck, the Youth Development Fund (YDF) whose president was Her Majesty the Queen Ashi Tshering Pem Wangchuck,<sup>19</sup> among others.

## VII. Freedom of the press

There is no media freedom though in 2006 the government allowed registration of two private newspapers - *The Bhutan Times*<sup>20</sup> and *The Bhutan*

*Observer*<sup>21</sup>. There is only one Television channel and that is owned by the Government.

On 5 July 2006, the National Assembly passed Bhutan Information, Communications and Media Act, 2006. This Act was drafted by a five-member committee of the government comprising of Kuensel, Bhutan Broadcasting Service, Center for Bhutan Studies, the Department of Information and Technology and the Ministry of Information and Communication.<sup>22</sup>

In June 2007, the "www.bhutantimes.com" website was blocked from viewing in Bhutan by the Information, Communication and Media Authority following orders issued by the government. The website allowed readers to express their views on critical national affairs.<sup>23</sup>

On 16 January 2007, Bhutan Police arrested Shanti Ram Acharya, a reporter of "The Bhutan Reporter" on the charge of being a member of the Communist Party of Bhutan. He was a resident of Beldangi Refugee Camp II, Sector D/1, Hut No.85 in Nepal.

## VIII. Violations of the rights of minorities

### a. Non recognition of religious or linguistic minorities

The people of Bhutan can be broadly divided into three main ethnic groups: the "Sharchops", who live in the east of the country; the "Ngalongs", who live mostly in western Bhutan; and the "Lhotshampa", who are of Nepali origin and settled in southern Bhutan.<sup>24</sup> In addition, there are also several small communities such as the Doyas in the south, the Layaps in the north-west, the Monpas of central Bhutan, and the nomads of Merak Sakten in eastern Bhutan. According to official records, 19 languages are spoken in the country.<sup>25</sup>

Bhutan officially does not recognise any minority community on the basis of race, religion, ethnicity or language. The State attempts to show that Bhutan is a homogenous society with "one culture

and one religion". The Department of Tourism of the Government of Bhutan boasts the country as "This spiritual land is the last bastion of the Vajrayana school of Mahayana Buddhism which provides the essence of a unique identity for the 750,000 people." The Government of Bhutan seems to be oblivious of the fact that Bhutan is a multi-cultural, multi-religious and multi-lingual country, and that large portion of the population of Bhutan does not have identity in the "the last bastion of Buddhism".

## **b. Discrimination against religious and linguistic minorities**

"Shangri-La" a mystical and harmonious valley, there lies a deep rooted policy and practice of discrimination and persecution of non-Buddhists.

Religious minorities do not have the right to practice or propagate their religions. Article 3(3) of the Draft Constitution of Bhutan states that "It shall be the responsibility of religious institutions and personalities to promote the spiritual heritage of the country" which is "Buddhism" according to Article 3(1).<sup>26</sup> This raises the question as to whether even non-Buddhists are obliged to promote Buddhism?

The fundamental right to freedom of thought, conscience and religion is subject to the restriction that "No person shall be compelled to belong to another faith by means of coercion or inducement" as provided in Article 7(4) of the Draft Constitution. This effectively bans any religious activity inside Bhutan as followers of any other faith could well be prosecuted in the name of "religious conversion" for teaching or propagating their religions..

The Marriage Act of Bhutan also prohibits a non-Bhutanese married to a Bhutanese citizen from propagating any other religion (except the State religion Buddhism) or introducing any new religion. Also, a non-Bhutanese married to a Bhutanese citizen will have to adopt and abide by "the existing traditions and customs, and comply with the laws of the Government and other laws promulgated by the government". Therefore, if a non-Buddhist foreigner marries a

Bhutanese citizen, his or her freedom of religion and expression shall be violated.

Linguistic minorities are the object of state discrimination. Article 1(8) makes Dzongkha the "National Language of Bhutan" but do not give recognition or special treatment to other languages spoken in Bhutan such as Groma, Nepali, Ngalopkha, Sharchopkh (also called Tshangla) either as official languages or regional languages. The government of Bhutan has not withdrawn the discriminatory Kasho (edict) issued by His Majesty the King in 1993 and the notification issued on 19 November 2005 that all conferences and public meetings must be conducted in the national language, Dzongkha, pursuant to the King's edict. Instead, the Draft Constitution only further legalizes such discriminatory practices by providing that citizens must be "able to speak and write Dzongkha" [Article 6 (3)]. The Bhutan Citizenship Act of 1985 also requires anyone to be "able to speak, read and write Dzongkha proficiently" in order to get citizenship by naturalization.

Under the provisions of Article 6 (Citizenship) of the Draft Constitution, it will be impossible for the Nepali ethnic refugees from Bhutan (now living in Nepal) or the exiled political leaders to attain citizenship of Bhutan. A person whose parents are citizens of Bhutan is the citizen of Bhutan by birth, while a person can attain citizenship by registration only if he or she is domiciled in Bhutan on or before the 31st December 1958 and whose name is registered in the official record of the Government of Bhutan. Getting citizenship by naturalization is next to impossible as the applicant must "(a) Have lawfully resided in Bhutan for at least fifteen years; (b) Not have any record of imprisonment for criminal offences within the country or outside; (c) Be able to speak and write Dzongkha; (d) Have a good knowledge of the culture, customs, traditions and history of Bhutan; (e) Have no record of having spoken or acted against the King, the Country or the People of Bhutan; (f) Renounce the citizenship, if any, of a foreign State on being conferred Bhutanese citizenship; and (g) Take a solemn Oath of Allegiance to the Constitution as may be prescribed."

The Draft Constitution does not provide any safeguard to preserve, protect and promote the arts, custom, knowledge and culture of the minorities. It has maintained deadly silence on providing any affirmative action programme for minorities.

### **c. Discrimination against the refugees of Nepali origin**

Over 108,000 Bhutanese refugees have been languishing in seven refugee camps in Nepal since 1989. They have been demanding their right to return to Bhutan. A census of the Bhutanese refugee population in all the camps conducted by UNHCR and the Government of Nepal was completed in May 2007. On 10 December 2007, the government of Nepal started issuing photo identity cards to all the registered Bhutanese refugees above the age of 15 years.<sup>27</sup>

#### **i. Denial of the right to return**

In 2003, Bhutan agreed to take back a certain number of refugees who were verified as genuine citizens of Bhutan but has failed to take back any of them.

Apart from the UNHCR, the Core Working Group on Bhutanese Refugees in Nepal consisting of the US, Australia, Canada, Denmark, the Netherlands, New Zealand and Norway have been trying to find a durable solution to the refugee problem. While the US has agreed to resettle over 60,000 Bhutanese refugees in the US over the next 4-5 years, Canada also announced that it would resettle up to 5,000 Bhutanese refugees.<sup>28</sup>

Following the US offer of resettlement, divisions and tensions emerged in the refugee camps as a section of them were against third country resettlement. On 27 May 2007, a group of refugee youths assaulted refugee leader Hari Adhikari of Beldangi-2 camp in Jhapa district for stating that third country resettlement was the only option for the refugees in a radio interview on 26 May 2007. The Nepal Police opened fire at the protesting Bhutanese refugees killing one refugee identified as Narapati Dhungel (16) and injuring at least two dozen other refugees at Beldangi refugee camp.<sup>29</sup>

On 28 May 2007, another refugee identified as Purna Bahadur Tamang (20) was killed in police firing at Beldangi camp.<sup>30</sup>

Earlier, on 16 May 2007, the Asian Centre for Human Rights cautioned the international community over the consequences of such resettlement policies without guarantees from Bhutan to accept genuine citizens. ACHR held that, if at all resettlement to third countries should take place then the Bhutanese refugees who failed to prove their citizenship in Bhutan should be given resettlement.<sup>31</sup> On 23 May 2007, ACHR reiterated that “The international community must be mindful of the implications of any resettlement process without any written commitment from Bhutan. It would tantamount to supporting ethnic cleansing policies of the Royal Government of Bhutan. If Bhutan can get away with 1,08,000 refugees, it would further make conditions of the remaining ethnic Nepalis in Bhutan untenable to force them to denounce their citizenships or discreetly leave Bhutan. Bhutan, which has perfected the art of repression, need not expel the ethnic Nepalis en masse but it can somehow force them to leave Bhutan. These measures against the ethnic Nepalis would also further worsen the conditions of the ethnic Sarchops in eastern Bhutan”.<sup>32</sup>

ACHR also suggested that the government of Nepal should officially declare its commitment to allow integration of those refugees who might prefer to integrate in Nepal.<sup>33</sup>

The resettlement must be reviewed in the context of the census of Population and Census Commission of Bhutan of 2005 which stated that out of the total 634,972 population, about 80,000 were “foreigners. About 70,000 alleged “foreigners” were reportedly prevented from taking part in the mock elections.<sup>34</sup> There has been little protest against such discrimination from the international community.

#### **ii. India’s obstruction to the refugees’ right to return to Bhutan**

Since Bhutan is landlocked by India by three sides, Bhutanese refugees living in Nepal have

to cross India to enter Bhutan. But India has used violence whenever the Bhutanese refugees have tried to enter Indian territory.

Prior to the proposed “Long March” to Bhutan by about 15,000 refugees via the Mechi Bridge on the Nepal-India border in West Bengal on 28 May 2007, the Indian government deployed large contingent of Sashastra Seema Bal (SSB, Armed Border Force) personnel and combat forces of the West Bengal Police to prevent refugees from entering India.<sup>35</sup> India also imposed a curfew at the border areas near the Mechi Bridge.

On 29 May 2007, hundreds of Bhutanese refugees clashed with the Indian security forces as they tried to cross the Mechi Bridge. The Indian security forces attacked the refugees and opened fire killing at least one refugee youth identified as Saha Bahadur Dewan and injuring at least 100 others.<sup>36</sup> The Indian security forces also arrested 14 refugees including human rights activist Narad Adhikari. On 30 May 2007, the refugees decided to call off their “Long March” programme after the Indian government agreed to release 14 arrested refugees and hold dialogue with Bhutan.<sup>37</sup> On 30 May 2007, the Bhutanese refugees staged a protest in front of the Indian Embassy in Kathmandu demanding their right of passage through Indian Territory on their way to Bhutan.<sup>38</sup>

## **IX. Violence against women**

According to the Population and Housing Census of Bhutan of 2005, women constitute over 45% of the total population of Bhutan. The lack of sex-disaggregated data makes it difficult to know understand patterns of abuses. Yet, lack of data does not mean that the women in Bhutan are free from violence and discrimination.

Sexual assaults on women were seldom reported due to fear of social exclusion or ill treatment. On the night of 22 April 2007, a 63-year-old woman identified as Abi was allegedly raped by a man at her house at Merak village in Trashigang. Abi was a widow and lived alone in the house. The accused was arrested by the police.<sup>39</sup> On the night of 19 November 2007, four youths

dragged a woman into their Maruti car and tried to rape her when she was returning to her home in Mendrelgang. She was however rescued by some passers-by. The police reportedly arrested the accused.<sup>40</sup>

Social activists believe that due to the strong social taboo in Bhutanese society, the victims share their ordeal with their family members or the police only when they had been repeatedly victimised.<sup>41</sup> On the night of 18 June 2007, one Shem Kumar Pradhan reportedly beat his wife Lila Maya Rai (26) to death at Garwa in Gelephu. The accused was arrested by the police.<sup>42</sup>

Though Bhutan ratified the Convention on the Elimination of All Forms of Discrimination Against Women in 1981 and established a National Commission for Women and Children in 2004, it has failed to address discrimination against women under the Inheritance Act of 1980 and the Marriage Act of 1980 (amended in 1996).

Under the Marriage Act those who marry non-Bhutanese are deprived of benefits including promotion in Government job with effect from 11 June 1977, termination of services from the defence or foreign ministry departments, denial of employment in these two departments, deprivation of governmental welfare services and schemes, including allotment of land, cash loans, seeds for fields and lands and ploughing bulls, cattle and livestock from the Department of Animal Husbandry, medical treatment in foreign countries, and capital for workshops, trade and industries. In addition, if any Bhutanese citizen receiving training or education under Government sponsorship marries a foreigner, he or she shall be deprived of the privileges and benefits. Such deprivations included restriction from receiving any aid from the government to pursue or undergo training in foreign countries, immediate withdrawal of Government aided expenses given for studies and training from the date of contracting such a marriage, and the expenditure given by the government of Bhutan for pursuing studies or undergoing training up till date of such a marriage shall have to be refunded to the government.<sup>43</sup>

## X. Violations of the rights of the child

According to the Population and House Census of Bhutan of 2005, 33.1% of the total population of Bhutan was below the age of 15 years.<sup>44</sup> Though Bhutan was among the first UN member States to ratify the Convention on the Rights of the Child in May 1990, it has failed to protect the rights of the children.

### i. Sexual violence

The girl child is not safe from sexual violence. On the night of 2 July 2007, a 16-year-old girl was allegedly gang raped by some army personnel at Samarzingkha in capital Thimphu. The police reportedly arrested five army personnel aged 25 to 32 years in connection with the rape case.<sup>45</sup>

### ii. Denial of the right to education

In addition to poverty, lack of schools in rural areas deprived village children of education. Many students in rural areas have to travel long distances to reach the nearest school. One-third of the children of school-going age do not have access to schools, in particular in remote areas.<sup>46</sup>

According to the education statistics 2007 of the Ministry of Education of the government of Bhutan, the national average teacher-pupil ratio was 1: 28 as of March 2007. However, in some districts like Dagana (1:40), Samtse (1:39.6), S/ Jonkhar (1:36.5), Sarpang (1:35.9) and Tsirang (1: 34.5), the teacher-pupil ratio was quite high. As of March 2007, 33 schools had only 1 teacher.<sup>47</sup>

Girls are discriminated by parents who typically do not enroll girls for secondary education because they want them to help at home. Also, the fact that the secondary schools are situated far away deters parents from enrolling girls for secondary education due to security reasons. Boys get preferential treatment over the girls at home.<sup>48</sup>

### iii. The plight of the refugee/ minority children

A large number of children of the Bhutanese refugees living in Nepal have been denied the right to nationality, and education.

Bhutan also failed to withdraw the rule introduced in 1990 under which all Nepali-speaking citizens need to produce a No Objection Certificate or Police Clearance Certificate or Security Clearance Certificate from the police stating that none of their relatives had taken part in the pro-democracy movement against monarchy during September-October 1990 in order to get admission in schools or sit for examinations.<sup>49</sup> Under this rule the children of Nepali-speaking community, especially those whose relatives were living in refugee camps in Nepal, as well as some Christian children continued to be denied access to education.

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# PAKISTAN

## I. Ranking In Human Rights Violators Index: 4<sup>th</sup>

With 41 points, Pakistan has been ranked No.4 human rights violator in South Asia because of the suppression of political freedom and attacks on political opponents, violations of the right to life and large scale enforced disappearances, failure to establish a National Human Rights Institution, attacks on the press through the Pakistan Electronic Media Regulatory Authority, appalling conditions of women and children, and Pakistan simply being a dangerous place for the religious minorities.

Following the suspension of the Constitution in November 2007, President Pervez Musharraf moved to buttress the already excessive powers of the Army. The amendment of the Army Act of 1952 (10 November 2007) awarded powers to military courts to try civilians on charges of terrorism, anti-national activities, sedition, attacks on Army personnel and attacks on the President in an attempt to undermine judiciary.

The suspension of the Constitution including the right to habeas corpus, imposition of a State of Emergency, attacks on the rule of law, the judiciary, lawyers, media, rights defenders, and democratic political opposition removed fundamental checks and balances on abuse of executive power, most of which remain in place under the “restored” Constitution.

As ever the President defended repression on the grounds of national security and the fight against terror. This strategy is buttressed by international community’s support for Pakistan’s ‘war on terror’.

Pakistan has a very serious security problem that requires a security dimension, but the actions taken in 2007 provoked more rather than less instability. Human rights violations and impunity

are one of the central causes of Pakistan’s acute security crisis. A failure to address human rights violations in Pakistan has serious consequences for domestic stability as well as regional and wider international security.

## II. Political Freedom

Repression of political freedoms continued in Pakistan in 2007 as President Pervez Musharraf struggled to retain position and power. On 3 November 2007, a State of Emergency was imposed. The Constitution was suspended and with it the rule of law.

The crackdown followed over protest against President General Pervez Musharraf’s suspension of the Chief Justice Iftikhar Mohammed Chaudhry on 9 March 2007. Hundreds of opposition political leaders and activists were either arrested or placed under house arrest. More than 5,000 people including lawyers, human rights defenders and opposition political activists were arrested following the emergency.<sup>1</sup> The Pakistan Muslim League (Nawaz) claimed that over 1,200 of its leaders and activists were arrested/detained. Prominent among those detained included Pakistan Muslim League (Nawaz) Acting President, Javed Hashmi and Awami National Party chief, Asfandyar Wali Khan, and leader of the Pakistan Tehrik-e-Insaf, Imran Khan.

On 4 November 2007, 55 human rights activists including 31 men and 24 women of Human Rights Commission of Pakistan (HRCP) were arrested by the police from its head office in Lahore. They were booked under Sections 146, 147 and 188 of the Pakistan Penal Code and Section 16 of the Maintenance of Public Order.<sup>2</sup>

The assassination of Benazir Bhutto in a suicide attack on 27 December 2007 was demonstrative of pervasive insecurity.

### III. Human rights violations by the security forces

The security forces were responsible for human rights violations including enforced disappearances, extrajudicial killings and arbitrary arrests, illegal detention and torture.

#### a. Disappearances

Hundreds of persons, mostly members of nationalist parties of Balochistan, Sindh; suspected members of Al Qaeda and lawyers, journalists and businessmen critical of Musharraf regime disappeared.<sup>3</sup> Human rights organisations alleged that 400 people went “missing” in Pakistan after 9/11; they are thought to have been detained secretly as part of the “war on terror.”<sup>4</sup> In his memoirs titled “In the Line of Fire”, Musharraf acknowledged that 689 persons were held during the war on terrorism and from amongst them, 369 persons had been handed over to the US for money.<sup>5</sup>

According to the Human Rights Commission of Pakistan (HRCP) as on 9 December 2006, as many as 242 persons - 110 from Balochistan, 70 from Sindh, 42 from Punjab and 20 from the North West Frontier Province have been missing since 2000.<sup>6</sup> According to submissions of the National Crisis Management Cell Deputy Director Col Javed Iqbal Lodhi before a bench of the Supreme Court comprising Justice Abdul Hameed Dogar and Justice Falak Sher on 25 May 2007, 254 persons were missing.<sup>7</sup>

The Judiciary played a proactive role in an effort to hold the government accountable. Starting with the *suo motu* cognizance of disappearance of businessman Ahmed Janjua in October 2006 by Chief Justice of Pakistan Iftikhar Muhammad Chaudhry, several cases of disappeared persons were brought before the Supreme Court. On 8 March 2007, the HRCP presented a list of 148 missing persons to the Supreme Court. The HRCP alleged that the country’s intelligence agencies were responsible for their disappearance, with the patronage of the Federal and Provincial governments.<sup>8</sup>

In the first ever public admission of state enforced disappearances in a press conference on 6 April 2007 Interior Minister Aftab Ahmed Khan Sherpao disclosed that the government had traced 10 of 164 people reported missing.<sup>9</sup> Further he stated that a total of 98 out of 254 persons reportedly missing had been traced as of 25 May 2007.<sup>10</sup> Another 4 missing persons had been traced as on 6 June 2007;<sup>11</sup> six as of 4 July 2007;<sup>12</sup> 37 as of 11 October 2007;<sup>13</sup> 3 more returned home as of 6 September 2007;<sup>14</sup> and 13 more had been traced as of 21 September 2007.<sup>15</sup>

On 4 July 2007, the Supreme Court warned the government that the Court would punish those responsible for the illegal detention of the missing persons.<sup>16</sup> On 1 August 2007, another Bench of the Supreme Court headed by Chief Justice Iftikhar Muhammad Chaudhry took *suo motu* cognizance of the rising number of disappearances of political activists in Balochistan. The bench issued notices to the Chief Secretary and Provincial Police Officer of Balochistan.<sup>17</sup> These interventions of the Supreme Court prompted the Government of Pakistan to form a committee for an out-of-court settlement of missing people cases in August 2007.<sup>18</sup> But on 29 October 2007, a three-member bench of the Supreme Court headed by Chief Justice Iftikhar Muhammad Chaudhry told the Interior and Defence Secretaries that failure to trace and release all individuals illegally detained by State agencies would result in action according to the law.<sup>19</sup>

In early November 2007, the Supreme Court consolidated the cases involving enforced disappearances and adjourned the hearing until 13 November 2007 on which date, the court was due to hear the government’s progress in cross checking the lists of those reported as “disappeared” into government custody and produce the individuals before the court.

However, following the summary dismissal of the Chief Justice and other senior judges of the Supreme Court after the declaration of the State of Emergency on 3 November 2007, all hearings of cases of enforced disappearance were suspended.<sup>20</sup>

Further in order to circumvent the Supreme Court, President General Pervez Musharraf amended the Army Act of 1952 through an ordinance granting military courts the power to try civilians suspected of a range of offences including “terrorist” activities, treason or sedition, for acts dating back to 2003.<sup>21</sup>

## **b. Arbitrary, summary and extrajudicial executions**

The security forces were responsible for extrajudicial executions. While many were victims of indiscriminate use of force by the security forces, many have been killed by the security forces on mere suspicion.

On 12 March 2007, a Frontier Constabulary (FC) patrol party opened fire on a vehicle near Nok Kundi village in Balochistan on suspicion of insurgent activity. While one of the occupants of the vehicle, Khudai Dad was killed immediately, his wife sustained serious head injuries.<sup>22</sup>

Security forces regularly resorted to indiscriminate use of force including the use of live ammunition resulting in significant numbers of casualties. This involved children. On the morning of 23 April 2007, five students were shot dead and dozens more were injured when security forces fired mortars, rockets and other heavy arms against protesting students gathered at Mandikas Ground of Khyber Agency Tehsil Bara in the North West Frontier Province (NWFP).

Four of the five killed have been identified as Rahid Khan, (15, son of Yaha Khan); Fazli Amin, (14, son of Atlas Khan); Maroof Khan, (13); Muhammad Elyis, (12, son of Haji Akhtar Jan) while the injured included Muhammad Rahim, (16; son of Shandi Gul); Abdur Rehman, (17, son of Socha Gul); Rehman Ullah, (16, son of Abdul Mateen); Libiya Khan, (20, son of Mumtaz); Saeed Khan (son of Zaman); Sameen Khan, (son of Aziz Khan); Haroon (son of Khan Gul) and Syed Habib (son of Ajmeer Khan).<sup>23</sup>

Numerous cases of custodial killings were reported in 2007. On 18 April 2007, Amanat, a labourer in Daska tehsil under Motra police

station of Sialkot in Punjab was tortured to death by the police personnel of Motra police station. The victim was reportedly implicated in a false narcotic case at the behest of two landlords Waheed and Naveed who had kidnapped and raped the daughter of the victim.<sup>24</sup>

Other victims of custodial killings included:

- Abid Ali, an alleged criminal, who was allegedly tortured to death at the Factory Area police station in Lahore on 24 January 2007;
- Muhammad Hafeez Gujjar of Mandaal Kothey who was beaten to death in custody by the police personnel of Sialkot Sadar police station in Punjab on 10 April 2007;<sup>25</sup>
- Munir Ahmed, (25), a resident of Hyderi Colony who died following beatings he received in the custody of Chuhng police station of Lahore from 9-12 April 2007;<sup>26</sup>
- Kashif, a resident of 102 Urban Union Council in Dera Gazi Khan who was shot dead in the custody of Dera Gazi Khan Sadar police station on 30 April 2007;<sup>27</sup>
- Arshad who was tortured to death in the custody of Farooqabad police station in Sheikhpura district of Punjab on 1 May 2007;<sup>28</sup>
- Zahir Shah, who was allegedly murdered in the custody of Mansehra Sadar Police Station in North West Frontier Province on 3 June 2007;<sup>29</sup>
- Farid Ahmad, a factory labourer who was beaten to death on 18 June 2007 by eight policemen led by the Station House Officer (SHO) of Grain Market Police Station Rao Shafqat in Sahiwal district of Punjab for putting up resistance against forcible possession of his residential plot in Chak 135/A/9-L by one Rao Imran. Imran allegedly acquired the service of SHO Rao Shafqat;<sup>30</sup> and
- Asghar, an alleged criminal, who was killed

during interrogation at the Mughalpura police station in Lahore on 8 July 2007.<sup>31</sup>

In a few cases, Court interventions resulted into the arrest of the accused police personnel. On 19 October 2007, the Additional Session Court Judge, Haripur in North West Frontier Province ordered the registration of First Information Report (FIR) against an SHO, a sub-inspector and five constables for killing three people - Arif-ur-Rehman (pir of Ziarat Kaka Sahib Noshehra), Ishtiaq and Talib-ur-Rehman, in an alleged false encounter. The SHO was identified as Babar Khan.<sup>32</sup>

### c. Arbitrary arrest and illegal detentions

Arbitrary arrest and unlawful detention were common in Pakistan. Scores of innocent persons were illegally arrested and detained during 2007. The Courts, especially the lower courts and the magistrates intervened into numerous cases of arbitrary detentions and secured the releases of many detainees from illegal detentions throughout the year: Some of the cases included:

- On the night of 21 March 2007 on the directives of District and Sessions Judge Nawabshah, the Civil Judge and Judicial Magistrate-I, Afzal Roshan conducted a raid at Gupchhani police station in Nawabshah of Sindh province and reportedly recovered 2 persons who had been illegally detained in ;<sup>33</sup>
- On 29 March 2007, one person (name unknown) was recovered by the Judicial Magistrate (South) Aurangzeb Alamgir, from illegal detention at Chakiwara police station in Karachi;<sup>34</sup>
- On 31 March 2007, 10 persons were recovered by Judicial Magistrate (South) Aurangzeb Alamgir, in a raid on a Federal Investigation Agency (FIA) lockup of the passport circle in Saddar in Karachi city;<sup>35</sup>
- On 26 April 2007, Murad Jagirani and Dilshad Jagirani who were detained at the

Pakho police post of Qambar police station were released by a Commissioner from the Session Court of Qambar-Shahdaskot in Lakarna district of Sindh;<sup>36</sup>

- On 5 June 2007, six persons viz. Amir Bux Kaleri, Noor Mohammad Khoso, Lutfullah Khoso, Haq Nawaz Jatoi, Nasrullah Jatoi and Waheed Ali Jatoi were released by raid commissioner Mohammad Suleman Solangi from illegal detention at Kandiaro police station and Rohri Canal Regulator in Naushahro Feroze district of Sindh province<sup>37</sup>;
- On 20 June 2007, Alamzaib Khan was recovered by a bailiff from illegal custody of Faqirabad police station in Peshawar<sup>38</sup>;
- In June 2007, Lubna Shahzadi, (wife of Adil Masih), was recovered by a bailiff from illegal detention at Badami Bagh police station in Lahore<sup>39</sup>;
- Amjad alias Qudrutullah who was released by a bailiff on 11 July 2007 from the illegal custody of Nishtar Colony police station in Lahore;<sup>40</sup>
- On 14 September 2007, 70-year-old Mohabat Khan was released from illegal detention by Civil Line police on 14 September 2007;<sup>41</sup> and
- On 1 November 2007, Salahuddin who was recovered by a court bailiff from the illegal police custody of Waris Khan police station in Rawalpindi;<sup>42</sup>

Illegal arrests often resulted in incommunicado detention. On 13 May 2007, plainclothes personnel allegedly picked up two brothers identified as Hafiz Anwarul Haq and Hafiz Israrul Haq who are former students of the Jamia Fareedia *madrassa*, a subsidiary of Lal Masjid, from Raja Bazaar restaurant in Islamabad. Both brothers were kept in illegal detention and tortured for weeks.<sup>43</sup> Earlier on 8 April 2007, one Allah Wadhayo and his son Khalid alias Khalil under Sukkur police station in Khairpur district of Sindh province was arrested by the police and

kept in incommunicado detention as on 1 May 2007.<sup>44</sup>

Police were also found tampering with documents to show detainees as criminals to escape from legal consequences in cases of illegal detention cases. On 19 July 2007, a two member-bench of the Supreme Court comprising Justice Muhammad Nawaz Abbasi and Justice Faqeer Muhammad Khokhar, reprimanded Islamabad Police for tampering with documents to show the 134 persons arrested from Lal Masjid as criminals wanted in many cases. The Court reportedly discovered from police record that many *zimmis* (supplementary documents) bearing antedated and forged evidence were inserted into the record to give the impression that the arrested persons were involved in criminal and terrorism cases registered previously.<sup>45</sup>

Unlawful detention took place at the behest of influential rivals, many for extracting illegal gratification or just to settle personal scores. Military Intelligence personnel allegedly forced the police personnel of Sui police station in Balochistan to arrest Farman Ali (son of Wadera Khan Mohammad Kalpar) to force his family to reach a compromise with his rival Jalal Khan Kalpar, who was running the affairs of the Sui town.<sup>46</sup>

On 7 May 2007, the Civil Judge and Judicial Magistrate-I Raja Habibur Rehman recovered three persons identified as Ghulam Qadir Qambrani, Nisar Qambrani and Ghulam Yasin Khaskhili from illegal detention at the residence of Attaullah Memon, an engineer in Hyderabad Electric Supply Company in Civil Lines, Hyderabad in Sindh province. The three persons have been detained by the Cantonment Police, Hyderabad for more than a month and a half on suspicion of theft of Rs 4 million, six kilogram of gold ornaments and other valuable items.<sup>47</sup>

The authorities failed to take appropriate action against illegal detention. In May 2007, Multan District Police Officer, Muzaffargarh Rai Muhammad Tahir suspended Station House Officer of Muzaffargarh police station in Multan for harassment and illegal confinement of the

District Amir of Jamaat Islami, Rana Omar Draz Farooqui.<sup>48</sup>

In a rare case, on 7 November 2007, the Station House Officer (SHO) of Makli police station in Thatta town of Sindh province was arrested and locked up on the order of the Sindh province Governor for illegally confining two labourers Shamim Arain and Basar Khan.<sup>49</sup>

#### **d. Torture, inhuman and degrading treatment**

Torture is prohibited under Pakistan's criminal justice system and Sharia laws. Article 38 of the Law of Evidence provides that "no confession made to a police officer shall be permissible against a person accused of any offence". Article 39 of the Law of Evidence further provides that "no confession made by any person whilst he is in custody of a police officer unless it be made in the immediate presence of a Magistrate shall be proved as against such person." Under the Qisas and Diyat Ordinances, causing of hurt by any person to extort "any confession or any information which may lead to the detection of any offence or misconduct" is defined as a distinct punishable offence.

Torture is routine in Pakistan. Numerous instances of torture by security forces were reported in 2007.

On the night of 25 and 26 January 2007, Mr. Hazoor Buksh Malik (24), a cook, was tortured by SHO Mr. Mohummad Tunio at Market police station after he was arrested from the Resham Gali Market in Larkana district of Sindh province for not producing an identity card on 22 January 2007. The victim was bound with ropes and chains. He was then tortured. The SHO Mr. Mohummad Tunio who was apparently drunk, allegedly severed the victim's penis.<sup>50</sup>

On the night of 24<sup>th</sup> January 2007, Mr. Mohammad Ali Malla (25), son of Mr. Hamza Ali Mallah and resident of Mohalla Kalri village in Pir Jo Goth town in Khairpur district of Sindh province, was tortured by Mr. Abdul Sami Vesper, Assistant Sub Inspector (ASI) of the Pir Jo Goth police station

after he was arrested along with his brother on charges of theft. He was hung upside down from the ceiling, beaten and the ASI allegedly forced him to drink lime and also forced lime water into his anus.<sup>51</sup>

On 31 March 2007, a group of policemen led by Assistant Sub Inspector Muhammad Sultan reportedly beat Forest Guard Alamgir stationed in Chowk Qureshi forests in Muzaffargarh district of Punjab province. He was detained after he sought police assistance to detain another policeman, Munawar Hussain, who had been caught stealing wood.<sup>52</sup>

Other victims of torture included two students of Government Poly Technical Institute, Layyah in Punjab province who were beaten up by the security forces after arrest on 9 March 2007;<sup>53</sup> student Nadeem Ali who was tortured by Assistant Sub-inspector (ASI) Muhammad Ishaq of Aabpara Police Station after his arrest from his home in Sitara Market in Islamabad on 25 October 2007.<sup>54</sup>

#### IV. Judiciary and administration of justice

The Supreme Court led by former Chief Justice Iftikhar Muhammad Chaudhry played an increasingly pro-active role including on enforced disappearances. President Musharraf sought to erode the independence of judiciary. In March 2007, Chief Justice Chaudhry was suspended. On 20 July 2007, the Supreme Court however struck down the suspension and restored him to the seat of Pakistan's top adjudicator.<sup>55</sup>

On 3 November 2007, President Pervez Musharraf imposed a State of Emergency in Pakistan and suspended the Constitution and the rule of law. President Musharraf accused members of the judiciary of "interference" in the functioning of the government that "weakened the writ of the government".

Following the emergency President Pervez Musharraf sacked Chief Justice Iftikhar Muhammad Chaudhry and handpicked a

loyalist Justice Hameed Dogar to replace Justice Chaudhry after a seven-member bench of the Supreme Court refused to endorse the emergency order and declared it as unconstitutional. The government also appointed new Chief Justices for the Sindh, Lahore and Balochistan High Courts. The reconstituted Court set aside their ruling by the Court that had declared the emergency unconstitutional.

Judges of the Supreme Court and the High Courts who refused to take an oath under the new Provisional Constitutional Order were placed under house arrest. Section 3(2) of the Provisional Constitutional Order provided that "No judgment, decree, writ, order or process whatsoever shall be made or issued by any court or tribunal against the President or the Prime Minister or any authority designated by the President."

The government also formally retired 37 judges including Chief Justice Iftikhar Chaudhry who refused to approve President Pervez Musharraf's emergency rule and denied them pensions and other entitlements.<sup>56</sup>

Following the emergency hundreds of lawyers were arrested across the country. Among those arrested included several office bearers of Supreme Court Bar Association (SCBA) including its President Aitzaz Ahsan, Vice-Presidents Saqi Sultan and Ghulam Nabi Bhatti, Secretary Mohammad Amin Javad, Additional Secretary Abdul Rasheed Awan and Executive Members Rashid Awan and Jhanzaib Jadoon, and Karachi Bar Association President Iftikhar Javed Qazi.

On the night of 8 November 2007, police registered a case of sedition against eight lawyers identified as Maqbool Hasan, Javed Tanoli, Sabir Tanoli, Mohammad Aslam Bhatti, Masoodur Rehman, Mohammad Imran Khan, Khurram Nisar and Jamila Manzoor.<sup>57</sup>

Following the emergency the judiciary suffered from the backlog of pending cases and shortage of judges further hampered in delivering justice. More than 50 per cent of judicial seats were lying vacant in the higher judiciary.

The situation deteriorated following the mass removal of judges on 3 November 2007. There were only 14 judges against the sanctioned strength of 17 judges in the Supreme Court as of 11 December 2007. The Lahore High Court had only 19 judges out of the sanctioned strength of 50 judges; the Sindh High Court had only 11 judges against the sanctioned strength of 28 judges; the Peshawar High Court had 13 judges against the strength of 15 and the Balochistan High Court was short of two judges against the strength of six judges.<sup>58</sup>

In May 2007, the government failed to pass the Law Reforms Bill within the 90 days required to make it a law for quick disposal of court cases by amending criminal and civil British-era laws.<sup>59</sup> There was a backlog of 14,474 cases in the Supreme Court of Pakistan as on 1 November 2007.<sup>60</sup> The number of pending cases in the High Courts was alarming, particularly in case of the Lahore High Court where a total of 75,195 cases were pending, followed by the High Court of Sindh with 27,291 pending cases, Peshawar High Court with 13,610 cases and the Balochistan High Court with 2,445 cases as on 1 January 2007. The number of pending civil and criminal cases was highest at the level of District and Subordinate Courts in all provinces. By the end of December 2006, 123,663 cases were pending in District and Subordinate Courts in Sindh province, 110,546 cases in Punjab, 37,000 in NWFP and 8,377 in Balochistan.<sup>61</sup> In addition, a total of 3,316 cases were also pending before the Federal Shariat Court by the end of 2006.<sup>62</sup>

## V. Status of National Human Rights Institutions

A draft National Commission for Human Rights Bill was presented to the National Assembly in February 2005. In May 2005, the Bill was referred to the National Assembly's Standing Committee on Law, Justice and Human Rights for further consideration and deliberations.<sup>63</sup>

The Draft National Commission for Human Rights (NCHR) Bill of 2005 failed to meet the Paris Principles of National Human Rights

Institutions. (Please refer to SAARC Human Rights Report 2006)

The government made no attempt to adopt the National Commission for Human Rights Bill by the end of 2007.

## VI. Repression of human rights defenders

Human rights defenders in Pakistan faced repression during 2007. On 3 November 2007, when President General Pervez Musharraf declared a State of Emergency, lawyer and Chairperson of the Human Rights Commission of Pakistan (HRCP) Asma Jahangir was detained at the head office of the HRCP in Lahore along with 55 others. A First Information Report (FIR) 843/2007, dated 4-11-07 was lodged under sections 146/147 and 188 of the Pakistan Penal Code (PPC) and Section 16 of the Maintenance of Public Order (MPO), at Garden Town Police Station. The Government of Punjab put Asma Jahangir under a 90-days preventative order [SO (IS-I) 3-24/200] and kept her under house arrest.<sup>64</sup> Earlier on 12 May 2007, the Government of Sindh province has passed an externment order against Asma Jahangir prohibiting her from visiting the province.<sup>65</sup>

The other 55 human rights defenders were held in Kot Lakhpat Jail, Lahore and were released on the evening of 6 November 2007.<sup>66</sup>

On 26 January 2007, Chief Coordinator of the NGO Defence of Human Rights, Khalid Khawaja was arrested on trumped up charges of distributing hate literature. He was kept in detention till the Lahore High Court ordered his release on 22 June 2007. Mr Khawaja spearheaded a movement for the release of the missing persons.<sup>67</sup>

The authorities also maintained tight control over the activities of non-governmental organizations (NGOs). NGOs engaged in relief activity in the cyclone and flood-affected areas of Balochistan were reportedly asked to get no-objection certificates from the Frontier Constabulary to operate and send their relief material through government agencies instead of directly

distributing the same to affected families. Many of them stopped work after the order was issued by the Balochistan government.<sup>68</sup>

The non-state actors also harassed human rights defenders and NGOs. During the night of 7 April 2007, unidentified persons reportedly attacked the office of a non-governmental organization National Rural Support Programme and its records were set on fire. Two motorcycles parked near the office of the NGO were also set on fire.<sup>69</sup> In the first week of July 2007 following the military action inside the Red Mosque in Islamabad, clerics and seminary students attacked offices of NGOs and the Earthquake Rehabilitation and Reconstruction Authority (ERRA) in Ghazikot town Mansehra district of North West Frontier Province.<sup>70</sup>

## VII. Freedom of the press

President Pervez Musharraf continued attacks on the press during 2007. Shortly after emergency rule was declared, all the private local and foreign news channels were taken off the air. Broadcasting or publication of statements that were perceived to be defamatory of General Musharraf, the military or the government and statements or pictures of Islamist militants were banned.<sup>71</sup>

Journalists work under constant threat of attack both from the security forces and militants. Journalists faced persistent pressure and threats from the government to censor anti-government protests. Media offices were attacked and put under surveillance by the security forces. Journalists are regularly subjected to torture, kidnapping, illegal detention, beatings, and death threat from the state, insurgents and violent opposition political parties.

On 4 June 2007, the legal environment deteriorated when the State introduced oppressive new legislation the Pakistan Electronic Media Regulatory Authority (Amendment) Ordinance, 2007 (PEMRA). It empowers the authorities to confiscate the equipment of broadcasters and seal the premises without consulting a council of complaints. Immediately after the declaration of emergency on 3 November 2007 all the private

local and foreign news channels were taken off the air.

Television channels critical of the President Pervez Musharraf's move to sack suspended Chief Justice Iftikhar Chaudhry were either warned that they would be taken off the air or barred from airing. In the second week of March 2007, PEMRA reportedly ordered the *Geo Television* to stop airing its daily news programme "Today with Kamran Khan" until further orders<sup>72</sup> reportedly because the programme had shown Chief Justice Iftikhar Chaudhry in a positive light. On 23 April 2007, PEMRA issued show cause notice to the Aaj Television for broadcasting news items relating to Chief Justice Chaudhry.<sup>73</sup> In May 2007, transmission of the private TV channels were interrupted and blacked-out through cable operators by PEMRA.<sup>74</sup> On 2 June 2007, PEMRA stopped satellite TV channels from broadcasting programmes, including live talk shows and discussions, on Chief Justice Iftikhar Mohammad Chaudhry.<sup>75</sup>

On 28 June 2007, PEMRA banned the transmission of Royal TV.<sup>76</sup> On 29 July 2007, PEMRA ordered the FM 103 Radio to immediately stop the broadcast of its hourly news bulletins syndicated by the BBC.<sup>77</sup>

Journalists were denied entry into state institutions and government meetings. These included denial of entry into the North West Frontier Province Assembly on 28 February 2007;<sup>78</sup> preventing journalists from covering all-parties conference on "Inter-active dialogue on provincial autonomy" in a Karachi hotel on 7 March 2007;<sup>79</sup> denial of entry into Supreme Court by security forces dressed as lawyers on 3 May 2007;<sup>80</sup> denial of entry into National Assembly on 7 June 2007;<sup>81</sup> and banning of US-based Cable News Network from visiting the Red Mosque and Jamia Hafsa in Islamabad on 12 July 2007.<sup>82</sup>

Journalists also often faced threats to their life and liberty, ill treatment and physical assaults from security forces:

- On 25 April 2007, police beat up reporter Wasim Farooq and cameraman Atif Yasin

of Apna TV channel and broke their camera and films for shooting police action at District Courts premises in Lahore.<sup>83</sup>

- On 5 June 2007, Station House Officer of Makhdoompur Pahuran in Khanewal district of Punjab, Muhammad Yousaf illegally detained three journalists - Muhammad Ayyub Khan Niazi, Hafiz Irfan Ahmed Malik and Lal Khan Bhatti when they went to the police station to collect the reports of a clash between two rival groups.<sup>84</sup>

Armed opposition groups also engaged in attacks on the media. At least two journalists were killed by militants - Noor Hakim on 2 June 2007 and Noor Ahmed Solangi in Sindh province on 17 June 2007<sup>85</sup>

On 26 May 2007, three grenades were thrown at correspondent of Urdu daily *Mashriq* Nasrullah Afridi's family home in Hayatabad, near Peshawar<sup>86</sup>. On 25 May 2007, gunmen attacked the home of *Daily Times* cartoonist Muhammad Zahoor on 25 May 2007 at Peshawar.

Students and political party workers were also responsible for assaulting journalists. On 20 March 2007, students of Jamia Rahimia Madrassa in Jhamabar near Kasur in Sindh province reportedly detained and beat up Geo television reporter Shaharyar, cameraman Irfan and their another colleague while they were filming the *madrassa* for a story involving two missing girl students from the madrassa.<sup>87</sup>

On 13 April 2007, Shakir Solangi, a reporter with KTN television was beaten by a Member of National Assembly belonging to the Pakistan People's Party Ghulam Murtuza Satti in front of the Supreme Court.<sup>88</sup> On 12 May 2007, men suspected of being members of the Muttahida Qumi Movement (MQM) attacked the *Aaj TV office* building in Karachi and set on fire more than a dozen vehicles in its parking lot.<sup>89</sup>

## VIII. Violations of the rights of the minorities

Religious minorities – Hindus, Christians and

Ahmadis - face systematic discrimination and persecution by the State. Religious minorities have been targeted and victimized under blasphemy laws which, among others provides for punishments including death penalty. Since July 2003, Ahmadis travelling to Mecca for the Hajj must officially denounce in writing the founder of the Ahmadi faith.<sup>90</sup> The entire Ahmadi population of Rabwah (the headquarters of Ahmadiya in Pakistan) has been prosecuted under Section 298C of Pakistan Penal Code since 15 December 1989.<sup>91</sup> They are prohibited from holding any public conference or gathering. Ahmadi publications are banned from public sale.

Many members of minority communities have been kidnapped and murdered because of their faith. There are regular credible reports of forcible conversion. Abduction, rape and forcible marriage of Hindu minority females by Muslim men are common in Pakistan. When the police arrest the accused, the accused produce certificates issued by any Muslim seminary certifying that the Hindu women voluntarily converted to Islam and the police release the accused.

Religious minorities have been systematically excluded from the new voters list released by the Election Commission of Pakistan on 12 June 2007.<sup>92</sup> The list placed Ahmadis on a separate discriminatory list.<sup>93</sup> In July 2007, the All Pakistan Minorities Alliance claimed that 20 per cent of non-Muslim voters had been excluded from the new voters' list.<sup>94</sup> About 18 per cent of eligible voters belonging to a minority group have been struck off from the new voters' list in North West Frontier Province.<sup>95</sup>

There were reports of attacks on religious minorities:

- On 1 March 2007, Mr. Muhammad Ashraf, an Ahmadi, was shot dead by Assistant Sub Inspector (ASI) Riaz Gondal at a restaurant in Seerah in Mandi Bahauddin district of Punjab for changing his faith from Sunni Muslima to Ahmadiya.<sup>96</sup>
- Chaudhry Habibullah Sial (82) was reportedly murdered at his home for being

an Ahmadi at Adda Nur Pur Nehr in Qasur district on 8 April 2007.<sup>97</sup>

- On 21 May 2007, Ahibzada Ayub Ahmad, a trader and spiritual leader of local Ahmadis, was reportedly kidnapped by five armed men from his shop in the Shafi Market in Serai Naurang town in Lakki Marwat district of FATA. Earlier he and other Ahmadis living in the Nar Sahibzada Khost area near Serai Naurang received threats from the local Taleban to leave the area if they did not “embrace Islam”.<sup>98</sup>

The hardliners also attempted forcible conversion of the Christians.

- Several Christian families fled their homes in Muslim Colony in Charsada of North-West Frontier Province after they received a letter on 8 May 2007 from Islamic militants asking them to convert to Islam within 10 days or else leave the area. Christians alleged that the police did not take the threat seriously.<sup>99</sup>
- On 12 June 2007, Christians of Shantinagar village of Khanewal district in Punjab received threatening letters by post from unknown people threatening them that they should leave the village or convert; and
- On 18 June 2007, Pastor Lamual Danial’s son Abi Saloom received telephone calls saying that Christians should be ready to face dire consequences if they failed to embrace Islam.<sup>100</sup>

Blasphemy laws continued to be used to harass religious minorities. According to the National Commission for Justice and Peace (NCJP), at least 25 persons were victimised under the blasphemy laws during the period 1 January 2007 - 1 June 2007.<sup>101</sup> In 2006, 90 cases of blasphemy were reported. Out of these, only 48 cases were registered with the police in which 27 accused were Muslims, 10 Christians and 11 Ahmadis.<sup>102</sup>

On 2 June 2007, two Ahmadis identified as Shahid Mahmud Ansari and Amir Ahmad Ansari

of Gulshan Sir Syed in Karachi were arrested under sections 298 C (person of Quadiani group etc, calling himself a Muslim or preaching or propagating his faith) and 506 B (threat to cause death or grievous hurt) of the Pakistan Penal Code (PPC).<sup>103</sup>

On 8 June 2007, Mr. Saeed Ahmad, an Ahmadi, was booked under Section 298-C of PPC at Nakdar Police Station in Sargodha district (FIR No 73/2007), and was arrested. Later, the police added Clause 9 of the Anti-terrorism Act to the charge sheet.<sup>104</sup>

Children belonging to the Ahmadi community were arrested under preventive detention laws. On 26 January 2007, police reportedly registered cases against five Ahmadi children identified as 11-year-old Nusrat Jahan (daughter of Hakim Muhammad Sadiq of Ahmadabad Janoobi); 8-year-old Umair Ahmad (son of Ghulam Ahmad of Ahmadabad Janoobi); Ashfaq Ahmad (son of Muhammad Mumtaz of Khai Kalan); Rafi Ahmad (son of Muhammad Yousaf of Omerabad Majoka); and Abdul Sattar (son of Ahmad Hasan of Thathi Omerabad) under Section 17 of the Maintenance of Public Order (MPO) Ordinance in Chora Kalan police station in Khushab district for subscribing to Jamaat-e-Ahmadiya’s monthly children’s magazine Tasheezul Azhan.<sup>105</sup>

On 30 May 2007, Younis Masih, a Christian, was sentenced to death for blasphemy by the Sessions Court in Lahore. He was charged on 10 September 2005 under Section 295C of PPC (use of derogatory remarks on the Holy Prophet).<sup>106</sup>

On 9 May 2007, the police arrested an 84-year-old Christian man, Walter Fazal a case under Section 295-B of PPC (defiling etc of copy of Holy Quran). The case was registered against him on the complaint of his Muslim driver, Raja Riaz, who claimed to have seen Khan burning pages of the Holy Quran in his house.<sup>107</sup> He was sent to jail.<sup>108</sup>

Other Christian victims of blasphemy charges included:

- Sattar Masih of Kotri in Sindh province

who was beaten by Muslim mob and later arrested by the police on 13 April 2007<sup>109</sup>; his 60-year-old uncle, Mushtaq Masih, and his son;<sup>110</sup>

- five Christians including Salamat Maseeh and Baboo Maseeh of Bakshi Park locality of Toba Tek Singh district of Punjab on 1 April 2007;<sup>111</sup>
- Amanat Masih of village Nabi Pur Virkan in Sheikhpura district of Punjab on 23 March 2007;<sup>112</sup> and
- Christian woman identified as Martha Bibi (40) on 22 January 2007.<sup>113</sup>

Women and girls belonging to religious minorities were specifically targeted and police failed to take action against the perpetrators despite identification by the victims.

- On 8 April 2007, on Easter Day, a 12-year old Christian girl named Cheena Bibi was kidnapped and gang raped by four Muslims in Punjab province. Despite providing the address and other details of one of the accused the police of Nishter Colony Police Station did not take any immediate action;<sup>114</sup>
- On 14 May 2007, 15-year-old Christian girl named Sumera was raped by Mohammad Asif, her employer in Nazam Pura Chak number 2, Sub-District Chuniyah of District Kasur in Punjab;<sup>115</sup>
- On the night of 23 May 2007, Miss Lunba (20) was reportedly gang raped at gun point by a group of Muslim youths in graveyard of Mughalpura in Lahore;<sup>116</sup> and
- On the night of 25 February 2007, three Hindu women were reportedly gang raped by unidentified armed men at Ghulam Ali Khawar village in Larkan a tehsil in Sindh. A group of eight armed men reportedly broke into the house of a Hindu family, held the family at gunpoint and gang raped the three women of the family.<sup>117</sup>

## IX. Gender Discrimination

Women remain extremely vulnerable in Pakistan. Women continue to be victimised under the Offence of Zina (Enforcement of Hudood) Ordinance of 1979. Under the Hudood Ordinance, victims of rape face legal barriers to securing a conviction of the accused, including production of at least four adult male Muslim eyewitnesses, who must be ‘truthful’ persons and who abstain from major sins (*kabair*) and have physically seen the act of rape. If unable to prove rape, a woman who goes to the police is vulnerable to prosecution as the Ordinance considers sexual intercourse as adultery whether it is with or without the consent of a woman.

### a. Restrictions on participation in public life

Participation of women in public life is highly restricted. The oppression of woman is part of public discourse: Chief Minister of Sindh Dr. Arbab Ghulam Rahim stated during the launch of the election campaign for his party on 26 August 2007 in Thatta that women’s leadership was a “curse” on society.<sup>118</sup>

On 29 March 2007, tribal elders in Bannu district of North West Frontier Province barred women from casting their vote in the by-election of National Assembly Seat-26.<sup>119</sup>

Most women councillors of Upper Dir district in NWFP have not attended sessions of district and union councils since 2005 because of an ‘unofficial ban’ imposed by a local *jirga*. Unelected male relatives had represented them since 2005, in sessions of the district and union councils.

These self-nominated ‘representatives’ of women councillors – apparently fathers, sons, brothers and husbands – enter councils’ rooms, sign the attendance roster and take part in the debate on behalf of the women councilors with complete acquiescence of the state.

Elected women councilors were denied the right to participate in the local Annual Development

Programme (ADP). Women councillors were not allowed to participate in budget sessions of councils and all decisions about the ADP were taken in their absence.<sup>120</sup>

Militants and extremists also banned participation of women in public life including serving as health worker. As on 27 April 2007, more than 70 female health workers in Swat district in NWFP have reportedly quit their jobs after local Taliban leader Maulana Fazlullah banned women from leaving their homes to deliver community services.<sup>121</sup>

### **b. Violations and ‘cultural’ practice.**

Hundreds of women have been killed every year for alleged adultery, marrying without the family’s consent, pre-marital sex or having been raped.

#### **Honour killings:**

Honour killings (*karo-kari*) continue in Pakistan. The crime is committed in an almost extraordinary scale. For example, 262 persons including women, children and men were murdered across Pakistan during January-March 2007 in crimes related to ‘honour’. Of these, 131 were female, while ten were minor girls and two minor boys.<sup>122</sup> According to a research report released by the Aurat Foundation, Women Foundation, in July 2007, Sindh province accounted for most of the honour killings with a woman losing her life every second day between January and June 2007. A total of 110 women and 64 men were killed on the pretext of *karo-kari*.<sup>123</sup> Between January and December 2007, at least 1,305 people including 792 women and 34 were underage girls victims of honour killings.<sup>124</sup>

On 9 June 2007, a woman named Amreen has been stoned to death by her father, husband and brother at Shahbaz Garhi in Mardan district of NWFP. The accused suspected her of having a relationship with someone in the area.<sup>125</sup>

On 1 November 2007, Sajid Hussain of Chak 400-GB under Tandlianwala in Faisalabad district of Punjab reportedly shot dead his cousin

sister Sajida and her mother Naziran in a killing attributed to ‘honour’. The assailant suspected his cousin had relationship with Javed Ahmed of the same village.<sup>126</sup>

#### **Traditional Justice:**

The traditional system of justice by council of elders often perpetrated violations against women. Sindh province accounted for the highest number of Jirgas. According to July report of the *Aurat Foundation*, at least 58 *Jirgas* were held in different parts of Sindh province on gender-related issues despite a ban imposed on this parallel system of the judiciary by the Sukkur Bench of the Sindh High Court.<sup>127</sup>

On 14 March 2007, local council of elders, including activists of the Lashkar-i-Islam, an extremist organization, ordered the public stoning of two males Allah Noor and Shahzada of the Kukikhel tribe and one female named Taslima, in Akkakhel area of Landi Kotal (Khyber Agency) of FATA. The three were later shot dead by the members of the extremists group who accused the three of having a relationship.<sup>128</sup>

#### **c. Sexual violence**

Women continued to be targeted because of their gender. During the night of 18 March 2007, 20 men reportedly entered the house of one Qabil Joyo in Joyo village under Gambat police station in Khairpur district of Sindh and kidnapped two female family members named Amna and Jamila.<sup>129</sup>

On 4 May 2007, Shahbaz Ali, Allah Bakhsh, Muneer Ahmed, Ghulam Muhammad and Ghulam Qadir reportedly dragged one Ansar Mai from her house under Melsi police station in Multan district. The perpetrators who were armed, stripped her naked and paraded her through streets of Pul Shaheedan Wala market on the allegation that she had arranged the meeting of a girl of their family with her boyfriend.<sup>130</sup>

In June 2007, five villagers Muhammad Khurseed, Ali Raza, Imran Sadaq, Muhammad Iqbal and Painsa Khan of Padshahan village in

Chakwal district of Punjab allegedly stripped naked one widow Nargis Sultana and paraded in the streets.<sup>131</sup>

In most cases, police failed to take action against the guilty. As *The Dawn* reported on April 2007, police of Motra in Sialkot district of Punjab failed to arrest rapists Idrees, Abdul Ghaffar and their accomplice who had abducted Muhammad Rafiq's daughter and gang raped her for three days in the third week of March 2007.

Similarly, police took no action against rapists Bashir Ahmad (son of Ramzan alias Ramzo Kaleri), Javaid Iqbal (son of Bashir Ahmad), Abdul Qadir (son of Muhammad Baksh alias Mamda Khan) and Abdul Wahid who gang raped one Allah Bachaya (50) of Basti Kaleri of Mir Hazar Khan.<sup>132</sup>

## X. Violations of the rights of the Child

Like women, the girls face acute discrimination in Pakistan. The girl child continues to be considered as the 'personal property' of the family and used as a means to settle debt or family dispute. Some of the cases are given below:

- In March 2007, one Lal Haider reportedly threatened the family of a 15-year old girl, Rasheeda Begum of Hyderabad for denying him custody of the girl whom he said he had won from her father in a bet some 15 years ago.<sup>133</sup>
- In April 2007, one Mansoor Khokhar of Gharibabad Colony of Kotri Site area of Sindh province reportedly sold his 14-year-old daughter Saira for Rs. 30,000 to influential persons in the area.<sup>134</sup>
- On 28 August 2007, police in Timergara in Dir district of NWFP saved a three-year-old girl from being handed over to his rivals by her father under the practice of Swara, a child marriage custom in tribal areas of Pakistan. The police produced the girl's father, Pervez Khan, in Court where he promised not to hand her over.<sup>135</sup>
- In September 2007, police recovered a minor girl named Shahnaz of Gul Mohammad Khoso Village under Larkana district of Punjab from the custody of one Qalandar Bux Siyal of Bhitai Nagar in Hyderabad on the orders of the Lakarna Bench of Sindh High Court. The minor girl was allegedly sold by her brother Ismail for Rs.85,000 to Qalandar Bux Siyal who married the girl to his crippled son, Sajjad.<sup>136</sup>

### a. Sexual violence

Incidence of sexual violence against children was common. But it was very difficult to punish the perpetrators. According to data released by the Centre for Missing Children (CMC), at least 345 cases relating to child abuse, kidnapping and missing were reported only in the two cities of Pindi and Islamabad in three months as on 23 June 2007.<sup>137</sup> As per report of another NGO, Azad Foundation, over 63 per cent of about 12,000 children who lived in the streets of Karachi city were victims of sexual abuse.<sup>138</sup> Some of the cases are given below:

- On 10 January 2007, four men reportedly kidnapped and gang-raped a 13-year-old girl Kainat Samroo on her way home from her village school in Sindh province;<sup>139</sup>
- On 19 March 2007, police reportedly recovered 20 children who were allegedly kept in fetters in a religious seminary of village Hala under Kotadu police station in Muzaffargarh district of Punjab. The in-charge of the seminary, Qari Ghulam Rasul was arrested on charge of sexually assaulting the children;<sup>140</sup>
- On 23 March 2007, a 13-year-old girl named Safia was allegedly gangraped at Warah in the Qambar-Shahdadkot district of Sindh province.<sup>141</sup>
- A four-year-old boy of Chak 132/16-L in Mian Channu city of Punjab province was sexually assaulted on 22 March 2007;<sup>142</sup>
- A 15-year-old girl of Chak 125-A Layyah

city of Punjab who was kidnapped on 17 April 2007 and gang-raped for 4 days;<sup>143</sup>

- An eight-year-old girl of C Area Qayumabad who was sexually assaulted during the night of 22 April 2007;<sup>144</sup>
- A teenage girl of Murtaza Shah Ji Haveli village in Naushero Feroze district of Sindh who was kidnapped and raped at gunpoint 27 April 2007;<sup>145</sup>
- A seven-year-old student of a *madrassa* who was sodomised by *muezzin*, Maulvi Hafiz Mohammad Tayyab at a mosque at Data Nagar under Orangi police station in Karachi on 25 April 2007;<sup>146</sup> and
- 14-year-old daughter of Mohammad Saleem of Fateh Jang area of Attock district Punjab who was kidnapped by five persons on 9 July 2007 and was sexually assaulted.<sup>147</sup>

## b. Juvenile justice

In 2007, the conditions of juvenile offenders remained deplorable. There were as many as 1,719 juvenile prisoners only in two of four provinces of Pakistan. Of these 600<sup>148</sup> were in Sindh and 1,119<sup>149</sup> in different prisons of Punjab. There has been a sharp increase in the number of juvenile offenders. There were only 1,507 juvenile offenders as on 12 December 2006.<sup>150</sup>

Under section 3 of the Juvenile Justice System Ordinance (JJSO), the government is required to provide free legal aid to juvenile offenders. However, most offenders continue to be denied access to legal aid primarily due to the failure of panel of lawyers to provide legal aid.

## XI. Prisoners' rights

In 2007, prisons conditions remain atrocious. There were 89,546 inmates in 82 jails of the country. Of these, 54,434 prisoners were languishing in Punjab jails; 21,762 in Sindh; 9,014 in the North-West Frontier Province; 3,503 in Balochistan; 356 in Northern Areas and 4,779 in Azad Kashmir. There are 7,527 condemned

prisoners in Pakistan's jails.<sup>151</sup>

Most of the jails in Pakistan are overcrowded and majority of the prison population are undertrials. Rawalpindi's Adiala Jail housed 6,195 prisoners — more than three times its designed capacity of 1,900. Of the 6,195 prisoners, only 1,972 of them were convicted prisoners, the rest 4,223 were undertrials. They live in inhuman and degrading conditions.<sup>152</sup> Petty offenders were housed in the same cells as hardened criminals.<sup>153</sup>

Many are subjected to severe beatings and other ill-treatment. On 3 February 2007, Mr. Ali Nawaz (33) (son of Mr. Ali Khan) was allegedly tortured to death in the Malir central jail in Karachi, Sindh Province after the failure to pay bribe to the jail officials. The doctors announced that the victim died due to kidney failure, while the family found numerous torture marks on the victim's body.<sup>154</sup>

On 17 May 2007, the body of an undertrial prisoner Mohammad Hafiz who died under mysterious circumstances at the Adiala prison in Rawalpindi was exhumed on the orders of a Sessions Judge to ascertain the cause of death. The jail authorities claimed he died of heart attack but his father, Chaudhry Mohammad Shafi, in his application to the Sessions Judge claimed that he saw injury marks on the body when it was given a bath before burial.<sup>155</sup>

## XII. Ethnic minorities

### I. Balochistan

The insurgency in Balochistan province has escalated since early 2005. Instead of addressing the genuine political and economic grievances of the Balochs, the Military is attempting to impose state control through force. There are credible concerns over the use of systematic disappearance, indiscriminate use of fire-arms and aerial bombings resulting in the deaths of hundreds of civilians.

Increasing disappearances of the Baloch nationalists forced the then Chief Justice of Pakistan to issue *suo motu* notices to the provincial government of Balochistan on 1 August 2007.

The Balochi insurgents have targeted civilians in retaliation.

### Continued military operations

Throughout 2007, military operations continued in Balochistan. Peace remained elusive and there were series of attacks upon security forces, rail links, gas installations etc by the Baloch nationalists. On 20 January 2007, Pakistani air force continued bombardment of Marri Baloch settlements in different areas of Kohlu district along the border of Sibi district which reportedly killed more than 20 persons including women and children. At least 96 persons were also arrested during the military operation.<sup>156</sup>

On 1 March 2007, President Pervez Musharraf offered talks to the Baloch ‘militants’ (nationalist) stating that he was trying to rectify 50 years of neglect of Balochistan by previous regimes by launching a multi-billion rupee programme of development assistance.<sup>157</sup> On 21 March 2007, Musharraf warned them to surrender or face elimination for opposing development. <sup>158</sup>

On the morning of 30 March 2007, thousands of Pakistan army soldiers entered and cordoned the Baloch villages of Lanju and Sagari in Sui area near Mazari goot on the Balochistan-Punjab border. Fighter jets and gunship helicopters bombarded the villages for several hours. After the attacks, the military used heavy artillery against the villages. At least 18 women, children and elderly were reportedly killed in the military action.<sup>159</sup>

According to Baloch dissident groups more than 50 Balochs were killed, many hundreds injured and another estimated 100 have disappeared or are being detained by the security agencies during March 2007.<sup>160</sup>

On 29 May 2007, Nawabzada Talal Akbar Bugti, chief of the Jamhoori Watan Party, alleged that the Pakistan Military Intelligence personnel killed four Bugti tribesmen in an ambush.<sup>161</sup>

On 21 December 2007, security forces attacked a house of Marri Tribe at Lundi, a border village of Kohlu and Dera Bugti and shot dead seven

women and children.<sup>162</sup>

The military operations resulted in significant displacement. According to a report of the United Nations High Commission on Refugees, over 84,000 residents of Dera Bugti and Kohlu districts were displaced as on January 2007. Of these, 26,000 were women and 33,000 children.<sup>163</sup>

In the first week of February 2007, security forces allegedly arrested 15 Baloch women and children in Badra-Jaldhi operation and 22 women and children in Marri-Bugti border area of Sia Koh.<sup>164</sup> On 4 April 2007, the HRCP accused the Frontier Corps of setting Baloch houses on fire and looting jewellery and cash during a search operation in Panjgur, Awaran and Gickh in Dera Bugti which made 500 to 800 of families homeless.<sup>165</sup>

### Enforced Disappearances

Hundreds of Baloch, mostly student leaders and political activists have gone missing allegedly at the hands of the security forces since 2000 when the on-going military operations began. The relatives of the nationalist leaders and political workers of Balochistan have been specifically targeted by the secret agencies.

Dr Jahanzaib Jamaldini, Acting Vice-President of Balochistan National Party (BNP) alleged in August 2007 that more than 3000 Baloch people have been arrested by the intelligence agencies from different parts of Balochistan, Sindh and Punjab since 2000. During their detention he alleges that detainees have been subjected to torture.

Earlier in December 2005, Federal Interior Minister Aftab Sherpao had revealed that nearly 4000 people had been arrested from Balochistan.

## II. FATA

Similarly, the people living in the Federally Administered Tribal Areas (FATA) region have been excluded from Pakistan’s mainstream. Under Article 247(3) of the Constitution of Pakistan, no act of the Parliament applies to FATA unless the President so directs.

The civilians in the areas targeted both by the security forces and the militants. Innumerable people have been killed either by the security forces or the Taleban militants.

As on 27 April 2007, more than 1,400 people including about 600 militants, 700 security forces and 100 pro-government Maliks (tribal elders) were killed in over 100 military operations carried out by the Pakistan security forces in South and North Waziristan Agencies of FATA.<sup>166</sup>

On 1 July 2007, as many as 18 tribesmen were killed near Miramshah in Mirali tehsil of the North Waziristan agency in FATA. According to survivors, their group of 22 tribesmen was indiscriminately fired upon the security forces at Banda checkpost and later supported by helicopter gunships and artillery fire.<sup>167</sup>

On 9 August 2007, at least 15 tribesmen were reportedly killed at Degan village in North Waziristan in firing by army's helicopter gun-ships following a roadside bomb blast in the area.<sup>168</sup>

On 3 September 2007, a tribal woman was killed and two others sustained injuries in Qutabkhel village in artillery fire by security forces at Chashma check-post in North Waziristan.<sup>169</sup>

On 29 September 2007, six civilians were injured when a public transport vehicle was fired upon by soldiers in the Pattikhel area, 10 kilometres west of Miranshah after it did not stop to allow a military convoy to overtake.<sup>170</sup>

On 7 October 2007, three civilians were killed when an artillery shell fired by the Security Forces hit their house in the Sokhail village of North Waziristan.<sup>171</sup>

On the night of 25 November 2007, four people including two men, a woman and child were killed in bomb attacks by security forces in Mirali village in Mirali tehsil of North Waziristan.<sup>172</sup>

### Other Armed Groups

Numerous tribal civilians, mostly pro-government tribesmen have been extrajudicially executed by extremist groups.<sup>173</sup>

- In the second week of April 2007, at least 15 people were killed when suspected militants attacked Jilamai and Chardewal villages in the Lower Kurram Agency in FATA and set houses on fire. A large number of villagers were also were injured in fire.<sup>174</sup>
- On 2 June 2007, five people, including Nazukai Salarzai tribe Chief Malik Muhammad Ayaz, his son Mohammad Pervez, political tehsildar Wisal Khan, journalist Noor Hakeem and sepoy Hassan Muhammad were killed in an improvised remote control bomb explosion the Dara Khwar area of Bajaur agency. While the tehsildar had gone to Mallsaid Banda in Salarzai tehsil to supervise an operation against a suspect wanted in a murder case, *Daily Pakistan* correspondent Noor Hakeem was accompanying the tehsildar to cover the operation against the suspect.<sup>175</sup>

Other civilian tribesmen who had been allegedly killed by militants included a pro-government elder Malik Kameen and tribesman Jabbar Khan who was killed in a remote controlled landmine explosion by suspected militants in Nawagai tehsil, 20 kilometres northwest of Khar in North Waziristan on 5 February 2007;<sup>176</sup> 2 tribesmen named 30-year-old Qayyum 40-year-old Reham Din Shahmiri whose bullet-ridden bodies was found at Miranshah in North Waziristan on 5 February 2007;<sup>177</sup> a man (name not available) whose beheaded body was found on 13 March 2007<sup>178</sup>; tribesman Rahim Khan whose bullet-ridden body was found on 8 June 2007 near the village of Alikhel, 12 kilometers (around eight miles) west of Miranshah, the main town in North Waziristan;<sup>179</sup> and two men (name not available) who were beheaded on 26 September 2007 in Miranshah.<sup>180</sup>

## XIV. Violations of International Humanitarian Law by the AOGs

Armed opposition groups remained highly active during the year and persistently carried out

attacks in which hundreds of people have been killed across Pakistan. Political party leaders were particularly targeted.

On 27 December 2007, former Prime Minister Benazir Bhutto was shot dead when a gunman opened fire at her before detonating explosive on his body which killed 30 more persons and injured several others while she was leaving an election rally at Rawalpindi.<sup>181</sup>

On the night of 14 May 2007, Syed Hammad Raza, former Additional Registrar of the Supreme Court of Pakistan who was killed by unidentified men at his home at G 10/2 in Islamabad.

Earlier, on 18 October 2007, at least 136 people were killed and more than 384 injured in a suicide bombing targeting the motorcade carrying former Pakistani Prime Minister Benazir Bhutto in Karachi shortly after her return to the country.<sup>182</sup>

Other cases included Ali Gohar, section officer of the Home Department, who was shot dead by unidentified gunmen while on way to office on Abul Asphani Road in Karachi on 19 March 2007;<sup>183</sup> renowned personality of Moza Khattiyala Sheikhian, Faiz Sheikh, his driver Jahangir and his gunman Phulla Kamiyar were killed on the spot by unidentified gunmen near Kakwal Bridge in Mandi Bahud-Din on 20 March 2007;<sup>184</sup> 35 persons who were killed in a suicide attack targeting Pakistan Interior Minister Aftab Ahmad Khan Sherpao during a crowded public gathering at railway station ground in Parang area of Charsadda district on 28 April 2007;<sup>185</sup> 25 persons, mainly Afghan refugees, who were killed in a suicide attack at Marhaba Hotel in Peshawar on 15 May 2007;<sup>186</sup> 13 persons including women and children were killed when cadres of AOG fired indiscriminately at the house of a political agent in the Jatai Qala area of Tank district on the night of 30 May 2007;<sup>187</sup> 36 persons were killed in a suicide attack targeting a convoy of Chinese workers at Hub town in Balochistan province on 19 July 2007;<sup>188</sup> at least 15 persons including the Imam Masjid and two children who were killed in a bomb explosion in a mosque in Pathan Line in Cantonment Area of Kohat;<sup>189</sup> and at least nine persons including a woman who were killed

when unidentified cadres of AOG fired a barrage of rockets on the civilian population in Bannu city on 24 July 2007;<sup>190</sup> among others.

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# MALDIVES

## I. Ranking In Human Rights Violators Index: 5<sup>th</sup>

With a population of 0.28 million, Maldives has been ruled with an iron hand by President Maumoon Abdul Gayoom since 1978. Political freedom continued to be undermined by the slow pace of implementation of the ‘Roadmap for Democratic Reform’ published in March 2006. In August 2007, then Foreign Minister Ahmed Shaheed Attorney General Hassan Saeed and Justice Minister Mohamed Jameel resigned citing their frustration over delays in the reforms.<sup>1</sup> Nonetheless, there has been some positive development viz. registration of political parties, referendum on the system of the government and the ratification of the “Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment” on 14 September 2005 and International Covenant on Civil and Political Rights (ICCPR), the Optional Protocol to the ICCPR, and the International Covenant on Economic, Social and Cultural Rights in September 2006. Maldives has been ranked No. 5th in the *South Asia Human Rights Violators Index 2008*.

## II. Political freedom

In the ‘Roadmap for Democratic Reform’ published in March 2006, the government promised to table a draft of new reform bills before the People’s Majlis by 31 August 2006. The roadmap included a new penal code; a bill on new sentencing regulations; a new criminal procedures code; a bill on evidence; a bill on the National Security Service; a Police bill; a bill on detention procedures; and a bill on parole. However, the government failed to meet its own deadline. Except the establishment of few bodies such as the Judicial Services Commission,

the government has failed to introduce any meaningful reform legislation.<sup>2</sup>

On 18 August 2007, a historic referendum was held to decide the political future of the Maldives. The voters opted for a presidential form of government. The Human Rights Commission of the Maldives declared the referendum fair. However, the Maldivian Democratic Party (MDP) alleged that the vote was rigged.<sup>3</sup>

Article 26 of the Constitution states: “Persons shall be free to assemble peaceably and in a manner that does not contravene the law”. However, the freedom of assembly regulation currently in force in the Maldives obstructs the right of freedom of assembly.

Political rights and civil liberties remained minimal. President Gayoom continued to restrict freedom of speech and assembly.

In 2007, there are five registered political parties operating in the Maldives. These included Dhivehi Rayyithunge Party (DRP), Maldivian Democratic Party (MDP), Adhaalath Party, Islamic Democratic Party (IDP) and Maldivian Social Democratic Party (MSDP). The Commissioner of Elections had received further applications for registration from five political parties namely the Social Liberal Party (SLP), the People’s Party, Maldivian Labour Party, the Maldives National Congress (MNC), the Dhivehi Vathanee Party and the Dhivehi Guamee Party.<sup>4</sup>

Arbitrary arrest, detention and intimidation of political leaders and activists opposed to President Gayoom continued. Peaceful assemblies were dispersed by using excessive force. At least 55 MDP activists were facing prosecution by the state in 10 ongoing trials as of 12 February 2007. Another 20 were in prison.<sup>5</sup>

On 23 January 2007, Sheikh Fareed, a popular

religious figure and prominent member of MDP, was reportedly arrested by police outside the Ibrahim Mosque in Male.<sup>6</sup>

On the night of 5 February 2007, the senior leadership of the Maldivian Democratic Party (MDP) including Chairman Nasheed, MP Hassan Afeef, MP Ismail Shihab, MP Mohamed Aslam and Shadow Minister Shehenaz Abdulla were reportedly taken hostage and beaten up by Golhaa Force, one of the security agencies. They were staging a peaceful protest in Male' calling for the release of the reformists arrested in Addu Atol.<sup>7</sup>

In February 2007, Nazeeha Ahmed (Nazee), a prominent opposition figure, was arrested and sent to Dhoonidhoo detention centre for parking her motorbike in a prohibited zone near Republic Square.<sup>8</sup>

In February 2007, MDP members who had initially received the consent of the police to protest against President Gayoom's visit were subsequently violently dispersed in Addu Atol. Three activists were reportedly hospitalised, one with a fractured skull.<sup>9</sup>

On 25 April 2007, Shehenaz Abdullah (Shehey), former Shadow Education Minister, was sentenced to four months in prison for unlawful assembly in relation to the MDP's 10 November 2006 demonstrations. The sentence was passed without a lawyer present and she was denied an opportunity to address the court.<sup>10</sup>

There were limited releases of political prisoners in 2007. On 3 May 2007, Ahmed Abbas, founding member of the Maldivian Democratic Party, was released from Maafushi prison after serving six months for allegedly inciting the public to violence against the Star Force, an elite unit of Maldives Police Service.<sup>11</sup>

On 9 April 2007, Imran Zahir (Bakuree), youth activist for the Maldivian Democratic Party, was arrested by police hours after participating in a protest outside the Majlis. No explanation was given for his arrest.<sup>12</sup>

In February 2007, the Human Rights Commission

of the Maldives asked the police to respect the right to peaceful assembly granted under both the Maldivian Constitution as well as international human rights treaties signed by the government.<sup>13</sup> There was no change in police policy.

On 15 April 2007, MDP Chairperson Mohamed Nasheed (Anni), Malé Member for Special Majlis Mohamed Nasheed (Colonel) and the Defense Minister of MDP Shadow Cabinet Ameen Faisal were arrested during a gathering near the New Cemetery. Anni reportedly sustained serious injuries during his arrest.<sup>14</sup>

On 3 May 2007, Aishath Aniya was arrested by police in connection with an article she wrote in *Minivan Daily* criticising the wearing of the veil.<sup>15</sup>

### III. Human rights violations by the security forces

The security forces were responsible for human rights violations including violations of the right to life, torture and other inhuman and degrading treatment.

Maldives acceded to the Convention against Torture as well as its Optional Protocol. Yet, there is no clear policy statement on torture.<sup>16</sup> Reports of torture and ill-treatment continued.

On 15 April 2007, Hussein Salah (27) was found dead after his arrest by police on 9 April 2007 on drug charges at Hithadhoo in Addu Atoll. Police claimed that he was released on the evening of 13 April 2007. However, photos taken of Salah and posted on the internet clearly indicate ill treatment which included bruises and swollen face. This contradicts reports by the police and state media that he had "no visible serious injuries."<sup>17</sup>

On 28 and 29 March 2007, the police used iron finger rings 'knuckle dusters' against demonstrators including women and children in Kibidhoo and Ihavandhoo. This was confirmed by the Maldives Human Rights Commission in a report into police handling of the demonstrations.

The report revealed that “police did this intentionally”.<sup>18</sup>

Victims were denied access to justice. On 1 February 2007, Male’ Criminal Court acquitted three police officers accused of torturing Lissan Faiz while being detained on drug offences in 2005 due to lack of evidence.<sup>19</sup>

#### **IV. Judiciary and administration of Justice**

The Executive continued to oversee judicial decisions, undermining judiciary’s independence. President Gayoom continued to be the judge and jury and final arbiter of appeals. The courts system remained rudimentary with no supreme court. Trials are unfair and people in detention have no rights. Defence lawyers are sometimes not allowed to cross-examine witnesses.<sup>20</sup>

In February 2007, Leandro Despouy, United Nation Special Rapporteur on the independence of judges and lawyers, visited the Maldives following an official invitation pursuant to the ‘roadmap to reform’. As expected, the Special Rapporteur noted several flawed conventions that he believed were in urgent need of reform. These included a serious lack of trained judges and lawyers, detainees being tried without the assistance of a lawyer and preventative detention which was a rule rather than the exception.<sup>21</sup>

Yet, the Judiciary did demonstrate some signs of independence. In October 2007, the Civil Court overturned a government dismissal and ordered the Customs department to reinstate a man apparently sacked for insulting the President. The ruling meant the Government can no longer dismiss civil servants for their political views.<sup>22</sup>

In line with the Special Rapporteur Leandro Despouy’s recommendations, on 11 July 2007, the government appointed two women judges identified as Shujoon Mohamed and Huzeyfa Mohamed for the first time in its Courts.<sup>23</sup> According to the majority of Islamic scholars, women cannot hold the position of judges.<sup>24</sup>

#### **V. Effectiveness of National Human Rights Institutions**

The Human Rights Commission of the Maldives (HRCM) was set up on 10 December 2003. On 27 November 2006, the HRCM was formally constituted, as an “independent lawful entity with a separate seal, possessing power to sue and be sued and to make undertakings in its own capacity”, under the Human Rights Commission Act. This Act was approved by the Parliament and ratified by the President on the 17 August 2006.<sup>25</sup>

The new HRCM is composed of five members. They are appointed by the President on the advice of the People’s Majlis. However, the new Commission did not satisfy the requirements of the Paris Principles because only Muslims are qualified to serve as commissioners.<sup>26</sup>

The new law provides the power to inquire into cases that occurred after the enactment of the law, and cases that occurred prior to the enactment of the law but not before 1 January 2000. The Commission was also vested with the power to summon witnesses and persons related to complaints filed and obtain their statements; instruct persons being questioned in an ongoing inquiry not to leave Maldives except upon its permission, among others.<sup>27</sup>

As on 21 December 2006, the new HRC received 161 cases, 59 of which were closed. While 40 cases were filed and 13 completed since it formally began on 27 November 2006.<sup>28</sup>

The new Commission is empowered to investigate any government body accused of human rights violations and to publish recommendations for the reform of the authority. However, the new Commission has so far been ineffective. According to Ahmed Saleem, President of the Commission, government institutions refused to consider the Commission’s reports and recommendations. In June 2007, the police rejected a Commission report which found officers had intentionally used violence against women and children to disperse a crowd on Kibidhoo Island in March 2007.<sup>29</sup>

## VI. Repression on Human Rights Defenders

There was no report of repression of human rights defenders in 2007.

## VII. Freedom of the press

There were 6 daily newspapers, 15 magazines and over 70 other publications registered in the Maldives. Out of this altogether 25 registered publications are in regular circulation including 6 daily newspapers publishing articles both in Dhivehi and English.<sup>30</sup>

In 2007, the Ministry of Information formulated a set of six different bills relating to the media. These included Right to Freedom of Information; Freedom of the Press; Maldives Media Council; Broadcasting; Registration of Publications and Cable TV Services in the Maldives.<sup>31</sup>

However, in November 2007, the Freedom of Information Bill was rejected by a single vote in the Parliament. The Freedom of Information Bill was part of a package of reform legislation tabled by the Information Minister Mohamed Nasheed in February 2006.<sup>32</sup>

The draft Bill on Freedom of the Press does not conform to international standards. Although the Draft Bill states that administrative censorship shall be prohibited, the Bill fails to provide sufficient positive support and protection for the right to freedom of expression. The Draft Bill has several provisions which will seriously undermine press freedom. There are many restrictions proposed under the Bill which negate the few protective measures it introduces.

According to ARTICLE 19, the Bill proposes the creation of a number of new ‘media crimes’ and a long list of ‘banned matter’. For instance, Article 11 of the Bill would make it a crime to publish anything that can be interpreted as an “act against the State”; or anything that is “deemed to be” a secret State document. Under Article 10, the media would be barred from publishing anything that would “serve to detract from the Islamic

character, or social standards of the Maldives”; information on personal finances or debt; material that “might detract” from the “mental well-being and personality traits” of children; and “material promoting negative visions of women and children”. Article 12 gives the government the power to confiscate a newspaper that publishes anything that contravenes the Law. Article 4 of the Bill places various matters outside the scope of ‘freedom of the press’ altogether, prohibiting the publication of anything that is inconsistent with “basic tenets of Islam”; anything that would threaten the sovereignty of the nation; and anything that would impinge on the maintenance of “public peace”.<sup>33</sup>

These restrictions all use terms that are excessively vague, undefined and open to wide interpretation. Therefore it can be easily abused for political or other ends.

Journalists continued to be arrested, summoned without justification, harassed or expelled in the Maldives. The South Asia Press Commission (SAPC) in its 2006 Annual Report described Maldives as a “journalists’ prison”.

On 1 January 2007, *Minivan* Reporter Fahala Saeed was seriously injured after being hit on the side of his face with a baton by a police guard during the unrest at Maafushi jail.<sup>34</sup>

In January 2007, Mohamed Naseer (Alif Alif Maalhos), freelance contributor to *Haama*, received death threats for expressing his view on sexual discrimination in Maldives and Islam which was published on 25 January 2007.<sup>35</sup>

On 19 January 2007, Phillip Wellman, journalist for the *Minivan News*, was reportedly expelled for two years from the Maldives. This was his second expulsion. He was expelled from the country on 3 November 2006 along with a freelance photographer.<sup>36</sup>

On 15 April 2007, Ibrahim Mohamed, 19, of *Miadhu Daily*, was detained by police while he tried to take photographs of Mohamed Nasheed’s (Anni) arrest and beating by police during protests over the death of Hussein Salah.<sup>37</sup>

On 28 April 2007, Adam Migdaad, Media Coordinator of Maldivian National Congress (MNC) was arrested by police without charges while he was covering the funeral of the Hussein Salah at the New Cemetery.<sup>38</sup>

On 1 June 2007, Ahmed Rifah of *Minivan Daily* was reportedly arrested while taking photos and reporting on an unlawful prayer meeting at Masjid-al-adil on Majedhee Magu.<sup>39</sup>

In February 2007, the police filed a case against Aishath Velezini, editor of *Adduvas Magazine* and reporter Mohamed Waheed for calling Maldives “a police state” in an article in 2006.<sup>40</sup>

The ‘disobedience to order’ charges against *Minivan Daily’s* Editor Aminath Najeeb<sup>41</sup> and Deputy-Editor Nazim Sattar were dropped in 2007.<sup>42</sup> On 4 May 2007, Ahmed Abbas, prominent opposition activist and cartoonist, was released after serving more than six months in jail for an article he wrote which the government deemed illegal.<sup>43</sup>

The Ministry of Information and Arts failed to grant permits to private broadcasters on the ground that there is no law to regulate the activity in the Maldives. The Ministry retracted its promise to grant permits to private broadcasters at the end of October 2006. Several parties have reportedly invested millions in broadcasting technology. More than 30 parties reportedly applied for broadcasting licenses before October 2006.<sup>44</sup>

## VIII. Violations of the prisoners’ rights

Prison conditions remained deplorable in the Maldives. There was chronic lack of rehabilitation services for drug offenders at Maafushi prison. The majority of the inmates of Maafushi Jail are drug addicts.

On 13 June 2007, 450 inmates of Maafushi prison went on a hunger strike over deplorable conditions in the jail and the treatment of drug addicts. The strike begun after one prisoner identified as Muslih Abbas allegedly died after swallowing a large number of pharmaceutical

tablets<sup>45</sup> and six more were hospitalised following a mass jailbreak on the night of 12 June 2007.<sup>46</sup>

The strike exposed the absolute lack of rehabilitation for drug addicts in the Maafushi prison despite government promises dating back to 2003.<sup>47</sup> On 27 June 2007, the President stated in an address to the nation that a rehabilitation programme would begin promptly for drug addicts in the jail.<sup>48</sup>

Prisons were overcrowded. Due to overcrowding, long-term prisoners were housed in temporary cells. In August 2007, the HRCM following an inspection of the Male’ remand centre found that more than 29 long-term prisoners were held in overcrowded cells at Male’ remand centre intended for temporary prisoners. This includes sentences ranging from six months to 25 years.<sup>49</sup>

The Maldivian Constitution provides that citizens are “entitled to the equal protection of the law, and no act detrimental to the life, liberty, body, name, reputation of a person shall be committed except as provided by law.” However, lack of an independent judiciary and detailed arrest and detention procedures allowed the police impunity and abuse of persons in custody.

There were also reports of torture of prisoners in the Maldives. In January 2007, the *Dhivehi Observer* website showed a number of handcuffed, badly beaten and bruised prisoners. According to the Maldivian Detainee Network (MDN), one Ahmed Shabeer lost all senses from the waist down, Hassan Manik was bleeding heavily from his ears and Mohamed Ibrahim had badly cut wrists after being handcuffed.<sup>50</sup>

In February 2007, six men from the island of Dhidhoo were injured after being beaten by riot police in detention. All were issued with certificates by the hospital verifying their bruises and injuries were the result of physical beatings.<sup>51</sup>

## IX. Violations of the rights of the child

The rights of child continued to be violated in the Maldives.

Sexual abuse against the children is widespread. According to Maldives Police Services (MPS), 22 cases of sexual assault on minors were filed during the Ramazan period alone in 2007.<sup>52</sup> On 31 March 2007, a 14-year-old girl was sexually assaulted by two men on Velidhoo Island in Noonu Atoll.<sup>53</sup>

In May 2007, a teacher from Hinnavaru Island in Lhaviyani Atoll was arrested for sexually assaulting a 9-year-old girl in his classroom. The teacher allegedly kept her alone in the classroom after school, and assaulted her.<sup>54</sup>

There were also allegations of assault against the Imam of Goidhoo Island. The Imam identified as Ali Rasheed allegedly used Koran classes to sexually assault girls aged as young as six years. Five different girls aged between 11 and 19 had accused the Imam of assaulting them in incidents dating back to 1999.<sup>55</sup>

On 31 January 2007, a 12-year-old girl was allegedly gang raped by four men after breaking into her home at Kurendhoo in Lhaviyani Atoll. However, the four accused were cleared of rape and the judge sentenced them to eight months exile for sex outside marriage in July 2007. The Judge noted “the girl had reached puberty” and “she was a willing partner,” because she had not screamed, struggled or told her sister-in-law or step mother about the event.

The sentence apparently contradicts a government commitment in May 2007 that child sex offenders would be imprisoned rather than banished.<sup>56</sup> The case underlines the urgent need to establish an age of consent and the Judges ruling defies all acceptable standards. .

On 6 February 2007, 16-year-old Hussein Ali, who had a speech disability from birth, was allegedly severely beaten by police during President Gayoom’s visit to Addu Atoll.<sup>57</sup>

Juvenile delinquency increased in the Maldives. According to statistics of Maldives Police Service, juveniles arrested for violent crimes increased from 23 in 2000 to 117 in 2006, reflecting more than five-fold increase in 6 years.<sup>58</sup>

## **X. Violence against women**

The Maldives signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2003 and the Optional Protocol in March 2006.

The Government had promised to increase the role of women in politics as part of the reform agenda. The amended constitution seeks to scrap the bar on women becoming head of state. The Government had already appointed first female judges and Azima Shukoor was made the country’s first female Attorney General.<sup>59</sup>

Yet, men dominate the decision making in the Maldives. Women were under-represented in the Parliament. Presently, only two women hold elected seats out of the six seats for women in the Maldives parliament. Four others were appointed by the President.<sup>60</sup> In November 2007, Attorney General Azima Shukoor’s proposal to create ten additional seats for women in the parliament was defeated in the Special Majlis.<sup>61</sup>

Men dominate the executive. No woman has been appointed as Atoll Chief. As in January 2007, there were 4 women ministers as against 33 men, 1 woman State Minister against 11 men; 9 women Deputy Minister against 37 men; 10 women Executive Director against 49 men; 2 women Assistant Executive Director against 14 men; 17 women Director General against 68 men; 1 woman Deputy Director General against 27 men 12 women Assistant Director General against 75 men and 67 women Director against 227 men.<sup>62</sup>

Violence against women including sexual violence such as rape, assault, domestic violence etc is high. According to a study by the Gender Ministry on Women’s Health and Life Experiences, 1 in 3 Maldivian women aged 15-49, equivalent to 27 000, experienced some form of physical or sexual violence at least once in their lives. 1 in 5 women aged 15-49 experienced some sort of physical or sexual violence by a partner. 1 in 9 reported experiencing severe violence like being punched, kicked, choked, and burnt or having a weapon used against them. 1

in 8 women experienced childhood sexual abuse under the age of 15. 6.3% of women aged 15 – 49 who have ever been pregnant report being physically or sexually abused during pregnancy. Of those, 41% reported being punched or kicked in the stomach.<sup>63</sup> As will be seen below, these crimes are chronically under-reported.

The Police have recorded a total of 2,083 cases of sexual offences from 2000 to 2006. This included 247 in 2000, 334 in 2001, 360 in 2002, 338 in 2003, 265 in 2004, 235 in 2005 and 304 in 2006.<sup>64</sup>

The Police were themselves accused of sexual abuse. On 29 March 2007, Rahma Abdulla, resident of Kibidhoo, alleged that police grabbed her breast, shoved her around and verbally abused her at Kibidhoo in Kolumadulu Atoll. The Police also allegedly molested many women while trying to disperse the crowd.<sup>65</sup>

Currently, there is no legislation that deals specifically with violence against women including domestic violence and workplace harassment in the Maldives. There is also no specific definition of rape. The Maldivian legal system is inadequate in providing protection to women victims of violence. Under Maldivian law rape is particularly difficult to prove. A man can only be convicted of rape if there are two male witnesses or four female witnesses willing to testify or if the accused confesses in court. This clearly contravenes international standards. Even if he confesses in police custody he can retract his statement in court and cannot be charged. Forensic evidence is not used because of a lack of resources and is not admissible as evidence.<sup>66</sup>

Maldivian law affords no confidentiality to rape victims in the media. This discourages many victims of sexual violence from reporting the crimes. Victims who choose to report sexual crimes are currently named on the Attorney General's website and in newspapers. They are offered no anonymity, and are likely to suffer social ostracism.<sup>67</sup>

Court judgments were atrociously lenient and did not commensurate with the gravity and barbarity of the crimes committed against women. The

punishment for rape is banishment in an island. In November 2007, the Criminal Court banished two men identified as Sobah and Ismail Shafeeq for one year for sexually assaulting a young woman and filmed the attack in Baa Atoll in 2003. Earlier in July 2007, four men from Lhaviyani Atoll Kurendhoo who gang raped a twelve year old girl were given six month's banishment! In both the cases, there was no imprisonment of the rapists despite the Justice Ministry's guidelines to imprison sex offenders.<sup>68</sup>

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# NEPAL

## I. Ranking In Human Rights Violators Index: 6<sup>th</sup>

While Nepal's human rights performance improved relative to the conflict and the period of Royal rule in 2007 the prospects for a long term improvement diminished as public security continued to wither on the back of overwhelming impunity. The biggest concern was not so much state violation but rather the absence of state; an absence that in 2007 facilitated political violence by the Communist Party of Nepal (Maoist) and the proliferation of armed groups and violence in the Terai.

The morale of the police was very low. The security sector of Nepal was and is in desperate need of reform and resources. Key to reform is the issue of the culture of impunity in the security forces which has discredited the institutions and made the task of providing public security increasingly untenable. But Maoist violence and the violence in the Terai must be understood in the context of the relationship between state impunity and the failure of public security.

Depressingly the one issue that binds all the major political groupings in Nepal is a refusal to address the obstacles to institutional reform created by impunity. Both Nepal's Army and the PLA and the Maoist leadership have obvious reasons to block change. But equally the other political parties, an important section of the international community, and indeed most of civil society, have repeatedly placed short term imperative before tackling impunity.

While both the Nepali Congress (NC) and the United Marxist Leninist (UML) repeatedly demanded that the Young Communist League (YCL) be dissolved and their abuses cease, neither party has laid much emphasis on the fact

that the YCL is breaking the law. Nor have they have the stressed the failure of the police and state to respond.

Impunity did not start with the Royal takeover. Both the UML and the NC must accept a large measure of responsibility for the failure to tackle impunity and the current security vacuum.

In 1992, then Prime Minister, GP Koirala buried the report of the Mallik Commission of Inquiry into the human rights violations committed during the first People's Movement (1990). The report was never published and nor was any action ever taken against those who perpetrated human rights violations.

Many of Nepal's nominally 'democratic' politicians have themselves overseen large scale violations of human rights. The majority of the Army's violations were committed under the nominally democratic Premiership of Nepali Congress leader Sher Bahadur Deuba.<sup>1</sup>

After the People's Movement in April 2006, power was restored to the democratic parties. But again they squandered another opportunity to tackle impunity. Prime Minister Koirala limited the terms of the investigation into the Royal takeover (the Rayamahji Commission). The report was not made public and Koirala's Cabinet found no-one responsible. Maoist participation in government can have only increased the momentum against tackling impunity. Koirala appointed himself Defence Minister and he retained General Kutuwal as Chief of the Army Staff (COAS) despite Kutawal's direct and leading role in the Royal takeover and his public writings against human rights and democracy.<sup>2</sup>

Nepal's peace is not a given. Nepal lives under the shadow of a highly politicised anti-democratic

Army, a highly politicised the PLA, the YCL and a host of other armed criminal gangs who are not accountable to anyone except themselves.<sup>3</sup> This lack of impunity will further widen the security vacuum. Ever more armed political groups and armed criminal gangs are likely to emerge adding ever greater destabilising factors to an already troubled environment.

The UN Mission to Nepal (UNMIN) and Office of the United Nations High Commissioner for Refugees (OHCHR) provided an important international presence outside Kathmandu. Apart from UNMIN's key role in the peace process both institutions have played key confidence building roles in the regions. Their actions have prevented human rights violations deteriorating into wider conflict and destabilising the peace process.

Given the very unstable situation it is unfortunate that Kathmandu's political classes, including representatives of civil society and notable members of the media in Nepal however have appeared to have failed to understand or overlook the positive impact of these international agencies in favour of criticising UNMIN for what often appear to be little more than often ill-informed and politically motivated purposes.

## II. Political freedom

Relative to the period of conflict and the Royal takeover, political freedom improved in 2007. However the increasingly evident security vacuum (as discussed above) was a source of instability and posed major threats for the future of political freedoms in Nepal.

The fragile nature of the political situation was illustrated by events in the Terai.

According to the OHCHR the first major unrest in the Terai in 2007 began on 16 January, when Madheshi protestors, including the chairman of the Madheshi People's Rights Forum (MPRF), were arrested in Kathmandu without legal basis. The MPRF responded by calling a Terai-wide strike (bandh).<sup>4</sup> On 19 January, a Maoist cadre killed a protestor in Lahan, Siraha District. Demonstrations quickly spread in the Eastern

and Central regions. OHCHR reported:

*'widespread destruction of public and private property. (...)The Nepal police and Armed Police Force responded to the protests with sometimes excessive and lethal force'*

*OHCHR documented at least 24 deaths in January and February, at least 18 of which were the result of actions by the NP[Nepal Police] or APF[Armed Police Force]. Many died due to excessive force including use of live bullets and baton charges against demonstrators'<sup>5</sup>.*

On 21 March, 26 persons linked to the Maoists and another individual were killed when the MRPF and Maoists organized rallies at the same site in Gaur, Rautahat District<sup>6</sup>.

Between 16 and 21 September violence broke out in Kapilbastu following the murder of Mohit Khan a local landowner, former congress member and former member of the local vigilante group. During the violence fourteen people were killed and at least nine were injured. Several thousand people were displaced as a result, and there was widespread looting and destruction of property.

As OHCHR stated 'Local government authorities and the police failed to prevent or intervene in a timely manner to stop the violence in Kapilbastu and did not reach some of the affected villages for several days. Retaliatory attacks continued in what was essentially a political and security vacuum, particularly in rural areas'<sup>7</sup>.

The government's response to all of these events was predictable and they followed the patterns of all other government investigations – see the section on impunity. For example, on 20 September it ordered the establishment of a judicial commission into the events in Kapilbastu. The Commission focused on loss of property and in the words of OHCHR: 'there has been no serious attempt to investigate the killings, even though the identity of those responsible is allegedly known in many cases'<sup>8</sup>.

### III. Human rights violations in Nepal

#### a. Royal Nepal Army

In Nepal, the Royal Nepal Army remained confined in the barracks and in 2007 there were, unsurprisingly, few violations reported. However, the Nepal Army's refusal to tackle violations of the past was ongoing. The institution remained a serious threat to democracy, human rights and the rule of law.

There was little civilian control over the Army. On paper the 2006 Army Act does indeed place the Army under civilian control, but the lack of any meaningful structure, institution, process or functionality suggests otherwise. In 2007, the Nepal Army continued to run itself and was answerable only to itself. The only civil-military relations were infrequent meetings between the COAS and Prime Minister Koirala.

The Army and particularly the Chief of the Army Staff (COAS) has made repeated public statements committing the Army to democracy, human rights and rule of law. But it failed to address well documented pattern of widespread and systematic violations of human rights violations by the army that OHCHR stated amount to war crimes committed with complete impunity.<sup>9</sup>

The emblem of Army impunity is the torture, disappearance and apparent execution of a 15-year-old girl, Maina Sunawar, while in RNA custody in February 2004. A military tribunal found that the responsible officers were guilty merely of negligence in the way Maina Sunawar's death was reported and failed to assign responsibility for the torture that is thought to have led to her death. The internal Army investigation was later leaked. It confirmed the allegations and revealed a deliberate cover up by the concerned officers. The Court Martial was revealed to be a deliberate cover up. The case was raised with the Army by the High Commissioner for Human Rights and various Ministers from European Countries. The COAS has made repeated commitments to act but the lack of progress is

increasingly suggestive of complicity.<sup>10</sup>

#### b. The Maoists

The CPN(M) often cites the absence of police as a justification for Maoist 'law enforcement' activities. But law enforcement cannot be cited as a justification for human rights abuses under any circumstances – which the Maoists committed in great numbers in 2007.

During the conflict the Maoists committed systematic violations of International Humanitarian Law. The emblem of failure to address Maoist abuse is underlined by the failure to prosecute those responsible for the bus bombing in Madi, Chitwan District, in June 2005 in which the CPN-M acknowledged responsibility for killing 36 persons and wounding 72 others.<sup>11</sup>

In the period of transition the CPN (M) leader Prachanda has repeatedly claimed that YCL violence as well as other affiliates is not policy. The Party has repeatedly committed to addressing the issue. The Maoists failed to show any desire to see criminal proceedings applied to YCL leadership.<sup>12</sup>

#### c. Violations of the right to life

##### State agencies:

In September of 2006 OHCHR Nepal published a detailed report on the April Protest Movement and evaluated the responses by the authorities in terms of respect for human rights. The analysis and conclusions were very clear. OHCHR found all three branches of the security forces to be responsible for excessive use of force, including the use of force resulting in the loss of life.

The report warned that 'the failure to punish those responsible for the most egregious violations will send a message that excessive force is tolerated'. The report recommended that security reform was urgent and that tackling impunity underpinned successful reform. No action or indeed recognition of the report was taken. Failure to act would simply result in further deaths from excessive force.

According to OHCHR-Nepal, at least 130 civilians were killed from January to October 2007 in Nepal, particularly in Central and Eastern regions of the Terai. Of them, 29 persons were killed by the police who used excessive force upon the protestors.<sup>13</sup> INSEC stated that 33 persons were killed by the security forces in 2007.

In this section ACHR considers violations committed by the state.

- On 1 February 2007, the police killed three protestors belonging to Madhesi People's Rights Forum (MPRF) at Inaruwa, the district headquarters of Sunsari;<sup>14</sup>
- On 4 February 2007, the police killed four persons including Asik Ali Mikrani of Malangawa-4, Ramnarayan Shah of Salempur VDC-3, Dinesh Raya, a resident of Gamhariya VDC at Malangwa in Sarlahi district;<sup>15</sup>
- On 7 February 2007, at least two protestors were killed when police opened fire on protestors belonging to MPRF near the Singhiya stream bridge in Biratnagar;<sup>16</sup> and
- On 28 April 2007, an activist of the Chure-Bhawar Ekta Samaj identified as Mangal Bahadur Gurbacharya of Dhunge Khola-1 was killed when police opened fire at protestors at Milan Chowk in Sarlahi district.<sup>17</sup>

### The Maoists:

The Maoist cadres were involved in a number of killings in 2007:

- On 27 February 2007, Maoists tortured to death Khotahawa Kori (18) at Udayapur VDC-6 of Banke district;<sup>18</sup>
- In October 2007, journalist Birendra Shah was murdered by the Maoist cadres after abduction;<sup>19</sup>
- On 12 November 2007, the dead body of Nepali Congress activist identified as Wakil Musalman, who was abducted by the alleged

Maoists from Kapilvastu district, was found at Ward No. 6 of Lumbini Adarsha VDC.<sup>20</sup>

## d. Involuntary disappearances

### State agencies:

Between May 2000 and January 2007 the National Human Rights Commission recorded 2028 cases of disappearance. The vast majority of these cases were perpetrated by the Nepal Army.

The Comprehensive Peace Agreement of 21 November 2006 provided that both the State and the Maoists would make public the "real name, caste and address of the people made "disappeared" or killed during the conflict" within 60 days. Both the Maoists and the government failed to do so.

The government sought to undermine the number of victims. On 15 February 2007, International Committee of the Red Cross published a list of 800 persons who were still missing.<sup>21</sup> However, on 26 July 2007, Minister for Peace and Reconstruction, Ram Chandra Poudel stated that the whereabouts of missing persons could not be publicised because of "lack of factual records" with the government.<sup>22</sup>

Earlier on 1 June 2007, the Supreme Court ordered the government to enact an anti-disappearance law in conformity with the International Convention for the Protection of all Persons from Enforced Disappearance and to establish a high level commission of inquiry on disappearances which would meet international standards.<sup>23</sup> In its judgement, the Supreme Court held that the Commission of Inquiry Act, 1969 of Nepal did not meet international standards and therefore ineffective to deal with issues related to disappearance.

The government failed to implement the Supreme Court judgement. On 21 June 2007, government set up a three-member High Level Probe Commission on Disappeared Persons (HLPCDP) headed by former Supreme Court judge, Justice Narendra Bahadur Neupane under the Commission of Inquiry Act of 1969 to

investigate all cases of disappearance between 13 February 1996 and 22 November 2006.<sup>24</sup>

On 5 July 2007, OHCHR-Nepal also called upon the government of Nepal to: “fully implement the Supreme Court’s decision, and ensure that any commission of inquiry which is established to investigate disappearances meets international human rights standards. Such standards must be reflected in the composition (including those carrying out investigations), terms of reference and procedures of a commission of inquiry so that it is credible, competent, impartial and independent, and so that it respects the rights of both victims and alleged perpetrators”.<sup>25</sup>

Those who were indicted for enforced disappearances enjoyed impunity. On 8 April 2007, a task force headed by Appellate Court judge Lokendra Mallik submitted its final report to the Supreme Court pertaining to the investigation into three cases of enforced disappearances.

The task force indicted several police and army officials including chief of the Central Division barracks of the Nepal Army in Hetauda, Lt Colonel Krishna Murari Neupane, late captain Dinesh Thapa, Deputy Superintendent of Police Hanuman Shah and Inspector Liladhar Paudel in the custodial killing of schoolteacher Chakra Bahadur Katuwal; Inspector Kush Bikram Rana for disappearing advocate Rajendra Dhakal; Sub Inspectors Bijaya Pratap Shah and Durga Lal Chaudhary for disappearing student leaders Bipin Bhandari and Dil Bahadur Rai. The task force also indicted former Assistant Chief District Officer of Okhaldhunga, Purusottam Adhikary, police inspectors Durga Lal Chaudhary, Kamal Prasad Giri and Chakra Basnet along with 17 others in several other cases of enforced disappearances.<sup>26</sup> Based on the findings of the Mallik task force, the Supreme Court on 1 June 2007 directed the government to punish the police and army officials who were involved in the custodial killing of Katuwal and disappearances of Bhandari, Rai and Dhakal and to pay compensations to their families. In the same judgement, the apex court also awarded compensation to 80 other families whose

members had disappeared during the so-called “Peoples’ War” of the Maoists.<sup>27</sup>

In November 2007, the government announced that it would soon bring a new law to deal with disappearances.<sup>28</sup> At the end of the year, the law was not adopted.

### The Maoists:

Abduction by the Maoists continued throughout 2007. Those abducted by the Maoists included:

- former chairman of Ruchan VDC, Humanath Pandey and Secretary Chiranjibi Acharya in Nawalparasi district on 4 March 2007;<sup>29</sup>
- Loknath Pokharel, Secretary of Aapchaur VDC from Gulma on 17 March 2007;<sup>30</sup>
- Suresh Malla, proprietor of Malla Press who was abducted by YCL cadres from Chhauni in Kathmandu on 18 March 2007;<sup>31</sup>
- Raja Ram Pathak of Nuwakot who was abducted by the Maoists on 13 April 2007;<sup>32</sup>
- Prem Prasad Bhattarai who was abducted and tortured by the YCL cadres on the charges of being a “royalist” at Tansen in Palpa district on 16 June 2007;<sup>33</sup>
- Hari Prasad Sharma, an activist of Nepali Congress who was abducted by YCL cadres from his residence at Bijeshwari VDC-3 in Rukum district on 23 October 2007;<sup>34</sup>
- folk singer Ram Prasad Khanal who was abducted by YCL cadres from Bhairahawa of Rupandehi district on 8 September 2007;<sup>35</sup>
- Suresh Khadka, who was abducted by YCL cadres from Mahankal area of Kathmandu on 13 November 2007;<sup>36</sup> and
- six persons including doctors and directors of Biratnagar-based Nobel Medical College who were abducted and tortured at an unidentified location near Kamidanda in

Kavre district by the YCL cadres on 18 November 2007.<sup>37</sup>

## e. Torture

### State agencies:

In 2005 the UN Special Rapporteur on Torture visited Nepal. He concluded that the systematic torture of detainees is widespread in Nepal.<sup>38</sup> In the absence of any visible political will or indeed reform, there is nothing to suggest that anything has changed.

In Nepal, confession forms the basis of criminal investigation and a common method of extracting confession - torture - remains an institutional practice. Advocacy Forum, a prominent advocacy NGO visits large numbers of detention centres. Their detailed records were alarming. They found that 30% of children detained by the police were subjected to torture. Between May 2006 and April 2007 out of 3,908 detainees interviewed 1,595 (55.1%) were detained illegally.

Some of the cases of torture perpetrated by the police and army as reported in the *Nepal: Human Rights Yearbook 2008* are given below:

On 15 January 2007, Hira Rajbanshi and Bhup Narayan Rajbanshi of Khajurgachhi VDC-3 and Druba Neupane of Damak Mmunicipality-3 were detained by inspector Santosh Lama of Gaurigunj area Office following a dispute with the police regarding setting up a fair. They were beaten by inspector Tamang and released next day when the locals protested.

On 21 March 2007, security guard at Mahendranagar municipality, Birendra Singh Dhami, 22, of Bankhet, Mahendranagar municipality was subjected to torture at District Police Office for alleged theft in the house of policeman Karna Bahadur Chand at Haldukhal, Mahendranagar Municipality-6.

On 26 March 2007, Dil Bahadur Suji (55), Pratap Singh (45), Jagat Singh and Tikaram Singh of Dally VDC-4 and Jagat Bahadur Shani of Chamunda VDC-4 were beaten by army

personnel of Bhawani box Battalion. The army personnel were allegedly drunk. The victims underwent treatment at local Primary Health Care Centre, Dallu. Chief of the Battalion informed that departmental action was taken against the accused.

On 4 April 2007, V Krishna Kumar Thokar of Dandakharka VDC-8 was beaten by ASI Amrit Bahadur Bhandari of Police Post in an inebriated condition. District Police Officer, Dolakha informed that ASI Bhandari was called back for departmental action. The victim was treated at local Chho Rolpa Clinic.

On 7 May 2008, a peon at the District Hospital, Moha Dutta Poudel (37) was arrested by the police on charges of killing a girl Jharana KC of Baglung municipality-11. The victim was tortured in the police custody by Police to extract a confession. He was released by the perpetrators on 8 May and was treated in the District Hospital.

On 29 June 2007, Raju Mandal (28) of Katahari VDC-9 was arrested by a plain clothed policeman, Shiva Adhikari from a tea shop near traffic Chowk, Biratnagar submetropolis-11. He was brought to Ward Police Office, Hatkhola and tortured with plastic pipes and boots. The victim sustained injuries at chest and knees were treated at Koshi zonal Hospital under the assistance 'Human Rights Project' of Nepal Bar Association.

On 29 June 2007, Dilman Rai (37) of Banku VDC-5 and Pawai Biyas Rai, a teacher at Hulu Lower Secondary School, were tortured by a group of policemen including ASI Rajendra Khadaka of Area Police Office, Sotang. The victims were arrested on charge of quarreling. Dilman was seriously injured and taken to the District headquarters for treatment. He was referred to Kathmandu after failing to receive treatment there.

On 10 July 2007, Gyanendra Khadka (24) of Bhojpur VDC-4, INSEC district representative and Vice-chairman of FNJ, Bhojpur chapter and Man Bahadur Khatri (30), teacher at Yoshodhara Secondary School of Bhojpur VDC-3 were beaten up by a group of 13 policemen of APF barrack.

The torturers were ASI Santosh Kirala and head constable Bhesh Bahadur Thapa who tortured under orders of SI Shiva Narayan Mahato. Both received injuries on the face and treated at local clinic. Khadka filed complaint at the DPO, DAO and NHRC on 12 July seeking action against the perpetrators. APF stated that an investigation team decided to halt the promotion of SI Mahato for three years, Yogya Basnet for two year, Bhesh Bahadur Thapa for three years and, to demote ASI Santosh Koirala to head constable.

On 21 August 2007, Dev Ram Luhar (21) of Sunsera VDC-4 was tortured by policeman Jay Bahadur Chand of Sunsera Police Post. The victim was arrested for alleged charge of manhandling of local woman. The victim was beaten on his feet by a bamboo stick, on his chest and others parts of the body by boots. The victim was seriously injured and was taken to Dharchula Hospital in India by policeman Sundar Singh Dhami on 28 August in the help of the villagers. The victim returned home on 2 September after treatment.

On 18 October, Radha Sarki of Waling Municipality-2, was arrested on charge of thievery and allegedly tortured in the custody for three days by ASI Hari Krishna Devkota of Area Police Office, Waling. The victim was hit by plastic pipe on her body including genitals.

On 12 December 2007, Milan Limbu, Sandip Poudel, Bishal BK, Pradeep Poudel, Ranjit Poudel, Kaji Bhujel and Surya Bahadur Basnet of Triyuga municipality were allegedly tortured by APF personnel. Milan Limbu sustained serious injuries in the beating and was treated at BP Koirala Institute of Health Sciences in Dharan. YCL and the locals shut transportation for four hours on 12 December saying those beaten were YCL cadres.

### The Maoists:

The Maoist cadres also tortured many victims. The victims of torture at the hands of the Maoists included:

- four members of a family - Hariram Chaudhary, Harsha Bahadur, Bechu and

their mother Batashiya who were beaten up by the Maoist cadres at Parroha-2 of Rupandehi district on charges of being supporters of Madheshi People's Rights Forum (MPRF) on 4 March 2007;<sup>39</sup>

- Sub-Inspector Krishna Khanal of the Crime Investigation Department who was beaten by the Maoists at Khusibu on the night of 19 March 2007;<sup>40</sup>
- Guru Raj Ghimire, former president of Nepal Students Union (NSU), who was tortured by the YCL cadres at Battispatali area in Kathmandu on the night of 12 June 2007;<sup>41</sup>
- two youths identified as Pradeep Puri (17) and Chandra Bahadur BC (15) who were tortured and tonsured by the Maoists on the charges of "attempted rape" at Harnawa village in Gulariya on 16 April 2007;<sup>42</sup>
- the administrative officer of Kailali district, Ganja Bahadur MC and his security guard Ganesh Dhami who were beaten up by the YCL cadres at the Kailali District Administration Office on 8 May 2007;<sup>43</sup>
- Mahesh Prasad Yadav, medical officer at Primary Health Center at Kadarbona in Saptari district, who was beaten up by the YCL cadres on 17 May 2007;<sup>44</sup>
- Ishwori Prasad Bhushal, headmaster of Gorlyangdham Lower Secondary School of Hoshrangdi VDC in Gulmi district who was beaten up by the YCL cadres on the night of 5 June 2007;<sup>45</sup>
- Gulmi district committee member of the CPN-UML, Tikaram Dhakal who was beaten up by YCL cadres on 6 June 2007;<sup>46</sup>
- Bhol Sah of Triyuga municipality-2 in Udayapur district who was tied up and beaten by YCL cadres on 10 September 2007 on the charges of selling marijuana; and
- Navin Sapkota, chairman of Nepal Students

Union (NSU) who was beaten up by YCL cadres at Purvanchal Engineering Campus in Dharan on the night of 8 December 2007.<sup>47</sup>

On 1 September 2007, the Maoist cadres reportedly assaulted a former Unified Marxist Leninist (UML) Member of Parliament, Dev Shankar Poudel and painted his face black during a UML programme at Sanghutar bazaar in Ramechhap district. Earlier on 31 July 2007, Maoists had beaten up Chitra Bahadur Karki, the district committee member of UML, when he was going to district headquarters Manthali.

The Maoists' forcible capture of private lands was emblematic of political violence promoted by the absence of the State and public security. In the Comprehensive Peace Accord, the Maoists promised to immediately return any lands they had seized from the public during the Peoples War. Instead, the Maoists continued to capture more lands with impunity:

On 13 May 2007, Maoist Chairman Prachanda stated that the Maoist Central Committee took a decision to return the seized lands to the actual owners.<sup>48</sup> Yet, on 17 May 2007, Minister for Information and Communication Krishna Bahadur Mahara and senior Maoist leader stated that they would not return land until the Constituent Assembly elections had taken place and a Land Reform Act passed.<sup>49</sup> There was little progress in return of land and further land was forcibly taken during 2007.

In April 2007, Maoist cadres reportedly forcibly captured land belonging to three locals identified as Dilu Kumari Tamrakar, Sarala Tamrakar and Anila Tamrakar of Barah Kshetra in Sunsari district.<sup>50</sup>

On 30 May 2007, hundreds of YCL cadres led by Maoists' nominated Member of Parliament Motidevi Chaudhary seized over 60 bighas of land in Baida of Dhadhabar VDC ward-9 in Bardiya district by planting their party flags on the plot of land which belonged to a retired doctor of the then Royal Nepal Army, Bal Bahadur Swar, and seven other locals.<sup>51</sup>

On 12 July 2007, the Maoists reportedly seized a piece of land belonging to the Chairman of Rastriya Janashakti Party (RJP) and former Prime Minister Surya Bahadur Thapa at Uttarpani in Chungbung in Dhankuta district.<sup>52</sup>

On 24 October 2007, Young Communist League (YCL) cadres seized lands belonging to four locals including Raj Lal Mali, Gona Lal Parmani and Awadh Lal Parmani at Kataiya VDC-4 of Saptari district.<sup>53</sup>

On 7 September 2007, the Maoist-affiliated All Nepal Peasants Association (Revolutionary) reportedly decided to resume the process of land confiscation from landlords to re-distribute to landless people.

## **f. Impunity**

Nepal drafted the Truth and Reconciliation Commission Bill with a mandate to investigate "incidents of gross violation of human rights and crimes against humanity during the course of armed conflict". The aim of the Bill was not to establish accountability but to provide further impunity to the perpetrators. It has been given powers, among others, to let off the perpetrator if the perpetrator offers a simple apology to the victim, and had the provision to recommend amnesty to the perpetrators for gross human rights violations and crimes against humanity. The Truth and Reconciliation Commission also lacked independence and impartiality as the commissioners will be selected by the government appointed three-member committee which could consist of political leaders.<sup>54</sup>

On 3 August 2007, the government tabled 1400-page report of the Justice Krishna Jung Rayamajhi Commission in the Parliament. The Rayamajhi Commission recommended action against 201 persons including the Chairman of the Council of Ministers (i.e. King Gyanendra) and 34 members of his Council of Ministers, five regional administrators, 13 zonal administrators, former Nepal Army chief Pyar Jung Thapa, National Investigation Department chief Devi Ram Sharma and Chief Election Commissioner Keshav Raj Rajbhandari for abuses and misuse of

power to suppress the Peoples' Movement. The Commission recommended enactment of new law to penalize some of the accused who enjoy immunity under the present laws.<sup>55</sup>

The only punitive measure taken was the enactment of the Constituent Assembly Members Election Act which barred individuals named as accused by the Rayamajhi Commission from contesting the Constituent Assembly elections. But that too was struck down by the Supreme Court on 27 September 2007 on the ground that the Constituent Assembly Members Election Act was against the Interim Constitution.<sup>56</sup>

#### **IV. Judiciary and administration of justice**

Although Nepal had a separate judiciary, the judiciary enjoyed limited autonomy from the Executive. On 18 November 2007, Chief Justice of Nepal, Kedar Prasad Giri stated that maintaining the independence of the court was a major challenge.<sup>57</sup>

The Interim Constitution of 2007 further weakened the independence of the judiciary.

Under Article 103 of the Interim Constitution, the Chief Justice is appointed by the Prime Minister on the recommendation of the Constitutional Council. But Article 149 provides that the Constitutional Council shall be composed of Prime Minister as Chairman, Chief Justice, Speaker of the legislature-Parliament and three ministers designated by the Prime Minister as Members. In case of vacancy in the post of the Chief Justice, the Minister for Justice shall replace him/her as Member. Hence, the appointment of the Chief Justice is a power of the Executive.

Further, the Supreme Court is accountable to the Prime Minister and the Parliament. Under Article 117, the Supreme Court is required to submit its annual report to the Prime Minister every year and the Prime Minister shall cause such annual reports to be laid before the Legislative-Parliament.

Article 106 of the Interim Constitution provides

the Prime Minister the authority to designate the Chief Justice or any other judge of the Supreme Court to do assignment "concerning a judicial inquiry or study and research in the field of justice or law or to a matter of national concern".

Government officials are contemptuous of the Supreme Court. On 27 November 2007, the Supreme Court for the seventh time directed the secretary at the Office of the Prime Minister and the Cabinet, secretary at the Ministry of Land Reform and the Director General of the Department of Land Reform to submit documents related to a land rights case pending in the court. The Land Reform Office had failed to send the documents related to the case filed by one Sabina Thapa despite sending six directives from the Supreme Court.<sup>58</sup>

The Maoists also obstructed the work of the court. On 4 November 2007, the Maoists abducted two district court employees identified as Sashi Ram Bista and Khadka Bahadur Khadka from Kholagaun area of Rukum district while they were on duty to implement a court verdict.<sup>59</sup>

Nepal also suffered judicial delay. As of 8 April 2007, more than 20,000 cases were pending at the Supreme Court.<sup>60</sup> 80 cases were pending in Baglung Appellate Court and 136 cases were pending at Baglung District Court as of 21 December 2007.<sup>61</sup>

#### **Maoists' "Peoples court"**

Section 10.1 of the CPA stated that "Both sides agree not to operate parallel or any form of structure in any areas of the state or government structure as per the letter of the decisions of November 8 and the spirit of the peace agreement." On 18 February 2007, Maoists chief Prachanda announced the dissolution of the "people's government" and "people's courts" of the Maoists at all levels.<sup>62</sup>

But on 4 September 2007, the Maoists decided to resume its "kangaroo courts" across the country. Dr Baburam Bhattarai justified the reactivation of the Peoples' Courts by stating, "As the common people have failed to receive justice from the

current state mechanism and action has not been taken against the corrupt and criminals”.<sup>63</sup> On 23 November 2007, NepalNews.com reported that the Maoists have restarted “hearing” cases through their “people’s court” in Biratnagar.<sup>64</sup>

## V. Effectiveness of National Human Rights Institutions

On 9 July 2006, members of the NHRC appointed by the King resigned *en masse*. Until the Parliamentary Special Hearing Committee approved the new members of NHRC on 12 September 2007 pursuant to the recommendations of the Constitutional Council on 30 August 2007<sup>65</sup>, the NHRC virtually did not exist. There was absolute protection gap in Nepal for more than a year.

As of November 2007, the NHRC had about 8,700 backlog cases.<sup>66</sup>

Further, the recommendations of the NHRC are not implemented by the government. Since the NHRC was established in 2000, it settled 1,350 cases and issued recommendations on 149 cases as of November 2007. But the government implemented 53 of these recommendations.<sup>67</sup>

On 4 November 2007, the NHRC submitted a Letter of Memorandum to Prime Minister Girija Pasad Koirala urging the government, among others, to cooperate with the NHRC by implementing the Commission’s recommendations and to provide the NHRC with adequate resources.<sup>68</sup>

## VI. Freedom of the press

Despite the end of the conflict, Nepal continued to be a very dangerous place for journalists. According to the Federation of Nepali Journalists, 1 journalist was killed, 73 were arrested, 148 journalists/ media houses were attacked, 4 journalists were abducted, 104 journalists faced threats/ harassment and 18 media vehicles were vandalized during January – November 2007.<sup>69</sup>

While no Maoist cadre or security personnel has been punished for their attacks on journalists

during the “People’s War”, on 4 May 2007 Government spokesman and Minister for Information and Communications, Krishna Bahadur Mahara reportedly “justified” the attacks on the journalists during the Maoists conflicts.<sup>70</sup>

### i. Violations against the media

#### a. Arrests

The Federation of Nepali Journalists estimated that a total of 73 journalists were arrested in Nepal during January – November 2007<sup>71</sup> in addition to a number of arrests during peaceful protests.

The journalists faced attacks and threats from the police while reporting or for writing against the administration/ police. The journalists who were attacked and threatened by the security forces included:

- photo journalists, Nitesh Mathema of Bypass Daily and Ram Saraf of Annapurna Post who were beaten by Armed Police Force personnel at Birgunj of Parsa district on 2 February 2007;<sup>72</sup>
- Govinda Ghimire, president of Sunsari Chapter of Federation of Nepali Journalists (FNJ) who was beaten up by Armed Police Force personnel at Itahari in Sunsari district on 24 November 2007;<sup>73</sup> and
- Birendra K. M, a local correspondent of Rajdhani Daily and Sagarmatha Television, who was beaten up by personnel of Armed Police Force when he was covering news at Inaruwa in Sunsari district on 6 December 2007.<sup>74</sup>

#### b. Media persons killed by the Maoists

On 5 October 2007, Birendra Shah, a Bara based journalist affiliated to Nepal FM, Dristri Weekly and Avenues TV, was abducted from Pipara Bazaar, Kalaiya -6 of Bara district<sup>75</sup> by the Maoists. He was later killed in the custody of the Maoists.

### c. Media persons abducted by Maoists

On 5 July 2007, Kanchanpur -based journalist Prakash Thakuri was abducted by alleged Maoists from his rented room at Mahendranagar in Kanchanpur district. The FNJ stated that the Young Communist League (YCL) cadres were involved in his abduction.<sup>76</sup> On 15 November 2007, the government set up a five-member panel led by Deputy Superintendent of Police Rajendra Khadka to probe into the disappearance of journalist Prakash Thakuri.<sup>77</sup>

Other journalists abducted by the Maoists included:

- Krishna Lama, correspondent of *Taja Khabar Weekly* abducted by Maoist cadres from Samakhushi chowk in Kathmandu on 4 January 2007;<sup>78</sup>
- Hridayaraj Gautam, editor of *Khulamanch Weekly* abducted from his house at Bara by an unknown group on 19 June 2007;<sup>79</sup>
- Prabhu Yadhav, reporter of *Young Guys*, an English weekly published from Birgunj abducted by an unidentified armed group from Birgunj in Parsa district on 6 September 2007;<sup>80</sup> and
- Pappu Gurung, reporter of *Abhiyan daily* and *Mahakali FM* abducted by alleged Maoists from his house at Dodhara in Kanchanpur district on 3 October 2007.<sup>81</sup>

### d. Destruction of media properties by the Maoists

Media houses and journalists were also targeted by the Maoists. Those attacked included:

In July 2007, the Maoists-affiliated All Nepal Communication, Press and Publications Workers' Association (ANCPPWA) obstructed publication and distribution of two national dailies - *The Himalayan Times* and *Annapurna Post*. On 24 July 2007, the cadres of ANCPPWA went to Sama Printers at Bhainsepati in Lalitpur, where the dailies were printed and tried to seize the vehicles loaded with newspapers.<sup>82</sup>

On 28 September 2007, Maoist-affiliated All Nepal Communication, Printing and Publication Workers' Union interrupted the publication of *Kantipur Daily* and *The Kathmandu Post* in Kathmandu.<sup>83</sup> On 30 September 2007, members of the All Nepal Communication, Printing and Publication Worker's Union forcibly entered into the offices of the *Kantipur Daily* and *The Kathmandu Post* at Jadibuti, Kathmandu and damaged two printing machines and stopped printing of the newspapers.<sup>84</sup>

On 1 October 2007, cadres of the Young Communist League (YCL) seized all copies of *The Kathmandu Post* and *Kantipur daily* from the regional office of Kantipur Publications in Pokhara to prevent their distribution.<sup>85</sup>

## II. Attacks on journalists by armed groups

Reporting from the region of Terai of southern Nepal remained the greatest challenge for the journalists in Nepal during 2007. They faced threats and attacks from various non-state actors such as Madhesi People's Rights Forum (MPRF), Madhesi Mukti Tigers, Janatantrik Terai Mukti Morcha (Jwala Singh faction), Janatantrik Terai Mukti Morcha (Goit faction), Maoist-affiliated Young Communist league (YCL), Chure-Bhawar Ekata Samaj, and Limbuwan Morcha, among others.<sup>86</sup>

The journalists who were attacked included:

- Bheem Ghimire of Kantipur and Tank Khanal of the BBC World Service were beaten up and their motorcycles were damaged in Biratnagar on 25 January 2007;
- Shambhu Bhandari of Nepal 1 Television, Binod Bhandari of The Post; Bijaya Pathak, editor of local Birat Darpan; Bikram Luitel of Nepal Samacharpatra
- and Mohan Manandhar of Nepal Television who were beaten up by the cadres of Madheshi People's Rights Forum in Biratnagar on 4 February 2007.<sup>87</sup>

On 28 January 2007, the offices of Radio FM Birgunj and the Federation of Nepalese Journalists (FNJ) were badly damaged by rioters during demonstrations organised by Madhesi Jana Adhikar Forum (MJAF) in Birgunj. The MJAF also issued a list of “wanted” journalists including the correspondents of Nepal Television, Radio Nepal, Kantipur Publications and Nepal FM 91.8 in southern Nepal.<sup>88</sup>

Media houses were also attacked by other armed groups. The attacks included:

On 11 July 2007, a van belonging to Kantipur publications was stopped and burnt near Banke river in the area bordering Sarlahi and Mahottari districts by a group called Gorkha Line Mukti Sewa Samaj.<sup>89</sup>

On 8 August 2007, alleged cadres of Sanghiya Limbuwan Rajya Parishad burnt a motorcycle belonging to Bidhan K.C, member of Federation of Nepali Journalists (FNJ), Chitwan branch and correspondent of Bazar fortnightly at Itahari road in Sunsari.<sup>90</sup>

## **VII. Violence against women**

In Nepal, domestic violence was widespread. In a judgment that has far-reaching positive consequences, the Supreme Court on 2 April 2007 ordered one Raju Suwal of Tahachal, Kathmandu to return the entire dowry he was given after marriage. He was ordered to pay Rs 1,24,922 to his ex-wife as compensation for taking the dowry.<sup>91</sup> However, he was not penalized for taking dowry.

Women continued to remain dependent on their husbands even on citizenship issues. If a husband refuses to acknowledge a woman as his wife, she can be deprived of citizenship. In February 2007, a woman identified as Sarita Bista of Makalu VDC -2 in Sankhuwasabha district was reportedly denied citizenship because her husband who married another woman refused to recognize Sarita Bista as his wife.<sup>92</sup>

Women were regularly abused on allegations of witchcraft. On 2 April 2007, a woman identified

as Dil Maya Khadgi (68) was beaten up and forced to eat human excreta by three villagers for allegedly practicing witchcraft at Kuringhat village in Darechowk VDC-3 in Chitwan district.<sup>93</sup>

On 11 March 2007, one Ms Basanti Rai (43) of Raigaun of Makawanpur was allegedly abducted and tortured by the Maoists at Pokhara where she worked as a maid. The victim stated that she was beaten with iron rods on her thighs and back by the Maoists. She had to be hospitalized after her release.<sup>94</sup>

## **VIII. Violations of the rights of the child**

The rights of the child continued to be violated in Nepal. Human Rights Watch estimated that 6,000 to 9,000 of the Maoist soldiers registered in the UN-managed camps were minors.<sup>95</sup>

In October 2007, Ian Martin, Special Representative of the Secretary General and head of the United Nations Mission in Nepal (UNMIN) confirmed that there were “significant numbers” of minors among the Maoists cadres in the UN managed cantonments of the People’s Liberation Army.<sup>96</sup>

On 22 November 2007, the OHCHR-Nepal stated that it has received various reports alleging that the Maoists have been forcing the child combatants who voluntarily left the UN managed camps of PLA to return to the camps.<sup>97</sup>

Armed opposition groups were responsible for abduction of children. The victims included:

- Ishwari Subedi (5) who was kidnapped by unknown persons from Dangihat bazar of Morang district on 26 March 2007;<sup>98</sup>
- 12-year old Krishna Mahato, (son of Shabnam Mahato of Medinipur Bhawanipur in Siraha district) who was abducted by JTMM-J cadres on the night of 1 May 2007;<sup>99</sup>
- Nautin Agrawal (9, son of Gopal Agrawal) who was abducted by unidentified persons

at Kalaiya-5 in Bara district on 16 May 2007;<sup>100</sup> and

- two schoolgirls identified as Chinimaya Bal (14) and Santamaya Bal (15) who were abducted by unidentified groups from Chandranigahapur-4 in Rautahat while they were returning home from school on 19 June 2007.<sup>101</sup>

## IX. Violations of the rights of the Dalits

The Dalit population in Nepal is estimated to be 4.5 million, representing 20 per cent of the total population of Nepal.

Dalits continued to be victims of abuse including physical violence and denial of access to public places and services.

Dalits were denied citizenship because of their caste/ In March 2007, some 400 Dalits of Bramhapuri Village Development Committee (VDC) in Rautahat district because the VDC secretary Raj Dev Shah refused to recommend them because of their caste.<sup>102</sup>

On 3 March 2007, some villagers including a hotel owner reportedly beat up Dalits for not washing their own plates after having food at the hotel in Changu Narayan VDC-3 in Bhaktapur district. The police refused to intervene.<sup>103</sup>

On the night of 6 March 2007, about 100 Dalit families of Sakhua Dhamaura VDC in Rautahat district were driven away by the upper caste persons. About 100 upper caste villagers attacked the Dalit settlement and injured many Dalits. The Dalits were attacked after they protested against the discriminatory treatment by a local upper caste shopkeeper, Ram Bahadur Pandit, who charged extra for a cold drink from a Dalit youth.<sup>104</sup>

## X. Inclusion of indigenous peoples

At present, 59 communities are recognized as

“indigenous nationalities” by the government of Nepal.

On 7 August 2007, the government of Nepal signed a 20-Point Agreement with the Nepal Federation of Indigenous Nationalities (NEFIN) after 10 rounds of talks. In the 20-Point Agreement, the government of Nepal promised to set up a National Commission on the Janjatis (indigenous peoples) and at least one representation from each of the 59 officially recognized indigenous nationalities in the Constituent Assembly, which will draft the country’s new constitution, formation of a “state restructuring commission”, among others.<sup>105</sup> Article 154 of the Interim Constitution already instructs the government of Nepal to establish a National Institution on indigenous peoples.

## XI. Status of internally displaced persons

An estimated 100,000 to 200,000 people were reportedly displaced during the Maoists conflict from 1996 to 2006. However, IDPs continued to suffer because of the non-recognition by the State, threats and intimidation by the Maoists and other armed groups. Further displacement continued in the Terai region.

Following the signing of the Comprehensive Peace Agreement an unknown but significant number of IDPs returned home.<sup>106</sup>

The government failed to set up a National Peace and Rehabilitation Commission as promised in the Comprehensive Peace Agreement to provide rehabilitation services for IDPs. In October 2007, the government decided to provide financial assistance of Rs 50,000 including loans of Rs 20,000 to each IDP family<sup>107</sup>

But a high-level committee formed under the Ministry of Peace and Reconstruction has reported that only 25,000 persons were internally displaced during the Maoists conflict.<sup>108</sup> On 6 December 2007, Minister of Peace and Reconstruction, Ram Chandra Poudel stated that the Ministry had already disbursed Rs 190.5 million in relief to the 25,000 displaced people.<sup>109</sup> It is unclear how

the government reached this calculation but their distribution has deprived many displaced persons from financial assistance. .

In 2007 the Maoists also prevented the return of the IDPs. For example, in March 2007, five families who returned to their homes in Siddhapokhari-5 in Sankhuwasabha district could not return to their land as it had been seized by the Maoists.<sup>110</sup>

On 30 April 2007, the Office of the UN High Commissioner for Human Rights in Nepal expressed concern that the Maoists were hindering safe return of the displaced persons and urged them to allow the IDPs to return safely to their homes and to return all the seized properties to the returnees.<sup>111</sup>

Terror created by the armed opposition groups also led to further displacement. For example, in April 2007, over two dozen Dalit families of Radhopur VDC-1 in Siraha district reportedly fled their village due to threats issued by the Jwala Singh faction of Janatantrik Terai Mukti Morcha. The threats were issued after the Dalit families foiled the JTMM-J's attempt to abduct Shailendra Devkota of Radhopur VDC-1.<sup>112</sup>

## XII. Status of Tibetan refugees

There were about 14,000 Tibetan refugees in Nepal. They suffer from periodic discrimination and repression. On 31 October 2007, US Assistant Secretary of State for Population, Refugees and Migration, Ellen Sauerbrey stated in Kathmandu that Nepal refused to issue "exit permits" to 5,000 Tibetan refugees when the US offered to resettle them in the US..<sup>113</sup> Tibetan refugees living in Nepal need an exit permit from the government to travel outside Nepal.

While Nepal welcomed the United States offer to resettle about 60,000 ethnic Nepali asylum seekers from Bhutan, it has systematically blocked Tibetan refugees from seeking asylum in the United States.

## XIII. Violations of criminal and international humanitarian law by the armed groups

Armed groups both criminal and opposition are proliferating in Nepal. Their activities are primarily criminal in nature. It is becoming increasingly difficult to distinguish between criminal activities and international humanitarian law violations. In 2007 there were at least five AOGs operating in the Terai region –Janatantrik Terai Mukti Morcha - Goit faction, Janatantrik Terai Mukti Morcha - Jwala faction, Terai Cobra, Janabadi Ganatantrik Terai Mukti Morcha (JGTMM), and Madhesi Mukti Tigers (MMT).

Other AOGs were two pro-palace armed groups - Nepal Defense Army (NDA) and Nepal Janatantrik Party (NJP), Supkranti Dal that purported to be fighting for the rights of the people living in the far western development region of Nepal and the Rashtriya Army Nepal.<sup>114</sup>

### a. Killings

Those who were killed by the Terai-based AOGs included:

- Sita Ram Pariyar, a resident of Rupnagar VDC in Saptari district who was killed by members of Janatantrik Terai Mukti Morcha (JTMM) on the night of 1 February 2007;<sup>115</sup>
- Ram Briksha Raya who was shot dead by cadres of Terai Cobra at Gangapipra VDC of Rautahat district on the night of 2 March 2007;<sup>116</sup>
- Gudananda Yadav who was shot dead by cadres of JTMM at Thelia in Saptari district on the night of 8 March 2007;<sup>117</sup>
- Basudev Paudel, a trainer at the Teachers' Training Centre in Bara who was killed after abduction by cadres of Janatantrik Terai Mukti Morcha (Goit faction) on the night of 16 April 2007;<sup>118</sup>
- Engineer Nabaraj Bista who was killed

by the cadres of JTMM-Goit faction at Khelonatole under Karkatti VDC of Siraha district on 11 May 2007;<sup>119</sup>

- Surya Narayan Yadav, a teacher of Janata Secondary School at Nahararigaul who was killed by cadres of the Janatantrik Terai Mukti Morcha (Goit) at Nahararigaul in Siraha district on the night of 9 June 2007;<sup>120</sup>
- Secretary of Govindpur Village Development Committee (VDC) Ram Hari Pokharel who was killed after abduction by the Janatantrik Terai Mukti Morcha-Jwala Singh on 18 July 2007;<sup>121</sup>
- Rajendra Sah Kanu, who was killed at Khopawa VDC-2 in Bara district by JTMM-G on 31 July 2007;<sup>122</sup>
- Dilbar Sah, who was burnt to death by JTMM-J cadres at Bhramara, some 10 kilometer west from Janakpur town on 5 November 2007;<sup>123</sup> and
- Nepali Congress (NC) activist Kiran Aryal who was shot dead by alleged cadres of the Janatantrik Terai Mukti Morcha (Jwala Singh) in Biratnagar municipality-14 in Sunsari district on 21 December 2007.<sup>124</sup>

## b. Abduction

Various Terai-based armed opposition groups were responsible for a proliferation of abductions. These included:

- 10 persons identified as Pampha Bhujel, Sanchaman Limbu, Kishore Kumar Magar, Pasang Tamang, Gyan Bahadur Bhujel, Laxman Rai, Buddhiman Bhujel, Karna Bahadur Gurung, Bhanu Biswas and Bhakta Bahadur Rai who were kidnapped by the cadres of Janatantrik Terai Mukti Morcha - Jwala Singh faction (JTMM-J) from Bavangamkati-4 in Rajbiraj on 4 February 2007;<sup>125</sup>
- teacher Krishna Prasad Timilsena who was abducted from his residence at Kalaiya

municipality-10 in Bara by JTMM cadres on 26 February 2007;<sup>126</sup>

- 11 villagers identified as Lakha Bahadur Thapa, Lal Bahadur Rai, Mukesh Basnet, Hari Bahadur Thapa, Bikas Khadka, Saroj Adhikari, Amar Tamang, Ganga Rokka, Dil Sapkota, Yuvaraj Siwakoti and Ram Bahadur Thapa who were abducted by cadres of the Madhesi Tigers at Haripur area in Saptari on 1 March 2007;<sup>127</sup>
- Vice-Chairman of Indreni Service Center, an NGO, Min Kumar Lama and his two colleagues - Tejilal Lama and Ram Sworup Sada who were abducted by the JTMM-Jwala Singh faction from Golbazaar of Siraha on 19 April 2007;<sup>128</sup>
- Hom Prasad Bajgain who was abducted by JTMM-J cadres from Jamuniya VDC of Rautahat on 8 June 2007;
- Devnath Yadav who was abducted by JTMM-J cadres from Bhotiya Tole of Siraha district on 7 June 2007;
- Chitra Bahadur Pant who was abducted by JTMM-G cadres from Chatari Bananiya VDC-6 in Siraha district on the night of 7 June 2007;<sup>129</sup>
- Shiv Kumar Yadav who was abducted by JTMM-J from Bariyarpatti-6 in Siraha district on the night of 26 June 2007;<sup>130</sup>
- Govinda Karki, the principal of Jirhari Lower secondary school, and the school teacher Bed Prasad Sapkota in Siraha district who were abducted on 15 July 2007 by the Janatantrik Terai Mukti Morcha Jwala Singh faction (JTMM-J) and released on 18 July 2007.<sup>131</sup>
- Pralhad Pokharel, an activist of Jan Morcha Nepal who was abducted by JTMM-J cadres in Siraha district on 30 November 2007;<sup>132</sup> and
- Ranger Suman Jha of Area Forest Office at Kadarbauna in Saptari district who

was abducted by cadres of JTMM-G on 8 December 2007.<sup>133</sup>

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## Endnotes:

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## INDIA

### I. Ranking In Human Rights Violators Index: 7<sup>th</sup>

India's has a poor record on human rights. Discrimination and exclusion, the routine use of human rights violations by the security forces, and armed opposition groups and many private groups are regularly reported. At the same time, it has few more institutional guarantees that its neighbours and therefore has been ranked No. 7 human rights violator in the South Asia sub-region.

India has found the will to enact legal protections for vulnerable groups like women, children and caste based violations. But it is unclear why or how these laws will be meaningfully implemented when human rights violations remain an acceptable operational practice of the security forces.

These attitudes also are compounded by the impunity enjoyed for human rights violations in India particularly in regions affected by armed conflict. To investigate the armed forces deployed in conflict situations, prior permission from central government is mandatory (under Section 197 of the Criminal Procedure Code and Section 6 of the Armed Forces Special Powers Act of 1958) Unsurprisingly prior permission has seldom been granted or requested. Even in cases where the Government's Central Bureau of Investigation has found compelling evidence of violation by the security forces, permission to prosecute has been denied. It reveals a dangerous weakness in India's system of justice: a pervasive regime of impunity.

Impunity creates a dangerous perception among the security forces that they are above the law. It means wider change than ratification and legislative reform. Impunity results in the well documented practice of torture as well as other

grave violations during operations. But the implications of impunity for the health of India's democracy and its rule of law go much wider than individual abuse.

Checks and balances in any democracy are neither static nor guaranteed. If not defended, protections weaken over time particularly when challenged by the demands of internal conflict. This is why the individual emblematic cases in this report are so important. They are indicators – emblems - of a wider institutional malaise but at the same time represent opportunities to restore the rule of law.

Human rights violations are also result of an inherited legacy. Indian criminal and penal laws and their accompanying institutions derive from archaic and punitive colonial legislation and institutional practice. Part of the solution in India is an imperative need for an inclusive public debate on reform of the security forces. Arguing for reform is not particularly contentious, indeed there is widespread acceptance, at least in the domain of the police and prison service, of its need, yet a reform process has not happened despite repeated commissions and endless recommendation.

Reform will require substantial political will. But there is new urgency to reform. As the Prime Minister has pointed out, the threat from India's armed opposition groups is increasingly serious. If human rights violations, committed both by the security forces and armed groups, are not promptly, thoroughly, independently and impartially investigated and those responsible brought to justice, the system which allowed them to commit those crimes will remain intact. It is difficult to see how reform would succeed under such circumstances.

The consequences are serious: the prospects for counter insurgency success will diminish

significantly and the space for ever more violent and extreme Armed Opposition Groups (AOGs) will grow ever greater; AOGs that will continue to commit appalling acts of torture with impunity. This does not of course mean that AOGs have no legal obligations.

ACHR accepts that mistakes happen in conflict and in the conduct of normal police operations, but the willingness, or otherwise, of the security forces and the State to address these 'mistakes' sets the tone for the conduct of any counter-insurgency and indeed the provision of normal public security.

Mistakes, unless quickly nipped in the bud, soon become routine. The routine use of human rights violations perpetrated with impunity by Indian security forces, at best, sends a worrying message. It is unclear how security force contempt for the rule of law will contribute to respect for the rule of law by the people.

## **II. Political freedom**

While there is greater political freedom in India than any other member of SAARC, vulnerable groups continue to be excluded from political processes in India.

### **Caste exclusion**

Scheduled Castes, also known as Dalits, continued to face discrimination while exercising their political freedom – from casting their votes to discrimination if elected.

On 15 August 2007, the head of Dumari panchayat, Ram Sinhasan Ram was assaulted when he hoisted the national flag at Durgavati in Sasaram because he was a Dalit. Similarly, Deputy Mukhiya Subodh Kumar Paswan, another Dalit, was barred from hoisting the flag at Arajpur panchayat at Madhepura.<sup>1</sup> On the same day, Dhanvanti Devi Meghwal, Pradhan of Shergarh panchayat Samiti in Jodhpur district, Rajasthan was prevented from hoisting the national flag on the Independence Day function. She alleged that the local Member of Legislative Assembly humiliated her in public.<sup>2</sup>

### **Ethnic exclusion**

About 65,000 Chakmas and Hajongs continued to be denied enrollment into electoral rolls in the state of Arunachal Pradesh. On 23 March 2005, the Election Commission of India issued specific guidelines for enrollment of eligible Chakma and Hajong voters. Instead of complying with the guidelines, Electoral Registration Officers and Assistant Electoral Registration Officers and other electoral officers (employees of the State Government) rejected the applications of the Chakma and Hajong citizens.

The Election Commission of India suspended publication of electoral rolls of all four Chakma and Hajong inhabited State Assembly constituencies and sent a team to investigate in February 2006. The team failed to address the issue. Rather another 1,497 voters (enrolled in 2004) were deleted from the electoral rolls. On 6 September 2007, the Election Commission of India Issued fresh orders/guidelines for inclusion of Chakmas and Hajongs in the voter list. The Election Commission of India failed to enforce its guidelines by the end of 2007 and Chakmas and Hajongs continued to be denied the right to franchise.

### **Religious exclusion**

About one million refugees, mainly Sikhs, who came to Jammu and Kashmir from Pakistan during partition in 1947 continued to be denied the right to citizenship as they have not been recognized as citizens of Jammu and Kashmir under the Jammu and Kashmir constitution. The government of India has failed to ensure their political participation for the last 60 years.

## **III. Human rights violations by the security forces**

The National Crime Records Bureau (NCRB) of the government of India in its 2006 Annual Report recorded a total of 62,822 complaints against police personnel. This was an increase of 2 per cent over 2005 (61,560).

Out of these, inquiries into 16,228 cases - 15,510 departmental inquiries, 423 magisterial inquiries and 295 judicial inquiries – were instituted.

About 3,062 police personnel were sent for trial after investigation and framing of charges. During the year, trials of 94 police personnel were completed out of which 24 convicted and 70 were acquitted. Cases against 133 police personnel were withdrawn or disposed off.<sup>3</sup>

The violations recorded by the NCRB do not include abuses by the armed forces under the jurisdiction of the Central government. Given very low levels of public trust in the police these records must be assumed to reflect only a portion of the real number.

### a. Disappearances

Disappearances continued to be reported in armed conflict situations. According to official estimates, the number of people disappeared in Jammu and Kashmir since 1990 was only 1,017. However, the opposition in the State Assembly claimed that the figure was around 5,000.<sup>4</sup> While the Association of Parents of Disappeared Persons (APDP) put the number of missing persons at over 10,000.<sup>5</sup>

In August 2007, the Jammu and Kashmir State Human Rights Commission (SHRC) stated that it recorded disappearances of 42 persons after arrest by different security agencies during April to July 2007 in the Kashmir division alone. While 10 persons disappeared in April 2007, 15 persons disappeared in May 2007; 11 in June 2007 and 6 in July 2007. These were the records of only those people who registered their cases with the SHRC. The SHRC did not have data from the Jammu division.<sup>6</sup>

The Guwahati High Court has not decided on the habeas corpus petition filed in January 2005 by Shyamali Gogoi seeking information on the whereabouts of her husband, Punaram Dihingia alias Prakash Gogoi, an ULFA cadre who went missing after alleged arrest by the Royal Bhutan Army after the ‘Operation All Clear’ launched by Royal Bhutan Army in December 2003.

### b. Custodial violence

Torture and other forms of custodial violence have been an integral part of administration of justice in India. Police stations use torture routinely across India. According to the 2007-2008 Annual Report of the Ministry of Home Affairs (MHA), the National Human Rights Commission (NHRC) received a total of 1,459 cases of custodial deaths during the period from 1 April 2007 to 31 December 2007. These included 1,315 cases of death in judicial custody and 144 cases of death in police custody.<sup>7</sup>

Some of the victims of custodial deaths in 2007 included:

- Chandrabhan (son of Babulal) at Pipri police station in Gwalior, Madhya Pradesh on 1 March 2007<sup>8</sup>;
- Nathun Kahar, an alleged Maoist, at Konch police station in Gaya district of Bihar on 8 March 2007<sup>9</sup>;
- Ram Lal Sahu in Bandri police station in Madhya Pradesh on 2 April 2007<sup>10</sup>;
- Santosh Jadon in Sabalgarh police station in Morena district of Madhya Pradesh on 9 April 2007;<sup>11</sup>
- Samir Martha at Khurda police station in Khurda district in Orissa on 22 May 2007<sup>12</sup>;
- B. Parameswar Reddy at Nalla Chervu police station in Anantapur district of Andhra Pradesh on 26 June 2007<sup>13</sup>;
- Manoj at Perumpetty police station in Pathanamthitta district of Kerala on 11 July 2007<sup>14</sup>;
- Rajesh at Nithauli Kalan police station in Etah in Uttar Pradesh on 11 July 2007<sup>15</sup>;
- Longki Ingti (son of Kasang Ingti) at Dokmoka police outpost in Karbi Anglong district of Assam on 16 July 2007;<sup>16</sup>
- Mandip Kumar at the Dasuya police station

- at Dasuya town under Hoshiarpur district of Punjab on 19 August 2007<sup>17</sup>;
  - Girish Shiggaon at Keshwapur police station in Hubli in Karnataka on 4 September 2007<sup>18</sup>;
  - Motahar Ali at Kalain outpost in Cachar district of Asom on 21 September 2007;<sup>19</sup>
  - Sathilal Singh alias Bhola at the Tinsukia police station of Asom on 22 September 2007<sup>20</sup>;
  - CPI-ML (Liberation) leader Ashok Shah in police custody at Runi Saidpur in Sitamarhi district of Bihar on 5 October 2007;<sup>21</sup>
  - Ghanshyam Choudhary (son of Nanuram Choudhary of Khatipura) at Heera Nagar police station in Indore of Madhya Pradesh on the night of 19 October 2007;<sup>22</sup>
  - Pamujula Ramanaiah at the Kovur police station in Nellore district of Andhra Pradesh on 19 October 2007<sup>23</sup>;
  - Rajen Das, headmaster of Ulubari LP School, in the police lock-up at Mushalpur police station in Baksa district of Asom on 2 November 2007;<sup>24</sup> and
  - Jogi Ram who was tortured to death at by the Crime Branch officials at their Sector 26 office in Panchkula of Haryana on 18 December 2007.<sup>25</sup>
- Home Minister Shivraj Patil attributed these custodial deaths to “illness/natural death, escaping from custody, suicides, attacks by other criminals, riots, due to accidents and during treatment or hospitalisation”.<sup>26</sup>
- The courts also awarded compensation in various cases of custodial deaths and extrajudicial executions. These included directions of the:
- Punjab and Haryana High Court on 15 February 2008 to pay compensation of Rs 1 million (Court on its own Motion Vs. State of Punjab) for the custodial death of Kewal Singh;
  - Madras High Court on 5 February 2007 (Writ Appeal No. 1018 of 2006) ordering to enhance compensation Rs. 300,000 to Rs. 500,000 for Custodial death of Natarajan Chettiar;
  - Madras High Court judgement of 11 April 2007 to pay compensation of Rs 500,000 for custodial death of Rajmohan (Writ Appeal No. 1169 of 2004 and WAMP No. 2198 of 2004);
  - Gujarat High Court order of 3 May 2007 J to provide interim compensation of Rs. 40,000 (US\$ 1,000) each to the petitioners for the custodial death of Rasiklal Jaiswal and illegal detention and torture of others;
  - Guwahati High Court on 14 June 2007 to pay Rs 1,02,000 to each of the families of five persons who were killed by the Maratha Light Infantry along the Indo-Bhutan Border in Kokrajhar district of Asom on 2 February 2002 by the Ministry of Home Affairs.<sup>27</sup>
  - Guwahati High Court order of 29 June 2007 awarded compensation of Rs 3,00,000 for the custodial death of Phomlin Mawlieh (Shri Dino DG Dympep and Anr. Vs. State of Meghalaya and Ors (Civil Rule No. 130(SH) of 1998)
  - Karnataka High Court on 3 July 2007 to pay Rs 3 lakh for the custodial death of Basappa Kuri in Dharwad in 2002;
  - Madras High Court order of 10 July 2007 to pay compensation of Rs 500,000 for Suicide of Pandian as a result of harassment and torture (Jayalakshmi Vs. The State of Tamil Nadu represented by its Secretary, Public Department and Ors W.A. No. 1130 of 2006 and WP. No. 24160 of 2006);
  - Karnataka High Court on 11 July 2007 to pay Rs 2.5 lakh for the custodial death of Dhananjaya of Bangalore in Jnanabharati police station in 2004;<sup>28</sup>
  - Imphal bench of the Guwahati High Court on 11 July 2007 to the 8<sup>th</sup> Assam Rifles

to pay Rs 3.5 for the custodial killing of Athokpam Purnima Singh of Kha Naorem Leikai in Imphal East district, Manipur on 1 September 2001;<sup>29</sup>

- Orissa High Court on 12 September 2007 direction to pay Rs 3 lakhs by to the family of Narayan Behera who died in the Bikrampur police outpost in Talcher of Angul district in Orissa on 31 December 2003;<sup>30</sup>
- Guwahati High Court order of 19 December 2007 to award compensation of Rs 30,000 for the torture to death of Benudhar Daimary (2008(1)(GLT338); and
- Madras High Court order of 20 December 2007 (W.A. No. 1328 of 2001) Rs.2,00,000 (US\$ 5,000) as compensation to Ms Pulliammal, the writ petitioner for the death of her husband, Mr Pancharaju in the custody of Central Jail, Madurai.

The NHRC also recommended payment of interim relief of Rs 81.15 lakh to the next of kin of the victims in 51 cases of custodial deaths during the period from 1 April 2007 to 31 December 2007.<sup>31</sup>

The courts have sentenced security officials in some cases of custodial killings. These included sentencing of the following police/law enforcement personnel:

- then Station House Officer (SHO) of Geeta Colony Police Station, New Delhi, Mr H P Singh to seven years rigorous imprisonment for the custodial death of Subhash by the Additional Sessions Judge of Karkardooma Courts, Delhi, on 24 January 2007, (S. C. No. 02/2006, State Vs. 1. Budh Prakash S/O Damodar Dass, 2. Smt. Sudesh Rani, W/o Budh Prakash, 3. Ashok Kumar Chadha, S/o Budh Prakash, 4. Shammi Chadha, S/o Budh Prakash 5. H. P. Singh, S/o Harbans Singh);
- Head Constable Rajbir Singh and Constables Ramesh Hooda and Bachchu Singh to seven-year rigorous imprisonment for the custodial death of Mr Indal Singh by

Additional Sessions Judge (Delhi) SP Garg on 2 February 2007;

- Constables Subhash Panhale, Ananda Bhosale and Sunil Jadhav for custodial death of Arun Pandav (The State of Maharashtra Vs. Subhash Gangadhar Panhale and Ors, Criminal Appeal No. 1084 of 1988) on 22 March 2007 by the Bombay High Court to “imprisonment for life with fine of Rs. 5,000/- (US\$ 125) in default to suffer rigorous imprisonment for two years”, to one year rigorous imprisonment with fine of Rs. 1,000/- (US\$ 25) in default to suffer R.I. for three months for illegal confinement, “three years rigorous imprisonment with fine of Rs. 3,000/- (US\$ 75) in default to suffer R.I. for six months” for framing incorrect record and further three years with fine of Rs. 3,000/- in default to suffer R.I. for six months for causing “voluntary hurt”;
- Police officer, Govindbhai Shivabhai Jadav by Gujarat High Court on 4 April 2007 for custodial death of Bhupendrabhai Chhotbhai Patel by the High Court of Gujarat on 4 April 2007 to rigorous imprisonment for 10 years with a fine of Rs.10,000/- (US\$ 250), in default of payment of fine, to undergo rigorous imprisonment for 2 years;
- Jail officials in Bikaner, Rajasthan including jail superintendent Om Prakash Chavadia, jailer Ram Kumar Jat and two prisoners to life imprisonment by a fast track court in Bikaner (Sessions Case No. 12/2007) on 23 June 2007 for their involvement in the custodial death of prisoner Lakhvinder Singh;
- Six persons including Sub Inspector Ms Jyothi Rayudu, women constables Santoshamma, P.V. Ragini and K. Raghavarani and two drivers of the Vijayawada Municipal Corporation to life imprisonment by Mahila Sessions Court in Andhra Pradesh on 17 August 2007 for the custodial death of Ms Kona Krishna Kumari in a women’s police station in Vijayawada in Andhra Pradesh on 5 May 1999;<sup>32</sup>

- Deputy Superintendent of Police Rajinder Pal Singh Anand for the custodial death of Balbir Singh by the Additional Sessions Judge of Sangrur, Punjab on 7 December 2007 to life imprisonment for the custodial death of Balbir Singh, a mason at Shahpur village in Sangrur district.

### c. Fake encounter killings

The Indian security forces continued to be responsible for extrajudicial killings in indiscriminate use of firearms and in fake encounters. Most of the fake encounter killings were associated with quick promotions, rewards and host of other perks.

Cases of fake encounter killings included:

- On 19 October 2007, a teacher identified as Abdul Rashid Mir (26, son of Ghulam Ahmad Mir of Rawalthpora) was tortured and later shot dead in army custody of 46th AD Regiment at Marsari Chowkibal in Kupwara district of Jammu and Kashmir. The post-mortem report confirmed the death due to torture and bullet injuries.<sup>33</sup>
- Suraj Singh by the police in Sultanpur, Uttar Pradesh on 12 February 2007;<sup>34</sup>
- Nongmaithem Tomba alias Chinung (son of Late N. Bashikhong Singh) by the personnel of 7<sup>th</sup> Assam Rifles stationed at Sagang in Bishnupur district of Manipur on 26 April 2007;<sup>35</sup>
- Athokpam Manja (son of Late A. Nodiyachand) by alleged Rapid Action Police Forces of the Manipur Police Commando at Langol in Imphal West district of Manipur on 29 April 2007;<sup>36</sup>
- Budheswar Moran, an employee of a tea estate, by the 6<sup>th</sup> Jammu and Kashmir Rifles at Doomdooma in Tinsukia district of Assam on 6 May 2007;<sup>37</sup>
- Mohammad Sultan (son of Abdul Gaffoor) and Mohammad Ashraf (son of Mohammad Ramzan of Chatroo under Kishtwar district of Jammu and Kashmir) by 11<sup>th</sup> Assam Rifles on 6 July 2007;<sup>38</sup>
- Mohammed Ramzan, a second year student of Sopore Degree College, by the army in Handwara in Kupwara district of Jammu and Kashmir on 10 September 2007;<sup>39</sup>
- Bilal Ahmad Bhat (son of Abdul Majeed Bhat of Gabbarpora village) by constable Gajendra Kumar of the 166<sup>th</sup> Central Reserve Police Force (CRPF) at Gabbarpora in Pulwamadistrict of Jammu and Kashmir on 26 September 2007;<sup>40</sup>
- tea worker Sadananda Tantabai who was shot dead by the army personnel of 316 Field Regiment at Desangpani in Sonari in Sibsagar district of Assam on the night of 25 November 2007;<sup>41</sup> and
- civilian Lal Lumsiem who was shot dead by 5 Bihar Regiment of the army in an alleged encounter at Hmar Veng in Diphu in Karbi Anglong district of Assam on 15 December 2007.<sup>42</sup>

The extrajudicial killing of Sohrabuddin Sheikh and his wife Kausar Bi in fake encounters in Gujarat brought to the fore the risk of security personnel in killing innocent people in the name of killing “terrorists”.

On 23 March 2007, the Gujarat government admitted before the Supreme Court that Sohrabuddin Sheikh was killed in a “fake encounter” with the police in Ahmedabad on 26 November 2005.<sup>43</sup> On 30 April 2007, the Gujarat government told the Supreme Court that Sohrabuddin’s wife Kausar Bi was also killed by the police.<sup>44</sup>

On 17 July 2007, the Gujarat Police filed a over 700-page charge sheet against 13 police officials including head of the Anti-Terrorist Squad of Gujarat, Inspector-General D.G. Vanzara, Indian Police Service (IPS) officers Rajkumar Pandian of Gujarat and M.N. Dinesh of Rajasthan in the Sohrabuddin fake encounter case.

Similarly, in January 2007, police investigations

in Jammu and Kashmir revealed that four persons identified as carpenter Abdul Rahman Paddar, two street vendors - Nazir Ahmad Deka and Ghulam Nabi Wani<sup>45</sup> and Showkat Ahmad Khan of Banihal in Doda district were killed in police custody in 2006.<sup>46</sup>

On 13 May 2007, the Bihar Police admitted that Parvati Devi and her daughter Sima Devi were killed in a “fake” encounter by the Bihar Military Police during an anti-Maoist operation at Ranjitpur village in Sitamarhi town of Bihar in early 2006.<sup>47</sup>

In a rare case, on 24 October 2007, a Delhi sessions court sentenced 10 policemen, including Assistant Commissioner of Police Mr S S Rathi to life imprisonment after they were convicted of killing two businessmen - Pradeep Goyal and Jagjeet Singh in a fake encounter at Connaught Place in Delhi in March 1997.<sup>48</sup>

Earlier, on 11 September 2007, a Sessions Court in Etawah, Uttar Pradesh sentenced 15 policemen to life imprisonment for the extrajudicial killing of physically challenged Raj Kumar Tiwari at Dadra village under Chakarnagar police station in Etawah district of Uttar Pradesh in January 1992.<sup>49</sup>

#### **d. Deaths relating to excessive use of force**

A large number of people are also killed in indiscriminate use of fire-arms. According to 2006 Annual Report of the NCRB, 472 civilians were killed and 432 others were injured in police use of fire arms during 2006.

Several persons lost their lives in police use of fire arms during 2007. These include:

- death of at least 14 persons when in the police opened fire at protestors in Nandigram in West Bengal on 14 March 2007;<sup>50</sup>
- death of at least 13 persons belonging to the Gujjar community when the police opened fire at Bundi town in Bundi district and at Patoli village in Dausa district of Rajasthan

on 29 May 2007;<sup>51</sup>

- death of five persons identified as Md. Zaheeruddin, Mohd Saleem Khan, Syed Adil Ali, Iftequaruddin and Mohd. Akhtar Mohiuddin and injuries to several others injured when the police opened fire at a group of people who were protesting against bomb blasts at Mecca Masjid in Hyderabad, Andhra Pradesh in June 2007.<sup>52</sup> Post-mortem reports reportedly found that of the five persons killed all died as a result of bullet injuries sustained above the waist level.<sup>53</sup>
- Balwinder Kumar who was killed after the police fired at a mob protesting against the suicide of a Dalit family following alleged torture by the Punjab Police in Nurmehal, Punjab on 8 June 2007;<sup>54</sup>
- death of eight persons in when police opened fire during the state-wide bandh called by left-wing political parties at Mudigonda village in Khammam district of Andhra Pradesh on 28 July 2007;<sup>55</sup>
- death of flood victim Darshan Thakur shot while demanding flood relief in Madhubani district of Bihar on 3 August 2007;<sup>56</sup> and
- Zahoor Ahmad Mir who was killed when police opened fire on protestors demanding the setting up of a degree college in Magam town in Central Kashmir on 15 December 2007.<sup>57</sup>

#### **d. Arbitrary arrest, illegal detention and torture**

Torture is almost an integral part of law enforcement and administration of justice irrespective of whether the States/areas are afflicted by armed conflicts or not. Apart from custodial deaths, during 2006-2007, the National Human Rights Commission received 1,270 complaints of unlawful detention and 709 complaints of illegal arrest across the country.<sup>58</sup>

Some of the victims included:

- Bhim Mondal, a lawyer, who was beaten up by Sub Inspector Ajay Kumar Singh and illegally detained on the false charges of “breaking traffic norms, trying to attack police personnel on duty and committing nuisance in public place” in Dumka of Jharkhand on 23 April 2007;<sup>59</sup>
- Moirangthem Gandhi Singh (24, son of Moirangthem Tombi Singh) who was arrested and tortured in illegal detention at Moirang police station under Bishnupur district of Manipur from 15 April 2007 to 17 April 2007;<sup>60</sup>
- four persons identified as Christian pastor Badal Soren, Rampada Mandy, Ram Hansda and Lal Murmu, a student of Class IX, who were arrested by the police during a raid on a church in Madhupur near the Kalaikunda, West Bengal on 8 April 2007<sup>61</sup>.
- Fumman Singh, resident of Kotu Wala village in Ferozepore district of Punjab, who was illegally detained and tortured on 18 May 2007;<sup>62</sup>
- Kamal Acharjee who was picked up on 29 July 2007 and tortured in custody by Sub-Divisional Police Officer (SDPO) of Sabroom, Amarjyoti Debbarmma in Tripura;<sup>63</sup>
- Giasuddin Mondal who was illegally detained and tortured at Deganga Police Station in North 24 Parganas district of West Bengal on 2 August 2007;<sup>64</sup>
- Mohd Aurangajeb, an alleged thief, who was reportedly tied behind a motorcycle by Assistant Sub-Inspector LB Singh and Constable Ramchandra Singh and dragged on the roads of Nathanagar locality in Bhagalpur of Bihar on 28 August 2007;<sup>65</sup>
- Ashok, a physically challenged painter, who was beaten up by a drunken police constable when he went to lodge a First Information Report at Nasirpur police post of the Sihani Gate Police Station in Ghaziabad of Uttar Pradesh on the night of 16 August 2007;<sup>66</sup>
- Mr Soraisham Gopeshor Singh (son of late Soraisham Hera Singh) who was first harassed by the personnel of 22<sup>nd</sup> Maratha Light Infantry stationed at Patsoi on the night of 16 August 2007 and illegally arrested and tortured by the 57<sup>th</sup> Mountain Division personnel on the night of 1 September 2007;<sup>67</sup> and
- Prafulla Phukon who was illegally detained by the 2<sup>nd</sup> Bihar Regiment at the army camp at Tipling in Tinsukia district of Asom on the charges of being a linkman of the ULFA on 29 September 2007;<sup>68</sup>

On 20 August 2007, Orissa High Court directed the State government of Orissa to pay compensation of Rs 8 lakhs to a tribal boy Pratap Naik of Boudh district who was illegally detained in jail for more than eight years till January 2003 although he was acquitted of murder charge in October 1994.<sup>69</sup>

#### IV. Judiciary and administration of justice

India’s judiciary remained more independent than its counterparts in South Asia. However, it continued to be plagued by judicial delay. In addition, corruption in judiciary and dispute over the Judges (Inquiry) Bill of 2006 which seeks for establishment of a National Judicial Council to “inquire into allegations of misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court” dominated the debates.<sup>70</sup> The courts had to interfere with the subordinate judiciary. On 26 October 2007, the Supreme Court stayed a Delhi High Court direction asking a Sessions judge to undergo a refresher course in criminal law for not following the correct judicial procedure in a bail case. The court also expressed strong disapproval that judges were issuing non-bailable warrants irresponsibly and using their powers for deriving ‘sadistic pleasure’.<sup>71</sup>

##### a. Legal reforms

Many positive initiatives have been taken to revamp the judiciary and provide speedy justice.

These include launching of the National e-Courts Project on 9 July 2007 which seeks to make the judiciary cost-effective, transparent and accountable;<sup>72</sup> and launching of evening courts in Tamil Nadu. In July 2007, 11 evening courts - four in Chennai, two each in Coimbatore and Tirunelveli and one each in Salem, Madurai and Tirucharapalli on experimental basis, were launched to tackle the problem of pending lawsuits at the trial court level. These courts would dispose of petty cases. It was proposed to start 80 evening courts at a later stage in the State.<sup>73</sup>

However, women were under-represented in the judiciary. Women's representation was less than seven per cent in the superior courts in India. There were only 39 women judges serving in various High Courts in India as in November 2007. There was no woman judge in the Supreme Court of India. The Delhi High Court had the highest representation of women (5 out of 36) followed by Bombay High Court (5 out of 53), Patna High Court (4 out of 31), Madhya Pradesh (4 out of 42), Madras High Court (4 out of 46) and Allahabad High Court (4 out of 76). On 20 August 2007, the Minister of State for Law and Justice K Venkatapathy stated that "the Government has addressed letters to Chief Justices of High Courts and Chief Ministers to locate eligible persons."<sup>74</sup>

There was a lack of security provided to judges/lawyers especially to those who were involved in speedy trials. On 8 November 2007, Ram Naresh Sharma, public prosecutor in the Begusarai civil court, was shot dead by unidentified gunmen at his residence in Begusarai town of Bihar. He was representing prosecution in speedy trial of all the criminal cases involving don-turned MP Surajbhan Singh.<sup>75</sup>

## **b. Judicial delay**

Judicial delay plagues the Indian judiciary. The judicial system is on the verge of collapse due to the rising backlog of cases. On 4 November 2007, Chief Justice of India K.G. Balakrishnan stated that there were about 14,600 courts in the country and there was need for at least 5,000

more courts to clear backlog of cases.<sup>76</sup>

Earlier, in April 2007, Justice Balakrishnan stated that India needed 1,539 more judges in the High Courts and 18,479 more judges in subordinate courts to clear the backlog cases within one year. Presently, India has only 10.5 judges per million population.<sup>77</sup>

As on 31 December 2007, there were a total of 46,926 cases pending with the Supreme Court of India, a total of 37,43,060 cases were pending with the High Courts and a total of 25,41,8165 cases were pending with the District and Subordinate Courts.<sup>78</sup>

There are huge vacancies in judicial services. As on 21 January 2008, there was one vacancy in the Supreme Court of India (out of sanctioned strength of 26 judges). While there were 284 vacancies against a sanctioned strength of 877 judges in the 21 High Courts as on 1 January 2008 and 3,233 vacancies as against the sanctioned strength of 15,672 in the District and Subordinate Courts as on 30 September 2007.<sup>79</sup>

Some cases go on for years before they come to a conclusion. On 19 June 2007, a local court in Bihar convicted 14 accused to seventeen years in jail after 116 Muslims including women and children, were massacred during the communal riots at Logai village under Jagdishpur police station in Bhagalpur district of Bihar on 27 October 1989. Among those convicted included the then officer-in-charge of Jagdishpur police station, Ramchandra Singh.<sup>80</sup>

## **V. Effectiveness of National Human Rights Institutions**

Despite its critical role, the NHRC continued to suffer from credibility crisis due to statutory limitations and operational flaws. The statutory limitations included an inability to investigate abuses committed by the armed forces, inability to investigate into complaints which are more than one year old, the lack of power to implement its recommendations.

## Dealing with complaints:

The NHRC is weighed down by large numbers of backlog cases. The NHRC stated that 82,000 complaints of human rights violations were received during 2007. Most of them were from Uttar Pradesh, followed by Bihar and Delhi.<sup>81</sup>

Once a complaint is filed, NHRC usually seeks comments of the same security agencies. In a number of cases, NHRC dismissed the complaints where a prima facie case of human rights violations exists; and in dismissing the case the NHRC has chosen to deny the complainants' access to key evidence as well as denying the complainant a hearing. Under Section 13 of the Human Rights Protection Act, NHRC has the powers of a civil court for investigation purposes. Hence, NHRC is equivalent to a tribunal and while adjudicating the cases, complainants have the statutory and constitutional right to receive a copy of all the documents made available to the NHRC. The complainant has the constitutional right to a hearing before the NHRC passes a final order. ACHR has documented numerous occasions where the NHRC has denied both rights. ACHR has been forced to file applications under the Right to Information Act to access information on complaints it has submitted. The information subsequently provided to ACHR under the RTI Act by the NHRC raises very serious concerns as the state responses (previously denied to ACHR) to the NHRC confirm that torture took place. Given that the NHRC dismissed the case, it has in effect denied that torture took place, despite the evidence.

ACHR has filed seven writ petitions before the Delhi High Court for dismissal of complaints without being given an opportunity of hearing by the NHRC.

## Composition: Lack of plurality

The NHRC's current composition does not have plurality required by the Paris Principles. Out of the five members of the NHRC, three are judges, one retired police officer and one retired foreign servant. There is no woman member. Nor is there representation of the Scheduled Castes, Dalits and the Tribals.

Poor state of State Human Rights Commissions: Presently, only 17 states - Andhra Pradesh, Asom, Chhattisgarh, Gujarat, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Karnataka and West Bengal - have established State Human Rights Commissions. State Human Rights Commissions lack sufficient financial resources, necessary infrastructure and investigative skills to carry out their functions.

## VI. Repression on human rights defenders

Human rights defenders in India continued to face violations from both State and non-State actors.

### a. State

Many State governments have misused national security laws against human rights defenders. Since India repealed its Prevention of Terrorist Act of 2002 and incorporated the provisions the Unlawful Activities Prevention Act of 1967 as amended in 2004, many human rights defenders have been subject to arbitrary detention under the anti-terror law.

On 14 May 2007, Dr. Binayak Sen, General Secretary of the Chhattisgarh State Branch of the Peoples Union for Civil Liberties (PUCL) and the Vice-President of the National PUCL was arrested by the police under the Chhattisgarh Special Public Security Act, 2005 and the Unlawful Activities (Prevention) Act, 1967 on charges of having links with the Maoists..

According to media reports in March 2007, Sonam Wangchuk, founder Director of the Students Educational and Cultural Movement of Ladakh, Jammu and Kashmir was allegedly harassed by district authorities on the charge of being anti-national.<sup>82</sup>

In August 2007, the state government of Chhattisgarh allegedly sought to expel the Medicines Sans Frontiers (Doctors Without Borders) from Dantewada district. As the

civil society groups including ACHR strongly condemned the move, the State Government of Chhattisgarh was forced to change its mind. It later stated that “the State government has not even contemplated on barring the NGO from working in any part of the State. The Government is sensitive to the humanitarian medical aid that has been provided by the Medicines Sans Frontiers across the Globe and in India”.<sup>83</sup>

## b. AOGs

Human rights defenders were also subject to abuse by armed opposition groups.

On 5 May 2007, Naseer Ahmad Khora, human rights activist hailing Doda, Jammu and Kashmir was allegedly abducted by an unidentified group of people while he was walking near Sheesh Mahal hotel at Sonawar. He was allegedly abused, beaten up and threatened by the abductors.<sup>84</sup>

## VII. Freedom of the press

Although press freedom was generally respected in India, journalists were subjected to attacks, harassment and intimidation from the law enforcement agencies and armed opposition groups as well as the government servants, leaders and the cadres of political parties etc.

### a. Attacks by the state agencies and political activists

In 2007, the state government of Andhra Pradesh issued a media gag order (GONo. 938) to prosecute newspapers and television channels which gave “baseless and defamatory” reports against the state government. But it withdrew the order after protests by the media. The state government also claimed that it had “incriminating evidence” about the links of more than 75 senior journalists with banned Maoist organizations.<sup>85</sup>

On 2 August 2007, the state government of Manipur reportedly issued an order imposing curbs on the reporting of certain militancy-related activities. The order was issued under the provisions of Section 95 of the Criminal

Procedure Code, which deals with subversive and seditious writings.<sup>86</sup>

Numerous journalists were arrested or harassed by security forces during 2007 on various charges ranging from forgery, cheating and blackmail to inciting communal sentiments and links with armed groups. Some of those arrested include:

- Mr B V Seetharam, Editor of Karavali Ali and his wife Rohini who were arrested in March 2007 on charges of inciting communal sentiments in Bangalore, Karnataka;<sup>87</sup>
- Robin Dhekiyal Phukon, correspondent of Asomiya Pratidin, Kakopathar, Assam who was arrested local along with another youth on 20 June 2007 on charges maintaining close links and working on behalf of the banned United Liberation Front of Asom (ULFA);<sup>88</sup>
- Anubhab Kumar, Correspondent of Asomiya Khabar at Changsari who was arrested on 3 October 2007 for links to the ULFA;<sup>89</sup>
- B Sreeramulu and B Urukundu, working for Telugu dailies Andhra Jyothi and Andhra Bhoomi in Kurnool district of Andhra Pradesh were arrested on 7 November 2007 on charges of forgery, cheating and blackmail for allegedly exposing irregularities in a housing scheme;<sup>90</sup> and
- Senior journalist Prashant Rahi who was arrested by police from Dehradun, Uttarakhand on charges of being a Maoist. He was reportedly kept in incommunicado detention for five days. On 21 December 2007, police charged him with charges under Sections 121, 121A, 124A, 153B and 120B of the Indian Penal Code.<sup>91</sup>

Many were physically attacked and manhandled by the security forces. Some of the cases are given below:

- Ambresh Mishra, correspondent of India Today, who was attacked with rods allegedly

- by policemen and anti-social elements in Hyderabad, Andhra Pradesh on the night of 20 May 2007;<sup>92</sup>
- a team of reporters including Gagan, reporter of the ISTV, and Brojen of the Ireibak, who were reportedly beaten up and detained for nearly two hours by the personnel of 38 Assam Rifles posted at Kotlien on NH-53 under Senapati district of Manipur while covering a sexual assault of a girl by a jawan on 14 March 2007;<sup>93</sup>
- Nilamoni Borah of the Dainik Janasadharan, who was beaten up by Assistant Sub-Inspector of Bhogdoi Police out post in Jorhat, Asom on 30 March 2007;<sup>94</sup>
- journalist Afrida Hussain and cameraman Nitul Deka of NE TV who were beaten up by a group of 20 security guards at the Guwahati Medical College Hospital (GMCH), Asom when they had gone to the hospital to file a report on 31 March 2007;<sup>95</sup> and
- 46 Rashtriya Rifles headed by Major Khanna who raided the house of scribe Altaf Baba in Baramulla district in north Kashmir and allegedly tore up the identity card of Gulam Geelani Baba, father of Altaf Baba, who works for UNI and Kashmir Times and allegedly threatened to kill Altaf and Ghulam Geelani in May 2007.<sup>96</sup>
- four journalists including reporter Nikesh of Ireibak and ISTV cameraman Gagan who were detained by Kuki Students Union (KSO) and Hills Tribal Council while returning from Moreh in Chandel district of Manipur during a bandh on 20 March 2007;<sup>99</sup>
- Rajen Deka, of the Dainik Asam who was brutally beaten up by Gafur Ali, Rafique Ali, Chafur Ali, Mrintu Ahmed and Barkshetri Child Development Project Officer (CDPO) Balen Barman at Mukalmua in Nalbari district, Asom for exposing corruption by the CDPO on 24 April 2007;<sup>100</sup>
- Tultul Phukan of Asomiya Pratidin who was assaulted by contractors at Atkai, Asom for exposing corruption on 13 August 2007;<sup>101</sup>
- two journalists of the NDTV news channel who were taken hostage and assaulted by ruling JD (U) MLA Anant Kumar Singh and his men when they went to seek his comment in a case of alleged rape and murder of a woman in Bihar on 1 November 2007;<sup>102</sup> and
- Bipul Kumar Das of Asomiya Pratidin who was assaulted by a mob at Mirza in Asom on 2 December 2007.<sup>103</sup>

Many media persons were subjected to assault and harassment by political activists during the year. Some of the cases of assault included:

- Ran Singh Machra, correspondent of a Hindi daily newspaper, who was shot and injured by unidentified persons at Bhattu village in Hisar district of Haryana on the night of 31 January 2007;<sup>97</sup>
- three reporters including one woman of The Asian Age were reportedly beaten up by CPI (M) supporters when they tried to enter Sonachura village in Nandigram, West Bengal on 15 March 2007;<sup>98</sup>

## b. Attacks by the AOGs

The AOGs were also responsible for attacks on the media

On 31 January 2007, ULFA asked two senior newspaper editors - Kanakasen Deka of Dainik Agradoot and DN Chakravarty of Dainik Asam<sup>104</sup> - to give up journalism for publishing a story accusing the ULFA of taking money from the State Government of Asom to allow the 33rd National Games to go ahead without violence.<sup>105</sup> On 1 February 2007, ULFA served a 'quit Assam' notice on Guwahati-based satellite news channel NE TV<sup>106</sup> for airing a news story alleging that ULFA had taken money from the State Government for letting the National Games

pass off peacefully.<sup>107</sup> On 4 February 2007, ULFA renewed its warning to the news channel to prove its allegation or else close its operation in the state.<sup>108</sup>

On 31 July 2007, unidentified persons suspected to from a faction of the People's Revolutionary Party of Kangleipak (PREPAK) reportedly delivered a grenade packed in a box for the Editor of The Sangai Express in Imphal, Manipur as a warning.<sup>109</sup>

## VIII. Violations of the rights of indigenous peoples

Over 84 million indigenous/tribals peoples of India, also known as the Scheduled Tribes, continued to be disproportionate victims of “development”, displacement and dispossession. They have been the worst victims of human rights violations at the hands of both State and non-State actors.

Many tribal communities are facing extinction. The tribal groups (PTGs) of Jarawas, Shompen, Great Andamanese, Onges and Sentinelese in Andaman and Nicobar Islands continued to be under threat due to the influx of non-tribal population and construction of the Andaman Trunk Road (ATR).<sup>110</sup> Others communities included the Sabar tribes of Chottanagpur Plateau in Jharkhand,<sup>111</sup> the aboriginal tribes of Attappady in Kerala,<sup>112</sup> the Juang tribe<sup>113</sup> and Bhuyan tribe of Orissa.<sup>114</sup>

Many tribals were not recognized as tribal areas for inclusion in the Fifth Schedule of the Constitution due to official apathy. In Andhra Pradesh, many villages have not been recognized for inclusion in the Fifth Schedule to the Constitution of India despite being tribal-majority villages.

Due to the non-inclusion of tribal dominated villages under the Fifth Schedule, nearly 200,000 Adivasis spread over 805 villages in nine districts of Andhra Pradesh do not enjoy Constitutional protections.<sup>115</sup>

### a. Violations against tribals

Official statistics have limited value given the mistrust of scheduled caste for formal state mechanisms. The National Crime Records Bureau in its 2006 Annual Report reported that a total of 5,791 cases against Scheduled Tribes were reported in the country as compared to 5,713 cases in 2005. This means an increase of 1.4% in 2006 from 2005. These included 1,232 cases reported under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 and 49 cases under the Protection of Civil Rights Act (PCR).

Although the average charge-sheeting rate for the crimes against the STs was 95.9 per cent, the average conviction rate was only 28.0%. A total of 8,339 persons (86.6%) out of 9,630 persons arrested for crimes committed against Scheduled Tribes were charge-sheeted but only 20.8% were convicted.

In Kadapa district of Kerala, 21 villages have been identified as areas where scheduled castes and tribals are subject to attacks. For example, 128 cases were registered under the Atrocities Against SC/ST (Prevention) Act in Kadapa district from January to 27 September 2007.

Of these, 44 were pending disposal, charge sheets were filed in six cases, three were ruled to be false and two cases were pending in court. In the remaining 33 cases, 20 cases were disposed of and 13 were pending.<sup>116</sup>

The security forces were responsible for killing hundreds of tribal peoples across India. The pattern of killings includes custodial killings, fake encounters and indiscriminate firings.

On 16 May 2007, the Tribal Nationalist Party of Tripura (INPT), a tribal regional political party, alleged that at least 103 innocent tribals have been killed by the police in “fake encounters” in Tripura since 1993. But no police/military officer has been convicted for the killings.<sup>117</sup>

During 2007, the Asian Centre for Human Rights documented other cases of alleged extrajudicial

killings of tribals by the security agencies included:

- a Karbi tribal youth Singh Timung (21), a higher secondary student of Diphu Government College by a joint team of the Assam Police and the Central Reserve Police Force (CRPF) at Inglang Kiri village under Karbi Anglong district in Asom on 19 August 2007;<sup>118</sup>
- Ramesh Vasunia of Jhaida village by police near Antarvelia outpost in Jhabua district of Madhya Pradesh on 2 July 2007;<sup>119</sup> and
- Seven tribals- Madiyam Fagu, Madiyam Lakhma, Kudiyan Musa, Markam Sanko and Marvi Mangu of Ponjer village, and Kudiyam Bojha, a former Special Police Officer of Santoshpur village who were killed by Chhattisgarh Armed Police and Salwa Judum members at Santoshpur village in Chhattisgarh on 31 March 2007.<sup>120</sup>

## **b. Violation against tribal women**

Tribal women faced violence including torture, rape, killing and other inhuman and degrading treatment at the hands of the law enforcement personnel, vigilante groups, the armed opposition groups.

The National Crime Records Bureau recorded a total of 699 cases of rape against the Scheduled Tribes in 2006 as against 640 in 2005. Madhya Pradesh reported the highest number of rape cases against Scheduled Tribe women (284) accounting for 40.6 percent cases of the total rape cases of tribal women in the country.<sup>121</sup>

On 24 November 2007, an Adivasi woman was stripped naked and beaten up in full public view by non-tribal residents at Beltola area in Guwahati, the capital of Asom. The Adivasis were holding a procession demanding Scheduled Tribe status in Asom.<sup>122</sup>

On 22 October 2007, a 20-year-old tribal woman was allegedly raped by two upper caste men identified as Badka alias Nandkumar Paswan, a

bus conductor, and Fakla alias Ramgopal Verma in Birgaon area under the Urla police station in Raipur, Chhattisgarh.<sup>123</sup>

On 9 April 2007, a tribal woman was raped by Ramsevak Das, a priest of a Hanuman temple in Mohna town in Gwalior district of Madhya Pradesh.<sup>124</sup>

On the night of 21 February 2007, 17 tribal women including minors from Jharkhand were allegedly gang raped by about 25 youths at a brick kiln at Sirohideeh village in Ballia district of Uttar Pradesh.<sup>125</sup>

## **Rape and security forces:**

The security forces were responsible for violence against the tribal women. As the majority of tribal peoples live in armed conflict situations, tribal women have often become victims of arbitrary arrest, illegal detention and sexual violence by law enforcement personnel.

On 9 January 2007, police arrested three Paharia tribal women along with several tribal men on the charge of the murder of one Deba Paharia. They were detained at Sundarpahari police station in Godda district of Jharkhand. While the men were detained in the police lock up, the women were illegally detained in the residential quarter of the Officer-In-Charge (OC) of Sundarpahari police station, Dipnarayan Mandal. They were allegedly tortured and raped by OC Dipnarayan Mandal and the Assistant Sub Inspector Mahadev Oraon.<sup>126</sup>

On 13 February 2007, a tribal woman filed a complaint alleging gang rape by personnel of the Mizoram 2nd India Reserve Battalion in Dantewada district of Chhattisgarh.

On the morning of 20 August 2007, 11 tribal women were allegedly gang raped by Greyhound policemen during anti-Naxalite operations at Vakapalli village under Nurmati panchayat in Visakhapatnam district of Andhra Pradesh. According to the victims, 21 Greyhound policemen entered the village around 6 a.m, and raided their houses on the charges that their family members were associated with the Naxalites. While some

of the women were raped in their homes, some others were raped in the fields.<sup>127</sup>

On the night of 27 August 2007, a 42-year-old Karbi tribal woman was raped by a soldier belonging to Bihar regiment at Mansingh Bey village under Hauraghat Police Station under Karbi Anglong district of Asom. A group of Bihar regiment personnel went to the Mansingh Bey village in an anti-insurgency operation at the midnight of 27 August 2007 and two jawans entered into the house of Longsing Bey. They tied the hands of Longsing Bey, blindfolded him and made him sit in his veranda at gunpoint. Later, one of the jawans allegedly raped Longsing Bey's sister.<sup>128</sup>

The police refused to receive FIRs of the tribals. In July 2007, tribal woman identified as Ms Budhini Murmu of Kendubania village in Balasore district of Orissa had to approach the District Collector as her attempts to lodge an FIR with regard to the murder of her husband at different police stations had failed as the police refused to receive her complaint.<sup>129</sup>

Armed opposition groups were also responsible of perpetrating rape of tribal women. On 9 July 2007, a 20-year-old tribal woman was raped by two alleged members of an unidentified armed opposition group at her Jhum hut at T-Phaijöl village in Churachandpur district of Manipur.<sup>130</sup>

### **c. Land alienation and displacement**

According to the 2001 Census, tribal peoples constituted 8.2% of the total population. Yet, they represented 55.1% of the 8.54 million persons displaced in India by development projects and conflicts between 1950 and 1990.

On 31 October 2007, the government of India notified the National Rehabilitation and Resettlement Policy of 2007. However, it failed to address a key issues relating to the proliferation of conflict: forcible acquisition of lands.

The 2007 Policy was supposed to be an improvement of the Draft National Rehabilitation Policy of 2006 which was drafted to address the

failures of the National Policy on Resettlement and Rehabilitation for Project Affected Families of 2004. But the 2007 National Rehabilitation and Resettlement Policy upholds the sovereign power of the State to apply the concept of "eminent domain" to forcibly acquire any private property in any part of the country in the name of "public purpose" under the Land Acquisition Act, 1894.

According to a recent survey conducted by ActionAid and Indian Social Institute, over 1.4 million people have been displaced from their homes in the four states of Andhra Pradesh, Chhattisgarh, Orissa and Jharkhand where a total of 10.2 million acres have been acquired for development projects such as mines, industrial plants and dams in the last decade. Out of the 1.4 million displaced persons in these four states, 79 per cent were tribals.<sup>131</sup>

### **d. Repression under the forest laws**

Thousands of petty cases have been lodged against tribal people under the forest laws.

According to a rough estimate, around 12,000 cases were filed by the forest officials of Jharkhand against forest dwellers. Most of the cases relate to land rights claims of land rights. Around 4000 villagers were released after the forest department withdrew cases relating to violations of collection of forest produce.<sup>132</sup>

Lack of lawyers to take up land-related cases of the tribals further delay the cases. Around 5,500 land-related cases of tribals were pending in various district courts in Jharkhand as of March 2007. The government of Jharkhand has an annual budget of Rs 50 lakh to provide legal assistance to poor tribals to pursue their land-related cases. However, not even 10 per cent of the total allocated budget was spent during the last six years.

### **e. Encroachment by non-tribals**

People who did not belong to tribal communities continued to encroach on tribal lands. This was reflected in the rise of tribal land grabbing by non-tribals in Jharkhand. In 2003-2004, 2,608

cases were registered, 2,657 cases in 2004-2005, 3,230 cases in 2005-2006 and 3,789 in 2006 to January 2007.<sup>133</sup>

In Andhra Pradesh, non-tribals were in possession of as much as 48 per cent of the land in scheduled areas. According to Jairam Ramesh, Union Minister of State for Commerce, 3,21,685 acres of land had been found to be alienated and 72,001 cases were booked as of 28 January 2007 since the inception of Land Transfer Regulation (LTR). Of the 72,001 cases booked, 70,183 cases were decided of which 33,319 cases (47.47 per cent) were decided against tribals involving 1,62,989 acres of land. In Andhra Pradesh High Court, about 300 cases were pending involving about 2,500 acres of land under LTR. Counter affidavits were filed by tribal welfare authorities only in 86 cases and stay orders were granted in 47 cases. The main reasons were attributed to lack access to justice and records.<sup>134</sup>

On 26 November 2007, the local tahsildar had allegedly given possession orders of land to 14 non-tribals at Gopalapuram village in Rachannagudem panchayat in West Godavari district of Andhra Pradesh.<sup>135</sup>

Under Schedule V and Article 244 of the Constitution, land specifically notified for the welfare of Scheduled Tribes in the scheduled areas can neither be sold nor transferred to any non-tribal.

In February 2007, the Supreme Court disapproved the decision of the Jharkhand High Court in dismissing a Public Interest Litigation petition filed by a tribal, Surendra Dehri, and allowed the petitioner to file a fresh petition. In the PIL filed before the High Court, the Petitioner alleged that over 10,000 acres of “notified tribal land” had been usurped in the state by mining contractors in collusion with government officials.<sup>136</sup>

#### **f. Lack of basic services**

The socio-economic conditions of the tribals continued to be miserable. The State Governments failed to implement most of the development and welfare projects.

Tribal villages lack access to basic services such as healthcare, education, drinking water, sanitation, electricity, irrigation, markets, livelihood etc. In November 2007, the Union Ministry of Environment and Forests urged the State Governments to take comprehensive steps to improve the basic infrastructure in the tribal villages in the country.<sup>137</sup>

The conditions of the tribals living in the forest villages were equally deplorable. There were around 3,000 forest villages in the country. Of these, more than 500 villages were converted into revenue villages during the last four years. In the north east region of India, there were about 499 forest villages in Asom, 85 in Mizoram, 62 in Tripura and 23 in Meghalaya. They could not avail the benefit of various welfare schemes due to non-availability of title land in their favour.<sup>138</sup>

### **IX. Violations of the rights of the Dalits**

Dalits continued to face discrimination and abuse in all spheres of life.

The 2006 Annual Report of the National Crime Records Bureau reported a total of 27,070 cases against Scheduled Castes. These included 8,581 cases under the SC/ST (Prevention of Atrocities) Act of 1989 and 405 cases under the Protection of Civil Rights Act. The average charge-sheeting rate for the crimes against the SCs was 91.3 per cent, yet the average conviction rate was only 27.6%. A total of 45,016 persons (79.7%) out of 56,492 persons arrested for crimes committed against Scheduled Castes were charge-sheeted but only 26.4% were convicted.

On 3 July 2007, the Karnataka State Commission for Scheduled Castes and Scheduled Tribes revealed that the accused in 98 per cent of cases of atrocities against Dalits were not punished. The lack of witness protection hampered proceedings. Many witnesses failed to attend proceedings for fear of attack and intimidation. There were around 500 pending cases in each district in Karnataka.<sup>139</sup>

According to information obtained by the National Campaign for Dalit Human Rights (NCDHR) through the Right to Information Act, 4,864 cases were filed under the Prevention of Atrocity Act for Scheduled Castes between 2000 and 2006 in Maharashtra. However, the conviction rate was one in 25.<sup>140</sup>

### a. Denial of access to public places

Article 17 of the Constitution of India has abolished untouchability “in any form”. But the caste system that provides the basis for untouchability continued to be integral part of mainstream Indian societies.

The head of Dumari panchayat, Ram Sinhasan Ram was assaulted when he dared to hoist the national flag on Independence Day at Durgavati in Sasaram in Bihar because he was a Dalit and deputy mukhiya Subodh Kumar Paswan, another Dalit, was barred from hoisting the national flag at Arajpur panchayat at Madhepura in Bihar.<sup>141</sup>

In September 2007, a report released by National Council for Educational Research and Training (NCERT) found “institutionalized discrimination” against students from SCs and STs in schools which resulted in their alienation from schools and high levels of child labour. The NCERT report provides examples of how tribal students face discrimination. Teachers in Madhya Pradesh expressed the view that teaching “Korku” tribal children was equivalent to “teaching cows” and in Bihar, teachers felt “Mushar” (Dalit) children were not interested in education.<sup>142</sup>

In parts of Uttar Pradesh and Bihar, upper castes did not allow Dalits to be employed as cooks or even serve the food in schools. Their children also sit separately. In Nalgonda district of Andhra Pradesh, parents did not allow their children to eat food in school because Dalits cooks it.<sup>143</sup>

On 13 April 2007, 20 Dalits were reportedly injured after upper caste Vokkaligas attacked Dalits after Dalit children swam in the Lokapavani River at K. Shettahalli in Mandya district in Karnataka.<sup>144</sup>

### b. Physical attacks against the Dalits

The National Crime Records Bureau recorded a total of 673 cases of killing, 280 cases of kidnapping and abduction and 226 cases of arson against the Dalits during 2006.<sup>145</sup> Hundreds of cases are seldom reported to the police.

On 1 March 2007, a group of upper caste Rajputs ransacked and burnt houses belonging to Dalits at Salwan village about 60 km from Karnal in Haryana after a Rajput was allegedly murdered in the village.<sup>146</sup>

In April 2007, Dalit farmer Madhukar Ghatge was killed by upper castes who did want him to dig a well on his own property at Kulakjai village in Satara District of Maharashtra.<sup>147</sup>

On 13 August 2007, Dalit farmer Khilan Singh Ahirwar was burnt alive by four people of the Yadav community following a dispute over land at Dhurhara village near Vidisha in Madhya Pradesh.<sup>148</sup>

On 13 September 2007, two Dalit children identified as Neeraj (9) and Akshay (7) were killed with their eyes gouged out and tongues chopped off at Bajrahapurva village under Chaubeypur police station near Kanpur in Uttar Pradesh.<sup>149</sup>

On the night of 21 September 2007, 11 Dalits were injured and about 37 houses belonging to Dalits were damaged when a mob of caste Hindus attacked a Dalit colony at Chikka Ankanahalli in Mandya district of Karnataka.<sup>150</sup>

On 25 September 2007, a Dalit labourer identified as Lalsingh Jatav was tortured by two upper caste persons named Kadamsingh Kushwaha and Ball Singh for refusing to work in their fields at Murdav village in Morena district of Madhya Pradesh. The victim was tied to a tractor and dragged on the village street. He sustained serious injuries. Police registered a case against Lalsingh Jatav and other Dalits who tried to prevent the two accused from torturing Lalsingh Jatav.<sup>151</sup>

On 11 November 2007, Dalit Kailash was burnt

alive by upper castes after he beat away a few animals of high caste man who had strayed into his house at Kharoda village in Dhar district of Madhya Pradesh.<sup>152</sup>

On 12 November 2007, Dalit youth identified as Guddu Jatav, a rickshaw puller, was beaten and buried alive by three upper caste men in Kanpur in Uttar Pradesh over a dispute.<sup>153</sup>

In November 2007, the National Human Rights Commission (NHRC) issued a notice to the Bihar government on the alleged abuses of Dalits by a police inspector in Buxar district. The police inspector reportedly picked up 18 Dalits from Bannarpur village and severely beat and humiliated them after being kept in the lockup for about 24 hours.<sup>154</sup>

### c. Violence against Dalit women

Rape remained a common instrument of revenge against scheduled castes. Both the upper castes and law enforcement personnel were responsible. The National Crime Records Bureau recorded a total of 1,217 cases of rape against the Scheduled Caste women in 2006 as against 1,172 cases in 2005.<sup>155</sup> Under-reporting is a serious concern given regular evidence of involvement of the law enforcement agencies. And whenever the Dalits file complaints with the police, they face threats and social boycott from the upper castes.

On 13 February 2007, a 14-year-old Dalit girl was gang-raped and then killed by three youths at Korandih village in Bhojpur district of Bihar.<sup>156</sup>

In March 2007, 15-year-old identified as Moni of Nirpura village in Bagpet under Dogat police station in Uttar Pradesh was gang raped and killed by some persons who had reportedly accompanied police. The police including a Sub-Inspector allegedly watched the incident without intervening.<sup>157</sup>

On the night of 27 March 2007, a Dalit woman was allegedly raped by Sub-inspector and In-charge of ITI police post, Mr R.K. Saklani and two other policemen at Chaiti Mela camp in Udham Singh Nagar district of Uttaranchal.

The victim had gone to the police to file an FIR against three youths who had gang raped her on 24 March 2007.<sup>158</sup>

On 7 April 2007, a 35-year-old Dalit woman identified as Indubai Tandekar was allegedly burnt to death by Babulal Bhagat after she refused to lend him money at Pachgaon village in Bhandara district of Maharashtra.<sup>159</sup>

In May 2007, a Dalit woman identified as Kari Devi (45) was beaten to death by the former village head Saroj Singh of Dhansir village in Gaya district of Bihar village on suspicion that she stole a cow.<sup>160</sup>

In June 2007, Dalit woman Rashmita Seth was allegedly not allowed to use community tube well for three days in Orissa after she lodged an FIR against two people for assaulting her.<sup>161</sup>

On 22 June 2007, a Dalit woman identified as Rashmita lodged a police complaint against physical assault by two upper caste youths at Khandagiri Bari on the outskirts of Bhubaneswar in Orissa. But the village panchayat forced her family to withdraw the complaint and denied them access to the community water tube well when she refused to withdraw her complaint.<sup>162</sup>

On 17 June 2007, Dalit woman Sarpanch Indira Kushwah of Mahoikala village in Chattarpur district of Madhya Pradesh was beaten up, stripped and paraded naked by upper caste men Lakhn Shukla and Santosh Shukla for not paying them Rs 50,000 from the village development fund.<sup>163</sup>

In July 2007, Dalit Banna Bairwa was allegedly killed by dominant Gujjar caste near Bilia village in Bhilwara district of Rajasthan after his wife refused to withdraw a rape case against one Bhanwarlal Gujjar.<sup>164</sup>

On 15 August 2007, Dhanvanti Devi Meghwal, Pradhan of Shergarh panchayat Samiti in Jodhpur district, Rajasthan was prevented from hoisting the national flag at an Independence Day function. She alleged that the local MLA humiliated her in public.<sup>165</sup>

On 31 August 2007, steaming dal was poured on a Dalit woman identified as Gyanti Devi and her six-month-old daughter by Ramavtar Yadav and his three sons in Patna in Bihar. Gyanti Devi was targeted because she had protested when her other children were being beaten by Ramavtar for allowing the children to play in the premises of a temple.<sup>166</sup>

On 16 August 2006, a 30-year-old Dalit woman was raped when she had gone to the fields to cut grass at Kalampur village of Muzaffarnagar district of Uttar Pradesh. The village panchayat ordered the rapist to be beaten with five shoes after he expressed regret.<sup>167</sup>

On 19 August 2007, Dalit girl Pooja was burnt alive in her house by three persons at Goyana village under Kotwali police station in Ghaziabad of Uttar Pradesh.<sup>168</sup>

In September 2007, members of the Lawyers for Human Rights International (LHRI) forced the police to register a case against a local shopkeeper Deepak Kumar who had allegedly beaten up a Dalit woman Vidya while she was shopping at a market in Lalru of Punjab. The accused had repeatedly hit her on the head with a hammer.<sup>169</sup>

On 19 October 2007, a Dalit woman identified as A. Ponnammal (34) was injured after being hit on the head with a crowbar by the tahsildar Motilal when she tried to prevent the officials from demolishing a toilet built on her premises at Prumalmalai near Kodaikanal in Dindigul district of Tamil Nadu. She was also stripped by the village panchayat president Selvaraj. The police rejected the actual complaint of Ms. Ponnammal and forced her to sign a written statement in the hospital.<sup>170</sup>

On 22 November 2007, Dalit woman Urmila Bai committed suicide after the police failed to act against the sarpanch's son Kale who raped her twice for criticising his father in Betul district of Madhya Pradesh.<sup>171</sup>

## X. Violence against women

Violence against women remained widespread

despite many laws and amendments made to the existing laws. According to 2006 Annual Report of the NCRB, a total of 1,64,765 incidents of crime against women were reported in India during 2006 as against 1,55,553 during 2005. This was an increase of 5.9% over 2005. These include 19,348 cases of rape involving 19,365 victims, 36,617 cases of molestation, 17,414 cases of kidnapping, 7,618 cases of dowry deaths and 63,128 cases of torture in 2006, among others.<sup>172</sup> Again these figures are heavily under-reported.

### a. Rape by the security forces

There are numerous credible allegations of rape, custodial torture and deaths against the security forces. However, the NCRB figures are absurd. The NCRB recorded 2 custodial rape cases in 2006, 7 in 2005 and 2 in 2004.<sup>173</sup>

The alleged cases of rape by the security forces during 2007 include:

- On 13 March 2007, a Kuki tribal girl identified as Nengneikim Haokip (18, daughter of Themang Haokip) who was raped by Nungthui Gangmei, personnel of the 38<sup>th</sup> Assam Rifles, at Beitun Khullen village under Sapermeina Police Station in Senapati district of Manipur;<sup>174</sup>
- on 20 July 2007, a woman who was allegedly raped by Constables Mohammad Shabir of Darhal and Mohammad Awaas of Thannamandi in a room of one of the constables at Ward number 4 in Rajouri district of Jammu and Kashmir;<sup>175</sup>
- On the night of 23 July 2007, a deaf and mute woman who was gangraped by Home Guard Umakant Dubey and Peon Badal Paswan at the office of the Department of Social Welfare under Shastri Nagar police station in Patna of Bihar;<sup>176</sup>
- On 11 August 2007, a girl from Sukhali village was allegedly raped by Head Constable Pawan Kumar of Sector 10 A police station in Gurgaon of Uttar Pradesh after she had gone to the police station to

lodge a complaint about her lost mobile phone;<sup>177</sup>

- On 19 August 2007, 17-year-old girl who was allegedly raped by jawan Ajay Kumar of 27 Rastriya Rifles in Daskal village in Akhnoor tehsil of Jammu district;<sup>178</sup>

On 12 October 2007, the Karnataka State Human Rights Commission wrote a letter to the City Police Commissioner of Bangalore seeking a report on the alleged rape of a woman by constable C Basavaraj during illegal detention at the Koramangala Police Station. The police illegally detained the victim and her husband at the Koramangala police station for almost a week but did not record either their arrest or detention.<sup>179</sup> On 14 December 2007, 17-year-old tribal girl was allegedly raped repeatedly by Sub-Inspector Nandan Baidya in the women's cell of Bisramganj police station near Agartala of Tripura.<sup>180</sup>

- On 16 May 2007, Suman Kale (45) belonging to de-notified Pardhi tribal community was tortured to death in the custody of the police at Ahmednagar in Maharashtra. She was picked up on 12 May 2007 on suspicion of sheltering dacoits. When her condition deteriorated due to torture she was admitted at a private hospital on Savedi road in Ahmednagar on 14 May 2007. In the lock up, the family members were not allowed to meet the deceased but when she was shifted to the hospital the police told the family members that she had consumed poison.<sup>181</sup>
- In some cases, police refused to register cases. On 13 July 2007, a rape case was registered against seven police officials including Station House Officer (SHO) of Sheshamau, Shivpukar Sonkar at the orders of a local court in Kanpur in Uttar Pradesh. The court gave the order after a woman alleged that Shivpukar Sonkar, then SHO of Sheshamau, Inspector Yadunath Singh, Brijlal Verma and four others forcefully entered her house and raped her in March 2007 and that the police refused to register her case.<sup>182</sup>

## b. Violence by the AOGs

The armed opposition groups (AOGs) were also responsible for sexual violence.

On 9 July 2007, a 20-year old woman was allegedly raped by three gunmen suspected to be cadres of AOG at T-Phaijol village in Churachandpur district of Manipur.<sup>183</sup>

The Maoists were accused of sexual harassment of its women cadres. In July 2007, three female Maoists who were arrested from Mainshidhia in Mayurbhanj district of Orissa alleged that they were forcibly confined and sexually harassed by their male counterparts.<sup>184</sup>

## c. Cruel cultural practices

Women continued to be victims of violence because of cruel cultural practices.

A large number of women are killed as alleged witches. In Asom, witch hunting continued despite implementation of a special project under Inspector General of Police Kuladhar Saikia viz. 'Project Prahari' to check witch killings<sup>185</sup>

Some of the cases of women being murdered as witches in 2007 included:

- Sib Bala Boro and her son Kalicharan Bodo who were killed at Rowmari village under Borbori police station in Baska district of Asom by unknown persons at on charges of practising witchcraft on 16 April 2007;<sup>186</sup>
- Pochamma Chegunta and her husband were burnt to death by villagers in Ullitimmayipalli village under Chegunta mandal of Medak district in Andhra Pradesh on 3 May 2007;<sup>187</sup>
- Gajanan Narayan Bramhankar and his wife Yashoda were reportedly axed to death by one Shirkrishna Bhaiyyalal Chute at Malitola Anjora village in Amgaon tehsil on 4 May 2007;<sup>188</sup>
- Dibakar Khodal, his wife Gauri and son Debicharan (18) of Nunapani village under

- Dhalai police station in Cachar district, Assam on the night of 28 May 2007;<sup>189</sup>
- four persons including three women identified as Tia Singh, Budhini Singh and Somabari Singh were beheaded by villagers for practicing witchcraft at Pratapur village under Nilagiri police station in Orissa on 26 August 2007;<sup>190</sup>
- Shanti Kheria who was beaten to death by tea workers in her home at Dima tea garden under Kalchini Block in Jalpaiguri district of West Bengal on 13 July 2007;<sup>191</sup> and
- two women identified as Singha Majhi and Sambari Munda were burnt alive by a man at Jhaunrisahi in Mayurbhanj district of Orissa on 7 November 2007.<sup>192</sup>
- Sabir Khan (17), son of Alim Khan by the 22<sup>nd</sup> Maratha Light Infantry near Irong Bazar in Imphal, Manipur on the night of 14 October 2007;<sup>194</sup>
- Md Razak Khan (15) of Lilong Leihaokhong by a combined security forces team at Leihaokhong Maru under Lilong Police Station in Thoubal district of Manipur on 13 September 2007<sup>195</sup>;
- Mizanur Rahman (17) by the personnel of Border Security Force at Gopalnagar under Tapan police station in Dakshin Dinajpur district of West Bengal on the night of 9 June 2007;<sup>196</sup>
- two minor boys identified Asif Iqbal (13), son of Asmat Sheikh and Sahin Sheikh (15), son of Jalil Sheikh of village Ramnagar Para under Raninagar police station in Murshidabad district of West Bengal by personnel of 140<sup>th</sup> Border Security Force (BSF) stationed at Kaharpara border outpost no.1 on the night of 1 April 2007.<sup>197</sup>

## XI. Violations of the rights of the child

The situation of children remained vulnerable with the lack of effective programmes for the child labourers, recruitment as child soldiers, sexual violence against girl child and deplorable conditions of the juveniles in conflict with the law. The security forces have also been responsible for violations of the rights of the child including rape, extrajudicial killing and torture.

In March 2007, the government of India established National Commission for Protection of Child Rights, a statutory body of Government of India under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) to protect, promote and defend child rights in the country.

The National Crime Records Bureau recorded a total of 18,967 cases of crimes against children reported in the country during 2006 as compared to 14,975 cases during 2005, reflecting an increase of 26.7%.<sup>193</sup>

### a. Killing by security forces

The security forces were responsible for the violation of the right to life of children. Some of the cases of extrajudicial killings of children included:

### b. Child labour

Child labour is a serious concern in India. The 2001 Census recorded that there were 12.5 million child labourers in India. The Ministry of Labour estimated that about 10 per cent or 1.3 million out of the 12.5 million child labourers work in hazardous industries.<sup>198</sup> The top five states employing children were Uttar Pradesh, Andhra Pradesh, Rajasthan, Bihar and Madhya Pradesh.

The official records accessed under Right to Information (RTI) Act by an NGO, Bachpan Bachao Aandolan, revealed that only 6,669 children were identified across the country as child labourers under the Child Labour (Prohibition and Regulation) Act, 1986. In all, 872 prosecutions were launched against the offending employers, but not a single conviction had taken place during the first year of the total ban. In the national capital of Delhi, only 55 child labourers had been identified, although the Bachpan Bachao Aandolan estimated that there

were more than 2 million child labourers working in restaurants and dhabas alone.<sup>199</sup>

### **c. Child trafficking**

There is no comprehensive law on human trafficking in India. Existing criminal laws fail to address the situation of child trafficking. The 'Immoral Traffic Prevention Act' that exists in India only refers to trafficking for prostitution. It does not provide comprehensive protection for children and a clear definition of 'trafficking'. The Goa Children's Act 2003 is the only law that defines child trafficking. However, it cannot be enforced countrywide as it is just a state law. Besides, India is yet to ratify UN Convention against Transnational Organised Crime.

A study by Shakti Vahini, an NGO working on anti-trafficking issues, found that 378 of India's 600 districts are affected by human trafficking. A large number of children were trafficked within in India. According to the estimates of National Human Rights Commission around 45,000 children in India go missing every year. The majority of these children were forced into prostitution, forced to work at homes and factories, pushed into begging, drug peddling and even in illegal organ trade. Rehabilitation and reintegration remained scarce to those children who were rescued.<sup>200</sup>

In its 2006 Annual Report, the National Crime Records Bureau recorded only 35 cases of buying of girls and 123 cases of selling of girls for prostitution. It also recorded a total of 5,102 cases of kidnapping and abduction of children during 2006. The figures of the NCRB however do not reflect the reality.

According to Shantha Sinha, Chairperson of National Commission for Protection of Child Rights, Andhra Pradesh was the biggest supplier of child sex workers in the country. Children, both boys and girls, were being trafficked for sex work from Andhra Pradesh to Pune, Kolkata and other cities..<sup>201</sup>

### **d. Children in armed conflict**

In armed conflict situations, children were

subjected to killing, torture, sexual abuses and other forms of physical violence both by the security forces and the armed opposition groups.

There were reports of recruitment of child soldiers especially by the state government of Chhattisgarh and the Maoists.

In addition to recruitment of under-age children as Special Police Officers to counter the Naxalites, the government of Chhattisgarh has a job scheme for children of police personnel killed in the line of duty. Minors were recruited as child police officers in Chhattisgarh. There were at least 75 child police officers in Chhattisgarh as of January 2007. These children do light office work. They were paid about Rs 2,500 a month for the job.<sup>202</sup>

The Maoists were accused of setting up Bal Militia (Children Militia. Children were lured into the military wing and trained in handling arms. On the night of 31 May 2007, 10-12 children were allegedly seen with Maoists at Kisinda village in Orissa where they distributed leaflets.<sup>203</sup>

### **e. Girl child: Target of sexual abuse**

On 16 July 2007, the NHRC issued draft guidelines for speedy disposal of child rape cases.<sup>204</sup> There were consistent reports of sexual abuse of girl children from across India.

In Mizoram, 39 out of 61 rape victims between January and August 2007 were girls below 18 years of age, according to the records of the Mizoram police. Of these, 17 victims were between 10 to 14 years of age and 16 were below 10 years while six of them were between 14 to 18 years.<sup>205</sup>

In many cases, the security forces were the perpetrators of rape of children. The victims included:

- an 8-year-old girl who was allegedly raped by a personnel of the Army Defence College, Golabandha near Berhampur town of Orissa on 28 January 2007,<sup>206</sup>
- a minor tribal girl was allegedly raped by three police officers of Nawadih police

station during an anti-Maoist operation at Jarwatola village of Deggadda panchayat in Jharkhand on 27 June 2007;<sup>207</sup>

- a girl from Sawlad near Demthring who was allegedly raped by an army personnel identified as Malsawm Tluanga at Police Bazaar in Shillong of Meghalaya on 9 July 2007;<sup>208</sup> and
- a 13-year-old girl who was allegedly raped by Lance Naik Kishori Lal of Sashastra Seema Bal (SSB) in a jungle under Birpara police station of Jalpaiguri district of West Bengal in July 2007.<sup>209</sup>

In May 2007, Assistant Sub-Inspector Mohammed Aalam of Jharkhand Police was arrested on charges of raping 16-year-old Mamata Kumari for three months at gunpoint in Jharkhand.<sup>210</sup>

## f. Juvenile justice

Despite the enactment of the Juvenile Justice (Care and Protection of Children) Act in 2000, by and large, the Act remained unimplemented. Many states did not establish an adequate number of Juvenile Justice Boards as provided under the Juvenile Justice Act of 2000.

The Juvenile Justice (Care and Protection of Children) Act of 2000 is often violated. Many juvenile offenders were tried and convicted under the Criminal Procedure Code (CrPC) rather than the Juvenile Justice (Care and Protection) Act, 2000. In December 2007, the Madras High Court expressed concern over trial sentencing of juvenile offenders under the Criminal Procedure Code (CrPC) rather than the Juvenile Justice (Care and Protection) Act, 2000.<sup>211</sup>

On 25 September 2007, two minor sisters Rinku (3) and Sangita Kumari (7) appeared with their parents in district and sessions judge court for bail under various sections of Indian Penal Code in Darbhanga, Bihar. Rinku was charged with forcibly taking away a flowerpot, while Sangita was charged with grievously assaulting one Bhageshwari Devi.<sup>212</sup>

In June 2007, arrest warrant was issued against a three-year-old boy identified as Raj Kumar Jha alias Raju Jha, son of Raj Narayan Jha along with six other persons on the charges of rioting and attacking policemen during a clash between two communities in a village under Manihari police station of Katihar district of Bihar. The boy was charged under sections 147, 148, 149, and 359 of the Indian Penal Code and the Arms Act.<sup>213</sup>

Under the Juvenile Justice Act, the enquiry against a child apprehended by police for an offence should be completed within six months. However, over 70 per cent of the children were detained without charge in the Observation Home in Madivala, Karnataka and exceed the remand limit.<sup>214</sup>

Children were also subjected to torture in juvenile homes and orphanages. In August 2007, 10 tribal boys, aged between 8 and 13, fled the Uma Anathalaya (orphanage) at Koriya village in Dumka district of Jharkhand as a result of inhuman treatment. The boys were allegedly denied proper food and medicine, beaten regularly and forced to do hard work like bringing firewood and cleaning the entire campus. On 14 August 2007, Narayan Soren (8) allegedly died after the orphanage staff did not provide him food and medicine despite suffering from very poor health.<sup>215</sup>

## g. Torture of children

Children have been subjected to illegal detention and torture at the hands of the security forces. The victims of torture included:

- an 8-year-old girl identified as Mantasha who was allegedly tortured by a Sub Inspector who was leading a search operation in Mau area in Uttar Pradesh on the night of 6 September 2007;<sup>216</sup>
- Mukhtayar (13) and his brother (15) of Bhupgarg village in Faridabad district of Haryana who were allegedly tortured in custody on 14 August 2007;<sup>217</sup>
- a 17-year-old Dalit girl identified as Seema, resident of Jagadishpur village in Uttar

- Pradesh who was illegally detained for the whole night on 15 August 2007 and tortured at Gaur Police Station in Basti district of Uttar Pradesh following which she died on 16 August 2007;<sup>218</sup>
- three minor girls - Chessam Reshima, 17, daughter of Md Abdul Chessam, her 15-year-old sister Saniya Chessam and 13-year-old Samina Chessam who were tortured by the personnel of 22<sup>nd</sup> Maratha Light Infantry during the arrest of their family member Md Manao at Sekmaijin Makha Phoubakchao in Imphal of Manipur on the night of 27 June 2007;<sup>219</sup>
  - Rakesh (8 years old) and Rahul (6 years old) who were illegally detained without food and water at the Shastri Nagar Police Station in Patna, Bihar on 24 June 2007;<sup>220</sup> and
  - Tabassum Noor, a student of Class X of Government High School, Mandoora Tral who was beaten up by the personnel of Central Reserve Police Force when she was going to school in Mandoora Tral in Jammu and Kashmir on 14 May 2007.<sup>221</sup>

## **XII. Status of internally displaced persons**

### **i. Conflict-induced displacement**

There were about 4,50,000 internally displaced persons in India as a result of conflict. These include:

- about 200,000 Santhals, Bodos and Muslims who have been displaced in Bodoland areas of Asom since 1994;
- 43,740 persons in 20 relief camps in Dantewada district of Chhattisgarh as a part of the government sponsored counter-insurgency in Salwa Judum campaign;<sup>222</sup>
- 55,476 Kashmiri Pandit families who had been displaced due to the armed conflict in Jammu and Kashmir in early 1990; and

- 35,000 Brus of Mizoram sheltered in Tripura State of India.

The conditions are deplorable and discriminatory. On 15 November 2007, a National Human Rights Commission (NHRC) team expressed dissatisfaction over the rations and medical treatment provided to victims of ethnic violence sheltered in relief camps in Kokrajhar district of Asom. During its visit to different camps in the district they found that the ration supplies provided to 15 relief camps for ten days to 7504 families was inadequate.<sup>223</sup>

In Chhattisgarh, there were 43,740 IDPs, most of them tribals, in 20 relief camps in Dantewada district, which has been the epicenter of the Maoists conflict, as of 5 January 2007. The IDPs were living in deplorable and sub-human conditions and remained extremely insecure from the Maoists attacks and had no access to their villages and means of survival.<sup>224</sup>

No visible measures were also taken to ensure return of the IDPs. The State government of Jammu and Kashmir failed to take serious steps in bringing back the displaced Kashmiri Pandits. Worst, the State government had even failed to improve the living conditions of this community who continued to stay in the valley in the last 17 years. They were at the verge of leaving Kashmir in a bid to settle outside. According to official sources, 6,000 Pandits were still living in the valley. They had been living in dilapidated conditions of their makeshift houses in shanty cluster colonies.<sup>225</sup>

The discrimination is clear and stark. Presently, Kashmiri pandits are provided cash assistance of Rs 1,000/- per head per month subject to a maximum of Rs 4,000/- per family per month both at Jammu and Delhi relief camps besides basic dry rations. This assistance has been proven to be inadequate.

In comparison a Bru tribal adult gets cash of Rs 2.90 per day (i.e. Rs 87 per month) and a minor gets Rs 1.45 per day (i.e. Rs 43.5 per month) and 450 gram of rice is being provided to per adult Bru per day while 225 gram of rice is provided to

per minor per day, which is highly inadequate.

Since 1997, the Mizoram government has refused to take back 35,000 Bru/Reang IDPs living in deplorable conditions in six relief camps in Tripura.

In June 2007, a Supreme Court-appointed Committee headed by N.C. Saxena found that 4,545 Muslim families comprising around 30,000 persons who were displaced by the post-Godhra communal riots were living in miserable conditions in 81 relief colonies in Gujarat. They faced acute scarcity of food and security. None of the 81 relief colonies were set up or assisted by the state government. Only five of the 81 colonies had government or government recognised schools, and only four served mid-day meals to children. Only three colonies had fair price shops, and only 725 out of the 4,545 families were recognised as living below the poverty line.<sup>226</sup>

## ii. Development-induced displacement

Development activities such as setting up of industries, mining and dams have displaced thousands of people in India. The government failed to take action to provide for people affected by these projects.

Tribals formed the majority of the development-induced displaced persons. A survey conducted by ActionAid and Indian Social Institute revealed that over 1.4 million people have been displaced from their homes in the four states of Andhra Pradesh, Chhattisgarh, Orissa and Jharkhand. A total of 10.2 million acres have been acquired for setting up of development projects such as mines, industrial plants and dams in these states in the last decade. Out of the 1.4 million displaced persons in these four states, 79 per cent were tribals.<sup>227</sup>

The National Rehabilitation and Resettlement Policy of 2007 notified on 31 October 2007 fail to address the key issues relating to the increase in conflict: forcible acquisition of lands. The 2007 Policy upholds the sovereign power of the

State to apply the concept of “eminent domain” to forcibly acquire any private property in any part of the country in the name of “public purpose”. This power is provided under the Land Acquisition Act of 1894. The 2007 Policy was supposed to be an improvement of the Draft National Rehabilitation Policy of 2006 which was drafted to address the admitted failures of the National Policy on Resettlement and Rehabilitation for Project Affected Families of 2004. The 2007 Policy allows further displacement in the name of resettlement and rehabilitation of the project affected families.

The IDPs have not been provided with meaningful rehabilitation. The case of the Narmada Dam exemplifies displacement without proper rehabilitation. Thousands of people, mostly tribals, have been displaced due to the dams built across the river Narmada.

More than 2,000 families displaced by the multi purpose Hirakund dam project in Sambalpur district of Orissa were not compensated as of 1 February 2007.<sup>228</sup>

As India’s booming economy requires more resources, villagers face more displacement. The State governments have been trying to forcibly occupy lands for so-called “industrial development”. Across India, a total of 404 Special Economic Zones (SEZ provide special fiscal incentives to industry) have been formally approved and 165 have been approved in principle under the SEZ Act of 2005. As of 30 November 2007, a total of 172 SEZs have been notified and began operations.<sup>229</sup>

In North-East India, large dams are emerging as a major issue of conflict. The government of India has proposed building a number of large dams in the region. . The state government of Arunachal Pradesh signed 39 Memoranda of Understanding (MoU) with both public and private sector developers to produce 24,471 MW as of September 2007. Some of the companies included the National Hydroelectric Power Corporation (NHPC), North Eastern Electric Power Corporation (NEEPCO), Reliance Energy, Jayprakash Associates, GMR Energy.<sup>230</sup> These

dams will cause displacement of the tribal peoples apart and destroy the bio-diversity of the state. Environmental and social impact studies of these projects are reportedly inadequate. Officials argue that Arunachal Pradesh is sparsely populated and displacement will be minimal.

The proposed Tipaimukh Hydro Electric Project, implemented by the North Eastern Electric Power Cooperation (NEEPCO), has been protested by the tribals of Manipur and Mizoram and other civil society organizations. The Hmar tribal bodies oppose the project as it would totally submerge 12 villages and would affect another 60 villages in Manipur. In Mizoram, the dam hydro electric project would affect 15-20 villages and again the affected peoples are tribals.<sup>231</sup> The affected peoples have complained that the public hearing on the project which was held in 2006 was unfair. . In December 2007, the state government of Manipur was forced to announce a fresh public hearing to be conducted at the project site.<sup>232</sup>

Across India, social movements of the dispossessed and displaced face harassment, intimidation and violence. What is more alarming is the use to state-sponsored informal militias to tackle these conflicts.

Nandigram in West Bengal turned into a battle ground between armed cadres of the ruling Communist Party of India-Marxist (CPI-M) and the anti-land acquisition Bhumi Uchhed Pratirodh Committee (Land Eviction Resistance Committee, BUPC), made up of poor people who do not want to sell their lands. Gross human rights violations have been committed with absolute impunity as the State government either perpetrated or remained complicit with the violence of the ruling party cadres.

On 14 March 2007, 14 BUPC protesters were shot dead by the State police. An inquiry by the Central Bureau of Investigation was ordered. On 16 November 2007, the Calcutta High Court declared the police killings as “unconstitutional”, unjustified” and awarded compensation of Rs 500,000 (US\$ 12,690) each to those killed, Rs 200,000 (US\$ 5,076) to each of the rape victims

and Rs 100,000 (US\$ 2,538) to each injured person. As the CPI-M cadres “recaptured” the areas in Nandigram from 6 November 2007, an unknown number of supporters of the BUPC were killed, women raped and displaced from their homes. Shockingly West Bengal Chief Minister Buddhadeb Bhattacharjee justified the actions of the CPI-M cadres saying that the victims were “paid back in the same coin”.<sup>233</sup>

### XIII. Violations of the prisoners’ rights

Prison conditions are very poor across India. According to the statistics of the National Human Rights Commission, there were a total of 3,32,112 (international: 332,112) prisoners against the total capacity of 2,38,855 (238,855) prisoners in the 1315 jails in India as on 31 December 2004. Out of total prisoners, 2,32,731 (232,731) inmates were awaiting trial. This equates to 70% of the total prisoners. This included 12,276 women and 1,570 children. The highest overcrowding rate was reported from Jharkhand with 195.2% overcapacity Delhi with 149.7%, Chhattisgarh with 94.5% and Gujarat with 91.5 % sanctioned capacity.<sup>234</sup>

Jail conditions do not conform to international standards and most lack basic amenities such as adequate food, drinking water, sanitation, and health services. In its 2007-2008 Annual Report, the Ministry of Home Affairs accepted that “the deterioration of the condition of prisons, prisoners, and prison staff because of inadequate allocations for the maintenance and upkeep of prisons from the States”. They noted the need to increase the capacity in jails to accommodate those awaiting trial and for convicted prisoners as well as the need to improve sanitation in prisons and provide adequate housing to prison personnel.

Apart from overcrowding which is the hallmark of the Indian jails, the jail conditions lacked even basic amenities such as adequate food, drinking water, sanitation, and health services.

The showpiece of India’s prisons, Tihar Jails had 13,025 prisoners, including 479 female, against

the total sanctioned capacity of 6250 as on 31 August 2007 resulting in 52% overcrowding. Of the total prison population, 10,652 prisoners or 81.7% were under-trials.<sup>235</sup> However, the figure came down to about 12,300 prisoners in the Tihar Jail as on 18 November 2007 following measures for decongestion initiated after a spate of prisoner deaths in Tihar Jail.<sup>236</sup>

As of 27 October 2007, at least 10 prisoners have died in the custody of the Cherlapally Jail in Hyderabad, Andhra Pradesh since 1 January 2007. While 9 prisoners including Sanjeeva and Laxman have died due to various easily curable illnesses, at least one prisoner identified as D. Bhaskar (32), a life convict, was allegedly beaten to death by the jail staff. Most of the deceased belonged to poor and underprivileged sections of society.<sup>237</sup>

Those who died in the jail custody during 2007 included:

- Bhuttu Chowdhary who died due to alleged negligence at Beur jail at Patna in Bihar on 13 November 2007;<sup>238</sup>
- Adol Basumata at Alipurduar jail in West Bengal on 2 November 2007;<sup>239</sup>
- Arsul Pradhan at Berhampur Circle Jail in Ganjam district of Orissa on 26 October 2007;<sup>240</sup>
- Rashpal Singh at Jalandhar Central Jail in Punjab on 17 September 2007;<sup>241</sup>
- Rabinarayan Bhoi under at the Allipingal jail in Jagatsinghpur district of Orissa on 13 September 2007;<sup>242</sup>
- Nagina Singh at Gaya Central jail in Bihar on 10 September 2007;<sup>243</sup>
- Virender at Jind jail in Haryana on the night of 2 September 2007;<sup>244</sup>
- Jawala Singh at Central Jail, Bathinda in Punjab on 1 September 2007;<sup>245</sup>
- Muktikanta Muduli at Balasore Jail in Orissa on the night of 28 August 2007;<sup>246</sup>

- Balram Sharma at the Raipur Central Jail of Chhattisgarh on 21 August 2007;<sup>247</sup>
- Bimal Roy at Jalpaiguri Central jail in West Bengal on 31 July 2007;<sup>248</sup>
- Gollu Kanna Rao (40) who died at Government General Hospital in Vijayawada in Andhra Pradesh on 29 July 2007;<sup>249</sup>
- Anu at Jalandhar Central Jail in Punjab on the night of 5 July 2007;<sup>250</sup>
- Thippeswamy at Chitradurga district jail in Karnataka on 1 July 2007;<sup>251</sup>
- Gurdev Singh at Ferozepur Central Jail in Punjab on the night of 12 June 2007;<sup>252</sup> and
- Anil Boraik at Golaghat jail of Asom on 5 June 2007.<sup>253</sup>

Due to inordinate judicial delay, many prisoners have been kept in jails for years. On 3 January 2007, an undertrial identified as Santosh Dhanvare threw his chappal (slipper) at the judge of the trial court after being frustrated with repeated assigning of new dates for hearing of the case. Santosh was arrested in a petty theft case in July 2004 and was denied bail. Each time, he was sent back to custody with a new date for hearing.<sup>254</sup>

On 13 February 2007, the Supreme Court directed the Registrar Generals of all High Courts to submit within six weeks reports giving details of all the undertrials whose cases have not been posted for hearing for years and also of those who have been sent to mental asylum. The apex court took suo motu cognisance of a news report that one Ramjeevan Yadav has been in a jail in Uttar Pradesh for 38 years without trial.<sup>255</sup>

The International Committee of the Red Cross (ICRC) is given access only in Jammu and Kashmir. ICRC carries out visits to persons held in relation to the situation in Jammu and Kashmir and submits confidential reports on its findings to the Indian authorities on the basis of a memorandum of understanding signed in 1995. In mid-2007, ICRC raised the issue of the living conditions and the treatment of Kashmiri

prisoners lodged in various jails across the country with the Central government.<sup>256</sup>

In March 2007, the Supreme Court summoned the home secretaries of twelve states including Jammu and Kashmir on 24 April 2007 explain the non-compliance of its earlier order seeking replies regarding thousands of prisoners detained without proper trial and other facilities.<sup>257</sup>

## **XIV. Violations of the rights of minorities**

Religious minorities in India constituted 18.6% of the total population as per 2001 census of India. Of them, Muslims constituted 12%, Christians 2.3%, Sikhs 1.9%, Buddhists 0.8%, Jains 0.4% and others 0.7%.<sup>258</sup>

The National Commission for Minorities is mandated to safeguard the constitutional legal rights of the minorities. Only 15 States - Andhra Pradesh (Statutory Commission), Assam (Non-Statutory), Bihar (Statutory), Chhattisgarh (Statutory), Delhi (Statutory), Jharkhand (Statutory), Karnataka (Statutory), Madhya Pradesh (Statutory), Maharashtra (Non-Statutory), Manipur (Non-Statutory), Rajasthan (Statutory), Tamil Nadu (Non-Statutory), Uttar Pradesh (Statutory), Uttarakhand (Statutory), and West Bengal (Statutory) have established State Minorities Commission.<sup>259</sup>

### **a. Attacks on the Christian minorities**

Christians continued to face systematic attacks because of their beliefs.

On 29 April 2007, pastor Waltar Mashih was seriously injured after being beaten up allegedly by a group of Hindu youths who attacked the prayer house at Geej Garh area of Jaipur in Rajasthan.<sup>260</sup>

On 7 May 2007, priests Ajit Billawi and Ramesh Kagargole of the Frank Missionary Prayer Board were reportedly beaten up by alleged activists of Bajrang Dal and VHP and later paraded through

the streets for allegedly converting Hindus to Christianity at Ichalkaranji in Kolapur district of Maharashtra.<sup>261</sup>

On 16 September 2007, pastor Virendra Singh and his wife were beaten up by villagers allegedly led by some VHP activists and burnt down a thatched hut that was being used as a place of worship at Barauli village under Madiagon police station in Lucknow, Uttar Pradesh.<sup>262</sup>

On 25 October 2007, five nuns of the Shantidham Convent were allegedly attacked by some unidentified persons at Bhagirathpura area in Indore, Madhya Pradesh.<sup>263</sup>

On the night of 19 November 2007, alleged activists belonging to the Bajrang Dal reportedly burnt and demolished a church at Manduwa village in Bastar region of Chhattisgarh to protest against the “conversion drive” taken up by missionaries in tribal areas. The pastor was also tied and beaten up.<sup>264</sup>

On 19 December 2007, four Christian missionaries were injured after being attacked allegedly by VHP activists while they were conducting “a social awareness programme” at Badia village in Kwant taluka of Vadodara district of Gujarat.<sup>265</sup>

On 25 December 2007, at least a dozen churches were attacked by a mob allegedly led by Vishwa Hindu Parishad (VHP) activists after Christians attacked a VHP leader in retaliation in Kondhmal district of Orissa.<sup>266</sup>

### **b. Attacks on the minorities by the AOGs**

On 29 March 2007, five Hindu labourers were killed and four others injured when two suspected members of an AOG attacked a shelter at Mathiani village in Rajouri district. The labourers were allegedly segregated based on their religion. After rounding up 11 Hindu labourers, the attackers opened fire, killing five of them on the spot.<sup>267</sup> The deceased were identified as Sanjay Kumar (21), Chaman Lal (32), Mohinder Kumar (28), Baldeve Kumar (38) and Rachpaul Singh (26).<sup>268</sup>

On the night of 21 August 2007, suspected cadres of United Liberation Front of Asom (ULFA) lobbed a grenade at the house of school teacher Ranjit Prasad Gupta, from Bihar, at Hojai town in Nagaon district of Asom.<sup>269</sup>

On 10 September 2007, suspected cadres of ULFA shot dead Hindi-speaking trader Tapan Kundu and his driver Ramvilas Sah at Talap in Tinsukia district of Asom.<sup>270</sup>

## XV. Status of the refugees

The government of India has no refugee policy. The refugees come under the Foreigners Act that has very limited differentiation between illegal immigrants and refugees. Many refugees were deprived of any kind of legal protection and live under fear of deportation.

## XVI. Violations of International Humanitarian Laws by the AOGs

AOGs committed violations of humanitarian law in 2007. On 5 September 2007, Minister of State for Home Affairs Sriprakash Jaiswal stated in the Upper House of Parliament that as many as 129 people's representatives including Member of Parliament, Sunil Mahto were killed by the Maoists from 2004 to 2006.<sup>271</sup> Presently, 21 out of total 28 states have been afflicted with internal armed conflicts.

The armed opposition groups banned by the Government of India under the Unlawful Activities (prevention) Act, 1967 were United Liberation Front of Assam, National Democratic Front of Bodoland, People's Liberation Army, United National Liberation Front, People's Revolutionary party of Kangleipak, Kangleipak Communist Party, Kanglei Yaol Kanba Lup, Manipur People's Liberation Front, Revolutionary People's Front, All Tripura Tiger Force, National Liberation Front of Tripura, Hynniewtrep National Liberation Council, Achik National Volunteer Council, Babbar Khalsa International, Khalistan Commando Force, International Sikh Youth Federation,

Lashkar-E-Taiba/ Pasban-E-Ahle Hadis, Jaish-E-Mohammed/ Tahrik-E-Furqan, Harkat-UI-Mujahideen/ Harkat-UI-Ansar/ Karkat-UI-Jehad-E-Islami, Hizb-UI-Mujahideen/ Hizb-UI-Mujahideen Pri Panjal Regiment, Al-Umar-Mujahideen, Jammu and Kashmir Islamic Front, Liberation of Tigers of Tamil Eelam, Students Islamic Movement of India, Deendar Anjuman, Communist Party of India (Marxist-Leninist)-People's War and all its formation and front organizations, Maoist Communist Centre and all its formations and front organizations, Al Badr, Jamiat-UI-Mujahideen, A-Qaida, Dukhtarane-Millat, Tamil Nadu Liberation Army, Tamil National Retrieval Troops, and Akhil Bharat Nepali Ekta Samaj.

### a. Violations of the right to life

AOGs continued to target innocent civilians through explosive devices. On 29 July 2007, six persons including four tourists from Gujarat and two local women were killed and 19 others were injured in an alleged AOG-triggered blast inside a bus near the Shalimar Gardens in Srinagar of Jammu and Kashmir.<sup>272</sup>

On 12 December 2007, five persons were killed and four other seriously injured when suspected All Adivasi National Liberation Army (AANLA) triggered a blast on Dibrugarh-Guwahati-Delhi Rajdhani Express near the Chungajan railway station in Upper Assam's Golaghat district.<sup>273</sup>

Some other cases killings by AOGs documented by Asian Centre for Human Rights included:

- civilians Farooq Ahmad Wani and Shakoor Ahmad Dar who were killed when unidentified gunmen opened fire on a private vehicle at Mohanvij in Pulwama district of Jammu and Kashmir on 15 April 2007;<sup>274</sup>
- Abdul Hamid, son of Ghulam Hussain of Kuth Dhar, who was killed after abduction by unidentified members of AOGs in Mansu nallah area in Doda district of Jammu and Kashmir on 22 June 2007;<sup>275</sup>
- Devraj and his 9-year-old daughter Manjoo

Devi were killed on the spot when suspected AOG members barged into the house of Village Defence Committee (VDC) member Mukesh Kumar's house and opened fire at Dalhal village in Doda district of Jammu and Kashmir in July 2007;<sup>276</sup>

AOGs often issued threats to villagers to pressure their family members who are in the army or the police and not to participate in the Independence Day celebrations. Failure to obey often results in killings.

- On 16 August 2007, alleged members Hizbul Mujahideen reportedly kidnapped Mahammad Rasheed, (brother of a Territorial Army soldier Muhammad Rafiq) and later killed him at Pangaber Dhok in Kotranka block in Rajouri district.<sup>277</sup>
- On 18 August 2007, Muhammad Afsar (70), father of police constable Muhammad Hanief, was reportedly killed by unidentified members of AOGs at Dakhan Wali Dhok in the Kandi area in Rajouri district.<sup>278</sup>

### **Killing of political party activists**

Political party activists were mainly targeted by the armed opposition groups in the Naxalite affected states, Jammu and Kashmir and Asom.

The Naxalites were responsible for the high levels of political activists during 2007. These victims included:

- Boyapati Chinna Ramaiah, a leader of Telegu Desam Party killed at his house at Yachavaram in Ardhaveedu Mandal in Prakasam district of Andhra Pradesh on 19 January 2007;
- Lakkireddy Rangareddy, a leader of the Youth Congress killed of Lakshnipuram village in Ardhaveedu Mandal of Prakasam district of Andhra Pradesh on 23 January 2007;
- Erava Tirupal Reddy, a Telugu Desam Party leader, shot dead at Erlupalli village of Giddalur mandal in Prakasam district of

Andhra Pradesh on 23 February 2007;

- Mr Sunil Mahato, General Secretary of Jharkhand Mukti Morcha and Member of Parliament in the Lok Sabha, at Bakuria village in East Singhbhum district of Jharkhand on 4 March 2007;
- Komati Prakash, a Mandal Parishad member of the Congress party at Marikal village under Peddakottapalli Mandal in Mahbubnagar district of Andhra Pradesh killed on 5 March 2007;
- Rampada Singh, member of the CPM's Belpahari local committee and Parikshit Singh, CPM member of Simulpal gram panchyat in West Midnapore district, West Bengal were killed on 30 March 2007;<sup>279</sup>
- Korra Rama Rao of Congress party and Sarpanch of Balapam panchayat under Chintapalli Agency mandal in Visakhapatnam district of Andhra Pradesh killed on the night of 10 April 2007;
- Samidi Ravi Shankar, Vice-Chairman of Zilla Parishad of Visakapatnam of Hukumpeta village in Visakapatnam of Andhra Pradesh on the night of 28 May 2007;
- Ramchandra Yadav, a Janata Dal (U) activist of Satgharwa village in Munger district of Bihar on the night of 29 May 2007;
- K. Satyam, a Congress leader, at Chinnamidisaleru village in Khammam district of Andhra Pradesh on 5 June 2007;
- Bishamber Singh of Bharatiya Janata Party (BJP) of Simdega in Jharkhand on the night of 7 June 2007.<sup>280</sup>
- Rohit Roy, the Secretary of the CPM's Kantapahari branch committee in Lalgahar in West Midnapore district of West Bengal on 10 July 2007;
- Congress leader Mandava Ram Reddy at Banjaragudem village in Khammam district

of Andhra Pradesh on 12 July 2007;

- Nand Kumar Singh, a local leader of the Bharatiya Janata Party and Salwa Judum campaigner at Jangla village in Bijapur district of Chhattisgarh on 17 July 2007;
- Gangaram Kohrami of the Congress party in Bijapur police district of Chhattisgarh on the night of 14 September 2007;<sup>281</sup>
- CPI (M) leader Bhagirath Karmaka who was killed by suspected Maoists at his house at Barabazar in Purulia of West Bengal on 1 November 2007;<sup>282</sup> and
- CPM local committee leader Sufol Mandal who was killed by suspected Maoists at Ghatberia in Purulia district of West Bengal on 19 November 2007.<sup>283</sup>

Political activists killed by AOGs in Jammu and Kashmir included:

- Congress leader Azhar Mohammad alias Jan Mohammad Kakroo who was shot dead by unidentified gunmen in Baramulla town in North Kashmir on 1 April 2007;<sup>284</sup> and
- Ghulam Nabi Wani, Councillor of National Conference, was killed by unidentified gunmen outside his home at Sheshgari in Srinagar of Jammu and Kashmir on 14 November 2007.<sup>285</sup>

In Asom, political activists targeted by AOGs included:

- Khagen Charengia, primary member of the Congress, who was shot dead on the night of 28 January 2007 at Hingpara Gaon under Moranhat Police station in Sibsagar district;<sup>286</sup>
- Abdul Baser, Congress worker, who was shot dead at Kacharipam village under Dergaon police station in Golaghat district on 1 February 2007;<sup>287</sup>
- Congress leader Darbitham Hmar who was killed by suspected Dima Halam Daogah (DHD) in North Cachar Hills district on 3

November 2007;<sup>288</sup>

- BJP leader Munindra Singh Lahkar who was shot dead by suspected ULFA cadres at his residence at Rangiya in Guwahati 13 December 2007 Guwahati;<sup>289</sup>

### **Killing of alleged police informers**

Numerous people were killed by AOGs on the charges of being “police informers” in 2007. Most of them were killed by the Maoists. The victims included:

- Gorle Ramesh of Pathakota village under Rayavaram mandal in East Godavari district of Andhra Pradesh on 20 January 2007;
- Gemeli Venkat Rao of Boddamanupakalu in Visakapatnam district of Andhra Pradesh on 1 February 2007 on 30 January 2007;
- Jangam Narayan of Komatlagudem village in Warangal district of Andhra Pradesh on 11 February 2007;<sup>290</sup>
- tribal woman identified as Samsubai Muraji Uike at Dabri village under Bedgaon Police Station in Raigad district of Maharashtra on 16 May 2007;
- Anil Yadav of Satgharwa village in Munger district of Bihar on the night of 29 May 2007;
- Kesmudi Venkatesh, a shop-keeper, who was tortured to death at Gandagatta village under Sringeri Police Station in Chikmagalur district of Karnataka on 3 June 2007;
- a tribal villager identified as Doge Mura Naroti at Hedri village in Etapalli tehsil in Godchiroli district of Maharashtra on the night 11 June 2007;
- three villagers identified as Harischandra Nayak and Bhubaneswar Nayak of Ranigola village and Mahi Pradhan of Telikusum village in Deogarh district of Orissa on the night of 21 June 2007;
- an alleged Salwa Judum activist identified as

- Srinivas from Chhattisgarh who was killed at Edugurallapalli in Khammam district of Andhra Pradesh on 22 June 2007;<sup>291</sup>
- Shambhu Shah and Meghu Ram were beaten to death by the Naxalites in the presence of the villagers at Sisahani village under Pakri Dayal police station of East Champaran district in Bihar on 1 July 2007;
- Arjun Dehuri, a grocery shop owner, who was abducted and later killed by the Maoists in August 2007; Nomula Mariadas, a surrendered Maoist, at Kallagunta village in Veldurthi mandal in Guntur district of Andhra Pradesh on the night of 24 July 2007;
- Majji Burga of Bedre police station in Bijapur district and Kattam Ramesh of Konta area in Dantewada district of Chhattisgarh on the night of 1 August 2007;
- Mukund Madhi of Bandiguda village and Babu of MV120 village under the Korkonda block in Malkangiri district of Orissa on the night of 4 August 2007;
- Shanti Sena leader, Jiti Jagaranga at his house at Luhaguma village under Gudari police station in Rayagada district of Orissa on the night of 1 September 2007.<sup>292</sup>
- Alam Sannu, son of Bhuja of Koitpal under Bijapur police district of Chhattisgarh, killed after slitting his throat in public view on night of 7 January 2007;
- Suklu Korsu who was beaten to death at Ghumra village under Bijapur police district of Chhattisgarh on the night of 16 February 2007;
- Sarharam of Chindbhata village and Kogeram of Temrupani village who were beaten to death after awarding them death sentence in a *Jana Adalat* at Temrupani village under Durgakondal police station in Kanker district of Chhattisgarh on the night of 28 February 2007;
- Teklal Mahto and Bhola Mahto who were beaten to death at Sohrai forest in Giridih district of Jharkhand on the night of 28 March 2007;<sup>294</sup>
- Hero Singh Munda and Rajesh Singh who were killed on the charges of rape and extortion in the name of the Maoists at Arki in Jharkhand on 5 August 2007;<sup>295</sup>
- Kamruddin of Chatra district of Jharkhand who was killed in front of villagers on 8 August 2007;<sup>296</sup> and
- Moinuddin Khan and Ram Kishun Bhuiyan at Lawalong village under Simeria police station in Chatra district of Jharkhand on 24 September 2007.<sup>297</sup>

AOGs also killed alleged police informers in Jammu and Kashmir. On the night of 25 July 2007, Mohammed Ibrahim was beheaded by AOG in the presence of villagers on the charge of being police informer in Sumbher village of Ramban district of Jammu and Kashmir.<sup>293</sup>

### Summary punishment through *Jan Adalat*

Naxalites continued to deliver summary punishment through their *Jan Adalat*, the People's Court in clear violations of international humanitarian law.

Those executed through *Jan Adalat* in 2007 included:

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# AFGHANISTAN

## I. Political freedom

Ruled by President Hamid Karzai, Afghanistan once again has not been included in the ranking of the SAARC Human Rights Violators Index 2008. Afghanistan remains a country in transition, its security is ensured by international forces and it is yet to develop the edifice of the State structure. However, human rights violations remain grim even where State administration has control. Both the international and Afghan security forces remain unaccountable while the Taleban gets more fatal.

## II. Human rights violations by the security forces

### a. Violation of the right to life

Throughout 2007, security forces — both international and Afghan — and the Taleban extensively violated the right to life of civilians across Afghanistan. According to a report of the Afghanistan NGO Safety Office (ANSO), about 1,980 civilians were killed in 2007. Of these, half were killed by armed opposition groups and another half by soldiers or criminal groups.<sup>1</sup>

On 2 July 2007, Adrian Edwards, spokesman of the United Nations Assistance Mission in Afghanistan (UNAMA) stated that about 600 Afghan civilians were killed in insurgency-linked violence as on 31 May 2007 and 52 percent of these deaths have been caused by pro-government forces while anti-government forces were responsible for 48 percent.<sup>2</sup>

Some of the major cases of civilian casualties by US and NATO led security forces include:

- death of 51 civilians in aerial bombings in Shindand district of Herat province on 27

and 29 April 2007;<sup>3</sup> death of 65 civilians in air strikes by international forces on 29 June 2007 in Girishk district of Helmand province;<sup>4</sup>

- death of 35 civilians in air strikes in Farah district of Kunar province on 6 July 2007;<sup>5</sup> death of 16 civilians and wounding of around 20 others on the night of 26 July 2007 in Musa Qala district of Helmand province;<sup>6</sup>
- death of over 75 civilians in military operations in September 2007;<sup>7</sup>
- death of at least 14 civilians in Ismailkhel area in Jalrez district of the central Maidan Wardak province on the night of 21 October 2007;<sup>8</sup> and
- death of 14 road construction workers in air strikes by coalition forces in Nuristan province on the night of 26 November 2007;<sup>9</sup> among others.

In the last week of May 2007, Afghan police shot dead at least five demonstrators in Shiberghan, the capital of the northern province of Jowzjan.<sup>10</sup> The International Security Assistance Force (ISAF) shot dead a farmer during a house search in Marabad area in the central Uruzgan province on the night of 23 June 2007.<sup>11</sup>

### b. Torture and custodial violence

Custodial violence such as torture and ill treatment continued to be perpetrated by the security forces, most particularly, the Afghanistan's intelligence services, the National Directorate of Security (NDS). In December 2007, Amnesty International claimed that scores of detainees handed over by the ISAF forces were continued

to be tortured at the NDS detention facilities across Afghanistan.<sup>12</sup>

Earlier in April 2007, *Globe and Mail*, a Canadian National Newspaper, claimed that its investigation has uncovered a clear pattern of abuse by the Afghan authorities who work closely with Canadian troops, despite Canada's assurances that the rights of detainees are protected.<sup>13</sup>

The Afghanistan Independent Human Rights Commission (AIHRC) confirmed the torture of three detainees- Gul Mohammed (25), Sherin (25) and Abdul Wali (23) - who had been handed over to the Afghan authorities by the Canadian forces. During his six months detention, Gul Mohammed was reportedly beaten with rifle butts, deprived of sleep, subjected to electrical shocks, and thrashed with bundles of cables. Sherin, a driver was detained at the NDS headquarters in Kandahar where interrogators punched his face, pulled his beard, and beat him with bundles of electrical cables for 60 strokes at a time. Similarly, Abdul Wali, a tailor was tortured by police and NDS personnel.<sup>14</sup>

The US forces have also been responsible for ill treatment of detainees. Nine Afghan prisoners including three of a family who were freed from the US military main airbase at Bagram north of Kabul on 11 July 2007 alleged that many of them had been arbitrarily detained and accused the prison authorities of subjecting them to harsh treatment, including deprivation of sufficient amount of food and water.<sup>15</sup>

### **III. Violations of International Humanitarian Law by the AOGs**

Armed opposition groups especially the Taliban were responsible for blatant violations of international humanitarian law including killings and abductions of civilians. According to the *Associated Press*, as many as 346 civilians have been killed in attacks by militants as of October 2007. Of these, at least 80 of them have been killed in suicide attacks by the Taliban in

September 2007 alone.<sup>16</sup>

The Taliban carried out large number of suicide attacks on security forces and government agencies. These attacks led to the killings of scores of civilians. On 4 March 2007, 16 people were killed and 25 wounded in a suicide and gunfire attack on a coalition convoy in Nangarhar province.<sup>17</sup>

On 17 June 2007, more than 35 people were killed and equal numbers were injured in a bomb attack in a police bus in a crowded civilian area in Kabul.<sup>18</sup>

On 17 July 2007, 17 civilians, including children, were killed and about 30 others were wounded when a suicide bomber blew himself up near a Nato convoy at Dehrawood town in the southern province of Uruzgan.<sup>19</sup>

On 6 November 2007, at least 100 people including six Members of Parliament were killed in a suicide attack on a public meeting venue near a factory in Baghlan province.<sup>20</sup>

A large number of civilians were executed by the Taliban on charges of spying for the foreign forces. Some of the victims who were killed included:

- Abdullah who was beheaded in Maqur district of Ghazni province on the night of 17 May 2007<sup>21</sup>;
- Qalam Khan who was killed in Aab Band district of Ghazni province on 14 June 2007;<sup>22</sup>
- Mir Zaman, an Afghan interpreter working for the Nato-led troops whose beheaded body was found in Logar province on 30 June 2007<sup>23</sup>; and
- Khalid who was beheaded on the night of 30 July 2007;<sup>24</sup> among others.

Truck drivers supplying provisions to foreign forces were targeted. On 21 March 2007, the decapitated body of an Afghan truck driver supplying necessary supplies to NATO forces

was found dumped by the side of a highway in Shahjoy district of Zabul province.<sup>25</sup> On 23 July 2007 decapitated bodies of six drivers had been found in Haiderabad area of Greshk district in Helmand province.<sup>26</sup>

On 17 March 2007, Talebans chopped off noses and ears of at least five truck drivers in Nuristan province.<sup>27</sup> The names of the victims were not available.

#### IV. Judiciary and administration of justice

Judiciary is overburdened, under-funded, rife with corruption and subject to political influence. Judiciary remains largely inoperable as international community has focused efforts on establishing peace and security.<sup>28</sup> Besides, the judges were incompetent. Only 11.6% of judges have a university law degree, and only 56.7% had completed any judicial training prior to their appointment. About 97.8% of Afghanistan's court facilities require construction or rehabilitation. Most judges in the provinces earn \$35 to \$50 a month – less than what a police officer earn.<sup>29</sup>

In the absence of national laws and access to the decisions of the Supreme Court, many decisions are based on personal opinion.<sup>30</sup> An estimated 80% of legal disputes are reportedly settled by traditional justice system called *jirgas* (or shuras), which is generally considered to be faster, fairer and more comprehensible, affordable and accessible, and less corrupt. Jirgas may be standing or ad hoc bodies that use customary laws to settle, in a communal manner, disputes ranging from property issues to (less commonly) murder. Decisions usually call for reconciliation between the parties, compensation, social ostracisation of the offender, marriage between families to settle the dispute, or burning of the offender's house etc.<sup>31</sup>

Reforms in the Afghan judiciary remain crucial. On 2 July 2007, the Governments of Italy and Islamic Republic of Afghanistan organized a conference “The Rule Of Law In Afghanistan” in Rome to develop a coordinated strategy to reform

Afghanistan's justice system.<sup>32</sup> A day before the Rome conference, the European Commission had announced a package of 210 million Euro for the rule of law in Afghanistan for 2007-2010.<sup>33</sup> At present, the reform process of the Afghan court system is underway under the supervision of a fresh team of Supreme Court justices appointed by Afghan President Hamid Karzai in 2006. A total of 350 judges have been trained during the year while more than 600 sitting judges have been trained since the removal of the Taleban. The law school curriculum of Afghanistan is also being currently redesigned as part of USAID's Afghanistan Rule of Law Project.<sup>34</sup>

#### V. Effectiveness of National Human Rights Institutions

During 2007, the Afghanistan Independent Human Rights Commission (AIHRC) continued to play a critical role in the protection and promotion of human rights. It's most significant work has been monitoring the human rights situation of Afghanistan and expressing concerns about human rights violations.<sup>35</sup>

In September 2007, the AIHRC decided to set up an independent unit to regularly investigate, authenticate and report incidents of conflicts affecting people's lives.<sup>36</sup> Earlier in March 2007, the AIHRC investigated the killing of 12 civilians by U.S. Marines Special Forces on 4 March 2007 at Jalalabad in Nagahar province following a vehicle-borne improvised explosive device (VBIED) attack on their convoy. In its investigation report, AIHRC stated that the use of indiscriminate and excessive force by shooting at vehicles and pedestrians at the site of the VBIED attack as well as in several different locations along the road resulted in the killing of civilians and constituted a serious violation of international humanitarian law.<sup>37</sup>

#### VI. Atrocities upon aid workers

2007 has been the worst year for aid workers in Afghanistan. The Afghanistan NGO Safety Office (ANSO) reported in October 2007 that 106 crime and conflict-related security incidents

have involved NGOs across the country since January 2007. NGOs have been attacked by anti-government forces and criminal groups. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), seven international and 34 Afghan aid workers were killed in various security incidents between January and September 2007.<sup>38</sup>

Aid workers and reconstruction personnel were specifically targeted by the Taliban. While many have been killed, many have been abducted by the Taliban to use them as means of securing the release of their fighters from jails.

In March 2007, five members of an Afghan medical team were kidnapped by insurgents near a refugee camp in Kandahar and have threatened to kill team members unless the government releases insurgent prisoners.<sup>39</sup>

On 3 April 2007, a French man and woman identified as Eric and Celine working with the aid group *Terre d'Enfance* were abducted along with their driver, cook and bodyguard in Nimroz province while traveling in their vehicle.<sup>40</sup> On 28 April 2007, Celine was released by her captors in Maiwand district of Kandahar province while Eric had been detained along with the three Afghans demanding withdrawal of French Nato troops and release of their imprisoned rebels in exchange for the captives.<sup>41</sup>

On 19 July 2007, Taliban insurgents kidnapped 23 South Korean Christian missionaries, 18 of them female, from Ghazni while they were traveling to Kandahar in a chartered bus.<sup>42</sup> On 21 July 2007, the Taliban threatened to execute all hostages unless South Korea withdrew its troops from Afghanistan and the government released 23 Taliban prisoners from jail.<sup>43</sup> While 2 of the hostages were killed in July 2007<sup>44</sup>, 12 of the 19 were released on 29 August 2007<sup>45</sup> and the rest seven on the next day.<sup>46</sup>

On 3 September 2007, suspected Taliban abducted two Afghan aid workers working for the Afghanistan Development Ministry in Nimroz province.<sup>47</sup>

On 16 October 2007, Ahmad Shah Shierzai, a doctor with a local NGO in Kandahar was abducted by Taliban along with two of his colleagues from outside Kandahar city. Soon after his release from captivity on 20 October 2007 he quit his job.<sup>48</sup>

On 19 November 2007, unidentified gunmen attacked the vehicle of Agha Khan Development Network (AKDN) in Shkashim district of Badakhshan province. A female staffer and the driver were killed on the spot while three other staffers sustained injuries.<sup>49</sup>

## **VII. Freedom of the press**

During 2007, the media came under sustained attack in Afghanistan. The progress and achievements made in respect of media freedom during the last six years since the fall of the Taliban in 2001 were negated during the year. 2007 has been the worst year for the media personnel since the fall of the Taliban. Media freedom has been repressed by the state and non-state actors alike.

The government and parliament have been particularly active in threatening and censoring journalists.<sup>50</sup> On 22 May 2007, the Afghan Lower House of Parliament (Wolesi Jirga) approved an amendment to the Mass Media Law with the addition of 16 new articles<sup>51</sup> and the same has been passed by both houses of parliament. As on 20 December 2007, this new law was pending assent of President Hamid Karzai.<sup>52</sup>

Among others, the amended law prohibits the publication by the mass media of any materials that are contrary to the "principles and provisions" of the Islamic Religion [Article 45(1)] and the publication by the mass media of materials that are offensive to other religions [Article 45(2)]. But the law does not define as to what constitute offensive materials and this ambiguity offers the potential for abuse of this clause to restrict press freedom and intimidate journalists. These rules also apply to non-Muslims and foreign-owned media outlets.<sup>53</sup>

It also prohibits the media from printing, airing,

broadcasting, or otherwise disseminating materials (articles, programs, etc.) that publicize or promote any religion other than Islam. This formalizes in Afghanistan's written law a prohibition on the use of mass media to attempt to convert to religions other than Islam [Article 45(6)].<sup>54</sup>

The number of violations against journalists has jumped from about 50 in 2006 to more than 70 as on December 2007.<sup>55</sup> On the night of 17 April 2007, about 50 armed policemen raided Afghanistan's most popular television Channel, the *Tolo TV's* studio in an upmarket Kabul suburb, assaulted its staff and picked up three senior journalists to the office of Attorney-General Abdul Jabar Sabet. The attorney-general had accused the critics of breaking the law and had ordered the raid.<sup>56</sup>

Journalists have been beaten by officials of the *Wolesi Jirga* inside the Parliament House. On 30 May 2007, five officials led by Deputy Speaker Muhammad Arif Noorzai's secretary beaten up *Ariana TV* channel's reporter Shakib Dost when the journalist called the proceedings chaotic.<sup>57</sup> In July 2007, warlord Abul Sayyaf sent his henchmen to attack a *Tolo TV* crew near Kabul. At least 20 journalists were assaulted or received death threats in 2006 from politicians or their families.<sup>58</sup> Similarly in August 2007, conservative members of parliament physically attacked a team from *Tolo TV* and called for their expulsion from the premises after it broadcast footage of slumbering deputies.<sup>59</sup>

On 7 April 2007, private security guards employed by the US army arrested Claire Billet, a French journalist working for the independent Hamsa Press agency, for filming civil vehicles close to the ISAF headquarters in the Shashdarak district of Kabul. After her arrest she was handed over to US soldiers who interrogated her for four hours and confiscated her footage and accreditation card. On 17 May 2007, she has been informed by email that she has been blacklisted by the NATO's ISAF forces.<sup>60</sup>

On 28 August 2007, security officials beat up *Ariana TV* reporter Qasim Rahimi while he

was on his way to where the negotiation talks concerning the release of 19 Korean hostages by the Taleban were being held in Ghazni province. The security officials stopped his taxi, beat him and confiscated his equipment without any explanation or justification.<sup>61</sup>

Scores of journalists have been arbitrarily arrested and detained for being critical of the authorities. On 30 June 2007, Mohammad Asif Nang, the editor of the government magazine *Peace Jirga* and also the Parliamentary Affairs Ministry Spokesman, was arrested allegedly for publishing an extract from a Canadian essay critical of President Hamid Karzai.<sup>62</sup>

On 4 July 2007, journalist and blogger Kamran Mir Hazar, the Editor of the *kabulpress.org* website, was picked up by members of the National Directorate of Security in Kabul and detained for four days. This was his second arrest in just over a month. The arrest was apparently prompted by posts on his website accusing senior Afghan officials of being spies.<sup>63</sup>

On 4 December 2007, police officers beat Mohammad Omar Mohammadi, a reporter for the popular radio programme *Salam Watandar*, as he prepared to file a report from the scene of a suicide bombing near Kabul International Airport.<sup>64</sup>

In November 2007, security forces arrested three Afghan journalists for traveling to a Taleban stronghold in southern Afghanistan.<sup>65</sup>

At least five journalists lost their lives during 2007:

- On the night of 6 June 2007, Ms. Zakia Zaki, the head of radio *Sada-e-Sulh* (Peace Radio), was shot dead in front of her two children by two armed men who broke into her home at Jabalussaraj in the northern province of Parwan. She reportedly received threats shortly before her murder.<sup>66</sup>
- Editor of government-run magazine *Andkhoy*, Rahman Qul was shot dead in Faryab province on 17 February 2007;

- freelance journalist Ajmal Naqshbandi was beheaded by his Taliban captors in Helmand province on 8 April 2007;
- television news presenter Shokiba Sanga Amaaj was killed in her home in Kabul on 1 June 2007; and
- producer and presenter of Radio Television Afghanistan, Abdul Munir was killed in Jawzjan province on 28 December 2007.<sup>67</sup>

### VIII. Violence against women

Women continue to suffer from discrimination, violence, poor health, illiteracy, and poverty across Afghanistan. Violence against women such as domestic violence, forced marriage, trading off to settle disputes or debts, rapes, and child marriage remained endemic. In view of the societal acceptance of violence against women, victims have limited chances to obtain redress. The existence of discriminatory laws, the failure of the government to bring about reform and societal acceptance contribute to the persistence of violence against women.

According to the Integrated Regional Information Networks, every 30 minutes, an Afghan woman dies during childbirth; 87 percent of Afghan women are illiterate; only 30 percent of girls have access to education; 1 in every 3 Afghan women experience physical, psychological or sexual violence; 44 years is the average life expectancy rate for women; and 70 to 80 percent of women face forced marriages in Afghanistan.<sup>68</sup>

#### a. Discrimination in participation in public life

Men continued to dominate decision making in Afghanistan. At the end of 2007, six years after the fall of the anti-women Taliban regime, gender equity still remains a distant goal. Women faced severe restrictions in participating in public life. According to a UNIFEM Afghanistan-Fact sheet on the situation of women in Afghanistan of May 2007, 87% of Afghans believed that women need a male relative's authorisation to vote while 35% of women believed they would

not have permission to vote and 18% of men admitted they would not allow their wives to vote.<sup>69</sup>

Women representation in the legislature is not satisfactory. In the National Assembly, women represent 27% of the National Assembly while their representation in the Provincial Council is little over 28%. Of the total 249 seats in *Wolesi Jirga* women held 68 seats while their representation in the *Mesherano Jirga* is only 23 out of 102 seats. In the Provincial Councils, women held only 121 out of 420 seats across the country.<sup>70</sup> All the powerful lawmaking institutions have been systematically dominated by men who oppose gender equality. In the Hamid Karzai led government, there is only one female minister.<sup>71</sup>

Women get limited opportunities to express their concerns in the *Wolesi Jirga*, the Lower House of parliament. The male speaker and administrative staff of the house think women do not have the capacity to engage in politics.<sup>72</sup> On 20 August 2007, female members of the *Wolesi Jirga* accused their male counterparts of denying women's rights and staged a walkout from a parliamentary session.<sup>73</sup>

Women's representation in civil service is only 26%. In 17 of the 36 Ministries there are less than 10% female employees.<sup>74</sup> The two sectors where women representation is almost non-existent are the security service and department of justice. With only 233 police women and 259 women personnel in the Afghan National Army, women representation is less than 1% of employees in Police or Military services. Although an Afghan Women Judges Association was created in 2003, and an Afghan Women Lawyers and Professionals Association had been in place, women representation in judiciary is still negligible. Of the 1,547 sitting judges in Afghanistan, only 62 are female. Of the 546 prosecutors, only 35 or 6.4% are female and of the 1,241 attorneys, only 76 or 6.1% are female. There are no women members in the Supreme Court Council although the Family and Juvenile Courts are headed by women.<sup>75</sup>

## b. Forced marriage and domestic violence

According to the Afghanistan Independent Human Rights Commission, between 60-80% of all marriages in Afghanistan are forced.<sup>76</sup> UNIFEM Afghanistan corroborates this fact.<sup>77</sup> Afghan women are often treated as objects through which tribal law accomplishes its goals of reconciliation and promoting stability. Girls are traded like currency.

- In July 2007, Nazir Ahmad, a resident of Jalalabad reportedly settled his debt of \$165, the value of nine sheep, by giving his 16-year-old daughter (name unknown) in marriage to the lender's son.<sup>78</sup>
- In the 1st week of February 2007, 18-year-old Samiya, (daughter of Gulzar and resident of the Teer village in Farkhar district of Takhar province) committed suicide in protest against her engagement by force to a sixty year old man, who was already married to another woman.
- In February 2007, another 17-year-old girl, Humaira Taiba of Mazar-i-Sharief, was reportedly considering committing suicide to escape forced marriage to a 45-year-old man Haji Qurban whom her grandfather Mullah Hafiz had promised to give her in marriage 17 years ago.<sup>79</sup>

According to the UNIFEM Afghanistan, 57% of girls are married before the legal marriage age of 16.<sup>80</sup> According to Najiba Hashimi, an AIHRC official, up to 70 percent of registered cases of violence against women have their origins in early marriages.<sup>81</sup>

- On the night of 2 April 2007, a 20-year-old woman named Zohra was burnt by her 14-year-old husband and her mother-in-law at Kirala village in Kunar province;<sup>82</sup> and
- During the night of 15 April 2007, a 14-year-old bride Nasrin was killed by her husband Dad Mohammad in Mohammad Agha district of the central Logar province.<sup>83</sup>

In 2006, the Afghanistan Independent Human Rights Commission registered 1,651 such cases. These included 558 cases of severe beatings; 213 cases of forced marriage; 106 cases of self-burning; 50 cases of murder; 41 cases of girls' exchange; and 34 cases of rape. Similarly, the Ministry of Women's Affairs registered 1,953 cases in 2006 that included 612 cases of forced marriage; 250 cases of beatings; 60 cases of murder; 44 cases of self-burning; and 31 cases of rape.<sup>84</sup>

In December 2007, a 40-year-old man named Mumtaz reportedly cut off both ears and nose, broke the teeth and shaved the head of his 16-year-old wife Nazia in Qalat, the provincial headquarters of Zabul province.<sup>85</sup>

Unable to cope with complex family hazards, including domestic violence these child brides either run away or often resort to suicide. According to Sayed Qasim Hashimi, Director of Women Affairs Human Rights Branch in Parwan that during the first half of 2007, 29 cases of women<sup>86</sup> escaping homes had been had been registered with them. In August 2007 alone, the provincial hospital of Mazar-i-Sharief received as many as 15 burn cases of women who attempted to burn themselves to death.<sup>87</sup> From March to August 2007, as many as 46 cases of self-immolation were reported from Herat province.<sup>88</sup> In 2006, 100 cases of self-immolation were reported.<sup>89</sup>

## IX. Violations of the rights of the child

The rights of the children continued to be violated including the right to life. Apart from the denial of access to proper healthcare, food and education, hundreds of children were killed in fighting between the security forces and the Taliban while scores of them have become victims of sexual abuse and trafficking.

### a. Access to healthcare

During 2007, Afghanistan continued to make progress in healthcare facilities which started

since the fall of the Taleban regime in 2001. Access to health care for Afghans has jumped from 8 percent of the population in the 1990s to close to 85 percent today, primarily largely due to efforts by USAID, the World Bank and the European Commission. According to the Ministry of Public Health, the under-5 child mortality rate in Afghanistan has declined from an estimated 257 deaths per 1,000 live births in 2001 to about 191 per 1,000 in 2006, a 25-percent drop. On 4 November 2007, President Hamid Karzai stated that 89,000 children will be saved each year because of the improved health care.<sup>90</sup>

However, the improvements are not commensurate to the lack of healthcare access. According to Health Minister Mohammad Amin Fatimi, Afghanistan still faces severe problems. At present, almost one in five Afghan children will die before the age of five, translating into 250,000 childhood deaths a year, mostly from malnutrition, diarrhea, tuberculosis and malaria. Currently, 129 per 1,000 children die in Afghanistan before reaching their first birthday while child mortality rate under five, is among the world's worst.<sup>91</sup> According to UNICEF, about 20 percent of Afghan children die before their fifth birthday while about 1,600 out of every 100,000 Afghan mothers die while giving birth or because of related complications.<sup>92</sup>

## b. Violence against the child

In the on-going conflict in Afghanistan, children have suffered the worst. They have been victims of violations both by the security forces and AOGs. Scores of children died in indiscriminate aerial bombing by the international forces. In a statement in 2007, a group representing 94 foreign and Afghan aid agencies, including Oxfam, Save the Children, and CARE International claimed that at least 60 children were killed in airstrikes and botched raids by U.S. and NATO troops as on 21 June 2007.<sup>93</sup> On 10 March 2007, three children were killed in air strike by the 508th Parachute Infantry Regiment of the US Airborne Division at a suspected Taleban hide out.<sup>94</sup> On 18 March 2007, seven children were killed in a

U.S.-led coalition air strike targeting suspected al-Qaida insurgents in Zarghun Shah District of Paktika province.<sup>95</sup>

Some other children who have been killed in aerial bombings included:

- two children who were killed on 4 March 2007 in Kapisa province<sup>96</sup>; three children aged from six months to two years old in Helmand province in June 2007<sup>97</sup>;
- five children of a family in Gereshk district of Helmand province on 29 June 2007<sup>98</sup>; and
- two children who were killed in gun battle between security forces and extremists on 31 October 2007 in Bati Kot district of Nangarhar province.<sup>99</sup>

The Taleban were equally responsible for violence against children. On 30 September 2007, armed Taleban men hanged a 15-year-old boy in Sangin district of Helmand Province on charges of espionage for the international forces.<sup>100</sup>

On 6 November 2007, at least 59 children were killed and 100 others were wounded in a suicide bomb attack on a function held at a sugar factory outside the town of Pul-i-Khumri in Baghlan province. 75 persons including six parliamentarians and 59 school children were killed in the attack.<sup>101</sup>

Some other victims of Taleban attacks included:

- three children who were injured in suicide attack on a Canadian military convoy in Kandahar on 8 March 2007;
- a 14-year-old child who was killed during an attack on an American convoy in Kabul on 19 March 2007;
- 12 children who were killed on 15 June 2007 when a suicide bomber rammed a car into an international military convoy near a school playground in Tirin Kot, Uruzgan Province<sup>102</sup>;
- four children who have been killed and

six others who were injured in a suicide car bomb attack on an Afghan convoy at Mehtar Lam in Laghman province on 31 March 2007,<sup>103</sup> and

- 13 children who were killed in a suicide bomb attack that targeted a NATO patrol in a marketplace crowded with children in Uruzgan province on 10 July 2007.<sup>104</sup>

### c. Child soldiers

Over 7,500 child soldiers went through Disarmament, Demobilisation and Reintegration (DDR) programmes between April 2003 and June 2006 under Afghanistan's post-Taleban peace building arrangements. However, children are being recruited and in some cases sexually abused by the Afghan police and/or various militias that support the police, as well as by private security companies and the Taleban. According to AIHRC, at least 200 boys under 18 are serving in the Afghan National Police (ANP) and a semi-formal auxiliary police force in Kandahar Province as of December 2007. Children are also recruited for military and non-military purposes by local militias who are paid by the government to supplement the fledgling ANP in volatile southern provinces. The auxiliary police and private security contractors also widely use child soldiers. However, due to lack of proper monitoring and accountability mechanisms, and the informal nature of the auxiliary forces, the use and abuse of child soldiers go undocumented.<sup>105</sup>

The Taleban and other anti-government elements have also been using children for various military and illegitimate purposes. The Taleban use children as foot soldiers and force them to engage in violent acts.<sup>106</sup> In April 2007, a video was obtained by the Associated Press Television News in Peshawar, on the border of Afghanistan and Pakistan. The video shows a young boy beheading an adult in a Taleban execution.<sup>107</sup>

Children are regularly used as combatants by the Taleban. In June 2007, ISAF forces intercepted a boy wearing explosives laden suicide vest. The Taleban rebels allegedly ordered him to target

a check point in Miri, in the Andar district of Ghazni province.<sup>108</sup> According to the UNICEF Afghanistan, the 16-year-old Afghan boy was ordered by the Taleban to wear a vest of explosives and detonate it in Ghazni province. But the boy did not carry the attack and threw the remote control battery away. Another 15-year-old Afghan boy from Gardez City was arrested after his bomb failed to explode.<sup>109</sup>

On 7 July 2007, Taleban extremists used an Afghan boy in a bomb attack on the Afghan National security Force in Sangin district center in Helmand province.<sup>110</sup>

The Taleban have also been regularly using children as human shields during clashes. On 19 September 2007, a coalition aircraft and ground forces withheld air strike and ground attack on a compound after spotting children in it. The Taleban extremists were allegedly seen using children as human shields against coalition attacks.<sup>111</sup>

### d. Juvenile justice

In February 2005, the Afghan Cabinet adopted a new Juvenile Code which has been regarded as a key step in reforming the juvenile justice sector for providing measures and procedures applicable to children in conflict with the law, children at risk, and children in need of care and protection, safeguarding children's rights during investigation and trial. Some of the key provisions in the new Juvenile Code were the increase in the age of criminal responsibility from 7 to 12 years, as well as recognizing the definition of a child as being anyone under the age of 18. The Code also introduced important protections for children under the process of the law, including the speeding up of criminal cases involving children. Under the new legislation, no child can be held without trial for more than two months, and children awaiting trial will, wherever possible, be kept in the care of their families or guardians. The new Code provides a broader range of measures for children convicted of crimes, including official cautions and probation as an alternative to custodial punishments.<sup>112</sup>

However, access to justice and rule of law for Afghan juvenile offenders is critically limited. The implementation of the new Juvenile Code remains a serious concern. Furthermore, only a couple of provinces have taken initial steps towards implementation of the new Code and there is an urgent need to extend this initiative to other provinces.<sup>113</sup> Poor capacity within the Ministry of Justice's Juvenile Rehabilitation Department; inadequate access to justice for vulnerable groups, especially girls; and corruption within the judicial and police systems are all major obstacles in the fulfillment of child rights. While boys are penalised for a wide number of reasons, girls often are imprisoned for coming into conflict with social and traditional moral codes, which are themselves highly discriminatory against women and girls.<sup>114</sup>

A specialized juvenile court as foreseen in the Juvenile Code has only been established in the limited area of the capital Kabul, specialized juvenile judges and prosecutors have only been appointed there.<sup>115</sup>

As of 6 March 2006, there were 31 active rehabilitation centers for juveniles in 22 provinces while in 12 provinces, specialized correction centers were non-existent and the offending children were kept in detention with adults.<sup>116</sup> Though there are provisions for both open and closed rehabilitation facilities and the separation of children from adults within detention facilities, yet most children are still sent to prisons with adults.<sup>117</sup> Adequate separate housing for women, accompanying children, and juveniles remained an issue as prisons did not have the capacity to separate prisoners. In Pul-e-Charkhi prison many juveniles were detained with adult prisoners.<sup>118</sup> According to the Ministry of Justice as in September 2007, there were over 60 children living with female prisoners in Pul-e Charkhi prison.<sup>119</sup> In a jail in Kabul, juveniles were reportedly kept locked in a separate cell to protect them from the rest of the prison population.<sup>120</sup>

Standards in such prisons are below international standards.<sup>121</sup> According to a report entitled "Afghanistan: Female Prisoners and Their Social

Integration" of August 2007 by the UN Office on Drugs and Crime (UNODC), the prison food regime does not meet the nutritional requirements for children's physical and mental growth. The imprisoned women and their children can receive no specialist health care or education, due to acute resource problems. What little educational or healthcare facilities is available inside the Pul-e-Charkhi jail is available from the Afghan Women's Education Centre (AWEC) which has set up a kindergarten school in the prison and provision of basic health services for pregnant women and children suffering minor illnesses.<sup>122</sup>

### e. Child labour

In Afghanistan, the legal age of employment is 15, but there are provisions for 13 and 14-year-olds to work as apprentices, provided they only work 35 hours per week. Children under 13 may not work under any circumstances. However, there was no evidence of enforcement of the labor laws relating to the employment of children in any part of the country.<sup>123</sup>

More than 50% of Afghanistan's total population of 24 million is under the age of 18. According to UNICEF estimates, up to 30% of primary school age children are working and are often the sole source of income for their families.<sup>124</sup> According to Save the Children (Sweden), there are up to 5,000 child labourers working in brick factories in Nangarhar province.<sup>125</sup> As in June 2007, there were nearly 70,000 working children in Kabul alone.<sup>126</sup> An AIHRC report entitled 'An Overview on Situation of Child Labour in Afghanistan Research Report' of 2006 stated that 21 percent of child workers are employed in shops; 13 percent work as street vendors. Others work in vehicle repair, metal workshops, tailoring, and farming. In Kabul and other cities there are street children who shine shoes, 86 percent of child laborers were boys, and 14 percent were girls.<sup>127</sup>

Despite change of the law regulating women rights after the fall of the Taleban regime, it is still not culturally acceptable for women in Afghanistan to work outside the home. If a woman has been widowed or her husband is unable to work due to injury or illness, support

of the family falls on other male relatives. When there is no extended family support, or it is insufficient to support a large family, children become the breadwinners.<sup>128</sup>

In summing up the report described the situation of child labourers in Afghanistan as a grave concern. The AIHRC says Afghanistan's next generation is seriously threatened by the increasing number of street children, groups of children used by adults for begging, and an "inconceivable" number of children exploited in activities ranging from carpet-weaving to the narcotics trade.<sup>129</sup>

## f. Attacks on school

Since the fall of the Taleban regime in 2001, close to six million children have returned to school - 35 percent of them were girls as on 15 December 2007. More than 3,500 schools have been built and new primary curriculum and textbooks developed during the last six years.<sup>130</sup> However, the progress made is being threatened by AOGs, mostly the Taleban.

In 2007, the schools remained the soft targets of Taleban. Destruction and closure of schools are part of the propaganda war by them. The Taleban stepped up their attacks upon schools. Between August 2006 and July 2007, at least 133 incidents of schools attacks took place, mainly in the southern provinces. As a result, 384 of the 721 schools in provinces of Helmand, Kandahar, Uruzgan and Zabul had to be closed.<sup>131</sup> About 200,000 school-aged children could not go to school in southern and eastern areas.<sup>132</sup> As of October 2007, the government was able to reopen only 50 out of the 400 schools which had been closed due to Taleban militancy and conflicts in the South and East Afghanistan over the past three years.<sup>133</sup>

According to the UN Assistance Mission in Afghanistan, from January until June 2007, over 30 attacks against schools, many involving the torching or blowing up of school premises have been reported.<sup>134</sup>

On 17 April 2007, two students were killed and

four others wounded in a bomb blast in a school in Herat city.<sup>135</sup> During the night of 12 June 2007, one school was set ablaze in Mehtarlam district of Laghman province.<sup>136</sup> On 28 June 2007, unidentified gunmen torched three primary schools in Nangata, Chonas and Gadolai areas in Shigal district of the eastern Kunar province depriving hundreds of students in these three schools.<sup>137</sup> On the night of 19 October 2007, four unidentified armed men blew up buildings of the Naderia (boys) Middle School in Shindand district of the western Herat province.<sup>138</sup>

Female students and girls' schools were particularly targeted by the Taleban. On 12 June 2007, unidentified gunmen shot at female students killing two, including 13-year-old girl, Shukria and wounding three others while they were returning home from school in Kalangar area of Logar province.<sup>139</sup> During the night of 12 June 2007, armed men attacked a girls' middle school in Baraki Barak district of the central Logar province. Unidentified armed men first hit the school building with rockets and then set a tented room on fire.<sup>140</sup> On the night of 19 October 2007, unidentified armed men destroyed the buildings of the Mir Sadaat Middle School for girls in Shindand district of the western Herat province by planting explosives.<sup>141</sup>

Teachers and educationists were equally targeted. The Taleban accused teachers of imparting an un-Islamic curriculum or educating girls. On 28 November 2007, armed men shot dead a school principal, Fazel Mir, in Khost province.<sup>142</sup> On 8 September 2007, unidentified armed men gunned down a director of education department Kamil Khan in a far-flung district of Faryab province.<sup>143</sup>

## g. Child trafficking

Afghanistan remained a source, transit, and destination country for men, women, and children trafficked for the purposes of commercial sexual exploitation and involuntary servitude. Afghan children are trafficked internally and to Iran, Pakistan, Saudi Arabia, Oman, and Zimbabwe for commercial sexual exploitation, forced marriage to settle debts or disputes, forced begging, debt

bondage, service as child soldiers, or other forms of involuntary servitude.<sup>144</sup>

However, despite high incidence of human trafficking Afghanistan does not provide minimum standards for the elimination of the menace. It is yet to draft its first anti-trafficking law.

Apart from lack of a specific anti-trafficking legislation, corruption is yet another alarming concern which has enabled many traffickers to smuggle their victims through local and international borders undisturbed. Afghan children are particularly vulnerable to international trafficking.

Although neither the Afghan government nor non-governmental organizations (NGOs) that support victims of trafficking have accurate data on human trafficking in Afghanistan, there is consensus that practice is “widespread”. Human trafficking, particularly of women and girls, is widespread in Afghanistan, notably for forced marriage, prostitution and domestic servitude.<sup>145</sup> IOM has reportedly identified 100 non-Afghan victims, most of them Chinese citizens, who were used in the sex trade in Kabul. According to US State Department Trafficking Report of 2007, about 200 Afghan children were repatriated in 2007 from Saudi Arabia where they were used as camel jockeys.<sup>146</sup>

In terms of victims’ protection, Afghanistan achieved only modest progress. In March 2007, the government provided land for IOM to build a shelter specifically designed for child victims of trafficking. The government also assisted in supporting 400 child victims of trafficking repatriated from Saudi Arabia, Oman, Pakistan, and Zimbabwe by facilitating family reunification and providing the children shelter in existing juvenile centers or orphanages, as well as medical care and educational services. Due to cultural mores, some victims of trafficking, however, continue to be arrested or otherwise punished for prostitution and morality crimes.<sup>147</sup> Many victims, particularly young women who experience sexual exploitation, do not have adequate access to legal services in Afghanistan.

Cultural mores and conservative traditions not only deprive many victims of social protection and help, but also lead to punishment for sexually exploited female victims.<sup>148</sup>

## **X. Conditions of refugees and IDPS**

More than 356,000 Afghans have returned home from Pakistan between 1 March and 31 October 2007. Each returnee received an enhanced repatriation package averaging \$100. Some 80 percent left from Pakistan’s North West Frontier Province, 13 percent from Balochistan, 3 percent from Sindh and the rest from Punjab and Islamabad. The main provinces of return in Afghanistan in 2007 were Nangarhar (57 percent of returnees), Laghman (6.5 percent), Kabul (6 percent), Kandahar (4.4 percent), Kunduz and Ghazni (3.7 percent each). This is a marked change from 2006, when Kabul was the top province of return, followed by Nangarhar, Kunduz, Logar and Paktya.<sup>149</sup>

As many as 100,000 Afghans had been deported from Iran between 21 April and 5 June 2007.<sup>150</sup> Iran was initially supposed to deport 500,000 illegal Afghan refugees back home in Afghanistan but following an agreement with the Afghan government, it slowed down the pace of expulsions.<sup>151</sup> However, it again resumed deportation of the Afghans in October 2007 and had reportedly sent back at least 8,000 Afghans between 21 October and 5 November 2007.<sup>152</sup>

According to the United Nations High Commission on Refugees (UNHCR), more than three million Afghan refugees remain in Pakistan (2.1 million) and in the Islamic Republic of Iran (915,000) as in January 2008. UNHCR states that the profile of these refugees is different from those Afghans who have returned home since 2002: the great majority of the families remaining in Pakistan and in the Islamic Republic of Iran have been in exile for more than 20 years. Half of the registered Afghans in these two countries were born in exile.<sup>153</sup>

The growing number of civilians displaced by

armed conflict in volatile parts of the country has become a major humanitarian challenge in Afghanistan. Although there are no reliable statistics about the numbers of internally displaced persons (IDPs) in Afghanistan, in a report to the UN Security Council on 28 October 2007 the Secretary-General stated that about 44,000 Afghans were displaced as a result of fighting in the first half of 2007.<sup>154</sup> According to UNHCR, there are currently about 129,000 registered IDPs in Afghanistan. The figure mainly covers people displaced by drought and insecurity in the south of Afghanistan, who are living in camps, and have been displaced for significant periods of time but it does not cover the growing numbers of IDPs living in irregular settlements in Kabul and other urban areas. It also does not include more recent displacement elsewhere in the country arising from human rights violations, inter-communal tensions, floods or drought. Neither does it include at least 20,000 families – that's about 100,000 individuals - displaced in the last few months by conflict in the south. As per the Internal Displacement Monitoring Centre, the exact number of IDPs in Afghanistan today is probably closer to 300,000.<sup>155</sup> In his statement to the 62nd Session of the General Assembly, Third Committee on 29 October 2007, Mr. Walter Kälin, Representative of the Secretary-General on the human rights of internally displaced persons expressed grave concerns that displacement is increasing and, has the potential to increase dramatically, for several reasons in Afghanistan.<sup>156</sup>

Shelter, food and medical services are among the urgent needs of almost all displaced families. Neither the UN nor the government of Afghanistan support the establishment of new camps - fearing this may encourage other people to leave their homes in search of aid - IDPs have been dispersed in and around urban locations, often living with relatives or in irregular settlements.<sup>157</sup> According to the UNHCR, unemployment and under-employment levels are still high. Land issues, including those related to tenure, confiscation, illegal occupation and disputes over property remain widespread. Indeed, landlessness in general is a significant obstacle to reintegration.

More than 46 per cent of returnees face housing problems, and some 28 per cent of returnee households report that they do not have a stable income.<sup>158</sup>

In an effort to avoid a protracted humanitarian emergency and aid-dependency, in March 2006 UN agencies operating in Afghanistan formally ended their aid assistance to IDP camps in Kandahar and Helmand provinces.<sup>159</sup> This has exacerbated the problems of the IDPs and returnee refugees. Apart from other serious problems, tens of thousands of internally displaced persons (IDPs) living in formal and informal camps, abandoned buildings and other locations in the south, west and north of Afghanistan face the threat of disease and had to struggle to keep warm during the winter. At least seven children reportedly died from pneumonia and acute respiratory infections in Lashkargah, the capital of Helmand Province.<sup>160</sup>

## XI. Condition of the prisoners

There are 34 prisons in Afghanistan. The conditions of prisons across the country remained deplorable. The prisons are overcrowded, decrepit and unhygienic. According to the Afghan Independent Human Rights Commission, prisoners generally have to rely on relatives for their food and other expenditure. Prisons and their staff are severely under-resourced and no training is provided to them about prisoner care or their duties with regards to the human rights of prisoners.<sup>161</sup>

The Shebarghan prison in Jawzjan province did not meet international standards. The facilities are entirely inadequate for the care of the number of people held there, the food is insufficient, the water supply unclean, sanitation virtually absent, clothing meager, and barred walls open to the elements expose the inhabitants to winter conditions. Disease is endemic. There are 3,000-3,500 inmates and as many as 80-110 inmates were reportedly lodged in one cell meant only for 8-10 inmates.<sup>162</sup> As many as 236 male prisoners and 13 female prisoners along with their 15 children were housed at the provincial jail in

Mazar-e-Sharif. The prison consists of only two small yards and just nine cells in a mud-built compound, which was originally the city's traffic police department office.<sup>163</sup> At the U.S. detention facility at Bagram known as Bagram Theater Internment Facility, there were reportedly 630 inmates which was more than twice than its sanctioned capacity of 275.<sup>164</sup>

The U.S. detention facility at Bagram near Charikar in Parvan is said to be as bad as the Guantanamo prison, Cuba. In a confidential report to the Pentagon in mid-2007, the International Committee of the Red Cross (ICRC) is said to have cited massive overcrowding, "harsh" conditions, lack of clarity about the legal basis for detention, prisoners held "incommunicado", in "a previously undisclosed warren of isolation cells," and "sometimes subjected to cruel treatment in violation of the Geneva Conventions." Some prisoners have been held without charges or lawyers for more than five years.<sup>165</sup> There were allegations of torture. Amnesty International claimed that scores of detainees handed over by the Nato-led ISAF forces were continued to be tortured at the NDS detention facilities across Afghanistan.<sup>166</sup> It alleged that inmates faced whipping, beatings, exposure to extreme cold and food deprivation in detention centers.<sup>167</sup>

Women and children are the worst sufferers in Afghan prisons. There are about 300 female prisoners in Afghanistan.<sup>168</sup> Most Afghan prisons lack separate buildings for female prisoners, many of whom are kept in cells in prisons originally built for male inmates.<sup>169</sup> According to a report of the UN Office on Drugs and Crime (UNODC) of August 2007, in the majority of provincial prisons, women are held in a compound within the main prison complex while in others, there are no facilities for the detention of women at all, where up to 20 women may be detained in a room with no water or electricity, held in the house of an elder or mullah, or transferred to the nearest provincial prison. In most prisons, conditions are extremely poor, with lack of water, electricity, heating and sanitation facilities.

The Pul-i-Charkhi prison in Kabul is a case in

point. All female prisoners in Pul-i-Charkhi prison are lodged in nine rooms, holding 4 to 15 prisoners and there were over 60 children living with their mothers. According to the inmates, the food delivered to them is insufficient and of poor quality. Healthcare is inadequate and prisoners were not satisfied with the medical service and complained of various health problems, including Hepatitis B and psychological problems. A prison doctor who visit the inmates only on request and treatment provide medicines typically consists of pain killers only. Toilet and washing facilities are located outside the prison and hygiene is poor. There was no heating in the prison.<sup>170</sup>

Apart from deprivation of basic needs, female prisoners also remain vulnerable to sexual violence. Members of Afghanistan parliament who visited Pul-e-Charkhi prison in November 2007 reportedly found that some female prisoners become pregnant after being raped by the prison officials. The findings of parliament delegation suggest that prison officials first give medicines to female prisoners to stupefy and then sexually assault them. Fouzia Kofi, one of the MPs who met these victims in the prison stated that in some cases victims have been forcibly raped while others were sexually abused after giving them drugs when they sought medicines for illness. In some cases the victims are forcibly taken to the offices of prison officials and raped.<sup>171</sup>

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## CONCLUSION AND RECOMMENDATIONS

“It is a tale ... full of sound and fury; signifying nothing.”

William Shakespeare

There is little enthusiasm beyond the bureaucratic and media circles for the 15th summit of the South Asian Association for Regional Cooperation. SAARC has no meaning for the people South Asia. And why should it? It has delivered nothing.

SAARC is caught between two opposing forces: the forces of globalisation, which imply cooperation, and the powerful force of regional mistrust, a consequence of historic disputes accentuated by a South Asian tendency to blame neighbours for all woes.

SAARC has failed to live up to expectations. But SAARC remains the only sub-regional forum. The need for regional cooperation is not a panacea but it is a good place to start. Respect for human rights and fundamental freedoms must form the cornerstone of regional cooperation. Human rights as enshrined under international law would provide a fundamental part of any future regional legal framework just as it has in other regional instruments in Africa, the Americas and Europe.

The Asian region has traditionally lagged far behind on standard setting on democracy and human rights issues. Asia has no regional human rights mechanisms unlike Europe, America and Africa. This is a concern.

The 1993 Vienna Declaration and Programme of Action of the World Conference on Human Rights stated that “Regional arrangements play a fundamental role in promoting and protecting human rights” and reiterated “the need to consider the possibility of establishing

regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist”.

Since 1994, the United Nations Commission on Human Rights has authorized the holding of an Annual Meeting on Regional Arrangement for Protection and Promotion of Human Rights in the Asian and Pacific Region to explore the establishment of a regional instrument. The government of Indonesia hosted the last Annual Meeting in Bali in 2007. Unfortunately, the process has made little progress.

The point of this indexing report is to begin the task of examining human rights from a sub-regional perspective. Given the scale of the task, this report is not exhaustive but rather aims to chronicle patterns, practices and the implications for the concerned countries.

While this report is an index, the report demonstrates that all South Asian countries have serious human rights problems. A regional analysis also shows a high level of commonality in human rights patterns. Discrimination is endemic, institutionalized and in many cases legalized. Human rights violations are integral to counter-insurgency operations conducted by the military in the region. Human rights violations are routinely violated in police detention in the region including the routine use of torture. Security laws tend to be poorly framed, routinely abused and used as blanket cover to silence legitimate dissent rather than tackle security.

A large part of the explanation for these violations is not difficult to identify: one of the central

themes of this report is that reform of South Asian security and justice sector institutions has been needed for a very long time.

Similarly, human rights violations are part of an inherited legacy. South Asian criminal and penal laws and their accompanying institutions derive from archaic and punitive colonial legislation and institutional practice. These are unfortunate legacies but ones we have done very little to resist.

Part of the solution is an imperative need for an inclusive public debate on reform of the security forces at the national level. There is widespread acceptance, at least in the domain of the police and prison service, of its need, yet a reform process has not happened despite repeated commissions and endless recommendation in all SAARC countries.

Failure to reform and human rights violations in the SAARC also persist because of the compounding problem of impunity for human rights violations. If human rights violations, committed both by the security forces and armed groups, are not promptly, thoroughly, independently and impartially investigated and those responsible brought to justice, the system which allowed them to commit those crimes will remain intact. And it is difficult to see how reform would succeed under such circumstances.

The consequences are serious: the prospects for counter insurgency success will diminish significantly and the space for ever more violent and extreme Armed Opposition Groups (AOGs) will grow ever greater; AOGs that will continue to commit appalling atrocities with impunity.

South Asians need to take urgent steps at a national and a regional level. This report focuses on the regional. And in this domain the rest of the world is leaving us behind, Even in South East Asia - traditionally opposed to international standards - is moving ahead. ASEAN Foreign Ministers in their "Statement on The Asean Charter" of 21 July 2008 decided:

"to establish a High Level Panel on an ASEAN

human rights body (HLP), and to give guidance and direction to the HLP based on their first draft of the Terms of Reference of the ASEAN human rights body to be submitted to us at the 14th ASEAN Summit in December 2008".

It was President Maumoon Abdul Gayoom of Maldives who at the 13th SAARC Summit held in Dhaka on 12-13 November 2005 asserted that:

"it is time that an autonomous SAARC Centre for Human Rights, based on civil society, is established. Such a Commission could promote international standards, facilitate co-operation among lawyers and jurist, and share expertise and resources in the advocacy of human rights and democracy in the region".

There is a need to move beyond this approach to a human rights mechanism akin to the proposed ASEAN Charter. The value of regional machinery lies in its capacity to contextualise international standards and to enhance their cross-cultural appeal and applicability. Regional machinery can concretise and fill in gaps in open-ended international norms, and address human rights issues of particular shared concern in the SAARC region.

South Asians cannot afford to be left behind. It is unlikely to produce startling immediate results but it is a start. Human rights while often uncomfortable, underpins the rule of law and democracy. While the governments might deny human rights violations, the rise of internal conflicts in the region would suggest otherwise. Few would argue that respect for human rights underpins long term prosperity and peace.

The Asian Centre for Human Rights recommends the following to the SAARC countries on the eve of the 15th SAARC Summit being held in Colombo, Sri Lanka:

- Establish a Working Group of Eminent Persons of South Asia to explore the possibility of drafting a South Asia Human Rights Convention with full and active participation of civil society groups and other stakeholders; and

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- National Human Rights Institutions in South Asia (the established ones like NHRC of India, NHRC of Nepal, Afghan Independent Human Rights Commission, Human Rights Commission of Maldives and Sri Lanka Human Rights Commission) should emulate the role of their counterparts in South East Asia to establish South Asia Sub-Regional mechanism.



Asian Centre for Human Rights (ACHR) is dedicated to promotion and protection of human rights and fundamental freedoms in the Asian region by:

- providing accurate and timely information and complaints to the national human rights institutions, the united nations bodies and mechanisms as appropriate;
- conducting investigation, research, campaigning and lobbying on country situations or individual cases;
- increasing the capacity of human rights defenders and civil society groups through relevant trainings on the use of national and international human rights procedures;
- providing input into international standard setting processes on human rights;
- providing legal, political and practical advice according to the needs of human rights defenders and civil society groups; and
- by securing the economic, social and cultural rights through rights-based approaches to development.

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