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INDIA

Time to act to stop torture and impunity in West Bengal

I. Introduction

This report should be read in conjunction with Amnesty International's *Recommendations for the Prevention of Torture* submitted to the Government of India in December 2000 and published in January 2001.¹ In March 2001 Amnesty International received a two-page response from the Government of India to those recommendations. The government pointed out that its signature of the Convention against Torture in October 1997 marked a commitment to the prevention of torture; that effecting further improvements wherever required was an ongoing process; that it was drawing up an "Action Plan" as part of the decade on human rights education and concluded by stating "we welcome all useful suggestions made in the report and shall have no hesitation in taking steps to implement them".²

Amnesty International believes that the findings in this report about torture in West Bengal only underline the need to implement its recommendations -- many of which are based not only on international human rights standards but orders of the Indian Supreme Court and recommendations of official committees and commissions and draft legislation that has been pending for many years in India -- as a matter of urgency.

In his report to the United Nations Commission on Human Rights in April 2001³, the Special Rapporteur on Torture⁴, Sir Nigel Rodley made the following observations about the situation of torture in India: *While the size and diversity of the country make it difficult to characterize the intensity of the problems all over, it certainly appears that there is a tradition of police brutality and arbitrariness in much of the country, the degree of brutality frequently being sufficiently unrestrained to amount to torture, often with fatal consequences. The brutality is sometimes linked with corruption and extortion and is often deployed in the service of local vested interests, be they economic or official. The use of excessive and indeed unprovoked and unjustified force is common, especially in response to protests demanding rights. The persecution of those pursuing complaints against the police is a not infrequent phenomenon. In areas characterized by armed resistance, the security forces seem notably prone to resort to extreme and often lethal violence, even if*

¹ *Words into action: Recommendations for the prevention of torture*, AI Index: ASA 20/003/2001.

² Unfortunately no specific information was given about which of the recommendations would be implemented.

³ UN doc: E/CN.4/2001/66, para 583.

⁴ The Special Rapporteur on Torture was appointed by the UN Commission on Human Rights in 1985 to look at issues of torture worldwide.

individual abuses not carried out as part of organized military operations may be sanctioned. In general, while not absolute, the level of impunity among police and security forces seems sufficiently substantial as to conduce a general sense among such officials that their excesses, especially those committed in the line of duty, will at least be tolerated, if not encouraged."

In June 1999, Amnesty International delegates visited the state of West Bengal to carry out research on practices of torture by police.⁵ Its findings match the above observations of the Special Rapporteur. The delegates -- a researcher from Amnesty International's International Secretariat and a serving police officer with the Netherlands Police who is a member of Amnesty International's Police Resource Group in the Netherlands -- looked at how arrest and detention procedures are open to abuse by police, how this facilitates torture and how it particularly affects the most socially and economically disadvantaged. The delegates also looked at how apparent safeguards in law for detainees could be manipulated or openly flouted and how problems within other aspects of the criminal justice system -- the prosecution service and the lower courts in particular -- compound the inadequacies of the policing system to further deny justice to victims of human rights violations. Several victims of torture and their relatives were interviewed and discussions were held with the Chairs of the West Bengal Human Rights Commission (WBHRC) and the West Bengal State Women's Commission, with lawyers, judicial officers, human rights activists and others including members of the West Bengal Police Commission.

Permission for this visit by Amnesty International had been sought originally in November 1996 for a visit to take place in January/February 1997.⁶ However, no response was forthcoming from the authorities. Visas were finally issued for the research to be carried out in May/June 1999. However, it became clear that the state authorities in West Bengal had not been informed by the Union government of Amnesty International's visit. It is regretted that as a result, the delegates received no cooperation from the authorities in West Bengal and were not able to meet officially with police or government officials. It is always Amnesty International's intention to seek meetings with government and other officials including police officials as well as human rights organizations and others in order to provide an opportunity to officials to inform delegates of policies for the protection of human rights, of problems they face in protecting human rights, of action taken in individual cases etc. It is in this spirit that this report was sent to the Government of West Bengal for comment one month in advance of publication. A response was received from the Government of West Bengal dated 20 July and a copy of this response is being published (as requested) with copies of our correspondence as an appendix to this report.

⁵ This report does not address conditions which amount to cruel, inhuman and degrading treatment in prisons although there are grave concerns about prison conditions in West Bengal. There are an extremely high number of deaths in judicial custody in the state: In 1997-98 the number was 46 and in 1996-97 it was 47.

⁶ Access to India for the purpose of research continues to be problematic for Amnesty International which has a policy of transparency in relation to research visits to countries and whose delegates do not travel on tourist visas. The granting of visas by the Government of India is often subject to severe delays.

II. Human rights in West Bengal: Past and present

West Bengal currently presents a situation of high levels of human rights violations by police coupled with an active human rights movement and a history of struggle for human rights. During the period of colonial rule, India's British rulers gave police wide powers to suppress the struggle for independence in Bengal. Police continue to operate to this day under the same regulations drawn up by the British.⁷ Post-independence during the 1960s and 70s, West Bengal witnessed the emergence of a left-wing Maoist movement, termed *naxalite*, which mobilised landless peasants and increasing numbers of urban youth, by organising them into an armed political movement to fight for equitable distribution of land. The ruling Congress government responded with a heavy hand. Activists of the Communist Party of India (Marxist -Leninist) (CPI(ML)) were deliberately targeted by the state government and large numbers were killed inside jails, police stations and on the streets. Large numbers of activists were detained under preventive detention laws. In 1974 an Amnesty International report which focused on detention conditions in West Bengal estimated that between 15-20,000 people were detained without trial in prisons in West Bengal, some of whom had been detained for five years.⁸ The report expressed concern about the grossly overcrowded conditions (with inadequate medical and hygiene facilities), allegations of torture within the prison, the death of 88 prisoners who were said to have been killed in 'jail incidents', the use of fetters on prisoners who were regarded as dangerous or as security risks and worrying reports about the West Bengal government's intention to convert certain prisons into correctional institutions to bring about psychological change in the behaviour of 'misguided youths' namely *naxalites*. Torture was common: the Centre for Care of Torture Victims based in Kolkata⁹ which was established in 1997 still treats several individuals who were tortured in the 1970s and who continue to suffer physical and psychological consequences.

When the Left Front -- a coalition of ten parties the largest of which is the CPI(M) -- assumed power in 1977, the Chief Minister Jyoti Basu announced a number of human rights initiatives. The state government made verbal commitments that excessive police force would not be used against democratic struggles and all political prisoners were released. Two Commissions of Inquiry were set up. The Sarma Sarkar Commission was set up in 1977 to investigate allegations of misuse of power by public servants during the Congress rule in the 1970s. The report was published in eight volumes. However, no action was taken on the basis of this report. The Haratosh Chakraborty Commission was set up under notification No. 10117-J dated 12 August 1977 to investigate among other things the "killings of persons in this state [West Bengal] during the period from the 20th March 1970 to May 1975 and killings of, and physical tortures and atrocities committed on, in this state during the aforesaid period by public servants and/or persons belonging to or enjoying patronage of the ruling party in power in state or centre or the government in power, state or central...." The Commission published an interim report.

⁷ The Police Regulations of Bengal, 1943.

⁸ *Short Report on Detention Conditions in West Bengal Jails*, Amnesty International, September 1974.

⁹ Formerly known as Calcutta.

However, six police personnel then moved the Kolkata High Court and Justice Sabyasachi Mukherjee in his verdict on 27 March 1980, held that the constitution of the Commission was not valid and liberty was given to the state government to issue fresh notices for the establishment of a new Commission. The government, however, did not issue fresh notices and so the Commission did no further work. No action was taken against any of the police officials found guilty of human rights violations by the Commission in its interim report; there were allegations that many of those police officers were in fact promoted. The government's inaction in addressing impunity has been blamed by human rights activists on its dependency on the police to maintain law and order and to do its bidding.

Throughout the 1990s, Amnesty International has received a large number of reports of torture and deaths in custody in West Bengal. For several years the National Human Rights Commission (NHRC) expressed concern about the high level of deaths in custody in the state: in the period 1994-1996, West Bengal had the highest total of recorded deaths in police custody in the country with 27 deaths in custody. The number of reported custodial deaths in West Bengal appear to have declined slightly over the last couple of years. According to the NHRC 63 out of 1139 reported deaths in custody nationwide (both police and judicial custody) took place in West Bengal in 1999 - 2000. However because the NHRC has not indicated whether this figure includes data collected by the West Bengal Human Rights Commission (WBHRC), it is impossible to know the true figure. It is also impossible to know the true extent of torture and ill-treatment. Many victims of torture do not file complaints or report incidents to human rights activists, viewing a beating or kicking as commonplace or a lucky escape from something more severe. As in the case of the NHRC, the WBHRC does not publish a breakdown indicating the number of complaints of torture or ill-treatment that it has received. In its latest published Annual Report for 1998-99 it reported that it had admitted 15 cases of deaths in police custody and 36 in jail custody and that it had admitted 409 unspecified "Complaints against police". Successive Annual Reports of the WBHRC have presented a grim picture of illegal practices of police, including torture and ill-treatment, against a large number of people.

Human rights under attack

Against a background of a continuing high level of human rights violations by police, the establishment of a state Human Rights Commission in 1995 (for a discussion of the WBHRC see end of report) was welcomed by human rights organizations. However, it was not long before the WBHRC became the focus of criticism for many government and police officials. Amnesty International believes that attacks on the Commission demonstrate a perception amongst officials of the current government and the majority of police officers that the maintenance of law and order and the protection of human rights are incompatible, a perception which continues to threaten human rights protection in the state.

In March 1997, a Deputy Inspector General of Police was reported as saying "Crime increased over the last couple of years since the West Bengal Human Rights Commission came into being. It is difficult to extract information from hardened criminals without resorting to third-degree methods".¹⁰ In a section on 'Custodial Crimes and Views of the Human Rights Commission' in

¹⁰ 'Rights bogey haunts crime busters', *The Telegraph*, 30 March 1997.

its Third Report on West Bengal police, the Committee on Estimates¹¹ 1999-2000 referred to complaints from the West Bengal Police Association that "the SHRC's [WBHRC] stern action in the cases of custodial death taken against police officers had demoralised officers". Another memorandum stated that the role of the WBHRC had caused "fear and hesitation in the mind of the police personnel in discharging their entrusted task on many occasions".

Buddhadeb Bhattacharjee, as Home Minister of West Bengal from 1987 to November 2000 and subsequently as Chief Minister, has clearly supported police against allegations of human rights violations. In March 1997 as Home Minister he was reported as saying that "Police should ruthlessly tackle criminals and see to it that the message of human rights does not get better of them". There was a mild reaction to this statement at that time by human rights organizations. However, when he appeared to repeat these sentiments as Chief Minister in January 2001 there was an outcry in the media, amongst human rights organizations and opposition politicians. He was reported to have instructed police to "use those guns that the government has given you to combat crime" and to have told police not to bother about criticisms by the WBHRC which he would "handle". Subsequent reports highlighted that the Kolkata Police Commissioner Dinesh Vajpai had instructed his officers to "track down criminals and tackle with an iron hand. Policemen have been clearly told to shoot down these criminals in encounters". In anticipation of the criticism from human rights groups the Police Commissioner reportedly asserted, "We will provide all assistance to officers who risk their lives in encounters with criminal gangs so that they are not harassed by certain sections of people who are more concerned about the rights of criminals than the lives of the ordinary citizen". Concerned at these reported comments, the NHRC on 11 January asked the West Bengal Chief Secretary to verify and confirm within a week the authenticity of media statements that the Chief Minister had asked the State Police to use arms against criminals and kill them without giving thought to human rights and criticisms from human rights commissions. Following receipt of a response from the Chief Secretary, the Commission decided not to pursue the matter. The response was reported to have clarified that the Chief Minister had stated that "the police might resort to firing only to save the lives and properties of innocent citizens from armed criminals committing heinous crimes".¹² The NHRC gave the Chief Minister the benefit of the doubt. However the Chief Minister never personally clarified his statements and there are continuing concerns about tolerance at the highest levels in the state for excessive use of force by police, including torture and ill-treatment.

Amnesty International acknowledges the need for police to tackle violent crime and to protect individuals who become its victims. However, it is concerned that instructions to shoot down criminals is an unconsidered reaction to a problem which needs longer-term solutions. In particular it is based on the premise that maintenance of law and order and human rights protection are incompatible. It is Amnesty International's firm conviction that human rights are not an impediment to effective policing but, on the contrary, vital to its achievement.

The increasing number of lynchings of suspected criminals by members of the public in West Bengal, in some cases with police complicity in these actions, demonstrates the urgent need for

¹¹ The Committee is constituted by the Legislative Assembly to monitor budget estimates for various departments.

¹² "NHRC won't take any action against Bengal CM", in *Asian Age*, 23 January 2001.

an effective criminal justice system and an awareness raising campaign against torture and the use of violence which will seek the support of the public for police actions in tackling crime and place human rights at the centre of government policy. Amnesty International fears that the example being set by government and opposition politicians in West Bengal is far from one which promotes human rights.

Since the last quarter of 2000, violence between supporters of the ruling CPI(M) "Left Front" government and the Trinamool Congress¹³ led by Mamata Banerjee has increased considerably. The violence has often been extremely brutal and there have been many deaths. According to a press release by the Union Ministry of Home Affairs, in Midnapore district of the state alone there have been 176 political clashes in which 64 people died, 707 were injured and numerous people were left homeless. A press report in India Today claimed that since 1998 when the Trinamool Congress was established 230 people had been killed in clashes between the two parties.¹⁴ In the context of this violence, both sides have claimed that their opponents are guilty of human rights abuses, the most notable being claims by the Trinamool Congress that CPI(M) workers were responsible for a massacre of its supporters in Chhoto Angaria village in Midnapore district on 4 January 2001. In March, the High Court ordered the Central Bureau of Investigation (CBI) to investigate the incident. Violence continued into the state assembly elections when there were allegations from both sides about high levels of violence and intimidation and scores of people were killed in clashes between rival political groupings.

In the context of these threats to human rights protection, Amnesty International is involved in a campaign in West Bengal in partnership with human rights organizations in the state to promote human rights and in particular as part of its international campaign to promote the right not to be tortured. There is an urgent need to stop the cycle of violence in the state.

III. Evidence of abusive police practice

The former Chair of the WBHRC explained to Amnesty International delegates visiting West Bengal that the motives for torture lie not just in attempts to solve crime through coercing confessions but referred to extortion as one of the major causes. He also alluded to the lack of public cooperation, the slow criminal justice system, political interference and lack of manpower. Amnesty International delegates were also told by a magistrate: "Police start from the criminal to reach the crime."

Anyone in any doubt about abusive police practices in West Bengal should refer to the 1996-97, 1997-98 and 1998-99 Annual Reports of the WBHRC. The reports document a range of illegal

¹³ The Indian National Congress (at one time the Left Front's main opposition in West Bengal) suffered a setback when one of its party members, Ms Mamata Banerjee founded her own party, the Trinamool Congress Party in late 1997. Her party, which has become the main opposition in the state, made an alliance with the Bharatiya Janata Party in the 1998 and 1999 national elections although in April 2001 prior to state assembly elections she shifted her support to the Congress party.

¹⁴ "Marx to Mamata", India Today, 14 August 2000.

police practices from corruption to illegal detention, torture and falsification of records. The 1996-97 Annual Report included the following comment:

*"Commission felt shocked when on occasions custodial violence was sought to be justified on the specious plea that certain degree of torture was essential and inevitable for investigation of crime in the larger interest of the society. Commission made it clear, time and time again, on different fora that custodial violence could never be an effective instrument of investigation. It was resorted to often as a short-cut to painstaking investigation; it, however, produced result exactly other than what was intended. In any case, any act of brutality during custody is an assault on the constitutional rights of the citizens and any public servant doing this must expose himself fully to its consequences. In fact, nothing can be more degrading than the beating of a helpless detainee during his detention. The trauma would be all the more agonising if one takes into consideration the fact that those who suffer from such violence are mostly women and those drawn from segments of society socially and economically most disadvantaged."*¹⁵

Amnesty International delegates found during their visit to the state in June 1999 that such illegal practices were rife.

Guidelines issued by the Supreme Court in 1996 in *D.K. Basu vs. State of West Bengal*, which had their origins in the state,¹⁶ were an attempt to address the problem of illegal detention and torture throughout the country. Amnesty International delegates saw a copy of the Kolkata Police Gazette dated 28 February 1997 in which under "miscellaneous notices" reference is made to the D.K. Basu judgement reproducing the 11 directions "for general information, guidance and compliance by all officers and men of Kolkata police." The notification (No.341) indicates that police officers will be punished if they do not comply with the Supreme Court judgement. However, no suggestions are made concerning the practical application of these directives and whether departmental action would be taken against those failing to comply (the latter of which was ordered by the Supreme Court in its judgement). This notice was reproduced in the Kolkata Police Gazette dated 3 March 1997. Amnesty International believes that issuing such notices without putting in place a mechanism or mechanisms to monitor compliance and punish non-compliance is entirely insufficient and has allowed police in West Bengal to operate outside these guidelines.

i. Torture and ill-treatment

The cases documented in this report demonstrate a variety of methods of torture and ill-treatment which are used by police in West Bengal. Mirroring methods used elsewhere in the country beating (with fists, rifle butts and *lathis*¹⁷), kicking and slapping are common-place. Other methods include hanging detainees from the ceiling using ropes, sexual torture including rape, and electric shocks.

¹⁵ Annual Report 1996-97 of the West Bengal Human Rights Commission, page 6, para 1.12.

¹⁶ The original petitioner in the case, D.K. Basu, who sent a letter to the Supreme Court in 1986 with concerns about custodial violence later became a High Court Judge and is Chair of the Legal Services Authority of West Bengal.

¹⁷ A long wooden pole carried by all police officers in India.

During their visit to West Bengal in June 1999, Amnesty International delegates were told that there were a number of "notorious" police officers operating in various police stations in the state over a number of years who were known for particular methods of torture or for a high number of deaths in custody under their supervision.

In 1995 a petition (No.22450 of 1995) was filed in the Jalpaiguri court by two individuals who claimed to have been tortured in **Dhupguri police station** in Jalpaiguri district in October 1993. Twenty-five-year-old Mohammad Nazrul Islam reported that he was arrested on 9 October 1993 at 9pm. Once at the police station he was beaten by several policemen and hung by a rope with his hands tied behind his back for 15 minutes. The following day officers hung him again and gave him injections in his penis and rectum. Thirty-two-year-old Asharu Roy, a labourer, was arrested on the evening of 13 October 1993 on suspicion of theft. He was beaten at the police station and two police constables restrained him and gave him injections into his penis and rectum. Asharu Roy described the injections as "causing acute pain all over my body". On 15 October he appeared before a magistrate and was remanded to judicial custody. However, his pain became intolerable and he was admitted to hospital on 16 October where he stayed for 10 days. Although he was released on bail on 7 January 1994, he became seriously ill and could not return to work. The injections given to these prisoners were described as a mixture of petrol and other fluids. Asharu Roy received threats from the Officer in Charge (OC) of Dhupguri police station -- reportedly with the backing of the local *Panchayat* [local representative body] member and political leaders -- not to proceed with a case against him.

On 21 October 1993, a meeting was held of the Dhupguri police station committee of the West Bengal Police Association at which the methods of the OC were condemned. However, a constable was suspended from duty on 26 October 1993 after objecting to the treatment of detainees in the police station. He appealed against his suspension by filing a writ in the Kolkata High Court. The court in January 1994 stayed the suspension and ordered an inquiry which was carried out by a judicial magistrate. His report submitted to the court in March 1994 reportedly confirmed the allegations of police torture. The High Court then directed the District Magistrate and the Superintendent of Police Jalpaiguri to appear in person before the High Court on 11 May 1994. There were subsequent allegations that the OC and Circle Inspector of Dhupguri police station took all those who gave evidence to the CJM to the police station where they intimidated and tortured them and forced them to place their signatures and thumb impressions on blank sheets of paper.

On 24 April 1998 the Chief Justice of the Kolkata High Court passed an order asking the First Class Judicial Magistrate, Jalpaiguri, to investigate and to start criminal proceedings against the OC and two Sub-Inspectors. On the basis of this investigation a criminal case was initiated under section 324 IPC [*voluntarily causing hurt by dangerous weapons or means*]. The OC and one of the Sub-Inspectors surrendered to the authorities and were granted bail. The case is currently pending before the court. On 4 January 2001 the court called for the confidential report of the Chief Judicial Magistrate in order to be able to adjudicate the case. It appears that the report has not yet been sent to the court. None of those tortured have received compensation to date.

ii. Illegal detention

In almost all the cases documented by Amnesty International delegates during their visit to West Bengal, many of which are referred to in this report, the victim of torture had been illegally detained for several days in the police station in violation of section 167 of the Code of Criminal Procedure (CrPC) which provides that all detainees should be brought before a magistrate within 24 hours and in violation of India's obligations to article 9(3) of the International Covenant on Civil and Political Rights (ICCPR) which provides that "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power." It is during this period of illegal detention that they were commonly subjected to torture and ill-treatment -- reflecting fears expressed by the United Nations Special Rapporteur on Torture who noted that "torture is most frequently practised during incommunicado detention [detention without access to the outside world]".¹⁸

Jagannath Shaw works at Shyamnagar North Jute Mill in Hooghly district of West Bengal. On the evening of 8 December 1998 police came to his room and searched it. They then took him to Bhadreswar police station and questioned him about a theft. He was released and returned home later that night but was arrested again on the night of 9 December and again taken to the police station. Jagannath Shaw told Amnesty International delegates in June 1999 that a police woman tied his thumbs together and he was then beaten with a stick on his arms, legs and head. He continued to be questioned about the theft and was interrogated for three days without being produced before a magistrate. On the second day he said he was made to sit on the floor with his thumbs again tied together. A police officer connected two naked electric wires which were connected to a machine, around his thumbs. After every question about the theft police pressed a button and six or seven times he got electric shocks until he became unconscious. On another occasion a police officer inserted a nail into his fingers and thumbs. He asked for medical treatment but it was refused.

He was finally brought to the court but he was not physically produced before a magistrate. He was remanded to judicial custody but released on bail after four days. When he returned home he discovered that many of his belongings, including Rs.500 [\$11] in cash, his service book (necessary for continuing employment at the Mill) and his ESI [Employees' State Insurance] Identity Card (necessary for free medical care) had been taken. On 11 December he went to the police station to lodge a complaint about the missing items but police refused to file the complaint.

In a statement made to the Superintendent of Police, Hooghly district, on 18 December 1998, Jagannath Shaw recounted: "since my release on 11th I have been asked by the Bhadreswar PS [police station] to give attendance every day at about 3pm. Whenever I go to the Police Station for attendance the constables and/or their associates go through my belongings and if nothing is found in my pocket they assault me physically. They also demand Rs.100 [\$2] every day, whenever I go to the PS".

Jagannath Shaw approached the Association for the Protection of Democratic Rights (APDR - a state-level human rights organization) with a complaint about his treatment on 17 December 1998. A medical examination was carried out on 18 December 1998 at the Imambarah Sadar

¹⁸ UN doc. E/CN.4/1995/434, para 924(d).

Hospital. The medical officer found various marks of injury and recorded the statement of the victim that he was tortured. On the advice of the medical officer, an eminent orthopaedic surgeon was consulted who also found various injuries including dislocation of the right elbow bones.

When the APDR went to see the Sub-Inspector of Bhadreswar police station on 24 December he reportedly admitted torturing detainees, explaining that there is no other way of making a suspect confess to a crime.

Manipulation of records of detention

As a means of covering up illegal detention, police have become adept at manipulating records. The WBHRC's Annual Report for 1996/97 commented that "It was almost a regular practice to leave blank space in the register¹⁹ to be filled up later." It also found that getting signatures or thumb prints on blank sheets was "regular practice" and that "when a detainee was interrogated and subjected to excesses, the records would show that the interrogating officer was out of the Police Station at the relevant time in connection with something entirely different." Amnesty International delegates were told by human rights activists, lawyers and even police officials (unofficially) that the General Diary²⁰ has fallen into disuse ensuring that there is no record of what happens at a police station. As delegates were not given access to police stations they were unable to check this for themselves.

Memos of arrest

In 1996 the Supreme Court in its order in *D.K. Basu vs. State of West Bengal* directed that memos of arrest should be prepared at the time of arrest which should be attested by at least one witness and countersigned by the arrestee. The memo of arrest was also to include the time and date of arrest. It appears that arrest memos are being issued in West Bengal. A lawyer told Amnesty International delegates that in almost all cases now a memo of arrest is given. However, the guidelines are not being followed in full. In particular arrest memos are said rarely to contain the signature of witnesses to the arrest. When lawyers have complained to magistrates about this, magistrates have reportedly expressed their helplessness and advised lawyers to file contempt petitions.²¹ D.K. Basu himself, who is Chairperson of the Legal Aid Services of West Bengal, complained to delegates that magistrates were not insisting on seeing arrest memos -- a vital component of the protective process.

In its 'Observations' on the WBHRC Report on the illegal detention and custodial torture of Jagannath Shaw (see above), the APDR noted: "*APDR categorically complained on several occasions that the PSs [police stations] in this state developed a novel method of*

¹⁹ This is a reference to the "lock-up register" which is supposed to include information on who is detained in the lock-up with personal details as well as information on how many meals have been ordered for detainees etc.

²⁰ The General Diary is provided for in section 44 of the Police Act 1861 and sections 154 and 155 of the CrPC as also regulation 377 of the Police Regulations of Bengal 1943, under which police in West Bengal operate. It should record every occurrence brought to the knowledge of police, all complaints and charges, names of detainees, offences, weapons or property seized, details of arrests etc.

²¹ In its order the Supreme Court said that police failing to comply with its order would be rendered liable to departmental action and to be punished for contempt of court.

subverting the Apex Court [Supreme Court] directions on this matter [D.K. Basu vs. State of West Bengal]. They have a band of antisocials and politicians with whom the police have a nexus. Whenever an arrested person is produced in court, a fictitious memo of arrest is enclosed with the forwarding papers in which name of one of the members of this nexus is simply put on it. In many cases there is no existence of person(s) whose name(s) appear in such memo of arrest(s). The result is: not a single arrested person or witness of arrest is served with the memo of arrest, but almost every judicial officer receives a copy of such memo along with persons forwarded to the court."

iii. Corruption and extortion

Discussions with various human rights organisations in West Bengal have revealed how extortion has become a common feature in their case work on torture and death in custody cases. In June 2001 the Chief Minister admitted in an interview that police in police stations across the state collect funds from criminals and are "hand in glove with criminals."²² There have been numerous reports of the police asking for money from the relatives of people taken into custody on petty criminal charges. If the family manages to meet the demands of the police the individual is released. Otherwise he/she remains in police custody and is subject to torture and ill-treatment which in some instances leads to death. Jabeda Khatoon, the mother of **Mohammad Alam** who died in police custody in 1995, was repeatedly asked for money by police in return for the release of her son; money she could not afford.

Following Mohammad Alam's arrest on 29 March 1995, approximately 25 non-uniformed police men from the Garden Reach Police Station came and searched Jabeda Khatoon's house at midnight. They informed the family that they were looking for money which Mohammad Alam was alleged to have stolen. Jabeda Khatoon was told to accompany the police officers to the police outpost where the OC of Garden Reach Police Station demanded that she pay Rs. 4,000 [\$86] for the release of her son. When Jabeda Khatoon responded that she did not have this kind of money the OC ordered that Mohammad Alam be beaten in front of his mother. Mohammad Alam was made to lie on a table and was beaten with *lathis*. Her pleadings were met with verbal and physical abuse. Police continued to harass the family for money for four days. She desperately tried to raise the money that police were demanding but was unable to do so. She claims to have approached a lawyer and offered to pay him Rs.200 [\$4] to get her son released but that he told her she would have to pay the Rs.4,000 [\$85] to the police if she was to stand any chance of getting her son back. Jabeda Khatoon earns Rs.150 [\$3] a month as a domestic assistant.

On the morning of 9 April 1995 after ten days of illegal detention, Mohammad Alam was taken to the Alipore court. A magistrate who did not see him (Mohammad Alam was kept in the court lock-up) remanded him to judicial custody, reportedly ignoring pleas by Jabeda Khatoon that he needed urgent medical treatment. On arrival at Alipore Central Jail the jailor reportedly refused to admit Mohammad Alam because of his condition and he was returned to the court where the magistrate passed orders that he be admitted to Presidency Jail Hospital for treatment. At approximately 1.20pm on 10 April 1995 Mohammad Alam died of his injuries in Presidency Jail.

²² 'Chief Minister admits police irregularities', Times of India, 13 June 2000.

Sections of the police are clearly involved in criminal activities and profit from such activities. Delegates heard reports of police stations being "sold" to police officers for a sum which represents the value of that police station in terms of money to be gained through extortion. In the Annual Report of the WBHRC for 1997-98 submitted to the government by the WBHRC in December 1998 it was stated that the Commission had found that there was a tradition of raising funds from criminals in police stations: "Vested interest groups, unscrupulous elements and those who do not go by the rules were allowed to have a free run on the strength of their periodic contributions."²³ This statement clearly highlights the way in which corruption within the police ensures that those with economic and political power have influence over police actions and leads directly to discrimination against those who are socially and economically disadvantaged within society. In an interview published in The Telegraph, the Chair of the WBHRC said in June 1999: "There are instances of the police being used as henchmen of moneyed people. Anyone influential can force the police to arbitrarily pick up a man and torture him in police custody in the name of gathering evidence."²⁴

At about 1.45am on 9 May 1999 six police came to the house where **Bikramjit and Papri Das Gupta** were staying in Kolkata. The police team was led by a Sub-Inspector from Phulbagan police station and was accompanied by a person who had filed a case of cheating against Bikramjit Das Gupta. The police were not in uniform and had no identification badges. Bikramjit and Papri Das Gupta were physically manhandled and Papri Das Gupta's parents with whom they were staying verbally threatened and abused. Papri Das Gupta who was heavily pregnant, fainted. Police demanded a bribe of Rs.40,000 [\$856] to remove the criminal case filed against Bikramjit Das Gupta and said that if they didn't pay up they would charge him under a more serious section of the penal code. A complaint was sent to the Commissioner of Police and to the WBHRC. They were given verbal assurances by police officers that action would be taken against police officials but at least one of the police officers was still said to be working in the police station when Amnesty International delegates interviewed Papri Das Gupta in June 1999.

Jyotsna Bal's husband died in 1995 and since then members of her husband's family have tried to take her family home from her. She was thrown out of the house but regained possession on the orders of the court. Police reportedly sided with her husband's family to harass her. On the afternoon of 21 April 1999 she was taken from her home by police in plain clothes who forced her into a waiting taxi. She was taken to Gariahat police station but was not told why she was being arrested. "I requested that I was running with high temperature [she suffers from hepatitis] and I should be released but the OC slapped me on my face and said that 'you are arrested'. He said '[my husband's relatives] paid me 2 lakhs of rupees [\$4,279]. I have arrested you. You pay me 5 lakhs of rupees [\$10,697]. I shall arrest [him] similarly with some other charge. If you could not do that, you take 20 lakh [\$42,790] and go out of the house without claiming anything else'". She was finally told that she was being arrested on a charge of theft of several books and pieces of furniture filed by her husband's relatives. Her sister and her lawyer came to the police station but the police officers refused to release her. She was then taken to Lal Bazar police lockup. During the journey she was slapped and kicked and verbally abused by male and female

²³ "Law-Twister Tag on State Police" in The Telegraph, 19 January 1999

²⁴ "Inhuman Bondage" in The Telegraph, 23 June 1999.

police officers. She was taken to the Alipore Court on 22 April where without seeing her – she was kept outside the court in a police van – and despite her lawyer presenting medical reports indicating she was not well, the magistrate denied her application for bail and remanded her to police custody until 26 April. During further police custody her condition became worse. A doctor saw her in custody on the night of 22 April and gave her oral rehydration treatment but did not examine her. On 23 April she was taken to the Medical College hospital where she was examined and given some medicine but was not told what it was. On the evening of 24 April she was taken back to Gariahat police station where she was told to sign several papers, including blank papers. However, she refused to sign them. She was slapped and her hair pulled and she was threatened with prolonged detention. She was finally granted bail on 26 April but told not to return to the property until 10 May. During her detention the ground floor flat of her house was occupied by members of her husband's family. Jyotsna Bal currently resides on the first floor of the house with her mother, sister and aunt. Members of her family are not allowed to enter the ground floor of the property and continue to face harassment from members of her husband's family. Jyotsna Bal continues to fear further harassment from the police and there are reports that *goondas* [criminals] have been hired by members of her husband's family to force her to settle the civil suit.

iv. Harassment of victims, witnesses and relatives

Extortion and harassment of victims and their relatives by police often continues for long after a person's detention. In particular, police against whom complaints have been made regularly harass the complainants in an attempt to force them to withdraw the complaint.

In its 1998-1999 Annual Report the WBHRC observed: "The Commission also noticed that policemen particularly at the lower levels did not always take kindly to the ordinary citizens approaching the Commission with complaints against them. They often expressed their annoyance and unhappiness by intimidating the persons and in some cases, even implicating them in other cognizable offences recorded at the police station. This frightened some persons from proceeding with their complaints with the Commission. Some individuals had withdrawn their complaints and some others reported that the matters had since been settled locally and they would not like to proceed any further... Commission would like Director General of Police and Police Commissioner to issue stern instructions to all the police stations indicating that any attempt to harass citizens for their approaching the Commission would be viewed adversely and would make the concerned individuals liable to punishment departmentally". In its Memorandum of Action Taken, the government simply said that "the concern expressed by the Commission has been communicated to all police personnel by way of publishing the observation made by the Commission in Kolkata Police Gazette dated 18 July 2000". In Amnesty International's view, the publication of this observation is a wholly inadequate response to such a serious issue and is in violation of Article 6 (d) of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which highlights the government's responsibility in "taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation". The government clearly made no attempt to address the issue seriously and to put in place mechanisms to prevent these practices, including -- as suggested by the Commission -- by issuing orders that departmental action should be taken and that these orders would be acted on.

In November 2000, Amnesty International was forced to issue an Urgent Action concerning the safety of **Jabeda Khatoon**, mother of Mohammad Alam who died in custody in 1995 (see above). Since her son's death she has been fighting a legal case against the police officers allegedly responsible. Despite the issuing of warrants of arrest in 1996 and again in July 2000, December 2000 and May 2001, the police have managed to avoid arrest to date. She has received repeated threats from policemen and local criminals given protection by the police. On 15 November 2000 she received a message to appear before a senior police official. She did not go for fear of further threats and harassment. Police have also made repeated offers of out of court settlements amounting to Rs. 50,000 [\$1,500]. Jabeda Khatoon earns Rs.150 [\$3] a month but she is determined to continue her fight for justice.

Harassment and intimidation by police officers is targeted not just at victims and their relatives but also at other police officers who may have witnessed practices of torture, objected to them or refused to carry them out.

On 14 January 1999 the wife of police constable **Abhay Kumar Singh** complained to the WBHRC that her husband had been abused, doused with kerosene and set on fire by a superior police officer in October 1998. The constable subsequently told the WBHRC that his superior officer used to force him to carry out illegal actions including extortion and to entertain senior officers with food and drink. The constable tried to report this but his superior officers told him to keep quiet. Following the attack on him he was hospitalised for almost a month. His family tried to register a case with police but they were refused. Police claimed that he had tried to commit suicide. A Deputy Commissioner of Police had written a report on the incident stating that the constable was mentally disturbed. An inquiry by the WBHRC found that the General Diary entries had been altered in order to show that the officer accused by Abhay Kumar Singh of attacking him was not on duty at the time of the incident. The WBHRC recommended that a criminal case be registered against the officer and that the case be investigated by the Deputy Commissioner of Police, that the officer should not be given charge of any police station for a year and that the victim be provided medical costs and interim compensation of Rs.10,000 [\$214]. The WBHRC said that it "found it difficult to accept the report prepared by the Deputy Commissioner of Police about the incident". The Constable's wife alleged that he had been called into the office of the Commissioner of Police on two occasions in July 1999. On the first occasion he was given Rs.5,000 [\$106] for his medical treatment and ordered to sign a statement in English which he couldn't read. On the second occasion he was told to drop the proceedings before the WBHRC.

In October 1993 a police constable was suspended from duty after objecting to the treatment of detainees in the police station in Dhupguri (see above). He appealed against his suspension by filing a writ in the Kolkata High Court. The court in January 1994 stayed the suspension. However the constable was subsequently sentenced to imprisonment in December 1994 on charges of corruption. This sentence was quashed by an administrative tribunal on 30 March 1998 but he has still not been reinstated into the police force.

Policing in West Bengal.

The Commission is quite conscious of the difficult job which the police have on its hands. Ill-equipped and ill-trained, it faces heavy odds. It operates under serious strain brought about by a wide variety of social and political factors. Radical reorientation of outlook is required so that it could uphold the rule of law. It will not be able to operate as an effective instrument unless it gets more professional in its character and more non-partisan in its performance

[1996-97 Annual Report of the West Bengal Human Rights Commission, para 1.46, page 24]

There is no doubt that police in West Bengal face enormous difficulties, many of them similar to their colleagues in other states: lack of even basic resources, poor pay, poor infrastructure²⁵, political interference and poor quality of investigations. Many of these were discussed in Amnesty International's earlier report published in January 2001 and have been identified by the West Bengal Police Commission (see below). According to the West Bengal Police Commission as of 1996 there were 56,200 armed and unarmed police in West Bengal and 21,743 in Kolkata and 425 police stations for a total population of around 72 million, making each police station responsible for around 170,000 people. The Police continue to operate under the Police Regulations of Bengal, 1943, drawn up prior to Independence under British rule.

A senior police officer who spoke unofficially to Amnesty International delegates said that there is not much support for in-service training. Once police have passed out of the initial training, they tend not to get more training and no mid-course correction. He also referred to problems with the standards of recruits to the police force saying that there are no aptitude tests for recruits at the constable level and no assessment of performance. In time of unemployment, anyone can become a constable: "we are not dealing with inadequacies of law, but dealing with inadequacies of policemen."

The West Bengal Police Commission found after looking at the police system that "the infrastructure of training is grossly inadequate, its delivery system outmoded, and the curriculum inadequate". No refresher courses were available for constables who are given nine months initial training. The Commission also found that standards of police investigation were very poor and had in fact worsened since the First West Bengal Police Commission issued its findings in 1960-61.

Criticism of the Government of India for failure to reform the police system is often met with the answer that police is a state subject and states are reluctant to agree to systematic reform of the police system. While that appears to be a genuine problem Amnesty International delegates were told unofficially by police in West Bengal that the central government discusses police reforms with state Director Generals of Police every year. However, the discussion does not cover systematic reforms along the lines of the recommendations of the National Police Commission but reforms to the infrastructure of the police at the police station level and some modernization of police forces including working conditions and equipment.

²⁵ For example Amnesty International delegates were told that there was no separate female lock-up in the Hooghly district court and that women were therefore kept standing outside tied with ropes and handcuffs. The lock-up itself is only 10/16 feet normally holding 30-40 people and has no bathroom.

West Bengal appears to have acknowledged serious problems in the policing system. Two Police Commissions have been appointed in the past 40 years to look at the problem and to bring out recommendations, the first in 1960 and the second in 1996. Like so many Commissions throughout the country, the findings of the First West Bengal Police Commission appear to have been ignored and their recommendations not implemented. The final report of the Second Commission has only just been submitted to the government after five years of work. Meanwhile, a police force unable to police effectively continues to perpetrate human rights violations with apparent impunity. In response to criticisms of policing in West Bengal by the WBHRC, the government has stated that it has "directed all its efforts to build up a police machinery dedicated to the welfare of the community at large."²⁶ The evidence is unfortunately to the contrary.

In 1997 Home Minister Buddhadeb Bhattacharjee admitted that law and order in the state was in terminal decline and that the Left Front government rather than creating a fair, independent police system, had in fact "politicised the police, destroyed the information gathering network, extended political protection to lumpen elements and has made senior officers subservient to the whims of political bosses."²⁷

During their visit to West Bengal in June 1999, Amnesty International delegates had an opportunity to meet with members of the **West Bengal Police Commission**. An interesting and open discussion was held about problems faced by police and the need for reform.

"Everywhere the police organization is deeply embedded in the social soil. Over the past years, this organization has been alleged to be either a passive spectator or an active participant in the process of social disorganization. Behavioural aberrations in the police are often a reflection of social permissiveness aggravated by organizational indifference. Corruption, bribery and abetment of crime that are commonly attributed to the police these days are the cumulative result of a long process of internal organizational laxity, slow but steady politicisation, and general societal apathy and permissiveness. What emerges at the end is a terrible loss of credibility, as the lay public is not sure about the advisability of approaching the police for redressal of grievances. In consequence, there appears to be developing a public culture of police avoidance and non-cooperation. At the other extreme, public alienation has occasionally been manifesting itself in ugly incidents of lynching and mass beating of criminals, taking the law out of police hands."

"There is a tug of war going on in police work, as it were. Democracy needs a citizen-friendly police that would extend its helping hand on demand; whereas in reality, the 'order'-maintenance work has been looming large and tending to inflate the 'coercive' nature of police work more and more. "

[extracts from the interim report of the West Bengal Police Commission, September 1998]

²⁶ See 1997-98 Annual Report of the WBHRC, Comments of the Government on action taken in response to Observation of the Commission (Para 5.6, Page 61).

²⁷ "True Confessions", The Telegraph, 19 March 1997.

The Commission was established under a Home Department resolution dated 18 October 1996 by the State Government. It began functioning only from September 1997 as it took one year to sanction office space and furniture. Its terms of reference were wide-ranging and were published through newspaper advertisements and individuals, organizations and associations were invited to send their views, comments and suggestions. While noting its disappointment at the lack of response from police directorates (notably the Director General of Police of West Bengal and the Commissioner of Police, Kolkata) to its call for input, the Commission made several interesting observations and recommendations in its interim report ("Part I") dated September 1998. Amnesty International understands that its final report was submitted to the state government in early 2001 but it has yet to be tabled in the State Assembly and has therefore not yet been made public.

IV. The role of other sections of the criminal justice system

In theory, other sections of the criminal justice system should provide checks on policing, identifying abusive practices and demanding change. In reality however, Amnesty International delegates found a system which as a result of overload, lack of resources, intimidation, self-interest and disinterest, appeared largely to ignore systematic patterns of abuse within the police system.

i. Public Prosecutors

The role of the Public Prosecutor in India is not set out in the Code of Criminal Procedure (CrPC) or in police manuals. State Public Prosecutors (often called Police Prosecutors) are chosen through the Public Service Commission which is a government body, must have three years experience practising law, are often recommended by the police for

Article 1 of the UN Guidelines on the Role of Prosecutors stipulates:

“Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.”

Article 2a of the UN Guidelines on the Role of Prosecutors further specifies:

“States shall ensure that “Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of a country concerned.”

In addition *Article 2b of the UN Guidelines on the Role of Prosecutors* states: “Prosecutors should have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.”

appointment and are appointed for life. Amnesty International delegates were told that Police Prosecutors in Kolkata are appointed directly by the Commissioner of Police. Although there has been discussion at the national level of the need for a Directorate of Prosecution -- an independent body staffed by bureaucrats with a selection panel -- this idea has never been pursued.

The Second West Bengal Police Commission in its September 1998 report noted that there was no system of accountability for Public Prosecutors. A group of lawyers in Kolkata told Amnesty International delegates that there is no professional pride amongst Public Prosecutors in presenting a sound case, that they accept unquestioningly the version of the police and are "pathetically dependent on police". Amnesty International believes that this is in clear violation of Article 14 of the UN Guidelines on the Role of Prosecutors which specifies that "Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded." Public Prosecutors rarely complain to police about insufficient evidence to prosecute a case or about conflicting evidence and unsound witnesses or question evidence which has clearly been extracted using torture. Justice D.K. Basu, Chairperson of the Legal Aid Services of West Bengal noted that it was commonplace for police to hire witnesses in criminal cases and that Public Prosecutors do not appear to question this violating Article 16 of the UN Guidelines on the Role of Prosecutors which stipulates, "When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice."

ii. The courts

The courts in West Bengal, as in all states in the country deal with a huge caseload. Hundreds of cases are pending and hundreds of detainees pass through the district and sessions courts every day. Such an overloaded system leads perhaps inevitably to abuse of safeguards set out to ensure the rights of detainees. In particular the role of the judiciary in monitoring the legality of detention is severely compromised as can be seen in the numbers of detainees held in illegal detention. Amnesty International delegates heard repeated complaints that magistrates remanded detainees to police or judicial custody under section 167 of the CrPC without those detainees being physically brought before them as they are required to be by law. Even when detainees are brought before a magistrate, courts are often too dark or too crowded for a magistrate to examine the detainee in any way, either to verify their true identity, to request information on whether or not the detainee has been treated properly while in police detention or to notice any physical injuries and take action thereon. Amnesty International delegates were told that the court of the Sub-Divisional Magistrate, Alipore, was too small to accommodate the accused who therefore can not be physically produced before the magistrate.

In its critique of the WBHRC's order in the case of Jagganath Shaw (see above), the APDR commented: "it is common knowledge that undertrials are presented literally in a herd in the courts, and the procedures of formal production remand, bail etc. for about fifty odd persons are

completed within a few minutes and they are never allowed to interact with the Judge disposing the matters. Instances are common, when accused persons are not even led in the court-room for a second. While they are kept inside prison van in the court compound, judicial formalities are completed."

Amnesty International delegates visited the Bardhaman district court in June 1999. They witnessed scores of men crowded in a tiny court lock-up awaiting their cases being heard and/or their production before the courts, and rows of small dark courtrooms, again crowded with people with a caged area where several detainees were kept while a magistrate sifted through papers remanding them to custody. Amnesty International believes that such conditions impede any effective monitoring of detainees and violates Principle 11 (1) of the UN Body of Principles for the Protection of all Persons which states, "A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assessed by counsel as prescribed by law."

In 20 November 2000 the Sub-Divisional Judicial Magistrate at Alipore before whom three young men -- Debojyoti Roy, Hridibrata Roy and Chandan Saha -- were brought, instructed the police officer dealing with their case to "render medical aid to the accused no.1 and 2 and not to torture upon any accused." While apparently thereby acknowledging that the three had been tortured -- their lawyer told the magistrate that they had been tortured and a subsequent medical report indicated that when examined, Debojyoti Roy had a small cut mark over his left eyebrow and a bruise under the left eye along with bruises and abrasions on both buttocks -- the magistrate took no action against the police officials nor did he take practical steps to ensure the further safety of the men who he remanded to further police custody. Debojyoti Roy, Hridibrata Roy and Chandan Saha were reportedly subjected to further torture in police custody before being granted interim bail on 25 November by the magistrate who noted that the police had failed to produce evidence against them.

iii. The role of doctors

There is no arrangement for medical treatment in police custody or for medical check-ups. Individuals must be taken to hospital by police in order to obtain treatment. Doctors who deal with medico legal cases²⁸ have loyalty to the government first (they are mainly government-employed) and are often influenced by police to manipulate findings or not record certain injuries. There are numerous examples of doctors refusing to provide treatment to individuals or failing to take note of complaints of torture or specific injuries due to torture during post mortem investigations and manipulating records to show that detainees were admitted and provided with medical care when in fact they were dead on arrival in hospital. The WBHRC has taken serious note of many of these and its annual reports list numerous cases of grave misconduct on the part of medical professionals. For example in its 1997-98 Annual Report it commented (Para 5.5, page 60) on the case of Babai Biswas who died in custody on 9 April 1997: "Commission had reason to believe that Babai Biswas was already dead by the time he was brought to the hospital but an elaborate exercise was undertaken to whitewash the matter.

²⁸ Cases in which the police are involved.

Attempt was made [by police] to brow-beat the doctor on duty and to rearrange the hospital records in a manner which would show that not merely the patient was brought to the hospital alive and breathing, but that he was even administered life saving injections before he died. The silent acquiescence of the higher authorities in the arrangement is sad and sickening." Another example was highlighted in its 1998-1999 Annual Report of the case of Sheikh Mumtaz who died in custody in July 1997. The Commission noted that the Executive Magistrate carried out the inquest "in a perfunctory manner" without recording marks of external injury and that when a doctor at the Diamond Harbour Hospital found external injuries on the body he stopped the post mortem and proceeded to attempt to match the post mortem examination with the inquest report. The Commission recommended that its "displeasure" be communicated to Executive Magistrate and the doctor concerned.

In its annual report for 1995-96 the WBHRC had observed as follows: "In a number of cases... the post-mortem reports were being submitted in a somewhat provisional manner and the medical officers, in a bid to play safe, invariably made their reports subject to the viscera report (forensic examination of the viscera - the organs in the abdomen), often, regardless of the requirements... The Medical Officer preparing the post-mortem report should be reminded by the authorities to discharge their duties and obligations without being subject to extraneous pressure and manipulation. The post-mortem reports should not be made subject to viscera report in a routine manner unless it is strictly warranted by the nature and facts of the case. The related infrastructure facilities including the morgues should be expanded and revamped so as to make the job less daunting." In its comments on action taken, the government of West Bengal merely responded that "Instructions to the Medical Officers are issued by the Health Department from time to time".

In March 1991, the West Bengal government set up an Expert Committee to identify problems of the forensic facilities available in the state and to make recommendations for improvements. The 'Report of the Committee on Upgradation, Improvement and Revamping of Forensic Science Laboratory Facilities, Modernisation of All Morgues, Speeding up of Submission of Post Mortem Reports and Other Related Matters' was published in October 1994. It found that in Post Mortem centres in medical colleges in the state medico legal experts were well trained and conversant in the subject of forensic medicine. However it found that in Post Mortem centres situated in police morgues in sub-divisional and district headquarters of all the 17 districts of the state, "medico legal works are being carried out by turn by a group of medical officers in addition to their routine hospital duties while working in the sub-divisions and district hospitals as and when required. All these medical officers are not equipped with sufficient expertise and experience in medico legal examination and medico legal works in the truest sense of the term". In 1996 the Committee was reported to have submitted two reports -- which also looked at the state of morgues and the problems in delays in post mortems -- and the recommendations were said to be under consideration. However, there were reported to be concerns about the large financial implications of the recommendations which the Committee had made. Concerns about the financial commitment that the West Bengal government is prepared to devote to this area are heightened by the fact that when the Committee was originally appointed it was not given an office. After several months they were given an office but no typist. The Committee was finalizing a report on medical-legal services in 1999.

The poor standard of post mortems makes the relatives' attempts to obtain justice extremely difficult. Further barriers have been placed in their way by the government (in the form of the Deputy Directorate of Health Services in West Bengal) which on 12 June 1996 issued a circular to all Chief Medical Officers of Health in all districts and Superintendents of Medical College hospitals stating: "It has been reported that Post Mortem Reports are being handed over to the concerned party (family members of the victim etc) after post mortem examination. It is strictly ordered that in no circumstances the Post Mortem report should be handed over to the party. The Post Mortem reports should be sent to the concerned police authority only and in special circumstances to the courts on demand." This order, which is still in force, clearly limits independent scrutiny of post mortem reports.

In the case of **Gopal Goswami** (see also on page 30) who died in police custody in 1987, following an initial post mortem which found that he had died of a heart attack, forensic expert Dr J.B. Mukherjee, was asked to give his opinion on the basis of several detailed photos of the victims body. Police had claimed that following arrest he had fallen from the police jeep and subsequently died of his injuries. However, Dr Mukherjee, who had access to the original Post Mortem report, found numerous inadequacies in it, demonstrating that it had been a cursory examination rather than a forensic examination. Dr Mukherjee's detailed opinion, given in December 1989, contained the following:

"Finally, the autopsy Surgeon opined that 'the cause of death was due to effect of shock and heart attack, which was may be natural death'. By giving this opinion the autopsy surgeon has presumed not to have properly considered, rather have categorically ignored the role of the seven injuries distributed from the head to foot of the deceased. He mentioned these injuries in his report but he remained completely silent whether those injuries played any role towards precipitating shock which was opined to be one of case of death... He has mentioned 'heart attack' as one of the causes of death of the deceased in the case under reference but he has not presented any substantive findings in support of his diagnosis of 'heart attack' - a lay man's term not usually used in medical parlance towards ascribing the cause of death".

Dr Mukherjee found that many injuries visible in the photographs had not been detailed in the post mortem report: *"The number of injuries as are overtly demonstrated in the pictures are not only many more in number and are more severe in nature and extensive in distribution than the few that are present in number, superficial in nature, localised in distribution as have been mentioned in the P.M. report, but also the injuries as noted in the pictures candidly suggest about homicidal nature of their implication than anything else, in contradistinction with the injuries as noted in the P.M. report... The injuries as noted in the P.M. report are more consistent with strike with hard blunt weapon like lathi/baton/roller than with fall from a jeep while trying to run away specially in absence of abrasions, bruise - lacerations over palms of hands soles of feet and fingers, hands toes, adjoining parts of fore arms, apart from absence of fracture - dislocation of wrist joints and ankle joints etc."*

Dr Mukherjee finally concluded that the injuries indicated that they had been caused by hard blunt forcible impact: "All these injuries were inflicted by no other means but homicidal ones. The injuries as noted and as explained to have been caused, were sufficient to produce enough

of shock and haemorrhage to cause death in ordinary course of nature." As a result of Dr Mukherjee's findings the case against police officers went to trial.

V. Targets of torture and ill-treatment

As can be seen from many of the case studies referred to throughout this report those most socially and economically disadvantaged, including women and children, are particularly vulnerable to torture and ill-treatment by a police force which seeks to exert power and to extort money -- often under the influence of powerful local groups -- from those too weak to resist.

During their visit to West Bengal, Amnesty International delegates heard of the torture of several **children** by police. For example delegates interviewed a 12-year-old boy in Hooghly district who was nine years old at the time he was arrested in connection with a murder. He was kept in custody for seven days, two of which were in police custody. The rest were spent in a Juvenile Home. He related how while in police custody he had been beaten by three police officers on his face (leading to the loss of a tooth), and on his knees with a baton. He told delegates that police had said to him "say that I have murdered and we will release you." When Amnesty International delegates met him he was on bail and the case was being heard by a sessions judge, Hooghly district.

Amnesty International delegates also heard of the cases of **Pinter Jadav** and **Manojit Gowala** who were picked up by police in Siliguri in May 1999. On 5 May 1999, 14-year-old Pinter Jadav and his nine-year-old cousin Manojit Gowala travelled from Phatapukur to Siliguri to see a film. They reached Siliguri at around noon but as the film was not due to start until 1.30pm, they wandered around the city. At the Tensing Norgay bus stand, a man asked them what they were doing there. He grabbed them both by the scruff of the neck, told them they were thieves and took them to the nearby police outpost -- Pradhan Nagar outpost. There they were beaten with *lathis* and kicked. Manojit said that Pinter vomited blood twice as a result of the beating. He said there were other police in uniforms at the police outpost who joined in the beating. Manojit was then taken by plain clothes police on a scooter to the local police station.

Manojit Gowala was released, with the help of a lawyer, on the surety of a personal bond after being detained for six days without charge. During his six days in detention no arrest memo was issued and he was not brought before a magistrate. Police subsequently stated that they did not release Manojit Gowala because he could not give his home address correctly. However, human rights activists who have taken up his case and have interviewed Manojit Gowala, have stated that he is fully capable of providing his address.

When their children didn't return from Siliguri, Paremo Jadav (Pinter's mother) became worried. The next morning Pinter's grandmother and her daughter went to the Kotwali Police station in Siliguri which is near the cinema to find out whether the police knew anything of the whereabouts of the two boys. Police told them that the boys had not been arrested. There was a lock-up at the back of the police station and when the two women shouted out the boys' names, Manojit shouted "Naani, I'm here, Pinter is at the police outpost". The women said they

were too scared to go to the police but went to the court in Siliguri to find out whether they could obtain bail for the boys. Manojit was subsequently released on bail.

Despite the submission by Paremo Jadav of a deposition to the Siliguri police on 18 May 1999 regarding the 'disappearance' of her son, the filing of a First Information Report on 18 May 1999 by the APDR and concerns raised with the government by the APDR on 28 May, Pinter Jadav's fate remains unknown. A *habeas corpus* petition (WP 9946 of 1999) was also filed on 14 June 1999. Pinter's grandmother has continued to visit the police outpost in search of her grandson but police regularly chase her away.

Police claimed that they took Pinter Jadav to hospital in an injured condition where he died. Photographs of a body were produced but Pinter's mother denied that it was her son. The Superintendent of Police, in an affidavit, stated that he investigated the incident and found that the boys had been brought to the outpost by members of the public who accused them of stealing. Pinter Jadav was not well and so police arranged for him to be sent to the Sub-Divisional Hospital, Siliguri. The younger boy was sent to Siliguri Police Station. The OC of Pradhan Nagar police outpost denied the boys' arrest and said that the elder boy -- Pinter Jadav -- had been taken immediately to hospital for medical treatment on the advice of police. He admitted that proper procedures were not followed -- the law provides that if anybody is brought to a police station in an injured state the police must register a General Diary before forwarding them to hospital and that if a person is taken into safe custody (as in the case of Manojit), police have to inform the court immediately -- because the boys would not give details of their identity and because the priority was to get the elder boy to hospital.

In a petition filed in the High Court on 14 June 1999 the APDR asked for an inquiry to be carried out by the Central Bureau of Investigation (CBI). In a judgement dated 14 October 1999 the High Court ordered a CBI inquiry and directed the police authorities to render all cooperation. The WBHRC informed Amnesty International in October 1999 that it had taken cognizance of the matter. As of the beginning of June 2001 the CBI inquiry was still continuing and the fate of Pinter Jadav remained unclear.

Women are also vulnerable to torture and ill-treatment including rape in police custody as several of the cases documented above demonstrate. In September 2000 it was reported that a 19-year-old mute girl had been raped by two police constables in a police van while travelling between the sub-divisional judicial magistrate's court at Alipore to Presidency Jail in Kolkata. The WBHRC does not list separately the number of complaints it receives of custodial rape. In its Annual Report 1998-99 it recorded that it had received 95 complaints of "Rape, Molestation and other indignity to women" but did not specify whether these were all alleged to have been perpetrated by police. As in other states, many crimes of violence against women go unreported. Amnesty International was told by activists working with women victims of violence that it is common for police to put pressure on women to withdraw complaints and that their attitude is "what is the point?" The **State Women's Commission**, established in West Bengal in October 1992 under state legislation focuses mainly on violence against women by non-state actors. The Chair of the Commission told Amnesty International delegates in June 1999 that its objectives were equality of treatment and opportunity and an end to discrimination. The Chair referred to issues of foeticide, determination of sex, discrimination against girl child and dowry death as well as the branding of women as witches as subjects of concern to the Commission and noted that

the Commission relies on police to investigate complaints submitted to it. The Chair admitted to delegates that the Commission had “been able to do very little till now” and activists expressed preference for taking cases to the WBHRC rather than the State Women’s Commission.

The vulnerability of individuals on the basis of their socio-economic status is commonplace. Most glaring in terms of discrimination is the treatment of members of “**denotified tribes**” otherwise known as “criminal tribes.”²⁹

28-year-old Budhan Sabar, from Akarbaid village in Purulia, one of the poorest districts in West Bengal, was arrested on 10 February 1998. He died in custody in Purulia jail seven days later. He was a member of the Khedia Sabar tribe - a denotified tribe. He was arrested by plainclothes police. When his wife Shyamoli tried to run after him she was told by police "Go away, or we will beat you too." He was picked up for questioning about a robbery committed in September 1997. Budhan was tortured in the Barabazar police station for six days. He was then sent to Purulia jail. Police claim that on the morning of 17 February Budhan lost his mental balance and was placed in solitary confinement and that there he committed suicide. The Khedias buried Budhan’s body and pretended to cremate it so that it could be exhumed later so that an independent post-mortem could be carried out. The Kolkata High Court ordered the exhumation and the holding of a second post-mortem (the first post mortem was conducted on 18 February). On 27 March the High Court showed the video-tape recording of the two post-mortems. The first tape had been tampered with. It was unsigned, unsealed and had no continuity and showed that in fact no doctor had been present. The Purulia district court has admitted a murder case against the Officer in Charge of Barabazar police station. The *Paschim Banga Kheria Sabar Kalyan Samiti* [Denotified Tribes Rights Action Group] took up the case of Budhan Sabar and has been campaigning on behalf of denotified tribes for many years.

Political activists and human rights defenders are also targets of police. Peaceful protests are regularly broken up by police using excessive force. In August 2000 Amnesty International wrote to the authorities in West Bengal after receiving reports that police had used excessive force against peaceful protesters involved in a rally opposing nuclear weapons and proposals to construct a nuclear power plant in West Bengal on 9 August in Kolkata. Several of the protesters were reportedly hit with *lathis* by police and many were kicked and beaten. Several women demonstrators were reportedly dragged by male police personnel and had their clothes torn. Many of those arrested sustained injuries during arrest. No response was received from the government to Amnesty International’s concerns. The involvement of police in suppressing political activity and supporting the ruling Left Front government was demonstrated in the recent assembly elections held in May 2001. On 10 May Rabindranath Das (alias Topi), who had reportedly gone to a polling booth to provide food for a polling agent belonging to the Trinamool Congress in Beliaghata, was chased by police wielding *lathis*. Fleeing, he ran into the nearby lake where he drowned. Human rights activists who saw his body claimed that he had severe

²⁹ In 1871 the British authorities governing India notified certain tribes as “criminal” in 1871 under the Notification of Criminal Tribes and Castes Act which placed them under constant surveillance. After independence these groups were officially “denotified” by the Government of India in 1952 and are now known as “denotified tribes”. However, human rights activists report that members of these tribes are particularly vulnerable to violations at the hands of police because they are often the first port of call for officers wishing to solve a crime.

injuries as a result of *lathi* blows and witnesses reported that police continued to beat him from the shores of the lake while senior police officials stood by. On the basis of press reports and a complaint from the APDR, the WBHRC initiated an investigation into the case. Amnesty International has learnt that arrest warrants were issued against the three accused police officers on 17 June 2001.

Figure 1 Asim Chakrabarty, Secretary of the Siliguri Branch of APDR, March 2000 (c) Association for the Protection of Democratic Rights

On 26 March 2000 Asim Charkrabarty, Secretary, and Vivek Sarkar, Executive Member of the Siliguri branch of the APDR were beaten with *lathis* when they went to a local police station to inquire about a criminal case. The OC verbally abused them saying that they needed to be taught a lesson. Asim Chakrabarty's arm was severely twisted and Vivek Sarkar, Executive Member of the Siliguri branch of the APDR were beaten with lathis when they went to a local police station to inquire about a criminal case. The OC verbally abused them saying that they needed to be taught a lesson. Asim Chakrabarty's arm was severely twisted and Vivek Sarkar was thrown in a ditch outside the police station. Amnesty International wrote to the Chief Minister asking for information on what action the government intended to take to investigate the incident and bring those found responsible to justice, but no response was received. A complaint was also registered by the APDR with the WBHRC. The WBHRC report has yet to be published and the case against the police is pending.

Figure 1 Vivek Sarkar, Executive member APDR, Siliguri Branch, March 2000 (c) Association for the Protection of Democratic Rights

VI. Impunity

Many observers argue that the impunity enjoyed by police officers in West Bengal in the 1970s in tackling left-wing armed groups has contributed directly to the high incidence of torture and death in custody in the state to this day. In 1998 the APDR filed a petition demanding that police officers responsible for human rights violations in the 1970s should be punished. The High Court dismissed the case but the petitioners filed an appeal in the Supreme Court. Most unfortunately the Supreme Court upheld the High Court judgement saying that owing to the time lapse between the human rights violations and the petition being brought, evidence would not be available and no useful purpose would be served.

As noted earlier, many of the public commitments made by the government to punish police officers are not put into practice.

In June 1996 the West Bengal government claimed that "in the last few years... 18 police officers were departmentally proceeded against and punished; cases were instituted against nine others of whom three were convicted by Courts and five were acquitted."³⁰

In government responses to the WBHRC's recommendations informing them of action taken, there are regular references to departmental proceedings. However, there is no indication of what these proceedings entail or what type of punishments are

handed out, indicating a lack of transparency which is underscored by the fact that the former Chair of the WBHRC told Amnesty International delegates that on two occasions the Commission had asked to be witness to departmental inquiries against police officers but that this had been refused by police.

In its 1998-1999 Annual Report, the WBHRC observed that "the grievances of the citizens submitted to higher police officials against the wrong-doings of the lower functionaries were not receiving such attention and priority as could inspire confidence and trust amongst the people". It further observed that "In a number of cases... the reports received by the Commission from the reporting officers in the districts economised on truth and often dressed up the incidents in a manner so as to make them look innocuous. It took considerable investigation efforts on

"Necessary steps shall have to be taken in order that in future the ministers and bureaucrats pay regard to the sovereign powers of the people and do not dare to flout their independence by the show of force. Those who do not want to punish the guilty are now raising their voice "Forgive and forget." The far-flung powers of the people will definitely drag those who committed offences against the people, who will put them in the dock for trial. If this is not done, the guilty ministers, their henchmen and the bureaucrats will get this assurance that without harbouring any fear or punishment they can go on oppressing the people and that no government can ever touch them."

[Ganashakti, 4/4/77. From the post-Emergency resolution of the CPI (M) Central Committee, in a meeting attended by (among others) Jyoti Basu (March 23 - 27 1977)]

"Deaths in police custody have been a cause for concern and have always been promptly attended to by the State Government. It may be noted that deaths in police custody are due to several factors like, public assault, encounters, suicide, natural causes, etc. However, sometimes there may be deaths in police custody due to negligence or assault by irresponsible policemen. All these incidents when reported, are attended to with promptness and statutory inquiries are conducted to ascertain the facts to meet the ends of justice."

[para 32 of the Budget Speech of Sri Buddhadeb Bhattacharjee, Minister-in-charge of the Home (Police) Department, for the year 1996-1997, June 1996]

³⁰ Para 33 of the Budget Speech of Sri Buddhadeb Bhattacharjee, Minister-in-charge of the Home (Police) Department, for the year 1996-1997, June 1996.

the part of the Commission to get to the truth beneath the layers of embellishment." It appears that there had been no improvement from the previous year. In its 1997-98 Annual Report the WBHRC had commented: "When custodial crime came to notice, the initial tendency was to hush up the case, and if that was not found feasible, to justify the same by inventing a surrogate story reinforced by manipulation and interpolation of records."

Amnesty International delegates heard of several police officers who had allegedly been responsible for numerous human rights violations who had been kept in senior positions within the police force and even promoted. One such was the Officer-in-Charge of Karimpur and Kalyani police stations against whom there were several charges of custodial deaths. The WBHRC recommended that he should not be given charge of any police station. However, he was subsequently transferred to Central Intelligence Department where he reportedly enjoys significant powers.

Victims and their families are faced with enormous hurdles in attempting to obtain justice. While there are severe delays in the criminal justice system, hurdles are often deliberately created by the police and government authorities in cases where police are the accused. Police often deliberately seek to cover up custodial crimes committed by colleagues or to influence or interfere with investigations. Commenting on the role of the District Superintendent of Police in the case of Debu Pramanik (see above) in its 1996-97 Annual Report, the WBHRC stated: "The Commission views with displeasure the tendency on the part of even senior police officer who, presumably, motivated by narrow departmental consideration goes out of (the) way to defend police action even if the said action is illegal and unlawful. The Commission initially faced difficulty in proceeding with this investigation because of lackadaisical response even from the S.P. Hooghly."

There is often no eye-witness evidence of torture in death in custody cases. This problem is exacerbated by police threats to families of victims and witnesses attempting to pursue cases and offers of bribes to withdraw complaints. Once initiated in the courts, cases are delayed by the withdrawal of testimony, failure of the accused to appear and requests for adjournments. In July 1997 the APDR wrote to the Chief Justice of the Kolkata High Court referring to scores of cases filed before the courts relating to human rights violations and pointed out delays asking the Chief Justice for these cases to be expedited.

In January 2001 **Nirupama Goswami** died. The last years of her life were spent fighting for justice after the death of her son Gopal Goswami in police custody in July 1987 (see page 23). Nirupama Goswami filed a complaint before the Chief Judicial Magistrate, Malda, six days after her son's death. The Chief Judicial Magistrate called for an investigation. After six years, when there was no progress in the investigation Nirupama Goswami filed a petition on 18 March 1993 before the Sub-Divisional Magistrate's Court, Malda, requesting that the final report of the investigating agency -- the CID -- not be accepted as they had not examined her or any other witnesses cited in her complaint at any time during the investigation. The magistrate kept this petition on record. In its report dated 20 January 1994 the CID found that Gopal Goswami had died as a result of injuries sustained from jumping from a police jeep while being taken to the police station on a charge of dacoity. His mother submitted a further protest letter on 24 April 1994 alleging that the police had not investigated the incident properly. She included the opinion of a forensic expert on the basis of photos of her son's body and the autopsy report (see above).

The court accepted this and ordered the CBI to investigate on 24 September 1994. The CBI preferred a revision of the order and the High Court set aside the order of the CJM court and directed the court to undertake its own investigation using its powers. Finally in November 1998 the District Court ordered that non-bailable arrest warrants be issued against the accused under section 304 IPC [*Punishment for culpable homicide not amounting to murder*].

The accused police officers appeared before the Subdivisional Judicial Magistrate, Malda, on 22 February 1999 and were remanded to judicial custody. Their plea for bail was initially rejected. But after 22 days they were released on bail. As of May 1999 they have been facing trial. In a letter to Amnesty International dated May 1999, Nirupama Goswami wrote: "I have been fighting since 1987, for more than twelve years, for prosecution against the torturers and murderers the top ranking Police personnel of Malda District involved in the murder case of my son. After a lapse of twelve years I have been able to put the accused Police personnel into judicial custody... Criminal case is a long drawn process and involves money and energy. I am too old and financially not sound now". Nirupama Goswami did not receive any compensation for the death of her son before her own death.

In March 1994³¹ Amnesty International issued a brief report on the case of Archana Guha who had at that time spent 16 years awaiting justice having been detained and tortured in July 1974. The torture she suffered caused paralysis of her legs. Five accused police were committed to stand trial in December 1978. There followed years of deliberate delay by the accused police officers, during which time four died and one retired. Archana Guha was supported by her brother and legal counsel, who argued her case in court and kept the case alive. Finally on 5 June 1996 the former deputy Commissioner of Kolkata Police and another police officer were sentenced to one year imprisonment and a fine of Rs.2,000 (\$57). The victory was unfortunately only temporary. The police officers went to the High Court on appeal which struck down the sentence of the lower court on technical grounds -- arguing that in violation of procedure the court had not read out separate sentences against each specific charge. The case was sent back to the sub-divisional judicial magistrate's court where it remains pending. One of the remaining police officer died in June 2001.

VII. The West Bengal Human Rights Commission

The West Bengal Human Rights Commission (WBHRC) clearly has a crucial role to play in human rights protection in the state. It has been able to uncover, as related in successive annual reports, numerous incidents of torture and illegal detention and other abusive practices -- practices which might otherwise have been left undisturbed. However, as referred to earlier, Amnesty International has been extremely concerned at apparent attempts to undermine the work of the WBHRC by government and police officials. Further concerns about the situation of the WBHRC include the failure of the government to provide adequate resources and infrastructure including appropriately trained investigative staff; lack of timely consideration of

³¹ See *Archana Guha - 16 years awaiting justice: the lack of speedy and effective redress mechanisms for torture victims*, March 1994, AI Index: ASA 20/08/94.

the annual reports of the WBHRC; the failure to provide meaningful information about action taken by the government to implement the recommendations; and numerous instances of non-implementation of recommendations of the Commission despite the government accepting them. In light of this, Amnesty International is also concerned at indications that the WBHRC itself has failed to follow up several of its recommendations with the government and has demonstrated an apparent willingness to allow acts of complicity in torture to go unpunished and to prioritise compensation for victims over prosecution of police officers found responsible for torture.

The WBHRC was established in February 1995. West Bengal was the first state to establish a state commission as envisaged under Chapter V of the Protection of Human Rights Act, 1993.³² The Commission is staffed by a Chair, who is a former Chief Justice of the West Bengal High Court and five members appointed by the Governor on the recommendation of the Chief Minister, Speaker of the Legislative Assembly, Home Minister and Leader of the Opposition. There are currently four investigative staff and several administrative staff. As with many state human rights commissions there were problems of resources when it was first set up. However, since its establishment it has taken up numerous incidents of human rights violations including torture and deaths in custody and numerous issues such as the treatment of detainees in prisons in the state. Between 1997 and 1998 the WBHRC received 3,130 complaints, an increase of 497.3% over the 524 complaints received between 1995 and 1996. Between 1998 and 1999 it received over 5,000 complaints.

Initially, the WBHRC gained a positive reputation amongst human rights activists for being responsive to their concerns about human rights violations and for not being afraid to recommend prosecution of police personnel whom they found guilty of torture. Amnesty International delegates were told by the former Chair of the Commission that if they received a complaint of a human rights violation the Commission would call for a report from the relevant district Superintendent of Police and give 4-5 weeks for reply. This reply would then be examined against the complaint, sometimes the respective parties would be called before the Commission, and a judgement would be given.

In a few cases the WBHRC investigates incidents itself using its own officials. However, there have been consistent problems with its investigative capacity. In June 1999 the Chair of the Commission complained that its investigative staff was insufficient, pointing out that four sanctioned posts of Inspectors in the Commission had been lying vacant for some time. In its 1998-99 Annual Report it complained that it was not in a position to promptly depute its investigating teams to "far flung" parts of the state and that "The Commission's ability to meet the rising expectations of the people for safeguarding their rights would be seriously compromised unless the facilities and resources of the Commission were upgraded." Amnesty International delegates were told that the investigative staff of the WBHRC who are seconded from the West Bengal police, receive no special human rights training. Amnesty International delegates also learnt that at least two of the investigative staff of the Commission had been anxious about returning to the police service after secondment to the Commission for fear of reprisals from their colleagues.

³² There are still only ten state human rights commissions in a country of 27 states.

In May 1999 the WBHRC said it was seeking permission from the government to inspect police stations and jails in West Bengal and indicated that a special team would be set up, led by a senior state judicial officer and made up of representatives of the WBHRC and senior police, jail and social welfare department officials. The WBHRC had asked the Home Department to nominate a senior Indian Police Service officer for the panel. According to reports the state police refused, saying it would be embarrassing for the officer to submit a report against his own force.

Soon after Amnesty International delegates met with him in June 1999, the Chair of the Commission Justice Mukherjee was reported to have sent a strongly worded complaint to the government: "Humiliated and angered by the step motherly treatment meted out the state Human Rights Commission, its Chairman Mukul Gopal Mukherjee has dashed off a letter to Chief Minister Jyoti Basu saying that the watchdog body is being treated as a poor second cousin, starved of resources and infrastructure. The letter says that the government did not seem bothered about protecting the basic human rights of people."³³

The publication of the WBHRC's Annual Report for 1998-1999 which was submitted to the government in April 2000 was severely delayed because the state Home Department had not finalised its Action Taken Report.³⁴ Some officials from the Home Department asserted that the delay occurred because of unhappiness about the recommendations amongst certain police officials who have influence over key individuals in the Home Department. The delay in presentation of the Action Taken Report to the state assembly is likely to further delay the publication of the SHRC report for 1999-2000.

As with the NHRC, the WBHRC only has recommendatory powers. Although it can recommend criminal prosecution, it cannot initiate such prosecution itself. Nonetheless, several appeals have been made in the courts by police officials against recommendations of the Commission for initiating criminal proceedings against them on the basis that the Commission has not given them a fair hearing before recommending criminal prosecution or departmental action. In the above-mentioned section on 'Custodial Crimes and Views of the Human Rights Commission' in its Third Report on West Bengal Police, the Committee on Estimates 1999-2000 referred to the unhappiness of police with procedures followed by the WBHRC and NHRC: "Since the enquiries conducted by the WBHRC/NHRC have the status of quasi-judicial bodies, and on the basis of these findings, quite often police officers are facing even criminal charges, it should be ensured that during the enquiries... the police officers get the reasonable opportunity of defending themselves... Due adherence to the principles of natural justice demand that this protection ought to be afforded to the police officers who are facing enquiries into actions taken by them in discharge of their official duties and in the general interest of the administration".³⁵

³³ "Rights panel protests neglect", *The Telegraph*, 20 June 1999.

³⁴ Under the Protection of Human Rights Act (section 28) the Annual Report of a state human rights commission must be submitted to the state government which must lay it before the state legislature with a memorandum of action taken prior to publication. This has led to long delays in publication as the commissions wait for the memorandums to be prepared and tabled. The NHRC has suggested amending this section of the Act to ensure that if the report has not been laid before the legislature within three weeks it can be published regardless.

³⁵ "WB police irked over rights panel report", *Indian Express*, 30 August 2000.

The High Court orders in these cases so far have been in favour of the Commission, pointing out that the Commission is a recommendatory body and that police officers have an opportunity to defend their position in the courts once criminal proceedings have been initiated.

Despite its criticisms of the WBHRC, the Government of West Bengal has set much store by the fact that it has accepted all the recommendations of the Commission. In December 1998 the Home Minister was reported as saying that since 1995 the government had received 125 recommendations from the Commission and that it had accepted them all. When Amnesty International delegates met with Justice Mukul Gopal Mukherjee he confirmed that the government had accepted all the recommendations of the Commission. However, Amnesty International is concerned that while recommendations might be accepted in theory, their implementation often remains lacking. It is also concerned at the nature of some of the WBHRC's recommendations.

Debu Pramanik sold illegal liquor from his house which was near a police outpost. Police officers used to visit his house to consume the illegal liquor. On 9 July 1996 a Constable was found lying in the road drunk after drinking at Debu Pramanik's house. Debu Pramanik was arrested by a police constable and several other police officers at around midnight and taken to the nearby police outpost: Sahagunge *thana* (station) outpost. No record was made of his arrest on 9 July. His arrest was subsequently recorded as having taken place at 9pm on 11 July 1996. Debu Pramanik's wife visited Sahagunge Police Outpost in the early morning of 10 July and was told by a police constable that her husband was inside the outpost and would then be taken to Chinsurah Police Station. She found him in the Chinsurah Police Station lockup at 11am. Because the Officer in Charge (OC) allegedly wanted to ensure that there was no record of Debu Pramanik's illegal detention he was not given any food for the whole of 10 July and into 11 July. His first meal was at 9pm on 11 July. The WBHRC found that he had been assaulted by police on the night of 9/10 July. Debu Pramanik was sent to the court at midday on 12 July but the Assistant Sub-Inspector (ASI) of the court lock-up refused to accept him as he was unable to stand. The investigation by the WBHRC found that he was sent back to the police station for medical treatment but no medical treatment was given. He was released on bail and handed over to his wife at 12.55pm on 12 July who took him home. He died under an hour later. The post mortem found numerous injuries on his body which were 12 to 36 hours old from the time of death. They found that he had pulmonary tuberculosis and cirrhosis of the liver. There was no food in his stomach and they concluded that an alcoholic suffering from these diseases who had not been fed could die as a consequence.

The WBHRC investigated the case and made a series of recommendations in December 1996:

- < that the Officer in Charge (OC) of Chinsurah Police Station should be prosecuted for illegally detaining Debu Pramanik and denying him food, as well as for subsequently fabricating custody records;
- < that departmental action be taken against the Sub-Inspector (SI) and ASI who helped fabricate records;
- < that departmental action be taken against the two constables from Sahagunge police outpost who assaulted Debu Pramanik and who were also found to have fabricated records;

-
- < that Rs.20,000 [\$428] be paid as interim compensation to Debu Pramanik's wife³⁶;
 - < that the government should ensure that an ASI who had cooperated with the Commission not be victimised.

The government accepted all the recommendations. In response to a letter sent to the authorities by the APDR, the Deputy Secretary of the Human Rights Cell of the Home Department on 9 April 1997 stated that "necessary steps have already been taken or initiated towards implementation of the recommendations." However, the majority of recommendations have still not been implemented. This despite numerous reminders by human rights activists in the state.

- < Prosecution of the OC of Chinsurah police station has still to commence. In February 1997 the Home Department instructed the Deputy Inspector General (DIG) of Police to initiate action against the OC. The DIG wrote to the Superintendent of Police (SP) of Hooghly district in June 1997 instructing him to initiate action. In the same month the SP of Hooghly district wrote to the OC himself asking that a case be lodged against him. Finally, on 18 June 1997 a First Information Report (FIR) was lodged at Chinsurah police station against the OC under sections 342, 466 and 471 IPC [*punishment for wrongful confinement; forgery of record of Court or of public register and using as genuine a forged document*]. However no action was taken on the basis of this FIR. The OC was not arrested or suspended. The OC obtained an interim stay of arrest in the Kolkata High Court on 16 August 1997. However, even after the period of stay expired no action was taken to arrest him. The only action taken was to transfer the OC to another section of the police force and finally to another police station: Magra.³⁷ Finally the case came up at the court of the Sub-divisional Judicial Magistrate (SDJM), Chinsurah on 3 March 2000. A case under section 304 IPC [*punishment for culpable homicide not amounting to murder*] was added to the case against the OC but a temporary SDJM granted him interim bail. On 25 March 2000 the regular SDJM refused to confirm this order of bail and asked the OC to apply for bail to a higher court. Bail was granted and the police officer continues as OC of Magra police station.
- < No departmental or other action is known to have been taken against any other of the police officers identified by the WBHRC as responsible for covering up Debu Pramanik's illegal detention and assaulting him while in custody.
- < the ASI who helped the WBHRC was indeed harassed. After numerous appeals he was transferred to a post in the railway police.

³⁶The WBHRC can only recommend an amount of interim compensation. It is for the state government to fix the quantum of final compensation. This is normally in line with norms set out by the Supreme Court but human rights activists in West Bengal have pointed out that the amount of compensation set out by the West Bengal government is normally far lower than this norm.

³⁷ Human rights activists have informed Amnesty International that Magra police station is known as a "profitable" police station for police and is therefore a better posting than Chinsurah police station.

One recommendation was implemented. Rs.20,000 [\$428]³⁸ was paid to Bula Pramanik on 17 February 1997. However in December 1997, the APDR, on behalf of Bula Pramanik – who has a daughter of 10 and a son of 11 years old who has had to leave school because his family can't afford the fees, and lives in a hut measuring about 10 feet square -- went to the High Court in December 1997 asking for the amount of compensation to be raised. The High Court rejected the petition in June 1998 but a Special Leave Petition was subsequently filed in the Supreme Court. On 15 January 2000 the Supreme Court ordered further compensation of Rs.50,000 which was received by Bula Pramanik at the end of 2000.

Unfortunately this case follows a worrying pattern of cases dealt with by the WBHRC and similarly the NHRC in which their recommendations for monetary compensation to be paid are followed up but in which prosecution or departmental action against police officers is severely delayed or not implemented.

Of further concern to Amnesty International is the apparent tendency by the WBHRC to recommend that "the displeasure of the Commission" be communicated in writing to police officials involved in acts of torture. This is often recommended in the case of senior police officials who overlooked or took no action against police officials who they knew were responsible for torture. Amnesty International believes that communications of displeasure are not sufficient a deterrence or punishment for those who are effectively complicit in torture. Amnesty International believes that officials who are found to have knowingly tolerated torture by those under their command should be held criminally responsible for their acts. In addition, any official indicted for complicity in torture or ill-treatment should be suspended from duty and not permitted to occupy any public position with responsibility for people in detention or occupy a position where he can influence the investigation.



Figure 1 Bula Pramanik, wife of Debu Pramanik, June 1999 (c)Amnesty International

In recent years, human rights organizations in West Bengal have become increasingly critical of the WBHRC and its actions in individual cases. In particular human rights organizations question the processes by which the Commission investigates and draws conclusions in individual cases and makes recommendations. The APDR has asked for a review of several of the WBHRC's recommendations and has accused the Commission of overlooking illegal actions of police, of ignoring evidence and favouring the version of police or jail officials. For example in the case of the alleged torture of Jagannath Shaw (see above), the WBHRC appeared to imply that because the victim did not complain about torture when brought before the magistrate, he

³⁸ The normal level of compensation recommended by the National Human Rights Commission for deaths in custody is Rs. 2 lakh [\$4,300].

had embellished his allegations as an afterthought. The APDR in its criticism of the WBHRC's actions in the case pointed to the difficulties faced by detainees in speaking directly to judicial officers which the Commission appears to have ignored. While admitting that Jagannath Shaw had probably been assaulted in the lock-up the Commission did not recommend that any action be taken against police officers.

The WBHRC clearly has a crucial role to play in human rights protection in the state. It has been able to uncover, as related in successive Annual Reports, numerous incidents of torture and illegal detention and other abusive practices -- practices which might otherwise have been left undisturbed. However, given this crucial role, it is vital that the WBHRC examine its practices and procedures to ensure that they meet standards of impartiality and rigour and that its standards of human rights protection are in line with international human rights standards and do not compromise human rights in any way. In order to do this however, it clearly requires the support of the West Bengal government in a shared commitment towards ending torture and impunity.

VIII. Conclusion

Amnesty International believes that its research shows that the state government of West Bengal has failed to give a clear signal to police in the state that torture will not be tolerated. Few attempts have been made to end a culture of impunity within the police force and to root out police officers who are clearly guilty of torture and ill-treatment. While acknowledging that in some cases individual police officers have been prosecuted, Amnesty International is urging the government to acknowledge that in the majority of cases in which this has happened it is after concerted efforts by victims and/or their relatives, supported by human rights activists and that this is often in the face of threats and harassment by perpetrators and obstacles thrown up by the state and criminal justice system. It should further acknowledge the numerous cases where action is not taken against perpetrators and where victims and their relatives give up the struggle for justice, thereby denying them the right to prompt redress which is the responsibility of the government to provide. Amnesty International urges the government of West Bengal to acknowledge that it has direct responsibility for this situation.

Rather than making human rights central to its policies the Government of West Bengal appears to have sidelined human rights to the remit of the WBHRC. Then too it appears happy to undermine its role by publicly criticising it and inhibiting its actions. As a new term of office for the Left Front government begins, Amnesty International is urging the Government of West Bengal to place human rights at the centre of its policies as a means of ensuring rights to all citizens within the state.

While the establishment of the West Bengal Police Commission is a welcome sign that the issue of police reform is on the agenda of government, it must be ensured that ending police abuses is central to any program of police reform. Given the current situation in West Bengal with increased political violence which in many cases involves the police, Amnesty International is concerned that human rights may be sidelined within any discussion of police reform.

Police practices and failures within the police system are largely responsible for the continuing use of torture. However, other sections of the criminal justice system are also responsible. Rather than responding to the situation of victims of human rights violations the criminal justice system appears designed to frustrate them and to protect perpetrators.

It is hoped that the recommendations which follow will be considered not only by officials of the Government of West Bengal but by police officials, judicial officers and members of civil society.

IX. Recommendations

The following recommendations are being made to the Government of West Bengal in light of the findings set out in this report and reflect many of those made to the Union Government of India in December 2000. At the end of this list of recommendations, Amnesty International is making several recommendations to the West Bengal Human Rights Commission towards strengthening its role in addressing torture and impunity in the state.

1. Publicly condemn and never tolerate torture

- # Officials at all levels of the administration should publicly condemn all forms of torture and ill-treatment whenever they occur. They must make clear to all law enforcement officials, public officials, members of the judiciary and members of civil society that torture will never be tolerated. Talk of degrees of torture or torture of certain groups of "hardened criminals" or "terrorists" as being "acceptable" should be condemned promptly and publicly.
- # Public officials should lead by example. Any public officials found responsible for committing acts of torture or ill-treatment whether in their private or public capacity should be publicly condemned and prompt action taken against them.
- # The authorities should institute public education programs to educate people about the unlawfulness of torture and ill-treatment in all their forms.
- # The Government of West Bengal should make a public commitment to end impunity for torturers as an important signal that torture will not be tolerated.

2. Address discrimination

- # Implement existing legal sanctions against police officers found responsible for illegal actions based on discrimination and initiate disciplinary action against police officers found to have acted in a discriminatory manner towards individuals.
- # Ensure that any program of police reform includes steps to eradicate discrimination within the police and to specifically prohibit acts of discrimination which lead to torture or ill-treatment. Reforms should include ensuring representation within police and security forces of all sections of society.
- # The authorities should ensure that training programs for law enforcement personnel include training on the prevention of violence against women, on the rights of the child, on the inviolable right of every person to respect of their dignity and physical integrity and on prohibiting discrimination on such grounds as racial, ethnic, caste and religious orientation.
- # All police stations should hold and display in regional languages copies of relevant legislation enacted to protect certain vulnerable groups from violence and abuse.

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- # Incidents of torture and other human rights violations should be carefully monitored with a view to determining correlation of their occurrence with victims belonging to certain categories in society including those designated as "denotified tribes". Statistics should be published and steps taken to provide special protection on the basis of this information. Monitoring mechanisms should involve the statutory commissions established to protect particular groups in society as well as non-governmental bodies and individuals who come from or represent these groups in society.

3. Prohibit torture and ill-treatment in law and amend or repeal legislation which facilitates it

- # The law should lay down an active duty on the part of public officials to protect human rights and prevent torture or ill-treatment rather than a passive one of merely abstaining from it and should include offences of ordering, preparation, participation, encouragement and complicity in torture. Article 5 of the UN Code of Conduct of Law Enforcement Officials, which states that it is a duty to disobey any order from a superior to inflict torture or ill-treatment, should be incorporated in relevant laws, including those governing policing in West Bengal. Such a provision should be included in training of and instructions to anyone who may be involved in the custody or treatment of detainees.
- # Protection should be provided for those refusing to carry out orders to inflict torture in addition to the prosecution of those who gave such orders.
- # Evidence elicited as a result of torture should be excluded in all trials.

4. Address institutional problems which facilitate torture

- # Amnesty International welcomes the establishment of the West Bengal Police Commission and urges the Government of West Bengal to thoroughly consult and include the West Bengal Human Rights Commission (WBHRC), human rights organizations and other members of civil society in the development of police reforms, including training programs, amendments to laws or creation of new oversight institutions. Any proposals for police reform including the report of the West Bengal Police Commission should be made public in full.
- # Consideration of the findings and recommendations of the West Bengal Police Commission should be prioritised by government, parliament and civil society.
- # Police reforms should specifically address the problem of human rights violations in custodial situations and structural problems which have been identified as facilitating torture and ill-treatment and other human rights violations. They should also incorporate international human rights standards, particularly those relating to arrest and detention procedures and safeguards against discrimination. They should incorporate a code of ethics for police officers.
- # Police reforms should ensure that police are able to operate independently in the interests of the whole community and are not, as they are now, open to political

and other influences which commonly lead to abuses of the law including torture and ill-treatment.

- # The Police Regulations of Bengal, 1943, should be urgently updated and brought in line with existing and any future national legislation and jurisprudence which provides safeguards to detainees. Any new legislation or manuals governing the operations of police should be kept under regular periodic review to ensure that the protection of human rights remains central.

Criminal justice system

- # The problem of overload within the criminal justice system must be urgently addressed recognising that it contributes to public tolerance of violence as a means of justice and the use of torture and ill-treatment by law enforcement officials as a means of "instant punishment", and prevents victims of torture or ill-treatment from obtaining prompt redress.
- # Urgent attention must be given to ensuring that evidence in criminal cases is collected through proper investigation by police and presented to the courts after careful consideration by members of the prosecution service. It should be made clear to all within the criminal justice system that the use of torture and ill-treatment as a means of coercing confessions from the accused or testimony from witnesses is unlawful and that all, including police, lawyers (including those provided through legal aid), prosecutors and judicial officers, play a crucial role in ensuring that such actions do not form part of processes for bringing people to trial.

Political and administrative system

- # The link between corrupt practices within the political and administrative system and the use of threats or force often amounting to torture or ill-treatment must be acknowledged and addressed. In particular, corrupt political influence over police and the resulting resort by police to threats or force against individuals must be addressed by taking relevant steps to remove the police from such influence and initiating criminal proceedings against public officials found to have abused their positions of authority for corrupt or malicious purposes.

5. Provide adequate safeguards for detainees during arrest and detention in law and practice

- # Police powers to arrest during investigation and without warrant should be strictly limited and adequate safeguards for arrest ensured. Police should be required to clearly demonstrate in writing the need for arresting an individual as a means of reducing the number of unwarranted arrests at the instigation of vested interests.
- # Records of all arrests should be kept in a general diary including details of the officer arresting, the full name and details of the arrestee, the time and place of arrest, any witnesses and any other relevant details. There should be periodic unannounced checks by superior officers or by a visiting body and action taken against officials found not to have followed procedures.

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- # Safeguards for detainees on arrest which have been set out by the Supreme Court, particularly in *D.K. Basu vs. State of West Bengal*, should be incorporated in relevant statutory law and all police manuals, including the Police Regulations of Bengal, 1943, as a matter of urgency. Measures should be put in place to monitor their implementation and statistics published periodically.
 - # Magistrates should play an active role in monitoring strict adherence to the guidelines set out by the Supreme Court in *D.K. Basu vs. State of West Bengal*.
 - # Resources should be allocated to ensure that these safeguards can be implemented in practice by police and security forces including the provision of basic materials. Regular training should be given to police officers incorporating these safeguards and any future safeguards set out by the courts or in law to ensure that police officers are aware of how such safeguards can be implemented in practice and how they are an essential part of their role in safeguarding the rights of citizens.
 - # An arrested person should have a right in law to be informed about their rights in custody. These should be read out to the arrestee in a language he or she understands (recognizing the low literacy levels in many areas of the country) and be publicly displayed in all police stations in relevant languages.
 - # Where unrecorded detentions have been proven, those responsible should be disciplined and prosecuted for unlawful imprisonment and the victims granted compensation for illegal detention.
 - # Police manuals/codes of practice and standing orders should be publicly available documents and be presented at police stations on request.
 - # Resources should be made available so that magistrates are able to apply themselves fully to the important role they play in assessing the lawfulness and monitoring the condition of detention of detainees. It should be a requirement that magistrates ask detainees questions which will clarify their identity.
 - # In order to ensure a safe environment in which detainees are able to bring complaints of torture before a magistrate, there should be an opportunity for detainees to be heard by the magistrate in the absence of those police officials who have brought them from the police station and may have been responsible for their arrest, interrogation and detention. Magistrates should question detainees brought before them to ascertain that they have not been tortured or ill-treated, have not made involuntary confessions and are not being held in conditions amounting to ill-treatment. In doing so, they must ensure that detainees are not withholding relevant information from them for fear of reprisals by law enforcement officials and make it clear to detainees that in the event that a complaint is made steps will be taken to protect them against reprisals.
 - # Judges should pursue any evidence or allegations of torture and order release if the detention of an individual is found to be unlawful.

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- # Detainees should have an enforceable right to a medical examination and should be informed of that right. A copy of the examination report should be given to the detainee or their nominated representative such as their lawyer or relatives. Medical personnel required to carry out examinations of detainees or to provide treatment to detainees in custody should be independent of police and should be duty bound to file an official report of the examination indicating any injuries found.
 - # Women should be detained separately from men and this should be carefully monitored by independent mechanisms.
 - # Recognizing the practice of arresting or detaining innocent relatives, particularly women, against whom there are no charges, as a means of forcing suspects to surrender or provide information about wanted people, this practice should be clearly identified as illegal and constituting the offence of "wrongful confinement". Reports of such practices should promptly be investigated and action taken against those responsible.
 - # The treatment of children who come into contact with the law must be in line with international standards on the administration of juvenile justice.

6. Provide adequate safeguards for interrogation

- # The role of proper investigation within the policing system should be strengthened to reduce reliance on confession as the lynch-pin of evidence against the accused.
- # Detailed guidelines should be drawn up for the interrogation of suspects in consultation with lawyers, Bar Associations, human rights groups and medical professionals. Guidelines should be published and reviewed periodically to ensure they remain an effective mechanism to prevent torture and ill-treatment.
- # The authorities should keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing any cases of torture in line with the Convention against Torture. Those involved in interrogation should receive regular training on how to implement such rules and regulations.
- # Lawyers should be present during interrogation of suspects. Detainees should be given the opportunity to contact their lawyer or seek the services of a lawyer through legal aid prior to interrogation.
- # All officials involved in interrogation should clearly identify themselves to the detainee and their lawyer.
- # Female security personnel should be present during the interrogation of women detainees, and should be solely responsible for conducting body searches in accordance with the directions of the UN Human Rights Committee and reflected in the Supreme Court's judgement in *Sheela Barse vs. State of Maharashtra* (1983 2 SCC 96).

7. Provide effective independent monitoring mechanisms to ensure

implementation of safeguards

- # The government should ensure that there are in place independent monitoring mechanisms to scrutinize police and security force behaviour in all districts of the state. Their independence should be assured by ensuring that they consist of persons of integrity respected in the local community for their independence of judgement and political impartiality. Their members should be fully aware of international human rights standards and national law as well as any new legal judgements which provide enhanced safeguards for those arrested or detained. Given that human rights organizations play an important role in the detection of cases of torture and other forms of ill treatment, Amnesty International believes that they should play a role in monitoring custodial situations.
- # Monitoring mechanisms should have adequate powers and resources to undertake their work including powers of unannounced, immediate and unhindered access to all places where people may be held in acknowledged or unacknowledged detention; access to interview detainees in private; and access to judicial processes. They should also have powers to obtain any documentary evidence necessary to check for implementation of legal provisions. Failure by police, security forces or judicial officers to cooperate with these mechanisms should be an offence and the government should take immediate action against any official who fails to cooperate promptly and fully.
- # Monitoring mechanisms should forward any evidence of non-implementation of safeguards to the WBHRC or NHRC and to relevant superior officers requesting further investigation or recommending action to be taken. They should regularly publish the results of their findings including information on specific provisions of law which have most commonly been violated, details of police stations which have been identified as abusing legal provisions, and information on the background of victims of human rights violations as a means of identifying particularly vulnerable groups in society and identifying the need for special protection.

8. Ensure investigations into torture

- # The government should ensure prompt independent investigations into all allegations of torture or ill-treatment (including rape and death in custody). Investigations of allegations of torture or ill-treatment should incorporate the Istanbul Principles³⁹ as endorsed by the UN Special Rapporteur on Torture. Those investigating the allegations should be fully independent of the alleged perpetrators and have the necessary powers and expertise required to open prompt criminal

³⁹ These are the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 1999 a Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (known as the Istanbul Protocol) was presented to the High Commissioner for Human Rights, Mary Robinson, by an international expert group which took three years drafting the document. The Istanbul Principles were an appendix to this Manual.

investigations wherever there is reasonable ground to believe that an act of torture has been committed. They should have the necessary resources and powers to carry out investigations promptly and effectively, including powers to compel witnesses to attend and to obtain documentary evidence including powers to commission investigations by medical or other experts.

- # Public officials suspected of involvement in torture or ill-treatment should not be allowed to be associated with the investigation into the allegation of torture in any manner, and should be removed from any position of influence over alleged victims or witnesses for the duration of the investigation and any trial proceedings. Firm action should be taken against any police officers found to have colluded with colleagues accused of torture or ill-treatment in the cover-up of the crime including harassment of the victim or witnesses.
- # Complainants, witnesses and others at risk should be protected from intimidation and reprisals: a witness protection program should be established in West Bengal.
- # Police and other officials not promptly or truthfully complying with the orders of judicial or other investigating officers should be subject to immediate disciplinary proceedings.
- # Methods and findings of investigations should be made public and the victim or the victim's family must be allowed access to the complete records of the enquiry including post mortem reports and be given the right to be represented through a competent legal counsel during the inquiry, if necessary with the help of legal aid.
- # The government should consider setting up effective, adequately resourced and independent police complaints investigation mechanisms at district level, the membership of which should include members of civil society as well as executive and judicial representatives. These bodies should maintain and publish uniform and comprehensive statistics on complaints of torture and ill-treatment by law enforcement personnel.
- # The West Bengal government should institute a review of the numerous cases of alleged torture by police which are pending investigation and prosecution to determine the reasons for delays and to take action against police officials found to be deliberately interfering in the investigative or judicial process.

9. Ensure adequate procedures for medical examination of torture victims

- # Facilities should be made available for medical examination by an independent medical practitioner on arrest at the request of the detainee.
- # Those who allege torture or ill-treatment including rape and other forms of sexual abuse should be immediately examined by an independent medical practitioner. Police should not be present during the examination and detailed records of the examination should be kept in accordance with Principle 6(b) of the Istanbul Principles.

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- # Steps should be taken to protect medical professionals carrying out post mortems and medical examinations of alleged torture victims from police pressure. As a step towards this, police officials should not be present during post mortems or the medical examination of detainees. In addition, the victims' relatives or their representatives should have the right to request any registered doctor of their own choice to be physically present while a post-mortem is actually being conducted.
 - # Training of medical professionals should incorporate medical ethics and in particular the UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Firm action should be taken against any medical professionals found to have participated in the cover-up or facilitation of torture.

10. Bring to justice those responsible for torture

- # The authorities should bring to justice anyone involved in acts of torture. The definition of those responsible should include those who may have given orders as well as those who carried out the actions. Officials who are found to have ordered or **tolerated** torture by those under their command should be held criminally responsible for their acts. An order from a superior officer or a public authority must never be invoked as a justification for taking part in torture. All officials must be made aware that they have a duty to disobey a manifestly illegal order and will themselves face criminal prosecution for such acts. There should be no amnesties for public officials found guilty of torture.
- # Any public official indicted for infliction of or complicity in torture or ill-treatment should be suspended from duty and not permitted to occupy any public position with responsibility for people in detention.
- # All legal provisions which require government sanction for the prosecution of police should be removed.
- # Those found guilty of torture or ill-treatment must be punished in a way commensurate with the seriousness of the offence, but excluding the death penalty and other punishments which are themselves human rights violations.
- # In cases in which "departmental action" has been taken against individual police officers, information should be publicly provided on the exact nature of that action.

11. Provide reparation to victims of torture

- # Verification mechanisms should be put in place to ensure that orders for compensation are implemented promptly by the authorities and that they are paid directly to the awardee.
- # Medical care and rehabilitation should be provided through institutions established

with state support.

12. Strengthen and support the West Bengal Human Rights Commission

- # The West Bengal government should publicly state its commitment to human rights and in that regard its support for the work of the WBHRC. Adequate resources should be provided for the full and effective functioning of the Commission including provision of investigative staff.
- # The WBHRC should be given the power to visit custodial institutions without having to previously notify state officials.
- # Recommendations of the WBHRC should be promptly complied with. As a means to this, it should be given explicit powers to refer cases in which it has found sufficient evidence to merit prosecution for a human rights violation directly to the prosecuting authorities so that appropriate action can be taken against individuals concerned. The West Bengal government should provide information on the nature of departmental action taken against police officials.

13. Provide effective human rights training to police

- # Training programs for law enforcement officials and others should include practical methods to prevent torture and not just theoretical teaching of legal provisions and human rights standards. Human rights education or ethics training should be integrated into training focussed upon increasing the professionalism of the police. Training should acknowledge the context in which violence has become accepted as a way of "solving" problems and that this situation increases the use of torture.
- # Training should include the issue of sensitivity towards groups already discriminated against.
- # In selecting and training of law enforcement personnel, the qualification of respect and sensitivity to human rights protection should be a prerequisite, kept under review and counted toward assessment of their performance and future prospects.
- # Human rights training including gender sensitive training should be provided to police, judiciary and medical professionals, in addition to programs already undertaken. The training should be provided to all ranks from the highest to the lowest and should be given at periodic intervals, not just at the start of the job.
- # The absolute prohibition against torture and ill-treatment should be reflected in the training and all orders given to officials involved in arrest and custody. These officials should be instructed that they have the right and duty to refuse to obey any order to participate in torture.
- # Training manuals should incorporate the following international standards:
 - UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
 - UN Code of Conduct for Law Enforcement Officials;

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- UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;
 - UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
 - UN Convention against Torture, and Other Cruel Inhuman or Degrading Treatment or Punishment.
 - UN Declaration on the Protection of All Persons from Enforced Disappearance.

14. Increase cooperation with national bodies in the fight to end torture

- # The Government of West Bengal should recognise the crucial role that many human rights organizations play in detecting and publicising incidents and patterns of torture, pursuing justice for victims and their relatives and identifying problems in the system which facilitate torture or prevent justice. It should effectively respond to the observations and recommendations made by various organizations in India and include them in discussions on how to prevent torture.
- # The Government of West Bengal should encourage the holding of expert meetings of human rights activists, lawyers, medical professionals and others including international experts, on torture and other human rights issues.

Recommendations to the West Bengal Human Rights Commission

- # The WBHRC should monitor, record and publish the numbers of complaints of torture and ill-treatment which are brought to them, including a separate category for the number of complaints of rape or sexual assault in custody. These records should provide a breakdown of the profile of victims by gender and social background in order to provide information on patterns of torture.
- # The WBHRC should examine its practices and procedures to ensure that they meet standards of impartiality and rigour and that its standards of human rights protection are in line with international human rights standards and do not compromise human rights in any way. Methods of investigation set out in the Istanbul Principles should be incorporated into the methodology and training of officials of the WBHRC to ensure professional and impartial investigation.
- # The WBHRC should establish a mechanism for reviewing its recommendations on a periodic basis as a means of checking whether its recommendations have been implemented and following up with the authorities.
- # The WBHRC should be clear that complicity by police in acts of torture is an offence and that "communicating its displeasure" to senior officers who have witnessed torture and taken no action or taken steps to cover up torture is insufficient punishment for such crimes and the identification of such practices by the WBHRC should be followed by investigation and criminal prosecution.

APPENDIX I: Response from West Bengal Government

Government of West Bengal
Home Department
Special Section
H.R. Cell

No. 643 - HS/HRC

Dated. Kolkata, the 20th July, 2001.

From: The Joint Secretary to the
Government of West Bengal.

To: Shri A.K. Jain
Joint Secretary (HR)
Ministry of Home Affairs
Government of India
North Block
New Delhi

Sir,

I am directed to invite your attention to a reference, bearing No. ASA 20/2001.38 dated 2 July, 2001, from Gerry Fox, Director, Asia/Pacific Regional Program, addressed to the Chief Minister of West Bengal, a copy of which is enclosed for your kind perusal. With the reference we have also received a report on "torture" in West Bengal.

2. The report in question is full of distortions, half-truths and slanders, with the sole aim at maligning the State Government, tarnishing its image and undermining its sustained efforts to uphold the cause of human rights in the State.

3. The sincere commitment to the cause of human rights has prompted the State Government to constitute the first State Level Human Rights Commission in India. Since the constitution of the National Human Rights Commission and the West Bengal Human Rights Commission in the State, the State Government has been extending whole-hearted cooperation to both the Commissions in all possible ways in the discharge of their manifold assigned duties. During the period from 1995-96 to 2000-2001 the State Government received 299 recommendations from the West Bengal Human Rights Commission, out of which as many as 282 recommendations have already been accepted by the State Government. Most of the accepted recommendations have been implemented barring a few which are under the process of implementation. During the same period, we have received 32 recommendations from the National Human Rights Commission, all of which have been accepted for implementation.

4. The complaints of violation of human rights and failure of the administrative machinery to prevent abuses of human rights in the State have always been dealt with due seriousness. The State Government has never hesitated in taking stern penal measures against all officers whose involvement in the violation of human rights have been substantiated by the findings of either the National Human Rights Commission or the West Bengal Human Rights Commission.

5. Our country is the largest functioning democracy in the world with a stout network of independent judiciary and a large number of various democratic institutions spread all over the country. In particular, the National Human Rights Commission and the State Human Rights Commission have been constituted with persons of high eminence in their respective fields. The National Human Rights Commission is headed by a retired Chief Justice of the Apex Court in the country while the State Human Rights Commission's Chairperson is a retired Chief Justice of a High Court. With these institutions we are convincingly in a position to take adequate care of the protection of human rights and for this purpose we do not require any advice/guidance from a foreign organization like Amnesty International whose track record in undertaking investigation of cases of human rights violation has been rather selective and unsavoury. It may be noted that this organization never really bothered to expose the misdeeds of the Apartheid Regime of South Africa or investigate the crimes perpetrated by other despotic regimes indulging in blatant and ruthless violation of human rights.

6. It will be appreciated if the reaction of the State Government is conveyed to the Director, Asia/Pacific Regional Program, Amnesty International and they are requested to publish this letter of the State Government in full at the time of publication of their report. Since they have requested for a response from the State Govt. by August 1 and the time is short, a copy of this letter is being endorsed to Amnesty International directly.

Yours faithfully

[signature]

Joint Secretary to the Govt. of West Bengal

No.643/1 - HS/HRC

Dated, Kolkata, the 17th July, 2001.

Copy forwarded to Amnesty International, International Secretariat, 1 Easton Street, London WC1X 0DW, United Kingdom.

[signature]

Joint Secretary to the Govt. of West Bengal

**APPENDIX II: Amnesty International Correspondence
with West Bengal Government**

Ref.: ASA 20/2001.38

Mr Buddadeb Bhattacharjee
Chief Minister of West Bengal
Office of the Chief Minister
Writers Building
Kolkata
West Bengal
India

2 July 2001

Dear Sir,

Please find enclosed our report on torture in West Bengal compiled as a result of research carried out by Amnesty International delegates in June 1999 and subsequent follow-up research. It is being published as one of a series of reports published by the organization as part of its international campaign against torture. The report sets out concerns about patterns of torture and impunity - highlighting how arrest and detention procedures are open to abuse by police, how this facilitates torture and how it particularly affects the most socially and economically disadvantaged.

This report is being sent to you for comment prior to its publication as indicated by our delegates during their visit. As well as comments on the content of the report and the conclusions drawn, we would be very interested in receiving comments on the recommendations set out at the end of the report which have been drawn up to seek constructive ways of addressing the problems identified. We would be interested to hear your government's reaction to these recommendations and to learn of any measures that are already being taken for the protection of victims of torture beyond those already referred to in the report.

We intend to publish the report on 8 August but would be very grateful for any comments you and your colleagues in the government might have by 1 August. We will seek to reflect any comments at the time of publication.

The report is also being sent to the Union Ministries of Home and External Affairs.

I look forward to hearing from you.

Yours sincerely,

Gerry Fox
Director
Asia/Pacific Regional Program

Ref.: TG ASA 20/2001.44

The Joint Secretary to the Government of West Bengal
Government of West Bengal
Home Department
Special Section
H. R. Cell
Kolkata
West Bengal
India

26 July 2001

Dear Joint Secretary,

I would like to thank you for your timely response to our letter and to our report. Your response will be published in full as requested when we issue our report.

Amnesty International regrets that the Government of West Bengal believes that the report is full of distortions. Amnesty International would welcome information on any of the cases which we have highlighted in the report if the Government of West Bengal feels that information in the report is incorrect or incomplete.

Amnesty International clearly acknowledges in the report the important role of the West Bengal Human Rights Commission and the fact that the Government of West Bengal was the first to establish such a Commission. However in doing so we have also recognized that there are several concerns about its ability to carry out its work many of which reflect concerns raised by the West Bengal Human Rights Commission itself. The report also notes that recommendations made by the West Bengal Human Rights Commission to the state government have officially been accepted but highlights concern - as demonstrated in the presentation of several cases - that these have only been partially implemented.

While accepting the importance of the Human Rights Commission you will recognize that such institutions should in no way operate in the absence of, or as a substitute for, other fundamental social, legal or judicial infrastructures. While Human Rights Commissions can and have served to enhance the promotion and protection of human rights, they should never replace, nor in any way diminish the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial, easily accessible, adequately resourced and effective judiciary. It is for this reason that we have sought your government's consideration of a comprehensive set of recommendations for the prevention of torture many of which relate to implementation of legal safeguards and the operations of all aspects of the criminal justice system. In this regard we would be pleased to hear from you whether these recommendations are being considered at all by your government.

The organization also regrets that the Government of West Bengal believes that there is no role for international human rights organizations in monitoring human rights. As you are aware, the Government of India has made international commitments to uphold human rights through its ratification of international human rights treaties such as the International Covenant on Civil and Political Rights and

thereby committed itself to a degree of international scrutiny. India as a member of the United Nations is bound by the UN Charter. One of the purposes of the UN expressed in Article 1 of the Charter is "promoting and encouraging respect for human rights". The Universal Declaration of Human Rights (UDHR) is addressed to "all peoples and all nations to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction." Amnesty International takes its inspiration for its work from this challenge in the UDHR and promotes the universality and indivisibility of rights everywhere.

As a global movement for human rights with over one million members around the world, Amnesty International seeks to promote and protect human rights in all countries of the world without fear or favour. The organization believes that human rights are the legitimate concern of the international community, and therefore seeks to engage all governments, inter-government agencies and others in protecting human rights both within their own country and other nations. Our work in monitoring the implementation of international human rights commitments is carried out in cooperation with numerous domestic human rights organizations in India and elsewhere and we seek to reflect their concerns in our actions. In this regard I think it is important to point out that many of the recommendations set out in the report are those made by the judiciary and numerous government appointed Commissions in India.

With regard to your comment on Amnesty International's work on South Africa and other regimes we have enclosed several reports, for your information, which affirm our work against human rights violations. This report is being published as part of a global campaign against torture which has highlighted concerns about human rights violations in countries including Mexico, United States, Spain, Europe, Israel, Egypt, Bangladesh and the Philippines.

I look forward to hearing from you.

Yours sincerely

Gerry Fox
Director
Asia/Pacific Regional Program