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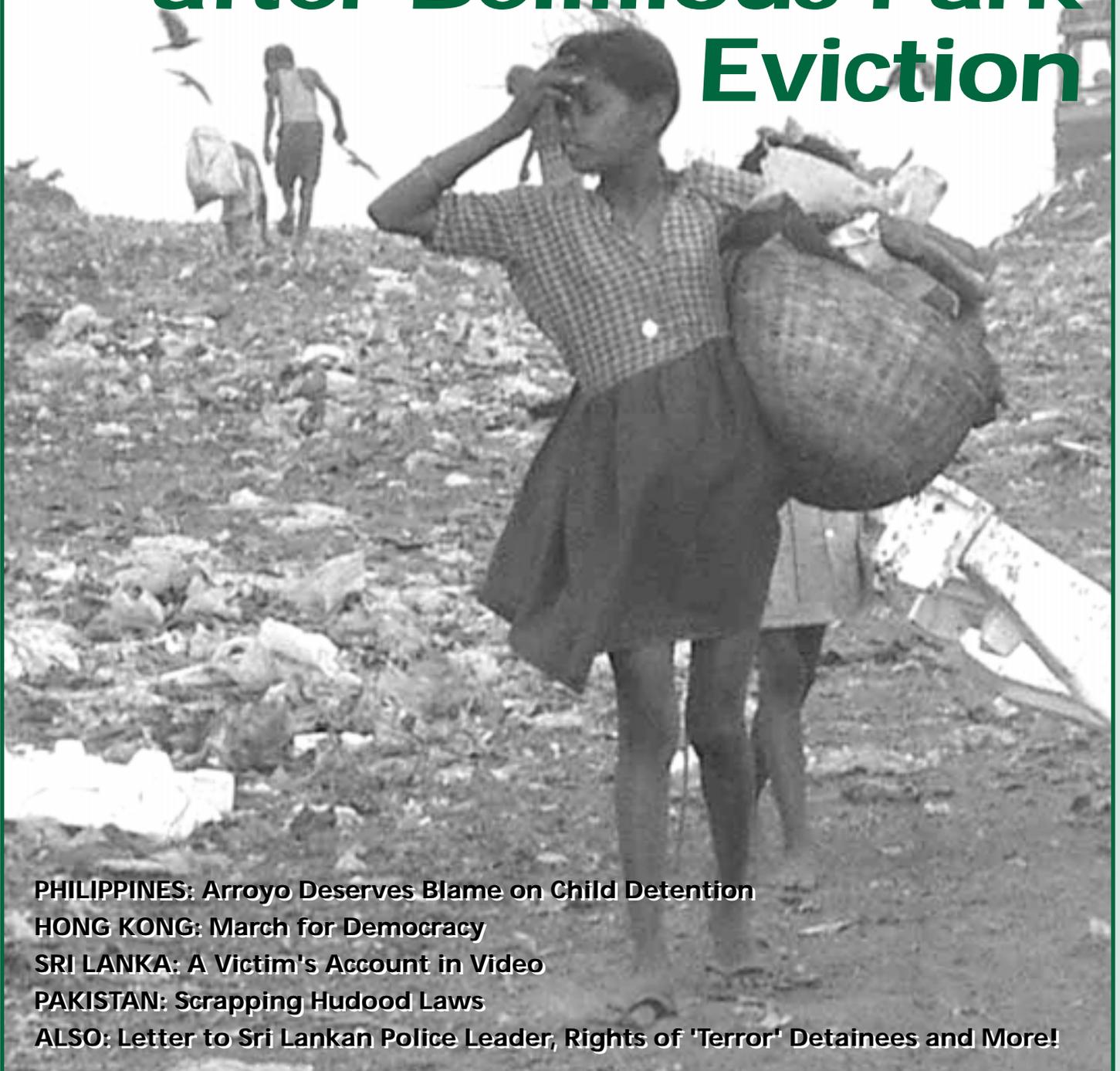
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Human
Rights

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Asian Legal Resource Centre

SOLIDARITY

Life at Rubbish Dump after Bellilious Park Eviction



PHILIPPINES: Arroyo Deserves Blame on Child Detention

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SRI LANKA: A Victim's Account in Video

PAKISTAN: Scrapping Hudood Laws

ALSO: Letter to Sri Lankan Police Leader, Rights of 'Terror' Detainees and More!



A girl scavenger at the Belgachhia dump where more than 1,000 Dalits have made home after being forcibly evicted from their houses at Bellilious Park in Howrah City in India's West Bengal (Photo: AHRC)

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Human Rights SOLIDARITY

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Human Rights SOLIDARITY is the newsletter of the Asian Human Rights Commission (AHRC) and Asian Legal Resource Centre (ALRC).

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

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

19/F Go-Up Commercial Building, 998 Canton Road, Mongkok, Kowloon, Hong Kong

• Tel: +(852) 2698-6339 • Fax: +(852) 2698-6367

• Internet: www.ahrchk.net • E-mail: editor@hrsolidarity.net

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The Great Indian Vanishing Act

Thousands of Dalits Forcibly Evicted from Their Homes

Bijo Francis



A woman points to the debris of Bellilious Park, the former home of thousands of Dalits. (Photo: MASUM)

(Thousands of families from the Dalit and lower caste communities in India's West Bengal have been forcibly evicted from their homes by the authorities without any compensation or resettlement. Among these victims are the 7,000 Dalits uprooted from Bellilious Park in Howrah City on February 2 last year. Many of them since then have been living in street shelters or the Belgachhia rubbish dump, a few kilometres away from their original quarters. Human Rights SOLIDARITY visited some of the families recently. In the following special report, we

examine the reasons and issues behind the forced eviction. We look at the homeless victims' livelihood in the next article. A medical project that helps the poor will be explored in the third story. article 2, a sister publication of Human Rights SOLIDARITY, will run a special edition in its August issue to discuss in more detail the legal aspects of the case and the complicity of all parts of government and local administration in this massive violation of fundamental rights.)

Being the "untouchables", the lowest of India's caste system, the ousted residents of Bellilious Park and their sufferings are being ignored by the West Bengal state government and the local Howrah administration. More than 17 months after they were evicted from their houses at 129 Bellilious Road by the authorities, the victims have yet to receive any form of redress for the damage done to them and their rights being violated despite the high

redevelopment value of the land. Their living conditions, which were not favourable at Bellilious Park, are now even worse. Many of them live at a city dumpsite, suffering from poverty, malnutrition and other diseases from contaminated water and the filthy and unhygienic environment.

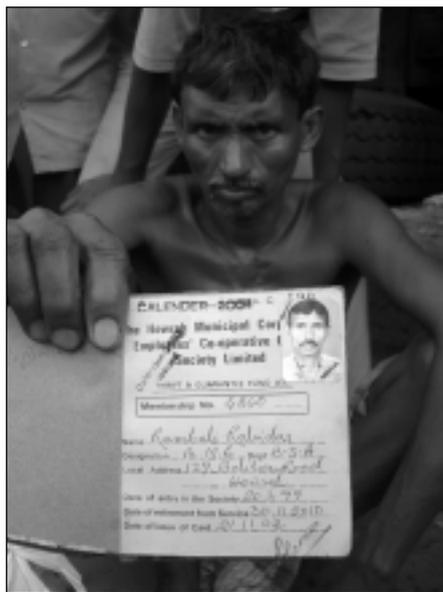
"We live amidst pigs and dogs," said Rajindar Balmiki, one of the victims. "Our women give birth to our next generation here. Mosquitoes literally drink our blood like vampires."

Their plight is rooted in the caste system, as this structure of hereditary classes of Hindu society allows those on top to treat the Dalits like dirt. "The dwellings of fierce untouchables and dog cookers should be outside the village, they must use discarded bowls, and dogs and donkeys should be their wealth," reads the *Manusmriti*, which governs the religious practices of the Hindus and their caste system.

Caste hierarchy is one of the sources for the worst forms of inhuman treatment faced by millions of Indians. It makes available a group of so-called "untouchables" to work for menial and often no pay jobs by virtue of their birth. It is a form of exploitation and discrimination.

When the authorities evicted the 7,000 Dalits from Bellilious Park on February 2 last year, they cited the official reason of beautifying and developing the area into a park within Howrah City. The local administration also claimed that the occupation of the land was illegal and the occupants had to be removed. No fair hearing was given to the residents before the eviction.

The settlement of the Dalits in the area, in fact, dated back before the independence of India. The



Bhola Hela displays his Howrah municipal employee's card, which shows his address at Bellilious Park: '129 Bellilious Road'. (Photo: AHRC)

municipality had sponsored their settlement in the past decades with the construction of three buildings to house those Dalits who worked as scavengers for the city. Human rights activists and the ousted residents said the eviction was linked to the vested interests of some upper caste families living nearby and the property developer. Bellilious Park, which was outside the city limit in the 19th century, is in the heart of Howrah, raising the market value of the site. Howrah is situated on the west bank of river Ganges, opposite Calcutta.

"We were staying at this place since the time of our forefathers. But now we have been thrown out without even being offered an explanation," said Rambali Rabidas, a scavenger working for the Howrah Municipal Corporation.

The upper caste Hindus were said to believe that the presence of the "untouchables" in the vicinity of their residence would pollute them and eventually deny their reserved place in heaven, a conviction associated to their

fanatic religious belief.

Proofs of Legal Occupancy

In 1987, an environmental group Howrah Ganatantrik Nagarik Samiti filed a petition before the Calcutta High Court to demand Bellilious Park be cleaned up as the pollution problem there grew. The court asked the municipality 15 years later whether the people staying on the land were legal occupants. The Howrah administration told the court that the people there were all encroachers. The court then gave an interim order in September 2002, saying the illegal encroachers should not be allowed to stay. But that order did not mention an eviction, according to Kirity Roy of Manabadhikar Suraksha Mancha (MASUM), a Calcutta-based human rights organisation.

The fundamental human rights of the residents were blatantly violated, as they were not given the right to be heard before the court. No written notice of removal was made. "But here no written notice, (there was) just a public announcement by the police with a loudspeaker on a rickshaw, stating that the people had to leave before February 2," Roy said. Under Indian civil law, a notice of eviction has to be served at least one month in advance, allowing residents to dispute the matter before a court.

Complicating the situation, some union leaders came and told the residents in Bellilious Park that nobody would be evicted and they would handle the problem for them. Some residents, nevertheless, with the help of a lawyer, filed two petitions to the court on January 30 last year, asking for the right to be heard and the interim court order be revoked. But their petitions were denied. "In this

case, not only the civil administration and police have defied the principles of the Constitution of India and the rule of law, but the upper judiciary also has been complicit in denying relief to these people," Roy said.

Contrary to the claims by the administration that those evicted had occupied the land illegally, the expelled dwellers were, in fact, predominantly employees of the Howrah Municipal Corporation and held identity cards and other evidences proving their legal occupancy at Bellilious Park. They had employees' cooperative cards, voter cards, ration cards and other documents such as of power connection, which all registered "129 Bellilious Road, Bellilious Park", as their addresses. These papers could prove that the occupants were holding the property since long. They could establish their continuous, unobstructed and open possession of the land. Moreover, many of the residents had title deeds for their property. However, none of these proofs, which otherwise would have been adequate enough to establish title or possession over any property according to Indian laws, were taken into account by the authorities.

Forced to Leave at Gunpoint

On the day of eviction, the administration came to Bellilious Park with bulldozers and demolished the entire area and all the buildings within hours under police escort. None of the residents were allowed to take away their belongings. Those people, who protested, were backed off by the police at gunpoint.

"They came with huge machines. Police accompanied them with guns and the officers from the administration ordered us to leave,"



Temporary houses of many evicted victims are made of poles covered with plastic sheets. (Photo: AHRC)

said one of the victims Rajesh Balmiki. "We tried to resist. They pulled us out from our houses. The machines were used to pull down our houses. We tried to gather whatever we could. But the police with guns shouted at us and threatened us. Those who resisted were beaten. I could not gather anything. We had a fridge and a TV, which we lost in the rubble. We could see the police taking away our belongings. I am sure they took them home. Our hard earned money. We lost everything," Rajesh recalled the eviction with horror and pain.

Government Offers No Help

While the houses of the poor were bulldozed in a matter of hours, shops built by the municipality and rented out on commercial leases were unscathed even though they were also on the premises of Bellilious Park.

As of now the evicted ground remains a barren land with the remnants of the destroyed buildings. Nothing has been done in furtherance to eviction, contrary to the claim of the

administration regarding the development.

The residents have yet to get any tangible reply either from the local government or from the Howrah administration for the damage they suffered and their rights violated despite protests. The mayor of Howrah, Gopal Mukherjee, said it was legal to evict the people and the municipality had no money to rehabilitate them.

The Asian Human Rights Commission has issued urgent appeals, calling for immediate attention to the eviction, the living conditions of those homeless people and other related problems of starvation and deaths. However, the Indian authorities maintain their ignorance and blunt stand towards the plight of the evicted poor.

The Bellilious Park victims even do not benefit from the Howrah Valmiki Ambedkar Awas Yojana, a government project with millions of funding for the rehabilitation of slums, pavement dwellers and *safai karmachari*—those

who work as scavengers. "This project has never been used for the betterment of these people," Roy said.

Houses of Plastic Sheets, Waste

Left with no other option, many Bellilious Park residents scrambled through the rummage and picked up whatever that could be recovered and set off for a new destination—a trenching ground at Belgachhia. "When our houses were demolished, some union leaders told us to come and stay here," said the 38-year-old cleaner for the municipality Rajinder. "There were so many leaders, and all of them gave us instructions. We didn't know what to do, so we just came here," he said.

Yet this place is a dumping site on the periphery of the city. It does not even have solid soil for setting up a temporary house since the ground is just a pile of accumulated waste from the city, predominantly plastic and other non-biodegradable waste, which emits fumes whenever there is a slight rain.

The evicted victims have now put up temporary houses made out of plastic sheets for the roof and fine steel filings mixed with carbide waste that they collected from nearby steel foundries for the ground. Since they do not have enough money to enjoy the luxury of a cot, their daily exposure to the corrosive mixture of the hard ground burns their skin, causing cuts and blisters.

Drinking water, electricity, sanitation and other basic living facilities are unheard of in the Belgachhia dump. Starvation and deaths due to other diseases acquired from being exposed to the inhuman living conditions take its toll upon the residents. Some

residents were fortunate enough to occupy a few rooms in an abandoned building located in the trenching ground. The building, however, is in such a state that it could collapse in a heavy rain. The human waste from the dilapidated latrines in the building just drains down through a small hole in the building wall at various places and merges with the waste and people living underneath. Even to live in this building, which has already been condemned by the administration, the Bellilious Park residents said they were demanded bribe by a local elected representative in return for not being forced out. The occupants were ready to pay because they had no other choice, even though how long they could stay in the building is a wild guess since the condition of the building is so poor and it may collapse.

Rajinder and fellow resident Gopal Balmiki, who both make a living as cleaners, complained that they were forced to work and live in a filthy environment. "We clean toilets and drains when we work. After work we come here to this pile of waste," Rajinder said. "Well for the animals they come here for food, whereas we have to live here...The water at Bellilious Park could be boiled and then consumed. Here the water is like oil. We have to adjust since we have no options and this is our home."

Due to the inhuman living conditions of the evicted victims, which are similar to their working conditions as the majority of them are manual scavengers, acute health problems are common in their current settlement. Coupled with poverty and lack of proper and hygienic food, deaths from starvation have been reported. A three-year-old boy named Shiva died of malnutrition in December last year.

Groups Come to Help

After knowing about the living conditions of the settlers at the Belgachhia dump, staff from the Belur Sramajibi Hospital, a hospital launched by workers to provide free to inexpensive health care services for the poor, took the initiative to conduct a weekly medical camp at the settlement. A medical team would visit the settlement and provide free checkup for the residents. Medicines would be given to those people who are in immediate need of treatment. As for the rest of the sick, the doctors would provide medical care at the hospital.

Local human rights group MASUM, meanwhile, helps the expelled residents of Bellilious Park fight for rehabilitation and compensation, make appeals to various authorities and take their case to courts.

The Bellilious Park eviction is not an isolated incident. In 2001, 1,400 families were cleared from Tolly's Nullah. Some 4,000 households from Beliaghata were driven out in 2002. These are a few glaring examples. Most of the families belong to the Dalit community. None of them had a fair hearing before the evictions or were given compensation and rehabilitation afterwards. Neither did the legal system in India was of any help to the victims.

Discrimination against Dalits

The reason for this brutal reality in India is simple: Who cares for the Dalits? Wherever people of this outcaste group go they will face the same situation. They are poor. They are being discriminated. Caste system follows a Hindu from birth to grave. The system engraves its mark upon an individual simply even by his or her

name. For example, Gopal Balmiki is easily identified as an "untouchable" from his name "Balmiki", which is being put in all of his records including the identity card. Once being tagged as a Dalit, a person will be treated differently by others. "If we walk into any restaurant we will not be provided any decent place to sit," Rajinder Balmiki said. "Even those petty bunk shops in the pavement will only give us tea in a separate glass. We have to wash our glass once we drink the tea. Whereas for other customers they could just give the empty glass back," he said.

Most of the Dalits can do no other job than scavenging. They have no choice but to take up the job of manual scavenging of night soil, which is outlawed in India. They have to carry the night soil on their heads as there are other means available for clearing human and animal excrement. The authorities turn a blind eye to the situation. As manual scavenging has been done by the people of the scheduled castes, especially the balmikies, for centuries, the presence of *safai karmachari* to keep the city clean has been taken for granted. Since the Dalits are not able to provide a better education for the next generations, their children usually end up in the same repulsive job.

"They need us to clean all their filth for which we need to report to duty at the early hours of the day and late at night and for which we need to stay within the city limits. But they do not want us to stay anywhere near their houses. What should we do?" asked one of the evicted residents of Bellilious Park who now stays at the Belgachhia dump.

The Indian delegation to the Race



A group of manual scavengers carrying night soil on their heads (Photo: MASUM)

Summit in Durban in 2001 was very emphatic to deny that caste discrimination was an issue in India and that definitely it did not come under the terms of racial discrimination according to international standards. However, the facts indicate a different picture. Discrimination in the name of caste is not a remote issue in India. It could be found in any state. It is reported even in more developed areas such as Bangalore and the most literate state Kerala.

Never-ending Exploitation

Despite its strong economic growth, rapid development of information technology and the claim of being the largest democracy in the world, India remains one of the worst human rights violators in Asia. The caste discrimination and exploitation plagues the progress of the country. Given the caste taboo, a person tends to remain within the clutches of the dominant majority in exploiting the cheap labour and oppress the scheduled castes. Although politicians vow that they will work to eliminate the caste system, once they reach their seat of power they forget their pledge of concern of the Dalits among other promises. That did happen in the

Bellilious Park incident. Representatives to the parliament and the Howrah Municipal Corporation failed to defend the rights of the ousted residents and fight for their rehabilitation.

The legislation in India, in fact, provides adequate security for people from being evicted without due process of law. Both the state and the central governments have special ministries chaired by ministers from the scheduled castes or scheduled tribes to attend to the burning issues of their communities. The government of India accepts aid from outside funding sources for programmes supposed to be aimed for the development and welfare of the Dalit community. Exploitation and discrimination against the scheduled caste community is punishable under specific legislation in India. The constitution provides adequate remedies for safeguarding the interest of the poor and weaker sectors of society. India is also a state party to the international covenant on economic, social and cultural rights.

Yet in reality, the story of exploitation and inhuman treatment of the Dalit community continues.

"The Constitution of India has the right to everything, but in practice, the people have the right to nothing," Roy said. The ousted residents need support to lead a dignified life, he said. "I am talking about assurances of even just a minimum amount of food, housing and health care to live a dignified life. I am talking about us ending this society where till today people are carrying human shit on their heads for work while the government is talking about sending a man to the moon."

'We Get so Tired That Sometimes We Can't Even Move' Life at Rubbish Dump

Nick Cheesman

"Some of us were very severely beaten," recalls Tara Murti Hela. "Some tried to flee by taking shelter in a pool of human shit, but the police beat them there too. It was so brutal, you can't imagine. If I think of these things, my heart is in pain. I just can't do it."

But it is not easy for Tara, 53, to forget. Her life has not been the same since the events she recalls, when she was among some 7,000 people evicted from their houses in Bellilious Park in Howrah City on February 2 last year. Their houses were bulldozed, possessions looted, and the occupants told to move to the Belgachhia

dump, a few kilometres away, if they had nowhere else to go. More than 1,000 have been there since.

The Dalit community accused of encroaching and polluting Bellilious Park was ousted by the authorities without compensation or resettlement.

The road to the Belgachhia dump winds through the declining industrial area of Howrah. Dead and dying factories line the thoroughfares of this city, across the Ganges River from Calcutta. Once these streets were crowded by workers brought to service the industrial heart of a foreign

empire, pumping life into its administrative capital across the water. Now they are crowded with the jobless, some going by bicycle or on foot in the hope of a day's work here or there, others lingering at tea shops, liquor stalls and street corners. They sit below walls thick with hammer and sickle insignia; an election is coming, and the Communist Party of India (Marxist) that has ruled West Bengal for nearly three decades is again filling every available public space with its logo and slogans.

Reaching the end of the bitumen, the high walls of old factories give way to low built settlements, a hillside to the rear. Hundreds of crows circle over the hill. It is a hill of rubbish, the main depository for the city. A number of dark green trucks emblazoned "Howrah Municipal Corporation" wind past, up the incline, and disappear over the crest in a cloud of dust and fumes. Accompanying the trucks, a stream of people moves back and forth – children, women, men – carrying plastic and hessian bags, baskets and hoes, a high wind whipping at their hair and clothes, scraps of debris flying past their eyes and mouths.

"Over 150 families are at this place out of the original number, which we estimate to have been more than 700," says human rights campaigner Kirity Roy, following a couple of people returning from the dump through a gap between two shop stalls on the left.

"In the first part of the 20th century, the municipality brought the grandparents of these people to clean the streets and drains. It was responsible for locating them at Bellilious Park, and even built



The Belgachhia dump, where many Dalits evicted from Bellilious Park have been staying (Photo: AHRC)

accommodation for them there; now it has demolished those very same buildings and forced the people to move here," says Roy, a member of Manabdhikar Suraksha Mancha (MASUM), a local human rights organisation. Since the eviction, MASUM has been deeply involved in the fight for rehabilitation and compensation of the victims.

"It is important to remember that all the people here are Dalits," Roy says. "They are segregated from the caste groups. Nobody will rent accommodation to these people. If your name is Balmiki or Hela [Dalit names], other groups will not allow you to stay with them."

Reaching the middle of the settlement at the dump, residents gather and sit in the shade of their houses, while others queue to collect water from a pump located adjacent to buildings set to be demolished. Here, conditions have the appearance of a refugee camp on the edge of a civil war. But there has been no war here, only one-sided violence. Casualties, too: apart from the injuries and destruction caused on the day of the eviction itself, at least six people at this site have died of starvation and other diseases since they were forced from their houses.

On Sunday, MASUM organises for a doctor and some orderlies from the nearby Sramajibi Hospital to visit the settlement. Sramajibi is itself a local initiative, staffed by volunteers, and run entirely on the support of the local population. Sramajibi has little resources to help those at the Belgachhia dump. The absence of any other agencies at the site leaves the workers of Sramajibi feeling obliged to do something. If this were in fact a refugee camp, the residents' health needs would at least attract the attention of some outside agencies; here, they attract no one other than the staff of Sramajibi. And so, surrounded by a crowd, the doctor has no time or place to properly diagnose anyone;

she consults under the awning of a house, and quickly dispenses medicines for numerous coughs, fevers and rashes.

'God Knows What will Happen'

Hunger, starvation. Here, not more than 10 kilometres from where the chief minister and members of parliament preside over the government of West Bengal, people are starving to death. E. M. Parvati knows this better than most: her son died for want of food just a few months ago.

Parvati lives in a dwelling that consists of little more than some wood and bamboo pressed hard against a wall at the far end of the settlement. Gusts of wind lift the plastic roof, which during heavy rain protects the family little more than were they in the open.

Parvati, 32, is carrying a new child. She speaks with exhaustion, three daughters sitting alongside: "My son Shiva died just three months back, because of malnutrition. He had no medicine, no proper place to live. He was in the hospital for two months, and died when he was three years old."

"My husband is here, but he is also very sick, with TB [tuberculosis]. Usually he cleans the toilets in private houses, but now he cannot work, so we have no income. I also was working like that, but cannot now because I am pregnant," she says.

Parvati says her children have to collect wood at the dumping ground during the daytime for cooking and boiling water. "We cannot send them to school. It is quite impossible for us to give them an education. I have no hope for their future. We have done everything we can for our children, but we haven't been able to change our situation," she says while looking at her children.



E. M. Parvati and her three daughters, with her sister's children looking on the left (Photo: AHRC)

Parvati's mother, E.M. Bhupati Lachmi, has to earn a living for the family by cleaning toilets in people's houses and the roads and drains outside. "I am the only earner in the family, and can get perhaps 50, perhaps 70 rupees per day (US\$1-\$1.40). I also get some rice and other things from neighbours. Another daughter of mine helps too, by giving some of her earnings from cleaning houses," she says.

"Today a neighbour gave some rice and wheat, with which we have prepared our meal," she says, opening pots by the earthen stove to show rice, flat bread and some thin curry. "As for tomorrow, God knows what will happen. I go to work in the morning and find out after that. If I go to work, I will definitely earn something with which we can buy food to eat."

So Many Things Taken

Back outside, the road is busier as the cool of evening approaches. Among those out at this time of the day is Rajinder Balmiki, who took over the job as a cleaner for the municipality from his father when he died in 1996. Although Rajinder is a permanent

employee, he has received no assistance to find new housing after his employer destroyed his house last year, and like everyone else, he is struggling for his family to survive at the dump.

Rajinder and some of his friends explain that after coming to the Belgachhia dump, the residents from Bellilious Park cleared the area of bushes and slept on the open ground for about a month, expecting to be relocated somewhere better. It was cold season, and people spent the nights sitting huddled together under plastic sheets. Everybody suffered some kind of illness, and the children suffered most. When no one had come after a month, they cleared the ground more, and built their dwellings. Since then, they have been provided no government services or facilities. The municipality has promised nothing, and given nothing.

Gopal Balmiki, joining Rajinder, recalls how the eviction was managed. "On the day of the eviction we were not given any notice. Some police came on January 28 and made an announcement with a loudspeaker that the place would be demolished and that we should go, saying, 'On February 2 this place will be vacated; remove your structures and leave.' After that there were no more warnings until they came with bulldozers at about 6 am that Sunday. Then we were scattered here and there." The municipality evicted the people on Sunday, leaving the residents no recourse to an injunction through the court.

"They took so many of our things, but to where, we do not know," says Gopal. "All our possessions were taken on the backs of trucks, like our TVs, radios and refrigerators. There were at least 10 trucks and hundreds of labourers employed by the corporation to take stuff away. When we tried to take our things for ourselves, the commandos beat us with their batons."



E. M. Bhupati Lachmi cleans a toilet in a private house. (Photo: Rajesh Balmiki)

Rajesh Balmiki, after listening to Gopal's description of events, tells how he was beaten: "They had cordoned off the entire area of the park. To go and get something from my house, first I had to get permission from the police. I was granted access, but when I got to my house and tried to carry some things out, the police nearby there started to beat me with batons. Then I left the things and fled back outside. All I could do was watch as they took away or wrecked everything."

"The temples were also destroyed, and when we tried to take things from them too we were beaten; even the women," says Rajesh. "We begged them, 'You may be destroying our houses, but please don't destroy our temples.' But the police said, 'No one will be staying here; you don't need them.' The idols were brought out, and the police took or broke everything else."

The looting and devastation were absolute. The community had built and run its own school, and this too was demolished, along with the three buildings that had been constructed by the municipality to house the workers. Wells were filled in, pipelines and electricity supplies destroyed. The

place was flattened.

"We were told that we were all illegal occupants and this was the reason for the eviction, but it is our feeling that it happened because we are Dalits, and our social position is weakest," says Gopal. There is a chorus of agreement from others nearby. "We don't have a say in anything. That is why we were targeted."

The Howrah administration, offering no help to the ousted residents despite their demonstrations, maintained that the eviction was legal and the municipality had no money to rehabilitate the people.

"Our only hope is to be able to educate our children and give them a better life than we have. When we stayed in Bellilious Park, we had a chance, but now these hopes have faded," Gopal says. "Now we are having to forego meals to save enough money with which to send our children to school. Where we once ate three times a day, now it is only twice."

Bad smells everywhere

Rajjo Devi is struggling to send her eight children to school, and she worries for



Tara Balmiki sweeps around an apartment building.
(Photo: Rajinder Balmiki)

their welfare. Now they are living next to the Belgachhia dump. Her small and neatly kept dwelling has whitewash on the earthen walls, and clay tiles on the roof. All of the materials to make the house, she explains, were bought with money borrowed from lenders. Her family came with only the clothes on their backs, not even able to finish their breakfast that Sunday. Clean new aluminium plates are lined up in a bamboo shelf on the wall, but they are rarely filled.

"I can't give my children proper food," says Rajjo, a slender 32-year-old whose headscarf covers her face as she talks. "All we have is rice and some vegetables, but the amounts are not sufficient. We don't have milk or bread to give them." Rajjo and her husband both clean private houses. Her husband also sometimes works as a rickshaw puller or as a day labourer at a factory, if he gets the chance. Together with a neighbour, Rajjo cleans apartment buildings near Bellilious Park. In the past, they could reach there on foot. Now they have to leave much earlier and pay a fare to get to their workplaces by bus each day.

"We have to take out the rubbish, clean the toilets, and once per week have to clean the staircases and other common areas thoroughly," Tara Balmiki, Rajjo's neighbour, says of her work. "If we just take

out the rubbish, we can get 300 rupees per building each month, but if we clean the toilets, it is around 750. We have to clean the stairwells and public spaces for no extra charge. Sometimes people dump dead animals in the stairwells, like rats, cats and dogs. By the time we find them they are covered with flies and maggots."

"All we get are bad smells everywhere. We go to work cleaning toilets, and all we get are bad smells, we come back home and live next to this dump, and all we get are bad smells." Tara says as she points to the lake of septic fluid at the rear of the house, next to the mountain of rubbish: "We are falling sick because we are living next to a pond that is full of human shit and hospital waste. This water even contains amputated body parts."

Body parts? "Yes, we have seen dogs chewing on human body parts that they have pulled from that water," she says. Rajjo has seen them too. "Because we stay in a place like this, it is natural that we fall sick. If we had some electricity, we could at least buy a fan to reduce the bad smell, and feel some small physical comfort after our hard work each day. But we don't have even that."

"Bellilious Park was not a good place to live, but it was better than here," she continues. "At least there we had electricity, and no stink like here. The location also was convenient, close to our workplaces, markets and schools. Now, look at these miserable conditions: these mosquitoes and flies. We are all human beings. How can we tolerate this? We get so tired that sometimes we can't even move, yet, in the night still we can't sleep for the stench."

Beautification...

Abhijit Datta, another member of MASUM and a lawyer at the Howrah District Court, feels the anger and frustration of the people forced to live at the dump. "This is not a place fit for human habitation, between a dumping ground and condemned buildings on the verge of collapse. But the municipal corporation doesn't care if these people die here because they are Dalits. In this sense the conditions for these people are not different now from how they have been for centuries."

Passing through the busy streets of Howrah, Datta points to an area of land on the right – Bellilious Park. The place looks uninviting: little can be seen other than some rubbish piles where the main dumping ground had once been located; the settlement was on the other side. Whereas the park was originally established in an open area outside the city limits, it is today surrounded on all sides by the walls of apartment buildings and other constructions. The area is densely populated, and by now of high commercial value.

The community was evicted on the ground that they were responsible for polluting the park; their removal being a step towards its beautification. The condition of the park today speaks to the audacity of this lie. It is a barren and dusty wasteland. To the left, on a dark open ground, some local boys play cricket. A short distance to the front, a painted statue of independence leader Chandra Bose keeps watch over a filthy, lethargic stream. The only place with a stand of trees is to the right, where the houses of Parvati, Rajinder and Rajjo had stood until February 2003. The location of their former houses is easy to see: the rubble is still there, the corporation not even having bothered to clear it all away after knocking it down. Nothing has been done with this part of the land since.

Picking through the rubble, pieces of a temple wall are uncovered. Somebody has piled a few bricks into a makeshift shelter nearby. The remnants of some structures remain upright – here is a corner of the school; there is the ground floor of one boarding house. Those walls still standing are covered with graffiti: "We were settled here by the British, we expanded under the Congress regime, and now these leftists have evicted us. Is it the real face of Marxism?"

Between the debris and the road is a recently constructed high concrete wall, delineating a new compound containing some buildings and other structures, including a common shed for washermen, a lower caste group. Apparently the plan that called for beautification has been abandoned in favour of construction of new buildings, in the very location that some houses of the Dalits once stood. "Why are they erecting these things? What is the purpose? Because of electioneering, to get some votes, this thing has been erected. They are just playing two downtrodden communities – the Dalits and the washer people – off against one another," Roy says.

'Stay Like Street Dogs Forever?'

Passing the washing compound, a short distance down the road is another place where some 50 families from Bellilious Park have settled. Their dwellings are on a narrow patch of land between a main road and an elevated train line. Although conditions here appear worse than at the larger site, residents say they prefer it because of its proximity to their places of work and that it is not located next to a giant rubbish dump. Here Rambali Rabidas and Bhola Hela are sitting in the shade of a parked truck. Both work as street cleaners for the municipality, for which they get a monthly payment of 5,500 rupees. As both are over 50 they are approaching retirement, at which time they should receive a pension and some



A new common shed for washer people is built in the park where the houses of the evicted residents once stood. (Photo: AHRC)

other benefits from the same corporation that has demolished their houses and stolen their possessions.

"I have been working for the Howrah municipality for 34 years, and my general experience has been bad," says Rambali. Asked why and he points to the obvious: "This corporation has destroyed my house and looted or wrecked everything inside it. How could I be happy? They sent a huge force, so what could we do? Each time we tried to take our things, the police beat us. We had to save our lives, not worry about our belongings."

"We had been told that if we were employees of the corporation then all we would have to do would be to show our employment cards and our houses wouldn't be destroyed, but later they bulldozed everything anyway," adds Tara Murti Hela. Tara is also approaching retirement, but has only worked for the municipality for a few years, having taken her husband's job after he became unwell. She and her family had been living in one of the quarters at the park constructed by the municipality for workers.

"Each time we put our articles somewhere,

one of them would come and steal them," she remembers. "I lost my clothes, my television, refrigerator, cooking equipment and so many other things. The police also beat my son. He was just standing among some other people, and when the police rushed the group, they caught him and beat him with their batons. Their senior officers were standing to one side and just watching. They never told their men to stop beating. They just stood there. So how could we take anything? What could we say or do? In the end, we just had to flee. We never thought of trying to get anything back."

"None of the municipal officers have ever come here to see our situation," says Rambali. "We have gone to them several times, but they do not even want to listen to us. With the help of the police they have just pushed us away from their office building when we tried to visit."

"I have only one question," Rambali asks, as the last rays of sunlight fade behind the buildings on the boundary of his old neighbourhood to the west. "Will we stay like street dogs forever? Or will we get our houses back and the perpetrators of this wrongdoing be punished?"

By the People for the People: The Belur Sramajibi Hospital

Bijo Francis

Located near Howrah's famous attraction Belur Math on the banks of river Ganges in West Bengal, a small old house stands among desolated factories in an industrial district, which was once bustling with hundreds of steel rolling mills under the former British colonial rule. Although the house is small, the mission it advocates and the contribution it has made is unique in India. Tens of thousands of local people, mainly workers and the poor, have been treated in this house—the Sramajibi Hospital—for free or at a minimal cost for the past 10 years.

The Sramajibi Hospital was founded by workers of the now defunct Indo-Japan Steel Ltd. (IJSL), with the help of a group of volunteer doctors and the support of the local community. The hospital is a people's initiative in its truest sense. Even all the beds, operation tables and various kinds of instruments and furniture are made by the workers. Doctors and paramedics are working round the clock to take care of hundreds of patients at the hospital's inpatient and outpatient units.

Despite its shortage of resources, the hospital offers help to those people who were evicted from their homes in Bellilious Park by the authorities last year and are now living in the Belgachhia dump. It organises a weekly medical checkup camp at the settlement to treat the residents. Many of the people there suffer from malnutrition and other diseases due to poverty and the unhygienic surroundings.

A People's Initiative

This unique hospital was evolved



The Sramajibi Hospital is a people's initiative. (Photo: AHRC)

from a health care initiative started by workers of the IJSL and some young doctors in 1983. The project began with an outpatient unit and different health awareness programmes for the workers and the local people. The activities gained momentum and the demand for health services rose. In 1989, the clinic moved to the premises of the National Iron & Steel Co. (NISCO) with the help of the workers' union of that company. The project expanded with an X-ray and biochemistry unit and a small operation theatre for minor surgeries. An indoor unit was also set up to treat patients of acute illness. The fledgling hospital at NISCO, however, ceased functioning by December 1993.

Attempts were made to restart the hospital. After putting intense pressure on the IJSL management, the workers were finally allowed to run the hospital in an old

dilapidated building within a factory in February 1994. The workers then transformed the building into a small but well planned and optimally equipped hospital. The workers not only raised funds for the renovation and other expenses but also helped cutting the costs by making different necessary appliances and furniture, including operation tables, orthopaedic tables and the lighting system, themselves. The Sramajibi Hospital was officially opened on March 1, 1994.

As the steel industry was hit by an unfavourable business environment due to problems of a non-competitive market, lack of raw materials and decline in profits, a property boom increasing the value of real estate at the time prompted the IJSL management to close down the factory and lay off the workers.

Despite that, the hospital has survived and continued to flourish with the joint efforts of the retrenched workers, local people and the medical staff.

The conveniences are minimal within the hospital, not to the patients but for the staff. The retiring room for senior surgeons and the rest of the staff has just a bench. Doctors and paramedics travel on a rundown jeep when they need to conduct medical camps elsewhere. The paramedics and the former workers of the locked out steel mills trained by experienced doctors keep working in their spare time, such as making acupuncture needles, to earn extra income for the hospital. The treatment in the hospital is free in most cases. In other cases where the patients can pay the charges are low. There is provision for subsidies to the patients from the poorer sectors and workers of closed industries. The hospital is also giving free medical assistance for war and torture victims.

To date, the general outpatient unit has treated more than 50,000 patients. More than 85,000 patients have been treated in the specialist outpatient units of all major branches including surgery, orthopaedics, gynaecology and obstetrics, paediatrics, eye, and ear, nose and throat medicine. More than 7,000 operations have been conducted, of which 50 per cent was done free of charge. Some complicated operations such as transplantation of loop of intestine, cancer surgery, removal of big tumors in the uterus, different reconstructive surgery over cleft lip and palate as well as deform knees and ankle joints were also performed. The hospital has been regularly giving free blood transfusion and other requisite treatment to 15 thalasemic children for the past few years. The hospital now runs an early cancer detection centre under the guidance of Dr Subir Ganguly, head of the oncology department in the Calcutta Medical College and Hospital. The



A worker makes acupuncture needles at the Sramajibi Hospital. (Photo: AHRC)

Sramajibi Hospital has also begun free diagnosis and treatment of tuberculosis patients under the guideline of the quality Revised National Tuberculosis Control Programme. The hospital believes that people from the low-income group should be able to benefit from the advantages of all types of advanced medical technology and treatment according to their needs.

Under Attack

In spite of its good work and popularity in the area, the Sramajibi Hospital has been attacked repeatedly by land grabbers in connivance with police and workers of the ruling political party. On April 26, 1997 a huge contingent of police and land grabbers with their hired hooligans raid the hospital. They threw out patients from the orthopaedics ward, demolished the southern part of the hospital, ransacked the hospital and manhandled doctors and female health workers. Kirty Roy, a human rights activist with Manabadhikar Suraksha Mancha (MASUM), filed a public interest litigation at the High Court in Calcutta to seek redress. Although the court found that the hospital was under attack, it referred the matter to the West Bengal Human Rights Commission for seeking intervention into human rights violations.

The rights commission submitted its report on December 14, 1998, stating the wrongdoing on the part of the police, who had favoured the land grabbers illegally. The commission recommended an interim compensation to the hospital. But the hospital has yet to receive anything.

The hospital was again under attack on January 24, 1999. This time land grabbers vandalised the hospital together with workers of the ruling communist party. The police did not take any action. The intruders even hoisted their party flag at the hospital to convert the premises into their party office. The attack prompted a debate at the West Bengal Legislative Assembly. Many denounced the heinous attack and aired their ill will against the party sponsored hooliganism. Since then, attempts to attack the hospital have ceased. But it is still believed that the lust for greed might lead to more attacks on the hospital in the future.

Health Rights Protection

Despite the difficulties and harassments, the Sramajibi Hospital has asserted itself as an alternative and a viable people's initiative to cater better health services for the community, especially the low-income group, thanks to the participation of the people and their perseverance in bringing about the project. It offers a hope for the people in the dismal health scenario of West Bengal, where public health care services are inadequate and poor in quality on one hand and the private-run nursing homes and other profit-making organisations have converted health into an expensive commodity on the other. The story of the Sramajibi Hospital demonstrates that given the existing situation in India where exploitation and state sponsored torture is a daily tale, people themselves are the strongest and ultimate resort to uphold and preserve their own rights.

Arroyo Deserves Blame for Violating Children Prisoners' Rights

Perfecto Caparas

(The author is a lawyer and the convener of the Coalition to Stop Child Detention Through Restorative Justice.)

Lean, agile and barely 1.2 metres tall, 11-year-old Julian (not his real name) could hardly be seen amid the mounds of flesh huddled together in a decrepit, tiny police cell measuring only 12 square metres beside a river.

The police jail nestles in Metro Manila's bustling premier city splashed with mega-malls, and just a spitting distance from rows of restaurants and karaoke bars. Packed with five other kids and 19 adult inmates, the small inferno not only swarms with half-naked and tattooed prisoners but also lacks adequate ventilation and sanitation facilities. The jailbirds only survive with food brought to the cell by relatives of some of the prisoners, which they share among themselves according to the command of their *mayores* who enforces this age-old tradition among cellmates. *Mayores* is prisoners' parlance for a jail chief who is usually the longest staying prisoner or trustee of the lawmen.

During the period of his police detention, Julian, just like the rest, was deprived of access to any medical, social, psychological and legal assistance and services.

He even confided to the author that upon arrest, a policeman kicked



Many children are still being detained with adult inmates in the Philippines, having their rights violated. (Photo: Coalition to Stop Child Detention Through Restorative Justice)

him on the stomach, throwing him off the ground, crushing his frail body against a wooden door. He writhed in pain. The lawman was trying to force him to return the necklace that he allegedly snatched from a woman on board a passenger *jeepney*, the common means of public transportation in the Philippines. Julian, who lives by peddling cigarettes to motorists, knew nothing about the robbery.

Nonexistent Prisoners

Julian's condition mirrors the risks and dangers of being held in police custody. Elsewhere in the Philippines, other children suffer from a far worse fate.

In Davao City, which is located in the southern province of the archipelago with a population of 82.7 million, for example, "incorrigible" children suspected of criminal involvement are systematically liquidated with impunity by death squads believed to be backed up by state functionaries.

The older children detained with Julian were tattooed by the adult prisoners with symbols of gangs. "They (adult prisoners) threaten us. They beat us," said the children who got tattooed.

Other children who suffered from police detention similarly complain of torture, rape, tattooing and other brutalities inflicted on them by police officers and adult prisoners.

More and more children suffer from police arrest and detention without judicial warrant. According to figures from the Office of Philippine Senator Francis Pangilinan, 20,000 children were detained last year. The Public Attorney's Office reported that it rendered assistance to 13,300 children in 2002. That means, on the average, 36 to 54 children get arrested and detained with adults in cramped police jails every day all over the country. All of them are virtually arrested without judicial warrants but subsequently charged routinely in court by inquest prosecutors, without due regard to their special entitlements as children, such as protection from tattooing and segregation from adult prisoners. Those children include beggars, scavengers, street hawkers, prostituted girls and street urchins. Even those with mental disabilities are not spared from the brutal de facto policy of the Philippine government of jailing kids with adults. A growing number of the

children are held for drug-related offences.

Yet, officially, they do not exist.

Official Approval

The police practice of jailing children with adults under the aegis of no less than President Gloria Macapagal-Arroyo and her concerned cabinet officials reeks of a discriminatory flavour and character.

Based on the 1990-2002 statistics of the Molave Youth Home, an exclusive youth detention centre run by the social services development department of Quezon City, most of these children prisoners facing trial come from families with a monthly income between 2,000 pesos and 4,000 pesos (US\$35.7-\$71.4). This is way below the 6,817 pesos monthly income needed by a family of six to live decently in 2000, according to the government's National Economic

and Development Authority.

These children, aged between 15 and 17, barely have adequate education. They are ignorant of their own human rights and the intricate processes of the criminal justice system, making them more vulnerable to state abuses. They lack the power and the voice to assert and stand up for their own rights in the face of the institutionalised violations ruthlessly committed by state agents. They suffer in meek silence and submission as practically all stakeholders acquiesce in the practice by virtually justifying its perpetuation on the pretext of lacking facilities. The lack of grassroots mechanisms to combat these violations only serves to fortify the wall of impunity permeating this long-running violation.

President Arroyo—in spite of her authority as the chief executive who is sworn to uphold the rule of law and do justice to every man, woman and child—fails and refuses to stop this illegality and barbarism committed against the children. She knows the situation. Yet she does nothing to stop and prevent the illegal, widespread, organised and systematic practice of jailing children with adult crime suspects. This is despite the fact that both Philippine and international laws forbid the commission of this dastardly deed that criminalises the young.

As the commander in chief, the president – through her Secretary of the Department of Interior and local governments – exercises control and supervision over the officers and personnel of the Philippine National Police who directly perpetrate this serious human rights violation with



Children are held in a cramped police jail. (Photo: Coalition to Stop Child Detention Through Restorative Justice)

impunity.

In spite of the welter of laws giving special protection to children, state authorities – ranging from community guardsmen (known in local parlance as *barangay tanod*) and police officers to top cabinet officials and the president herself – fail to stop the despicable and gruesome practice of police detention that Julian and other children from mostly poor families get routinely subjected to. That thereby institutionalises and perpetuates the ignominious violations of children's inviolable human rights without any form of redress.

President's Tacit Consent

Although the matter of mixing up children with adult prisoners under sub-human conditions had been personally brought to her attention by Fr Anthony Ranada and the author in January 2003, President Arroyo chose to sweep the problem under the rag. She perfunctorily referred the matter to Silvestre Afable, secretary of the presidential management staff who, in turn, referred it to the Department of Social Welfare and Development.

The latter, however, in its response on April 1 last year, simply begged the question by harping on the law supposedly protecting children in violation of the law, without alluding at all to the insidious state practice of jailing children with adult prisoners in police jails nationwide.

The Office of the President, speaking through presidential spokesman Ricardo Saludo, vowed to stop the practice last December 11. Fielding questions from the press, Saludo said: "We will speedily take any

measures necessary in order to address any injustice or violation of rights that may be happening. At this point we do not have any solid information yet on the situation and we'll have to look into this."

Yet the official pronouncement that was published in *TODAY* newspaper turned out to be merely intended for public consumption. The mixing up of children with adult prisoners persists without letup to this day.

Not a single police official has been investigated and prosecuted for this egregious violation of the human rights of the children. This is not only on account of the esprit de corps pervasive among members of the police force and other government agencies but more importantly because of the seemingly tacit consent by Arroyo herself and her top officials to perpetuating the illegal practice.

Official Inaction

The class action suit filed by five children prisoners with the support of the Coalition to Stop Child Detention Through Restorative Justice against the president and her top cabinet and police officials on December 10 last year demanding that the practice be immediately and unconditionally stopped has yet to be acted upon by the Office of the Ombudsman.

The Department of Justice has also yet to act on a mass petition spearheaded by the coalition on January 7 this year for inquest prosecutors all over the country to be required to ensure that no children are detained by the police especially in the company of adults. The petition also demanded

guarantee of the right of children under arrest to diversion or to be turned over to their next-of-kin, social workers or responsible members of the community at the point of arrest.

This, after all, is the essence of the law (Section 8 of the Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders and Article 191 of the Child and Youth Welfare Code [Presidential Decree 603]) requiring children to be diverted at the point of arrest to any of the above persons pursuant to the children's best interests.

But Arroyo and her cabinet officials opt not only to pay lip service to the human rights of children prisoners but also to conceal their own brutality from the rest of the world.

In their second country report to the United Nations Committee on the Rights of the Child, state officials – knowing fully well that the practice is brazenly illegal – concealed by omitting any mention at all of the state norm and de facto policy of routinely detaining children with adults in cramped police jails all over the country.

Yet the deliberate, widespread, organised and systematic comingling of children with adults in police jails under sub-human conditions and deprived of access to any assistance and services per se constitutes a cruel, inhumane and degrading treatment and punishment outlawed by the 1987 Philippine Constitution as well as the Universal Declaration of Human Rights and the International Covenant on Civil and Political

Rights (ICCPR).

Crime against Humanity

Such practice constitutes a crime against humanity. Inviolable human rights inhere in the person of children prisoners as human beings and as children entitled to special protection. The ICCPR that the Philippines ratified on October 23, 1986 and the United Nations Convention on the Rights of the Child (UNCRC) that came into force on September 2, 1990 prohibit the mixing up of children with adult prisoners, except under specific circumstances. Having attained the status of quasi-universality, the UNCRC (as far as the matter of segregation of children prisoners from adults, at least, is concerned) should be considered – like torture and slavery – as a non-derogable right, as a principle of customary international law, permitting of no deviation whatsoever by the state. This is so, considering further that as early as 1924, the League of Nations had come out with the Geneva Declaration on the Rights of the Child guaranteeing special protection to children.

Based on the holdings of the Limburg Principles and the Maastricht Guidelines – which should also be construed to apply to civil and political rights owing to their symbiotic, interdependent and indivisible character vis-à-vis economic, social and cultural rights – the state has the obligation to respect, protect and fulfill the human rights of children prisoners.

As far as their obligation to respect human rights is concerned, all Arroyo, her top cabinet and police officials have to do is to cease and



President Gloria Macapagal-Arroyo is sworn to uphold the rule of law, yet has not stopped the state practice of jailing children with adults under inhumane conditions. (Photo: PCPO Malacanang)

desist immediately, permanently and unconditionally from further jailing children with adult prisoners, especially under sub-human conditions without access to adequate psychological, social, medical and legal services and assistance.

Mechanisms

The Philippine experience shows that state functionaries have no qualms in perpetuating institutionalised human rights violations even against children prisoners. They mask their egregious deeds with the sugar-coated language of the law to cover up for what is really obtaining on the ground (as if harping on the law, just like what Philippine officials did in their report to the U.N. Committee, can be equated with its actual observance).

It is this schism between law and reality that has to be narrowed down

by demanding and enforcing official accountability – by pressing for their culpability for such atrocities – by means of mechanisms for enforcing human rights duties on the part of state officials.

Given its vitality and dynamism, the global community of human rights advocates should farther push the frontiers of international human rights law by elevating to the status of a crime against humanity the state practice of jailing of children with adults under inhumane and oppressive conditions in a systematic, organised and widespread manner.

State officials should be held to account for their egregious deeds by virtue of the principle of command responsibility. This would strip state officials like President Arroyo of sovereign immunity from suit – upon whom the doctrine of command responsibility properly applies – and make them accountable before the bar of justice.

A Gravy Train and Shackled Kids

Asian Centre for Human Rights

(The Asian Centre for Human Rights is based in New Delhi, India.)

Hundreds of juveniles in Bangladesh are being illegally detained in prison in violation of the country's Children Act of 1974 and its obligation as a party to the United Nations Convention on the Rights of the Child.

According to the Dhaka Central Jail authorities in last December, at least 108 juvenile delinquents were held in the central jail instead of correction centres. At least eight of them have been in jail for more than a year, including a 14-year-old boy, Al Amin, who has been held since October 7, 2000. At the National Juvenile Correction Centre at Tongi, nearly 100 seats are vacant. The government of Bangladesh unabashedly stated in a report to the U.N. Committee on the Rights of the Child in last September that a total of 1,041 juveniles – 959 boys and 82 girls – were held in different prisons.

Under section 2(f) of the Children Act of 1974, any person below 16 years is a juvenile and must be sent to a "certified home or approved home or to the custody of a relative or other fit person".

However, age verification has never been taken seriously in the administration of juvenile justice. Police often increase the age of a juvenile in court to avoid the so-called legal complications. Magistrates are supposed to order a verification of age if a suspect seems to be under 18. The verification involves scrutiny of birth or school certificates and bone ossification tests. But most magistrates usually do not look up from their paperwork and, in a routine exercise, send the juveniles to jail. Even when court orders send the juveniles

to correction centres, they are often ignored and the children are still being detained in prison. There were five cases in January last year in which the accused children remained in the Dhaka Central Jail although the court ordered that they be sent to correction centres. For example, Rafique, 13, has been in the central jail since last November despite a court order to keep him in the National Correction Centre at Tongi.

The maltreatment of juveniles in Bangladesh is in contravention of international standards on the administration of juvenile justice. It violates Articles 37, 40 and 39 of the U.N. Convention on the Rights of the Child. It also breaches other U.N. standards including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System.

The Bangladesh Penal Code determines the minimum age of criminal responsibility at seven. That is an affront to the treatment of children in a civilised society. The U.N. Committee on the Rights of the Child, in examining the periodic report of the Bangladeshi government at its 35th session in last September, expressed concerns about

- (a) the minimum age of criminal responsibility (at seven years);
- (b) the sentencing to life imprisonment of children from the age of seven and to death penalty of children from the age of 16;

- (c) the absence of juvenile courts and judges in some parts of Bangladesh;
- (d) the extensive discretionary powers of the police, reportedly resulting in incarceration of street children and child prostitutes;
- (e) the use of caning and whipping as a sentence for juvenile offenders;
- (f) the failure to fully ensure respect for the right to fair trial, including legal assistance for alleged children offenders and the very long periods of pre-trial detention; and
- (g) the detention of children with adults and in very poor conditions without access to basic services.

The committee recommended the Bangladeshi government to

- (a) raise the minimum age of criminal responsibility to an internationally acceptable standard;
- (b) ensure that the imposition of the death penalty, of life imprisonment without possibility of release, and of caning and whipping as sanctions for crimes committed by persons while under 18 are explicitly prohibited by law;
- (c) ensure the full implementation of the right to fair trial, including the right to legal or other appropriate assistance;
- (d) protect the rights of children deprived of their liberty and improve their conditions of detention and imprisonment, including by guaranteeing separation of children from adults in prisons and in pre-trial detention places all over the country; and
- (e) establish an independent child-sensitive and accessible system for the reception and processing of

complaints by children.

The December report prepared by the central jail authorities of Dhaka shows that government has little respect for the recommendations made by the U.N. bodies.

The establishment of a national human rights commission consistent with the Paris Principles relating to the status of national institutions for the promotion and protection of human rights could have served as an effective mechanism to address such gross and systematic human rights violations.

After examining the first periodic report of the government of Bangladesh, the U.N. Committee on the Rights of the Child in its concluding observations on June 6, 1997 welcomed "the recent law to establish the post of ombudsperson as well as the fact that a national human rights commission is being set up". More than six years later on October 3 last year, the committee after examining the second periodic report once again welcomed "the information from the delegation concerning the intention to establish a national human rights commission and an ombudsperson".

Since the start of the project to establish a national human rights commission by the then Bangladesh National Party government in April 1995, three governments have changed. During that period of time, many draconian laws such as the Public Security (Special Provision) Act of 2000 and the Joint Drive Indemnity Act of 2003 were passed, and the officials and project officers took a detour of all the countries in the world that have national human rights institutions. Yet the establishment of the national human rights commission in Bangladesh remains a pipe dream. The process of establishing such a commission has been all but a gravy train.

Hong Kong March Democracy

Hundreds of thousands of Hong Kong citizens, defying Beijing's objection to greater democracy in the former British colony, rallied on July 1 to voice their demand.

The demonstrators marched some four kilometres under the sweltering heat from Victoria Park in the main shopping area of Causeway Bay to the government headquarters in the Central business district.

"Return power to the people. Fight for democracy," chanted the crowd who were all dressing in white in unison. Many were holding umbrellas to screen themselves from the scorching sun in one of the largest demonstrations in Hong Kong.

This was the second massive protest in two consecutive years on the day that marks Hong Kong's return to Chinese rule in 1997. Beijing has promised a high degree of autonomy for Hong Kong, but is reluctant to allow the territory's population of 6.8 million to directly elect their government leader and lawmakers.

Hong Kong's Chief Executive Tung Chee-hwa was selected by an 800-strong committee handpicked by Beijing, while only half of the 60 seats in the legislature will be returned by direct elections in September.

Most of the Hong Kong citizens want a faster pace of democratisation by having the right to choose the chief executive as soon as 2007 and all the legislators in 2008.

But Beijing ruled against such change in Hong Kong's electoral systems in a landmark interpretation of the Basic Law, the territory's post-handover constitution, in April. The Chinese leaders argued that Hong Kong was not politically mature enough to elect its leaders and stressed on a gradual and orderly reform process.

Many people in Hong Kong were disappointed and angry. They saw no reason for any delay on the pace of democracy in this southern Chinese special administrative region. Many believe that if the Chinese central government continues to restrict the democratic rights of Hong Kong citizens, the people here will feel that they are not fully respected.

The Asian Human Rights Commission (AHRC) issued a statement on the eve of the march, urging the governments of China and Hong Kong to work with the people of the territory to introduce a truly democratic system based on universal suffrage.

"July 1 is not a threat; it is an opportunity. It is not a challenge to stability and prosperity, but a commitment to maintaining the values and institutions that have made Hong Kong what it is today," the AHRC said.

"A democratic political system promotes transparency and accountability. It lends credibility and legitimacy. By withholding democracy from the people of Hong Kong, the Chinese and Hong Kong governments are only sowing the seeds of instability and its negative

nes for

economic consequences by spawning anger and frustration without any institutional outlet," the human rights group warned.

The AHRC said Hong Kong people were ready to elect their government leader and legislators as the city possessed all the necessary attributes for a democracy to function and flourish. "It has a free press and respect for the other necessary freedoms of expression, assembly and association. It has an independent judiciary, the rule of law and an educated population," it said.

The rally organisers estimated 530,000 people took part in the march this year, higher than expected and more than last year's half a million. The police, however, put the figure at only 200,000. Despite the discrepancy, the mass participation still surprised many here. One participant said although more people had been aware of the situation in Hong Kong and because of the success of last year's march, they hoped to make a difference by joining the march.

The protest was held orderly and peacefully. "All of us want to show we care for the future of Hong Kong and that democracy is important for Hong Kong's future," another demonstrator said.

Reacting to the march, Tung said he understood the people's demand, yet insisted on reforming the political system according to the timetable set by Beijing. "To those who have participated in the rally and to all my fellow citizens of Hong Kong, I clearly hear your views.



Hong Kong people march to demand for full democracy on July 1. (Photo: Bruce Van Voorhis)

"I understand your aspirations," said the Hong Kong leader.

"I hear your concern on our governance. Although there has been substantial improvement, I recognise there is still room for further improvement and we will keep at it. I also hear your aspirations on democracy. We will take forward constitutional development with the ultimate aim of universal suffrage, in accordance with the principle of gradual and orderly progress, the provisions of the Basic Law as well as the interpretation and the decision of the

Standing Committee of the National People's Congress," Tung said.

On July 1 last year, the Hong Kong people marched to express their opposition to a proposed legislation on national security under Article 23 of the Basic Law. They feared the bill, if passed, would infringe civil liberties and impose more restrictions on freedoms. They also vented their anger on the Hong Kong government under Tung's poor leadership. The government was forced to withdraw the proposed draconian law soon after the march.

Dear Police Commission Chairman, Protect Torture Victims or Quit

Asian Human Rights Commission

(The chairman of the National Police Commission in Sri Lanka, Ranjith Abeyseriya, did not react to an urgent report of police assault on a torture victim on July 7. Abeyseriya even complained that his dinner was disturbed when an Asian Human Rights Commission officer called to ask for his intervention in the case. The AHRC wrote the following letter to the police chief on the next day to express its shock and disgust at his attitude towards the practice of torture in police stations. If Abeyseriya cannot protect torture victims and deal with their complaints against the police, he should resign, the AHRC said.)

July 8, 2004

Mr. Ranjith Abeyseriya PC
Chairperson
National Police Commission
69-1 Ward Place
Colombo 7
Sri Lanka
Fax: +94 11 2 669128 / 691926 / 674148
(residence)

Dear Mr. Abeyseriya,

RE: Provide Effective Protection to Torture Victims Who Make Complaints, or If You are Unable to Do Your Constitutional Duty, Resign

I refer to the telephone conversation between yourself and an AHRC programme officer Ali Saleem, which took place last night (July 7, 2004) regarding further assaults upon – and the baseless arrest of – J. V. Saman Priyankara, the petitioner in S.C.F.R. 78/2004. Mr. Priyankara had complained to you of being cruelly treated by an officer of the Matale Police Station, who poured boiling

water on his thighs on January 5, 2004.

You earlier wrote to the AHRC stating that the Kandy Area Coordinator of the National Police Commission (NPC) had taken effective action regarding this matter and that the officer concerned was facing a disciplinary inquiry. You also used the occasion to express your absolute confidence in the Kandy Area Coordinator whom, you said, you had been fortunate to recruit.

Ever since Mr. Priyankara made his complaint regarding the above mentioned incident he has faced severe threats to withdraw it, and in fact has made further complaints regarding the threats themselves. Regrettably, these threats were made good at around 5 pm yesterday, July 7, when 10 officers came to Mr. Priyankara's house and severely assaulted him in front of his family, before taking him away in their jeep. At the Matale Police Station, two lawyers were unable to get access to him. One person, who was able to speak with him, found that he had lost hearing in one of his ears and was finding it difficult to speak. He managed to say that he was arrested for no reason and mercilessly assaulted. Since about 11 am this morning he has been transferred from police custody to court.

Mr. Saleem's call to you was to complain about this assault and request your urgent intervention, at least by making your concern known to the concerned authorities. Given your position as chairperson of the NPC, we believe that some phone calls from you would have carried considerable weight and secured a torture victim from further violence at

this very crucial stage.

However, to Mr. Saleem's surprise, you responded irritably that he was disturbing your dinner after a hard day's work, and your only advice was that he ought to contact the Inspector General of Police. We had in fact by then complained to higher police authorities, but informed you directly in deference to your position as chairperson of the NPC. We had confidence that you believed in your constitutional mandate and that you would at least do the minimum possible to protect a victim of torture in grave danger at that very moment. You have maintained publicly that you are dissatisfied with how the police themselves deal with such complaints, and have even stated that you would prefer to have an independent investigatory unit under your command.

On April 30, I wrote to you to register dissatisfaction at the manner in which the case of Tissa Kumara – who was tortured and contracted tuberculosis due to the actions of one officer at the Welipenna Police Station – has been handled by your commission. I also expressed dissatisfaction at your handling of other cases of torture in the past and pointed out that the commission is not a mere box into which we wish to drop complaints but get no reply.

We are now making it known to you that we are appalled by the manner in which you deal with complaints of torture. Torture is among the most heinous crimes under international human rights law, and is also a crime under Sri Lankan law. Yet you have been treating the enormous number of torture complaints reaching

you – many of them extremely gruesome – as if they were trivial. In fact, your casual approach is helping to perpetuate the routine torture being practised in police stations in Sri Lanka. The record of your commission on torture is shameful. It is an utter disgrace.

We now urge you to:

1. Either take appropriate action in terms of your constitutional duty to deal with public complaints against the police, particularly those relating to torture,

and to maintain discipline in the police force; or,

2. If you feel that you are not up to the task and that you are unable to get the cooperation required from the police to do your duty, make this known to the nation and then, for the love of the people, please do resign.

We make this call only now, having welcomed the inauguration of your commission and your appointment, and having made very serious efforts to support

your commission and cooperate with you personally in every possible way. I regret to say that this all appears to have come to nought.

Thank you.

Yours sincerely,
Basil Fernando
Executive Director
Asian Human Rights Commission

Top Court Orders Biggest Compensation to Torture Victim's Family

Sri Lanka's top court has ordered a compensation of one million rupees (about US\$9,630) to the family of a 36-year-old man who was tortured to death while he was detained in jail for allegedly stealing two bunches of bananas.

The sum is the biggest amount being awarded to a torture victim in the country's history.

In a judgment on July 26, the Supreme Court found that Lamaheewage Lal Meddagoda was severely beaten, cruelly treated and dead within 48 hours after being remanded in the Negombo Prison in November 2002.

The court blamed the officer-in-charge, chief jailer and superintendent of prisons at the Negombo Prison for dereliction of duties. The three failed to prevent the assault on the victim by some jail officers and were responsible for the infringement of the victim's fundamental rights guaranteed under the constitution, the court said.

The court ordered the state to pay 925,000 rupees and the three leading officials of the Negombo Prison each 25,000 rupees as compensation to the victim's wife and three children.

However, the perpetrators in the case have yet to be prosecuted and punished. The Asian Human Rights Commission has urged the attorney general of Sri Lanka to take immediate action to prosecute those jail officers who are responsible for

the torture and death of the victim under the Convention Against Torture Act, Act No. 22 of 1994.

The victim was arrested by officers from the Seeduwa Police Station on November 5, 2002 for allegedly stealing two bunches of bananas and was remanded by a magistrate to the Negombo Prison on the next day.

The Supreme Court heard that the victim was handcuffed, shackled, beaten mercilessly and tied to an iron door during custody. "The deceased was a father of three minor children and the treatment meted out to him while he was at the Negombo Prison has painted a gruesome picture where a hapless prisoner was brutally tortured and left alone tied to an iron door to draw his last breath," Justice Shirani Bandaranayake said in the verdict.

Justice Bandaranayake said assault on a prisoner by jail officers, who are officials of the state, must be considered to be "an especially grave form of ill treatment". "This indicates that the officers concerned have exploited the vulnerability of the victim," she said.

"It is paramount importance that the lives of the prisoners are safeguarded. Although there should be discipline and order that should be maintained with firmness, such discipline cannot invoke punishments, which are inhuman and violative of Article 11 of the Constitution," the judge said.

A Victim's Account in Video

Woman Harassed by Police Recounts Fiancé's Death

(The following is the English translation of a verbatim statement made by a 26-year-old Sri Lankan woman whose fiancé was allegedly killed by two police officers. In her account videotaped recently by the Asian Human Rights Commission, Lankapurage Sunethra Malkanthi reveals that three police officers from the Welipenna Police Station have made sexual advances to her for several years. Her relationship with M.R.D. Saman Priyantha Guneratna, 29, also made these officers jealous. They often harassed him in a bid to bring pressure on her. Guneratna was shot dead by two police officers at close range when he was driving his open lorry along a gravel road on May 30. The two officers arrested claimed that they shot Guneratna because he refused to obey their order to stop the vehicle. Malkanthi demands a proper inquiry into her fiancé's death and the perpetrators be punished.)

I am Sunethra Malkanthi and I live near Kappettiyagahalanda Dalanda Nagaraya Village.

In January 1996 I was married to a soldier and moved into his home. On June 18 of the same year my husband passed away. He was killed in combat. For about two years after that I continued to live at his home and then I returned to my parent's home where I am staying now. I met a person called Saman Priyantha who came to our home with my brother. At that time he was selling illicit liquor and I developed a relationship with him because I often had to rescue him due to business dealings.

Later I bought my own property at a place called Marindagoda and built my own house there. It was during this time that



Sunethra Malkanthi tells her ordeal. (Photo: AHRC)

the police at Welipenna used to catch Saman selling his illicit liquor and take him to the police station and I would have to go to the station to rescue him. After some time he stopped selling illicit liquor. But the problems with the police continued. Even though he was innocent of any crime, the police tried to implicate him in cases. They used to file fabricated cases against him saying that he was still selling illicit liquor. I pleaded with the officer in charge of the station, Mr. Padmalal, that Saman had done nothing wrong and not to implicate him in these cases. I told him that Saman had a place to live (with me) and that I received a pension from the army because of my ex-husband, who had died.

Police Jealousy

To earn a living, I bought Saman a machine to make cement bricks. I also bought him tools to do carpentry work.

He started making bricks with the machine and doing odd jobs with the tools. I then mortgaged my house to finance a company and bought a tipper lorry.

Saman used this lorry for his work, which took him past the Welipenna Police Station several times a day to buy sand and transport the bricks. Even though they knew that Saman was no longer engaged in illicit work, the police often caused us a lot of trouble. They knew that I was receiving a pension from the army and that I was unmarried. However, I was intending to marry Saman, which is why I bought the tools and the lorry.

It was during this time that a sub inspector by the name of Silva was very angry with me. There was a sergeant called Premarisi who was also angry with the two of us. I know that they were jealous of Saman. As a result of this, Saman and I considered selling the property and moving away from

the village. However, I had to obtain a letter from the government village representative, Mr. Ramasevaka, every month in order to obtain my ex-husband's pension. Without the letter I would not be able to obtain the money. So when Saman suggested that we sell our property and move elsewhere, I was reluctant to do so. I was hoping that after we bought the lorry Saman and I could get married and reside permanently in the house that we were living in at that time.

Guneratna's Death

On May 28, I went to Anuradhapura with Saman's father. Saman stayed at home and was working with his lorry and transporting sand and stones. I returned on the evening of May 30 and learned that Saman was shot. The shooting took place when he was on his way back after transporting some timber. There were two people involved and one of them was Sergeant Premasiri. The two of them shot Saman. When I learned of the shooting and that Saman was in hospital, I immediately went there but was not allowed to see him. Soon after I learned that he had died.

I then prepared the funeral arrangements for Saman, covering all the expenses myself. The vehicle, which was hit by bullets during the incident, was at the Matumaga Magistrate's Court and I learned that not a single lawyer from that court wanted to represent me in the case. Neither the Matumaga court nor the police offered me justice.

I hope that the perpetrators will be punished and given the highest possible sentence they deserve.

Indecent Proposals

Saman was often arrested and taken to the Welipenna Police Station and I always went to have him released. Sergeant Premarisi and Sub Inspector Silva of that station used to tell me I didn't need to marry

Saman. They used to tell me that he was unsuitable for me. They told me that there was no need for me to marry anyone and that if I needed any help, anything at all, they would help me at any time.

Both before the shooting and afterwards the police made indecent proposals to me and were very persistent. However, I chose Saman and intended to spend the rest of my life with him. I did not want any relationship with the policemen. They continued to harass us and arrest Saman because they knew that every time they did so I would turn up at the station to rescue him. Very often when I visited the station I saw that the officers were drunk. On those occasions they used foul language and made sexual innuendoes to me. It was insulting and demeaning I cannot bring myself to repeat here what they used to say to me. This happened very often.

Sometimes Saman would stay out working overnight or visit his mother and return home late in the evening. On those occasion the police used to visit my home, using the excuse that they were looking for Saman. If Saman was home they would talk briefly and then leave. But if he was not at home they would try to persuade me to agree to their suggestions that I shouldn't marry Saman but rely on them for any help. I told them that I would never agree to such suggestions. I am not such a woman that would do that sort of thing. I chose Saman because he was from my own village and we suited to each other. I had every intention of marrying him.

Sometimes when Saman was using his lorry the police would employ him. The police started using Saman and the lorry to transport their own things. I was worried about this and believed that the police were looking for a way to harm him. I warned Saman about accepting work from them. I told him that we were under no obligation to accept personal requests from the police officers. But sometimes

they just used to come and take him away, even using force in order to get their work done. Saman used to comply with them because he was afraid of them.

So I believe the police were angry at Saman and thought that if they could get rid of him then they could get to use me. They tried to kill Saman in such a way that no one would be caught for the crime. But, we later found the culprits and the police admitted that they were guilty. Otherwise, even today we would not know who shot Saman. It was the villagers that cornered the police officers. Later when officers arrived from several other police stations, they surrendered themselves to the police.

Court Hearing

On June 8, the case was presented in the Matumaga Magistrate's Court and the two officers who shot Saman were remanded. No lawyers from that court were willing to represent me and it was clear that all of them supported the police. I was offered no justice from the Matumaga Magistrate's Court and until now the case is still pending. If we cannot get any justice through this court, I hope there are other legal mechanisms that can punish these perpetrators.

Saman went to a village to collect some timber from a house that had been demolished near the place where the shooting occurred. After the shooting the police claimed that he was transporting stolen timber and used that excuse for shooting at the lorry. They also stated that they ordered him to stop and opened fire when he did not. However, the road that Saman was driving on was not one that anyone could drive fast. It was very narrow. Also, at the time of the shooting there was no timber or wood on the lorry as he had unloaded the wood at another location and was returning home. The case that the police filed stated at the time of the shooting the lorry was transporting

timber illegally.

About half an hour after the shooting the provincial council member arrived along with two assistant superintendents of police. At the time there was not one piece of timber or wood in the vehicle. But the police filed their case stating that there was timber in the lorry. The police took some timber from another property and showed it to the judge as evidence to support their case. Before I went to the vehicle the police tried to load the lorry with timber taken from somewhere else. I scolded them and told them not to put anything in my lorry. I told them that I would stop them even if they tried to kill me. So they stopped. After a magistrate arrived at the scene, they took the lorry to the police station and then later to the court. Even then they were still claiming that there was timber in the vehicle.

The wood that the police were trying to use as evidence was in fact located at a property near to the crime scene and was owned by the owner of that property.

The crime scene is on a gravel road and it is impossible to drive fast on such a surface. The police were able to get very close to Saman before they shot him. Even a bicycle cannot go fast on that road.

I admit that Saman used to make and sell illicit liquor, but I wanted him to get out of this work and that is why I bought everything for him including the brick making machine and carpentry equipment. I spent my own money to buy the property and build the house. I did all these things to get him out of the illicit work and Saman took advantage of this to clean up his life.

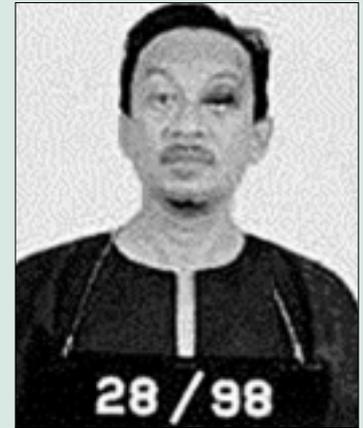
Money Matters

When they used to arrest Saman, I would go to the station and used to beg the officer-in-charge, Padmalal, by holding his feet. I would tell him that Saman was innocent and to leave us alone. But the officers who arrested Saman

used to falsify evidence, which they presented to the officer-in-charge. When I went to the station I used to strike my head against the ground and plead with them not to implicate Saman in such cases. Even Saman used to say it was unfair that I was involved every time he was arrested. Both of us were afraid of the police at this station. Often we were presented in court and I was always the one to rescue Saman and secure his release.

Some time ago we had a three-wheeler, a trishaw that Saman operated. One day one of Saman's friends, without our knowledge, used the trishaw to transport some illicit liquor. The police chased and intercepted the trishaw and Saman told the police that the cargo did not belong to him. The owner of the liquor and Saman were taken to the police station and later produced in court. Saman was fined 125,000 rupees for possession of the liquor even though it did not belong to him. I didn't have the money to pay such a huge fine and the trishaw was kept by the police for 10 months. As the trishaw was kept under the sun and rain all that time, its condition deteriorated so badly that it became unusable. Also, anything useful in the trishaw, the battery for example, had been removed. I felt very helpless at that time because I could not get the trishaw back.

Due to the fact that I had an income from the pension I was able to borrow money at a very high interest rate of between 15 per cent and 20 per cent per month. But even with the loans I was still unable to retrieve the trishaw. I pursued the case in court at Kaluthra and went there three or four times and was finally able to have the fine reduced to 25,000 rupees. Saman was implicated and there was no way to confront the police. We were concerned that our lives might be threatened. Eventually, I borrowed money from many places and managed to get back the vehicle. The 25,000 rupees that I used for bail are still in the police station as is all the other bail money that I used to bail out Saman.



ANWAR IBRAHIM
2,110 DAYS IN PRISON
(as of July 1, 2004)

AHRC Victims Fund

Human rights abuses are prevalent in Asia. The victims are often the poor. Whether they are victims of disappearance, torture, extrajudicial killing or other forms of abuses, they and their families all suffer—physically, psychologically and financially. They need support.

To help the victims and their families, the Asian Human Rights Commission has set up a Victims Fund. You can pitch in by sending a cheque in U.S. dollars payable to the "Asian Legal Resource Centre Ltd." to the following address:

19/F Go-Up Commercial Building
998 Canton Road
Mongkok
Kowloon
Hong Kong

Upholding Rights of 'Terror' Detainees

Kishali Pinto-Jayawardena

(The author is a public interest lawyer and a columnist for the Sunday Times in Sri Lanka. The article was originally appeared in the July 2 issue of Jana Sammathaya, a weekly e-newsletter on Sri Lankan folk issues run by the Asian Human Rights Commission.)

Should detainees held as "enemy combatants" on the shores of the United States or in foreign bases such as Guantanamo Bay be afforded basic rights, including access to an attorney and the right to challenge their detention in court? The answer to this query seems astonishingly simple and resoundingly in the positive. Yet, for years, this most fundamental of questions has been in limbo in the United States; the first and one of the most poignant victims of the "war on terror" waged with impunity by the Bush administration.

This cloud of uncertainty was dispensed to some extent by rulings by the U.S. Supreme Court in three cases that deal with the rights of U.S. detainees held as "enemy combatants" and foreign detainees at Guantanamo Bay on June 28.

In one of the cases involving a U.S. born detainee of Saudi origin, who had been detained without access to court after being suspected of having Taliban links, the Supreme Court in a majority ruling of eight to one, affirmed his right of access to an attorney and to challenge his detention in court.

Writing the majority opinion, Justice Sandra Day O'Connor acknowledged the power of Congress to give the president authority to detain citizens in the war under "very limited circumstances". However, she asserted a vital qualification to this authority. Due process demanded that a citizen held in the United States as an enemy combatant be given a meaningful opportunity to contest the factual



A detainee is escorted to a security facility at Guantanamo Bay. (Photo: U.S. Department of Defence)

basis for that detention before a neutral decision-maker.

The Supreme Court rulings will come as additional – and very welcome support – for civil rights lobby groups within the United States itself who are urging the current U.S. administration to refrain from outraging basic principles of humanitarian law in the war theatres that the United States maintains abroad.

Prisoners in Iraq

While the cases did not concern prisoners held at the now notorious Abu Ghraib prison, the general outrage manifested in the United States over the inhumane prisoner abuse in the past few months in Iraq formed a significant background to the judicial rulings. There is no doubt that the opinions expressed by the Supreme Court will buttress the raising of additional questions relating to detention of prisoners after the transfer of sovereignty to Iraq on June 30.

Earlier, the U.S. military in Baghdad said that the United States would continue to detain without charge some 4,000 to 5,000 prisoners

deemed a threat to the coalition even after the transfer of sovereignty.

Responding to this claim, groups such as Human Rights Watch pointed out that international humanitarian law as exemplified in the 1949 Geneva Conventions permit detention without charge of prisoners of war and other detainees only in two contexts: in the case of an international armed conflict between governments, or during an occupation.

In the case of Iraq, however, neither of these contexts will be applicable after the end of June. Consequently, practices of detention without charge by the U.S. military will no longer be possible.

Abuse in Abu Ghraib Prison

Interestingly, the reluctance of the current U.S. administration to allow detainees being held by the U.S. military to pass out of its hands has many points of origin. Earlier, it was the high sounding albeit undeniably arrogant argument that American justice is second to none in the world. However, the documented instances of prisoner abuse at Abu Ghraib prison in Iraq has put paid to this assertion with a vengeance, making public a truth that was the worse kept secret for many months.

It has now been proved beyond any doubt (as conceded by a few senior administration officials themselves) that the official government policy of permitting illegal interrogation techniques was the starting point for these abuses, most notably in reference to Iraq and Afghanistan prisoners. Guantanamo Bay provided the most astonishing example in this regard.

Despite campaigns of civic agitation by old and highly respected civil rights bodies, such

as the American Civil Liberties Union, as well as Amnesty International and Human Rights Watch, the Bush administration proceeded regardless.

Internal warnings of detainee abuse also left the government undeterred, including a stern caution from the Office of the Inspector General, an agency watchdog within the U.S. Ministry of Justice. The Office of the Inspector General faulted officials of the Justice Department, the Federal Bureau of Investigation, the immigration and the prisons for their treatment of non-citizens detained ostensibly on immigration charges but under investigation with regard to terrorism crimes. Its report found prolonged detention without charge, denial of access to legal counsel and excessively harsh conditions of confinement with regard to the detained individuals.

Where domestic agitation failed, international pressure did not succeed either. The United States was not overly disturbed by pronouncements from regional tribunals such as the Inter American Commission on Human Rights, which urged the United States to determine the status of prisoners held at Guantanamo Bay and afford them the rights that correspond to that status. The Abu Ghraib incidents, which are not isolated to that prison alone, were the direct result of a deliberate policy of keeping detainees beyond the bounds of international

humanitarian law and condoning torture as a method of interrogation. The stupendous manner of the abuses practised in that prison compelled the U.S. administration at long last, to publicly acknowledge that something was wrong. Its prevarication with regard to substantive accountability for its practices of detention however continues.

Thus, we have now a more sophisticated argument than the supremacy of American justice, put forward to justify its decision to continue detaining Iraqi prisoners without charge. Iraq, it is said, does not have the capacity to superintend the detention of its so-called insurgents or conduct their trials. But this claim is also easily defeated by questioning as to why the United States does not, in the first and most obvious instance, allow responsibility in this regard to pass to the International Criminal Court? Instead, the current administration attempted to press the United Nations Security Council to renew its 2000 and 2003 exemption of its troops from prosecution for war crimes when serving in any U.N. peacekeeping operations.

From another perspective, the practice of entering into non-surrender agreements with individual countries putting nationals of both signatories beyond the jurisdiction of the International Criminal Court under the Rome Statute continues. As maybe remembered, Sri Lanka was one of three countries from the South Asian Association

for Regional Cooperation to sign such an agreement during the pendency of the previous government. Unlike protests in Thailand against a similar attempt on the basis that it offended the principle of sovereignty and should be approved by parliament, we did not react in any way, which is, of course, not surprising given the present somnambulant state of

our civil society.

Change Needed

The impunity with which the United States continues to disregard basic human rights and humanitarian norms sets, of course, a dire precedent for other countries. Increasingly, one is beginning to hear murmurs from other governments that, what is good for the goose should also be good for the gander. This is a slippery slope of the most dangerous kind. It is heartening that the U.N. Committee on Torture has now called for both the United States and Britain to present reports relating to prisoner abuse in their detention facilities, but what the U.N. can do as far as the United States is concerned is historically limited. However, an international "constituency of resistance" against powerful nations that put themselves beyond the rule of law appears to be growing in strength. In the final analysis, it is only this force that can prod the U.N. into action.

The U.S. Supreme Court rulings will help this "constituency of resistance" in a very particular way; unlike administration warnings or ruling by foreign tribunals, this is a reprimand delivered by the highest judicial authority in the United States itself. Accordingly, the Bush administration cannot disregard the rulings in quite the same juggernaut way in which it proceeded earlier.

The point being made here is not difficult to comprehend. Significant overall change is needed in the patterns of detention engaged in by the U.S. military authorities. Detainees should be held subject to the guaranteeing of their basic rights, whether in the United States or in the facilities maintained abroad. Interrogation techniques practised on them should not violate humanitarian law. Without this, a few individual hearings before military tribunals with regard to lower ranking members of the military conveniently cast as scapegoats will accomplish little except set the United States even further beyond the norm of the community of nations.



Detainee bunks in a medium security facility at Guantanamo Bay (Photo: U.S. Department of Defence)

Scrapping Sources of Oppression – Hudood Laws

Idara-e-Amn-o-Insaf Lahore

(Idara-e-Amn-o-Insaf Lahore is the Lahore branch of the Committee for Justice and Peace in Pakistan.)

Twenty-five years back, in the process of Islamisation of the society, hudood laws were promulgated in Pakistan by the military ruler General Muhammad Zia ul-Haq and Islamic Shariah was imposed by enforcing Islamic punishments in the form of *hadd*. *Hadd* is a punishment as ordained by Islamic injunctions. Those punishments provide stoning to death, whipping and amputation of hands and feet. According to state declarations, those steps were taken to make Pakistan an Islamic state, in which people would lead their lives according to the injunctions of Islam, and to deliver justice to the people, especially women.

During these 25 years of Islamisation not only minorities but also women were subjected to state oppression because of retrogressive and sectarian legislation. The country's progressive circles, minorities and women organisations have been raising their voices against this retrogressive and oppressive legislation in the name of religion. The federal government has constituted three commissions so far on the subject, respectively headed by Zari Sarfraz, Justice Nasir Aslam Zahid and Justice Majida Razvi.

The National Commission on the Status of Women under the leadership of Razvi constituted a 14-member special committee to thoroughly

examine the Hudood Ordinances of 1979. That special committee concluded that the four Hudood Ordinances patently contained conceptual inaccuracies, textual errors, discrimination on gender and religious lines and flawed application of law that have caused gross injustice to the people.

The committee recommended immediate repeal of the hudood laws. The national commission adopted the recommendations, which were forwarded to the federal government and the president for implementation. In consequence thereof, President Pervez Musharraf has made a few public declarations that the hudood laws needed review and more consideration.

Realising the need to lobby for the recommendations for the repeal of the Hudood Ordinances and for opening public debate and opinion making, the Idara Lahore organised a seminar on "Hudood Ordinances and Other Discriminatory Laws against Women and Minorities" in Lahore on June 24. It was attended by a cross section of the society.

Abid Hassan Minto, a renowned lawyer and the president of the National Workers Party, told the seminar that derogatory norms, practices, customs and traditions of the patriarchal society were part of the feudal system. The system is not only oppressive but is the cause of retrogression that retards the process of social development, Minto said. Therefore, the hudood laws and

the feudal system should both be abolished, he said.

Terrorism and religious extremism are the natural outcomes of the "unholy alliance" of the military rulers and the religious clerics in Pakistan, Minto said. Such a situation has not only subjected the minorities to repression, but also made the whole nation the victim of that oppression, he said.

Razvi, meanwhile, noted that 80 per cent of female prisoners were convicts under the Hudood Ordinances. The incidents of violence against women have increased beyond proportions after promulgation of these laws, added the chairwoman of the National Commission on the Status of Women. Yet removing flaws and errors in these laws is not possible, as it is like an old cloth that will tear further if mended at one place, she said. The national commission had recommended for the repeal of the hudood laws and the matter is now with the president and the federal government, she noted.

Syed Afzal Haider, a former president of the High Court Bar Association in Lahore and a former law minister of Punjab, discussed the subject from different angles of Islamic jurisprudence. Haider said the Holy Quran did not prescribe the punishment of *rajam*, stoning to death. The remote reference found in the Sunnah, the life of holy prophet Muhammad, has not been interpreted in its historical perspective. He said Islam laid much emphasis on forgiveness rather than punishment.

The religious clerics have made Islam merely a religion of severe punishments. Those punishments should be repealed, said Haider, who is also a member of the special committee under the national commission on women to review the legislation.

Naeem Shakir, the Idara Lahore chairman and a member of the special committee, said many Muslims in Pakistan were swayed by religious sentiments and stood up against those who indicated that the hudood laws failed to deliver justice and demanded for their abolition. "They think as if we were disturbing divine laws," said Shakir, a lawyer.

Yet these laws were framed by draftsmen of the Ministry of Law under the advice of a Saudi religious scholar who was especially engaged by Zia. The laws were never put before any forum of assembly for debate or consideration. Treating these laws as divine is not only a misconception but creates a lot of problems, Shakir said.

Pakistani women and the minorities remain subjected to the rigours of the Hudood Ordinances, as their testimonies under these laws have been rendered inadmissible for the offences laid in those laws, especially rape and adultery. According to the standard of evidence, to prove the commission of an offence of adultery or rape it requires to have four adult male Muslim eyewitnesses. Such a standard throws women and the minorities out of the witness category and thus they are discriminated and marginalised, he said.

Moreover, only that the witnesses are supposed to be leading a life according to the ordained injunctions of Islam, the victims of rape are unable to

produce such kind of evidence to punish the perpetrators and are roped in on their own statements, which will be treated as confessions. That is why female victims are put in jail while the perpetrators are at large and free to harm more victims, Shakir said. In the religious fervour to Islamise the society, Zia also brought non-Muslim citizens under the application of Islamic Shariah and that is state oppression against the minorities, he said.

Other speakers, Professor Neelam Hussain from SIMORGH and Uzma Saeed from Aurat Foundation, also urged for the repeal of the hudood laws. The activists from the two women groups said the promulgation for such laws by the military regime and prescribing punishments of the medieval era were, in fact, meant to create general scare and to legitimise an undemocratic government.

The participants unanimously passed the following resolutions at the seminar:

- We demand for the repeal of Hudood Ordinances and strongly support the recommendations of the National Commission on the Status of Women. We urge the president and the federal government to bring an end to the state oppression and stop the policy of appeasement, which is the main hindrance in doing away with discriminatory legislation.
- We urge the government to stop applying Islamic Shariah on non-Muslim citizens and bring an immediate end to discrimination against them by repealing all sectarian legislation.
- The syllabi of educational

institutions that generate the sentiment of hate and socio-religious intolerance religious extremism and violence in the name of religious jihad should be substituted with such literature that fosters love, brotherhood and socio-religious tolerance.

- We urge the government to take immediate steps to demilitarise the state and the society. We further urge to disarm and ban different religious outfits operating in the country under different names.
- We strongly urge the government to take immediate steps to stop killing of people especially women in the name of honour by abolishing all those norms, practices, customs and traditions in the name of karo-kari or in any other name.
- We strongly feel that many of our economic and social ills are due to the feudal values and system that retard the process of social development and therefore demand immediate abolition of the feudal system in the country.
- On the decisions of *jirga* (council of local elders) women are subjected to physical and sexual violence as a punishment for disobeying and going against oppressive and discriminatory traditions and customs. And for the past many years there has been a growing trend towards such killings. We urge the government to take immediate measures to stop these inhuman acts.
- We urge the government to award exemplary punishment to the killers of Javed Anjum and Samuel Masih who lost their lives under blasphemy law and hate sentiment against Christians.

The Practice of Honour Killings

Human Rights Correspondence School

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

Violence against women is an unfortunate but common human rights violation, particularly in South Asia. The practice of honour killings is a particularly atrocious form of such violence against women. In some instances, honour killings take the life of men and children as well, not just women. Honour killings have a long history steeped in traditional forms of justice with no relation to the effective rule of law.

The lesson series 35 of the Human Rights Correspondence School examines the practice of honour killings in Pakistan, where the practice of honour killings is linked to the traditional system of *jirga* or *panchayat* rule. These tribal councils act as parallel legal systems within the country and not only prevent the abolition of honour killings, but actively encourage them. These bodies are also primary obstacles towards human rights protection and the establishment of effective rule of law.

There are three lessons with questions for discussion in this series.

Lesson 1 introduces the practice of honour killings in Pakistan and provides specific cases as illustration. The term "honour killings" comes from the idea of killing for "honour", usually that of the family. Females are believed to be the repositories of such "honour", as well as being the possessions of men. When this honour is believed to be besmirched, and when possessions are thought to be "tainted", such killing is allowed as retribution and as a means to defend "honour". The practice is given legitimacy due to the traditional authority of the *jirgas* or the *panchayats*, which firmly abide by such practices.

According to these tribal councils, in cases where a woman is believed to have "dishonoured" her family with immoral conduct, all those responsible should be killed or otherwise punished. The undefined concept of "honour" and of what undermines it leads to almost every act of female disobedience amounting to "dishonouring" the family. The truth of such an allegation of inappropriate behaviour does not need to be established.

Lesson 2 examines the national and international legal framework relating to honour killings and the system of *jirgas*. Although Pakistan

is party to numerous international conventions that include specific provisions on the rights of women, the rights to due process and fair trial, all such rights are violated by the practice of honour killings.

Contrary to popular belief, the *jirga* tradition has no relationship to religion. Most commonly, it is the disputes related to *zar* (money), *zin* (women) and *zameen* (land) that are settled through the *jirga*. The members of the *jirga* are always men and the representation of women is not permitted. Even when women are the victims, they are not heard.

Although illegal, the *jirga* is a powerful institution within the Pakistani informal justice system, which is influenced by wealthy clans, biased against the women and the poor, and condoned by the police.

Even state officials have used *jirgas* to solve criminal cases pending in court. Many *jirga* leaders are parliamentarians or members of the civil administration, or have family links to the administration. In their official capacity they talk about human rights for all, yet in their constituencies they participate in tribal courts, handing down punishments in violation of basic human rights principles.

The 1979 Constitution of Pakistan guarantees women's equality before the law. However, the Qisas (retribution) and Diyat (compensation) law, which covers offences relating to physical injury and murder, does not conform to the standards laid out in the constitution.

Lesson 3 focuses on the collapse of the rule of law within the country, which prevents the deterrence of honour killings. In recent years, the establishment of military courts and rule has undermined the little legal framework that exists in Pakistan. The collapse of the rule of law stems not only from poor legislation, but also from ineffective justice mechanisms – the institutions responsible for enforcing the legislation and protecting the rights of the people under the country's constitution are currently in a state of corruption and decline. One of the reasons that is consistently cited for why the *jirga* system is still so common throughout the country, is precisely because of the ineffective and drawn out process of official justice.

It is only with the abolishment of the *jirgas* and the reform of Pakistan's legal system and institutions that human rights violations such as honour killings will cease, the lesson concludes.

HUNGER ALERT



Little
Shiva
Dies of
Malnutrition

(Photo:MASUM)

"My son Shiva died...because of malnutrition. He had no medicine, no proper place to live. He was in hospital for two months, and died when he was three years old," E.M. Parvati says. Shiva's family was among some 7,000 Dalits forcibly evicted from Bellilious Park in Howrah in West Bengal, India, by the authorities without any compensation or resettlement in February last year.

Many sad hunger stories like that of little Shiva are being neglected, unheard and ignored in different parts of the world. The victims suffer in silence. Our society is not poorer than it was in the past. Why is that the problems of starvation, malnutrition and other related problems are unabated?

To raise awareness and prompt action on poverty-related issues in the region, the Asian Human Rights Commission has launched a campaign of *Hunger Alert*. It aims to break the silence of suffering and bring the plight of these people to public concern. *Hunger Alert* can be reached by email at:

<hungeralert@ahrchk.net>

Individuals or organisations can send untold stories and latest information concerning those people who face hunger and related problems, or the threat of starvation, together with contact details, to *Hunger Alert*. Upon verification, the news will be shared with a large audience throughout the world via email networking and websites. The approach is modelled on the AHRC's Urgent Appeals programme (www.ahrchk.net/ua), which receives information by email at <ua@ahrchk.org>.

For further details on *Hunger Alert*, contact the AHRC.

We want to hear from you.