Interim Observations of the Jury

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People’s Tribunal on Torture (Karnataka)

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The following constitutes the interim observations of the Jury presiding over the People’s Tribunal on Torture (“PTT”) in Karnataka, held in Bangalore on 12–13 August 2008 as part of the National Project on Preventing Torture, organised by People’s Watch, implemented by South India Cell for Human Rights Education and Monitoring (SICHREM) in Karnataka with support from the European Union and the Friedrich Naumann Stiftung. The PTT jury was chaired by Justice H. Suresh, (Retd Judge High Court of Bombay). Joining him as jury members were: Dr. Muzaffar Hussein Assadi (Prof. of Political Science, University of Mysore), Mr. Vasudeva Sharma (Chairperson, Child Welfare Committee, Bangalore Urban District), Ms. Bhargavi Nagaraja (Development Journalist), Ms. Nina P. Nayak (Hon. President, Karnataka State Council for Child Welfare), Prof. Sarasu Esther Thomas (Assistant Prof. of Law, National Law School of India University), Mr. Ossie Fernandez (Director, Human Rights Advocacy & Research Foundation, Chennai), Dr. Ambrose Pinto (Principal, St. Joseph’s College for Arts and Science, Bangalore), Prof. Xavier Arockiasamy (Founder & Executive Trustee of the Center for Promotion of Social Concerns) Dr. K. C. Sunny (Head of the Department of Law, University of Kerela), Dr. Ruth Manorama (President, National Alliance of Women), Ms. Arlene Manoharan (Senior Research Officer, Centre for Child and the Law, National Law School of India University), Ms. Saumya Uma (Convenor, ICC- India Campaign), Prof. Joselyn T. Lobo (Prof. School of Social Work, Roshni Nilaya, Mangalore), Prof. Elizabeth V. S. (Additional Prof. and Coordinator, Center for Women and the Law, National Law School of India University), Ms. Nandana Reddy (Director, The Concerned for Working Children), Dr. Rajkumar (International Training Consultant), Ms. Donna Fernandez (Vimochana), Ms. Asha Ramesh (Activist & Researcher on gender-related issues), Dr. V. P. Niranjanaradhya (Center for Child and the law, National Law School of India University), Mr. Aravind Narrain, (Alternative, Alternative Law Forum, Bangalore), Dr. Mathihran (Institute of Legal Medicine).
Police torture is a pervasive and insidious practice occurring throughout India. In complete defiance of clearly articulated national and international law, state police, special task forces, and paramilitary forces either directly employ torture to assert control over the citizenry, or fail to prevent or suppress private acts of torture most commonly conducted by the powerful in society against the weak. The net effect is the existence of a culture of impunity in which police are free to act or not act with no credible threat of repercussion.

Police torture in India is not simply an aberration of the system which can be remedied by sensitization programs and monitoring. Rather, police torture is an entrenched system with strong structural ties to class, caste, and communal dynamics, political power, and patriarchal attitudes that ensure the continued subjugation of women and children. The intersectionality of these factors adversely impact the most vulnerable sections of the people.

To combat police torture in India, People’s Watch worked in cooperation with the Freidrich Naumann Stiftung to found the National Project on Preventing Torture in India (“NPPTI”), with support from the European Union. Across forty-seven districts in nine States, the Project currently employs a variety of techniques to fight police torture and to seek redress for the victims/survivors of such torture. These victims/survivors have undergone incredible hardships, in many cases including such abuses as: severe physical abuse; deprivation of food, water, sleep, and medical attention; threats and humiliation; third degree torture [electric shock treatment, rape, and death]; custodial rape; and death.

The physical and psychological damage inflicted on torture victims/survivors can last a lifetime. However, this damage spreads beyond the victims/survivors themselves. Their families and communities lose not only parents and children but also hope and possibility. Across India, a culture of impunity grows; citizens feel insecure, even in their homes. Insecurity breeds silence, and silence allows further torture to flourish.

The NPPTI thus seeks to empower victims/survivors of police torture to raise their voices and to tell their stories. Through media campaigns, awareness programmes, State- and national-level lobbying and wide-ranging legal interventions, the NPPTI also seeks to raise a larger public outcry against police torture.

This year is the Project’s last and its most active. The year 2008 has seen the first seven of the NPPTI’s State-level People’s Tribunals on Torture (“PTTs”) – in Kerala, Uttar Pradesh, Tamil Nadu, West Bengal, Bihar, Rajasthan and Orissa. The Karnataka Tribunal is thus the NPPTI’s eighth. One more remains – in Andhra Pradesh – and a national-level PTT will follow in New Delhi in October 2008. These PT Ts provide opportunities for victims/survivors of police torture to provide their testimony to a Jury of Former Judges, social activists, medical experts, jurists, journalists, and other relevant professionals, as well as conscientious members of the public.

Preparations for the Karnataka PTT were extensive. Mr. Ashok Mathews Philip, NPPTI State Director for Karnataka, led the State Office in its work in the districts of Bangalore, Kolar, Mysore, Chamrajnagar, Mandhya, Kodagu and Haveri. Over the course of two and a half years, district human rights monitors conducted over 800 fact findings in cases of police torture. More than 182 of these cases were pursued in nearly 750 legal interventions, which targeted governmental authorities, the National and State Human Rights Commissions (“NHRC” and “SHRC”), and criminal cases filed as private complaints. The State Office will continue its intensive work through the remainder of 2008.
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.

Each case heard by the Jury differed in its details – but every victim / survivor showed great courage in telling his or her story. With these thoughts in mind, and after listening to and reflecting upon the victims’ / survivors’ accounts who testified at the Karnataka PTT, the Jury is pleased to offer the below Interim Observations.

**INTERIM OBSERVATIONS**

**Breaking the Culture of Silence**

One of the primary goals of the NPPTI Project is to reverse the dearth of available data on police torture in order to expose the pervasiveness of police torture. Without such data, cynics, perpetrators, and even neutral third parties can effectively disregard police torture as a serious issue, or they can attribute it to the uncommon behavior of a few remote police stations or a few bad police officers.

The NPPTI Project has registered over 6,000 cases across 47 districts in nine states to provide this essential data. However, despite the progress that has been made, a culture of silence regarding police torture still exists. Victims / Survivors hesitate to bring cases against the officers that beat them, and the police are reluctant to take action when cases are brought. There is a pervasive climate of fear and freedom from fear is still a distant reality.

The Jury notes that many victims / survivors are still not coming forward with their cases of torture in Karnataka. In one case police armed with lathis charged a crowd of villagers who were waiting outside the office of the District Commissioner of Police. The police injured twenty-five villagers, including one woman who they beat on her head, but only three came forward at the tribunal. The Jury believes that many victims / survivors of police violence and torture remain silent, fearing the consequences of speaking out. The Jury additionally notes that the police fail to register cases of torture even when the incidents violate several different statutes (such as the SC/ST Prevention of Atrocities Act, the Juvenile Justice (Care and Protection of Children) Act etc.)

The Jury recognizes that the Karnataka PTT gives victims / survivors of police torture a public space to share their stories. 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 Karnataka State Human Rights Commission. The Jury observes, however, that some victims / survivors come to the Tribunal seeking a binding ruling or economic compensation. The Tribunal has no binding authority to issue such rulings, and the Jury notes that such expectations should be tempered at the outset.

**Breaking the Culture of Impunity**
Central to the goal of ending police torture is ending the culture of impunity for authorities who fail to take action. Currently, police officers, state- and national human rights organizations, and judges have the right to take action against police torture, but many choose to remain silent or extremely delayed responses. The jury notes that virtually every case which it heard indicates that impunity is institutionalized. The police have used violence in investigations at the behest of dominant caste members, other influential people, or politicians. The jury strongly condemns the impunity with which the police have acted in these cases.

Under the respondeat superior principle of international law, superiors are responsible for the acts of their subordinates, including for those acts of which they have no knowledge. However, this principle does not erode the accountability of the subordinates themselves. In other words, all those in the chain of command are responsible for individual violations of human rights.

In the cases presented before the Jury, the incidents of torture all bore striking similarities in the perpetrators involved and the methods of torture used. The Jury notes that the police have no fear of the repercussions of their behavior, as a result of this systemic culture of impunity. Higher officials often respond to victims’ complaints against police officers with apathy and actively work to support the illegal acts of their subordinates. The Jury observes that not only have the victims/survivors had their lives devastated by the insensitivity of the higher officials but it has also affected the lives of the families involved. Many of the victims/survivors have been so physically, financially and, most significantly, mentally traumatized that they are still unable to resume their normal lives and relationships.

Superiors and subordinates must all be held responsible for violations of human rights; only thus can the rule of law be established as a preeminent principle in Indian society. The Jury notes that the police torture documented in this public tribunal represents a gross violation of international human rights law, and clearly violates Articles 14, 19, 20, 21, and 22 of the Indian Constitution.

The Jury believes that a system of accountability must be developed, perhaps consisting of a “black mark” placed on the record of any station house officer responsible for a police station in which torture has taken place.

The Jury also notes that judges themselves may block victims’ access to justice. The Jury notes that a certain Magistrate Judge presided over multiple cases of police torture and consistently sided with the police rather than fairly apply the law.

Further, the Jury notes that the police’s designation of certain areas as “disturbed” often allows for police torture to occur with impunity. In general, such regimes must be replaced by regimes founded on the various international human rights conventions, covenants, treaty body jurisprudence.

Finally, with regards to impunity, the Jury strongly condemns any use of Section 197 of the Indian Criminal Penal Code and its “good faith” language to justify human rights violations, including torture.

**Culture of Repression and Torture: Torture as State Power**

The Jury notes that, although higher ranking police officials display a ‘human face’, use appropriate language and understand the conventions of proper conduct when dealing with the public, they systematically display brutalized force when dealing with people behind closed doors. The extent of this brutalized force is so endemic among the police force that police torture can be considered a tool by which those with power attempt to silence the masses.
The Jury notes that the majority of victims / survivors were from marginalised groups; many of the victims / survivors were Dalits, tribals, backward classes, minorities and many of them were poor (see cases II B 17, II B 7, II B 4, II B 2, II B 11). The Jury notes that the police were far too often employed as a tool of the powerful and rich, who channeled their own caste, class, and communal biases to exploit the offices of the Karnataka police service. The Jury notes several cases from the Kodagu district where plantation owners used the police as well as forest officials to settle their disputes with their employees.

The jury also observes that dominant caste individuals often manipulate and bribe the police to carry out their own private civil disputes. The police use such cases as land disputes and domestic disputes as excuses for torture and retribution against vulnerable and marginalised sections of society. The fact that the police often target communities that are totally vulnerable makes their abuse of power all the more inexcusable.

The Jury further observes that there were often patterns of torture cases clustered around specific geographical locations; with particular police officials repeatedly and fearlessly carrying out torture. The Jury further notes the two main facets of police torture: (1) police direct action against victims / survivors; and (2) police acquiescence/inaction in the face of maltreatment by private citizens against victims / survivors. The Jury feels that although these two facets of police torture differ in kind, they do not differ in significance.

The Jury notes that varying types of physical torture are carried out by police. Most commonly the police use lathis as a weapon to beat their victims / survivors, electric shock “treatment,” and roller “treatment” is also a common method of torture (see cases II B 21, III B 17, III B 9, III B 19, II B 19, I B 21). In addition sexual abuse of women in custody and extensive use of verbal abuse and character assassination against those tortured. The Jury further notes that the equipment and ‘tools’ used to commit such atrocities appear to be readily available at many police stations in the state.

Finally, the Jury condemns the widespread intervention of Karnataka police in civil disputes, including family disputes, which provides the police further opportunities to torture.

**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.

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.

**Disregard for Mandatory Police Procedures**

To a frightening degree, some police officers pretend ignorance of their mandatory provisions, use their power over general diary entries, complaints, and FIRs to exercise control over victims/survivors. Empowered to draft and to file grievances, they can and often do employ the threat of false charges to induce victims/survivors to act in a particular way. Where victims/survivors defy such a blatant abuse of power, the threat of false charges often becomes a reality.

The power to receive complaints also frequently leads police officers to accept only those complaints from victims/survivors that they deem worthwhile. However, the notion of what is worthwhile is often motivated by nefarious factors, including bribery, political influence, and simple apathy (see cases IIB1, II B20, II B I). Even where victims/survivors or human rights organizations have managed to secure some police action, this action is often delayed, limited and yields few results.

The Jury notes that victims’ family members who visited the victims in jail expressed concern at the state of overcrowding. It appears that the official capacity of some jails are often exceeded by several hundred people.

The Jury also states that often low level police personnel do not observe the SC/ST Prevention of Atrocities Act and the Juvenile Justice Act despite the display of ‘human face’ at higher levels. The victims are often treated as disposable by higher ranking police officials, because they are of a low social status.

**Disregard for D.K. Basu Guidelines on Arrest**

The Jury heard numerous cases in which the police contravened the arrest guidelines laid down by the Supreme Court in *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610 (‘the D.K. Basu Guidelines’). When the Guidelines are breached (see cases I B 10, I B 3, III B 13), the victims/survivors suffer, as do the legitimacy of the Supreme Court and the rule of law more broadly.

Strictly speaking, the D.K. Basu Guidelines apply only to recorded arrests, and thus not to the majority of cases heard by the Jury, which featured illegal detention or interrogation rather than actual arrest.

**Custodial Death**
Where custodial deaths do occur, however, mandatory procedures are found to be regularly ignored in the State of Karnataka. A 2005 amendment to Sec 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.

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 and prosecution.

**Emboldening Statutory Human Rights Institutions**

The culture of impunity also persists outside law enforcement. The State Human Rights Commission (SHRC) and National Human Rights Commission (NHRC) purportedly exist to monitor incidents of police torture and acquiescence. After listening to the Proceedings, the Jury expresses frustration at the consistent unresponsiveness of both the SHRC and the NHRC. The SHRC in Karnataka is particularly unresponsive in providing redress to individuals who have been falsely charged by the police of committing a crime.

The NHRC and SHRC have consistently failed to use their powers with regard to torture cases – even those cases that receive significant local, regional, or national publicity. Indeed, the Jury noted the utter listlessness, and almost callousness, with which the Commissions respond to such cases. To some, the Commissions stand as largely decorative bodies. The unresponsiveness of Commissions stands in stark contrast to their mandates to act swiftly to cases within their substantive jurisdictions.

The NHRC has published numerous other lists of guidelines for the police. However, publishing such lists is not enough without monitoring and oversight; the NHRC and SHRC must work actively to ensure that those guidelines are adhered to. Where they themselves have articulated the standards by which police action is to be judged, the Commissions have every reason – and a moral duty – to see that such standards are enforced.

However, the responsibility to act does not fall solely on the NHRC and SHRC. The Jury also notes inaction on the part of the National Scheduled Castes/Scheduled Tribes Commission and the National and State Women’s Commissions/Minority Commissions. These bodies must also take cognisance of torture cases and respond to complaints registered by victims/survivors and their families. Such duties also fall on the National Commission for the Protection of Children’s Rights.

The Jury encourages organized movements by civil society organisations to highlight the Commissions’ lethargy in order to mobilize these potentially powerful bodies.

The Jury notes that the human rights commissions, without delving deeply into the cases, reject jurisdiction for the reason that a criminal case is pending elsewhere. The Commissions must look into each case in depth to determine whether they are genuinely being dealt with.

**Ending the Complicity of Medical Personnel**
The Jury notes the role that some doctors play in perpetuating a culture of torture and impunity in India. There is a prevailing nexus between the police and the medical profession. For example, while a thorough and impartial post-mortem examination can yield valuable causal evidence in a custodial death case, the families of the deceased 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 generally do not have access to long term treatment from the cases seen by the Jury. Medical personnel often delay treatment or incorrectly or falsified record facts in accident registers, wound certificates, post-mortem reports, and other documents. In some cases it was also found that the Government hospital was also used as a ‘safe place’ for keeping the accused in continuous custody with no possibility of their near relatives meeting them. Such abuses are particularly common at the government hospitals where many torture victims are sent for treatment. Victims sustaining lasting injuries experience particular difficulties: even if medical personnel are willing to treat victims immediately after their torture, they will rarely provide long-term medical care.

Broadly speaking, many medical professionals are reluctant to treat torture victims, refuse to provide victims with medical documents, and fail to conduct thorough examinations for rape victims, particularly custodial rape. Whether bred of intentional complicity, wilful blindness, or negligence, such action expressly violates the Indian Medical Council’s Code of Ethics.

**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 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 requires 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.

**Reparation and Compensation**

Torture may begin and end quickly, but its psychological effects can endure for years or even a lifetime. If victims/survivors have no opportunity for redress, and see no possibility for redress in the future, the
psychological component of their torture can become unendurable. The Jury notes that securing monetary compensation for torture victims / survivors is a slow, inefficient and often ineffectual process.

The Jury further asserts that even where torture victims / survivors obtain compensation, they are not made whole. The Jury notes a crucial difference between reparations and compensation and notes that compensation alone cannot restore the respect a torture victim may have lost in his or her community. For example, in one case, several houses of victims / survivors were burnt down. Despite receiving compensation, it was insufficient to rebuild their homes and restart their lives. Similarly, in many cases, torture leaves lasting injuries which may prevent a victim / survivor from returning to work. In these instances, compensation for the torture alone cannot account for a lifetime of lost wages.

True compensation requires a much wider conception of victims’ needs. National and State governments in India should look to the jurisprudence of human rights institutions like the European Court of Human Rights and the Inter American Court of Human Rights for examples of such a wider concept.

Ideally, reparations should take the form of a Special Livelihood Package (“SLP”), which recognises the two crucial aspects of rehabilitation: it must be free, and it must be ongoing. SLPs envision many types of assistance, including medical and psychological rehabilitation, financial advice, and legal counsel.

In addition to the implementation of an SLP, victims/survivors can draw great benefit from an acknowledgement of their suffering – ideally, in the form of an apology from the state. Incorporating a commitment that such torture will not be repeated, an apology involves the state itself in breaking down the walls of silence that too often enclose victims/survivors of police torture.

**Protecting Juvenile Victims**

The Jury expresses indignation that there are several cases of police brutality and torture on children, particularly of children belonging to minority communities, SC, ST, and poor families (See Case I B 15). This practice blatantly violates Article 37 of the U.N. Convention on the Rights of the Child, which India has ratified. Children are additionally protected by Indian law under the Juvenile Justice (Care and Protection of Children) Act 2000/2006. Although the Act allows only Special Juvenile Police Unit (“SJPU”)-linked police officers to interact with children in police custody, it is common practice for any police officer to interrogate and torture children. Some parents allege that officers have come to their homes late at night and taken their children into custody, despite the fact that the Act gives clear instructions not to keep children in the police station at night. Additionally, the police are known to administer lathi beatings and electric shocks to children.

The children of torture victims/survivors also endure emotional trauma long after their parents were tortured. Many children have been forced to discontinue their education and enter the labour force. Facing both economic and family stress, many children desperately need psychological treatment. In addition to counseling, children need guidance during their primary and secondary schooling, as well as vocational training.

The Jury notes that the following must be done to rehabilitate the children of police torture victims/survivors:

1. Provide counseling to individual children as well as groups of children periodically, even after the child is over 18 years.
2. Provide financial assistance, vocational training, and information on job opportunities.
3. Establish a comprehensive support system in places where greater numbers of victims reside for health, education, and counseling services.

The police must be trained not only on the requirements of the Juvenile Justice Act, but also must be made aware of the emotional trauma suffered by the children and families of torture victims/survivors. Additionally, there must be a concerted effort to increase public awareness of the prevalence and effects of torture on children.

**General Recommendations**

We urge the following of the Government of India:

- Ratify the convention against torture, acknowledging the application of Article 20 and Article 21 without reservations as well as the ratification of the optional protocol to CAT.
- Ratify the first Protocol to the ICCPR and ratify the Rome statutes to the ICC.
- Legislative implementation of relevant treaties should include:
  - include a comprehensive definition of the term “torture” in domestic legislation;
  - ensure that torture is a specific criminal offence under domestic law;
  - recognise customary international law as informing domestic law;
  - assert jurisdiction over extraterritorial acts of torture committed both by national and non-nationals;
  - repeal Section 197 of CrPC; and
  - stress the importance of effective witness and victim/survivor protection regimes to ensure that witnesses and victims/survivors are not subject to retaliation of any kind.
- Amend the Indian Evidence Act and Cr. P. C. such that, in cases of custodial death, a rebuttable presumption of wilful *mala fide* action is imposed on the implicated police officials.
- Ensure that all governmental agencies implement the UN Declaration on Human Rights Defenders.

We demand the following of the Government of Karnataka:

- Strengthen internal mechanisms within the police service which will make not only perpetrators of police torture 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 Karnataka. 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 programmes 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 can have on citizens.

• In view of the fact that extraordinary laws like TADA (in the context of Karnataka) have played a key role in perpetuating torture and entrenching impunity, we urge the Government of Karnataka not to implement the Karnataka Control of Organized Crime Act.

• Demand Zero Tolerance to torture in police stations.

• 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 Karnataka 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 organisations.

**We demand the following of the NHRC:**

• Enforce speedy responses from state authorities to victims/survivors’ legitimate complaints of torture by police personnel, and ensure that victims/survivors and their families are duly and swiftly compensated.

• Monitor the implementation of its Guidelines, using the services of civil society organisations if required, in order to establish nation-wide compliance with best practices.

• Establish a fast-track process to handle complaints of police torture and custodial death in order to ensure that these complaints are completed in the shortest possible time.

• Constitute an urgent appeal procedure for all referred cases of torture in order to ensure a speedy handling of the cases and effective orders including medical and psycho-social treatment where necessary.

• Take full cognisance of all torture cases of which they become aware, and respond promptly and thoroughly to all complaints registered by victims/survivors.

• Implement more democratic means of selecting NHRC staff.

**We demand the following of the SHRC:**

• Report instances of complicity in torture by medical personnel to the State Medical Council.

• Intervene when the D.K. Basu Guidelines are not followed.

• Enforce speedy responses from state authorities to victims/survivors’ legitimate complaints of torture by police personnel, and ensure that victims/survivors and their families are duly and swiftly compensated.
• Establish a fast-track process to handle complaints of police torture and custodial death in order to ensure that these complaints are completed in the shortest possible time.

• Ensure that the SHRC undertakes effective steps when human rights defenders are under attack.

• Take *suo moto* cognisance of all torture cases of which they become aware, and respond promptly and thoroughly to all complaints registered by victims/survivors.

• Periodic inspections coupled with surprise checks of police stations and all other places of official detention.

**We demand the following from the Indian judiciary:**

• The Indian Supreme Court shall direct all the subordinate courts, including the Magistrates to follow guidelines of D.K. Basu, in so far as they relate to the courts;

• The magistrates shall enquire when suspects are brought before the magistrates for remand/detention about any torture and after physical inspection direct the suspect to be sent for medical examination;

• The Magistrates shall also call for all Memos of arrest, lock-ups register, and other Diary entries, in all cases where the suspects are charged with serious offence.

**We demand the following of the National Scheduled Castes/Scheduled Tribes Commission, the National and State Women’s/Minorities Commissions, and the National Commission for the Protection of Children’s Rights:**

• Take *suo moto* cognisance of all torture cases of which they become aware, and respond promptly and thoroughly to all complaints registered by victims/survivors.

**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 whenever there is an infraction.

• Remind all members of their duty to attend to victims of torture when they appear before them for treatment.

**We demand the following of the media:**

• Observe the conventions governing the media in all the national laws for e.g. protecting identity of women and children, not publicising photographs of victims or revealing their identity.

• Creating awareness regarding legal and human rights of citizens.

• Not to sensationalise cases.

**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.
• 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.
Special Focus: The JSTF Cases

Having heard the torture cases presented at the Karnataka PTT, the jury felt it necessary to distinguish between the systematic torture practices of the Joint Special Task Force (“JSTF”) and what appeared to be more indiscriminate 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.

BACKGROUND

The 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.

DIRECT RESPONSIBILITY OF SHANKAR BIDARI

Many depositions before the J. Sadashiva Committee appointed by the NHRC indicated that Mr. Shankar Bidari was directly responsible for the atrocities perpetrated by the JSTF. Mr. Bidari currently serves as the Commissioner of Police of Bangalore City.

GENERAL OBSERVATIONS

At the Karnataka 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-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.
RECOMMENDATIONS

We demand the following of the State Government of Karnataka:

• To initiate an inquiry into Mr. Shankar Bidari’s alleged role in the atrocities perpetrated by the JSTF.

• In the interim period before any such inquiry is initiated concerning Mr. Bidari, recall Mr. Bidari from his responsibilities as the Commissioner of Police, Bangalore City.

We strongly recommend the following to the Governor of Karnataka and the Home Minister of Karnataka:

• Believing that the death penalty is a grave violation of fundamental human rights, the Jury strongly recommend that the four accused in the STF-TADA case, namely, Gnanapragasam, Simon, Bilavendranan and Meesakara Madayan, should be pardoned by the Governor of Karnataka based on a recommendation by the Home Minister of Karnataka.

We demand the following of the State Governments of Tamil Nadu and Karnataka:

• Release the Rs. 10 crore that the State Governments of Tamil Nadu and Karnataka publicly committed (Rs. 5 crore each) on 25 August 2000 towards interim rehabilitation and compensation for victims of JSTF human-rights abuses.

• Initiate prosecution against the errd JSTF personnel without any further delay, so that justice may soon be done to the 89 victims to whom the Sadashiva Commission recommended relief.

• As promised by the Chief Minister of Tamil Nadu, instruct and expedite the process of enumerating and compensating all victims who have not yet been provided with compensation. Accept the list of over 1000 victims that the Chief Minister, on the floor of the Legislative Assembly, asked the Campaign to prepare.

• Ensure full and comprehensive rehabilitation of victims and their families. Such compensation should take the form of a Special Livelihood Package (“SLP”), with a particular focus on women, and especially on the widows of victims. The SLP should include medical and psychological treatment (including counselling facilities), food and housing assistance for those rendered homeless, livelihood regeneration and income-generating activities, community reconciliation, educational support for the children of victims, and monetary compensation. This rehabilitation should be conceptualised, organised, and executed by NGOs already involved in victim rehabilitation (viz, SICHREM in Bangalore, Tamilnadu Pazhangudi Makkal Sangam, SOCO Trust, and People’s Watch in Tamil Nadu), as well as the victims themselves.

• Undertake measures for the immediate removal from the area of former JSTF personnel who now function as regular police, so that the present and frequent complaints of threat and coercion by them are immediately brought to an end.

• Screen all JSTF personnel for human-rights violations and complete pending criminal prosecutions. Meanwhile, keep all rewards to these personnel in abeyance and return to their previous positions all those who received out-of-turn promotions (Such action is consistent with Section G of the NHRC’s
Guidelines Regarding Encounter Deaths in the Course of Police Action, which states that “[n]o out of turn promotions or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officer is established beyond doubt must be followed in letter and spirit.”). Rescind rewards or promotions to all those JSTF personnel who have been indicted on criminal charges.

- Develop some kind of memorial for JSTF victims, both recognising and honouring their suffering, and ensuring that communities remain vigilant against future abuses.

**We demand the following of the State Governments of Tamil Nadu and Karnataka, as well as of the Government of India:**

- Institute a Special Medical Programme (“SMP”) through which mobile clinics visit Chamrajnagar District in Karnataka, as well as Dharmapuri, Salem, and Erode Districts in Tamil Nadu. The SMP clinics would provide physical and psychiatric treatment, as well as physiotherapy, and would primarily target the victims of JSTF abuses. The SMP would be free of charge and would be budgeted and staffed to operate in the long term. Local businesses and individuals can be solicited to contribute.

**We urge the following of the Government of India:**

- Ratify the convention against torture, acknowledging the application of Article 20 and Article 21 without reservations as well as the ratification of the optional protocol to CAT.

- Ratify the first Protocol to the ICCPR and ratify the Rome statutes to the ICC.

- Legislative implementation of relevant treaties should include:
  - include a comprehensive definition of the term “torture” in domestic legislation;
  - ensure that torture is a specific criminal offence under domestic law;
  - recognise customary international law as informing domestic law;
  - assert jurisdiction over extraterritorial acts of torture committed both by national and non-nationals;
  - repeal Section 197 of CrPC; and
  - stress the importance of effective witness and victim/survivor protection regimes to ensure that witnesses and victims/survivors are not subject to retaliation of any kind.

**We demand the following of the NHRC:**

- Appoint a Special Investigation Team (“SIT”) consisting of male and female police officers from outside Tamil Nadu and Karnataka to examine each case of abuse committed by JSTF personnel. The SIT should provide fortnightly reports to the NHRC.

- Direct the State Governments of Tamil Nadu and Karnataka to initiate prosecution against the erred JSTF personnel without any further delay so that justice may soon be done to the 89 victims to whom the Sadashiva Commission recommended relief.
Pressure the States to initiate criminal cases against all accused JTSF personnel – based on the findings of the proposed SIT – with safeguards to ensure that the proceedings are conducted in a timely and judicious manner.

Immediately pay attention to the reference on torture of the Advisory Council of Jurists of the Asia Pacific Forum of National Human Rights Institutions – to which the NHRC is a party – and to ensure the NHRC’s strict compliance.

Take action on the above recommendations immediately, with the understanding that delay will prompt concerned actors to engage in state-wide yatra in Tamil Nadu and Karnataka and to expose the NHRC’s inaction before the International Coordinating Committee of National Human Rights Institutions, the Asia Pacific Forum of National Human Rights Institutions, and other international human-rights organizations.
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<th>Name</th>
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