



# ASIAN HUMAN RIGHTS COMMISSION

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## FOR IMMEDIATE RELEASE

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### International Human Rights Day Statement for 2006

## ASIA: Extrajudicial killings, disappearances, torture and other forms of gross human rights violations still engulf Asia's nations

In addition to the [general statement](#) issued by the Asian Human Rights Commission (AHRC) for International Human Rights Day on December 10, we are also making the brief comments below on the human rights situation in several Asian countries. A more comprehensive report will be available soon.

### Sri Lanka

The most violent place in Asia at the moment is Sri Lanka, and the state has not taken any serious steps to bring it under control. The state blames the Liberation Tigers of Tamil Eelam (LTTE) for creating the violence in the country, and the LTTE blames the Sri Lankan government, acting through the military and its paramilitary forces, as being responsible. There is talk of "war" on both sides, but each claims to be merely in defensive military positions. Such propaganda only manifests the absence of an agent to bring the violence under control. In response to local and international criticism of abductions, disappearances, extrajudicial killings, torture and other forms of serious crimes and gross abuses of human rights, the president has appointed a local commission of inquiry, and a group of people from the international community has been given permission to observe their work. However, this move has not created confidence or credibility inside or outside of the country.

The violence in Sri Lanka that presently afflicts the country has been aggravated by the collapse of the rule of law for a considerable time. The policing system suffers from an institutional collapse; the judiciary is faced with a serious crisis; the government lacks the capacity to carry out its normal functions of protection. Meanwhile, the enforcement of strict emergency regulations will only aggravate the violent situation, and there are no local or international initiatives to address the problems plaguing the country.

The president acted in open defiance of the Constitution and the provision of the 17th Amendment that was adopted in 2001 to deal with the crisis of the rule of law. The Constitution does not grant any power to the president to abandon the implementation of parts of the Constitution. However, the courts of Sri Lanka have interpreted the impunity of the president for acts and omissions, both official and personal, as granted under Article 35(1) of the Constitution as a blanket clause, and the judges consequently have excluded themselves from adjudication relating to acts of the president. The Supreme Court, however, did hold the president's signature to the optional protocol of the International Covenant on Civil and Political Rights (ICCPR) as *ultra vires*. In short, the courts in recent years have minimised their role in the protection of the rights of the people.

### Philippines

Extrajudicial killings have become a common feature of life in the Philippines during this year. Extrajudicial killings, in fact, have increased in 2006 as the government has failed to stop the killings. Promises of inquiries have not resulted in any credible measures. Task Force Usig and the Melo Commission have not proved capable of conducting any serious

investigations into the killings. The absence of any deterrence through credible investigations, arrests, detentions and prosecutions offers encouragement for anyone who wishes to engage in such killings.

The moral condemnation from within the country and from the international community against the extrajudicial killings in the Philippines though has increased during the year. However, such condemnation and pressure does not seem to generate any aggressive response on the part of the government to stop the killings. The absence of a credible policy on the part of the government to stop the killings has given credence to the view that the state itself is complicit in these killings.

Aggravating these circumstances is the collapse of the institutions of justice and rule of law in the country. The police, for instance, are known to be inefficient and corrupt; but in spite of this, there is no move on the part of the state to reform the police. The judiciary is also accused of being corrupt, inefficient and slow. Thus, the mechanism of enforcement and implementation of human rights does not exist in the Philippines. International efforts to intervene to stop the killings in the Philippines have not yet developed beyond condemnation.

## **Thailand**

Respect for human rights and the rule of law in Thailand were set back many years with the return to power of the military on September 19. The military regime insisted that it had taken power to avert a national crisis; but in the following months, it has failed to produce any evidence to show that widespread violence was imminent as it claimed to justify its actions, which began with the scrapping of the people's Constitution of 1997 and its replacement with an interim charter modelled upon those of earlier military regimes. The army is now working hard to build a fictional constitutional order and resecuring power for the military elite while trying to give the opposite impression. Although it has expressed commitment to the rule of law, its actions all demonstrate the opposite.

The military government has persistently directed public attention towards the excesses of the previous administration while playing down or entirely ignoring its shared responsibility for human rights abuses of recent years. The interim prime minister has apologised for the killing of some 84 people in Narathiwat Province in 2004 but has not acknowledged the liability of the army for these deaths, least of all the 78 who died in its custody. He has ordered the security forces to cease using "blacklists" to hunt for suspects but has not yet explained anything about how they were made, who used them, which abuses occurred as a result of them and what investigations of wrongdoing will follow due to the use of the lists. Nor has his government yet lifted the emergency decree over the southern provinces, which a U.N. expert in July said "makes it possible for soldiers and police officers to get away with murder." Martial law remains in effect across half of the rest of the country nearly three months since the military took power.

Furthermore, there has been no improvement in overall conditions of human rights throughout the country. Human rights defenders and social activists continue to be abducted and killed with impunity. Most recently, Thanee Sodsri, an environmentalist in Ratchaburi Province, was apparently shot and removed from his house on December 1. Not one case in recent years has been solved, including the disappearance of lawyer Somchai Neelaphaijit more than two years ago.

Meanwhile, a senior bureaucrat acknowledged the scale of problems in the Thai justice system by saying that the police have no evidence with which to lay charges in some 30 percent of cases that are deliberated by the courts, and, most importantly, there remains no way to complain of such abuse. There are also no laws to prohibit torture and forced disappearance or an effective witness protection scheme. Even a National Human Rights

commissioner who was seriously threatened obtained no protection from the state nor did his case arouse any official concern.

## **Burma**

During 2006, Burma continued to be characterised by wanton criminality of state officers at all levels and the absence of the rule of law and rational government. The growing numbers of bloody assaults, rapes and killings of ordinary people by police and other state officers in the cities and towns of Burma are exposing the myth of "state stability" that the military government uses to justify its prolonged existence. Most of the victims of such crimes are innocent people accused of ordinary crimes— if anything—often due to personal grievances or out of favour to others. The officials responsible usually completely ignore ordinary criminal and judicial procedures, have no interest in genuine investigation methods and present no avenues for anyone to make a complaint. Those who attempt to complain are usually made the target of countercomplaints, such as farmer U Tin Kyi who was imprisoned for having allegedly resisted efforts to turn adjacent land into a plantation under a government scheme. Although a few people linked to similar cases involving the International Labour Organisation (ILO) were released from detention, their cases and the circumstances under which they were freed were exceptional. Unfortunately, none of the people remaining in detention can be visited by the International Committee of the Red Cross (ICRC) as the group has been blocked from visiting prisoners since December 2005. In October, the government also ordered five ICRC field offices to close without apparently any explanation.

Internally displaced people, refugees and others in remote areas and border regions of the country continue to be subject to some of the worst human rights abuses in Asia, mostly at the hands of the military. In October, the Bangkok-based Thailand Burma Border Consortium reported that more than a million people are now displaced in eastern Burma alone with 82,000 forced from their homes in the last year through the systematic destruction or forced abandonment of more than 200 villages. Out of this population, more than half are believed to be living in the jungles and hills due to "systematic human rights abuses and humanitarian atrocities."

## **Singapore**

Singapore is the most complete authoritarian system in Asia today and perhaps also in the world. It is an authoritarian system that has entrenched itself on a small island which, due to certain circumstances, is relatively an economic success. The founder of the modern authoritarian system, Lee Kuan Yew, has consistently claimed that it is due to strong leadership that Singapore has become an economic success story. By strong leadership, he means a draconian system of control which restricts any possibility of people's participation in political affairs. That ruling is the business of the ruling political party and that the people should keep out of political affairs is a latent political philosophy that has been a pillar of the system for decades. The suppression of attempts to build a political party as an alternative to the People's Action Party (PAP) is resisted with ruthless efficiency through mainly rigorous imposition of some laws which obstruct freedom of expression and organisation.

Laws, for instance, relating to defamation, with the possibility of large sums of money being awarded to political leaders who claim to have been defamed, makes bankruptcy proceedings one of the most powerful tools in the suppression of political movements in Singapore. The notion that political movements will lead to chaos within the country and that ethnic factors will play havoc with the situation if free political expression is allowed is part of the dogma of the state of Singapore. Singapore prevents monitoring of human rights by U.N. agencies and tacitly claims human rights as an alien concept that can harm national interests, which, in fact, mean the interests of the ruling party.

The constant suppression of freedom of expression and organisation has manifested itself in various events throughout the last few decades. The most recent example is the imprisonment of Singapore's opposition leader, Dr. Chee Soon Juan, a neuropsychologist whose crime is speaking in a public place.

Chee was imprisoned earlier this year for speaking in public on April 22 prior to Singapore's latest general election. He and other members of the Singapore Democratic Party (SDP) were speaking to passing citizens in the course of selling the party newspaper on the street.

The current sentence is five weeks in prison. Two of Chee's SDP colleagues, Gandhi Ambalam and Yap Keng Ho, were sentenced to shorter incarceration terms. All three had initially received heavy fines but have now been jailed by the Singapore Subordinate Court due to their refusal to pay. Recent reports indicate a deterioration in Chee's health as a result of imprisonment.

Chee refused to pay the fine as a matter of principle. In a statement read in court on November 23, 2006, he exhorted the judiciary to recognise the "difference in punishing someone who has committed a crime versus punishing someone who is fighting for democracy and the rights of the people." Chee pointed out that criminal punishment is typically meant to either deter or rehabilitate the offender.

Imprisoning Chee for pursuing his peaceful campaign for democracy will not serve either purpose. As he put it, "What will punishing me achieve? Do you think it will rehabilitate me and deter me from doing what I am doing?"

## **Maldives**

Current abuse of the human rights of political activists, journalists and dissenters in the Maldives involve a pattern of arbitrary arrests and detentions bypassing basic guarantees of due process, such as the right to be told of the reasons for the arrest, the right to have charges served upon the arrestee and the right to trial without undue delay. While some detainees are released following international and domestic protests, others who are charged are imprisoned and then released without formal notification of the charges being dropped against them. Others are pardoned by presidential intervention while yet others are not given this same clemency. The manner in which charges are left pending evidence a common tactic of harassment and intimidation.

Though a range of proposals towards constitutional reform have been announced (including a draft Constitution, the redrawing of electoral boundaries and the introduction of a voter education programme) with multiparty elections to be held in 2008, there is widespread public cynicism as to whether the government headed by President Abdul Maumoon Gayoom is committed to implementing these reform proposals. There is no doubt that if democratic rule is to be enhanced in the Maldives the present totalitarian authority of the presidency will need to be drastically reduced and/or replaced by a politically pluralistic framework which balances powers between the office of the presidency, a democratically functioning legislature and an independent judiciary.

It is imperative that the country's judicial and legal system is headed by a Supreme Court with judges, including the chief justice, appointed through an independent process and with security of tenure rather than the present arrangement based on dependency on the president. In addition, the Constitution needs to have a justiciable chapter on rights that can be enforced through the Supreme Court, and systematic codes of criminal and civil procedure, evidence and a revised Penal Code should be enacted as well. Moreover, the office of the attorney general must be made independent and divested of the political colour in which it is currently shrouded, and the promulgation of presidential decrees has to stop.

Furthermore, freedoms of speech and expression, association and assembly need to be secured both in law and practice. The Freedom of the Press Bill ought to be redrafted in consonance with modern-day principles and should not be allowed to give rise to new media crimes. Political parties need to be allowed to enjoy their rights of democratic assembly and association, and practices of arbitrarily arresting political activists on charges of high treason or terrorism purely for taking part in a demonstration or engaging in comment critical of the government needs to be halted.

Lastly, bodies vested with the task of monitoring abuses by government officials, such as the National Human Rights Commission (NHRC), ought to be allowed to function independently and should be staffed by members having established credentials in the field of human rights and chosen through a process of consultation with political parties and civil society rather than purely appointed by the president.

## **Nepal**

The year 2006 has been a landmark year in Nepal and has included vast popular demonstrations against King Gyanendra and his government, which finally led to the government's demise and the creation of a new platform upon which progress toward peace, security and human rights could be built. During the period since the April uprisings, Nepal has been under a state of political flux with difficult questions being addressed step by step. By the end of the year, a comprehensive peace accord had been signed by the Seven Party Alliance (SPA) and the Maoists, bringing an end to a bloody decade-long war that claimed the lives of more than 13,000 people and seriously affected many more. The Maoists are in the process of being disarmed and brought into the political mainstream. If all parties stick to their commitments made as part of various agreements, notably that reached on November 8, then there is reason to hope that the country is heading into a period of sustained democratic development and peace. It is rare to see such sweeping changes in the course of one year, and full credit must be given to the people of Nepal and all other actors that have enabled this positive development.

However, from a human rights perspective, much remains to be done. Violations continue to be committed by all sides, including abductions, torture and extrajudicial killings, and this violence will persist while the culture of impunity that has accompanied the widespread abuses of the past continues in the country. In order to ensure that impunity is dismantled, justice cannot be sacrificed on the altar of political expediency. All allegations of human rights abuses committed by any party must be effectively investigated and prosecuted in line with Nepal's international obligations. To enable these investigations to be effective, the institutions of the rule of law must be strengthened to allow them to cope with this sizeable task. Investigations and prosecutions should commence without further delay as the legal institutions can develop as the process proceeds as long as there are no undue political restrictions on their actions. It is also vital that an effective, credible and well-resourced system of witness protection be created. Otherwise, the investigation and prosecution of alleged perpetrators will fail. In the process of ensuring that the people responsible for human rights violations are held accountable, Nepal can establish a deterrent against future violations and the victims can feel secure that adequate compensation will be provided. Such a deterrent will enable a more peaceful, less fractured society to emerge. The only way to move beyond past grievances is for justice to be done. By ignoring such grievances in order to sidestep difficult issues that may threaten ongoing political progress, there may be short-term gains, but ultimately, the door will remain open to a return to violence and insecurity as those that profited from such a situation will remain protected and may later opt to offend again.

While there has been significant political progress during the year, many difficult decisions remain. It is hoped that the new political dynamics in Nepal will enable the implementation of much-needed reforms to now begin in earnest.

## **Indonesia**

There is alarm at the lack of action taken by the attorney general in prosecuting the perpetrators of the May 1998 riots and the student killings in Trisakti and Semanggi that took the lives of more than 1,000 people with many others suffering serious injuries and damage to their property and possessions. The victims of these abuses have been awaiting justice for more than eight years, which is simply unacceptable for a state that is a member of the U.N. Human Rights Council and a party to a number of U.N. human rights conventions. Because of the lack of effective investigations by the prosecution system into these gross abuses, genuinely concerned independent organisations, such as the National Human Rights Commission (Komnas Ham), have conducted their own independent investigations into these human rights violations and have submitted a formal report of their investigative findings to the attorney general. Time and time again, however, these reports have been dismissed and discarded on the flimsy pretence of legal technicalities. Not only is the Attorney General's Department guilty of failing to undertake its own investigations into these serious abuses, but it is also guilty of refusing to act on the credible evidence accumulated by independent bodies.

This negligence raises fundamental questions about the role of the attorney general, the senior-most authority of the state prosecution system who is responsible for the impartial investigation and prosecution of perpetrators of human rights abuses and other crimes. Thus, it is the responsibility of the prosecution to ensure that effective investigations are conducted and sufficient evidence is collected to ensure a fair trial. This must be done with the highest level of impartiality and objectivity. The prosecution should not be susceptible to external political pressure and influence.

## **Pakistan**

Pakistan is still in the strong grip of a military regime. Although there was an election for Parliament in 2002, the military still controls all policy matters. The president of Pakistan still wears his army uniform and has no plan to separate the office of the chief of army staff from the office of the president of the country. Appointments to the higher judiciary are made by the president himself with the independence of the judiciary sacrificed in the process. Moreover, there are 56,000 army officers in various government and corporate positions, including communication, power and educational institutions.

Since 1998, Pakistan has been under emergency rule. Consequently, all basic rights have been suspended for the past eight years, including Articles 16, 17, 18 and 19 of the Constitution which guarantee freedom of assembly, association, speech and movement. The judiciary labours under the provisional Constitution made by the army in 2000; and since then, the judiciary has not taken its oath on the country's Constitution although the Parliament has been restored.

Since Pakistan was thrust to the forefront of the “war against terror,” human rights violations have increased in comparison with previous years. Military operations in at least two out of four of Pakistan's provinces have resulted in the death of more than 3,000 people since 2001. In addition, there is no rule of law, and government agencies have a free hand to arrest anyone and torture them. Whoever is killed or tortured or fatally shot in fake encounters are labelled by the state as “terrorists.” Furthermore, disappearances after arrest were first introduced in the country after 9/11, a phenomenon that was not common in Pakistan previously. There has also been a tremendous increase in the use of torture by the military agencies with new methods being employed—an illegal development that even the higher courts cannot

question. Moreover, the high judiciary does not have the jurisdiction to search the military's torture cells.

Another check on the government—the media—also was under threat in 2006. More than 20 journalists were killed, tortured or disappeared by state agencies, and more than 90 cases of threats, harassment and attacks on journalists and their offices were reported. In addition, more than three FM radio stations and one television station were banned by the government's regulatory agency.

## **Cambodia**

In 2006, Cambodia witnessed a variety of human rights violations—land-grabbing, political discrimination and the repression of freedom of expression and labour rights. These abuses occurred in an environment in which the rule of law is collapsing. Some people are above the law in Cambodia as the majority of criminal cases involving high-ranking government officials have never resulted in justice. Police officers and soldiers use their guns to solve problems by threatening or shooting people, but they are never found guilty of infringing on the rights of people or breaking the law.

Large-scale land disputes between powerless people, on one hand, and private companies and high-ranking government officials, on the other, are becoming a serious problem that affects people's daily lives. No solution is presented to people who cannot cultivate their land. Injustice for the innocent is prevalent, and corruption is becoming further embedded in the political culture of the country.

## **Bangladesh**

In the area of criminal justice, Bangladesh has not taken steps towards democracy or improvement of the rule of law.

In the lower courts, it is the civil servants that exercise judicial power. This allows the police to get whatever they wish from these courts where no proper scrutiny of the papers filed by the police takes place. The result often is prolonged detention of many people who have to have recourse to higher courts to get bail through appeals. Meanwhile, while the appeal process takes place, they are kept in custody. The attempt by the Supreme Court to end the practice of civil servants exercising judicial power and to transfer this power to judicial magistrates where it properly belongs has not yet received a positive response from the government.

The corruption of the Bangladeshi police is frequently experienced by ordinary people in the country as it is often not the law but money that is behind arrests and illegal detentions. The guilty can escape through payments to the police with the innocent substituted in their place.

Moreover, the use of torture is endemic within the policing system of Bangladesh. The police are also utilised to suppress political dissent by opponents of the government and to use violence to control political or trade union demonstrations.

The most dismal aspect of human rights in Bangladesh is that there is no means by which victims can make complaints and have them investigated. The internal process of discipline within the police force itself does not exist. Even in cases where an inquiry begins due to public agitation, investigations are commonly characterised by corrupt interventions. Fundamental reform of the police is not only a necessary condition for democracy and the rule of law but also for the maintenance of any form of rational order within the country.

The Rapid Action Battalion (RAB), brought into force to deal with increased crime, is itself engaged in serious crimes, such as extrajudicial killings, torture and abductions. The concept of the control of crime is not to improve criminal investigations and to institute prosecutions but to deal with alleged criminals by extralegal means. This policy itself is an acknowledgement that the law enforcement system has collapsed under the weight of corruption. Since the law cannot be imposed through legal means due to institutionalised corruption, a more naked use of force is now used. The RAB, in effect, simultaneously acts as informers, judges and executioners.

In recent times, the chief justice and the attorney general have also come under severe criticism for being politicised and biased. All these factors cause tremendous confusion to the people and disrupt the development of more rational forms of administering society and ensuring security.

## **China**

China's struggle to replace the rule of man by the rule of law has still not reached the stage of success needed to achieve the latter. In many areas, the philosophy is still to maintain order with or without the law. Respect for the law as the final criterion in all matters has not yet become established despite claims and efforts made since the end of the Cultural Revolution three decades ago. China's economic success has not yet translated into a transformation of society that is based on the rule of law. As such, there is still fear among the ordinary people to express themselves and to participate in the life of their society in a more vigorous manner. A rule-of-law-based society cannot develop without genuine independence of the judiciary. While the educational level of judges has improved to some extent in many places, this improvement has not been the common feature everywhere.

However, the real problem area is the judicial role. The judiciary is still under political control and does not enjoy equal status with the executive. Much of the disciplinary control of the judges is carried out through party processes. This control of judges through party disciplinary processes is a hindrance to the development of an independent judiciary. The control of judicial discipline must shift to more credible internal processes of accountability from within the judiciary itself.

The role of lawyers, while having improved from their former position, has also not yet become similar to that of countries based on the rule of law. Often lawyers can be punished or harassed for acts that in normal circumstances would be considered the professional duty of a lawyer. An independent legal profession is one of the most basic requirements of the development of a system based on the rule of law.

One of China's claims in recent times is that it is struggling to eliminate corruption. However, the elimination of corruption and the development of a progressive system of criminal justice cannot be separated. On this score, mainland China has much to learn from its administrative region in Hong Kong. Since the 1960s and 1970s, Hong Kong has achieved a great degree of success in the elimination of corruption through the improvement of its criminal justice system. A component of the system introduced in 1974—the Independent Commission against Corruption (ICAC)—is not merely a corruption control agency but a very important component of the criminal justice system of Hong Kong.

It is due to the lack of improvement of the criminal justice system that China is not making attempts to eliminate the death sentence. The feeling for the need for the death sentence is itself an indication that the state does still not trust its criminal justice system to deal with serious crimes. The basic dictum that it is not the severity of the punishment but the certainty



of punishment through the certainty of detection of the crime that can eliminate criminal activity has not become part of jurisprudence in China.

## **India**

India has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) with torture remaining rampant as a method of criminal investigation in the country. Even in more developed areas of India, from the point of view of the educational level of the people, like Kerala, torture is still common. The widespread use of torture occurs despite commendable judicial decisions, such as the famous *Basu vs. the State of West Bengal*, which laid down detailed rules on arrest, detention and the like, which, if applied, would lead toward the elimination of torture. The prevalence of torture is also not due to the lack of forensic facilities or forensic training available to the Indian police; for in recent years, there has been considerable sophistication achieved with regard to equipment and training. Torture though remains endemic due to other factors, such as bribery and corruption and the lack of a speedy and efficient disciplinary control mechanism. The tolerance of torture by higher-ranking officers and some prominent politicians of the central government as well as various states has not ceased. The failure of the Indian government to ratify CAT is itself a manifestation of the irresoluteness on the part of the state to bring this evil practice to an end.

In addition, India's record on delays in adjudication, including matters of criminal justice, are among the worst in the world. Court cases may go on for five or 10 years or even longer—delays in the judicial system that virtually distort the whole process of justice. The prevalence of these delays prevents the possibility of judicial enforcement of the basic rights of the people. While the higher courts still produce significant judgments, the justice that the average litigant receives is still of a primitive nature. Delays allow corruption and negligence. Accusations of corruption among some of the judiciary of all ranks are now an open accusation that has not been reputed in any credible way.

Another major problem facing the country is the caste system. Despite many commitments expressed by India's best-known leaders since independence to end this great social divide, it is still one of the greatest obstacles to progress in Indian society. Dalits, or "Untouchables," for instance, are among the worst victims of torture and other abuses of human rights in the country. Dalits also suffer from delays in justice and the absence of access to justice. Thus, their misery is specifically linked to serious defects in the criminal justice system.

The absence of justice also contributes to deeply entrenched poverty and starvation. The AHRC's studies on starvation deaths have revealed that there have been deaths caused by starvation even due to the negligence of magistrates who have particular responsibilities relating to these matters.

In short, the neglect of justice in India is of such a proportion that it challenges India's claim of being a vibrant democracy. India's democracy, in fact, is fundamentally flawed and is unable to maintain the rights of its ordinary folk. The powerful, for the most part, are still above the law.

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**About AHRC:** *The Asian Human Rights Commission is a regional non-governmental organisation monitoring and lobbying human rights issues in Asia. The Hong Kong-based group was founded in 1984.*