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# securing their rights

## INTRODUCTION

*"The way a society treats its children reflects not only its qualities of compassion and protective caring, but also its sense of justice, its commitment to the future and its urge to enhance the human condition for coming generations."*

Javier Perez de Cuellar, former Secretary General of the UN

Respect for the human rights of children is vital to any society's future health and prosperity. To respect the human rights of children is to secure respect for human rights in the next generation.

It is in childhood that people form their view of the world and how to act within it. If children are socially and economically marginalized, know only poverty and hardship, discrimination and abuse, that experience will shape them as adults. If on the other hand society ensures the freedom and dignity of children, creating the conditions in which they can develop their potential, they have the chance to grow to a full and satisfying adulthood, assuming a constructive role in society.

In South Asia, children make up over 40 per cent of the population -- around 539 million of more than 1.2 billion people are under 18 years old -- with 13.3 per cent of the total number being under five. Together they constitute a quarter of the children in the world. Their experience is not just an important measure of the human rights situation in South Asian countries, but of the state of children in the world at large. The promotion and

protection of their rights is vital to future development in the region -- and to that of humanity as a whole.

The governments of South Asia have recognized this important responsibility. Each state has ratified or acceded to the UN Convention on the Rights of the Child (CRC), signalling its commitment to the survival, development and protection of children. They have reinforced this commitment collectively, making children a priority area for cooperation and assistance programs through their regional grouping SAARC (the South Asian Association for Regional Co-operation). SAARC countries have declared the 1990s the Decade of the Girl Child -- and from the year 2001 they will begin the SAARC Decade of the Rights of the Child.

During the Decade of the Girl Child in the 1990s, the SAARC countries have committed themselves to child welfare by the year 2000 of the girl child by: reducing ill, malnourished and anaemic children; increasing the provision of safe, clean drinking water and adequate shelter; and taking measures to eliminate all forms of discrimination. The countries have agreed on the years 2001 to 2010 as the Decade of the Rights of the Child. The year 2010 has been set as the deadline for eradicating all child labour and the year 2000 as the deadline to end child labour in hazardous conditions or in bonded labour.

But in the face of this promise, South Asia's children remain prone to a litany of human rights violations at the hands of state agencies and abuses by armed opposition groups -- from arbitrary detention, cruel punishments and torture, to killings and "disappearance" in armed conflict. In the wider community and the privacy of the family, children also suffer systemic abuse of their rights through such practices as bonded labour and trafficking for purposes of prostitution. Although state officials may deny their responsibility for these latter abuses, their complicity, acquiescence and indifference often serve to perpetuate them.

These violations are intrinsically linked to the more general deprivation of children's economic and social rights. According to the UN Children's Fund, UNICEF, each year 4.7 million children die in South Asia under the age of five, the majority from preventable and curable illnesses such as diarrhoea and respiratory infections. Two-thirds of surviving children are malnourished. Urbanization, poverty and the breakdown of family structures have left millions of children displaced or forced to fend for themselves on the streets where they are especially vulnerable to violence and exploitation. Girl children, and those from marginalized or minority groups, face additional discrimination and disadvantage.

Many South Asian governments have taken important legislative initiatives in an effort to safeguard children's rights or eradicate particular abuses. They have set up special commissions and tribunals, and launched ambitious programs for social and economic development. In Bangladesh, the National Children's Council was established by the government in 1995 and a national policy for children adopted. In 1997, Pakistan signed a memorandum of understanding with the ILO (International Labour Organisation) under its International Program for the Elimination of Child Labour (IPEC).

In some cases, including several mentioned in this report, the authorities have taken strong action against those who have perpetrated abuses on children. In Sri Lanka, for instance, a prosecution is continuing against eight soldiers and one police officer allegedly responsible for the "disappearance" and killing of 16-year-old Prasantha Kumarasamy. Prasantha "disappeared" in September 1996 after he went with his mother and a neighbour to look for his 18-year-old sister Krishanthi Kumarasamy in the north of Sri Lanka. Several weeks later, the bodies of all four were discovered in shallow graves. Medical and other evidence suggested that Krishanthi had been raped and then killed in custody. Prosecutions of this kind send a salutary message to others that they cannot get away with breaking the law and abusing human rights. This landmark case has been an important factor in bringing the level of "disappearances" in Sri Lanka down to a lower, if still unacceptable, level. Sadly, though, cases of this kind tend to be the exception rather than the rule. The usual inaction, and sometimes deliberate exemption from punishment, fosters a climate of impunity throughout South Asia.

Other institutions, such as the judiciary and national human rights commissions, have also taken important initiatives to promote and protect children's rights. In Sri Lanka, for instance, the Supreme Court in 1997 ordered record compensation to be paid to Bathatha Jayatunga Gamage Malsha Kumari, who had been tortured by police at Hungama, including by being hung by her wrists from a tree. In India, the Maharashtra High Court in 1996 forced the state government to rescue 484 young girls from the red light areas of Bombay, 238 of whom were from Nepal. With the help of non-governmental organizations (NGOs), 128 of the girls were finally returned to Nepal. Together with other institutions and agencies, such as the national Commission for Women and UNICEF, the National Human Rights

Commission in India has been developing strategies for tackling child prostitution.  
Across civil society, NGOs and other groups have joined efforts to protect and foster

the development of children.

Sometimes these activists are children themselves. They play a critical role in highlighting abuses, seeking redress and carrying out practical programs for children's civil, political, economic, social and cultural advancement. Often they face opposition and harassment from governments, opposition groups and other powerful vested interests in society.

Against this backdrop, Amnesty International is launching a special campaign for the rights of children in South Asia. Through its one million members around the world, including in South Asia, the organization is seeking to raise consciousness about the situation of children in the region and the enormous human rights challenge this represents. It wants not only to remind the governments of South Asia of their responsibility to promote and protect children's rights. It also wants to remind the international community of its role in support of this goal. This campaign will be carried forward at a number of different levels, from human rights promotion and educational activities by Amnesty International members in the region, to campaigning and international solidarity by Amnesty International groups worldwide. In the process, Amnesty International hopes to forge closer links with other institutions and NGOs working in this field.

Given the scale and diversity of South Asia, this report does not pretend to be a comprehensive survey of issues relating to children in the region. Some of the issues involved go beyond Amnesty International's research and campaigning specialization and

These issues have a special focus in 1998, as the international community marks the 50th anniversary of the Universal Declaration of Human Rights (UDHR) from which the fundamental rights of children derive, and the countries of South Asia prepare for the SAARC Decade of the Rights of the Child.

experience. Amnesty International has long highlighted individual cases of child victims of human rights violations, such as torture, ill-treatment and extrajudicial killings. This campaign aims to highlight the particular vulnerability faced by children, particularly those in especially difficult circumstances who are frequently the most invisible and voiceless victims of these abuses. It also sets these concerns within the broader framework of children's rights, spanning the full range of rights which governments are obliged to respect and ensure.

This campaign seeks to highlight that children's rights, like all human rights, are indivisible and interdependent. So too is the work of all parts of the human rights movement. Whether campaigning for better education or health care, against child bonded labour or torture, or for immunization programs or civil rights, NGOs and other institutions share a common agenda as defenders of children and of children's human rights.

The first chapter explores the treatment of children in the custody of the state as it administers juvenile justice. The second chapter looks at state failure to protect

children against a selection of abuses in the sphere of community and family life. The third chapter looks at the plight of children in armed conflict at the hands of state security forces and armed opposition groups alike. The report concludes with a wide range of recommendations to the governments of South Asia, opposition groups and the international community as a whole.

### **Deprivation and discrimination**

The degree to which children in South Asia can enjoy their human rights is heavily influenced by other aspects of their identity -- such as gender, ethnicity, caste or economic status -- which are part of a wider context of

Girl children face particular disadvantages in the South Asian context. The persistence of discriminatory attitudes towards girls mean that the birth of a girl is often considered a liability to a family and less is invested in her health and education. In Afghanistan, girls have been systematically denied education by the *Taliban* on the basis of the group's extreme interpretation of Islamic teaching. In many countries, gender-selective abortion and infanticide are common, and girls figure disproportionately in infant mortality and illiteracy statistics. These factors, together with the persistence of harmful practices such as dowry and child marriage, also feed other cycles of abuse, including domestic violence and sexual exploitation. Discriminatory treatment of the girl child deepens the marginalization of women and perpetuates problems from one generation to the next.

discrimination, deprivation and disadvantage in South Asian societies.

Economic disadvantage, social exclusion and political marginalization combine with the vulnerability of age to perpetuate cycles of abuse. In India, for instance, it is no surprise to find that children from the lowest castes or *dalits* form the vast majority of the country's bonded child labourers. In the conflicts which have racked Afghanistan and Sri Lanka, children are often targeted for their ethnic identity. Across the region, street children find themselves in custody often for little more than being children, as they eke out a living outside family and other social structures.

The experience of poor and disadvantaged children in South Asia serves as a powerful reminder of the indivisibility of human rights envisaged in the UDHR and CRC. The child's enjoyment of civil and political rights is fundamentally compromised by a lack of economic, social and cultural rights; and the economic, social and cultural development of Children are endowed with all human rights, as set down in the 1948 UDHR and all human rights standards developed since. In the 50 years since the UDHR's proclamation, the international community has put considerable effort into further defining and codifying these rights, as well as developing international benchmarks for their implementation in national law and practice. These international human rights treaties and standards, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

the child cannot be advanced effectively without civil and political freedoms and protection.

### **Understanding children's rights: the international framework**

Punishment, uphold the rights of children along with all other members of society. Together, these instruments represent a comprehensive agenda for the protection of the full spectrum of children's human rights.

In most societies, children, by reason of their physical and mental immaturity, are almost totally dependent on adult structures of political and economic power to safeguard and protect their rights and well-being. Instead of giving rise to special protection, this situation of dependence and vulnerability is often exploited by those with responsibility over children -- in the name of economic expediency, culture or tradition. Children are

effectively viewed as property whose individual rights must be subsumed in the interests of family, community and authority.

A complementary body of human rights standards has developed therefore which, while affirming that children are endowed with the same human rights as adults, recognizes that those rights can only be realized if the special needs of children are addressed.

These standards reflect increasing efforts by the international community to see the rights enshrined in the UDHR from a childhood perspective. This means recognizing the circumstances in which children are particularly at risk, such as in police custody or in situations of armed conflict. It means challenging the various motives and justifications commonly given for denying children's rights: submission to authority, tradition, economic necessity, intimidation of relatives. It means erecting safeguards against the particular forms of abuse to which children are vulnerable

The CRC is not only the first legally-binding instrument to elaborate human rights specifically and uniquely for children. It is also one of the most comprehensive instruments in human rights law. Whereas many other international standards deal with particular sets of rights, the CRC's 54 articles cover the full spectrum of civil, political, economic, social and cultural rights, stressing their indivisible and interdependent relationship<sup>i</sup>. It is also the most universally accepted, having been ratified by all but two states.<sup>ii</sup> At a time when a number of governments throughout the world, including in South Asia, are questioning the legitimacy of the international human rights framework, and challenging the concepts of universality and indivisibility, the CRC stands as a landmark for the international consensus on these basic human rights principles.

because of their age, such as being sexually abused by fellow adult inmates, being subjected to solitary confinement or press-ganged into armed forces. It means addressing the physical, psychological, social and economic consequences of the abuse, which may be far worse for a child. It means overcoming children's usual lack of access to the kinds of remedies and resources that may be available to adult victims of human rights violations.

The first declaration on the rights of the child was drafted by the League of Nations in 1924. This was superseded by the 1959 UN Declaration on the Rights of the Child, which asserted that humankind owed the child "the best it has to give". The 1959 Declaration provided a powerful moral framework for children's rights, but it was only after the International Year of the Child in 1979 that governments began serious work on a fully-fledged treaty. After a decade of negotiations, the UN General Assembly adopted the CRC in 1989.

The rights contained in the CRC range from the child's most basic subsistence needs (such as food, shelter and access to health care), to other fundamental things that children need to develop their fullest potential (such as the rights to education and freedom of thought and religion). The Convention also includes the right to be protected from abuse, exploitation and neglect, and the right to participate in one's community and in political life. The rights in the CRC are meant to be applied in the light of the four general principles, namely non-discrimination (Article 2); the best interests of the child (Article 3); the right to life, survival and development (Article 6); and respect for the views of the child (Article 12).

The adoption of the CRC also saw the establishment of an expert Committee on the Rights of the Child to monitor and advise governments on implementation of the Convention although not formally to hear individual complaints. Unlike most international instruments, the CRC embraces issues of social policy as well as law. The Committee therefore engages governments not only on their legal obligations but in a constructive policy dialogue.

The scale and diversity of South Asia present the governments of the region with a huge challenge in implementing the CRC and other international human rights standards. All of them face problems of institutional weakness and resource constraints: some are dealing with difficult internal security situations or

conflicts, others are facing entrenched social attitudes and practices. The CRC recognizes this, putting emphasis on “international cooperation” to end abuses and promote development. Many articles, such as those relating to education and health, underline this need and the Committee on the Rights of the Child is empowered to help mobilise international resources to this end. The CRC provides a basis on which South Asian governments can seek international cooperation and assistance. This campaign is framed in this light, addressing not just the governments of South Asia but their international donors and partners as well.

In many South Asian societies, concepts of childhood are defined in relation to puberty and this is reflected in some legislation which links the age of criminal responsibility with the attainment of puberty.

The Hudood Laws of Pakistan, for instance, deem that a child is legally an adult when they reach puberty, possibly as young as 12. Linking the age of criminal responsibility with the attainment of puberty is a subjective criterion which addresses only the physical aspect of the development of the child. This approach also discriminates against girls, who generally reach puberty at a younger age than boys.

The CRC reaffirms that everyone, including children, are entitled to all human rights without exception or discrimination of any kind. Importantly, it seeks to protect children from discrimination not only on the



basis of their own attributes but also those of their family or social group (Article 2). Again, this provision has special relevance to South Asia, where a child's enjoyment of human rights will depend on other attributes such as gender, ethnicity, social or economic background.

While the CRC emphasizes the family as the fundamental group of society and environment for nurturing the child, it protects the rights of children to express their own views and to be heard in judicial and administrative proceedings affecting them. It also places obligations on the state to protect children from all forms of abuse, neglect and exploitation even where these are not carried out at the hands of state officials. In this way, the CRC challenges the traditional misperception that states are not responsible for abuses committed within the sphere of the family or the community and recognizes the political dimensions of the systemic abuses committed in these spheres of society. While governments may not be the perpetrators of abuses such as domestic violence, bonded child labour or child prostitution, they are accountable for their failure to implement the protection of children to which they have committed themselves by ratifying the CRC.

Other international standards have been developed which establish norms for the treatment of children and juveniles who come into contact with the law. These include the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) of 1985, which seek to protect the rights of juvenile suspects or offenders; the UN Rules for the Protection of Juveniles Deprived of their Liberty of 1990, which further affirm and develop these standards; and the UN Guidelines for the Prevention of

The recruitment of children aged under 15 into armed forces, whether of governments or armed political groups, is prohibited by the

Juvenile Delinquency (the Riyadh Guidelines) of 1990, which promote comprehensive policies to prevent juveniles from engaging in criminal activity by promoting their full social development and respect for their rights.

The International Labour Organisation (ILO) has also adopted standards for the elimination of child labour, such as Convention No. 138 on minimum age for admission to employment. This commits states to raising progressively the minimum age for workers to a level consistent with the fullest mental or physical development of young people. Other ILO Conventions, such as Convention No. 29 concerning forced or compulsory labour, also seek to protect children's rights. The ILO is currently debating a new Convention that would seek to eliminate the most extreme forms of child labour.

The CRC amplifies other international instruments by providing a special obligation on the part of governments to respect the rights of children in situations of armed conflict. Many children in South Asia, however, live in areas controlled by armed opposition groups which do not consider themselves bound by such international standards. All the parties to these conflicts -- government and opposition alike -- are bound by the principles of international humanitarian law that provide safeguards for the life and security of civilians by limiting the methods and means of warfare. In particular, Common Article 3 of the Geneva Conventions forbids abuses such as the deliberate killing of civilians and captured combatants, torture, ill-treatment and hostage-taking.

CRC as well as Additional Protocol Two to the Geneva Conventions (applicable in certain situations of internal armed conflict). In

response to growing international pressure to prevent the use of child soldiers, the UN Commission on Human Rights established a Working Group to draft an optional protocol to the CRC on the involvement of children in armed conflicts. Along with other NGOs, Amnesty International is campaigning to ensure that the optional protocol prohibits the participation of people below 18 in hostilities and the recruitment, whether compulsory or voluntary, of those under 18 into the armed forces of governments or armed political groups.

The framework for the protection of children's rights is constantly evolving. These new standards should not be seen as conferring "special" rights on children, but rather as a means of realising the rights children enjoy by virtue of being human, the same rights all people share under the UDHR. This 50th anniversary year of the UDHR presents an important opportunity to reflect on the degree to which children enjoy those rights promised them -- for securing their rights today will help to secure all human rights in the future.

## **Chapter I: Children in custody**

Seema has been tortured, ill-treated and harassed. She is still only 12 years old. The adults responsible for her suffering are police officers, the very people who should protect her from harm. The daughter of a landless labourer, Seema was sent from Bihar to live with her grandparents in a slum in Delhi, India. She found work as a domestic servant, but the day after she got the job, her employer was murdered. Seema was arrested by police on 10 December 1997 and illegally detained for two days. She was never charged but was questioned repeatedly about the events surrounding the murder. She subsequently told members of the South Asia Coalition on Child Servitude that in custody she had been tied with electric cord and thrashed with a ruler. She was also hung upside-down and slapped on her ears. She was not provided with proper food or blankets to keep warm. She was released on the morning of 12 December, but continues to be called to the police station and questioned. On 24 January she filed a complaint with police which remains pending.

Children like Seema are arbitrarily detained, tortured and ill-treated by police and other state authorities in lockups, prisons and army camps throughout South Asia. Far from giving them special protection, their status as children makes them especially vulnerable to abuse. The majority come from extremely poor families or have had to fend for themselves, outside family and social structures, from a very young age. Their poverty brings them into the path of the law, as they are forced into begging, prostitution and exploitative forms of labour in order to survive. Often they are additionally vulnerable because of other aspects of their identity, such as their gender, ethnicity or caste background, for which they are discriminated against by state officials.

Many are detained without trial, sometimes for years, on false charges or for minor offences such as petty theft, begging or vagrancy. They are often failed by systems of judicial supervision and review and left to languish in overcrowded juvenile homes or adult prisons, forgotten by the system that is meant to protect them. Few are granted bail, usually because their families have not been or cannot be informed of their detention, do not have the money to meet bail conditions, or have disowned them. Poor, illiterate and unaware of their rights, these children often cannot defend themselves and have little access to advocates who can work on their behalf.

Children, particularly those from poor and disadvantaged backgrounds, are easy targets

for custodial violence, rape and sexual abuse, either at the hands of state authorities or adult criminals with whom they are often held. Often this treatment is meted out on account of their ethnic or caste identity. Even children placed in the “care” of dedicated government and state institutions, such as orphanages and remand homes, sometimes experience ill-treatment and abuse. In some instances, children suffer cruel, inhuman or degrading treatment allowed by national laws in the form of corporal punishments and the death penalty.

The state has a responsibility to protect children in custody – state officials are accountable for the way they treat children in their care, custody and control. This chapter surveys some of the human rights violations children experience while in custody in South Asia against the backdrop of each state’s commitments under the CRC and other international instruments.

### **International standards for juvenile justice**

The CRC imposes on states clear obligations with respect to the administration of juvenile justice and the treatment of children in custody. These obligations are based on the rights children should enjoy as human beings

under other international human rights instruments. The CRC is complemented by relevant international standards such as the Beijing Rules, the Riyadh Guidelines and the Rules for the Protection of Juveniles

Juvenile justice, like all other areas of children's affairs, should be administered in the light of the four general principles of the CRC, namely non-discrimination (Article 2); the best interests of the child (Article 3); the right to life, survival and development (Article 6); and respect for the views of the child (Article 6). In South Asia, sadly, the opposite is all too often the case: the child's status and identity – for instance, gender, ethnicity, caste or economic background – can exacerbate rather than mitigate their treatment at the hands of the state, and a lack of legal infrastructure and training for state officials often results in complete disregard for the best interests and views of the child.

Under the CRC, children should be treated by the justice system in a manner consistent with their inherent dignity as human beings and which takes into account the needs of people their age. The deprivation of a child's liberty should never be unlawful or arbitrary and should only be a measure of last resort and for the shortest appropriate period of time. The administration of juvenile justice should be directed towards rehabilitation of the child and their reintegration into society.

When detained, every child should have contact with their family (other than in the most exceptional circumstances) and prompt legal or other appropriate assistance. States parties to the CRC are obliged to establish special juvenile justice systems and provide training to judges, lawyers, social workers and law enforcement officials on the rights of the child. Children should be separated from adult prisoners, unless this would not be in the best interests of the child.

Deprived of their Liberty, which provide guidance for the implementation of the rights recognized by the CRC.

In any judicial or administrative proceedings affecting them, children have the right to be heard and to have their views taken seriously. They should be provided with information about their fundamental rights and legal safeguards, including the right to assistance from legal counsel. Every child has the right to challenge their detention before a court or other impartial and independent body, and to lodge complaints when their fundamental rights are violated, including in cases of ill-treatment and sexual abuse.

*a) no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.*

*b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention and imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*

*c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*

*d) every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and*

*impartial authority, and to a prompt decision on any such action.*

#### Article 37

#### **Convention on the Rights of the Child**

Fundamentally, children have the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. The prohibition of torture is one of the most fundamental norms of international human rights law and is contained in a number of international human rights standards. The prohibition can never be suspended, whatever the circumstances. It is important to recognize that some forms of treatment may constitute torture or ill-treatment for a child but not an adult – and that for children, at such a vulnerable stage of their human development, it is often more difficult to provide full rehabilitation and redress.

#### **Arbitrary detention, torture and ill-treatment**

Most countries in South Asia have introduced special legislation or procedures applicable to children in custody, taking into account their specific needs. In many instances, this legislation falls below the international standards set by the CRC and other instruments. In hearing reports from Bangladesh, Nepal and Pakistan, for instance, the Committee on the Rights of the Child has strongly urged reforms which would strengthen the legal safeguards for children's rights in line with international standards.<sup>iii</sup>

Of more immediate concern, however, is the degree to which these systems break down in practice and existing legislation is routinely flouted. Not only do many children not benefit from special procedures to uphold their rights in custody, they are often denied basic rights pertaining to all detainees. This failure of legal safeguards and protection leads to children being arbitrarily detained

and puts them at serious risk of torture, ill-treatment and other forms of abuse.

Under most South Asian criminal codes, police are required to produce an arrested person before a magistrate within 24 hours of the time of arrest. It is up to the magistrate to decide, based on the substance of the case, whether to remand the detainee to custody, to grant bail, or to order their release if there are insufficient grounds for detention. Often special laws relating to children impose additional requirements, for instance prohibiting the detention of children at police stations and lockups and directing they be handed over to juvenile or remand homes. Police are generally required to make efforts to locate and inform the child's parents, along with special welfare boards or officials, of the child's detention.

These systems fail in practice, however, with the result that children are often held illegally and arbitrarily for long periods in police custody. Police often fail to follow proper procedures, either deliberately abusing their power or because they are not familiar with the law. Welfare officials do not regularly visit police stations or jails to look after detained children, nor do the police consistently inform welfare officials after arresting a child. Many countries lack the infrastructure to administer juvenile justice properly: special juvenile courts or remand boards meant to review and supervise the detention of children often fail to sit regularly; suitable accommodation for children as required by law is often virtually non-existent.

In this situation, children are at risk of the torture and ill-treatment so prevalent in South Asia's police stations and other custodial institutions. Torture is used to intimidate and

humiliate, and to extract information or more commonly money from the victims or their

An investigative committee appointed by the High Court in Gujarat, **India**, found that many children picked up by police for minor offences such as vagrancy and begging were illegally detained and ill-treated in police custody before being sent to observation homes. The committee reported on the:

*“shockingly savage and barbarous treatment meted out to the juveniles by the law enforcement agency of the state -- handcuffing, tying legs, hands and neck with ropes, locking juveniles in the police stations for up to 10 days without providing them with any basic facilities whatsoever, torturing them with beatings with sticks, kicks, belts and verbal abuse. Third degree torture methods have been used on some of these juveniles -- electric shocks, piercing chilli powder and petrol covered sticks into the private parts and knotting the juvenile's body to a stick.”<sup>iv</sup>*

On 26 May 1996 a 14-year-old ragpicker<sup>v</sup>, Rajesh, was dragged into a jeep by several policemen in Trivandrum in the southern state of Kerala, **India**. No reasons were given for his arrest. While he was in the jeep, the police officers began beating him. They continued their assault at the police station. Rajesh's mother was not informed of her son's arrest, but she heard rumours that her son was being detained, so went to the police station. Police abused her verbally and threatened her against taking any action to secure her son's release. They subsequently denied that Rajesh was in their custody and transferred him between police stations to conceal his whereabouts. They also asked his mother for money in exchange for his release.

Finally, after Rajesh's mother had filed a *habeas corpus* petition and written to senior government and police officials, police from

families.

Thiruvallom police station produced Rajesh on 7 June before the court at Vanchiyoor claiming he had been arrested the previous day on a charge of theft. The court remanded Rajesh to judicial custody. He was released on bail on 10 June.

Following his release, Rajesh needed hospital treatment for injuries sustained while

in police custody.

Rajesh told a local human rights organization -- the Kerala Civil Liberties Committee -- that police had pierced pins through his finger nails, banged his head against the wall, forced him to sit on an imaginary chair for long periods, and beat the soles of his feet. To date, Amnesty

International knows of no inquiry into the illegal detention and torture of Rajesh.

In **Sri Lanka**, Tamil children are routinely picked up by police and army personnel on suspicion of links with the Liberation Tigers of Tamil Eelam (LTTE), an armed opposition groups (see Chapter 3). One such boy was Kumar (pseudonym) aged 12. He had arrived in Colombo with his ailing father from their village in the north of the country in November 1997. His father was admitted to hospital almost immediately for special medical treatment. On 14 November, while at his father's bedside in the hospital, Kumar was arrested by the police and taken to Maradana police station. The police accused him of links with the LTTE, pointed a gun at him and threatened to "break his head on the ground" and "pour water through his eyes and nose". Over the next days, he was stripped and beaten repeatedly with a broken wooden bat. They told him that his father had died. Five days after his arrest, Kumar was admitted to hospital with stomach pains. To his joy, Kumar discovered his father was still alive. A subsequent medical examination showed Kumar had injuries consistent with being assaulted with a blunt weapon while his hands had been tied below his knees.

Across South Asia, children are sexually humiliated and abused and, in many cases, raped by law enforcement officials who are supposed to protect them from harm. These violations are often not reported and documented because of the fear and shame for the children involved. Rape and sexual abuse have catastrophic effects on children in any situation, let alone for those in the most difficult and vulnerable circumstances. It is an experience from which they may never recover or be able to receive adequate compensation, rehabilitation and redress.

Among those still suffering are two children, Khal Kumari Khatri Chhetri, 14,

and Thirtha Khatri Chhetri, 17, and a young woman, Deosari Khatri Chhetri, 18. They were ordered by police in **Nepal** to strip naked and it is reported that they were subsequently raped. The incident happened in February 1996 after the police killed six people in an attack on a house in which alleged members of a Maoist opposition group were hiding at Leka, Rukum district.

Young women and girls taken into protective custody by the police in **Bangladesh** are among those most vulnerable to rape and sexual abuse. For example, 14-year-old Yasmin Akhter was raped and killed by three police officers as she was returning home in Dinajpur in August 1995. The policemen reportedly picked her up in their van on the pretext of giving her a lift home. They then raped her. She died as a result of her injuries. The police attempted to cover up the crime by claiming that Yasmin was a prostitute who had died jumping out of the van when it was moving. Following public protests and a judicial inquiry, the three police officers were charged with her rape and murder. In a rare example of police being held to account for human rights violations, the three policemen were tried and convicted in 1997.

Boys are vulnerable to sexual abuse as well. Mohammad Shawkat, a 13-year-old street child, was raped by two police constables on patrol in Dhaka in July 1993. They first sexually assaulted him near the place he had slept on a veranda, then again in Azimapur police post. He was released the following morning. After three days' treatment in hospital for injuries sustained during the sexual assault, he went missing without trace, possibly because he feared retaliation or was threatened by police. The two constables were suspended, but no

charges were known to have been brought against them.

Sexual assault and rape of boys and girls is also reportedly widespread in police stations and prisons throughout **Pakistan**. Children held pending trial with adult prisoners are particularly at risk. The Lahore High Court in 1996 referred to a survey that showed that of 200 child prisoners in Punjab, 63 had been sexually abused in jail. Prison staff in many instances fail to show appropriate care and diligence in protecting children from adult detainees and prisoners.

Such abuses are also reported in **India**. In one case, 17-year-old Vijaya, a tribal young woman from the South Arcot district of Tamil Nadu, was taken to a nearby police station at midnight on 29 July 1993 to be questioned about her cousin who was suspected of theft. Vijaya alleged that she was raped that night by five police constables before being taken home to her mother. Police initially refused to file a complaint and denied that the rape had occurred.

In some cases, children are held in custody without any charge or on a false charge to intimidate, harass or punish them and their relatives. Children are sometimes arrested to force their parents to hand themselves over to the authorities. Such illegal actions are particularly prevalent in areas of armed conflict.

In **Pakistan**, in early 1996, 17-year-old Deedar complained to police about the rape of his younger sister by a relative of a retired Deputy Superintendent of Police. Rather than register the complaint, police in Cantonment police station in Hyderabad, Sindh province, detained Deedar for three months without charge in the police station lockup and then brought false narcotics charges against him. On 24 August 1996 he was transferred to prison. When the Senior Superintendent of

Police was informed, a police inquiry was set up which showed that the narcotics charges were false. Deedar was eventually released on 30 August 1996. None of those responsible for his arbitrary arrest and detention was reportedly held to account. It is not known if his sister's rape was ever investigated.

*.b) every child alleged as or accused of having infringed the penal law has at least the following guarantees:*

*i. to be presumed innocent until proven guilty according to law;*

*ii. to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;*

*iii. to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law... taking into account his or her age or situation*

#### **Convention on the Rights of the Child Article 40 [b]**

In **Nepal**, 13-year-old Indra Prasad Devkota from Amale, Sindhuli district, was arrested on 19 April 1996 and taken to Sindhulimadi police station. Police reportedly told his mother that he would not be released unless her husband -- whom police suspected of involvement in attacks by Maoist activists in the area -- handed himself over. Local human rights organizations managed to obtain the boy's release after five days. When interviewed by Amnesty International, Indra Prasad Devkota said that he had been hit with a bamboo stick and kicked while being asked to reveal his father's whereabouts.

In **Bhutan**, several young children were reportedly taken into custody together with their mothers in October 1997 to force their fathers to hand themselves over to the authorities. The fathers were suspected of being members or sympathizers of the Druk National Congress, a political party set up in exile in Nepal in 1994. Among those detained were Nima Oezer, a two-year-old girl, and her mother Daza who were arrested to force Karje, the father and husband, to surrender to the authorities. Similarly, Tshering Chhoezom, the wife of Sangay Dorji, together with Sangay Lhadon, their three-year-old daughter, were taken into custody. Karje and Sanjay Dorji had reportedly escaped from a temporary detention camp at Gomdar, Samdrup Jonkhar district in the east of Bhutan.

Breaches of the law and failings in the juvenile justice system see children lost in the custodial system, sometimes for years on end, without judicial supervision or trial. As a result of abuses in process and the lack of facilities, they are often held in normal jails with adult prisoners where they are at risk of further abuse. Conditions in South Asia's jails are uniformly harsh, and distinction is rarely made between children and adults, convicted prisoners and those in protective custody. This situation contravenes one of the most fundamental principles of the CRC -- that the best interests of the child should always be paramount. Far from ensuring their development and reintegration into the community, the experience of the justice system often leaves children hardened and scarred for the future.

In **Pakistan**, for instance, juvenile justice procedures are routinely ignored. Justice Channa, director general of the Judicial

Similar problems occur in **Nepal**. According to Nepal's Children's Act of 1992,

Academy of Sindh, stated in December 1996 that less than four per cent of over 700 child detainees in Karachi's Juvenile Jail had been sentenced. The rest were awaiting trial. A survey in Punjab found that only 66 of 1,204 child detainees had been convicted. The rest had been awaiting or undergoing trial, sometimes for years, usually for minor offences. The Human Rights Commission of Pakistan estimated that there were between 3,600 and 4,000 child detainees in Pakistan during 1996, less than a sixth of whom were convicted. On average, only between 13 and 17 per cent of child detainees are eventually convicted. The rest are released without charge or trial.

Many children in **Bangladesh** end up in jail for indeterminate periods after being taken into so-called "safe-custody". This purports to provide safety for women and child victims of rape, sexual assault, trafficking and kidnapping. However, with few suitable facilities available, children who have fled their homes because of abuse often find themselves placed in "safe-custody" in jail. Hashi Khushi, aged eight, who worked as a maid, was held in Dhaka Central Jail for four months in 1997 after a court ordered that she be placed in "safe-custody". She had fled her employer's house after being abused. The court ordered that the police trace her guardians, but the police said they could not be found. It was left to an NGO, *Ain-o-Salish Kendra* (ASK), to find Hashi's guardians and file a petition for her release. Hashi was one of three girls (the others were aged 12) who were released from "safe-custody" from Dhaka Central Jail in October 1997 after the intervention of ASK.

children should be kept in a juvenile detention centre. But in August 1997, for

instance, 15 children aged between 12 and 14 were held alongside adults for about two weeks at Hanumandhoka police station and Kathmandu Central Prison. They had been living on the city's streets and had been arrested for "creating public nuisance" under the Public Offences Act while they were trying to earn some money by begging, ragpicking or carrying tourists' bags near Kathmandu airport. The Kathmandu District Court sentenced them to Rs 2,500 fine. As they could not pay, they were sent to prison for six months. Thanks to the intervention of local NGOs and a lot of publicity, they were handed over to the care of an NGO.

Even when children are passed into the care and custody of special state institutions they are at risk of torture, ill-treatment and abuse. Where they exist, special juvenile remand homes are often over-crowded and under-staffed, with children of all ages mixed together. There is little possibility for children to pursue studies or receive counselling for behavioural or other problems. Rather than receiving rehabilitation training, children are often made to work, sometimes in the houses of the personnel supervising them. While these institutions are designed as short-stay accommodation, the failure of judicial review systems can mean that children are held in these institutions for months longer than allowed in law.

In **India**, for instance, about 30 cases of deaths in official children's homes in various parts of the country were recorded by the NHRC during the first three and a half months of 1997. On 26 June 1995, 29 inmates reportedly escaped from the Juvenile Remand Home in Ujjain, Madhya Pradesh by bending the iron grill on the kitchen window. The inmates, aged between 13 and 17, alleged that torture and ill-treatment were taking place in the home, as well as a case of sexual abuse. The boys said they had been sent to the home after being picked up by police at railway stations, some because they refused to polish policemen's boots free of charge.

### **Unfair trials**

9 and 18 of the ICCPR, this includes the presumption of innocence until proven guilty, the right not to be compelled to testify against oneself or to confess to guilt, the right to examine witnesses or to have witnesses examined, the right to the free assistance of an interpreter if necessary, and the right to judicial review of conviction and sentence. Other rights have been formulated in the CRC

Once in a court of law, every child should be confident that justice will be served and that they will receive a fair trial according to international standards. As set out in Articles

in a way which takes account of a child's specific needs, such as that the child must be tried without delay and given a fair hearing in the presence of a legal counsel and must have appropriate assistance (which may include parents or legal guardians). Yet despite these guarantees, in some instances across South Asia children are being sentenced and imprisoned after unfair trials.

In **Pakistan**, 12-year-old Javeed, son of Mohammad Rafique, was arrested by police in May 1996 at his home in Hyderabad, Sindh province, after a fire-cracker was exploded by someone else standing near the boy during a strike. Police accused Javeed of being a terrorist who had used explosives. He was tried by the Special Court for the Suppression of Terrorist Activities, which on 17 July 1996 sentenced him to one year's imprisonment and a fine. He was sent to the central prison in Hyderabad, then to the district jail in Mirpurkhas. Following local appeals to the Home Secretary in Sindh, Javeed was released on parole on 16 September 1996, having spent four months in detention. Certain provisions of the Suppression of Terrorist Activities Act, 1975 violate international standards for fair trial. The legislation includes a provision which completely denies the accused the right to be presumed innocent until proven guilty and permits the accused to be convicted on the basis of vague, circumstantial evidence.

The CRC states that a minimum age of criminal responsibility should be established by law. The Beijing Rules hold that the age should "not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity". The commentary of the Beijing Rules argues that if the age is fixed too low, or not fixed at all, the notion of responsibility becomes meaningless.

*The child shall be registered immediately after birth...*

*AI Index: ASA 04/01/98*

### **Convention on the Rights of the Child, Article 7**

Many children in the region face trial when they are below the age of criminal responsibility because they have no proof of their age. In Bangladesh, Bhutan, India, Nepal and Pakistan no adequate system of birth registration exists, especially in rural areas. As a result, disputes often arise about the age of children and therefore whether they can be brought before a court of law.

In one such case in **Bhutan**, Dambar Singh Gurung, who says he was born in May 1977, was found guilty in September 1995 on eight different charges (the details of which are not fully known) and sentenced to 11 years and one month in prison. The alleged offences were reportedly committed in 1990 and 1991 when, according to Dambar Singh Gurung, he was only 13 or 14 years old. During the trial, the prosecutor maintained that Dambar Singh Gurung was 36 years old at the time of the alleged offences. Dambar was allegedly not allowed to produce any witnesses for his defence, or to fully answer the charges against him. To Amnesty International's knowledge, he has not received a response to his appeal for clemency sent to King Jigme Singye Wangchuck on 17 October 1995.

In **Nepal**, the law states: "If the child below the age of 10 years commits an act which is an offence under the law, he shall not be liable to any type of punishment." But nine year-old Gopal Sunar was charged in connection with an armed attack on Jamalal Pun of Morabang VDC (Village Development Committee) on 17 February 1996 in an area that has seen a Maoist insurgency. He was detained until a case was filed against him in Rukum District Court on 5 July 1996 and is currently out on bail.

*Amnesty International April 1998*

In **Pakistan**, the Penal Code used to confer an absolute presumption of innocence on children below the age of seven and made the criminal liability of children aged between seven and 12 dependent on the child's maturity. However, the Hudood laws of 1979, which relate to the offences of rape, adultery, use of alcohol and drugs, theft, robbery and slander, apply to all Pakistanis irrespective of age. Any child, therefore, however young, can be tried for these offences, although punishments are graded according to age.

### Corporal punishments

The CRC prohibits the torture or other cruel, inhuman or degrading treatment or punishment of children in Article 37. In its review of State Party reports, the Committee on the Rights of the Child has noted the "incompatibility of corporal punishment, as well as other forms of violence... with the provisions of the Convention... in particular Article... 37."<sup>vi</sup> In the course of reviewing particular reports, the Committee has also called on countries as a matter of priority to abolish corporal punishment, including such punishment as penal sanctions, for children.

Corporal punishments amounting to torture or to cruel, inhuman or degrading treatment can be imposed on children in several South Asian countries. In **Pakistan**, a wide range of corporal punishments were introduced when President Zia-ul Haq's martial law government amended sections of the Pakistan Penal Code (PPC) in line with Islamic injunctions. *Hadd* punishments include judicial amputation and public flogging, which can be applied to children who have reached puberty.<sup>vii</sup> In *hadd* cases, judges have no discretion. In the majority of cases which are not *hadd* cases, judges take the age of the defendant into consideration and pass more lenient sentences.

Nevertheless, it remains the case that lesser sentences for children are not a matter of right, but depend on the compassion of individual judges.

On 17 May 1997, a 14-year-old boy, Fahimullah, was publicly flogged in a tribal area, Bara Bazar, in the Khyber Agency. The area, close to the border with Afghanistan, has its own judicial and legal system, separate from that of the rest of Pakistan. Fahimullah was found guilty of engaging in sexual intercourse with Mohammad Zaman, a 38-year-old local mosque worker who had allegedly paid Fahimullah money. According to reports, a council of tribal elders passed the sentence of public flogging after obtaining confessions from them both. Mohammed Zaman was given 75 lashes and Fahimullah 32 lashes with a strap.

In Pakistan's case, the Committee has noted the incompatibility of certain areas of national legislation with the principles of the CRC, including the punishment of flogging and the death penalty. It has recommended the abolition of flogging and capital punishment for children under 18.

In **Sri Lanka**, under the Penal Code and the Children and Young Persons Ordinance 1939, courts can impose whipping as an additional punishment for certain offences for boys. During the Human Rights Committee session reviewing Sri Lanka's third periodic report in July 1995, a government delegate alleged that corporal punishment used against prisoners and detainees either as a punishment or as a disciplinary measure had been suspended for [then] 10 years. However, in that same year at least two cases of caning of minors imposed as a sentence by local magistrates courts were reported.

In some countries, such as Bangladesh and Pakistan, children appear to suffer the same cruel treatment as adult prisoners, including shackling. One case that came to light was that of Nazrul Islam who was arrested in **Bangladesh** in November 1980 at the age of 12. He was convicted of robbery and sentenced to seven years' imprisonment. In late 1992 it emerged that he was still in Satkhira jail, well after his sentence had expired, and that for most of the past 12 years he had been held in shackles. When his story was exposed, the High Court examined the case. It found that Nazrul Islam's entire 12-year detention had been illegal and ordered his release. During his long imprisonment, the leg irons were removed only when he was transferred to hospital for medical treatment. He was even brought to the High Court hearing in 1992 in chains. It is not known if he was awarded any compensation.

*... No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age...*

**Convention on the Rights of the Child,  
Article 37 [a]**

### The death penalty

The view that judicial executions violate the right to life is reflected in the ever-growing international consensus opposing the death penalty for all -- and for children in particular. Yet it is a view that is being ignored by the authorities in Bangladesh, India and Pakistan, none of which have abolished the death penalty for adults or all children.<sup>viii</sup>

Everywhere experience shows that executions brutalize those involved in the process. Nowhere has it been shown that the

death penalty is an effective deterrent against crime or political violence. In country after country, it is used disproportionately against the poor or other disadvantaged groups such as racial or ethnic minorities. It is imposed and inflicted arbitrarily. It is an irrevocable punishment, inevitably involving the risk of executing people innocent of any crime.

The prohibition in international law of the use of the death penalty against children stems from the recognition that they are not fully mature. Hence sentencing should take into account the need to facilitate a child's rehabilitation and harmonious reintegration into society.

In **Pakistan**, the death penalty can be legally imposed for a variety of offences, including blasphemy, armed robbery, theft, rape, fornication, alcohol consumption and certain offences against the state. The PPC does not set an age limit below which the death penalty cannot be imposed. The Hudood laws provide *hadd* or fixed punishments for certain offences, including stoning to death, which are applicable to children who have reached puberty and are therefore considered adult. Usually, children are spared the death penalty, although this is not always the case. Two people were executed in Hyderabad Central Jail in September 1997 following their conviction for murdering three watchmen during a robbery in 1988. One of the convicts, Shamum Maseeh, was only 14 years old at the time of the murder.

It is also believed that at least one child has been sentenced to death in **Bangladesh**. Mohammad Selim, who was sentenced to death by a martial law court and executed in 1986, was only 17 years old at the time of the alleged offence. The authorities claimed he was older.

In **India**, the Juvenile Justice Act defines a child as a boy under 16 and a girl under 18 years. This means that the death penalty is applicable to any young man aged 16 or over, in contravention of the ICCPR and the CRC,

of the offence. An appeal against the sentence is pending before the Supreme Court. Amnesty International is not aware of any recent instances in which the death penalty has been carried out against juveniles in India.

In all the cases highlighted above, state officials have had direct responsibility for protecting the children in their care and have clearly failed in their duty. In some cases, they have violated national as well as international laws; in others they have been allowed by national laws to carry out practices that are prohibited by international standards. Yet all the countries in which they operate have pledged to uphold the provisions of the CRC. It is time the governments took action to ensure that their laws and the practice of their officials match the commitments they have made to the international community -- and to the children in their countries.

both of which India has ratified.

In July 1997 the Human Rights Committee expressed concern at this discrepancy and recommended that the government abolish by law the imposition of the death penalty on minors.

In January 1998, A. Athirai was sentenced to death along with 25 others by a special court for her part in the assassination of former Prime Minister Rajiv Gandhi. A. Athirai was reportedly 17 years old at the time

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## Chapter II: Children in the community and family

In ratifying the CRC, the governments of South Asia committed themselves to protecting the fundamental human rights of children and promoting their full development in the civil, political, social, economic and cultural spheres.

The previous chapter looked at the state's responsibility for children in its custody and care. But the obligations of the state for children's rights do not end there. The CRC, by its very scope, also requires states to promote the development and protect the rights of children in the community and family context in which they live. The CRC imposes obligations on the state not only in the area of law, but in aspects of social policy and the provision of services. Once again, application of the CRC should be guided by the four basic principles -- non-discrimination, the best interests and views of the child, and the right to life, survival and development of the child.

The CRC reaffirms the rights of the child to an adequate living standard and adequate health care, social security and education. It establishes the right of the child to be free from the dangers of sale or trafficking, sexual abuse and exploitation, and the illicit use of drugs. It commits states to protecting children from economic

Delivering on this commitment is an enormous challenge for any government,

exploitation and work that may interfere with education or be harmful to their health and well being.

requiring a combination of legal, economic and social measures. The task is especially

daunting for many of the countries of South Asia, with large and diverse populations, limited resources and weak institutions. The CRC recognizes this, emphasizing the importance of international cooperation to protect children and promote their rights. The Committee on the Rights of the Child engages governments in a constructive dialogue on these matters of social policy; governments in turn are encouraged to seek international assistance from donors and UN agencies in dealing with these problems.

Some governments have taken worthwhile initiatives, ranging from legislation against bonded labour to human rights education programs, with varying degrees of implementation and success. But this cannot excuse the way state officials help to perpetuate a wide range of abuses against children in the community and family, either through active collusion and complicity or through tacit toleration and acquiescence.

The spectrum of abuses faced by children in the family and community across South Asia is too wide for the scope of this report, ranging from ill-treatment in institutions to violence in the family, from child trafficking to child bonded labour. This chapter explores just a few of these areas to show how state officials, far from protecting children, actually contribute to the cycle of abuse in varying degrees. It also shows how human rights defenders, standing up for the full range of children's rights, often find themselves under attack by state authorities and powerful vested interest groups.

Once again, the vulnerability of children to these abuses is heavily influenced by other aspects of their identity -- such as gender,

Investigations by the Human Rights Commission of Pakistan in 1994 showed that in some seminaries, children in groups of four or five were locked in iron chains to a heavy

ethnicity, caste or economic status – which are part of a wider context of discrimination, deprivation and disadvantage in South Asian societies. This serves as a powerful reminder of the indivisibility of human rights. The denial of one set of rights leads to the abuse of others. Children denied an education because they are girls or are poor and forced to work are condemned to a cycle of marginalization and powerlessness that involves further violations of their civil, political, economic, social and cultural rights.

### Abuses in private institutions

Many children in South Asia suffer abuses when they are put in the care of institutions that are supposed to look after their needs. Even when the abuses become widely known, the authorities appear unwilling to take decisive action to protect the children. The following is just one extreme example of the many institutional settings, from schools to orphanages, where children's rights are abused with apparent toleration by the state.

Many poor parents in **Pakistan** who cannot afford fees in government-run schools send their children to the country's 13,000 or so Islamic seminaries or *madrasas*, which provide free lodging and food. They are often run by religious organizations, parties or sects, and provide religious education. In some cases they also provide intensive political and armed training. As will be seen in the following chapter, many students of *madrasas* are believed to have joined the *Taleban* in Afghanistan or militant religious groups in Pakistan, often without the consent of their parents.

wooden block to prevent them escaping. Several children were found to have been continuously chained for up to one year. The chains were reportedly not even removed at

night. A police raid in March 1996 released 64 students from a *madrassa* near Multan. The children, aged between eight and 14, were held in ropes and chains. The head of the school later said that "parents leave their children with us and ask us to chain them because they have fallen into bad habits of watching satellite television..."

Muhammad Azam Dogar, a 14-year-old boy, was tragically killed in September 1997 when he tried to free himself of iron fetters. He had studied for some years in a religious school in Shujabad, Punjab province. After a family celebration his father reportedly returned him to the school where he was put in iron fetters so he could not flee. He managed to escape but found no way of removing the fetters. He finally decided to put them on a rail track and was crushed to death by an oncoming train.

Although the authorities are aware of the abuses children suffer in *madrassas*, no effort has been made to outlaw the beating, chaining or abduction of children in such schools. Leaders of religious parties resent official probing into the functioning of the *madrassas* and threaten retaliation if they are more closely controlled.

### **Bonded and exploitative child labour**

The problem of bonded and exploitative child labour in South Asia has received widespread attention over many years from governments, donor agencies, NGOs, the media and industry groups. At the time this report was being prepared, one leg of a Global March Against Child Labour was winding its way

As part of the campaign to eliminate child labour, the ILO is proposing the adoption of a new international Convention obliging member states to suppress immediately all extreme forms of exploitation of children, such as children labouring in particularly

through the countries of South Asia, home to nearly half the world's child labourers.

All over the region, children can be seen working in factories, mines, brick kilns and brothels. They often work in dangerous and unhealthy environments and are deprived of rights promised them in the CRC such as health, education, recreation – even childhood itself. They find themselves trapped in a cycle of poverty, growing up illiterate, unskilled and prone to crime.

There is an ongoing debate about the degree to which children should be allowed to contribute to their families economically. Some argue that prohibiting child labour completely would increase the economic deprivation of extremely poor families who often depend on money brought in by children for their basic needs. Others say that removing children from some industries will only force them onto the streets or into more dangerous and exploitative forms of work.

There are no easy answers to this. The important thing is to look at the rights of the child in a holistic way and in terms of the best interests of the child, as envisaged in the CRC. Child labour can often involve a violation of more than Article 32 of the CRC, which deals with protection from economic exploitation. It usually involves denial of other rights as well, such as to education, health and physical integrity. By denying children these aspects of their development, child labour is often a critical link in the cycle of deprivation and disadvantage that feeds other abuses.

hazardous, slave-like and bonded conditions, including commercial sex work. The Convention would complement existing international standards, including ILO Convention 138 on the minimum age for employment,<sup>ix</sup> by setting clear obligations and

priorities for national and international action on the most intolerable forms of child labour.

simply by being the children of bonded labourers who work in the family unit to pay off a family debt.

In the face of domestic and international pressure, governments throughout South Asia have condemned such practices and taken legislative steps against them. SAARC has adopted the year 2000 as a deadline to end child labour in hazardous or bonded conditions and 2010 for the eradication of all child labour. These initiatives have been launched against the backdrop of debate at the inter-governmental level, such as in the International Labour Organisation where new international standards on child labour are being developed.

Certain forms of child labour have been illegal in **India** for decades. Various legislative measures have been introduced against child labour, including the Child Labour Prohibition and Regulation Act 1986. In **Pakistan**, the Employment of Children's Act of 1991 prohibits child labour for certain age groups and types of work. The Bonded Labour Liberation Act, passed in 1992 but with its rules framed only in 1995, declares bonded labour illegal and states that every bonded labourer is to be released and freed from their obligations and debts. In **Nepal**, **Sri Lanka** and **Bangladesh**, various laws regulate the employment of children.

A large majority of child labourers are employed in rural communities, many as bonded labourers. Some are sold to a rural landlord to work against a debt incurred by the family. Many are born into bondage,

In many instances, these laws have been complemented by judicial action and other social and economic programs. NGOs and industry groups, such as sporting goods manufactures, have developed initiatives to improve conditions and facilities for child workers. In Sialkot, in the Punjab province of Pakistan, where an estimated 7000 children stitch three quarters of the world's leather footballs, a pilot project aims to gradually

phase out child labour from this sector. Supported by international financial assistance, children's working hours will be reduced and complemented with training to help them out of the poverty trap. At the same time credit schemes and training for their parents will help them to find work so they can provide for their children and allow them to go to school.

Despite the publicity this issue has received and the steps taken specifically to outlaw such practices, bonded and exploitative child labour continue – not just under the noses of state officials, but often with their collusion and acquiescence. As R. S. Chaurasia, General Secretary of the South Asian Coalition on Child Servitude, has said, the problem is not a lack of legislation but a lack of political will: “If we wanted to, we could get rid of this problem in a year.”

Bonded labourers, including children, are often under the control of powerful figures, such as landlords, who hold sway over local officials and police. In **Pakistan**, bonded labourers are sometimes held in private jails controlled by landlords, members of parliament, local police or administrative officials. Some of these private jails in rural areas of Sindh province are fortified structures with watchtowers erected at strategic points and armed guards keeping watch. Bonded labourers, who include children, work seven days a week, sometimes in chains.

Despite the fact that the existence of these jails is well known, both the police and lower judiciary fail to take action to end this unlawful practice. Local police regularly refuse to register or pursue complaints against such locally influential personalities.

Attempts made by liberated or escaped bonded labourers to file criminal complaints against their landlords have been met with police refusal to register a First Information Report (FIR). Even when a FIR has been filed, police have failed to arrest the accused and in the rare cases where arrests have been made, the accused were usually released on bail.

Children in bonded or exploitative employment are extremely vulnerable to

In 1995, in Umerkot district in Sindh

province, the Human Rights Commission of Pakistan exposed the existence of a rural jail in which 148 *haris*, members of the Bheel, Machi and Kohli tribes<sup>x</sup>, were being held in bondage. They ranged in age between a few months old to 85 years. At least seven of the women alleged that the landlord, his three sons and his farm managers, had repeatedly raped them and others, including girls of 10 and 11 years old. Although the police in this case helped to free the bonded labourers from jail, the landlord was not arrested or charged.

ill-treatment and abuse. Some are literally shackled to their machines to prevent their escape. Others are ruthlessly beaten or even

raped by their employees. In the relatively exceptional instances where they are able to turn to the police and other officials, those who should protect them often let them down.

Fourteen-year-old Baby Kumar was tortured and scarred for life by her employers in **India**. She was employed as a maid by a senior personnel officer of the Indian Petrochemical Company Ltd and his wife. In January 1991 she was taken from Adityapur in West Singhbhum to Nagothane in Maharashtra. Baby became pregnant and her employers began to abuse her. She was continuously raped, her meals and salary were stopped and she was beaten and kicked. She was cut with a razor blade and had chilli powder applied to the wounds. Her vagina was slashed and she was touched with a hot iron. Her lips and tongue were injured with a knife.

Baby Kumar's case was taken up by the National Human Rights Commission (NHRC) in February 1996 and reported to the Adityapur police. Even with the NHRC's intervention, the local police failed to register the complaint until there was higher-level intervention from the superintendent in West Singhbhum. The case was then transferred to another police station in Raigadh district. Compensation was slow in coming and the partial settlements have been spent entirely on medical bills.

### **Child trafficking and sexual slavery**

Every day, a miserable cargo of young girls and women is being trafficked across well-beaten paths within South Asia and further afield. Just two routes, from Nepal to India and from Bangladesh to Pakistan, involve an estimated 9,000 girls a year.

A significant number of trafficked children end up being detained by the

Organized groups kidnap children, often very young, and sell them into prostitution, domestic servitude, bonded labour or marriage. Smugglers take advantage of the economic vulnerability of young women from disadvantaged and marginalized groups, luring them with the promise of jobs or acquiring them from their impoverished families. The youth of the victims makes it difficult for them to escape or retrace their families. The number of very young girls being trafficked is believed to be increasing because of the preference for virgins and fear of Acquired Immune Deficiency Syndrome (AIDS).

State authorities, such as border officials and police, are often a key link in the process. In her February 1997 report to the UN Commission on Human Rights, the Special Rapporteur on violence against women expressed particular concern at the levels of state participation and complicity in the trafficking. She reported the case of a **Bangladeshi** woman who was trafficked to **Pakistan** (at the age of 27) who said, "the border officials kept the girls who were pretty and sexually abused them until the other lots of girls came, then the previous ones were released."<sup>xi</sup> Police officers and border security personnel also demanded bribes to facilitate border crossings. The Special Rapporteur concluded, "migrant women prostitutes are particularly vulnerable to violence by state agents, such as the police and immigration officials, due to their often undocumented status, language deficiencies and lack of legal literacy." There is no reason to believe that the treatment of trafficked children, even more vulnerable in the hands of smugglers and officials, should be any different.

authorities on grounds such as prostitution. Many remain in detention for indeterminate

periods as they have no money for bail or to make the return journey. In September 1997, for instance, 16 **Bangladeshi** children aged between three and 10, who were allegedly being trafficked into **India** en route to the United Arab Emirates, were arrested under the Foreigners Act as they did not have valid travel documents. Some of them were believed to be returned to Bangladesh after the intervention of a local non-governmental organization, the Bangladesh National Women Lawyers Association, in February 1998. However, it is estimated that about 200 Bangladeshi children and women are awaiting repatriation from India.

Hamida, an 11-year-old girl from **Bangladesh**, was raped by several men including police after she had reportedly been trafficked to Delhi, **India** in 1993. The problems she faced after she filed a complaint illustrate the vulnerability of the child victims of such abuse. Police failed to provide the girl with counselling or even an interpreter. She was kept in a home in Delhi while the first stage of the trial proceeded (which is continuing), and was only allowed to return to Bangladesh in November 1996.

### **Harmful traditional practices affecting girls**

Many girls in South Asia face abuses arising out of traditional practices that are based on discrimination and the low status of women and girls in society. The traditional practice of *Devadasi* in **India**, for example, not only perpetuates systems which include trafficking and slavery of women and girls, but also involves the ritualistic marriage of girls to gods. The girls are often later sold into forced

Common to all these abuses is that they are rooted in systemic discrimination against women and girls and reflect the value society places on them. Economic and political subordination perpetuate their inferior status

prostitution. In July 1997 the UN Human Rights Committee hearing India's third periodic report under the ICCPR expressed grave concern about the continuation of *Devadasi*, noting the lack of legislation to outlaw the practice. In the *Deukis* system in **Nepal**, rich families without daughters buy young girls from poor communities and offer them to a temple as their own. The girls are not allowed to marry and often end up as "kept wives" or prostitutes. The UN reported that 17,000 girls were endowed as *Deukis* in 1992.

These abuses occur in a broader social context in which traditions of child marriage and dowry weigh against the girl child. In many communities of South Asia, girls are given away for marriage at a very young age, their age and sexual inexperience increasing their "bride-price". Child marriage robs girls of their childhood. It can inflict emotional stress and mental and physical health problems. It also leaves the girl child vulnerable to physical abuse at the hands of her husband and family.

The predicament of girls in this area is often exacerbated by the issue of dowry. The dowry price of a woman is determined between families as part of the marriage contract. In some South Asian communities, the low status of girls means that dowry payments are made by the parents of the bride to her husband's family at the time of marriage. Disputes over dowry payments often lead to domestic violence and other crimes, such as rape, defacement, starvation, and even murder (often by burning).

-- as long as girls have unequal access to education, health, wealth and employment, these abuses will persist. National governments and intergovernmental bodies have been particularly wary of addressing as

human rights abuses harmful traditional practices carried out in the community, despite their grave implications for the basic rights of the child. As pointed out by the Special Rapporteur on violence against women, “blind adherence to these practices and state inaction with regard to these customs and traditions have made possible large-scale violence against women”.

The 1993 UN World Conference on Human Rights and the 1995 Fourth UN World Conference on Women mark two important milestones in securing an international commitment to ending these practices. They affirmed that the rights of the girl child are an inalienable, integral and indivisible part of universal human rights. A seminar in Colombo, Sri Lanka, organized in 1994 by the UN Working Group on Traditional Practices Affecting the Health of Women and Children, led to the adoption of a Plan of Action for the elimination of these practices. The plan sets out a broad range of protective and preventive measures to be taken at a national and international level.

The Committee on the Rights of the Child, in a number of recommendations under Article 2 of the CRC (“non-discrimination”), has called upon states to recognize the principle of equality before the law and forbid gender discrimination, including through the adoption of legislation prohibiting practices such as forced and early marriage of girl children. Some countries in South Asia have taken legislative initiatives in this area. But, as in so many other areas, state authorities fail

One such case in **Pakistan** which received much international attention was that of child labour activist, Iqbal Masih, believed to have been between 12 and 14 years old when he died. He had been sold into bondage at the age of four, for a loan of Rs 600 (\$12) from a carpet factory owner. To repay this loan, Iqbal worked for more than 12 hours

to implement the law or afford children the protection to which they are entitled. In some instances, they even collude in such practices by failing to register cases or act on complaints.

### Defenders of children

Throughout South Asia, many individuals and NGOs are working to promote and protect the full range of children’s rights. Sometimes these activists are children themselves. They play a critical role in highlighting abuses, seeking redress and carrying out practical programs for children’s civil, political, economic, social and cultural advancement. Whether they are active in the field of education, law, health or housing, campaigning against child marriage and dowry deaths or for clean water and immunization, they are defenders of children and of children’s human rights. Just as human rights are indivisible and interdependent, so too is the work of all parts of the human rights movement.

Often the work of these activists brings them into conflict with governments, armed opposition groups and other powerful interest groups. In many different contexts, they find themselves under attack -- intimidated, harassed and even killed for their human rights work. Sometimes human rights defenders have been victimized by the state itself; in other instances, state authorities have failed to protect or defend them from attack by other groups.

every day, often chained to the loom and beaten. Despite years of work, the debt increased. When Iqbal was 10 and the debt had reached Rs 13,000 he sought the help of a local organization, the Bonded Labour Liberation Front, which secured his freedom. He then dedicated his life to freeing other children like himself. Iqbal Masih was shot

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dead in April 1995 in circumstances never clarified; his murderers have yet to be held to account for their crime.

In Rajasthan, **India**, village development worker Bhanwari Devi was raped by five men of a higher caste on 22 September 1992. She was targeted because of her activities which included opposing child marriage. She was initially refused a medical examination by the Primary Health Centre because a female physician was not on duty. When she was sent to a government hospital in Jaipur, a physician refused to examine her without a magistrate's order. The magistrate refused to grant an order because it was "outside office hours". The next morning she was given an authorization for a general medical examination (not a rape examination). She was finally examined at 9 pm on 24 September, 52 hours after the rape and after much evidence had been lost. Although the case against her rapists has been pending in the Rajasthan High Court for over two years without a hearing, legal action in the Supreme Court has led to directives concerning the sexual harassment of women in the workplace. Since her rape, a coalition of women's and human rights NGOs has been campaigning against "blackmail *kaand*" (rape) in villages throughout the state during which girls have been exploited and targeted for attack.

The protection of children in the community and in the privacy of family life poses enormous challenges for governments in South Asia. What is certain is that no progress will be made if state officials ignore, tolerate or collude in the wide range of abuses suffered by children in the "private" sphere, or if the governments continue to fail to live up to their obligations under the CRC to actively promote the full development of children's civil, political, social, economic and cultural rights.

### Chapter III: Children in armed conflict

*"Two soldiers... threw me in a tub which had no water in it. I got up and ran to my mother at the gate. I held my mum and asked her not to allow them to take me. They snatched me away again. I was put against the wall and one of the soldiers kicked me with his knee in my stomach. I screamed. Then they took me behind their compound. There was a coconut tree. They tied my legs with rope and pulled me upside down. While hanging, I was beaten with netted [twisted] wire about six times. Then they let me down and tied my hands. I was beaten with sticks from the tulip tree."*

This shocking testimony was given to Amnesty International by an 11-year-old Tamil boy Rajah (pseudonym) in August 1997 about one month after he was tortured at a small army camp near his home in the Jaffna peninsula, **Sri Lanka**. The soldiers suspected his family of providing food to members of the Liberation Tigers of Tamil Eelam, an armed opposition group. He still had marks of beatings on his buttocks. The soldiers eventually let him go, warning him not to tell anybody about his treatment. His mother did not dare to get medical care for his wounds.

Several armed conflicts in South Asia and many local upheavals have devastated the lives of millions of children. In **Afghanistan** the carnage has been continuing for 19 years, first as a result of an invasion by the former Soviet Union and later due to an internal struggle for control between regional warring factions. In **Sri Lanka**, conflict between

There is an alarming trend in which children in South Asia are increasingly targeted for abuses, rather than accidental victims of carnage. They are killed and

government forces, the Liberation Tigers of Tamil Eelam (LTTE) and other armed opposition groups has racked the country for approximately 15 years. Conflicts between government forces and opposition groups have continued for decades in several parts of **India**, including Jammu and Kashmir and the northeastern states. In parts of **Pakistan** too there have been ethnic, communal and sectarian conflicts.

The CRC, along with other international human rights instruments, reaffirms the special obligation on the part of states to respect the rights of children in conflict. But all the parties to these conflicts – government and opposition alike -- are bound by the principles of international humanitarian law that provide safeguards for the life and security of civilians by limiting the methods and means of warfare.<sup>xii</sup>

1. *States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.*

#### Convention on the Rights of the Child Article 38

Yet these principles are widely ignored. As Graca Machel found in her landmark UN study on the impact of conflict on children, "War violates every right of a child -- the right to life, the right to be with family and community, the right to health, the right to development of personality and the right to be nurtured and protected."<sup>xiii</sup>

tortured because of where they live, or because of the politics, religion or ethnic origin of their family. They are singled out for sexual abuse. Untold thousands of children

have been disabled, orphaned or separated from their parents in the conflicts. Thousands have been left homeless or forced to flee with or without their families in search of safety.

Countless other children are at risk of dying as an indirect result of armed conflict. Disruption to food supplies, health services, water systems and sanitation are just some of the causes of premature and unnecessary deaths, particularly for those under five years of age. Many who have been forced to flee their homes in fear for their lives end up internally displaced or in refugee camps. Instead of finding the safety and support they need and deserve, refugee and displaced children often face danger, starvation and death in the camps.

Children's education is often disrupted in conflict as schools are closed or destroyed and teachers forced to flee. In **Afghanistan**, the *Taliban* not only banned girls from going to school in areas they controlled, but also closed schools for boys in most areas, including in Kabul when they took over the city in September 1996.

Children are also deeply affected by the trauma of witnessing brutal deaths and being surrounded by violence, fear and hardship. Some have even become perpetrators of violence. Facing such conditions during a formative stage leaves permanent scars on the personality of a child that last a lifetime. In October 1997 the UN Children's Fund, UNICEF, revealed the findings of a first study of its kind in Afghanistan on the effects of the conflict on children. It showed that the majority of children in Kabul were suffering serious traumatic stress. Some 72 per cent of children had experienced the death of a relative between 1992 and 1996. Almost all

Even before the *Taliban*'s arrival in Kabul, much of the educational system had collapsed. Schools had been destroyed and their contents looted since April 1992, when President Najibullah was ousted and Mujahideen groups took control of the city. Teachers fled abroad to escape the fighting and those who stayed were not paid. The devastating effects of such policies on the educational well-being of children will take years to remedy.

of the children interviewed had witnessed acts of violence. Two-thirds of them had seen dead bodies or parts of bodies, and nearly half had seen people killed during rocket and artillery attacks. A disturbing 90 per cent believed they would die during the conflict.

UNICEF said the trauma experienced by Kabul children was chronic and the psychological impact would be long-lasting. Most were suffering from nightmares, anxiety and concentration problems, which also affected their appetite and their ability to play. Almost all of the children interviewed felt

sometimes or often that life was not worth living.

In **Pakistan**, too, thousands of disturbed children bear witness to the conflicts they have lived through. Following a year of political strife in Karachi in 1995, during which around 2,500 people were killed, children formed armed gangs and terrorized whole neighbourhoods of Karachi and extorted money from frightened residents. Many of the gangs, mostly boys aged between 10 and 12, were reportedly led by teenage "militants" who had joined armed opposition groups after seeing their fathers or elder brothers abducted or killed. After months of being made to stay indoors by nervous parents, deprived of school, play and a carefree childhood, "these children are showing symptoms of anti-social personality disorders," a local psychiatrist said. "It is the result of feeling hopeless and helpless," he added.

Children in Jammu and Kashmir, **India**, have also shown signs of psychological

damage caused by armed conflict. Children who have witnessed human rights abuses, have had their education disrupted and lives distorted by a climate of violence are ill-equipped for normal life.

A recent study on the situation of children in Jammu and Kashmir carried out by Muzamil Jaleel, a former journalist, concluded: "Kashmir children are socialized to violence and if this socialization towards violence continues unabated, there will be a revival of large-scale militancy after a decade... For the Kashmiri child, A stands for arms, B stands for bullet, C stands for curfew".<sup>xiv</sup> In one reported incident, 10-year-old Mushtaq took a bayonet to Burnhall school in Srinagar to show off to friends. He was outdone by another 10-year-old boy who had brought a grenade and pistol in his lunch box. The school's vice principal said that children frequently brought guns to school.

*States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*

**Convention on the Rights of the Child,  
Article 22**

**Killings**

1. *States Parties recognise that every child has the inherent right to life...*

**Convention on the Rights of the Child,  
Article 6**

The right to life is also enshrined in the **UDHR** and the **ICCPR**. It is also reinforced in the principles of international humanitarian law.

4. *In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.*

**Convention on the Rights of the Child  
Article 38**

In conflict situations, children are often the innocent victims of deliberate attacks on the civilian population, which are increasingly used as a tactic of war. They are also killed in indiscriminate or disproportionate attacks by government forces and armed opposition groups. Armed forces on both sides fail to take sufficient care when identifying targets and distinguishing between civilians and combatants.

Children are sometimes killed deliberately by security forces and armed opposition groups, often in retribution or to provoke outrage in each other's communities. In the Chittagong Hill Tracts in **Bangladesh**, over 100 tribal people were reportedly killed

Children are often targeted simply because of the political, religious or ethnic origin of their family. For example, children belonging to the Sinhalese and Muslim communities in **Sri Lanka** have been deliberately killed by the LTTE. In May 1995, six children were among 42 civilians

in Logang on 10 April 1992, apparently in reprisal for the killing of a Bengali boy by Shanti Bahini fighters. Paramilitary security

forces reportedly set fire to the village and shot dead those attempting to escape. Survivors of the killings, including a 17-year-old witness, reported that they had seen mothers feeding their children being shot dead and children being thrown alive into the flames

killed at Kallarawa, north of Trincomalee, during an attack by members of the LTTE. Others lost both or one of their parents. In addition, children have been among civilians killed during attacks attributed to the LTTE in Colombo and other parts of the predominantly Sinhalese south.

Amirthalingam Surenthran, a 13-year-old student and his 17-year-old brother, Amirthalingam Jagendram, were among eight civilians deliberately shot at close range by police and home guards at Tampalakamam, **Sri Lanka** on 1 February 1998. They had attended a house-warming party the previous evening in a house near the police post at Pokkuruni, a hamlet of Tampalakamam, Trincomalee district and had decided to stay the night. At about 6.30am, around 20 police and home guards who appeared drunk dragged them out of the house and reportedly took them inside the police

In the context of armed conflict, many children have died in custody. On 16 February 1996 a 15-year-old student, Kanjugam Ojit Singh, was arrested by

post and shot them. Although at the time of writing the motive for the killings had not been established, villagers suspected that they may have been in reprisal for the killing of 13 civilians during a bomb attack on the Temple of the Tooth in Kandy (see below).

In **Afghanistan**, around 70 civilians, including children – all reportedly members of the Hazara minority -- were deliberately and arbitrarily killed by armed guards of a warring faction in Qezelabad village near Mazar-e Sharif. Survivors said the massacre was carried out by *Taleban* guards retreating from positions they had captured in the area. *Taleban* officials denied this. Among the victims was a boy of about eight who was reportedly killed and decapitated. Other reports stated that victims had their eyes gouged out with bayonets. Two boys of about 12 were reportedly held by the guards and had their arms and hands broken with stones.

Children are also the victims of indiscriminate attacks. In **Sri Lanka**, three members of the LTTE drove a truck loaded with explosives through roadblocks and detonated it in front of the Temple of the Tooth at Kandy just after 6am on 25 January 1998. The 13 civilians killed were reportedly all pilgrims. Among them were five members of a family from Embilipitiya, Ratnapura district, including two children, one aged two, the other seven.

members of the 57 Mountain Division of the armed forces in the **Indian** state of Manipur on suspicion of having links with an armed opposition group. He was handed over to

police on 19 February. Police kept him in detention and denied access to his relatives who attempted to visit him. Late in the evening of 19 February Kanjugam Ojit Singh was taken to hospital where he died the next day. An inquest found several injuries on his body and concluded that death was caused by "contusion and oedema of lungs associated with multiple bruises resulting from blunt force injuries on the body -- homicidal in nature". The central government has challenged this inquiry, but offered no explanation or investigation into his death.

### 'Disappearances'

In situations of armed conflict, juveniles are sometimes picked up without any charge, merely on the assumption that they participate in, or sympathize with, armed opposition groups. It is frightening for anyone to be held in unacknowledged detention, to be cut off from the outside world, from the support of family members and the advice of a lawyer, at the mercy of the detaining authorities. It is even more so for vulnerable children and juveniles.

Particularly in **Sri Lanka**, the phenomenon of "disappearances", including of children, has been a long-standing concern. In the late 1980s, dozens of children were among tens of thousands of people who "disappeared" or were killed during counter-insurgency operations in the south of the country against members of the *Janatha*

"Disappearances" have continued to be reported, particularly from Jaffna district, where an estimated 600 people are unaccounted for after they were seen being taken into custody by army personnel in mid-1996. Among them are at least five students. During 1997, four students were among 37 people who were reported to have "disappeared" in Jaffna district. They included Jeganathan Janagan, a 17-year-old

*Vimukthi Peramuna* (JVP, People's Liberation Front) who attempted to overthrow the government. Among them were 17 students aged between 16 and 18 attending local high schools in the Embilipitiya area. Thanks to an unwavering campaign by their parents together with local and international organizations, those responsible were finally charged in 1994 with abduction with intent to murder and wrongful confinement. Their trial started in January 1997 and was continuing at the time of writing.

In 1990, soon after fighting between the LTTE and government forces resumed, young children were among large groups of villagers seen being taken away by army personnel in the east of the country. They were never seen again. No less than 68 children were among over 160 villagers from the Saturukondan area in Batticaloa who were taken away by soldiers attached to the Boys Town army camp on 9 September 1990. Their cases have been investigated by a presidential commission of inquiry set up in late 1994. The commission's report includes testimony of several people who said they "heard gunshots... children crying out in agony and women crying in pain." Among those giving testimony was a man who had lost 10 members of his family, including his three children, Sulosena, aged seven, Thulasi, aged three, and 18-month-old Subashini.

student from Jaffna Central College, who was taken from his home at Nallur, Jaffna at around 2am on 14 July 1996 by soldiers suspected of being attached to the Kailasa Pillayar Kovil army camp. Two days after the arrest, army personnel under the direction of the officer in charge of Nallur army camp searched Jeganathan Janagan's home and told his mother that he would be released once

inquiries were over. As of late 1997, his fate or whereabouts remained unknown.

Several juveniles have “disappeared” in custody in Jammu and Kashmir, **India**, following a pattern of widespread “disappearances” over many years both there and in other conflicts. Fourteen-year-old Nazir Ahmad Gojar was grazing cattle in Gojar Pathi Malagam, Bandipora, district Baramula, when army personnel picked him up along with two others during a search operation. Their arrest on 26 January 1992 was witnessed by neighbours. One of the co-arrested young men who was released after five months in detention later stated that they were beaten in a forest, taken to a nearby army camp and later transferred to another camp. Nazir Ahmad Gojar was not seen again after the three young men were separated on around 29 January 1992.

After the parents had pleaded in vain with all the army authorities they could reach to disclose their son’s whereabouts, Nazir’s mother Zaitoon Begum filed a *habeas corpus* petition in the Jammu and Kashmir High Court. A judicial inquiry initiated by the High Court concluded in its report of May 1996 that “... failure of the army of not disclosing the whereabouts of missing individual Nazir Gojar so far suggests with force that it is a clear case of custodial disappearance of the missing individual ... about whom the presumption of death during custody can be drawn”. To date, the government has not given sanction – a legal requirement -- to prosecute the army officers allegedly responsible for the “disappearance” of the boy.

### Recruited as fighters

International humanitarian law also prohibits the recruitment of children

Fifteen-year-old Raja (pseudonym) went to the Teaching Hospital in Jaffna, Sri Lanka, complaining of insomnia, aggressive outbursts and irrational abnormal behaviour in late 1994. He had joined the LTTE at the age of 11 and underwent extensive training. He told doctors that after one attack where he lost many friends he was shown videos of dead women and children and told that his enemies had done this. Soon afterwards he was involved in attacks on several Muslim villages near Batticaloa. When recounting one attack, he described how he had held a child by the legs and bashed its head against a wall and how he enjoyed hearing the mother’s screaming. He said they deserved to die.

*... 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.*

*3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.*

### Convention on the Rights of the Child, Article 38

under 15 into the armed forces of governments **and** armed political groups  
**(Additional Protocol II to the Geneva**

**Conventions** applicable in certain types of internal armed conflict). In line with the general age of majority set in the CRC, and in view of the grave violations of physical and mental integrity involved when children participate in hostilities, Amnesty International and others are calling for the age to be raised to 18.

Increasingly, children are singled out for recruitment by both armed forces and armed opposition groups, and exploited as combatants. They are indoctrinated with ethnic, nationalistic or religious hatred, and then thrown into the firing line to fight adult wars.

The involvement of children in armed forces has devastating effects on their physical and mental integrity. There are frequently higher casualty rates among children because of their inexperience, fearlessness and lack of training. Their size and agility means they may be sent on particularly hazardous assignments. Invariably the use of children as soldiers violates rights enshrined in the CRC, for instance by depriving them of an education.

Several of the warring factions involved in the region's armed conflicts exploit the vulnerability of children and recruit them as soldiers. Some fight alongside adults, others are recruited into separate units. It appears that those in command believe that child soldiers are less likely to question orders from adults and are more likely to be fearless, as they do not appreciate the dangers they face.

In July 1997 the father of 13-year-old Maroof Ahmad Awan filed a petition in the Sindh High Court in Karachi, **Pakistan**, accusing the principal of the local *Jamia Islamia* of sending his son to fight in Afghanistan without consulting the parents. "I handed him over to the school to learn the Qur'an, not to handle guns. He is too young to fight in a war", the father said. Maroof had

Many children "volunteer" because they or their families are destitute, or because they have lost their families and are homeless. Others are forcibly recruited, either directly or, in the case of Afghanistan and Pakistan, through religious schools known as *madrasas*, often without the consent of their parents. Once recruited, children are frequently exposed to brutal initiation ceremonies. They are made to endure horrific scenes in order to harden them to the violence they are expected to face or inflict on others, and in order to subordinate them to authority. In some cases, they are forced to commit atrocities against people known to them.

joined the school in early May and was missing for several weeks until the school authorities admitted that he had left, supposedly of his own volition, to fight in **Afghanistan**. Farooq Ahmed Awan, fearing for the safety of his family, went into hiding after submitting his petition. A month later his son returned, saying, "I was persuaded to go to Afghanistan by the *nazim* of the

school". Some 600 other juveniles were reportedly taken in buses to Afghanistan on the same day. The father withdrew his petition after the Pakistan police registered a criminal case, although no investigation was made and no one was arrested.

An unaccompanied teenager currently seeking asylum in the United Kingdom told Amnesty International how members of the LTTE in **Sri Lanka** repeatedly tried to recruit him and his sister. They first came in 1993 when he was 14 and living with his family at a camp for internally displaced people at Urumpirai, Jaffna. The LTTE member who entered the family's hut was in civilian clothes, but others waiting outside were in uniform and armed. When he and his sister refused, they allegedly said: "Think about it. If you don't join, we will come and take you." Later, after he and his family were further displaced to Chavakachcheri, the LTTE came again with the same request. His parents then sent him and his sister to Kilinochchi to stay with relatives, and then later to Colombo. When he and his uncle tried to cross into government-held territory at Vavuniya around May 1996, they were arrested by members of the People's Liberation Organization of Tamil Eelam (PLOTE), a group fighting alongside the army. The juvenile, who was by this time 17 years old, was taken to a room and beaten with sticks and kicked with boots. His uncle

There are reportedly around 75 *Bala Sanghams* in Andhra Pradesh with over 800

was released with the message to come back and hand over Rs 10,000 (US\$ 160) for his release. After three days, the money was paid and the youth was freed. Amnesty International knows of children as young as 12 who have been recruited against their will by the LTTE. It also knows of others as young as nine who have been seen carrying arms.

PLOTE and other Tamil armed groups fighting alongside the security forces against the LTTE have also been accused of recruiting juveniles. There have also been reports that senior schoolboys are forced to perform civil defence duties normally performed by Home Guards in the Dimbulagala and Welikanda area of Pollonaruwa district, **Sri Lanka**. Officers of the Welikanda police station have set up a scheme whereby each family has to send an adult male to do Home Guard duty. If for whatever reason they cannot do so, they have to contribute Rs 125 per day to allow someone else to be engaged or they must send a child.

As these are very poor families, the older children are performing these duties in addition to attending school. In the state of Andhra Pradesh, **India**, members of left-wing armed groups who call for radical land reform, known as Naxalites, have reportedly begun recruiting boys aged between eight and 15. The boys usually come from scheduled castes or tribes, or socially or economically disadvantaged classes. Boys are recruited to the *Bala Sangham*, a militant children's organization based in district towns such as North Telengana.

children in their ranks. The People's War Group (PWG) founded the *Bala Sanghams*

believing that they could train children more effectively than women to resist police interrogation. Tribal girls are reportedly used as couriers in areas of Adilabad and Dandakarnya. Organizations such as the PWG also reportedly use children to provide food and to deliver ransom notes without arousing police suspicion.

*States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of .. armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.*

#### **Convention on the Rights of the Child, Article 39**

Amnesty International has become part of a global campaign for an optional protocol to the CRC on the involvement of children in armed conflicts, to stop the recruitment and participation in hostilities of anyone under 18 into both government and opposition armed forces. It also urges that all peace agreements should specifically address the need to demobilize and reintegrate child soldiers back into society, in line with Article 39 of the CRC.<sup>xv</sup>

#### **Convention on the Rights of the Child Article 34 [c]**

Many young girls have suffered sexual harassment or rape by security forces in Jammu and Kashmir, **India**. In the night of 22 to 23 April 1997, during a raid of Wavoosa village near Srinagar, at least four security personnel raped 14-year-old Gulshan, her 15-year-old sister Kulsuma and her 16-year-old sister Rifat. In a neighbouring house they raped 17-year-old Naza and at least three adult women. Army and civilian authorities made inquiries into the incident

#### **Sexual violence**

Armed conflicts provide fertile ground for commanders of armed groups to exploit children as the spoils of war and as sources of income. Children are taken away from their families by force and "married" to local commanders. They are frequently exposed to physical violence and rape.

In March 1994 a 15-year-old girl was repeatedly raped in her house in Kabul, **Afghanistan**, after armed guards entered the house and killed her father for allowing her to go to school.

*"They shot my father right in front of me. He was a shop-keeper. It was nine o'clock at night. They came to our house and told him they had orders to kill him because he allowed me to go to school. The Mujahideen had already stopped me from going to school, but that was not enough. They then came and killed my father. I cannot describe what they did to me after killing my father..."*

*States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.*

but no steps appear to have been taken to bring those responsible to justice<sup>xvi</sup>.

For some army commanders, sexual abuse of children is a source of income. Many children are forcibly removed from their parents and sold into prostitution rings. Afghan refugee families in **Pakistan** say there are several criminal rings operating from the North West Frontier Province supplying Afghan children to paedophiles in South Asia and the Gulf region.

Such actions are strictly prohibited under humanitarian law including Common Article 3 of the Geneva Conventions which outlaws "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, and any form of indecent assault."

### **Landmines**

When Picham Ali, a 15-year-old shepherd from Bagram, in Parwan Province, Afghanistan, stepped on a mine in mid-1994, he joined thousands of other children who had suffered a similar fate. His father claimed that the mines had been placed in agricultural land by the then government forces to intimidate local farmers into supplying food for the soldiers based nearby. Picham lost his right leg and right eye in the blast.

In **Afghanistan**, landmines continue to kill and maim children like Picham Ali as well as adults. According to the Mine Clearance Planning Agency, more than 30 per cent of mine victims are children under 12 years of age. Every day around seven children fall victim to this deadly hazard. Most of them die as their small bodies cannot stand mine explosions. Many of those who survive the explosion die because of lack of medical facilities. Others are left blind, deaf or without limbs.

Statistics published by various campaigns to ban landmines indicate that throughout the world, 2,000 people -- almost all civilians -- are killed or wounded by mines each month. Many companies and countries have profited from the sale of these deadly weapons. Mines are cheap to manufacture, costing only three dollars each, but a thousand dollars to remove. As most affected countries are among the world's poorest, this generates an additional challenge. It is estimated that more than 110 million mines have been laid in at least 68 countries, several of them in South Asia. Afghanistan and Sri Lanka are considered among the worst affected nations in the world, with Kabul alone having more than a million.

Landmines or, specifically, anti-personnel mines, are indiscriminate weapons both because of their inherent characteristics and because of the way they tend to be used. They are planted in large numbers, often by different parties, in shifting combat zones, sometimes deliberately aimed at civilians, but almost always with little regard for civilians. No records are kept of where they have been laid, and they remain active long after a conflict has

ended, thus inhibiting reconstruction and development. In Jaffna, the northern peninsula of **Sri Lanka**, several children have been among approximately 30 people killed or injured when they stepped on uncleared mines after they returned to their homes in mid-1996.

The recent UN Study on the impact of armed conflict on children<sup>xvii</sup> found that landmines pose a particular threat to children. The natural curiosity of young children, combined with lack of awareness, make them likely to pick up unknown objects including landmines.

Mines may also be more difficult to spot for a small child. Mines have been laid in agricultural fields, on roads, in irrigation canals and in residential areas. This often presents a disproportionate danger to children who are often the ones to carry out tasks such as herding and searching for firewood.

To rid the world of these weapons, Amnesty International has joined with hundreds of NGOs in the International Campaign to Ban Landmines, a campaign supported by the International Committee of the Red Cross (ICRC) and the UN. These efforts culminated in the December 1997 Ottawa Agreement (Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction), in which 121 nations pledged to

ban the production, sale, export or use of anti-personnel landmines. Regrettably, India, Pakistan and Sri Lanka have as yet failed to sign the agreement.

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## AMNESTY INTERNATIONAL'S RECOMMENDATIONS

Up to a quarter of the world's children live in South Asia where governments and armed opposition groups abuse and ignore their human rights on a wide scale. Amnesty International urges all governments and armed opposition groups in South Asia to take the following measures to protect children and promote their development in line with the Convention on the Rights of the Child and other international instruments. It calls on the international community as a whole to support these efforts, through political persuasion, aid and other forms of assistance.

### I. TO GOVERNMENTS IN SOUTH ASIA

#### 1. Protecting children at risk

Below are concrete steps that governments can and should take immediately to protect children at risk of human rights abuses in custody, in the community and in situations of armed conflict.

##### 1.1 *Protection of children in custody*

The treatment of children in custody should at all times conform to the provisions of the Convention on the Rights of the Child and other international standards including *the UN Rules for the Protection of Juveniles deprived of their liberty* and the *UN Standard Minimum Rules for the Administration of Juvenile Justice*. In particular, governments should:

- Ensure that children who are detained are made aware of their rights, including their right to legal counsel and their right to lodge a complaint if their rights are violated, and to have such complaints investigated.
- Ensure that any detained child is brought before a judicial authority without delay after being taken into custody and is given immediate access to relatives, legal counsel and medical assistance. Relatives or guardians should be notified immediately of the child's whereabouts.
- Ensure that detained children are held separately from adults unless it is in their best interests not to do so.
- Take particular measures to protect girls in custody against rape and sexual abuse.
- Provide for the development of independent mechanisms to ensure periodic visits to and an effective monitoring of institutions for children, including in relation to complaints that might have been lodged, as recommended by the Committee on the Rights of the Child.
- Ensure that all necessary financial and human resources are made available for the effective running of administrative, judicial and penal systems and procedures which deal with children and the full protection of their rights in the administration of juvenile justice.

- Establish a minimum age of criminal responsibility in line with the principles of the Convention on the Rights of the Child and the Standard Minimum Rules for the Administration of Juvenile Justice.
- Release immediately and unconditionally all children detained or imprisoned as prisoners of conscience, that is, those held solely for their political or other beliefs or on grounds such as ethnic origin, gender or economic status, who have not used or advocated violence. Children should never be detained solely for being relatives of “wanted” political or criminal suspects. The detention or imprisonment of children along with their mothers must never be used in such a way as to inflict torture or ill-treatment on either.
- Review the scope and application of all legislation leading in practice to patterns of arbitrary detention of children, such as vagrancy laws and the institution of “safe custody”.
- As a step towards the total abolition of the death penalty, the death penalty should not be imposed on anyone aged under 18 at the time the offence was committed. No executions of juveniles should be carried out.
- Abolish in law all cruel, inhuman and degrading punishments, including flogging, chaining and the use of fetters.

### **1.2 Protection of children in the community**

Hazardous and exploitative forms of child labour, including bonded labour, commercial sexual exploitation and any other work that threatens the survival and full development of the child must not be tolerated and governments must take immediate steps to end them.

These steps should include bringing legislation and policy relating to employment and education of children fully into line with international standards including the CRC and relevant ILO conventions. Child labour has many interrelated causes and affects the enjoyment of the full range of childrens’ rights. Solutions must therefore be comprehensive and multi-disciplinary, and guided at all times by the best interests of the child. In framing policy, governments should seek guidance from international agencies such as UNICEF and the ILO with expertise in the field of child labour.

Governments should also develop comprehensive programs of action to eradicate harmful traditional practices which deny girls their fundamental rights and perpetuate discrimination against them. These should be guided by the *Colombo Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children*, adopted by the Sub Commission on Prevention of Discrimination and Protection of Minorities in 1994, as well as the recommendations of the UN Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on traditional practices affecting the health of women and children.

### **1.3 Protection of children in armed conflict**

Governments should order and train their forces to respect and ensure respect at all times for human rights and for the relevant provisions of international humanitarian law aimed at the protection and care of children in armed conflicts. In particular, they should:

- Prohibit the compulsory or voluntary recruitment of anyone under the age of 18 into government armed forces, and ban people below the age of 18 from participating in armed hostilities. They should also take all feasible measures to prevent recruitment by armed political groups operating in their country.
- Ratify and implement the treaty banning the use, stockpiling and transfer of anti-personnel mines and other weapons whose effects are indiscriminate (check name of treaty). Develop strategies for humanitarian mine clearance.
- Ensure that peace agreements reached with armed opposition groups include the rehabilitation of children and their reintegration into society, as well as other mechanisms for the prevention and redress of human rights abuses against children.
- Offer adequate protection and assistance to refugee and displaced children within the country, including protection against recruitment, gender-based violence and sexual exploitation. As human rights abuses are the root cause of displacement, governments should end impunity for human rights abuses which displaced people are fleeing and facilitate the return or resettlement of displaced people in safety and dignity.
- Abide by international standards regarding the protection of refugee children, including Article 22 of the Convention on the Rights of the Child. There should be no refoulement of child refugees from neighbouring countries to situations where they would be at risk of human rights violations. Governments should remove barriers to children seeking asylum and the particular needs of refugee children should be taken into account in devising and implementing refugee policy. States should ensure that such policies adhere in all respects to international standards and take into account the *UNHCR Guidelines on Protection and Care of Refugee Children*.

#### **1.4 Redress for violations**

- Governments should investigate impartially and thoroughly all reports of torture or ill-treatment, “disappearances”, extrajudicial executions or other human rights violations committed against children.
- Ensure that all those found responsible for human rights violations against children, including those who deny juvenile detainees their rights, are brought promptly to justice.
- Provide adequate compensation and redress to child victims of human rights violations, aimed at their rehabilitation and reintegration into society.

## **2. Promotion and prevention**

Further fundamental changes are needed if the promises of the Convention are to become a reality for children in South Asia. National laws, institutions, social policy and practice need to be reformed and social attitudes must evolve to conform with the principles enshrined in the Convention. This task involves not just governments but the whole of society and the international community. Children themselves should be protagonists in that process. Promoting their awareness of their rights today is an essential precondition for the respect of children's rights by future generations.

Governments should develop coherent, inter-ministerial strategies for promoting awareness of and adherence to international human rights standards and principles of relevance to children. This involves ratifying key international human rights standards and adopting measures to implement the provisions of these standards in national law and policy. It also involves effective collaboration with UN treaty and thematic mechanisms and providing training and education to key sectors in the promotion and protection of children's human rights.

Governments should give support in this area to the functioning and development of national human rights institutions, including through the provision of resources.

### **2.1 Ratification and implementation of standards**

All South Asian governments have ratified the Convention on the Rights of the Child. They should ensure full and speedy implementation of all the provisions of the Convention on the Rights of the Child. A first step will be to undertake a review of all legislation in force in countries in South Asia which aims to protect children with a view to bringing domestic laws into line with the Convention. This review will set the framework for the development of social policy aimed at the fulfilment of the child's full set of rights and eradicating practices which militate against this. Given that education is a prerequisite for the full enjoyment of all rights, a priority should be to promote the goal of equal access to education by taking measures to eliminate discrimination in education at all levels on grounds such as gender, race, religion, ethnic origin, age or disability. In addition, governments in South Asia should:

- Cooperate fully with the Committee on the Rights of the Child, established to monitor implementation of the Convention, in particular, by submitting timely reports to the Committee and ensuring that recommendations made by the Committee are implemented fully and disseminated widely.
- Ratify and implement other key international human rights standards relevant to the protection of children in custody, in the community and in situations of armed conflict, including:
  - The International Covenant on Civil and Political Rights (ICCPR) and two optional protocols
  - The Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment
  - The Convention relating to the Status of Refugees and its 1967 Protocol.<sup>1</sup>

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<sup>1</sup>Although they have not ratified the Refugee Convention, India, Pakistan, and Bangladesh are member states of the Executive Committee of the Programme of the UNHCR, and therefore play an influential role in the shaping of the international standards of refugee protection.

- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The Convention on the Elimination of All Forms of Discrimination against Women
- The Convention on the Elimination of All Forms of Racial Discrimination (CERD)

South Asian governments should play an active role in strengthening the framework of international standards for the protection of children, for example by supporting the adoption of an optional protocol to the Convention on the Rights of the Child which raises the minimum age of recruitment into armed forces and participation in hostilities to 18.

## **2.2 Training as a means of prevention**

- Ensure that all law enforcement personnel, lawyers, the judiciary, social workers and personnel working in institutions for children are trained in the basic principles of international human rights law and are familiar with those international treaties which governments in South Asia are bound by, including the Convention on the Rights of the Child. In countries where there is specific legislation designed to protect children, ensure that these personnel are trained in its provisions. Particular emphasis should be placed on training law enforcement officials to use force and firearms strictly in accordance with the *Code of Conduct for Law Enforcement Officials* and the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. Training relevant officials in applying the *Principles on the Effective Prevention and Investigation of extra-legal, arbitrary and summary executions* is also an essential means of preventing extrajudicial executions.

## **2.3 Promoting children's rights**

- Promote and protect the human rights proclaimed 50 years ago by the international community in the Universal Declaration of Human Rights. At the heart of the Declaration is the principle that human rights are universal, indivisible and interdependent -- all human rights should be enjoyed by everyone, including children.
- Take active steps to promote the rights set out in the Convention on the Rights of the Child amongst children and adults alike.
- Promote understanding of and respect for the core concepts of non-discrimination, child participation and the child's "best interests" which underlie the Convention. Other human rights standards, such as the Convention on the Elimination of All Forms of Discrimination against Women, provide an additional framework for the promotion of fundamental principles such as non-discrimination on the basis of gender.
- Promote changes in social perception and increase social awareness, especially at the local level, by informing, educating and sensitizing parents and children, teachers and the communities in general, with regard to the rights of the child, especially the right to basic education and protection from economic exploitation.

## **2.4 Support for children's human rights defenders**

- Ensure that non-governmental organizations with direct experience of dealing with children's issues are involved in the development of policies, legislation and other measures to promote and protect the rights of children.
- Support the non-governmental sector in its efforts to complement and stimulate government action against violations of the rights of the child and identify and denounce abuses. In particular governments have a duty to ensure that those working for the defence of the human rights of children, including child activists, are able to carry out their activities without arbitrary restrictions or fear for their security. Governments should do everything in their power to support their work and not seek to undermine their legitimacy.

## **II. TO ARMED OPPOSITION GROUPS IN SOUTH ASIA**

- Instruct all forces under their command to observe as a minimum the fundamental principles of humanitarian law contained in Common Article 3 to the Geneva Conventions, in particular to treat civilians and captured combatants humanely, and to prevent deliberate and arbitrary killings, torture and hostage-taking.
- The leaders of all armed groups should make clear to those under their command their total opposition to torture and unlawful killings. They should maintain strict chain-of-command control over their forces and hold accountable any members of their forces who commit or tolerate human rights abuses.
- Prohibit the compulsory or voluntary recruitment of anyone under the age of 18 into armed forces.
- End the use of anti-personnel mines and other weapons whose effects are indiscriminate.

## **III. TO SAARC AS A REGIONAL ORGANIZATION**

- Continue to support efforts in member states to implement the Convention on the Rights of the Child through technical assistance programs and annual monitoring and review of the situation of children.
- Remind member states of the importance of incorporating into national legislation the provisions of the Convention on the Rights of the Child.
- Ensure that programs and projects relating to children in the region are developed taking into account reliable indicators on the enjoyment of children's civil, political, social, economic and cultural rights.
- Work with the UN High Commissioner for Human Rights to strengthen human rights protection in member states.

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- Work with other donor and technical assistance agencies in the development and implementation of programs for the promotion and protection of children's rights.

#### IV. TO THE INTERNATIONAL COMMUNITY

- All governments should undertake every possible effort and use whatever influence they have in the region, whether it be political, economic or cultural, to bring an end to the widespread human rights abuses of children in South Asia.
- All governments should abide by international standards regarding the protection of refugee children, including Article 22 of the Convention on the Rights of the Child. There should be no refoulement of child refugees from South Asia to situations where they would be at risk of human rights violations. Governments should remove barriers to children seeking asylum and the particular needs of refugee children should be taken into account in devising and implementing refugee policy. States should ensure that such policies adhere in all respects to international standards and take into account the *UNHCR Guidelines on Protection and Care of Refugee Children*.
- All governments should establish effective systems of monitoring and control of military, security and police transfers to ensure that such transfers do not contribute to human rights abuses.
- All governments should ratify and implement the international Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction and provide economic and technical assistance to mine-clearance efforts in South Asia.
- All governments should encourage and support international organizations, bilateral assistance agencies and international financial institutions working with South Asian governments to implement policy and social and economic development programs aimed at the promotion and protection of children's rights.
- All governments should undertake human rights impact assessments in their aid and development assistance programs.
- All governments should support the work of intergovernmental organizations which work to ensure observance of children's rights, including UNICEF, the UN High Commissioner for Human Rights, the International Labour Organisation and the Committee on the Rights of the Child (the Committee, entrusted with monitoring children's rights worldwide, is composed of 10 part-time members — they meet for only 12 weeks each year. The secretariat comprises three staff members at the UN Centre for Human Rights). As a basis for international cooperation in this area, all governments should ratify and implement the Convention on the Rights of the Child in their own jurisdiction.

National and international corporations should be urged to adopt codes of conduct guaranteeing that neither they nor their subcontractors will employ children in conditions that constitute a denial of their basic rights and pledging to ensure that no aspect of their operations contributes to the violation of the rights of South Asian children.

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## ENDNOTES

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i. Other UN standards which similarly embrace civil, political, economic, social and cultural rights include the Convention on the Elimination of Discrimination Against Women and the Convention on the Elimination of Racial Discrimination.

ii. The USA is the only country with an internationally recognized government that has failed to ratify the CRC. The other country is the collapsed state of Somalia.

iii. The Committee on the Rights of the Child has expressed its concern about the system of administration of juvenile justice in Pakistan, and its incompatibility with the provisions of the CRC including Articles 37, 39 and 40, and other relevant international standards. It advised that the system be reviewed and that assistance in this regard could be sought from the program of advisory services and technical assistance of the UN Centre for Human Rights.

A new Child Offenders Bill, which was drawn up in consultation with relevant NGOs in Pakistan, has been pending since 1995. If passed by parliament the law would ban the death penalty, the use of fetters, whipping and amputation for any child under the age of 16. This would mark a step forward, even though Pakistan law would still fall short of the requirements of the CRC in a number of ways. See Committee on the Rights of the Child, Concluding Observations on the Initial Report of Pakistan (CRC/C/15/Add.18, April 1994)

In relation to Nepal, the Committee recommended that "particular attention should be paid to raising the minimum age of responsibility, the establishment of juvenile courts... alternatives to deprivation of liberty and institutional care, the protection of the rights of children deprived of liberty, respect for fundamental rights and legal safeguards in all aspects of the juvenile justice system." See Committee on the Rights of the Child, Concluding Observations on the Initial Report of Nepal (CRC/C/15/Add.57, June 1996)

In relation to Bangladesh, the Committee on the Rights of the Child has raised concern about the very young age of criminal responsibility (seven years), the lack of adequate protection for children aged 16 to 18, the grounds for arrest and detention that can include prostitution, "vagrancy" or "uncontrollable behaviour", the possibility of imposing heavy sentences on children and the solitary confinement and ill-treatment of children by police, recommending that "allegations of violations of children's rights should be investigated and prosecuted". See Committee on the Rights of the Child, Concluding Observations of the Initial Report of Bangladesh (CRC/C/15/Add.74, 18 June 1997).

iv. "Interim Report on Observation Home at Khanpur Road, Ahmedabad" by the new enlarged Committee constituted on 10 November 1995 by Hon'ble Gujarat High Court in Special Civil Application No. 5136 of 1984, page 5.

v. Those engaged in picking through refuse on the streets and selling usable materials.

vi. Committee on the Rights of the Child, Concluding Observations on the Initial Report of Zimbabwe, Add.55, paragraph 31.

vii. Under Islamic dispensation, punishments can be either *hadd* (plural hudood, literally 'the limit'), punishments laid down in the Qur'an or Sunnah, which a judge has to impose irrespective of mitigating circumstances if certain evidential requirements and other specified conditions are fulfilled. If a *hadd* punishment cannot be imposed, but the court is convinced of the guilt of an offender, it may impose a lesser *taz'ir* (literally 'to punish') punishment. In such cases the court has some discretion in determining the punishment within certain defined limits.

viii. Some confusion is created in this area by laws in different countries which specify different age limits for the application of the death penalty. The CRC specifies that capital punishment should not be applied to anyone under 18 years of age.

ix. No South Asian state has ratified Convention 138. The ILO expects that a new Convention focusing on the most intolerable forms of child labour would be more widely ratified and applied. The ILO's International Programme on the Elimination of Child Labour (IPEC) has developed an extensive regional program of action in South Asia in conjunction with national governmental and non-governmental organizations.

x. Most of the bonded labourers in Sindh belong to low caste or outcaste Hindu communities like Bheels, the Kohlis and the Machis, who live as nomads in the desert areas of Sindh or as farmers on small holdings in the canal-irrigated parts of Sindh.

xi. UN Commission on Human Rights report of the Special Rapporteur on violence against women, 12 February 1997.

xii. This legal distinction needs to be kept in mind throughout this chapter. In Afghanistan for instance, there is effectively no government machinery. In this case, Amnesty International campaigns within the framework of international humanitarian law, but also urges the various factions, in seeking recognition as a government, to accept the responsibilities and obligations which come with government in terms of the international human rights instruments Afghanistan has ratified in the past as a state. In Sri Lanka, India, Nepal and Bangladesh, Amnesty International has called upon armed opposition groups to abide by principles of International Humanitarian Law. In doing this, the organization does not confer any special recognition or status to them.

xiii. Graca Machel was appointed by the UN Secretary General as an expert to study the impact of armed conflict on children.

xiv. "Causes and Manifestations of Violence on Kashmiri Minds", by Muzamil Jaleel.

xv. See Amnesty International's report "*Old enough to kill but too young to vote*", AI Index: IOR 51/01/98, January 1998.

xvi. In response to inquiries by the NHRC, the government of Jammu and Kashmir stated that investigations were carried out by executive officials who found the allegations of rape false. Amnesty International has raised concerns about the impartiality of these investigations with the NHRC and is awaiting a response to these concerns.

xvii. "Impact of Armed Conflict on Children", report of the expert of the Secretary General Ms Graca Machel, submitted pursuant to General Assembly resolution 48/157, ref: A/51/306, 26 August 1996.