



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2003/NGO/87
10 March 2003

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-ninth session
Item 11(a) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
TORTURE AND DETENTION

Written statement* submitted by Asian Legal Resource Centre (ALRC), a non-governmental
organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 January 2003]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Torture continues to be the central human rights abuse in Asia

1. In Asia, torture is still endemic, and a reality that affects all other rights. The freedom needed to develop an understanding of rights—and people's ability to assert their rights—is retarded by a deep social consciousness of the widespread nature of torture. Torture is the reason why vast masses of people in Asia are silent about the deep injustices they suffer. When the state and the elite perpetuate the tradition of torture, it is difficult to create a society where equality is respected, the participation of all in decision making is accepted, and democratic practices are guaranteed. Torture is what keeps inequality alive. To create the foundation for a democratic society, it is essential to eradicate torture.

2. According to article 7 of the International Covenant on Civil and Political Rights (ICCPR), no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 16 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) determines that each State Party shall undertake efforts to prevent—in any territory under its jurisdiction—acts of cruel, inhuman or degrading treatment or punishment when such acts are committed by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. Article 2 of the same Convention requires that each state take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction among the states that have ratified the Convention.

3. Nearly every Asian country has failed to uphold its obligations under these instruments. This has resulted in torture not being brought under domestic law, not being properly defined, not being declared a punishable crime with adequate punishment and remedies for the victims, or not being brought under a prescribed legal procedure for the trial of offenders. The Asian Legal Resource Centre is particularly concerned by instances where the CAT has ostensibly been brought under domestic law without any genuine change resulting within the country concerned. As such, it has made separate written submissions on torture in Sri Lanka, where under Act No. 22 of 1994 a mandatory seven-year prison sentence applies for offenders but

4. where there is no prescribed system for prosecution, and Indonesia, where Act No. 5 of 1998 is fundamentally flawed. Conditions in other countries previously identified by the Asian Legal Resource Centre (E/CN.4/2002/NGO/72), notably Nepal, China and Myanmar, have either not improved or worsened during the last year. Additional comments on two other countries also previously raised, India and Bangladesh, follow.

5. INDIA: The often repeated assertion that India need not ratify or formulate laws to address the issue of torture, as torture is anti-constitutional, has not stood the test of time. Constitutional provisions that by implication prohibit torture and offer means of redress to victims and prosecution of offenders have failed dismally, as torture is treated trivially by the courts, with minimal penalties imposed on perpetrators and piecemeal compensation awarded to victims. Consequently, torture by the police and state security forces in India is

widespread. Victims do not complain as the practice is systemic and the fear of repercussions far in excess of the potential gains. By refusing to ratify and incorporate the CAT, India has indicated that it is unwilling to uphold the universality of rights and affirm the gravity of torture as a human rights violation. By not taking effective action to prevent torture, it is a party to the crime.

6. A large number of cases of torture continue to be reported from India. Among them, the Asian Legal Resource Centre draws the Commission's attention to two example cases from Kerala State. Mr Sasi, of Thrissur District, was arrested on 21 August 2002 while having lunch, on suspicion of boot legging. He suffered very serious injuries due to police assault, and was falsely charged by the police in an effort to escape charges of assault and arbitrary arrest. At present the case is pending with the Kerala Human Rights Commission. Ms Pallathi, of Malapuram District, was a 39-year-old Dalit woman brutally kicked on the chest and killed by excise officers on 22 November 2001 after she was taken into illegal custody. Although the case is pending before the National Human Rights Commission, to date the government has taken no action whatsoever. (See also the Asian Legal Resource Centre's written statement to the fifty-ninth session of the Commission on violence against Dalit women in India and Nepal, under item 12[a]).

7. BANGLADESH: In 2002 the Government of Bangladesh launched "Operation Clean Heart", in the name of restoring law and order in the country. The security agencies responsible for this operation have operated without transparency or accountability, across vague institutional boundaries between the civil administration and military, and with ambiguous internal guidelines. Numerous reports of serious human rights violations, including extra-judicial killings, deaths in custody, torture and arbitrary arrests have followed the military throughout this operation.

8. Among the 44 deaths in custody reported in Bangladesh during 2002 was the case of 17-year-old Mir Zahidul Hossain Robin, taken by the army from his Pallabi residence on 8 December 2002 after it failed to arrest his father, Mir Mohammad Hossain, a leader of the Bangladesh Nationalist Party. Robin died the following day at Dhaka Medical College Hospital, after being admitted in an unconscious condition by the police. Both the police and

9. Army have denied being responsible for his death. In a similar case, the army picked up Jasim Uddin from a relative's house in Dhaka's Pahartali area on the night of 15 December 2002. Later that day, Jasim's dead body was found at the Chittagong Medical College Hospital. Army sources denied any link with his death and said they had heard of him being beaten to death by a mob. Police, however, said they had no report of any such incident and claimed that they had turned down an army request to receive Jasim as he was in a critical condition.

10. The Asian Legal Resource Centre calls upon all states in Asia to eliminate torture. To this end, the Commission must pressure every state to:

- a. Make torture a criminal offence prosecutable by the attorney general or equivalent.
- b. Establish an independent body with the legal responsibility to investigate torture.
- c. Ensure that a proper sentencing regime exists for offenders.
- d. Ensure that victims obtain adequate compensation, with perpetrators paying part of any financial redress.
- e. Submit reports to the Committee against Torture and monitor implementation of standards within domestic structures.
