

# Torture and Impunity in India



National Project on Preventing Torture in India

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People's Watch

# Torture and Impunity in India

## National Project on Preventing Torture in India People's Watch

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# **Torture and Impunity in India**

Edition, first: November 2008

Copies : 1000

Published by

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Design & Lay out: Anand

Printed and bound in India at, M/s. Anto Art Craft, Sivakasi, Tamil Nadu

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## Acknowledgement

*Projecting the intimations received throughout the project in the 47 districts to the 620 districts in the country, our data reveals that there is a common prevalence of 1.8 million cases of torture, ill treatment and inhuman behaviour at the hands of the police alone that takes every year in this country.*



The National Project on Preventing Torture in India (NPPTI) concentrated among its other goals, the task of demonstrating the actual prevalence of torture in India. Pursuant to this implementing this goal, its Human Rights Defenders undertook several fact findings on police torture during the project period. The fact findings undertaken were followed up in almost 1/3 of the cases where the victims were willing to challenge their cases with different legal and meta legal interventions.

In a country where authorities of the instrumentalities of the State continuously deny the prevalence of torture as a routine event by the police, the extent of torture that this data indicates in 26 months in 47 districts is extremely shocking. Each of the Human Rights Defenders undertook monitoring cases of police torture that were reported in the media as well as on the basis of intimations that they received from primary sources. Projecting the intimations received throughout the project in the 47 districts to the 620 districts in the country, our data reveals that there is a common prevalence of 1.8 million cases of torture, ill treatment and inhuman behaviour at the hands of the police alone that takes every year in this country.

This book attempts to portray this raw data emerging from the fact findings and indicates the background of the victims, the background of the perpetrators and a few other details. Indian democracy boasts itself of the inbuilt mechanisms it possesses to cater to the complainants suffering from a variety of human rights violations – be they women, children, dalits, tribals, minorities etc. However, in this project there were over 10,000 interventions that were undertaken in over 2,300 cases. The response of the authorities, the response of the Human Rights Institutions as well as Courts indicates to a very sorry state of ‘impunity’.

Our attempts herein are therefore to share these details with you so that you maybe encouraged in your personal and collective endeavours to urge the Government of India to speed up its publicly pronounced promise for the ratification of the UN Convention against Torture and bringing about the Domestic Law on torture in India. I

remember with gratitude the various Human Rights Defenders as well as their co ordinators who worked with us in these 47 districts to ensure that this data that we present was verified to the best of our conscience. We also remember their associates in our nine state offices who guided by their lawyers undertook the various litigative interventions. Their work was not without challenges and in many cases our own staff were threatened, arrested on false charges as well as tortured. I of course recall the work of our State Directors who guided the work in the respective states – all of them have been named in this publication with great gratitude. Our National Program Officer, Ms Sunila Singh who liaisoned with the national human rights institutions in New Delhi and our Administrative Assistant to the National Director, Ms. Anita Princy needs to also be specially remembered and thanked for her co ordination of many of the activities. I specially thank Mr. Anand Kumar, Systems Manager, People’s Watch who has worked to get his out in time.

**Henri Tiphagne,**  
National Director, National Project on Preventing  
Torture in India &  
Executive Director, People’s Watch



## Introduction

*Meanwhile, India boasts a staggering 130 statutorily created human-rights institutions. Whether through unwillingness or inability, these institutions are all too often unresponsive to the clear evidence of torture presented to them by victims or by organizations acting on victim's behalf.*



**T**he **National Project on Preventing Torture in India (NPPTI)**, supported by the European Union and the Friedrich Naumann Stiftung, has been implemented by People's Watch, a human rights organization based in Madurai, Tamil Nadu. Operating in 47 districts across 9 States, the Project seeks the **prevention and reduction of torture in India**. Its efforts will culminate in December 2008 after a National-level People's Tribunal on Torture and drafting the principles behind a domestic law on torture in India.

### Background

In India, torture remains an entrenched and often routine law-enforcement strategy, despite India's status as the world's largest democracy. In the name of investigating crimes, extracting confessions, and punishing perpetrators, torture is inflicted not only upon the accused, but also upon *bona fide* petitioners, complainants, informants and innocent bystanders. Frequent police practices include assault, physical abuse, custodial death, rape, threats, psychological humiliation, and deprivation of food, water, sleep, and medical attention. Torture is also inflicted on women and girls in the form of custodial rape, molestation and other forms of sexual harassment.

The NPPTI's fact-finding data suggest that 1.8 million people fall victim to police torture each year in India. In most of these cases, it is the vulnerable sections of the society – particularly Dalits women, religious minorities and the poor – that are targeted. Many **victims fear further prosecution or retribution**, and so suffer in silence.

Meanwhile, India boasts a staggering 130 statutorily created human-rights institutions. Whether through unwillingness or inability, these **institutions are all too often unresponsive** to the clear evidence of torture presented to them by victims or by organizations acting on victim's behalf.

In addition, India operates within a **legal void** in regards to torture. India signed the UN *Convention Against Torture*

*These three elements – fear among victims, institutional paralysis, and legislative inaction – have fostered the creation of a **culture of impunity**. Such impunity ensures that police torture remains prevalent across India.*

(CAT) in 1997, but ten years later the CAT has not yet been ratified and the CAT's Optional Protocols (OPCAT) remain unsigned. At the domestic level, there is no legislative definition of torture, nor is there a law identifying torture as a crime. There is also no system for victim and witness protection.. The Supreme Court of India has acted to condemn torture by developing jurisprudence that outlines best practices for police and other state actors, but the legislature has not responded by codifying these practices into law.

These three elements – fear among victims, institutional paralysis, and legislative inaction – have fostered the creation of a **culture of impunity**. Such impunity ensures that police torture remains prevalent across India.

#### Project Goals

The NPPTI seeks to make or to encourage progress towards the following targets:

- Ratification by India of the CAT, and both signature and ratification of the OPCAT
- Promulgation of a domestic law that both defines and condemns torture as a crime
- Accountability of state actors for torture perpetrated by themselves and by their subordinates
- Rehabilitation of those who have fallen victim to police torture, and of their communities
- Protection of victims of, and witnesses to, police torture
- Strengthening of statutory human rights institutions

#### Project Methods

In order to make progress towards the goals identified above, the NPPTI has engaged in the following activities:

- 1. Case Monitoring.** In all participating districts within States where the NPPTI operates, Project staffs have solicited intimations of police torture. As a result, 6,063 confirmed cases of torture were documented in detailed reports between January 2006 and August 2008. After screening, these reports have been translated into English and published, serving as proof that police torture is rife in India.



*People's Tribunals on Torture (PTTs) in each of the nine participating States. These large events provided 682 victims and their families an opportunity to share their stories before Juries of legal professionals, social activists, medical personnel, state actors, and journalists.*



**2. Legal Interventions.** Project lawyers pursued cases through a variety of legal means between January 2007 and now. The result was 10,077 legal interventions in 2,261 cases, which targeted governmental authorities, statutory human rights institutions, and criminal cases filed as private complaints.

**3. Lobbying for Legislative Change.** Project staffs have lobbied state and national governments to undertake legal reform, including ratification of the CAT/OPCAT. Further, the Project is in the process of finalizing the 'Principles behind a model anti-torture legislation' and pressurizing lawmakers to adopt it. As a result, police torture has become an election issue in some states; NPPTI staffs want to bring torture into the national consciousness.

The NPPTI culminates in its third year with a series of **State People's Tribunals on Torture (PTTs)** in each of the nine participating States. These large events provided 682 victims and their families an opportunity to share their stories before Juries of legal professionals, social activists, medical personnel, state actors, and journalists. In venues ranging from convention halls to street corners, these PTTs invited members of the public, the police and security services, and the government to bear witness to the experiences of those still living with the effects of torture. Press conferences accompanied the release of the Interim Jury Observations and later the final report will make general observations and recommendations on torture in each State. The result is a detailed, State-by-State compilation of victim testimony and expert opinion that could mobilise support for the NPPTI's goals by making Indian citizens, their representatives, and the global community aware that torture is not only frighteningly prevalent in India but devastating for each individual victim.

#### **A National-Level People's Tribunal on Torture**

The **national-level PTT was held in New Delhi on 17 October 2008**. The objective of the national-level PTT was to hear twenty one cases, in three sessions over the course of the day on the 17<sup>th</sup> October. The final report of the National PTT, highlights the two motifs common to each case: **torture and impunity**.

## The National Data arising out of monitoring police torture through fact findings

The National Project on Preventing Torture in India covered 9 States in India. They were Andhra Pradesh, Bihar, Karnataka, Kerala, Orissa, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. In each of the 9 States the following were the districts covered:

### Andhra Pradesh

1. Hyderabad
2. MahaboobNagar
3. Medak
4. Nalgonda
5. Rengareddy

### Karnataka

10. Charmrajnagar
11. Haveri
12. Kodagu
13. Kolar
14. Madya
15. Mysore

### Orissa

20. Cuttack
21. Dhenkanal
22. Jagatsingpur
23. Khurda
24. Sonapur

### Tamil Nadu

28. Chennai
29. Kanyakumari
30. Madurai
31. Salem
32. Sivagangai
33. Thanjavur
34. Tirunelveli
35. Vellore

### Bihar

6. Bhojpur
7. Nalanda
8. Nawada
9. Patna

### Kerala

16. Kottayam
17. Palacaud
18. Pathanamthitta
19. Trivandrum

### Rajasthan

25. Ajmer
26. Jodhpur
27. Kota

### Uttar Pradesh

36. Allahabad
37. Chandauli
38. Jaunpur
39. Mirzapur
40. Sonbhadur
41. Varanasi

### West Bengal

42. Hooghly
43. Howrah
44. Kokatta
45. Murshidabad
46. 24 Parganas (South)
47. 24 Parganas (North)



Each of the Districts was assigned either one or two Districts Human Rights Monitors. These District Human Rights Monitors had the responsibility of :

- a) Receiving 'intimations' about the cases of police torture within a district from either primary or secondary sources;
- b) Communicating these 'intimations' to their respective State offices and receiving instructions about the 'intimations' that had to be followed up with field level fact findings;
- c) Undertaking fact findings into cases of police torture as instructed by the state office;
- d) Generating reports of the fact findings
- e) Undertaking legal interventions in those fact findings where victims were willing to cooperate.

*District Human Rights Monitors underwent trainings – for the southern States in Coonoor in July, 2008 and for the northern States in July, 2008 in Allahabad.*

This was not an easy process. Prior to this the District Human Rights Monitors underwent trainings – for the southern States in Coonoor in July, 2008 and for the northern States in July, 2008 in Allahabad. Subsequent to the trainings, exposure within the districts were under taken by these Monitors to acquaint themselves with all justice related institutions within the districts like Police Stations, Office of the Prosecutors, Prisons, Hospitals, etc.

The exact period that the fact findings actually commenced were from July, 2006 and this continued till August, 2008 – 26 months. The analysis of the data that emerged from all the fact findings undertaken are provided in the accompanying chart.



## Institutional Responses to our Intervention on Torture

*The meta legal interventions undertaken largely concentrated on strengthening victims / survivors and building a trust between victim/ survivors and our local team; providing our assurance at periodic intervals to the victims/ survivors' family members*



The National Project on Preventing Torture in India has planned to follow up its fact findings with legal interventions wherever the victims/survivors of torture were willing to cooperate. In order to facilitate this, its State offices had been provided services of an exclusive lawyer and the services of associates to assist them. These lawyers were further separately trained on Laws relating to the various mechanisms that should be put into motion in order to challenge the heinous crime of torture. In addition, each of the States organized a few training programs for Lawyers in different districts so that a group of Lawyers committed to carrying out the tasks envisaged in legal interventions could be followed pro-bono by these Lawyers in the district in tandem with Law Officers of the project.

Interventions under the project were envisaged under the following categories.

- a) Meta Legal Interventions.
- b) Interventions not involving Courts
- c) Court Interventions.

### **a)Meta Legal Interventions:**

The meta legal interventions undertaken largely concentrated on strengthening victims / survivors and building a trust between victim/survivors and our local team; providing our assurance at periodic intervals to the victims/ survivors' family members; constantly figuring of the issue in the local media – all this was achieved through periodic meetings with victims/ survivors by our State team lead by the State Directors and State Lawyers in these 47 districts where we were engaged. These meetings used to be followed by a victim solidarity protest and culminating with a Memorandum being presented to the District Collector and the District Superintendent of Police on the cases of torture pending within the district and finally a press meet. These events were held with a certain amount of religiosity under the project in almost all the districts that are covered.

**b) Interventions not involving Courts:**

Our country is administered by a very effective, trained and efficient bureaucracy. This bureaucracy makes tall claims about its effectiveness which we wanted to put to test under this project. Therefore, the first of the interventions taken in the cases to be followed, were to put officials such as the said District Collectors, District Superintendents of Police on notice along with the Chief Secretary, Home Secretary and the Director General of Police at the State level. Thus, in each of the cases these interventions were required to be followed.

In addition, our country boasts about a series of statutory institutions that it has now created with certain specialization. Thus we now have a Commission for Human Rights, on Women, on Children, on Right to Information, on disabled, on Semi Nomadic Tribes, etc. These are not only at the National, but also at the State level and the country has over 130 such institutions. Under the present project, we found it therefore important that we in all cases we undertake we shall take recourse to the National/State human rights institutions since all of them had complaints handling mechanisms in place.

**c) Court Interventions:**

In addition to Interventions not involving Courts mentioned supra, Court interventions were also initiated in the form of petitions under Section 156 (iii) Cr.P.C to the Judicial Magistrates asking them for directions for the First Information Report to be registered by the jurisdictional police in the cases of torture that have taken place. Other interventions of course were initiation of private complaints and the 3<sup>rd</sup> option of initiating Writ Petitions before the High Court.

*All these interventions have taken place in the 2,300 cases with over 10,000 interventions.*

*This was of course a very difficult task given the fact that convincing victims to follow up on an agenda of challenging impunity by filing complaints is a costly exercise.*

All these interventions have taken place in the 2,300 cases with over 10,000 interventions. This was of course a very difficult task given the fact that convincing victims to follow up on an agenda of challenging impunity by filing complaints is a costly exercise. Nevertheless, this was undertaken in as many cases as possible. Below you will therefore find the details of the responses by each of these Institutions.

The names of the State Law Officers and the State local associates who supported these interventions are also provided in the following pages.



## State and National People's Tribunal on Torture

*The Tribunals started on the 1<sup>st</sup> of April, 2008 in Kerala and culminated on 31<sup>st</sup> August, 2008 in Andhra Pradesh. They ranged from two days to three days duration. While most of the proceedings were indoors conducted in a plenary session followed by a parallel sitting of different panels of the jury, in one State however, the Tribunal also included evening / night sittings of panels in 17 different locations in two different nights.*



In the third year of the project we envisaged a series of People's Tribunals on Torture to be conducted in each of the 9 participating States. The reason for conducting such People's Tribunals on Torture was primarily to show case the co-existence of a wide prevalence of torture and impunity not any longer as an exceptional case in this country, but as a day-to-day occurrence affecting the poorest of poor. We felt it was necessary that for a participatory democratic process to be set into action and that in the combat against torture that requires a multi-actor response rather than individual responses, such an exercise was felt really necessary. This was collectively to be organized by the State offices in collaboration with a number of civil society organizations within the State after a real long preparatory process that commenced in the month of November 2007 itself in Patna. From Nov 2007 to April 2008 was the period of preparation that the project functionaries engaged in this exercise to make it a success that it finally was.

It was envisaged that from the cases taken up under this project from the year 2006 to 2008, the State offices could select a few which would be fairly representative of the cases that were handled throughout the three years in the State. A very competent credible, jury largely from the State, but also with expertise drawn from outside the State were invited to act as Jury in these Tribunals.

The Tribunals started on the 1<sup>st</sup> of April, 2008 in Kerala and culminated on 31<sup>st</sup> August, 2008 in Andhra Pradesh. They ranged from two days to three days duration. While most of the proceedings were indoors conducted in a plenary session followed by a parallel sitting of different panels of the jury, in one State however, the Tribunal also included evening / night sittings of panels in 17 different locations in two different nights. Thousands of people therefore witnessed these proceedings in the halls and on the streets. Immediately thereafter, the Jury provided an interim report of their observations to the media and ultimately came out with final report of the Jury that was translated into the regional language.

All these proceedings before the Tribunals were of course only after due notice being issued both to the perpetrators as well as the representatives of the Institutions to which interventions had been made. The responses to these invitations were different. While in some State there was no

*The case in point is the Tribunal in Madurai (Tamil Nadu) in May, 2008 followed by the Tribunal in Kolkatta (West Bengal) in June, 2008 both had resulted in FIRs being registered against the National Director of the Project and the State Director of West Bengal as well as other named colleagues.*

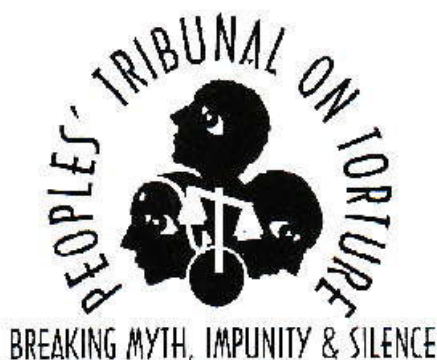
response at all from the police to these Tribunals and the invitations extended to them, there were others like in the State of Karnataka where the DGP was physically present for the inaugural and had deputed the ADGP to be present throughout the plenary and panel sessions. In the State of Rajasthan, the Chief Minister took the issue up on the floor of Assembly and directed Senior Police Officers of the state to attend to the cases presented before the Tribunal and send her a report. In most of the States barring a few, many of the perpetrators who were invited also responded to these invitations.

However these Tribunals were not without their sharing of the reprisal. The case in point is the Tribunal in Madurai (Tamil Nadu) in May, 2008 followed by the Tribunal in Kolkatta (West Bengal) in June, 2008 both had resulted in FIRs being registered against the National Director of the Project and the State Director of West Bengal as well as other named colleagues.

Details of the State Tribunal are as follows:

To date, the details of the nine State-level PTTs have been held, and three remain:

State	PTT Location	No. of Cases Slated for Deposition	Dates
Kerala	Trivandrum	34	1-3 April 2008
Uttar Pradesh	Varanasi	78	28-29 April 2008
Tamil Nadu	Madurai	260	29-31 May 2008
West Bengal	Kolkata	75	9-10 June 2008
Bihar	Patna	36	9-10 July 2008
Rajasthan	Ajmer	50	15-16 July 2008
Orissa	Bhubaneswar	25	5-6 Aug 2008
Karnataka	Bengaluru	95	12-13 Aug 2008
Andhra Pradesh	Hyderabad	29	30-31 Aug 2008
<b>Total</b>		<b>682</b>	



After the State Tribunals culminated, on the 17<sup>th</sup> of October, the National People's Tribunal on Torture was convened in New Delhi. 21 cases were taken before the Jury which was headed by Justice Shri Shivraj V. Patel, the former Judge of the Supreme Court of India and the former acting Chairperson of the National Human Rights Commission of India. The others on the Panel were

## Torture and Impunity in India

*...this was an International Jury with Jury members participating in the same on the Video Conferencing.*

Justice Bhargava,	Former High Court Judge, India
Justice Malay Sengupta,	Former High Court Judge, India
Mr. Ole Espersen,	Legal Adviser, RCT, Denmark, Former Member of the Human Rights Committee, Member of the European Parliament & Chair of the IRCT
Mr. Kuldip Nayar,	Former High Commissioner to UK & Member, Rajya Sabha, India
Mr. Eric Sottas,	Secretary General, World Organization Against Torture, Geneva
Mr. Brad Adams,	Director – Asia, Human Rights Watch
Mr. K. R. Venugopal IAS,	Former Special Rapporteur, NHRC – India
Dr. Haragopal,	Prof in the Central University, Hyderabad, India
Mr. Pheroze Nowrojee,	Constitutional Lawyer, Nairobi, Kenya
Prof. Nohyun Kwak,	Former Secretary General of the NHRC of Korea and Professor of Law
Prof. K. Chockalingam,	Professor, Tokiwa International Victimology Institute, Tokiwa University, Japan
Dr. Usha Ramanathan,	Independent Law Researcher, New Delhi, India
Dr. Babu Mathew,	Country Director, Action Aid India, New Delhi, India
Mr. Harsh Mander,	Human Rights activist and writer, New Delhi, India
Dr. Ruth Manorama ,	Convenor, National Federation of Dalit Women & National Alliance of Women, Bangalore, India
Dr. J. Rajkumar,	International Training & UN Advocacy Consultant, Chennai, India
Prof. C. Raj Kumar,	Professor & CEO, O.P. Jindal Global University & Jindal Global Law School, India
Mr. Swee Seng Yap,	Acting Executive Director, Forum Asia, Bangkok
Ms. Nimalka Fernando,	President, IMADR, Sri Lanka
Dr. Gopal Guru,	JNU, New Delhi, India
Ms. Meenakshi Ganguly,	Senior Researcher - Asia, Human Rights Watch
Dr. Rajat Mitra,	Director, Swanchetan Society for Mental Health , New Delhi, India
Dr. Mathiharan,	Hon Director, Institute of Legal Medicine, Chennai, India

**Chairperson of the International Jury Panel** Justice Shivraj Patil Former Supreme Court Judge & Former Acting Chair of the NHRC, India



You will thus note that this was an International Jury with Jury members participating in the same on the Video Conferencing. While this report is going to the press, the final report of the People's Tribunal is not yet over.

We therefore provide below, random selection from the recommendations that emerged from different States. These random observations/recommendations are provided below only to get an idea of the variety of observations and recommendations that emerged from various States.

## Andhra Pradesh

*...People's Tribunals or public hearings such as these are important expressions of 'setting the democracy' of a country in order. These are engagements of civil society to improve the governance system existing in the state.*

...' The Jury notes that many victims/survivors were still not coming forward with their cases of torture before the PTT in Andhra Pradesh. The Jury believes that many victims/survivors of police violence and torture remain silent, fearing the consequences of speaking out. While 70 cases were scheduled for hearing at the People's Tribunal in Andhra Pradesh, only 25 of the victims came forward. The Jury has heard that many of the victims who did not come forward were coerced, threatened, or compensated by higher authorities in order to prevent them from appearing. One woman did not appear before the panel because she had compromised the case with the police for Rs. 2000.' ...

.....People's Tribunals or public hearings such as these are important expressions of 'setting the democracy' of a country in order. These are engagements of civil society to improve the governance system existing in the state. The Jury recognizes that the Andhra Pradesh PTT gives victims/survivors of police torture a public space to share their narrations of events. In so doing, the Tribunal empowers victims/survivors, giving them a voice that they lack in front of the police, local and state government, and the Andhra Pradesh State Human Rights Commission. However, the experience of this People's Tribunal and others point out that human rights defenders (including organizations) can at best address letters of invitation to the authorities of the state, and in most cases such letters evoke no response from them. This stems from the fact that such human rights defenders do not possess any power to summon persons under the law. Therefore, when such hearings are conducted, existing national and state human rights institutions which have such powers of summoning witnesses should generously come forward to collaborate with human rights defenders (including organizations) who organize such public hearings to summon the authorities so that their presence is ensured at such hearings. We strongly assert the right to organize such public hearings is stipulated by the UN Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998), Article 9. ....



**We demand the following of the Government of Andhra Pradesh:**

- Strengthen internal mechanisms within the police service which will make not only perpetrators of police torture

*Assume responsibility for protecting those victims/ survivors and witnesses who deposed before the People's Tribunal on Torture for Andhra Pradesh. The victims/ survivors must be protected from direct and indirect harassment for having deposed at the tribunal as well as for pursuing their cases.*

but their superiors accountable for their misdeeds. Any such system must flag for higher officials those repeat subordinate offenders within the police ranks who have been implicated multiple times in torture cases.

- Assume responsibility for protecting those victims/ survivors and witnesses who deposed before the People's Tribunal on Torture for Andhra Pradesh. The victims/ survivors must be protected from direct and indirect harassment for having deposed at the tribunal as well as for pursuing their cases.
- After examining programs enacted in other states and countries, and after considering the creation of an independent institution for this purpose, issue directions for the protection – before, during, and after trial – of victims/ survivors and witnesses in torture cases.
- Ensure that all established norms and guidelines regarding the treatment of female suspects – including that female police officers effectuate any arrests – must be followed.
- Sensitize police regarding the effects that their language and actions can have on citizens.
- Demand Zero Tolerance for police torture, both within and outside of police custody.
- Urge National and State Judiciary Academies to conduct human rights sensitization programs for magistrates and judges by human rights defenders.
- In cases of loss of livelihood and for victims whose torture cases are pending, the government should provide for maintenance for the complainants for the period of the case.

**We demand the following of the Andhra Pradesh Police:**

- Abide by all mandatory police procedures and reporting guidelines.
- Publicly display posters containing the D.K. Basu Guidelines for arrest within each police station.
- Require all police officers and staff to undergo human rights training.
- Take constructive steps toward establishing partnerships with community organizations.
- List the police officers who engage in inhuman and illegal acts of torture. Constantly monitor the actions of these police officers.

Appropriately punish the officers who engage in torture and prevent them from being promoted. Terminate officers who are repeat-offenders from police employment.



**Bihar**

*The amendment of s. 176 of the Criminal Procedure Code (“Cr. P. C.”) in 2005 responds to Section D of the NHRC Guidelines on Custodial Deaths by requiring an enquiry by a Judicial Magistrate into every custodial death.*

**..... Violation of Mandatory Procedures: False Charges, Acquiescence, Illegal Arrests, and Custodial Deaths**

The police are subject to numerous procedural requirements; some are imposed by the government, others by the courts. However, all too often, these requirements are flagrantly breached – either in the name of expediency, or simply as an abuse of power.

The Jury heard numerous cases in which false charges were filed against victims (see *e.g.* Case Nos. P.6, 1.6, 2.7, 3.3, 3.7). Whether such charges were filed for purposes of intimidation or as retribution, the procedures for charging and investigating allegations were clearly abused.

Also, the testimony heard at the PTT showed that, all too often, the police ignore others’ violation of the laws – whether because they are bribed or influenced, or because they simply choose not to act (see *e.g.* Case Nos. P.5, 2.1, 2.2, 3.1, 3.4). In a limited number of cases, intense pressure from victims, their representatives, or human rights organisations resulted in action by the police – but, even then, accountability often remained elusive.

Additionally, the police regularly contravene the arrest guidelines laid down in *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610 (“the *D.K. Basu* Guidelines”). The breach of these Guidelines may arise when police officers are unaware of their existence – but frequently also evidences a blatant disregard for the rights of arrestees (see *e.g.* Case Nos. 2.5, 2.7, 2.10, 3.8). Human rights suffer, as does the authority and legitimacy of the Supreme Court itself.

The amendment of s. 176 of the *Criminal Procedure Code* (“Cr. P. C.”) in 2005 responds to Section D of the *NHRC Guidelines on Custodial Deaths* by requiring an enquiry by a Judicial Magistrate into every custodial death. This practice differs from the previous practice of appointing an Executive Magistrate – significantly less independent and thus prone to police pressure – but is all too often ignored. Specifically, the Jury saw no evidence that custodial deaths were appropriately investigated in Case Nos. P.3 and 2.6.

Finally, it is worth noting that, as India has no anti-torture law, a legislative definition of torture – against which the cases heard by the Jury could be measured – is lacking. However, where some may disagree as to whether “torture” *per se* was



*The suffering of torture victims does not end when the torture itself ceases: the physical and psychological effects of torture can last for months or years. The psychological component of torture is then doubled when victims see no opportunity to seek a reasonable remedy for their suffering.*

experienced by a given victim, there is no doubt that even in such cases the misuse and abuse of police power unleashed untold suffering and violations of basic human rights and dignity. Articles 21 (the right to live with human dignity and personal liberty) and 22 (the right to seek legal defence and to consult the lawyer of one's choice) were frequently violated, as were ss. 50, 50-A and 51 Cr. P. C.

#### ..... **Psychological Suffering**

The suffering of torture victims does not end when the torture itself ceases: the physical and psychological effects of torture can last for months or years. The psychological component of torture is then doubled when victims see no opportunity to seek a reasonable remedy for their suffering.

Many particular observations spring from the cases themselves, shedding light on the unique nature of the psychological suffering undergone by each victim. In Case No. P.5, police refusal to take seriously the rape of a minor girl led to the sapping of her mental strength to survive; instead of psychological support, she was interrogated and denied an opportunity to share her feelings. In Case No. P.6, serial torture rendered the victim mentally weak, insecure, helpless, fearful, phobic, anxious, and depressed; similar feelings were observed in his wife and children. In Case No. 3.3, punishment for acts that he did not commit rendered the victim disturbed, fearful, aggressive, and impulsive.

Such varied psychological suffering merits individual attention. Each torture victim deserves rehabilitation, so that they may emerge from fear psychosis and reintegrate themselves into their communities as productive and "whole" citizens.

#### **Civil Society's Responsibility**

Across India, full-time activists and other committed citizens have mobilised to fight for human rights. Many of the civil society organisations born of their efforts participated in the organisation of the PTT in Bihar. Additionally, many professional organisations and trade unions contribute to the growth of a national consensus against torture and ill-treatment.

However, such a consensus amongst civil-society organisations has often yielded few results in terms of government action. The resultant frustration, however, should not deter future efforts. Instead, civil society must redouble its efforts to force the state to reduce the incidence of police



*The members of the jury wish to acknowledge the presence of Mr. Sreekumar IPS, Director General of Police, Karnataka in the inaugural session of the PTT and Mr. Infant IPS Additional Director General of Police,(L&O) Karnataka in some of the sessions of the Tribunal.*

torture and other human rights violations, and to respond to such violations when they do occur. Solidarity and coordinated action will be crucial. Those who document torture cases will have to increase their efforts and improve their training in order to collect all relevant information (including all documentation and photographic evidence), with which legal officers can then engage in targeted and successful legal interventions. These interventions should target the widest possible range of appropriate state actors, including (but not limited to) Magistrates, CJMs, ST/SC Commissions, and the NHRC/SHRC. Also fundamental will be intensive work with the media, in order to sensitise them to torture cases and thus in the long run to bring torture cases to the public's attention

## Karnataka

..... The Karnataka PTT was held on 12-13 August 2008 at St. Josephs College in Bangalore. On that day, the Jury heard 98 cases in both a plenary session and smaller panels. The members of the jury wish to acknowledge the presence of Mr. Sreekumar IPS, Director General of Police, Karnataka in the inaugural session of the PTT and Mr. Infant IPS Additional Director General of Police,(L&O) Karnataka in some of the sessions of the Tribunal. We would also like to recognize the response to the invitation by several other police officials in several of the cases where they appeared. We do hope this will lead to their continued concern and definitive actions in the follow up to these interim observations that we are making on the cases that we have heard.

### **The Social, Psychological and Economic Consequences of Torture**

The Jury notes that the social, psychological and economic consequences of torture on the victims/ survivors are often forgotten. However this 'human' element should not be neglected over the physical injuries incurred. The Jury expresses that as the victims / survivors deposed their cases, a specific vocabulary was used to describe their experience. Many victims/ survivors stressed that their 'life had been lost', meaning that the emotional and psychological effects of the torture had been so grave, they did not know how to go on with their life (see case I B 7). After torture had occurred, many of the victims/ survivors felt that the social stigma and the loss of dignity attached to them by the larger community was hard to cope with. Often the victims/ survivors felt humiliated and expressed that they had difficulty returning



to their locality. The Jury recognised that it is a great task to restore someone's self respect, but hope that the People's Tribunal is a small step in the right direction.

*Specifically concerning the economic consequences of torture, the Jury notes that often victims/ survivors suffered from a total loss of livelihood due to injuries sustained from torture.*

Further, the Jury notes that there was a marked difference between those victims/ survivors that received help in the aftermath of the torture and those that did not. The victims/ survivors who had an extended network of friends and family, and access to supportive civil society organizations were better able to cope with their ordeal. Those victims/ survivors that received little or no support were more likely to be affected adversely by the torture, and reach a state of mental and emotional breakdown. It appears that in several cases the victims experienced severe trauma but were never referred to counselors, psychologists or the appropriate medical professionals. The Jury cited one specific case ( see case III B 5) where a rape victim had not received any such treatment following her attack, and, as a consequence, her case lacked credibility as she was unable to properly cope with the court proceedings.

However, given such ongoing trauma, all the victims/ survivors showed both courage and determination in appearing before the Jury to share their accounts of police torture. Some victims cried, some yelled, some testified in hushed tones. But they all stood up and spoke in an attempt to secure justice not only in their individual cases, but also to play their inimitable part in ending the culture of impunity that engenders police torture and protects those who practice it. The Jury notes that, time and again, the victims/survivors who testified spoke of their resolve to gain justice, to make the state pay for its wrongs, and to seek punishment of those state officials who directly or indirectly participated in the torture.

Specifically concerning the economic consequences of torture, the Jury notes that often victims/ survivors suffered from a total loss of livelihood due to injuries sustained from torture.

### **Police Torture of Women**

The Jury observes the compounded nature of police torture against women in that sexual violence often amounting to rape frequently accompanies other forms of torture (see cases IB 6, II B 13, III B 14, III B 11, III B 19). The Jury insists that all established norms and guidelines regarding the treatment of female suspects – including that female police officers effectuate any arrests – must be followed.



*The Jury also expresses consternation over police officers' repeated use of gender-specific, abusive language towards victims and survivors amounting to cruel, inhuman, and degrading treatment of women.*

The jury expressed shock at the manner in which women who went to the police station were subjected to utter humiliation by the use of gender-specific abuse referring to the women as prostitutes. In short, the police attack the character of these women with the intent of demoralizing them into submission. The consequences of torture for women require special attention to be paid to remedial mechanisms in this regard. Since rape of women is often used as a tool to break down and subjugate the women and/or the communities to which they belong.

The Jury also expresses consternation over police officers' repeated use of gender-specific, abusive language towards victims and survivors amounting to cruel, inhuman, and degrading treatment of women. Across the board, victims specifically referred to this language used by the police officers and described how it negatively affected them. Such language in and of itself is an affront to human dignity and eats away at a person's self worth and confidence in the police. Police must be sensitized to the effects that their language can have on citizens.

**We demand the following of civil society:**

- Report instances of complicity in torture by medical personnel to the State Medical Council.
- Monitor cases of torture and pursue them on the victims/survivors' behalf up to the highest courts.
- Take part in human rights training programmes in schools and places of employment.
- Provide rural-based vocational training for the widows of torture victims.
- Monitor state actors and engage in lobbying and awareness-raising at all levels to raise the profile of human rights violations and thus contribute to the fight against impunity.
- Encourage employees and volunteers of civil society organisations to be intimately familiar with the various avenues of redress and recourse available to torture victims/survivors.
- Advise/counsel victims before any public hearing or tribunal, so they are aware of the procedures, objectives and limitations of the forum.
- Advise victims/survivors regarding the different avenues of redress available to them, including but not limited to mediation of civil cases by local Panchayats.



*...the SHRC that had been approached and in certain cases even the courts had done meager little to do justice to them. They had not secured any form of justice or consolation even.*

- Encourage students and other members of society to volunteer in public hearings and Know-your-rights trainings.
- Encourage victims to pursue all avenues of recourse including the Child Welfare Committee, the SC/ST Act, Juvenile Justice Act and the State / District Consumer Disputes Redressal Forum / Commissions.

#### **Jury's Proposed Immediate Plan of Action**

- Willing members of the Jury will present all those cases of police torture that are substantiated by clear documentation to the Director General of Police of Karnataka. The cases presented will be substantiated with full documentation of clearly evident police torture. The DGP will be required to order a special review of the 'false cases' registered against the victims / survivors of torture so that the charges framed are dropped. The members of the jury shall also require the DGP to order immediate provision of medical and psycho-social therapy to the patients at state cost as well as interim compensation to the victims from the "State Victims' Fund" and later reimbursed directly from the perpetrators.

### **Kerala**

..... The PTT heard in total a sample of 30 of the 34 scheduled cases in which victims were willing to depose as well as the 4 District Human Rights Monitors (DHRMs) of the NPPT who narrated details of an average of 10 cases each that they had documented personally highlighting the manner in which settlements / compromises were engineered in each of those cases of police torture under different circumstances.

The jury heard testimonies of survivors and family members of victims. In all these cases the jury noticed that in each of the cases the police stations, the district and state level authorities who had been approached, the SHRC that had been approached and in certain cases even the courts had done meager little to do justice to them. They had not secured any form of justice or consolation even. It is in these circumstances that the jury took up these cases for enquiry in the PTT.

While acknowledging that this re-telling is indispensable to justice, we bear witness to the pain and humiliation that people who deposed before us have been through in the past and through the continuing present. Apart from justice in the legal sense, recovery for these victim-survivors depends



*These experiences come within the meaning of "atrocities" under Section 3 of the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989 which also calls for the immediate registering of cases under the abovementioned special legislation.*



on disclosure, the courage of conviction, the creation of a community of support, and criminal prosecution. This recovery depends on finding and using effectively tools to overcome extreme trauma and loss – whether this is in terms of livelihood guarantee, memorializing those that did not survive torture, psychological counseling, or any other means. Combating torture therefore is not restricted to documenting cases of arbitrary detention and violence. Rather it extends to providing a community of support through the difficult period of recovery till the attainment of emotional and economic stability.

### **Torturing the Impoverished :**

There are cases of torture before us from Kerala where police officers have used caste abuse and stripped persons in police station as part of practices of torture. These experiences come within the meaning of "atrocities" under Section 3 of the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989 which also calls for the immediate registering of cases under the abovementioned special legislation. All the survivors who appeared before the jury belonged to extremely poor and marginalized sections and in most instances they did not know why they had been arrested, nor were they informed of the same. In several instances, cases had also not been registered, but persons were detained for hours and days in police stations where they were tortured. Medical records, by and large, point to the fact of abuse and assault by police.

### **On the Kerala State Human Rights Commission :**

The Kerala State Human Rights Commission (KSHRC) has been constituted in December 1998. As per Sec 12 (a) of the Protection of Human Rights Act (PHRA) of 1993, the KSHRC is mandated to hear complaints of violations of human rights.

The Paris Principles of 1991, which all such Human Rights Institutions are expected to adhere to, also includes the principle of effective functioning, the principle of adequate powers and jurisdiction and the principle of accountability. In addition, according to Sec 12(i) of the PHRA , the SHRC shall ' encourage the efforts of non governmental organizations and institutions working in the field of human rights.' It has been noticed by the jury that in the year 2006 and 2007, People's Watch which is implementing the NPPT in Kerala has filed over 75 complaints in representative capacity alone before the KSHRC and the jury is pained to note that action is pending – not even an acknowledgement -

*The Jury observes the almost complete lack of witnesses, beyond the victims' families, who testified at the Orissa tribunal. The Jury recommends that a robust witness protection system must be developed to ensure that witnesses feel free and secure to testify in public.*

in a majority of the cases. It is further noticed by us that victims who have been tortured and have sought the intervention of the KSHRC are made to travel from different parts of the state to the headquarters of the KSHRC in Trivandrum for every hearing and for which their travel costs are not compensated. It has also been noted by the jury that cases stand dismissed when they are absent for one hearing. In general the attitude of the KSHRC has been quite discouraging though it is obligatory on its part to encourage the efforts of NGOs working in the field of human rights and effectively handle complaints of human rights violations.

## Orissa

.... The Jury also observed the use of illegal detention as a general precursor to custodial torture. Jury Members additionally acknowledge that the injury on torture victims'/survivors' psyche remained raw, even in instances when the torture occurred years ago. Moreover, such scars on the victims'/survivors' dignity were separate and apart from any physical injuries which were sustained. Given such ongoing trauma, however, the victims/survivors showed both courage and determination in appearing before the Jury to share their accounts of police torture. Some victims cried, some yelled, some testified in hushed tones. But they all stood up and spoke in an attempt to secure justice not only in their individual cases, but also to play their inimitable part in ending the culture of impunity that engenders police torture and protects those who practice it.

### Protecting Victims/Survivors and Witnesses

The Jury observes the almost complete lack of witnesses, beyond the victims' families, who testified at the Orissa tribunal. The Jury recommends that a robust witness protection system must be developed to ensure that witnesses feel free and secure to testify in public. It observes generally that there are instances of intimidation of witnesses by police officers and also criminal elements. Before, during, and after trial, victims/survivors and witnesses deserve safety from retribution. The Jury supports creative solutions to this critical witness protection issue, and welcomes an examination of programmes implemented for such purposes in other States and countries.

### Ending the Complicity of Medical Personnel

The Jury notes the role that doctors must play a more active role in eradicating torture. For example, while a thorough



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and impartial post-mortem examination can yield valuable causal evidence in a custodial death case, the deceased's families are frequently denied their rightful copies of post-mortem reports and videographs, in-patient and out-patient records, reports of enquiries, and other relevant documentation. Such denial often results from the complicity of medical personnel in police torture.

The complicity of the medical profession extends beyond custodial death cases. Victims/survivors of police torture more broadly are rarely denied treatment altogether, but medical personnel often delay that treatment or faultily record facts in accident registers, wound certificates, post-mortem reports, and other documents. Whether bred of intentional complicity, wilful blindness, or negligence, such action is in flagrant violation of the Indian Medical Council's Code of Ethics.

### Rajasthan

The Jury noted that the majority of victims/survivors were from marginalised groups: many were Dalits or tribals, many were poor, many were from religious minorities, and many displayed some combination of the above characteristics. The torture cases heard by the Jury therefore reflected the casteist, classist, and communal biases of the Rajasthani police service; such biases either reflect or are exploited by the rich and powerful, who increasingly use the police as a tool to serve their own interests. Finally, the Jury remarked on the use of sexual violence as a mode of torture.

Jury Members also observed that most, if not all, of the victims/survivors were still traumatised by the indignities that they had suffered, even those that were independent of any physical injuries they had sustained. The Jury Members noted that torture seemingly created a "scar for life" on the victims/survivors. Given such ongoing trauma, however, the victims/survivors showed both courage and determination in appearing before the Jury to share their accounts of police torture. They sought not only justice in their individual cases, but also an end to the culture of impunity that both promotes police torture and protects those who engage in it.

### Combating Procedural Violations: Custodial Deaths

The Jury took pains to distinguish custodial deaths, which result from police or judicial negligence, from deaths in custody, wherein a detainee dies of causes unrelated to the detainers' (in)action. Although the Jury believes that all deaths of detainees merit the imposition upon the implicated police

officers of a rebuttable presumption of wilful *mala fide* action, the Jury made clear that its observations and recommendations on custodial deaths do not apply to those cases judicially determined to be deaths in custody.

*When police personnel see torture as just one more tool in the array of law-enforcement strategies available to them, the very law that they seek to enforce is undermined. The rule of law is thus replaced by a culture of impunity.*

Where custodial deaths do occur, however, mandatory procedures are regularly ignored. A 2005 amendment to s. 176 of the *Criminal Procedure Code* (“Cr. P. C.”) requires that every custodial death (whether in police or judicial custody) be followed by an enquiry conducted by a Judicial Magistrate. However, the police often subject cases to an Executive – and therefore partial – Magistrate instead (see *e.g.* Case 1A.1); the results of the subsequent enquiry are often slow to arrive (if they arrive at all) and biased. An impartial judicial investigation was followed in only one case heard by the Jury (Case P.2). Further, the wider NHRC *Guidelines on Custodial Deaths* – to a part of which the new s. 176(1)(A) Cr. P. C. responds – are frequently overlooked.

Further, the Jury noted that custodial deaths have severe ramifications for the deceased’s families. Often robbed of their breadwinners, these families may face severe economic hardship. These families are then denied crucial information about the deceased – sometimes because they are not given copies of post-mortem reports, and on other occasions because they are not provided with the results of any magisterial enquiry. Such denial prevents families from overcoming the evidentiary hurdles inherent in custodial death cases such that they cannot mount solid claims for compensation.

### **Refusing Torture as a Policy Choice**

When police personnel see torture as just one more tool in the array of law-enforcement strategies available to them, the very law that they seek to enforce is undermined. The rule of law is thus replaced by a culture of impunity. Where the state declines to act against such impunity, it makes what is in effect a policy choice to support torture. Such a choice is in blatant violation of international law, which holds the right against torture to be both absolute and non-derogable. Further, a policy choice to support torture abrogates the state’s primary moral and legal responsibility to protect its citizens.

The policy choice to support torture can also occur on a smaller scale. The Jury noted that many victims/survivors described police officers as using torture as a means of relaying a message to the wider community. “Making an example” of someone (see *e.g.* Case 1A.1), however, is no excuse for torture – because no such excuse exists and no law supports it.



Policies of deterrence, whether enacted at the highest or lowest levels, cannot include torture among their methods.

**We demand the following of the State Medical Council:**

- Take notice of and track, *suo moto*, all reports of torture.
- Monitor the discharge of duty by medical personnel, and take appropriate action wherever there is an infraction.

**Tamil Nadu**

**Breaking the Culture of Silence:**

In their statements before the jury, several witnesses openly talked about sexual abuse. Both male and female victims spoke about how the police – and sometimes their fellow detainees – were involved in forcibly having sex with them. Though it was a painful exercise, we saw in victims’ disclosure of such state oppression a positive sign of “breaking the silence.” We take this as a development brought about by the work of the human rights community, which has been able to generate a sense of confidence and a desire to challenge the process of dehumanisation that is heaped upon victims by the law enforcement agencies. A victim speaking out is the beginning of the most meaningful search for justice. It shows that people are no longer afraid and that they are aware that remaining silent compounds the power of the oppressor. The act of speaking out is challenging that state power in itself.

**Forms of Torture**

The victims’ courage is particularly remarkable when we consider the full range of torture to which they were exposed:

- **Inhuman and degrading treatment.** Such treatment often precedes torture. Some examples included:
- being blindfolded;
- being stripped naked, often in full view of police and persons of the opposite sex;
- being forced to torture other members of their families (e.g., mothers were forced to give shock treatments to their sons and *vice versa*);
- being subjected to verbal abuse;
- being subjected to sexual abuse (particularly of female victims);
- being provided with limited or no meals;
- not being allowed to wash themselves or change their clothes; and

*Though it was a painful exercise, we saw in victims’ disclosure of such state oppression a positive sign of “breaking the silence.”*



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- being deprived of water and other basic necessities.
- **Physical torture.** Though the treatment meted out by JSTF personnel was amongst the most heinous, many victims in many cases were subjected to physical abuse that constitutes torture. Examples included:
  - administering electric shocks to various parts of the body (including earlobes, nose, neck, breasts, and genitals);
  - tying victims to a wheel or hanging them from a hook to be beaten and kicked;
  - indiscriminate beating on fingers, toes, feet and the whole of the body using batons, butts of rifles, and clubs; and
  - slitting parts of body and filling the slits with chilli pepper.
- **Sexual violence.** Such forms of torture were particularly prevalent at JSTF camps:
  - both women and men were electrically shocked on their genitals;
  - female victims particularly were subjected to a range of sexual abuse and violence, including brutal, repeated and mass rape by the JSTF, as well as touching, fondling, and verbal sexual abuse;
  - sexual torture was clearly used as an act of power, and an instrument of repression of victims and their families; and
  - the threat of sexual abuse was frequently used to silence victims and their families.
- **Mental torture.** Being continuously subjected to pressure to admit to having done things that one did not do, or being criminally associated or liable when one is not, is in itself a form of torture. Suspicion of being a criminal or a criminal sympathiser, solely because one is from the same caste as a criminal, is a lifelong source of mental torture. The jury also heard many examples of more acute mental torture, including:
  - during their detention, when one victim was taken in for interrogation, others waiting out knew that (s)he would be tortured and could hear the screams of the victim being tortured – so while one victim was being subjected to physical torture, the rest of them were subjected to mental torture;
  - certain events in JSTF workshops, such as the sound of a vehicle driving into the workshop, or the arrival of certain officers, were dreaded signs that torture would now begin;

*The manner in which Manalmedu Sankar was killed extrajudicially despite a Supreme Court direction to provide him security, and killed in exactly the manner as stated in the Supreme Court petition, speaks volumes about the lack of fear of consequences and the callous nature in which the police force commits such heinous crimes.*



- many victims were threatened with dire consequences to their families;
- many victims knew that their families were unaware of their location or treatment for long periods of time; and
- many victims were not allowed to visit their detained family members.

### **Impunity**

A well recognized principle of international law is the concept of command and superior responsibility, which places the onus on superiors to ensure compliance of subordinates with standards of human rights. This does not exempt subordinates from responsibility for their actions. It, however, ensures that lack of knowledge of illegal acts committed by subordinates is not an excuse, and will be used to hold superiors responsible, for acts or omissions.

The lack of accountability of superior officials, including District Collectors, Magistrates, and police officials, is particularly problematic when assessing the cases of torture. There are numerous instances where victims have approached superior officials and police officers. The response has varied from apathy and inaction on part of these officials, to actual connivance and cover-up of the actions of subordinates.

The attitude and behaviour of the police, as reflected through victim testimonies, without any fear of even judicial orders and directions, and without any fear of consequences of acts of torture and extrajudicial killings (claimed to be “encounter deaths” by the police) is indicative of the failure of the legal system to make such perpetrators accountable. It is also indicative of the level of impunity that has been entrenched into the system. The manner in which Manalmedu Sankar was killed extrajudicially despite a Supreme Court direction to provide him security, and killed in exactly the manner as stated in the Supreme Court petition, speaks volumes about the lack of fear of consequences and the callous nature in which the police force commits such heinous crimes.

### **Special Focus: The JSTF Cases**

Having heard the torture cases presented at the Tamil Nadu PTT, the jury felt it necessary to distinguish between the systematic torture practices of the JSTF and what appeared to be more arbitrary cases of torture committed by police more generally. Recognising that the two categories overlap, it is impossible to separate them entirely; however, the

overwhelming evidence of egregious and state-sanctioned torture in the JSTF cases warrants separate attention as set forth below.

*The jury consistently noted that, when approached by victims, governmental authorities – including district- and state-level agencies, the NHRC, the SHRC, and in certain cases even the courts – did precious little to render justice.*

### **Background**

The Joint Special Task Force (JSTF) was established in 1993 by the State Governments of Tamil Nadu and Karnataka to capture Veerappan, a forest brigand and smuggler operating in the border region between the two States. The JSTF's strategy was to terrorise and to intimidate the villagers living in and around the forest shared by the two States, hoping to extract information at any cost. The results included horrific tales of torture and murder by JSTF personnel, and hundreds of false charges that left victims languishing in jail for years. Only after civil society – particularly a coalition of individuals and groups known as the Campaign for the Relief and Rehabilitation of TADA Detenues ("the Campaign") – mobilised widespread support did the National Human Rights Commission ("NHRC") finally act. In 1999, the NHRC tasked the Sadashiva Commission with formulating a response to the human-rights abuses perpetrated by JSTF personnel; the Commission's 2003 Report acknowledged that torture had been perpetrated (though it identified no individual perpetrators) and recommended compensation in some cases. However, governmental lethargy – even after Veerappan's eventual death in 2004 – means that little compensation has been granted and many communities remain traumatised.

At the Tamil Nadu Public Tribunal on Torture ("PTT"), the jury heard the testimonies of survivors and family members of those who fell victim to JSTF human-right abuses. The jury consistently noted that, when approached by victims, governmental authorities – including district- and state-level agencies, the NHRC, the SHRC, and in certain cases even the courts – did precious little to render justice. It was in these circumstances of desperation and isolation that the jury took up these JSTF cases for enquiry and for retelling at the PTT.

While acknowledging that this retelling is indispensable to justice, we bear witness to the pain and humiliation that those who deposed before us have been through in the past and continue to bear today. Apart from justice in the legal sense, recovery for these victim-survivors depends on disclosure, the courage of conviction, the creation of a community of support, and criminal prosecution. Governments and civil society must effectively use all available tools – be they livelihood guarantees, memorials to victim-



*When state officials are responsible for torture or ill-treatment, the state must be ready to provide reparation to the victims. Victims should be treated at all times with respect, and reparations should take into account their needs and wishes as far as possible.*

survivors, opportunities for rehabilitation, or others – to overcome the extreme trauma and loss occasioned by JSTF abuses. Combating torture therefore is not restricted to documenting the heinous cases of human-rights abuses by JSTF personnel. Rather, it extends to providing a community of support through the difficult period of recovery, helping victim-survivors to attain emotional and economic stability.

## Uttar Pradesh

..... The NPPT debuts the People’s Tribunal on Torture (PiT) in the year 2008 and nine state-level tribunals and one national tribunal in Delhi were planned to be held in 2008. The Uttar Pradesh People’s Tribunal on Torture was held in Varanasi from **28th** and **29th** April 2008. The Uttar Pradesh PU was headed by Mr. Shankar Sen (Former Director General, NHRC) and members along with him were Mr. Ashok Chakravarti ( Former senior Director,NHRC), Ms. T K Rajalakshmi (Senior Assistant editor, Frontline), Mr. John Dayal

( Chairperson All India Catholic Union, Member National Integration council), Mr. Chitranjan Singh ( National secretary PUCL), Mr K K Rai ( Senior Advocate Allahabad High Court), Mr. Ram Ashray Singh (Secretary General PUCL, Bihar) Ms. Sandhya (Convener Mahila Adikar Manch, and Member executive council NAFRE- people’s movement) Ms. Kumkum ( Deputy Director, Mahila Samakhya UP) Mr. Maheshanand

Bhai (Bhumi Huqdan Morcha) and Ms. Padma ( Convener Stree Adikar Sanghathan).

### Reparation:

When state officials are responsible for torture or ill-treatment, the state must be ready to provide reparation to the victims. Victims should be treated at all times with respect, and reparations should take into account their needs and wishes as far as possible. The UN Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms has prepared a draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (draft Basic Principles on Reparation). This draft instrument distinguishes five forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non- repetition.



*NHRC mandated to promote and protect human rights in this country, as such has got an important role to play to bringing desirable changes in our rights scenario, with its regular intervention in different areas of concern.*

In practice, it is usually very hard for victims of torture or ill-treatment to obtain compensation. The authorities will not want to admit, even implicitly, that their agents were guilty of serious crimes; they may also be reluctant to spend the money. Victims suffer harassment, intimidation and reprisals if they pursue their claims. They may be offered ex gratia payments without any admission of wrong-doing, or compensation on condition that they drop any attempt to press criminal charges.

Where the state has been responsible for torture or ill-treatment, the authorities should ensure that victims so desiring are afforded medical care and rehabilitation, in accordance with Article 14 of the Convention against Torture and Article 11 of the Declaration against Torture. The authorities should ensure that the necessary facilities can be provided and should be ready to pay for the treatment.

#### **The National Human Rights Commission of India:**

NHRC mandated to promote and protect human rights in this country, as such has got an important role to play to bringing desirable changes in our rights scenario, with its regular intervention in different areas of concern. Because NHRC has been not able to play any meaningful role, the high hopes and expectations of the people suffering and facing different forms of violations is belied. The Commission is eager to get large number of complaints for the purpose of showing high statistical data of cases dealt with them. Most of the cases are being referred to the same person or that set up against whom the allegation of violation have been leveled. The late registration of the cases and routine replies have been have been unnecessarily delaying the efficient administration of justice.

Since a large amount of public resources has been spent on the NHRC, it is high time to call for a social auditing of the NHRC to make them accountable to the public-interest for which they represent.



#### **West Bengal**

The PTT itself is also an expression of the internationally acknowledged role of human rights defenders. As noted by Mr. Henri Tiphagne in his address to the Inaugural Session of the West Bengal PTT, the *United Nations Declaration on Human Rights Defenders* recognises the rights of these champions of the downtrodden to assemble peacefully, to listen to complaints of state abuse, to disseminate these complaints, and to criticise the government where required. The PTT is thus a legitimate forum for giving a voice to those whose common dignity and human rights, lauded by Justice

*The heinous acts committed at Nandigram and by the BSF exemplify the use of torture as an instrument of state power. These acts show the recurrent willingness of government agents to use state machinery in order to propagate what can only be considered as a particular policy decision in favour of torture.*



D.K. Basu (Retired Judge, High Court of Kolkata) in the same Session, have gone unrecognised. In fact, Dr. Syeda Hameed (Honourable Member, Planning Commission of India) saw the staging of PTTs as one aspect not of a *right* but of a *duty* to bring such cases to light. Ms. Sreerupa Mitra Choudhry (National Advisor, National Legal Services Authority) further committed to realise the government's reciprocal duty to pursue such cases once they are exposed, with exposure here consisting of the official release of the NPPTI Annual Report for West Bengal, detailing 479 incidents of torture.

Thus, in fulfilment of the crucial duty of human rights defenders, in recognition of the courage of those victims who testified at the PTT and of those countless others who did not, and in rejection of the culture of impunity, the Jury has made the following interim observations.

### **Culture of Oppression and Torture: Torture as State Power**

The heinous acts committed at Nandigram and by the BSF exemplify the use of torture as an instrument of state power. These acts show the recurrent willingness of government agents to use state machinery in order to propagate what can only be considered as a particular policy decision in favour of torture. Seen in this light, the war between the ruling CPI(M) and opposition parties at Nandigram is revealed as a calculated effort to conduct government business through violence, and the neglect by local police to pursue allegations brought against the BSF is shown to be a tacit acknowledgement of the latter's brutal methods. The state whose purpose should be to protect its citizens becomes not only unable to protect these citizens from torture, but itself propagates torture against them.

### **Custodial Deaths**

A 2005 amendment proposed to s. 176 of the *Criminal Procedure Code* ("Cr. P. C.") echoes NHRC *Guidelines* section D in demanding a Judicial Magisterial enquiry in every case of custodial death, as opposed to the Executive Magistrate's enquiry now being conducted. In spite of continuous reminders in various cases of custodial violence undertaken by MASUM, we found reluctance on the part of the state to adhere to these amendments.

### **Extrajudicial Killings**

The Jury heard ample evidence of extrajudicial killings – particularly by BSF personnel – during the public hearings, and believes that serious action must be taken against the police officers implicated in these and similar deaths. BSF personnel repeatedly resort to killing citizens whom they decide are guilty of real or fabricated offences (see e.g. Cases

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2-3, Panel 2; Case 8, Panel 4; Case 9, Panel 4), thus circumventing and undermining the entire criminal judicial process.

In some appalling cases, the killing is not targeted but rather almost entirely indiscriminate. When victims are shot nearly at random while engaging in religious activity or lawful protest (see *e.g.* Case 8, Panel 3; Case 9, Panel 3; Case 10, Panel 3; Case 11, Panel 4; Case 12, Panel 4), not just their human rights but their very humanity is denied.

It is unacceptable that extrajudicial killings are part of the law-enforcement culture in West Bengal, particularly amongst the BSF. Civil society and government must make it clear that extrajudicial killings are unacceptable. Prompt accountability is essential in order for the number of extrajudicial killings to fall.

Where an extrajudicial killing does occur, appropriate procedures must be followed. The NHRC issued eight *Guidelines Regarding Encounter Deaths in the Course of Police Action* in 2003. The *Guidelines* address all aspects of extrajudicial killings, ranging from registration of all details (Guideline A) to mandatory investigation (Guideline C), from suspended rewards for officers involved (Guideline G) to periodic reportage (Guideline H). Also, the NHRC/SHRC have *suo moto* jurisdiction to investigate human-rights violations under the *Protection of Human Rights Act, 1993* – and they should use this jurisdiction to investigate and to intervene in extrajudicial killings.

### **Victim (s) and Witness Protection**

To ensure that police and BSF officers cannot propagate a culture of impunity by intimidating or harming those who could substantiate cases of police torture, reliable and uncorrupted victim and witness protection is fundamental. The jury heard numerous cases in which victims or witnesses, under threat, did not pursue their rightful legal recourse against criminal acts of torture. Further, the jury could only presume that many of the victims who were slated to testify, but did not do so, were coerced into remaining absent. Such a presumption is justified by the aforementioned case of Pradip Paswan (Case 1, Panel 2B), who was detained illegally by police personnel in order to dissuade his participation in the PTT.

Another aspect of victim protection is guaranteeing their access to justice. Where victims of torture cannot afford to access and to engage the very legal system that is designed to protect them (see *e.g.* Case 10, Panel 2), their rights are denied. Financial barriers should not stand between victims and justice. Therefore, a program of legal aid is required to lower these barriers for those of limited means.



## Minimum Interrogation Standards

*Asia Pacific Forum of  
NHRIs*

*Advisory Council of  
Jurists*

*Reference on Torture  
24-26 Aug' 2005*



Interrogation is any questioning by a public official of a person where there is a suspicion that that person is involved in an offence. It applies whether someone is under arrest or detention or is voluntarily subjecting themselves to an interview and includes a situation where someone is interviewed originally as a witness or as someone with relevant information but, during the course of the interview, becomes suspected of involvement in the offence. Most of these standards will also apply by analogy to other types of questioning.

1. States must ensure that torture and cruel, inhuman or degrading treatment or punishment are not employed before, during or after any interrogation. Nor must these practices be employed to compel witnesses to give information about or evidence against another.
2. Interrogation should never take place at secret interrogation centres. If a person is detained for interrogation, relatives or a third person of the person's choice and, where applicable, consular authorities should be informed immediately of the fact and place of detention and/or that of interrogation.
3. Individuals should only be interrogated for a reasonable period, taking into account the individual characteristics of the interrogated person and, if extending for a lengthy period, regular breaks should be provided.
4. Persons subject to interrogation must be given adequate food, sleep, exercise, changes of clothing, washing facilities and, if needed, medical treatment taking into account any particular characteristics of the individual including age, gender, religion, ethnicity, medical needs, mental illness and any disabilities or other vulnerabilities.
5. There should never be a threat of the removal of basic necessities such as hygiene provisions, food, exercise, rest, sleep, in exchange for information or cooperation. Neither should there be a threat of any reprisals against a third person (and in particular a relative).
6. No method of interrogation should be employed that impairs a person's capacity of decision-making or judgement. Save in exceptional circumstances, no interrogation should take place at night.
7. All interrogations should be conducted in an age and gender appropriate manner and take into account any

other relevant characteristics of an interrogated person including, for example, religion, ethnicity, medical needs, intellectual disability, mental illness, personality disorder or any other vulnerability.

8. A person under the age of 18 who is suspected of involvement in any offence should not be questioned without an adult of their choice present.
9. At the time of any arrest or detention (and before any interrogation) a person should be given the right to undergo a medical examination by a competent and impartial medical practitioner in order to provide a point of reference as to their condition before the commencement of any interrogation. The time and findings of the medical examination should be recorded.
10. An individual for whom the language of interrogation is not his or her first language or who is deaf, should always (and before any interrogation) be informed of his or her right to have a competent and impartial interpreter for any interrogation.
11. If there are any issues about the person's understanding of his or her rights or of the interrogation process or of any questions asked, an interpreter should be provided, whether requested by the person being interrogated or not. Interpreters should also be available in detention facilities so that a person's basic needs can be communicated.
12. Before any interrogation commences, the interrogated person should be informed (in a manner that is understandable to him or her) of the reason for the interrogation and any charges against him or her.
13. Every interrogated person should, before any interrogation begins, be told (in a manner that is understandable to him or her) of his or her right to consult a lawyer of his or her choice without delay and in private.
14. The person should also be told of his or her right not to be compelled to testify against him or herself or to confess guilt. Where a person (or his or her lawyer) has indicated that the person intends to exercise the right to silence, no further questioning should take place.
15. Those who are arrested or detained should be told of their right to consult a lawyer at the time of arrest or detention. All detainees should also be given the right forthwith to challenge the lawfulness and conditions of their detention.



16. Officials have an obligation to facilitate contact with a lawyer of choice, for example by providing a list of available lawyers, access to a telephone and reasonable conditions of privacy for any consultation.
17. The provision of a lawyer should be free of charge if the person does not have the means to pay for his or her services and the person should be told (before any interrogation begins) that a lawyer can be provided at no cost in such circumstances.
18. Where a person has indicated a wish to consult a lawyer no further questioning should take place until that consultation has taken place.
19. The person's lawyer must be physically present and within earshot during any interrogation and have the right to intervene in the interview to ensure that the law is complied with (but not otherwise to interfere with the interrogation). The interrogated person should also have the right, if requested during the course of the interview, to consult with his or her lawyer in private.
20. Where a lawyer is not available, or the interrogated person does not want to have a lawyer present, the person should be given the opportunity to have present at any interrogation a representative from a relevant non-governmental organisation or a relative or friend of his or her choice. Except to ensure the law is complied with, those persons should not otherwise interfere with the interrogation.
21. The time of arrest or detention and/or the arrival at the place of interrogation should be recorded. The name of any arresting officer and all others who have any contact with the interrogated person should be recorded, as well as the nature and time of that contact.
22. Each interrogation should begin with the identification of all persons present and the recording of their names and any official position held as well as the place of interrogation. The time the interrogation began and finished and the timing of and reasons for any breaks should also be recorded.
23. All interrogation sessions should be recorded. This should be by way of video (or audio) recording unless, for reasons which should be recorded in writing, this is not possible or if the interrogated person does not wish to be recorded in that manner. In cases where there is no video or audio recording, a comprehensive contemporaneous written record should be kept.



## India

*The ACJ recommends that the National Human Rights Commission of India (NHRCI) urges its Government to address the following issues:*

- *the need for India to sign and/or ratify the First Optional Protocol, CAT, the OPCAT, the Refugee convention, the Protocols to the Geneva Conventions and the Rome Statute;*
- *the provision of the Prevention of Terrorism Act which prevents the legal practitioner of a detainee to remain present through the period of interrogation;*
- *section 376(B) of the Indian Penal Code which seems on its face to apply only in the case of public servants who are male and who have sexual intercourse with a woman in custody but not in the case of female public servants who have sexual intercourse with a male in custody;*
- *the promotion of the NHRCI handbook on human rights for judicial officers;*
- *the continuation of human rights training for the police, the paramilitary, the armed forces and public servants;*
- *strengthening the role of human rights cells in State police headquarters; and*
- *ensuring the guidelines set by the Supreme Court on arrest and detention are met.*

24. Procedures should be instituted to ensure the integrity of interrogation records, including proper storage. Evidence from non-recorded interrogations should be excluded from court proceedings (ie no 'verballing').
25. The recording should be made available to the interrogated person and his or her lawyer of choice. Where the record is in writing, the interrogated person and his or her lawyer should be given the opportunity to correct it.
26. After any interrogation, the interrogated person should have the right to request a medical examination by a competent and impartial medical practitioner.
27. Appropriate penalties should exist (including the inadmissibility of evidence) and be enforced for any breach of these standards.



## Human Rights Defenders engaged in the Data Collection of Torture

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Ms. Salini Kodali, State Program Associate  
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Mr. Nagaraju, State Legal Associate  
Mr. Sudarshan, DHRM-Ranga Reddy  
Mr. Mallesham, DHRM-Medak  
Mr. Darshanam Narasimha, DHRM-Nalgonda  
Mr. Diddi Prahalad Rao, DHRM-Mahabubnagar  
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Mr. Jayaprakash Das, State Legal Associate  
Mr. Sumita Kumari, DHRM-Patna  
Mr. Anand Kumar Ravidas, DHRM-Nalanda  
Mr. Raj Kishore Raj, DHRM-Nawada  
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Ms. Eunice Mercy, State Legal Associate  
Mr. Padmanabha, DHRM-Mysore  
Mr. Raju, DHRM-Chamraj Nagar  
Mr. Susai Raj Babu, DHRM-Kolar  
Mr. Vasanth, DHRM-Kodagu  
Ms. Honnamma, DHRM-Haveri  
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Mr. Abraham Mathew, State Law Officer  
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Mr. Baby Prasad, DHRM-Kottayam  
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Torture and Impunity in India  
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**Mr. Perumal**, DHRM-Chennai  
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**Mr. Sumita Roy Choudhrey**, DHRM-24 Parganas(South)  
**Mr. Murari Dey**, DHRM-Hooghly  
**Mr. Mukhtar Ahamed**, DHRM-24 Parganas (North)







## We Demand that the Government of India :

- Ratify the UN Convention Against Torture & its Optional Protocol.
- Enact Legislation to prevent corporal punishment in schools
- Enact a domestic legislation that makes torture a punishable offence & provides for the protection and care of victims & witnesses
- Enforce strict implementation of the Prevention of Atrocities Act of 1989
- Establish District Human Rights Courts under the Protection of Human Rights Act (1993)

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